Bramwell, BB., took the opposite view ; (*b*) and this, it would seem, must be the correct one, wherever, at least, the judge is placed in possession of all the facts upon which his opinion is to be formed. A theory of evidence which is based upon the very improbable, though not wholly impossible, contingency that the *simplicatas laicorum* may arrive at a sounder conclusion as to the purely legal significance of evidence than the trained intellect of a professional jurist savours somewhat too strongly of over-refinement to find a place in a practical science like the law.

In estimating the value of the opinion of a magistrate as evidence of probable cause, it must be theoretically proper to consider whether the opinion represents a conclusion as to a matter of law, or a mere inference that certain acts were done by the person brought before him, and also whether he was a trained lawyer or a layman. But the courts have not attempted to make these alternatives the basis of any very precise differentiation. We find it laid down, however, that, where the justifiabilty of the proceedings depends upon whether the accused did something which, if established by adequate proof, indisputably constitutes the offence charged, the fact that a judge or magistrate had spontaneously bound over the defendant to prosecute would go very far to show that the prosecution was a proper one (*c*). So also the fact that a magistrate, supposed to be sufficiently learned in the law to decide officially as to the nature of a complaint made before him, issued a warrant upon a true statement of facts really inadequate to justify arrest, is very strong evidence in favour of the plaintiff, who may well be supposed to have acted on the advice of the magistrate ; though it would probably be still a question for the jury whether the defendant, influenced by the decision of the magistrate, had innocently pursued his opponent

(*b*) See also the opinion of Cockburn, C.J., stated in the next note.

(*c*) *Fitzjohn* v. *Mackinder* (Exch. Ch. 861) 9 C.B.N.S. 505, per Cockburn, C.J.: *Pinsonnault* v. *Sebastien* (1887) 31 L. C. Jur. (Cour. de Rev.) 167. In Massachusetts the advice of a magistrate who is not a member of the legal profession is not available as a defence any more than the advice of laymen, the principle laid down being that "the law requires that a person who has instituted a groundless suit against another should show that he acted on the advice of a person who by his professional training and experience, and as an officer of the court, may be reasonably supposed to be competent to give safe and prudent counsel on which a party may act honestly and in good faith, although to the injury of another": *Olmstead* v. *Partridge* (1860) 82 Mass. 381. To the same effect see *Probst* v. *Ruff* (1882) 100 Pa. St. 91.