CHRISTIE AND ANOTHER . . . . . APPELLANTS ;

AND

LEACHINSKY . . . . . RESPONDENT.

H. L. (E.)*

1946

Dec. 2, 3, 5, 6, 9, 10.

1947

Mar. 25.

Criminal law—Arrest—Illegal arrest without warrant—Subsequent justification on ground of reasonable suspicion of felony—Ground not communicated at the time to person arrested—False imprisonment.

On August 31, 1942, the appellants, who were Liverpool police officers, arrested the respondent at his warehouse in Liverpool, without a warrant. At the time they suspected and had reasonable grounds for suspecting that he had stolen or feloniously received at Leicester a bale of cloth then in the warehouse, but they did not give this as the ground of the arrest, professing instead to arrest

* *Present :* VISCOUNT SIMON, LORD THANKERTON, LORD MACMILLAN, LORD SIMONDS and LORD DU PARCQ.

H. L. (E.)

1946

CHRISTIE v. LEACHINSKY.

him on a charge of " unlawful possession " under the Liverpool Corporation Act, 1921, though in the circumstances the Act admittedly gave them no power to arrest without warrant. The respondent was taken to the police station and there detained in custody until the following day, when he was brought before the magistrate on the charge of " unlawful possession," being by him remanded in custody for a week, and subsequently, further remanded on bail on September 8, for a further week. In an action for false imprisonment the appellants sought to justify the arrest and detention from August 31 to September 1 on the common law ground :

Held (affirming the judgment of the Court of Appeal), that (apart from special circumstances, which did not exist in this case), an arrest without warrant can be justified only if it is an arrest on a charge made known to the person arrested, and the plea of justification therefore failed.

It is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested : and, therefore, just as a private person arresting on suspicion must acquaint the party with the cause of his arrest, so must a policeman arresting without warrant on suspicion state at the time (unless the party is already acquainted with it), on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part. Even if circumstances exist which may excuse this, it is still his duty to give the information at the first reasonable opportunity after the arrest. The exigency of the situation which justifies or demands arrest without a warrant cannot justify or demand either a refusal to state the reason of arrest or a mis-statement of the reason.

On September 15 the respondent was again brought before the court on the charge of " unlawful possession," which with the magistrate's consent was then withdrawn on the ground that the Leicester police had decided to prosecute the respondent for larceny. The respondent was accordingly discharged, but instead of coming from the dock into the body of the court, he was directed by one of the appellants to descend the steps into the cells and was detained until the arrival some hours later of a Leicester policeman who charged him with larceny and took him into custody :

Held (reversing the judgment of the Court of Appeal), that this imprisonment was justified, since the respondent then knew for what alleged felony he was being detained. It is undesirable that an arrest should be made in court, but such an arrest, although it might amount to contempt of court, will not, if otherwise justified, give rise to an action for damages, unless perhaps the person arrested is one who has a duty to be in court, such as counsel, solicitor or witness.

Decision of the Court of Appeal (sub nom. *Leachinsky* v. *Christie*) [1946] K. B. 124, varied.

APPEAL from the Court of Appeal (Scott and Lawrence L.JJ. and Uthwatt J.).

The facts, summarized from their Lordships' opinions, were as follows: The respondent, Maurice Leachinsky, was a "waste" merchant, who dealt in what are commonly called "rags," with a warehouse at 196, Beaufort Street, Liverpool. The two appellants, Lewis Christie and Thomas Morris, were respectively a detective constable and a detective sergeant in the Liverpool City police force. The respondent brought an action against the appellants (together with other police officers, who were subsequently dismissed from the suit as a result of the decision of the Court of Appeal), for damages for false imprisonment, alleging that he was wrongfully arrested and detained by them on August 31, 1942. The trial judge, Stable J., directed judgment to be entered for the defendants (including the present appellants) but the Court of Appeal reversed this decision and ordered judgment to be entered for the plaintiff (the present respondent) against the defendants, Christie and Morris (the appellants) for damages, such damages to be assessed by a judge and jury. The appellants appealed to the House of Lords.

The respondent was in the habit of buying his supplies from various towns and had recently from time to time made purchases from a tailoring firm in Leicester, called Michaelsons, acting by Michael Michaelson, a partner. On August 26, he there bought three bales of waste cuttings for 4*l.* 6*s.* 0*d.*, such waste being habitually sold by weight. On August 27, he called with a van to pay for and collect what he had bought and, according to his story, incidentally asked Michaelson if he had any remnants out of which to make a dress for his wife. Michaelson said he had many and in the result the respondent bought the lot for 22*l.* and they were packed into a single bale. The contents were pieces of cloth, stockinet and linings. (The bale was referred to in the evidence as "a bale of cloth." The respondent paid cash for the whole purchase. He consigned the four bales, together with twenty-three other bales of waste bought from other sellers in Leicester, by carrier to his warehouse in Liverpool, describing the whole consignment for the purpose of the carrier's charges as "waste." (Stable J. considered that no sinister inference should be drawn from this misdescription.) On Saturday, August 29, the Liverpool police, apparently having already some suspicion, on grounds which were not alleged in the pleading or explained at the trial, examined the goods while in the hands of the carrier and so ascertained that one of the bales contained pieces of cloth and not mere "waste." (The investigations of the police may

H. L. (E.)
1946
CHRISTIE v. LEACHINSKY.

have been inspired by the war-time restrictions on the sale and purchase of cloth.) On the morning of Monday, August 31, the appellants secretly watched the unloading of the bales and their removal into the respondent's warehouse by the back entrance. The respondent was present and assisted in the work. He himself carried the bale of cloth inside and placed it near the door; the other bales, which required to be weighed in order to check the purchases, were placed in another part of the premises. The appellants now went round to the front door of the warehouse, entered it without any search warrant and told the respondent they were making inquiries about a bale of cloth which had been delivered to him. The respondent professed to know nothing about any cloth and the appellants set to work to search the premises. The respondent asked whether a search warrant was not necessary but the appellant Morris incorrectly told him that he was not exceeding his powers at all. The appellants, not being satisfied with the explanations given by the respondent (who did not produce any receipt or invoice and did not disclose that he had bought the cloth from Michaelson) arrested him on a charge of "unlawful "possession" under the Liverpool Corporation Act, 1921, although they knew his name and his place of residence in Southport, where he had lived for eighteen years. Having cautioned him, they took him in custody to the Essex Street Bridewell, where he was again cautioned. He was brought to Essex Street police station about noon in custody and was later charged by the appellant Christie before Police Sergeant Tindell, who was on duty, with "unlawful possession" under the Act. In the charge book the charge was entered as: "Unlawful possession of a quantity of cloth at the warehouse, "196, Beaufort Street on 31.8.42." The respondent was again cautioned. The appellant Christie told Tindall that bail was not advisable. The respondent was kept a prisoner all night and had an uncomfortable experience when being removed about midnight from one place of detention to another in a police van containing two drunken negroes. The next morning he was brought before the stipendiary on the charge of "unlawful possession" and the prosecuting constable asked for his remand for a week in custody. There was no evidence that the stipendiary was told that when the police arrested the respondent they already knew his name and address; at any rate, he acquiesced in the police request. About 1.30 p.m. on the day of his arrest, the respondent, after being cautioned

by the appellant Christie, made a signed statement in which he gave a full account of how he acquired the property and gave the name and address of Michaelson, from whom he had bought the four bales and to whom he had paid cash for them. The Liverpool police, however, took no steps to bring Michaelson before the Liverpool magistrate and on September 8 the respondent was brought up again and remanded on bail for a further week until September 15. In the meantime, the Leicester police interviewed Michaelson who, for some reason, told a pack of lies, asserting he had never sold the contents of the bale of cloth to the respondent at all and that the articles in that bale had been taken from him without his authority. On September 15, as the Leicester police were intending to prosecute the respondent for larceny and were on their way to arrest him, the Liverpool police applied to the stipendiary for leave to withdraw the proceedings before him. The stipendiary assented to the withdrawal of the only charge before him and, accordingly, discharged the respondent. Instead of coming out of the dock into the body of the court, the respondent was, by the appellant Christie's intervention, motioned to descend the steps to the cells below. The appellant Christie, according to his evidence, which was not contradicted, saw him immediately he left the court and told him that he was being detained on a charge of larceny. He was detained at the Bridewell until the arrival, some hours later of Detective-Sergeant Moorhouse of the Leicester police, who charged him with stealing cloth from Michaelson and took him into his custody. When the respondent was subsequently brought before the court at Leicester his solicitor triumphantly exploded the case against him and showed up Michaelson as a liar. In the result, therefore, the respondent was not proved guilty of any offence.

In the present action the defendants (the appellants) originally pleaded that they arrested the plaintiff (the respondent) " in pursuance of the powers vested in them by ss. 507 " and 513 of the Liverpool Corporation Act, 1921, having . . . . " reasonable and probable cause for believing and/or suspecting " that the plaintiff had in his possession a bale of cloth which he " had stolen or otherwise unlawfully acquired." At the trial, after the case for the defence had been opened, Stable J. holding that this pleading set up the common law justification for the arrest as well as the statutory justification, gave the defendants leave to amend the passage to read that they arrested the plaintiff " having . . . . reasonable and probable cause for

H. L. (E.) 1946 CHRISTIE v. LEACHINSKY.

" suspecting and in fact suspecting that the plaintiff had stolen " or feloniously received the said cloth." (They thereby abandoned the statutory justification.) Neither the pleadings nor the evidence suggested that the respondent was told that he was arrested on this ground. In the course of the trial of the action, the appellant Christie was cross-examined as to the arrest to the following effect: " Q. You made your arrest in " terms that he was arrested for being in unlawful possession " of the cloth ? A. Yes. Q. You have always, so far as you " were concerned, dealt with him in terms of being in unlawful " possession of the cloth . . . . It had never been, so far as " you are concerned, any other charge ? A. No. . . . . " Q. Having got the message from Michaelson . . . . you " decided he had stolen the cloth. Why did you not then " charge him with larceny ? A. Because that larceny was " committed at Leicester and it would then be a matter of " withdrawing our charge and handing him over to Leicester. " Unlawful possession was the most convenient charge at the " time until he could be handed over to the Leicester City " police . . . . Q. Did you know you had no power of arrest " if you knew the name and address of the man or could reason- " ably discover it ? A. Yes. Q. Knowing that you had no " power of arrest under that Act, how did you dare to detain " him on a charge of unlawful possession, when you had all those " details ? A. I was acting on reasonable suspicion and did in " fact suspect the property had been stolen or feloniously " received. Q. Did you tell him you were detaining him on a " charge of feloniously stealing property ? A. No." Stable J. found that the appellants reasonably suspected larceny or felonious receiving and dismissed the action. The Court of Appeal reversed this decision and ordered judgment to be entered for the respondent against the appellants for damages to be assessed by a jury. The court held unanimously that the arrest on August 31 was wrongful and further (per Scott L.J. and Uthwatt J., Lawrence L.J. dissenting) that the arrest on September 15 was wrongful.

Hemmerde K.C., *Nelson K.C.* and *Patrick O'Connor* for the appellants. The appellants rely on the following propositions: (*a*) where a police constable has reasonable and probable cause to suspect and does suspect that a person has committed a felony he may lawfully arrest that person without specifying any particular felony or even telling that person that he is

arresting him on suspicion of felony. (*b*) Any words used by a police constable at the time of such arrest cannot per se affect the legality of the arrest. (*c*) A charge subsequently preferred against a person arrested on suspicion of felony does not and cannot affect the legality of the arrest. The cause of action in the present case is trespass to the person; the essential point is putting the man under your control and taking away his freedom so that he acts under your domination; that is an infringement of the liberty of the subject and is prima facie wrong. A police officer arrests at his peril but he is protected if he can show that at the time he had good grounds for suspecting and did suspect that the arrested person had committed a felony. There is no limitation on that protection. The police officer is not bound to specify the felony of which he suspects the man or to formulate the precise legal charge. It is not the law that he is estopped from subsequently relying on his reasonable suspicions if at the time of the arrest he used certain words which did not properly express the correct charge. When there are reasonable grounds for believing that a man has committed a felony, a police officer may arrest him, although in doing so he may allege some other ground. The present case is distinguishable on the facts from *Dumbell* v. *Roberts* (1) which has nothing to do with it, but if that decision is an authority for the proposition that a police constable who makes up his mind to arrest on suspicion of felony must tell the person arrested at the time of the arrest what is the felony of which he suspects him, it is wrong. It is not even necessary to caution a prisoner unless it is intended to question him: see the Judges' Rules, Archbold's Criminal Practice (31st ed.), pp. 371–2. Further, reasonable suspicion will justify a constable in breaking open doors: see Halsbury's Laws of England (2nd ed.), vol. IX., p. 98, and *Smith* v. *Shirley* (2). A police officer cannot be expected to make up his mind at once as to which particular offence has been committed and this action is an attempt to put on to him something which it is not his business to decide. The police must be given a certain amount of latitude, for the duty of arresting criminals is important, although less important than the liberty of the subject. This exceptional latitude is necessary because the police officer is faced with the duty of making decisions of his own although he is not a lawyer. It cannot be that unless he adheres to the charge first formulated right up to the end of the proceedings the arrest is necessarily rendered unlawful. In the present case the

(1) (1944) 113 L. J. (K. B.) 185. (2) (1846) 3 C. B. 142.

H. L. (E.)
1946
CHRISTIE v. LEACHINSKY.

respondent was arrested on suspicion of having committed a felony. Had he asked the police officer whether that was so the answer would have been that it was. There is evidence of a bona fide suspicion of felony in the minds of the appellants when they made the arrest. They believed that the cloth had been stolen and that the respondent had stolen it. They had reasonable grounds for the suspicion which they in fact harboured. There is no case which decides the exact point in the present case, viz., that of an officer purporting to arrest on one charge a man who is actually prosecuted on another. [They referred to *Diamond* v. *Minter* (1); *Walters* v. *W. H. Smith & Sons, Ld.* (2); *Hirsch* v. *Somervell* (3); *Winslow* v. *Knight* (4); *Samuel* v. *Payne* (5); Bullen & Leake's Precedents of Pleadings (3rd ed.), pp. 353–4 n; Hawkins' Pleas of the Crown (1824 ed.), Bk. 2., c. 12, s. 7, p. 117; Bk. 2, c. 12, s. 18, p. 120; Bk. 2, c. 13, ss. 6–7, p. 129 and Hale's Pleas of the Crown (1800 ed.), vol. II., c. 11, pp. 84, 91–2.]

Laski K.C. and *Rose Heilbron* for the respondent. The respondent was arrested on a charge of unlawful possession under s. 507 of the Liverpool Corporation Act, 1921, and that arrest was unlawful. That was the only charge and he was never detained on a reasonable suspicion that he had committed a felony. The appellants did not entertain such a suspicion, and if they had it would not have availed them, for no felony had in fact been committed by anyone. The arrest under the Act was unlawful and a trespass to the person and the onus was on the appellants to justify it by proving that they had reasonable grounds for the suspicion which they allege; they have not discharged it. This case is important as involving the liberty of the subject and the power to arrest without warrant. The issue of a warrant is an act of the judiciary and there is a difference between arrest with and arrest without a warrant but there is an analogy between them. There are also helpful analogies between arrest for felony and arrest on civil process or imprisonment for debt. A fortiori a constable acting executively without a warrant must be subject to at least the same obligations as he would have been subject to if he had acted with a warrant: see *Hooper* v. *Lane* (6); *Codd* v. *Cabe* (7); *Horsfield* v. *Brown* (8); *Ockford* v. *Freston* (9);

(1) [1941] 1 K. B. 656.
(2) [1914] 1 K. B. 595, 601.
(3) (1946) 175 L. T. 456, 461.
(4) (1928) 92 J. P. N. 526.
(5) (1780) 1 Doug. 359.
(6) (1856) 6 H. L. C. 443, 456, 550.
(7) (1876) 1 Ex. D. 352.
(8) [1932] 1 K. B. 355.
(9) (1861) 6 H. & N. 466, 471.

and the *Six Carpenters* case (1). The appellants were bound to tell the respondent in respect of what felony they were arresting him. It was useless to caution him unless he was told what the charge really was, since he would not give the relevant answers and might be led into a trap : see the Judges' Rules, Archbold's Criminal Practice (31st ed.), p. 372. Further, a police officer acting on his own initiative, has despite the ruling in *Beckwith* v. *Philby* (2), no superior right to a private citizen in the matter of arrest. [They also referred to the Constables Protection Act, 1750 ; the Indictable Offences Act, 1848, ss. 8, 9 and 10 ; the Summary Jurisdiction Act, 1879, s. 38 ; the Criminal Jurisdiction Act, 1925, ss. 32 and 44 ; the County Courts Act, 1934, s. 147 ; and Halsbury's Laws of England (2nd ed.), vol. IX., p. 97, para. 123 and vol. XXV., p. 235, para. 535.] As to the detention on September 15 after the proceedings under the Act were withdrawn, when he was taken to the cells to await the Leicester police, that was also wrongful : see *Bird* v. *Jones* (3). It amounted to arrest in the face of the court : Comyn's Digest, Tit. Imprisonment H. 5.

Nelson K.C. in reply. The only authorities cited for the respondent are cases from which it is sought to draw analogies. There is no analogy between arrest for debt and arrest for felony or between arrest on warrant or arrest without a warrant. There is no authority which defines the duty of a police officer arresting on suspicion of felony. He has a right to arrest without giving any ground ; in any event, the man must be taken before a justice within twenty-four hours. Here the police did in fact indicate the general nature of the charge, i.e., that it concerned the cloth in his possession. It is the state of the policeman's mind that justifies the arrest in these circumstances and not what he said. In such cases the police rarely have enough evidence to formulate a precise charge, as distinct from founding a reasonable suspicion. Here they convinced the judge that they arrested on a reasonable suspicion of felony.

THE HOUSE took time for consideration.

1947. Mar. 25. VISCOUNT SIMON. My Lords, I agree with Scott L.J. that the main issue raised is of great importance and requires careful examination, for it concerns the liberty of the

(1) (1610) 8 Co. Rep. 146a.
(2) (1827) 6 B. & C. 635.
(3) (1846) 7 Q. B. 742, 752.

H. L. (E.) 1947 CHRISTIE v. LEACHINSKY. Viscount Simon.

subject and the extent of the powers of the police to arrest without warrant. There can be no doubt that the Liverpool Corporation Act, 1921, did not authorize this arrest at all. The Act does not use the term "unlawful possession," though this is the customary phrase used in connexion with an infringement of the Act. The phrase is, in fact, somewhat misleading. The following provisions are included in part II. of the Act: "507 (1.) Any person brought before any court of summary "jurisdiction charged with having in his possession anything "which there is reasonable ground to believe or suspect has "been stolen and (*sic.*) who does not account to the satisfaction "of the court for his possession of the same shall be liable to a "penalty not exceeding five pounds or in the discretion of the "court to imprisonment for any term not exceeding two months "with or without hard labour. (2.) If any person so brought "before any court shall declare that he received such thing from "some other person or that he was employed as a carrier agent "or servant to convey the same for some other person such court "shall cause such other person and also if necessary every "former or pretended purchaser or other person through whose "possession the same shall have passed to be brought before a "court and examined . . . . (5.) For the purposes of this "section . . . . the expression 'stolen' means stolen or "unlawfully acquired or detained. 513. It shall be lawful "for any police constable and all such persons as he shall "call to his assistance to arrest and detain without warrant "(1.) any person whose name and residence shall be unknown "to such constable and cannot then be ascertained by him "and who shall commit any offence against (*a*) the provisions "of . . . . this part of this Act." Inasmuch as the appellants knew the respondent's name and also knew his place of residence in Southport where he had lived for the last eighteen years and moreover arrested him in his own warehouse in Beaufort Street, the Act manifestly gave the appellants no right to arrest the respondent for "unlawful possession" without a warrant. What is surprising, and is a matter for severe comment, is that the appellant Christie admitted at the trial that he knew at the time that he had no power to arrest without warrant under the Liverpool Act in the circumstances and that the arrest was nevertheless made on this charge because it was the "most convenient" course. It is much to be hoped that the Liverpool police will be instructed not to disregard the limitations laid down by law in this connexion

again. In another aspect the Liverpool Act is a curious one, for the misdemeanor created by it only arises if the individual, when brought before the magistrate, fails at that stage to account for what is in his possession; no offence, therefore, can be committed before he is brought before the magistrate and the power of the police to arrest and detain an individual (whether with or without a magistrate's warrant, according to circumstances) is not a power to charge him with having committed the crime of " unlawful possession " (for up to that time he has not committed any breach of the Act) but rather a power to arrest and detain him if his name and residence are unknown to them for the purpose of bringing him before the court to give his explanation. The suspicion that a thing " has been " stolen " is, of course, quite different from the suspicion that the individual was a party to stealing it or has received it knowing that it was stolen.

In the result, the respondent has not been proved guilty of any offence and he has spent a week in prison, after being arrested on a charge of " unlawful possession " in circumstances where an arrest on this charge was contrary to law. Any liability of the police, however, for the arrest of August 31 ended when the stipendiary ordered the remand in custody, for the remand was the action of the magistrate for which the appellants cannot be held responsible as for false imprisonment. If there were nothing to add to the above facts, it would be clear that the appellants, by arresting the respondent without a warrant on August 31 on a charge of unlawful possession, when they knew his name and residence, were acting illegally and were liable to pay damages for false imprisonment: see *Dumbell* v. *Roberts* (1). Indeed, this was admitted at the trial. But by an amendment of their defence it was pleaded that at the time of the arrest they had reasonable and probable cause for suspecting, and in fact suspected, that the respondent had stolen or feloniously received the bale of cloth. Stable J. found that this was true, but neither the pleading nor the evidence suggested that the respondent was told that he was arrested on this ground. The question to be determined is therefore whether, when a policeman arrests X. without a warrant, on reasonable suspicion that he has committed a given felony, but gives X. no notice that he is arrested on suspicion of such felony, he is acting within the law. There is nothing in the judgment of the trial judge to indicate that this vital

(1) 113 L. J. (K. B.) 185.

H. L. (E.)

1947

CHRISTIE v. LEACHINSKY.

Viscount Simon.

question was ever argued out before him at all. Stable J. had no difficulty in holding that in the circumstances arrest on the charge of "unlawful possession," standing by itself, was an unlawful imprisonment, but the fact that the police reasonably suspected larceny or felonious receiving appeared to him to provide a complete defence, though they did not arrest for this charge. The learned judge said: "Of course, if when the police "had arrested Mr. Leachinsky, all they had believed was that "Mr. Leachinsky was in unlawful possession under the Act of "this bale—if that was their state of mind at the time of the "arrest they could not justify the detention—a wrongful "arrest—thereafter by setting up the fact, if fact it had been, "that Mr. Leachinsky had committed some other felony of "which they were wholly unaware at the time of making the "arrest. The law, it seems to me, on that point is quite plain. "But if they believed he had committed a felony when they "arrested him, if there were reasonable grounds for that belief, "and they arrested him because they so believed, that act, "which was legal and justifiable at that time, does not become "illegal thereafter because for convenience a charge of unlawful "possession is brought in Liverpool, in order that the real charge "of larceny may be prosecuted by the police before the court "in Leicester, which was really concerned in the matter. "The test as I understand it is what was the state of mind of "the police at the time of the arrest. Why did they arrest "him? If they arrested him because they believed he had "committed a felony and there were reasonable grounds for so "believing, they do not lose the protection of the law. And "what was not a wrongful act at the time does not become an "actionable wrong because thereafter the proceedings in Liver-"pool are confined to what was really a mere formality, un-"lawful possession, and the prosecution for felony is relegated "to the appropriate court."

The all-important question in this appeal is whether this passage correctly embodies the law. If a policeman arrests without warrant when he entertains a reasonable suspicion of felony, is he under a duty to inform the suspect of the nature of the charge, and if he does not do so, is the detention a false imprisonment? In the Court of Appeal Scott L.J. strongly insisted that it was a false imprisonment. Arrest, he pointed out (1), was the first step in a criminal proceeding against a suspected person on a charge which was intended to be judicially

(1) [1946] K. B. 124, 130.

investigated. If the arrest was authorized by magisterial warrant, or if proceedings were instituted by the issue of a summons, it is clear law that the warrant or summons must specify the offence. This rule is now embodied in s. 32 of the Criminal Justice Act, 1925, but it is a principle involved in our ancient jurisprudence. Moreover, the warrant must be founded on information in writing and on oath and, except where a particular statute provides otherwise, the information and the warrant must particularize the offence charged. The famous case of *Entick* v. *Carrington* (1), dealing with the illegality of "general warrants" is an illustration of the principle. Again, when an arrest is made on warrant, the warrant in normal cases has to be read to the person arrested. All this is for the obvious purpose of securing that a citizen who is prima facie entitled to personal freedom should know why for the time being his personal freedom is interfered with. Scott L.J. (2) argued that if the law circumscribed the issue of warrants for arrest in this way it could hardly be that a policeman acting without a warrant was entitled to make an arrest without stating the charge on which the arrest was made, and he contrasted (3) what he took to be the general law on this subject with the exceptional situation created by the well-known reg. 18B of the Defence (General) Regulations, made under the Emergency Powers (Defence) Act, 1939, according to which during the emergency the Home Secretary could, if satisfied that it was necessary to do so, make an order with respect to a particular person "directing that he be detained" which detention "shall . . . . be deemed to be in legal "custody." With Scott L.J.'s judgment his colleague Uthwatt J. agreed. "A person," he said (4), "cannot be lawfully "arrested for a misdemeanor by a constable merely because "the constable reasonably suspects him of having committed "a felony," and he quoted the passage in Hawkins' Pleas of the Crown ((8th ed.), vol. II, c. 10, s. 18), that if a private person is pleading a justification for arresting a man on suspicion, "it seems certain, that regularly he ought expressly to show, "that the very same crime for which he made the arrest, was "actually committed." The relevance of this quotation becomes clear on examining the decision of *Walters* v. *W. H. Smith & Son, Ld.* (5). Lawrence L.J. agreed in the conclusion

(1) (1765) 19 St. Tr. 1029.
(2) [1946] K. B. 124, 130.
(3) Ibid. 127.
(4) Ibid. 149.
(5) [1914] 1 K. B. 595.

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Viscount Simon.

reached by the Court of Appeal, though he based his view on the previous decision of the Court of Appeal in *Dumbell's* case (1). The learned lord justice, however, indicated his doubts whether this decision was not open to challenge, basing himself, as I understand, largely on the assumption that a constable, when making an arrest without warrant on reasonable suspicion of felony, may do so " without giving any reason to " the person arrested " in as much as " the constable is not " bound to say anything at all." With all respect to the lord justice, I am unable to agree with the propositions quoted and take the view that *Dumbell's* case (1) was rightly decided.

When the appeal came before your Lordships' House the arguments which had prevailed before the Court of Appeal were repeated, but it was not apparently realized by counsel on either side that there is direct authority, both in text books of acknowledged weight and in cases actually decided, that in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on a charge made known to the person arrested. I owe most of what follows to the erudition of my noble and learned friend, Lord du Parcq, who made a careful investigation of the recorded law after the arguments were concluded. Take first the text books. Burn's Justice of the Peace is a work of acknowledged authority which has gone through more than thirty editions. It originally appeared in 1755, and the learned author, the Reverend Richard Burn, D.C.L. (who also brought out three successive editions of Blackstone's Commentaries), deals in detail with the law of arrest without warrant. He says (vol I., p. 302) that " where a constable acts without warrant " by virtue of his office of constable, he should, unless the party " be previously acquainted with it, notify that he is constable, " or that he arrests in the Queen's name, *and for what.*" Hale's Pleas of the Crown (vol. II, c. 10, p. 82), dealing with arrest by a private person on suspicion, says, " note that in all arrests " he must acquaint the party with the cause of his arrest." Archibald's Metropolitan Police Guide (7th ed.), p. 713, is a more modern book which affirms that the general rule is that, in arresting without warrant on suspicion, the person making the arrest, whether constable or private person, should at the time state on what charge the arrest is being made. The propositions laid down in the text books are supported by judicial decisions, to some of which I will briefly refer. What is

(1) 113 L. J. (K. B.) 185.

particularly noteworthy is that in many of these decisions an exception to the general rule is explained and justified, and this indirectly establishes what the general rule is. For example, in *Mackalley's* case (1), the decision of the Star Chamber in the *Countess of Rutland's* case (2), was followed to the effect that it is not necessary to state the ground of arrest when the party makes resistance before the person arresting him "can speak "all his words." *Mackalley's* case (1) arose out of an arrest based on a plaint of debt which led to the debtor and his friends resisting the official arrester with fatal results, and it was ruled that "an officer making an arrest, ought to show at whose suit, "out of what court, and for what cause he made the arrest, "when the party arrested submits himself to the arrest, "but not when the party resists." In *Rex* v. *Howarth* (3), it is laid down that there is no need to tell a man why he is being arrested when he must, in the circumstances of the arrest, know the reason already. Another qualification may be gathered from the decision of *Rex* v. *Ford* (4), to the effect that it is not necessary for a person making an arrest to state the charge in technical or precise language.

The above citations, and others which are referred to by my noble and learned friend, Lord du Parcq, seem to me to establish the following propositions. (1.) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2.) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3.) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4.) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the

(1) (1611) 9 Co. Rep. 65b.
(2) (1605) 6 Co. Rep. 52b.
(3) (1828) 1 Mood. 207.
(4) (1817) Russ. & Ry. 329.

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Viscount Simon.

reason why it is claimed that this restraint should be imposed (5.) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter. These principles equally apply to a private person who arrests on suspicion. If a policeman who entertained a reasonable suspicion that X. has committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. No one, I think, would approve a situation in which when the person arrested asked for the reason, the policeman replied " that has nothing to do with you : come along " with me." Such a situation may be tolerated under other systems of law, as for instance in the time of lettres de cachet in the eighteenth century in France, or in more recent days when the Gestapo swept people off to confinement under an over-riding authority which the executive in this country happily does not in ordinary times possess. This would be quite contrary to our conceptions of individual liberty. If I may introduce a reference to the well-known book Dalton's Country Justice, that author, dealing with arrest and imprisonment, says at p. 406 : " The liberty of a man is a thing specially favoured by " the common law." And there are practical considerations, as well as theory, to support the view I take. If the charge on suspicion of which the man is arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken, with the result that further inquiries may save him from the consequences of false accusation. It must be remembered that in former days arrest was practised not only in certain cases of suspected crime, but as a preliminary in civil suits also. I entertain no doubt that in the present case the appellants are not exonerated from liability for false imprisonment by satisfying the judge that they had a reasonable suspicion that the respondent had been guilty of theft or of receiving stolen goods knowing they had been stolen, when they never told the respondent that this was

the ground of his arrest. Instead of doing so, they gave a different ground which, as Christie admitted, was not a good excuse for arresting him at all.

The respondent alleged a second false imprisonment on September 15, 1942, for which the appellant, Christie, was responsible, and the Court of Appeal has held that the claim for damages in respect of this second imprisonment succeeds. The circumstances were that when on that date the respondent, who was on remand, appeared before the stipendiary magistrate, the Liverpool police asked leave to withdraw the charge of " unlawful possession " on the ground that the Leicester police (misled by Michaelson) had decided to prosecute the respondent for larceny and were on their way to arrest him. The magistrate assented to the withdrawal of the only charge that was before him and accordingly discharged the respondent. Instead of coming out from the dock into the body of the court, the respondent was, by Christie's intervention, motioned to descend the steps to the cells below and was detained at the Bridewell until the arrival, some hours later, of a Leicester policeman, who charged the respondent with stealing cloth from Michaelson and took him into his custody. The difference between the facts of the first detention on August 31 and the second detention on September 15 is that on the second occasion the respondent knew what was the alleged felony in respect of which he was being detained. Christie's action on this second occasion was a detention which in substance, if not in form, amounted to an arrest on suspicion of a felony which the respondent knew to be that of larceny, and the case seems to be covered by the exception contained in the third proposition above. Comyn's Digest, Tit. Imprisonment H. 5, indicates that an arrest should not take place " in the face of the court," but, on examining the authorities cited, it seems to me that what is meant is that the proceedings of a court and the part taken by litigants and witnesses are not to be disturbed by the execution of an arrest. The gallery at the Old Bailey is not, I presume, an Alsatia for wanted criminals, but it is certainly a better practice to carry through such detentions as the law authorizes outside. This, in substance, is what Christie did and I do not agree with the Court of Appeal that damages should be awarded for what happened to the respondent on September 15.

I move that, as regards the first imprisonment the appeal

H. L. (E.) 1947

CHRISTIE v. LEACHINSKY.

should be dismissed, but that as regards the second imprisonment, it should be allowed.

LORD THANKERTON. My Lords, I have had the opportunity of considering the opinion just delivered by my noble and learned friend on the woolsack, and also the opinions about to be delivered by my noble and learned friends, Lord Simonds and Lord du Parcq, and I desire to express my concurrence in them. I would further like to express my indebtedness to my noble and learned friend, Lord du Parcq, for having drawn our attention to a series of authorities, which are more directly in point than any of the other authorities cited in this House, but which, for some reason, have escaped the notice of counsel, and were not present to the minds of the courts below.

LORD SIMONDS. My Lords, I agree with Scott L.J. in thinking that this case raises questions of importance affecting the liberty of the subject and for that reason think it right to state in my own words why I am of opinion that this appeal should be dismissed. The admirably clear and accurate statement of the facts by the learned trial judge relieves me of the necessity of any prolonged examination of them. I proceed upon the basis that, when the appellants arrested the respondent at his premises in Liverpool at about noon on August 31, 1942, they in fact suspected that he had stolen a bale of cloth or had received it knowing that it was stolen, and further, that they had reasonable grounds for that suspicion. I accept the view adopted by the learned judge and also by Lawrence L.J. in the Court of Appeal that it is not inconsistent with a reasonable suspicion of felony that the possibility of what is colloquially called a "black market" offence should also have been in their minds. I agree further with the learned judge in the view which he took of the plea of justification in the defence and the course that he consequently followed of allowing an amendment. It appears to me that the plea as originally drawn clearly indicated that the defendants relied on the power of arrest at common law as well as on the provisions of the Liverpool Corporation Act, 1921, and that the plaintiff suffered no prejudice whatever by an amendment at the trial which put that plea in proper form. If, then, the appellants reasonably suspected that the respondent had committed a felony, was it not their right to arrest him without a warrant? And, if they did so arrest him, how is it that the arrest can be branded as

illegal and an action for false imprisonment lie against them ?

My Lords, it is here that the crux of the matter lies and it is not easy so to state the law as not on the one hand to impinge upon the liberty of the subject or on the other hand to make more difficult the duty of every subject of the King to preserve the King's peace. It was, I think, this difficulty that led Lawrence L.J. to the conclusion that the appellants were not precluded from pleading their reasonable suspicion of felony, which would have justified arrest, by the fact that they at no time charged the respondent with anything but a misdemeanor, which in the circumstances did not justify arrest. The learned lord justice states his view of the law thus (1) : " It is argued that it is unfair not to let the person arrested " know what the charge against him is, and no doubt it is desir- " able that he should be informed as soon as possible of the facts " which are said to constitute a crime on his part, and ultimately " when the indictment is framed, what the actual charge is. " But the undoubted fact that the charge may be altered seems " to me to show that the right to know the charge only comes " into existence when the indictment is finally drawn." My Lords, in my opinion, this statement of the law, which the learned lord justice proceeds to apply with perfect logic to the present case, cannot be accepted without qualification. Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested ? It is to be remembered that the right of the constable in or out of uniform is, except for a circumstance irrelevant to the present discussion, the same as that of every other citizen. Is citizen A. bound to submit unresistingly to arrest by citizen B. in ignorance of the charge made against him ? I think, my Lords, that cannot be the law of England. Blind, unquestioning obedience is the law of tyrants and of slaves : it does not yet flourish on English soil. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested, and then, since the affairs of life seldom admit an absolute standard or an unqualified

(1) [1946] K. B. 124, 147.

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Lord Simonds.

proposition, see whether any qualification is of necessity imposed upon it.

This approach to the question has, I think, a double support. In the first place, the law requires that, where arrest proceeds upon a warrant, the warrant should state the charge upon which the arrest is made. I can see no valid reason why this safeguard for the subject should not equally be his when the arrest is made without a warrant. The exigency of the situation, which justifies or demands arrest without a warrant, cannot as it appears to me, justify or demand either a refusal to state the reason of arrest or a mis-statement of the reason. Arrested with or without a warrant the subject is entitled to know why he is deprived of his freedom, if only in order that he may, without a moment's delay, take such steps as will enable him to regain it. In the second place, I find assistance in the analogous procedure in civil proceedings in olden days and in imprisonment for debt. Upon the former the judgment of Scott L.J. in this case is illuminating (1). The sheriff, who by judicial writ was directed to bring the defendant before the court, was not left, nor did he leave the defendant, in ignorance of the demand that must be met. Common justice and common sense required that the defendant should know why he should on such and such a day be brought before the King's justices at Westminster or wherever it might be. So also in regard to imprisonment for debt. Upon this subject much information is to be found in *Hooper* v. *Lane* (2). I think it necessary only to cite a single passage from the speech of Lord Cranworth (3). "The sheriff," he said, "is bound, when he executes the writ, "to make known the ground of the arrest, in order, among "other reasons, that the person arrested may know whether he "is or is not bound to submit to the arrest." Here is a clear illustration of the principle upon which I base this opinion that if a man is to be deprived of his freedom he is entitled to know the reason why.

If, then, this is, as I think it is, the fundamental rule, what qualification if any must be imposed upon it? The cogent instances given by Lawrence L.J. (4) are conclusive that an arrest does not become wrongful merely because the constable arrests a man for one felony, say murder, and he is subsequently charged with another felony, say manslaughter. It is not enough to say that in such a case the accused man could

(1) [1946] K. B. 124, 132.
(2) 6 H. L. C. 443.
(3) Ibid. 550.
(4) [1946] K. B. 124, 146.

not recover any damages in an action for false imprisonment. It is more than that. It is clear that the constable has not been guilty of an illegal arrest, if he reasonably suspected that murder had been done. Again, I think it is clear that there is no need for the constable to explain the reason of arrest, if the arrested man is caught red-handed and the crime is patent to high Heaven. Nor, obviously, is explanation a necessary prelude to arrest where it is important to secure a possibly violent criminal. Nor again, can it be wrongful to arrest and detain a man upon a charge, of which he is reasonably suspected, with a view to further investigation of a second charge upon which information is incomplete. In all such matters a wide measure of discretion must be left to those whose duty it is to preserve the peace and bring criminals to justice. These and similar considerations lead me to the view that it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. But this, and this only, is the qualification which I would impose upon the general proposition. It leaves untouched the principle, which lies at the heart of the matter, that the arrested man is entitled to be told what is the act for which he is arrested. The "charge" ultimately made will depend upon the view taken by the law of his act. In ninety-nine cases out of a hundred the same words may be used to define the charge or describe the act, nor is any technical precision necessary: for instance, if the act constituting the crime is the killing of another man, it will be immaterial that the arrest is for murder and at a later hour the charge of manslaughter is substituted. The arrested man is left in no doubt that the arrest is for that killing. This is I think, the fundamental principle, viz., that a man is entitled to know what, in the apt words of Lawrence L.J., are "the "facts which are said to constitute a crime on his part "(1). If so, it is manifestly wrong that a constable arresting him for one crime should profess to arrest him for another. Of what avail is the prescribed caution if it is directed to an imaginary crime? And how can the accused take steps to explain away a charge of which he has no inkling?

I turn, then, to the present case which appears to me to present a strange combination of circumstances. For, while I doubt not, that the appellants reasonably suspected the respondent of having committed a felony, yet I must, on the

(1) [1946] K. B. 124, 147.

H. L. (E.)
1947
CHRISTIE
v.
LEACHINSKY.
Lord Simonds.

evidence, conclude that they refrained from bringing home to his mind at the time of arrest that that was their suspicion. Their minds, it is clear, were running on the provisions of the Liverpool Act, that curiosity of penal legislation, about which I need say no more than has already fallen from your Lordships. It is from that Act alone (though the ipsissima verba do not occur in it) that the expression "unlawful possession" with which this case is riddled, is derived. So when counsel asked the appellant Christie in cross-examination "You made your "arrest in the terms that he was arrested for being in unlawful "possession of the cloth?" though he may well have wondered what was meant by "in the terms that," he answered "Yes." And to the next question "You have always, so far as you "were concerned, dealt with him in terms of being in unlawful "possession of the cloth . . . . ? It has never been, so far "as you are concerned, any other charge?" he answered "No." So also in the station charge book the charge was entered "unlawful possession of a quantity of cloth at the "warehouse, 196, Beaufort Street on 31.8.42." And so the matter proceeded. It is clear, then, that whatever may have been the secret thought of the constables at the time of the arrest and detention, they allowed him to think that he was being arrested for being "in unlawful possession" of certain goods, an offence, if it be an offence, which was at the most a misdemeanor within the Liverpool Act and could not, except under conditions which did not here obtain, justify an arrest without a warrant, and was described in terms not calculated to bring home to him that he was suspected of stealing or receiving the goods. In these circumstances the initial arrest and detention were wrongful. He was not aware and was not made aware of the act alleged to constitute his crime but was misled by a statement which was calculated to suggest to his uneasy conscience that he was guilty of a so-called black market offence. It is no answer that the constables had no sinister motive. They had, from the administrative point of view, a perfectly good motive. It will be found in an answer to a question, which, though it related to a later stage of the proceedings, is equally applicable to the earlier, "Why did you "not then charge him with larceny?" To this the revealing answer was "Because that larceny was committed at Leicester "and it would then be a matter of withdrawing our charge "and handing him over to Leicester. Unlawful possession "was the most convenient charge at the time until he could be

"handed over to the Leicester city police." My Lords, the liberty of the subject and the convenience of the police or any other executive authority are not to be weighed in the scales against each other. This case will have served a useful purpose if it enables your Lordships once more to proclaim that a man is not to be deprived of his liberty except in due course and process of law.

Upon the second part of the case, viz., the alleged wrongful imprisonment on September 15, I will add only a few words. Here I find myself in complete agreement with the conclusions reached by the learned trial judge and Lawrence L.J. On that day Christie suspected the respondent of a felony with which the Leicester police proposed to charge him. He had good grounds for his suspicion. For it was the misfortune of the respondent that the doubts engendered by his own equivocation had been strengthened by the false statements of Michaelson, his associate in the transaction, so that his belated candour did not carry the conviction that it otherwise might have done. I see no reason, therefore, why Christie, entertaining the reasonable suspicion, which he had no reason to doubt that the Leicester police shared, should not have arrested the respondent and detained him to await their arrival. Here, as it appears to me, there was no question of convenience superseding the law. On the contrary Christie was acting within the law and in accordance with his duty. It is not necessary to decide the question whether it was unlawful to effect the arrest actually in court. I should hesitate to say that such an arrest is necessarily unlawful. But, in any case, the difference between being arrested on one side of the door of the court or the other is unsubstantial and I agree that the rule of "de minimis" is applicable. Therefore, whilst concurring in the motion that the appeal should be dismissed, I would add, that in the assessment of damage only the first arrest and consequent imprisonment should be considered.

My Lords, since writing this opinion, I have had the advantage of seeing in print the speeches of my noble and learned friends Lord Simon and Lord du Parcq. I am fully in agreement with them and am happy to find that the authorities, which are now brought to the attention of the House, amply support the conclusions at which I had arrived.

LORD DU PARCQ. My Lords, it is common ground between the parties to this appeal, and was admitted by the appellant

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Lord de Parcq.

Christie in the witness-box, that the only charge made against the respondent at the time of his arrest, and during the period described in the order of the Court of Appeal as the "first "imprisonment," was a charge under s. 507, sub-s. 1, of the Liverpool Corporation Act. It is beyond doubt that the appellants had no right to arrest the respondent without a warrant on that charge. There is, I think, equally no doubt that, at common law, "a constable is justified in arresting a person "without a warrant, upon a reasonable suspicion of a felony "having been committed, and of the person being guilty of it, "although no felony has in fact been committed." In stating this proposition, I have quoted a passage from Bullen & Leake's Precedents of Pleading (3rd ed.), p. 795. I should have said that this proposition was both indisputable and undisputed, but for the fact that I understood Mr. Laski to tell the House that he was prepared to challenge it if it were thought desirable that he should deal with the point. Certainly it has come to be regarded as a settled principle of our law. It confers on the police one of the few privileges which they enjoy at common law, and it is relevant to the serious question which your Lordships have to decide to observe how gradually, and one may almost say grudgingly, the courts came to grant to the peace officer a right denied to the private citizen, who cannot justify an arrest on reasonable suspicion of felony if the suspected felony has not in fact been committed. The law at first recognized no distinction in this respect between the private citizen and the peace officer, who was thus put into a position of difficulty. If he were called on by a private citizen of repute to arrest a person for felony, he was in duty bound to do so. The oath administered to a high constable in the seventeenth century contained the words "You shall do your best endeavour (upon "complaint to you made) to apprehend all felons, barretors and "rioters," and petty constables were called upon to swear that in the presence of the high constable they should "be aiding "and assisting unto him," and in his absence they should "execute his office." (The oaths are set out fully in Captain Melville Lee's "History of Police in England" (1901) at p. 111.) Abbott C.J. was, therefore, stating a long-established rule when he said, in 1827, that "if a reasonable charge of felony is given, "a constable is bound to take the party into custody." (*Cowles* v. *Dunbar* (1).) It might turn out that the constable's informant was mistaken, and that no felony had been committed,

(1) (1827) 2 Car. & P. 565.

and then the officer would be held liable in an action for false imprisonment. A solution was found in 1780, when it was held that a constable could justify arrest made on a charge preferred by another person, although no felony had in fact been committed. (*Samuel* v. *Payne* (1).) This case did not decide, however, that the constable could safely arrest on suspicions of his own, however reasonable they might be, if no felony had been committed. Indeed, it remained the better opinion for many years that in such a case he was not protected. Buller J., in 1788, stated the law as it was then understood in these words: "that if a peace officer of his own head takes a "person into custody on suspicion, he must prove that there "was such a crime committed; but that if he receives a person "into custody, on a charge preferred by another of felony or a "breach of the peace, then he is to be considered as a mere "conduit, and if no felony or breach of the peace was com- "mitted, the person who preferred the charge alone is "answerable." This ruling of Buller J. in the unreported case *Williams* v. *Dawson* (2) was in terms approved by Lord Ellenborough C.J. in 1813 (*Hobbs* v. *Branscomb* (3)). In 1827, however, Lord Tenterden C.J., giving the judgment of the Court of King's Bench in *Beckwith* v. *Philby* (4) distinguished the case of the constable from that of the private individual, and said that "a constable, having reasonable ground to "suspect that a felony has been committed, is authorized to "detain the party suspected until inquiry can be made by the "proper authorities." This would seem to conclude the matter. But the old rule died hard, and even in 1869, in the thirtieth edition of Dr. Burn's Justice of the Peace (vol. I, p. 295), a doubt is expressed whether the constable who acts on his own initiative is in any different position from the private citizen, save in some exceptional cases. No such doubt can be justified to-day. The judges of England have long regarded the law on this point as settled—see, for instance, the judgment of Blackburn J. in *Hadley* v. *Perks* (5), and that of Isaacs C.J. in *Walters* v. *W. H. Smith & Son, Ld.* (6), and juries have long been directed as a matter of course in accordance with the rule stated in the passage which I have quoted from Bullen & Leake. Your Lordships, I think, will all agree with Stable J. and the Court of Appeal that the generally accepted view is, without doubt, correct.

(1) (1780) 1 Doug. 359.
(2) (1788) Unreported.
(3) (1813) 3 Camp. 420, 421.
(4) (1827) 6 B. & C. 635, 638.
(5) (1866) L. R. 1 Q. B. 444, 456.
(6) [1914] 1 K. B. 595, 602.

H. L. (E.)
1947
CHRISTIE
v.
LEACHINSKY.
Lord du Parcq.

The question which gives to this appeal its importance and interest may be stated fairly, I think, as follows: In the circumstances of this case was it open to the appellants, who arrested and imprisoned the respondent without a warrant on a charge, formally made, on which they could not lawfully so arrest him, to justify that arrest and imprisonment by proof that, at and after the time of the arrest, they suspected him, on reasonable grounds, of having committed one or other of certain felonies? In so stating the question I have assumed that the police spoke the truth when they said that they suspected Mr. Leachinsky of felony, and that they had reasonable grounds for their suspicion. Stable J. so found and I am not prepared to differ from this finding of fact. The appellants, in para. 17 of their case, set out the contention which their counsel sought to maintain at the Bar, "that "where a police constable has reasonable and probable cause "to suspect and does suspect that a person has committed "felony he may lawfully arrest that person without specifying "any particular felony or even telling that person that he is "arresting him on suspicion of felony." If this contention were accepted, it would not necessarily follow that a constable acts lawfully if he specifies as the ground of arrest some charge (not itself justifying arrest without warrant) other than that for which he is in fact making the arrest. The contention, however, constitutes a necessary step in the appellants' argument and must be examined. Even if the appellants' proposition be read as referring only to the moment of arrest, it is not an accurate statement of the general rule. My noble and learned friend on the woolsack has cited authorities which, while they show that circumstances may justify an arrest without a statement of the reason for the arrest, do not invalidate, but rather assume and affirm, the general rule which my noble friend has quoted from Burn's Justice of the Peace, to which rule they must be regarded as exceptions. The principles established by the authorities are agreeable to common sense, and follow from the governing rule of the common law that a man is entitled to his liberty, and may, if necessary, defend his own freedom by force. If another person has a lawful reason for seeking to deprive him of that liberty, that person must as a general rule tell him what the reason is, for, unless he is told, he cannot be expected to submit to arrest, or blamed for resistance. The right to arrest and the duty to submit are correlative. This principle is applicable both to arrests in

execution of civil process and to arrests on a criminal charge. It was stated in this House by Lord Cranworth L.C. in *Hooper* v. *Lane* (1), when he said that a sheriff "is bound, when he "executes the writ, to make known the ground of the arrest, "in order, among other reasons, that the person arrested may "know whether he is or is not bound to submit to the arrest." While this is the general rule, it is certainly true that officers and ministers of public justice, of whom Sir Matthew Hale says in his Pleas of the Crown (vol. II, c. 10), that they are under a greater protection of the law than private persons, are often justified in making an arrest without a preliminary, or simultaneous, statement of the charge. The law does not encourage the subject to resist the authority of one whom he knows to be an officer of the law. In *Mackalley's* case (2), where it was a serjeant-at-mace who made the arrest, it was said that if the party knows the person arresting him to be an officer he must not offer resistance, "and if he has not a lawful warrant he "shall have his action of false imprisonment." That case however, plainly recognized that the officer was under a duty to state the ground of the arrest "when the party arrested "submits himself to the arrest." The present case was not one of those exceptional (I do not say rare) instances in which no charge need be stated at the time of arrest. Mr. Leachinsky was not so ill-advised as to offer resistance to the police, who had no excuse at all to offer for not performing their duty to acquaint him with the ground of the arrest except, it would seem, ignorance of the law. I am glad to think that this ignorance is exceptional, and, in this regard, some of the answers given by Detective-Sergeant Moorhouse, of the Leicester City police, when under cross-examination, are significant and reassuring. It must be admitted that the form of the questions which he was answering is not to be commended, and that objection might well have been taken to them, but his answers are of value as showing what the witness, as an experienced police officer, understood his duty to be. I will quote four questions and answers: "Q. When a man is "arrested, immediately on arrest he is told what he is arrested "for, is he not?—A. By me; I always tell him what he is "arrested for. Q. The law is, even if you be a police officer "of the highest rank, you cannot detain a man without telling "him why he is detained, can you?—A. He should be told "why he is detained. Q. At once?—A. Yes. Q. Meaning

(1) 6 H. L. C. 443, 550. (2) 9 Co. Rep. 65b, 66a.

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Lord du Parcq.

" by 'at once' the earliest reasonable moment?—A. The " earliest reasonable moment." In my opinion, those answers correctly state the policeman's duty. In cases where a statement of the charge at the moment of arrest is, in the circumstances, excused there is still a duty to acquaint him with it at the first reasonable opportunity. Arrest (as is said in Dalton's Country Justice, 1727 ed., at p. 580) " may be called the " beginning of imprisonment," and these appellants were called on to justify the whole imprisonment and not its beginning alone. Indeed, I find it difficult to believe that the appellants would have sought to defend their conduct if the fact had been that Mr. Leachinsky had been arrested and taken to prison without ever being given a reason for his arrest until he came before the magistrate. It is a curious feature of this case that the arrest and the subsequent proceedings were carried out with what must have seemed to any man unskilled in the law to be a careful attention to all the requisite formalities. The appellants did not omit to charge the respondent at the time of his arrest. They charged him, in due form, with an offence which, as the appellant Christie admittedly knew, did not justify the arrest. They cautioned him when he was arrested, and I must assume, in the absence of evidence as to the words used, that the form prescribed by the Judges' Rules (1) was followed, and that he was asked the question " Do you wish " to say anything in answer to the charge ? " The caution was twice repeated—when the police arrived with the prisoner at the police station, and again when he was taken before Sergeant Tindall, the " bridewell sergeant." He was thus, with impressive solemnity, invited on three separate occasions to defend himself on a charge which was not the charge for which he was arrested. This repetition of a deceptive formula does not disguise the fact that the appellants wholly failed in their duty to tell him what that charge was.

The omission to tell a person who is arrested at, or within a reasonable time of, the arrest with what offence he is charged cannot be regarded as a mere irregularity. Arrest and imprisonment, without a warrant, on a charge which does not justify arrest, are unlawful and, therefore, constitute false imprisonment, whether the person making the arrest is a policeman or a private individual. This follows in my opinion from the decision of the judges in *Rex* v. *Curvan* (2). Curvan had been

(1) Archbold's Criminal Practice (31st ed.), pp. 371–2.

(2) (1826) 1 Mood. 132.

arrested by a constable, without a warrant, for "insulting a "man on a road." The constable was acting on a complaint which had been made to him, but the alleged offence did not, of course, justify Curvan's arrest without a warrant. He escaped, and, later, one Walby, a private person, on whom the constable had called for assistance, stopped him and attempted to arrest him, threatening him with a stick. Curvan, after telling Walby that he would stab him if he did not let him go, cut him in the face with a knife. He was subsequently tried on an indictment, one count of which charged him with feloniously cutting Walby "with intent to obstruct, resist, and prevent the lawful "apprehension and detainer of the prisoner, for a certain "offence, for which he was then liable by law to be apprehended "and detained." He was convicted on this count. Holroyd J. who tried the case, reserved it for the opinion of the judges, who held (1) "that the original arrest was illegal, and that the "recaption would also have been illegal; and, therefore, the "case would not have been murder if death had ensued, and "consequently the prisoner was entitled to an acquittal." The importance of this decision for the present purpose is not so much that it strikingly demonstrates to what lengths a man may go in the defence of his liberty as that it emphasizes the illegality of an arrest without a warrant on a specified charge which does not justify such an arrest. If when a charge which does not justify arrest has been expressly made the person charged is entitled to resist apprehension, I find it impossible to suppose that the law will hold the arrest good if it subsequently appears that the officer had in his own mind an unexpressed suspicion that a felony had been committed. The right to resist is, as I have tried to show, always limited by the duty to submit to arrest by an officer of the law even though the reason for arrest is not at once stated. *Rex* v. *Woolmer* (2) was a case in which a man's failure to observe this distinction led to his conviction and punishment for a violent attack on the watchman who was seeking to apprehend him. But if a reason has been stated which is, on the face of it, insufficient to justify arrest without warrant, no man could safely defend his liberty if some other ground for the arrest, which the officer had deliberately chosen to conceal from him, could subsequently be brought forward by way of justification. The prisoner in *Rex* v. *Curvan* (3) could not properly have been

(1) 1 Mood. 133–4.
(2) (1832) 1 Mood. 334.
(3) 1 Mood. 132.

H. L. (E.)
1947
CHRISTIE
v.
LEACHINSKY.
Lord du Parcq.

convicted even if it had been proved at his trial that the constable had in his mind a reasonable suspicion that he had committed a felony.

I have already reminded your Lordships of the reluctance of the courts to accord to the officer of the law any rights or privileges which are denied to private citizens. "With some "few exceptions," Sir James Fitzjames Stephen wrote in a passage which was cited by Scott L.J. (1) "he may be described "as a private person paid to perform as a matter of duty acts "which, if so minded, he might have done voluntarily." (History of the Criminal Law, vol. I, p. 494.) The learned author said further that when the police constable had made an arrest he was under precisely the same obligations as a private person, and I believe this to be a correct statement of the common law. It can hardly be maintained that it would be a mere irregularity, against which the law provides no sanction, if a private person were to arrest and detain a fellow subject without intimating to him the reason for his imprisonment, or that such a person could strengthen his position in the eyes of the law by stating an inadequate reason, and keeping a better one in reserve. I know of no previous case in which the police, to say nothing of private persons, have claimed a right to keep their prisoner in ignorance of the charge which he has to meet. It is worthy of note that when one Bentley was tried and convicted at the Central Criminal Court in 1850 in consequence of violent resistance which, being drunk at the time, he had offered to the constable arresting him, and it was part of his defence that the constable had not told him for what he was being arrested, Talfourd J., who was the judge, in his charge to the jury laid stress on the fact that the constable had told the prisoner "that if he went to the station he "should know the charge against him": see *Reg.* v. *Bentley* (2). Finally, the duty to make a definite charge against a person who has been arrested without a warrant has been impliedly affirmed by the legislature. Section 22 of the Criminal Justice Administration Act, 1914, which replaced s. 38 of the Summary Jurisdiction Act, 1879, provides that "on a person being taken into custody for an "offence without a warrant, a superintendent . . . . may in "any case, and shall, if it will not be practicable to bring "such person before a court of summary jurisdiction within "twenty-four hours after he was so taken into custody, inquire

(1) [1946] K. B. 124, 131. (2) (1850) 14 J. P. 671.

" into the case, and, unless the offence appears to such superin- " tendent . . . . to be of a serious nature, discharge the person " upon his entering into a recognisance . . . . " The offence to be inquired into is the offence for which the person has been arrested. For these reasons I take the same view of the law as that which has been more concisely expressed by my noble and learned friend on the woolsack, and I agree with him that the arrest of the respondent and his detention down to the time when he was first brought before a magistrate were unlawful, and that he is entitled to recover damages for false imprisonment in respect of them.

I have not so far dealt with the " second imprisonment " referred to in the order of the Court of Appeal. In my opinion the appellant Christie was justified in detaining the respondent from the time of his acquittal on the charge under the Liverpool Corporation Act until the Leicester police took him into custody. This seems to me to be plain, in the light of the admitted facts, on the principle stated in *Beckwith* v. *Philby* (1), which I have already cited. Christie said in his evidence that he had almost immediately told the respondent the true ground of this detention. The respondent was not asked whether he had been so informed, partly because of the state of the unamended pleadings when he first went into the witness-box, and partly, no doubt, because Stable J. expressed the view that the matter was irrelevant. I think, however, that there is no reason to doubt that Christie's evidence on this point was true, and I did not understand counsel for the respondent to challenge its accuracy. The only question which remains is whether Mr. Leachinsky ought to have been allowed to leave the court by another exit, and not drected to go immediately into confinement, and it is suggested that what was done was tantamount to an arrest in the face of the court, and was thus unlawful on the authority of Comyn's Digest Tit. Imprisonment H. 5. If Mr. Leachinsky had gone out by the door of the court he would, and could lawfully, have been at once arrested, so that on any view he could not be said to have suffered serious damage by the alleged irregularity. I am of opinion, however, that, although it is no doubt undesirable, speaking generally, that an arrest should be made in court, such an arrest, while it might well be a contempt of court in certain circumstances, will not, if in other respects justified, give rise to an action for damages, unless indeed the person arrested is one who has a

(1) 6 B. & C. 635.

H. L. (E.)
1947
CHRISTIE v. LEACHINSKY.
Lord du Parcq.

duty to be in court (as, for instance counsel, solicitor, or witness) when different considerations may apply. The authorities cited in Comyn's Digest all deal with arrest in execution of civil process, and, even if it be right to regard this as an immaterial distinction, they do not seem to me to assist the respondent.

In the result I think that this appeal fails on the main issue, although the order of the Court of Appeal will require modification in respect of the "second imprisonment." I must add, however, that although I agree in the result with the judgment of Scott L.J. on the main issue, I must not be taken to approve all the statements of the law which it contains. Some of these statements will be seen, I think, to be inconsistent with the view of the law which I have stated, but it is right that I should deal particularly with two of them. First, if, as I think, the learned lord justice intended to lay down that the charge must be specifically and precisely formulated, without "duplicity" in the technical sense of that word, at the time of arrest, I think that his view is contrary to authority and much too strict. If it were right, it would put great difficulties in the way not only of the police but of private persons who felt it to be their duty to make an arrest on suspicion. It is, however, manifestly contrary to what was decided by the judges in *Rex* v *Ford* (1), a case in which the charge was most inaptly stated at the time of arrest. Ford violently resisted arrest, and his defence that he was not charged with any legal offence did not avail him. The judges held (2) that, although the charge was defective, this defect was immaterial, and "that it was not necessary the "charge should contain the same accurate description of the "offence as an indictment." Secondly, I think that the observations of the learned lord justice as to the impropriety of arresting on a minor charge a man suspected of murder may be understood in a sense which the lord justice cannot, I think, have intended them to bear. If all that the lord justice means is that the police have no right to arrest a man suspected of murder on a minor charge solely in order to prevent his escape, and with no belief in or reasonable suspicion of his guilt on that minor charge, then I think that his opinion is plainly right. If, however, his words are to be taken to mean that it is wrong to arrest such a suspect on a minor charge, itself of such a nature as to justify arrest without a warrant, of which the police believe him to be guilty, when their real or principal motive is to prevent his escape from justice, and that in such a case arrest

(1) Russ. & Ry. 329. (2) Ibid. 331.

and detention on the minor charge would constitute false imprisonment, I must say, with great respect, that this seems to me to be a highly questionable proposition. I concur in the motion which is about to be proposed from the woolsack.

VISCOUNT SIMON. My Lords, my noble and learned friend, Lord Macmillan, who is not able to be present to-day, authorizes me to say that he concurs in the opinions which have been expressed in this case.

Appeal dismissed as regarded the first imprisonment and allowed as regarded the second imprisonment.

Solicitors for appellants: *Cree & Son, for W. H. Baines, Liverpool.*

Solicitors for respondent: *Sidney Pearlman, for Silverman & Livermore, Liverpool.*