The argument is that, under the previous order of 1889, every transferee from the Municipality would acquire an absolute right to the property transferred free from the payment of any assessment, in other words, that order granted an exemption from payment of land revenue to all persons who might purchase lands from the Municipality. This is a contention which it is impossible to uphold. There are no words of exemption from liability to assessment in the Government order of 1889. No exemption can be claimed without a grant or exemption in express words. The construction to be placed on the order of 1889 would be that the transferees would obtain a title to the land under their transfers although the transferer might be a Municipal Council, *i.e.*, to remove all objection to the transfer on the ground that the transferer is a Municipal Council. There is no reason for differing from the conclusion of the Lower Appellate Court. We dismiss the Second Appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Spencer.

1911. October 20.

V. VYDINADIER (DEFENDANT IN ALL), APPELLANT IN ALL,

v.

G. KRISHNASWAMI IYER (PLAINTIFF), RESPONDENT IN SECOND APPEAL No. 286 OF 1910.

VAITHINATHIER (PLAINTIFF), RESPONDENT IN SECOND APPEAL No. 287 OF 1910.

VENKATARAMAIYAR (PLAINTIFF), RESPONDENT IN SECOND APPEAL No. 288 OF 1910.*

Malicious prosecution—What has to be proved—Onus on plaintiff—What amounts to malice—Recklessness in what, amounts to malice.

In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence. All that the defendant has to be satisfied about is that there is reasonable and probable cause for the charge, *i.e.*, reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming

* Second Appeals Nos. 286, 287 and 283 of 1910.

VYDINADIER v. KRISHNASWAMI IYER.

to the conclusion that the Court would convict him of it. Carelessness on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice and both malice and absence of reasonable and probable cause have to be proved. If a man is reckless, whether the charge be true or false, that might amount to malice, but not recklessness in coming to the conclusion that there was reasonable and probable cause.

What would amount to reasonable and probable cause is a question of fact.

SECOND APPEALS against the decrees of T. SWAMI AYYAR, the Subordinate Judge of Kumbakōnam, in Appeals Nos. 540, 541 and 542 of 1909, presented against the decrees of C. S. VENKATARAMANA RAO, District Munsif of Mannārgudi, in Original Suits Nos. 59, 60 and 64 of 1908, respectively.

The facts of this case are set out in the judgment.

G. S. Ramachandra Ayyar for the appellant.

T. R. Venkatrama Sastri for the respondents.

SUNDARA AYYAR AND SPENCER, JJ.

JUDGMENT.—The judgment of the Lower Appellate Court is unsatisfactory. The suit in each of the three Second Appeals was for damages for malicious prosecution. The defendant charged the plaintiff in each of the suits with abetting the offence of assault committed by certain other persons. He says that each of the plaintiffs used certain language which showed that he was guilty of abetment. The complaint against the three plaintiffs was dismissed. The Subordinate Judge has not recorded a finding on the question whether, as a matter of fact, the language imputed to the plaintiff in each suit was used by him or not. But he says that assuming he did so, there was no reasonable and probable cause for the charge of abetment against him. In arriving at this finding the Subordinate Judge has apparently thrown the onus on the defendant. He observes "Taking the defence evidence at its best, it makes out no further than the use of the expressions set forth at the outset, by the respective appellants. From this it is sought to be shown that they became accessories after the fact." It was not on the defendant to show that there was reasonable and probable cause in a suit for malicious prosecution but on the plaintiff to prove its absence. We may also observe that the Subordinate Judge seems to have misunderstood what would constitute reasonable and probable cause; for he says that "the degree of caution expected of a man who wants to set the criminal law in motion is that he should reflect like a man of ordinary prudence what chances

there were of conviction against the person whom he accuses and how far his conduct would amount to an offence. It was quite an elementary rule of law that defendant had to remember in this case and not so difficult as to be solved by lawyers. Every man is supposed to know the law, and that no man would be an abettor unless he had actually instigated the offence is a matter that must be universally known." This cannot be accepted as correct. All that the defendant had to be satisfied about was that there was reasonable and probable cause for the charge, *i.e.*, reasonable grounds for believing that the plaintiff was guilty of abetment and not reasonable grounds for coming to the conclusion that the Court would convict him of it. Whether the use of the particular language by the plaintiff in each suit in the circumstances in which it was uttered (assuming that the language was used) would amount to reasonable and probable cause for believing that they were guilty of abetment is a question that must be left to the Lower Appellate Court to decide.

Again, with respect to the question of malice, the Subordinate Judge observes "He (the defendant) did not stop to consider what each of the appellants did to contribute to the offence and what proof he had of it. His action in having included the appellants in the criminal charge has, in my view, been on the whole reckless and not sustained by reasonable grounds." Now carelessness on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice, and both malice and absence of reasonable and probable cause had to be proved. It has no doubt been decided that, if a man has been reckless whether the charge be true or false, that might amount to malice but not recklessness in coming to the conclusion that there was reasonable and probable cause. We must therefore reverse the decrees of the Lower Appellate Court and remand the appeals to it for fresh disposal.

The costs of these Second Appeals will abide the result.