

The subjoined rulings deal with the sufficiency of the declaration, so far as it bears upon probable cause, in actions under statutes giving a creditor the right to arrest a debtor when there is reason to believe that he is about to leave the country.

A declaration in an action under 1 & 2 Vict., c. 110, sec. 3, for malicious arrest and holding to bail on a false affidavit of the amount owed need not set out the false statement by which the judge was induced to make the order, nor shew that the facts were false within the defendant's knowledge, nor that he had not reasonable or probable cause for believing it to be true. (*d*)

A declaration on an action under the same statute for falsely and maliciously procuring an order for the arrest of the plaintiff under the Act of 1 & 2 Vict., c. 110, sec. 3, is bad, unless it shews the nature of the falsehood by which the order was procured (*e*).

In an action for malicious arrest under the Upper Canada Statute, 8 Vict., c. 48, which required that the plaintiff should swear that he had "good reason to believe and did verily believe that the defendant was about to leave Upper Canada with intent to defraud the plaintiff of his debt," a declaration was held to be sufficient which alleged that the defendant "had not any reasonable cause for believing." (*f*) In actions under Upp. Can. Consol. Stat., c. 24, sec. 6, (a provision also found in Rev. Stat. Ont., 1877, c. 67, sec. 5: see also Rev. Stat. Ont., 1897, c. 80, secs. 1, 8), for procuring the arrest of a debtor on the ground that he was about to quit the country, the grievance is that the defendant maliciously and without probable cause, set the law in motion, and, that by his false and untrue statements he obtained from a judge the order for bailable process. Hence a count which avers that the defendant made an ungrounded statement and "by means of such false allegations, falsely and maliciously induced the said judge" to grant the order for arrest, is not demurrable, although the statute requires the affidavit on which the order is granted to shew facts and circumstances to satisfy the judge. (*g*)

In an action under the same statutes against one of the deponents of a creditor a declaration is sufficient which alleges that he "made a false affidavit that he had good reason to believe and did believe that the plaintiff had departed from the country with intent to defraud the creditor."

(*d*) *Ross v. Norman* (1850) 5 Exch. 359.

(*e*) *Brant v. Bobbett* (1847) 11 Jur. 1021, following *Daniels v. Fording* 10 M. & W. 200.

(*f*) *Lyons v. Kelly* (1849) 6 U.C.Q.B. 278.

(*g*) *Griffith v. Hall* (1867) 26 U.C.Q.B. 64.