

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 76 of 1964

BEFORE: The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody

BETWEEN LLOYD WILLIAMS PLAINTIFF/APPELLANT
AND THE ATTORNEY GENERAL and DEFENDANTS/RESPONDENTS
DETECTIVE CORPORAL L. SHIRLEY

Mr. M.S. Tenn for the Plaintiff/Appellant
Mr. B.J. Scott for the Defendants/Respondents

24th & 26th November, 1965
and 18th February, 1966

HENRIQUES, J.A.,

This appeal and cross appeal arise out of an action for damages for assault brought in the Resident Magistrate's Court for the parish of St. James against the respondents - the Attorney General as representative of the Crown and Detective Corporal Shirley, a member of the Jamaica Constabulary Force, in which the learned Resident Magistrate found in favour of the plaintiff/appellant against the defendant/respondent, Shirley, and awarded him £10 damages. The learned Resident Magistrate also found in favour of the Attorney General, but deprived him of his costs. The plaintiff/appellant now appeals in respect of the quantum of damages and the respondent, the Attorney General, against the order depriving him of his costs.

According to the evidence in the Court below, the plaintiff/appellant went to Montego Bay Police Station on the 20th July, 1963, to seek bail for a friend of his who had been arrested. This friend obtained bail, and they were leaving the Station together when the Station guard ordered them out, using some disgusting language to the plaintiff/appellant's companion, whereupon the plaintiff/appellant reprimanded him. The defendant/respondent, Shirley, who happened to be in the Station, then exchanged words with the plaintiff/appellant and taking hold of him, pushed him against a wall, which

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came in contact with the right side of his head and also his right elbow. After further words, the respondent then hit plaintiff/appellant twice in his stomach, and then holding him by the back of the neck, pushed him out of the Station. The defendant/respondent's version was a complete denial of having committed any assault at all. The learned Magistrate, having accepted the plaintiff/appellant's version of the incident, entered judgment in his favour for the sum of £10, but subsequently stated, in her Reasons for Judgment, "on re-consideration, this amount could be heavier." Learned counsel for the appellant has urged that the amount awarded is too low and invites the Court to review the quantum of damages.

Learned counsel for the Attorney General has submitted the appellant is not entitled to exemplary or punitive damages.

To my mind, this was a high-handed and unwarranted attack on the plaintiff/appellant, and, in my view, the damages awarded were inordinately low. I would, therefore, vary the amount awarded by the Magistrate to the sum of £25, a figure which I feel the circumstances justify.

In her Reasons for Judgment, the learned Resident Magistrate, when dealing with the question of the costs of the Attorney General, stated, "There was one representation of both defendants by the Crown Solicitor. Substantially the Attorney General's defence depended on the defence of the defendant Shirley. I accordingly entered the judgment for the defendant Attorney General with no order as to costs." Counsel for the Attorney General had submitted that there were, in fact, two separate defences, and that following the general rule, a successful defendant ought not to be deprived of his costs. He cites *Beaumont v. Senior* (1903) 1 K.B. 282. Mr. Tenn, on the other hand, stated that he cannot support the decision of the learned Magistrate on the reason she has given, but urges that the proper order, in the circumstances, is what is known as a "Bullock" order. Vide *Bullock v. London General Omnibus Co.* [1907] 1 K.B. 264.

Beaumont v. Senior decided that where two defendants are jointly represented by the same solicitor, and judgment with costs is
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given in favour of one defendant and against the other, the successful defendant is, in the absence of any agreement between him and his co-defendant as to how the costs are to be borne inter se, entitled to recover from the plaintiff half the costs of the defence. I think that principle applies to the instant case, and that the Attorney General is entitled to half the costs of the defence and I would accordingly so order.

I would therefore allow the appeal of the plaintiff~~appellant~~ and I would order that judgment be entered for him in the sum of £25 with costs £12 here and in the court below. I would also allow with costs £12, the cross appeal of the respondent Attorney General as to costs, and order that he be entitled to recover half the costs of the defence in the court below.