

system of jurisprudence, has been subject to an exception in cases where, to use the language of Strong, J., there has been, "by means of civil process some unwarrantable interference with the person or property of the defendant in the original action." (h)

The most frequent illustrations of this principle are furnished by the cases in which the law permits the suit to be commenced by *capias* and followed by arrest. (i) An action can then be maintained, provided the plaintiff can show special damage. (j) (Specific decisions falling under this category will be noticed in sec. 7, post.)

Other civil suits for the institution of which the law grants a remedy where reasonable and probable cause is wanting are those which imply an inability to discharge pecuniary obligations, such as the presentation of bankruptcy petitions, (k) or petitions for winding up a company. (l)

4. How far the defendant is protected by the official intervention of the judge or other public functionary who authorized the proceedings—The doctrine established by the decisions seems to be that, as a general rule, the intervention of the public functionary, whether judge, magistrate or executive official, by whom, or at whose instance, the proceedings complained of were actually instituted and carried on, will or will not serve as a protection to the defendant in the subsequent action, according as such functionary is bound to set the law in motion, simply upon the applicants submitting facts which show that he has a *prima facie* right to the assistance of the State, or is under the obligation of examining into the truth of those facts and satisfying himself that the circumstances are as represented before the request of the applicant is granted.

(h) *Montreal, &c., R. Co. v. Ritchie* (1889) 16 Can. S.C. 622 (p. 630).

(i) *Johnson v. Emerson* (1871) L.R. 6 Exch. 329 (p. 372), per Martin, B.

(j) *Jennings v. Florence* (1857) 2 C.B.N.S. 467; *Churchill v. Siggers* (1854) 3 El. & Bl. 929. In the latter case Lord Campbell said: "The Court or Judge to whom a summary application is made for the debtor's liberation can give no redress beyond putting an end to the process of execution on payment of the sum due, though, by the excess, the debtor may have suffered long imprisonment and have been utterly ruined in his circumstances."

(k) *Johnson v. Emerson* (1871) L.R. 6 Exch. 329.

(l) *Quartz Hill, &c., Co. v. Eyre* (1883) 11 Q.B.D. (C.A.) 674.