**Semayne's Case**

COURT OF KING'S BENCH

All ER Rep 62, Also reported 5 Co Rep 91 a; Cro Eliz 908; Moore KB 668; Yelv 29; 77 ER 194

Michaelmas Term, 1604

**JUDGMENT: SIR EDWARD COKE:**

In his report, said that the court resolved the following points: (i) That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and although the life of man is a thing precious and favoured in law so that, although a man kills another in his defence, or kills one per infortunium [by misfortune] without any intent, yet it is felony, and in such case he shall forfeit his goods and chattels [1 ]for the great regard which the law has to a man's life, but if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing, and therewith agree 3 Edw 3 Coron 303 and 305, and 26 LIB Ass pl 23. So it is held in YB 21 Hen 7, fo 39, pl 50, everyone may assemble his friends and neighbours to defend his house against violence; but he cannot assemble them to go with him to the market or elsewhere for his safeguard against violence; and the reason of all this is because domus sua cuique est tutissimum refugium [his own house is the safest place of refuge].

[1] But see Offences Against the Person Act, 1861, s 7 (5 HALSBURY'S STATUTES (2nd Edn) 790) now repealed by the Criminal Law Act 1967, Sched 3, part 1.

(ii) That when any house is recovered by any real action or by ejectione firmae, the sheriff may break [into] the house and deliver the seisin or possession to the demandant or plaintiff for the words of the writ are habere facias seisinam, or possessionem, etc, and after judgment it is not the house in right and judgment of law of the tenant or defendant.

(iii) That in all cases when the King is party, the sheriff (if the doors be not open) may break [into] the party's house, either to arrest him or to do other execution of the King's process, if otherwise he cannot enter. But before be breaks [into] it, he ought to signify the cause of his coming and to make request to open the doors. That appears well by the Statute of Westminster the First (1275) c 17 [repealed] (which is but an affirmance of the common law) as hereafter appears, for the law without a default in the owner abhors the destruction or breaking [into] of any house (which is for the habitation and safety of man) by which great damage and inconvenience might ensue to the party when no default is in him; for perhaps he did not know of the process of which, if he had notice, it is to be presumed that he would obey it. That appears by the book in 18 Edw 2, Execut 252, where it is said that the King's officer who comes to do execution, etc, may open the doors which are shut, and break them, if he cannot have the keys; which proves that he ought first to demand them: YB 7 Edw 3, fo 16, pl 15 J beats R so as he is in danger of death, J flies, and thereupon hue and cry is made, J retreats into the house of T. They who pursue him, if the house be kept and defended with force (which proves that first request ought to be made) may lawfully break (into) the house of T, for it is at the King's suit: 27 LIB Ass pl 66. The King's bailiff may distrain for issues in a sanctuary: 27 (28) LIB Ass pl 35. By force of a capias on an indictment of trespass the sheriff may break [into] his house to arrest him; but in such case, if he breaks [into] the house when he may enter without breaking [into] it (that is, on request made, or if be may open the door without breaking [in]) he is a trespasser: 41 LIB Ass 15. On issue joined on a traverse of an office in Chancery, venire facias was awarded returnable in the King's Bench without mentioning non omittas propter aliquam libertatem; yet forasmuch as the King is party, the writ of itself is non omittas propter aliquam libertatem; YB 9 Edw 4, 9. For felony or suspicion of felony the King's officer may break (into) the house to apprehend the felon, and that for two reasons: (a) for the commonwealth, for it is for the commonwealth to apprehend felons; (b) in every felony the King has interest, and where the King has interest the writ is nonomittas propter aliquam libertatem; and so the liberty or privilege of a house does not hold against the King.

(iv) That in all cases when the door is open, the sheriff may enter the house and do execution at the suit of any subject, either of the body or of the goods; and so may the lord in such case enter the house and distrain for his rent or service: YEAR BOOKS 38 Hen 6, 26 a; 8 Edw 2, Distr 21; and 33 Edw 3, Avow 256. The lord may distrain in the house although lands are also held in which he may distrain: vide 29 LIB Ass 49. But the great question in this case was if by force of a capias or fieri facias at the suit of the party, the sheriff, after request made to open the door and denial made, might break [into] the defendant's house to do execution if the door is not opened. It was objected that the sheriff might well do it for divers causes: (a) because it is by process of law; and it was said that it would be granted on the other side that a house is not a liberty, for if a fieri facias or a capias be awarded to the sheriff at the suit of a common person and he makes a mandate to the bailiff of a liberty who has return of writs who nullum dedit response, in that case another writ shall issue with non omittas propter aliquam libertatem. Yet it will be said on the other side that he shall not break into the defendant's house as he shall do of another liberty, for whereas in the county of Suffolk there are two liberties, one of St Edmund Bury and the other of St Etheldred of Ely, suppose a capias comes at the suit of A to the sheriff of Suffolk

to arrest the body of B and the sheriff makes a mandate to the bailiff of the liberty of St Etheldred who makes no answer; in that case the plaintiff shall have a writ of non omittas, and by force thereof he may arrest the defendant within the liberty of Bury, although no default was in him; (b) admitting it to be a liberty, the defendant himself shall never take advantage of a liberty; as if the bailiff of a liberty be defendant in any action, and process of capias or fieri facias comes to the sheriff against him, the sheriff shall execute the process against him, for a liberty is always for the benefit of a stranger to the action: (c) for necessity the sheriff shall break (into) the defendant's house after such denial as is aforesaid, for at the common law a man should not have any execution for debt but only of the defendant's goods. Suppose, then, the defendant would keep all his goods in his house and so the defendant himself by his own act would prevent not only the plaintiff of his just and true debt, but there would also be a great imputation to the law that there should be so great a defect in it, that in such case the plaintiff by such shift without any default in him should be barred of his execution and the book in 18 Edw 2 Execut 252 was cited to prove it, where it is said that it is not lawful for anyone to disturb the King's officer who comes to execute the King's process; for if a man might stand out in such manner a man would never have execution, but there it appears (as has been said) that there ought to be request made before the sheriff breaks [into] the house: (d) the sheriffs were officers of great authority in whom the law reposed great trust and confidence, and are to be of sufficiency to answer for all wrongs which should be done; and they had custodia comitatem, and, therefore, it should not be presumed that they would abuse the house of anyone by colour of doing their office in execution of the King's writs against the duty of their office and their oath also.

But it was resolved that it is not lawful for the sheriff (on request made and denial) at the suit of a common person to break [into] the defendant's house, scilicet, to execute any process at the suit of any subject, for thence would follow great inconvenience that men as well in the night as in the day should have their houses (which are their castles) broken into, by colour whereof great damage and mischief might ensue; for by colour thereof, on any feigned suit, the house of any man at any time might be broken into when the defendant might be arrested elsewhere, and so men would not be in safety or quiet in their own houses. And although the sheriff is an officer of great authority and trust, yet it appears by experience that the King's writs are served by bailiffs, persons of little or no value; and it is not to be presumed that all the substance a man has in his house, nor that a man would lose his liberty which is so inestimable, if he has sufficient to satisfy his debt.

And all the said books which prove that, when the process concerns the King, the sheriff may break [into] the house, imply that at the suit of the party the house may not be broken into], otherwise the addition (at the suit of the King) would be frivolous. And with this resolution agrees the book in YB 13 Edw 4, fo 9, pl 4. The express difference there taken between the case of felony, which (as has been said) concerns the commonwealth, and the suit of any subject, which is for the particular interest of the party, as there it is said in YB 18 Edw 4, fo 4, pl 19, by LITTLETON and all his companions that it is resolved that the sheriff cannot break [into] the defendant's house by force of a fieri facias but he is a trespasser by the breaking, and yet the execution which he then does in the house is good. It was said that the book of 18 Edw 2 was but a short note and not any case judicially adjudged and it does not appear at whose suit the case is intended, but it is an observation or collection (as it seems) of the reporter. And if it be intended of a quo minus or other action in which the King is party or is to have benefit, the book is good law.

(v) That the house of anyone is not a castle or privilege but for himself, and shall not extend to protect any person who flies to his house or the goods of any other which are brought and conveyed into his house to prevent a lawful execution and to escape the ordinary process of law; for the privilege of his house extends only to him and his family, and to his own proper goods, or to those which are lawfully and without fraud and covin there, and, therefore, in such cases after denial on request made, the sheriff may break [into] the house. That is proved by the First Statute of Westminster, c 17 [repealed], by which it is declared that the sheriff may break [into] a house or castle to make replevin when the goods of another which he has distrained are by him conveyed to his house or castle to prevent the owner to have a replevin of his goods; which Act is but an affirmance of the common law in such points. But it appears there that, before the sheriff in such case breaks [into] the house, he ought to demand the goods to be delivered to him, for the words of the statute are: "After that the cattle shall be solemnly demanded by the sheriff's, etc."

(vi) That admitting that the sheriff after denial might have broken into the house, as the plaintiff's counsel pretend he might, then it follows that he has not done his duty, for it does not appear that be made any request to open the door of the house. Also the defendant, as this case is, has done that which he might well do by the law, scilicet, to shut the door of his own house.

Lastly, the general allegation praemissorum non ignarus was not sufficient in this case where the notice of the premises is so material; but in this case it ought to have been certainly and directly alleged; for without notice of the process of law and of the coming of the sheriff with the jury to execute it, the shutting of the door of his own house was lawful. Judgment was given against the plaintiff.

**DISPOSITION: Judgment for the defendant.**