be an apparent, there has been no real, departure from the rule. Thus, in some cases the reasonableness and probability of the ground for prosecution has depended, not merely upon the proof of certain facts, but upon the question whether other facts which furnished an answer to the prosecution were known to the defendant at the time it was instituted. (*g*) Again, in other cases, the question has turned upon the inquiry, whether the facts stated to the defendant at the time, and which formed the ground of the prosecution, were believed by him or not; (*h*) in other cases the inquiry has been, whether from the conduct of the defendant himself the jury will infer that he was conscious he had no reasonable or probable cause But in these and many other cases which might be suggested, it is obvious that the knowledge, the belief and the conduct of the defendant are really so many additional facts for the consideration of the jury; so that, in effect, nothing is left to the jury but the truth of the facts proved, and the justice of the inferences to be drawn from such facts, both which investigations fall within the legitimate province of the jury, whilst, at the same time, they have received the law from the judge, that, according as they find the facts proved or not proved, and the inferences warranted or not, there was reasonable and probable cause for the prosecution, or the reverse." . . . . . "Such being the rule of law, where the facts are few and the case simple, we cannot hold it otherwise where the facts are more numerous and complicated. It is undoubtedly attended with greater difficulty in the latter case, to bring before the jury all the combinations of which numerous facts are susceptible, and to place in a distinct point of view the application of the rule of law, according as all or some only of the facts and inferences from facts are made out to their satisfaction. But it is equally certain that the task is not impracticable; and it rarely happens but that there are some leading facts in each case which present a broad distinction to their view, without having recourse to the less important circumstances that have been brought before them."

(*g*) In *James* v. *Phelps* (1840) 11 Ad. & E. 483, Lord Denman had said, in the course of his opinion, that "the question whether there be or not reasonable or probable cause may be for the jury or not, according to the particular circumstances of the case." But this was a case where the evidence suggested that the defendant knew that an essential ingredient of the offence charged was lacking. See also sec. 10 (*d*) infra.

(*h*) In *Wedge* v. *Berkeley* (1837) 6 Ad. & E. 663, the court held that both the bona fides of the defendant, a magistrate, and also the question whether there was reasonable cause for a magistrate's detaining goods on a suspicion that they were stolen was for the jury. But this ruling is deprived of much of its significance by the fact that it was made on the course of a judgment which upheld the action of a judge in leaving the case to the jury upon instructions that they were to find whether there were "reasonable grounds of suspicion." It may be reconciled with the general current of the authorities by assuming that the real question which the trial judge intended to leave to the jury was merely whether the defendant believed in the guilt of the plaintiff (see sec. 10 (*b*) and (*c*) post).