

But the application of the maxim is subject to some reasonable exceptions, as where the justifiability of the proceedings depends upon the construction of an obscure statute.

"In a matter of some difficulty connected with a new Act of Parliament, and on which opinions might differ, a mistake might be made without any blame attaching, and a person under the influence of such a mistake might still have reasonable and probable cause for taking a proceeding which it turned out afterwards was not justified." (d)

For analogous reasons, where an attorney in the petition upon which a debtor of his client is adjudicated a bankrupt truly states all the facts upon which the proceedings are taken, absence of reasonable and probable cause cannot be inferred from the circumstance that he was mistaken in point of law as regards the statements made. (c)

In the nature of the case, a want of probable cause cannot be predicated where the facts alleged are such that, if they are true, the plaintiff's amenability to the proceedings is legally beyond dispute. (d)

In one instance, an attempt was made upon a special ground to restrict the effect of this proposition. The doctrine which the plaintiff sought to establish in *Lowe v. Telford* (e) was that the fact of the defendant's possessing certain rights for civil purposes did not necessarily avail him as a defence to an action to recover damages for a prosecution

defendant had not reasonable ground for believing that the plaintiff had unlawfully and maliciously injured his property includes, by implication, a finding that there was a want of such value, and, consequently, an absence of such circumstances as are necessary to constitute reasonable and probable cause for the prosecution: *Wehber v. McLeod* (1888) 16 Ont. R. 606. If the act of the plaintiff was one for which an officer had no right to make an arrest at all, the mere fact that he may have, bona fide, believed that he had a right to make the arrest, and that such was his official duty is no qualification: *Kelly v. Burton* (1893) 20 Ont. Rep. 608, aff'd 22 Ont. App. 322. It may also be noted that, if the defendant, at the time he made the affidavit upon which the plaintiff was arrested, had reason to believe that the demand was not one on which a *capias* could lawfully issue, he is, as matter of law, guilty of malice: *Gibbons v. Alison* (1846) 3 C.B. 181, per Tindal, C.J., and Maule, J. (p. 185).

(b) *Johnson v. Emerson* (1871) L.R. 6 Exch. 329, per Clensby, B. (p. 331); *Phillips v. Naylor* (1859) 4 H. & N. 565, per Erle, J. (p. 568).

(c) *Johnson v. Emerson* (1871) L.R. 6 Exch. 329, per Bramwell, B. (p. 363).

(1) As where the non-liability of defendant must at once be conceded on proof that the plaintiff was indebted to him: *Drummond v. Pigeon* (1835) 2 Scott 228 (outlawry for non-payment of debt admitted to be due); *David v. Thomas* (1837) 1 L.C. Jur. 10, B.1 to issue of *subpoena* to enforce payment of rent disputably due. Probable cause for prosecuting the plaintiff on a charge of assault is shown where he admits that he struck the defendant: *Raymond v. Rider* (1892) 24 Nov. Scot. 363.

(2) H.L. 1870 L.R. 1 A.C. 414.