The *lease* of an unpatented machine upon condition that a certain unpatented article be used with it[8] has been upheld as not tending to restrain trade or create a monopoly.[9] The present case, however, involves a patented machine, leased with a restriction as to its use. The distinction is all-important because the feature of a patent is its *exclusive* character. A patent, almost by definition, carries with it a need, and to compel the use of an unpatented article with the patented article or process would naturally bring about a limited monopoly.

The principal case is harsh in its effects upon the patentee, for as a result of it he is unable to bring suit even for direct infringement[10] and thus is denied the value of his patent until he ceases the unfair practice,[11] but it is in accord with reason as well as law. Monopolies are frowned upon in our economic system, and to attach a penalty to their existence seems just and right.

R. S. S.

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TORTS—FALSE IMPRISONMENT—INSTRUCTIONS—IMPRISONMENT PRIOR TO RETURN OF GOODS WRONGFULLY TAKEN—[Missouri].—Plaintiff's sister-in-law falsely claimed to be the wife of one A. F. Foster and charged goods to his account at defendant's department store. The store detective who knew the real Mrs. Foster became suspicious and detained plaintiff and her sister-in-law. An investigation was made, in the course of which Mr. Foster was called on the telephone. He denied any acquaintance with the women and they were not allowed to talk to him. They were questioned sharply and duress was used to compel them to admit having made the purchase upon the credit of an innocent third party. Some packages had

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8. Federal Trade Comm'n v. Sinclair Ref. Co. (1923) 26 U. S. 463, where defendant had leased unpatented gasoline pumps upon condition that only Sinclair gasoline be used in them, the court *held* that there was no showing of an unfair trade practice since there was no restraint upon the purchase and sale of competing gasoline (so long as other pumps were used). The distinction between this and the principal case is that in the principal case the lease made a restraint upon the purchase of competing salt tablets (since other machines could not be obtained).

9. This is in accordance with the contract theory as to contracts which are not in restraint of trade. See 5 Williston, *Contracts* (2d ed. 1938) §1642, p. 4602.

10. Many of the previous cases dealt with *contributory* infringement, where the sale of unpatented materials used with a patented machine or in a patented process was sought to be enjoined, whereas this case deals with *direct* infringement by the manufacture of the very thing covered by the patent.

11. In B. B. Chemical Co. v. Ellis (1942) 62 S. Ct. 406, 86 L. Ed. 320, a case similar to the principal one and decided the same day, the court said, "* * * petitioner suggests it is entitled to relief because it is now willing to give unconditional licenses to manufacturers on a royalty basis, which it offers to do. It will be appropriate to consider petitioner's right to relief when it is able to show that it has fully abandoned its present method of restraining competition in the sale of unpatented articles and that the consequences of that practice have been fully dissipated."

been put in their automobile prior to the detention and after these goods had been returned the women were forced to remain until they signed confessions. Plaintiff brought suit for false imprisonment and the lower court awarded her a judgment for $500 actual and $500 punitive damages for detention both prior and subsequent to the return of the goods. Plaintiff appealed because of insufficient damages. Defendant, also appealing, objected to the following instruction on which the case went to the jury: "If you further find and believe from the evidence that such imprisonment, if you find there was such imprisonment, was to a greater extent than was reasonably necessary to enable defendants to recover or retake from plaintiff and her companion Leona Teel the merchandise * * * then such imprisonment, if any, constitutes false imprisonment and plaintiff is entitled to recover." *Held:* The instruction was erroneous because it permitted recovery for false imprisonment *prior* to the time that the merchandise had been returned from the car as well as *after* the goods were returned. *Teel v. May Department Stores Co.*[1]

The appellate court properly decided that there *might* be a jury case of false imprisonment after the goods were returned.[2] But the holding that there can never be a case of false imprisonment before goods bought under false pretenses are returned may be questioned. Indeed, this ruling is surprising in the light of much of the language of the opinion. It is only in the last sentence of the last paragraph in a long and well written opinion that the court suddenly deviated from the general rule as layed down by the cases and authorities. The rule is that a detention may be made for reasonable and probable cause,[3] although it has been said that probable cause is no defense in actions for false imprisonment.[4] Certainly the facts of the principal case would justify the defendant department store

1. (Mo. 1941) 155 S. W. (2d) 74.

2. Harper, *Torts* (1938) 50, says, "A reasonable detention for a reasonable purpose, if not accompanied by force or threats of violence, does not constitute a false imprisonment since there is no mutual restraint. But if the detention is unreasonably long and brought about by compulsion, so that the plaintiff, in apprehension of force or arrest submits thereto the defendant is liable." In Collyer v. S. H. Kress Co. (1935) 5 Cal. (2d) 175, 44 Pac. (2d) 638 it was held that detention of a person for even a short period in such a manner that his liberty is restrained, by means of force or threats, in a place where he does not want to be may give rise to false imprisonment. And in Williams v. Zelzah Warehouse Co. (1932) 126 Cal. App. 28, 14 Pac. (2d) 177 the court held that a prisoner is entitled to a hearing within a reasonable time after arrest and an unreasonable delay in bringing him before a magistrate constitutes false imprisonment.

3. This rule is well established. Bettolo v. Safeway Stores (1936) 11 Cal. App. (2d) 430, 54 Pac. (2d) 24; Collyer v. S. H. Kress Co. (1935) 5 Cal. (2d) 175, 44 Pac. (2d) 638; S. H. Kress & Co. v. Bradshaw (1940) 186 Okl. 588, 99 Pac. (2d) 508. The courts use the objective test of the reasonably prudent person instead of the subjective test in instructing the jury on questions of probable cause. Collyer v. S. H. Kress Co. (1935) 5 Cal. (2d) 175, 44 Pac. (2d) 638; Titus v. Montgomery Ward & Co. (1939) 232 Mo. App. 987, 123 S. W. (2d) 574.

4. Nelson v. Kellogg (1912) 162 Cal. 621, 123 Pac. 1115; Neves v. Costa (1907) 5 Cal. App. 111, 89 Pac. 860.

in having the goods returned before the women had departed from the store. An owner of property, in order to protect it, may detain one whom he reasonably suspects is attempting to steal it.[5] But though an owner may detain a person under these circumstances, he may not do so for insubstantial suspicion or for an extended period of time. Even where a legal arrest has been made by an officer of the peace the person arrested may only be held for a reasonable time before his arraignment.[6] The court justifiably held the evidence insufficient to show unreasonable or unlawful detention up to the time of obtaining the return of the goods. In view of the carefully guarded language in which the trial court gave its instruction the reason for holding the instruction erroneous is incomprehensible.

No case has been found precisely in point, but the principle is well illustrated under slightly different circumstances. In the leading case of *Jacques v. Childs Dining Hall Co.*,[7] plaintiff was detained for thirty minutes pending an investigation to determine whether she had paid her check. The court held that detaining one for an unreasonable time or under unreasonable circumstances for the purpose of investigating the payment of a bill amounts to false imprisonment. In another case, *Sunbolf v. Alford*,[8] plaintiff had ordered a meal and was unable to pay for it; defendant had detained him and withheld his coat as a security for payment. In holding the defendant guilty of false imprisonment the court said:

> If an innkeeper has a right to detain the person of his guest for the nonpayment of his bill, he has a right to detain him until the bill is paid—which may be for life; * * *. The proposition is mon-

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5. Ordinarily the owner of property may detain for a reasonable time and in a reasonable manner one who attempts to interfere with or injure it and in such cases probable cause is a defense even though the damage to be sustained by the property constitutes only a misdemeanor. 22 Am. Jur. 408 §78. This principle is supported by Bettolo v. Safeway Stores Incorporated (1936) 11 Cal. App. (2d) 430, 54 Pac. (2d) 24; Sweeney v. F. W. Woolworth Co. (1924) 247 Mass. 277, 142 N. E. 50; Fenn v. Kroger Grocery and Baking Co. (Mo. 1919) 209 S. W. 885.

6. Cooley, *Torts* (1906), states that even where a felony has been committed, and an arrest is made by an officer, the person arrested may not be held in custody for a longer period of time than is reasonably necessary under the circumstances of the particular case to procure a proper warrant for his further detention. Otherwise there is a case of false imprisonment against the officer. Williams v. Zelzah Warehouse Co. (1932) 126 Cal. App. 28, 14 Pac. (2d) 177; Madsen v. Hutchison (1930) 49 Ida. 358, 290 Pac. 208.

7. (1923) 244 Mass. 438, 138 N. E. 843.

8. (1838) 150 Eng. Reprint 1135. In Salisbury v. Poulson (1918) 51 Ut. 552, 172 Pac. 315, the court said, "Let it be admitted that defendant was right as to the correct price, and that the services and work were reasonably worth that amount, still, that would give him no right to take the law into his own hands and imprison the plaintiff to enforce his version of the contract, or to enforce any lawful rights to which he might have been entitled." Standish v. Narragansett (1873) 111 Mass. 572, 15 Am. Rep. 66; Warren v. Dennett (1896) 17 Misc. 86, 39 N. Y. S. 830.

strous. * * * where is the law that says that a man may detain another for his debt without process of law?[9]

In these cases the courts, disregarding whether or not the meals had been paid for, held that plaintiffs were detained for such a length of time as would amount to false imprisonment.[10] It would seem, then, by analogy, that if persons are detained for an unreasonable length of time by the owner of merchandise who may demand the return of such goods there may be a case of false imprisonment even before the goods are returned.

S. F.

9. 150 Eng. Reprint 1135, 1138.

10. The bill had been paid in Jacques v. Childs Dining Hall (1923) 244 Mass. 438, 138 N. E. 843; it had not been paid in Sunbolf v. Alford (1838) 150 Eng. Reprint 1135.