



PIERSON ET AL. v. RAY ET AL.

No. 79

SUPREME COURT OF THE UNITED STATES

386 U.S. 547; 87 S. Ct. 1213; 18 L. Ed. 2d 288; 1967 U.S. LEXIS 2791

January 11, 1967, Argued

April 11, 1967, Decided *

* Together with No. 94, Ray et al. v. Pierson et al., also on certiorari to the same court.

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

DISPOSITION: *352 F.2d 213*, affirmed in part, reversed in part, and remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: The court granted certiorari to the United States Court of Appeals for the Fifth Circuit, which held in petitioners' action for damages under *42 U.S.C.S. § 1983* that respondent judge was immune under both *§ 1983* and state common law, reversed and remanded for a new trial on a *§ 1983* claim against respondent police officers, and directed that petitioners were precluded from seeking damages under *§ 1983*.

OVERVIEW: Petitioners were a group of white and Negro clergymen who attempted to use segregated facilities at a bus terminal. Respondents, city policemen, arrested petitioners, and petitioners were convicted of violating Miss. Code Ann. *§ 2087.5*. One petitioner was granted a directed verdict, and the cases against the other petitioners were dropped. Petitioners alleged that respondents had violated *42 U.S.C.S. § 1983* and were liable at common law for false arrest and imprisonment.

The court agreed with the court of appeals that respondent judge was immune from liability because his acts were committed within his judicial discretion. The court held that though the statute under which petitioners were convicted was found to be unconstitutional after the arrest, the defense of good faith and probable cause was available to respondent police in the *§ 1983* action, and that a new trial was necessary because the jury's verdict was influenced by irrelevant and prejudicial evidence. The court found, however, that the substantially undisputed fact that petitioners expected to be arrested did not disqualify them from seeking damages under *§ 1983* as the court of appeals had directed.

OUTCOME: The court affirmed in part, reversed in part, and remanded, holding that respondent judge acted within his judicial discretion, and that a new trial was necessary because the jury's verdict was influenced by irrelevant and prejudicial evidence, but that petitioners were not disqualified from seeking damages under the statute.

LexisNexis(R) Headnotes

*Civil Rights Law > Immunity From Liability > Court Personnel & Judges
Governments > Courts > Judges*

Torts > Public Entity Liability > Immunity > Judicial Immunity

[HN1] Judges are immune from liability for damages for acts committed within their judicial jurisdiction. This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.

Civil Rights Law > Immunity From Liability > Local Officials > Customs & Policies***Torts > Intentional Torts > False Arrest > General Overview******Torts > Intentional Torts > False Imprisonment > General Overview***

[HN2] A peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved. A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does. Although the matter is not entirely free from doubt, the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied.

Civil Rights Law > Immunity From Liability > Local Officials > Customs & Policies***Torts > Intentional Torts > False Imprisonment > Civil Rights Actions******Torts > Intentional Torts > False Imprisonment > Defenses > Justification***

[HN3] The defense of good faith and probable cause, which may be available to police officers in the common-law action for false arrest and imprisonment, is also available to them in an action under 42 U.S.C.S. § 1983.

SUMMARY:

While attempting to use segregated facilities at an interstate bus terminal in Jackson, Mississippi, the plaintiffs were arrested by municipal police officers on charges of having violated the Mississippi breach-of-peace statute. They were convicted by a municipal police justice and each given the maximum jail

sentence and a fine. On appeal to the County Court, one of the plaintiffs was acquitted; the cases against the others were then dropped. Thereupon the plaintiffs brought, in the United States District Court for the Southern District of Mississippi, Jackson Division, the present action for damages against the judge and the arresting officers, based on both the common law of false arrest and 1 of the Civil Rights Act of 1871 (42 USC 1983), which makes liable "every person" who under color of law deprives another person of his civil rights. A jury returned a verdict for defendants on both counts. On appeal, the Court of Appeals for the Fifth Circuit held (352 F2d 213) that (1) the judge was immune from liability under both 1983 and the common law of Mississippi for acts committed within his judicial jurisdiction, and (2) the common-law claim against the police officers was not well founded, since they had probable cause to believe that the Mississippi statute was violated and were not required to predict a later decision of the United States Supreme Court holding the Mississippi statute invalid, but a new trial should be granted on the 1983 claim because of prejudicial cross-examination of plaintiffs by defense counsel. The court also held that plaintiffs could not recover at the new trial if it were proved that they went to Mississippi anticipating to be illegally arrested, this being a consent to such arrest.

On writs of certiorari, the Supreme Court of the United States affirmed the judgment of the Court of Appeals as to the defendant judge and reversed it as to the defendant police officers. In an opinion by Warren, Ch. J., expressing the views of eight members of the court, it was held that, as ruled by the Court of Appeals, the judge was immune from liability. As to the police officers, it was held that the defense of good faith and probable cause was available to them under 1983, and that, as held by the Court of Appeals, a new trial was necessary because the jury's verdict was influenced by the prejudicial evidence solicited by defendants' counsel in cross-examining plaintiffs, but that recovery should not be denied on the ground that plaintiffs consented to the illegal arrest.

Douglas, J., dissented from the holding that the judge was immune from liability under 1983, since the term "every person," as used in the statute, did not except judges.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

APPEAL §1087.7

issue not raised in certiorari petition --

Headnote:[1A][1B]

A holding of a Court of Appeals that a new trial is necessary because of prejudicial cross-examination cannot be attacked in a party's brief in the United States Supreme Court, where the holding was not challenged in his petition for certiorari.

[***LEdHN2]

APPEAL §1552

cross-examination --

Headnote:[2A][2B]

The cross-examination of plaintiffs by defense counsel--in an action for false arrest, made at the location of civil rights demonstrations, and for violation of civil rights--as to an alleged convergence of plaintiffs' views on racial justice with those of the Communist Party is prejudicial so as to require the direction of a new trial on plaintiffs' appeal from an adverse judgment, the views of the Communist Party on racial equality not being an issue in the case.

[***LEdHN3]

JUDGES §14

immunity from liability --

Headnote:[3]

At common law judges are immune from liability for damages for acts committed within their judicial jurisdiction; this immunity applies even when the judge is accused of acting maliciously and corruptly, since it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences.

[***LEdHN4]

CIVIL RIGHTS §12.5

infringement -- immunity of judges --

Headnote:[4]

The common-law doctrine of immunity of judges from liability for damages for acts committed within their judicial jurisdiction is not abolished by 1 of the Civil Rights Act of 1871 (*42 USC 1983*) which makes liable "every person" who under color of law deprives another person of his civil rights.

[***LEdHN5]

EVIDENCE §94

presumptions -- change of common law --

Headnote:[5]

There is no presumption that Congress, when enacting 1 of the Civil Rights Act of 1871 (*42 USC 1983*), which makes liable "every person" who under color of law deprives another person of his civil rights, intended to abolish the common-law doctrine, well settled at the time of the statute's enactment, of immunity of judges from liability for damages for acts committed within their judicial jurisdiction.

[***LEdHN6]

FALSE IMPRISONMENT §2

immunity of police officers --

Headnote:[6]

At common law police officers have no absolute and unqualified immunity from liability for false arrest.

[***LEdHN7]

FALSE IMPRISONMENT §2

peace officers -- liability --

Headnote:[7]

Under the prevailing view a peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved.

[***LEdHN8]

FALSE IMPRISONMENT §2

police officer -- excused from liability --

Headnote:[8A][8B]

A police officer seems excused from liability for false arrest where he acts under a statute that he reasonably believed to be valid, but which was later held unconstitutional, on its face or as applied; a police officer is not charged with predicting the future course of constitutional law.

[***LEdHN9]

CIVIL RIGHTS §12.5

false arrest -- defenses --

Headnote:[9]

The defense of good faith and probable cause, which is available to a police officer in a common-law action for false arrest and imprisonment, is also available to him in an action under 1 of the Civil Rights Act of 1871 (*42 USC 1983*), which makes liable "every person" who under color of law deprives another person of his civil rights.

[***LEdHN10]

APPEAL §1682

dismissal -- suit for false arrest --

Headnote:[10]

An action against police officers for false arrest of plaintiffs when they attempted to use segregated facilities at an interstate bus terminal should not be ordered dismissed by a Court of Appeals on the theory that the police officers were not required to anticipate a subsequent judicial declaration of the invalidity of the statute under which they were acting, where the plaintiffs did not simply argue that they were arrested under a state statute later held unconstitutional, but claimed and attempted to prove that the police officers arrested them solely for attempting to use the waiting room, that no crowd was present, and that no one threatened violence or seemed about to cause a disturbance, and the officers did not defend on the theory that they believed in good faith that it was constitutional to arrest the plaintiffs solely for

using the waiting room.

[***LEdHN11]

FALSE IMPRISONMENT §2

police officers -- constitutionality of arrest --

Headnote:[11]

If in an action against police officers for false arrest the jury finds that the officers reasonably believed in good faith that the arrest was constitutional, then a verdict for the officers follows even though the arrest was in fact unconstitutional.

[***LEdHN12]

APPEAL §1691

new trial -- insufficiency of verdict --

Headnote:[12]

A case must be remanded to the trial court for a new trial where the jury's verdict was influenced by irrelevant and prejudicial evidence.

[***LEdHN13]

CIVIL RIGHTS §12.5

consent to illegal arrest --

Headnote:[13]

Even if it is assumed that plaintiffs, attempting to use segregated facilities at an interstate bus terminal, went to the terminal for the sole purpose of testing their rights to unsegregated public accommodations, they did not, because of going to that place expecting to be illegally arrested, consent to the arrest so as to be precluded, under the principle of *volenti non fit injuria*, from suing the arresting officers for damages under 1 of the Civil Rights Act of 1871 (*42 USC 1983*), where the plaintiffs in no way tricked or goaded the officers into arresting them, but merely exercised their right to use the waiting room.

[***LEdHN14]

APPEAL §1258.5

review of state law --

Headnote:[14A][14B]

+ See n. 3, *infra*.

The Supreme Court of the United States does not ordinarily review the holding of a Court of Appeals on a matter of state law, and this is particularly so where a state common-law claim is merely cumulative, and the right of recovery of the party seeking review is adequately protected by federal law.

SYLLABUS

Petitioners, + members of a group of white and Negro clergymen on a "prayer pilgrimage" to promote racial integration, attempted to use a segregated interstate bus terminal waiting room in Jackson, Mississippi, in 1961. They were arrested by respondent policemen and charged with conduct breaching the peace in violation of § 2087.5 of the Mississippi Code which this Court, in 1965, held unconstitutional in *Thomas v. Mississippi*, 380 U.S. 524, as applied to similar facts. Petitioners waived a jury trial and were convicted by respondent municipal police justice. On appeal one petitioner was accorded a trial *de novo* and, following a directed verdict in his favor, the cases against the other petitioners were dropped. Petitioners then brought this action in the District Court for damages (1) under 42 U. S. C. § 1983, which makes liable "every person" who under color of law deprives another person of his civil rights, and (2) at common law for false arrest and imprisonment. The evidence showed that the ministers expected to be arrested on entering a segregated area. Though the witnesses agreed that petitioners entered the waiting room peacefully, petitioners testified that there was no crowd at the terminal, whereas the police testified that a threatening crowd followed petitioners. The jury found for respondents. On appeal the Court of Appeals held that (1) respondent police justice had immunity for his judicial acts under both § 1983 and the state common law and (2) the policemen had immunity under the state common law of false arrest if they had probable cause to believe § 2087.5 valid since they were not required to predict what laws are constitutional, but that, by virtue of *Monroe v. Pape*, 365 U.S. 167, they had no such immunity under § 1983 where the state statute was subsequently declared invalid. The court remanded the case against the officers for a new trial under § 1983 because of prejudicial cross-examination of petitioners, but ruled that they could not recover if it were shown at the new trial that they had gone to Mississippi in anticipation that they would be illegally arrested. *Held*:

1. The settled common-law principle that a judge is immune from liability for damages for his judicial acts was not abolished by § 1983. Cf. *Tenney v. Brandhove*, 341 U.S. 367. Pp. 553-555.

2. The defense of good faith and probable cause which is available to police officers in a common-law action for false arrest and imprisonment is also available in an action under § 1983. *Monroe v. Pape*, *supra*, distinguished. Pp. 555-557.

3. Though the officers were not required to predict this Court's ruling in *Thomas v. Mississippi*, *supra*, that § 2087.5 was unconstitutional as applied, and the defense of good faith and probable cause is available in an action under § 1983, it does not follow that the count based thereon should be dismissed since the evidence was conflicting as to whether the police had acted in good faith and with probable cause in arresting the petitioners. Pp. 557-558.

4. Petitioners did not consent to their arrest by deliberately exercising their right to use the waiting room in a peaceful manner with the expectation that they would be illegally arrested. P. 558.

COUNSEL: Carl Rachlin argued the cause for petitioners in No. 79 and for respondents in No. 94. With him on the briefs was Melvin L. Wulf.

Elizabeth Watkins Hulen Grayson argued the cause for respondents in No. 79 and for petitioners in No. 94. With her on the brief was Thomas H. Watkins.

JUDGES: Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Fortas

OPINION BY: WARREN

OPINION

[*548] [***291] [**1215] MR. CHIEF JUSTICE WARREN delivered the opinion of Court.

These cases present issues involving the liability of local police officers and judges under § 1 of the Civil Rights Act of 1871, 17 Stat. 13, now 42 U. S. C. § 1983. ¹ Petitioners [*549] in No. 79 were members of a group of 15 white and Negro Episcopal clergymen who

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attempted to use segregated facilities at an interstate bus terminal in Jackson, Mississippi, in 1961. They were arrested by respondents Ray, Griffith, and Nichols, policemen of the City of Jackson, and charged with violating § 2087.5 of [***292] the Mississippi Code, which makes guilty of a misdemeanor anyone who congregates with others in a public place under circumstances such that a breach of the peace may be occasioned thereby, and refuses to move on when ordered to do so by a police officer.² Petitioners³ waived a jury trial and were convicted of the offense by respondent Spencer, a municipal police justice. They were each given the maximum sentence of four months in jail and [*550] a fine of \$ 200. On appeal petitioner Jones was accorded a trial *de novo* in the County Court, and after the city produced its evidence the court granted his motion for a directed verdict. The cases against the other petitioners were then dropped.

1 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U. S. C. § 1983.

2 "1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

"(1) crowds or congregates with others in . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of

not more than two hundred dollars (\$ 200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment . . ."

3 The ministers involved in No. 79 will be designated as "petitioners" throughout this opinion, although they are the respondents in No. 94.

Having been vindicated in the County Court, petitioners brought this action for damages in the United States District Court for the Southern District of Mississippi, Jackson Division, alleging that respondents had violated § 1983, *supra*, and that respondents were liable at common law for false arrest and imprisonment. A jury returned verdicts for respondents [**1216] on both counts. On appeal, the Court of Appeals for the Fifth Circuit held that respondent Spencer was immune from liability under both § 1983 and the common law of Mississippi for acts committed within his judicial jurisdiction. 352 F.2d 213. As to the police officers, the court noted that § 2087.5 of the Mississippi Code was held unconstitutional as applied to similar facts in *Thomas v. Mississippi*, 380 U.S. 524 (1965).⁴ Although *Thomas* was decided years after the arrest involved in this trial, the court held that the policemen would be liable in a suit under § 1983 for an unconstitutional arrest even if they acted in good faith and with probable cause in making an arrest under a state statute not yet held invalid. The court believed that this stern result was required by *Monroe v. Pape*, [*551] 365 U.S. 167 (1961). Under the count based on the common law of Mississippi, however, it held that the policemen [***293] would not be liable if they had probable cause to believe that the statute had been violated, because Mississippi law does not require police officers to predict at their peril which state laws are constitutional and which are not. Apparently dismissing the common-law claim,⁵ the Court of Appeals reversed and remanded for a new trial on the § 1983 claim against the police officers because defense counsel had been allowed to cross-examine the ministers on various irrelevant and prejudicial matters, particularly including an alleged convergence of their views on racial justice with those of the Communist Party. At the new trial, however, the court held that the ministers could not recover if it were proved that they went to Mississippi anticipating that they would be illegally arrested because such action would constitute consent to the arrest under the principle of *volenti non fit injuria*, he who consents to a wrong cannot be injured.

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4 In *Thomas* various "Freedom Riders" were arrested and convicted under circumstances substantially similar to the facts of these cases. The police testified that they ordered the "Freedom Riders" to leave because they feared that onlookers might breach the peace. We reversed without argument or opinion, citing *Boynton v. Virginia*, 364 U.S. 454 (1960). *Boynton* held that racial discrimination in a bus terminal restaurant utilized as an integral part of the transportation of interstate passengers violates § 216 (d) of the Interstate Commerce Act. State enforcement of such discrimination is barred by the *Supremacy Clause*.

5 Respondents read the court's opinion as remanding for a new trial on this claim. The court stated, however, that the officers "are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment." 352 F.2d, at 221.

[***LEdHR1A] [1A] [***LEdHR2A] [2A] We granted certiorari in No. 79 to consider whether a local judge is liable for damages under § 1983 for an unconstitutional conviction and whether the ministers should be denied recovery against the police officers if they acted with the anticipation that they would be illegally arrested. We also granted the police officers' petition in No. 94 to determine if the Court of Appeals correctly held that they could not assert the defense of [*552] good faith and probable cause to an action under § 1983 for unconstitutional arrest.⁶

[***LEdHR1B] [1B] [***LEdHR2B] [2B]

6 Respondents did not challenge in their petition in No. 94 the holding of the Court of Appeals that a new trial is necessary because of the prejudicial cross-examination. Belatedly, they devoted a section of their brief to the contention that the cross-examination was proper. This argument is no more meritorious than it is timely. The views of the Communist Party on racial equality were not an issue in these cases.

The evidence at the federal trial showed that petitioners and other Negro [**1217] and white Episcopal clergymen undertook a "prayer pilgrimage" in 1961 from New Orleans to Detroit. The purpose of the pilgrimage was to visit church institutions and other places in the North and South to promote racial equality and integration, and, finally, to report to a church convention in Detroit. Letters from the leader of the group to its members indicate that the clergymen intended from the beginning to go to Jackson and attempt to use segregated facilities at the bus terminal there, and that they fully expected to be arrested for doing so. The group made plans based on the assumption that they would be arrested if they attempted peacefully to exercise their right as interstate travelers to use the waiting rooms and other facilities at the bus terminal, and the letters discussed arrangements for bail and other matters relevant to arrests.

The ministers stayed one night in Jackson, and went to the bus terminal the next morning to depart for Chattanooga, Tennessee. They entered the waiting room, disobeying a sign at the entrance that announced "White Waiting Room Only -- [***294] By Order of the Police Department." They then turned to enter the small terminal restaurant but were stopped by two Jackson police officers, respondents Griffith and Nichols, who had been awaiting their arrival and who ordered them to "move on." The ministers replied that they wanted to eat, [*553] and refused to move on. Respondent Ray, then a police captain and now the deputy chief of police, arrived a few minutes later. The ministers were placed under arrest and taken to the jail.

All witnesses including the police officers agreed that the ministers entered the waiting room peacefully and engaged in no boisterous or objectionable conduct while in the "White Only" area. There was conflicting testimony on the number of bystanders present and their behavior. Petitioners testified that there was no crowd at the station, that no one followed them into the waiting room, and that no one uttered threatening words or made threatening gestures. The police testified that some 25 to 30 persons followed the ministers into the terminal, that persons in the crowd were in a very dissatisfied and ugly mood, and that they were mumbling and making unspecified threatening gestures. The police did not describe any specific threatening incidents, and testified that they took no action against any persons in the crowd who were threatening violence because they "had

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determined that the ministers was the cause of the violence if any might occur,"⁷ although the ministers were concededly orderly and polite and the police did not claim that it was beyond their power to control the allegedly disorderly crowd. The arrests and convictions were followed by this lawsuit.

⁷ Transcript of Record, at 347. (Testimony of Officer Griffith.)

LEdHR3 [3] We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for damages for his role in these convictions. The record is barren of any proof or specific allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court.⁸ Few doctrines were more solidly [*554] established at common law than the [HN1] immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley v. Fisher*, 13 Wall. 335 [**1218] (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it "is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." (*Scott v. Stansfield*, L. R. 3 Ex. 220, 223 (1868), quoted in *Bradley v. Fisher*, *supra*, 349, note, at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may [295] hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.

⁸ Petitioners attempted to suggest a "conspiracy" between Judge Spencer and the police officers by questioning him about his reasons for finding petitioners guilty in these cases and by showing that he had found other "Freedom Riders" guilty under similar circumstances in previous cases. The proof of conspiracy never went beyond this suggestion that inferences could be drawn from

Judge Spencer's judicial decisions. See Transcript of Record, at 352-371.

LEdHR4 [4] [LEdHR5] [5] We do not believe that this settled principle of law was abolished by § 1983, which makes liable "every person" who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities. Accordingly, this Court held in *Tenney v. Brandhove*, 341 U.S. 367 (1951), that the immunity of legislators for acts within the legislative role was not abolished. The immunity of judges for acts within the judicial role is equally well established, and [*555] we presume that Congress would have specifically so provided had it wished to abolish the doctrine.⁹

⁹ Since our decision in *Tenney v. Brandhove*, *supra*, the courts of appeals have consistently held that judicial immunity is a defense to an action under § 1983. See *Bauers v. Heisel*, 361 F.2d 581 (C. A. 3d Cir. 1966), and cases cited therein.

LEdHR6 [6] [LEdHR7] [7] [***LEdHR8A] [8A] The common law has never granted police officers an absolute and unqualified immunity, and the officers in this case do not claim that they are entitled to one. Their claim is rather that they should not be liable if they acted in good faith and with probable cause in making an arrest under a statute that they believed to be valid. Under the prevailing view in this country [HN2] a peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved. *Restatement, Second, Torts* § 121 (1965); 1 Harper & James, *The Law of Torts* § 3.18, at 277-278 (1956); *Ward v. Fidelity & Deposit Co. of Maryland*, 179 F.2d 327 (C. A. 8th Cir. 1950). A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does. Although the matter is not entirely free from doubt,¹⁰ the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied.

¹⁰ See Caveat, *Restatement, Second, Torts* § 121

, at 207-208 (1965); *Miller v. Stinnett*, 257 F.2d 910 (C. A. 10th Cir. 1958).

The Court of Appeals held that the officers had such a limited privilege under the common law of Mississippi, 11 and indicated that it would have recognized a similar privilege under § 1983 except that it felt compelled to hold otherwise by our decision in *Monroe v. Pape*, 365 U.S. [*556] 167 (1961). *Monroe v. Pape* presented no question of immunity, however, and none was decided. The complaint in that case alleged that "13 Chicago police officers broke into petitioners' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers. It further [**1219] allege[d] that Mr. Monroe was then taken to the police station and detained on 'open' charges for 10 hours, while he was interrogated about a two-day-old murder, that he was not taken before a magistrate, though one was accessible, that he was not permitted to call his family or attorney, that he was subsequently released without [***296] criminal charges being preferred against him." 365 U.S., at 169. The police officers did not choose to go to trial and defend the case on the hope that they could convince a jury that they believed in good faith that it was their duty to assault Monroe and his family in this manner. Instead, they sought dismissal of the complaint, contending principally that their activities were so plainly illegal under state law that they did not act "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" as required by § 1983. In rejecting this argument we in no way intimated that the defense of good faith and probable cause was foreclosed by the statute. We also held that the complaint should not be dismissed for failure to state that the officers had "a specific intent to deprive a person of a federal right," but this holding, which related to requirements of pleading, carried no implications as to which defenses would be available to the police officers. As we went on to say in the same paragraph, § 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." 365 U.S., at 187. Part of the background of tort liability, in the [*557] case of police officers making an arrest, is the defense of good faith and probable cause.

11 See *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 906 (1943).

[***LEdHR8B] [8B] [***LEdHR9] [9]
[***LEdHR10] [10] [***LEdHR11] [11]
[***LEdHR12] [12] We hold that [HN3] the defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under § 1983. This holding does not, however, mean that the count based thereon should be dismissed. The Court of Appeals ordered dismissal of the common-law count on the theory that the police officers were not required to predict our decision in *Thomas v. Mississippi*, 380 U.S. 524. We agree that a police officer is not charged with predicting the future course of constitutional law. But the petitioners in this case did not simply argue that they were arrested under a statute later held unconstitutional. They claimed and attempted to prove that the police officers arrested them solely for attempting to use the "White Only" waiting room, that no crowd was present, and that no one threatened violence or seemed about to cause a disturbance. The officers did not defend on the theory that they believed in good faith that it was constitutional to arrest the ministers solely for using the waiting room. Rather, they claimed and attempted to prove that they did not arrest the ministers for the purpose of preserving the custom of segregation in Mississippi, but solely for the purpose of preventing violence. They testified, in contradiction to the ministers, that a crowd gathered and that imminent violence was likely. If the jury believed the testimony of the officers and disbelieved that of the ministers, and if the jury found that the officers reasonably believed in good faith that the arrest was constitutional, then a verdict for the officers would follow even though the arrest was in fact unconstitutional. The jury did resolve the factual issues in favor of the officers but, for reasons previously stated, [*558] its verdict was influenced by irrelevant and prejudicial evidence. Accordingly, the case must be remanded to the trial court for a new trial.

[***LEdHR13] [13] [***LEdHR14A] [14A] It is necessary to decide what importance should be given at the new trial to the substantially undisputed fact that the petitioners [***297] went to Jackson expecting to be illegally arrested. We do not agree with the Court of Appeals that they somehow consented to the arrest because of their anticipation that [**1220] they would be illegally arrested, even assuming that they went to the Jackson bus terminal for the sole purpose of testing their

rights to unsegregated public accommodations. The case contains no proof or allegation that they in any way tricked or goaded the officers into arresting them. The petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate exercise of that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983.

12

[*LEdHR14B]** [14B]

12 The petition for certiorari in No. 79 also presented the question whether the Court of Appeals correctly dismissed the count based on the common law of Mississippi. We do not ordinarily review the holding of a court of appeals on a matter of state law, and we find no reason for departing from that tradition in this case. The state common-law claim in this case is merely cumulative, and petitioners' right to recover for an invasion of their civil rights, subject to the defense of good faith and probable cause, is adequately secured by § 1983.

The judgment of the Court of Appeals is affirmed in part and reversed in part, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

DISSENT BY: DOUGLAS

DISSENT

MR. JUSTICE DOUGLAS, dissenting.

I do not think that all judges, under all circumstances, no matter how outrageous their conduct are immune [*559] from suit under 17 Stat. 13, 42 U. S. C. § 1983. The Court's ruling is not justified by the admitted need for a vigorous and independent judiciary, is not commanded by the common-law doctrine of judicial immunity, and does not follow inexorably from our prior decisions.

The statute, which came on the books as § 1 of the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13, provides that "every person" who under color of state law or custom "subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." To most, "every person" would mean *every person*, not every person *except* judges. Despite the plain import of those words, the Court decided in *Tenney v. Brandhove*, 341 U.S. 367, that state legislators are immune from suit as long as the deprivation of civil rights which they caused a person occurred while the legislators "were acting in a field where legislators traditionally have power to act." *Id.*, at 379. I dissented from the creation of that judicial exception as I do from the creation of the present one.

The congressional purpose seems to me to be clear. A condition of lawlessness existed in certain of the States, under which people were being denied their civil rights. Congress intended to provide a remedy for the wrongs being perpetrated. And its members were not unaware that certain members of the judiciary were implicated in the state of affairs which the statute was intended to rectify. It was often noted that "immunity is given to crime, [***298] and the records of the public tribunals are searched in vain for any evidence of effective redress." Cong. Globe, 42d Cong., 1st Sess., 374. Mr. Rainey of South Carolina noted that "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." *Id.*, at 394. [*560] Congressman Beatty of Ohio claimed that it was the duty of Congress to listen to the appeals of those who "by reason of popular sentiment or secret organizations or prejudiced juries or bribed judges, [cannot] obtain the rights and privileges due an American citizen . . ." *Id.*, at 429. The members supporting the proposed measure were apprehensive that there had [*1221] been a complete breakdown in the administration of justice in certain States and that laws nondiscriminatory on their face were being applied in a discriminatory manner, that the newly won civil rights of the Negro were being ignored, and that the Constitution was being defied. It was against this background that the section was passed, and it is against this background that it should be interpreted.

It is said that, at the time of the statute's enactment, the doctrine of judicial immunity was well settled and that Congress cannot be presumed to have intended to abrogate the doctrine since it did not clearly evince such a purpose. This view is beset by many difficulties. It assumes that Congress could and should specify in advance all the possible circumstances to which a

remedial statute might apply and state which cases are within the scope of a statute.

"Underlying [this] view is an atomistic conception of intention, coupled with what may be called a pointer theory of meaning. This view conceives the mind to be directed toward individual things, rather than toward general ideas, toward distinct situations of fact rather than toward some significance in human affairs that these situations may share. If this view were taken seriously, then we would have to regard the intention of the draftsman of a statute directed against 'dangerous weapons' as being directed toward an endless series of individual objects: revolvers, [*561] automatic pistols, daggers, Bowie knives, etc. If a court applies the statute to a weapon its draftsman had not thought of, then it would be 'legislating,' not 'interpreting,' as even more obviously it would be if it were to apply the statute to a weapon not yet invented when the statute was passed." Fuller, *The Morality of Law* 84 (1964).

Congress of course acts in the context of existing common-law rules, and in construing a statute a court considers the "common law before the making of the Act." *Heydon's Case*, 3 Co. Rep. 7 a, 76 Eng. Rep. 637 (Ex. 1584). But Congress enacts a statute to remedy the inadequacies of the pre-existing law, including the common law.¹ It cannot be presumed that the common law is the perfection of reason, is superior to statutory law (Sedgwick, *Construction of Statutes* 270 (1st ed. 1857); Pound, *Common Law and Legislation*, 21 Harv. L. Rev. 383, 404-406 (1908)), and that the legislature always changes law for the worse. Nor should the canon of construction "statutes in derogation of the [***299] common law are to be strictly construed" be applied so as to weaken a remedial statute whose purpose is to remedy the defects of the pre-existing law.

¹ "Remedial statutes are to be liberally construed." See generally, Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed*, 3 Vand. L. Rev. 395 (1950); Llewellyn, *The Common Law Tradition*, Appendix C (1960).

The position that Congress did not intend to change the common-law rule of judicial immunity ignores the fact that every member of Congress who spoke to the issue assumed that the words of the statute meant what they said and that judges would be liable. Many

members of Congress objected to the statute because it imposed [*562] liability on members of the judiciary. Mr. Arthur of Kentucky opposed the measure because:

"Hitherto . . . no judge or court has been held liable, civilly or criminally, for judicial acts Under the provisions of [section 1] every judge in the State court . . . will enter upon and pursue the call of official duty with the sword of Damocles suspended over him" Cong. Globe, 42d Cong., 1st Sess., 365-366.

[**1222] And Senator Thurman noted that:

"There have been two or three instances already under the civil rights bill of State judges being taken into the United States district court, sometimes upon indictment for the offense . . . of honestly and conscientiously deciding the law to be as they understood it to be. . . ."

"Is [section 1] intended to perpetuate that? Is it intended to enlarge it? Is it intended to extend it so that no longer a judge sitting on the bench to decide causes can decide them free from any fear except that of impeachment, which never lies in the absence of corrupt motive? Is that to be extended, so that every judge of a State may be liable to be dragged before some Federal judge to vindicate his opinion and to be mulcted in damages if that Federal judge shall think the opinion was erroneous? That is the language of this bill." Cong. Globe, 42d Cong., 1st Sess., Appendix 217.

Mr. Lewis of Kentucky expressed the fear that:

"By the first section, in certain cases, the judge of a State court, though acting under oath of office, is made liable to a suit in the Federal court and subject to damages for his decision against a suitor. . . ." Cong. Globe, 42d Cong., 1st Sess., 385.

[*563] Yet despite the repeated fears of its opponents, and the explicit recognition that the section would subject judges to suit, the section remained as it was proposed: it applied to "any person."² There was no exception for members of the judiciary. In light of the sharply contested nature of the issue of judicial immunity it would be reasonable to assume that the judiciary would have been expressly exempted from the wide sweep of the section, if Congress had intended such a result.

² As altered by the reviser who prepared the

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Revised Statutes of 1878, and as printed in *42 U. S. C. § 1983*, the statute refers to "every person" rather than to "any person."

The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. The parade of cases coming to this Court shows that a similar condition now obtains in some of the States. Some state courts have been instruments of suppression of civil rights. The methods may have changed; the means may have become more subtle; but the wrong to be remedied still exists.

[***300] Today's decision is not dictated by our prior decisions. In *Ex parte Virginia*, 100 U.S. 339, the Court held that a judge who excluded Negroes from juries could be held liable under the Act of March 1, 1875 (18 Stat. 335), one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function. But it went on to state that the judge would be liable under the statute even if his actions were judicial.³ It is one thing to say that the common-law doctrine of [*564] judicial immunity is a defense to a common-law cause of action. But it is quite another to say that the common-law immunity rule is a defense to liability which Congress has imposed upon "any officer or other person," as in *Ex parte Virginia*, or upon "every person" as in these cases.

3 The opinion in *Ex parte Virginia*, *supra*, did not mention *Bradley v. Fisher*, 13 Wall. 335, which held that a judge could not be held liable for causing the name of an attorney to be struck from the court rolls. But in *Bradley*, the action was not brought under any of the Civil Rights Acts.

The immunity which the Court today grants the judiciary is not necessary to preserve an independent judiciary. If the threat of civil action lies in the background of litigation, so the argument goes, judges will be reluctant to exercise the discretion and judgment inherent in [**1223] their position and vital to the effective operation of the judiciary. We should, of course, not protect a member of the judiciary "who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good." *Gregoire v. Biddle*, 177 F.2d 579, 581. To deny recovery to a person injured by the ruling of

a judge acting for personal gain or out of personal motives would be "monstrous." *Ibid.* But, it is argued that absolute immunity is necessary to prevent the chilling effects of a judicial inquiry, or the threat of such inquiry, into whether, in fact, a judge has been unfaithful to his oath of office. Thus, it is necessary to protect the guilty as well as the innocent.⁴

4 Other justifications for the doctrine of absolute immunity have been advanced: (1) preventing threat of suit from influencing decision; (2) protecting judges from liability for honest mistakes; (3) relieving judges of the time and expense of defending suits; (4) removing an impediment to responsible men entering the judiciary; (5) necessity of finality; (6) appellate review is satisfactory remedy; (7) the judge's duty is to the public and not to the individual; (8) judicial self-protection; (9) separation of powers. See generally Jennings, *Tort Liability of Administrative Officers*, 21 Minn. L. Rev. 263, 271-272 (1937).

The doctrine of separation of powers is, of course, applicable only to the relations of coordinate branches of the same government, not to the relations between the [*565] branches of the Federal Government and those of the States. See *Baker v. Carr*, 369 U.S. 186, 210. Any argument that Congress could not impose liability on state judges for the deprivation of civil rights would thus have to be based upon the claim that doing so would violate the theory of division of powers between the Federal and State Governments. This claim has been foreclosed by the cases recognizing "that Congress has the power to enforce provisions of the *Fourteenth Amendment* against those who carry a badge of authority of a State . . ." *Monroe v. Pape*, 365 U.S. 167, 171-172. In terms of the power of Congress, I can see no difference between imposing liability on a state police officer (*Monroe v. Pape*, *supra*) and on a state judge. [***301] The question presented is not of constitutional dimension; it is solely a question of statutory interpretation.

The argument that the actions of public officials must not be subjected to judicial scrutiny because to do so would have an inhibiting effect on their work, is but a more sophisticated manner of saying "The King can do no wrong."⁵ Chief Justice Cockburn long ago disposed of the argument that liability would deter judges:

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"I cannot believe that judges . . . would fail to discharge their duty faithfully and fearlessly according to their oaths and consciences . . . from any fear of exposing themselves to actions at law. I am persuaded that the number of such actions would be infinitely small and would be easily disposed of. [*566] While, on the other hand, I can easily conceive cases in which judicial opportunity might be so perverted and abused for the purpose of injustice as that, on sound principles, the authors of such wrong ought to be responsible to the parties wronged." *Dawkins v. Lord Paulet*, L. R. 5 Q. B. 94, 110 (C. J. Cockburn, dissenting).

5 Historically judicial immunity was a corollary to that theory. Since the King could do no wrong, the judges, his delegates for dispensing justice, "ought not to be drawn into question for any supposed corruption [for this tends] to the slander of the justice of the King." *Floyd & Barker*, 12 Co. Rep. 23, 25, 77 Eng. Rep. 1305, 1307 (Star Chamber 1607). Because the judges were the personal delegates of the King they should be answerable to him alone. *Randall v. Brigham*, 7 Wall. 523, 539.

This [*1224] is not to say that a judge who makes an honest mistake should be subjected to civil liability. It is necessary to exempt judges from liability for the consequences of their honest mistakes. The judicial function involves an informed exercise of judgment. It is often necessary to choose between differing versions of fact, to reconcile opposing interests, and to decide closely contested issues. Decisions must often be made in the heat of trial. A vigorous and independent mind is needed to perform such delicate tasks. It would be unfair to require a judge to exercise his independent judgment and then to punish him for having exercised it in a manner which, in retrospect, was erroneous. Imposing liability for mistaken, though honest judicial acts, would curb the independent mind and spirit needed to perform judicial functions. Thus, a judge who sustains a conviction on what he forthrightly considers adequate evidence should not be subjected to liability when an appellate court decides that the evidence was not adequate. Nor should a judge who allows a conviction under what is later held an unconstitutional statute.

But that is far different from saying that a judge shall be immune from the consequences of any of his judicial

actions, and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights. What about the judge who conspires with local law enforcement officers to "railroad" a dissenter? What about the judge who knowingly turns a trial into a "kangaroo" court? Or one who intentionally flouts the [*567] Constitution in order to obtain a conviction? Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far outweighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights.⁶

6 A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., *Ex parte Virginia*, 100 U.S. 339; 2 Harper & James, *The Law of Torts 1642-1643* (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices.

The [***302] plight of the oppressed is indeed serious. Under *City of Greenwood v. Peacock*, 384 U.S. 808, the defendant cannot remove to a federal court to prevent a state court from depriving him of his civil rights. And under the rule announced today, the person cannot recover damages for the deprivation.

REFERENCES

15 *Am Jur 2d, Civil Rights* 67; *Am Jur, False Imprisonment* (1st ed 53, 79, 82)

9 *Am Jur Pl & Pr Forms, False Imprisonment, Forms* 102, 122, 126, 128, 141

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13 ALR 1344, 55 ALR 282, 173 ALR 802.

Liability in damages under civil rights statute for conspiring to deprive a person of his civil rights. 95 L ed 1261.

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