

"There was a demurrer fyled to the declaration which came on for argument before me and was decided in October, 1864."

"The present action alleges no infraction of the personal liberty of the Plaintiff, nor of his rights of property, but simply of the institution of certain suits against him and of their failure in all the Courts to which they were successively brought."

"The demurrer raised the question whether the bringing of an action without good ground gives rise to a recriminatory action, or, in other words, whether an action lies against a solvent Defendant for maliciously and without reasonable or probable cause bringing an action against the Plaintiff whereby damage of the nature of that alleged in this case can be recovered, and whether the law is as alleged by the Plaintiff."

"I found no case\* where such grounds of damage were held to constitute legal damage for the recovery of which an action would lie, and I maintained the demurrer and dismissed the action."

The above-written declaration contained nothing new; but, viewed by the light of the 179th article of the Code (hereinunder cited), it will be found to be wanting in an essential particular:

Art. 179.—"Any Judge who is aware of a ground of recusation to which he is liable, is bound, without waiting

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\* The Judge does not affirm that he *sought*, still less specify the law books in which he did not find. A candid judge would have ordered a rehearing, and stated the point on which he needed information. From the act of the Court of Appeal in reversing his decision, Judge Stuart might have inferred that there was law in *some* book, *some* law—law *enough*—to sustain the action; but evidently the Judge would not—or at least did not open *those* books, and for the second time did dismiss—did *dismiss* my action upon the same grounds and for the same reasons by which he was moved to dismiss it on the 5th of October, 1864.