

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Criminal Justice/Search and Seizure

Burns v. Erben, 1 Hand 463 (1869)

Henry Erben believed he had been robbed of some silverware. His son Charles informed Thomas Frost, a police officer, that Ellen Burns was the only person not a member of the Erben family in the house at the time when the goods were stolen. Frost, after consulting with his superiors, arrested Burns and took her to the local police station for questioning. After being questioned, Burns was permitted to go home. Shortly thereafter, Burns sued Charles Erben and Thomas Frost for false imprisonment. She claimed that her arrest was illegal under New York and common law. Burns claimed that police could arrest persons without a warrant only if a felony had occurred [apparently no felony had actually been committed] and the police officer suspected that the person arrested had committed the felony. A lower court rejected her claim. Burns appealed to the Court of Appeals of New York.

The Court of Appeals affirmed the lower court ruling that Frost acted legally. Judge James declared that police officers could not be held liable for making an arrest when they had a good faith reason for believing that a felony was committed, even if that belief was mistaken. Judge James claimed this immunity was rooted in the common law. Do you believe Judge James correctly stated the common law? Is Burns an instance when courts modified existing search and seizure practice to accommodate professional police forces?

JUDGE JAMES

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Probable cause, or reasonable ground, for suspicion against a plaintiff, affords no justification for an arrest or imprisonment, unless a felony has actually been committed; in which case the burden of proving that a felony had actually been committed, and the facts relied upon to establish probable cause, or reasonable ground for suspicion, is upon the defendant.

As a general principle, no person can be arrested or taken into custody without warrant. But if a felony, or a breach of the peace, has, in fact, been committed by the person arrested, the arrest may be justified, by any person, without warrant, whether there was time to procure a warrant or not; but if an innocent person be arrested upon suspicion by a private individual, such individual is not excused unless such offence has, in fact, been committed, and there was reasonable ground to suspect the person arrested.

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In this case there was no dispute about the facts bearing upon the question of probable cause. It was undisputed that a felony had been committed; that plaintiff was in the house at the time it was committed, and that she left shortly after. There was not, therefore, any question for the jury. The question was simply one of law, and, as such, the proof showed a reasonable ground for suspicion against the plaintiff.

Therefore, conceding that defendant entered a complaint against the plaintiff, that he actually assisted in her arrest, a complete justification was established.

JUDGE WOODRUFF

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In pursuance of information given by the defendant, Erben, the defendant, Frost, accompanied by Erben, arrested the plaintiff without warrant, took her to the police station, where she was detained a few minutes, and after some conversation with the officer in charge, she was permitted to return to her residence. For this she has brought the present action for false imprisonment.

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Lord TENTERDEN, Ch. J., in *Beckwith v. Philby* says: "The only question of law in this case is, whether a constable, having a reasonable cause to suspect that a person has committed a felony, may detain such person until he can be brought before a justice of the peace to have his conduct investigated. There is this distinction between a private individual and a constable; in order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has actually been committed; whereas a constable having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry can be made by the proper authorities." . . .

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The fact being proved in this case that a felony had in fact been committed, I have no hesitation in saying that, however unfortunate it was to the plaintiff, the circumstances fully justified the suspicion which led to her arrest. It is claimed that these circumstances should have been submitted to the jury. Not so; a verdict finding no reasonable ground of suspicion would have been against evidence. There was no conflict of testimony, and that the arrest was made without malice, in good faith, and upon reasonable grounds, is to my mind incontrovertible.

The appeal appears to me to have been taken upon a misapprehension of the construction and effect of the statutes conferring power on the policeman. I think the power perfectly clear, and I notice that the rules and regulations of the board of police are in conformity therewith; and it is made the duty of the officer to take the arrested person immediately before the Police Court, or if made at night or when the courts are not open, immediately to the station house, where the officer on duty is required to examine whether there is reasonable ground for the complaint, and if so, to cause the party to be taken before the court the next morning. Under such a system, innocent parties may sometimes be subjected to inconvenience and mortification; but any more lax rules would be greatly dangerous to the peace of the community and make the escape of criminals frequent and easy.