TORTS TO PERSON.

CHAPTER XI.

ASSAULT AND BATTERY.

An **assault** is the unlawful laying of hands on another person, or an attempt or offer to do a corporal hurt to another, coupled with an apparent present ability and intention to do the act (*Stephen*). "Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Indian Penal Code, is 'about to use criminal force' to the person threatened, constitute, if coupled with a present ability to carry such intention into execution, an assault in law" (per Arnould, C. J., in *Cama* v. *Morgan*, 1 B. H. C. 205). Striking at a person with or without a weapon; holding up a fist in a threatening attitude sufficiently near to be able to strike; presenting a gun or pistol, whether loaded or unloaded, in a hostile and threatening manner, within gun-shot or pistol-shot range, and near enough to create terror and alarm; riding after a man with a whip threatening to beat him; shaking a whip in a man's face; advancing with hand uplifted in a threatening manner with intent to strike, although the person is stopped before he gets near enough to carry the intention into effect; and any gesture or threat of violence exhibiting an intention to assault, with the means of carrying that threat into effect, will constitute an assault (*Addison*, 137).

Mere words do not amount to an assault. But the words which the party threatening uses at the time may either give to his gestures such a meaning as may make them

amount to an assault, or, on the other hand, may prevent them from doing so. For instance, where A laid his hands on his sword, and said to Z "if it were not the assize time* I should not take such language from you" (*Tuberville* v. *Savage*, 1 Mod. 3). This was held not to be an assault, on the ground that the words showed that A did not intend *then and there* to offer violence to Z (in the language of the Penal Code, was not 'about to use criminal force' to Z). Here there was the menacing gesture, showing in itself an intention to use violence, there was the present ability to use violence, but there were also words which would prevent the person threatened from reasonably apprehending that the person threatening was really then and there about to use violence (per Arnould, C. J., in *Cama* v. *Morgan*, *sup.*).

A battery is the actual striking of another person, or touching him in a rude, angry, revengeful, or insolent manner. It consists in touching another's person hostilely or against his will, however slightly (*Rawlings* v *Till*, 3 M, & W. 28). In *Cole* v. *Turner* (6 Mod. 149) Holt, C. J., declared: (1) that the least touching of another in anger is a battery; (2) if two or more meet in a narrow passage, and without any violence or design of harm, the one touches the other gently, it will be no battery; and (3) if any of them use violence against the other, to force his way in a rude, inordinate manner, it will be a battery; or any struggle about the passage to such degree as may do hurt will be a battery.

Battery includes assault. It is mainly distinguishable from an assault in the fact that physical contact is necessary to accomplish it. It does not matter whether the

* It *was* the assize time, and the consequence of drawing a sword on another during assize time involved in those days (the latter end of Charles I's reign) not only the certain infliction of a heavy fine, but the possible chopping off of the hand by which the sword was drawn.

force is applied directly or indirectly to the human body itself or to anything in contact with it; nor whether with the hand or anything held in it, or with a missile (*Pursell* v. *Horne*, 4 N. & P. 564).

But every laying on of hands is not a battery. The party's intention must be considered, for people will sometimes by way of joke or friendship clap a man on the back, and it would be ridiculous to say that every such case constitutes a battery (*William* v. *Jones*, Hard. 301).

Assault.—The accepted test is one laid down by *Tindal*, C. J., in *Stephen* v. *Myers* (4 C. & P. 349), in which the plaintiff was chairman of a parish meeting; the defendant having been very vociferous, a motion was made and carried by a large majority, that he should be turned out. Upon this the defendant said he would rather pull the chairman out of the chair than be turned out of the room, and immediately advanced with his fist clenched towards him; he was, therefore, stopped by the churchwarden, who sat next but one to the chairman, at a time when he was not near enough for any blow he might have meditated to reach the plaintiff; but the witnesses said that it seemed to them that he was advancing with an intention to strike the chairman. The jury found for the plaintiff with one shilling damages. The learned Chief Justice said: "It is not every threat, when there is no actual personal violence, that constitutes an assault; there must in all cases be the means of carrying the threat into effect. The question, I shall leave to you will be, whether the defendant was advancing at the time in a threatening attitude, to strike the chairman, so that his blow must almost immediately have reached the chairman, if he had not been stopped. Then, though he was not near enough at the time to have struck him, yet if he was advancing with that intent, I think it amounts to an assault in law. If he was so advancing that, within a second or two of time, he would have reached the plaintiff, it seems to me it is an assault in law. If you think he was not advancing to strike the plaintiff, then only you can find your verdict for the defendant, otherwise you must find it for the plaintiff, and give him such damages as you think the nature of the case requires." Where the defendant rode after the plaintiff so as to compel him to run into his garden for shelter to avoid being beaten; it was held that an assault was committed (*Martin* v. *Shopper*, 3 C. P. 373). Where the defendant and his servants surrounded the plaintiff, who had refused to leave their workshop, and threatened to break his neck; it was held that an assault was committed (*Read* v. *Coker*, 13 Q. B. 850). It is an assault to present an unloaded fire-arm, or any thing that looks like a fire-arm (*R.* v. *James*, 1 C. & K. 530); or a gun in a hostile manner

within shooting distance, although it may be at half-cock, because the cocking is a momentary operation (*Osborn* v. *Veitch*, 1 F. & F. 318). If a policeman handcuffs an unconvicted man, where there is no attempt to escape, and no reason to fear a rescue, it is an assault (*Wright* v. *Court*, 4 B. & C. 596); so, too, if a man forcibly takes chattel from the possession of another (*Green* v. *Goddard*, 2 Salk. 641). But it is no assault to touch a man in order to draw his attention to something, or pushing gently, through a crowd (*Coward* v. *Baddley*, 4 H. & N. 481). If a constable, when he has no power to arrest a person riding a bicycle after dark without a lamp, stops such a person by catching the handle-bar of his machine, causing him to fall, the constable is guilty of an assault (*Hatton* v. *Treesby*, 13 T. L. R. 556).

Leading case.—**Stephen v. Myers.**

Battery.—Such a seizing and laying hold as are necessary to restrain (*Rawlings* v. *Till*, 3 M. & W. 28); spitting in the face (*R.* v. *Cotesworth*, 1 Mod. 172); throwing over a chair or carriage in which another person is sitting (*Hopper* v. *Reeve*, 1 Taunt. 698); throwing water over a person (*Pursell* v. *Horn*, 8 A. & E. 602); striking a horse so that it bolted and threw its rider (*Dodwell* v. *Burford*, 1 Mod. 24); the removal of a person from one part of prison to another in which he could not be legally confined (*Cobbett* v. *Grey*, 4 Ex. 729); cutting off a pauper's hair, even for the sake of cleanliness and according to the rules of the workhouse (*Forde* v. *Skinner*, 4 C. & P. 239); taking a person by the collar by a constable (*Wiffin* v. *Kincard*, 2 B. & P. N. R. 471); causing another to be medically examined against his or her will; (*Latter* v. *Braddell*, 29 W. R. 239); firing a gun carelessly and hitting another, though the person firing never designed the shot to touch him (*Weaver* v. *Ward*, Hob. 134; *Leane* v. *Bray*, 3 East. 597), are all held to amount to battery.

Leading case.—**Cole v. Turner.**

Civil liability.—The fact that a defendant has been fined by a criminal Court for an assault is no bar to a civil action against him for damages (*Akhil Chandra Biswas* v. *Akhil Chandra Dey*, 6 C. W. N. 915; *Jodhi Ram* v. *Abdul*, 13 A. W. N. 62; *Chandan* v. *Sumera*, 7 A. W. N. 104). The previous conviction of the defendant in a criminal Court is no evidence of the assault. The *factum* of the assault must be tried in the civil Court (*Ali Buksh* v. *Sheikh Samiruddin*, 4 B. L. R. A. C. 31; *Bishonath* v. *Haro Gobind*, 5 W. R. 27). A *plea* of guilty in a criminal Court may, but

a *verdict* of conviction cannot, be considered in evidence in a civil case (*Shumboo Chunder* v. *Modhoo*, 10 W. R. 56).

Mayhem is a bodily harm whereby a man is deprived of the use of any member of his body or of any sense which he can use in fighting to defend himself or annoy his enemy, or by reason of which he is generally and permanently weakened (Hawk. P. C. i. 44; Stephen, Arts. 227; *R.* v. *Sullivan*, C. & M. 209). It is assault and battery of such an aggravated character as to amount to an actual wounding of the person, *e. g.*, cutting off, disabling, or weakening, a hand or finger, striking out an eye or fore-tooth, breaking a bone, or injuring the head, or wounding a sinew (*Bacon*).

When the assault has been carried to the extent of maiming or crippling, or of wounding a person, the damages will be greater than those awarded for a mere assault or battery.

Justifications.—Assault and battery may be justified in the following cases:—

1. Self-defence. The force used must not be more than is necessary under the circumstances. The battery justified must have been committed in actual defence, and not afterwards and in mere retaliation (*Cockrofft* v. *Smith*, 11 Mod. 43). A man may justify himself on the ground of defending his wife, child, servant, and even his friend. A wife may justify in defence of her husband, a child of a parent, and a servant of his master. In such cases the act must not have been by way of revenge, but in order to prevent an injury (*Collett*).

Son assault demesne.—It is a principle of plain common sense that a man when attacked should be permitted to defend himself. The plea of *son assault demesne* means that the assault complained of was the effect of the plaintiff's own attack; that is, the blow was given in defending the party's person, family,

or property from the trespass of the plaintiff. But the defendant is justified only in making *defence*; and if he replied to the plaintiff's assault or trespass with a force and spirit altogether disproportionate to the provocation, the plaintiff may reply *de injuria sua propria.* This excess of force is, as it were, a new assault. And therefore it is that in connection with *son assault demesne* the defendant's plea says, *molliter manus imposuit*, he gently laid his hands upon the plaintiff. This is a good plea, because it shows that the defendant has not used more force than was necessary in resisting the plaintiff. If, however, the action be for an assault and battery and *wounding*, this plea would not be good, for it would not justify the wounding (*Dean* v. *Taylor* 11 Ex. 68—*Ball*).

2. In defence of the possession of a house, or goods and chattels. If one man enters the house of another with force and violence, the owner may justify in turning him out without a previous request to depart; but if he enters quietly, he must be first requested to retire before hands can be lawfully laid upon him to turn him out.

3. To prevent a forcible entry or seizure of chattels. A servant, after request and refusal to deliver, may justify the use of force to recover possession of his master's goods which a wrong-doer is removing, no needless violence being used, but when the removal is perfected, neither master nor servant ought to be allowed to justify a breach of the peace to enforce their rights (*Anthony* v. *Haney*, 8 Bing. 186).

4. For the correction of a pupil, child, apprentice, or sailor on board a ship. Here the chastisement must not be excessive or unreasonable.

5. By leave and license of the party injured.

6. In the preservation of the public peace. Here the force used should not be more than what is necessary.

Where a railway traveller lost his ticket and could not produce it when required so to do in accordance with an endorsed condition, and refused to pay over again; it was held that this did not justify the company in forcibly

ejecting him (*Butler* v. *M. Ry.*, 21 Q. B. D. 207). A shop keeper is not bound to sell goods at the prices marked over them, and if one enters a shop and insists on having the goods and refuses to leave the shop, the shopkeeper may, after request to depart, use force to turn out the disorderly person (*Timothy* v. *Simpson* 1 C. M. & R. 757). An innkeeper may turn out a disorderly person though there is no actual breach of the peace (*Howell* v. *Jackson*, 6 C. & P. 725).

Indian case.—Where the plaintiff committed a trespass by riding in the train without a ticket, and was assaulted and forcibly removed, the assault and forcible removal were held to be justifiable by the fact of the plaintiff being a trespasser (*Protab Daji* v. *B. B. & C. I. Ry.*, 1 Bom. 52).

Leading case.—**Dean v. Taylor.**

Menace.—Menace without assault is in some cases actionable. But this is on the ground of its causing a certain special kind of damage; and then the person menaced need not be the person who suffers damage. Verbal threats of personal violence are not, as such, a ground of civil action at all. If a man is thereby put in a reasonable bodily fear he has his remedy, but not a civil one, namely, by security of the peace (*Pollock*, 215).

Damages.—Damages in actions for assault and battery will vary according to the circumstances of each case. But generally the damages should be exemplary.

The circumstances of time and place as to when and where the assault was committed, and the degree of personal insult, must be considered in estimating the nature of the offence and the amount of damages. It is a greater insult to be beaten in a public place than in a private room. Provocation may be shown by way of mitigation, or that the blow was unintentional and an apology was offered; so previous threats by the defendant may be proved as an aggravation of the assault. When the assault is accompanied by a false charge, affecting the honour, character, and position in society, of the plaintiff, the offence will be greatly aggravated, and the damages proportionately increased. But if punishment in person is resorted that must

always be an important element in mitigation in subsequently estimating the amount of damages (*Misr Ramji* v. *Jiwan Ram*, 1 A. W. N. 131). The plaintiff's position should be considered for the purpose of seeing how far the compensation awarded is commensurate with the injury inflicted (*Joypal Roy* v. *Makhoond Roy*, 17 W. R. 280). Damages should be commensurate to the injury and annoyance caused, eventhough there has been no serious personal injury (*Ramjoy* v. *Russell*, (1864) W. R. 370).

If two assault another, and one beats violently and the other a little, each is responsible for all the damage received from both; and the criterion of the damages is the injury sustained, and not the act or motives of the most guilty, or the least guilty of the defendants. Probable future damage should be considered, for, if the plaintiff has once recovered for an assault, though it be slight, he can have no fresh action for a subsequent new damage resulting from the same act (*Clerk* v. *Newsam*, 1 Ex. 131—*Collett*).

Where there has been no serious injury, still damages commensurate to the injury and annoyance caused should be awarded (*Ramjoy* v. *Russell*, W. R. 1864, 370). Where the damages awarded in compensation for an assault were beyond the means of the defendant, the Court reduced them on the defendant's tendering a written apology to the plaintiff, expressing his regret for what had passed (*MacIver* v. *Shungeshur Dutt*, 6 W. R. 95). A plaintiff may be entitled to substantial damages for being beaten with a shoe, notwithstanding that he may not have lost his caste, or sustained a pecuniary loss, or physical injury by the act complained of (*Bhyran Pershad* v. *Isharee*, 3 N. W. P. 313).

An assault made by parties proceeding together and acting in conjunction as to time, place and assault, is a single act, and the cause of action is common to all the parties (*Ramessur* v. *Shibnarain*, 14 W. R. 419).

CHAPTER XII.

FALSE IMPRISONMENT.

FALSE IMPRISONMENT is a trespass committed by one man against the person of another, by unlawfully arresting him, and detaining him without any legal authority (*Addison*). It consists in the imposition of a *total* restraint for some period, however short, upon the liberty of another, without sufficient legal authority. A *partial* obstruction of his will, as the prevention of his going in one direction or in all directions but one, does not constitute an imprisonment (*Bird* v. *Jones*, 7 Q. B. D. 743). The restraint may be either physical or by mere show of authority. Actual contact is not necessary. Thus, to constitute this wrong two things are necessary:—(1). the detention of the person either (*a*) actual, *e. g.*, laying hands upon a person; or (*b*) constructive, *e. g.*, by an officer telling anyone that he is wanted and making him accompany: (2). the unlawfulness of such detention.

Every confinement of the person is an imprisonment whether it be in a common prison or a private house, or in the stocks, or by forcibly detaining any one in the public streets (*Blackstone*). A prison may have its boundary large or narrow, invisible or tangible, actual or real, or indeed in conception only; it may be in itself moveable or fixed; but a boundary it must have, and from the boundary that party imprisoned must be prevented from escaping; he must be prevented from leaving the place within the limits of which the party imprisoned could be confined (per Coleridge, C. J., in *Bird* v. *Jones*, 7 Q. B. D. 742). A man is not imprisoned who has an escape open

to him. False imprisonment assumes an entire restriction of free motion ; and hence it involves a notion of boundary or circumscribing limits ; not that these need necessarily be physically defined if they are actually constituted by the effectual control of a power and will exterior to one's own (*Collett*). The retaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will (*Paran kusam* v. *Stuart*, 2 M. H. C. 396).

The plaintiff need only prove the detention or imprisonment.

Action for a false imprisonment lies against the plaintiff's attorney, who sues out an illegal and void *ca. sa.* against the defendant, and delivers it himself to the officer, who by his order arrests the defendant thereon (*Barker* v. *Braham* and *Norwood*, 2 W. Bl. 866). Where a party lays a complaint before a Magistrate on a subject matter over which he has a general jurisdiction, and the Magistrate grants a warrant upon which the party charged is arrested, the party laying a complaint is not liable as a trespasser, although the particular case be one in which the Magistrate had no authority to act. But, where the complainant having accompanied the constable charged with the execution of the warrant, pointed out to him the person to be arrested, it was held that this was evidence of a participation in the arrest (*West* v. *Smallwood*, 3 M. & W. 418). Suspicion of a party having committed a misdemeanour on a former occasion, is no justification for giving him in charge to a constable without a Justice's warrant ; and there is no distinction in this respect between one kind of misdemeanour and another, as breach of the peace and fraud (*Fox* v. *Gaunt*, 3 B. & Ad. 798).

Where a bailiff tells a person that he has a writ against him and thereupon such person peaceably accompanies him, that constitutes an imprisonment (*Grainger* v. *Hill*, 4 B. & C. 212 ; *Harvey* v. *Mayne*, 6 Ir. R. C. L. 417). Where a jailor acts upon a writ or order of a competent Court, which is *prima facie* valid, he is not liable if it subsequently turns out that the order was wrong (*Greaves* v. *Keene*, 4 Ex. D. 73 ; *Henderson* v. *Preston*, 21 Q. B. D. 362). But where the order shows on the face of it that the prisoner was committed under a statute which expressly casts on the jailor the duty of releasing the prisoner after a specified time unless the party n whose motion the prisoner was committed brings the prisoner to the bar of the Court, then

the jailor will be liable unless he so releases the prisoner (*Moore* v. *Rose*, L. R. 4 Q. B. 486). Where two policemen hindered defendant from going on a portion of a public footway on a bridge which was appropriated by seats to view a regatta, it was held that there was no imprisonment committed by the policemen (*Bird* v. *Jones*, 7 Q. B. D. 742). A passenger on the London & S. W. Ry. on arrival at Totton Station, refused to give up his ticket, on the ground that he had been misinformed by a porter at Waterloo as to the destination of the train, and required his ticket in order that he might make a claim against the company. The local station-master thereupon refused to allow him to leave, and although he tendered his name and address, detained him for some hours. He subsequently sued the company and the station-master to recover damages for alleged false imprisonment. The jury gave him the verdict and assessed the damages at £100, whilst the Judge intimated that the public were indebted to any one who brought a case of this kind forward because it was occasionally necessary to show the officers of the companies that they were not entitled to take the law into their own hands (Unrep. *Eng.* 1897).

Indian cases.—Where a wrong person is arrested and imprisoned under a decree to which he was no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly (*Bheema* v. *Donti*, 8 M. H. C. 38). Where the defendant, a commanding officer of a Regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully in possession of the authority to do so and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed. Held, that the plaintiff under the circumstances was entitled to substantial damages (*Patton* v. *Huree Ram*, 3 Agra H. C. 409). A zemindar who discharged some of his officers and placed them under personal restraint was held liable to pay compensation in damages for the wrong inflicted (*Rajah Pedda Venkatapa* v. *Aroovala*, 2 M. I. A. 504). Where the plaintiff's imprisonment took place under a warrant of the Bombay Small Cause Court issued in a regular manner, and such Court being of competent jurisdiction, the plaintiff was held to have no cause of action against the bailiff who arrested him, as there was no bad faith, fault, or irregularity, on the part of the bailiff so as to make him responsible for the wrongful arrest (*Fisher* v. *Pearse*, 9 Bom. 1). Where a false charge led to a party being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation, for which an award of Rs. 20 as damages was not unreasonable (*Madhub Chunder Sircar* v. *Banee Madhub*, 15 W. R. 85).

Leading cases.—**Barker v. Braham; West v. Smallwood; Fox v. Gaunt.**

Arrest and imprisonment by private persons and public officers.

False imprisonment may also arise from the arrest or detention of a person by (1) a private person, or, (2) an officer without warrant, or by an illegal warrant, or by a legal warrant executed at an unlawful time.

Where an arrest can only lawfully be made by a warrant the person arresting must have it with him at the time, ready to be produced if demanded (*Gilliard* v. *Loxton*, 31 L. J. M. C. 123). But there are a few exceptions to these principles.

A private person may *without* warrant arrest—

1. A person whom he sees committing, or about to commit, a breach of the public peace, but not if the affray be over and not likely to recur (*Timothy* v. *Simpson*, 1 C. M. & R. 757).

2. A dangerous lunatic, who seems disposed to do mischief to himself or to any other person.

3. A person for whom he has become bail, in order to give him up in his discharge (*Ex parte Eyre*, 3 Stark. 132).

4. In certain cases, depending upon relationships. A parent may lock up his child, a master his apprentice, and a ship-master his crew and passengers.

5. Under the provisions of section 59 of the Criminal Procedure Code (Act V of 1898).

Plaintiff entered defendant's shop to purchase an article in the shop, when a dispute arose between the plaintiff and defendant's shopman, and the plaintiff refusing on request to go out of the shop, the shopman endeavoured to turn him out, and an affray ensued between them. The defendant came into the shop during the affray, and requested the plaintiff to leave the shop quietly; but on his refusing to do so, the defendant gave him in charge to a policeman, who took him to a station-house. Held, that the defendant was justified, under the circumstances, in giving the plaintiff in charge to a policeman, for the purpose of preventing a renewal of the affray (*Timothy* v. *Simpson*, 1 C. M. & R. 757). In an action for false imprison-

ment, the defendant justified on the ground that the plaintiff had been his lodger, and after she had left her apartments, he discovered that some feathers were missing from a bed which he had occupied, and he, suspecting her to be the person who had stolen them, caused her to be apprehended, &c. Held, that as the defendant had taken the law into his own hands it was incumbent on him to make out not only that a felony had been committed, but that the circumstances of the case were such that any reasonable person would fairly have suspected the plaintiff of being the person who had committed it (*Allen* v. *Wright*, 8 C. & P. 522).

Leading cases.—**Timothy v. Simpson; Allen v. Wright.**

A public officer may arrest *without* warrant in the following cases: see ss. 4 (f), 54, 55, 57, 64, 65, 480 and 485 of the Criminal Procedure Code (Act V of 1898).

A constable is not justified in arresting a supposed offender for felony, without warrant, at the instigation of a third party, unless there exists a reasonable charge and suspicion (*Hogg* v. *Ward*, 3 H. & N. 417).

Leading case.—**Hogg v. Ward.**

Damages.—The expenses incurred to regain freedom from false imprisonment may be calculated in awarding damages. The remarks made under assault equally apply here.

When a judicial officer is liable for a false imprisonment, he is liable for all the usual and ordinary injurious consequences thereof, such as hand-cuffing, cutting off the hair, payment of penalties, fees, and all such expenses as are reasonably necessary to enable the plaintiff to procure his liberty; but he is not liable for any unnecessary or excessive violence on the part of the officers executing the warrant (*Mason* v. *Barker*, 1 C. & K. 100—*Collett*).