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False Imprisonment: Civil Liability of a Judge Acting Without Jurisdiction

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secured thereunder than has been evinced in earlier decisions.²⁷ The scope of the injunctive remedy, while limited in principle to the use of a term in its secondary sense only, must of necessity bear a practical relation to the exigencies of a factual situation if fraud and public deception are to be prevented.²⁸

The relief accorded complainant in the instant case is no more than adequate to meet the need. The Court, having found complainant entitled to equitable protection, exercised a wise discretion in granting relief broad enough to give it that full protection but not so general as to burden members of the public in the prosecution of their business endeavors.

BROOKS P. HOYT

The following case comments, written by freshmen students in this College in fulfillment of a portion of the requirements in the course known as Introduction to Legal Research and Writing, are considered of sufficient quality to merit publication. The University of Florida Law Review intends to publish in future issues further examples of the scholarship of freshmen law students.

FALSE IMPRISONMENT: CIVIL LIABILITY OF A JUDGE ACTING WITHOUT JURISDICTION

Farish v. Smoot, 58 So.2d 534 (Fla. 1952)

Appellee, arrested for violation of a municipal ordinance, posted \$500 bond but later entered voluntarily into custody and obtained a writ of habeas corpus conditioned upon posting bond with the circuit court clerk. The municipal clerk transferred the bond and appellee was released until hearing on the writ, set for the following day. The municipal judge, with knowledge of issuance of the writ, ordered appellee's re-arrest. In an action for false imprisonment against the municipal judge and the police appellee was awarded exemplary damages against the judge. On appeal, HELD, in acting outside his

²⁷Consumers Finance Co. v. Consumer's Loan Service, Inc., 36 So.2d 443 (Fla. 1948); Table Supply Stores, Inc. v. Home Supply Stores, Inc., 115 Fla. 188, 155 So. 317 (1934).

²⁸Richard Store Co. v. Richard's Warehouse Sales & Auction Gallery, Inc., 63 So.2d 502 (Fla. 1953); 2 U. OF FLA. L. REV. 159 (1949).

jurisdiction the judge became liable, and his so acting with notice of the facts properly subjected him to exemplary damages. Judgment affirmed, Justice Roberts dissenting without opinion.

The well-settled rule in the United States is that a judge is not civilly liable for false arrest or detention if he acts within his jurisdiction.¹ This rule is based upon considerations of public policy that judges must be free to exercise their best judgment without apprehension of personal liability.² The strong trend of authority is to apply the same rules to judges of inferior jurisdiction that are applied to those of general jurisdiction.³ If the jurisdiction attaches to both person and subject matter, even though the judge may have acted maliciously and corruptly the consensus is that he is not civilly liable,⁴ the remedy in this instance being impeachment⁵ or suspension.⁶

A judge who acts wholly without his jurisdiction enjoys no immunity.⁷ Unless he stays within the limits of his jurisdiction he acts as a private person, liable in damages to the injured party.⁸ This proposition embraces arrests without jurisdiction.⁹

There is authority to the effect that a judge will not be civilly liable unless he has knowledge of his lack of jurisdiction;¹⁰ however, if the facts are sufficient to put him on inquiry, knowledge of his lack of jurisdiction is imputed to him.¹¹ Nevertheless, according to the weight of authority it is immaterial whether the judge is aware of his lack of

¹Bradley v. Fisher, 13 Wall. 335 (U.S. 1871); Connor v. Real Title Corp., 165 F.2d 291 (4th Cir. 1947); Brictson v. Woodrough, 164 F.2d 107 (8th Cir. 1947); Allen v. Biggs, 62 F. Supp. 229 (E.D. Pa. 1945).

²Bradley v. Fisher, *supra* note 1; Allen v. Biggs, *supra* note 1; Comstock v. Eagleton, 11 Okla. 487, 69 Pac. 955 (1902).

³Lacey v. Hendricks, 164 Ala. 280, 51 So. 157 (1910); McDaniel v. Harrell, 81 Fla. 66, 87 So. 631 (1921); Calhoun v. Little, 106 Ga. 336, 32 S.E. 86 (1898).

⁴Connor v. Real Title Corp., *supra* note 1; Allen v. Biggs, *supra* note 1; Broom v. Douglass, 175 Ala. 268, 57 So. 860 (1912); Woodruff v. Stewart, 63 Ala. 206 (1879).

⁵FLA. CONST. ART. III, §29.

⁶FLA. CONST. ART. IV, §15.

⁷Broom v. Douglass, 175 Ala. 268, 57 So. 860 (1912).

⁸Koepp v. City of Hudson, 276 App. Div. 443, 95 N.Y.S.2d 700 (3d Dep't 1950).

⁹Manning v. Ketcham, 58 F.2d 948 (6th Cir. 1932).

¹⁰Duffin v. Summerville, 9 Ala. App. 573, 63 So. 816 (1913); Calhoun v. Little, *supra* note 3; Clarke v. May, 68 Mass. (2 Gray) 410 (1854); Grove v. Van Duyn, 44 N.J.L. 654 (1882).

¹¹Greenspahn v. Joseph E. Seagram & Sons, Inc., 186 F.2d 616 (2d Cir. 1951); Crawford v. Brown, 61 So.2d 344 (Miss. 1952); O'Dowd v. United States Fidelity & Guaranty Co., 117 N.J.L. 444, 189 Atl. 97 (1927); Newton v. Scott, 254 App. Div. 140, 4 N.Y.S.2d 420 (4th Dep't 1938).

jurisdiction.¹² The instant opinion reiterates the dictum in an earlier Florida case¹³ that a judge acting outside his jurisdiction is civilly liable, the Florida Court adopting the majority view on this principle.

Conceding that he was civilly liable for compensatory damages under the majority rule, appellant contended that the judgment for exemplary damages should not stand, since no personal malice on his part had been shown. The Supreme Court answered this contention by saying:¹⁴

"... malice, as used in cases which allow recovery for exemplary damages where the imprisonment is actuated by malice, does not necessarily mean anger or a malevolent or vindictive feeling toward the plaintiff. A wrongful act without reasonable cause is malicious within the legal meaning of the term."

The wrongful act to which Justice Sebring referred in his opinion is,¹⁵

". . . that of a judicial officer who, though having eyes with which to see and ears with which to hear, wilfully failed and refused to inform himself fully in respect to the facts at a time when the slightest inquiry on his part would have revealed that the order he had determined to make would be in a case as to which he then had no jurisdiction, . . ."

The Court thus held that a judge with imputed knowledge of his lack of jurisdiction is civilly liable for exemplary damages.

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¹²Manning v. Ketcham, *supra* note 9; Koeppe v. City of Hudson, *supra* note 8.

¹³Beckham v. Cline, 151 Fla. 481, 488, 10 So.2d 419, 422 (1942).

¹⁴At p. 538.

¹⁵At p. 537.