

I cannot find in defendant's attitude towards plaintiff returning to his work anything to show that he did not believe in plaintiff's guilt, for which belief he had reasonable and probable cause. There were no information he could have got which would have altered that belief. Had he questioned Cohen, and had Cohen repeated what he had said in his evidence, it would have made the crime even clearer, for he would have found that plaintiff owed defendant \$3 which might very likely have been an inducement for secretly delivering this stove; that the telephone message was sent to the shop at a time plaintiff knew defendant was not there, for it is clearly proved that plaintiff did not open the shop and only arrived after the book-keeper had opened it about 9 o'clock. There was no more he could have got from plaintiff, who had two opportunities to explain, and failed each time. Had plaintiff told the story he tells in Court, it would only have confirmed his impression of plaintiff's guilt, as he knew that that story was not true.

Defendant's prosecuting was uncharitable as he knew plaintiff was only a working man with two children and there were no employees in his store (who were not related to himself or his partner) on whom the prosecution would have a salutary effect as an example, and the value stolen was small, and he might easily have let the matter pass. But while uncharitable, it was not malicious and he had clearly reasonable and probable cause for his prosecution.

Although the judgment is small, I consider that the action should have been dismissed with costs, and would therefore be to reverse the judgment, dismiss plaintiff's action, with costs, and maintain defendant's inscription in Review, with costs.