

UK Cases: Tobin V The Queen 1864, Mostyn v Fabrigas 1774 and Enever v The King 1906 High Court Case on The Monarch's are not liable for officers exceeding their duty, The officers are liable including Governors, Governor Generals, Justices, Judges, Magistrates, Police and Sheriff Officers...

[James Aspinall Tobin, who has Survived Thomas Tobin v The Queen \[1864\] EngR 21; \(1864\) 16 CB NS 310; 143 E.R. 1148 \(1 January 1864\)](#) Top of page 1156 by the court.

Quote: “Lord Shiffeld v Ratcliffe, Hob. 334, 347, The Attorney General v Chitty, Parker, 37, 48, and The Queen V Renton, 2 Exch. 216, are also authorities to shew that the Crown is not to be prejudiced by the wrongful acts mistakes of its officers and servants. **Judges and governors have been held responsible for wrongs done to a subject, even though the act has had the approval of the Crown or the government : see Mostyn v Fabrigas, Cowp. 161; Sutherland v Murray 1 T. R 538, n; Sutton v Johnstone, 1 T.R. 493.”** In the last mentioned case, **Eyre C.B.**, in answer to an objection that the plaintiff's complaint, - that the defendant neglected and committed to hold a court-martial upon him within a reasonable time, - was *damnum sine injuria*, says: **Every breach of a public duty, working wrong and lost to another, is an injury, and actionable, “ – that is, against the party doing the wrong.”** End Quote.

[Mostyn versus Fabrigas \[1774\] EngR 104; \(1774\) 1 Cowp 161; 98 E.R. 1021 \(14 November 1774\)](#), [Sutton against Johnstone \[1786\] EngR 18; \(1786\) 1 TR 493; 99 E.R. 1215 \(B\) \(1 January 1786\)](#); [Sutherland v Murray 1 T.R 538](#) exists as citings within English Law Reports, but the case is not online publicly or via Law Library databases.

15 High Court cases and applications confirming Tobin v The Queen [1864]

[Attorney-General \(NSW\) v Perpetual Trustee Co \(Ltd\) \[1952\] HCA 2; \(1952\) 85 CLR 237 \(3 March 1952\)](#) Dixon. J at paragraph 19.

[Field v Nott \[1939\] HCA 41; \(1939\) 62 CLR 660 \(20 December 1939\)](#) Latham. CJ, Starke and Dixon. JJ.

[Strachan v Commonwealth \[1906\] HCA 48; \(1906\) 4 CLR 455 \(14 August 1906\)](#) Application heard by Griffith C.J and O'Connor. J;

[Little v Commonwealth \[1947\] HCA 24; \(1947\) 75 CLR 94 \(11 July 1947\)](#) Application heard by Dixon. J;

[Commonwealth v Miller \[1910\] HCA 46; \(1910\) 10 CLR 742 \(12 September 1910\)](#)
Higgins. J;

[Baume v Commonwealth \[1906\] HCA 92; \(1906\) 4 CLR 97 \(27 August 1906\)](#) The
Court – Griffith. C.J, Barton who agreed with Griffith C.J and O’Connor.

[Ramsay v Larsen \[1964\] HCA 40; \(1964\) 111 CLR 16 \(29 July 1964\)](#) Kitto and
Taylor. JJ confirm Tobin and also Enever.

[Enever v R \[1906\] HCA 3; \(1906\) 3 CLR 969 \(12 March 1906\)](#) Griffith. C.J and
O’Connor. J to which all these previous cases confirm Enever of a police officer
false arrest. Namely a public officer exceeds their duty is liable to which [Horvath
& Ors v State of Victoria & Ors \[2004\] HCATrans 215 \(18 June 2004\)](#) Hayne and
Heydon. JJ in this Application stated they would not overrule the Enever case.

[Commonwealth v Quince \[1944\] HCA 1; \(1944\) 68 CLR 227 \(25 February 1944\)](#)
Latham. C.J confirms Enever and Griffith.CJ in Baume. Rich and Williams.JJ
confirm Tobin v The Queen 1863-4.

[Shaw Savill & Albion Co Ltd v Commonwealth \[1940\] HCA 40; \(1940\) 66 CLR
344 \(5 December 1940\)](#) Starke. J.

[R v Dalgety & Co Ltd Suppliant \[1944\] HCA 2; \(1944\) 69 CLR 18 \(2 March 1944\)](#)
Latham. C.J and Starke. J

[Cain v Doyle \[1946\] HCA 38; \(1946\) 72 CLR 409 \(16 October 1946\)](#) Latham C.J
and Dixon. J.

[Downs v Williams \[1971\] HCA 45; \(1971\) 126 CLR 61 \(11 October 1971\)](#) by
Windeyer and Gibbs. J.

[Oceanic Crest Shipping Co v Pilbara Harbour Services Pty Ltd \[1986\] HCA 34;
\(1986\) 160 CLR 626 \(26 June 1986\)](#) Gibbs. C.J at 6 confirms Tobin and at 9 like
Brennan. J at 21 and Dawson. J at 6 confirms Enever.

And [Mabo v Queensland \(No 2\) \("Mabo case"\) \[1992\] HCA 23; \(1992\) 175 CLR 1
\(3 June 1992\)](#) Deane and Gaudron at 29 confirm Tobin. Toohey. J at 113 confirms
Mostyn versus Fabrigas [1774]

5 High Court cases confirming Mostyn versus Fabrigas [1774] EngR 104; (1774) 1 Cowp 161; 98 E.R. 1021 (14 November 1774).

[Anderson v Eric Anderson Radio & Tv Pty Ltd \[1965\] HCA 61; \(1965\) 114 CLR 20 \(1 December 1965\)](#) Windeyer. J first paragraph.

[Breavington v Godleman \[1988\] HCA 40; \(1988\) 169 CLR 41 \(18 August 1988\)](#) Toohey. J at 20.

[Commonwealth v Yarmirr \[2001\] HCA 56; 184 AJR 113; 208 CLR 1; 75 ALJR 1582 \(11 October 2001\)](#) McHugh. J at 188 and 203.

[Regie National des Usines Renault SA v Zhang \[2002\] HCA 10; 210 CLR 491; 187 ALR 1; 76 ALJR 551 \(14 March 2002\)](#) Gleeson.CJ, Gaudron, McHugh, Gummow and Hayne. JJ at par 70.

[Mabo v Queensland \(No 2\) \("Mabo case"\) \[1992\] HCA 23; \(1992\) 175 CLR 1 \(3 June 1992\)](#) Toohey. J at 113.

Some UK Cases citing Mostyn v Fabrigas [1774]

[Glynn v Houston \[1836\] EngR 1168; \(1836\) 1 Keen 329; 48 E.R. 333 \(17 December 1836\)](#) at top pg 336 Mr Pemberton for Glynn Quote: “Governors, as well as all other subjects, are criminally responsible for their acts as well before the ordinary tribunal of the nation. (1)” Bottom of page 337 “ (1) See the case of Mostyn v Fabrigas, Cowp. 161. “To lay down,” says **Lord Mansfield “in an English Court of Justice such a monstrous proposition as that a governor, acting by virtue of letters patent under the Great Seal, is accountable only to God and his own conscience; that he is absolutely despotic, and can spoil, plunder, and injure His Majesty’s subjects, both in their liberty and property, with impunity, is a doctrine which cannot be maintained,” p.175.**” End Quote.

□ [PDF] [Sir William Gosset against Howard \[1845\] EngR 233; \(1845\) 10 QB 411; 116 ER 158 \[100%\]](#) Page 168 Sir F. Thesiger, Attorney General replied within this case: **Quote: “In addition to the authorities before mentioned, the Attorney General cited, as to the irresponsibility with which certain bodies and individuals, and among these the Judges, are invested, in the discharge of public functions, *Floyd v. Barker.* (12 Rep. 23) ; judgments of De Grey C.J. and Blackstone J. in *Miller v. Seare* (2 W, BI. 1141, 1145, 1147); *Garnett v Ferrand* (6 B. & C. 611, 625) judgement of Holt C.J. in *Groenvelt v Burwell* (I Ld. Ray. 454, 468) ; judgment of Lord Mansfield in Mostyn v Fabrigas (1 Cowp, 161, 172).”** End Quote.

[Scott v Lord Seymour \[1862\] EngR 719; \(1862\) 1 H & C 219; 158 ER 865 \[100%\]](#)
Archibald for (Lord Seymour): (231) at 871 **Quote:** “The only passages in the judgment in *Mostyn v Fabrigas* (Cowp. 161, 173) which bears on this question is in favour of the defendant: “It does not follow from hence that, let the cause of action arise where it may, a man is not entitled to make use of every justification his case will admit of, which ought to be a defence to him” **End Quote.**

[PDF] [Charlotte Munden against The Duke of Brunswick \[1847\] EngR 5; \(1847\) 10 QB 656; 116 ER 248 \(1-01-1847\)\[100%\]](#) Page 251 Lush in reply: **Quote:** “If the subject be aggrieved by a Sovereign, he cannot maintain an action, or oblige him to redress : he may persuade him if he can”(c).” **End Quote.**

(c) There was also an argument upon the form of the plea. It was objected that the plea was in abatement, whereas it ought to have been in bar, as it gave no better writ: and *Evans v Stevens* (4 T. R. 224), *West v Turner* (6 A. & E. 614), ***Mostyn v Fabrigas* (Cowp, 161, 172,** and *Hunter v Neck* (3 M. & G. 181 were cited.”

□ [PDF] [Money and Others v Leach \[1746\] EngR 362; \(1746-1779\) 1 Black W 555; 96 ER 320](#) Halfway down page 321 **Quote:** “Where-upon the counsel for the defendants insisted on the benefit of the stat. 24 Geo. 2, c. 44, for indemnifying constables, &c, acting in obedience to the warrants of justices of the peace; and that the matters aforesaid were conclusive evidence (p), for that purpose and to bar the action of the plaintiff.” **End Quote.** [(p) *Chichester v. Philips*, T. Raym. 404, T. Jones, 146; ***Mostyn v Fabrigas*, 1 Cowp. 161; Bill. N.P. 315.**]

19 High Court Cases confirming *Enever v R* [1906] HCA 3; (1906) 3 CLR 969 (12 March 1906)

[Attorney-General \(NSW\) v Perpetual Trustee Co \(Ltd\) \[1952\] HCA 2; \(1952\) 85 CLR 237 \(3 March 1952\) \[6%\]](#)

[Ferdinands v Commissioner for Public Employment \[2006\] HCA 5; \(2006\) 225 CLR 130; \(2006\) 224 ALR 238; \(2006\) 80 ALJR 555 \(2 March 2006\) \[4%\]](#)

[Oceanic Crest Shipping Co v Pilbara Harbour Services Pty Ltd \[1986\] HCA 34; \(1986\) 160 CLR 626 \(26 June 1986\) \[3%\]](#)



[Jarratt v Commissioner of Police \(NSW\) \[2005\] HCA 50; \(2005\) 224 CLR 44; \(2005\) 221 ALR 95; \(2005\) 79 ALJR 1581 \(8 September 2005\) \[2%\]](#)

[Ramsay v Larsen \[1964\] HCA 40; \(1964\) 111 CLR 16 \(29 July 1964\) \[1%\]](#)

[Baume v Commonwealth \[1906\] HCA 92; \(1906\) 4 CLR 97 \(27 August 1906\) \[1%\]](#)

[Field v Nott \[1939\] HCA 41; \(1939\) 62 CLR 660 \(20 December 1939\) \[1%\]](#)

[Fowles v Eastern & Australian Steamship Co Ltd \[1913\] HCA 31; \(1913\) 17 CLR 149 \(16 June 1913\) \[1%\]](#) Isaacs quotes [Farnell v Bowman \[53\]](#) 12 App. Cas, 643 and on Two Master (Master and Servant)

Isaacs. J at halfway through his summary. **Quote:** “The Audit Commissioner, the Sheriff, a police inspector, are all in the public service. But they have some personally official duties which are beyond the control of the administration, and for which the Government could not be held responsible. See  *Enever*  v. *The King*[56].” **End Quote.**

[New South Wales v Fahy \[2007\] HCA 20; \(2007\) 81 ALJR 1021 \(22 May 2007\) \[1%\]](#)

[New South Wales v Ibbett \[2006\] HCA 57; \(2006\) 231 ALR 485; \(2006\) 81 ALJR 427 \(12 December 2006\) \[1%\]](#)

[Howard v Jarvis \[1958\] HCA 19; \(1958\) 98 CLR 177 \(30 April 1958\) \[1%\]](#)

[Little v Commonwealth \[1947\] HCA 24; \(1947\) 75 CLR 94 \(11 July 1947\) \[1%\]](#)

[Kuru v State of New South Wales \[2008\] HCA 26 \(12 June 2008\) \[1%\]](#)

[Commonwealth v Quince \[1944\] HCA 1; \(1944\) 68 CLR 227 \(25 February 1944\) \[1%\]](#)

[Downs v Williams \[1971\] HCA 45; \(1971\) 126 CLR 61 \(11 October 1971\) \[1%\]](#)

[Ramsay v Pigram \[1968\] HCA 34; \(1968\) 118 CLR 271 \(14 June 1968\) \[1%\]](#)

[Calman v Commissioner of Police \[1999\] HCA 60; \(1999\) 167 ALR 91; \(1999\) 73 ALJR 1609 \(10 November 1999\) \[1%\]](#)

[Frankston & Hastings Corporation v Cohen \[1960\] HCA 6; \(1960\) 102 CLR 607 \(23 February 1960\) \[1%\]](#)

[Sydney Harbour Trust Commissioners v Ryan \[1911\] HCA 64; \(1911\) 13 CLR 358 \(4 December 1911\) \[1%\]](#)

19 High Court Transcripts Citing *Enever v The King* 1906

1. [Ferdinands v Commissioner for Public Employment \[2005\] HCATrans 570 \(8 August 2005\)](#) [100%]
2. [Horvath & Ors v State of Victoria & Ors \[2004\] HCATrans 215 \(18 June 2004\)](#) [81%]
3. [State of New South Wales v Bryant; State of New South Wales v Ibbett \[2006\] HCATrans 319 \(16 June 2006\)](#) [56%]
4. [McStravick v State of WA & Ors P3/2002 \[2003\] HCATrans 739 \(9 May 2003\)](#) [56%]
5. [Calman v Commissioner of Police S187/1998 \[1999\] HCATrans 307 \(9 September 1999\)](#) [37%]
6. [State of New South Wales v Ibbett \[2006\] HCATrans 463 \(31 August 2006\)](#) [25%]
7. [Scott v Northern Territory \[2003\] HCATrans 405 \(3 October 2003\)](#) [18%]
8. [Bass and ANOR V Permanent Trustee Company Limited and ORS S45/1997 \[1998\] HCATrans 313 \(3 September 1998\)](#) [18%]
9. [Sanders v Snell S142/1997 \[1998\] HCATrans 253 \(25 June 1998\)](#) [18%]
10. [A v State of New South Wales & Ors \[2006\] HCATrans 495 \(5 September 2006\)](#) [12%]
11. [Tame v Morgan & Anor S83/2001 \[2001\] HCATrans 630 \(4 December 2001\)](#) [6%]
12. [Annetts & Anor v Australian Stations Pty Limited P97/2000 \[2001\] HCATrans 629 \(4 December 2001\)](#) [6%]
13. [Goldsmith v Sandilands & Ors P91/2000 \[2001\] HCATrans 542 \(24 October 2001\)](#) [6%]
14. [Tepko Pty Limited & Ors v Water Board S36/2000 \[2000\] HCATrans 697 \(22 November 2000\)](#) [6%]
15. [Cran v State of New South Wales & Anor \[2005\] HCATrans 21 \(4 February 2005\)](#) [6%]
16. [State Authorities Superannuation Board v Com of State Taxation for the State of W Australia P43/1994 \[1995\] HCATrans 424 \(5 December 1995\)](#) [6%]

17. [State Authorities Superannuation Board v Com of State Taxation for the State of W Australia P42/1994 \[1995\] HCATrans 423 \(5 December 1995\) \[6%\]](#)
18. [Ferdinands v Commissioner for Public Employment \[2005\] HCATrans 106 \(4 March 2005\) \[6%\]](#)
19. [Roncevich v Repatriation Commission \[2005\] HCATrans 208 \(21 April 2005\) \[6%\]](#)