



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

HILL *v.* SMITH, Police Sergeant.

Nov. 29, 1907.

[59 S. E. 475.]

1. Criminal Law—Preliminary Proceedings—Arrest without Warrant—Complaint.—Though an officer may arrest without a warrant on suspicion that the person has committed a felony, and, the person being in custody before a magistrate, no warrant is required, a written complaint or information must be filed, setting out the offense charged.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 415.]

2. Arrest—Criminal Charge—Disposition of Prisoner.—Where a prisoner is arrested by an officer without a warrant, it is the officer's duty to take him without unnecessary delay before a magistrate who can take such proofs as may be offered, or, if the circumstances justify it, hold him for further examination.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 4, Arrest, § 172.]

3. Criminal Law—Preliminary Examination—Adjournment.—Where a prisoner has been arrested and a complaint duly filed against him before a police justice, the preliminary hearing may be postponed for cause shown by the commonwealth for a reasonable time, not exceeding 10 days at one time without defendant's consent, as authorized by Code 1904, § 3963.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 477.]

4. Habeas Corpus—Arrest without Warrant—Commitment as Suspicious Character—Discharge.—Petitioner was arrested by a police officer without a warrant, and on the succeeding day was taken before a police justice and charged with "being a suspicious character." He was suspected of having committed a grave felony, but no complaint was filed charging him with any specific offense, and without a hearing he was committed to jail for 10 days. Held, that petitioner was not legally held, and was entitled to his discharge on habeas corpus.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 25, Habeas Corpus, § 19.]

Habeas corpus, a petition of Claude Hill, to obtain his release from custody of one Smith. Writ granted. Petitioner discharged.

David Mcade White, for petitioner.

Mintree Folkes, for respondent.

KEITH, P. At a former day of this term Claude Hill filed a

petition before this court, stating that on November 19, 1907, he was arrested, and on the following day, to wit, November 20, 1907, was taken before the police justice of the city of Richmond, and there for the first time learned that he was charged with "being a suspicious character," and without a hearing was committed to the jail of the city of Richmond by the police justice of said city. The petitioner states "that he has not committed any offense against the laws of the commonwealth of Virginia, that he has not violated any of the laws or statutes of the United States, and therefore prays that the commonwealth's writ of habeas corpus may issue, directed to the sergeant of the city of Richmond, commanding him to bring the prisoner before this court."

In accordance with that petition a writ was issued, directed to the sergeant of the city of Richmond, and commanding him to bring before this court, immediately after the receipt of the writ, the body of Claude Hill, which was accordingly done.

From the return of the sergeant of the city of Richmond, it appears that Hill is detained by virtue of a mittimus, which is in the following words:

"City of Richmond, to-wit:

"To the Keeper of the Jail of said City:

"Receive into your jail and custody the body of Claude Hill, charged before me, on oath of F. M. Kraft, suspicious character, and him safely keep until the 30th day of Nov. 1907, when you are required to have him before me, or some other Justice of the Peace of said city, at the police justice's court, at 9:30 o'clock of said day, to be further examined on said charge and dealt with according to law; said examination being thus continued for material witnesses for the commonwealth.

"Given under my hand and seal, this 20th day of Nov. 1907.

"Jno. J. Crutchfield, Police Justice. [Seal.]"

By section 8 of the Bill of Rights, Constitution of Virginia of 1902 [Va. Code 1904, ccix], it is provided that "no man shall be deprived of his life or liberty except by the law of the land or the judgment of his peers."

It was held by this court in Muscoe's Case, 86 Va. 443, 10 S. E. 534, that a constable may, by virtue of his office, without warrant, arrest for felony, or upon reasonable suspicion of felony, or for misdemeanors committed in his presence, and take the accused before a magistrate, and that a police officer cannot be authorized by municipal ordinances to do more.

And so a party may be arrested without a warrant upon suspicion of having committed a criminal offense. 1 Bishop on Crim. Proc. § 182. And where one is arrested and brought before a magistrate without a warrant, nothing further is required to give him jurisdiction, for, being already in custody, there is no reason to issue a warrant for his apprehension; but a written com-

plaint or information against the defendant setting out his offense is as necessary in such a case as in any other. Section 179.

In the Matter of Arthur Henry, 29 How. Prac. (N. Y.) 185, before the New York Supreme Court, it is held that "where an officer arrested a prisoner for felony on telegraphic or other satisfactory dispatches without warrant, it is his duty, equally as if the arrest had been made by warrant, to take the arrested party without any unnecessary delay before some officer who can take such proofs as may be offered, or, if the circumstances will justify it, hold him for further examination. If this is not done with reasonable diligence, the party arrested can apply for a habeas corpus, calling on the officer to show cause why he is detained. And, on the return of the writ, the rule is that, where the arrest is upon suspicion and without warrant, proof must be given to show the suspicion to be well founded. If no such proof is offered, it is the duty of the officer to discharge the party." In that case of its opinion, the court said further that "the rule is that a private person even may arrest a party if a felony has in fact been committed, and there was reasonable ground of suspicion; but in the case of an officer he is justified in making an arrest if no felony was in fact committed, if he acted upon information from another on which he had reason to rely. This is the well-settled rule in the English courts, sanctioned and followed in this state in the case of *Holley v. Mix*, 3 Wend. (N. Y.) 350, 20 Am. Dec. 702."

It appears from the affidavits in this case that there had recently been committed within the city of Richmond a felony of the gravest nature. Acting upon information in his possession, the police officer arrested Claude Hill upon suspicion of being the perpetrator of this crime. Instead of charging him, however, with being suspected of this specific offense, he was arrested and is held merely as a suspicious character.

We are of opinion that it was proper for the officer to arrest the prisoner if he had reasonable ground to suspect him of having committed a felony, or the felony to which allusion has already been made; and that, having arrested and taken him before the police justice under such circumstances, it became the duty of the police justice, without unnecessary delay, to formulate a specific complaint in writing against the prisoner, informing him of the offense with the commission of which he stands accused, upon which complaint the prisoner may lawfully be held until the case is disposed of according to law; and, if cause be shown by the commonwealth, the hearing may be postponed for a reasonable time, not exceeding 10 days at one time, without his consent. Code Va. 1904, § 3963. But, it appearing that the course indicated has not been pursued in this instance, we are of opinion that the detention of the prisoner is unlawful. The distinction is

broad between holding a prisoner because he is suspected of the commission of a specific offense for such reasonable time as enables the commonwealth to investigate his connection with it, and the proceeding in this case of holding him upon a warrant which merely charges that he is a suspicious character.

We are, for these reasons, of opinion that the return of the sergeant of the city of Richmond does not show that the prisoner is held in accordance with the law of the land, and that he is entitled to his discharge.

Note.

The decision in this case that an arrest upon a warrant which merely charges the prisoner with "being a suspicious character" is illegal, will doubtless come as a surprise to many. Whether legal or not, such warrants have been served by police officers in every city in the state from time out of mind, and this is probably the first time the legality of such a proceeding has been questioned. Nevertheless, the decision of the court is clearly correct and timely. Because this irregularity has long continued is no reason why it should be accepted as law. This case is discussed in an editorial in this number of "The Register."