

In the Supreme Court of Judicature of Jamaica

Common Law

Suit No. C.L.S. 110 of 1976

BETWEEN Earle Patrick Stephens Plaintiff
A N D The Attorney General for Jamaica Defendant

Mr. R. Henriques, Q.C. and Mr. Anthony Levy for Plaintiff
Mr. R. Langrin, Q.C. and Mr. Douglas Leys for Defendant.

December 16, 17, 1987
February 4, 1988

ZACCA, C.J. :

This is an assessment of damages, to which the Plaintiff is entitled, the defendant having admitted liability.

The Plaintiff claims damages both compensatory and exemplary, for illegal and wrongful detention and imprisonment. He asserts that he was denied his Constitutional rights of freedom of movement and was incarcerated in detention on grounds which were false, fraudulent and deliberately concocted in order to furnish reasons for the Plaintiff's detention and unlawful imprisonment.

The Plaintiff, Earle Patrick Stephens is a member of Parliament and Minister of Government.

At the time of his detention in 1976, he was a Manufacturer, land developer and was involved in a Promotion Company. He was also a member of the Action Team of the Executive of the Jamaica Labour Party.

He is married with four children. In 1976 the children ranged in ages from 11 to 16 years.

The uncontroverted facts are these. On the 19th June, 1976 the Government of Jamaica declared a State of Emergency by the Governor General issuing a proclamation purporting to exercise powers under Section 26(4) of the Jamaican Constitution Order in Council, 1962.

On the said 19th June, 1976, the Plaintiff was attending a Jamaica Labour Party Conference at the Holiday Inn Hotel in Montego Bay. At about 3.00 p.m. the Plaintiff was taken by the police to the Coral Gardens Police Station in Montego Bay where he was questioned. From there he was taken to the Old Montego Bay Airport occupied by army personnel and placed in a cell - 10 ft. by 12 ft. The cell was exceedingly hot. At about 10.30 p.m. the Plaintiff was taken under heavy police and military guard to Camp in Kingston by a Jamaica Defence Force aircraft. The Plaintiff was then taken to an area of Camp known as Red Fence where he was stripped of his clothes and searched. At about 1.00 a.m. on the morning of 20th June, 1976 he was locked in cell No. 8 and for the first time since his detention was given a meal of bully beef and bread. Cell No. 8 measured about 9 ft. by 10 ft. In the cell was a wooden bench with a thin foam mattress, a small table and a dim light in the ceiling. Toilet facilities were provided outside some distance from the cell. The Plaintiff was not allowed to communicate with his family or his Attorney. Those in detention were allowed out for a total of one hour each day.

Although detained on the 20th June, 1976, it was not until the 25th June, 1976 that the Plaintiff was served with a detention Order. On the 28th June, 1976 the Plaintiff was served with a Notice setting out the grounds for his detention.

The Notice read :

" Whereas an Order under Regulation (23) or (34) or (35) has been made against you Earle Patrick Stephens notice is hereby given that -

- (a) the aforesaid Order has been made on the following grounds :

concerned in the preparation of acts prejudicial to public safety and public order.

- (b) You may make objections to the Order to the Tribunal established under Regulation 39 of the Emergency Powers Regulations 1976. "

On the 2nd July, 1976 the Plaintiff was served with another detention Order and another Notice in similar terms. On the 12th July, 1976 the Plaintiff was served with particulars relating to his detention. The particulars read :

" Whereas an Order under Regulation 35 has been made against you Patrick Stephens I set out hereunder the following particulars :

That from information received in March 1975 you seduced a member of the Social Development Commission to get him to remove Government files from which information was extracted and used unlawfully. That in June 1976 you instructed the aforementioned Officer to ascertain and divulge the date of the visit to Jamaica of a Head of State. "

On the night of the 27th June, 1976 the Plaintiff was interrogated between the hours of 7.20 p.m. and 11.50 p.m. He was again interrogated on the night of the 30th June, 1976 between the hours of 9.30 p.m. and 1.00 a.m.

On the second occasion he was handcuffed with a ratchet type handcuff with a chain. This chain was pulled so that the ratchet became very close against his wrist. The Plaintiff was also placed to sit on a chair with a peculiar shaped back which is designed to press into the small of the back. His complaints about the tightness of the handcuff and the chair pressing into his back were ignored.

On one occasion the Plaintiff was placed in solitary confinement for three or four days.

An application made to the Review Board was heard on the 15th October, 1976. The Plaintiff gave evidence and the Board requested to hear evidence from Captain Marsh. Soon after, on the 22nd October, 1976, the Plaintiff was served with an Order revoking his detention Order. It is reasonable to infer that this resulted from the hearing before the Review Board.

However, he was not allowed freedom of movement. On that same day, a Confinement to Place of Residence Order was served on him. He was restricted to his house between the hours of 8.00 p.m. each day and 6.00 a.m. of the succeeding day. Although allowed to go to his place of business between the hours of 6.00 a.m. and 8.00 p.m. he was restricted to a certain route as a result of a Restriction of access to area Order which was served on him also on the 22nd October, 1976.

The Plaintiff remained under house arrest until the 15th March, 1977 when the Restriction of access to area Order was withdrawn.

During his detention at Red Fence, the Plaintiff was allowed visits by his wife regularly but was allowed to see his children only on one occasion.

Despite the lifting of the access to area Order, the Plaintiff felt threatened and did not feel free to move about. He was concerned about his freedom as the State of Emergency was still in existence at that time. The Plaintiff stated that his wife and children were uncomfortable and a decision was taken to leave Jamaica. This decision was encouraged by the Assistant Commissioner of Police, Mr. L.R. Trought. Whilst in the United States, he was interrogated by the F.B.I. This was as a result of his detention in Jamaica.

He later sold his house for \$75,000.00. The replacement cost of this house would be 1.5 million Dollars. He does not now own a house. His decision to leave Jamaica and to

sell his house were determined as a result of his detention and his fear for his freedom. However, no damages will be awarded in respect of this.

As a result of his detention, his business suffered severely. His block factory had to be sold. There was a loss of \$50,000. The Promotion Company incurred a debt of \$17,000.

He also incurred legal fees of \$7,000.00, \$10,000.00 and \$19,000.00. Plaintiff's economic position had severely worsened as a result of his detention. He no longer enjoyed the facilities which existed prior to his detention. Plaintiff admitted that the economy of the Country had deteriorated in 1976.

I turn now to consider the quantum of damages which should be awarded. There is also a claim for exemplary damages. Do the facts of this case fall within the categories laid down by Lord Devlin in *Rookes v. Barnard*, 1964, 2 A.C. 1129 for the granting of exemplary damages? Lord Devlin stated that there were two categories of cases in which an award for exemplary damages could be made.

At page 1226, Lord Devlin said :

" The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category - I say this with particular reference to the facts of this case - to oppressive action by private corporation or individuals In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. "

Again at page 1227, Lord Devlin said :

" I wish now to express three considerations which I think should always be borne in mind when awards of exemplary damages are being considered. First, the Plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour. The anomaly inherent in exemplary damages would become an absurdity if a plaintiff totally unaffected by some offensive conduct which the jury wished to punish obtained a windfall in consequence.

" Secondly, the power to award exemplary damages constitutes a weapon that, while it can be used in defence of liberty, as in the Wilkes case, can also be used against liberty. Some of the awards that juries have made in the past seem to me to amount to a greater punishment than would be likely to be incurred if the conduct were criminal, and, moreover, a punishment imposed without the safeguard which the criminal law gives to an offender. I should not allow the respect which is traditionally paid to an assessment of damages by a jury to prevent me from seeing that the weapon is used with restraint. It may even be that the House may find it necessary to follow the precedent it set for itself in *Benham v. Gambling*, and place some arbitrary limit on awards of damages that are made by way of punishment. Exhortations to be moderate may not be enough.

Thirdly, the means of the parties, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages. Everything which aggravates or mitigates the defendant's conduct is relevant. "

Taking everything into account, I am satisfied that this is a case in which exemplary damages should be awarded. Following the hearing before the Review Board, the detention Order was revoked on 22nd October, 1976. Despite this, the authorities persisted in detaining the Plaintiff under House arrest until 15th March, 1977.

The particulars served on the Plaintiff on the 12th July, 1976 which was the basis on which the Order for detention was made, changed dramatically before the hearing of the Commission of Enquiry which was set up by the Government to enquire into the calling of the State of Emergency. The then Chief Justice, the Honourable Kenneth G. Smith, O.J., was the sole Commissioner.

At the Enquiry, the only particulars given for the Plaintiff's detention was that he was involved in monitoring the radio network of the security forces.

In his report, the Honourable Chief Justice Smith stated :

" All of this cast grave doubt on the veracity of the evidence that Mr. Stephens' detention Order was made on the basis that he was involved in monitoring etc. the radio network of the security forces only and not on the basis of Mr. Robinson's allegations.

The doubt is increased by the fact that no written record of the information about the monitoring was produced, apart from the statement to which reference has been made and which Mr. Trought said confirmed the oral information which he had had from the Detective Inspector. It is not suggested that this written statement was either shown to the advisory body or the Minister before the detention Order was made or that it was sent to the Attorney General's Office. Mr. Trought, however, said that the oral information which he received (about the monitoring) was given to his C.I.U. Presumably this was in writing and was prepared by Mr. Trought himself. He said that he was informed that the information he had given had gone to the Attorney General from Special Branch. This, presumably, written information was not produced and its absence has not been explained.

If the legal officer in the Attorney General's department, who drafted the particulars in respect of Mr. Stephens' detention, had both sets of information before him, it is difficult to understand why he elected to use the information based on Mr. Robinson's allegations in preference to, and to the exclusion of, the information about the monitoring of the radio network of the security forces which, it is claimed, frustrated their efforts to control crime. In my opinion, the information in the particulars supplied to Mr. Stephens, which came from Mr. Robinson, did not, at the time, constitute valid grounds for the making of a detention Order. There was no visit of a Head of State then pending and the allegation about the S.D.C's file, which took place over a year before, was certainly not a valid ground. On the other hand, the information about monitoring was, without doubt, a valid ground for the making of the Order. In my judgment, if the evidence before me was before a Court which was asked to rule on the validity of Mr. Stephen's detention, I have not the slightest doubt that the decision would be that no justifiable ground had been shown and that the detention was, therefore, illegal. "

Reference to this report is made, not for the purpose of establishing the illegality of the detention Order (this is admitted) but to show the persistence in the Government's desire to establish valid grounds for the Plaintiff's detention. In my view, the acts of the Government in detaining the Plaintiff was oppressive and arbitrary.

The difficult task of quantifying the damages must now be undertaken. Mr. Henriques for the Plaintiff has referred the Court to the unreported Trinidadian case of Ramesh L. Maharaj and has submitted that this case should guide the Court in assessing the damages to be awarded the Plaintiff. In that case Mr. Maharaj, a Barrister-at-law was committed to prison for seven days for contempt on the Order of a Judge of the High Court. This case was heard in 1978 and the Judge in awarding the sum of \$25,000.00 as general damages stated that he had taken into account the alarming decrease in the value of money since 1973. This sum did not include any award of exemplary damages.

On the other hand, Mr. Langrin for the Attorney General has referred the Court to the case of Attorney General of St. Christopher, Nevis and Anguilla v. John Joseph Reynolds, 1977, 24 W.I.R. 552. In that case, Mr. Reynolds, a former Inspector of Police and a member of a political party, was detained on June 11, 1967 under a State of Emergency for a period of two months. The Court held that his detention was unlawful and awarded him \$5,000.00 damages. This sum was increased on appeal to \$18,000.00 which included a small sum for exemplary damages. The Respondent was detained on the ground that he had recently been concerned with acts prejudicial to the public safety and to public Order, and that by reason thereof it is necessary to exercise control over him. The particulars given were that he, during the year 1967, encouraged civil disobedience throughout the state, thereby endangering the peace, public safety and public order of the state.

If guidance is to be had from either of these two cases, then the Reynolds' case which is similar in many respects to the instant case, is preferred. However, one must take into account the differences between St. Christopher and Jamaica. These would include the size of the Country,

the value of money, the standard of living and the economic position. In my view an award made in Jamaica would be more substantial than an award made in St. Christopher.

If the Court is to be guided by the Reynolds' case and arrive at a figure which would have been awarded in Jamaica in 1977, then to that figure must be added a 100% increase of inflation up to 1984 and then an additional 40% based on inflation since 1984. See Central Soya of Jamaica Ltd. v. Junior Freeman S.C.C.A. 18/84, March 8, 1985. This is conceded by both parties.

Both Mr. Henriques and Mr. Langrin have submitted that for the period of house arrest the amount to be awarded should be one half of the amount awarded for the period during detention at Red Fence. I am prepared to accept this submission.

The Plaintiff was detained at Red Fence for 125 days and thereafter detained under house arrest for 143 days. He was detained in circumstances of inconvenience and indignity.

He was deprived of being with his wife and children and the comfort of his home. His detention adversely affected his life style and was severely traumatic. When he appeared before the Review Board and the Order of detention subsequently revoked, he was placed under house arrest for a further period of 145 days.

In assessing the damages, I have taken all these matters into consideration. Taking everything into account, including the place and manner of his detention and the discomfort suffered by him and bearing in mind the three considerations expressed by Lord Devlin, I am of the view that a sum of \$380,120.00 should be awarded for general damages. This figure includes an award for exemplary damages. There is little challenge to the amount to be

awarded for special damages. In the circumstances, I would award a sum of \$104,000.00 for special damages made up as follows :

- (1) \$50,000.00 for loss of income from his business ;
- (2) \$17,000.00 being loss in his Promotion Company ;
- (3) Legal Expenses - \$37,000.00.

There will, therefore, be judgment for the Plaintiff in the sum of \$480,120.00 with costs to the Plaintiff to be agreed or taxed.

I will also allow interest on the special damages at the rate of ^{per annum} 3% from the date of detention - June 19, 1976 until December 17, 1987 and interest on the general damages at the rate of ^{per annum} 3% from the date of service of the Writ, i.e. August 10, 1976 until December 17, 1987.