

its terms either as to the mode of payment or as to the parties with whom it was made.

Per WEATHERBE, J.

Held, that the proof of the written instrument signed by defendants threw the burden upon them of establishing their defence.

Per MEAGHER, J.

Held, that in the absence of evidence of the acceptance by defendants of the offer said to have been made by the Toronto company to accept the crusher in payment for machinery to be ordered, or the amount to be allowed therefor, there was no agreement concluded between the Toronto company and defendants which could be assumed by the plaintiffs.

W. E. Roscoe, Q.C., and W. M. Christie in support of appeal. B. Russell, Q.C., contra.

Province of Manitoba.

QUEEN'S BENCH.

Killam, C.J.]

ROGERS v. CLARK.

[Oct. 9.

Pleading—Action for malicious prosecution—Striking out paragraphs of defence as embarrassing—Queen's Bench Act, 1895, rules 280, 283, 293, 298, 301 and 318.

Application to strike out paragraphs of the defence in an action for malicious prosecution. The paragraphs objected to set up certain alleged facts and information given to the defendant tending to justify his belief in the plaintiff's guilt, and that the defendant had laid all the information received by him before the magistrate who issued the warrant, and before counsel who advised the commencement of the prosecution complained of, also that the plaintiff had been in possession of animals which he was accused of stealing, without shewing that it was recent possession. It was further alleged that certain facts were shewn by evidence taken upon the first charge without information from other sources had been received, without specifying these sources.

The objections relied on were that these facts and information and the advice of counsel and magistrate were only evidence of reasonable and probable cause which should not, under rule 298 of The Queen's Bench Act, 1895, be set out in detail; and that sufficient was not stated to shew reasonable and probable cause absolutely, as the information and inquiry may not have been sufficient to warrant belief of guilt, and the sources of the information were not stated.

Held, 1. That a simple traverse of the plaintiff's allegation of the want of reasonable and probable cause is sufficient in the statement of