

1897

THE QUEEN
v.
CLERK OF
ASSIZE
OF OXFORD
CIRCUIT.

Bruce J.

are insufficient to disclose a legal duty, it may be quashed as being bad on the face of it. With reference to the case of the manager of the quarry, I only wish to add this—that it is a general rule of law that a person is not to be held criminally responsible for the neglect of a subordinate, and consequently, although it should be proved that there was a neglect to fence the quarry, yet if the manager of the quarry could establish that it was not his neglect but the neglect of a subordinate, he would have a complete answer to the charge.

Rule absolute.

Solicitors for coroner: *Bridges, Sawtell & Co.*

Solicitors for defendants Daniell and Saise: *Rowcliffes & Rawle, for Benson, Carpenter & Co., Bristol.*

Solicitors for defendant Free: *Rowcliffes & Rawle, for Salisbury & Griffiths, Bristol.*

Solicitor for Public Prosecutor: *Solicitor to the Treasury.*

J. F. C.

C. A.

[IN THE COURT OF APPEAL.]

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Jan. 29.

JONES *v.* GERMAN.

Justices—Information—Sufficiency of Information—Allegation of reasonable Suspicion of Larceny—Specification of Goods alleged to be Stolen—Search-warrant—Legality of Warrant.

A search-warrant may be issued on an allegation of reasonable suspicion of larceny.

On an application to a justice of the peace for a search-warrant, the sworn information upon which the application was made stated that the informant “hath just and reasonable cause to suspect and doth suspect that W. J. has in his possession certain property belonging to” (the informant), “and that he has requested the said W. J. to allow him to search several boxes which the said W. J. has had packed ready to be taken away, and which he refuses to be looked through.” The justice issued his warrant, which was executed. In an action of trespass alleging that the information was insufficient, and that the warrant was consequently illegal and without jurisdiction:—

Held, affirming the judgment of the Lord Chief Justice, that it is not necessary in such an information to allege that a larceny has in fact been committed, but that it is enough to allege a suspicion that a larceny has

been committed; that it is not necessary to specify in the information the particular goods for which a search is desired; that the information in question substantially averred that the informant suspected certain property of his to have been stolen; and that it was sufficient to give the justice jurisdiction.

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APPEAL from a judgment of Lord Russell of Killowen C.J. on further consideration, reported [1896] 2 Q. B. 418.

The action was against the defendant, a justice of the peace, for trespass to goods and for false imprisonment, and the question was as to the sufficiency of a sworn information made by one Wood, in whose employment the plaintiff was as butler, on an application to the defendant for a search-warrant. The information was in the following form: "Be it remembered that . . . Thomas Wood . . . on oath maketh complaint that he hath just and reasonable cause to suspect and doth suspect that William Jones of Brasted has in his possession certain property belonging to the said Thomas Wood, and upon his oath doth depose and say that the said William Jones has been in his employ for five years and is now under notice to quit, and that he has requested the said William Jones to allow him to search several boxes which he the said William Jones has had packed ready to be taken away, but which he refuses to be looked through." The defendant upon this information issued his warrant to a constable authorizing him in the usual form to enter the premises occupied by William Jones and search for the goods, and ordering him, if the same or any part thereof should be found on such search, to bring the goods so found and also the body of William Jones before some justice of the county to be dealt with according to law. The constable accordingly made a search in the plaintiff's boxes in the presence of Wood, who identified a number of articles as his property. The constable then arrested the plaintiff on a charge of stealing the articles so identified; and the plaintiff was eventually committed for trial at the quarter sessions. In the course of the trial the prosecutor withdrew from the prosecution, and the plaintiff was discharged. This action was then brought on the allegation that the information upon which the search-warrant was issued was insufficient,

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and that the defendant in issuing the warrant acted illegally and without jurisdiction. The defendant pleaded that the warrant was good, both at common law and also under s. 103 of the Larceny Act, 1861 (24 & 25 Vict. c. 96). The jury assessed the damages conditionally, and the question of liability was reserved for further consideration. On the argument the Lord Chief Justice gave judgment for the defendant. (1)

The plaintiff appealed.

Lawson Walton, Q.C., and *A. Gill*, for the plaintiff, contended that the information was insufficient on the grounds that it did not contain any allegation that goods had been stolen, that there was no reference to specific goods, that the statement that goods were in the possession of the plaintiff was consistent with a claim to them on his part, and that the information did not even aver a suspicion on the part of the informant that goods had been stolen.

[They cited 4 Inst. 176; *Entick v. Carrington* (2); *M'Donald v. Bulwer* (3); *Lawrenson v. Hill* (4); *Lindsay v. Leigh*. (5)]

Carson, Q.C., and *Hohler*, for the defendant. There need not be an averment upon oath that goods have been stolen, but it is sufficient that the informant swears that he suspects that they have: *Elsee v. Smith*. (6) If the information alleges facts which by reasonable intendment convey a charge of felony the magistrate has jurisdiction: *Lawrenson v. Hill* (7); and the defendant would not be liable for a mere error of judgment: *Mills v. Collett*. (8)

Lawson Walton, Q.C., in reply.

LORD ESHER M.R. In this case an action has been brought against a magistrate for trespass to goods and wrongful imprisonment, and the plaintiff's case is that the information upon which the search-warrant was grounded was insufficient.

(1) [1896] 2 Q. B. 418.

(2) (1765) 2 Wils. 275; 19 Howell's State Trials, 1030, at p. 1067.

(3) (1862) 13 Ir. C. L. Rep. 549.

(4) (1860) 10 Ir. C. L. Rep. 177.

(5) (1848) 11 Q. B. 455.

(6) (1822) 1 D. & R. 97.

(7) 10 Ir. C. L. Rep. at p. 194.

(8) (1829) 6 Bing. 85, at p. 192.

The information was to the effect that the claimant had reasonable cause to suspect and did suspect that his servant had in his possession certain property belonging to the complainant; that the servant was under notice to quit and would not allow his boxes to be searched. The defendant thereupon issued his warrant to a constable to enter the premises and search for the goods, and if the same were found to apprehend the plaintiff. The constable accordingly made the search, and some things identified by the complainant as his were found. The plaintiff was thereupon arrested on the charge of stealing the goods, and was committed for trial; but at the trial the prosecutor withdrew from the prosecution, and the plaintiff was discharged.

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The plaintiff brought this action, which was tried before the Lord Chief Justice, and alleged that the warrant was granted illegally and without jurisdiction. I agree with the Lord Chief Justice in thinking that there is enough on the face of the information to justify the magistrate in issuing the search-warrant, and I think the appeal must be dismissed.

LOPES L.J. The question arises in this case upon the form of the information upon which the defendant, who is a magistrate, issued a search-warrant to a constable to enter and search certain premises, and if goods were found to seize them and apprehend the plaintiff. It is said that on the information as sworn there was no jurisdiction to issue a search-warrant, because there was no allegation that a larceny had been committed, and because no goods are specified in the warrant. I think it is clear on the authorities that it is not necessary to allege an actual felony, but that it is enough to allege that there are reasonable grounds for suspecting that a felony has been committed. The decision in *Elsee v. Smith* (1) establishes that proposition. If so, we must look to the information in this case and see whether by reasonable intendment it may be gathered from it that the informant suspected that a felony had been committed in respect of property of his. Applying the test suggested by the Lord Chief Justice in his judgment, if

(1) 1 D. & R. 97.

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the language of the information were the subject of an action of libel, it would be properly capable of the innuendo that the informant had reasonable grounds for suspecting, and did suspect, that his goods were being feloniously dealt with. If this meaning ought to be attached to the information, it was a sufficient one, and one on which the magistrate had jurisdiction to act, although no specific goods are mentioned in it.

I agree that the judgment of the Lord Chief Justice should be upheld and the appeal dismissed.

LORD ESHER M.R. Rigby L.J., who heard the argument, concurs in this judgment.

Appeal dismissed.

Solicitor for plaintiff: *C. Everett.*

Solicitors for defendant: *Routh, Stacey & Castle, for Knocker, Knocker & Holcroft, Sevenoaks.*

A. M.

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 Jan. 12, 15.

MORRIS, APPELLANT; HOWDEN, RESPONDENT.

*Ship—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 320, 341, 342—
 Offences—"Passage Broker."*

By s. 341 of the Merchant Shipping Act, 1894, a "passage broker" is defined as "any person who sells or lets, or agrees to sell or let, or is any-wise concerned in the sale or letting of steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea"; and by s. 342, "a person shall not act directly or indirectly as a passage broker" unless he holds the prescribed licence:—

Held, that the selling or letting intended by s. 341 was a selling or letting in a named ship of a passage to commence at a definite time for a specified voyage, and, therefore, that a person who agreed to procure a passage for another, no ship or time of sailing being named or specified, had not "acted as a passage broker" within the meaning of s. 342.

The respondent, in consideration of 22*l.* paid to him by C., agreed to place C.'s son as a farm pupil in Canada, and out of the 22*l.* to procure him a steamship passage from Liverpool to Quebec. Subsequently the respondent obtained for about 9*l.* from shipowners a contract ticket for a voyage from Liverpool to Quebec, and sent it to the son. The respondent made no profit or commission out of the latter transaction:—

Held, that he had not been "concerned in the sale or letting of a passage" within the meaning of s. 341.

By s. 320, "if any person, except the Board of Trade and persons acting