is such as to furnish prima facie evidence that the proceeding was without foundation. (*a*) Since, therefore, both upon principle and authority, an essential ground of the action on the plaintiff's side is his innocence, (*b*) an unreversed conviction is conclusive evidence of the existence of probable cause. (*c*)

There is high authority for the doctrine that even a judgment of a tribunal which fixes the guilt of the accused until a higher tribunal has declared him to be innocent, is a bar to an action, for the Court of Exchequer Chamber has held that a declaration which charged that the defendant maliciously exhibited an information against the plaintiff before the sub-commissioners of excise for a violation of the excise laws, that the sub-commissioner condemned the property described in the information, and that the commissioners ordered the property to be restored to the plaintiff, was "felo de se," as the sub-commissioner's condemnation showed of itself a foundation for the prosecution, and this result was not altered by the judgment of reversal. (*d*) But this decision would seem, in view of the more modern authorities, more especially those relating to the effect of a commitment by a magistrate—sec. 20 (*a*) post—to ascribe an undue weight to the action of a merely quasi-judicial body, having, as may be assumed, no special qualifications which would justify placing them in the same category as the expert lawyers who preside over the superior courts.

The fact that the plaintiff was absolved merely by a pardon implies, it is evident, that he had previously been convicted after a regular trial. Proof of that fact, therefore, like proof of conviction merely, conclusively establishes the existence of probable cause. (*e*)

19. Specific results of previous proceedings, inferences from — (*a*) *Acquittal in previous trial* — The general principle that "it is not enough for the plaintiff to shew, in order to support the claim which he has made, that he was innocent of the charge upon which he was tried, and that he has to shew that the prosecution was instituted against him by the defendant without any reasonable or probable cause, and not with the mere

(*a*) *Wilkinson* v. *Howell* (1830) Moo. & Malk. 495, per Lord Tenterden.

(*b*) *Jones* v. *Givin* (1712) Gilbert's K.B. 185.

(*c*) *Mellor* v. *Baddeley* (1834) 2 Cr. & M. 675; *Kenahan* v. *Geriken* (1878) 1 L.C. Leg. News (S.C.) 267. In *Parton* v. *Hill* (1864) 12 W.R. 753, it was contended that a termination of the original suit in the plaintiff's favour was sufficiently shown by the removal of the attachment upon the plaintiff's paying the money, but Blackburn, J., remarked that such payment rather showed a determination in favour of the defendant than of the plaintiff.

(*d*) *Reynolds* v. *Kennedy* (Exch. Ch. 1748) 1 Wils. 232 [discussed, however, with more especial reference to the existence of malice, which, it was said, was not conclusively shown by the reversal].

(*e*) *Jones* v. *Givin* (1712) Gilb. K.B. 185 (p. 215).