NAMES

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1992/J349

BETWEEN	**GLADSTONE JEMMISON**	**PLAINTIFF**
A N D	**KAY BECKFORD**	**DEFENDANT**

MISS D. SATTERWAITE AND MISS K. PHIPPS FOR PLAINTIFF

MR. LACKSTON ROBINSON FOR DEFENDANT

Heard: July 25, September 23rd, 1996

SUMMONS TO STRIKE OUT PLAINTIFF'S STATEMENT OF CLAIM AND INDORSEMENT OF THE WRIT OF SUMMONS AND TO DISMISS ACTION.

IN CHAMBERS

KARL HARRISON J.

An action has been filed by the plaintiff against the defendant in respect of certain orders she made against him in her capacity as Resident Magistrate for the parish of St. James. The indorsement of the Writ of Summons states:

> "The plaintiff's claim is against the defendant for false imprisonment in that on the 3rd day of December 1991 the defendant wrongfully and without reasonable and probable cause caused the plaintiff to be detained and be taken into custody for seventy-one (71) days until the 12th day of February 1992 he was released therefrom."

The Statement of Claim alleges inter alia:

> "2. The defendant was at all material times Resident Magistrate for the Parish of Saint James.
>
> 3. On the 3rd day of December 1991 the plaintiff appeared before the defendant sitting at the Resident Magistrate's Court at Montego Bay. The accused did not appear.
>
> 4. That on that day the defendant ordered that the plaintiff be remanded in custody and on the 5th day of December, 1991 the defendant ordered that the plaintiff pay the sum of Five Hundred Thousand Dollars ($500,000.00) or spend six months in prison at hard labour knowing that the provisions of the Recognizance and Sureties of the Peace Act were not being complied with.

5. Pursuant to the said order the plaintiff was imprisoned for a period of seventy-one days.

6. That on the 12th day of February, 1995 the Full Court on hearing the plaintiff's motion for an order of Certiorari quashed the Order of the defendant remanding the Plaintiff in custody.

7. In ordering the plaintiff remanded in custody the defendant acted wrongfully and without any jurisdiction and acted maliciously and without reasonable cause, well knowing that she was acting without jurisdiciton.

PARTICULARS

(A) The defendant failed to act in accordance with section 2 of the Recognizance and Sureties or the Peace Act.

(B) The defendant failed to issue a warrant to the bailiff for recovery by distress in accordance with the Recognizance and Sureties of the Peace Act.

(C) The defendant ordered the imprisonment of the plaintiff at hard labour resulting in his incarceration for seventy-one days."

SUMMONS

The defendant now seeks to strike out the plaintiff's statement of claim and indorsement of the writ and to dismiss the cause of action. She seeks inter alia, an order that:

"1. The statement of claim and the indorsement of the writ be struck out and the action dismissed pursuant to section 238 of the Judicature (Civil Procedure Code) Law and the inherent jurisdiction of the court on the grounds that:

(a) The Statement of Claim discloses no cause of action against the defendant;

(b) The action is frivolous or vexatious or otherwise an abuse of the process of the court."

Previous Application to dismiss action

The records show that on the 15th December, 1992 the defendant had filed a summons to have this action dismissed on the ground that "no proceedings can lie against the defendant for anything done while discharging responsibilities of a judicial nature." The Master in Chambers did strike out the action on the 25th day of February, 1993 but her order was set aside

on appeal to the Court of Appeal on the 8th February, 1995. I have not had the benefit however of seeing a written judgment from that Court; but perhaps there was none.

Submissions

Mr. Robinson has submitted that the action cannot be brought against the Crown servant alone and so circumvent the provisions of section 3(5) of the Crown Proceedings Act. He argued that although the Director of State Proceedings had entered an appearance for the defendant, the proper party to be sued ought to have been the Attorney General and not the Crown servant. He referred to sections 3(5) and 13(2) of the Crown Proceedings Act which read respectively:

> **"3(5) - No proceedings shall lie against the Crown by virtue of this secction in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibility of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process."**
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> **"13(2) - Civil proceedings against the Crown shall be instituted against the Attorney General."**

Mr. Robinson further submitted that although the pleadings did not disclose that the Magistrate was acting as servant or agent of the Crown, it was clear on the face of these pleadings that she was so acting, hence by law, the Attorney General is the proper party or must be a party in this aciton. He also submitted that the action could not be brought against the Magistrate when she is acting in a judicial capacity.

It was contended by Mr. Robinson that the Magistrate was acting within her jurisdiction. He arged that jurisdiction must be construed broadly in the sense that the Magistrate had jurisdiction to deal with the matter before her and that the error she made was one of procedure. He further argued that even if the procedure led to one where imprisonment was involved she was still acting within her jurisdiction.

Mr. Robinson finally submitted that the Magistrate ought to be afforded

the same immunity as that enjoyed by a judge of the Supreme Court. He referred to and relied on the dicta of Buckley L.J. in Sirros v Moore and Others [1974] 3 All E.R. 776 at p. 787 where it reads:

> **"There is no difference between the principle applicable to a judge of a superior court and that applicable to a judge of an inferior court. Any difference that may arise in the operation of the rule between superior and inferior courts is due to the difference in jurisdiction. In determining whether a judge is liable for some act which he purports to have done in his judicial capacity, the sole question is whether it was an act coram non judice. If the judge was not then performing a judicial function, or if he was purporting to perform a judicial function but the matter was such that he had no jurisdiction to adjudicate on it, the act was not coram judice and he has no protection. If, however, he did the act in question in the purported performance of his judicial function and it was within his jurisdiction then the act was coram judice and the judge is protected notwithstanding any error in his reason for doing the act or his method of doing it."**

Miss Phipps in responding to the submissions made by Mr. Robinson argued that the summons ought to be dismissed. She submitted that there is a distinction between the powers of a magistrate and those of a Judge of the Supreme Court, the former being a creature of statute and was therefore bound by statutory provisions unlike a Judge of the Supreme Court who was exercising inherent jurisdiction and cannot be made actionable for what he does.

She also submitted that the Magistrate in the instant case had acted in excess of the provisions of the Recognizances and Sureties of the Peace Act in failing to comply with the statute. Section 2 of this Act provides:

> **"2. - In all recognizances taken in or returnable to any court, when any person shall make default therein, it shall be lawful for such court to issue a warrant to the Bailiff .... for recovery by distress and sale of the goods and chattels of such person of the penalty of such recognizance and of the sum of one dollar for costs; and in default of payment or recovery of such penalty and costs, the person so making default shall be liable to be imprisoned for a period not exceeding six months:**
>
> **Provided always, that it shall be lawful for such court, on cause shown, to remit the penalty and costs in whole or in part, or to discharge the recognizance without issuing a warrant of distress on such terms as such court may think fit."**

Miss Phipps finally submitted that since the Magistrate had exceeded her jurisdiction in relation to the above provisions she ought not to be afforded protection because she was not acting as a servant or agent of the Crown at the material time. It was for that reason therefore, that the Magistrate was sued in her personal capacity and the Attorney General not joined.

The law

Section 238 of the Judicature (Civil Procedure Code) Law provides as follows:

> **"238 - The Court or a Judge may order any pleadings to be struck out on the ground that it discloses no reasonable cause of action or answer; and in any case, or in the case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."**

It has been said and is accepted in our law that no action is maintainable against a judge for anything done by him in his judicial capacity and within his jurisdiction even if he acts maliciously or in bad faith. The remedy of the party aggrieved would be to appeal to a court of appeal or apply for habeas corpus or certiorari or to take some such step to reverse the ruling. On the other hand, it has been held that a judge, if he acts in excess of his jurisdiciton, may be personally liable, notwithstanding that he acted in good faith and in a mistaken belief that he had jurisdiction.

Gwinne v Poole (1962) 2 Lut. 1560 125 E.R. 858 decided that the liability of magistrates as judges of inferior courts for acts done in a judicial capacity but without jurisdiction was limited to cases where the magistrates knew or ought to have known that they were acting outside their jurisdiction.

Morgan v. Hughes (1788) 2 Term Rep. 225 decided that magistrates as judges of inferior courts, could be made liable in damages for wrongful judicial actions within their jurisdiction if the plaintiff could show that

that the magistrates acted maliciously and without probable cause.

In M'Creadie v Thomson (1907) S.C. 1176 a magistrate who had power to fine and to imprison if the fine were not paid sentenced the plaintiff to 14 days without giving her the option of a fine. The plaintiff served 12 days in prison and the magistrate was held liable in damages for false imprisonment. The trial and conviction had been within jurisdiction but the magistrate had no jurisdiction to impose a sentence of imprisonment on the offender.

So far as inferior courts are concerned, it has been established by authority of long standing that a judge of an inferior court was only immune from liability when he was acting within his jurisdiction but had no such protection when he went outside his jurisdiction. He was then liable to an action for damages if he acted outside of his jurisdiction.

Meaning of Jurisdiction

Paragraph 822 of Halsbury's Laws of England, Third Edition Vol. 9 defines jurisdiction as follows:

> **"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by the like means."**

It was contended by Mr. Robinson that this court should look at jurisdiction in the broad sense. He argued that the Magistrate was seised with jurisdiction under the Recognizances and Sureties of the Peace Act but had only committed an error of procedure when she ordered the plaintiff to be imprisoned rather than having a warrant issued initially to the Bailiff for execution against his goods. The law is clear that it was only upon default of payment or recovery of such penalty that the person making default would be liable to be imprisoned.

From Miss Phipps' point of view the Magistrate had gone beyond the bounds of the statute, i.e had exceeded her jurisdiction and was no longer protected. So, according to her, in these circumstances she was no longer acting as servant or agent of the Crown. She referred to and relied upon the House of Lords decision of McC v Mullen and Ors. [1984] 3 All E.R. 908. The head note reads:

> ".... the respondent was convicted by Magistrates in Northern Ireland of the offence of failing to comply with an order to attend an attendance centre which had been imposed on him as the result of a previous offence. The Magistrates ordered him to be detained at a young offenders centre allegedly without first informing him of his rights to apply for legal aid, as required by the provisions of a Treatment of Offenders Order. On an application by the respondent for judicial review, the detention order was quashed on the grounds of irregularity and he was released from detention. He then brought an action against the magistrates claiming damages for false imprisonment. Section 15 of the Magistrates' Courts Act (Northern Ireland) 1964 provided that no action would lie against a magistrate unless he had acted 'without jurisdiction or in excess of jurisdiction'. The question whether the magistrates had acted within their jurisdiction was tried as a preliminary issue. The judge at first instance held that they had, but on appeal the Court or Appeal in Northern Ireland held that they had not. The magistrates appealed to the House of Lords. At the hearing of the appeal before the House, the question arose (i) whether an action lay against magistrates if they acted within their jurisdiction but maliciously and without reasonable and probable cause and (ii) as to the extent to which magistrates were liable to an action for damages if they did not have jurisdiction or exceeded their jurisdiction.
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> The Court held inter alia, that although, on the facts, the magistrates had had power to try the respondent, to convict him and to impose a detention sentence for the offence for which they convicted him, they had no power to impose that sentence on the respondent because he had not been informed of his right to legal aid as required by section 15 of the Order. That requirement was a statutory condition precedent to the magistrates' having jurisdiction to pass an otherwise appropriate sentence. Their failure to observe that condition precedent was not a mere procedural irregularity but amounted to their acting 'without jurisdiction or in excess of jurisdiction' within the meaning of section 15 of the Act".

It is quite clear from the above case that none of the conditions required to be satisfied before a sentence of detention could be imposed were in place. The setence imposed by the magistrates on the respondent was therefore an unlawful sentence.

I find the words of Lord Denning M.R. in Sirros v Moore (supra) quite instructive where he states at page 785:

> **"In the old days, as I have said, there was a sharp distinction between inferior courts and superior courts. Whatever may have been the reason for this distinction, it is no longer valid. There has been no case on the subject for the last 100 years at least. And during this time our judicial system has changed out of all knowledge. So great is this change that it is now appropriate for us to reconsider the principles which should be applied to judicial acts. In this new age I would take my stand on this. As a matter of principle the judges of superior courts have no greater claim to immunity than the judges of the lower courts. Every judge of the courts of the land - from the highest to the lowest - should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure 'that they may be free in thought and independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: "If I do this, shall I be liable in damages?" So long as he does his work in the honest belief that it is within his jurisdiction then he is not liable to an action .... He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will make him liable except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it."**

The final words, "nothing will make him liable except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it" are quite apt. Paragraphs 4 and 7 respectively, of the Statement of Claim allege that the defendant knew that the provisions of the Recognizance and Sureties of the Peace Act were not complied with and that she well knew that she was acting without jurisdiction. These are allegations which a trial judge will be called upon to resolve and cannot at this stage of the proceedings be determined one way or the other.

I also find the case of McC v Mullan and Ors (supra) very helpful. It was held in that case that although the Magistrates did have power to try the respondent, to convict him and to impose a detention sentence, they had no power to detain him because he had not been informed of his right to legal aid as required by statute. That requirement was a statutory condition precedent to the Magistrates having jurisdiction to pass an otherwise appropriate

sentence. The court further held that their failure to observe that condition precedent was not a mere procedural irregularity but amounted to their acting 'without jurisdiction or in excess of jurisdiction' within the meaning of the statute. Likewise, it could be argued in the instant case that the Magistrate had not complied with the statutory conditions and was not acting within her jurisdiction under the Recognizances and Sureties of the Peace Act.

The case of McCreadie v Thomson (supra) is also quite useful and relevant. Although the trial and conviction had been within the jurisdiction of the Magistrate, he had no power to imprison the plaintiff without giving her the option of a fine. The present case deals with default of a recognizance and it is a condition precedent that a warrant shall be issued to the Bailiff in the first instance for recovery by distress and sale of goods and chattels against the person making default. Section 2 of The Recognizances and Sureties of the Peace Act then provides inter alia:

> **"... in default of payment or recovery of such penalty and costs, the person so making default shall be liable to be imprisoned for a period not exceeding six months."**

In so far as the second limb of the summons is concerned, I am therefore not persuaded by the submissions made by Mr. Robinson that the action is frivolous or vexatious and is otherwise an abuse of the process of the court. It is my considered view that there would be triable issues raised in the plaintiff's statement of claim.

There is one other limb where this summons is concerned, and that is to say, that the statement of claim discloses no cause of action against the defendant. Mr. Robinson did submit that the action cannot be brought solely against the Crown servant under the provisions of the Crown Proceedings Act where the servant has failed to or has omitted to do anything while discharging or purporting to discharge any responsibility of a judicial nature vested in him or her or any responsibilities which he or she has in connection with the execution of judicial process. It was further his view that although the pleadings did not disclose that the Magistrate was

acting as a servant of the Crown, it was clear on the face of these pleadings that she was so acting. In the circumstances, he says, the Attorney General ought to be the proper party in the proceedings. Accordingly, section 13(2) of the Crown Proceedings Act states:

> **"Civil proceedings against the Crown shall be instituted against the Attorney General"**

Of course, there are times when a plaintiff brings an action against both the Attorney General and the servant and/or agent of the Crown. There seems to be no problem when this procedure is followed, but can a litigant circumvent section 13(2) by bringing such an action solely against a person who is discharging or purporting to discharge his or her duties as a servant or agent of the Crown? I think not. Once it is alleged or it can be reasonably inferred from the pleadings that this person was acting as such I hold that the proper party to be sued is the Attorney General and not the Crown servant. There is merit therefore so far as this limb is concerned. The statement of claim and indorsement of the writ are therefore struck out and the action stands dismissed. There shall be costs of this application to the defendant to be taxed if not agreed.