

pleadings. He, however, considered that it was not before him. There was a misunderstanding between him and the counsel as to what was intended to be admitted. Order made setting aside judgment and referring the case back to the referee to be tried out. Costs of appeal and reference back to be dealt with as part of the costs of the cause by the referee, and paid by the unsuccessful party upon the reference back.

APRIL 11TH, 1903.

DIVISIONAL COURT.

PRING v. WYATT.

*Malicious Prosecution — Reasonable and Probable Cause—Nonsuit—
Search Warrant — Theft — Information not Charging Crime—
Amendment.*

Re-argument of case reported ante 22.

Appeal by defendant from a judgment of nonsuit by the junior Judge of the County Court of Middlesex in an action for malicious prosecution.

On 20th February, 1902, defendant, having with him a collie dog, was passing plaintiff's house, when plaintiff and his son claimed the dog as theirs and took possession of it. Defendant went to a magistrate and stated the facts, whereupon the magistrate drew an information stating that plaintiff did on that day "unlawfully have and keep in his possession and take away a black collie dog, the property of the complainant," which was sworn to by defendant, and upon it the magistrate issued a search warrant and delivered it to a constable, who took the dog out of plaintiff's possession, plaintiff insisting that the dog was his. The constable then laid an information against plaintiff, charging that on the 20th February, 1902, he "unlawfully did have and keep in his possession a black collie dog, the property of" defendant. A summons was issued by the magistrate, and both parties appeared before him. There was evidence to shew that at the request of defendant and his counsel the information was amended by inserting the words "steal and take away." The trial then proceeded, and the magistrate dismissed the charge, making a note that "the charge of theft" was dismissed. Plaintiff then brought this action for malicious prosecution.

J. H. Moss, for plaintiff.

J. R. Meredith, for defendant.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by