dant in bringing that charge, as he did, acted with malice and without reasonable cause. It is not whether he so acted upon grounds which ultimately turned out to be insufficient to convict; not whether there was certainly and conclusively cause for bringing it; not even whether he was incensed and overanxious to get a conviction. All that would tend, no doubt, to show malice; but malice, as everybody knows, will not sustain the action, unless there is also a want of probable cause. Therefore, the question is whether the grounds were reasonable and probable upon which he proceeded. It certainly would not be the first case that has been brought on good, or even on conclusive grounds, and where the accused has been freed by a jury in a criminal court. But had he fair and reasonable grounds for proceeding? He produces the deed which speaks for itself. It says there is one mortgage only. Then the notary says the same thing. It was urged for the plaintiff that he only understood French; but the notary says he read the deed in French to him. More than this, his attention was very particularly called to the fact, and must have been so, for the deed as first expressed said that the money was due to the Trust and Loan Company under "a mortgage;" but was altered before signing it to "mortgages to the T. & L. Co."—the sum being still the same. It was also urged on the plaintiff's side that the other mortgage to the Metropolitan Society had been mentioned in a conversation before the passing of the deed to defendant. J. Beauchamp and young Grothé are brought up to prove this, and they both say that the other mortgages were mentioned. As to young Grothé, Mr. Brunet and Mr. Lyman both say that they would not believe him on oath. Lyman says the same thing as to Beauchamp. Brunet was brought up again, and Lyman was cross-examined with some effect to show that they judged harshly; but after all, without the evidence of Mr. Brunet or of Mr. Lyman, it would still be a question of the weight of evidence, and I should not hesitate to take the deed itself, and the notary's evidence and the very nature of the transaction itself, in preference to the son, and the intimate friend of the plaintiff; for it would be absurd to believe that Saunders would have advanced his goods on this security if he had known it to be worthless.

Judging this case as a jury would be bound to judge it, taking the evidence for themselves, and the law from the Court, I feel satisfied that there is not only no want of probable cause shown, but the defendant, on the contrary, had very reasonable grounds to go upon in prosecuting this plaintiff as he did. As to malice, if there is no want of probable cause, malice is immaterial; but one way or the other, the only suggestion on the subject of malice was the fact that the bill had been laid before the Grand Jury without previous examination before a Magistrate. It is a practice which I do not approve of, unless there is necessity for it; but the law has provided for that, and vested the Crown counsel with the discretion of permitting it, as was done here; and the plaintiff gives the best reason for it, for he says the defendant had already addressed himself to a Magistrate who would not act.

I will cite only two authorities on the general principles of this sort of action. In *Williams* v. *Taylor*, 6 Bingh. 186, Ch. J. Tindal said :—"The facts ought to be such as to satisfy any reasonable mind that the accuser had no ground for the proceeding but his desire to injure the accused."

Hilliard on Torts, p. 428 : "Where the plaintiff has been acquitted on the charge brought against him, the acquittal does not raise a presumption of want of probable cause."

These principles—those of the English law—have always in my time, been applied to these actions. Necessarily so, I consider, as I said in *Chartrand* v. *Pudney* in Review, two years ago this very day.* It is very true that our civil rights are to be governed by the laws of France as they existed at the time of the cession—with such modifications by local or imperial power as have been subsequently made. One of those modifications was the introduction of the whole body of the English criminal law. That measure, generally regarded as a great public benefit by the whole people without distinction of origin, as I have always believed, would become a great danger and mischief, if those who exercise their rights under it were not protected by the same rules as those which would govern their exercise in England. Our own law says nothing on the subject; but in the analogous case of false arrest under civil process our law has made provision by art. 796

* 3 Legal News, p. 237.