

law and under the Code, sec. 185. Much learning upon this subject may be read in Russell on Crimes, vol. I., bk. II., ch. xxx., sec. 1, pp. 567 et seq. of the 5th ed., and in Archbold's Criminal Pleading and Evidence, 22nd ed., pp. 978 et seq., and in similar books. If, indeed, the applicant had taken any part, however small, e.g., by requesting or urging it, in procuring his release, he might well be considered guilty, but the facts here shew quite a different state of things. After sentence, he was allowed to go away, and shortly thereafter he was brought back by a peace officer to the magistrate, there told that he must enter into a recognizance, and upon doing so he was sent away. Giving all effect to the maxim that every man must be held to know the law, I decline to hold that Robinson, doing as he was told by the magistrate, could be said to be "at large . . . without some lawful cause;" that is, a cause lawful quoad him—however unlawful it may have been in the abstract or quoad the magistrate. (This latter is for the Attorney-General to consider.) All the cases of escape reported are cases in which the prisoner knew, or ought to have known from the circumstances, that he had no right to his liberty—there was a *mens rea*—here the prisoner had no reason to think everything was not being done regularly, and no *mens rea* can be seen.

Any doubt should be resolved in *favorem libertatis*, and I have the less hesitation in so doing since the Attorney-General may appeal, if he thinks the point of sufficient importance.

The applicant should be released, and he should have his costs from the magistrate. The magistrate not being a party before me, I cannot order him to pay these costs. But upon ordering, as I do, that no action is to be brought against any person for the imprisonment, I order that this protection shall extend to the magistrate only upon his paying, within 30 days, the costs of these proceedings, which I fix at \$40.