

they were available at 2.30 P.M., when he brought the stoves to defendant's and was reproached by Nutkin, and before he had delivered the goods.

Seeing then that plaintiff had made a sale and had not reported it, defendant and his bookkeeper, another Nutkin, went to Cohen's (the purchaser) to investigate, about 6 P. M. When he got there he found out that plaintiff was expected to call to collect the price. Defendant hid himself awaiting plaintiff's arrival, and when plaintiff came in telling Cohen he had come to collect, defendant asked him what right he had to sell and deliver his property without his knowledge, to which plaintiff made no reply. Defendant then asked him to come with him. Plaintiff, defendant and Nutkin all repaired to defendant's shop where Nutkin, defendant's partner (not the bookkeeper) questioned plaintiff. The only excuse plaintiff gave for selling this stove as he had done was that Mrs Cohen owed him money, at which they all laughed. Then plaintiff put up defendant's horse for the night in its stable, returned with the stable keys and departed, nothing being said as to his not returning next day or as to any dismissal. Defendant expected him to return next morning. He did not do so. So about noon, defendant went in search of him, with a view to having him return and pay for the stove and work out his week. Plaintiff declined to come and did not return to work, and defendant had him arrested as above narrated the day following.

Let us look at the case as it could have appeared to defendant from the facts he had before him when he caused the arrest, for it is from that standpoint that we have to decide the presence or absence of malice, and reasonable and probable cause. I find the following facts which defendant knew at that time: