

v Judgement Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. C.L. NO39 OF 1987

BETWEEN	GLADSTON NELSON	PLAINTIFF
AND	THE ATTORNEY GENERAL	FIRST DEFENDANT
AND	ACTING CORPORAL RENDELL JOHNSON	SECOND DEFENDANT

W.B. Frankson, Q.C. and Mrs. Margaret Forte for Plaintiff

W. Wilkins and Frank Williams for Defendants.

October 25, 26 and 27, 1989, November 12 and 14, 1990

CHESTER ORR, J:

In this case the Plaintiff claims damages for False Imprisonment, Assault, Malicious Prosecution, Detinue and/or Conversion of his cows and motor car.

The case for the Plaintiff in brief is that on Sunday, the 13th April, 1986, the Second Defendant, Acting Corporal Johnson, Sergeant Campbell and Detective Ross went to the Plaintiff's home at Benbow, St. Catherine, between 7.30 - 8.00 A.M. The Plaintiff a farmer was absent at his farm. His wife was present. The officers enquired for the Plaintiff and were advised that he was at his farm. They went towards Franseco McLean a neighbour. Sgt. Johnson called to him, handcuffed him and told him to show them where the Plaintiff's farm was located. McLean was placed in the police jeep and they went to the Plaintiff's farm which is situated at the foot of a hill. The Plaintiff was milking a cow with its calf tied nearby. Sgt. Campbell summoned the Plaintiff who went to him. When the Plaintiff sought the reason for the visit by the police he was told he would be advised when he went to the Police Station. He was handcuffed together with McLean and taken towards the police jeep. On the way the police decided to carry his cows and Acting Corporal Johnson returned for the cows. They proceeded to the Guy's Hill Police Station. On the way Acting Cpl. Johnson decided that the Plaintiff and McLean should lead the cows. They were ordered to do so which they did.

At the Police Station both the Plaintiff and McLean were placed in custody in a cell.

The Plaintiff stated that he was assaulted twice. On the 13th April Acting Corporal Johnson hit him with a stick on the right side of his head and right shoulder. This resulted in pain and bruising. He gave no details of the second assault. McLean stated that the Plaintiff was assaulted twice. On the 13th April, Johnson hit him with a stick on the right side of his head and right shoulder.

On Wednesday the 16th Johnson and the Sergeant beat the Plaintiff by hitting him with sticks. A medical certificate was tendered. McLean was released on the 16th with no charge laid against him.

The Plaintiff was detained and on the 16th taken to the Resident Magistrate Court at Linstead where he was advised for the first time that he was charged for Unlawful Possession of the Cows. He was remanded in custody by the Court and on the 23rd April, he was acquitted of the charge.

During his incarceration his crops and farm suffered damage as a result of lack of care.

The Plaintiff left his motor car parked on his premises. During his incarceration the Plaintiff's wife saw Acting Cpl. Johnson driving the car on the road towards the police station where it remained until sometime after the Plaintiff's release.

On the 24th April, the Plaintiff and his brother went to the Police Station to recover the car but were chased away by Johnson. Plaintiff consulted his Attorney who gave him a letter which he presented to Cpl. Johnson and secured the release of his car.

The Plaintiff denied that he had been questioned about the ownership of the cows by the police and had given conflicting accounts which led to his arrest. Indeed he asserted that no questions had been asked of him about the cows. The receipt for the purchase of the cows was tendered in evidence.

The case for the defence was that Sgt. Campbell had received certain information in respect of larceny of goats as a result of which, Sgt. Campbell,

Acting Cpl. Johnson and Detective Acting Cpl. Ross had gone to the Plaintiff's home. They went to Franseco McLean's home. He was absent. They went to the Plaintiff's home. The Plaintiff was absent but Mrs. Nelson and Franseco McLean were there. They asked for the Plaintiff and received information that he was at his bush. Sergeant Campbell told McLean to accompany the police party to indicate his whereabouts. McLean complied.

On reaching the brow of a hill the Plaintiff was seen milking a cow with a calf tied nearby. The Plaintiff looked in the direction of the police, got up and attempted to run by taking two or three steps. Sgt. Campbell and Acting Cpl. Johnson drew their firearms and shouted to the Plaintiff that he should not run. They went to the Plaintiff who appeared to be very frightened. Sgt. Campbell asked the Plaintiff how he came in possession of the cows. The Plaintiff gave contradictory replies and could not produce a receipt. Neither the Plaintiff nor McLean was handcuffed.

The Plaintiff was taken to the Police Station where he said he bought the cows from one Bunny McLean some three weeks previously at about 9 O'clock at night. The Plaintiff was placed in custody but not formally charged until the 16th April when he was taken to Court.

Acting Corporal Johnson said he waited until the 16th to charge the Plaintiff because he had been advised that once charged the Plaintiff had to be taken to Court within 24 hours and the police were then experiencing problems with transportation.

The Plaintiff was taken to the Linstead Resident Magistrate Court where he was remanded until the 23rd April.

The cows had been tied to a tree in the police Station compound which was surrounded by barbed wire. On the morning of the 15th April, the cows were missing. The wire had been cut as also the ropes. Acting Cpl. Johnson admitted under cross-examination that no one had been detailed to guard the cows.

On the 16th April Acting Cpl. Johnson in company of other Constables saw the Plaintiff's motor car being driven along the main road at Benbow.

He signalled the driver to stop but instead the driver increased his speed. The police gave chase and the car was found abandoned. The following day Acting Corporal Johnson advised the Plaintiff who was then in custody of the situation re the car, and indicated he could retrieve same on production of proof of ownership. The Plaintiff produced the letter from his Attorney but did not provide proof of ownership until the 30th April when the car was released.

FINDINGS

I accepted the evidence of the Plaintiff and his witnesses, as regards the events leading up to his arrest.

I reject the evidence that the Plaintiff gave an unsatisfactory account of his possession of the cows.

On my findings of fact I hold that there was an absence of reasonable and probable cause for the arrest and prosecution of the Plaintiff.

RE MALICE

The proper motive for a prosecution is to secure the ends of justice. It is of significance that no evidence was adduced as to any inquiries made of the Plaintiff or McLean concerning the goats, the alleged subject of the mission of the police.

I find that the proper motive did not exist and that Acting Corporal Johnson acted maliciously.

I find that the Plaintiff was assaulted by Acting Corporal Johnson and that the assault was without reasonable and probable cause.

I find that the police failed to exercise the standard of reasonable care demanded of them in their capacity as bailee of the cows and are thus liable for their loss from the Police Station.

I accept the evidence of Acting Corporal Johnson as to the circumstances in which he came in possession of the Plaintiff's motor car.

THE DAMAGES

The Plaintiff claimed exemplary damages.

Mrs. Forte submitted that this case fell within the category of "oppressive, arbitrary or unconstitutional actions by the servants of the government" enunciated by Lord Devlin in *Rookes v. Barnard* [1964] A.C. 1129 and followed in this country in *Douglas v. Bowen* 1974 12 J.L.R. 1544. Mr. Williams submitted to the contrary.

I am of the opinion that this case does not fall within this category and does not warrant an award of exemplary damages.

FALSE IMPRISONMENT

I agree with Mr. Williams that the Defendant's are not liable for the period of imprisonment following the remand in custody of the Plaintiff by the Resident Magistrate on the 16th April.

I award the sum of \$10,000.00 for General Damages.

For the Assault I award the sum of \$3,000.00.

For Malicious Prosecution I award \$3,000.00 for General Damages.

RE SPECIAL DAMAGES

Mr. Williams submitted that these had not been proved. He adverted to the non-production of receipts for the various items.

It is pertinent to observe that apart from the general denial in the pleadings there was no cross-examination on any of the items except those relating to the damage to the cultivation.

In light of the evidence adduced, I hold that the Plaintiff has established his loss on a balance of probabilities on such items as I shall allow.

Mr. Williams submitted further that the Plaintiff had failed to mitigate his loss.

Bankes L.J. said in *Payzu LD v. Saunders* 1919 2 K.B. 581 at J 88.

"It is plain that the question what is reasonable for a person to do in mitigation of his damages cannot be a question of law but must be one of fact in the circumstances of each particular case."

In the instant case Mrs. Nelson stated that she was not permitted to communicate with the Plaintiff while he was in custody. This evidence was unchallenged.

The Plaintiff said he saw no one with whom he could send a message in connection with his farm. Mrs. Nelson said that she was busy attending to her three children and obtaining the services of an Attorney for the Plaintiff. She had no friend whose assistance she could seek.

I hold that in the circumstances of this case the failure of the Plaintiff to take steps to preserve his crops was not unreasonable.

I disallow item (v) 260 plants of yam at \$5.00 each - \$1,300.00.

The valuator Mr. Henry stated that he saw fingerprint impressions as if the hills had been searched. This gives rise to an inference of Larceny for which the defendants' cannot be held liable.

The total award for Special Damages is therefore \$227,900.00

RE DETINUE OF MOTOR CAR

Acting Corporal Johnson realised that the car was the Plaintiff's on the 16th April.

I accept the Plaintiff's evidence that he demanded its return on the 23rd April, which Ag. Cpl. Johnson refused. The car was eventually returned on the 30th April. No evidence was led as to any loss.

I award \$1,000.00 Damages.

There will therefore be Judgment for the Plaintiff against both defendants as follows:

General Damages -	\$ 17,000.00
Special Damages --	<u>\$227,900.00</u>
Total -	<u>\$244,900.00</u>

with Costs to be agreed or taxed.