by reason of some technical defect in those proceedings the complainant was not placed in actual jeopardy by the specific accusation complained of, as, for example, where he could not have been convicted because the indictment was bad. (*c*)

The rule by which the defendant in an action for which there was a probable cause cannot subsequently maintain a suit against the moving party is no less applicable to civil than to criminal proceedings. (*d*) But in its converse aspect this rule has a much more limited scope in civil than in criminal cases. As respects the former, the doctrine as recently laid down by Bowen, L.J., is that, "according to our present law, the bringing of an ordinary action, however maliciously, and however great the want of reasonable and probable cause, will not support a subsequent action for malicious prosecution." (*e*) The amiable fiction upon which the common law bases this rule is, it is hardly necessary to remind our readers, that the costs in which a plaintiff who fails in his suit is amerced are an adequate indemnity for the successful defendant.

In countries where the Civil Law, or any system based upon it, is administered, a different doctrine apparently prevails. Thus, by the law of the Province of Quebec an action can be maintained by a defendant who has succeeded in a civil action against one who maliciously and without reasonable and probable cause, or, in other words, has in bad faith and with the malicious intention of harassing his adversary unsuccessfully prosecuted the action. (*f*)

But for at least two hundred years (*g*) this doctrine, both in England and in the countries which have adopted the English

(*c*) *Jones* v. *Givin* (1712) Gilbert's K.B. 185 (p. 201): *Chambers* v. *Robinson* (1823) 2 Strange 691.

(*d*) *Baugh* v. *Killingworth* (1691) 4 Mod. 13: *White* v. *Dingley* (1808) 4 Mass. 433: Mellor, J., in *Parton* v. *Hill* (1864) 12 W.R. 753: *David* v. *Thomas* (1857) 1 L. Can. Jur. (Q.B.) 69.

(*e*) *Quartz Hill, &c., Co.* v. *Eyre* (1883) 11 Q.B.D. 674 (p. 690). See also *Johnson* v. *Emerson* (1871) L.R. 6 Exch. 329, per Martin, B. (p. 372): *Montreal, &c., R. Co.* v. *Ritchie* (1889) 16 Can. S.C. 622, per Strong, J. (p. 630). Originally the right to sue seems to have depended upon whether the plaintiff, in the first suit, actually knew that it was groundless: *Waterer* v. *Freeman* (1623) Hobart 266.

(*f*) Strong, J., in *Montreal, &c., R. Co.* v. *Ritchie* (1889) 16 Can. S.C. 622 (p. 630). See also *Labelle* v. *Martin* (1885) 30 L. C. Jur. (Cour de Rev.) 292.

(*g*) See remarks of Lord Camden in *Goslin* v. *Wilcock* (1766) 2 Wils. 302, and cases cited in sec. 8(g), post.