

by the Judge. Neither of the questions submitted answered, some of the persons possibly interested not being parties. Question of parties and other questions to be re-argued if either party desires it.

JANUARY 9TH, 1903.

DIVISIONAL COURT.

PRING v. WYATT.

*Malicious Prosecution—Reasonable and Probable Cause—Case for Jury—Search Warrant—Theft—Information not Charging Crime—Amendment.*

Appeal by plaintiff from judgment of nonsuit by County Court of Middlesex. The plaintiff's claim was for damages for malicious prosecution in defendant's having caused to be laid against plaintiff an information that he "unlawfully did have and keep in his possession and take away a black collie dog, the property of W. H. W." Upon this information a search warrant, and later a summons, was issued. At the hearing, the information, without being resworn, was, on application of defendant's counsel, amended by the insertion of the word "stole." The County Judge held that there was an entire absence of the proof necessary to shew that defendant laid the information with a want of reasonable and probable cause, or maliciously, and that the action could therefore not be left to the jury.

J. H. Moss, for plaintiff.

J. R. Meredith, for defendant.

THE COURT (BOYD, C., MEREDITH, J.) held that, as to the search warrant, the judicial action of the magistrate had absolved the defendant from liability in that respect: *Hope v. Good*, 17 Q. B. D. 338; *Smith v. Evans*, 13 C. P. 62.

BOYD, C., held that there was ample evidence of an intention to conduct a criminal prosecution: *Sinclair v. Hughes*, 16 U. C. R. 247; *Crawford v. Beattie*, 39 U. C. R. 13.

MEREDITH, J., held that the prosecution was the result of an error of judicial opinion in the magistrate's assumption that the information gave him jurisdiction, although the word "steal" or "theft" did not appear in it; that the defendant had not desired to institute criminal proceedings; and that, so far as the defendant was concerned, the information truly stated the facts, the dispute being purely one about the ownership of the dog. The defendant was, therefore, not liable.

BOYD, C., held that the Judge below was wrong in holding that a man might put the criminal law in motion where there was no crime and then shelter himself behind the action of the magistrate, and that the case should have gone to the jury.

Case to be re-argued if either of the parties desires it.