

the local agent of the defendants, swore to an information charging the plaintiff with having forged one of the express orders issued from the book in question. Thereupon the plaintiff was arrested on the 29th August, 1908, and kept in custody, bail being refused, until the 4th September, when he was admitted to bail. Subsequently the same expert was asked to make a report, which he did, stating that, in his opinion, the plaintiff was not the forger. Thereupon the Crown withdrew the charge of forgery. On the same day Mitchell swore to another information charging the plaintiff with theft of the book of orders; a warrant was issued, the plaintiff was arrested, admitted to bail, tried at the Sessions on the charge of theft, and found not guilty.

This action was brought for damages because of these prosecutions.

In submitting the case to the jury, MULOCK, C.J., divided the plaintiff's causes of action into three: (1) in respect of the arrest and proceedings for forgery down to the first remand; (2) in respect of the proceedings from the first remand until the termination of the proceedings for forgery; (3) in respect of the arrest for theft; and he prepared questions applicable to each of these causes of action. By mistake, one sheet of paper, containing 5 questions prepared for the jury, became detached from the others, and only after the jury had been discharged, after having answered certain questions, was it discovered that the paper containing these 5 questions was not taken by the jury to the jury room, with the result that there was no finding in regard to them. They related entirely to the charge of forgery.

As to the cause of action for theft, the jury found malice against the defendants; that the plaintiff was not guilty of the stealing charged; that Mitchell, their agent, at the time he laid the information for stealing, did not honestly believe the plaintiff guilty of that offence; and they awarded the plaintiff \$750 damages for the arrest for theft.

H. H. Dewart, K.C., and J. S. Lundy, for the plaintiff.

C. Millar, for the defendants.

MULOCK, C.J., was of opinion that the findings did not warrant a judgment for either party in respect of the prosecution for forgery. The causes of action, however, being entirely separate, the proper course to adopt was to treat the issues in regard to the forgery charges as untried, the plaintiff being at liberty, if he so desired, to go to trial on these two issues. On the answer that Mitchell, who laid the information leading to the plaintiff's arrest for stealing, did not honestly believe him guilty, there was an