

liable for the consequences, even if he would otherwise have been protected by the intervention of such agent. (1)

5. Arrest for felony without warrant, justifiability of— The rule is that where an arrest for felony is made without a warrant by a constable, he is protected if he can shew that he had reasonable cause to suspect that the felony had been committed, though, as a matter of fact, none had been committed. (a) But to justify a private individual in making such an arrest, he must not only make out a reasonable ground of suspicion, but also prove that a felony has been committed. (b)

(i) *Steer v. Scoble* (1623) Cro. Jac. 667. [Arrest of bail by creditor who knew that the principal had surrendered himself; *Lowe v. Collum* (1877) 2 L.R. 1r. 15 [wilful misrepresentation that threatening letter was in the plaintiff's handwriting]. Compare cases, supra, as to position of defendant, who is bound over to prosecute. An allegation that the defendant falsely and maliciously, and without reasonable or probable cause, "caused and procured" the plaintiff to be adjudicated a bankrupt, is established by proof that the defendant petitioned for the adjudication, and by depositions, false in fact and maliciously made, induced the commissioner to adjudicate the bankruptcy, although it appears that, even if the depositions had been true, the adjudication could not have been supported in law; *Farley v. Danks* (1855) 4 El. & Bl. 493. Replying to the contention of counsel that "the adjudication ought to be a consequence necessarily and legally following from the facts, if true," Lord Campbell said: "All that is necessary is that the defendant should falsely and maliciously cause the act; and he does that when he swears falsely, and the act would not be done without his so swearing. . . . Where a man makes a true statement of fact, upon which the Court acts wrongly, the grievance, it is true, arises, not from the statement, but from the judgment; but it would be monstrous to hold that this is so where the statement is maliciously false." So, per Crompton, J.: "There is none the less wrong in causing the act to be done, because the act would be illegal at any rate. In a popular sense, a person who puts the law in motion causes the thing to be done." See, however, *Daniels v. Fielding* supra.

(a) *Beckwith v. Philby* (1827) 6 B. & C. 35; *Samuel v. Payne*, (1780) Dougl. 350; 4 Camp. 421; *Lawrence v. Hedger*, (1810) 3 Taunt. 13. Reasonable and probable cause exists for an arrest by a constable of a man suspected of a design to commit some act of violence when he and his brothers and some others have been previously convicted of similar offences, and a general terrorism prevails in the locality of so serious a nature that the military have been called out to restore order: *Donnelly v. Bawden* (1877) 40 U.C.Q.B. 611.

(b) *Beckwith v. Philby* (1827) 2 B. & C. 35; *Lyden v. McGee* (1868) 16 Ont. R. 105; 1 Hale P.C. 588; III. Russell on Crimes, p. 74. Where plaintiff, while passing along the street, pushes a drunken man from him, merely to avoid coming into contact with him, and the latter rolls against and breaks a shop window, the shopkeeper has probable cause for procuring plaintiff's immediate arrest, without a warrant, on a charge of disorderly conduct: *Barrette v. Turner* (1886) 9 L.C. Leg. News (S.C) 314. In an action against a private party for false imprisonment, on a charge of felony not actually committed, evidence that the plaintiff was found under suspicious circumstances, and confirmed the suspicion by refusing to give an account of himself, goes in mitigation of damages: *Cowles v. Dunbar* (1827) 2 C. & P. 365; *Chinn v. Morris* (1820) 2 C. & P. 361. Compare also *Coyte v. Richardson* (1879) 2 L.C. Leg. News (S.C.) 60.