

No. 719

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. NO. 93/64

BEFORE:           The Hon. Mr. Justice Henriques (Presiding)  
                  The Hon. Mr. Justice Waddington  
                  The Hon. Mr. Justice Moody (Acting)

RUBY WILLISTON                   ..           Plaintiff/Appellant

v.

THE ATTORNEY GENERAL &  
VINCENT MOWATT                   ..           Defendants/Respondents

Mr. D. McFarlane for the Plaintiff/Appellant

Mr. E. Grant for Defendants/Respondents

26th November, 1965

WADDINGTON, J.A.,

This is an appeal from the judgment of the Resident Magistrate for the parish of St. Andrew, whereby he entered judgment for the defendants, in an action brought by the appellant to recover damages for assault and for false imprisonment.

The case for the appellant was that on the morning of the 15th of February, 1964, she had a quarrel with another woman who lived in the same premises in which she lived at 25 Slipe Road, and that arising out of that quarrel, the respondent, who is alleged also to live on those premises with the woman with whom the appellant quarrelled, namely, Hazel Hastings, intervened and assaulted the appellant by hitting her with his fist on the left side of her chest and kicking her in her stomach, and dragging her along the ground, and finally arresting her for using indecent language.

He arrested her for using indecent language and also for assaulting him in the execution of his duty. I should have mentioned that the respondent is a Special District Constable. The criminal proceedings, that is to

/say, both.....

say, both informations, were subsequently dismissed in the Petty Sessions Court.

The respondent in his defence said that he was returning to these premises that morning, at about 7.45, and whilst he was standing at the front of the premises, that is to say, on the street, he saw the appellant and heard her using indecent language. He warned her to desist, but she refused, and he thereupon arrested her, and with the aid of another Constable who was passing, took her to the Admiral Town Police Station, where she was duly charged with these offences.

The learned Resident Magistrate found that the plaintiff's case was tainted with suspicion and he said that he did not believe her story. He found as a fact that the second defendant, that is to say, the respondent Mowatt, had not assaulted the appellant. He also found that the appellant had used indecent language and also had assaulted Constable Mowatt in the execution of his duty, and on that finding he entered judgment for the defendants with costs and Solicitor's costs.

Three grounds of appeal have been urged before this Court, but we consider it necessary to deal only with the first ground of appeal, which was, that having regard to the second limb of the defence, the learned Resident Magistrate erred in excluding evidence by the plaintiff of a previous incident of recent occurrence, to prove malice and the absence of reasonable and probable cause. The second limb of the defence referred to, is the statement of the defence in the Court below which was -

" If an assault was committed it was in lawful execution of the duty of the second defendant and without malice and with reasonable and probable cause."

/It appears...

It appears from reading the transcript of the notes of evidence, that when the appellant was giving her testimony she started to give evidence of an incident which was alleged to have occurred on the 1st of February, that is to say, 14 days before the incident in respect of which this action arose. Mr. McDonald, the Solicitor for the defendants, thereupon objected to that evidence being given, and Mr. Barnes, the appellant's Solicitor submitted that the evidence of the prior date was relevant, in order to prove malice and an absence of reasonable and probable cause. The learned Resident Magistrate sustained the objection and that evidence was excluded.

Now this action was one against a Constable who was purporting to act in the execution of his duties, and it was therefore incumbent upon the appellant to allege in her declaration and to prove that the respondent was acting, either with malice or with an absence of reasonable and probable cause. It appears to us, therefore, that it was highly relevant for the appellant to give some evidence of malice, and it is our view that the learned Resident Magistrate erred, when he upheld this objection by Mr. McDonald and excluded the evidence of the incident on the 1st of February.

It is clear from the cross-examination of the respondent, that whatever occurred on the 1st of February culminated in proceedings having been brought by the respondent against the appellant. Those proceedings were, a prosecution by the respondent of the appellant for using indecent language and an action by the respondent against the appellant. As I have said before, it was, in our view, very material and relevant for the learned Resident Magistrate to have admitted evidence of the incident on the 1st of February, as it might very well have been that had that evidence been given, it might have affected the credibility of the respondent Mowatt, and the learned Resident Magistrate might have come to a different conclusion in respect of the subsequent events of the 15th of February.

/It is.....

It is our view that this was a grave miscarriage of justice, in so far as the appellant was concerned, and although we have been asked by learned counsel for the respondent to say that having regard to the fact that some evidence was given in cross-examination of the respondent Mowatt as to the culmination of the events of the 1st of February, that this Court ought to exercise its discretion and apply the proviso to Section 251 of the Judicature (Resident Magistrates) Law, we do not think that this is a case in which the proviso should be applied.

In the circumstances, the appeal will be allowed and the Court orders that there should be a new trial. The appellant will have the costs of the appeal fixed at £12.

*G. E. Waddington*  
JA

~~Mr~~ Henriques, J.A.:

I agree.

~~Mr~~ <sup>J.A.</sup> Moody, (Acting):

I agree.