

the property of another; and the evidence fully warranted the trial Judge in ruling that there was an absence of reasonable and probable cause for the criminal proceedings taken against the plaintiff.

The plaintiff was liable to pay for the shortage, but that was a different thing from his being liable to the charge of theft because the shortage existed or because he could not or would not pay for it.

The finding of the trial Judge as to reasonable and probable cause could not be disturbed.

According to the provisions of sec. 62 of the Judicature Act, the question of reasonable and probable cause is to be determined for all the purposes of the trial by the Judge, and the jury cannot disregard that finding, but must give effect to it when determining the question of malice.

That being so, the functions of the jury, in such a case as this, are to determine the following matters and these only:—

1. Whether the defendant prosecuted the criminal charge against the plaintiff as alleged before a tribunal into whose proceedings the civil courts are competent to inquire.

2. Whether the proceedings complained of terminated in the plaintiff's favour.

3. Whether the defendant instituted or carried on the proceedings maliciously.

4. The damages sustained by the plaintiff.

In determining the third question, the jury may but are not bound to imply malice from the want of reasonable and probable cause.

In this case, the jury must have found malice, and there was not only the implication from the absence of a reasonable and probable cause, but express evidence that the prosecution was instituted from an indirect or improper motive, viz., for the collection of the alleged debt, to support the finding.

It was argued that the defendants had laid all the facts fully and fairly before the Crown Attorney, and had acted on his advice in laying the information. The view of the trial Judge was that the defendants had not done this, but had withheld from the Crown Attorney material facts which, had they been disclosed, would have led him to advise against laying an information; and with that view the learned Chief Justice agreed.

Upon the issues which the jury were to decide there was no misdirection. That the defendants had instituted the prosecution and that it had terminated in favour of the plaintiff was not disputed; and in the direction as to malice there was nothing to complain of.

Although no objection has been taken to the charge, if it