S. P. 4t — false imprisonment — whether reasonable and probable cause — whether exemplary damages — quantum

Case referred to:

Dumbell v Roberts (1944) 1 All ER 326

✓ Cmp

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1984/F.194

BETWEEN	EUGENT FORBES	PLAINTIFF
AND	CONSTABLE HYDE	1ST DEFENDANT
AND	DENZIL SCOTT	2ND DEFENDANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	3RD DEFENDANT

Remedies

Mr. M. Frankson and Miss J. Cummings for Plaintiff.

Mr. E. Oniss and Miss M. Henry for 1st and 3rd Defendants.

(Action discontinued at trial against 2nd Defendant)

Heard: 29/4/93, 21/6/93, 23/6/93, 24/6/93, 22/7/93

JUDGMENT

HARRISON J. (Ag.)

This is an action for False Imprisonment. The plaintiff who is a farmer residing at Broad Street, Calremont in the Parish of St. Ann testified that he was at home with his wife on the 22nd July, 1987 when Constable Hyde and Denzil Scott came there at about 6.00 a.m. Constable Hyde came on his verandah; pointed a gun in his face and said, "Is you a come fah, for the man them who just leave yuh yard a while ago, a have them lock up with ten heads of goat and they say is you sold them to them."

Constable Hyde, without saying anything more, pulled the plaintiff to Scott's pick-up and conveyed him to Claremont Police Station where he was locked up in a cell. He complained that, "This was the worst place I had ever been to." The cell had faeces, urine and maggots crawling all over it. He was eventually released from custody at about 10.a.m. the said date and no charges were preferred against him.

He made a report to the Superintendent of Police for the Parish of St. Ann upon his release and had to be medically examined as bumps which caused severe itching, appeared all over his body.

The medical evidence indictaed that he was seen and examined by Dr. H.A. Gill on the 12th September, 1987. There were generalised healed dark spots to his trunk, buttock and limbs. Dr. Gill was of the opinion that he had contracted scabies with secondary sepsis as a result of the unsanitary surroundings he had experienced in the cell.

The Defence called Constable Wesley Hyde as a witness. He testified that on July 22, 1987 he went to the plaintiff's home because of information he had received concerning the theft of Denzil Scott's goats. He questioned the plaintiff and as a result of the answers he received and from observations he made at the premises, he reasonably suspected that the plaintiff was involved in the theft of these goats. As a consequence, he arrested the plaintiff and carried out further investigations which resulted in the release of the plaintiff from custody.

Dr. Claire Lyn-Shue was also called by the Defence. She is a Dermatologist of some seven years standing. She did not examine the plaintiff but having read the medical report (Exhibit 1) she was of the view that Dr. Gill's diagnosis of scabies was incorrect and concluded that the plaintiff's condition was due to "papular urticaria" (mosquito bites).

The Issues

The plaintiff's statement of claim alleged inter alia that the first and second defendants maliciously and without reasonable and probable cause took the plaintiff into custody and thereafter falsely imprisoned him.

The Defence denied that the plaintiff was imprisoned falsely and without reasonable cause. It further alleged that the plaintiff was taken into custody on reasonable suspicion that he had committed a felony and was released as soon as investigations were concluded.

The Law

In Dumbell v. Roberts (1944) 1 All. E.R. 326, Lord Justice Scott said:

> "The power possessed by constables to arrest without a warrant, whether at common law for suspicion of a felony or under statutes for suspicion of various misdemeanours, provided always they have reasonable grounds for their suspicion is a valuable protection to the community;

suspicion. Furthermore Constable Hyde had admitted under cross-examination that he did not regard the wet pants with burrs on it as relevant evidence at the time of arrest so, they were not taken as an exhibit.

In relation to the information which Constable Hyde said he had received, the evidence revealed where he admitted telling the Court a lie. In chief, he said he got information from a man who saw the plaintiff taking Mr. Scott's goats. He would in those circumstances have had an eye-witness to this crime. Under cross-examination he retracted this statement and said that his informant told him that the plaintiff was seen with his friends the previous day and that when the car was leaving early in the morning he heard goat sounds coming from the car trunk.

It was also submitted that the Court should favourably consider the evidence of the plaintiff. In particular, the Court should pay close attention to what Constable Hyde said upon arrival at the plaintiff's home. This is what the evidence reveals:

> "Is you a come fah, for the man
> them who just leave yuh yard a
> while ago a have them lock up with
> ten heads of goat and they say is
> you sold them to them."

It was submitted therefore, that the only inference to be drawn from this statement is that Constable Hyde had made up his mind that he came to take the plaintiff into custody because of the information he had received. Mr. Frankson quite forcibly, submitted that the defendant's evidence as to his observations made at the plaintiff's premises and his conversation with him should be rejected in light of the above evidence. This evidence he said, showed clearly the intentions of Constable Hyde.

Findings

I have assessed the demeanour of the witnesses and must say that I was most impressed with the evidence of the plaintiff. He was quite frank with the Court and I accept him as a witness of truth. The Court finds Constable Hyde on the other hand, to be evasive, unreliable and contradictory. I therefore reject his version of the incident.

I find the following facts:

a) The plaintiff was host for the night to some Church brothers who attended a Crusade in Claremont on the 21st July, 1987.

b) That early in the morning of the 22nd July, 1987 they left the plaintiff's house in a car for Fairfield, St. James.

c) At about 6.00 a.m. on the aforesaid date the plaintiff was escorted at gun-point by Constable Hyde from his home to Claremont Police Station where he was detained in a cell for approximately three hours on suspicion of larceny of goats.

d) That the cell in which he was detained was most unsanitary in that it contained human excrement, urine and maggots.

e) That the plaintiff became ill and suffered injury as a result of the insanitary conditions.

Conclusion

The evidence has revealed that Constable Hyde released the plaintiff immediately after making contact with Granville Police Station. It is quite useless however to speculate what the police told him. What is of importance however, is his remark to the plaintiff when he was being released; "It is wicked and sinful to lock up an innocent man".

The words of Lord Justice Scott in Dumbell v. Roberts (supra) are very relevant today where he said:

> "The duty of the police when they arrest without warrant is no doubt, to be quick to see the possiblity of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. The British principle of personal freedom, that every man should be presumed innocent until he is proven guilty, applies also to the police function of arrest - in a very modified degree, it is true, but at least to the extent of requiring them to be observant, receptive and open-minded and to notice any relevant circumstance which points either way either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who is ex-hypothesi aroused their suspicion, that he probably is an "offender" attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try and prove innocence; that is not their function; but they should act on the assumption that their prima facie

> suspicion may be ill-founded. That duty attaches particularly where slight delay does not matter because there is no probability, in the circumstances of the arrest or intended arrest, of the suspected person running away. The duty attaches, I think simply because of the double-sided interest of the public in the liberty of the individual as well as in the detection of crime".

On the facts as found, I have no hesitation whatever in coming to the conclusion that in arresting the plaintiff, Constable Hyde acted without reasonable and probable cause. I agree with the submissions raised by Mr. Frankson. The plaintiff therefore succeeds on his claim for false imprisonment.

Damages

I now turn to the issue of damages. Special damages in the amount of $320.00 has been proven and interest will be awarded thereon at 3% from the 22nd July, 1987 to July 22, 1993.

I am satisfied that in addition to being imprisoned, the plaintiff sustained physical injury. He was not responsible in any way for these injuries. What is certain is that he was placed in a cell and he left there with conditions which did not exist prior to being taken into custody. At first, the pleadings alleged that he was placed in the guardroom. However, at the end of the day the parties are both agreed that he was kept in a cell, albeit, that Constable Hyde said it was not he who placed him there.

Dr. Gill, diagnosed the plaintiff's condition as scabies with secondary sepsis. Dr. Lyn-Shue disagreed with that diagnosis and contends that the bumps which surfaced were due to mosquito bites. The fact of the matter is that whatever it was medically, the condition left the plaintiff with healed dark spots to his trunk, buttock and limbs. He had to be treated by the Doctor for his ailments. Initially he was seen three times in the same month. He suffered tremendously and according to him he scratched like he was on fire. The itching ceased eventually in November, 1987 after the bumps had cleared away.

The plaintiff is seeking an award of exemplary damages. These damages are punitive in nature and are visited upon tortfeasors where, for example, there has been oppressive, arbitrary or unconstitutional action by servants of the Crown. The authorities show that it should only be awarded where compensation which the Court proposes to award is inadequate.

It must be borne in mind the time the plaintiff spent in custody. It was for approximately three hours but it was a traumatic experience. He describes the cell as the worst place he has ever been to.

I am of the view however, and am fully satisfied that the plaintiff can be sufficiently compensated for the tort which had been committed. In my view, this is not the type of case which calls for an award for exemplary damages.

It is therefore my judgment that the plaintiff be awarded under the head of general damges, the sum of Forty Thousand Dollars in respect of the claim for false imprisonment and the consequent injuries sustained. Interest is awarded on this sum at a rate of 3% per annum from the date of service of Writ of Summons to July 22, 1993.

There shall be final judgment for the plaintiff as follows:

1) Special Damages in the sum of $320.00 with interest thereon at the rate of 3% from 22nd July, 1987 to July 22, 1993.

2) General Damages in the sum of $40,000.00 with interest thereon at the rate of 3% per annum from the date of service of the Writ of Summons to July 22, 1993.

Costs to be taxed if not agreed.