(*d*) *Nonsuit*—If the first actions go off by nonsuit, it is evident that, in another action brought for the same cause, there may be a verdict rendered inconsistent with that given in the action for malicious prosecution. But it has long been settled that the possibility of such a verdict in a future and not existing action shall not hinder a man from bringing the second action. (*i*)

(*e*) *Abandonment of previous proceedings*—It has been laid down that the fact of the prosecution being abandoned before the trial does not relieve the plaintiff in the second action from the burden of proving want of probable cause; (*j*) that an action for malicious prosecution cannot be supported merely by evidence of the abandonment of an action of debt after the arrest of the plaintiff; (*k*) and that the existence of probable cause is not absolutely negatived by evidence showing that the defendant discontinued an action of debt after the arrest of the plaintiff. (*l*) But in later cases a different doctrine seems to be enunciated. Thus, evidence that an action for debt was discontinued by the defendant about three weeks after the commencement of the proceedings and the arrest of the plaintiff, has been held sufficient to cast upon the defendant the onus of proving a probable cause for the arrest. The position taken was that, as the ground of the discontinuance is peculiarly within the knowledge of the defendant, it is for him to offer an explanation, if he has one. (*m*) So also, Lord Tenterden laid it down a few years later, that, in deciding the questions of malice and want of probable cause, it makes a material difference whether the plaintiff or prosecutor terminated the previous proceedings by merely letting them drop and allowing a nolle prosequi or a nonsuit to be entered, or whether he discontinued them, the latter being a termination by his own act. (*n*) So also it has been said that a stet processus, by consent of the parties, so far from being evidence that the suit in which an arrest was made was without probable cause, is prima facie evidence the other way. (*o*)

(*i*) Parker, C.J., in *Parker* v. *Langley* (1712) 10 Mod. 209.

(*j*) *Purcel* v. *McNamara* (1808) 1 Camph. 199 (and cases cited on reporters' notes). There the plaintiff rested his case after proving the dropping of the prosecution, and was nonsuited, Lord Ellenborough remarking that "the abandoning of a prosecution may arise from the most honourable motives, and the nicest sense of justice, instead of necessarily proving that the prosecution was wantonly and maliciously instituted, and the facts which justified the prosecutor's conduct may be known only to himself. A rule for a new trial in this case was refused by the King's Bench; see 9 East 361.

(*k*) *Sinclair* v. *Eldred* (1811) 4 Taunt. 7.

(*l*) *Bristow* v. *Heywood* (1815) 1 Stark 48.

(*m*) *Nicholson* v. *Coghill* (1825) 4 B. & C. 21.

(*n*) *Webb* v. *Hill* (1828) Moo. & M. 253.

(*o*) *Norrish* v. *Richards* (1835) 3 Ad. & E. 733, per Patteson, J. (p. 737), citing *Wilkinson* v. *Howell* (1830) Moo. & M. 495.