In two cases a doctrine more favourable to the plaintiff has been propounded. In one it was held that, if the plaintiff shews that he was innocent of the charge and states all he knows, the defendant then has the burden of proving that he acted bona fide in commencing criminal proceedings. (*b*) In the other it was remarked by Rolfe and Parke, BB., during the argument of counsel, and also intimated by the latter judge in his opinion that, when the plaintiff has proved facts shewing that there was no probable cause, it lies on the defendant to shew that he believed in the plaintiff's guilt, or that he was misled or acted in ignorance. (*c*) The authority relied upon was the following passage in the judgment of Lords Mansfield and Loughborough in *Johnstone* v. *Sutton*: "From the want of probable cause, malice may be, and most commonly is implied." (*d*)

Whether the doctrine thus indicated may not be a more reasonable one than that which has been adopted in *Abrath* v. *North Eastern R. Co.* seems to be fairly open to argument. It should not be forgotten that at least a portion of the circumstances by which the accuser in any particular instance was led to believe in the guilt of the accused are, in the nature of the case, likely to remain within the exclusive knowledge of the former, even after the latter has obtained all the information supplied in the course of the proceedings complained of. It would seem therefore that the analogies of a familiar principle of the law of evidence are strongly in favour of a rule which would ascribe due weight to the fact that this partial superiority of knowledge on the defendant's part exists under normal conditions, and require him to follow the plaintiff's proof of his innocence by stating at once the whole of the grounds upon which he took action. A doctrine which compels the plaintiff to meet a defence not yet formulated and founded on circumstances which will often be, to a large extent, a matter of mere conjecture on his part seems to be decidedly unjust.

of the parties hinged: *Turner* v. *Ambler* (1847) 10 Q.B. 252. "The unfair use of the charge," said Denman, C.J., "may prove malice, but does not raise any inference of a belief that there was no reasonable or probable cause, for the contrary belief is perfectly consistent with malice." Compare *Cotton* v. *James* (1830) 1 B. & Ad. 128, [sec. 14, note (*g*)].

(*b*) *Henderson* v. *Midland R. Co.* (1871) 20 W.R. 23 [non-suit held wrong: Bramwell, B., dissenting on the ground that the plaintiff had not produced all the evidence which was available.

(*c*) *Mitchell* v. *Williams* (1843) 11 M.&W., 205 (pp. 211, 213, 214).

(*d*) 1 T.R. 493 (p. 545).