

WALTERS v. W. H. SMITH & SON, LIMITED.

[1913 W. 10.]

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Oct. 29, 30 ;

Nov. 8 ;

Dec. 3.

False Imprisonment—Defence to Action for—Arrest without Warrant by Private Individual—Felony for which Plaintiff arrested not committed—Other Felonies committed by some Person other than Plaintiff—Reasonable and Probable Cause to suspect Plaintiff of having committed the other Felonies.

A private person is justified in arresting another on suspicion of having committed a felony if, and only if, he can shew that the particular felony for which he arrested the other was in fact committed, and that he had reasonable and probable cause for suspecting the other of having committed it.

FURTHER CONSIDERATION.

The action was brought by the plaintiff, Walters, against the defendants to recover damages for false imprisonment and malicious prosecution.

The following statement of the facts is taken from the judgment of Sir Rufus Isaacs C.J.

"The plaintiff brought this action to recover damages for false imprisonment and malicious prosecution. It was tried by me with a special jury to whom I submitted certain questions to which they gave the following answers:—(1.) Did the defendants take reasonable care to inform themselves of the true facts of the case?—Yes. (2A) Did the defendants honestly believe that the plaintiff had stolen the book?—Yes. (2B) Did the defendants reasonably believe that the plaintiff had stolen moneys and stock (other than the book 'Traffic') from the bookstall?—Yes. (3.) Were the defendants in instituting the criminal proceedings actuated by malice?—No. (4.) What damages for false imprisonment?—75*l*.

"I ruled that there was not an absence of reasonable and probable cause for the prosecution. Thus the plaintiff failed and the defendant succeeded upon the claim for malicious prosecution, and the claim for false imprisonment remained to be dealt with.

"During the trial it was contended by the plaintiff that, inasmuch as the defendants admitted that no felony had in fact

1913 <hr/> WALTERS <i>v.</i> W. H. SMITH & SON, LIMITED.	been committed in respect of the book 'Traffic' there was no defence to the claim based upon false imprisonment. The defendants contended that all that they need establish as legal justification for the imprisonment was (1.) that an actual felony or felonies had been committed, and (2.) that they had reasonable and probable cause for suspecting the plaintiff of having committed an actual felony or actual felonies; in other words, it was argued for the defendants that it was not essential to their defence to prove that the felony for which the plaintiff was arrested had in fact been committed. In order to give the defendants the opportunity of raising this point of law I left question (2B) to the jury, which was answered in favour of the defendants. Both parties claimed judgment upon the verdict of the jury. The matter was then argued before me, and I received great assistance from counsel on both sides, who argued the case with great ability. It was agreed by counsel for the parties that I should be at liberty to find any further facts which might become necessary. So far as they are material to the questions now raised the facts are that the plaintiff was, and had been for some nine years, in the employment of the defendants as assistant manager at a bookstall at the King's Cross Railway Station of the Great Northern Railway, where some five other persons were also employed under a manager. Early in 1912 it was discovered at the usual half-yearly stocktaking that there was a deficiency of 126 <i>l.</i> which pointed to dishonesty and thefts by one or more of the defendants' servants. Stock was again taken in February, when the deficiency was 154 <i>l.</i> , and again in April, 1912, when it was 148 <i>l.</i> Such a deficiency was inexplicable except upon the basis that money or stock, or both, had been stolen; probably only money was taken, but it might well be that stock also had been stolen. It is clear, and indeed it was not, and could not be, disputed by the plaintiff at the trial, that a felony, or more probably a series of felonies, had been committed which caused the deficiency, and it was unlikely that they could have been committed otherwise than by a person employed by the defendants at this bookstall. The defendants in order to detect the culprit, and acting upon advice,
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thereupon set what was called 'a trap.' Copies of a book called 'Traffic' were marked and delivered to the bookstall at King's Cross. An agent of the defendants went to a shop at Staines kept by the plaintiff and his wife, where magazines and newspapers were sold, to purchase a copy of 'Traffic.' On a later day he called, and one of the marked copies was sold to him in exchange for the price which he then paid. The book had been taken on June 15, 1912, by the plaintiff from the bookstall without payment having been made, and without the knowledge of the manager or other assistants at the bookstall. These facts when ascertained were duly reported, on June 19, to Mr. Kimpton, a manager of one of the defendants' departments, to whom the elucidation of the mystery had been entrusted. In addition, and as the result of inquiries, it was discovered that the plaintiff had acted in various respects in contravention of the practice regulating his employment by the defendants, which he knew he was bound to observe, and that in particular he, with his wife's assistance, had commenced, and was carrying on, a business where newspapers and magazines, and occasionally books, were sold. All these facts were thereupon reported to Mr. Hornby, one of the members of the defendant firm. The plaintiff was asked into a room, and in answer to questions put to him made statements which were of a very unsatisfactory character, and wholly failed to give an explanation of his possession of the book 'Traffic.' Mr. Hornby honestly believed that the plaintiff had stolen the book 'Traffic' and that the plaintiff had committed the thefts of money or books from the bookstall which had caused the deficiency, and at the end of the interview Mr. Hornby gave the plaintiff into the custody of Sergeant Budge, who had been employed in the matter as a detective officer. The plaintiff was taken to the police court and charged with stealing the book 'Traffic.' He was committed for trial and was eventually tried at the County of London Sessions held at Newington and acquitted; the defence was that in taking the book he had no felonious intent, which the jury accepted. At the hearing before me it was admitted by the defendants that the plaintiff had not stolen the book, but had taken it away with the intention of subsequently accounting or paying for it, and no imputation now

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rests upon him in connection with this transaction, and no suggestion is made against him of being party to the acts of theft or dishonesty which caused the deficiency.

"Having regard to the facts proved I have no doubt that the defendants had reasonable and probable cause for suspecting the plaintiff of having stolen the money or books other than the book 'Traffic' when they gave the plaintiff into custody. I further find as a fact that the plaintiff was given into custody for stealing the book 'Traffic,' and that although the defendants when they caused his arrest were convinced that the man who stole 'Traffic' was also guilty of the other thefts, they did not cause his arrest for those other thefts, but only for that theft of which they thought they had clear evidence. Doubtless they were influenced in taking this course by the suspicion, and indeed conviction, in their minds that the plaintiff had committed the other thefts. It induced them to give him into custody for stealing the book, whereas otherwise they might merely have summoned him or indeed might not have prosecuted him at all."

Clavell Salter, K.C., and F. F. Daldy, for the defendants. The key to the solution of this case is the necessity of distinguishing between two separate and distinct duties cast upon citizens by the common law. Those duties are (1.) acting as a citizen in aid of the Executive; (2.) acting as a citizen in bringing a prosecution. The law has always protected citizens in aiding the Executive by arresting suspected persons. In early days it depended almost entirely upon unofficial assistance for the arrest of suspected persons. But although that is not so at the present day, the necessity for the protection of the citizen is as great as ever it was. Some kind of formulation of suspicion accompanies every case where a person is given in charge. Only two elements are necessary in order to justify a citizen arresting another on suspicion of having committed a felony: 1. A reasonable suspicion of actual felony, i.e., an actual and reasonable suspicion that the person arrested has committed a felony which has actually been committed by some one. 2. There must be no further or greater interference with the liberty of the person arrested than is necessary to put the matter

in train for judicial inquiry. In the present case no felony had been committed with regard to the book "Traffic," but the defendants reasonably and with probable cause thought that it had, and felonies had actually been committed with regard to other books. The defendants reasonably suspected the plaintiff of having committed a number of felonies, and some of them had actually been committed, although not by him, and they used no more detention with regard to the plaintiff than was necessary to set the law in motion. The arrest of a person is one thing; the formulation of a charge against him before a magistrate is an entirely distinct matter. The justification for the arrest of a person depends upon suspicion — not upon the nature of the charge which is subsequently brought against him. A citizen has performed his duty if he arrests another on suspicion of actual felony and takes him to the threshold of justice. There may or may not be a charge formulated subsequently against the arrested person. The charge which is formulated is only relevant in so far as it is evidence of what the suspicion was which was in the arrester's mind at the time he arrested the other person. The threshold of justice is crossed when the charge sheet is signed. The defendants are responsible for all that they did from the moment they arrested the plaintiff till they signed the charge sheet for stealing the book "Traffic," and they must shew that during that time they had in their minds a reasonable suspicion against the plaintiff of actual felony. During that time they reasonably suspected the plaintiff of a series of felonies. It is impossible to say how many were in fact committed, but the defendants were actuated by the suspicion that the plaintiff had committed felonies which had actually been committed by some one. The charge before the magistrate which may be made after the arrest is not necessarily made by the arrester. The police or the Treasury may take up the inquiry. The judicial inquiry is in fact quite irrelevant to the arrest. In Hale's Pleas of the Crown, vol. i. (ed. of 1800 by Dogherty), p. 588, it is laid down that "if a felony be committed in fact, and A. suspects B. did it, and hath probable cause of suspicion, A. may arrest B. for it, and justify it in an action of false imprisonment."

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1913 The actuating suspicion in Mr. Hornby's mind was the series
 WALTERS of larcenies of money and the other books, and those were
 v. felonies which had actually been committed. The defendants
 W. H. SMITH are therefore entitled to succeed in this action. They could only
 & SON, be liable if upon the evidence it appeared that larceny of the
 LIMITED. book "Traffic" was the only actuating felony. If one citizen
 deprives another of his liberty upon a reasonable suspicion of
 having committed ten felonies and nine felonies have been com-
 mitted the arrester is protected. In Chitty on Pleading, 7th ed.,
 vol. iii., p. 334, note (f), it is stated "Semble, it would suffice to
 prove some of the alleged acts of felony, &c.: *Atkinson v. Warne*" (1), although that decision does not appear to support
 the statement. [*Mure v. Kay* (2); *Stammers v. Yearsley* (3); *Hall*
v. Booth (4); *Timothy v. Simpson* (5); *Sewell v. National Telephone*
Co. (6); Chitty on Pleading, 7th ed., vol. iii., p. 333; and Bullen
 and Leake's Precedents of Pleading, 3rd ed. (1868), pp. 795, 796,
 were also referred to.]

St. John Hutchinson, for the plaintiff. The plaintiff was given
 into custody upon the single charge of stealing the book "Traffic."
 As a general principle the common law has always been very
 jealous of the liberty of the subject, and has always held that it
 should not be taken away without just cause. In Dalton's
 Country Justice (ed. of 1655), p. 406, it is laid down that "The
 liberty of a man is a thing specially favoured by the common
 law of this land; and therefore if any of the King's subjects shall
 imprison another without sufficient warrant of him, or his law,
 the party grieved shall have his action, and shall recover damages
 against the other; and the King also shall have a fine of him: for
 imprisonment of another without offence of the law is one of the
 King's royal prerogatives, and only annexed to the Crown."

In the Earl of Halsbury's Laws of England, vol. ix., p. 296,
 it is said that "At common law the power of a private person to
 arrest is limited to cases where treason or felony has been
 actually committed or attempted, or where there is immediate
 danger of treason or felony being committed, or where a breach

(1) (1834) 6 C. & P. 687.

(2) (1811) 4 Taunt. 34.

(3) (1833) 10 Bing. 35.

(4) (1834) 3 Nev. & M. 316.

(5) (1835) 5 Tyr. 244.

(6) [1907] 1 K. B. 557.

of the peace has been actually committed or is apprehended.”
 The special protection which in certain cases has been given to a private person who arrests another is grounded upon necessity or because there is inordinate danger. It would be very dangerous to broaden still further the cases in which the liberty of the subject—perhaps the happiest creature of the English law—may be affected. An application can be made to a magistrate for a warrant. In order to justify an arrest by a private person there must be a reasonable suspicion of a felony which has actually been committed and that felony must be the felony for which the arrest is made. Otherwise a defendant in an action for false imprisonment might be able to say in effect to the plaintiff, “Although you are innocent of the felony for which I caused your arrest I intend to prove that you committed a felony ten years ago and I therefore have a defence to your action.” In that way the defendant would be able to set up a previous felony with perhaps no connection with the felony the subject of the arrest and of which the defendant had no evidence but suspicion merely. In the present case the fact that the defendants gave the plaintiff into custody for stealing the book “Traffic” prevents them from relying on the other felonies. [*Cowles v. Dunbar* (1); *Allen v. Wright* (2); *King v. Metropolitan District Ry. Co.* (3); *Roscoe on Evidence at Nisi Prius*, 18th ed., vol. ii., p. 922; and *Beckwith v. Philby* (4) were also referred to.]

Daldy replied.

Dec. 3. SIR RUFUS ISAACS C.J., after stating the facts above set out, continued: If as a matter of law the defendants must prove that the particular felony for which the plaintiff was imprisoned had in fact been committed they have failed in their defence, inasmuch as no felony with regard to “Traffic” had in fact been committed. If as a matter of law the defendants may justify the imprisonment by proof that at the time of the arrest of the plaintiff felonies had been committed other than that for which he had been arrested, and that they had reasonable and

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(1) (1827) 2 C. & P. 565, at p. 567

(2) (1838) 8 C. & P. 522.

(3) (1908) 72 J. P. 294.

(4) (1827) 6 B. & C. 635.

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probable cause for suspecting the plaintiff of having committed them, they would be entitled to succeed.

That is, in my view, the precise question for decision in this case, and one which, so far as I am aware, has never been expressly decided, and for that reason I have gone carefully into the facts and set them out in detail in order that, should it be desired to argue the case further, all the findings of fact will be found in my judgment.

It was strenuously argued before me by counsel for the defendants that in ordering the arrest of the plaintiff they had only caused such an interference with his liberty as was necessary to put matters in train for judicial inquiry, and that the charge subsequently formulated against the plaintiff in the legal proceedings should not be regarded in the claim for false imprisonment. I cannot accept that view inasmuch as it became quite clear during the course of the case, as I have found, that the plaintiff was arrested for stealing the book; and I must deal with the case upon that basis. Interference with the liberty of the subject, and especially interference by a private person, has ever been most jealously guarded by the common law of the land. At common law a police constable may arrest a person if he has reasonable cause to suspect that a felony has been committed although it afterwards appears that no felony has been committed, but that is not so when a private person makes or causes the arrest, for to justify his action he must prove, among other things, that a felony has actually been committed: see per Lord Tenterden C.J. in *Beckwith v. Philby*. (1) I have come to the conclusion that it is necessary for a private person to prove that the same felony had been committed for which the plaintiff had been given into custody. In Hawkins' Pleas of the Crown, 7th ed. (1795), bk. ii., ch. xii., p. 163, the law is thus stated: "As to the fourth particular, namely, in what manner an arrest for such suspicion is to be justified in pleading. Sect. 18. It seems to be certain, that . . . regularly he ought expressly to show that the very same crime for which he made the arrest, was actually committed."

(1) 6.B. & C. 635.

In Hale's Pleas of the Crown (ed. of 1800), vol. ii., ch. x., p. 77, s. 78, clause iii., the law is thus stated: "The third case is, there is a felony committed, but whether committed by B. or not, non constat, and therefore we will suppose that in truth it were not committed by B. but by some person else, yet A. hath probable causes to suspect B. to be the felon, and accordingly doth arrest him; this arrest is lawful and justifiable, and the reason is because if a person should be punished by an action of trespass or false imprisonment for an arrest of a man for felony under these circumstances, malefactors would escape to the common detriment of the people. But to make good such a justification of imprisonment, 1. there must be in fact a felony committed by some person, for were there no felony, there can be [no] (1) ground of suspicion. Again, 2. the party (if a private person) that arrests must suspect B. to be the felon. 3. He must have reasonable causes of such suspicion and these must be alleged and proved." In quoting as I do that statement of the law by a very distinguished and celebrated Lord Chief Justice I lay particular stress upon his reference to what it is necessary to prove as a justification of imprisonment, although the language may be in this connection a little ambiguous. It is under the second head, "the party (if a private person) that arrests must suspect B. to be the felon." I take that to be that the person must suspect B. to be the felon who has committed the felony for which the person has arrested, and, in order that there should be no doubt about it, I have considered the authorities which were quoted both in Hale's Pleas of the Crown and Hawkins' Pleas of the Crown, and I find particularly in the one authority of "Pulton de pace Regis et Regni" at pp. 12, 13 of the edition of 1609 that the law is thus stated: "Suspicion only without a felony committed, is no cause to arrest another. But if a felony be done in those parts, and one doth suspect another to have committed the same felony, then he may arrest him." That authority is cited in Hawkins' Pleas of the Crown, as is also Finch's Law, a book written by Sir Henry Finch in the

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(1) This word, which appears in the first edition, 1736, is omitted by printer's error in ed. 1800.—F. P.

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time of Charles I.; and quoting from p. 340 of an edition which was printed in 1759, I find this is a statement of the law: "Neither can any man arrest one for a trespass unless it be the constable; nor for a felony except himself suspect the party (though he doth it by the condonement of one that doth suspect him) and that the same felony be indeed committed." He refers for this purpose to 11 Edw. 4, and also to the section with which I have already dealt, in Hawkins' Pleas of the Crown.

The case which is nearest to the one which we are at present considering is in the Year Book 27 Hen. 8, p. 23, where the plea was that divers cattle were stolen, and the defendant suspected the plaintiff of stealing six cattle. That plea was held bad on the ground that the defendant must prove that the thing which he suspected the plaintiff of stealing was in fact stolen. It is not the precise point, but it is at any rate the nearest to it that I have been able to find.

Mr. St. John Hutchinson on behalf of the plaintiff also quoted Dalton's Country Justice, where at p. 408 it is said: "The party that shall arrest such suspected person, must have a suspicion of him himself and for the same felony, or otherwise suspicion generally is no cause to arrest another." It was argued that the words "suspicion generally" mean that suspicion of other felonies which had in fact been committed would be no justification for arrest in a civil action. I am not satisfied that that is the true meaning to be given to those words. I think they can be quite justified by the explanation that a general suspicion of a person, although a felony had not been committed, would be enough, as indeed it would be in the case of a police constable in the circumstances to which I have adverted. But the other words are precise, that is to say, that the party who shall arrest a suspected person must have a suspicion of him and for the same felony. I doubt very much whether that statement in Dalton's Country Justice really carries the case any further. I mention it because much reliance was placed upon it on behalf of the plaintiff by Mr. St. John Hutchinson. My attention was also directed to a more modern authority, namely, Bullen and Leake's Precedents of Pleading, 3rd ed. (1868) at p. 797.

This authority was produced by the defendants for another purpose to which I will refer in a moment, but in the note at p. 795 I find the law thus stated: "A private individual is justified in himself arresting a person or ordering him to be arrested where a felony has been committed and he has reasonable ground of suspicion that the person accused is guilty of it"—that means the felony for which he has been arrested. I doubt whether the two cases cited are in themselves a sufficient authority for the proposition there laid down, but I am satisfied that, as indeed one would expect to find in this very learned work, it is an accurate statement of the common law. I cannot find that any doubt has ever been expressed as to the accuracy of this proposition. On behalf of the defendants Mr. Clavell Salter attached some importance to Chitty on Pleadings, vol. iii., pp. 333 and 334, which contains a plea in bar in an action for trespass, and no doubt there the plea was in terms that the arrested person was given into custody (I am not using the exact language) for the purpose of setting on foot a judicial inquiry or legal proceeding, and that was very persistently and very ably relied upon before me. For the reason I have already given I do not think that in this case it assists the defendants, as I am quite convinced that the dominant intention in the minds of the defendants, as was shewn by the fact of the arrest, was to give the plaintiff into custody for having stolen the book and not merely for the purpose of setting on foot a judicial inquiry or formulating subsequently the charges upon which he was arrested. I think on examination of that plea it will be found that it does not support, or at least does not assist in, this case, because as a matter of law I think it is perfectly right to say (and it will be found in the pleas in all the old books on pleading) that there is a statement such as Mr. Salter argued must be pleaded, that it must be pleaded in substance that the plaintiff had been given into custody for the purpose of setting on foot a judicial inquiry, because were it otherwise there could be no justification for the arrest, and no private person would be justified in detaining a person in his own room or in his own house merely for the purpose of detention or punishment. His only justification, given the other circumstances which I have indicated, must be

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that he did it for the purpose of setting on foot a judicial inquiry. It is only by means of judicial process that the arrest can otherwise be justified. The mere fact of arrest for the purpose of detaining a person and not setting on foot a judicial inquiry could not be justified. It is in that connection that reference was made to the pleas in Bullen and Leake's *Precedents of Pleading* in the edition which I have quoted.

I have considered the authorities cited by Mr. St. John Hutchinson, but I do not think that they really assist. It is admitted on both sides that there is no authority precisely in point; one gets close to it, no doubt, in a number of cases, but I do not think that any real assistance is derived from the consideration of authorities which are not upon the precise point to be determined. It is by reference to the earlier works on the common law, which has never been altered, that one must ascertain what is the law of the land. I cannot find that any doubt has ever been expressed upon the accuracy of the proposition of law which I have stated in the simplest language from the note in Bullen and Leake's *Precedents of Pleading*. I am bound to follow the law thus laid down, and, moreover, I am convinced on consideration that it is based on sound principle. I should be bound to follow it whether I was of that opinion or not, although it may well be that in some cases—as in this particular case—the law seems to operate somewhat harshly upon the defendants. But I have to bear in mind that the principle of law applicable to the facts in this case must be one of general application and cannot be modified, unless the law allows it, in order to meet the difficulties of a particular set of circumstances. The principle urged by the defendants' counsel would, in my judgment, be an encroachment upon the liberty of the subject as hitherto understood. It is true that very often there is a duty cast upon a person to put the law in motion in order to bring offenders to justice, and it is no doubt for reasons of public policy that some excuse, limited in character, is permissible in an action for damages at civil law for false imprisonment when a private person has wrongly caused the arrest of another. But be it observed that this concession is limited to felonies, and although a misdemeanour, which may

be a more serious crime than some felonies, may have been committed, yet if a person causes a wrongful arrest, however serious the misdemeanour may be, it cannot be made the basis of any legal excuse if the party has been wrongfully arrested.

When a person, instead of having recourse to legal proceedings by applying for a judicial warrant for arrest or laying an information or issuing other process well known to the law, gives another into custody, he takes a risk upon himself by which he must abide, and if in the result it turns out that the person arrested was innocent, and that therefore the arrest was wrongful, he cannot plead any lawful excuse unless he can bring himself within the proposition of law which I have enunciated in this judgment.

In this case, although the defendants thought, and indeed it appeared that they were justified in thinking, that the plaintiff was the person who had committed the theft, it turned out in fact that they were wrong. The felony for which they gave the plaintiff into custody had not in fact been committed, and, therefore, the very basis upon which they must rest any defence of lawful excuse for the wrongful arrest of another fails them in this case. Although I am quite satisfied not only that they acted with perfect bona fides in the matter but were genuinely convinced after reasonable inquiry that they had in fact discovered the perpetrator of the crime, it now turns out that they were mistaken, and it cannot be established that the crime had been committed for which they gave the plaintiff into custody; they have failed to justify in law the arrest, and there must, therefore, be judgment for the plaintiff for the 75*l.* damages which have been awarded, with the consequent results.

It follows from what I have said that, although there is judgment for the plaintiff for this amount, the defendants have succeeded on the issue as to malicious prosecution, and having succeeded, in my judgment they are entitled to all such costs as the Master thinks were properly attributable to that issue as distinguished from the general costs of the action, and I think the costs should follow the event; the Master will have

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1913 to rule upon it, but so far as it may be necessary I make that
 order.
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 W. H. SMITH There will therefore be judgment for the plaintiff for 75*l.* and
 & SON, costs.
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Judgment for plaintiff.

Solicitors for plaintiff: *Ricketts & Son.*

Solicitors for defendants: *Bircham & Co.*

J. E. A.

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THE KING *v.* WILLIAMS AND OTHERS (JUSTICES
 OF SWANSEA).

Ex parte PHILLIPS.

*Crown Office—Certiorari—Rule Nisi—Sufficiency of Affidavit—Conviction—
 Disqualification of Magistrate—Knowledge of Facts disqualifying—
 Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 15.*

By s. 15 of the Bread Act, 1836, no person who shall be concerned in the business of a baker shall be capable of acting or shall be allowed to act as a justice of the peace under the Act, and if any baker shall presume so to do he shall for every such offence forfeit a penalty.

A baker was charged under s. 4 of the Act with selling bread otherwise than by weight and was convicted in presence of two justices. He obtained a rule nisi for a writ of certiorari to quash the conviction on the ground that one of the justices alleged to have taken part in the conviction was a person concerned in the business of a baker. The affidavit on which the rule nisi was obtained did not state that any objection to the competence of the Court was taken at the hearing before the justices, nor did it state that at the date of that hearing the applicant was without knowledge of the facts alleged to disqualify one of the justices:—

Held, that this defect in the affidavit disentitled the applicant to the issue of a writ of certiorari *ex debito justitiæ*.

Held, also, on the facts, that, the granting of the writ being discretionary, the discretion should be exercised by refusing the writ.

RULE NISI for a writ of certiorari to remove into the High Court the record of the conviction hereinafter mentioned.

On May 27, 1913, James Phillips, under the name of John Phillips, was convicted for that he on May 17, 1913, at the town of Swansea in the county borough of Swansea, being a seller of