

Eng. Rep.]

LEETE V. HART.—DIGEST OF ENGLISH LAW REPORTS.

rests on some ground, and therefore I doubt whether *Roberts v. Orchards*, has much changed what was considered to be the law on the subject before. *Hermann v. Seneschal* was a case in which the plaintiff was given into custody on the suspicion of passing bad money; and Erie, C.J., says, "the jury having found that the defendant did really believe that the plaintiff had passed him a counterfeit coin, and did honestly intend to put the law in force against him, and as I am clearly of opinion that the facts were sufficient to justify that conclusion, I do not think that the other part of the finding, viz., that the defendant had no reasonable ground for such his belief, entitles the plaintiff to retain the verdict." *Roberts v. Orchards*, therefore reposes on the same ground as that case, for there were no facts there sufficient to justify the belief.

KEATING, J.—I am of the same opinion. The rule in *Roberts v. Orchard*, is not meant to be impinged upon by any judgment of ours. Did the defendant honestly believe in a state of facts which, if true, would justify him? That is the question. If he acted upon what he had been dreaming, that would not be sufficient. I cannot see what the facts are which he believed in, and which if they had existed would have justified him. There is no evidence that any offence had been committed on that night by anyone; much less that any one had been found committing any offence. How could the defendant honestly believe in facts which, if true, would justify him?

MONTAGU SMITH, J.—I am of the same opinion. In *Read v. Coker*, Jervis, C.J., lays it down broadly that "to entitle a defendant to a notice of action it is enough to show that he *bonâ fide* believed he was acting in pursuance of the statute for the protection of his property." Perhaps the rule stated in those general terms may be too wide; but the rule laid down by Williams, J., in *Roberts v. Orchard*, is enough for us in disposing of this case, and the defendant has not brought himself within it; and the meaning of the rule is, the defendant must not only believe that he is right in law but that those facts exist, which if they had existed, would justify him; and that was the view of Parke, B., in *Hughes v. Buckland*, 15 M. & W. 346, where the plaintiff was apprehended while fishing, for he says, "The defendants, in order to be protected, must have *bonâ fide* and reasonably believed Colonel Pennant to be the owner of the place where the plaintiff was fishing, and that the trespass was committed within the limits of his property;" and so it was held in *Downing v. Capel*. Here I am not satisfied that the defendant believed, indeed I think that he did not believe, that his house had been broken into. The defendant himself might have satisfied the jury as to the state of his mind, but he did not choose to undergo the ordeal.

Rule refused.

DIGEST.

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FOR FEBRUARY, MARCH AND APRIL, 1868.

(Continued from page 155.)

ACTION.—See BANKER.

ADMINISTRATION.

1. A bankrupt was indebted to the estate of A., and was entitled as one of the residuary legatees of A., and also as next of kin to another residuary legatee. The executor of A. proved the debt under the bankruptcy, and received a dividend. Held, that the executor had thereby abandoned the right to retain the debt out of the direct or derivative shares of the bankrupt in A.'s estate. — *Stammers v. Elliott*, Law Rep. 3 Ch. 195.

2. In an administration suit by a residuary legatee, the court has jurisdiction to compel the plaintiff to refund, for the purpose of paying pecuniary legatees who are not parties to the suit, assets paid to the plaintiff by the executor before the suit. — *Prowse v. Spurgin*, Law Rep. 5 Eq. 99.

3. A testator domiciled in England gave his personal property, situate in England and Scotland, to two of his sons, and appointed his three sons executors. The will was proved in England by two of the sons, and also recorded in the Scotch Consistory Court. At the testator's death, the other son, one of the residuary legatees, was indebted to a company carrying on business both in Scotland and England, who obtained a judgment in Scotland against such son, and proceeded there against the executors to arrest the amount in their hands to which the indebted son was entitled. The court, upon the executors undertaking to obtain forthwith an administration decree in England, enjoined the proceedings against the executors in Scotland. — *Baillie v. Baillie*, Law Rep. 5 Eq. 175.

ADMIRALTY.

Under a statute giving the Admiralty jurisdiction "over any claim of damage done by any ship," the Admiralty has jurisdiction of a cause of damage for personal injuries done by a ship. — *The Sylph*, Law Rep. 2 Adm. & Ecc. 24.

See AWARD, 2; COLLISION; COSTS.

AGENT.—See CUSTOM; EQUITY PLEADING AND PRACTICE, 3; FACTOR.

AGREEMENT.—See CONTRACT.

ANNUITY.—See BANKRUPTCY, 1; WILL, 3.

ARBITRATION.—See AWARD.

ASSIGNMENT.—See COMPANY, 1.

ASSUMPSIT.—See SHIP, 2.