

that there was sufficient cause to the arrest, but Ross refused to sign the complaint. His reason for doing so was that he knew Ralston well, that his relations with him were very good and that he didn't like to do such a thing. It was decided to bring a sample of this flour to Montreal in order to have it examined.

"It was first submitted to Neilson, one of the company's employees, who declared that the flour was not Five Roses flour, but inasmuch as it was a matter of taking criminal proceedings, this sample was submitted to examination by two experts, Mahaffy and Smith, both of whom, after having been informed of the purpose of the examination, declared that the flour was not Five Roses flour. The agent, Ross, then consented, on the instructions of the police officers and in accordance with its lawyers' advice to sign the complaint. The respondent was acquitted because it was proved that this flour had been bought from his brother, a merchant at Sutton.

"It was said that the station agent informed Ross before the arrest that Ralston might have obtained this flour from his brother. The station agent says this; Ross denies it. Any suspicion of malice on the part of Ross is removed by the fact that he at first refused to sign the complaint because he did not like to do it, being on good terms with Ralston. We must completely eliminate any idea of malice on Ross' part.

"It is true that malice is not always evil intention or hatred that one person has towards another. Malice from the legal point of view is often inferred from the gross negligence of a person who, without informing himself and on simple suspicion causes another's arrest.

"Is there in the present instance absence of reasonable and probable cause? It seems to me that there is not. The