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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 102 of 1969

BEFORE: The Hon. Mr. Justice Shelley, Presiding
The Hon. Mr. Justice Eccleston J.A.
The Hon. Mr. Justice Edun J.A.

In Plaint 388/69

B E T W E E N	ERIC BROWN	PLAINTIFF/RESPONDENT
A N D	CITRUS GROWERS ASSOCIATION LTD	DEFENDANT/APPELLANT

In Plaint 389/69

B E T W E E N	ERIC BROWN	PLAINTIFF/RESPONDENT
A N D	CITRUS GROWERS ASSOCIATION LTD	DEFENDANT/APPELLANT

Mr. J. Leo-Rhynie for the Defendant/Appellant.

Mr. W. Chin-See for the Plaintiff/Respondent.

9th July 1970; 30th October 1970

EDUN J.A.

Both actions were by consent heard together by the learned Resident Magistrate for the Parish of Clarendon. In action (Plaint No. 388/69) the respondent sought to recover damages for false imprisonment and in action (Plaint No. 389/69) sought to recover the sum of £10.13.6 as money had and received by the defendant to the use of the plaintiff. As to the first action the appellant denied ever imprisoning the respondent, falsely or at all, and in the second action, the appellant pleaded that the amount of £10.13.6 was received by the appellant from the respondent in settlement of a debt for which the appellant obtained judgment against the respondent at the Kingston Resident Magistrate's Court.

The case for the respondent was that sometime in July 1956 he obtained a loan from the appellant to buy fertiliser, and in 1967 when he was sued for the debt he sent the respondent the sum of £6.15.6 in settlement of the debt with Costs. The appellant acknowledged receipt of the amount and issued a receipt to the respondent No. 4464 dated 1st September 1967, Ex 4. The respondent testified that that was the only loan he ever had from the appellant, and he claimed he was a member of the Trout Hall Branch of the appellant's association. On 24th April 1968, the bailiff

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arrested the respondent on a warrant of commitment and took him to the Court House in Clarendon. The respondent borrowed the sum of £10.13.6 and secured his release after three hours of imprisonment.

On the other hand, Horace Spence Chief Accountant of the appellant's association gave evidence claiming that the respondent had two loans from the appellant, one for £62.6.9 obtained on 4th January 1962 and the other for which judgment was obtained by Plaint 3772/67 for the sum of £6.8.10. The appellant admitted receiving the sum of £6.15.6 from the respondent, but that amount was allocated on account of a 1962-debt which was not yet sued for. As far as the appellant was concerned, there was the judgment debt of £6.15.6 against the respondent not satisfied and on 7th November 1967, the appellant obtained a judgment summons order for the payment of that debt at the rate of £1 monthly. The respondent said he received the judgment summons but as he did not owe the appellant any moneys, he did not attend Court, and so the judgment summons order was obtained by default.

The Chief Accountant at the trial admitted that his association had a Trout Hall Branch in Frankfield and one at Crooked River and that both branches were distinct and separate. He said that there was an Eric Brown, member of the Crooked River Branch and there is an outstanding debt against him. He admitted also that the respondent's address is Frankfield P.O., and it was possible that there were two Eric Browns but he knew neither Eric Brown.

The learned Resident Magistrate gave judgment for respondent on both claims; £30 as damages for false imprisonment and for £10.13.6 as money had and received; his reasons are as follows:

"1. That plaintiff obtained only one loan from the defendant and that the one in respect of which by Plaint 3772/67 in the Kingston Resident Magistrate's Court he was sued.

2. That on 1st September 1967 plaintiff settled his indebtedness by the payment of £6.15.6 acknowledged by receipt No. 4664.

3. That the loan of £62 odd made by the defendant was made not to plaintiff but to someone else bearing the same name as plaintiff and residing in the Crooked River area;

4. that the defendant wrongly and mistakenly allocated the amount paid to settle the plaintiff's indebtedness to the account of the other Eric Brown instead of crediting this amount in satisfaction of Plaint No. 3772/67.
5. That at the time the defendant obtained the judgment Summons Order against the Plaintiff, he was never indebted to the defendant at all;
6. That at the time the Plaintiff was arrested and detained on the order of commitment, he was never indebted to the defendant at all."

The defendant has appealed and several grounds of appeal were filed but learned Counsel for the appellant submitted in the main the following points:-

1. that the warrant of committal was rightly issued and unless the respondent set it aside he has no remedy, and
2. there was no proof of malice in the appellant as the payment made by the respondent was mistakenly allocated to another account.

He relied upon the authorities of Riddell v Pakeman (1835) 2 CM & R p.30 and Prentice v Harrison (1843) 4 Q.B. 852, in support.

On the other hand, learned Counsel for respondent submitted that in the instant case, the judgment summons order was not properly obtained as the respondent had satisfied the debt by payment and he cannot be held responsible for the appellant's mistake. When therefore he was arrested, the warrant of committal was void ab initio. He cited among other cases Crosbie v Dalhouse (1936) 3 J.L.R. p.4, in support, and he stated that the cases relied upon by the other side are inapplicable to the facts of the instant case.

In my view, this appeal turns on the very simple point, that is, whether or not the warrant of commitment upon which the plaintiff was arrested was void ab initio. In Crosbie v Dalhouse (1936-40) 3 J.L.R. p.4 where acceptance by the Clerk of Courts (after due date) of payments purported to be made in accordance with the judgment prevented him from afterwards issuing a warrant on the footing that the payments were not in accordance with the judgment: held, any such warrant was void and the judgment creditor who procured the issue of the warrant was liable in trespass for the false imprisonment of the judgment debtor thereunder. At p.7 Lyall-Grant C.J., said "..... Any such warrant to my mind is

void as not having the unmistakeable sanction of the Court. The judgment creditor cannot therefore pray this warrant in aid and is liable in trespass for false imprisonment." In Harris v Seaga and Maxwell (1936-40) 3 J.L.R. p.8, it was held (i) a warrant of commitment issued by a Clerk of Courts on the mere statement of a judgment creditor's solicitor, unsupported by any evidence, that payments under a committal order are in arrear, was void ab initio and required no setting aside, if in fact such payments have been made to the judgment creditor's solicitor, unknown to the Clerk of Courts. (ii) The judgment creditor was liable for obtaining (through his solicitor agent) the wrongful imprisonment of the judgment debtor under such a warrant which, being void afforded him no protection. In giving judgment Lyall-Grant C.J., said at p.8 "The facts in this case are not in dispute and bear some resemblance to those in the case of Crosbie v Dalhouse (supra) which has just been decided. In both cases there was an order for committal for non-payment of debt, and in both cases the orders were suspended while small monthly payments were made. In neither case were there any arrears at the time the warrant was issued or at the time it was executed." In Clissold v Cratchley (1908-1910) AER (Reprint) p.739, the sheriff on 17th December 1908 levied execution upon the goods of the plaintiff and remained in possession until the following day when he withdrew upon receiving instructions that the debt was paid. The plaintiff brought an action to recover damages from defendants for improperly levying execution or in the alternative, damages for trespass caused by the defendants or their agents entering the plaintiff's premises and improperly levying execution. The County Court Judge found as a fact that neither defendants had acted maliciously, but he held that they were liable in trespass and gave judgment for the plaintiff for £15 damages. The defendants appealed and the Divisional Court (Darling J. and Phillimore J.) held that the action would not lie without proof of malice and allowed the appeal. On further appeal, the Court of Appeal allowed the appeal and held that a writ of execution cannot lawfully be issued on a judgment which has been paid or satisfied, and, if execution is levied, an action of trespass will lie against the judgment creditor and his solicitor who has directed the execution to be levied. This case was followed in the local case of

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Harris v Seaga and Maxwell (supra). An action for false imprisonment is an action in trespass.

The cases of Riddell v Pakeman (supra) and Prentice v Harrison (supra) are clearly distinguishable from the facts of the instant case. In Riddell v Pakeman, the plaintiff sued the defendant in trespass for false imprisonment, the defendant pleaded that he was justified in apprehending the plaintiff under process of outlawry. The plaintiff replied that there was no proper affidavit of debt made and filed; the defendant rejoined that the affidavit was irregular. The Court held that the defendant was entitled to judgment, trespass not being maintainable where the process was irregular merely and not void. In Prentice v Harrison and another (supra) the plaintiff sued the defendants for assault and false imprisonment; the defendant pleaded justification under a writ of capias; the plaintiff replied that the writ of capias, after the issuing thereof, and before commencement of the suit (to wit, on a day after the alleged taking) was ordered to be set aside by the order of a judge. It was held that the replication was bad for not stating the grounds upon which the writ was set aside. In that case, for the plaintiff to succeed in trespass and false imprisonment he had to show the reasons why the writ of capias was set aside. Butt, in support of the demurrer argued: "The replication is bad, for merely stating that the writ of capias was set aside, without showing the grounds upon which that was done. There is a distinction between proceedings set aside as erroneous and proceedings set aside as irregular, the latter only being void from the beginning whereas the former stand up to the time of their being set aside." The Court approved of that argument in its judgment and concluded that the plaintiff should have shown that the writ was set aside for such irregularity (being void from the beginning) as would make the defendants liable in an action for trespass.

In Clerk & Lindsell on Torts 12th Edition paragraph 561 page 569 it is stated thus:

> "Many proceedings are taken under the authority of courts of justice which are ministerial because they are not the consequence of a decision judicially given. Thus judgment may be given by default on the production of certain formal

> evidence, and this judgment, though in one sense the act of the court, is in another sense the act of the party and he may be directly responsible in trespass for anything done to carry it out. If the order of the court was altogether without jurisdiction it can derive no protection whatever".

And, in such cases there would be no need to set aside the writ or process by which the plaintiff was imprisoned: See Brooks v Hodgkinson & Butt (1859) 4 H & N 712. In the instant case, if the Resident Magistrate making the judgment summons order, had known that the original debt was satisfied, he would have had no jurisdiction whatsoever to make the judgment summons order for payment; the appellant's mistake or gross negligence has been responsible for that, by stating there was no payment of the debt.

There can be no doubt that when the respondent was arrested on the warrant of commitment there was not any debt due, owing or payable to the appellant. The learned Resident Magistrate hearing the actions upon ample evidence reasonably so found, and now that the true facts are known, in my view the warrant of commitment arresting the plaintiff was void ab initio; there is no need for setting it aside and it cannot afford any protection to the appellant against an action of false imprisonment.

The learned Resident Magistrate was therefore correct in giving judgment for the respondent against the appellant for false imprisonment and for the sum of £10.13.6 which the appellant wrongly recouped from the respondent through the void warrant of commitment.

I would, therefore, dismiss the appeals with Costs to the plaintiff/ respondent.