

represented. The facts as disclosed were submitted by the directors of the company to counsel, and he advised that there was a good case for prosecuting a charge of conspiracy against both McMann and Dr. Abrath, his medical adviser. In addition to this, two eminent medical men were of the opinion that the case of the alleged injuries to McMann was a fabrication amounting to an imposture. Information was laid and Dr. Abrath committed for trial. He was acquitted, and thereupon brought an action of malicious prosecution against the defendants. The trial judge, Cave, J., left three questions to the jury: (1) Did the defendants, in prosecuting the plaintiff, take reasonable care to inform themselves of the true state of the case; (2) did they honestly believe the case which they laid before the magistrate; (3) were the defendants actuated by any indirect motive in preferring the charge against the plaintiff. The jury answered the two first questions in the affirmative, but gave no answer to the third, whereupon the judge upon these findings drew the inference of reasonable and probable cause, and directed a verdict to be entered for the defendants, and accordingly gave judgment for them. On appeal to the Queen's Bench Division, this judgment was set aside, and a new trial ordered. On appeal to the Court of Appeal, the judgment of the Court of the Queen's Bench Division was set aside, and the appeal from the order for a new trial allowed.

In his judgment in the Court of Appeal, Brett, M.R., characterized the charge of Cave, J., to the jury as most masterly. Among other things he said: "I wish I could express what I intend to say as clearly and as concisely as he stated this case to the jury. A summing up in an action for malicious prosecution I have never read which I more admired."

This model charge was as follows: "I think the material thing for you to examine about is whether the defendants in this particular case took reasonable care to inform themselves of the true facts of the case. That, I think, will be the first question you will have to ask yourselves: Did they take reasonable care to inform themselves of the true facts of the case? Because, if people take reasonable care to inform themselves, and notwithstanding all they do, they are misled, because people are wicked enough to give false evidence, nevertheless, they cannot be said to have acted without reasonable and probable cause; with regard to this question, you must bear in mind that it lies on the plaintiff