

The question whether defendant was acting bona fide in the discharge of his duty as a constable in searching a private house, as being a house of public entertainment, for liquor, was a question for the jury; and, in view of defendant's admission that he knew he had no right to search a private house, it is difficult to see how he can have made the search in discharge of his powers as a constable; indeed the real defence is that the search was made by leave of plaintiff. Honest belief is always a question for the jury: *McKay v. Cummings*, 6 O. R. 400.

During the argument counsel for defendant urged that the procuring by plaintiff of a lantern and giving it to defendant when entering the cellar was conclusive of leave having been given by plaintiff to make the search. But plaintiff says he told defendant when handing him the lantern that he had no right to search the cellar, and plaintiff's housekeeper said that while defendant was descending the cellar stairs she heard plaintiff tell him he had no right to search the cellar, and defendant himself admits that, as plaintiff handed him the lantern, he told him he had no right to search the house.

There is no plea of leave and license on the record, and without an amendment that question cannot properly be, as if the amendment had been made it must have been submitted to the jury.

Appeal allowed, nonsuit set aside, and new trial ordered, with liberty to defendant to amend by adding a plea of leave and license.

Costs of the former trial and of the appeal to plaintiff in any event.