intention of carrying the law into effect, but with an intention which was wrongful in point of fact," (*a*) clearly involves the corollary that the fact of the plaintiff's having been acquitted in the previous trial is not conclusive as to the absence of probable cause. (*b*) It has been pointed out that this must be the correct principle, for this, if for no other reason,—that the presence of probable cause would not be enough to justify a conviction. (*c*)

(*b*) *Ignoring of bill by grand jury*—Analogous to the principle laid down in the last sub-section is that by which the ignoring of the bill by the grand jury is regarded as inconclusive evidence of the want of probable cause. (*d*) Hence, where the plaintiff merely shews that the grand jury threw out the bill, he should be nonsuited. (*e*)

(*c*) *Termination in plaintiff's favour on purely technical grounds*—The fact that the previous proceedings terminated in the plaintiff's favour is no evidence whatever of the want of probable cause, where such termination was not on the merits, but on purely legal and technical grounds; as, for instance, on account of a defect in the indictment, (*f*) or where the crime charged is one which can only be committed where the prosecutor and the accused occupy certain legal relations to each other, and those relations were not proved to have existed. (*g*)

As a supersedeas may proceed upon strictly legal grounds, it is not conclusive proof of want of probable cause for serving out a commission of bankruptcy. (*h*)

(*a*) *Abrath* v. *North Eastern R. Co.* (1883) 11 Q.B.D. 440, per Brett, M.R.: *Sherwood* v. *O'Reily* (1846) 3 U.C.Q.B. 4: *Joint* v. *Thompson* (1867) 26 U.C.Q.B. 519.

(*b*) *Lows* v. *Telford* (H.L.E. 1876) 1 A.C. 414. In an early case the court acted on the theory that probable cause for a prosecution is established where it appears that the jury before acquitting the plaintiff, deliberated for a short time, even though he was not obliged to call any witnesses in his own behalf: *Smith* v. *Macdonald* (1799) 3 Esp. 7.

(*c*) *Pinsonnault* v. *Lebastien* (1887) 31 L. Can. Jur. (Cour de Rev.) 167.

(*d*) *Cartier* v. *Rolland* (1887) 32 L.C. Jur. (Q.B.) 31.

(*e*) *Byrne* v. *Moore* (1813) 5. Taunt. 187: See, however, contra, *McCreary* v. *Bettis* (1864) 14 U.C.C.P. 95, and the remarks made, arguendo, by Holroyd, J., in *Nicholson* v. *Coghill* (1825) 4 B. & C. 21 that such action is sufficient to warrant an inference of want of probable cause. But it is difficult to see how such statements can be brought into harmony with the undisputed doctrine as to the inconclusive effect of an acquittal. An endorsement upon the bill in these words: "The Grand Jury recommended no bill," amounts to an ignoring of the bill, and if it is so treated, and no further proceedings are taken, the prosecution is terminated: *Alward* v. *Sharp* (1868) 1 Hannay (N.B.) 286.

(*f*) *Wicks* v. *Fenthon* (1791) 4 T.R. 247 [In an indictment for permitting escape of prisoner, the headborough was misdescribed as constable].

(*g*) In *Edwards* v. *Annett* (1885) 3 Times L.R. 671, the plaintiff had been tried on a charge of embezzlement, and acquitted on the technical ground that he was not a servant of the defendant. Grove, J., told the jury that the plaintiff had the burden of proving that the defendant instituted the proceedings without reasonable and probable cause, and the jury returned a verdict for the defendant.

(*h*) *Hay* v. *Weakly* (1832) 5 C. & P. 361, per Tindall, C.J., comparing the cases of an acquittal and a nonsuit.