

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW

SUIT NO. C. L. 125 OF 1992

BETWEEN CHRIS BURNETT PLAINTIFF
A N D ALBERT CLARKE 1st DEFENDANT
A N D DISTRICT CONSTABLE GAYLE 2nd DEFENDANT

**Mr. Rudolph Smellie, Attorney-at-Law for the Plaintiff instructed by
Daly, Thwaites & Company.**

**Mrs Arlene Ferguson-McNair and Mr. John Francis, Attorneys-at-
Law, for the 2nd defendant, instructed by the Director of State
Proceedings.**

The 1st defendant not appearing and not represented.

**HEARD: 24th May, 2000,
29th June, 2000,
9th February, 2001**

RECKORD, J

This is an action for assault, the particulars as set and in the statement of claim being that on or about the 30th day of January, 1990, the first named defendant wrongfully and intentionally assaulted the plaintiff by stabbing the plaintiff in his left breast and on other parts of his body with a knife and

that the second named defendant aided and abetted the assault, by reason of which the plaintiff sustained severe personal injuries and has suffered loss and damages.

THE PLAINTIFF'S CASE

On the 30th of January, 1990, the Plaintiff said he was walking along Derrymore Road accompanied by another man. He heard someone running behind him and when he looked around he saw the 1st defendant with a knife which he pushed into the left side of the Plaintiff from behind. He ran off, stopped and turned around and was crouching down. He asked 1st defendant why he stabbed him as he did not know him and he replied that he had taken away the 1st Defendant's juice cart.

In the meantime the 2nd defendant was pointing a gun at the plaintiff telling him not to move. The 1st defendant cut him on the right side of his upper lip. He grabbed the knife. The 1st defendant dragged it away and he received cut on the 2nd finger of his right hand.

The Plaintiff was taken to the Kingston Public Hospital where he was admitted. That same night he was taken to the operating theatre and had

surgery. He spent one week as a patient in the hospital. He was in pain for about one month. The clothes he had on were destroyed. He lost his pants valued at \$400.00 - shorts \$140 - underpants \$50.00 - merino \$20.00. He paid hospital costs of \$1,500 and \$50.00 for medication.

After discharge from hospital he had to return for treatment on about four trips at \$15.00 per trip - Doctor's fee \$27.00 each occasion. He was not fit enough to go back to work until June 1991. He did not get back his job as a steel worker at Construction Engineering where he earned \$350.00 per week. He paid \$150.00 for medical report from Dr. Smith.

The plaintiff said he did not know either of the defendants before that incident.

He denied that he had a knife. The district constable never took knife from him. He did nothing to prevent the 1st defendant from attacking him. He was within arms length of the plaintiff pointing the gun at his head and telling him not to move. He was scared when the gun was pointed at him.

DEFENDANT'S CASE

He was a district constable attached to the Half-Way-Tree police station. In the afternoon of the 20th of January, 1990, he was on foot patrol alone on Westminster Road and saw four men having an altercation. He did not know them before. The plaintiff and the 1st defendant had knives. He approached them and drew his service revolver as the men had drawn knives in their hands. He shouted "police, drop the knife." After a second shout they both dropped the knives on the ground. As they did so the plaintiff shouted that the 1st defendant had cut him. He picked up the knives and observed that the plaintiff was bleeding profusely. He later assisted in taking the plaintiff to the Kingston Public Hospital where he was admitted. The 1st defendant Clarke was charged for wounding the plaintiff, pleaded guilty in the Half-Way-Tree resident magistrate's court and was fined \$2000.00 or 30 days imprisonment.

It was not true that he stood there and let the 1st defendant cut the plaintiff three times. He denied he was there to assist Clarke in an illegal exercise. He never saw when the injuries were inflicted – he never saw the plaintiff with three injuries as stated in the medical report.

When the hearing resumed on the 29th of June, 2000, both parties agreed to submit their final submissions in writing by the 14th of July, 2000. To date neither party has done so despite a reminder from the registrar. I have therefore prepared this judgment without counsel's final submissions.

FINDINGS

In the medical report by Dr. G. W. Smith (F.R.C.S) Consultant Surgeon at the Kingston Public Hospital the following injuries were discovered.

1. 2.5 cm laceration to the interdigital and cleft right hand.
2. 3 cm laceration to the right upper lip
3. 3 cm laceration to left abdomen with evidence of intra-abdominal bleeding

In the doctors opinion, "His injuries were serious but apart from his scars no permanent disability is anticipated."

From the evidence of the 2nd defendant himself the 1st defendant pleaded guilty to unlawfully and maliciously wounding the plaintiff. If as the 2nd defendant says that both the plaintiff and the 1st defendant were stabbing at each other with knives, I seriously doubt that the 1st defendant

would have made such a plea especially when he had a strong defence of self defence with corroborative evidence coming from the district constable himself.

The 2nd defendant testified that after the men had dropped their knives that the plaintiff called out that he got cut and then he observed that the plaintiff was bleeding profusely. In his defence filed he stated at paragraph 4, that after seeing the men stabbing at each other, he drew his firearm, made enquiries and saw the plaintiff bleeding profusely from a wound on his left side. He then disarmed the men of their weapons. His viva voce evidence is in violent conflict with his defence filed. Again, in his sworn evidence he saw only one injury. However, from the plaintiff's evidence supported by the medical report, there were three injuries, all of which the doctor said were serious. Even if the district constable may not have seen the injury on the finger of the right hand, how could he have failed to see the one on the upper lip.

I cannot rely on the 2nd defendant. Of the evidence of these 2 parties, I find that of the plaintiff to be more credible. I accept the evidence of the plaintiff that the 1st defendant without any reasonable excuse attacked and

wounded the plaintiff with his knife and that the 2nd defendant, the district constable who was along with the 1st defendant, acted in concert with the 1st defendant and allowed him to inflict these injuries on the plaintiff.

Accordingly , on a balance of probabilities there shall be judgment for the plaintiff against both defendants.

Special damages is assessed as follows:

Transportation	\$60.00
Clothes destroyed	620.00
Hospital charges	1500.00
Medical Report	150.00
Medication	50.00
Visit to Doctor	<u>108.00</u>
	\$2,488.00

The claim for loss of earnings for 100 weeks (about 2 years) is not supported by the medical report. In March of 1990, he was suffering from a slightly infected upper lip. Following treatment with antibiotics and further examination on April 23, 1990 "he was completely asymptomatic and

examination revealed no significant abnormality. He was discharged from the clinic for further follow up”

I am therefore prepared to allow no more than 13 weeks for loss of earning at \$350.00 per week = \$4,550.00.

For general damages, the nearest case I have seen reported is found in Harrison's Case Note Issue 2 at page 74 – Melvin Fenton v Daniel Lewis heard on the 12th of July, 1991. In that case the plaintiff had lacerations to the face, right side of neck and right knee with loss of skin. He spent approximately one week in hospital where he was treated with antibiotics and analgesics. There were no resulting disability or deformity. Langrin J, awarded \$35,000.00 for pain and suffering and loss of amenities. That award is now equivalent to
$$\frac{[1342.6 \times \$35,000.00]}{219.2} = \$214,375.00$$

It does appear that the injuries suffered in the instant case are more serious than the case under reference in that the plaintiff was bleeding profusely from the injury to his side. The doctor found intra abdominal

bleeding. During surgery a 3 cm laceration to the diaphragm was found. This was repaired and the other lacerations were sutured.

In summary, special damages assessed at \$7,038.00 with interest at 6% p.a. from the 30th January 1990 to today.

General damages assessed at \$300,000 for pain and suffering and loss of amenities with interest at 6% p.a. from the date of the service of the writ on 14th April, 1992 to today.

Costs to the plaintiff in accordance will schedule A.

[Counsel on both sides at the reading of this judgment informed the court that their written submissions were in fact submitted.]