

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW.

C.L. 682/70

Between  
BASIL CUMMINGS (B.N/F)  
MAUD CUMMINGS ) PLAINTIFF  
And  
JAMAICA OMNIBUS SERVICES LTD. - 1ST DEFENDANT  
And  
ISIAH HAMILTON - 2ND DEFENDANT  
And  
HANDEL DIXON - 3RD DEFENDANT

Dr. Lloyd Barnett instructed by Miss Gladys Morrison for  
Plaintiff. Mr. H.O.A. Dayes & Mr. Clinton Hines instructed  
by Mr. H.O.A. Dayes for the 1st and 2nd Defendants.  
3rd Defendant has not entered appearance nor <sup>has he filed</sup> defence.

Heard: 24. 2. 75, 25. 2. 75, 19 - 22. 5. 71

Before Rowe Judge.

The 1st Defendant operates omnibus services in the Corporate  
Area under the Public Passenger (Corporate Area) Law and the Public  
Passenger Transport (Corporate Area) Licence 1953.

On the 2nd October, 1969 the 2nd defendant was employed by the  
1st defendant to drive an omnibus on Route 14 and the 3rd defendant was  
employed by the 1st defendant to be the Conductor of the bus driven by  
the 2nd defendant on Route 14.

THE PLEADINGS

The Plaintiff was just under 17 years of age on the 2nd October,  
1969. He alleged in his statement of claim that on 2nd October, 1969  
he was a passenger in motor omnibus A.T. 172 which at all material times

was owned and operated by the 1st defendant as a public passenger vehicle and was driven and controlled by the 2nd defendant the servant and/or agent of the 1st defendant. He entered the bus at Lady Musgrave Road - on the No. 14 Route.

The 2nd defendant drove the bus off the said route and in so doing operated and/or controlled it so negligently that he was violently thrown therefrom and crushed by it so that he suffered personal injuries, pain and suffering, <sup>and</sup> the loss and damage.

The particulars of negligence were:-

- (i) Driving too fast.
- (ii) Failing to keep any or sufficient look out.
- (iii) Failing to give any or sufficient warning of intended course or manoeuvre.
- (iv) Moving while the exit door was still open and/or while passengers were alighting.
- (v) Moving without giving any or sufficient warning to passengers.
- (vi) Operating the said vehicle so violently that passengers were unable to maintain their balance.
- (vii) Failing to stop or so to manage the said vehicle as to avoid throwing the passengers from the said bus or crushing them.

The particulars of injuries were:-

- (a) Amputation of the right leg about the knee joint.
- (b) Consequent surgical amputation of the said leg 9 inches above the said knee joint.
- (c) Depressive illness.

Further or in the alternative, he claimed damages for false imprisonment in that the 2nd defendant wrongly and without lawful excuse drove the passengers away from the normal or the agreed route in a

direction in which the passengers did not wish to go and for several minutes left the passengers imprisoned in the bus. He claimed \$547.80 as special damages.

The amended defence for the 1st defendant which was actually filed by the Attorney-at-Law after the commencement of the trial with the consent of the plaintiff was of a comprehensive nature -

In essence the defence was:-

- (a) that the 2nd defendant's authority was limited to driving the bus along Route 14.
- (b) That at the material time the 2nd defendant was not acting as servant or agent of 1st defendant.
- (c) That the 2nd defendant was not negligent when driving the bus on the unauthorised route to the Matildas Corner Police Station.
- (d) That there was no negligence on the part of the 3rd defendant in the instructions he gave to the 2nd defendant.
- (e) That the 3rd defendant was the servant or agent of the 1st defendant solely for conducting the bus on Route 14.
- (f) That the plaintiffs injuries were solely due to his own voluntary, wrongful and illegal acts or solely due to the plaintiff's negligence or that the plaintiff's negligence contributed thereto.

Particulars of negligence of Plaintiff

- (a) Attempting to jump from and leave a bus while it was still in motion,
- (b) not waiting for a bus on which he was a passenger to stop before attempting to alight from the said bus,
- (c) forcing open the entrance door of the bus for use as an exit.



- (d) Attempting to alight from a moving bus without waiting for the exit door of the bus to be opened and ready for his use.
  - (e) Attempting to jump from and leave the moving bus as it was passing through a gate-way without ensuring that there was sufficient space for him to carry out this exercise with safety.
- The 1st and 2nd defendants relied upon the doctrine of *volenti non fit injuria*.

The 1st and 2nd defendants further averred that the bus was driven off the route on the instruction of the conductor for the purpose of taking the passengers and other persons who together formed a group on the said bus and who together were committing a breach of the peace and behaving illegally, when the said motor omnibus was driving off the said route.

The 1st and 2nd defendants pleaded the purposes for which the omnibus was driven off the route to be as follows:-

- (a) to make a report concerning the conduct of the plaintiff and the other persons of the said gang to some police constable at the nearest police station and to try to prevent the continuance of the breach of the peace.
- (b) To ensure the safety of the other passengers in the said motor omnibus and the safety of the crew thereof;
- (c) To prevent the continuation of the said breach of the peace or any further breach of the peace.
- (d) To ensure that the illegalities committed by the plaintiff and the gang came to the notice of the police and to allow the police to make investigations and to take such steps as they thought fit to prevent the continuation of the said illegalities, namely the refusal to pay the proper fares and the committing of a breach of the peace and to deal with the said illegalities.

/ .....

THE EVIDENCE

The Plaintiff gave evidence on his own behalf. He called in support Clifton Bennett a machine operator who said he was on the bus on the night of the accident and saw what happened.

Dr. Chutkan gave evidence of the plaintiff's injuries, Mr. James Gordon the Headmaster of Grantham College spoke of the plaintiff's prospects as a student and Dr. Lindsay as to <sup>the</sup> plaintiff's psychiatric condition.

The plaintiff, a schoolboy of about 17 years, went to a football match at the Stadium with a number of other boys from his own area in Barbican. After the ~~match~~ the plaintiff walked with 3 other boys whom he knew before to a bus stop on Lady Musgrave Road. A No. 14 bus drove up and about 7 persons got on to the bus including the 4 boys. The conductor discovered that one person did not pay his fare and instituted an inspection of tickets.

This caused the bus to be delayed at the stop. The inspection revealed that one of the 4 boys had not paid his fare. So that the bus could proceed, some of the passengers made a collection and paid that boy's fare.

The plaintiff said that after the boy's fare was paid some of the boys not including himself started to quarrel with the conductor. The conductor called the boy a thief and this caused the boys to "mouth" ~~ie.~~ tease the conductor. The conductor became "ignorant", started to curse bad words, then he went up to and spoke to the driver and then the conductor said aloud - "take the bus to the police station".

The plaintiff said that he had paid his fare and he produced in evidence the ticket which he received from the conductor.



The 2nd defendant drove the bus off the No. 14 Route on to Seaview Avenue, and on to Old Hope Road towards Matildas Corner. The conductor was up by the front of the bus. When the bus reached Matildas Corner Police Station it stopped, reversed and stopped and the door was opened. Plaintiff got up to leave as he saw other people coming off the bus. The boys who were "mouthing" the conductor came off too.

As the plaintiff was in the act of leaving the bus, his left foot reached outside and his right foot about to come outside, the door shut and caught his right foot inside the door and the bus began to drive. The bus flung him to the ground and as it tried to turn the rear wheels of the bus came upon and crushed his right leg.

In cross-examination he said he did not remember his foot getting a blow in the gateway of the police station. Significantly he said that in between remembering that his left foot was caught in the closing door of the bus and his realizing that he was in hospital, he could not remember how his leg got damaged.

Plaintiff explained that the bus reversed once as the angle at which the bus tried to get into the police station gate made that manoeuvre impossible. Plaintiff said that at all times on the bus his behaviour was good. He did not use indecent or abusive language and he kept his seat until the bus reached the station gate. He was asked whether he was the boy who had refused to pay his fare and he said "no".

Of the 30 people on the bus apart from the 3 boys plaintiff knew two men. None of the persons in the bus protested to the driver that he was taking them off route. When the bus reached the station gate a number of persons including the plaintiff stood up. The driver reversed the bus into Old Hope Road and stopped and opened both

doors. About 10 people including the 3 boys known to the plaintiff left the bus through both open doors.

The plaintiff denied the suggestion that when the bus was nearing the police station gate he got up and opened the back door of the bus himself. At the time of the accident the bus was partly in the station yard and partly on Old Hope Road.

The defence suggestion to the plaintiff were that he held the rear door of the bus open and allowed his friends to jump out one by one and when the last had jumped out the bus was nearing the gateway of the police station at which time the plaintiff let go the two halves of the door intending to jump from the bus, but the door closed and caught the right foot. These suggestions the plaintiff denied. The plaintiff could not say if his right leg came into contact with the column of the police station gateway. Plaintiff recalled that immediately after the accident his severed leg was on the sidewalk.

It was suggested to the plaintiff that one of the boys in his party took out a knife while he was in the bus and threatened to cut up the conductor with it. This the plaintiff denied. He said no one threatened the conductor nor did anyone abuse him. The conductor had lost many of his teeth and this was a cause for amusement amongst the boys.

Mr. Clifton Bennett, the plaintiff's eye witness said he was travelling on the bus that night. He told of the several boys entering the bus on the Lady Musgrave Road and of the confusion over one boy failing to pay his fare. He told how the bus drove off the route on to Old Hope Road and towards Matildas Corner Police Station. He said that the bus travelled to the gate of the police station and



stopped as it could not make a "one turn" to enter.

The bus stopped and then reversed and then opened both doors and all the passengers began to come off through both doors. When the passengers were coming off the bus the "bus close up same time because it cause a traffic jam and move off right into the station." While still in the bus he heard an alarm that a boy had been injured. Mr. Bennett said that the bus reached inside the station before it stopped again and again both doors were opened.

He saw the plaintiff lying on the ground with his leg severed. The severed leg was lying in the station yard, not under the bus, and the injured boy was also lying on the asphalt in the station yard. When tested in cross-examination the witness said that the plaintiff was not one of the persons who got off the bus when it ~~had~~ reversed into Old Hope Road and some of the passengers <sup>had</sup> came off. He said it was not true that as the bus was moving to go through the gateway the plaintiff jumped out the door.

In fact Mr. Bennett did not actually see at what point plaintiff got off the bus. He was not specifically watching plaintiff and so could not tell if plaintiff tried and failed to get off the bus before the accident.

When the doors were closed after the bus reversed into Old Hope Road, the plaintiff was still in the bus. In speaking of what followed the incident at the bus stop, this witness said that the boys and the conductor were "mouthing" one another, they were not threatening the conductor. The boys called the conductor "idiot" and "dunce". One of the boys did not have a knife and there were no threats. This witness was asked " I suggest to you that the boy who did not pay his fare until someone paid it for him was Basil Cummings. Answer 'ho" it was not him".



The witness was equally firm that it was untrue to suggest that as the bus was nearing the police station the ~~plaintiff~~ held the back door open and the other boys jumped out the bus and last of all the plaintiff jumped.

It was not true he said that the plaintiff's foot got caught in the door because the plaintiff had to release the door in order to make his jump. He ended his evidence by saying that as he was not watching the plaintiff all the while he did <sup>not</sup> notice every movement of the plaintiff while he was in the bus.

The plaintiff's teacher Mr. James Gordon the Head Master of Grantham College said that for the nearly two years that the plaintiff spent at the College he thought his performance throughout very good and as the boy was pretty bright at mathematics he thought that the plaintiff had fair prospects of taking up accountancy.

Dr. Winston Chutcan, FRCS., and a lecturer in Orthopaedics at University Hospital treated the plaintiff at the University Hospital. When he examined plaintiff on 2nd October, 1969, he found the plaintiff suffering from a severe crush injury of the right lower limb involving the leg and the knee joint with complete amputation above the right knee joint. Plaintiff was severely shocked from blood loss. He was conscious and well.

The treatment consisted of giving the plaintiff blood transfusions and a general anaesthetic and he had an amputation about 7 inches above right knee joint. Plaintiff was given post-operative treatment of antibiotics, anti-tetanus serum and for the blood transfusions.

On the 6th October, 1969, he was given another general anaesthetic for changing of his dressings and inspection of his wound.

On the 9th October, 1969, 18th October, 1969 and 22nd October, 1969 he was again given general anaesthetic for the changing of the dressings and cleaning of the wound.

It was on the 13th November, 1969, that skin was taken from his left thigh and under general anaesthetic skin-graft was done to cover the wound. The final amputation site was 9 inches above the right knee joint. Plaintiff was discharged on the 24th November, 1969.

Plaintiff received out-patient treatment until 8th January, 1970, when he was referred to the Limb-fitting Clinic at Mona Rehab Centre. Plaintiff now walk with crutches which cost between \$175 - \$200 and needs to be renewed every 3 - 4 years.

As to pain and suffering the Doctor said that on the day after the operation plaintiff would have fever, he would be anaemic from blood loss, the stump of the limb would be bandaged, swollen and painful. Plaintiff would be sedated for 3-4 days after the 1st operation and for 1-2 days after each general anaesthetic. He would have been treated with tranquillizers to keep him quiet and drowsy and not to make him think of his condition too much.

In the doctor's opinion the injury was consistent with crushing by the wheels of a bus. In cross-examination he said the injury could also be caused if the limb was caught between a bus and a column with sharp edges. The accident could happen either way and each way equally probable. Taking into account the fact that the plaintiff had no injuries other than that to the right leg, the doctor eventually said that he would think it more probable that the crush injury was caused by the wheels running over the leg.

A consulting psychiatrist Dr. Lindsay of the Bellevue Hospital examined the plaintiff on two occasions and gave as his opinion that the



plaintiff was definitely suffering from physical and mental defects. His mental state could be summarised by saying that he was suffering from a severe depressive illness. In Dr. Lindsay's opinion that condition stemmed from the loss of the leg.

The symptoms were that he was sad-looking, slow in answering questions and tearful. He was unable to think very quickly and readily. Plaintiff expressed that his loss had come about due to the loss of his leg. He stated that he used to do well at school getting as much as 95% in mathematics, but after accident he began to do badly in school. He could no longer play football and cricket with other boys and they teased him calling him "one-armed bandit". This made him even more upset and kept him more to himself. Plaintiff felt himself getting "ignorant" no matter who was speaking to him. Plaintiff felt that he had let down his mother and with the mother being very upset, there was a vicious circle.

In the psychiatrist's opinion plaintiff could be helped but it would take a great deal of drug treatment plus long period of psychotherapy to enable plaintiff to come to terms with his loss both physically and psychologically. The cross-examination was to suggest that there was nothing seriously wrong with the mental state of the plaintiff.

Maud Cummings the mother and next-friend of the plaintiff proved certain items of special damage amounting to \$657.80.

#### THE DEFENCE

The 2nd defendant gave evidence and two other witnesses were called on behalf of the 1st, and 2nd defendants. The 3rd defendant was not represented and took no part in the case.

Isaiah Hamilton was the bus driver and he told of stopping at the bus stop on Lady Musgrave Road in the vicinity of Worthington Avenue, to pick up passengers. He heard a quarrel, a noise, on the bus. The quarrel was about fare but he could not tell anything else about the quarrel.

He drove off, after some pause, at the conductor's signal. The quarreling continued and the conductor told him something whereupon he drove towards Old Hope Road intending to go to the Matildas Corner Police Station.

About 2 - 3 bus lengths before he reached the police station, he slowed down, put out his indicator to indicate that he was going to turn into the police station pulled to about the centre of the road to accommodate the length of the bus and then entered the gateway. Going further in he felt a thump and heard a thump as if somebody had hit against the bus side. Immediately he stopped the bus which was then inside the station yard. He opened the bus doors and when he got out the bus he noticed the plaintiff lying down on the side walk with one of his legs cut off.

The severed leg was lying just beside the bus in the station yard. He saw people both inside the bus and in the station yard when he stopped the bus and he could not recall if he had seen persons outside the bus in station yard just before he entered the gateway.

He said he did not come up to the station gate, stop, reverse and stop, open the door of the bus, then drive off again to enter the station gateway.

He said that the doors of the bus were on its left side. The exit door was to the front and the entrance door to the rear. Each door had two halves. The bus has 6 road wheels, two on each side at the rear, and one at the front.



Although Mr. Hamilton had earlier said he could give no details of the quarrel in the bus in answer to a leading question from his attorney he did say he had heard indecent language but he could not recall what that indecent language was. He did not know who used the indecent language.

When cross-examined Mr. Hamilton said it was his experience that passengers would leave the bus through both doors depending on which door was nearer to where they sat. The gateway at the police station was wide enough to admit the bus and he entered with "one lock". The conductor was near the front of the bus when he entered the gateway. The conductor did not tell him that people were leaving the bus and he did not know that this was happening. The bus is fitted with rear view mirrors which enables him to see inside the bus and to the rear.

The bus is also fitted with side mirrors to enable him to see the rear of the bus on the outside and <sup>to</sup> assist him in driving. He contended that although he could not see through the side mirror from the angle at which he entered the gateway, the bus was in the "right way" i.e. not too near to the gate columns.

He did not recall if anyone was standing in the passage of the bus as he approached the police station.

Mr. Hamilton said that the doors of the bus can be opened without the use of the levers which he controls and if this is done he would not necessarily know. He could not say how easy or difficult it would be for someone to prise open the closed door.

Mr. Hamilton gave evidence that when the conductor told him to drive to the station no one else in the bus could hear. He would have been willing to stop the bus if anyone had rung the bell but no one did so. He further said that no one did or said anything during the time

the bus was off the No. 14 route to make him think that such person wanted to come off the bus.

Sergeant Cleveston Griffiths who was stationed at Matildas Corner Police Station for a considerable number of years said that at 9:45 p.m., on the 2nd October, 1969, he was at the station in a position where he could look up and see the gateway. He heard a thud and when he looked up he saw a J.C.S., bus inside the station yard.

He hurried out because he heard screaming and he saw a severed leg lying between the bus and the gate column but more inside the station compound. He saw the plaintiff hopping about using indecent expressions. Soon he was exhausted and fell.

Gateway was 12 - 14 feet wide. When the Sergeant saw the bus it was at a slanting position towards Matildas Corner.

An important witness for the defence was Mr. Nathaniel Sheriff who said he was on the bus that night and saw what took place.

According to him during the quarrel in the bus the boys were cursing bad words and one boy draw a white handle knife and pointed it at the conductor. He saw a boy bracing the entrance or rear door of the bus when the bus was still on Old Hope Road. When the bus started to go very slow he discovered some fellows were bracing the bus at the door. Some were getting out, jumping out the bus through the rear door.

He saw a young man who got injured that night. The very first time he saw that young man was when he saw him lying on the side walk with his foot severed.

According to Mr. Sheriff the conductor having spoken to the driver, the conductor came and stood in the middle of the bus. From where he was he could easily see the people leaving the bus. The conductor was standing 12 - 15 feet from the people leaving the bus and facing them.

In re-examination he said when the people were jumping off the



bus, the bus was on Old Hope Road. No one had jumped off the bus before the bus was at Old Hope Road.

Bus was going slow as it started to enter the station. People jumped out the bus after it slowed down and also before it slowed down. He saw people jumping through the window and some jumping through the door forcing the door and jumping out. The bus was about 6 chains from the police station when the first person jumped out.

FINDINGS OF FACT

- (1) That Mr. Bennett for the Plaintiff and Mr. Sheriff for the Defendants were both passengers on the bus that night.
- (2) That the Plaintiff had paid his fare when he entered the bus and that there was no evidence whatever for the suggestings that he had not paid his fare. The authenticity of the ticket produced by the plaintiff as an exhibit was not challenged by the defence.
- (3) That the Plaintiff did not threaten the conductor with a knife and indeed that the plaintiff had no knife and that there was no evidence whatever grounding the suggestion that the plaintiff had been armed with a knife and had threatened the conductor.
- (4) That indecent language was used by the boys who were quarrelling with the conductor.
- (5) That although the plaintiff was one of the group of boys he was not taking any part in the quarrel nor was he using indecent language.
- (6) It was at the very end of the cross-examination of the plaintiff that the knife was first mentioned. The 2nd defendant did not mention a knife at all in his evidence.

On the balance of probabilities since I find that Mr. Sheriff

was to a great extent a truthful witness, I accept the evidence that a knife had been drawn and that the conductor had been threatened with it. On the evidence it is impossible to say that it was the plaintiff who drew the knife and I find that he was not armed with and did not draw or threaten conductor with knife.

- (7) That the bus was driven off the fixed No. 14 route.
- (8) That the plaintiff did not <sup>expressly</sup> consent to be driven off the No. 14 route.
- (9) That the purposes of driving the bus off the route was to make a report concerning the conduct of persons on the bus to some police constable at the Matildas Corner <sup>Police</sup> Station.
- (10) That the persons misbehaving on the bus did not include the plaintiff and consequently his conduct did not give rise to any action taken by the 2nd and 3rd defendants.
- (11) That neither the plaintiff nor anyone else in the bus expressly asked the 2nd defendant to stop the bus so that he or she could get off during the time that the bus diverted from off the No. 14 route on its way to the police station.
- (12) When the bus reached the gateway of the police station it stopped, reversed and moved forward again.
- (13) That the driver of the bus did not open the doors of the bus while the bus was on Old Hope Road in the vicinity of the Matildas Corner Police Station.
- (14) That after the conductor spoke to the driver, the conductor did not remain at the front of the bus but stood somewhere in the middle of the bus facing the rear of the bus.
- (15) That some of the boys on the bus began bracing the rear door of the bus in an effort to force it open while the bus was in motion



on the Old Hope Road.

- (16) That it is not correct that it was the plaintiff who held the door open and permitted the other boys to jump from the bus.
- (17) That when the bus slowed down and was making the manoeuvre at 12 above, the boys jumped from the bus through the rear door and through the window of the bus.
- (18) That the plaintiff attempted to jump from the bus while it was moving and in all probability after it had reversed and was about to enter the gateway of the police station.
- (19) That when the plaintiff made his attempt to jump his right foot caught in the closing door.
- (20) That on the probabilities the plaintiff was not thrown on the ground and the wheels of the bus did not run over and crush his leg while plaintiff was lying on the ground.
- (21) That on the probabilities, the plaintiff's right leg came into contact with the column of the gateway and was crushed and amputated when the bus passed quite close to the column in the slanting position described by Sergeant Griffiths.
- (22) That the plaintiff's severed leg fell inside the station yard while the plaintiff himself was on the street side of the gate column.
- (23) That the conductor the 3rd defendant was standing in a position on the bus to be able to observe and did observe the boys jumping from the bus while the bus was in motion and was being driven so as to get the said bus into the police station at Matildas Corner.
- (24) That the driver, the 2nd defendant was in a position to observe that the several boys were bracing the door to get it opened and that in all probability he did observe this.

- (25) That the driver the 2nd defendant was in a position to see the several boys jumping from the bus either through the entrance door or through the windows, of the bus and that in all probability he did observe them doing so.
- (26) That somewhere between 5 and 7 boys jumped from the bus before the plaintiff made his attempt.
- (27) That when the driver knew or ought to have known that the boys were jumping from the bus he took no steps to stop the bus or otherwise to prevent the boys from leaving the moving bus.
- (28) That in all probability the intention of the driver was to get the bus to the police station with some if not all of the boys whom he thought were making trouble in the bus still in the bus and without giving them any further opportunity to escape.
- (29) That in all the circumstances the driver drove the bus too near to the left column of the gateway.

I hold that as soon as the 2nd defendant knew or ought to have known that there was this deliberate attempt on the part of some of the passengers to leave the bus, as a reasonable driver he should have stopped the bus and given those who wished to alight an opportunity to do so.

I hold that for ~~the~~ bus driver to <sup>have</sup> continue on his course regardless when he became aware that passengers were jumping from the bus and there was nothing to prevent him from bringing the bus to a stop, he was not taking sufficient care for the safety of his passengers.

I hold further that for the driver of the bus to attempt to go through a gateway 12 - 14 feet wide at a slant, knowing that there are columns at the gateway and knowing that his first attempt to enter the gateway failed due to the angle of his approach, and knowing that persons were in the act of jumping from the bus, showed a disregard for the safety



of his passengers.

I hold that the conductor was negligent in not specifically warning the driver of the dangerous situation and for not taking steps to ring off the bus to stop.

I hold that the 2nd defendant is negligent for not bringing the bus to a stop as soon as he knew or ought to have known that some of the passengers were jumping from the bus.

I hold that the plaintiff in following the other boys to jump from the moving bus when he knew that the boys had themselves prised the door open, was not taking reasonable care for his own safety and contributed to the injuries he received and the damages he suffered.

The question now arises, is the 1st defendant liable for the negligent acts of the 2nd or 3rd defendant? The 1st and 2nd defendants pleaded that at all material times the 2nd defendant was not acting as the servant or agent of the 1st defendant.

The attorney for the 1st and 2nd defendants argued that the 1st defendant had authority by its licence to operate buses on the No. 14 route and that that route was specifically and definitively prescribed. The 1st defendant had no authority in law to operate the No. 14 route on roads not prescribed and could not authorise the 2nd and 3rd defendants to operate the No. 14 route on any road or street not included in its licence. The submission was that in the circumstances of this case the 1st defendant cannot be liable because the servants of the 1st defendant cannot be deemed to be able to do more than their employers are authorised to do.

Where the employer has no authority in law to operate in a certain way he has no power to delegate or authorise his servants to operate in that way, except in a case of emergency. The servants and

agents of the employer cannot depart from the designated and defined route in a case of this nature.

Attorney for the 1st and 2nd defendants referred me to a number of regulations made under the Road Traffic Law, dealing with the conduct of drivers, conductors and passengers on public passenger vehicles.

Reg. 129 (c) provides:-

"A driver or conductor when acting as such shall take all reasonable precautions to ensure the safety of passengers in or on or entering or alighting from the vehicle."

131 (c) "A conductor when acting as such shall to the best of his ability take, steps whenever necessary to enforce the provisions of these Regulations relating to the conduct of passengers".

134 (1) "When a vehicle is carrying passengers or waiting to pick up passengers, a passenger or intending passenger shall not use obscene or offensive language or conduct himself in a riotous or disorderly manner!"

135 (b) "When a vehicle is carrying passengers or is waiting to pick up passengers, a passenger or intending passenger shall not enter or travel on a vehicle with ..... any dangerous or offensive article ....."

137 (a) "Any passenger contravening these regulations may be removed from the vehicle on the request of the driver or conductor by any police constable."

The scheme of these Regulations is to confer upon the driver and conductor the authority to maintain order on the buses and to take reasonable steps to prevent the continuance of serious misconduct or disorder.

Reg. 136 empowers the conductor to ensure that every passenger on the bus has a ticket.



Attorney for the 1st and 2nd defendant relied upon CHARLESTON v. LONDON TRAMWAYS Co.LTD. (iv) T.L.R 1887-88 page 629. in support of his proposition of law.

In that case an elderly woman tendered a half-crown to a bus conductor to pay a fare of 2d. The conductor thought that the half-crown was counterfeit money and refused to set down the passenger on request. He took her to the police station and charged her with having given him a bad half-crown.

The police officer investigated and found the half-crown to be perfectly good money. The elderly passenger became very ill, suffered serious damages and sued the Tramway Company. She lost her action in the Court of Appeal.

I quote from the judgment of the Master of the Rolls:-

"The only question was whether they (London Tramway Company Ltd.) had authorized the conductor to do what he did. It was clear that there was no express authority, but could only be implied? The effect of the decision in Poulton's case was that no authority could be implied to a servant to do more than the company itself was authorized to do".

"What then could the company or their manager have done had they been present? They were authorized by the Tramways Act to detain a passenger for attempting to evade payment of the fare. But it was perfectly clear that the conductor detained the plaintiff and ultimately gave her in charge, not for attempting to evade the payment of her fare, but for attempting to pass bad money knowing it to be bad. There was no authority in the section of the Tramways Act to arrest a passenger in such a case and therefore the Co. itself would have had no authority to arrest

the plaintiff.

That being so it followed that the conductor had exceeded the scope of his authority and the company would not be held liable for his action".

In my view the facts of the Charleston case are easily distinguishable from the instant case. The avowed intention of the driver and the conductor the 2nd and 3rd defendants was to hand over those persons misbehaving in the bus to a police constable. This they had express power to do by section 137 (a) and 131 (c) of the Regulations.

It is clear from the reasoning of all the judges in the Charleston case that had the passenger been handed over for attempting to evade the payment of her fare she would have succeeded in her action.

In my view the Road Traffic Regulations must be construed reasonably. If serious disorder breaks out on a bus, is the conductor or driver to abandon the bus and go in search of a police constable? Or is he to stop the bus and wait in the hope that some police constable will happen that way?

In my opinion a driver or conductor has implied authority under Reg. 131 (c) to take an omnibus temporarily off the prescribed route if that appears to be a necessary step to enforce the provisions of the Road Traffic Regulations which deal with the maintenance of order on the bus.

At the time when the 2nd defendant drove the bus off the No. 14 route, the evidence is that there was no protest from the nearly 30 passengers. I am prepared to draw the inference that this absence of protest was tacit approval of the course adopted by the 2nd and 3rd defendants.

I draw the further inference that this tacit approval supports the



contention of the 1st and 2nd defendants that there was serious disorder on the bus and not the mere "mouthing" to which the plaintiff refers.

Accordingly I hold that in diverting the bus temporarily from the prescribed No. 14 route for the purpose of maintaining order on the bus and specifically to get the assistance of a police constable at the Matildas' Corner Police Station, the 2nd and 3rd defendants were acting within the scope of their implied authority and remained the servants or agents of the 1st defendant during the period of that temporary diversion. I hold that the 1st defendant is vicariously responsible for the negligence of the 2nd and 3rd defendants.

The claim for false imprisonment fails. The driver and conductor were not bound to consult all the passengers in the instant circumstances before the bus was temporarily diverted from the route for the purpose of maintaining order on the bus. The plaintiff did not make any request to be set down prior to the time that he made that unfortunate jump. He cannot now complain for false imprisonment.

I hold that the defence of *volenti fit injuria* has no place in a matter of this nature. The plaintiff cannot be said to have appreciated the risk that he was about to take and then to agree impliedly with the defendants, that he the plaintiff would be liable for any negligence on the part of the defendant while he the plaintiff carried out this manoeuvre.

#### DAMAGES.

The plaintiff was just under the age of 17 years when the accident happened. He was a student at a private secondary school and his achievement thereat seems to have been quite moderate. The end-of-term reports put in evidence do not bear out that he was a bright scholar although it shows that he was better at mathematics than some of the other

subjects.

It is quite possible then that he could have pursued a course of some sort in accountancy. On the evidence his memory has become impaired and he can no longer pursue these studies.

Dr. Lindsay said that on the two occasions that he saw the plaintiff he diagnosed depressive illness. He spent a long time in the witness box and the impression which I had was that the plaintiff has spent many years being sorry for himself and that his mother's disappointment at his condition has done much to make him even more sorry for himself.

The plaintiff can no longer participate in field sports such as cricket, and football. He will not be able to attend parties and dances as would young people of his age. He has had to put up with teasing from his peer group and in the end he will have to live with the condition of being one legged and therefore different from other people. The physical injuries were serious indeed. The depressive illness was of a minor nature.

I assess the general damages at \$14,000.00. Special damages proved amounted to \$657.80. I find that the plaintiff was one-third to blame for the accident.

Accordingly I gave judgment for the plaintiff against the 1st and 2nd defendants for general damages \$9,333.66, and interest at 6% from 28th July, 1971.

Special damages:- \$438.34 and interest at 3% from the 2nd October, 1969.

I. D. Rowe,  
Judge.