

## WHAT IS AN ARREST?

There have been reported in this JOURNAL the judgments of Mr. Justice Rose in *Forsyth v. Goden* (ante p. 288) at the Middlesex Spring Assizes, and of Mr. Justice Meredith in *Fleming v. Woodyatt* (ante p. 335) at the Brant Spring Assizes, both of which have to do with the discussion here raised. The occasion, therefore, would seem an opportune one to collect the cases which settle the principles and outline the procedure that should govern in this connection.

It must, to start with, be accepted as incontrovertible that to constitute an arrest matters need not be pushed by the sheriff or constable to the length of manual contact.

The stronger and later authorities both here and in England further show that where there has been ambiguous or doubtful action, the making of an arrest can never (so far as these should be proclaimed by monologue, or verbal passages between them) hinge upon the officer's attitude to, or dealing with, the person whom the compulsion of his office may, or is meant to overawe. The effectuation of a proper result depends mainly, if not altogether, on the consideration that the former may, by suggestive act or declaration, have given the passive subject of the encounter reasonable ground for supposing that his failure to submit to the desired directions (be it in the way of imperative mandate or bare request) would be promptly followed up by some visible application of force; and has so persuaded him to yield to what he deems to be inevitable. In this view of the operation, an element of weight and moment, from which the acquiescing party might, in fairness, apprehend ulterior treatment of this sort, is the announcement that a warrant or writ has been issued or is held against him, though it has been judged unimportant to be divulged that the instrument at the time was in the personal possession of the officer, or how the fact was in this respect.

In our own Courts the most instructive case perhaps which may be found is that of *McIntosh v. Demeray*, 5 Q.B. 343. In that case the sheriff went to the debtor's house and