

## The Legal News.

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### MALICIOUS PROSECUTION.

Actions of damages for malicious prosecution are surprisingly numerous in our Courts, and although the leading principles which apply to cases of this description are tolerably well settled, we find judges frequently coming to different conclusions as to the proper mode of disposing of them. A recent case before the Court of Appeal in England—*Hicks v. Faulkner* (46 L. T. Rep. N. S. 127), which affords the latest exposition by the English judges of an important doctrine in connection with this branch of law, is worthy of attention. The defendant prosecuted the plaintiff for perjury alleged to have been committed in an action for rent brought by the defendant against the plaintiff's father. The plaintiff was acquitted, and thereupon sued the defendant for damages for malicious prosecution. The jury were directed that in an action for malicious prosecution, the plaintiff must prove affirmatively the absence of reasonable and probable cause and the existence of malice. The learned judge then told them if they came to the conclusion that the plaintiff had spoken the truth, but that the defendant had a very treacherous memory, and went on with the prosecution under the impression that the plaintiff had committed perjury, yet if that was an honest impression, the upshot of a fallacious memory, and acting upon it he honestly believed that the plaintiff had sworn falsely, they would not be justified in finding that the defendant had maliciously, and without reasonable and probable cause, prosecuted the plaintiff. This was held a right direction by the Court of Appeal. The authorities referred to were *Mitchell v. Jenkins*, 5 B. & Ad. 594; *Lister v. Perryman*, 23 L. T. Rep. N. S. 269; *Turner v. Ambler*, 10 Q. B. 252; *Bromage v. Prosser*, 4 B. & C. 255.

### TESTS BEFORE JURIES.

Baron Huddleston lately gave rise to some criticism by the report that he had sanctioned a test of skill in the presence of the jury. The

case which was being tried was *Belt v. Lawes*. Mr. Belt, who is a fashionable sculptor, was suing the *Vanity Fair* newspaper for libel in alleging that he is not an artist of merit, and that his pretended works are executed by talented subordinates. It was suggested during the trial that Mr. Belt might give a practical proof of his skill in the presence of the jury, and Baron Huddleston is reported to have said, "If the jury express a wish to see Mr. Belt put to the test, I shall certainly not prevent it."

The *Law Times* thereupon observed: "The above case is probably the first in which it has been suggested that an artist whose skill is impugned should prove it by practical operations in court. The inconvenient results which would probably flow from such a practice are obvious. The practical operation would not be recorded, although it might produce different impressions upon different minds. The operator and his friends might consider the test conclusive in his favor; another view might be taken by the other side. How move against a verdict based on this operation on the ground that it was against the weight of evidence? If the test is to be applied to a sculptor, why not to a *prima donna*? We have known of a case in which an *artiste* sought damages for wrongful dismissal, and the justification was that she could not sing. Would a judge have allowed her to sing to the jury? If so, the rule might be extended without limit, with consequences terrible to contemplate."

Baron Huddleston would now have it understood that he was wrongly reported, and when, at Carnarvon, in an action for personal injuries against a railway company, the plaintiff's counsel asked the Judge to allow the plaintiff to walk across the court before the jury, with a view to convince them that his lameness was not assumed, Baron Huddleston declined to allow the test, and observed that ever since he had been reported to have said, during the hearing of the case of *Belt v. Lawes*, that he should allow the plaintiff to make a bust of him (Baron Huddleston) in court, he had been pestered to allow all kinds of tests to be gone through in Court before the jury; and he wished it to be known that the press had entirely misrepresented him in this matter, and that he had never indicated that he should allow such a course to be taken."