

Melvin
vs.
Fisher.

It has long been a well settled principle, that in many cases where trespass will lie, the injured party may waive the trespass, and bring trover. *Cro. Eliz.* 824, *Bishop vs. Viscountess Montague*.

And it is now decided, and the decision rests on the most satisfactory grounds, that in cases where either trespass or trover might be maintained, the injured party may, if he so choose, waive both the trespass and the conversion, and recover for any damages he may have sustained, in a special action on the case. 1 *B. & C.* 145, *Branscomb vs. Bridges*; 9 *East* 298, *Phillips vs. Bacon*; 2 *Neville & Manning* 114, *Smith vs. Goodwin*.

We entertain no doubt that this principle may with great propriety be applied to the case now before us, and are of opinion that the motion in arrest of judgment must be overruled.

Judgment on the verdict.

GEORGE MELVIN vs. NATHAN FISHER.

He who causes another to be arrested by a wrong name, is a trespasser, even if the process by virtue of which the arrest is made was intended to be against the person actually arrested.

THIS was an action of trespass, for an assault, battery and false imprisonment.

The cause was tried upon the general issue, at February term, 1836.

It appeared that on the 20th June, 1835, the defendant sued out a writ against George Melvil, by virtue of which he caused the plaintiff to be arrested and committed to prison, where he remained for more than sixty days. The writ by virtue of which the arrest was made, was returnable before

a justice of the peace, but was never returned. It was not disputed that the writ was intended to be sued out against the plaintiff.

The court directed the jury that if the plaintiff had always been called and known by the name of Melvin, and not by the name of Melvil, the arrest was illegal, and the plaintiff entitled to recover.

The jury having returned a verdict in favor of the plaintiff, with \$150 damages, the defendant moved for a new trial upon the above case.

C. G. Atherton, for the plaintiff.

Hazeltine, for the defendant.

RICHARDSON, C. J., delivered the opinion of the court.

Where a party has been usually and commonly called and known by several names, he may be lawfully arrested by any name by which he has been usually known.

But it is well settled, that he who causes another to be arrested by a wrong name is a trespasser, even if the process was intended to be against the person actually arrested. 2 *Strange* 1218, *Crawford vs. Snatchwell*; 6 *D. & E.* 234, *Cole vs. Hindson*; 8 *East* 328, *Shadgett vs. Clipson*; 1 *B. & A.* 647, *Morgans vs. Bridges*; 2 *Taunton* 399 & 401, *Wilkes vs. Lerck*, & *Ahitbol vs. Beneditte*; 1 *Marshall* 75, *The King vs. the Sheriff*.

Judgment on the verdict.

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