

bringing him to court-martial, although such superior was cognizant of circumstances which justified such disobedience. (c)

Obviously, however, it is wholly impossible to reconcile this latter theory with the doctrine that the reasonable belief of the moving party in the criminal or civil liability of the party proceeded against is the touchstone by which the existence of probable cause must be tested. If the former knows, or is affected with constructive notice, of the fact that the latter has a perfect defence which will prevent the enforcement of liability to which he might otherwise be subject, it is impossible to assert with any show of reason that it is justifiable to drag him into court, so as to go through the idle formality of exculpating himself. The separation of the facts which *prima facie* constitute an offence or furnish a good cause of action from the facts which render it impossible to convict or recover damages is a mere scholastic subtlety which is quite out of place in this connection.

(g) *Rule where the issue presented is whether the acts charged as done amount in law to the crime charged*—There is a clear distinction between the defendant's belief that the acts upon which he based his charge were done by the plaintiff and his belief that those acts really constituted the specific crime for which he seeks to have the plaintiff tried. In the former case his belief may or may not be warrantable, as we have already seen. In the latter case his liability is determined by the principle, *Ignorantia juris neminem excusat*. The rule is well settled, therefore, that a want of probable cause is conclusively established by proof that the plaintiff, however culpable in other respects he may have been, had done nothing which would render him legally amenable to the process employed against him by the defendant (a)

(c) *Johnstone v. Sutton* (1786) 1 T.R. 493. "I doubt," said Eyre, B. (p. 507), in delivering the opinion of the Court of Exchequer, "whether, if a man were to indict one for murder, who had committed homicide under circumstances within the knowledge of the prosecutor which made it justifiable, it could be said that there was no probable cause for preferring that indictment. In the Court of Exchequer Chamber, Lords Mansfield and Loughborough agreed with the lower court on this particular point, though the judgment was overruled as a whole. That the moving party is not bound to investigate the truth of any excuse which the guilty party may offer was also laid down in *Wiseman v. McCulloch* (1884) 1 Montr. L.R. (S.C.) 338, but there the excuse actually offered was a falsehood.

(a) *Farmer v. Darling* (1776) 1 S. & P. 191; *Heath v. Heap* (1856) 5 W.R. 23; *Michell v. Williams* (1843) 11 M. & W. 205; *Abell v. Light* (1868) 1 Hannay, N.B. 240; *Huntley v. Simson* (1857) 2 H. & N. 600; *Boaler v. Holder* (Q.B.D. 1886) 51 J.P. 277; *Seary v. Saxton* (1896) 28 Nov. Sc. 278. In an action for false arrest on a charge of "unlawful malicious injury to the defendant's property" (R.S.C., ch. 168, sec. 50), by sawing off the ends of some old and rotten logs used in the construction of a building which the plaintiff was allowed to occupy, the fact that logs were actually cut does not constitute a valid defence, if it is shewn that they were of no appreciable value. A finding of the jury that the