

Any statement made by the debtor himself from which it may be inferred that his removal from the country will be permanent, warrants his arrest. (y)

(l) *Fraudulent insolvency*—Proof that an embarrassed debtor secreted his furniture and effects, and made fraudulent and fictitious transfers to his relatives just prior to an assignment for the benefit of his creditors, shows the existence of probable cause for his arrest. (s)

(m) *Procuring injunction restraining payment of dividend by company*

Sufficient probable cause exists for a shareholder's procuring an injunction against the payment of a dividend, when the annual report contains mis-statements. (a)

### III. PROVINCES OF COURT AND JURY RESPECTIVELY IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE.

**8. Reasonable and probable cause, existence of, a mixed question of law and fact**—The doctrine established by the authorities is that the existence of probable cause is a question exclusively for the court only when there is no controversy either as to the facts upon which the solution of the various subordinate issues which it involves is dependent.

"The question of probable cause is a mixed question of law and fact. Whether the circumstances alleged to show it probable or not probable are true and existed is a matter of fact; but whether, supposing them true, they amount to probable cause, is a question of law." (a) "It is for the jury to say whether the facts pleaded were proved, and for the judge to determine whether or not they amounted to reasonable and probable cause." (b) "The prevailing law of reasonable and probable cause is that the jury are to ascertain certain facts, and the judge is to decide whether those facts amount to such cause. (c)

(y) *Benjamin v. Wilson* (1850) 1 L.C.R. (S.C.) 351; *Debien v. Marsaut* (1863) 14 L.C.R. (S.C.) 89; *Berry v. Dixon* (1854) 4 L.C.R. (S.C.) 218; *Wilson v. Reid* (1854) 4 L.C.R. (S.C.) 157.

(s) *Poulin v. Ansell* (1874) 5 Revue Legale S.C. 251.

(a) *Montreal, &c., R. Co. v. Ritchie* (1889) 16 Can. S.C. 622 (decided with reference to the law of Quebec).

(a) *Johnstone v. Sutton* (1786) 1 T.R. 493, per Lords Mansfield and Loughborough (p. 543).

(b) *Maule, J.*, in *West v. Bavendale* (1850) 9 C.B. 141.

(c) *Turner v. Ambler* (1847) 10 Q.B. 252, per Lord Denman. Similar language is used in *Broad v. Ham* (1839) 5 Bing. N.C. 722; *Davis v. Russell* (1829) 5 Bing. 354; *Huddrick v. Heslop*, 12 Q.B. 267, aff'd (in Exch. Ch.) 12 Q.B. 928; 23 L.J. Q.B. 49; *Weston v. Beeman* (1857) 27 L.J. Exch. 57; *Hailes v. Marks* (1861) 7 H. & N. 56; *Buss v. Gibbons* (1861) 30 L.J. Exch. 75; *Ayres v. Elborough* (nisi pr. 1870) 22 L.T.N.S. 106, per Blackburn, J.; *Kelly v. Midland, &c., R. Co.* (1872) 1r. Rep. 7 C.L. 8; *Lucy v. Smith* (1852) 8 U.C. Q.B. 518; *Joint v. Thompson*