

[Eng. Rep.]

REG. V. JOHN MARSDEN—BELL V. AITKEN AND OTHERS.

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ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. V. JOHN MARSDEN.

*Wounding constable with intent to resist lawful apprehension
Fresh pursuit—Evidence.*

A police-constable, having interfered to stop an altercation near the house where the prisoner lodged between the prisoner and another man, was struck by the prisoner and they had a struggle. The constable then went for assistance, and after an hour returned with W. and two other constables to the house—within which the prisoner had retired, all then being quiet. The prisoner having refused to open the door, one of the constables fetched a serjeant of police, and he and one of the constables having gone to the back door, W. and the two others forced open the front door, and in apprehending the prisoner, who had a bill-hook in his hand, and threatened to kill the first man who came up, W. was wounded by the prisoner, who struck him on the head with the hook.

Held, that the apprehension, after the lapse of an hour, was unlawful, the first transaction having then come to an end; and therefore that a conviction for wounding W. with intent to resist his lawful apprehension must be quashed.

[16 W. R., 711, April, 1868.]

Case reserved by Smith, J. :—

The prisoner was tried and convicted before me at the spring assizes, 1868, at Warwick, on an indictment which charged him with feloniously wounding George Wesson, a police constable, with intent to resist his lawful apprehension.

The facts were that the prisoner lodged at his father's house in Lower Town street, Nottingham. About twelve o'clock on the night of Saturday, the 29th February, the prisoner, suspecting a man called Wormald was listening at the windows of the house, came into the street and used threatening language to him. Raison, a police constable, came up and interfered to put a stop to the altercation, and the prisoner then turned upon him and struck him with his fist, and there was a struggle between them. Raison, the police constable, then went away for assistance and remained absent for an hour. In the interval he changed his plain clothes for his uniform, and he returned to the house with three other constables, Wesson, Ash, and Harabin. The prisoner had then retired into the house and all was quiet. The door of the house was closed and fastened. Raison asked the prisoner to open the door and he refused. The constables tried the door several times, and after an interval of ten minutes or quarter of an hour finding they could not get into the house, they determined to send for a serjeant of police. One of them went to the police station distant about half a mile then, and after another interval of fifteen or twenty minutes returned with Serjeant Hind. The serjeant and Harabin went to the back door; Raison, Wesson, and Ash remained by the front door. These three constables again demanded admission, and were refused, and they then forced open the front outer door and entered the house. The constables saw the prisoner stand on the top of the stairs with a bill-hook in his hand. Raison asked the prisoner to come down. He refused and threatened to kill the first man who came up. Wesson then said, "Here's at him," and the three constables Wesson, Raison, and Ash ran up stairs to lay hold of him.

The prisoner then struck Wesson with the hook upon the head and wounded him—a struggle

ensued in which Raison was also wounded by the prisoner with the hook. The prisoner was overpowered and taken into custody, having himself received severe wounds on the head from the constables in the struggle.

It was contended for the prisoner that the apprehension was not lawful—the assault was over—there was no further assault or affray to be apprehended, and no such fresh pursuit as would justify the constables in breaking into the house or apprehending the prisoner (see *R. v. Gardener*, 1 M. C. C. 390; *R. v. Walker*, 2 W. R. 416, Dearsley's C. C. 358).

I reserved these points for the consideration of the Court for Crown Cases Reserved. I did not pass sentence, and detained the prisoner in custody. If the apprehension was not lawful it is to be taken that there was no excess in this resistance offered by the prisoner.

No counsel appeared on either side.

KELLY, C.B.—In this case a police officer having heard an altercation between the prisoner and another man, interfered to stop it, when a struggle took place between the officer and the prisoner, and the latter struck the officer a blow with his fist. The officer then went away to seek for assistance, and at the end of an hour returned with some other officers and broke into the house within which the prisoner had in the meantime taken refuge. In the course of the struggle which then took place he received the wound for which the prisoner was indicted. Under these circumstances the question is whether this indictment for feloniously wounding with intent to resist the prisoner's lawful apprehension can be maintained. That depends upon whether this was a lawful apprehension, and that upon the question whether the struggle upon the stairs was a continuance of the first transaction, when no doubt the prisoner might have been lawfully apprehended. But between the two times an hour had elapsed, and it is therefore impossible to say that the second struggle was a continuance of the same transaction, or that this was such a fresh pursuit as to justify the acts of the constables. All the first matter having come to an end we are of opinion, independently of authority, that this conviction must be quashed. If, however, we had any doubt, the case of *R. v. Walker* (*supra*) is conclusive.

SMITH, J., concurred. His opinion at the trial was in favour of the view taken by the prisoner's counsel; but, on account of the importance of the question, he reserved the case.

Conviction quashed.

COMMON PLEAS.

BELL V. AITKEN AND OTHERS.

Practice—Costs of Country Attorney where trial in town.

The costs of the country attorney's attendance at a trial in town will not usually be allowed on taxation as between party and party, but the Master has a discretion to allow them in exceptional cases.

[16 W. R. 704, May, 1868.]

This was a patent case of considerable importance and difficulty. The plaintiff laid the venue in London; the defendant and his attorney resided at Stockport.

The defendant's country attorney attended at the trial in town, and (the defendant having