

If a constable, instead of being simply requested by a complainant to take a designated person into custody, is given an opportunity of forming his own judgment upon the circumstances, he is responsible for making an arrest, if those circumstances were such that he should have seen that the charge was unfounded. (c)

II. WHEN REASONABLE AND PROBABLE CAUSE EXISTS FOR SETTING THE LAW IN MOTION.

6. Existence or absence of probable cause, tested by existence or absence of justifiable belief on defendant's part that the plaintiff was amenable to the procedure complained of—The standpoint from which the common law regards the question whether there was reasonable and probable cause for the institution of the proceedings complained of is principally determined by two considerations: (1) That "it is of importance that prosecutions for offences should not be discouraged, and at the same time that the liberty of the subject should be protected;" (a) (2) That "if any man honestly believes that a crime has been committed by any person, it is not only his right but his duty to prosecute that man." (b) As Mr. Justice Cave observed in a recent case:

"In this country we rely on private initiative in most cases for the punishment of crime; and while, on the one hand, it is most important firmly to restrain any attempt to make the criminal law serve the purposes of personal spite or any other wrongful motive, on the other hand it is equally important, in the interest of the public, that where a prosecution honestly believes in the guilt of the person he accuses, he should not be mulcted in damages for acting in that belief, except on clear proof, or at all events reasonable suspicion of the existence of some other motive than a desire to bring to justice a person whom he honestly believes to be guilty." (c)

(c) *Hogg v. Ward* (1858) 3 H. & N. 417. An inspector of police is justified in arresting a woman on a charge of keeping a house of ill-fame, where a woman alleging herself to be a former inmate has signed an explicit statement recounting acts of her own which, if they were actually committed, justify the charge: *Archibald v. McLaren* (1892) 21 Can. S.C. 588.

(a) Lord Kenyon in *Smith v. MacDonald* (1799) 3 Esp. 7. Some older cases went so far as to lay it down that actions for malicious prosecution were not to be favoured: *Sazile v. Roberts* (1708) 1 Salk. 14; 1 Raym. 374; Carth. 416; *Reynolds v. Kennedy* (Exch. Ch. 1748) 1 Wils. 233.

(b) Mathew, J., in *Vagg v. Hemp* (1887) 4 Times L.R. 52.

(c) *Brown v. Hawks* (1891) 2 Q.B. 718 (p. 723). Compare the remarks of Bramwell, B., in *Darling v. Cooper* (1869) 11 Cox Cr. Cas. 533, and of Lord Colonsay in *Lister v. Poryman* (1870) L.R. 4 H.L. 521.