

VI. EVIDENCE ADMISSIBLE TO ESTABLISH OR NEGATIVE
EXISTENCE OF PROBABLE CAUSE.

20. Opinions formed by others as to the justifiability of the previous proceedings, materiality of.
21. Opinions of non-professional persons, how far a protection.
22. Previous occurrences, how far suspicions of defendant are justified by.
23. Bad character of party prosecuted, how far admissible as evidence of probable cause.
24. Miscellaneous rulings as to evidence.

In the following article we propose to state the effect of the English and Canadian cases in which the defence of reasonable and probable cause has been discussed. As the decisions by the courts of the Dominion on this important subject have never before been brought together, we hope that the present collection of authorities will be especially useful to our readers.

I. GENERAL PRINCIPLES.

1. **Standard to which reasonable and probable cause is referred** - The method pursued by the courts in determining whether one person had reasonable and probable cause for putting the law in motion against another is to some extent analogous to the method by which the existence or non-existence of actionable negligence is ascertained. In both instances the situations upon which the liability of the defendant hinges are, as indicated by the terminology employed in describing them, incapable of being defined by any fixed legal standard, and the test applied is conformity or non-conformity to a certain hypothetical course of conduct which a typical citizen would, as may be supposed, have pursued under the circumstances.

"In order to justify a defendant there must be reasonable cause, such as would operate on the mind of a discreet man; there must also be probable cause, such as would operate on the mind of a reasonable man, at all events such as would operate on the mind of the party making the charge; otherwise there is no reasonable cause as to him." (a)

The essential distinction, however, between the ultimate objects of the inquiries in the two classes of cases involves the consequence that a different degree of importance is attached in each investiga-

(a) Tindal, C.J., in *Broad v. Ham* (1839) 5 Bing. N.C. 722 quoted, with approval by Lord Chelmsford and Lord Colonsay in *Lister v. Perryman* (1879) L.R. 4 : L.L. 521.