

(k) *Arrest of debtor on ground that he is about to leave the country*—
To establish probable cause something further is required than mere proof of the existence of the debt and the impending departure of the debtor. (x)

(1833) 5 B. & Ad. 588. The duty of an arbitrator being to render judgment *secundum equum et bonum*, without being tied down by the strict rules of law, his award in favour of a defendant in an action of debt after examination of the accounts between him and the plaintiff, who had procured his arrest, does not necessarily show that there was nothing legally due, and, therefore, no probable cause for his arrest: *Habershon v. Troby* (1799) Peake 135; 3 Esp. 33. An arrest in an action against the acceptor of a bill was held not to be without probable cause where his name and address were identical with those on the bill, even though it turned out that the acceptance was not his in fact, and that he disclaimed the bill when it was pre-ented to him by one of the defendant's clerks: *Spencer v. Jacob* (1828) Moo. & M. 180 [where there was no proof that the disclaimer had been actually communicated to the defendant]. As to the construction of the Act of 43 Geo. III., ch. 46, sec. 3; providing that defendant, who had been arrested in an action of debt, should be allowed his costs, if the plaintiff "recovered" less than the amount for which the arrest was made, and the arrest was "without reasonable and probable cause," see *Keene v. Deeble* (1824) 3 B. & C. 491, and cases cited [money awarded by arbitration not "recovered"]; *Thompson v. Atkinson* (1827) 6 B. & C. 193 [statute does not cover cases where all matters in difference between the parties and the costs are to abide the event of the award]: *Silversides v. Bowley* (1817) 1 Moore 92 [defendant not entitled to costs, unless arrest was malicious and vexatious].

(x) *Shaw v. McKenzie* (1881) 6 Can. S.C. 181: *Henderson v. Duggan* (1879) 5 Que. L.R. (S.C.) 364: *Berry v. Dixon* (1854) 4 L.C.R. 218. Under the Nova Scotia Act for abolishing arrest for debt on mesne process (Rev. Stat. Nov. Scot., ch. 94), the fact that the holder of a note had good cause for believing, and did believe, that the maker was about to leave the province, and that they would lose their remedy against him if he was not forthwith arrested, constitutes reasonable and probable cause for the arrest, notwithstanding they might have believed that they could recover the amount of the debt from the indorsers: *Bank of British N.A. v. Strong* (1876) L.R. 1 A.C. 397. The following cases may be consulted as to the facts which prove or disprove probable cause. No probable cause: *Torrance v. Jarvis* (1856) 13 U.C.Q.B. 120 [fair assignment of property and an acceptance of salaried position as clerk in the winding up of the estate]: *Renaud v. Vandusen* (1872) 21 L.C. Jur. (Q.B.) 44 [trader domiciled in country to which he was going and constantly travelling to the one where the writ was applied for]. It is not justifiable to arrest a person who returns to his own country after a residence of several years abroad, where his departure in the first instance had followed an assignment for the benefit of his creditors, the bonafides of which was not impeached by the arresting party himself or any other creditor. His departure being free from fraud, he acquires a legal domicile in the foreign country, so far as his creditors are concerned, and is entitled to return home without becoming liable to a charge of fraud: *Drapeau v. Deslaurier* (1888) 32 L.C. Jur. (Cour de Rev.) 191. In the same case the fact that the plaintiff had given proofs of his intention to remain in the country by buying land and making a contract for the erection of a house thereon, was also mentioned among the grounds upon which it was held unjustifiable to arrest him for fraud. Probable cause: *Wanless v. Matheson* (1837) 15 U.C.Q.B. 278 [plaintiff, overwhelmed with debts, had assigned all his personal property, had broken faith with the defendants, had been detected in several misstatements, and was reported to have absconded]: *Hartubise v. Bourret* (1879) 23 L.C. Jur. (Q.B.) 130 [refusal to pay debts by debtor able to do so—no leviable property—presence in country due to family affairs calling for a few hours' stay]: *Lajeunesse v. O'Brien* (1874) 5 Rev. Leg. (S.C.) 242 [plaintiff abandoned premises leased from defendant when rent came due, having sold some of his stock, and left behind some trifling personal effects].