In the Supreme Court

Before : Mr. Justice Ross

Suit Nos. C.L. 186, 187, 188, 189, 190 of 1972

Between	Isaiah Brown Hopeton Thomas Wilfred Davis Winston Chambers Ishmael Smith	)	Plaintiffs
And	Detective Allen Corporal Roxroy Linton The Attorney General	)	Defendants

Mr. R. Pershadsingh, Q.C. and Mr. A. Mundell appeared for the plaintiff instructed by Mr. S. Fyfe - Mr. Pershadsingh having full charge of suits 186.72, 187/72 and 190/72, while Mr. Mundell had full charge of suits 188/72 and 189/72.

Mr. Ellis and Mr. Codlin, of Attorney General's Department, for defendants.

J U D G M E N T

With the consent of the parties all five actions were taken together, although there was no consolidation, as this appeared to be the best course in the circumstances.

The trial commenced on 16th May, 1974, and ended eventually on 7th November, 1975, after 17 days of hearing.

Four plaintiffs claim damages for assault and battery and false imprisonment, and the fifth plaintiff, Mr. Brown, claims damages for assault and battery, false imprisonment and malicious prosecution.

Although all five actions were tried together because they arose out of one incident and this was the most convenient course, it will be necessary for me to deal with each case separately, examining the facts and the law in regard to each suit. Further it is more convenient to deal with the suits in the order in which the plaintiffs gave evidence. The first plaintiff to give evidence was Ishmael Smith and I shall commence with his case.

Suit No. C. L. 190 of 1972 - Ishmael Smith v. Det. Allen et al

This plaintiff's claim is for damages for assault and battery and false imprisonment on 14th February, 1971, and he alleged in his statement of claim that the first and second-named defendants and other policemen and detectives assaulted him "by hitting him with sticks, rubber hoses, tying a rope around his neck, dragged him outside, placing the rope around a branch of a jack-fruit tree and pulling him up, pulleywise, by the end of the rope so that his feet could not touch the ground, and "imprisoned the plaintiff

/.....

by detaining him and leaving him hanging on the said tree for some time before he was released." The statement of claim also set out particulars of personal injuries suffered in consequence of the above as well as the particulars of special damages.

In the defence, the defendants deny the allegations of the plaintiff as to the incident on 14th February, 1971, as also allegations of personal injuries and special damages.

The plaintiff, Ishmael Smith, testified that he was a fisherman and labourer of Rocky Point, that he went to Isaiah Brown's home at Pineapple near Bog Walk in the parish of Saint Catherine on Saturday 13th February, 1971, he spent the night there and early the following morning at about daybreak, occurred the incident which gave rise to these actions: he was sleeping in the sitting hall when he heard a knocking or stamping that "fly the door open," he received a blow and jumped up and saw three policemen who said "police" and asked for Isaiah Brown; he replied and the policemen pointed a gun at him, went to Hopeton Thomas, who was asleep in the same room and struck him with a rubber hose which caught him across his head.

Smith went on to relate what weapons the policemen carried: one was in uniform and carried a revolver in one hand and a flashlight in the other, one had a piece of stick and the third one had a piece of bent "steel iron," when asked further in examination-in-chief whether he saw anything else ih their hands, he replied that he got so frightened that he never discerned what they had again. He went on to relate how when they came to Brown's door one policeman went in front and "pitched the door open - the lock fly and the door open," and then he described what happened in Brown's room - this is more conveniently dealt with when I come to Brown's case.

On leaving Brown's room, Smith and Thomas were taken outside and put to kneel on broken stones at the shop corner (Thomas said they were put to kneel before the verandah on the ground).

After this, Brown was taken back inside the house, some policemen came out with a rope which Mrs. Brown had used to tie a box, they hit Smith with the rope, grabbed him in his collar, took him to a jack-fruit tree, where they put the rope around his neck and drew him up on a limb of the tree until his toe point was just brushing the earth and kept him there

/.....

about five minutes; during this period they asked him: "Whey the white fowl and how much money I carry come to Brown to work obeah? Where the money I give Brown? and me must tell them whey the dead man head and ganja, for it is it them come for." After this, Smith related that he was put to kneel beside the plaintiffs Davis and Chambers (who is also known as Anancy), and that he was hit several times with the rope and the rubber hose on various parts of his body.

In the course of his evidence, Smith said that before this incident he was being treated at the University Hospital for a heart ailment and stoppage of water; after the beating by the policemen he went to urinate about 2 p.m. that day and there was blood in his urine, resulting, he suggested, from the beating he had received; later that same day he went to seek medical attention but it was not until the following Wednesday that he saw and was treated by the late Dr. Leslie (whose record was later produced by Mrs. Leslie).

In cross-examination, Smith described the relationship between Brown and himself: Brown was his spiritual friend, father and brother, and had a church, a branch of which was at Rocky Point and was run by Smith; the religion they practised was pocomania; he described Brown's house as having 14 apartments with many bedrooms; the yard was fenced with zinc and the gate was made of zinc; Smith heard no knocking on the fence but after the incident he saw the gate broken and flung to one side - the suggestion by the plaintiffs being that the gate and a part of the fence had been torn down by the police in effecting an entry into the premises that morning.

On the question of identification of his assailants Smith testified that he did not know any of the policemen who were there that morning except Corporal Roache (who he said was in uniform) and he pointed to the defendant Linton as Roache; he went on to say that Roache (which I understood to be a reference to Linton, the man whom he pointed out as Roache) did not do him anything; this defect in the case for Smith was cured by the evidence of Hopeton Thomas who testified that four policemen entered the sitting hall that morning while he and Smith were there and that the four policemen were; the defendant Linton in uniform, the defendant Allen and two other policemen, Roache and Green.

/.....

Other witnesses gave evidence in support of Smith and they all were able to give some evidence in support of the hanging of Smith on the jack-fruit tree but on examining this evidence, I find it so improbable and so riddled with discrepancies that I am quite unable to accept that protion of the evidence; for example, Smith said he was strung up for about five minutes while Davis and Chambers say the period was about two hours, and then when he was let down he stood up and then walked off; ordinary common-sense suggests that this was highly improbable.

Again, Smith and other plaintiffs and their witnesses related that the gate and a part of the zinc fence were torn off and it was suggested to the defendants who gave evidence that this was done by the police in the course of entering the premises that morning; now this gate and fence were made of zinc and the police entered the premises about 6 a.m. coming on to day-light - and further there were dogs on the premises: bearing all this in mind and the noise which would have been made in the course of tearing down a zinc gate and zinc fence, I find it difficult to believe that the police party tore down the gate but not disturb the sleep of the people in the house, and that this plaintiff was awakened in the manner he described.

Looking at all the evidence, it seems more probable that entry was effected in the manner described by the defendants, that is, by Detective Allen climbing over the gate and opening it for the rest of the police party to enter as quietly as possible in order to foil any possible attempt to get rid of articles the police may have come to search for on the premises.

Turning to the medical records of the late Dr. Leslie, I noted that much of the record consists of the history given to the doctor by the plaintiff and that this history was generally consistent not only with the findings of the doctor but also with the evidence of the plaintiff, and this means that the plaintiff was telling a similar story from about three days after this incident.

On the other hand, the first and second defendants have denied beating this plaintiff although Sergeant Linton said that Smith and Thomas were searched in the sitting hall that morning at the same time that room was searched, and Sergeant Roache said that he saw Smith searched by Linton and Allen; this is rather revealing in the light of evidence

/.....

by the defence that Roache did not enter the house that morning!

In deciding what evidence to accept, I bear in mind, inter alia, the demeanour of the witnesses, that the incident occurred in February 1971, a rather long time ago, that the plaintiffs are illiterate and unaccustomed to giving evidence while the defendants who gave evidence are police officers accustomed to doing this and to the atmosphere of a court room. While I believe that the plaintiff and his witnesses have exaggerated the assault on him that morning, and that there has been some fabrication, I am satisfied on a balance of probabilities that he was assaulted and beaten in the course of the search by Linton and Allen and I am further satisfied that the circumstances were such as to make them joint tortfeasors.

It is noted that Smith claimed to have been falsely imprisoned by being hung from a tree; I do not accept the evidence on this aspect of the case, but I find that he was detained and searched, although his detention was only for the very short time it would take to search him.

The further question arises whether the search of Smith's person was lawful or otherwise. Firstly, I find that the search warrant was a valid warrant and that the search of Brown's premises under this warrant was lawful. An inspection of this warrant reveals that it authorises only a search of the premises and not of persons found on the premises; accordingly, while it was lawful to search the premises, any search of a person found on the premises would have been unauthorised since the warrant did not in terms authorise the search of any person - see Herman King v. R. (1969) 1 A.C. 304, in which Lord Hodson stated, referring to sec. 21(5) of the Dangerous Drugs Law:

> " Although a warrant to search persons as well as premises was contemplated by this section this warrant did not in terms authorise search of any person ..... In these circumstances the search was not on the face of it justified by the warrant nor in their Lordships' opinion can authority for the search of any person be implied from the language of the section without express authorisation. "

As I understand it, their Lordships are here clearly saying that if it is intended to search premises as well as persons on the premises under the Dangerous Drugs Law, then the search warrant must state this expressly, otherwise any search of a person on the premises will be unlawful. As the warrant produced in evidence only authorised a search of the premises and not of persons found on the premises, the search of persons

/.....

on Brown's premises was unauthorised.

There was no authority for the search of the plaintiff Smith, and he has alleged that the defendants Linton and Allen acted maliciously or without reasonable or probable cause; the defendants had a search warrant to search for ganja among other things, and it would have been quite easy for the plaintiff to have taken the ganja (if there were any on the premises) and concealed it on his person and thus defeat the object of the search by the defendants.

Section 33 of the Constabulary Force Act provides as follows:

> " Every action to be brought against any Constable for any act done by him in the execution of his office shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant. "

Looking at the circumstances in which the search of the plaintiff Smith was made, it does not seem to me that the plaintiff has established that in searching him the first and second defendants acted maliciously or without reasonable or probable cause. I am, however, satisfied that the plaintiff Smith was assaulted and beaten and that this was done maliciously and without any reasonable or probable cause.

I come now to the question of damages. The special damages claimed were not challenged and I therefore award special damages as claimed as follows:

Medical expenses	$ 48.00
Transportation	6.00
Loss of earnings for 12 weeks at $20 per week	240.00
	$294.00

I turn now to a consideration of what general damages should be awarded to this plaintiff; as I stated earlier, I found that while he was assaulted and beaten, the evidence had exaggerated the incident and the injuries inflicted. While saying that I am not in any way minimising what was shocking and reprehensible conduct on the part of two men who are peace officers and whose duty it is to maintain law and order and protect citizens.

/.....

The circumstances of this case are such that I consider that the award for general damages should not be merely to compensate the plaintiff for the injuries he suffered (and which as I said, I did not find serious) but that there should be an additional sum as the damages have been aggravated by the manner in which the injury was inflicted and by the fact that the injury was inflicted by policemen.

Having considered all the circumstances, it seems to me that a fair award for general damages should be three thousand dollars ($3,000) and I order that the defendants do pay to this plaintiff Smith the sum of three thousand dollars ($3,000) by way of general damages and $294.00 as special damages making a total of three thousand two hundred and ninty four dollars.

Suit No. C. L. 187/72 - Hopeton Thomas v. Det. Allen et al

This plaintiff's claim is for damages for assault and battery and false imprisonment on 14th February, 1971, and he alleged that Detective Allen and Corporal Linton and other policemen and detectives assaulted him by hitting him with rubber hose, rope and stick and chucking him to the verandah "and imprisoned him by detaining and searching him and making him kneel down on the ground for some time." The defendants deny this.

This plaintiff had been living at Mr. Brown's home for some time and he related how in the early morning of Sunday, 14th February, 1971, while sleeping on a couch in the sitting hall he was awakened by a blow on his head; he awoke to see four policemen in the room (this conflicts with Smith who said there were three); the four policemen were Linton who had a revolver pointed at him and Smith, Green who had a rubber hose, Allen with a stick and another who had a gun. Thomas went on to say that he jumped up and was hit again by Green and Allen; nothing had been said to him to explain why he was so beaten, and then he was asked where Brown's room was. He then described what happened in Brown's room and after leaving Brown's room, Smith and himself were put to kneel outside on the ground before the verandah.

Thomas then testified that Smith was taken towards the jack-fruit tree; he could not see what took place there, but he heard people on the street bawling "lawd, lawd, see policeman going to hang man dey;" in passing I would observe that Mrs. Brown described the position of the jack-fruit tree in relation to the verandah by which Thomas knelt, and as I understood it, he would

/.....

have been able to see the jack-fruit tree and what took place there.

This plaintiff also told the Court that he next saw Smith after he (Thomas) had got up from where he was put to kneel, while Mrs. Brown said that she came out on the verandah and saw Thomas and Smith being beaten in front of the verandah, and this was after she had heard, while inside the house, a bawling about policemen hanging someone.

In cross-examination, this plaintiff said that he was searched by the police after he had been ordered to drop his pants and had done so, but he did not say by whom; Sergeant Linton, however, said that Thomas was searched in the sitting hall, presumably by Detective Allen and himself.

There was too, in evidence, the medical record allegedly made by Dr. Leslie in respect of this plaintiff and, as with the plaintiff Smith, the document is largely a record of what Thomas told Dr. Leslie as to how he received the injuries found on him by Dr. Leslie; this record is consistent with and supports generally the evidence of Thomas as to the blows he received that morning.

Again, as with Smith, I find that there has been some exaggeration of the injuries Thomas stated he received as well as of what happened to other plaintiffs, and there are parts of his evidence which I do not accept and will refer to at a later stage; but on looking at all the evidence I am satisfied on a balance of probabilities that this plaintiff was assaulted and beaten that morning , although not seriously injured, by the first and second named defendants in the sitting hall. I do not accept the evidence of this plaintiff being put to kneel outside by the verandah and being beaten there.

I am also satisfied that this plaintiff was detained for a short time and searched that morning; as I said earlier, when dealing with Smith's case, although I consider that the search of Thomas' person was unlawful, I am not satisfied that it was done maliciously or without reasonable and probable cause, and consequently the defendants are not liable in tort to this plaintiff in respect of his detention and the search of his person - the same considerations apply in this case as in the case of Smith.

Turning to the question of damages, the special damages claimed are allowed as follows:

/.....

Medical Expenses	$35.70
Transportation	4.00
Loss of earnings for 4 weeks @ $17.50 per week	70.00
	$109.70

In regard to the general damages, again the same considerations apply here as with the case of the plaintiff Ishmael Smith, the circumstances in this case are so similar that I would make an award in the same amount as in the case of Smith, and for the same reasons.

Accordingly, the defendants are hereby ordered to pay to this plaintiff general damages in the sum of three thousand dollars ($3,000.00), and special damages in the sum of $109.70 making a total amount of three thousand one hundred and nine dollars and seventy cents ($3,109.70).

Suit No. C.L. 186 of 1972 Isaiah Brown v. Det. Allen et al

This plaintiff's claim is for damages for assault and battery, false imprisonment and malicious prosecution on 14th February, 1971, and he alleged in the endorsement of the writ that the defendants Linton and Allen and other policemen and detectives assaulted and beat him, that they took him into custody and imprisoned him maliciously or without reasonable or probable cause, and further that they maliciously or without reasonable or probable cause prosecuted him. Here it must be noted that although in paragraph 1 of the endorsement of the writ it is alleged that the plaintiff was beaten, this allegation is not repeated in the statement of claim!

The witnesses Ishmael Smith, Hopeton Thomas and the plaintiff's wife related how the door to Brown's room was forced open and the policemen entered the room where Brown was asleep in bed, how a gun was pushed in his ear, an iron hook was placed around his neck, how he was touched four times, how he was then hauled off the bed and it was only after this that he woke up; Brown in his evidence only relates waking up and finding that he had fallen off the bed.

Mr. Brown described the search of the house by Corporal Linton who was in uniform and who told him that he had come to search for ganja and obeah; after the search Brown related over-hearing a conversation between Linton and another policeman (whom Mrs. Brown said was Allen) who said to Linton that he is coming all the way from Spanish Town, and what is he (Linton) going to do with the man now; that he (Linton) had to find some clue against the

/.....

man for when the man take action against him, what about his wife and children. After this conversation (which Mrs. Brown also related hearing), Brown was taken to another place where a further search was made; then they went back to his gate and he was then taken to the Bog Walk Police Station and locked up. He also told the Court of certain articles taken from his home and produced in evidence - I noted that he did not agree that all the articles produced in Court were taken from his home.

Mr. Brown went on to say that bail was refused him and so he remained in jail until Monday morning when he was taken to Court and granted bail; before this, two gold rings were taken from his fingers by Linton who charged him with unlawful possession of the two gold rings; he was also arrested on charges of ganja and obeah, but he was never tried for these offences; further, he was acquitted of the charge of unlawful possession.

In cross-examination, Brown stated that the police told him they were searching his place under the Obeah Law and for ganja as well as under the Unlawful Possession Law but he denied that a search warrant was read to him that morning.

He further testified that that morning when he came to his verandah he saw the gate and part of the fence torn down, and that the gate and fence were sound when he went to bed; it should be noted here that it was suggested to the defendants who gave evidence that the police had damaged the gate and fence. This was denied.

Now, the evidence is that the gate and fence were made of zinc and if Brown saw them torn down when he came to the verandah, the only inference is that the police must have torn them down in order to effect an entry; it is also in evidence that the verandah is near the fence and that on one side of the verandah is Brown's room, on the other side is his wife's room, and the sitting hall in the middle. As I observed earlier, according to the plaintiff's evidence the entry of the police would have been accompanied by a considerable amount of noise from this assault on the gate and fence, the assualt on the door to the sitting hall, as well as the door to Brown's room. From the evidence not only did Brown sleep throughout that noise but he slept on even after the police entered his room and put a gun in his ear and an iron hook around his neck and his wife shouted at the police that they must not shoot Brown because he is not a bird, a wanted man or a criminal! All this was

/.....

happening at about 6 a.m. and I find it highly improbable that the account given by Smith, Thomas and Mrs. Brown is true and consequently I do not accept this portion of the evidence. Consequently, I do not find that Brown was assaulted as alleged or at all.

In regard to the allegations of false imprisonment and malicious prosecution, I consider firstly whether there is any evidence of malice on the part of the first or second defendant; the only evidence which could in my opinion amount to malice is the evidence given by Brown and his wife of the conversation between Linton and Allen after the house had been searched to which I have already referred. It was after this, Brown said, that Linton asked him about his other place and took him there and made a further search. Mrs. Brown supported her husband and gave a similar account, in greater detail, of this incident, and she went on to relate that at this time Thomas and Smith were kneeling on the ground before the verandah, and they were near to Linton and Allen but she did not know if they could hear as "they were getting lick over their bottom." This account of a conversation between Linton and Allen seems highly improbable to me and I form the view that it was a fabrication to provide some evidence of malice on the part of the first and second defendants. I therefore reject this portion of the evidence of Brown and his wife, consequently, there is no evidence before this Court from which could be inferred any malice on the part of the first or second defendant towards the plaintiff Brown.

I have now to consider whether or not Linton and Allen had reasonable or probable cause for imprisoning and for prosecuting the plaintiff Isaiah Brown.

Sergeant Linton gave evidence (which I accept) that prior to the 14th February, 1971, he had been keeping Brown's premises under observation from time to time and had observed an apparently unusual number of persons visiting Brown's premises on these occasions. Then there is the evidence that Brown's home had some 11 bed-rooms, a rather unusual and significant feature having regard to Brown's station in life and his means; in the absence of other explanation (and there was none) it did tend to lend support to the allegations of the defence that Brown's house was used not only as a home for his family and friends, but also as a place where he was accommodating sick people. It also tended to lend credence to the evidence

/.....

of the defendants Linton and Allen that in the house that morning, apart from the plaintiff Brown, his family, and the other plaintiffs, there were also people suffering from sores and other ailments.

In addition, I accept the evidence that the defendants Linton and Allen found in a back room of the house that morning; a bust size carving in wood (or an image as Linton referred to it), a round transparent ball, a wooden box which could also have been a small bench, a large drinking glass (containing water, a small white ball and coins) two drums, a sword and a wooden rod or stick with a snake carved wrapped around its entire length.

As a result of this, Linton arrested and charged the plaintiff Brown with having in his possession implements of obeah, and the plaintiff has submitted that the circumstances did not disclose any reasonable or probable cause for so doing, particularly as this charge was withdrawn by Linton, who has stated that he acted on instructions from the Resident Magistrate in Saint Catherine.

It is therefore necessary to consider what is meant by "reasonable and probable cause." In Herniman v. Smith (1938) A.C. 305 (316) Lord Atkin said:

> " I know of no better statement of the issue than the words of Hawkins J. in Hicks v. Faulkner (1881) 8 Q.B.D. 171: 'I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead any ordinary prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.' "

For a fuller appreciation of this dictum one ought to read it as one with what the same learned judge later said (ibid at p. 173):

> " The question of reasonable and probable cause depends in all cases not upon the actual existence but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of - no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused. The distinction between facts to establish actual guilt and those required to establish a bona fide belief in guilt should never be lost sight of in considering such cases as that I am now discussing. Many facts admissible to prove the latter, would be wholly inadmissible to prove the former. "

/.....

That was a case of malicious prosecution, but it has been generally conceded that the factors and considerations that go to establish reasonable and probable cause or conversely the want of it in an action for malicious prosecution are substantially the same as those which go to prove or disprove reasonable and probable cause in an action for wrongful arrest and false imprisonment.

Looking at the position of Linton, he had previously made certain observations at Brown's place at various times, he had executed a search warrant in the course of which he had seen several obviously ill people at the premises and he had found in a room at the back of the house certain articles which by themselves would have no particular significance but taken together in the circumstances related by Linton could well be believed to be instruments of obeah; all this had taken place at the home of a man who with his wife were the leaders of a pocomania group and had two churches, one immediately adjacent to their home and the other at Rocky Point.

Let me add here that I accept the evidence of Linton as to the time when, and the circumstances in which he took the two gold rings from the plaintiff Brown and charged him with unlawful possession of the articles.

Looking at the evidence I cannot say that there was an absence of reasonable or probable cause on the part of Linton when he arrested or prosecuted the plaintiff Brown. Accordingly, the plaintiff has failed to establish his claim that he was maliciously or without reasonable cause falsely imprisoned and that he was maliciously or without reasonable cause prosecuted.

This plaintiff's claim is therefore dismissed - there will be judgment for the defendants on this claim.

Suit No. C. L. 188 of 1972 - Wilfred Davis v. Det. Allen et al

This plaintiff's claim is for damages for assault and battery and false imprisonment on 14th February, 1971, when he alleged that Detective Allen and Corporal Linton and other policemen assaulted him, hitting him with a stick and rubber hose, and pushing him on to the verandah, as well as detaining and searching him and making him kneel on the ground for some time.

Mr. Davis was a fisherman and cane cultivator who also came from Rocky Point and was spending the night at Mr. Brown's house when, in his sleep, he said he felt blows in his head, he woke up and saw someone with a gun whom he

knew to be a policeman because he moved him (Davis) out of the room; having stood up, he was hit again in his head, taken outside and put to kneel before a jack-fruit tree, and the policeman continued to hit him several times with a piece of rubber hose. He went on to relate that Chambers was brought and put to kneel beside him, and soon after Smith was brought to the jack-fruit tree and strung up on a limb of the tree with his feet about twelve inches above the earth for about two hours.

This plaintiff gave evidence of the injuries he suffered and of his visits to Dr. Leslie for treatment subsequently.

Like the others from Rocky Point he attended the church of Mr. and Mrs. Brown and had come to Bog Walk at their invitation.

In cross-examination, he related that he alone slept in a big bed in a room to the back of the house but Mrs. Brown testified that he shared a room with Chambers. He was unable to say who was the policeman who took him from his room but it is quite clear that it was not Corporal Linton who Brown says was with him continually during the search of the house; nor was it Detective Allen as I accept the evidence that he accompanied Corporal Linton on the search; in fact, neither this plaintiff nor any other plaintiff or witness for the plaintiffs gave any evidence linking Linton or Allen with the assault on this plaintiff.

One is therefore led to ask oneself why did the plaintiff Davis name Allen and Linton in the endorsement of the writ as well as in the statement of claim, when no evidence is led of either one having anything to do with him; further, Davis alleged in his statement of claim that he was detained and searched but nothing of this emerged from the evidence.

In the course of submissions, it was urged by Mr. Mundell, as I understood it, that Davis was beaten by a policeman and since Linton and Allen were in the party of policemen and they had beaten other plaintiffs, there was a common design or purpose to beat these plaintiffs, and all the policemen were joint tortfeasors, so that Linton and Allen were tort-feasors in respect of the injury to Davis just as much as the policeman who beat him. I understood him further to urge that it is not necessary to prove that a particular named policeman assaulted and beat Davis in order to establish liability on the part of the Attorney General, as long as the Court is satisfied that some policeman in the party caused these injuries.

These arguments were interesting but I found them to be somewhat lacking in merit.

As I understand it, the only common purpose which the evidence discloses on the part of the police party which went to the premises was to effect a search of the premises; there is nothing in the evidence adduced by either the plaintiffs or the defendants to suggest that the policemen had a common purpose to assault and beat any person on the premises and there is no evidence that either Linton or Allen took part in the beating of Davis - if he was beaten.

But further than that, what is the evidence that Davis' attacker was a policeman? Davis told the Court that he knew the man who hit him to be a policeman "because he moved me out," this man, he said did not ask him any questions, he only kept beating him; then in cross-examination Davis was asked how he knew the man was a policeman, and he replied, "when I see him point the gun at me and licking me I know he was a policeman;" further, although Davis said that when he was taken outside the house the sun was hot, he was unable to say whether or not the man who was hitting him was wearing a uniform - but he told the Court he did see one man wearing a uniform around the verandah. Apart from this evidence of Davis, there is the evidence of Chambers who said that he saw a policeman beating Davis; he did not say how he knew this man was a policeman, and it would seem from Davis' evidence that his attacker was not in uniform, as if he were, Davis would undoubtedly have said so.

This plaintiff was not, to my mind, a reliable witness - he was obviously exaggerating to such an extent that it was difficult, if not impossible, to say what of his evidence was fact and what was fiction. Looking at the evidence before the Court, I am unable to say that I am satisfied that a policeman assaulted and beat Davis although I believe he did suffer some injury at the hands of someone that morning.

Assuming, however, that it was a policeman, who assaulted Davis, it does not seem to me that that evidence by itself would suffice to make the Attorney General liable; before such liability could arise, I am of the opinion that the plaintiff would have to go further and satisfy me that a particular named policeman caused the injury in respect of which it is alleged that the Attorney General is vicariously liable; I cannot

/.....

agree that liability could be laid at the door of the Attorney General without giving him the opportunity to rebut the allegation, and how could he rebut if he did not know the name of the policeman?

Accordingly, I find that the plaintiff Davis has not made out a case against the defendants; his claim is dismissed and there is to be judgment for the defendants.

Suit No. C.L. 189 of 1972 - Winston Chambers v. Det. Allen et al

Mr. Chambers in his statement of claim alleged that on the early morning of the 14th February, 1971, the defendants Allen and Linton and other policemen hit him with hose and a stick and pushed him against a door as well as imprisoned him by detaining him and searching him and making him kneel down on the ground.

In support of these allegations this plaintiff testified that he was a fisherman and cultivator of Rocky Point and a member of Brown's church; he had been spending the night at Brown's house when in the early morning of 14th February, 1971, while sleeping in a backroom he felt a blow in his stomach; he jumped up, saw a man who said "police" and hit him on his shoulder; this man had a gun and a stick; another policeman came behind him and hit him in the back of his head - this policeman had a piece of board in his hand; he was then searched, nothing was found on him and he was taken outside and put to kneel beside Davis where he received several more blows on various parts of his body.

This plaintiff also related seeing Smith strung up on the jack-fruit tree with a rope for about two hours and how people on the street bawled out: "Look how policeman them a hang a next man over Brown's yard."

While this plaintiff stated that Davis slept in a different room at the back of house, Mrs. Brown said that at her request Hopeton Thomas had given up his room to Davis and Chambers for the night.

Turning to the evidence for the defendants, Sergeant Roache testified that he saw Linton and Allen conducting searches of persons that morning and that he saw them search this plaintiff Chambers; he went on to say that he saw Chambers searched in the open yard, while Chambers said that he was searched in the house. I am inclined to accept the evidence of Chambers on this point as it seems more probable that Linton and Allen in the course of their search of the rooms would search an

/.....

occupant of a room at the same time instead of sending them outside and searching them there; further Roache having said he never entered the house might find it a little awkward to explain how he saw a search effected in the house.

Further, I accept the evidence of this plaintiff that he was assaulted and beaten, and it seems to me that the time when this took place was when he was searched in the house. As with the other plaintiffs and their witnesses there has been some exaggeration and some fabrication in an attempt to make the injuries appear more serious than they were, or perhaps, simply because in retrospect it all appears to have continued for a much longer period than in fact was the case.

This, of course, in no way detracts from the very serious view which I take of this wanton and disgraceful attack on this man and Smith and Thomas, as I have already indicated.

I am satisfied that this plaintiff was assaulted and beaten without any reasonable or probable cause and that he was detained and searched without authority. As I indicated earlier in the case of Smith, although the detention and search were without authority, it is necessary for the plaintiff to go further and to satisfy me that the defendants acted either maliciously or without reasonable or probable cause. Again, in this case, as I said earlier, there is no evidence of the defendants acting maliciously; considering the circumstances in which the search was made - that a warrant to search for ganja among other things was being executed in the course of which the plaintiff was searched, I find that the defendants had reasonable cause to search the plaintiff, and that I am not satisfied that the defendants acted maliciously or without reasonable and probable cause.

The plaintiff having proved his case in respect of his allegation of assault and battery without reasonable or probable cause, he is entitled to judgment against the defendants.

On the Question of damages:

Firstly, the plaintiff is to have special damages but not as claimed - from the evidence it seems to me that the plaintiff's weekly earnings were about $20 and I allow this amount instead of $30 claimed.

/.....

The special damages allowed are as follows:

Medical expenses	$ 29.40
Transportation	6.00
Loss of earnings for 4 weeks @ $20 per week	80.00
	$115.40

Turning to the general damages, again the same conditions apply as set out in regard to the other successful plaintiffs. It seems to me that an award of general damages in the same amount would be fair, and accordingly, it is ordered that general damages in the sum of three thousand dollars be paid to this plaintiff, which together with the special damages will give him a total amount of three thousand one hundred and fifteen dollars and forty cents.

Costs are to follow the event - to be agreed or taxed.