

Ordinarily, therefore, the declaration must shew the original suit, wherever instituted, to be at an end, not merely because, if a different doctrine prevailed, he might recover in the action, and yet be afterwards convicted on the prosecution. (*d*'), but also because "no man can say of an action still depending that it is false or malicious." (*e*) But the want of an averment that the original proceedings were determined will be cured by verdict (*f*) because it will be presumed that it has been proved at the trial. (*g*)

17. Qualifications of the general rule—The cases in which the entire determination of the previous suit out of which the action for malicious procedure has arisen need not be established as a prerequisite to the right to maintain, may be conveniently considered under several categories.

(*a*) *Where the cause of action is not dependent on the result of the former suit*—The first of these categories is defined by the exception implied in the remark of Blackburn, J., that "the termination demanded by the rule need not be a final determination of the cause of action, as in the case of a non-suit; but it must be final in so far as the suit or proceeding itself is concerned." (*a*) Hence if the declaration shew that the cause of action is dependent on the result of the former suit, it must shew the successful termination of such suit in favour of the plaintiff, as a condition precedent to the bringing of the action; but if the complaint disclosed be in no way dependent on the result of the former suit, and it is a well-grounded complaint, however the event may be,

of an injunction still in force) from those in which the issuing of the process is the act of the moving party, but there seem to be no other authorities for this view.

(*d*) *Fisher v. Bristow* (1779) Dougl. 215. "If nothing was done upon the indictment, the plaintiff will clear himself too soon, i.e., before the fact tried, which will be inconvenient": *Arundell v. Tregino* (1608) Yelv. 116. To the same effect see *Lewis v. Farrel* (1719) 1 Str. 114.

(*e*) *Parker v. Langley* (1712) 10 Mod. 209. As regards the rule that it should appear on the face of the record that the prosecution was at an end, there is no difference between a malicious prosecution and a malicious commitment: *Morgan v. Hughes* (1788) 2 T.R. 225. The tracing of a writ of extent to its close is sufficiently accomplished by shewing its discharge by the court, though upon an arrangement and by consent: *Craig v. Hasell* (1843) 4 Q.B. 481.

(*f*) *Skinner v. Gunton*, 1 Wms. Saund. 228.

(*g*) Per Denison, J., in *Panton v. Marshall*, Q.B. Michaelmas, 28 Geo. II., cited in Selwyn's Nisi Prius (8th Ed.), p. 1070.

(*a*) *Parton v. Hill* (1864) 12 W.R. 753, per Blackburn, J.