

Torts: False Imprisonment: Officers' Right to Detain Non-Resident Driver for Investigation

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and the relationship between himself and the defendant, is a matter of policy upon which the courts are not in accord. In the instant case the court decided against the plaintiff. Perhaps in most jurisdictions the decision would be for the plaintiff on this question. *Robinson v. McAllister*, 216 Cal. 312, 13 P. (2d.) 926 (1932). The problem of pleading is tied to the problem of proof. General allegations of negligence will be sufficient if the passenger does not have to show anything by way of specific facts as evidence of fault to get to the jury. *Guaranty Casualty Co. v. Am. Milling Co.*, 169 Wis. 426, 172 N.W. 148 (1919); *Klien v. Butian*, 169 Wis. 385, 172 N.W. 736, 5 A.L.R. 1237 (1920). It has been held in some cases that plaintiffs may show for example, that the bus was being driven at a high rate of speed, or without proper lights, where the complaint had set out negligence in general terms, *Omaha & C. B. St. Ry. Co. v. McKeesnan*, 250 Fed. 386, 162 C.C.A. 456 (1928); *Carnahan v. Motor Trans. Co.*, 65 Cal. App. 402, 424 P. 143 (1924).

Which is the better way of handling these cases is for the court in each jurisdiction to decide for itself. Because of the relationship between the parties, the public nature of the defendant's calling, the difficulties facing the plaintiff in building up a case, and the position of the carrier's employees who ought to know what happened, it would seem that these are cases where the courts should compel the defendant to satisfy the jury that the accident occurred through no fault of its employees.

P. G. Y.

TORTS—FALSE IMPRISONMENT—OFFICERS' RIGHT TO DETAIN NON-RESIDENT DRIVERS FOR INVESTIGATION.—A non-resident while driving his car was stopped by police officers, who believed that the car was a stolen one. Having determined that it was not the car reported as stolen, the officers took the driver into custody when he could not produce licenses as required in the state where he was arrested. The driver contended that the law in the state of his residence did not require such license. After an investigation which took a substantial time, the truth of the driver's contention was ascertained and he was released. An action for false imprisonment was commenced on the theory that the detention was unlawful *ab initio*. Held, On appeal, that the circumstances (suspicion of a felony) existing at the time of the arrest was sufficient justification for the detention. *Pine et al v. Okzewski et al.* (N.J., 1934) 170 Atl. 825.

There is interesting *dicta* in the instant case tending to justify the detention, not because there was suspicion of a felony but because there was suspicion of a misdemeanor (see points 6 to 11, incl., pp. 828 to 830). Reasonable grounds for suspecting a misdemeanor is no defense to a false imprisonment action when in fact no misdemeanor was committed. *Stewart v. Freeley*, 118 Iowa 524, 92 N.W. 670 (1902), (vagrancy); *Daniels et. al. v. Millstead*, 221 Ala. 353, 128 So. 447 (1930), (failure to have hunting license); *Martin v. Golden*, 180 Mass. 549, 62 N.E. 977 (1902), (vagrancy); *Tillman v. Beard*, 121 Mich. 480, 80 N.W. 248, 46 L.R.A. 215 (1899), (no vendor's license).

The Wisconsin court, in a case involving failure to have proper license plates on a car, has held that if it reasonably appears to the officer that a misdemeanor is being committed he does not have to justify the arrest by showing a misdemeanor is in fact being committed. *Bursack v. Davis*, 199 Wis. 115, 225 N.W. 738 (1929). In the instant case the statutes, (Comp. St. N.J. Supp. 135-49 et seq.), giving the officer power to arrest drivers for failure to have in their possession the required licenses, were construed to permit the officer to detain a non-

resident driver while an investigation was made of the laws of the state of residence. The investigation is limited to a reasonable period of time.

Unskillful operation of automobiles and the fact that automobiles are employed extensively by criminals constitute a menace to public safety. To give the police more freedom in coping with such a situation is the basis for the expressions tending to liberalize the law in respect to false imprisonment actions in misdemeanor cases. What the court in the instant case seems to suggest as a justification for the detention departs less from the generally accepted standards than what the Wisconsin court has held. Perhaps the deviations may well be limited to automobile cases.

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G. D. F.