

FRAME *v.* SEWING-MACHINE CO.¹

Circuit Court, E. D. Pennsylvania.

June 28, 1887.

MALICIOUS PROSECUTION—INJUNCTION—EVIDENCE.

In an action brought to recover damages for maliciously procuring an injunction, the plaintiff must prove malice and want of probable cause.

At Law. On motion to take off nonsuit.

This was an action brought to recover damages for the alleged malicious procurement of an injunction. Previously to the granting of the injunction in question, which was subsequently dissolved, similar ones had been granted in several other circuits. The plaintiff failed to show malice, and in the light of the action of the other circuit courts, the court did not consider the defendant's application without probable cause, and entered a nonsuit. A motion was subsequently made to take off the nonsuit, which the court refused.

Joseph C. Fraley, for plaintiff.

Wayne Mac Veagh, for defendant.

BUTLER, J. The motion must be denied. On fuller examination, I am entirely satisfied the plaintiff has not presented a case which entitles him to recover. The burden is on him to prove *malice*, and also *want of*

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probable cause. In my judgment, he has not produced any reliable evidence of either. I have looked carefully through the case, and the impression made at the trial has deepened into conviction. I need not repeat what I then suggested in explanation of my views.

¹ Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.