(*f*) *Discharge by magistrate* [*compare sec. 20* (a) *post ante*]—A dismissal of a charge by a magistrate is not of itself proof of want of reasonable and probable cause for bringing that charge. (*p*) Still less will the fact that the complaint was dismissed by the magistrate merely on account of a defect of jurisdiction, enable the plaintiff to maintain the action, where the absence of authority was not absolute, but arose merely from an error as to the local extent of the jurisdiction. (*q*)

VI. EVIDENCE ADMISSIBLE TO ESTABLISH OR NEGATIVE EXISTENCE OF PROBABLE CAUSE.

[In this subdivision we shall state the effect of those rulings only which are of universal application, irrespective of the nature of the proceedings complained of. The admissibility of evidence for the purpose of establishing or negativing probable cause in particular cases has been already reviewed, as a part of the foregoing discussion, under the appropriate headings].

20. Opinions formed by others as to the justifiability of the previous proceedings, materiality of—(*a*) *Opinion of judge or magistrate, how far a protection*—Upon the question whether the decision of a superior judge or of a court, or of both, that an indictment will lie, as a matter of law, or that a man may be adjudicated a bankrupt, there was a conflict of opinion in *Johnson* v. *Emerson*, (*a*). Kelly, C.B., and Cleasby, B., considered (p. 393) that such a decision is not necessarily conclusive evidence that one who had before preferred the indictment, or petitioned for the adjudication, had reasonable and probable cause for the act he did, and that it is evidence only so far as it may tend to satisfy a jury that what the judge and the court held to be law, the prosecutor or petitioner bona fide believed to be the law. There still, it was said, remained the alternative that, assuming it to be not the law, the prosecutor or petitioner knew or believed it was not the law. The moment this was shewn, there was, it was said, no probable cause. Martin and

(*p*) *Henderson* v. *Midland* R. Co. (1871) 20 W.R. 23: *Barbour* v. *Gettings* (1867) 26 U.C.Q.B. 544. An allegation in a complaint against a magistrate for maliciously committing the plaintiff to prison is demurrable where it merely states that the plaintiff was "discharged," unless the discharge was in consequence of the grand jury's not finding the bill: *Morgan* v. *Hughes* (1788) 2 T.R. 225: So held also, where the charge was one of assault, in spite of the fact that the ground of dismissal was that the complainant, according to the weight of the evidence, had commenced the disturbance and by his conduct provoked the assault: *Raymond* v. *Biden* (1892) 24 Nov. Sc. 363.

(*q*) *Copeland* v. *Leclerc* (1886) 2 Montr. L. R. (Q.B.) 365.

(*a*) (1871) L. R. 6 Exch. 329.