

It is not necessary to aver also that the defendant had no reasonable or probable cause for making the said affidavit, or for believing, &c. (*b*)

24. Plea—The defendant is not bound to set forth in his plea all the evidence on which he acted; it is enough if he shows facts which would create a suspicion in the mind of a reasonable man. (*a*)

Evidence of probable cause may be given under the plea of Not Guilty. (*b*) But such a plea puts in issue merely the malicious use of process without probable cause, (*c*) not such a fact as the plaintiff's acquittal. Hence, a new trial will not be ordered, for the reason that no evidence was given of an acquittal alleged in the complaint. (*d*) So, also, a discontinuance is a material allegation which the defendant must deny specially, if he wishes to dispute it; if he does not do so, he admits the discontinuance. (*e*)

In order to throw upon the plaintiff the burthen of proving the reversal of an outlawry, such reversal should be specially pleaded. (*f*)

If the defendant, instead of relying on a plea of Not Guilty, elects to bring the facts before the court on a plea of justification, he must not only allege certain facts which were sufficient to make him or any other reason-

(*b*) *Fahy v. Kennedy* (1869) 28 U.C.Q.B. 301. For decisions on the pleadings under the repealed Canadian Statute of Geo. IV., c. 1, regarding the right to arrest a debtor where the creditor apprehended that he was about to leave the country, see *Denham v. Ridout* (1842) 6 U.C.Q.B. (O.S.) 193; *Thompson v. Harrison* (1842) 6 U.C.Q.B. (O.S.) 213; *McLennan v. Campbell* (1843) 6 U.C.Q.B. (O.S.) 457.

(*a*) *Broughton v. Jackson* (1833) 18 Q.B. 378.

(*b*) *Cotton v. Browne* (1833) 3 Ad. & E. 312 [where the court struck out a special plea setting forth the facts shewing the existence of probable cause]; *Houndsfield v. Derry* (1839) 3 Per. & D. 127; *Jones v. Dunn* (1851) 1 U.C. C.P. 204. To set out a plea in an action for false imprisonment, stating that the crime had been committed and that the defendant had cause to suspect the plaintiff of its commission, is considered in aggravation of damages, as shewing the animus of the defendant in persevering in the charge to the very last. Such a plea differs in this respect from one justifying the false imprisonment on the ground that the defendant had reasonable and probable cause to suspect that the plaintiff had been guilty of felony, a justification being in the nature of an apology for the defendant's conduct: *Barwick v. Foulkes* (1843) 12 M. & W. 507. A plea in an action for malicious arrest, which states that the defendant "had good, sufficient and reasonable and probable cause of action against the plaintiff in respect of the sum of money mentioned" is bad, because it neither traverses a fact which he would have been taken to have admitted by pleading only the general issue, nor amounts to a special plea of facts and circumstances on which the court could render judgment: *Sunderman v. Downs* (1853) 11 U.C. Q.B. 94, distinguishing *Pain v. Rochester*, Croke Eliz. 871, and *Chambers v. Taylor*, Croke Eliz. 900, and relying on *Cotton v. Browne*, 3 A. & E. 312.

(*c*) *Watkins v. Lee* (1839) 5 M. & W. 270, decided with reference to the Hilary Rules, 4 Will. IV., cas. iv., 1. Under these rules, the only effect of a plea of Not Guilty in an action for maliciously suing out a fiat in bankruptcy is to put in issue the procuring a fiat without probable cause: *Atkinson v. Raleigh* (1843) 3 Q.B. 79, holding it not to be a ground of nonsuit that the complaint stated that the fiat had been annulled by the Court of Review, whereas on the trial the annulment was shown to have been by the Lord Chancellor.

(*d*) *Hoddrick v. Heslop* (1848) 13 Q.B. 267.

(*e*) *Watkins v. Lee* (1839) 5 M. & W. 270.

(*f*) *Drummond v. Piquet* (1835) 5 Scott 228.