When the prosecutor has taken the opinion of counsel on facts submitted for his decision before laying information, another factor enters into the consideration of the question.

In 1813 it was held by the Court in *Hewlett* v. *Cruchley*, 5 Taunt., page 277, that in an action for malicious prosecution it is no answer that the defendant took the opinion of counsel in what he did, if the statement of facts was incorrect or the opinion ill-founded. Mansfield, C.J., on motion for a new trial, said: "But one would at least expect that the defendant, in order to purge himself by the testimony of the opinion of a barrister, ought to shew that he laid a most full statement of the case before him upon which he could form a full judgment of the propriety of the case." Heath, J., said: "It would, however, be a most pernicious practice if we were to introduce the principle that a man, by obtaining an opinion of counsel, by applying to a weak man or an ignorant man, may shelter his malice by bringing an unfounded prosecution."

Chief Justice Abbott, in *Ravenga* v. *Mackintosh*, 2 B. & C., p. 693 (1824), substantially charged the jury to find a verdict for the defendant if they were of the opinion that, at the time when the arrest was made, Mackintosh acted truly and sincerely upon the faith of the opinion given by his legal adviser; but to find for the plaintiff if they were of the opinion he intended to use the opinion as a protection, in case the proceedings were afterwards called in question. Bayley, J., in delivering judgment on motion for a new trial, said: "I accede to the proposition that if a party lays all the facts of his case fairly before counsel, and acts bona fide upon the opinion given by that counsel (however erroneous that opinion may be) he is not liable to an action of this description."

This question is set in clear light by the great leading case of *Abrath* v. *North Eastern Railway Company*, L.R. 11 Q.B.D. 440 (1893). Briefly summarized, the facts were these: The plaintiff, a medical doctor, had attended one Mr. McMann for injuries sustained in a collision in two trains upon defendant's railway. Principally upon the representations of the doctor, who described the injuries as of a most serious character, the defendants compromised Mr. McMann's claim for a large amount. In consequence of certain inquiries set on foot, it seemed to the company they had been made the victim of a conspiracy on the part of the doctor and his patient, the injuries being far less serious than