

defendant might perhaps be reasonably held bound to make further inquiry before taking the strong step of procuring plaintiff's arrest, and he felt compelled to hold that the appeal should be dismissed.

Mr. Justice Osler pointed out that no change had been made by the Judicature Act in the disposal of the question of reasonable and probable cause, that it is always a question for the judge, though the disputed facts, if any, upon which that question depends are to be determined by the jury.

The learned judge then points out that

"Under the present law, the judge cannot compel them to give a special verdict, or to answer questions on which he will direct judgment *on the whole case*; but there is nothing in any of these provisions which takes out of the hands of the judge in actions for false imprisonment or malicious prosecution any power which he had theretofore possessed in dealing with the question of reasonable and probable cause as a preliminary question to be determined by him before the jury could entertain those other questions upon which the right of the plaintiff to recover depends, and the determination of which, by a general verdict one way or the other, rests with the jury, when it has been determined that there was a want of reasonable and probable cause. The question in this case is whether the plaintiff gave any evidence on which the learned Chief Justice who presided could rule that there was a want of reasonable and probable cause for the course taken by the defendant, or whether there was evidence in regard to any disputed facts necessary to be determined before the Chief Justice could so rule, proper to be submitted to the jury for the purpose of determining such facts?"

His Lordship thus proceeds :

"The questions of the defendant's honest belief in the truth of the charge, and whether it was reasonable that he should make further enquiry into or obtain corroboration of the charge before acting, are questions which it is undoubtedly proper in some cases, though perhaps not necessarily in every case, to submit to the jury in order to enable the trial judge to rule upon the question of reasonable and probable cause. Under the circumstances of this case, as shown in the evidence and set forth in the judgment below, I think such questions would have been proper, and that there was some evidence upon which the jury might have answered them adversely to the defendant. For the reasons given in the judgment appealed from, I think the order setting aside the judgment at the trial and granting a new trial was right, and that this appeal should be dismissed."

Mr. Justice Burton and Mr. Justice MacLennan differed from this view. The former said :

"I have stated my views generally very fully in the case of *Hamilton v. Cousineau* as to the proof necessary to sustain an action in cases of this kind. The facts briefly stated are that a statement was made to the defendant by a