

of the plaintiff which would admittedly have been unjustifiable if the defendant did not really possess those rights. But the House of Lords declined to accept this theory, and laid it down that, as a mortgagee has by the legal title to, and is able to take possession of, the mortgaged premises at any time, persons taking possession by his authority are regarded as being rightfully in possession. Hence, even though they have taken possession in a rough and discourteous manner, and by taking advantage of the mortgagor's absence, another person who enters and forcibly ejects them by the authority of the mortgagor is guilty of the offence of forcible entry, and, if indicted on such a charge, cannot maintain an action against the prosecution on the theory that he acted without reasonable and probable cause. Lord Selborne thus disposed of the special point made by counsel: "The question whether there was any reasonable ground for that charge or not must necessarily depend upon the state of the legal possession of the *locus in quo* at the time when the acts alleged to constitute the forcible entry were done; and if for civil purposes the legal possession was in the appellant, the foundation for such an action, so far as the state of possession is concerned, is sufficiently and properly established.

8. Illustrative decisions as to the justifiability of various proceedings—The justifiability of instituting particular proceedings under special circumstances will be further illustrated by the subjoined rulings:

(a) *Clandestine removal of goods*—Evidence that the plaintiff had actually removed the goods to his own house, locked them up, and refused to surrender them on demand, shows probable cause for laying a complaint on this ground. (a)

(b) *Conspiracy to defraud*—The fact that the dishonest character of the plaintiff's son was concealed from the defendant, with whom he was about to engage in business transactions which involved the son's having the custody of valuable property belonging to the defendant, does not justify the latter, after the son has absconded largely indebted to him, in prosecuting the father for a conspiracy to defraud. (b)

Reasonable and probable cause for A.'s laying an information against B. for becoming a party to a conspiracy by which C. was seeking to defraud a company, of which he was manager and to which he was largely indebted, is established where the evidence is that C. transferred his entire estate to B., the foreman of the company, earning \$2.50 a day, for a consideration which was stated as \$7,000 cash, but of which no part was satisfactorily shown to have passed; that on the next day B. transferred the same property to the wife of C. in consideration partly of a promise to

(a) *McNellis v. Gartshore* (1853) 2 U.C.C.P. 464.

(b) *Rowlands v. Samuel* (1847) 17 L.J.Q.B. 65.