

J A M A I C A

IN THE COURT OF APPEAL

R. M. CIVIL APPEAL NO. 31/70

Before: The Hon. Mr. Justice Eccleston - Presiding
The Hon. Mr. Justice Fox
The Hon. Mr. Justice Edun.

GRANVILLE SCOTT - DEFENDANT/APPELLANT

vs.

SELVIN WILKIE - PLAINTIFF/RESPONDENT

Mr. Chin-See for the Appellant

Mr. H. Edwards, Q. C. for the Respondent.

15th October, 1970.

EDUN, J.A.:

In this appeal, learned counsel for the appellant argued only one ground of appeal, that is, that the learned Resident Magistrate was wrong in his award of exemplary damages. He relied upon the case of *Rookes v. Barnard* (1964) 1 A.E.R. p. 367 and in particular upon the following passage of the judgment of Lord Devlin at page 411 where he stated that one of the categories in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law, thus:-

"The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category, - I say this with particular reference to the facts of this case, - to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might perhaps be said to be using it oppressively. If he uses his power illegally,

/ he must of course.....

"he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages. "

The case for the appellant was that he was a lifeguard employed by the St. Ann Parish Council and on Sunday, 23rd March, 1969, at the Roxborough beach, St. Ann, he put a chair in a position as to keep motor cars from the beach. The respondent moved that chair and the appellant told him to replace it. Soon after, the respondent got up off the chair and then the appellant replaced it in its former position, whereupon the respondent assaulted him and run away. The respondent's case, on the other hand, was that whilst he was sitting on the chair the appellant held it, turned it over and the appellant hit him with the chair in his back. The ~~respondent~~ ^{Appellant}, he said, then ran off, secured a piece of stick, hit him again in his back, held him in his throat and butted him in his mouth. He, the respondent, then ran away. The appellant sued the respondent for damages for assault and the respondent counter-claimed for damages for assault.

The learned Resident Magistrate believed the respondent, dismissed the claim and gave judgment in the respondent's favour thus -

Loss of earnings

3 weeks at £1 per week - £ 3. 0. 0

General damages - £47. 0. 0

£50. 0. 0

In the relevant parts of his reasons for judgment, the

learned Resident Magistrate stated:-

1. The appellant was a taller and stouter and heavier man ...
2. "The appellant is a lifeguard at a public bathing beach and has been so for nine years. In my view, his action in thus wantonly attacking a member of the public at the beach is a gross abuse of authority and merits exemplary damages. "

Learned counsel for the respondent submitted that the appellant was motivated by malevolence and his conduct was that of a person vested with quasi-government authority, acting oppressively and arbitrarily and deserving of an award of exemplary damages against him. Alternatively, he submitted that the respondent was entitled to compensation which was nevertheless aggravated because of the facts and circumstances of the case. Learned counsel for the appellant added in reply that even if the damages of £47 were considered as aggravated, the amount was regarded by the learned Resident Magistrate as exemplary and therefore the amount ought to be reduced.

In my view, there is nothing in the evidence which suggests that the appellant pretended in any way to act under a cloak or disguise of authority; the incident was simply one of two individuals in their private capacity after a misunderstanding assaulting each other. It may well be that because of his physique and towering strength that the St. Ann Parish Council appointed the appellant a lifeguard because they must have considered that a lifeguard must be gifted with a greater strength of endurance to withstand the ordeal of saving lives. But that is far from saying that every act of the appellant in his employment must necessarily be clothed with authority oppressively exercised. Therefore, the conclusion of the learned Resident Magistrate that the plaintiff's action was a gross abuse of authority was unwarranted by the evidence.

The incident between the parties can reasonably and properly be described as that of a big man bullying a small man and very likely the bullying was a source of humiliation to the respondent; this court cannot ignore the findings of the learned

Resident Magistrate in that respect as he had the advantage of seeing the witnesses and considering their evidence. In the circumstances, the award of damages can properly be determined under the head of aggravated damages and under that head this court can proceed to assess the damages. In doing so it will say whether or not the sum of £47. 0. 0 awarded as general damages is excessive. In my view, the respondent was entitled to a reasonable sum as damages, by way of pain and suffering; that amount must relate to the fact that the respondent lost earnings for three weeks, obviously through pain and suffering. Though the respondent was not examined by a doctor, yet the learned Resident Magistrate having accepted his evidence; his back was swollen and with three of his front teeth shaking, the respondent must have suffered great discomfort and inconvenience. Whether a reasonable amount in that respect could be half of £47 or be more or less than £47, I cannot say that the entire amount of £47 as general damages, though it may be high, was in fact far too high as to be wholly out of proportion to all the facts and circumstances of this case.

For the reasons given, I would therefore dismiss the appeal with costs to the defendant/respondent of \$30.00.

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FOX, J.A.:

I agree that this appeal should be dismissed for the reasons stated in the judgment which has just been read.

I agree that in the circumstances an award for aggravated damages is clearly justified. I wish to reserve my opinion as to whether in these particular circumstances an award for exemplary damages would not also be justified.

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ECCLESTON, J.A.:

I agree that the appeal should be dismissed with costs - \$30.00.

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