

is about to leave England, the judge may direct that the defendant shall be held to bail, and the plaintiff may for that purpose sue out a writ of *capias*, the foundation of an action for malicious arrest is that the party obtaining the *capias* has imposed on the judge by some false statement, and has thereby satisfied him not only of the existence of the debt, but also that there was reasonable ground for supposing that the debtor was about to quit the country. No action, therefore, will lie where a plaintiff, without any fraud or falsehood and upon an affidavit fairly stating the facts, succeeds in satisfying the judge that the defendant is about to quit the country, even though he may not himself believe that the defendant is about to do so. (e)

Under sec. 10 of the Criminal Law Amendment Act of 1885, empowering a justice to issue a search warrant, upon information made before him on oath by any parent of any woman or girl, or any other person who, in the opinion of the justice, is bona fide acting in her interest, that there is reasonable cause to suspect that she is being detained for immoral purposes, the justice has a judicial and not a merely ministerial duty to perform, and where the applicant is acting bona fide, and has stated the matter fully, and the judge concludes that there is reasonable ground for suspicion, his conclusion is an answer to an action for maliciously procuring the issue of the warrant. (f)

Of course the applicant "is not responsible for the act of the judge which is, upon the face of the proceedings, an illegal one, if he has only stated the truth;" (g) as where a justice of the peace orders an arrest on a charge of felony, that being his own construction of the facts laid before him, and it turns out that the facts do not amount to a felony. (h)

Where the statement of facts by which the agent of the State was induced to set the law in motion against the plaintiff was false to the defendant's knowledge or not believed by him, he is

(e) *Daniels v. Fielding* (1846) 16 M. & W. 200. Under that statute, the plaintiff in an action for malicious arrest should allege the facts, showing falsehood or fraud in obtaining the original order. But after verdict a declaration containing an allegation that the defendant "falsely procured" the judge to make the order for the *capias* will be held good, the words being taken to mean by false evidence: *Ibid.*

(f) *Hope v. Evered* (1886) 17 Q.B.D. 338.

(g) *Johnson v. Emerson* (1871) L.R. 6 Exch. 320, per Cleasby, B. (p. 344).

(h) *Leigh v. Webb* (1800) 3 Esp. 165; *Cohen v. Morgan* (1822) 6 Dow & R. 8. A complaint to a magistrate which is merely to the effect that the plaintiff had "clandestinely removed and secreted" certain articles belonging to the defendant does not justify the magistrate in issuing a warrant to arrest the plaintiff and search his premises: *McNellis v. Gartshore* (1853) 2 Upp. Can. C.P. 464.