

MEREDITH, J.]

[Brantford, April 14.

FLEMING v. WOODYATT, ET AL.

*Action against public officers—Arrest without personal possession of warrant—Assent to imprisonment in wrong place—Leave and license—Failure of action.*

This was an action for assault and false imprisonment against the chief constable and two inferior constables of the city of Brantford. There was an outstanding fine against the plaintiff for some minor violation of the conditions of his license as a tavern keeper in the city of Brantford. A writ of certiorari had been applied for, and the proceedings thereon were pending at the time of the grievances complained of. Knowledge of these circumstances was not, however, brought home to the defendants.

The plaintiff, advised by his solicitor of the supersession of the conviction by the writ, had not paid the fine and costs, and was, about 12.30 o'clock at night arrested by one of the defendants, without the personal possession of any warrant, though one had been issued, and delivered for execution soon after the making of the conviction. The constable did not lay hands upon the plaintiff, but simply told him that he had better come to the office, (the police station) and settle the matter, intimating that there was a warrant out for him. The constable was well known by the plaintiff to be such, and was on regular duty at the time of the encounter. Several minutes after their coming together, the constable, having then conveyed the plaintiff for nearly half a mile in the opposite direction from the common gaol, in which the warrant of commitment directed him to be confined, and towards the city lock-up, the plaintiff expressed his preference to be detained in the latter place over night, that he might more readily make known his strait to his friends, and procure assistance from them in paying the fine. The constable, on arriving at the station, made a note in writing that he had arrested the plaintiff. The next day, a request by the plaintiff to remain in the lock-up an hour or two longer for the purpose named was denied by the chief constable, who, despite his protest, caused him to be transferred to the gaol, where he was kept for some hours, being finally released only on payment of the fine and costs.

*Held*, that although the offence of the plaintiff, had he, in resisting the arrest, killed the constable, would be reduced to manslaughter, he could not maintain an action therefor.

*Held* also, (distinguishing *Barsham v. Bullock*, 10 A. & E., 23) that the doctrine of leave and license must be extended to the case, to prevent the recovery of damages for the detention in the lock-up; and moreover, that there was no grievance for the subsequent imprisonment in the common gaol, as the plaintiff should have been originally taken there.

*Semle*, the arrest was sufficiently made out without the memorandum in the police register.

*Heyd*, for the plaintiff.

*Hardy*, Q.C., for the defendants.