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Public Officers: Aiding While Making Arrest

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CURRENT LEGISLATION

Editor—LAWRENCE T. GRESSER, JR.

PUBLIC OFFICERS: AIDING WHILE MAKING ARREST.—The principle that members of society must actively assist to arrest criminals is very old in English law. It dates back to the time of the hue and cry, and the days of barbaric justice.¹ We are told that when a crime was detected the neighbors should turn out with the bows, arrows and knives that they are bound to keep and, besides much shouting there will be hornblowing; the “hue” will be ‘horned’ from vill to vill.”² A successful chase with evidences of the crime on the person caught was of itself sufficient proof of guilt. The theory, akin to excommunication, being that a criminal taken in the act was *ipso facto* an outlaw. As such he was not entitled to any “law.” If caught “redhanded” there was no need for any accusation against him; he could not even claim innocence nor demand a trial;³ and usually his captors were also his judges and executioners.⁴ This method of “capture” justice was swift, though it was not always sure. But it introduced a basic principle that has remained throughout the history of the development of the common law, i.e., that every man must aid his fellow recapture property wrongfully stolen.⁵

Time brought out many inherent defects in this system of apprehending criminals. Stealthy crimes, well organized perpetrators, often fear of the powerful outlaw bands⁶ defied chase. In order to meet the need thus presented by the decline in effectiveness of the hue and cry, a public official was created. Originally it was his duty to lead the cry⁷ but gradually he was invested with the power to *seek out* a suspected criminal and secure his appearance before a tribunal, irrespective of any question of possession of the fruits of the crime.⁸ And though the use of the chase dropped off proportionately as the powers and effectiveness of the search increased, the fact of the common existence of both methods of apprehension has never been doubted.⁹

¹ 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW (1899) 580; *Babington v. Yellow Taxi Corp.*, 250 N. Y. 14, 16, 164 N. E. 726, 727 (1928).

² POLLOCK AND MAITLAND, *supra*, p. 577

³ *Ibid.*

⁴ *Ibid.*

⁵ *Babington v. Yellow Taxi Corp.*, *supra* note 1.

⁶ 4 HOLDSWORTH, HISTORY OF THE ENGLISH LAW, 521.

⁷ *Ibid.* vol. 1, p. 294; POLLOCK AND MAITLAND, *supra* note 1, p. 581.

⁸ *Supra* note 6, vol. 3, p. 599.

⁹ *Coyles v. Hurtin*, 10 Johns. 85 (N. Y. 1813). This is very aptly illustrated by the method of dealing with those accused of larceny. The distinction between the fate of the manifest and non-manifest thief was fast becoming a matter of procedure. The one after a summary trial that was hardly a trial at all, was

This process of transition was a matter of centuries.¹⁰ It often occurred that men called to aid in the chase, before as well as after the introduction of the official, were either unready or unwilling to respond. How greatly this was due to economic causes is conjectural; but we know that as early as 1252¹¹ statutes were enacted requiring free men to keep arms in readiness to take up the cry. Later on, in an effort to stem too frequent escapes, penalties¹² were levied on the local community for failure to apprehend the perpetrator. Yet chase by the vill was almost certainly doomed to failure unless aided by its neighbors; and since the penalty was imposed only on the former, it left the latter indifferent towards assistance. As a result, during the reign of Elizabeth, more comprehensive bills were enacted which involved all who might have helped.¹³ From these ancient beginnings, by easy stages without any violent change in principle, developed the right of our present-day professional police official to arbitrarily compel assistance which is embodied in Section 1848 of the Penal Law.¹⁴ Judge Cardozo says, "Still as in the days of Edward I, the citizenry may be called upon to enforce the justice of the State."¹⁵

Whatever the reason, whether the speed of modern life and the highly concentrated mass of people in our big cities, or the powerfully fortified gangs frequenting our streets, the fact can hardly be questioned that fulfilling this duty whereof our learned justice speaks, is now accompanied by much greater risk to life and property. To meet this situation, the Legislature has transcended history, and, we are sure, has advanced a full progressive stride. By an amendment to sec. 1848,¹⁶ the burden of the material

put to death by hanging or in some other fashion sanctioned by custom; the other, tried and sentenced by the king's justices, went to the gallows. POLLOCK AND MAITLAND, *supra* note 1, p. 495.

¹⁰ *Supra* note 6, vol. 3, p. 599.

¹¹ See the Writ of 1252 in Select Charters.

¹² This usually equalled the value of the article lost.

¹³ The neighboring vills who neglected suit were liable for half the damages assessed against the hundred where the crime had been committed (*supra* note 6).

¹⁴ A person who, after having been lawfully commanded to aid an officer in arresting any person, or in re-taking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer, is guilty of a misdemeanor. * * *

¹⁵ *Babington v. Yellow Taxi Corp.*, *supra* note 1.

¹⁶ Where such a command is obeyed and the person obeying it is killed or injured or his property or that of his employer is damaged and such death, injury or damages arises out of and in the course of aiding an officer in arresting or endeavoring to arrest a person or re-taking or endeavoring to re-take a person who has escaped from legal custody or executing or endeavoring to execute any legal process, the person or employer so injured or whose property is so damaged or the personal representatives of the person so killed shall have a cause of action to recover the amount of such damage or injury against the municipal corporation by which said officer is employed at the time such command is obeyed. In the event of the death of the person so commanded to aid an officer, the action shall be governed by the provisions of sections one hundred

risk is shifted from our citizen and placed on the municipal corporation against whom the crime has been committed, and who, through its professional police officer, has drafted the assistance, if it results in harm to him who answered the call. Thus society, which has always recognized the right to assistance of the wronged, now must compensate the avenger who is himself harmed while so upholding the peace.

LAWRENCE T. GRESSER, JR.

AERONAUTICS—WRECKED AIRCRAFT—EXAMINATION OF, BEFORE REMOVAL.—The aviation policy of New York, according to the State Aviation Commission, is predicated on the belief that the basic control of aeronautics is primarily a function of the federal government.¹ In conformity to this, all aircraft and airmen are required to procure a federal license,² and comply with the federal standards for airworthiness.³ However, since 1928, there has been a rapid increase in the number of state laws supplementing the national statutes, resulting in the imposition of stringent local requirements.⁴

Such a law became effective in July, 1932,⁵ in the case of accidents occurring through the falling or faulty landing of an airplane. It reads as follows:

“When an aircraft falls or lands in a wrecked condition or is wrecked by the fall or in landing and an occupant thereof is killed or severely injured thereby or escapes death or injury by the use of a parachute, neither such aircraft or any part of it shall be destroyed or removed before the expiration of twenty-four hours thereafter without the permission of an inspector of the United States Department of Commerce or a member of the state police and if, before it is destroyed or removed, such an inspector or member of the state police shall appear at the scene of the wreck for the purpose of examining the aircraft it shall not be destroyed or removed until the examination is completed within forty-eight hours of the time that the aircraft fell or landed. This section shall

and thirty, one hundred and thirty-two, one hundred and thirty-three and one hundred and thirty-four of the Decedent Estate Law.

¹ “Foreword,” LAWS AFFECTING AVIATION OF THE STATE OF NEW YORK, 1932, published by the New York State Commission on Aviation, Albany, N. Y.

² Laws of 1928, c. 233, art. 14, §241.

³ *Ibid.* §243.

⁴ Laws of 1928, cc. 169, 233, 373, 408; Laws of 1929, cc. 16, 31, 53; Laws of 1930, cc. 289, 334, 488; Laws of 1931, cc. 99, 101, 225; Laws of 1932, cc. 121, 187, 594.

⁵ S. Int. 652, March 15, 1932. Introduced Feb. 3, 1932.