

1899
 LYNES
 v.
 SNAITH.
 ———
 Channell J.

in the occupation of a tenant at will was decided by Kennedy J. about a year ago in an unreported case. There a gamekeeper was assigned a cottage to reside in by his employer, and on his death his widow was allowed to continue residing there rent free, and without having any services to perform. The landlord occasionally did repairs. It was held that his entry for that purpose did not interrupt the running of the statute. The appeal must be allowed.

Appeal allowed.

Solicitor for plaintiff: *Warwick Webb, for H. Bray, Leicester.*

Solicitors for defendant: *Metcalf & Sharpe, for Stratton & Aysom, Leicester.*

J. F. C.

1899
 Feb. 4.

[CROWN CASE RESERVED.]

THE QUEEN v. SAUNDERS.

Criminal Law—Misreception of Evidence—Prisoners jointly Indicted—Case stated on behalf of one Prisoner only—Crown Cases Act, 1848 (11 & 12 Vict. c. 78), s. 2.

Where two prisoners jointly indicted have been convicted, and a question has been reserved for the consideration of the Court for Crown Cases Reserved on behalf of one of them, that Court has power, under 11 & 12 Vict. c. 78, s. 2, if it shall be of opinion that the objection raised is valid and that it affects the conviction of both prisoners, to quash the conviction of the other prisoner as well as that of the prisoner on whose behalf the question has been reserved.

CASE stated by the chairman of the Huntingdon Quarter Sessions for the opinion of the Court for the Consideration of Crown Cases Reserved.

At the Michaelmas quarter sessions of the peace holden at Huntingdon on October 18, 1898, Frederick Ward, James Saunders, and John C. Saunders were indicted for conspiracy. Frederick Ward pleaded guilty and James Saunders and John C. Saunders pleaded not guilty to the indictment. In the course of the trial, at which John C. Saunders was defended by counsel and James Saunders conducted his own defence, counsel for the prosecution asked the prosecutor, "Did you

make inquiries as to whether any trade had been done by the prisoners?" To this the prosecutor—the deputy chief constable—answered, "I did." Counsel for the prosecution then asked, "Did you as the result of such inquiries find that any had been done?" The prosecutor answered, "I did not." Counsel for J. C. Saunders objected to both these questions, but the chairman overruled the objections, and both prisoners were convicted and sentenced. The chairman, however, reserved for the opinion of the Court, at the request of counsel for John C. Saunders, the following question: "Were the replies to the questions above set out admissible in evidence, and, if not, could John C. Saunders be properly convicted on the indictment?"

1899
REG.
v.
SAUNDERS.

E. E. Wild, for John C. Saunders.

H. St. John Raikes, for the prosecution.

THE COURT (Lord Russell of Killowen C.J., Wills, Lawrance, Bruce, and Kennedy JJ.) held that the evidence was inadmissible as being hearsay, and that, therefore, the conviction of John C. Saunders was bad, since evidence not legally admissible against him had been left to the jury. (1)

The question then arose as to the mode in which the Court could deal with the conviction of James Saunders, against whom the same evidence which the Court had held to be inadmissible had been left to the jury, but on whose behalf the point had not been taken.

LORD RUSSELL of KILLOWEN C.J. The Court is of opinion that it has power to deal with both convictions. It is true that the point was taken on behalf of John C. Saunders only, he alone being represented by counsel at the trial, and that the case is only stated in regard to him. But we think that under the circumstances we have power to deal with the conviction of James Saunders also.

No doubt, by s. 2 of 11 & 12 Vict. c. 78, the Court for the Consideration of Crown Cases Reserved is limited to hearing

(1) See *Reg. v. Gibson*, (1887) 18 Q. B. D. 537.

1899

REG.

v.

SAUNDERS.

—
Lord Russell
C.J.

and determining the questions of law reserved by the case, and that it cannot go outside them ; but, having determined those questions, power is given to the Court by the section “ there-upon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen or to avoid such judgment.”

The question of the admissibility of this particular piece of evidence is, as is apparent from the case, absolutely identical as regards John C. Saunders and James Saunders, and it is plain that if, as we have held, the admission of that particular item of evidence renders the conviction of John C. Saunders bad, it must have a similar effect on the conviction of James Saunders. The only question, therefore, is : how to give effect, in the case of James Saunders, to our decision. We might send the case back in order that it should be restated on behalf of James Saunders ; but that course would involve unnecessary delay, since the case could not be restated at any rate until the next meeting of the quarter sessions. Another course would be for this Court to communicate the result of its decision to the Home Secretary ; but that is open to the objection that he would have no power to quash the conviction of James Saunders, and could only remit the punishment. That in certain cases might involve a good deal of hardship, and seems undesirable. There might well be cases where prisoners have been indicted together, and where the quashing of the conviction of one on a point taken on his behalf might not affect the conviction of the others. In such a case, of course, the Court would not interfere ; but where, as here, it is clear that the convictions of the two prisoners stand or fall together, it seems to us right, as we think that we have power to do so, to order that both convictions should be quashed.

Convictions quashed.

Solicitor for prosecution : *Solicitor to the Treasury.*

Solicitors for prisoner : *Sole, Turner & Knight, for Papworth & French, Cambridge.*

A. P. P. K.