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W. C. Holt

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from advertising is enough.¹² The profits made on "Bank Night" greatly exceed those of any other night.¹³ Therefore can it be said that no consideration is paid for the chances? The promoter is receiving increased profits as a direct result thereof. Inferior pictures are often shown on "Bank Night"¹⁴ and the price of admission could be held to cover both admission and the chance.

It has long ago been determined that lotteries are an evil which the law should prevent. In substance "Bank Nights", whatever their form, are a variety of the same abuse. People are induced to part with their money for the chance of winning a larger sum. The promoters of "Bank Nights" expect them to. Otherwise there would be no object in the schemes. The problem has not been presented to the North Carolina Supreme Court, but when and if it is, it is to be hoped that the Court will look to the substance and not the form of these transactions.

JAMES A. WELLONS, JR.

Officers—Law Enforcement—Bonds.

A statute proposed but not enacted in the recent session of the North Carolina legislature would have required all peace officers of every city and town in the state to be bonded.¹ However, a bill was passed requiring the bonding for faithful performance of their duties of all members of the Highway Patrol and every other peace officer employed by the state.^{1*} This legislation, and that attempted, was an effort to make more adequate the remedies available to innocent persons who are injured by police officers in the performance of their duties. This is desirable since the duties of police officers place them in a position where they are more likely to injure innocent parties than are other members of the general public, and all too often the officer is execution proof.

267 N. W. 602 (1936); *Maughs v. Porter*, 157 Va. 415, 161 S. E. 242 (1931), criticized in (1932) 18 VA. L. REV. 465, (1932) 80 U. OF PA. L. REV. 744 (chances given to anyone attending an auction sale. Attendance of persons at sale constituted consideration); *Society Theatre v. City of Seattle*, 118 Wash. 258, 203 Pac. 21 (1922); *Willis v. Young*, 1 K. B. 448 (1907) (increase in circulation of newspaper held consideration).

¹² See *Brooklyn Daily Eagle v. Voorhies*, 181 Fed. 579, 581 (E. D. N. Y. 1910).

¹³ *Central States Theatre Corp. v. Patz*, 11 Fed. Supp. 566 (S. D. Iowa, 1935).

¹⁴ *Ibid.*

¹ S. B. No. 389, Session 1937.

Sheriffs are required to give bond for faithful performance of their duties. N. C. CODE ANN. (Michie, 1935) §3930. For a discussion of the extent of liability on sheriff's official bond see (1934) 12 N. C. L. REV. 394. Every injured party may sue in the name of the state the officer and his surety for any injury inflicted by virtue of or under color of office. N. C. CODE ANN. (Michie, 1935) §354; *Warren v. Boyd*, 120 N. C. 56, 26 S. E. 700 (1897).

^{1*} P. L. N. C. 1937, Ch. 339. Cf. p. 342, *supra*.

The municipality is free from liability for torts inflicted in the performance of governmental functions. Law enforcement comes within this category.² The majority of states which allow the garnishment of debtors prohibit the use of this remedy in the case of officers for reasons of public policy and allied grounds.³ At least one city⁴ has assumed its "moral" obligation for injuries to private persons, incurred in the course of law enforcement, by obtaining passage of legislation authorizing reimbursement for injured parties. Some states have authorized to a certain extent compensation in instances where persons are injured when commandeered to aid officers.⁵ Provisions for compensation by cities or states could be made adequate, but in the light of the difficulty in obtaining the passage of such legislation, it is impractical as an immediate solution.

The remedy which appears to be most practical and to offer more proper relief is the requirement of official bonds for all officers.⁶ This means of redress is today undergoing a period of development as evidenced by the proposed North Carolina statute. Many states at present require the bonding only of sheriffs and constables. Some states provide that certain cities bond their police officers for the benefit of the public,⁷ while others allow such bonding in the discretion of the particular municipality.⁸ However, the courts have, in many instances, defeated the purpose of such bonds by strict construction of the bonds or by strict and narrow interpretations of the statutes regarding them.⁹ For individuals to sue upon the bonds where the city is named as the

² Sandlin v. City of Wilmington, 185 N. C. 257, 116 S. E. 733 (1923); 6 McQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS (2ND ED. 1928) §2591.

³ Hall, *The Law of Arrest in Relation to Contemporary Social Problems* (1936) 3 U. OF CHI. L. REV. 345, 346.

⁴ N. Y. Local Law 13, of 1927 (authorizing the city of New York to compensate persons injured by police officers while the latter are engaged in making arrests or executing legal processes); Evans v. Berry, 262 N. Y. 61, 186 N. E. 203 (1933); (1933) 42 YALE L. J. 241; Borchard, *Recent Statutory Developments in Municipal Liability in Tort* (1936) 2 LEGAL NOTES ON LOCAL GOV'T 89, 98; Tooke, *The Extension of Municipal Liability in Tort* (1932) 19 VA. L. REV. 97, 118.

⁵ MICH. LAWS (Mason's Supp., 1933) §2746, 237; NEW JERSEY STAT. SERVICE (1932) 136-1611; NEW YORK LAWS (Cahill Supp. 1931-35) §41-1848.

⁶ Hall, *The Law of Arrest in Relation to Contemporary Social Problems* (1936) 3 U. OF CHI. L. REV. 345, 349.

⁷ IDAHO CODE ANN. (1932) §49-116.

⁸ W. VA. CODE (1931) §11; ILL. REV. STAT. (Cahill, 1933) Chap. 34, §66(9).

⁹ Brookes v. Fidelity and Deposit Co. of Md., 147 Md. 194, 127 Atl. 758 (1925) (Sheriff imprisoned and tortured woman whom he suspected of knowing whereabouts of escaped prisoner. Recovery denied against surety. Surety only liable for official acts of officer because bond was for faithful performance of duties. Officer here exceeded his authority. Bond is a contract and to be strictly construed.); Williams v. Boles, 160 Ky. 775, 170 S. W. 170 (1914) (Recovery on bond denied where statute did not specifically provide for liability on bond of town marshal for policemen specially appointed by him though it did for specially appointed deputies, and the authority of town marshal to appoint both was given in same statutory provision.); State v. Sriver, 1 N. E. (2d) 579 (Ind. 1936)

obligee, there must be express statutory authority.¹⁰ Recovery is denied where the act of the officer is merely under color of office,¹¹ as for instance where the officer exceeded his territorial jurisdiction.¹² Death of the officer has even been held to abate the action against the surety.¹³ A technical irregularity in the execution of the bond has defeated recovery.¹⁴ Some courts, though, have been more liberal and allow recovery even though the act of the officer was not within the technical scope of his duties.¹⁵ Such a result is undoubtedly more sound

(Bond executed by policeman of city belonging to a class in which the police were under control of board of public safety, payable to city and approved by said board, for the faithful performance of duties, held to have been executed pursuant to municipal corporation act and hence not subject to general statutes covering official bonds. Suit was for an assault committed by officer while on duty.).

¹⁰ *Sunter v. Fraser*, 194 Cal. 337, 228 Pac. 660 (1924); *Martin v. Magee*, 179 La. 913, 155 So. 433 (1934) (La. had such a statute.); *City of Eaton Rapids v. Stump*, 127 Mich. 1, 86 N. W. 438 (1901); *Carr v. City of Knoxville*, 144 Tenn. 483, 234 S. W. 328 (1921); *U. S. Fidelity and Guaranty Co. v. Crittenden*, 62 Tex. Civ. App. 283, 131 S. W. 232 (1910); *cf. Cushing v. Lickert*, 79 Neb. 384, 112 N. W. 616 (1907) (recovery allowed only on bonds required by law unless specifically given right to sue on others by statute).

¹¹ *Taylor v. Shields*, 183 Ky. 669, 210 S. W. 168 (1919) (unlawful arrest); *Fidelity and Casualty Co. of N. Y. v. White*, 209 Ky. 402, 272 S. W. 902 (1925) (false arrest); *Indemnity Ins. Co. of North America v. Bonta*, 217 Ky. 265, 289 S. W. 231 (1926) (unlawful arrest and assault); *Young v. Amis*, 220 Ky. 484, 295 S. W. 431 (1927) (unlawful arrest and later killing to prevent escape); *Reed v. Philpott's Adm'r*, 235 Ky. 429, 31 S. W. (2d) 339 (1930) (Deceased, an officer, had prisoner under arrest. Defendant, an officer, tried to take prisoner from deceased, and arrest him as his own prisoner, and in the affray shot deceased. Court held that defendant exceeded his authority. Surety not liable.); *Shelton v. Nat. Surety Co. of N. Y.*, 235 Ky. 778, 32 S. W. (2d) 339 (1930) (unlawful arrest and search); *Goins v. Hudson*, 246 Ky. 517, 55 S. W. (2d) 388 (1932) (jailer unlawfully imprisoned plaintiff).

¹² *Brittain v. U. S. Fidelity and Guaranty Co.*, 219 Ky. 465, 293 S. W. 956 (1927) (Street was city limits. Officer shot plaintiff in attempting to make an arrest in house situated on side of street which was outside city limits.)

¹³ *Veatch v. Derrick*, 224 Ky. 332, 6 S. W. (2d) 279 (1928); *Jonas v. Taylor*, 166 Wash. 302 6 P. (2d) 615 (1932).

¹⁴ *Finney v. Shannon*, 166 Wash. 28, 6 P. (2d) 360 (1931) (city council had not properly voted on requiring the execution of the bond).

¹⁵ *Burge v. Scarbrough*, 211 Ala. 377, 100 So. 653 (1924) (assault and battery in making arrest); *Ingram v. Evans*, 227 Ala. 14, 148 So. 593 (1933); *Gomez v. Scanlan*, 155 Cal. 528, 102 Pac. 12 (1909) (false arrest and imprisonment); *Helgeson v. Powell*, 54 Idaho 667, 34 P. (2d) 957 (1934) (officer, while attempting to arrest deceased unlawfully, shot and killed him); *City of Cairo v. Sheehan*, 173 Ill. App. 464 (1912) (wrongfully assaulting man under arrest); *Scott v. Feilschmidt*, 191 Iowa 347, 182 N. W. 382 (1921) (officer without cause arrested and insulted girl in public on charge of immorality); *Haack v. Pollei*, 134 Minn. 78, 158 N. W. 908 (1916) (officer without justification shot man under arrest when he attempted to run); *Lee v. Charmley*, 20 N. D. 570, 129 N. W. 448 (1910) (false arrest); *Santora v. Callan*, 18 Ohio App. 92 (1924) (officer, off duty and not in uniform, was intoxicated and shot innocent bystander while attempting to make an unjustifiable arrest. Surety was held liable for acts under color of office, therefore if officer was pretending to act as an official it was color of office.); *Burkeland v. Bliss*, 62 S. D. 91, 252 N. W. 25 (1933); *Riter v. Neatherly*, 157 S. W. 439 (Tex. 1913) (unlawful arrest); *Branch v. Guinn*, 242 S. W. 482 (Tex. 1922) (false arrest and imprisonment); *Jackson v. Harries*, 65 Utah, 282, 236 Pac. 234 (1925) (Unlawful search of home. Test of liability of surety is whether official would have acted if he had not been an

because if the acts outside the scope of an officer's duties are not included the bond is useless to members of the public wrongfully injured, because it is not the duty of police to injure persons wrongfully.

The real solution of the problem can be effected by proper legislation regarding bonding. In order to obviate judicial strictness of interpretation, both the statutes and the bonds should be carefully and minutely drawn. Each must be worded with respect to the other. Every law enforcement officer, capable of making an arrest, should be required to give a bond for the benefit of any person injured by the officer in the execution of official acts or those under color of office. What then shall be the extent of liability on the bond? Consideration must be given the various interests involved, which are those of the individual, the officer and the general public. Since the latter are the most important, the liability on the bond should not be so broad as to paralyze law enforcement. In many instances the officer must act quickly in making arrests, and he cannot stop to weigh responsibilities. Therefore to allow recovery on the bond for every technically irregular arrest would require officers to spend a large part of their time defending minor suits; as a consequence officers would act only when sure as to the guilt of the individual, and law enforcement would be retarded. Consequently, liability on the bond should be limited to damages for actual injuries or extended false imprisonment.

The cost of these bonds should be borne by the governmental unit hiring the officer because the bonds are primarily for the general public good. Additional reasons are economy, expediency, prevention of lapses, and certainty of existence of the bond.

Where the surety has paid for a wilfull or grossly negligent injury a cause of action by the surety against the officer should be allowed to restrain the officer from becoming excessively careless and high-handed in his acts.

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officer); *Town of Mabscott v. Saunders*, 114 W. Va. 196, 171 S. E. 410 (1933) (officer negligently shot plaintiff); *Village of Barboursville v. Taylor*, 115 W. Va. 4, 174 S. E. 485 (1934) (Officer in making arrest fired tear gas gun near face of prisoner and severely injured him. Case remanded on other grounds than liability of surety.); *City of Princeton v. Fidelity and Casualty Co. of N. Y.*, 188 S. E. 757 (W. Va. 1936) (unlawful shooting to prevent escape of prisoner); 19 A. L. R. 73. Accord: *Hodge v. U. S. Fidelity and Guaranty Co.*, 42 Ga. App. 84, 155 S. E. 95 (1930) (Approved rule allowing recovery where act is under color of office, but held that where deceased was shot by officer while engaging in a purely personal affray with the officer this was not in any way connected with his office.).

Recovery allowed on bond for "faithful performance of duties" where officer negligently operated a motor vehicle causing the damage. *Manwaring v. Geisler*, 191 Ky. 532, 230 S. W. 918 (1921); *National Surety Co. of N. Y. v. Hester's Adm'r*, 241 Ky. 623, 44 S. W. (2d) 563 (1931); *Curnyn v. Kinney*, 119 Neb. 478, 229 N. W. 894 (1930); *U. S. Fidelity and Guaranty Co. v. Samuels*, 116 Ohio St. 586, 157 N. E. 325 (1927).