

J A M A I C A

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL No. 69/64

BEFORE: The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Moody  
The Hon. Mr. Justice Eccleston (Actg.)

BETWEEN DAISY GAYLE PLAINTIFF/RESPONDENT  
AND THE ATTORNEY GENERAL }  
& DEFENDANTS/APPELLANTS  
CONSTABLE HAROLD CROOKS }

Mrs. S.I. Miller for the Defendants/Appellants  
Mr. R.N.A. Henriques for the Plaintiff/Respondent

March 1, 2, 15, 16, 17, 1966  
and June 21st, 1966

ECCLESTON, J.A. (Actg.),

This appeal arises out of an action for damages for assault and false imprisonment brought in the Resident Magistrate's Court for the parish of St. Catherine against the Appellants, the Attorney General as representative of the Crown, and Constable Harold Crooks, a member of the Jamaica Constabulary Force, in which the learned Resident Magistrate found in favour of the Plaintiff/Respondent against the Defendants/Appellants and awarded the sum of £50 for damages and costs.

Before the hearing of the appeal, arguments were heard on the preliminary point whether there being two defendants/appellants there should be two notices of appeal.

Counsel for the appellants referred the Court to section 251 of Cap. 179, the Judicature (Resident Magistrates) Law, and submitted that in fact there was one appeal in which both defendants had joined, each depositing the sum of 10/- as security for the due prosecution of the appeal and giving security to the extent of £10 for the payment of costs as is required by section 256 of Cap. 179, the Judicature (Resident Magistrates) Law. She however pointed out that as only one notice of appeal had been given, only

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one stamp fee of 10/- had been affixed to the document.

Respondent's counsel referred the Court to the decisions in *Aarons v. Lindo*, 6 J.L.R., p. 205, and *Rochester v. Chin*, 4 W.I.R., p. 40, and submitted it was a condition precedent to the founding of the jurisdiction of the Court that a proper notice should be given and that the notice as given should be stamped £1 and not 10/-.

The Court after referring to Order II Rule 25 of the Resident Magistrate's Court Rules, came to the conclusion that the notice of appeal having been given in time, that although the stamp fees had been short paid, it was not as such a condition precedent that the Court would not have jurisdiction to hear the appeal.

Appellants' counsel then applied for leave to file an additional ground of appeal, notice of which had been given to the respondent, and asked that the Court grant such leave in accordance with section 265 of Cap. 179. There was no objection taken and the leave was granted.

The evidence in the Court below disclosed that the plaintiff, a cook employed to the Public Works Department, lived on land she owned at Byndloss in St. Catherine. On these premises she had some small sticks and fence posts under an orange tree near to the roadway. She bought these from the driver of a motor truck, which had broken down at her gateway in January, 1963.

The defendant, Crooks, who was a friend of one Brown, an employee of the Public Works Department, visited her premises in February, 1963. At this time her boyfriend was off the island and Crooks suggested to her that they should embark on a friendship and have sexual intercourse, with which suggestion he refused to comply, and on leaving he remarked to Brown that he could get at her in the worst kind of way, or words to that effect.

On the 14th March, 1963, Crooks returned to her premises with two constables. Leaving her with the two constables at the

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gate, he went around her yard. While he was away, one of the constables left with her, told her that Constable Crooks was going to arrest her for the sticks, to which she expressed her surprise, and Crooks returned and held her at her right elbow and put her in a jeep and took her to the Police Station at Linstead. She was not told by Crooks for what she had been arrested. There he told a Constable Lewis to lock her up. She was detained at the Police Station for two hours, and, later that day, given bail to attend the Court at Linstead on the 20th March, 1963. She attended Court on the 20th March, 1963, and on another occasion, when the case against her was dismissed.

The defendant/appellant Crooks' version was that in March, 1963, he received certain information from a Joseph Baker and after making enquiries about the theft of lumber, which took him to the Worthy Park property where he had spoken with the Manager of the property, he passed the plaintiff's property and then went to a Justice of the Peace and obtained a search warrant under the Unlawful Possession of Property Law, Cap, 401. Armed with this warrant, he went to the premises of the respondent, asked her name and if she owned the premises and then read the warrant to her. He asked her about the lumber in the yard, to which she replied that she had bought it from a truck man. She could not tell the name of this man, nor the number of the truck, and not being satisfied with her explanation, he arrested her and charged her with being in unlawful possession of the lumber, namely, 22 posts each approximately 18 feet in length. At her request she was accompanied by some person to the Station for the purposes of bailing her. He said he had never seen respondent before the 14th March, 1963, and denied any conversation or association with her at her premises before that date.

In his reasons, the learned Resident Magistrate found

- (i) Some time in January, 1963, the plaintiff purchased a quantity of fence posts from the witness Ernest Morris,

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and placed them under a tree near the gate to her premises where they were allowed to remain until the 14th of March, 1963.

- (ii) Prior to the 14th of March, the second defendant, accompanied by Louis Brown, visited the plaintiff at her home, in the absence of her paramour, on three occasions in an unsuccessful attempt to win her friendship and favours.
- (iii) In the course of his visits to the plaintiff's home the second defendant must have seen the posts under the tree at or near the gate.
- (iv) The second defendant, probably grieved by the plaintiff's rejection of his advances, did in fact threaten to cause her trouble.
- (v) The evidence of the witness, Joseph Baker, a sorry spectacle in the witness box, and although not cross-examined, could not be accepted, not only because the plaintiff was not given the opportunity to admit or deny the "facts" given in evidence by this witness, but because the demeanour of this witness inspired not the least confidence.
- (vi) I could not accept the evidence of the second defendant to the effect that he had received any information as he alleged from Joseph Baker.
- (vii) When the second defendant procured the issue of a Search Warrant to search the plaintiff's yard he was motivated by a spiteful desire to harm the plaintiff rather than by any reasonable suspicion that there were lumber and posts either stolen or unlawfully obtained on these premises.

The appellant's counsel argued the additional ground

of appeal first:

" The judgment of the learned Resident Magistrate was against the weight of the evidence. In particular he

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" erred in finding that when the second defendant procured the issue of a Search Warrant to search the plaintiff's yard he was motivated by a spiteful desire to harm the plaintiff rather than by any reasonable suspicion that there were lumber and posts either stolen or unlawfully obtained on those premises.

The second defendant gave evidence that he received information from Joseph Baker as a result of which he obtained a Search Warrant. His evidence was supported the evidence of Joseph Baker who was called as a witness and whose evidence was not challenged in cross-examination. There was no proper basis on which the learned Resident Magistrate could reject the evidence of this witness..."

She submitted that the findings of the learned Resident Magistrate in items (ii) to (vii) could not be supported by the evidence and that item (i), by itself, was not sufficient to justify a verdict for the plaintiff; that the witness Joseph Baker had not been cross-examined nor had it been suggested to him that he was not a witness of truth, nonetheless the learned Resident Magistrate had rejected his evidence and regarded him as being an untruthful witness. She made a similar complaint in respect of the witness Louis Brown. The appellant's counsel also referred to the discrepancies in the evidence between plaintiff's witnesses.

In my view, these submissions raise questions of fact which refer to the credibility or reliability of the plaintiff's witnesses wherein the advantage enjoyed by the trial judge by reason of having seen and heard the witnesses are sufficient to explain and justify the conclusions reached by him in his findings.

I see no reason to disturb his findings of fact.

The next two grounds of appeal may be considered together:

1. The learned Resident Magistrate erred in law and in fact in finding that Constable Crooks did not act in obedience to the Search Warrant tendered in evidence in this case.
2. The learned Resident Magistrate was wrong in holding that the said Search Warrant afforded Constable Crooks no protection and in failing to find a verdict in favour of the defendants as provided by section 40 of the Constabulary Force Law (Chapter 72).

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Learned counsel for the appellants submitted -

- (a) that the acts of the second appellant were done in obedience to the warrant notwithstanding the finding of the learned Resident Magistrate that this was not so;
- (b) that once the provisions of section 40 of the Jamaica Constabulary Force Law, Chapter 72, were complied with, there must be a finding in favour of the defendant, Constable Crooks; the section is as follows:-

" When any action shall be brought against any Constable for any act done in obedience to the warrant of any Justice, the party against whom such action shall be brought shall not be responsible for any irregularity in the issuing of such warrant or for any want of jurisdiction of the Justices issuing the same, but may plead the general issue and give such warrant in evidence at the trial; and on proving that the signature thereto is the handwriting of the person whose name shall appear subscribed thereto and that such person was reputed to be and acted as a Justice for the parish and that the act or acts complained of was or were done in obedience to such warrant, there shall be a verdict for the defendant in such action who shall recover his costs of suit ... "

and that it was unnecessary that the provisions of section 40 should be specifically drawn to the attention of the learned Resident Magistrate;

- (c) that the Resident Magistrate's Courts Rules cannot override the provisions of section 40;
- (d) that it is the warrant that is to be construed and not the statutory provisions of section 8 of Chapter 401.

It appears to me that nowhere in the record does it appear that the second defendant/appellant has proved that the act or acts complained of by the respondent were done in obedience to the warrant. The evidence of the second appellant is that: "I arrested her because she failed to give me a satisfactory explanation as to the means by which she came into possession of lumber and posts. My suspicions were aroused by her answer. Up to that time I had an open mind."

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Thus the provisions of section 40 of Chapter 72 of the Revised Laws of Jamaica were not complied with fully.

Section 150 of Chapter 179, the Judicature (Resident Magistrates) Law provides inter alia that notice as directed by the Resident Magistrate's Courts Rules (order 10, rule 15) shall be given to the Clerk of the Courts, who shall communicate it to the plaintiff, of a defence of not guilty by Statute. The record does not disclose that the defendants/appellants ever gave such notice. Further, the record does not disclose that this defence was ever raised at the trial. Although a Court of Appeal may allow points of law not raised in the Court below to be the subject of argument, it can only do so if satisfied that all the evidence on both sides material to the point raised, is before it. (Fletcher v. Wright et al [1947] 5 J.L.R. 77, at p.82.)

I do not find it necessary to determine whether the warrant in this case is appropriate to the provisions of section 8 of Chapter 401 of the Revised Laws of Jamaica.

In my view the appeal should be dismissed with costs fixed at £12.

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