mitted having written the subpœna; McMullen, it was known, was interested in the litigation; and it was known that the police would only be set in motion against the Wetlaufers (the defendant and his father) upon the complaint of the father's wife. This, and McMullen's denial of all knowledge of the letters, constitute the material facts as known to the defendant at the time the information was laid; and I think it is my duty to attempt to determine the existence of reasonable and probable cause having regard to the facts as they then appeared to the defendant.

Mr. Godfrey, a barrister and solicitor, who had been acting for the defendant throughout, advised the prosecution. He and the defendant laid the facts before the Crown Attorney, and the Crown Attorney approved of the prosecution and directed the issue of a warrant.

Were I not trammelled by authority, I should hold that the advice of the experts and of the defendant's legal adviser and of the Crown Attorney, while going to negative malice, had no bearing upon the question of reasonable and probable cause. But I think that authorities binding upon me compel me to determine that where the facts are placed fully and fairly before experienced counsel, and in particular where the facts are submitted to the Crown Attorney, and a prosecution is advised, this constitutes reasonable and probable cause.

It has not been suggested that the Crown Attorney or the defendant's legal adviser acted in any way dishonestly. All the facts were known to Mr. Godfrey; he did nothing to mislead the Crown Attorney. In finding in the defendant's favour I base my finding entirely upon the ground that on the authorities the advice given constitutes reasonable and probable cause. The advice of a competent counsel, having knowledge of all the facts, has been determined to be reasonable and probable cause for a prosecution.

I do not think that the prosecution was justified or that there was, apart from such advice, any reasonable or probable cause for its institution.

The case is singularly like Clements v. Ohrly (1847), 2 C. & K. 686. . . . The reasoning of Lord Denman in that case commends itself very strongly to me, but it is opposed to authorities which I feel bound to follow, for the reasons assigned in Longdon v. Bilsky (1910), 22 O.L.R. 4. . . .

The action fails; but I dismiss it without costs, firstly because there was malice; and secondly, because I desire to express in this way disapproval of the course adopted in issuing a warrant in a case which at most justified only the issue of a summons.