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Torts—False Arrest

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governing actions to foreclose mortgages or enforcing a liability created by statute cannot control in the presence of a specific declaration.[26]

The Court overruled the Appellate Division's[27] determination that the above mentioned statutes of limitation affect only the remedy, not the right, and therefore, can be applied without conflicting with the declaration of a perpetual lien. The Court refused to go along with the somewhat artificial "right-persists-remedy-gone" analysis which is generally used to uphold revival legislation[28] feeling that this analysis has no place where there is an attempt to bar the primary means of enforcement, specifically made perpetual, relegating the lienor to inferior remedies.

It is obvious that it was intended to make these liens perpetual and an attempt to construe the section involved as giving merely a right, leaving the remedy controlled by general statutes of limitation, involves artificial reasoning which has no place in our modern tax structures.

TORTS

False Arrest

The offense of speeding in a vehicle is labeled by statute a "traffic violation" rather than a crime.[1] The purpose of legislating such designation was "to establish a new type crime," without the stigma of criminality attached.[2] Yet, such offense, by statute, is subject to similar jurisdiction accorded traditional misdemeanors.[3]

In the case of *Squadrito v. Griebsch*,[4] plaintiff brought a false arrest action against defendant state trooper, who arrested him while speeding and took him to a justice of the peace without informing him as to why he was apprehended. (He was duly tried, found guilty and fined for speeding). The Court of Appeals *held* (4-3), his complaint should be dismissed. In so holding, the majority rea-

26. In *County of Erie vs Lowenstein*, 235 N. Y. 458, 139 N. E. 573 (1923), a statute similar to the one involved here was held to give the liens involved perpetual existence.

27. 1 A. D. 2d 976, 150 N. Y. S. 2d 914 (2d Dep't 1955).

28. *Campbell v. Holt*, 115 U. S. 620 (1885).

1. N. Y. VEHICLE AND TRAFFIC LAW §2 (29). Courts and judicial officers heretofore exercising jurisdiction over such acts and violations as misdemeanors or otherwise shall continue to exercise jurisdiction over traffic infractions as herein defined, and for such purpose such acts and violations shall be deemed misdemeanors and all provisions of law relating to misdemeanors . . . except as herein otherwise expressly provided shall apply to traffic infractions, except however, that no jury trial shall be allowed for traffic infractions.

2. PUBLIC PAPERS OF GOV. HERBERT LEHMAN, 345 (1934).

3. See note 1, *supra*.

4. 1 N. Y. 2d. 471, 136 N. E. 2d. 504 (1956).

soned that the plaintiff's offense fell within sections 177 and 180 of the New York Code of Criminal Procedure,[5] rendering him liable to arrest without a warrant and notice then as to his offense.

Judge Desmond, dissenting, argued that the policeman should have stated the reason for arrest to the plaintiff, since section 180 can apply only to ". . . grave crimes . . . or public disorders or breaches of the peace where there can be no uncertainty as to the cause." He deemed the plaintiff's offense clearly outside such category. Arguing alternatively, he said that though classed as crimes for jurisdiction purposes, traffic offenses are not susceptible to being termed crimes in this context. Accordingly, the defendant still was not protected by section 180 and was therefore required to tell the plaintiff the nature of his offense when he arrested him.

It would seem that logical statutory arguments can be framed for either side in this case. For this reason, policy considerations must be weighed. As conceded by the majority, it would have been reasonably simple for the officer to inform the plaintiff why he was taking him into custody. Indeed, the majority recommended this be done in such cases as a matter of administrative practise. The dissent pointed out the minimal burden such requirement would place on law officers, as contrasted to the "valuable and important right" one ordinarily has to be told why he is arrested. Further, speeding can hardly be classified a "public disorder" or "peace breach"—where one's very act apprises him of his offense—regardless of the danger it may cause. For this reason and the small effort involved in telling a traffic transgressor of his offense when arrested, the duty to inform should be made mandatory with police officers.

Testamentary Libel

The rule that allegedly libelous matter is defamatory per se, ". . . if it tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking people, and . . . deprive him of their friendly intercourse . . . .",[6] was applied by the Court of Appeals in *Brown v. DuFrey.*[7]

5. N. Y. CODE CRIM. PROC. §177. A peace officer may, without a warrant, arrest a person, (1.) *For a crime,* committed or attempted in his presence; N. Y. CODE CRIM. PROC. §180. [An officer] must state his authority and cause of arrest, except where party is committing felony or is pursued after escape. When arresting a person without a warrant the officer must inform him of the authority of the officer and the cause of arrest, *except when the person is arrested in the actual commission of a crime,* or is pursued immediately after escape. (emphasis added).

6. *Mencher v. Chesley,* 297 N. Y. 94, 75 N. E. 2d 257 (1947); *Nichols v. Item Publishers,* 309 N. Y. 596, 132 N. E. 2d 860 (1956), 6 BUFFALO L. REV. 72 (1956).

7. 1 N. Y. 2d 190, 134 N. E. 2d 469 (1956).