

[CROWN CASES RESERVED.]

1900
July 28.

THE QUEEN v. BUTTON.

Criminal Law—False Pretences—Athletic Sports—Competitor in Handicap—False Statements as to Name and Performances—Attempt to obtain Prize.

On the trial of an indictment for attempting to obtain property by false pretences the following facts were proved.

Entries for two handicaps were sent to the secretary of an athletic meeting, in the name of Sims, containing statements as to the recent performances of Sims, which were very moderate, and in consequence Sims was given long starts. The entries were not written by either Sims or the prisoner. At the meeting the prisoner, who was a good runner, personated Sims, who was absent, and came in first in both races. After the first race the handicapper asked the prisoner whether he was really Sims, whether the performance given in the entry form was really his, and whether he had never won a race, as stated in the entry. He answered these questions, falsely, in the affirmative.

On a case stated :—

Held, that the attempt to obtain the prizes was not too remote from the pretence, that the case was rightly left to the jury, and the prisoner was properly convicted.

Reg. v. Larner, (1880) 14 Cox C. C. 497, disapproved.

CASE stated by the recorder of Lincoln.

The prisoner was charged with attempting to obtain goods by false pretences.

On August 26, 1899, there were athletic sports at Lincoln, for which prizes were given. Among the contests were a 120 yards race and a 440 yards race, in respect of each of which a prize was given of the value of ten guineas.

Among the names sent in for these two contests was the name of "Sims, C., Thames Ironworks A. C.," and two written forms of entry were sent in to the secretary of the sports, containing (as appeared to be usual) a statement as to the last four races in which Sims had run, together with a statement that he had never won a race. These forms were not sent by Sims, nor were they in his handwriting, and he knew nothing of them. They were however signed in his proper name, and

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The performances of Sims were very moderate, and, as a fact, he was only a moderate runner, and as a result the supposed Sims was given by the handicapper of the sports a start of 11 yards in the 120 yards race and a start of 33 yards in the 440 yards race.

Sims was ill at Erith when the races were run, and was not at Lincoln at all, and he was personated by the prisoner, who was a fine performer and won both contests very easily.

The suspicion of the handicapper being aroused, he asked the prisoner, after the 120 yards race, whether he was really Sims, whether the performance given in the entry form was really his, and whether he had never won a race. To these questions the prisoner answered that he was Sims, that the performances were his own, and that he had never won a race. All these statements were untrue, and in particular he had won a race at Erith in his own name. The handicapper was called as a witness, and swore that he would not have given the prisoner such favourable starts if he had known his true name and performances.

These facts were all admitted, and no evidence was called to contradict them. It was, however, suggested for the defence that the prisoner might have done it for "a lark," or might have possibly done it in order to keep himself in good training. In summing up the case to the jury the recorder told them that if the prisoner did it for "a lark," without any criminal intent, and without intending to get the prizes, they ought to find him not guilty; but that if he made the false representations wilfully, intentionally, and fraudulently, with intent to obtain the prizes, they ought to find him guilty of attempting to obtain them by false pretences.

The jury found a verdict of guilty.

It was contended for the prisoner that, on the authority of *Reg. v. Larner* (1), the obtaining the prizes was too remote from the false representation and that he ought to be acquitted.

(1) 14 Cox C. C. 497.

The recorder overruled the objection, but agreed to state this case. A case decided by Lord Lindley at Nottingham Assizes (1) appeared to be contrary to *Reg. v. Larner*. (2)

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The questions of law for the opinion of the Court were :—

(1.) Whether the recorder had summed up the case correctly to the jury.

(2.) Whether the attempt to obtain the prizes was too remote from the pretence.

J. Percival Hughes, for the defendant. The conviction is bad. There was no completed criminal offence, for, assuming that the defendant did make the representations alleged for the purpose of obtaining a longer start in the handicaps than he would have got if he had entered in his own name, and disclosed his previous performances truthfully, still there is nothing to shew that he may not have done what he did for amusement, or to keep himself in training, for it is not shewn that he ever applied for the prizes, and even if in the first instance he intended to get the prizes, which is not clearly shewn, still until he applied for them there was a *locus pœnitentiæ*, and he might never have taken the prizes at all.

[MATHEW J. Those are questions of fact, and the verdict of the jury negatives the suggestions on behalf of the defendant.]

The intention to obtain the prizes is too remote from the representations. What he really obtained was more favourable terms in the handicaps. He came in first owing to his good running. *Reg. v. Larner* (2) is a strong authority against the conviction. [He also referred to *Reg. v. Eagleton* (3); *Reg. v. Gardner*. (4)]

Montague Shearman (*T. Hollis Walker* with him), for the prosecution, was not called on.

MATHEW J. The conviction in this case must be upheld. The case of *Reg. v. Larner* (2) is relied upon as an authority

(1) <i>Reg. v. Dickenson</i> , (1879)	(2) 14 Cox C. C. 497.
Roscoe's Criminal Evidence, 432, 433,	(3) (1855) 6 Cox C. C. 559; 24
12th ed.; 2 Russell on Crimes, Book	L. J. (M.C.) 158.
III., cap. xxxii., s. ii., p. 511, 6th ed.;	(4) (1856) 7 Cox C. C. 136; Dears.
<i>Times</i> of July 26, 1879.	& B. C. C. 40.

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for the defendant. In that case the question was one of fact, and the Common Serjeant directed the jury according to his impression of the view of the law taken by Stephen J., whom it appears from the report he had consulted; but that case is contrary to the ruling of Lord Lindley in a case tried before him at the Nottingham Assizes (1), and I am clearly of opinion that Lord Lindley was right. The questions to be decided in the present case were pure questions of fact, namely, whether the intention of the defendant, when he entered for the races, was to obtain the prizes, and whether he made the representations with that intention. It appears from the case that he pretended to be a man who had never won a foot-race, and he was handicapped on the faith of that statement, as is shewn by the evidence given by the handicapper; but it also appears from the case that his statement was false, for he had won races. Then it was suggested that he competed in the name of Sims, as it is put in the case, "for a lark"; but that question was for the jury, and they have negatived the suggestion. It was also contended that his coming in first in the races was owing to his own good running; but it was also owing, in part at least, to the false pretences, for by means of the false pretences he obtained a longer start than he would have had if his true name and performances had been known. It is also said that some other act had to be done in order to make the offence complete, and that he could not rightly be convicted because it was not shewn that he had applied for the prizes, and that the criminal intention was exhausted. The argument is exceedingly subtle, but unsound. In fact, he was found out before he had the opportunity of applying for the prizes, as no doubt he otherwise would have done. The pretences which the prisoner made were not too remote, and the conviction was good.

LAWRANCE J. concurred.

WRIGHT J. I am of the same opinion. If nothing more had been shewn than that the defendant had entered for the

(1) See note (1), ante, p. 599.

rages in a false name, the case would have been different. If he did not run or claim the prize it would be difficult to say that there was an actual attempt to obtain it. But here in effect he did claim the prize.

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KENNEDY and DARLING JJ. concurred.

Conviction affirmed.

Solicitors for defendant: *Tolhurst, Lovell & Clinch, Gravesend.*

Solicitor for prosecution: *A. L. Rayner.*

P. B. H.

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THE QUEEN v. STREETER.

Criminal Law—Receiving—Property Stolen by Wife from Husband—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16.

Two prisoners, a man and a woman, were indicted for stealing property in a dwelling-house, and, in a second count, for receiving the same property. The woman was the prosecutor's wife, and the man had lodged in their house. After he left, the woman packed up the property in question, and sent it to the man, and afterwards left the house, and joined him, and the two lived together. The property was found in their possession. The jury found the woman guilty of stealing, and the man of receiving. The question was reserved, whether the man could be indicted for receiving the property:—

Held, that, as the stealing by a wife of her husband's property did not amount to a felony either at common law or by virtue of the Larceny Act, 1861, but was made a criminal offence by the Married Women's Property Act, 1882, ss. 12, 16, the man was not liable to be convicted under the Larceny Act, 1861, s. 91, of receiving property stolen by the woman from her husband, and the conviction was wrong.

Reg. v. Smith, (1870) L. R. 1 C. C. 266, approved and followed.

CASE stated by the chairman of the West Sussex Quarter Sessions.

Ellen Tickner and William Streeter were tried for larceny in a dwelling-house of some household goods, a sewing-machine,