

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 17/87

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

BETWEEN MILTON MILLINGEN PLAINTIFF/APPELLANT  
AND THE ATTORNEY GENERAL DEFENDANT/RESPONDENT

R. M. Millingen for the appellant

Wendel Wilkins for the respondent

May 25, 1989

WRIGHT, J.A.:

By the endorsement to his writ, the appellant, Milton Millingen, had sought to recover damages from the Attorney General as follows:-

"The Plaintiff's claim is against the Defendant for damages for False Imprisonment, Malicious Prosecution, Assault and Trespass to the Plaintiff's land at Colegate St. Ann for that maliciously and/or without reasonable and probable cause the defendant through the agency of the police on the 23rd May, 1981 and on other days thereafter

- (1) arrested the Plaintiff on a charge of larceny the property of Olive Powell
- (2) at Colegate and at St. Ann's Bay Police Station assaulted the Plaintiff
- (3) PROSECUTED THE PLAINTIFF
- (4) trespassed on the Plaintiff's land at Colegate St. Ann."

The action came on for trial before Malcolm, J., and on the 20th of January, 1987 he gave judgment for the appellant in respect of malicious prosecution \$15,000; in respect of false imprisonment \$20,000; in respect of assault

\$15,000 and special damages were awarded in the sum of \$2,020. The claim for trespass was dismissed. Against that part of the judgment this appeal is brought.

Mr. Millingen's contention on behalf of the appellant is that in the circumstances the police had no right to enter the premises. A brief look at the evidence shows that the police were asked to attend the premises by one Olive Powell who had been living in a common-law relationship as man and wife with Milton Millingen and as a result of some fuss she had been put out leaving her things in the house. The sole purpose for which the police went there was to enable her to recover her property without there being any breach of the peace. Mr. Millingen contends that they required a warrant for that purpose but under section 4 of the Suppression of Crimes Act that is not so. And there is authority both at common law and under this Act that the police were enabled to enter in anticipation of any breach of the peace. Mr. Millingen still contends that on the evidence, they had no right of entry.

We cannot agree with Mr. Millingen and we find that the learned trial judge was correct in his assessment of the evidence and the conclusion to which he came. In the circumstances, the appeal is dismissed with costs to the respondent to be agreed or taxed.

GORDON, J.A. (Ag.):

I also agree with the judgment given by my learned brother Wright. I have nothing further to add.

CAREY, J.A.:

On the question of trespass, the learned judge had to satisfy himself that the police entry on those premises was one that was justified in law, and I entirely agree with what has fallen from My Lord Wright in that regard. The police have a right to ensure that there is no breach of the peace committed. To that end, they could, having regard to the facts in this case, attend the premises to ensure that. On the evidence, it was significant that the police had to return to those premises on more than one occasion to ensure that the goods were returned to the lady - which justifies, it seems to me, or shows very clearly that there was need for a police presence. But for the police presence, this woman could never have claimed her goods.

This appeal, in our view, is wholly misconceived, and I agree, therefore, that it should be dismissed. The order of the judge below is affirmed. The respondent is entitled to the costs of the appeal to be taxed if not agreed.