

William and Mary Review of Virginia Law

Volume 1 (1949-1953)
Issue 1

Article 7

May 1949

False Imprisonment - Liability for Illegal Arrest-Evidence

Frederick B. Price

Follow this and additional works at: <https://scholarship.law.wm.edu/wmrval>



Part of the [Criminal Procedure Commons](#), and the [Evidence Commons](#)

Repository Citation

Frederick B. Price, *False Imprisonment - Liability for Illegal Arrest-Evidence*, 1 Wm. & Mary Rev. Va. L. 25 (1949), <https://scholarship.law.wm.edu/wmrval/vol1/iss1/7>

Copyright c 1949 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmrval>

FALSE IMPRISONMENT— LIABILITY FOR ILLEGAL ARREST—EVIDENCE

Upon leaving defendant's store, plaintiff and a friend were arrested and searched by a police officer summoned by defendant's manager. The officer had no warrant for their arrest. The object of the search was a small seventy-five cent tool allegedly stolen from the hardware department. The tool was found in the possession of the plaintiff's friend. After the plaintiff's acquittal of that charge he instituted an action seeking compensatory damages for false imprisonment. Judgment was for the plaintiff in the trial court. On appeal, *held*, reversed and remanded. Evidence of plaintiff's acquittal in the original action is inadmissible where there is no claim for punitive damages; nor is evidence admissible that defendant's manager offered to withdraw the charge of theft if plaintiff would admit his guilt and pay for the tool. *Montgomery Ward Company v. Wickline*, 188 Va. 485, 50 S. E. 2d 387 (1948).

At common law an officer could arrest without a warrant only for those misdemeanors which amounted to a breach of the peace actually committed in his presence.¹ This principle was designed to protect public safety, assure due administration of public justice, and to afford the citizen security against unwarrantable restraints upon his personal liberty.² As to a private person at common law the rule was even more strict. He could not arrest for a misdemeanor, on suspicion, no matter how well grounded.³ Nor could a private individual avoid personal liability if he procured the arrest by an officer without a warrant of an innocent person for a misdemeanor.⁴ A private person could arrest for a breach of the peace while it continued, but in order to not be answerable therefor, he must show the guilt of the person arrested.⁵

Most jurisdictions follow the common law rules today, except where the power has been broadened in specific instances by statute.⁶ Virginia substantially follows the common law rules.⁷

Since the gist of the action for false arrest is the illegal detention of the person, neither malice, ill will, nor the slightest wrongful intention is necessary to constitute the offense.⁸ It is only when punitive damages are requested that mitigating circumstances may be shown by the defendant.⁹ Also, when only compensatory damages are claimed, neither a conviction¹⁰ nor an acquittal¹¹ of the plaintiff of the original charge is material.

Thus the question arises as to how far may one go in preventing his property from being stolen in his presence. It is noteworthy that in Virginia there have been surprisingly few cases involving false imprisonment, thus rendering it difficult to ascertain a proper sphere of conduct in protecting property. The surreptitious taking of an article from a store counter can hardly be termed a breach of the peace thereby justifying one in detaining and searching a supposed

thief.¹² The doctrine of fresh pursuit applies to any wrongful taking not under a claim of right.¹³ It would seem that as a necessary incident to recaption, there may be a privileged detention for the purpose of regaining possession of the stolen article, and that such a detention would not be per se an arrest and, hence, should not give rise to a cause of action for false imprisonment.¹⁴

Compensatory damages include loss of time, legal expenses, bodily and mental suffering, humiliation, and damage, if any, to the plaintiff's reputation.¹⁵ These compensatory damages have been assessed varying from three hundred dollars to a thousand dollars. The legislature has passed an act which enables newspaper companies, when defending libel actions, to introduce in evidence, in mitigation of general damages all the circumstances of the publication, including good faith of the defendant and a timely apology or retraction.¹⁶ Similarly, by statute, when banks are sued for refusing to honor a check which should have been paid, they are permitted to introduce evidence showing that non-payment was due to mistake or error, and without malice, thereby limiting the plaintiff's recovery to the actual damages suffered.¹⁷ It is submitted that the legislature, likewise, enact a statute authorizing the admission of evidence of probable cause in mitigation of general damages in an action for false imprisonment. Such a statute would remedy a gap in the law of arrests, a gap which, as Professor Waite has commented,¹⁸ obliges one to stand helplessly by while a wrongdoer leaves the jurisdiction for parts unknown.

FREDERICK B. PRICE

FOOTNOTES

1. *People v. McLean*, 68 Mich. 480, 36 N. W. 231, (1893); see *Com. v. Wright*, 158 Mass. 149, 33 N. E. 82, 86 (1893); see Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 673 (1924).
2. See *Palmer v. Me. Central R. Co.*, 92 Me. 399, 42 Atl. 800, 803, (1899).
3. *Ibid*; see Waite, *Some Inadequacies in the Law of Arrest*, 29 Mich. L. Rev. 488, 451, (1931).
4. *Palmer v. Me. Central R. Co.*, 92 Me. 399, 42 Atl. 800 (1899); *Ross v. Leggett*, 61 Mich. 445, 28 N. W. 695 (1886).
5. See *Palmer v. Me. Central R. Co.*, 92 Me. 399, 42 Atl. 800, 803, (1899).
6. *Krilevitz v. Railroad Co.*, 143 Mass. 228, 9 N. E. 613 (1887). see RESTATEMENT, TORTS §§119, 121.
7. See *Crosswhite v. Barnes*, 139 Va. 471, 478, 124 S. E. 242, 244 (1924); *Muscoe v. Commw.*, 86 Va. 443, 447, 10 S. E. 534, 535 (1890).

8. **Crosswhite v. Barnes**, 139 Va. 471, 124 S. E. 242 (1924); see **BURKS, PLEADING AND PRACTICE**, §143 (3rd ed. 1934); **RESTATEMENT, TORTS** §44.
9. **Crosswhite v. Barnes**, *supra* note 8; **Nelson v. Snoyenbos**, 155 Wis. 590, 145 N. W. 179 (1914).
10. **Crosswhite v. Barnes**, *supra* note 8.
11. E.g. **Pilos v. First National Stores**, 319 Mass. 475, 66 N. E. 2d 576 (1946); **Fitzgerald v. Lewis et. al.**, 164 Mass. 495, 501. 41 N. E. 687, 688; (1895).
12. **Waite, Some Inadequacies in the Law of Arrest**, 29 Mich. L. Rev. 448, 452 (1931).
13. **RESTATEMENT, TORTS** §101.
14. **PROSSER, TORTS** §24 (1941).
15. **Bolton v. Vellines**, 94 Va. 404, 26 S. E. 847 (1897); see **S. H. Kress & Co. v. Roberts**, 143 Va. 71, 129 S. E. 244 (1925).
16. **VA. CODE ANN. §6240 (a)** (Michie, 1942); **News Leader Co. v. Kocen**, 173 Va. 95, 107, 3 S. E. 2d 385, 390 (1939).
17. **VA. CODE ANN. §4149 (40)** (Michie, 1942).
18. **Waite, Some Inadequacies in the Law of Arrest**, 29 Mich. L. Rev. 448, 452 (1931).