The full scope and significance of this doctrine was definitely settled by the Exchequer Chambers in the leading case of *Panton* v. *Williams*, (*d*) which, although it was not accepted without some expressions of dissatisfaction on the part of individual judges (*e*) is now regarded as the fountain of law upon this subject. (*f*) The principle there formulated was this: Whether the question of reasonable or probable cause depends upon a few simple facts, or upon facts which are numerous and complicated, and upon inferences to be drawn therefrom, it is the duty of the judge to inform the jury that, if they find the facts proved and the inferences to be warranted by such facts, the same do or do not amount to reasonable and probable cause, the result being that the question of fact is left to the jury, and the abstract question of law to the judge. Commenting on the cases, which might be thought to have somewhat relaxed the application of the rule, by seeming to leave more than the mere question of the facts proved to the jury, Chief Justice Tindal said:

"It will be found on further examination that, although there has

(1867) 26 U.C. Q.B. 519: *Hawkins* v. *Snow* (1895) 27 Nov. Sc. 408: *Cundell* v. *London* (1785), cited in *Johnstone* v. *Sutton*, 1 T.R. 493 (p. 520); *Huntley* v. *Simson* (1857) 2 H. & N. 600: *Donnelly* v. *Bowden* (1877) 40 U.C. Q.B. 611: *Archibald* v. *McLaren* (1892) 21 Can. S.C. 588. In some cases we find it laid down that the question of probable cause must be left to the jury where the decision depends on disputed questions of fact: *Wilson* v. *Winnipeg* (1887) 4 Man. L.R. 193. Compare *Vincent* v. *West* (1868) 1 Hannay (N.B.) 290. From the cases cited in sec. 12, however, it is plain that this is correct only in the sense that the judge must take the opinion of the jury on such facts as a step in the process of determining the defendant's liability. The final decision must always rest with him whether it is arrived at by means of special findings or by means of instructions couched in a hypothetical form. In *Martin* v. *Lincoln* (1668), cited in Bul er N.P. 13, it was held to be in the discretion of the court to direct the jury, if there were manifest proof that there was no cause of action. In the earliest reported cases the question was treated as a matter of pleading. Thus in an action for conspiracy and procuring the plaintiff to be maliciously indicted for robbery, a plea setting forth the fact of the robbery and circumstances of suspicion was held good on demurrer, as it confessed procuring the indictment and avoided by matter of law: *Pain* v. *Rochester*, Croke Eliz. 871; *Chambers* v. *Taylor*, Croke Eliz. 900. In *Rochester* v. *Whitfield* (1595) Croke Eliz. 871, the court held, on demurrer, that a plea setting out the circumstances whereby the defendants came to indict the plaintiff was good "for their causes of suspicion are sufficient, . . . and the imprisonment need not be answered when the indictment is grounded upon good cause."

(*d*) (1841) 2 Q.B. 169.

(*e*) See especially the remarks of Denman, C.J., in *Rowlands* v. *Samuel* (1847) 11 Q.B. 39 (note); 17 L.J. Q.B. 65. Both reports, however, leave the precise grounds of his disapproval rather obscure.

(*f*) "There can be no doubt, since the case of *Panton* v. *Williams*, 2 Q.B. 169, that reasonable and probable cause in an action for malicious prosecution or for false imprisonment is to be determined by the judge." Lord Chelmsford in *Lister* v. *Perryman* (1879) L.R. 4 H.L. 521 (p. 535).