

reasonable and probable cause, the circumstances must be such as would produce on the mind of a prudent and cautious man, an honest conviction of the guilt of the party he accused."

This judgment was confirmed by the Court of King's Bench, M. L. R., 3 Q. B., 208, Cross, J., p. 212.

"The policy of the law should not be too severe towards those who, in the public interest, resort to the legal tribunals to have their grievances investigated; when good faith appears on their part and probable cause, they should be excused, although their prosecution may fail, and that even when the object of it is put to inconvenience and damage. The judgment of the Superior Court will therefore be confirmed."

The above principles have been laid down by the higher Courts in England: *Cox vs English, Scottish and Australian Bank, Ltd.*, L. R. A. C., 1905, House of Lords, p. 168; Lord Darcy, p. 170, said: — "Now, it is important to consider what it is in an action of this kind that the plaintiff has to prove and what are the respective functions of the judge and the jury. The principles applicable in these cases have been laid down for the English Courts in the case of *Abrath vs North Eastern Railway Co.*, 11 Q. B. D., 440, at p. 445, in which Bowen, L. J., said: — "This action is for malicious prosecution and in an action for malicious prosecution the plaintiff has to prove first that 'he was innocent and that his innocence was pronounced by the tribunal before which the accusation was made; secondly, 'that there was a want of reasonable and probable cause for the prosecution or, as it may be otherwise stated, that the circumstances of the case were such as to be in the eyes of the judge, inconsistent with the existence of reasonable and probable cause; and lastly, that the proceedings of which he complains were initiated in a malicious spirit, that is from an indirect and improper motive and not in furtherance of justice." At page 457, he says: "Now in an action for malicious prosecution the plaintiff has the burden throughout of establishing that the circumstances of the prosecution were such that a judge can see no reasonable or probable cause for instituting it."

*Hilliard, on Torts*, p. 428. — "Where the plaintiff has been acquitted on the charge brought against him, the acquittal does not raise a presumption of want of probable cause."