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## Citizen's Arrest

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had adversely affected the income of motion picture theaters at the time of the fire.<sup>24</sup> In other words, the broad evidence rule permits a wide latitude in the ascertainment of actual cash value. Depending on the circumstances the application of the rule may be favorable either to the insurer or the insured. For example, if in the above case the business climate and conditions surrounding the theater had been very good, the jury might have found a higher actual cash value.

It is submitted that the court in the principal case adopted the most equitable rule. However, since recovery under casualty insurance policies is predicated upon the actual cash value of the property at the time of the loss, it is important that both insurer and insured remain aware of the actual value of the structure. As was pointed out above, where the policy contains a co-insurance clause, the insurer may try to show that the actual cash value is great enough so as to make the insured a co-insurer. On the other hand, of course, the insured will want to introduce evidence tending to show a low actual cash value so as to avoid being a co-insurer. It is important, therefore, that both parties and especially the insured, be cognizant of the factors considered in such a determination. For the insured may wish to increase or reduce his insurance coverage in accordance with changes in the actual cash value. Hence, it is suggested that for the protection of the insured he should make a periodic review of the factors which go to make up the total value of the property.

NORRIS A. HARMON

### TENANCY BY ENTIRETIES IN BANKRUPTCY PROCEEDINGS

The tenancy by the entireties has a long history at common law as an incident of the concept of the legal unity of husband and wife, it being a form of joint ownership that can only be vested in a husband and wife.<sup>1</sup> As a result of the abolition of the unity of spouses many jurisdictions have completely abolished this type of ownership, others have extensively modified it, while some retain the tenancy with most of its original characteristics.<sup>2</sup> The peculiar characteristic

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<sup>24</sup>212 F.2d 821, 825-26 n.7 (3d Cir. 1954).

<sup>1</sup>Licker v. Gluskin, 265 Mass. 403, 164 N.E. 613 (1929); 2 Tiffany, Real Property § 431 (3d ed. 1939).

<sup>2</sup>For an excellent discussion of tenancy by the entireties and classification into groups see Phipps, Tenancy by Entireties, 25 Temp. L.Q. 24 (1951).

of a tenancy by the entireties is that each spouse has the possibility of becoming the sole owner of all the property by surviving the other. One spouse cannot defeat this right by a unilateral act; in other words, both must consent to any disposal of the property.<sup>3</sup> As a result of the limitation on alienation only joint creditors are able to reach the property in satisfaction of a debt.<sup>4</sup>

Virginia is one of the jurisdictions which still retains the tenancy by the entireties in its original common law form.<sup>5</sup> What appears to be a case of first impression in any state concerning one incident of the tenancy arose in a bankruptcy proceeding in Virginia in which a joint creditor sought to reopen a closed estate for consolidation with the subsequent bankruptcy proceeding of the other spouse. In the case of *In the Matter of Reid*,<sup>6</sup> a husband and wife owned property by the entireties. The husband upon filing a petition in bankruptcy was duly adjudicated a bankrupt, and on May 3, 1960, he was granted a discharge. The estate was closed on August 16, 1960. On October 18, 1960, his wife filed a petition in bankruptcy. A joint creditor, who had not participated in the earlier proceeding, moved to reopen the husband's estate for consolidation of the proceeding with that of his wife, so that property held by entireties could be reached. The

<sup>3</sup>*Ades v. Caplan*, 132 Md. 66, 103 Atl. 94 (1918); *McCubbin v. Stanford*, 85 Md. 378, 37 Atl. 214 (1897); *Licker v. Gluskin*, 265 Mass., 403, 164 N.E. 613 (1929); *Vasilov v. Vasilov*, 192 Va. 735, 66 S.E.2d 599 (1951).

In *Allen v. Parkey*, 154 Va. 739, 149 S.E. 615 (1929) the court denied a partition of land held by the entireties because there is no separate interest in either tenant. The seisin is "per tout et non per my"

"[T]he survivor of the marriage, whether the husband or the wife, is entitled to the whole, which right cannot be defeated by a conveyance by the other to a stranger, as in the case of joint tenancy. " 2 *Tiffany*, Real Property § 430 at 218 (3d ed. (1939)).

<sup>4</sup>*Phillips v. Krakower*, 46 F.2d 764 (4th Cir. 1931); *In re Kearns*, 8 F.2d 437 (4th Cir. 1925); *Ades v. Caplan*, 132 Md. 66, 103 Atl. 94 (1918); *Frey v. McGaw*, 127 Md. 23, 95 Atl. 960 (1915); *Jordan v. Reynolds*, 105 Md. 288, 66 Atl. 37 (1907); *Johnson v. Leavitt*, 188 N.C. 682, 125 S.E. 490 (1924); *Martin v. Lewis*, 187 N.C. 472, 122 S.E. 180 (1924).

If judgment is obtained by an individual creditor he has only a potential lien based on the contingent expectancy of that spouse surviving and the creditor cannot complain of a conveyance. *Kerin v. Palumbo*, 60 F.2d 480 (3d Cir. 1932); *Wylie v. Zimmer*, 98 F. Supp. 298 (E.D. Pa. 1951).

The creditor of the husband can levy and sell the property and the purchaser has a right to immediate possession, but this possession is subject to being defeated by the wife surviving. *Licker v. Gluskin*, 265 Mass. 403, 164 N.E. 613 (1929); *Raptis v. Cheros*, 259 Mass. 37, 155 N.E. 787 (1927).

<sup>5</sup>*Phipps*, Tenancy by Entireties, 25 Temp. L.Q. 24 (1951); *Ritchie*, Tenancies by the Entireties in Real Property with Particular Reference to the Law of Virginia, 28 Va. L. Rev. 608 (1941) contains a discussion of how to create tenancy by the entireties in Virginia and the applicable statutes.

<sup>6</sup>198 F. Supp. 689 (W.D. Va. 1961).

District Court granted the motion, basing its decision on an interpretation of Section 2(a)(8) of the Bankruptcy Act which provides for reopening an estate upon showing of good cause.<sup>7</sup> The bankrupt argued that the court should not exercise its discretion to reopen the estate because the petitioner was barred by laches, since he failed to seek a stay of discharge until a judgment against the joint debtors could be obtained in a state court. The court rejected this argument on the ground that laches was a good defense only when third persons would be injured by granting the relief sought,<sup>8</sup> and here there was no possibility of injury to third persons.

The purpose of a bankruptcy proceeding is twofold:<sup>9</sup> to relieve the debtor of a hopelessly indebted situation, and more importantly, to enable creditors to receive as much by way of payment as possible. In order to achieve these ends, title to property held by the bankrupt passes to the trustee<sup>10</sup> to be administered in the most advantageous way. However, the trustee receives title only to property which is capable of being transferred by the bankrupt at the time the petition is filed.<sup>11</sup> Since property held by entireties is incapable of being transferred by one of the spouses, it does not pass to the trustee.<sup>12</sup> Hence it is not available for the payment of the bankrupt's debts, and the individual bankrupt receives his discharge without losing his interest in property so held.

Several techniques have been used by the courts to enable joint creditors with good and valid claims, who would otherwise have their claims against the bankrupt extinguished if a discharge was granted, to reach property which did not pass to the trustee. In the leading case of *Lockwood v. Exchange Bank*<sup>13</sup> the creditor was the holder of the bankrupt's joint note which waived a homestead exemption. This property did not pass to the trustee under Section 70(a) of the Bankruptcy Act.<sup>14</sup> The creditor petitioned for a stay of discharge

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<sup>7</sup>Bankruptcy Act § 2(a)(8), 52 Stat. 843 (1938), 11 U.S.C. § 11(a)(8) (1958).

<sup>8</sup>*Brust v. Irving Trust Co.*, 129 F. Supp. 462 (S.D.N.Y. 1955).

<sup>9</sup>*Phillips v. Krakower*, 46 F.2d 764, 765 (4th Cir. 1931).

<sup>10</sup>Bankruptcy Act § 70(a), 52 Stat. 879 (1938), 11 U.S.C. § 110(a) (1958).

<sup>11</sup>*Everett v. Judson*, 228 U.S. 474 (1913); *Kerin v. Palumbo*, 60 F.2d 480 (3d Cir. 1932); *Dioguardi v. Gurrán*, 35 F.2d 431 (4th Cir. 1929); *In re Kearns*, 8 F.2d 437 (4th Cir. 1925); *Wylie v. Zimmer*, 98 F. Supp. 298 (E.D. Pa. 1951); Bankruptcy Act § 70(a)(5), 52 Stat. 879 (1938), U.S.C. § 110(a)(5) (1958).

<sup>12</sup>*Kerin v. Palumbo*, 60 F.2d 480 (3d Cir. 1932); *Phillips v. Krakower*, 46 F.2d 764 (4th Cir. 1931); *Dioguardi v. Curran*, 35 F.2d 431 (4th Cir. 1929); *In re Kearns*, 8 F.2d 437 (4th Cir. 1925); *Wylie v. Zimmer*, 98 F. Supp. 298 (E.D. Pa. 1951); *Vonville v. Dexter*, 118 Ind. App. 187, 76 N.E.2d 856 (1948).

<sup>13</sup>190 U.S. 294 (1903).

<sup>14</sup>Bankruptcy Act § 70(a), 52 Stat. 879 (1938), 11 U.S.C. § 110(a) (1958).

until judgment on the note could be obtained in a state court, and he could levy on the property. The court granted the stay because the creditor had a valid claim but since the property did not pass to the trustee in bankruptcy, his only remedy was in the state court. The court reasoned that to grant a discharge knowing that the creditor had a claim on this exempt property would be tantamount to legal fraud, for once the discharge was granted the debt would be barred.<sup>15</sup>

In *Phillips v. Krakower*,<sup>16</sup> which is heavily relied upon in the principal case, there was a petition filed seeking a stay of discharge until the holder of a joint note could obtain a judgment on it in a state court. The makers of the note owned property by the entirety, and one of the tenants was a bankrupt. Therefore, the only way the joint creditor could reach the property held by the entirety, title to which did not pass to the trustee, to satisfy his debt was to proceed in a state court. The court held that if the discharge was granted before the state court judgment was obtained the bankrupt's liability on the note would be extinguished, thus precluding the creditor from subjecting the property to payment during the bankrupt's lifetime because of the tenancy by the entirety. Therefore, the court reasoned that the stay should be granted in order to avoid this consequence.<sup>17</sup>

Essentially the same principles are involved in the principal case as in the *Lockwood* and *Krakower* cases. Although the creditor in *Reid* was not seeking a stay of discharge, the discharge already having been granted, he was seeking a decree to reopen the estate and to consolidate it with that of the wife's in her bankruptcy proceedings. Nevertheless, the cases are similar in that creditors would lose a valid claim if the relief sought is denied because in all three the property sought to be reached had not passed to the bankruptcy trustee for administration. In other words, in all three cases creditors were petitioning the bankruptcy court to use its broad equity powers to subject property, which has not passed to the trustee, to payment of a valid claim which would otherwise be lost.

Bankruptcy courts have always exercised broad equitable powers concerning the bankrupt's estate, but prior to 1938 an estate could be reopened only if it appeared that the estate had not been fully administered.<sup>18</sup> The Chandler Act broadened the power to reopen

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<sup>15</sup>190 U.S. at 300.

<sup>16</sup>46 F.2d 764 (4th Cir. 1931).

<sup>17</sup>Id. at 765, "We cannot conceive that any court would lend its aid to the accomplishment of a result [legal fraud] so shocking to the conscience."

<sup>18</sup>*Kinder v. Scharff*, 231 U.S. 517 (1913); *In re Schreiber*, 23 F.2d 428 (2d Cir. 1928); *In re Chapman*, 55 F.2d 965 (N.D.N.Y. 1930).

an estate by adding the last clause to Section 2(a)(8) by which an estate can be reopened "for cause shown."<sup>19</sup> Thus the powers of the court with relation to reopening estates were greatly increased, and now the reopening may be granted or refused in the discretion of the court, exercised on principles of equity.<sup>20</sup> However, this discretion should be exercised sparingly and only in unusual circumstances lest the bankrupt will never receive the assurance of a finally settled estate.

As pointed out by counsel for the bankrupt the creditor could have followed a procedure like that outlined in *Krakower* by moving for a stay of discharge until judgment could be obtained on the note and the property subjected to payment of the claim. The creditor could have also entered into the proceedings and received a dividend.<sup>21</sup> However, notwithstanding the failure to seek a stay or file a claim, the creditor should not be denied his request to reopen the estate under the circumstances shown in the *Reid* case. The husband's discharge included his obligation in the joint debt held by the petitioner, so that the only chance of satisfying the claim was dependent upon the wife's contingent right of sole ownership. This position was apparently at the creditor's choice.

When, however, the wife subsequently filed a petition in bankruptcy, as she did here, and is allowed to proceed to a discharge the creditor would be left holding a good claim without any remedy to satisfy it, and the bankrupts' still retaining all their property held by the entireties. To allow such a result, merely because the creditor failed to avail himself of a more expeditious method of obtaining satisfaction, would be tantamount to fraud upon the creditor.

Therefore, the court should exercise its discretion and allow the reopening of the first estate and then consolidate it with the one presently in bankruptcy. This was done by the District Court in the *Reid* case so as to enable a joint creditor holding a good claim to reach joint property. To have held otherwise would be tantamount to condoning fraudulent bankruptcy proceedings.

GARNET L. PATTERSON II

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<sup>19</sup>Bankruptcy Act § 2(a)(8), 52 Stat. 843 (1938), 11 U.S.C. § 11(a)(8) (1958).

<sup>20</sup>*Grand Union Equip. Co. v. Lippner*, 167 F.2d 958 (2d Cir. 1948); *In re Stein*, 111 F. Supp. 327 (S.D.N.Y. 1953); *In re Ostermayer*, 74 F. Supp. 803 (D.N.J. 1947); *In re Krieg*, 37 F. Supp. 559 (E.D. Pa. 1941).

<sup>21</sup>*Ades v. Caplan*, 132 Md. 66, 103 Atl. 94 (1918).

## CITIZEN'S ARREST

The traditional requirement of a warrant to arrest for a breach of the peace not committed in the presence of the arresting party can occasionally hamper police officers in maintaining order. A patrolman often arrives upon the scene after an altercation has ended, but before order has been restored. The officer then cannot make an arrest until the proper warrant has been obtained. If he arrests without a warrant, the arrest may be annulled by the courts and the arresting officer sued for false arrest or false imprisonment. In an apparent effort to extend protection to officers who arrest for misdemeanors without a warrant, the highest court of New York, in the case of *People v. Foster*,<sup>1</sup> recently found an unusual type of citizen's arrest.

*People v. Foster* arose out of a New York City street-fight in which the defendant, a Negro girl, battled with a woman shopkeeper whose daughter allegedly had taunted her. After first blows had fallen, the defendant and two companions left the scene to summon one of their parents. When they returned, the shopkeeper, a Mrs. Salzberg, had retreated into the building and locked the door. Several dozen policemen arrived to find the defendant outside the shop loudly abusing Mrs. Salzberg before the many onlookers. The officers arrested the defendant upon the complaint of Mrs. Salzberg. The defendant was convicted of disorderly conduct and appealed to the New York Court of Appeals on the ground that the arrest without a warrant was illegal because the underlying assault for which the defendant was arrested had not been committed in the officer's presence.<sup>2</sup>

Speaking for three members of the court, Judge Desmond found that the underlying breach of the peace was still in progress when the officers arrived on the scene, and thus the arrest without a warrant was permissible and, secondly, that the shopkeeper had made a "citizen's arrest" of the defendant.<sup>3</sup>

The citizen's arrest was based on the theory that the police took

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<sup>1</sup>10 N.Y.2d 99, 176 N.E.2d 397, 217 N.Y.S.2d 596 (1961).

<sup>2</sup>The court, in affirming the conviction, struggled to justify the arrest, with three of the judges basing the decision on two alternative grounds; a fourth member of the court concurring in the holding on one ground only, and the three remaining judges dissenting.

<sup>3</sup>The dissent's criticism of the first basis of the decision—that of a continuing breach of the peace—is that since the defendant left the scene between the initial altercation and the later disorder which was in progress when the police arrived, the original assault could not possibly be continuing. The majority opinion ignores the departure of the defendant, which would seem to make the first ground for the decision untenable.

the defendant into custody following an arrest by Mrs. Salzberg. This theory may prove to be a novel and extremely useful device for accomplishing arrests for misdemeanors without a warrant. The facts of *People v. Foster* do not suggest that Mrs. Salzberg intended to arrest the defendant. There is no indication that the shopkeeper mentioned an arrest or made any move to effect one, nor was the defendant conscious of having been arrested by Mrs. Salzberg. Indeed during the entire period when Mrs. Salzberg might have arrested defendant, a locked door separated the two women.

The two New York cases<sup>4</sup> cited in the principal case involved valid initial arrests carried out by private individuals in accordance with the settled requirements of a legitimate arrest, the police officers taking into custody individuals who had been previously arrested. But they do not support *People v. Foster*, in which the facts show that the defendant was arrested solely on the basis of an unsworn complaint, which under these circumstances is clearly illegal.

A proper citizen's arrest includes all the elements common to valid arrests in general, but civilians may lawfully apprehend criminals without a warrant only in well-defined circumstances. To constitute an arrest, there must be an intent to arrest, under real or pretended authority, accompanied by a seizure or detention which is so understood by the one arrested.<sup>5</sup> A private person making an arrest must always give notice of his intention,<sup>6</sup> unless the arrestee knows or ought to know under what authority the arrest is being made.<sup>7</sup> Unless there is statutory authority, neither an officer nor a private citizen may arrest for a misdemeanor unless it constitutes a breach of the peace committed in his presence.<sup>8</sup> A private person may arrest for a felony which has in fact been committed, provided he has reasonable grounds for believing the arrestee guilty of committing it.<sup>9</sup>

Many states have given statutory authority to officers<sup>10</sup> and to

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<sup>4</sup>*People v. Ostrosky*, 95 Misc. 104, 160 N.Y.S. 493 (Nassau County Ct. 1916); *People ex rel. Gunn v. Webster*, 75 Hun. 278, 26 N.Y.S. 1007 (5th Dep't 1894).

<sup>5</sup>*Jenkins v. United States*, 161 F.2d 99 (10th Cir. 1947); *Melton v. State*, 75 So. 2d 291 (Fla. 1954); *State ex rel. Sadler v. District Court*, 70 Mont. 378, 225 Pac. 1000 (1924); *Lester v. Albers Super Market, Inc.*, 94 Ohio App. 313, 114 N.E.2d 529 (1952); *Neapolitan v. United States Steel Corp.*, 149 N.E.2d 589 (Ohio Ct. of App. 1956).

<sup>6</sup>*Brooks v. Commonwealth*, 61 Pa. 352 (1869); ALI Code Crim. Proc. 249 (Official Draft 1930).

<sup>7</sup>*Robinson v. State*, 93 Ga. 77, 18 S.E. 1018 (1893); *Croom v. State*, 85 Ga. 718, 11 S.E. 1035 (1890).

<sup>8</sup>ALI Code Crim. Proc. 231-33 (Official Draft 1930).

<sup>9</sup>ALI Code Crim. Proc. 240-41 (Official Draft 1930).

<sup>10</sup>ALI Code Crim. Proc. 232 (Official Draft 1930); Warner, "Investigating the Law of Arrest," 26 A.B.A.J. 151, 152 (1940).



private<sup>11</sup> individuals to arrest for certain types of misdemeanors committed in their presence, although not amounting to a breach of the peace. But almost nowhere is an officer,<sup>12</sup> and never a private individual,<sup>13</sup> permitted to arrest for misdemeanors not committed in his presence, purely on the basis of suspicion or unsworn complaint.

Private individuals rarely exercise their authority to arrest. A survey of cases reaching the appellate courts in the last two decades discloses that, on an average, less than three cases a year have arisen involving citizen's arrests. These cases fall primarily into two categories; those involving government agents who find themselves in an "arrest" situation without a warrant and fall back on citizen's arrest to apprehend their man;<sup>14</sup> and those where retail store managers use citizen's arrest to detain suspected shoplifters.<sup>15</sup>

Only a handful of cases have arisen in recent years involving the traditional concept of an individual's arresting for a crime commit-

<sup>11</sup>State ex rel. Sadler v. District Court, 70 Mont. 378, 255 Pac. 1000 (1924); ALI Code Crim. Proc. 238-39 (Official Draft 1930).

<sup>12</sup>A number of courts have held that statutes authorizing arrests without warrants for misdemeanors not committed in the presence of the arrester are unconstitutional as an unlawful search. See *In re Kellam*, 55 Kan. 700, 41 Pac. 960 (1895); *Pinkerton v. Verberg*, 78 Mich. 573, 44 N.W. 579 (1889); *Gunderson v. Struebing*, 125 Wis. 173, 104 N.W. 149 (1905). But see *Hanser v. Bieber*, 271 Mo. 326, 197 S.W. 68 (1917).

<sup>13</sup>ALI Code Crim. Proc. 238 (Official Draft 1930).

<sup>14</sup>It should be noted that these arresters are trained in methods of arrest and their actions remain basically those of law enforcement officers. *United States v. Burgos*, 269 F.2d 763 (2d Cir. 1959) (federal customs officers arrested alien); *Richardson v. United States*, 217 F.2d 696 (8th Cir. 1954) (federal agents made arrests for narcotics violation); *United States v. Coplon*, 185 F.2d 629 (2d Cir. 1950) (federal agents made arrests for espionage); *Dorsey v. United States*, 174 F.2d 899 (5th Cir. 1949) (federal agents arrested holder of illegal sugar ration coupon); *United States v. Lindenfeld*, 142 F.2d 829 (2d Cir. 1944) (federal agents made arrests for narcotics violation); *United States v. Hayden*, 140 F. Supp. 429 (D. Md. 1956) (federal agents arrested operator of illegal still); *United States v. Guller*, 101 F. Supp. 176 (E.D. Pa. 1951) (federal agents made arrests for narcotics violation); *United States v. Chodak*, 68 F. Supp. 455 (D. Md. 1946) (federal agents made arrests for violation of price ceilings); *United States v. Strickland*, 62 F. Supp. 468 (W.D.S.C. 1945) (federal agents arrested holder of illegal gas coupons); *People v. Burgess*, 170 Cal. App. 2d 36, 338 P.2d 524 (1959) (state investigators arrested a driver's license examiner); *Smith v. Hubbard*, 253 Minn. 215, 91 N.W.2d 756 (1958) (constable arrested a traffic offender); *Commonwealth v. Duerr*, 158 Pa. Super. 484, 45 A.2d 235 (1946) (state officers made arrests for auto theft).

<sup>15</sup>*Montgomery Ward & Co. v. Freeman*, 199 F.2d 720 (4th Cir. 1952); *Sima v. Skaggs Payless Drug Center, Inc.*, 92 Idaho 387, 353 P.2d 1085 (1960); *Jefferson Dry Goods Co. v. Stoess*, 304 Ky. 73, 199 S.W.2d 994 (1947); *Banks v. Town, Inc.*, 98 So. 2d 719 (La. App. 1957); *Lester v. Albers Super Markets, Inc.*, 94 Ohio App. 313, 114 N.E.2d 529 (1952); *Pilos v. First Nat'l Stores, Inc.*, 319 Mass. 475, 66 N.E.2d 576 (1946); *Ira v. Columbia Food Co.*, 360 P.2d 622 (Ore. 1961); *Martin v. Castner-Knott Dry Goods Co.*, 27 Tenn. App. 421, 181 S.W.2d 638 (1944).

ted in his presence and delivering the culprit to the authorities.<sup>16</sup> The crimes for which the arrests have been made have generally been varieties of breaches of the peace, with the arrester subduing the trouble-maker until the arrival of authorities. In some cases the person making the arrest was part of a posse organized in the classical manner to track down a thief.<sup>17</sup> Citizen posses are rare, however, having been replaced by more effective professional policemen. A plausible explanation of the scarcity of common law citizens' arrests would be the fact that few citizens are fully aware of their authority to arrest and fewer still are willing to risk the prosecution for false arrest which will likely result if the arrest is adjudged unwarranted.

The decline of arrests by private individuals should not be considered altogether undesirable. Except in rare instances official law enforcement agencies are capable of making necessary arrests without civilian aid. At the same time there seems to be no need to extend the law of arrest as it applies to police officers. Perhaps they should be given the power to arrest for any misdemeanor committed in their presence, whether or not it constitutes a breach of the peace. There seems to be no justification, however, for permitting an arrest for a misdemeanor not committed in the presence of the arresting officer, as was the case in *People v. Foster*. Such an arrest invades "the sacred right of an individual to be protected from an arrest founded upon mere oral complaints where petty crimes of the misdemeanor type are involved." <sup>18</sup>

WILLIAM H. CLARK, Jr.

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<sup>16</sup>*Lima v. Lawler*, 63 F. Supp. 446 (E.D. Va. 1945) (citizen's arrest of unruly sailor); *Ogulin v. Jeffries*, 121 Cal. App. 2d 211, 263 P.2d 75 (1953) (woman arrested man for attacking her); *Thacker v. Commonwealth*, 310 Ky. 702, 221 S.W.2d 682 (1949) (citizen's arrest of man shooting into bus, killing the driver); *Commonwealth v. Lussier*, 333 Mass. 83, 128 N.E.2d 569 (1955) (thief arrested by citizen as he ran from robbed liquor store); *Bellinger v. State*, 206 Misc. 575, 134 N.Y.S.2d 104 (1954) (hotel operator arrested trouble-maker in parking lot); *Oklahoma Ry. Co. v. Sandford*, 258 P.2d 604 (Okla. 1953) (bus driver arrested intoxicated motorist); *Wingfield v. State*, 81 Okla. Crim. 146, 160 P.2d 945 (1945) (citizen's arrest of prowler); *Commonwealth ex rel. Garrison v. Burke*, 378 Pa. 344, 106 A.2d 587 (1954) (citizen's arrest of burglar).

<sup>17</sup>*State v. Parker*, 355 Mo. 916, 199 S.W.2d 338 (1947).

<sup>18</sup>From Judge Frossel's dissent in *People v. Foster*, supra note 1 at 399.