

"ness of his station and rank in life did not appear to the jury in that striking light in which
 "the great point of law touching the liberty of the subject appeared to them at the trial; they
 "saw a magistrate over all the King's subjects exercising arbitrary power, violating Magna
 "Charta, and attempting to destroy the liberty of the Kingdom by insisting upon the legality
 "of this general warrant before them. * * * * * To enter a man's house by virtue
 "of a nameless warrant in order to procure evidence, is worse than the Spanish Inquisition,
 "a law under which no Englishman would wish to live an hour. It was a most daring public
 "attack made upon the liberty of the subject * * * * *. I cannot say what damage I
 "should have awarded if I had been on the jury but I directed and told them they were not
 "bound to any certain damages * * * . Upon the whole I am of the opinion the damages
 "are not excessive."

The law as here laid down was the law of the North-American Colonies before the independence of the United States, and is the law to-day in both Great Britain and the United States. Addison in his work on Torts, Edition 1887, p. 163 says: "When the assault is
 "accompanied by a false charge affecting the honor or character and position in society of
 "the plaintiff the offence will of course be greatly aggravated and the damages proportionally
 "increased, and if the plaintiff has been assaulted and imprisoned under a false charge of
 "felony, when no felony had been committed, or when there was no reasonable grounds for
 "suspecting or charging the plaintiff, exemplary damages will be recovered."

In the case of Kilbourn vs. Thompson, 103 United States reports, p. 168, Mr. Justice Miller, in pronouncing the opinion of the Supreme Court of the United States said: "The
 "general doctrine that the person who procures the arrest of another by judicial process, by
 "instituting and conducting the proceedings, is liable to an action for false imprisonment,
 "where he acts without probable cause, is not to be controverted."

The authorities are numerous in both England and the United States sustaining the position that arrest *without* judicial warrant, process and legal warrant is also false imprisonment.

In the case of Kilbourn vs. Thompson, cited supra, which arose in the District of Columbia, in the United States, Kilbourn had been arrested on an order of the House of Representatives and was detained in the custody of the Sergeant-at-Arms of the House, Thompson, for a month and a half, about. It was not disputed that during his mild imprisonment he lived sumptuously at the expense of the government of the United States, and that he was permitted to suffer no special indignity; his alleged offense was contempt of the House of Representatives in refusing to answer at the bar of the House, certain questions propounded to him in an investigation conducted by a Committee of the House. Upon action brought against the Sergeant-at-Arms for false imprisonment, the jury first awarded the sum of \$100,000.00; this was set aside by the court as excessive; on a second trial an award of \$60,000.00 was made by the jury, which was also set aside on the same ground, and another trial had, resulting in a verdict of \$37,000.00, upon which the court allowed a judgment of \$20,000.00 to be entered in Kilbourn's favor on his abatement of \$17,500.00.

Sutherland in his work on Damages, Vol. III, page 731 says: "The injury of being illegally restrained of one's liberty is akin to that suffered from assault and battery. The
 "injured party in such cases, even though the act complained of be done without malice, is
 "entitled to recover the expenses reasonably incurred to procure discharge from the restraint,
 "for loss of time, interruption of his business and the suffering, bodily and mentally which
 "the wrong may have occasioned. The filthy condition of the jail in which the plaintiff was
 "confined, or any other discomforts or deprivation, may be shown to enhance compensatory
 "damages for mental anguish and discomfort. The plaintiff may recover for loss of work
 "not only up to the time of the suit, but also for the time lost after the suit, if by the arrest
 "he failed to get work he otherwise would have obtained."

The public arrest of Memorialist under the charge of horse-stealing has been shown in the testimony heretofore submitted, and was particularly damaging to Memorialist's character in the section where he was arrested, wherein no felony, not even murder, is held by the community in greater abhorrence. The indignity heaped upon him in being shackled with irons on his wrists and ankles for more than thirty-six hours; the deprivation of a bed during two nights at a public house which was the scene of his arrest; his intimidation by reason of the sentry standing over him continuously during this period with loaded carbine; the assurance of instant death in case he attempted to escape; his confinement in an out-house,