

holder at the expiration of the period. (m) The same case decides two other points: (1) The mere fact that a company was defrauded by promoters into paying an excessive price for its property, and was about to take proceedings to recover back part of that price, does not furnish any reasonable and probable cause to a shareholder for filing a petition to wind up the company. (2) The fact that articles have been published in the newspapers casting odium on a company does not furnish reasonable or probable cause for presenting a petition to wind up a company. The opposite doctrine, it was said, would involve the proposition that a person, without taking the trouble to inquire whether the allegations might not be subject to the errors frequently occurring in newspaper reports, is at liberty to take a step which may destroy the credit of the company.

Where the circumstances upon which action is to be taken are susceptible of two constructions, one of which will render an arrest unjustifiable, it is the duty of the moving party to make further inquiry so as to ascertain the real significance of those circumstances, (n)

So far as regards the right of a prosecutor to rely upon his own recollection of material circumstances without substantiating it by further inquiries, the only rule which it seems possible to enunciate is the very indefinite one that such reliance is not necessarily unjustifiable.

"It does not follow," said Hawkins, J., in a recent case, (o) "that, because the supposed fact had no real existence, the belief of the accuser that it had such existence was unreasonable. . . . If a man has never seen reason to doubt, but, on the contrary, has even had reason to trust, the general accuracy of his memory, and that memory presents to him a vivid apparent recollection that a particular occurrence took place in his presence within a recent period of time, is it not reasonable to believe in the existence of it? the more especially if his diary and other surrounding circumstances appear to confirm his memory. What more

(m) Brett, M. R., in *Quartz Hill, &c., Co. v. Eyr* (1883) 11 Q. B. D. (C.A.) 674 (p. 686). Bowen, L. J., merely said that his view as to reasonable and probable cause might be influenced by the jury's opinion. In the Court of Queen's Bench, after the new trial ordered by the Court of Appeal, the judges held that the defendant was not justified, as a matter of law, in proceeding without ascertaining whether the power so granted had been exercised (50 L. T. N. S. 274).

(n) A creditor has no right to submit an affidavit that a debtor has made a conveyance of his property to prevent its being taken in execution simply because he was apparently in possession of considerable property, and the sheriff had returned "nulla bona." Non constat, that the return may not have been false, or the property not really his: *Smith v. Chief* (1842) 6 T. C. Q. B. (O. S.) 213.

(o) *Hicks v. Faulkner* (1881) 8 Q. B. D. 107. See also *Young v. N'hol* (1885) 9 Ont. R. 347.