

dant was justified in his prosecution. The fact that the defendant did consult Counsel is an important element in considering the state of mind that a reasonable person would have in the presence of the facts as presented to his Counsel before the information was laid.

"It is not suggested that the Magistrate was actuated by improper motives: it is not suggested that he was not a reasonable man, and if the facts were sufficient to induce him to take the serious step of putting the plaintiff upon trial for a serious offence, can it be said that the knowledge of the same facts existing in the mind of the defendant was not a reasonable and probable cause sufficient to induce any reasonable and prudent man to take the steps which the defendant did.

"Now, further, there was never been, in my opinion, a termination of this prosecution. In the case reported it was stated, that the plaintiff in an action of this kind, must prove he was innocent, and that his innocence was pronounced by a tribunal before which he came and he must show want of a reasonable and probable cause.

"Under the English jurisprudence, and under our jurisprudence, I should say that there must be a final termination of the prosecution before an action of this kind can be maintained.

"What is a termination of the prosecution? It is a final judgment discharging the accused, and declaring the accused innocent, and I should say that a liberation of the accused for the time being, without a declaration of his innocence, is not a termination. It has been held that an entry of "*nulli prosequi*" is a good termination, if the *nulli prosequi* is not entered on account of an irregularity or technicality.

"In like manner it has been held, that an arrest of judg-