

arrested and convicted. The defendant, being sued for the arrest and prosecution, pleaded that he had reasonable and probable cause for laying an information and prosecuting the plaintiff. A motion for nonsuit was reserved by the trial judge, and the case allowed to go to the jury, who found a verdict for the plaintiff, with \$200 damages. Subsequently the judge granted the motion, and dismissed the action.

Held. The evidence shews that there was an absence of reasonable and probable cause in not withdrawing from the prosecution at an early stage. Though a private prosecutor may have such knowledge as would warrant the commencement of criminal proceedings, he is not relieved from the primary duty of acting discreetly and fairly towards the accused person in directing and continuing the prosecution. Though reasonable and probable cause may exist at the initiation, yet if it afterwards appear that there is good reason to doubt whether the charge is well founded, the private prosecutor should make reasonable inquiry to clear the doubt, and, if he has obvious means of finding out that the charge is not well founded, he should relinquish the matter or do what he can to dis sever himself from its further prosecution.

The necessity for a prosecutor to take reasonable care to inform himself of facts with which he might have made himself acquainted was dealt with in *Abrath v. North Eastern R.W. Co.*, 11 Q.B.D. 440 (affirmed II. App. Cas. 247), and in *McGill v. Walton*, 15 O.R. 359.

Russell Snow, K.C., for plaintiff. *Dewart*, K.C., for defendant.

Chapelle, Master.]

[Aug. 3.

KELLY BROS. v. TOURIST HOTEL CO.

Mechanics' and Wage Earners' Lien Act—Work done and material supplied—Written contract—Work to be done according to plans and specifications—Payments in monthly instalments—Guarantee bond—Entire contract—Condition precedent.

The plaintiffs, who were contractors, entered into a written contract with the defendants bearing date the 26th day of June, A.D. 1907, whereby they contracted and agreed with the defendants to do the work and furnish the material: the work to be done in accordance with written plans and specifications of the architect. The plaintiffs were to be paid for the whole of the said work the sum of \$115,000, which sum was to be paid in monthly