

The defendant pleads reasonable and probable cause for the information and prosecution. The main issue is whether the defendant had reasonable and probable cause.

The facts are shortly these: Bowes & Co., consisting of Archibald and David Bowes, went into partnership as warehousemen in Toronto in 1877. In the fall of 1877, two of the agents of the mercantile agency of Dun, Wiman & Co., called upon them in succession, and the second of these agents, Mr. Hutton, says that plaintiff represented to him that each of the partners was putting \$5,000 into the business. They were thereupon rated in the books of the agency as worth \$5,000.

On the 14th November, 1878, the firm of A. Bowes & Co. bought from defendant's firm to whom they were entirely unknown, 10 barrels of oil of the value of \$207.75. This purchase was made by plaintiff, and he referred Ramsay & Co. to the mercantile agency for a report as to the position of Bowes & Co. On the 28th November, 1878, Bowes bought more oil from Ramsay & Co., 7 barrels of the value of \$141.31. This last lot was handed to one Bowes a farmer, a relative, in payment of an antecedent debt. This fact comes out in consequence of proceedings being taken against the recipient of the oil on the subsequent insolvency of Bowes & Co., to return the oil or the value to the assignee of Bowes & Co. The Court gave an order accordingly and the oil or value was returned.

On the 26th December, 1878, Bowes & Co., were put into insolvency, this being within one month after the purchase of the second lot of oil. It was in consequence of the answers made by plaintiff to the questions put by his creditors, that the facts were put before Mr. W. H. Kerr, Q. C., of this city, with a view to criminal prosecution, and he advised a criminal prosecution and prepared an information to be sworn to by defendant and laid before the magistrate. It would appear that the magistrate after hearing several witnesses decided not to commit the plaintiff, but to discharge him. It further appears that Bowes & Co. procured a composition at 25 cents in the dollar from their creditors, bearing date 30 April, 1879. A year afterwards the county judge confirmed the discharge by his judgment of date 26 April, 1880, but with the proviso that it shall only operate and have effect as a discharge as to Archibald

Bowes in two months, namely, on and after the 26th April, 1880, and as to the plaintiff, in one month after his judgment, namely, in one month after the 26th April, 1880. These are the facts which have been very carefully put before the Court by the counsel charged with the prosecution of the present suit and its defence.

Does an action for damages lie in such a case? The important question is not whether the defendant Ramsay was actuated by malice in the criminal prosecution, though here there is evidence that he took criminal proceedings in the hope of coercing plaintiff into paying the debt, and the action would not lie without proof of malice. Nor is the important question whether the accusation by Ramsay was true or false. The important question here is whether Ramsay had reasonable and probable cause for the criminal prosecution. "Probable cause," says 2 Greenleaf's Evidence, in chapter on Malicious Prosecution, § 455, "does not depend on the actual state of the case, in point of fact, but upon the honest and reasonable belief of the party prosecuting." Next we have the advice of counsel. "It is agreed that if a full and correct statement of the case has been submitted to legal counsel, the advice thereupon given furnishes sufficient probable cause for proceeding accordingly." *Idem*, § 459. On the whole case, the conclusion of the Court is that the plea of Ramsay has been made out. Perhaps there was nothing more than imprudence on the part of the plaintiff, but he was the means of Dun, Wiman & Co. certifying that Bowes & Co. had a capital of \$5,000. Again, the appropriation of the oil purchased within a month before a writ in insolvency issued against Bowes & Co., to pay a debt due a relative, is an unfortunate circumstance, and the conclusion of the county judge suspending the discharge shows that he was not satisfied that the insolvents had clean hands.

Action dismissed.

Doutre & Joseph, for plaintiff.

L. N. Benjamin, for defendant.

SUPERIOR COURT.

MONTREAL, July 8, 1881.

Before TORRANCE, J.

GORRIE et al. v. OGILVIE et al.

Married woman—Payment of husband's debt.