placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. (*g*)

7. Subsidiary issues suggested by this doctrine—(*a*) *Defendant liable in damages unless he shews that his belief was the operative inducement to the institution of the proceedings*—A party who does not believe in the guilt of the accused cannot be said to have reasonable and probable cause for making the charge. (*a*) Reasonable and probable cause, therefore, must appear not only to be deducible in point of law from the facts, but to have existed in the defendant's mind at the time of his proceeding; (*b*) and he must fail, under a plea of not guilty, if he does not prove that the facts of the case, or, at all events, so much of the facts as would have been sufficient to induce a belief of the plaintiff's guilt on the mind of any reasonable man, had been communicated to him previous to the laying of the charge. (*c*) Knowledge acquired after the arrest of the plaintiff cannot be proved to support an allegation of reasonable cause. (*d*)

(*g*) *Hicks* v. *Faulkner* (1881) 8 Q.B.D. 167. See also *Johnson* v. *Emerson* (1871) L.R. 6 Exch. 329, per Martin, B. (p. 373); *Munroe* v. *Abbott* (1876) 39 U.C.Q.B. 78, per Harrison, C.J.; *Webber* v. *McLeod* (1888) 16 Ont. R. 609, per Ferguson, J. Formerly a distinction seems to have been taken between "reasonable" and "probable": *Jones* v. *Givin* (1712) Gilbert's K.B. 185 (p. 187).

(*a*) *Broad* v. *Ham* (1839) 5 Bing. N.C. 722; *McVellis* v. *Gartshore* (1853) 2 U.C.C.P. 464 (Sullivan, J., arg.); *Millner* v. *Sanford* (1893) 25 Nov. Sc. 227.

(*b*) *Turner* v. *Ambler* (1847) 10 Q.B. 252. "Reasonable and probable cause in the mind of the judge is not alone sufficient; there must be also reasonable and probable cause moving and inducing the defendant:" *Shrosbery* v. *Osmaston* (C.P.D. 1878) 37 L.T.N.S. 792, per Denman, J.

(*c*) *Doeurc* v. *Hilton*, cited by Tindal, C.J., in *Delegal* v. *Highley* (1837) 3 Bing. N.C. 950.

(*d*) *Shaw* v. *McKenzie* (1881) 6 Can. S.C. 181. But probable cause may be established by evidence confirmatory of that of an accomplice, which, though it was not disclosed until after the plaintiff was given into custody, was discovered before the criminal charge was preferred against him with a view to prosecution: *Dawson* v. *Vansandau* (Q.B. 1863) 11 W.R. 516. Hence, for the purpose of ascertaining whether the defendant believed in the truth of a charge on which he caused the plaintiff to be arrested, it is proper to look at the time of the arrest, and not at the time of the trial: *Wiseman* v. *McCulloch* (1884) 1 Montreal L.R. (S.C.) 338. The principle that the law is concerned only with the mental condition of the defendant at the time when he moved in the case sometimes enures to his benefit. Thus, where the facts are otherwise sufficient to justify the defendant in believing that the property found in the plaintiff's possession was that which had been taken away from him, the absence of probable cause for arresting him is not established by the mere fact that one of the plaintiff's witnesses contradicted at the trial the statements of the witness on whose testimony the defendant had placed his main reliance, for, granting that such contradiction is true, it can have no bearing upon the significance of the defendant's conduct, unless it is shewn that, before instituting the prosecution, he had an opportunity of knowing what such witness would say: *Joiner* v. *Thompson* (1867) 26 U.C. Q.B. 519.