

1943

Recent Cases

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Recent Cases

TORTS—FALSE IMPRISONMENT

*Teel vs. May Dept. Store*¹

Plaintiff accompanied S, her sister-in-law, to defendant's store where S made a number of purchases and charged them to X, claiming to be the wife of X. After a part of the purchases was made, plaintiff and S took them to the latter's car nearby and then returned to the store, whereupon they were arrested by the store detective who had already investigated and found that S was not the wife of X as she claimed to be. Plaintiff showed that X had authorized S to charge against his account as his wife, and also that prior purchases had been made in like manner. The detective then took plaintiff and S to the credit department and the true facts of the relationship between the latter and X were brought out. Plaintiff, S, and two detectives then went to S's car and got the packages and returned to sign a confession before she was released. In an action for false imprisonment the court held "that an owner of a store or other premises has the right to detain a person therein for a reasonable time for a reasonable investigation, whom he has reasonable grounds to believe has not paid for what he has received or is attempting to take goods without payment." The defendant was held justified in what was done to obtain a return of the goods, but the privilege to restrain plaintiff for that purpose did not justify any detention thereafter for the purpose of obtaining a confession, since the obtaining of the confession had no relation to accomplishing the purpose for which the privilege was given. The plaintiff received judgment in the lower court, she appealed on the question of inadequate damages and the defendant appealed on alleged error in the court's instructions on the imprisonment prior to the return of the merchandise. The case was remanded.

False imprisonment is the direct restraint by one person of the physical liberty of another without adequate legal justification.² To constitute false imprisonment it is not necessary that manual force should actually be employed; it is sufficient if the party against his will yields to the force threatened.³ False imprisonment may be had by words of threat, acts or by both, if restraint results.⁴ One is not obliged to incur the risk of personal violence by resisting until actual force be used.⁵

1. 348 Mo. 696, 155 S. W. (2d) 74 (1941).

2. *Hanser v. Bieber*, 271 Mo. 326, 197 S. W. 68 (1917); RESTATEMENT, TORTS (1934) § 35.

3. *Ahern v. Collins*, 39 Mo. 145 (1866); RESTATEMENT, TORTS (1934) §§ 36-40.

4. *Tiede v. Fuhr*, 264 Mo. 622, 632, 175 S. W. 910, 913 (1915); *Hurst v. Montgomery Ward & Co.*, 107 S. W. (2d) 183 (1937); *Sweeney v. F. W. Woolworth & Co.*, 247 Mass. 277, 142 N. E. 50, 31 A.L.R. 311 (1924) (Accusing one of larceny is not in itself enough to constitute false imprisonment.).

5. COOLEY, TORTS (4th ed. 1932) § 109.

The privilege to defend the possession of property from wrongful intrusion and interference rests upon the same consideration of policy as that of self-defense. The interest in peaceable possession and enjoyment of property justifies protection by self-help in situations where there is usually no time to resort to the law. The limitations upon the privilege are much the same as in the case of self-defense; the force must be, or reasonably appear to be, necessary, and not excessive in view of the interest involved.⁶

The privilege to restrain one's liberty to prevent the carrying away of property from the possessor's premises may arise in different ways, excluding the situation where the taking was by force or duress. Where there has been an actual interference with chattels and that interference was intentional, then the possessor is privileged to restrain the actor by force reasonably necessary under the circumstances to regain possession of the chattel or chattels. The same privilege should apply where the interference was unintentional.⁷ The principal case supports this situation. Of course the use of force is not privileged when it is apparent that no immediate interference with the property is threatened, or that all danger is past.⁸

Where there has been an actual interference with the possessor's chattels, but the possessor only reasonably suspects the other, there is a conflict among the cases. One view is that probable cause to suspect the person detained does constitute a defense to false imprisonment in this situation⁹ while other courts have held that probable cause never constitutes a defense to false imprisonment.¹⁰ The Restatement recognizes a privilege to detain when there has been an actual interference and the possessor reasonably suspects the other of this interference.¹¹ The Missouri cases, up to the time of the principal case, held, when there has been an actual interference but the possessor only suspected the other of this interference, that probable cause was not a defense to an action for false imprisonment.¹²

6. PROSSER, TORTS (1941) 131-132.

7. RESTATEMENT, TORTS (1934) §§ 77-80; 22 Am. Jur. 408-409 § 78.

8. PROSSER, TORTS (1941) 133.

9. C. J. 471, §§ 36-39.

10. RESTATEMENT, TORTS (1934) § 44.

11. RESTATEMENT, TORTS (1934) §§ 77-80.

12. Carter v. Casey, 153 S. W. (2d) 744 (1941); Tiede v. Fuhr, 264 Mo. 622, 175 S. W. 910 (1915); Vaughn v. Hines, 206 Mo. App. 425, 230 S. W. 379 (1921); Martin v. Woodlea Inv. Co. 206 Mo. App. 33, 226 S. W. 650 (1920) (Plaintiff was arrested by an officer without warrant, instigated by the agent of defendant); Oliver v. Kessler, 95 S. W. (2d) 1226 (1936) (Plaintiff arrested by an officer without a warrant, instigated by defendant); Hanser v. Bieber, 271 Mo. 326, 197 S. W. 68 (1917). (Plaintiff arrested by an officer, without warrant, instigated by defendant.) Monson v. Rouse, 86 Mo. App. 97 (1900); Boeger v. Langenberg, 97 Mo. 390, 11 S. W. 223 (1889); Dunlevy v. Wolferman, 106 Mo. App. 46, 79 S. W. 1165 (1940); Rice v. Gray, 225 Mo. App. 890, 34 S. W. 2d 567 (1930). (There was no property involved. Defendant had plaintiff confined to an insane asylum.) Shull v. Boyd, 251 Mo. 452, 158 S. W. 313 (1913) (No property involved and plaintiff refused to answer questions in court that the court had no authority to ask and defendant had plaintiff put in jail.) Thompson v. Buckholz, 107 Mo. App. 121, 81 S. W. 490 (1904); McCaskey v. Garrett, 91 Mo. App. 354 (1902).

Where there has been no actual interference with chattels, but the possessor only suspects there has been and only suspects the other of the interference or intrusion, there is also a conflict among the cases. These cases differ from the principal case on the facts in that in the latter case there had been an actual interference with the defendant's chattels. However, some cases go further and allow probable cause to be a defense where there is only a suspicion that there has been an interference with the possession of the property.¹³ Other cases hold probable cause is not a defense in this situation, and the only defense is that the plaintiff is guilty as charged.¹⁴ There is language in the principal case which would support the broader privilege, but it must be read in connection with the facts of the case which make it one of actual interference with reasonable suspicion as to the plaintiff, and it is not a case in which there was suspicion as to both the interference and the person.¹⁵

Even though the defendant may be privileged to detain a person to recover chattels, it must only be a reasonable detention. It is well settled that unreasonable delay in releasing a person who is entitled to be released, or such delay in

13. *Jacques v. Child Dining Hall Co.*, 244 Mass. 433, 138 N. E. 843, 26 A.L.R. 1329 (1923).

14. *Great Atlantic & Pacific Tea Co. v. Smith*, 281 Ky. 583, 136 S. W. (2d) 759 (1939). (This case was cited in support of principal case, but is contrary to that case. A merchant conducting a self-serving store does not have a right to apprehend and detain a customer and inspect her parcels and packages upon mere suspicion of shoplifting based only upon her failure to heed and comply with self-made rules of the store.) *Titus v. Montgomery Ward & Co.*, 232 Mo. App. 987, 123 S. W. (2d) 574 (1938); *Knowles v. Bulline*, 71 Mo. App. 341 (1897); *Hurst v. Montgomery Ward & Co.*, 145 S. W. (2d) 992 (Mo. 1940); *Gust v. Montgomery Ward & Co.*, 234 Mo. App. 611, 136 S. W. (2d) 94 (1940); *Pandjiris v. Hartman*, 196 Mo. 539, 94 S. W. 270 (1906); *Harris v. Terminal R. R. Ass'n. of St. Louis*, 203 Mo. App. 324, 218 S. W. 686 (1920); *Wehmeyer v. Mulvihill*, 150 Mo. App. 197, 130 S. W. 681 (1910).

Hill v. S. S. Kresge Co., 202 Mo. App. 385, 217 S. W. 997 (1919); *Vest v. S. S. Kresge Co.*, 213 S. W. 165 (Mo. App. 1919); *Utz v. Mayes*, 267 S. W. 59 (Mo. App. 1925); *Greaves v. Kansas City Junior Orpheum Co.*, 229 Mo. App. 663, 80 S. W. (2d) 228 (1935); *Frampton v. Bieber*, 204 S. W. 728 (Mo. 1918). These last five cases deal with punitive damages. Lack of malice is a defense to a claim for punitive damages.

22 Am. Jur. 368 § 24, *Jacques v. Child Dining Hall Co.*, 244 Mass. 433, 138 N. E. 843, 26 A.L.R. 1329 (1923); *Standish v. Narragansett Steamship Co.*, 111 Mass. 512, 15 Am. Rep. 66 (1873); *Harbison v. Chicago R. I. & P. Ry.*, 327 Mo. 440, 37 S. W. (2d) 609, 79 A.L.R. 1 (1931); 25 C. J. 491-495 §§ 61-65.

15. Decisions in other states in accord with the principal case: *Chesapeake & Ohio Ry. v. Welch*, 268 Ky. 93, 103 S. W. (2d) 698 (1937) (Property actually interfered with by some one but plaintiff not guilty); *Missouri Pacific R. R. v. Quick*, 199 Ark. 1134, 137 S. W. (2d) 263 (1940) (Plaintiff actually interfering with property but defendant only suspected plaintiff of wrongfully interfering with said property); *Bettolo v. Safeway Stores*, 11 Cal. App. (2d) 430, 54 P. (2d) 24 (1936) (Plaintiff accused of stealing candy. Defendant's agent saw plaintiff put candy in pocket and searched plaintiff, but found no candy. Later the candy was found elsewhere in the store); *Collyer v. S. H. Kress Co.*, 5 Cal. (2d) 175, 54 P. (2d) 20 (1936).

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calling, taking him before, or turning him over to the proper authorities, or in wrongfully denying him opportunity to give bond, would thereafter amount to false imprisonment. A person in the exercise of the privilege has no right to force the other to comply with a demand which has no relation to accomplishing the purpose for which the privilege was given. The authorities are in accord with the principal case on this point.

WILLIAM LEE DODD

