IN THE COURT OF APPEAL
R. M. CIVIL APPEAL NO. 32/71

BEFORE: The Hon. Mr. Justice Luckhoo, J. A.
The Hon. Mr. Justice Fox, J. A.
The Hon. Mr. Justice Graham-Perkins, J. A.

ELIZA SNOW - Plaintiff/Appellant

vs.

SEPTIMUS CRADDOCK - Defendant/Respondent.

Mr. H. H. Gayle for Plaintiff/Appellant.
Mr. W. B. Brown for Defendant/Respondent.

October 13, 1971.

FOX, J. A.: This case illustrates the unhappy and negative use which may be made of the machinery of justice by the citizens of this island. Mr. and Mrs. Snow are a married couple. On the 5th October, 1968, they lived at 48 Slipe Rd., St. Andrew. They occupied an upstair room in a building on these premises. Mr. Septimus Craddock occupied an adjoining upstair room. Both rooms opened on to a common verandah. At some time prior to the 5th October, 1968, what was described as "indicted feelings" developed between Mr. and Mrs. Snow on one side and Mr. Craddock on the other. The phrase "indicted feelings" (indicted - indictive - vindictive) is well recognized and frequently used amongst a certain class in the community to describe a deterioration in the relationship between persons. The "indicted feelings" here arose as a consequence of a promise made by Mr. Craddock to give evidence of behalf of Mr. and Mrs. Snow in a case they had against their common landlady. This promise was apparently not kept by Mr. Craddock; hence the development of "indicted feelings." The disharmony in the relationship between Mr. and Mrs. Snow and Mr. Craddock deteriorated further to a stage which was described by a phrase, also well known in Jamaica, as "bad blood."

On the 5th October, 1968, the disagreement between the parties erupted

in an altercation. This commenced on the common verandah and involved all three persons in trifling physical conflict. As a consequence of this incident, a series of proceedings were commenced in the courts of the island. There was first of all a petty sessions case in which, as it appears from the printed record, Mrs. Snow brought up Mr. Craddock for common assault. On the 18th December, 1969, a case of wounding against Mr. Snow, in which Mr. Craddock was the plaintiff, was disposed of. Mr. Snow was acquitted of the charge. Following upon these criminal proceedings against Mr. Snow for wounding, he became the successful plaintiff in an action for malicious prosecution against Mr. Craddock.

The civil action for assault and trespass, out of which these proceedings on appeal arise, was filed on the 21st November, 1969. Mrs. Snow was the plaintiff and Mr. Craddock was the defendant. The claim was for damages for assault and battery on her and for trespass to her premises and damage to crockery in her room. When the action came on for trial before the resident magistrate for St. Andrew, counsel for the defendant, Mr. Bentley Brown, stated, as he was required to do by the Resident Magistrates Law, the defence to the action. As stated, the defence was in two parts:

(a) - a statutory defence under the provisions of section 37 of the Offences against the Persons Law, chapter 268 and

(b) - a denial of the assault and trespass.

During the cross-examination of Mr. and Mrs. Snow, suggestions were confined to the second defence; no suggestion relating to the first defence was made to them. Mr. Craddock then gave evidence in support of the second defence. At the end of his examination in chief, some attempt was made to provide a factual basis for the statutory defence which was stated. The record contains this passage:

"Husband brought me up in petty sessions at Halfway Tree 15/12/68. Mr. Jones for her for assault. Made it up and paid costs £5. 1/-. She has now sued for the same. I did not touch her."

This is the only material in the printed record which is relevant to the

statutory defence stated. As Mr. Gayle pointed out in making his submissions on behalf of Mrs. Snow, the statutory defence required either (a) the production of a certificate by Mr. Craddock that he had been tried for a common assault in the petty sessions court and had been either acquitted or convicted or, (b) proof that he had been convicted in the petty sessions court for common assault and had paid the whole amount adjudged to be paid or had suffered imprisonment in lieu thereof. Whereupon "in every such case, he shall be released from all further or other proceedings, civil or criminal, for the same cause." (S. 37, Cap. 268). The defence had shown neither (a) nor (b), and the statutory plea in bar therefore failed.

Mr. Gayle contended that the word "husband", which was in the typed passage from the notes of evidence, was an obvious error, and that what was intended was the word "wife." The ground for this contention was the statutory defence as pleaded and the whole context of the passage itself. Mr. Brown did not concede the error. In our view there is no answer to Mr. Gayle's contention that this was an obvious error. We have no doubt that what was meant to be stated in the notes of evidence was that the wife, Mrs. Snow, had brought up Mr. Craddock for assault in the petty sessions court.

The magistrate gave judgment for the defendant, Mr. Craddock. In his reasons for judgment, he summarized the evidence given in support of the cases of the two adversaries. In a final paragraph he stated his findings thus:

> "I found as a fact that 'bad blood' existed ~~existed~~ between plaintiff and her husband on the one hand and defendant on the other hand. Even assuming there was an assault on the plaintiff, I did not accept that the husband was a witness thereto. It was clearly a concocted story between them stemming from the bad blood. I accepted the defendant's version as being the more probable and so found for him."

The complaint on appeal was that although the decision of the magistrate

as to which version of the incident he should accept was based on the probabilities which emerged from the evidence, he had overlooked two probabilities which indicated a conclusion contrary to the one at which he arrived. These two probabilities were identified by Mr. Gayle as, firstly, an admission by Mr. Craddock that he had assaulted Mrs. Snow which arose out of his evidence that he had made up the petty sessions case of common assault brought by her against him and paid costs £5. 1/-. Mr. Gayle conceded that cases are frequently settled or 'made up' in the petty sessions court for reasons other than those which express an admission of guilt. He recognized that settlements frequently occurred in these courts because one party or the other found it convenient to do so, but he submitted that in this particular case, when the admission of a settlement of the case is considered against the background of the statutory defence stated, the only reasonable conclusion which unequivocally emerges is that Mr. Craddock was admitting that he had assaulted Mrs. Snow.

The second probability which in Mr. Gayle's submission was overlooked by the magistrate was in relation to his finding that he "did not accept that the husband (Mr. Snow) was a witness thereto, it was clearly a concocted story between them stemming from the bad blood." Mr. Gayle pointed out that the magistrate had before him proof that in the wounding case, and in the malicious prosecution case, the findings of two separate courts were against the conclusion that Mr. Snow was the villain in the incident on 5th October, 1968. To the contrary, the decision of these courts tended to show that he was the innocent party. In addition, Mr. Gayle pointed out that the magistrate misconceived the evidence when he said that he did not accept that Mr. Snow was a witness to what had happened because, on the case of Mr. Craddock himself, Mr. Snow was present and participated in an attack against him.

We agree with these submissions of Mr. Gayle. It is clear that the magistrate decided this case on the basis of the probabilities which emerged in the evidence. In doing so, it is beyond question that he ignored these two import-

ant probabilities which suggest a contrary conclusion. As well, he misconceived the evidence on an important point. The reasons for his judgment are therefore palpably unsatisfactory. In accordance with well-recognized principles, the issues of fact which arose for his decision therefore become at large for the decision of this court. We notice that nowhere in his judgment does the magistrate purport to base his conclusions on the demeanour of the witnesses. He accepted Mr. Craddock's version "as being the more probable." This court is therefore in as good a position as the magistrate to arrive at a decision by means of the same criteria which he employed, namely, the probabilities in the evidence.

In our view, the probabilities which emerged from the printed record distinctly favour the case for the appellant. The decision of the magistrate cannot stand. It must be set aside. In relation to the claim for assault and battery, there should have been judgment for the plaintiff/appellant, Mrs. Snow. We consider reasonable, $10 for general damages, and $5.78 for special damages, making a total of $15.78. We think the trespass minimal and award damages in the sum of $1. The judgment of the magistrate is therefore set aside and judgment entered for the plaintiff/appellant in the sum of $16.78 with costs to be agreed or taxed. Costs of this appeal to the plaintiff/appellant, $40.

J.A.