the jury. (*j*) But where the facts proved by the defendant before the magistrates were all undisputed, the judge ought not to leave to the jury the question whether the defendant took reasonable care to inform himself of the true facts of the case. "If," said Cave, J., in a recent case, "wherever the judge is of opinion that there is a prima facie case of reasonable and probable cause, he is still bound to ask the jury whether the defendant took reasonable care to inform himself of the whole of the facts, the result will be that the jury will always be able to overrule the view of the judge by finding that the defendant did not take such reasonable care." (*k*) In the Court of Appeal, Lord Esher expressed (p. 726) his complete concurrence with these views, and an additional reason for adopting the rule thus laid down was pointed out by Kay, L.J., viz., that the result of holding otherwise would be that a finding of a jury that the defendant did not take proper care to inquire into the facts would, without more, determine the action in favour of the plaintiff, and render a further investigation into the question of malice superfluous.

(*f*) *Motive of defendant*—Among the facts to be determined by the jury are the motives of the prosecutor. Thus, where the defendant, though he was in court when the plaintiff was on trial on a charge of perjury, did not testify in support of the charge, a judge acts properly in leaving the case to the jury under an instruction that, if they thought that this non-appearance as a witness arose from a consciousness that he had no evidence to give which could support the indictment, there was want of probable cause for instituting the prosecution. (*l*)

(*j*) See *Loog* v. *Nahmaschinen, &c., Gesellschaft* (1884) 4 Times L.R. 208, where Stephen, J., submitted to the jury the questions whether the defendants had taken proper care to inform themselves as to the facts; and *Goudge* v. *Sims* (1884) 1 Times L.R. 35, where Hawkins, J., took the same course. In *Grant* v. *Booth* (1893) 25 Nov. Sc. 266, one of the grounds which Townshend, J., held, that the verdict for the plaintiff should be set aside was, that as the facts were not in dispute, the judge was wrong in putting to the jury the question: "Did the defendant take reasonable pains to ascertain the true facts of the case?" McDonald, C.J., on the other hand, thought that the action of the trial judge was quite proper, as "a man who sends his bottles broadcast over a city to everyone who buys his beverages has no right to charge anyone who has those bottles in his possession with theft without at least taking some little pains to learn whether wrong was intended." Where the defendant trusted to his memory in regard to the existence of a fact which influenced him materially in instituting the proceedings, the jury may be asked whether it was prudent of him to rely on his memory: *Young* v. *Nichol* (1885) 9 Ont. R. 347.

(*k*) *Brown* v. *Hawks* (1891) 2 Q.B. 718. Where there is nothing in the evidence to suggest any doubt in the mind of the trial judge as to the bona fides of the defendant or his belief in the truth of the statement on which he acted, he is not bound to take the opinion of the jury on these points: *Archibald* v. *McLaren* (1892) 21 Can. S.C. 588, see especially per Gwynne, J. (p. 596) To the same effect see the remarks of Street, J., and Burton, J.A., in *Hamilton* v. *Cousineau* (1892) 19 Ont. App. 203.

(*l*) *Taylor* v. *Willans* (1831) 2 B. & Ad. 845; 6 Bing. 183. Compare the ruling that, whether the reasonable and probable cause was not only deducible in point of law from the facts, but existed in the defendant's mind at the time of his