

11. Illustrative cases — The scope of the general principles enunciated above will become plainer if we set forth, under convenient headings, the effect of some specific rulings of the courts upon the propriety of submitting to or withholding from the jury certain questions.

(a) *The trustworthiness of the materials*, i.e., "not the legal inference to be drawn from them, but the worth of them,"—from which the defendant formed his opinion as to the guilt of the plaintiff, is a question of fact not of law. (a)

(b) *Whether the defendant entertained a bona fide belief in the guilt of the plaintiff* is a question properly submitted to the jury, where the evidence suggests that the existence of such a belief on his part is doubtful, (b) or, as another case puts it, where the facts and inferences are doubtful, the bona fides of the defendant must be determined by a jury. (c)

cause, yet, if the defendant subsequently adduces facts which satisfy him that there was reasonable and probable cause, a nonsuit may properly be granted: *Riddell v. Brown* (1864) 24 U.C.Q.B. 90. where it was held that, as unimpeached witnesses had established facts sufficient to justify the inference that the plaintiff was about to leave the country, his arrest was warrantable, though he offered testimony shewing, prima facie, that he had no such intention.

(a) *Abrath v. North Eastern R. Co.* (C.A. 1883) 11 Q.B.D. 440, per Bowen, L.J. (p. 460).

(b) *Darling v. Cooper* (1869) 11 Cox Cr. Cas. 533: *Wedge v. Berkeley* (1837) 6 Ad. & E. 663.

(c) *Broad v. Ham* (1839) 5 Bing. N.C. 722: Where the defendant is shewn to have made a charge of perjury upon information given to him, it is properly left to the jury to say whether he believed that information: *Haddrick v. Heslop* (1848) 12 Q.B. 267. A judge is warranted in leaving to the jury the question of the existence of probable cause upon the following state of facts: Plaintiff, a servant, being discharged on a Friday, took away with her from her master's house a trunk and bag, the property of her master. The master wrote to her the next day demanding his property, and threatening to proceed criminally on the Monday following, if it were not restored. The plaintiff being absent from home when the letter arrived, no answer was returned, whereupon the master, the same day (Saturday), had her taken in custody, but, when she was brought before the magistrates on Monday, declined to make any charge: *McDonald v. Rooke* (1835) 2 Bing. N.C. 217. Whether the utterance of words susceptible of the construction that the speaker intended to threaten another person's life constitutes a reasonable and probable cause for laying a charge against him depends on the question in what sense the words were used, to whom they were addressed, and whether they were believed by the party against whom they were directed. Hence, if there are facts which raise a doubt whether the accuser believed the reality of the threat, it is the duty of the judge to take the opinion of the jury upon the issue, whether the accuser believed the charge, or whether it was altogether colourable: *Venafra v. Johnson* (1833) 10 Bing. 301 (nonsuit set aside). Whether the defendant acted bona fide on the opinion obtained from counsel is a proper question to submit to the jury: *Fellowes v. Hutchinson* (1855) 12 U.C.Q.B. 633. Where the evidence points to the conclusion that the detention of the defendant's property on which he based a charge of theft against the plaintiff was made under a bona fide claim of right, he cannot complain of the action of the judge in leaving the question of his belief in the guilt of the plaintiff to the jury: *Alward v. Sharp*