

Que.]

[March 23.]

HETU v. DIXVILLE BUTTER AND CHEESE ASSOCIATION.

*Malicious prosecution—Reasonable and probable cause—Bona fide belief in guilt—Burden of proof—Right of action for damages.*

An action for damages for malicious prosecution will not lie where it appears that the circumstances under which the information was laid were such as might lead to an honest belief in the guilt of the person accused. *Abrath v. North Eastern Railway Co.* (11 App. Cas. 247) and *Cox v. English, Scottish and Australian Bank* ((1905) A.C. 168), referred to.

*Semble*, that in such cases, the rule as to the burden of proof in the Province of Quebec is the same as that under the law of England, and the plaintiff is obliged to allege and prove that the prosecutor acted with malicious intentions or, at least, with indiscretion or reprehensible want of consideration. *Sharpe v. Willis*, Q.R. 29 S.C. 148, 11 Rev. de Jur. 538, and *Durocher v. Bradford*, 13 R.L. (N.S.) 71, disapproved.

Judgment appealed from, Q.R. 16 K.B. 333, affirmed.

*Belanger*, K.C., and *Verret*, for appellant. *Shurtleff*, K.C., for respondents.

B.C.]

HUTCHINSON v. FLEMING.

[March 23.]

*Principal and agent—Secret profit—Trust—Clandestine transactions by broker—Sham purchaser—Commission.*

H., a broker, undertook to obtain two lots for F., as an investment of funds supplied by F. for that purpose, at prices quoted, and on the understanding that any commission or brokerage chargeable was to be got out of the vendors. H. purchased one of the lots at a price lower than that quoted, receiving, however, the full amount quoted from F., and by representing a sham purchase of the other lot, got an advance from F. in order to secure it.

*Held*, affirming the judgment appealed from, that H. was the agent of F. and could not make any secret profits out of the transactions, nor was he entitled to any allowance by way of commission or brokerage in respect of either of the lots so purchased.

*W. S. Deacon*, for appellant. *D. G. Macdonnell*, for respondent.