

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
(Consolidated Actions)

SUITS C.L. 1716 of 1973; 1974/SO37 and 1974/SO38

BETWEEN	OBEDIAH SMITHSON) CLARENCE SHAND) EGBERT STEPHENS)	PLAINTIFFS
A N D	WINSTON HAYNES	FIRST DEFENDANT
	DETECTIVE DELROY COLE	SECOND DEFENDANT
	THE ATTORNEY GENERAL FOR JAMAICA	THIRD DEFENDANT

B. McCaulay, Q.C. and W. B. Brown for plaintiffs.

Dr. Lloyd Barnett for first defendant.

Eugene Harris and G. Burton for the second and third defendants.

February 2, 3, 4 & 7, 1977

CAREY, J.:

These are three consolidated actions for false imprisonment and malicious prosecution brought by each of three plaintiffs, respectively, against a Winston Haynes who was at the material time a Security Officer employed to Western Terminals Limited, Detective Delroy Cole and the Attorney General. Two of the plaintiffs, namely Messrs. Obediah Smithson and Clarence Shand, in the course of the trial, abandoned their claims against Mr. Haynes, and the third plaintiff, Mr. Egbert Stephens, abandoned that part of his claim relating to malicious prosecution in respect of Haynes. So that as far as the defendant Haynes is concerned, the only action which remains extant is Suit C.L.1716 of 1973, i.e. the claim by Mr. Stephens.

It was alleged against Mr. Haynes that he caused not only the arrest of Mr. Stephens on charges of conspiracy and larceny of 250 bales of rice, the property of Western Terminals Limited, but also his imprisonment until he was bailed about the 13th of

November, 1972.

The defence of Mr. Haynes, shortly put, is that Mr. Stephens was arrested and charged by Detective Cole on his own initiative; alternatively, that if he did cause Stephens' arrest on the 9th of November, this was done because he had reasonable and probable cause of suspecting that the plaintiff had committed a felony.

The actions, therefore, in respect of the three plaintiffs against the second and third defendants, namely Detective Cole and the Attorney General, remain in full force and vigour and the defence of these defendants amounted to this - that there was reasonable and probable cause for the prosecution in all cases. In so far as the arrest of Smithson and Shand was concerned, the position is that Detective Cole acted under a Warrant, and as to Stephens, whose arrest was without a warrant, the police had reasonable and probable cause to arrest him.

I should like at once to deal with a point taken by Mr. McCaulay on behalf of the plaintiffs. He submitted that S.40 of the Constabulary Force Act, which is the section relied on by Detective Cole, was not a complete answer to the charge. It was being said that if it were found that Smithson and Shand were not advised of the reason for the arrest, the section did not avail as a defence. That position is, I think, unarguable. There is a right to be advised of the reason why a citizen is being deprived of his liberty, whether he is being arrested on a warrant, equally whether he is being arrested without a warrant. I think, however, that this submission by Mr. McCaulay is misconceived having regard to the facts. I suspect, myself, that Mr. McCaulay forgot the evidence of Mr. Smithson, who himself testified that he was told the reasons for his arrest by Detective Cole.

In so far as Shand was concerned, Shand denied being told by the police officer the reason why he was being arrested, and it is true to observe that Detective Cole did not say expressly

that he told Shand of the reason why he was being arrested. What he did say was that he arrested him on warrants charging conspiracy and larceny. A suggestion was put to Shand that the warrants were, in fact, read, but Cole did not expressly say that he did in fact read any warrant to the plaintiff. However, as I understand the evidence of Cole, it seems reasonable to infer that the basis of the arrest was being brought home to Mr. Shand; at all events, Mr. Shand's evidence was to the effect that after he was taken from Western Terminals Limited, he was taken to the Sutton Street Court by way of the Central Police Station. And it would follow, of course, that when he went before the Court, he would be told of the charges against him. In my view, the defence on which the Attorney General relies on this aspect of the case is well founded, so that the claim of false imprisonment by Smithson and Shand, fails.

I wish now to make two comments. My first comment is directed at the plaintiffs in this action, and it is this: it may not be appreciated by lay persons that the fact that a person is acquitted of a criminal charge in a court does not of itself give rise to the actions which have been brought in this Court. Much more is needed than a mere acquittal. These are highly technical causes of action, and this leads me to the second comment. I must first, however, record my indebtedness to counsel who appeared on behalf of the plaintiffs, Mr. McCaulay and Dr. Barnett, who appeared on behalf of the first defendant, Haynes, for the clarity of their submissions. I feel it is my public duty, as public funds are concerned, to make an observation with regard to the representation by the Crown. I would venture to suggest that the Attorney General ought, hereafter, to ensure that persons who are briefed to appear on his behalf possess the necessary experience, so that a reasonable degree of skill and competence is brought to bear on matters of importance in these courts.

I turn now to look at the facts of this case. On Thursday,

the 9th of November, 1972, Mr. Stephens who is by profession a haulage contractor, received an order from the Managing Director of Wong Chew Onn and Company, a firm in the import and distributive trade, to take delivery of some 1,000 bags of rice from Western Terminals Limited. As he was bidden, Mr. Stephens proceeded to Western Terminals, and there certain events took place. There are two versions given as to what took place, the version reported by Mr. Stephens and supported by Mr. Shand, who at the material date was a warehouse clerk employed to Western Terminals Limited, and the version by the defence.

In so far as there was any conflict between these versions, I accept and prefer that put forward by the defence and reject that of the plaintiffs. I do not regard the plaintiffs as persons on whom I can place reliance. Neither Mr. Stephens nor Mr. Smithson, Mr. Stephens in particular, impressed me as witnesses of truth. So that, as I say, what took place at Western Terminals, and which I find as the facts, went thus: according to Mr. Stephens he took delivery of 600 bales of rice. The reason why this was so was because he had gone there somewhat late in the afternoon. He said he got 600 bales and documents were tendered in evidence, which showed ex facie that 600 bales of rice were delivered to him. The other version, i.e. the acceptable version was that in fact 850 bales of rice were delivered to Mr. Stephens.

The procedure at Western Terminals is this: when the truckman arrives with his order, he would go to a delivery clerk - in this particular instance Mr. Stephens went to Mr. Shand, who as I say was the warehouse clerk, and Mr. Shand in his evidence said that he endorsed on the back of this delivery slip the quality of rice which was delivered, namely 600 bales. Mr. Shand admitted that he endorsed the number, and he physically checked to see that 600 bales were delivered. From the delivery clerk the truck goes to another gentleman - in this case Mr. Harris, who gave evidence on behalf of Mr. Haynes - whose duty it is to

give a gate-pass. Mr. Harris is required to check the quality of goods on the vehicle to see if in fact they accord with the delivery slip. I think that at this point there is a crucial fact. I should mention and it is that the goods cannot leave the wharf until and unless Mr. Shand authorises this.

To continue, when Mr. Stephens got out to the gate where Mr. Harris was stationed Mr. Harris signed out 600 bags of rice. At the same time he made a note at the back of the slip (and the slip was put in evidence). When the note is calculated arithmetically it shows that 850 bags, or bales of rice were delivered. The fact of the matter is that what Mr. Harris did, and I accept this as being truthful, was to check the tiers, number of rows, lengthwise, height and width, and record that, but he did not calculate the result. It was only after the truck had departed from Western Terminals that he made the calculation and discovered the error that in fact 250 bales of rice had left the warehouse. He at once contacted his supervisor and Mr. Haynes who was the Security Officer at Western Terminals.

Now Mr. Stephens, who as I said is a haulage contractor, had a list of persons to whom deliveries should be made and he had gone off to make his deliveries. Mr. Haynes, in the meantime, having learnt of the error on the part of Mr. Harris, went to Wong Chew Onn and obtained a list of the customers whom Stephens was likely to call on, in the course of his delivery round.

As a result of checking on this list, he eventually arrived at Mr. Smithson's shop, which is at 9 Prince of Wales Street. Mr. Smithson the first of the plaintiffs in this action, is a shop-keeper. Mr. Smithson had, in fact, ordered 100 bales of rice from Wong Chew Onn. When Mr. Haynes arrived at Mr. Smithson's shop, he saw rice stacked all together on the pizza. On this point there is a conflict as to how the rice was stacked. As I say, I prefer the version given by the defendants; there was no separate stacking of the rice on Prince of Wales Street and on Victoria Street as stated by

Smithson and Shand; it was all at one point. At all events, even if what Mr. Smithson said were true, namely that they were stacked on different streets, he himself had to concede that their 'separateness' was a matter of two inches, so that to the person looking on it was obvious that the rice was all stacked together. But as I said, I prefer the version put forward by the defendant.

Mr. Haynes enquired of Mr. Smithson what was the rice doing there. Mr. Smithson acknowledged that the rice was left by Mr. Stephens. I should explain that Mr. Haynes saw a quantity of rice in excess of 200 bags. Mr. Smithson claimed 100 and said the 250 had been left by Mr. Stephens who was to call back for them.

Mr. Haynes intimated to Smithson that the rice was stolen and Smithson, according to Haynes, made a comment which he Haynes denied making, namely, that he should not call the police but should await the arrival of the truckman Mr. Stephens and then they would be able to do business. Mr. Haynes would not be swayed from his duty. He tried to call the police by telephone but was not successful, so he then went off to the police station where he made a report and received certain instructions. He returned to await the arrival of Stephens. When Stephens arrived he parked the truck some distance from the shop, which is a strange fact for a man who had come to collect and reload rice. Mr. Stephens went into Mr. Smithson's shop but hurriedly made his departure. The clear suggestion being that Mr. Haynes' presence provoked his hurried departure. The fact of Mr. Stephens coming to the shop is confirmed by Mr. Smithson's evidence. Mr. Haynes went after Mr. Stephens, who as I say, had his truck parked some distance from the shop. Mr. Stephens tried to drive the truck off but was unable to start the truck, which coasted down the road for some distance. In the result, Mr. Haynes succeeded in removing Mr. Stephens from the truck and brought him to the shop.

Mr. Stephens had observed that two of the sidemen had made a precipitate departure, and not only that, but another curious fact, in the cab of the truck was one of Mr. Haynes' security officers, who was attempting to hide himself under the dash board.

In due time Detective Cole came on the scene and a report was made to him. All these events were recounted, and Detective Cole made certain enquiries of the parties who were there. There was no denial as to the statement that Mr. Smithson is alleged to have made - it was made in the presence of Stephens and there was no denial on his part. So, what did Cole do? Cole took Mr. Stephens off to the station where he was detained and to make further enquiries. Thereafter, Cole having been to Western Terminals and spoken to persons there, went to Wong Chew Onn and got certain lists and in due time he arrested and charged Stephens, on charges of conspiracy and larceny. He obtained warrants for the arrest of the other two gentlemen. Smithson was arrested on warrants charging conspiracy and receiving stolen goods, and Shand, the warehouse clerk, for conspiracy and larceny. They were tried in the Resident Magistrate's Court, Sutton Street, where they were acquitted. I am wholly unaware as to the reason for the acquittal, but it matters not; my own observation is that they must have been indeed very fortunate persons.

So I consider, first of all, Mr. Smithson's case. In this case, as I already said, the claim for false imprisonment fails for the reason I have given, namely, that they were arrested on a warrant.

Was there reasonable and proper cause for the prosecution and obviously for the arrest and the imprisonment? I say at once that the onus is on the plaintiff who must prove the absence of reasonable and probable cause. As I understand the law, he must show the circumstances on which the prosecution was instituted; it is not enough to show that on the true facts there was

no criminal liability against him, unless it appears that those facts were in the personal knowledge of the defendant. See Clerk & Lindsell, 13th Edition, paragraph 1902.

I now look at Smithson's case. What did the police know of Smithson? I prefer to look at it from the defence point of view, as a matter of convenience. At the time when Smithson was arrested the police had evidence that he had in his possession 250 bales of stolen rice; Haynes came there and saw it; Cole came there and saw 250 bales of rice. The rice was stacked in a position from which it was reasonable to infer that Mr. Smithson had taken them under his control. In fact, it is significant to observe that Smithson himself must have thought so. He made two comments which would suggest this: he said that Stephens was safely able to leave the rice where he did, because persons living around would think the rice belonged to him and would not therefore move it; and also that he, Mr. Smithson, counted the rice.

It seems a rather curious fact that a man asked to keep an eye on a quantity of goods, would put himself to the trouble of physically checking 250 bags; it is not only curious, it is incredulous and suggests that Smithson was a party to the conspiracy and had taken the bags under his control. At any rate there was reasonable and proper cause for assuming his control.

The police also had evidence, because Cole was present when the information was given that Smithson had said that Haynes should await the arrival of Mr. Stephens and then upon his arrival they would do business. There again, those are facts which would give reasonable and probable cause for coming to the conclusion that Smithson was part of this conspiracy. What is important is that the evidence that is necessary is not such evidence as would inevitably satisfy a jury so that they feel sure; a prima facie case is enough. On the facts that the police had at the time the prosecution was initiated, they had

reasonable and probable cause to issue the warrant and prosecute him on the charges which I have set out.

In so far as the case of Shand is concerned, what is the evidence which the authorities had? Again, I would point out that the onus is upon the plaintiff to prove the absence or reasonable and probable cause. I do not think that Shand succeeded in this, and I do not accept the submission of Mr. McCaulay, that there was no cause, reasonable or otherwise to charge Shand. There was in my view, cause to charge Shand. The police had in their possession evidence that 850 bales of rice, which Shand had counted had left the wharf and documents which Shand admitted he signed, showed 600 bales. Shand admitted physically checking this. That is a clear inference that Shand had knowledge and was concerned in the removal of the rice from the wharf. At all events it supplied reasonable and probable cause for holding that Shand was involved in the removal of this rice from the wharf dishonestly.

In so far as Stephens is concerned, what did the police do? What was the evidence against Mr. Stephens? The police had evidence, as did Haynes, that he attended at the wharf; Haynes saw him there; that he had left with 850 bales of rice, although only 600 were authorised for delivery. They knew that he had left 250 bales at Smithson's - and at the time when he was arrested, that is formally charged at the station, that he had made delivery of 600 bales of rice to all the customers and 250 bales was what remained. This arises from the evidence of Mr. Wong Chew Onn, who tendered some delivery slips, which in my view showed clearly that Stephens had delivered all the rice, that is 600 bales, and the 250 which he had openly removed from the wharf remained. This is the knowledge they had at the time when Cole arrived on the scene. It is surprising as I said that a man who had come to reload his truck should park it some 20 yards from the shop. He had hurriedly departed from the shop where Haynes was. He had tried to make his escape; there were

persons around, namely another security guard, and the precipitate disappearance of the two sidemen - the police had all this evidence. So that in so far as the detention, the keeping of Mr. Stephens in custody from the 9th to the 11th was concerned, they had reasonable and probable cause for doing so.

It must be pointed out that it was not until the 11th that Mr. Stephens was formally charged with larceny and conspiracy, after the police had made further enquire^{re}rs and confirmed the number of bags delivered to customers. At that stage the other charge was made, so that on these facts the police had reasonable and probable cause to suspect that Mr. Stephens was concerned in the larceny and in the conspiracy, and the further information between the 9th and the 11th confirmed this.

Mr. McCaulay argued a point of law, which I must deal with - or rather, there are two points of law in so far as the Stephens' case is concerned, with which I must deal. One relates to the position of Mr. Haynes, his responsibility for the imprisonment of Mr. Stephens from the 9th to the 13th, because that is the time when Mr. Stephens was bailed. I refer to the pleadings. The cause of action, in so far as Haynes is concerned is his responsibility for the detention between the 9th and 13th when Stephens was bailed. Mr. McCaulay argued, and I put his submissions as shortly as I can, that Haynes was the person who caused the arrest of Mr. Stephens; in other words, that the arrest of Stephens was not on the initiative of the police officer; the police officer exercised no discretion. Dr. Barnett argued contra, that Haynes did not cause, did not direct, did not authorise the arrest. Both counsel cited authority to support their respective contentions. Mr. McCaulay referred to Stonehouse & Elliott 101 E.R. 571 and Christie v Leachinsky (1947) A.C. 573. Dr. Barnett called my attention to Austin v Dowling (1870) L.R. 5 C.P. 534 and Chubb v Wimpy & Co. (1936) 1 All E.R. 69.

It was accepted by both sides, however, that the matter was one of fact, not law. If it were the fact that Mr. Haynes

authorised, or directed the arrest then he would be liable for false imprisonment. If a charge is made to a police constable and he thereupon makes an arrest, the party making the charge, if liable at all, would be liable for false imprisonment on the ground that he has directed the arrest and that it was his own act and not the act of law. Both counsel accepted this as being good law, so one has to look at the facts of this particular case and see what did in fact take place.

As I understand the facts in this case, Mr. Haynes had certain information and he took that information to the police station at Allman Town, where he received certain instructions. As a result of that he returned and waited for Mr. Stephens. When Mr. Stephens came he detained him, and he made a report of what he knew, to Cole. What did Cole do? He took him into custody. To what end? To make further enquiries. Cole did make further enquiries and did not in fact charge Stephens until the 11th when he, Cole, had completed his own enquiries, and could confirm what he had already been told.

So that the facts, in my view do not show that Haynes directed or authorised the arrest of Mr. Stephens or that he had authorised and directed detention until he was bailed on the 13th. Cole acted, in my view, on his own initiative.

The second point of law which Mr. McCaulay argued, and I must say he did so with an assiduity worthy of a more arguable case - he endeavoured to show that in Jamaica a police constable does not have at common-law the power to arrest a citizen on reasonable suspicion that a felony has been committed. He submitted that the Constabulary Force Law is definitive of the powers of ~~avert~~^{arrest} of a police constable. In my view, this submission is quite unsustainable. There was no authority cited for this novel proposition. Such as were cited by Mr. McCaulay show that where a Code has been enacted on a particular subject, it is that Code to which one must look and not glosses or interpolations from the Common Law. The Constabulary Force Law

does not codify the subject of arrest by police constables. The Constabulary Force Law in so far as arrest is concerned, does not cover the position at common law, and as I understand the law, there is a presumption that the common law is not abrogated unless the Act in question expressly so states. If what was put forward by Mr. McCaulay were accepted, the startling position would be that a constables's powers of arrest, vis-a-vis the citizen, would only be more extensive to this degree, that he could arrest where he found a citizen committing a summary offence, while the citizen could not.

As I say, that is a proposition which I cannot accept and I think I am in respectable company. The view I hold is a view which was held, certainly in 1954, and I refer to the case of R. v. Owen Sampson 6 J.L.R. 292 and I quote from page 295:

"The question of whether the Constable was entitled at common law to arrest the accused was not argued before us, but we have considered this question [.....].⁷ A constable has power, at common law, to arrest without warrant on reasonable suspicion of a felony having been committed; but he has no power to arrest for a misdemeanour, unless a breach of the peace has been committed in his presence or there is reasonable ground for supposing that a breach of the peace is about to be committed:

Apart, however, from powers of arrest at common law or under the provisions of section 3 of the Towns and Communities Law, there is another statutory provision conferring powers of arrest without warrant upon police constables

and then he refers to s. 18 of the Constabulary Force Law.

A police officer in this country has undoubtedly, in my judgment a power of arrest at common law upon reasonable suspicion that a felony has been committed. So that when Constable Cole held Mr. Stephens at the shop and took him off to the police station, he had reasonable and probable cause for doing so and he had the power at common law to do so.

This being so, there must be judgment for the defendants. It is wholly unnecessary then to consider the question of damages. I observe, parenthetically, that where exemplary damages are being claimed, and they were being asked for by Mr. McCaulay, they must be expressly claimed. That was not done in this case.