

"When Truesdell took the lock from the boat had he an honest belief in a state of facts which would justify him in taking the boat from Holden's possession?" to which they have said "No."

The jury have added to this confusion by assigning as reasons for their answer to the first question: "1. Putting on the extra lock;" 2. Keeping a watch; (i.e., a watch to see that Truesdell did not take out the boat contrary to his agreement); 3. Holden was the first to break the agreement." They give as the reason for their answer to the latter question, "he was not justified according to their mutual agreement."

At the request of Truesdell's counsel I submitted the question, "Was Holden, when he laid the information, actuated only by the honest desire to bring a criminal to justice?" The jury answer "No." I also submitted the subsidiary question at his request, "If any other motive, what?" and the answer is "He desired either to obtain the boat or his money."

In the light of the facts as found, and doing my best with the matters not in controversy, I think there was reasonable and probable cause for the institution of the prosecution against Truesdell. He had agreed with his mortgagee not to remove the boat. He had taken the boat out in violation of this agreement. He was about to remove it again. He had forbidden the mortgagee to remain upon the boat. He intended to use the boat without insurance, notwithstanding the agreement to insure.

The refusal of the insurance company to carry the risk, and the experience that Holden had had with Truesdell, abundantly justified him in feeling "unsafe and insecure" within the meaning of the mortgage. Even if Holden had taken possession in violation of the understanding that he was not to seize, this would not justify Truesdell in his conduct. Not only was there reasonable and probable cause for the institution of a prosecution, but the failure of that prosecution reflects no credit upon those connected with the administration of justice in Collingwood. The suggestion that Holden acted improperly because "he desired to obtain the boat or his money" seems quite untenable. I think the owner of property is entitled to resort to the criminal law for its recovery, and that his desire to recover