IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1976/M101

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| BETWEEN | FITZROY MARSHALL | |
| AND | DETECTIVE CORPORAL THOMPSON | FIRST DEFENDANT |
| AND | THE ATTORNEY GENERAL | SECOND DEFENDANT |

Heard: October 17, 18, 1978; December 18, 1978; July 31, 1979

COR: THE HONOURABLE MR. JUSTICE WHITE

Alvin Mundell, Esq., for plaintiff.

Eugene Harris, Esq., for the defendants.

White, J. :

The plaintiff, Fitzroy Marshall, has brought this action against the defendants to recover damages "for false imprisonment and trespass to the person for that on the 17th day of February, 1976, the first-named defendant, wrongfully, maliciously and without reasonable and probable cause, arrested the plaintiff and detained him in custody and deprived him of his liberty for four days after which he was released".

The first-named defendant is a Detective Corporal of Police, and was at all times the servant or agent of the Crown, while the Attorney General, the second-named defendant, as is customary in these cases, is sued as the legal representatives of the Crown and the person appointed by law to be sued in civil proceedings against the Crown.

The fact of the arrest and subsequent detention has not been disputed. It was, however, pleaded for the defendants that given the general nature of the plaintiff's claim, "he was arrested on the 17th day of April, 1976, and detained because it was reasonably suspected that he had committed or was about to commit an offence". Further "the defendants will say that the acts admitted ..... were done without malice and with reasonable or probable cause."

At the trial, in support of this stand, I was adverted to the Suppression of Crime (Special Provisions) Act, 1974, now the Suppression of Crime (Special Provisions) Act, s. 4(1) (c), which reads:

> " In a special area, any member of the Security Forces may, without warrant, and using such force (if any) as may be reasonably justified in the circumstances ..... arrest any person upon reasonable suspicion of his having committed or of being about to commit an offence. "

I was also asked to consider s. 5 of the Act, the wording of which is:

> " Where any member of the Security Forces purports to act in the exercise of authority conferred by this Act he shall be presumed to be acting within such authority in the absence of proof to the contrary. "

By definition, the first-named defendant was at the material date a member of the Security Forces, acting, it was said, within a Special Area constituted by Ministerial Order by reason of the authority conferred by s. 3 of the Suppression of Crime (Special Provisions) Act, 1974. In this regard, my attention was drawn to the Suppression of Crime (Special Provisions) (Special Areas) Order, 1976, published in the Jamaica Gazette Supplement, dated January 9, 1976. By this order the provisions of the Act were to have effect in relation to the parishes of Kingston and Saint Andrew, Saint James, Saint Catherine, Clarendon and the territorial seas of Jamaica. It was common ground that the first defendant took the plaintiff

off a bus on which the plaintiff was travelling in the vicinity of the Causeway and within the parish of Saint Andrew. In this Special Area, the Act had been made operative for an extended period of 180 days by the Suppression of Crime (Special Provisions) (Special Area) Resolution 1976, which was agreed to by the House of Representatives on the 3rd February, 1976, and published in the Jamaica Gazette Supplement of Friday, February 20, 1976.

In the long run, the validity and efficacy of the pleas by the defendants will depend on whether the evidence discloses any basis for the actions of the first-named defendant on the 17th April, 1976, guided by the usual rule that in this type of case it is for them to

prove that the first-named defendant acted without malice and with reasonable and probable cause.

In his evidence, the plaintiff asserted that while travelling as a passenger on the bus, he saw the first-named defendant come on the bus after it stopped. He said that at that time there was another police man at the door of the stationary bus. The plaintiff also stated that at the point where the bus stopped he saw two soldiers leaning on the barbed wire fence nearby.

When he came into the bus, Detective Corporal Thompson, the first-named defendant, ordered all the men in the bus to stand. And although in examination-in-chief the plaintiff's account impressed that Thompson spoke only to the plaintiff, he later admitted under cross-examination that the Detective Corporal did, in fact, question other men before he came to, and questioned the plaintiff. The plaintiff said he told the first-named defendant in answer to his questions that he was coming from work in Kingston and was going to his home in Lakes Pen, in Saint Catherine. His efforts to establish this were thwarted by Detective Corporal Thompson. Firstly, by his advice to the plaintiff: "If you live in Saint Catherine, you must stay in Saint Catherine and don't come to Town." Secondly, by the refusal of Detective Corporal Thompson to even look at the identification card which the plaintiff produced for the inspection by, and information of, the Detective, who, according to the plaintiff, boxed the card from his hand. Icolyn Davis, the witness supporting the plaintiff, stated that when she attempted to take up the card, to give it to Detective Corporal Thompson, she was threatened with prosecution for obstructing him.

The recalcitrant conduct of the first-named defendant was later sharpened upon the arrival of a Corporal of Police who was on mobile patrol. The plaintiff said that by this time he had been taken to a parked jeep on the instructions of Detective Corporal Thompson. He did not know the Corporal on mobile patrol, but that Corporal enquired of Detective Corporal Thompson what had the plaintiff done, to which Thompson replied, "He don't do anything". When asked by the other police man if he was detaining the plaintiff, Detective Corporal Thompson

replied that he would be carrying the plaintiff to the station to question him and send him home. Although the newcomer advised the first-named defendant to "let the man go" and attempted to put him back in the bus, the plaintiff averred that : "Thompson held me back-wyas and drew me out and said I must come out". Still continuing what the plaintiff's evidence impressed as an unyielding attitude, against the advice of his colleague that "That is not the way to detain", Detective Corporal Thompson took the plaintiff to the Hunt's Bay Police Station. There, he remained in the guard room for about one and a half hours and later, on the instructions of the first-named defendant, he was placed in the cells. He was in the cells for four days, which in itself caused him great inconvenience, and raised threats from otherpersons in the cells to his personal and physical safety.

Detective Corporal Thompson denied that he refused to look at the identification card tendered by the plaintiff; that he boxed the card out of his hand, and threatened Miss Icolyn Davis with prosecution for obstructing him when she attempted to retrieve it from the ground where she said it had fallen. He flatly denied that he saw her on that afternoon; although he recalled that some "ladies were outside all around the bus, by the back of the bus. None of them spoke to me", he said. He further said that it was not true that any policeman had told him to release plaintiff, because he had shown the first defendant an identification card. Nor did he while leaning on the bus, that afternoon take time to consider his next move after, as it was alleged, he had been spoken to by the passing policeman. His action in detaining the plaintiff was not malicious and without reasonable and probable cause.

This divergence between the respective accounts of the plaintiff and defendant is sharply indicated by the evidence of Detective Corporal Thompson as to what occurred after he had stopped the vehicle on which the plaintiff was travelling. Detective Corporal Thompson gave evidence that he had been assigned to participate with four others of the Security Forces in a road block. His companions were two other policemen and two soldiers. In carrying out the instructions of his assign-

ment, a J.O.S. bus was stopped below the Causeway in the parish of Saint Catherine. He said he entered the bus, and the subsequent search was particularly intended to apprehend persons involved in violent crimes in the Western Kingston area. Those crimes encompassed shooting, arson, malicious damage to property. He had information about the likely movements of those persons and the direction in which they were going, that is, towards Lakes Pen, Naggo Head, and Edgewater in the parish of Saint Catherine. While he was searching the bus and passengers, he said he spoke with the plaintiff, Fitzroy Marshall. He said he told him: "I have information that persons travelling from West Kingston to Saint Catherine have been involved in violence including shooting and other acts. I told him that he resembled one of the persons involved." After questioning the plaintiff where he was coming from and to where he was going, the first-named defendant took the plaintiff off the vehicle and transported him by jeep to the Hunt's Bay Police Station. Three other persons were taken off the bus and they also were taken to the police station. This was done, he said, under the Suppression of Crime (Special Provisions) Act.

His stated observation to the plaintiff that he resembled one of the persons allegedly involved in the violent crimes was based on information he had previously received. This related to "complexion, height, build and locality that these men were travelling through, viz, Kingston - Lakes Pen - Edgewater - Naggo Head". He did not, however, know the person who he said the plaintiff resembled. Nor was he able to give any more detailed description.

From the foregoing recitation of the facts in evidence, it is clear that the defendants are contending that the first defendant, Detective Corporal Thompson, arrested the plaintiff in the context of a reasonable suspicion that the plaintiff had committed an offence, and not in respect of the plaintiff being about to commit an offence. So that two important matters arise for decision. In the first place, was there any ground upon which it can be said that Detective Corporal Thompson was justified in arresting the plaintiff upon reasonable suspicion of his having committed an offence? Secondly, what is the meaning and efficacy of s. 5 of the Suppression of Crime (Special Pro-

visions) Act?

As regards the first question, Mr. Mundell, for the plaintiff, submitted that on the facts given in evidence there should be judgment for the plaintiff, it being quite clear that although the police have a right to arrest without a warrant, which right is conferred on them by s. 4(1)(c) of the Suppression of Crime (Special Provisions) Act, they can only do so on reasonable suspicion that the person arrested had committed a crime or was about to commit an offence. The presence of "reasonable suspicion" must be determined by an objective approach, which he submitted must be guided by the over-riding consideration that operation of this Act must be in the context of other legislation governing the activities of the police, particularly that a person arrested under the powers of this Act would have to be taken before a Court within a reasonable time after arrest.

On the other hand, it is imperative that the object of the legislation be not lost sight of. The provisions of the Suppression of Crime (Special Provisions) Act, are to be applied by Ministerial Order:

> " Where the Minister has reasonable grounds to believe that in the interest of public safety or public order or for the purpose of preventing or detecting crimes, it is requisite so to do. "

The Act will, "during the continuance in force of the order, have effect in relation to any area of the Island specified in the order". Ibid. s. 3(1). Within such a Special Area, the Security Forces are empowered to "undertake a search of any premises, place, vehicle, person or thing". This may be effected without a warrant. So may the other powers granted by s. 4(1) of the Act be exercised. And it is not farfetched to conclude that the general purposes of the Act have the rationale that by the powers granted, the Security Forces will be able to take speedy action against, and thereby control, criminal action. When passed in 1974, the Act was intituled "An Act to make additional provision for the prevention and detection of crime in 'Special Areas' ". By the short title, it is to be cited as the Suppression of Crime (Special Provisions) Act. So that the powers under the Act are far reaching without the specific directions of, for example, the Constabulary Force Law or Larceny Law. The implication for this is that

the Act on the face of it imposes qualifications on the constitutionally guaranteed protection against arbitrary arrest, although by s. 15 (1)(f) of the Constitution of Jamaica a person may be deprived of his personal liberty "upon reasonable suspicion of his having committed or of being about to commit a criminal offence".

What is noticeable about this formulation both in the Constitution and in the Statute is that the common law distinction between arrest without a warrant for a felony vis-a-vis arrest without a warrant for a misdeameanour is not maintained. The Act speaks of arrest without warrant for "an offence" while the Constitution speaks of a "criminal offence". So whereas at common law the constable had power to arrest without warrant on reasonable suspicion of felony only, but had to obtain this power by statute for arrest on reasonable suspicion of misdemeanour, under the present law in Jamaica he is so empowered generally whether the offence would constitute a felony or misdemeanour. Provided, of course, that the constable abides by any condition precedent to the exercise of the power to arrest upon reasonable suspicion that a criminal offence has been committed or is being about to be committed.

To this extent, the reliance placed by Mr. Mundell on Dumbell v. Roberts [1944] 1 All E. R. 326 is misplaced. That was a case where the police officers concerned had failed to inquire the plaintiff's name and address - a statutory condition precedent to arrest without a warrant on a charge of unlawful possession of property under a local Act. It was held that the common law plea of justification is not available where the plaintiff was not charged on the basis of a reasonable suspicion of felony or being implicated in a felony.

Mr. Mundell placed heavy stress on the words of Scott, L.J., at p. 329 at letter E reflecting on the police function of arrest. The Lord Justice intimated that it is important that no one should be arrested by the police except on grounds which in the particular circumstances of the arrest really justify the entertainment of a "reasonable suspicion". Of course, the judgment had earlier recognised that "the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt ." But,

"That requirement is very limited. The police are not called on before acting to have anything to be a prima facie case for conviction." A view which he reiterated on the same page at letter F when speaking of "the person who has ex hypothesi aroused their suspicion". He said: "I am not suggesting a duty on the police to prove innocence; that is not their function, but they should act on the assumption that their prima facie suspicion may be illfounded."

This was the only case cited to me by Mr. Mundell and the narrow compass of its applicability to the particular circumstances of this case is highlighted by the discussion of the word "suspicion" by Lord Delvin in delivering the judgment of the Privy Council in Hussein v. Chong-Fook Kam [1970] A.C. 942 P.C. The Judicial Committee was there considering the ambit of the power granted to the police by a Malaysia Statute to arrest if a reasonable suspicion existed of the plaintiff having been concerned in the offence of reckless and dangerous driving causing death. The police had started their enquiries as a result of complaints made to them. According to the judgment at p. 948 B, the moment when the legality of the arrest arises is when the arrest was first made. What follows after that initial act does not by itself make the initial act illegal, though subsequent events may aggravate the unlawful arrest or mitigate it.

The judicial definition of suspicion appears at p. 946 B:

> " Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking. 'I suspect but I cannot prove.' Suspicion arises at or near the starting point of the investigation of which the obtaining of prima faice proof is the end. "

Observing that "the test of reasonable suspicion prescribed by the [Criminal Procedure] Code [of Malaysia] is one that has existed in the common law for many years" (p. 948), their Lordships went on to emphasize that they were unable to find any authority in which reasonable suspicion has been equated with prima facie proof. The judgment quoted the following passage from the judgment of Scott, L.J. in Dumbell v. Roberts [1944] 1 All E.R. 326 at p. 329 to show that while "the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion .... the police are not

"called upon before acting to have anything like a prima facie case for conviction". A further distinction between "reasonable suspicion" and " prima facie proof" was explained by their Lordships of the Privy Councul in this way:

> " Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. There is a discussion about the relevance of previous convictions in the judgment of Lord Wright in McArdle v. Egan (1934) 150 L.J. 412. Suspicion can take into account also, matters which, though admissible could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstance. "

The statutory stipulation must not be viewed in the light of the unduly credulous, nor must it be considered to have been met by a mere hint or conjecture. Notwithstanding, it is not oppressive to suggest that information may be the source of a reasonable cause for suspicion. Indeed, in McArdle v. Egan [1933] 1 All E.R. Rep. 610 at p. 612 I to p. 613 B, Lord Wright quoted the following passage from Bullen and Leake (3rd Ed. at p. 795 note):

> " A constable is justified in arresting a person without a warrant, upon a reasonable suspicion of a felony having been committed .... and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or are facts stated to him by another: ..... So that the inquiry is as to the state of mind of the chief constable at the time when he ordered the arrest, and it involves that it must be ascertained what information he had at the time even though that information came from others, of course, the information must come in a way which justifies him in giving it credit; the suspicion upon which he must act, and indeed ought to act, in the course of his duty, must be a reasonable suspicion. "

I mention here that in Wiltshire v. Barrett [1966] 1 Q.B. 312, the Court of Appeal when discussing the power to arrest without a warrant for driving under the influence of drink given by the Road Traffic Act, 1960, s. 6(4), drew a distinction between the empowering words in that section, and the enabling words in s. 217(1). During the argument, the Court was adverted to the terms of s. 217(1) that a person who takes and drives away a motor vehicle without having either the consent of the owner thereof or other lawful authority "shall be liable to a fine or imprisonment" and to s. 6(4) which states that a police constable

may arrest without warrant a person reasonably suspected by him of having committed or of attempting to commit an offence under this section". Commenting thereon, Lord Denning, M.R., said at page 322 A-C:

> " It was said that this section expressly empowered arrest on reasonable suspicion. If Parliament intended a like power under s. 6, surely they would have expressed it in like language. But I think different considerations apply. S. 217 deals with offences where the power of arrest may be exercised sometime after the offence has been committed. It may be based, not on the constable's own observation, but on information received from others. Whereas s. 6 deals with offences where the power of arrest is to be exercised at the very time when a person is committing the offence or very soon afterwards. So much that the constable acts on his own observation. Naturally enough there is a difference in language. "

At p. 328 D, in dealing with the submission placing great reliance on the constrast between the two sections, Davies, L.J., said:

> " It is argued that since this subsection (s. 217) (4) expressly empowers a police officer to arrest on reasonable suspicion, section 6(4) in the absence of similar words, cannot justify an arrest on such grounds ....
>
> In my judgment the argument is fallacious. The two sections are not in pari materia. The offences which they create give rise to entirely different considerations and the respective powers of arrest are different. In the case of an offence or suspected offence under s. 217, it may well be necessary for a police officer to arrest upon information .... of an alleged offence committed perhaps a long time previous to the date of the arrest in circumstances in which the police officer has no direct personal knowledge of the facts constituting the alleged offence. The power under s. 6(4) is much narrower. It applies only to cases where a police officer perceives with his own senses; whether of sight, hearing or smell, facts which lead him to the belief that an offence is apparently being or has just been committed. This difference is emphasized by the use of the past tense in s. 217(4) and the present tense in s. 6(4). "

It will be recalled that in Dallison v. Caffery (1965) 1 Q.B. 348 when Miss Phillips identified Dallison's photograph, the defendant Caffery, was not present. He was informed about it by Detective

Inspector Hepworth, a credible informant.

In the case before me, it is a question of fact whether the first defendant was acting on information he received, and which he said he communicated to the plaintiff. The plaintiff earnestly denied that the first defendant ever told him that he resembled anyone involved in crimes committed in Western Kingston. It is worthy of note that I was not told the source of the information, that is to say, whether it was from the Security Forces or from civilians. I did not have the benefit of hearing from any other witness as to the actual occurrences, nor regarding the likely movements of the alleged perpetrators from the scene of the crimes. At the same time, I do not think it is unreasonable to say that it is more likely that such a report would have come from the Security Forces. A conclusion supported by the fact of the road block, which from the evidence I can correctly conclude was set up at the time of this particular incident, under the Suppression of Crime (Special Provisions) Act.

Suffice it, further, that my findings of fact and the reasonable inferences therefrom must inevitably be weighed objectively according to the words of Wooding, C.J., in the case of Boodoo v. Joseph [1964] 7 W.I.R. at p. 379:

> " In my judgment, the test for determing whether or not reasonable cause exists must at all times be objective. Not only must cause exist, it must also be reasonable. And whether it is reasonable will depend upon all the known circumstances of the case. In some cases the possession or lack of relevant information may be significant; in others it may be of no consequence whatever. No single factor can be posited as essential. The facts must be examined dispassionately and assessed objectively according to the standards of the reasonable man. See Cedeno v. O'Brien (1964) 7 W.I.R. 192. "

The objective approach which is enjoined must therefore answer the question, if the defendant did act on information, was it credible and trustworthy information? Or, was it that there in fact existed no reason to suspect known to the officer, but was "merely speculation, or conjecture or even suspicion harboured or entertained by him"? The moment of reasonable suspicion is the moment when the arrest is made. For myself, the fact that at that time the first defendant ignored the means by which the plaintiff sought to establish

his identity is no proof that there was no reasonable and probable cause. Nor is the fact that the plaintiff gave the address of his home and the address of his workplace, any indicator that the first defendant acted without reasonable and probable cause. Mr. Mundell argued that Dumbell v. Roberts would apply to this case in that the plaintiff having told the Detective Corporal his name and where he is from, the latter was put on inquiry; and Lakes Pen not being far from where the incident took place, the first defendant could easily have made enquiries to ascertain whether or not the plaintiff was indeed who he claimed to be. In addition, the police could have checked the employer of the plaintiff to ascertain the identity of the plaintiff.

I do not accept that the first defendant was under any such duty at that time. One has to take into account that the circumstances of the road block, the search of the bus and of the male passengers, were all part of an urgent situation demanding the prevention and detection of crime, and the forestalling of the possible escape of those persons who may have been involved in the reported crimes of violence. At the same time it is an apposite comment that the Suppression of Crime (Special Provisions) Act, does not contain any procedural steps to be taken after arrest. Looking at the Act, and contemplating the legislative intention, I am of the view that it successfully can be argued that reasonable and probable cause would justify a mere temporary detention for the purpose of enquiring into identification or other circumstances under the Act that might warrant an actual arrest. A fortiori, the statutory power of arrest, authorises detention or arrest of an innocent person if he is reasonably suspected of having committed or being about to commit an offence, provided the arrest took place in a special area declared under the statute.

This conclusion is not as shocking as appears at first sight. The position was not dissimilar at common law. Lord Denning, M.R., sets out that position in his judgment in Dallison v. Caffery [1965] 1 Q.B. 348. After pointing out that a constable exercising his powers of arrest upon reasonable suspicion has not got to prove that a felony has in fact been committed, the Master of the Rolls opined that

> " So far as custody is concerned, a constable also has extra powers .... When a constable has taken into custody a person reasonably suspected of a felony, he can do what is reasonable to investigate the matter, and see whether his suspicions are supported or not by further evidence. He can for instance, take the person to his own house to see whether any of the stolen property is there, else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working for there he may find persons to confirm or refute his alibi. The constable can put him upon an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable. In Wright v. Court (1805) 4 B & C 596 a constable held a man for three days without taking him before a magistrate. The constable pleaded that he did so in order to enable the private prosecutor to collect his evidence. That was plainly unreasonable and the constable's plea was over-ruled. In this case it is plain to me that the measures taken were reasonable. "

The reasonableness of whatever is done by the arresting constable must depend on all the circumstances of the case. One of the arguments put forward by Mr. Mundell was that the person arrested would have to be taken within a reasonable time before the Court. It is only then that the arresting constable would be able to justify arrest on reasonable suspicion without a warrant. But this requirement is only such as a reasonable time will allow. In Wright v. Court the phrase used is: "as soon as he reasonably can" and that is what Lord Denning, M.R., expatiated on in Dallison v. Caffery.

If in the interim of arrest and being brought before the Court the person arrested is freed by the police, is there any cause of action? The answer is no. In support of this I quote from the judgments in Wiltshire v. Barrett [1966] 1 Q.B. 32. Firstly, Lord Denning, M.R. at p. 325 B-C spoke of the position at common law as having been settled that:

> " if after an arrest a man is found on enquiry to be innocent, or at any rate that there is no sufficient case for detaining him, he should at once be set free. There is no obligation to take him to the magistrate. "

For this proposition he cited several cases.

The views of Davies, L.J. are found at p. 331. They are that:

> " the police are perfectly entitled and indeed bound to release a man whom they believe to be innocent or against whom they consider there is insufficient evidence, and their action in this present case did not, nor could it have, rendered unlawful the previous arrest of the plaintiff by the defendant if it was otherwise justified."

Those dicta have to be applied to the facts of this case. Detective Corporal Thompson said that he had hoped to establishe that this was the man sought from further investigations "which would include my informants and contacts. After I had completed my investigations I had intended to hold an identification parade. At the time I took him to Hunt's Bay Police Station I had intended to hold an identification parade if certain contacts not made ..... I completed my investigations on the day the plaintiff was released".

None of these facts would seem to be in breach of the Wright v. Court principle particularly because of the special legislation factor. Then too, the arrest was made on Saturday afternoon with the weekend intervening, and the plaintiff was released on the Tuesday morning. So that on any score as I have held, the arrest was initially justified, and the detention was in the circumstances reasonable. My researches have disclosed the case of Peacock and Hoskyn v. Musgrave and Porte /1956/ Crim. L.R. 414. In that case before Streafield, J., reasonable cause for detention and enquiry not resulting in an arrest was held a sufficient defence to a claim for assault and false imprisonment. However, the jury awarded damages of £5.00 to each plaintiff on a finding that the detention, although justified was prolonged longer than was reasonably necessary. The factors which I have already mentioned in my view, preclude me from giving judgment for the plaintiff even on the limited ground that the plaintiff was detained for longer than was reasonably necessary. This is not to suggest, however, that in an appropriate case an arresting constable could escape liability on facts which show that he takes a suspect to the police station without arresting him in order to question him, then to decide in the light of his answers whether to charge him. This would be unlawful and would constitute unlawful imprisonment. See Dallison v. Caffery (supra).

However, I must stress that this is not such a case on the facts as I have found them. Even if judgment for the plaintiff

were in the offing it is evident that s. 5 of the Suppression of Crime (Special Provisions) Act would be an obstacle. While Mr. Harris for the defendants submitted that s. 5 gave the police constable complete immunity, on the other hand Mr. Mundell argued that the matter is not as simple as that. The constable must be acting on reasonable suspicion, otherwise the section will not avail him. And this despite the fact that the first defendant was carrying out his duties under the Act. In his submission the law is not saying that the police constable is presumed to be acting reasonably. Nor despite the side-note does s. 5 give a complete protection and so even on the presumption that the police constable was acting within the provisions of the Act he must still act resonably.

What seems to be overlooked in these submissions as Mr. Harris pointed out, is that s. 5 on its literal meaning is saying that the plaintiff at a certain stage of the proceedings has to show that the police constable was not acting in pursuance of the powers given by the Act. Under that section the literal meaning results in immunity for the police constable once that rebuttal that he was not purporting to act under the powers of the Act, is not forthcoming. Unless it can be shown that there was a blatant disregard for the plaintiff's constitutional rights. The fact that the Act makes no mention of a time-limit for the detention is because the Act takes into account the difficulty which the security forces would encounter in locating persons who would be witnesses.

I look at the matter a little closer cognisant of the advice of Viscount Simon, L.C., in Bernard v. Gorman [1941] A.C. 378 at p. 387 that:

> " When the question arises whether a statute which authorises arrest for a crime should be construed as authorising arrest on reasonable suspicion that question was to be answered by examining the contents of the particular statute concerned; rather than by reference to any supposed rule of construction."

At the same time I warm myself not to be guided in any way by the sidenote to the section. When the Act speaks of "When a member of the security forces purports to act in the exercise of authority conferred by or under the Act"; one recalls to mind the observations

of Graham-Perkins, JA. in Reid v. Sylvester /1972/ 19 W.I.R. 86 at p. 99 I. His words were in the context of the consideration of s. 39 of the Constabulary Force Law ( C. 72) now the Constabulary Force Act.

> " Where a person consciously does an act in pursuance, or in the execution, of an offence by which he is clothed with an authority to act he will, in the ordinary course of things intend to act in pursuance or in the execution, of that offence. "

The Courts in Jamaica have held that the phrase "purports to act", and similar phrases:

> " cannot be construed as meaning that the person to be protected must have been lawfully exercising his rights since, if his act were lawful, he could require no special statutory protection. All the decisions agree, therefore, that such enactments are intended to protect persons within their scope whose actions have not been lawful."

After making the above summary of the authorities Adrian Clarke, J., at p. 80 of Chong v. Miller (1933) ~~L.J.R.~~ J.L.R. 80 intimated at pp. 87 - 88 of the said report:

> " A person 'purporting to act' under the provisions of the Law 28 of 1926 (The Gambling Law) will therefore be entitled to the benefit of s. 10 of that law if either he has acted under an honest belief in the existence of a state of facts which if they existed would have made his act a lawful one, or if he has acted under an honest misapprehension as to his authority under that law to do the act complained of. Where the defendant is a constable and claims to have acted under a bona fide mistake as to his legal powers of arrest this claim should naturally be subject to careful scrutiny before it is accepted. A constable above all people may be presumed to know the law as to his own powers of arrest, and it can only be in unusual circumstances that any court would conclude that he was acting in good faith if he acted outside those powers. The question is, however, simply one of bona fides and must ultimately be a question of fact. "

Recent judicial opinion is that the phrase describes no wider protection than the phrase "act done by him in the execution of his office" in s. 39 of the Constabulary Force Law, per Fox JA. in Reid v. Sylvester (supra) at p. 93. That learned judge commented on the above-quoted words of Adrian Clarke, J.:

> " It is clear that the statement was not intended to qualify the test of 'bona fides' for answering the question whether on any particular occasion a constable is acting in the execution of his office. The statement merely emphasises the difficulty which may arise in some situations of maintaining that a constable who has acted illegally was honestly intending to execute his duties, or had reasonable and probable cause for his actions. Whereas, as here, an answer to the particular legal point upon which the lawfulness or otherwise of the constable's action depends is not

> " immediately apparent, the fact that lawyers ultimately conclude that the constable had acted illegally should be allowed very little if any significance, in deciding these matters. "

The examination of the issues in this case lead me to the evaluation that the provisions of the Suppression of Crime (Special Provisions) Act deprive the plaintiff of any cause of action in these circumstances.

Accordingly, there will be judgment for the defendants with costs to be agreed or taxed.