

These rules depend upon what is admitted to be the interest of the community that no person knowing of the commission of a crime shall be intimidated from causing its punishment by fearing actions in damages.

I am of opinion that not only the circumstance proved to have been within the knowledge of the defendant in this case at the time when he laid his information for theft against the plaintiff, but also the circumstances actually proved in the case, were sufficient to lead the defendant to believe that the plaintiff was guilty of the crime charged against him and that the defendant, in laying the information, did not act with malicious motives and therefore was not liable to an action in damages.

I am of opinion to reverse the judgment and to dismiss the plaintiff's action with costs.

Judgment. "Considering that plaintiff's action was for malicious prosecution;

"Considering that in such action, it was incumbent on plaintiff and essential to the success of his action to establish that the arrest he complained of was made through malice and without reasonable and probable cause;

"Considering that plaintiff has failed to establish the above essential elements to a judgment in his favour;

"Considering that on the contrary the proof establishes that the arrest in question was made without malice and with reasonable cause;

"Considering that in view of the foregoing there was error in the judgment of the Court of first instance which condemned defendant in the sum of \$35 and the costs of an action of \$100; doth reverse said judgment; and proceeding to render the judgment which the Court of first instance should have rendered, doth dismiss plaintiff's action with costs of both Courts.