

From these principles, it follows that the existence or absence of reasonable and probable cause must be determined by inquiring, in the first place, whether or not the moving party actually believed the other party to be amenable to the proceedings complained of, (d) and, in the second place, supposing that issue to be settled in favour of the moving party, by inquiring whether his belief was justifiable under the circumstances. (e)

When approached from one side, these inquiries present no difficulties. It is easy to define what the moving party is *not* obliged to establish. Thus, so far as regards criminal proceedings are concerned, it is evident that, under any possible theory of the adequacy of a justification, we must assume that, as has been explicitly laid down in one case, the existence of probable cause is shewn where evidence sufficient to make out a *prima facie* case is in the possession of the prosecutor, even though it may not be sufficient to warrant a conviction. (f) And the same principle, *mutatis mutandis*, must evidently prevail in respect to civil suits.

The investigation under its other aspect is much less simple. For the solution of the question when that *prima facie* appearance of liability, civil or criminal, shall be deemed to exist, to the extent of warranting a person in undertaking to invoke the aid of the state, the law has devised no better expedient than the one already referred to in sec. 1, ante. Taking the conduct of the typical discreet citizen as the standard, the courts have evolved a working rule which has been thus formulated in a recent case :

Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man,

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(d) *Broad v. Ham* (1839) 5 Bing. N.C. 722, per Colman, J.; *S. P. Turner v. Ambler* (1837) 10 Q.B. 252; *Wiseman v. McCulloch* (1884) 1 Monr. L.R. (S.C.) 338, per Loranger, J., following Hilliard on Torts, p. 429. See also cases cited in the following section.

(e) "Mere suspicion cannot in any case amount to reasonable and probable cause. There must be a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant the belief that the party is guilty of the crime of which he is accused." Harrison, C.J., in *Munroe v. Abbott* (1876) 39 U.C.Q.B. 78, citing *Douglas v. Corbett*, 6 E. & R. 511; *Dawson v. Fansandau*, 11 W.R. 516, and American cases. See also *Kiddell v. Brown* (1864) 24 U.C.Q.B. 90; *Barrette v. Turner* (1886) 9 L.C. Leg. News (S.C.) 314.

(f) *Dawson v. Fansandau* (1863) 11 W.R. 516.