Murray v Ministry of Defence [1988] 2 All ER 521

Torts 2 (Kenyatta University)

(if held to exist). In the absence of any such finding, it would be quite wrong for your Lordships to consider what must be, in the circumstances, an academic question. In truth, all the points which counsel for the charterers sought to raise could only sensibly be considered as a whole, together with the question whether the *Bremer Vulkan* case was rightly decided. This is as true of the issue of the implied term as it is of any other of the issues which he sought to raise, for it is difficult to see how any such term could be implied consistently with the existence of an implied mutual obligation on the parties to co-operate in proceeding with the reference to arbitration, as was held to exist by the majority of your Lordships' House in the *Bremer Vulkan* case.

It is for these reasons, as I understand it, that your Lordships declined to grant to the charterers leave to pursue any of the new points which counsel for the charterers sought to raise.

I would therefore dismiss the appeal. I wish however to add a footnote. There has been clearly expressed, by all members of the Court of Appeal in the present case, grave concern about the law as it now stands with regard to arbitrations which have been allowed to go to sleep for many years; and it is plain that, in so expressing themselves, they were expressing a concern felt generally in the City of London. It may, however, be that the problem could be dealt with most expeditiously, and most clearly, by legislation conferring a power to dismiss claims in arbitrations for want of prosecution, similar to the power which now exists to dismiss similar actions for want of prosecution in the courts. If that is right, then, in the interests of all concerned, the sooner the matter is brought before the legislature for consideration, the better.

Appeal dismissed.

Solicitors: *Zaiwalla & Co* (for the charterers); *Holman Fenwick & Willan* (for the owners).

Mary Rose Plummer Barrister.

Murray v Ministry of Defence

HOUSE OF LORDS
LORD KEITH OF KINKEL, LORD TEMPLEMAN, LORD GRIFFITHS, LORD OLIVER OF AYLMERTON AND LORD JAUNCEY OF TULLICHETTLE
20, 21 APRIL, 25 MAY 1988

False imprisonment – Arrest without warrant – Northern Ireland – Arrest by armed forces – Arrest of person suspected of involvment with IRA – Arrested person under restraint in private house for 30 minutes before formal arrest made – Whether arrested person unlawfully imprisoned during that period – Northern Ireland (Emergency Provisions) Act 1973, s 14.

The plaintiff was suspected of having committed offences involving the collection of money in Northern Ireland for the IRA, a prohibited organisation. Acting on orders, D and five other soldiers, who were armed, went to the plaintiff's house at 7 am one morning to arrest the plaintiff. When the door was opened by the plaintiff the soldiers, in accordance with their usual procedure, entered the house and D asked the plaintiff who she was and ascertained her identity. The soldiers then assembled all the other occupants of the house in one room and searched the house. During that time D remained with the plaintiff. At 7.30 am D formally arrested the plaintiff and when asked by the plaintiff D stated that the arrest was being made under s 14[a] of the Northern Ireland (Emergency Provisions) Act 1978, which provided for members of the armed

a Section 14 is set out at p 523 *f* to *h*, post

forces on duty to arrest without a warrant and detain for up to four hours a person suspected of committing an offence. The plaintiff was then taken to an army screening centre where she was interviewed but refused to answer any questions. She was released at 9.45 am. The plaintiff brought an action against the Ministry of Defence claiming damages for false imprisonment, contending (i) that she had been unlawfully detained between 7 am and 7.30 am because until she was told she was being arrested she was not under arrest and (ii) that the failure of the soldiers to tell her that she was being arrested until they were about to leave rendered the arrest unlawful. The trial judge dismissed her claim and his decision was affirmed on appeal by the Court of Appeal in Northern Ireland. The plaintiff appealed to the House of Lords.

Held – Where a person was detained or restrained by a police officer and knew that he was being detained or restrained, that amounted to an arrest even though no formal words of arrest were spoken by the officer. Since the plaintiff had been under restraint from the moment she was identified and must have realised that she was under restraint, she had been under arrest from that moment notwithstanding that D did not make a formal arrest until half an hour later. Furthermore, although in ordinary circumstances the police should tell a person the reason for his arrest at the time the arrest was made, the circumstances of the plaintiff's arrest were such that it was reasonable for D to delay speaking the words of arrest until the plaintiff and the soldiers were leaving the house and the failure to make a formal arrest did not render the plaintiff's arrest unlawful. The appeal would therefore be dismissed (see p 523 *b c*, p 526 *f* to *j*, p 527 *b c g* to p 528 *b* and p 530 *g h*, post).

Dicta of Lord Devlin in *Shaaban bin Hussien v Chong Fook Kam* [1969] 3 All ER at 1629, of Viscount Dilhorne in *Spicer v Holt* [1976] 3 All ER at 79 and of Lord Diplock in *Holgate-Mohammed v Duke* [1984] 1 All ER at 1056 applied.

Per curiam. False imprisonment is actionable without proof of special damage and thus it is not necessary for a person unlawfully detained to prove that he knew that he was being detained or was harmed by his detention (see p 523 *b c*, p 528 *b c*, p 529 *g h* and p 530 *g h*, post); dictum of Atkin LJ in *Meering v Grahame-White Aviation Co Ltd* (1919) 122 LT at 53–54 approved; *Herring v Boyle* (1834) 1 Cr M & R 377 doubted.

Notes

For arrest by armed forces, see 11 Halsbury's Laws (4th edn) para 114.

For false imprisonment, see ibid para 1211 and 45 ibid paras 1325–1338, and for cases on the subject, see 46 Digest (Reissue) 307–311, 2676–2707.

For the Northern Ireland (Emergency Provisions) Act 1978, s 14, see 31 Halsbury's Statutes (4th edn) 438.

Cases referred to in opinions

Christie v Leachinsky [1947] 1 All ER 567, [1947] AC 573, HL.
Herring v Boyle (1834) 1 Cr M & R 377, 149 ER 1126.
Holgate-Mohammed v Duke [1984] 1 All ER 1054, [1984] AC 437, [1984] 2 WLR 660, HL.
Meering v Grahame-White Aviation Co Ltd (1919) 122 LT 44, CA.
Shaaban bin Hussien v Chong Fook Kam [1969] 3 All ER 1626, [1970] AC 942, [1970] 2 WLR 441, PC.
Spicer v Holt [1976] 3 All ER 71, [1977] AC 987, [1976] 3 WLR 398, HL.

Appeal

The plaintiff, Margaret Murray, appealed with leave of the Court of Appeal in Northern Ireland granted on 3 March 1987 against the decision of that court (Gibson and Kelly LJJ) on 20 February 1987 dismissing her appeal against the judgment of Murray J sitting in the High Court of Justice in Northern Ireland, without a jury, on 25 October 1985 whereby he dismissed her claim against the defendant, the Ministry of Defence, for false imprisonment by the army. The facts are set out in the opinion of Lord Griffiths.

Reginald Weir QC and *Seamus Treacy* (both of the Northern Ireland Bar) for the plaintiff.

Anthony Campbell QC and *Patrick Coghlin QC* (both of the Northern Ireland Bar) for the Ministry of Defence.

Their Lordships took time for consideration.

25 May. The following opinions were delivered.

LORD KEITH OF KINKEL. My Lords, I have had the opportunity of considering in draft the speech to be delivered by my noble and learned friend Lord Griffiths. I agree with it, and for the reasons he gives would dismiss the appeal.

LORD TEMPLEMAN. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Griffiths and, for the reasons he gives, I too would dismiss the appeal.

LORD GRIFFITHS. My Lords, the plaintiff, Mrs Margaret Murray, a resident of Andersonstown, Belfast, sued the Ministry of Defence for false imprisonment by the army. Her claim was dismissed by Murray J and the Court of Appeal in Northern Ireland, and she now appeals to your Lordships' House by leave of the Court of Appeal. She also appealed to the Court of Appeal from the refusal of Murray J to award her damages for trespass to the person arising out of a 'pat search' of her clothing whilst she was in custody. The Court of Appeal allowed her appeal in this respect and awarded her £250 damages. There is no appeal against this finding of the Court of Appeal and it would therefore be inappropriate to express any view on the correctness or otherwise of that part of the judgment of the Court of Appeal and I refer to it only as an incident in the history of these proceedings.

Although I shall have to deal with the facts of the plaintiff's arrest and detention in some detail, the appeal raises the correctness of the procedures laid down and followed by the army in Northern Ireland when they purport to exercise the power of arrest, detention and search, contained in s 14 of the Northern Ireland (Emergency Provisions) Act 1978, which provides:

> '(1) A member of Her Majesty's forces on duty may arrest without warrant, and detain for not more than four hours, a person whom he suspects of committing, having committed or being about to commit any offence.
>
> (2) A person effecting an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of Her Majesty's forces.
>
> (3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises or other place—(*a*) where that person is, or (*b*) if that person is suspected of being a terrorist or having committed an offence involving the use or possession of an explosive, explosive substance or firearm, where that person is suspected of being.'

I turn now to the facts. On 22 June 1982 two of the plaintiff's brothers, Colum and Eamonn Mayne, were convicted of arms offences in the United States of America connected with the purchase of weapons for the IRA, and they received sentences of three years' and two years' imprisonment respectively.

At about 6.30 am on 26 July 1982 Lance Cpl Davies, a member of the Women's Royal Army Corps, serving with 181 Provost Regiment, attended an army briefing at which she was told that the plaintiff was suspected of involvement in the collection of money for purchase of arms for the IRA in the United States, an offence under s 21 of the 1978 Act and s 10 of the Prevention of Terrorism (Temporary Provisions) Act 1976. Cpl Davies was instructed to go with a number of armed soldiers to the plaintiff's house, 50 Stewartson Park, Andersonstown, and to arrest the plaintiff and bring her to the army screening centre at Springfield Road.

Acting on these orders Cpl Davies, who was unarmed, and five armed soldiers arrived

outside the plaintiff's house in a Land Rover at 7 am. The driver stayed with the Land Rover in front of the house, one of the soldiers went round to the back of the house, and the remaining three soldiers and Cpl Davies went to the front door and rang the bell. The door was opened by the plaintiff who was only partly dressed. The three armed soldiers and Cpl Davies immediately entered the house. Cpl Davies asked the plaintiff if she was Mrs Margaret Murray and she replied Yes.

Cpl Davies asked the plaintiff to get dressed and she and the soldiers then followed the procedure in which they had been instructed when effecting an arrest in a private house. They entered every room in the house and asked all the occupants to assemble in one room. Cpl Davies went upstairs and told the children, three girls and a boy, to get up and go down to the living room, and the plaintiff's husband was also asked to go to the living room. Cpl Davies stayed with the plaintiff upstairs whilst she was getting dressed. According to the plaintiff, she asked at this stage if she was being arrested, and received no answer. Cpl Davies was not cross-examined about this, but it seems likely that if the plaintiff had asked the question Cpl Davies would not have replied, as her instructions were to make the arrest just before they left the house.

At some stage, Cpl Davies remembers the plaintiff taking two tablets which she said she needed because she was diabetic. One of the soldiers downstairs stood in the hallway near the front door, and the other two looked into the other rooms on the ground floor and took notes as to their contents including the pattern of the wallpaper. There was, however, no evidence and no suggestion that they carried out any search of the contents of the house.

After the plaintiff had dressed and come downstairs, Cpl Davies called one of the soldiers to be a witness, and said to the plaintiff: 'As a member of Her Majesty's forces I arrest you.' The plaintiff, who is not unversed in these matters, asked: 'Under what section?' Cpl Davies did not reply; the plaintiff repeated the question, and Cpl Davies said: 'Section 14.' Cpl Davies, the plaintiff and the soldiers then left the house and were all driven in the Land Rover to Springfield Road. It was not suggested on behalf of the plaintiff that Cpl Davies or any of the soldiers behaved in a bullying or aggressive manner towards her or any member of her household or that there was any undue delay before the plaintiff left the house with them after she had dressed.

After the Land Rover had been parked in the yard at Springfield Road, the plaintiff was asked to wait in the back of the Land Rover while Cpl Davies reported their arrival. She was then asked by Cpl Davies to get out of the Land Rover and stand facing the wall of the yard. The plaintiff refused to face the wall and she and Cpl Davies stood in the yard for a few minutes until Sgt Brothers came from an army building known as the screening centre and asked the plaintiff her name, address and date of birth. The plaintiff only gave her name. She was then escorted into the building and asked to sit for a short time in a small cubicle. At 8.05 am she was taken before Sgt Brothers who attempted to obtain answers from her that would enable him to complete a form entitled 'Screening Pro Forma—Part One (To be completed by Reception Controller)'. This short form records personal details, arrest details, a screening procedure record and appearance. The only information required from the plaintiff related to her personal details. She refused to answer any questions save to give her name and the entire interview took only four minutes, ending at 8.09 am when she was taken by Cpl Davies to the medical orderly. She was asked by the medical orderly if she suffered from any illness but, again, the plaintiff refused to answer any questions.

At 8.20 am the plaintiff was taken to an interview room and questioned by a soldier in civilian clothes in the presence of Cpl Davies. The plaintiff maintained a totally uncooperative attitude, refusing to answer any of the interviewer's questions. On three occasions the interview was interrupted when the plaintiff asked to go to the lavatory, to which she was escorted by Cpl Davies. The interview ended at 9.35 am. The plaintiff was taken once more to the medical orderly and asked if she had any complaints about her treatment which she refused to answer. She declined the offer of transport to return her to her house and was escorted to the gates of the centre by Cpl Davies and released at 9.45 am.

At the trial before Murray J, the main thrust of her complaint was that the whole operation carried out by the army was unlawful from beginning to end. It was submitted that the plaintiff had been arrested and questioned not because of any suspicion that she had been involved in collecting money to buy arms for the IRA but as part of an intelligence-gathering operation carried out by the army in which innocent persons, unsuspected of any offence, were brought in for questioning to gather information that might be useful against others suspected of IRA activities. This primary attack failed because the judge held that he was satisfied that Cpl Davies was an entirely honest witness and that after her briefing she did suspect the plaintiff of the offences involved in collecting money for the IRA, and thus had the limited power of arrest and detention conferred on members of the armed forces by s 14 of the 1978 Act. No appeal is pursued before your Lordships in respect of this finding of the judge.

However, accepting that the army had grounds for arresting and detaining the plaintiff, it is submitted that the procedures they adopted were unlawful in two respects. First, it is said that the plaintiff should have been told that she was under arrest as soon as her identity was established when she opened the door at 7.00 am and the failure to tell her that she was under arrest until just before they left the house at 7.30 am meant that she was unlawfully detained and thus unlawfully imprisoned for half an hour. Second, it is said that she was detained at the centre for an unjustifiably long period before she was released and thus unlawfully imprisoned during the latter period of her detention at the centre.

The Court of Appeal rejected both these complaints of unlawful imprisonment. They gave the following reasons for rejecting the complaint of false imprisonment from 7 to 7.30 am:

> 'Whether the plaintiff has any complaint in law on account of her treatment during the first half-hour before the formal words of arrest were spoken may depend on whether in law she was already under arrest, or, if not, whether she was being falsely imprisoned. During that period the evidence was that had the plaintiff attempted to leave the house she would have been stopped. Had she been denied the right to leave, that refusal would have constituted an imprisonment in law. But it also appears from the terms of her inquiry that she did not appreciate that she would not have been free to leave the house. I am satisfied that because of this lack of any indication by any member of the army that the plaintiff was being arrested or any appreciation on her part of what would have been the reaction had she attempted to leave, she was not during that period under arrest or falsely imprisoned. Knowledge of the fact of restraint by the suspect is an essential element of an arrest. There was some indication to the contrary in *Meering v Grahame-White Aviation Co. Ltd* (1919) 122 LT 44. In that case the Court of Appeal divided on the question. Atkin LJ expressly stated that awareness of the fact of detention was unnecessary. Warrington LJ, who concurred in the result, does not appear to have considered the question whether the knowledge was necessary and the report does not indicate whether this was a matter which was argued. The third member of the court, viz Duke LJ, was of the opinion that a person could not claim to have been falsely imprisoned without knowledge of the fact of the denial of liberty. The opinion of Atkin LJ has been subject to considerable criticism. In the first place it is plainly inconsistent with the decision of the Court of Exchequer in *Herring v Boyle* (1834) 1 Cr M & R 377, 149 ER 1126, a decision of a court of equal authority which apparently was not cited to the court. Academic criticism of the opinion of Atkin LJ may be found, for example, in Smith and Hogan *Criminal Law* (5th edn, 1983) pp 385–386, *Street on Torts* (7th edn, 1983) pp 25–26, *Winfield and Jolowicz on Torts* (12th edn, 1984) pp 59–60 and Goodhart 'Restatement of the Law of Torts' (1935) 83 U Pa LR 411 at 418. I consider that the conclusion in *Herring v Boyle* is to be preferred to the dictum of Atkin LJ which was not part of the ratio of the decision, and, therefore, that the plaintiff was not subject to imprisonment until formally arrested.'

Counsel for the plaintiff attacked the finding of the Court of Appeal that the plaintiff did not know that she was under restraint until she was told she was arrested. He submitted that it is an irresistible inference that once the armed soldiers had entered the house and the plaintiff had identified herself and had been told to get dressed, she must have realised that she was under restraint. It is true she says she asked if she was under arrest whilst dressing, but this is to be interpreted as a challenge to authority rather than as indicating any doubt in her mind about the fact of restraint. It is pointed out that Cpl Davies was actually with her as she was getting dressed which was when she said she asked the question. Counsel for the Ministry of Defence felt constrained to accept this part of the plaintiff's submission and, in my view, he was right to do so. The plaintiff was in fact under restraint in her house from the moment she was identified. Cpl Davies stayed with her throughout the time it took her to dress and prepare to leave, and the plaintiff must have realised that she was under restraint and was not free to leave the house.

The next step in the plaintiff's argument is the submission that during the time that she was under restraint, between 7 and 7.30 am, she was not under arrest, and her arrest only commenced when she was told she was arrested at 7.30 am. Therefore, the plaintiff submits, the period of detention before arrest was unlawful and the Ministry of Defence liable for the tort of unlawful imprisonment during that period of half an hour whilst the plaintiff was getting dressed. If the plaintiff had been told she was under arrest the moment she identified herself, it would not have made the slightest difference to the sequence of events before she left the house. It would have been wholly unreasonable to take her off, half clad, to the army centre, and the same half hour would have elapsed while she gathered herself together and completed her toilet and dressing. It would seem a strange result that in these circumstances, whether or not she has an action for false imprisonment should depend on whether the words of arrest are spoken on entering or leaving the house, when the practical effect of the difference on the plaintiff is non-existent.

I do not accept the distinction drawn by the plaintiff's counsel between detention to the knowledge of the detainee and arrest. In *Shaaban bin Hussien v Chong Fook Kam* [1969] 3 All ER 1626 at 1629, [1970] AC 942 at 947 Lord Devlin said:

> 'An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when, by words or conduct, he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go.'

In *Spicer v Holt* [1976] 3 All ER 71 at 79, [1977] AC 987 at 1000 Viscount Dilhorne said:

> '"Arrest" is an ordinary English word ... Whether or not a person has been arrested depends not on the legality of the arrest but on whether he has been deprived of his liberty to go where he pleases.'

In *Holgate-Mohammed v Duke* [1984] 1 All ER 1054 at 1056, [1984] AC 437 at 441 Lord Diplock said:

> 'First, it should be noted that arrest is a continuing act: it starts with the arrester taking a person into his custody (sc by action or words restraining him from moving anywhere beyond the arrester's control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate's judicial act.'

In the light of these authorities I can entertain no doubt that the plaintiff was under arrest from the moment that Cpl Davies identified her on entering the house at 7 am.

The question remains, however, whether the failure to tell the plaintiff that she was being arrested until the soldiers were about to leave the house renders the arrest unlawful. It has been well-settled law, at least since *Christie v Leachinsky* [1947] 1 All ER 567, [1947] AC 573, that a person must be informed of the reason for his arrest at or within a reasonable time of the arrest. There can be no doubt that in ordinary circumstances, the

police should tell a person the reason for his arrest at the time they make the arrest. If a person's liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment. However, it is made plain in the speeches in *Christie v Leachinsky* that there are exceptions to this general rule.

It is a feature of the very limited power of arrest contained in s 14 that a member of the armed forces does not have to tell the arrested person the offence of which he is suspected, for it is specifically provided by s 14(2) that it is sufficient if he states that he is effecting the arrest as a member of Her Majesty's forces. Cpl Davies was carrying out this arrest in accordance with the procedures in which she had been instructed to make a house arrest pursuant to s 14. This procedure appears to me to be designed to make the arrest with the least risk of injury to those involved including both the soldiers and the occupants of the house. When arrests are made on suspicion of involvement with the IRA, it would be to close one's eyes to the obvious not to appreciate the risk that the arrest may be forcibly resisted.

The drill the army follow is to enter the house and search every room for occupants. The occupants are all directed to assemble in one room, and when the person the soldiers have come to arrest has been identified and is ready to leave, the formal words of arrest are spoken just before they leave the house. The army do not carry out a search for property in the house and, in my view, they would not be justified in doing so. The power of search is given 'for the purpose of arresting a person', not for a search for incriminating evidence. It is however a proper exercise of the power of search for the purpose of effecting the arrest to search every room for other occupants of the house in case there may be those there who are disposed to resist the arrest. The search cannot be limited solely to looking for the person to be arrested and must also embrace a search whose object is to secure that the arrest should be peaceable. I also regard it as an entirely reasonable precaution that all the occupants of the house should be asked to assemble in one room. As Cpl Davies explained in evidence, this procedure is followed because the soldiers may be distracted by other occupants in the house rushing from one room to another, perhaps in a state of alarm, perhaps for the purpose of raising the alarm and to resist the arrest. In such circumstances a tragic shooting accident might all too easily happen with young, and often relatively inexperienced, armed soldiers operating under conditions of extreme tension. Your Lordships were told that the husband and children either had commenced, or were contemplating commencing, actions for false imprisonment arising out of the fact that they were asked to assemble in the living room for a short period before the plaintiff was taken from the house. That very short period of restraint when they were asked to assemble in the living room was a proper and necessary part of the procedure for effecting the peaceable arrest of the plaintiff. It was a temporary restraint of very short duration imposed not only for the benefit of those effecting the arrest but also for the protection of the occupants of the house and would be wholly insufficient to found an action for unlawful imprisonment.

It was in my opinion entirely reasonable to delay speaking the words of arrest until the party was about to leave the house. If words of arrest are spoken as soon as the house is entered before any precautions have been taken to search the house and find the other occupants, it seems to me that there is a real risk that the alarm may be raised and an attempt made to resist arrest, not only by those within the house but also by summoning assistance from those in the immediate neighbourhood. When soldiers are employed on the difficult and potentially dangerous task of carrying out a house arrest of a person suspected of an offence in connection with the IRA, it is I think essential that they should have been trained in the drill they are to follow. It would be impracticable and I think dangerous to leave it to the individual discretion of the particular soldier making the arrest to devise his own procedures for carrying out this unfamiliar military function. It is in everyone's best interest that the arrest is peaceably effected and I am satisfied that the procedures adopted by the army are sensible, reasonable and designed to bring about the arrest with the minimum of danger and distress to all concerned. I would, however, add

this rider: that if the suspect, for any reason, refuses to accept the fact of restraint in the house he should be informed forthwith that he is under arrest.

In the circumstances in this case it was, in my opinion, reasonable to speak the words of arrest as they were leaving the house and the failure to do so at an earlier time did not render the plaintiff's arrest unlawful. I therefore agree with the conclusion of the Court of Appeal that the plaintiff was not unlawfully imprisoned between 7 and 7.30 am albeit my reasons for doing so are different from those of the Court of Appeal.

Although on the facts of this case I am sure that the plaintiff was aware of the restraint on her liberty from 7.00 am, I cannot agree with the Court of Appeal that it is an essential element of the tort of false imprisonment that the victim should be aware of the fact of denial of liberty. The Court of Appeal relied on *Herring v Boyle* (1834) 1 Cr M & R 377, 149 ER 1126 for this proposition which they preferred to the view of Atkin LJ to the opposite effect in *Meering v Grahame-White Aviation Co Ltd* (1919) 122 LT 44. *Herring v Boyle* is an extraordinary decision of the Court of Exchequer: a mother went to fetch her 10-year-old son from school on 24 December 1833 to take him home for the Christmas holidays. The headmaster refused to allow her to take her son home because she had not paid the last term's fees, and he kept the boy at school over the holidays. An action for false imprisonment brought on behalf of the boy failed. In giving judgment Bolland B said (1 Cr M & R 377 at 381, 149 ER 1126 at 1127):

> '... as far as we know, the boy may have been willing to stay; he does not appear to have been cognizant of any restraint, and there was no evidence of any act whatsoever done by the defendant in his presence. I think that we cannot construe the refusal to the mother in the boy's absence, and without his being cognizant of any restraint, to be an imprisonment of him against his will ...'

I suppose it is possible that there are schoolboys who prefer to stay at school rather than go home for the holidays but it is not an inference that I would draw, and I cannot believe that on the same facts the case would be similarly decided today. In *Meering v Grahame-White Aviation Co Ltd* the plaintiff's employers, who suspected him of theft, sent two of the works police to bring him in for questioning at the company's offices. He was taken to a waiting-room where he said that if he was not told why he was there he would leave. He was told he was wanted for the purpose of making inquiries about things that had been stolen and he was wanted to give evidence; he then agreed to stay. Unknown to the plaintiff, the works police had been instructed not to let him leave the waiting-room until the Metropolitan Police arrived. The works police therefore remained outside the waiting-room and would not have allowed the plaintiff to leave until he was handed over to the Metropolitan Police, who subsequently arrested him. The question for the Court of Appeal was whether on this evidence the plaintiff was falsely imprisoned during the hour he was in the waiting-room, or whether there could be no 'imprisonment' sufficient to found a civil action unless the plaintiff was aware of the restraint on his liberty. Atkin LJ said (122 LT 44 at 53–54):

> 'It appears to me that a person could be imprisoned without his knowing it. I think a person can be imprisoned while he is asleep, while he is in a state of drunkenness, while he is unconscious, and while he is a lunatic. Those are cases where it seems to me that the person might properly complain if he were imprisoned, though the imprisonment began and ceased while he was in that state. Of course, the damages might be diminished and would be affected by the question whether he was conscious of it or not. So a man might in fact, to my mind, be imprisoned by having the key of a door turned against him so that he is imprisoned in a room in fact although he does not know that the key has been turned. It may be that he is being detained in that room by persons who are anxious to make him believe that he is not in fact being imprisoned, and at the same time his captors outside that room may be boasting to persons that he is imprisoned, and it seems to me that if we were to take this case as an instance supposing it could be proved that Prudence had said while the plaintiff was waiting: "I have got him detained there

waiting for the detective to come in and take him to prison"—it appears to me that that would be evidence of imprisonment. It is quite unnecessary to go on to show that in fact the man knew that he was imprisoned. If a man can be imprisoned by having the key turned upon him without his knowledge, so he can be imprisoned if, instead of a lock and key or bolts and bars, he is prevented from, in fact, exercising his liberty by guards and warders or policemen. They serve the same purpose. Therefore it appears to me to be a question of fact. It is true that in all cases of imprisonment so far as the law of civil liberty is concerned that "stone walls do not a prison make," in the sense that they are not the only form of imprisonment, but any restraint within defined bounds which is a restraint in fact may be an imprisonment.'

I agree with this passage. In the first place it is not difficult to envisage cases in which harm may result from unlawful imprisonment even though the victim is unaware of it. Dean William L Prosser gave two examples in 'False Imprisonment: Consciousness of Confinement' (1955) 55 Col LR 847, in which he attacked §42 of the American Law Institute's Restatement of the Law of Torts, which at that time stated the rule that 'there is no liability for intentionally confining another unless the person physically restrained knows of the confinement'. Dean Prosser wrote (at 849):

'Let us consider several illustrations. A locks B, a child two days old, in the vault of a bank. B is, of course, unconscious of the confinement, but the bank vault cannot be opened for two days. In the meantime, B suffers from hunger and thirst, and his health is seriously impaired; or it may be that he even dies. Is this no tort? Or suppose that A abducts B, a wealthy lunatic, and holds him for ransom for a week. B is unaware of his confinement, but vaguely understands that he is in unfamiliar surroundings, and that something is wrong. He undergoes mental suffering affecting his health. At the end of the week, he is discovered by the police and released without ever having known that he has been imprisoned. Has he no action against B? ... If a child of two is kidnapped, confined, and deprived of the care of its mother for a month, is the kidnapping and the confinement in itself so minor a matter as to call for no redress in tort at all?'

The Restatement of the Law of Torts has now been changed and requires that the person confined 'is conscious of the confinement or is harmed by it' (see Restatement of the Law, Second, Torts 2d (1965) §35, p 52).

If a person is unaware that he has been falsely imprisoned and has suffered no harm, he can normally expect to recover no more than nominal damages, and it is tempting to redefine the tort in the terms of the present rule in the American Law Institute's Restatement of the Law of Torts. On reflection, however, I would not do so. The law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage.

I turn now to the complaint that the plaintiff was unlawfully detained at the Springfield Road centre. It is rightly conceded by the plaintiff that a suspect arrested under s 14 may be questioned to confirm or allay the suspicion on which he was arrested. It was however submitted that the right to ask such questions is confined to the person making the arrest. I can see nothing in the wording of the section which forbids anyone save the arrester to ask any questions of the suspect whilst they are in custody. Cpl Davies suspected the plaintiff solely because of what she had been told at the army briefing and questioning by her would have been unlikely to advance matters at all. On the other hand, questioning by a skilled interrogator, who is likely to have access to far more background information, may well either confirm the suspicion or show that it was mistaken, or, as appears to be the case here, that the grounds of suspicion were not sufficient to warrant handing over the suspect to the police. It therefore seems sensible to carry out the questioning by a fully briefed and skilled interrogator. I reject the submission that the suspect cannot be asked questions other than by the arresting officer.

The final objection to the detention at the centre turns on the state of the evidence in this case. The power of detention under s 14 is 'for not more than four hours', and it is common ground that the burden is on the army to show not only that the period of detention did not exceed four hours but also that it did not exceed the time that was reasonably required to make a decision whether to release the suspect or to hand them over to the police. The member of the forces who carried out the interrogation between 8.20 and 9.35 am was not called as a witness on behalf of the Ministry of Defence. There may have been sound reasons for this decision associated with preserving the confidentiality of interrogating techniques and the identity of the interviewer; but be that as it may, the only evidence of what took place at the interview came from Cpl Davies and the plaintiff and it is submitted that this evidence is insufficient to establish that the interview was directed towards an attempt to invesigate the suspicion on which the plaintiff was arrested. Cpl Davies was present at the interview, she was not paying close attention but she gave evidence that she remembered questions about the plaintiff's brothers and questions about money which were obviously directed towards the offences of which the plaintiff was suspected. The plaintiff also said she was questioned about her brothers.

The judge also had before him a questionnaire that was completed by the interviewer. The questionnaire was in the standard form used as the basis for interviewing all suspects. It is directed to establishing information about the suspect, her relations and friends and about other matters which, although routine, may in fact tend to dispel or establish suspicion; it also provides space to record answers directly related to the suspected offence. It would be to ignore all experience of interview technique to limit questioning a suspect to two or three questions directly related to the suspected offence and I cannot accept the complaint of the plaintiff's counsel that the questionnaire formed an improper basis for questioning a suspect on the ground that it asked questions not directly relevant to the suspected offence. There is nothing in the questionnaire which the army may not reasonably ask the suspect together with such particular questions as are appropriate to the particular case. In fact the questionnaire in this case was wholly uninformative as the plaintiff refused to answer any of the interviewer's questions. The trial judge expressed himself as satisfied that the plaintiff 'was not asked unnecessary or unreasonable questions'. The Court of Appeal said:

> 'There is no doubt, therefore, that the interviewer did attempt to pursue the subject of the suspicion which had been the occasion of her arrest but was unable to make any headway.'

I am satisfied that the evidence justified these conclusions and that there is no substance in this final ground of complaint. I would therefore dismiss this appeal.

LORD OLIVER OF AYLMERTON. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Griffiths and, for the reasons he gives, I too would dismiss the appeal.

LORD JAUNCEY OF TULLICHETTLE. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Griffiths and, for the reasons he gives, I too would dismiss the appeal.

Appeal dismissed.

Solicitors: *Robin Thompson & Partners*, agents for *Madden & Finucane*, Belfast (for the plaintiff); *Treasury Solicitor*, agent for *Crown Solicitor*, Belfast.

Mary Rose Plummer Barrister.