

conclusion even if this hotel were not in a district where there are many Maoris, but that fact is also irrelevant.

It is perhaps superfluous to add that nothing in this judgment is intended to suggest that the particular offence of after-hours trading is to be dealt with differently from other offences against the Act. The Court, as such, has no views on the hours of trading, but must take the law as it stands, and concerns itself only with its proper enforcement.

The appeal is dismissed and the sentence confirmed; and the appellant is ordered to pay the sum of £12 12s. for costs, such costs to be paid to the Registrar of this Court within ten days and to be by him paid over to the respondent.

Solicitors for appellant: *Bell and Johnson*, (Hamilton); Solicitor for respondent: *K. L. Sandford*, (Hamilton).

(*New Zealand Law Reports*, 1951, page 801)

SUPREME COURT, PALMERSTON NORTH. JUNE 7, 29, 1951.  
HAY, J.

### ELDER v. EVANS

*Police Offences—Wilful Obstruction—Physical Obstruction not Essential—Mere Non-disclosure of Name and Address not Wilful Obstruction—"Wilful Obstruction"—Police Offences Act, 1927, s. 77.*

*Police—False Imprisonment—Suspected Vagrant Refusing to Give Name and Address to Constable—Constable Arresting Him on Charge of Obstruction—No Reasonable Grounds for Arrest on that Ground—Constable Liable in Damages for False Imprisonment.*

It is a fundamental principle in English law that an accused person cannot be interrogated or at least cannot be forced to answer questions, under a legal penalty if he refuses. That principle is absolute, and does not admit of an exception, even for a demand of name and address, unless a statute has expressly created an exception.

At common law, if a policeman arrests without warrant on reasonable suspicion of crime of a sort that does not require a warrant, he must, in ordinary circumstances, inform the person arrested of the true ground of arrest—that is to say, a citizen is entitled to know on what charge, or on suspicion of what crime, he is seized. The rule applies with equal force where the power to arrest without warrant rests upon an express statutory provision.

*Christie v. Leachinsky*, [1947] 1 All E.R. 567, followed.

Mere non-disclosure by a person of his name and address to a constable who is making the inquiry does not amount to "wilful obstruction" within the meaning of that term as used in s. 77 of the Police Offences Act, 1927.

*Halton v. Trechby*, [1897] 2 Q.B. 452, applied.

*Betts v. Stevens* [1910] 1 K.B. 1, and *Mathews v. Dwan*, [1949] N.Z.L.R. 1037, referred to.

Thus, where a person whom a constable suspected of being a vagrant refused to give his name and address, and the constable, acting honestly, arrested him on a charge of wilful obstruction under s. 77 of the Police Offences Act, 1927, there being a complete absence of reasonable grounds for arresting him on that charge, the constable was liable in damages to that person for false imprisonment.

An appeal against the quantum of damages awarded by the learned Magistrate, who assessed such damages at £5, was dismissed, as, in the circumstances of the present case, the award was a proper one.

APPEAL against the quantum of damages awarded to the appellant by Mr. Herd, S.M., in his judgment delivered at Palmerston North on March 21, 1951, in an action for false imprisonment.

After the filing of the motion on appeal, the respondent gave notice under s. 74 of the Magistrates' Courts Act, 1947, of his intention, upon the hearing of the appeal, to contend that the whole of the decision of the learned Magistrate should be reversed, or, alternatively, that the damages should be reduced. There being ample material before the Court in the form of complete notes of evidence and the exhibits produced at the original hearing, as well as the learned Magistrate's judgment, it was deemed unnecessary to hear the evidence afresh.

The material facts were that on the night of November 7, 1950, the appellant was encamped with his bicycle on the roadside outside the City of Palmerston North. He had no overhead tent, but used an orderly arrangement of sacks and newspapers for sleeping-purposes. The respondent constable, with another policeman on patrol duty on the outskirts of the city, noticed him there at 1.40 a.m., and commenced to interrogate him as to his reasons for sleeping out, his name, address, and occupation, and his having slept nearby the previous night. He told the police that he frequently stopped at hotels about Palmerston North, that his address was care of the Palmerston North Post Office, and that he often camped out at night. In his own evidence, the appellant was emphatic that he also gave his name, "P. A. Elder," and that, although declining to give his Christian names or his means of livelihood, he was not otherwise obstructive, merely saying to the policemen that he could not assist them further. The respondent was in charge of the patrol, and both he and his fellow-constable swore positively that appellant did not give his name, although repeatedly asked to do so. The learned Magistrate accepted their evidence on that point, and a careful examination of the notes of evidence (which include a voluminous cross-examination by the appellant) lead the learned Judge to the conclusion that he could not well have done otherwise. Their evidence on the point was, in the opinion of the learned Judge, corroborated by the evidence of the constable who was on duty at the police-station when the appellant was brought in by the other two constables. He testified that the appellant's manner was not co-operative, and that he refused to give his name and said that it was up to the police to find out. This constable said further that, when he discovered a Post Office Savings-bank book among the appellant's possessions and asked whether it was his book, the appellant's only answer was to repeat that it was up to him to find out.

When the appellant failed to give his name in the first instance, he was informed by the respondent that, if he persisted in his refusal, he would be arrested for obstructing the police in the execution of their duty. After further efforts to obtain the name, which were met with either no reply or an intimation that he could not assist them, he was arrested and taken to the police-station, where he was searched, examined for identification marks, and finger-printed. He protested that the police action was illegal, but offered no physical resistance. He was informed that the charge against him was one of obstructing the police, and there was entered in the Police-station Register a record to the effect that he was so charged under s. 77 of the Police Offences Act, 1927. When being placed in the cell, appellant said, without being asked, that his name was Elder. Later, on the same morning, the appellant was charged before the Magistrate in Court with wilfully obstructing under the section. He pleaded not guilty, and the charge was dismissed.

Appellant subsequently, after giving the notice required by s. 39 (1) of the Police Force Act, 1947, brought his action against the respondent, claiming the sum of £100 by way of damages.

*Meltzer*, for the respondent.

*On the cross-appeal:* A. The arrest of the appellant was a lawful arrest. The respondent was a duly sworn police officer, with certain general and special powers—namely, (i) his general duties and powers are under ss. 7 and 9 of the Police Force Act, 1947, and Regs. 18 and 93 (36) of the Police Force Regulations, 1950; and (ii) his special duties and powers are under the Police Offences Act, 1927 (“An Act . . . in restraint of vagrancy”) ss. 50, 60, 73, 78.

In pursuance of his duties, the respondent found the appellant in such circumstances as may have given him reasonable cause to believe that he was a person who might have no lawful means, or insufficient lawful means of support: s. 50. In pursuance of his duty under s. 78, and with a view to ascertaining if there was “reasonable cause to believe,” the respondent questioned the appellant.

If there was a duty on respondent to investigate, there should be a corresponding duty on appellant to answer such questions as would have enabled the constable to decide the question of lawful means of support. Otherwise, the constable cannot decide the question of “reasonable cause” under s. 50. By his conduct in being found in the particular circumstances, and by failing to answer the questions, the appellant offended against s. 73 of the Police Offences Act, 1927. As his name and address and mode of livelihood could not be ascertained, the respondent was justified in taking him into custody without warrant.

Refusal to give name and address can be made an offence by statute: *cf.* the Transport Act, 1949, s. 48, and the Licensing Act, 1908, s. 194. The appellant offended under s. 73 of the Police Offences

Act, 1927, by failing to give his name and address. The Vagrancy Act, 1824 (Eng.), is “the most ‘‘unconstitutional law yet lingering on the statute book’’: *Kenny’s Outlines of Criminal Law*, 15th Ed. 380, quoting Sergeant Cox’s *Principles of Punishment*, 212. Wilful obstruction does not necessarily imply assault, and it extends to acts intended to interfere with constables in the execution of their duty: *Archbold’s Criminal Pleading, Evidence, and Practice*, 32nd Ed. 1003, *Betts v. Stevens*, [1910] 1 K.B. 1, *Bastable v. Little*, [1907] 1 K.B. 59, and *R. v. McDonald* (1911) 16 B.C.R. 191. *Turner v. Patterson*, (1908) 27 N.Z.L.R. 207, is distinguishable.

Actual physical interference with an officer in the discharge of his duty is not necessary to constitute obstruction: *Duncan v. Dowding*, [1897] 1 Q.B. 575; but *Hammerley v. Scandrett*, [1921] N.Z.L.R. 455, is to be distinguished. In *Reg. v. Spencer* (1863) 3 F. & F. 857; 176 E.R. 391, it was held that the police had no right to stop a cart on the highway and claim to search unless they had good cause to suspect an offence. In the present case, the respondent had good cause to suspect vagrancy: *Police v. Carter*, (1939) 1 M.C.D. 132. Any conduct by any person that shows an intention to prevent or delay a Police officer acting in the execution of a particular duty is obstruction.

As to the taking of name and address, see *Dumbell v. Roberts*, [1944] 1 All E.R. 326, 329; and see also *Police v. Maddick*, (1939) 1 M.C.D. 359. It is the duty of a police officer *ex virtute officii* to take name and address, for the purpose of detecting and preventing the commission of breaches of the law.

B. The appellant’s conduct amounted to obstruction. Even if it did not amount to obstruction, nevertheless, the respondent had a reasonable and honest belief that the circumstances justified the arrest, and that is a defence to an action for false imprisonment: *Winfield on the Law of Torts*, 5th Ed. 222, 224, and *Broughton v. Jackson*, (1852) 18 Q.B. 378, 385; 118 E.R. 141, 144. A constable is free from liability for false imprisonment if, though the person arrested has not committed the offence, the constable honestly and on reasonable grounds believes he has committed it: *Trebeck v. Croudace*, [1918] 1 K.B. 158, and *Isaacs v. Keech*, [1925] 2 K.B. 354; see also *Bullen and Leake’s Precedents of Pleading*, 10th Ed. 454. The question of reasonable suspicion is a matter of law, and should not be left to the jury: *Hill v. Yates*, (1818) 8 Taunt. 182; 129 E.R. 353.

The words “who offends against this Act” in s. 73 of the Police Offences Act, 1927, include a person who is suspected on reasonable grounds of having committed the offence, and, therefore, a person so suspected, though in fact not guilty, may be detained: *Barnard v. Gorman*, [1941] A.C. 378; [1941] 3 All E.R. 45. The term “offender” also means “a suspected offender.” *Ledwith v. Roberts*, [1937] 1 K.B. 232; [1936] 3 All E.R. 570, is distinguishable, on the ground that it was there necessary to show that the person arrested belonged to a certain category before he was liable to arrest. In the present

case, under s. 73, it is necessary to establish only that "he has offended in any manner against the 'Act.'" *Dumbell v. Roberts* [1944] 1 All E.R. 326, is distinguished, because there the arresting constable failed to make inquiries as to the name and address of the suspected offender.

C. The arrest was justified under s. 57 (2) of the Crimes Act, 1908.

*On the appeal:* As to damages: The question on appeal is not primarily what the amount of damage is: it is whether the Magistrate's finding should be interfered with: *Dumbell v. Roberts*, [1944] 1 All E.R. 326, 330, *Diamond v. Minter*, [1941] 1 All E.R. 390, 403, and *Jones v. Watney, Combe, Reid, and Co., Ltd.*, (1912) 28 T.L.R. 399. If the injury received is aggravated by imprudent conduct on the part of a plaintiff, such aggravation will not be deemed to be a direct consequence of his injury. Where a plaintiff gives no evidence of his loss, the damages generally are, but need not necessarily be, nominal: *Tims v. John Lewis and Co., Ltd.*, [1951] 1 All E.R. 814.

The principles laid down in *Christie v. Leachinsky*, [1947] 1 All E.R. 567, were complied with. The appellant was informed at the time of his arrest of the true grounds for his arrest. The learned Magistrate accepted the evidence that he was told that he was being arrested for obstruction.

The appellant appeared in person. *On the cross-appeal:* It is not obstruction if the person questioned does not answer: *Leachinsky v. Christie*, [1945] 2 All E.R. 395, 406. "Reasonable and 'probable cause'" means an honest belief in the guilt of the person arrested, based on full conviction: *Leachinsky v. Christie*, [1945] 2 All E.R. 395, 404.

*On the appeal:* General damages are claimed for the indignity of a wrongful arrest: *Salmond on Torts*, 10th Ed. 333, and *1 Jenks's Digest of English Civil Law*, 410. Refers to the taking of finger-prints.

*Cur. adv. vult.*

HAY, J. [after stating the facts, as above]: In an elaborate and able argument on behalf of the respondent, it was submitted, first, that the appellant's conduct on the occasion of the arrest did amount in law to wilful obstruction, and, secondly, that, if it did not, the respondent had a reasonable and honest belief that the circumstances justified the arrest, thus affording a good defence to the action for false imprisonment. It was submitted that in the execution of his duties the respondent found the appellant in such circumstances as gave the respondent reasonable cause to believe that the appellant was a person having either no lawful, or insufficient, means of support, and consequently threw upon the respondent the duty of investigating the circumstances. I think the evidence warrants the last-named submission, even though it subsequently transpired that the appellant was a respectable citizen. He was found in the early hours of the morning sleeping on the side of a road on the outskirts of the city, covered by sacks and newspapers, and without many of the

items of gear associated with the normal camper. The respondent said in his evidence that, having suspected that the appellant had committed the offence of having no lawful means of support, his suspicion was strengthened by the nature of the appellant's response to his inquiries. When the appellant was asked what he was doing there, he said he was camping out, and that he often did so. When asked where he came from, he was vague and evasive; and, when asked again, he said Palmerston North. He was then asked for his name and address, but refused the name and said his address was care of the post office. Further attempts to get the name met with a refusal, and it was then that he was warned that his refusal of particulars amounted to obstruction, because the manner in which he was found on the roadway and the appearance of his sleeping-gear gave grounds to suspect his reasons for being there. The warning was given three times before the arrest was made, nor did the respondent act precipitately, as is evident from the fact that the interrogation extended over a period of fifteen or twenty minutes.

The weakness of the respondent's legal position is that, unfortunately for himself, he chose the wrong ground for the arrest. His original suspicion that the appellant was a person having no lawful means of support was well founded, and, when it was strengthened by the appellant's evasiveness, the obvious course of procedure for him to adopt when the appellant refused to give his name was to arrest him on the grounds of the original suspicion. The respondent should have realized that the refusal of the name was in itself the best confirmation of his suspicions, and would have been a factor going far to justify the arrest. Instead of doing so, he elected to arrest on the grounds of wilful obstruction, which deprived him of the right to plead in justification the circumstances which gave rise to the suspicion that the appellant was without lawful or sufficient means of support. It is well established that, if a policeman arrests without warrant on reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself, or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge, or on suspicion of what crime, he is seized. The foregoing is a statement of the first of the propositions enumerated by *Viscount Simon* in his judgment in *Christie v. Leachinsky*, [1947] 1 All E.R. 567, 572. The judgment goes on, *ibid.*, 573, to explain that general rule by stating that, if the charge on suspicion of which the man is arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding, with the result that further inquiries may save him from the consequences of false accusation. It seems to me that the rule applies with equal force where the power to arrest without warrant rests upon an express statutory provision.

Can it then be said that, in the circumstances, the action of the appellant in refusing his name constituted wilful obstruction within the meaning of s. 77 of the Police Offences Act, 1927? In certain cases, the refusal of a name and address is made a substantive offence, as, for example, under s. 48 of the Transport Act, 1949, and s. 194 of the Licensing Act, 1908. It was argued on behalf of the respondent that, notwithstanding the absence of similar provision in the Police Offences Act, 1927, it is nevertheless implicit in s. 73 of that Act, which provides (*inter alia*) for the arrest without warrant of any person who, within view of a constable, offends in any manner against the Act, and whose name and residence are unknown to such constable and cannot be ascertained by him. The argument was that in the present case the respondent believed the appellant to have offended against the Act because the appellant obstructed him in carrying out his duty of ascertaining whether he should arrest him as a person who he had reasonable cause to believe had no means of support, or insufficient means of support. There was, in the circumstances, it was submitted, only one way to establish reasonable cause—namely, by questioning the appellant. In other words, there was a special duty to investigate, which could be done in one way only, and the refusal of the name was, therefore, obstruction. It was also contended that wilful obstruction for the purposes of s. 77 need not be physical obstruction, and this, indeed, seems clear from cases such as *Bells v. Stevens* [1910] 1 K.B. 1, and *Mathews v. Dwan* [1949] N.Z.L.R. 1037. It would, however, be going far to hold that the mere nondisclosure by a person of his name and address amounts to wilful obstruction, even where the person making the inquiry is a constable engaged in the execution of his duty. As stated by Professor Glanville L. Williams in his informative article on the subject in (1950) 66 *Law Quarterly Review*, 465, the general principle of the common law is that neither a private person nor a constable has any effective power to demand the name and address of a person on the ground that he had committed an offence or is under a civil liability. He illustrates the principle by citing *Halton v. Treeby* [1897] 2 Q.B. 452, where a constable saw a person riding a bicycle at night without a light, which was a petty offence. He called on the rider to stop to ascertain his name and address, and, on the rider's failing to do so, caught hold of the handle-bar of the bicycle, whereby the rider was thrown to the ground. It was found as a fact that the constable did not know the name and address of the rider, and could not have ascertained his name and address in any other way than by stopping him, and that in so stopping him he used no more force than was necessary. Notwithstanding these findings, the constable was convicted of assault, having no power to act as he did. The learned writer goes on to point out that, whenever the police or private persons have power to arrest upon reasonable suspicion of crime, they naturally

have an effective power to demand name and address. for, if no answer is given, or if the answer is unsatisfactory, this will help to furnish them with reasonable grounds for arresting. He adds that the constable in *Halton v. Treeby*, [1897] 2 Q.B. 452, was not sharp enough, for, when the rider of the unlighted bicycle failed to stop in response to his demand, he should have suspected him of having stolen the bicycle and arrested him (as he had power to do) upon that charge. The article goes on to discuss the question whether the power of the police to demand name and address is in effect generalized by the statutes creating the offence of obstructing the police in the execution of their duty, so that refusal to comply with the demand amounts to an obstruction. In support of his submission that such refusal does not constitute an obstruction, the learned writer relies on two grounds—first, that, if it were an obstruction, all the statutes making it an offence to refuse to give name and address in specific situations would have been unnecessary, and, secondly, that it is a fundamental principle in English law that an accused person cannot be interrogated, or at least cannot be forced to answer questions, under a legal penalty if he refuses. That principle, he says, is absolute, and does not admit of exception even for a demand of name and address, unless a statute has expressly created an exception.

The principle to which I have just referred was the one relied upon by the learned Magistrate in deciding that the arrest in the present case was unlawful, and I agree with his decision. The question, then, is whether the respondent in making the arrest acted honestly and upon reasonable grounds, so as to give him a good defence to an action: see *Bullen and Leake's Precedents of Pleadings*, 10th Ed. 454. That the respondent acted honestly there can be no doubt, but there was a complete absence of reasonable grounds for arresting on a charge of wilful obstruction. All the grounds that existed were relevant to a charge that was not made, and were relevant to that alone. I therefore find myself in complete agreement with the learned Magistrate in the view he took of the case.

I have given careful consideration to the question of damages, and, in particular, to the submissions of the appellant in relation thereto, with the result that I am not prepared to interfere with the assessment of £5 made by the learned Magistrate. Here again, in my opinion, the Magistrate rightly directed himself by taking into account the facts that the respondent had cause to believe that the power to arrest the appellant as a vagrant had arisen and that the appellant's lack of co-operation on the occasion of his arrest contributed largely to his being taken into custody. I agree with the Magistrate's view that the circumstances in which the appellant was found would generally, in the case of a respectable camper, have led to a ready supply of information, from which the police could reach the conclusion that he was not a person against whom the vagrancy provisions of the

Police Offences Act, 1927, are aimed. It was unfortunate for the appellant that he found his liberty interfered with in such an unpleasant manner, but, in my opinion, he was the author of his own misfortune. He appears to have acted under the belief that he was so well and favourably known in Palmerston North as to make it unnecessary for him to inform the police of what in his view they must already be well aware. What he seems to have overlooked is that his habit of life, admittedly respectable, was unusual to the extent of bordering on the eccentric, and, as such, was calculated to attract the notice of the police. Indeed, his own evidence gave ample confirmation of that fact, in the illustrations he volunteered of contacts with the police in various places. The case is certainly not one calling for more than a small award of damages.

For the reasons given, both the appeal and the cross-appeal will be dismissed, but, in the circumstances, without costs to either side.

*Appeal and cross-appeal dismissed.*

Solicitors for the respondent: *Burton and Meltzer* (Wellington).