

DELICTS IN NATIVE LAWWRONGFUL ARREST AND FALSE IMPRISONMENT.

"The wrong of false imprisonment or arrest consists in the unjustifiable infliction of a restraint upon the personal liberty of another. Although the wrong of false imprisonment generally involves a wrongful assault, it does not necessarily do so; it must therefore be treated as a separate and distinct wrong. Since the essence of the wrong is the depriving another of his personal liberty, a person may be held liable for false imprisonment, although there has been no imprisonment in the ordinary sense of the term, nor any employment of actual force (McLennan: Law of Delicts in S.A., p. 100).

For an action for false imprisonment or illegal arrest to lie it is not necessary that the defendant should act maliciously; it is sufficient that the arrest should be illegal. If he does act maliciously, that will be an element in the estimation of damages; but the mere false imprisonment or illegal arrest gives a right of action to the person arrested." — Burch v King, 1914 T.P.D. p. 106.

In the case of false imprisonment the onus is on the defendant, who admits arrest, to establish reasonable cause. In the case of an alleged malicious prosecution the plaintiff must prove affirmatively that the defendant acted maliciously and without reasonable cause (Binell v Fryer, 1926 E.P.L. p. 287)

In the present case the arrest and imprisonment being admitted, the onus is on the defendant to establish reasonable cause.

(Stephen Kumkoni v Z & Joyi & J. Zebi, 1936 N.A.C. 25.)