

RECENT DECISIONS.

the conditions of sale of the conveyance under which the vendor held,—viz. a void conveyance from a railway company,—the purchaser forfeited his deposit on refusing to complete, notwithstanding that the vendor had only a bare possession, and was assuming to sell by a right similar to that of a disseisor or trespasser. Jessel, M. R. says,—“The title of a disseisor is in this country a freehold title, and therefore, although the vendor had a very bad title, and a title liable to be defeated, he had still a title good against all the world, except against those who might be proved to have a better one. * * * The simple fact is that the vendor had a possession in this case, so that a fair sale of that possession is perfectly good.” And Brett, L. J. adds,—“If the defendant had had nothing, or if he had had only a revocable license or easement, then, as he professed to sell freehold land, what he professed to sell would not correspond with that which the plaintiff bought.” Two of the judges also observed that it was not necessary to decide whether or not the vendor had sufficient possession to ripen into a title under the statute of limitations, though they were of opinion that he had.

The March numbers of the Law Reports are now reached, comprising 8 Q. B. D. p. 165-318; and 19 Ch. D. p. 207-310, the former of which we propose to review in part in our present issue.

ACTION FOR MALICIOUS PROSECUTION.

Hicks v. Faulkner, p. 167, being the argument of a rule for a new trial, on the ground of misdirection in an action of malicious prosecution, contains a long and instructive judgment of Hawkins, J., upon the nature of such an action, of which the following summary, framed for the most part in the actual words of the learned Judge, appears to give the drift:—To succeed in an action for malicious prosecution, the plaintiff must allege and establish two things: (i.) absence of reasonable and probable cause, and (ii.) malice. The

affirmative of these allegations is upon him. Failing to establish *both* of them, he fails altogether. (i.) Reasonable and probable cause may be defined to be—“(a) An honest belief in the guilt of the accused, (b) based upon a full conviction, (c) founded upon reasonable grounds, of the existence of a state of circumstances, (d) which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.” The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable *bona fide* belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of—no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by the accused. And the distinction between facts proper and fit and admissible as evidence to establish actual guilt, and those required to establish a *bona fide* belief in guilt, should never be lost sight of in considering cases of alleged malicious prosecution. Many facts admissible to prove the latter would be wholly inadmissible to prove the former; (ii.) as to malice, though it is true as a general proposition, that want of probable cause is evidence of malice, this general proposition is apt to be misunderstood. In an action for malicious prosecution the question of malice is an independent one—of fact purely—and altogether for the consideration of the jury, and not at all for the judge. The malice necessary to be established is not even malice in law such as may be assumed from the intentional doing of a wrongful act (see *Bromage v. Prosser*, 4 B. & C. 255, per Bayley, J.); but malice in fact—*malus animus*—indicating that the party was actuated either by spite or ill-will towards an individual, or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feeling towards anybody. Want of rea-