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TORTS—FALSE IMPRISONMENT—DETENTION OF INSANE PERSON—Plaintiff sued defendant doctor for false imprisonment arising out of her detention as an insane person. Defendant had examined plaintiff at the request of the plaintiff's husband, called the police, and advised that she be detained as dangerous. Plaintiff was released ten days later but there was evidence to the effect that she was of unsound mind when originally detained. The arrest and detention of insane persons without a warrant is authorized by a District of Columbia statute on the affidavits of two responsible persons supported by certificates from two doctors or when such a person is found in a public place.[1] Plaintiff appealed from a directed verdict for defendant. *Held,* reversed and remanded. The evidence was sufficient to go to the jury, since the evidence would support a finding that the defendant doctor caused the arrest and such

[1] D. C. Code (1940) §§21-326, 21-327.

arrest on advice of one physician is not authorized by the statute. *Jillson v. Caprio,* (D. C. Cir. 1950) 181 F. (2d) 523.

At common law it was well established that an insane person could be arrested without a warrant or comparable order if he were dangerous to himself or to others.[2] From the facts of the principal case it is clear that there was total restraint of plaintiff against her will and that the defendant participated to such an extent that an action for false imprisonment would lie against him at common law, were it not for the "insane person" exception. In view of the threats the plaintiff was alleged to have made to her husband and child, the defendant, after his interview with plaintiff and her husband, could be found to have believed reasonably that it would be dangerous for the plaintiff to remain at liberty. The majority of the court, however, were of the opinion that this was immaterial inasmuch as the common law had been changed by statute.[3] It is universally recognized that statutes in derogation of the common law are to be strictly construed[4] and that the mere fact that legislation on the subject exists creates no presumption that there was an intent to modify or to abrogate the common law.[5] Instead, in cases where a contrary intent is not shown, it is presumed that no change in the common law was intended.[6] In light of the statute in the principal case, the opinion of the concurring judge, in which he considers the statute as not intended to impose liability for every deviation from the established procedure, is deemed to express a view more consistent with the authorities.[7] Since the burden is on the defendant to show legal justification once the fact of imprisonment is shown,[8] and, on defendant's motion for a directed verdict, the plaintiff is entitled to have the evidence considered in the light most favorable to her,[9] it would appear that the court in the principal case was justified in returning the case for a new trial.[10] However, the opinion of the majority does appear to lay down a rule

[2] Crawford v. Brown, 321 Ill. 305, 151 N.E. 911 (1926); Maxwell v. Maxwell, 189 Iowa 7, 177 N.W. 541 (1920).

[3] "Some insane and some sane persons may well be thought dangerous, but even the most reasonable belief that they will do harm in the future does not justify doctor or layman in arresting them without statutory authorization and without a warrant." Principal case at 525.

[4] Thompson v. Thompson, 218 U.S. 611, 31 S.Ct. 111 (1910); Williams v. Meredith, 326 Pa. 570, 192 A. 924 (1937).

[5] SUTHERLAND, STATUTORY CONSTRUCTION 374 (1891); Scharfeld v. Richardson, (D.C. Cir. 1942) 133 F. (2d) 340; Jennie Depauw Memorial M. E. Church v. New Albany Waterworks, 193 Ind. 368, 140 N.E. 540 (1923).

[6] Denver & R. G. R. Co. v. Norgate, (8th Cir. 1905) 141 F. 247; State Bank v. Sylte, 162 Minn. 72, 202 N.W. 70 (1925); In re Rochester, 208 N.Y. 188, 101 N.E. 875 (1913).

[7] Bisgaard v. Duvall, 169 Iowa 711, 151 N.W. 1051 (1915); Warner v. State, 297 N.Y. 395, 79 N.E. (2d) 459 (1948); It is said in In re Cash, 313 Ill. App. 281, 40 N.E. (2d) 312 (1942), that lunacy statutes should be construed liberally to the end that no insane person be permitted to remain at liberty if the necessity of the case requires he be restrained.

[8] PROSSER, TORTS 74 (1941).

[9] Tobin v. Pennsylvania R. Co., (D.C. Cir. 1938) 100 F. (2d) 435.

[10] Brown v. Capital Transit Co., (D.C. Cir. 1942) 127 F. (2d) 329; Speirs v. District of Columbia, (D.C. Cir. 1936) 85 F. (2d) 693 (1936). Although the trial judge's

of liability which seems too strict, and the reasoning of the concurring judge, who believed that the question for the jury should be whether the defendant had violated the statute and, if so, whether the measures taken were reasonable in view of the emergency, seems to be more in accord with authority and sound policy.[11]

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decision is entitled to great weight in the appellate court and the propriety of a directed verdict depends on the facts of the particular case.

[11] In New York where a similar statute exists it was held in Warner v. State, 297 N.Y. 395, 79 N.E. (2d) 459 (1948), that the common law was still in force. This would appear to support the opinion of the concurring judge in the principal case.