ENGLISH REPORTS.

COMMON PLEAS.

Leete v. Hart.

False imprisonment—Giving person in custody found committing offence—24 & 25 Vict. c. 96, s. 103.

A person found committing an offence against the Larceny Act may be immediately apprehended by any person without a warrant, provided, according to the rule laid down in *Herman* v. *Seneschal*, and adopted in *Roberts* v. *Orchard*, the person so apprehending honestly believes in the existence of facts, which, if they had existed, would have justified him under the Statute.

Held, that this belief must rest on some ground, and that mere suspicion will not be enough.

[16 W. R. 676; April 2, 1868.]

This was an action for false imprisonment. Plea.—Not Guilty by Statute, 24 & 25 Vict. c. 96, ss. 51, 103, 104, and 113.

At the trial before Byles, J., at the last Guildhall sittings, it appeared that the defendant, who lived in a suburban villa, had been on several occasions alarmed by attempts made to break into his house during the night. On the night of the 5th of October last, about half-past twelve, he was in a back room on the ground floor, and and on looking out of the window he saw a man at his back door, who, he concluded, was trying to effect an entrance. He at once ran up stairs to his bedroom to fetch a sword and pistol, and alarmed his wife, who had already gone to bed. She ran down out of the front door screaming police, and seeing a man standing at the garden gate in front of the house, gave him in custody to a policeman who came up at the moment. This man was the plaintiff. Shortly afterwards the defendant came down with his sword and pistol, and saw his wife standing with the policeman at the gate. The wife, pointing to the plaintiff, said, 'that is the man," or words to that effect, and the defendant thereupon gave him into custody; but after they had proceeded some fifty yards on the way to the police station the defendant, on the plaintiff's assurance that he was a respectable man and a neighbour of his, expressed his wish to withdraw the charge; they, however, went on to the police station. The plaintiff it appeared lived in the same row of houses as the defendant, and was walking home along the pavement, and was within a stone's throw of his own house, when he heard the defendant's wife screaming police, and stopped at the garden gate to learn what was the matter, and was then given in custody. A centre bit was found next morning at the back of the house. On these facts, no witnesses being called for the defence, the jury found for the plaintiff, with £10 damages.

Foard now moved, pursuant to leave reserved, to enter the verdict for the defendant.

The plea is founded on sections 51, 103, 104, & 113, of the Larceny Act, 24 & 25 Vict. c. 69. The 51st section defines the crime of burglary; by the 103rd section "any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act except only the offence of angling in the day time, may be immediately apprehended with a warrant by any person," &c. By the 104th section "any constable or peace officer may take into custody without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place, during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against this Act," &c.; and the 113th section provides that in an action for anything done in pursuance of the Act, notice shall be given to the defendant, and that he may plead the general issue, and give this Act, and the special matter, in evidence thereunder.

The Act was intended to protect those who have by mistake exceeded their duty; and the defendant here *bonâ fide* believed that an attempt at burglary had been committed: *Roberts* v. *Orchard*, 12 W. R. 253, 2 H. & C. 768; *Read* v. *Coker*, 1 W. R. 413, 13 C. B. 850; *Heath* v. *Brewer*, 15 C. B. N. S. 803; *Hermann* v. *Seneschal*, 11 W. R. 184, 13 C. B. N. S. 392; *Downing* v. *Capel*, 15 W. R. 745, L. R. 2 C. P. 461. He was misled by an existing state of facts, over which he had no control.

Bovill C. J.—I am of opinion that this rule should be refused. *Roberts* v. *Orchard*, did not introduce any new law on the point, but the case must be decided on the law as previously laid down, and especially in *Hermann* v. *Seneschal*. In *Roberts* v. *Orchard*, the question was whether the judge should have asked the jury if the defendant honestly believed that the plaintiff had taken the money, and that in giving him into custody, he was exercising a legal power; and it was decided that it would not be enough to ask them that, but that they should also be asked whether the defendant honestly believed that the plaintiff had been found committing the offence. But as to the rule of law, the Exchequer Chamber adopted what had before been laid down by Williams, J., in *Hermann* v. *Seneschal*, viz., that the defendant has the protection of the statute "if he honestly intended to put the law in motion, and really believed in the existence of the state of facts, which, if they existed, would have justified him in doing as he did." That I take to have been the rule before *Roberts* v. *Orchard*, and it was not interfered with by that case, and must be applied here. Did the defendant then in this case to adopt the words of Williams, J., in *Roberts* v. *Orchard*, "honestly believe in the existence of those facts which, if they had existed, would have afforded a justification under the statute?" It is clear that it is not necessary that an offence should have been committed under the statute by any one, here there was certainly no such offence committed by the plaintiff, and there is nothing to satisfy me that the defendant did believe facts which, if they had existed, would have justified him, or that the plaintiff was found committing any offence under the Act. There was no entry, no robbery, and no attempt; and further an attempt at robbery is not within the statute. The case is not brought either within the 51st or the 58th section; and there is no evidence of any such belief as is required on the part of the defendant, or of any other circumstance to bring the case within the Act.

Byles, J.—I am of the same opinion, and will only add one further on *Roberts* v. *Orchard*. My brother Willes there says, "it is clear to my mind, from the defendant's evidence in answer, that he was acting on mere suspicion." Mere suspicion will not do for belief is a state of mind which