took part in it, and who could testify that Widmeyer, the plaintiff, was also one of the parties who took part in the robbery; and here was the testimony of the conductor, Baldwin, that he would be able to identify Widmeyer as one of the three parties who had broken into the cars and were seen escaping. Upon this statement of facts, after careful consideration of counsel, a prosecution was advised, upon condition, however, that the county attorney of Kenton county, Ky., where the prosecution must be instituted and carried on, should also be of the opinion that the prosecution could be sustained, and who, acting under the responsibility of his office, after what seems to have been a careful investigation of the story, and after inquiry made of Kates as to certain evidence which would be necessary in order to comply with the Kentucky statute, drew the affidavit for the arrest of the plaintiff. There is no question but that these facts were laid before counsel,—before Murphy, the superintendent, Colston, the counsel, and Simmons, the county attorney. It seems to me that the defendant acted with caution and prudence, and that he was warranted in accepting the advice of counsel, based upon such circumstances as these, and that the circumstances showed reasonable and probable cause for the prosecution. It certainly cannot be said that they show a want of reasonable and probable cause; and the plaintiff in this case, in order to recover, would be required, if the case were to go to the jury, to satisfy the jury by a preponderance of the evidence that there was a want of reasonable and probable cause. The jury would be compelled, after consideration of this testimony, to say that it showed a want of reasonable and probable cause to justify this prosecution, before they would be warranted in returning a verdict in favor of the plaintiff.

I will not repeat what I have said about the immateriality of alleged omitted material facts, or of the criticism of the evidence of accomplices, further than to call attention to this work of Clerk & Lindsell on Torts (pages 567, 568), where it is said:

"A man is not bound, before instituting proceedings, to see that he has such evidence as will be legally sufficient to secure a conviction. In Dawson v. Vansandau, 11 Wkly. Rep. 516, the defendant had preferred a charge of conspiracy against the plaintiff on the evidence of an alleged accomplice, and it was held that he might well have reasonable and probable cause. An accomplice or tainted witness may give evidence sufficient to make out a prima facie case and warrant the preferring of a criminal charge, though it might not be sufficient evidence upon which to convict. Neither is it necessary that the defendant should act only on legal evidence, and inquire into everything at first hand. It is sufficient if he proceed on such information as a prudent and cautious man may reasonably accept in the ordinary affairs of life, and it is for the plaintiff to satisfy the jury that there was want of proper care in testing that information."

Assuming now that the defendant was not guilty of this crime,—that the jury in the Kentucky court properly acquitted him,—yet, in my judgment, the plaintiff has not shown any want of care or prudence on the part of the defendant in testing the information on which he acted in instituting this prosecution. If there was anything in dispute here,—any question of fact in dispute,—that ought to be settled before attempting to apply the law, I would submit the question to the jury, and would not assume to determine it myself.

There is no question as to what case was presented, nor as to the circumstances under which it was presented, to counsel for the defendant, and it is simply a question of law, upon admitted and undisputed facts, as to whether these facts are sufficient to show that the defendant acted with reasonable and probable cause; and, being of the opinion that they are sufficient and do so show, the motion of defendant will be sustained, and the jury will be instructed to return a verdict in favor of the defendant.

LANGFORD v. UNITED STATES.

(Circuit Court, D. Oregon. July 28, 1899.)

DAMAGES—BREACH OF CONTRACT.

A contract for building a lighthouse, by which the United States agrees to furnish the necessary metal work, in the absence of any specified time binds it to supply such material within a reasonable time, and, if it fails to do so, by reason of which the contractor is compelled to suspend work, and discharge his men, he is entitled to recover as damages the increased cost of necessary labor by reason of a rise in wages, necessary expenses, and loss of materials resulting from stopping the work, and interest on the deferred payments under the contract, but not, where he subsequently completes the contract, for the value of his time during the delay, and during which time he performed no services.

This was an action against the United States to recover damages occasioned plaintiff, as a contractor for the building of a lighthouse, by reason of delay in furnishing certain materials required by the contract.

O. F. Paxton, for plaintiff.
John H. Hall, for the United States.

BELLINGER, District Judge. The plaintiff had a contract with the United States for the construction of a lighthouse at the mouth of the Columbia river, the latter to supply the metal work used in the building. Plaintiff moved his plant to the site of the lighthouse, and began work under his contract. There was delay on the part of the government in furnishing the metal work, and as a result the plaintiff was compelled to discharge his laborers, and wait several months before the metal work was supplied, so as to enable him to resume work. In the meantime there was an advance in the wages of laborers, and there was a further damage to the plaintiff caused by the loss of mortar mixed for use, and of lime, cement, and sand. For these losses the plaintiff claims damages, and he also claims damages on account of money necessarily spent in painting and protecting his plant during the delay, for traveling expenses for himself, and for interest on payments due under his contract. There is a further claim for the time of plaintiff and for the use of his plant, amounting to $2,500. In the contract no time was specified within which the metal work agreed to be furnished by the government was to be furnished. I am of the opinion, however, that it was its duty to furnish this metal work within a reasonable time, and that the government