

GARROW, J.A.:— . . . The learned Chancellor so fully and satisfactorily dealt with the whole subject that, agreeing as I do with his conclusions, I have but little to add.

The distinction between the liability of a municipal corporation for the consequences of its act when acting as a deputy for the general government, or, according to the British theory, for the Crown, in matters relating to the general public good, and when in the smaller field of local affairs it represents only the interests of the inhabitants within its local jurisdiction, is clearly drawn in the cases to which the learned Chancellor refers, to which I should like to add an instructive case from the Court of Appeal for the State of Virginia, *City of Richmond v. Long's Administrators*, reported in 17 Grattan R. 375, where a similar conclusion was arrived at in a very well-reasoned judgment.

In the former class, in which, in my opinion, this case belongs, the rule *respondeat superior* does not apply.

Nor do I understand Mabee, J., who dissented, to have proceeded upon a different view of the law, but rather upon the view that the defendants are responsible for the conduct of Lee, as the janitor of the building in which was situated the lock-up in which the plaintiff was confined. What creates the difficulty—the only one, I think, in the case—is the circumstances that Lee, in addition to being janitor, was also a constable, and appears to have acted as the deputy of the chief constable, Mooney, who was the keeper of the lock-up. In the statement of claim Mooney and Lee are bracketed together, the one as chief constable, the other as assistant constable, and both as servants of the defendants. It was Lee who first told the plaintiff that Mooney had a warrant for his arrest; and Lee, according to the plaintiff's evidence, had a key of the part of the prison in which the plaintiff was confined, and "came down once or twice to see me, to see how I was getting on"—which was no part of his duty, or even, one would think, of his opportunities, if he was acting merely as janitor or caretaker. In these circumstances the plaintiff cannot complain if he is held to the language of his pleading, and Lee treated, as indeed he seems to have been, not merely as the janitor of the building, but as the deputy of Mooney, the keeper of the lock-up.

At the same time I am of the opinion that the result should not be otherwise even if Lee is to be regarded solely in his other character, as mere caretaker. The defendants did not cause the imprisonment. They had supplied a proper enough prison with appliances to heat it sufficiently. No one disputes that. And it was the duty of the keeper of the prison to see that these appliances were, if necessary, used. Mooney visited the prisoner as