if the trial court had instructed the jury that, in determining the question of contributory negligence, it might consider this speculation that ". . . . the pedestrian may have observed the coming automobile and believed that . . . . ," such instruction might well have been reversible error as having enlarged the issues presented by the evidence since no evidence was presented upon which to base this speculation.[17] Judicial hostility toward the minority rule requiring the plaintiff to prove lack of contributory negligence may be a possible explanation of the decision. The result reached, however, is deplorable since the difficulty of repeated new trials, already existing where there is a direct conflict in the evidence,[18] is extended to cases where the trial court should have directed a verdict in the first instance.

Torts—False Imprisonment—Probable Cause—Punitive Damages—[Illinois].—The plaintiff in payment of some purchases tendered a clerk in the defendant's store a counterfeit $5.00 bill. The bill was turned over to the manager, the defendant, who went to the plaintiff and said, "Madam, I am sorry; this bill is counterfeit. I have called the police. You will have to wait here!" He then remained in the plaintiff's vicinity until the police arrived a few minutes later. The plaintiff was taken to the defendant's office by the police for questioning and then to the police station whence she was discharged after an hour and a half. *Held*, affirming the trial and appellate courts, that there was sufficient evidence of false imprisonment to support a verdict, including punitive damages, and that $750 for the plaintiff was not excessive. *Lindquist et al. v. Friedman.*[1]

Rarely is a clash between two policies of the law more clearly delineated than where the court in order to uphold a person's right to freedom from the unwarranted confinement refuses to direct a verdict and thus deprives a citizen of the immunity which should attend those who in a reasonable manner attempt to aid in the enforcement of the law.[2]

Since submission to words when they are accompanied by threats of force or asserted authority is sufficient to constitute false imprisonment,[3] the court could not have ruled as a matter of law that there was no confinement. But there is a distinction between cases where a person requests an officer to arrest and cases where a person lays information before an officer who arrests on his own authority.[4] The court might well have excluded the evidence of the action of the officers at the police station as an aggravation of damages.

At common law a citizen was privileged to arrest when a crime had been committed

[17] Galena Ry. Co. v. Jacobs, 20 Ill. 478 (1858).

[18] Baumann v. Hamburg-American Packet Co., 67 N.J. L. 250, 51 Atl. 461 (1902); McDonald v. Metropolitan Street Ry. Co., 167 N.Y. 66, 60 N.E. 282 (1901); Phillips v. Phillips, 93 Iowa 615, 61 N.W. 1071 (1895); however, see note 14 *supra*.

[1] 366 Ill. 232, 8 N.E. (2d) 625 (1937).

[2] Harper, Malicious Prosecution, False Imprisonment and Defamation, 15 Tex. L. Rev. 157, 177 (1937).

[3] Rest., Torts—Intentional Harms §§ 40, 41 (1934); Harper, Law of Torts 49 (1933); Cooley, Torts 435 (4th ed. 1934).

[4] Zinkfein v. W. T. Grant Co., 236 Mass. 228, 232, 128 N.E. 24, (1920); Murray v. Werner, 192 Ill. App. 564, 568 (1915) (*dictum*); Baker v. Coon, 102 Neb. 243, 166 N.W. 555 (1918).

and he had reasonable grounds for believing the person arrested had committed the crime.[5] But recent cases in some jurisdictions have shown a tendency also to allow a reasonable detention if there is probable cause for the belief that a crime has been committed.[6]

In Illinois, however, not only has the legislature narrowed a citizen's privilege to arrest without a warrant,[7] but the courts have in several opinions shown themselves desirous of affording a high degree of protection to a person's interest in freedom from confinement.[8] Even the police have failed to establish their right to detain persons for questioning when they have no reasonable grounds for connecting such persons with a crime.[9] It is apparently felt that it is better for a few criminals to escape than for citizens to take the law into their own hands.[10]

It would seem, however, that very different social factors should be considered in awarding punitive damages against one whose only motives were to aid in the enforcement of the law. In Illinois, as in most jurisdictions,[11] punitive damages may be awarded only where there is malice, wantonness, or wilfulness in the conduct of the defendant. In *Eshelman v. Rawalt*[12] the Illinois Supreme Court recognized that punitive damages were an anomaly in the law today, and the awarding of them should be exactingly reviewed. The defendant, in the instant case, was admittedly hasty, overzealous, and possibly inconsiderate in his actions; but only in a state where there is a very strong policy against mandatory instructions and directed verdicts would the jury have been allowed to consider awarding punitive damages.[13]

In order to combat counterfeiting, the federal authorities must get aid from the retailers, but as the law stands in Illinois a merchant can not effectively cooperate with the authorities without bearing the risk of punitive damages for false imprisonment. Because knowledge that the money is counterfeit is an essential requirement of the crime of uttering counterfeit money, it is impossible for a merchant to rely on what would ordinarily be prima facie grounds for believing a felony had in fact been committed. It might be sound policy in such a case to direct a verdict in order to allow storekeepers an immunity,[14] where the detention was reasonable. The present situa-

[5] Wilgus, Arrest without a Warrant, 22 Mich. L. Rev. 673 (1924).

[6] Collyer v. S. H. Kress & Co., 5 Cal. (2d) 175, 54 P. (2d) 20 (1936), noted 21 Minn. L. Rev. 107 (1936); Bettolo v. Safeway Stores Inc., 54 P. (2d) 24 (Cal. App. 1936); Begley v. Commonwealth, 22 Ky. L. Rep. 1546, 60 S.W. 841 (1901); State v. Griffin, 74 S.C. 412, 54 S.E. 603 (1905).

[7] Ill. State Bar. Stats. c. 38, § 657 (1937).

[8] Enright v. Gibson, 219 Ill. 550, 76 N.E. 689 (1906); People v. McGurn, 341 Ill. 632, 173 N.E. 754 (1930); Cox v. Rhode Ave. Hosp., 198 Ill. App. 82 (1916); Greathouse v. Summerfield, 25 Ill. App. 296 (1888).

[9] People v. Scalisi, 324 Ill. 131, 154 N.E. 715 (1926); People v. Ford, 356 Ill. 572, 191 N.E. 315 (1934).

[10] Dodds v. Board, 43 Ill. 95 (1867).

[11] Beckwith v. Bean, 98 U.S. 266 (1878); McCormick, Damages 175 (1936); Freifield, The Rationale of Punitive Damages, 1 O.S.U. Stu. Bar Ass'n. L. J. 1 (1935).

[12] 298 Ill. 192, 131 N.E. 675 (1921).

[13] Blumb v. Getz, 366 Ill. 273, 8 N.E. (2d) 620 (1937), noted *supra* p. 315.

[14] Larke v. Bande, 4 Mo. App. 186 (1877); West Chicago St. R.R. Co. v. Luleich, 85 Ill. App. 643, 650 (1899).

tion points to a need for insurance coverage against the merchants' risk. Through the insurance companies a standardization of the practises of storekeepers in such situations could be effected which would give a maximum of assistance to the federal authorities with a minimum of interference to the customer and embarrassment to the storekeeper.[15]

Torts—Privacy—Trade-Piracy—Unpermitted Broadcast of Horse Race—[Australia].—The defendant broadcasting company leased the premises adjoining the plaintiff's commercial racecourse and built an elevated platform overlooking the track. From this vantage point it proceeded to broadcast the races. The plaintiff charged admission to the track and stipulated on the tickets that the purchaser agree not to disclose any information concerning the races for the day. The plaintiff alleged that the defendant's acts resulted in a decrease in the patronage of the track and sought an injunction to restrain the broadcasting of the races. *Held*, suit dismissed. The defendants acquired the information lawfully and its subsequent broadcasting was not under the circumstances unfair to the plaintiff. *Victoria Park Racing and Recreation Grounds Co., Ltd. v. Taylor and others.*[1]

The instant case illustrates once more judicial hesitancy to grant relief in the absence of injury to a conventionally recognized property right. Too simple a notion of property has prevented courts from recognizing familiar problems under new fact situations.[2]

The legality of the defendant's viewing the race, considered apart from the subsequent use of the information so obtained, depends on the extent to which a landowner can keep his property free from interferences having a foreign source. It is clear that he has a right to have his land free from the impact of tangible substances,[3] and from the intrusion of things less tangible such as unpleasant sounds[4] and noisome odors.[5] This protection has even been extended to the interference with sunlight where maliciously caused.[6] But where the interference is merely an intrusion upon privacy no relief is given,[7] except where the loss of privacy affects the rental value of the land.[8] Therefore, in the instant case, the plaintiff could not prevent the defendant from viewing his land on the grounds of privacy, particularly since he was holding his land open to the public; and the economic loss to the plaintiff of an admission price was too trivial to warrant judicial attention.

Legal access to information, however, does not necessarily imply a right to indis-

[15] *Cf.* similar attempts in combating shoplifting.

[1] 37 N.S.W. 322 (1937). A contrary result was obtained by the New York court. Time 85 (Sept. 6, 1937).

[2] See remarks of Erle, J., in Jefferys v. Boosey, 4 H.L.C. 815, 869 ff. (1854).

[3] Harper, Law of Torts, § 204 (1933).

[4] *Id.*, at § 181.

[5] *Ibid.*

[6] *Id.*, at § 187.

[7] Chandler v. Thompson, 3 Camp. 80 (1811); Bryant v. Sholars, 104 La. 786, 29 So. 350 (1901). See also Tapling v. Jones, 11 H.L.C. 290, 305 (1865); Winfield, Privacy, 47 Law Q. Rev. 23, 24 ff. (1931).

[8] Odell v. New York El. R.R. Co., 130 N.Y. 523, 29 N.E. 997 (1892); Duke of Buccleuch v. Metropolitan Board of Works, L.R. 5 H.L. 418 (1871), reversing L.R. 5 Ex. 221 (1870).