

driving?" the passenger said, "Barrister White." That Constable Gordon said, "in that case I will damn well take the report myself." That Constable Gordon pushed up District Constable Newell, more or less grabbed away the Station Book (Diary) and proceeded to take the report from the passenger. That the passenger was unable to give him details and particulars of the other vehicle involved in the accident i.e. not his White's car but the car in which he was a passenger. That Constable Gordon asked him, White, whether he had taken any particulars from the other driver and he told him yes. That Constable Gordon told him to let him have it, i.e. the particulars, and he told the Constable no. That the Constable demanded these particulars about two or three times and he refused to let him have it. Plaintiff stated that by 'demand it' he meant the constable became agitated in a militant tone, very loudly and said "Give it to me" i.e. the details and particulars that he plaintiff said "the passenger from the other side is giving his report and it is not for me to interfere with it in any way and that when I come to give my own report I would at that stage let him have them." That he was in the act of walking away. That the constable leapt over the counter which he was behind; grabbed him in his waist, held his gun, drew it half way out the holster, and said and kept repeating "Diggs White you drunk. I arrest you for drunken driving". The constable then dragged and pitched him behind the counter. That he was subsequently taken to the Chapleton Hospital where he was examined by Dr. Lindo who stated that he was not drunk; and on return to the station he was charged with abusive and calumnious language and resisting arrest.

In cross-examination he stated that on the Police Station Constable Gordon was jubilant. That the first thing the Constable said was "Mr. Diggs-White, did you take any particulars from the other vehicle?" That he, plaintiff, did not consider this to be an unreasonable question so he answered "Yes." That he refused to give the constable the particulars he had taken

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for two reasons:

Firstly, the passenger from the other vehicle was then in the act of giving his report and he did not think it was fit for him to intervene and make his own additions to his report. He stated that he had gone to report an accident. That he, White, was not taking the statement that it was Constable Gordon who was taking the statement.

He was asked:

"Do you agree that it is Constable Gordon's responsibility to ascertain the particulars of both vehicles?"

Ans: "What I did not agree with is the mode he went about discharging that responsibility; at that stage I made no report to Constable Gordon. He did not know why I was in the station, that was my second reason. I had not given in my report yet."

Of course, this cannot be so as plaintiff, in Chief, stated that Constable Gordon was present and could hear what was taking place. However, plaintiff stated that Constable Gordon did not know what he had come to the station for, not from him. He stated that he did say the passenger said "Barrister White was driving the other car." That he can only say the constable knew he was there but he can't say the constable knew why he, White, was there. That he, White, could have been there for other reasons. He was asked:

Q. Do you agree that Constable Gordon is the best judge as to how to carry out his duty, such as taking statements?

Ans: Subjectively, yes. That is not what I wanted at the station to tell Constable Gordon, how he must take his statement. That is not what I was doing. My reason for not giving the information was:

Firstly, the other passenger was making his report. It is not for me to help him with his report.

Secondly, I knew that if he could not supply the details then he was not the driver but merely a passenger.

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Thirdly, reason is that when I come to give my own report that report would of itself contain details and particulars of the other vehicle and by that means Constable Gordon would be fully informed.

He stated that he was not ready to give it (report) when the passenger was giving it and he would have given it after he was allowed to give his report. He stated that Constable Gordon did not ask him for his Registration Booklet, Registration Number of the other vehicle, name of the driver of the other vehicle, or if he knew the address of the driver of the other vehicle. He stated he was an Attorney-at-Law since 1969. That he was familiar with Road Traffic cases. That he knew what was meant by the particulars of vehicle. That by 'particulars' is meant:

'All the particulars relating to the driver in the following respects:

Name
Address
Insurance
Driver's Licence
Registration number of vehicle.

He stated that he did say Constable Gordon did not ask him for any of those things as above i.e. particulars. He admitted, however, that in chief, he did say "Constable Gordon asked me if I had taken any particulars of the driver and I said yes."

He stated that when Constable Gordon asked him about 'particulars' he understood him to mean name, address, etc of the driver.

He was asked:

Q. You went there to report an accident and when asked for the particulars you refused to give it?

A. Yes, I refused.

On this particular point, plaintiff's witness, Neville Clarke, stated that he had accompanied plaintiff to the station.

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There he saw District Constable Newell behind the counter writing down information being given to him by a man whom he had seen earlier at the scene of the accident. That District Constable Newell was having difficulty getting the information from this gentleman. That the impression he got was that the man was unable to give all the information relating to the other vehicle involved in the accident. That during the course of this, District Constable Newell asked the man who was the driver of the other vehicle and the man answered "Barrister Diggs-White sir." That Constable Gordon asked "Diggs-White was the driver of the other vehicle?" That at that stage Constable Gordon took the book from District Constable Newell and said he would take the particulars. This witness does not suggest that Constable Gordon pushed aside District Constable Newell and more or less grabbed away the station book as the plaintiff stated. Mr. Clarke stated that Constable Gordon was speaking to the man with whom District Constable Newell had been talking; and at some stage Constable Gordon asked Diggs-White, who was standing there, to let him have the particulars of the other vehicle. That White refused. That White did not give him the details. That White said he was not giving him, he would give him the account of what happened when he come to give his particulars relating to the accident. That Constable Gordon then said he was investigating the accident so he wanted the full particulars. That White still did not give the particulars, and kept on saying he would give them when the other man was finished. That an argument commenced at this stage - a lot of cross-talk - Constable Gordon saying, "Give me the particulars," and White saying, he was not giving the particulars then.

He stated that Constable Gordon then leapt over the counter in the Guard Room and held onto White in his waist, pulled him behind the counter and told White he was arresting him for drunken driving and Constable Gordon said that White was drunk.

Defendant, Constable Gordon, gave evidence and stated he

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was at the station and saw plaintiff and another man come to the Guard Room and began to report an accident. That White began to report an accident to District Constable Newell. That he asked District Constable Newell to allow him to take the report and he did. That he spoke to the other man who began to tell him about the accident. That he asked the man if he knew the registration number of the other car he was involved with. He said he did not. That he turned to plaintiff and asked him for the registration letter and number of his vehicle. That plaintiff said, "Oh, don't ask me any questions man, you ask the other man." That he asked plaintiff again and plaintiff said, "You want two good lick a you back-side. You are a blasted idiot." That he spoke to him about the words he used and plaintiff repeated them. That he went **around** the counter and arrested and charged plaintiff for using abusive and calumnious language. He was **cross-**examined and stated that it was plaintiff who first started giving particulars of the accident. That all he can remember plaintiff saying then was that he had come to report an accident which took place at Pennants involving his car and another vehicle. That when plaintiff told him that he began to record the accident in the Station Diary, so he asked plaintiff for his full name, age, occupation and address, which plaintiff gave him. That plaintiff also told him the type of car - a chevrolet. That he asked the plaintiff nothing else. He stopped speaking to the plaintiff and was speaking to the other man. That he had stopped speaking to plaintiff before he concluded the details of the report. That at this stage he did not ask plaintiff for his registration number. He denied that it was the other man who was giving the report first and then he spoke to plaintiff. He stated that he asked plaintiff for his registration number and he refused.

Clive Fagan also gave evidence. He stated that he was present at the station when a man came there and spoke to District Constable Newell. This man left and another man returned. Then he saw plaintiff and Mr. Clarke. The first man, whose name he does

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not know, started making a report about an accident. That it was then plaintiff and Mr. Clarke came into the station. That plaintiff said he was there to report an accident. That he said this to Constable Gordon. That Constable Gordon pointed out to him that the other man was there before, and that he was in the act of taking a statement and he should take a seat. That plaintiff did not, but stood by the counter. That Constable Gordon continued taking the statement from the first man. That he asked the man for the registration number of the other vehicle, and he said he did not know it. That Constable Gordon asked plaintiff for the registration number of his car and plaintiff said "ask the other man, don't ask me." That Constable Gordon again requested the registration number again pointing out that it ^{his} was (White's) registration number he wanted not the man's. That White said, "What you want is two good licks in your back-side. You are a blasted idiot." He repeated it and the Constable arrested and charged White for using abusive and calumnious language.

There is dispute between the parties as to the sequence of events in the taking of the report of the accident. What, however, is not in dispute is that:

- (a) Constable Gordon was taking a report of an accident involving the plaintiff;
- (b) that during the course of taking this report he requested information from plaintiff relevant to the accident;
- (c) that this information was within plaintiff's power to give;
- (d) that plaintiff refused to give this information.

THE LAW

Section 33 of Chapter 346 Road Traffic Law deals with the obligations of the drivers of motor vehicles when an accident occurs.

Section 33(1) sets out the information required to be given by the driver to any person having reasonable grounds for requiring it.

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The information must cover:

- (a) Driver's name and address
- (b) name and address of owner
- (c) identifying marks of the vehicle.

Section 33(2) reads:

"If in the case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid he shall report the accident at a Police Station or to a Constable as soon as reasonably practicable and in any case within twenty-four hours of the occurrence thereof."

Section 33(4) reads:

If any person fails to comply with the provisions of this section he shall be guilty of an offence."

It is clear that under section 33, if a report is made of an accident, at a Police Station, the information given the police must include:

- (a) Driver's name and address;
- (b) name and address of owner
- (c) identifying marks of the vehicle.

Here, on the plaintiff's own case, plaintiff states that he had taken the necessary particulars from the other driver, That he was asked this by Constable Gordon and he told him yes. That Constable Gordon asked him for these particulars and he refused to give them. That at the time he knew that the particulars Constable Gordon was asking him for was information relating to:

- (a) name of driver;
- (b) address of driver;
- (c) insurance;
- (d) Drivers licence;
- (e) registration number of vehicle.

That he refused to give it and was walking away.

It is clear that the information asked of plaintiff, by Constable Gordon, was the information necessary for the plaintiff to give under section 33 Cap. 346. Plaintiff was the

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only driver involved in the accident, who was present, and who had gone to the Police Station to make a report of the accident. It matters not whether the information relates to plaintiff's vehicle or the other vehicle. If he has the particulars, he is required by the section to give it to the police. The plaintiff was required to give this information under section 32 Cap. 346. It cannot, therefore, be said that the request of Constable Gordon for the particulars was unreasonable. I am of the view that plaintiff's refusal to give the information was unreasonable in the circumstances, and his explanation for his refusal I find very unsatisfactory.

Plaintiff, however, states that he was arrested by Constable Gordon for driving under the influence of drink. Constable Gordon, on the other hand, states that plaintiff used words to him and he arrested plaintiff for abusive and calumnious language and having resisted the arrest, he also charged him for resisting arrest.

THE ARREST:

Plaintiff in his evidence stated that when Constable Gordon demanded the particulars he White said "The passenger from the other side is giving his report and it is not for me to interfere with it in any way and that when I come to give my own report I would at that stage let him have them. I was in the act of walking away. The Constable leapt over the counter, which he was behind, grabbed me in my waist, held his gun, drew it half-way out the holster and said and kept repeating, "Diggs-White, you drunk. I arrest you for drunken driving." He then grabbed and pitched me behind the counter. He denied that when the constable asked him for particulars he shouted words to the effect that he is not giving it and when constable persisted he told the constable, "Gordon, all you want is too good licks at your back-side, you are a blasted idiot." He is supported by Mr. Clarke in this regard. Mr. Clarke stated that plaintiff refused to give the particulars. That in refusing plaintiff did not speak loudly, but firmly, and that there was cross-talk

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between plaintiff and Constable Gordon in a moderate tone. That Constable Gordon raised his voice, leapt over the counter, held White in his trousers waist, pulled White behind the counter and said, "I am arresting you for drunken driving." That he heard Constable Gordon say further, "You re drunk."

He stated that when Constable Gordon held White and arrested him, White did not submit meekly to the arrest. That Gordon was pulling White and White was bracing back, i.e., holding back as he was being pulled so there was a drag. That the drag continued for about forty-five seconds. The movement was Gordon pulling and White holding back, i.e. a bracing effect all the way. He stated that he did hear Constable Gordon say to White, that he is charging him with using abusive and calumnious language, but this was after they had returned from the hospital. That he heard Constable Gordon told White, "you drunk, you drunk," and White said something to the effect, "You are a fool, you are an idiot."

The defendant, Constable Gordon in his evidence, stated that he asked White for the registration number and letter of his motor car. That White replied in a loud tone of voice saying, "Oh, don't ask me any question man, you ask the other man." That he said to White "but this is just a simple question Mr. White," and White said, "You want too good lick on your back-side. You are a blasted idiot." That he told White if he repeated those words he would arrest him. That White replied in an even louder voice, "You want two good licks on your back-side. You are a blasted idiot." That he went around the public section of the Guard Room through the gate. That he told plaintiff he is arresting him for abusive and calumnious language. That plaintiff at that stage pulled away himself from him. Other policemen came and told White to go on with the policeman and White went inside the private section of the Guard Room. That plaintiff became very boisterous at that stage and said, "You boy Gordon, you are stupid. Your job is too big for you. I shall surely get some money off you and the Attorney General.

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Boy, you are my friend." That he, the constable, began to write the charges, in the Station Diary. That plaintiff come up to him and started to pull it away saying, "I want to write too." That because of his behaviour he formed the opinion that he was drinking and that is wh t might have caused the accident so he told him he intended taking him to the medical officer for an examination.

In cross-examination, the witness stated th t White had given him information and then had refused. That he was surprised at the refusal. That up to the time he refused he never suspected he was drunk. That he was looking very untidy when he came into the station, not the usual Mr. White. The constable admitted he was involved in a motor vehicle accident on 13th February, 1975, and was shaken up and was in hospital. He denied that he arrested the plaintiff and charged him for driving under the influence of drink.

Constable Gordon is supported by one Clive Fagan, who stated that he was at the station. That Constable Gordon asked White for the registr tion number of his car and White said, "Ask the other man don't ask me." That Constable Gordon again asked White, and White said, "What you want man, two good lick in your backside, you are a blasted idiot." That he said this loudly. That Constable Gordon told White if he did not behave he would arrest him. That plaintiff continued and repeated the statement. That Constable Gordon hurried around from the official side of the counter and said he was going to arrest him, and charged him for using abusive and calumnious language. That the Constable held onto White's arm. White shook off his arm and refused to move. They were both making a lot of noise. Senior officers came and advised White to go with Constable Gordon since the constable said he, White, was arrested and White went on the official side of the counter. White was told to sit down but didn't. That White approached the counter where Constable Gordon was standing beside the Station Diary with pen in his hand That White said, "the officer is his friend and he is going to

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make a lot of money off him'. That he never saw Constable Gordon write in the Station Diary. He drifted away as the excitement was sort of quashed down.

Corporal Balman Reid gave evidence and stated that on that day he was in the Recreation Room, which is separated from the Guard Room by another room. Heard commotion in the Guard Room and went there. Saw White speaking to Constable Gordon in a loud tone of voice. Heard him saying, "You are stupid, damn stupid." He returned to the Recreation Room. Heard a louder noise coming from the Guard Room. Returned and saw Constable Gordon attempting to hold White and White pushing him away and saying he must let him alone. He heard Constable Gordon say, he was arresting White for abusive and calumnious language. That somebody encouraged White to go with the constable and White went around the counter freely, White was still behaving boisterously and say to Constable Gordon, "You are a damn fool, damn stupid. You want two good licks in your back-side.

STATION DIARY:

The Station Diary was put in evidence, with particular reference to entries 38, 39, 40, 45, 51, 58.

The evidence is that the hour stated in the Station Diary is the exact time when the entry is recorded and when the report is made; that the time also reflects what act is being done and by whom in the particular record.

Entry 38 is timed at 4:00 p.m. and relates to the report of the accident.

Entry 39 is timed 4:35 p.m. and records the arrest of plaintiff and the charges:

- Indecent language;
- Abusive and calumnious language;
- Resisting arrest.

It also records that the arrest took place at about 4:30 p.m.

It was suggested by counsel for plaintiff, in his address, that these entries were inaccurate in that they were inserted to support Constable Gordon's evidence that the arrest for these charges:

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- (a) did take place;
- (b) and was done before the plaintiff was taken to the hospital.

Plaintiff's case is that he was charged with these offences on his return from the hospital after the medical officer had said he was not drunk. To support this contention counsel for plaintiff suggested that the time of arrest, 4:30 p.m., as recorded at entry 39, had been tampered with. That there is an over-writing. That the figure '4' was over-written and suggests that the original figure was a '7'. Constable Gordon was asked to inspect it and denied that there was an overwriting.

It is clear to the Court that the figure '4' appears to be an over-writing and it does appear as if the figure over-written was a '7'

If one, however, examines the subsequent entries in the Station Diary, and in particular entries 41, 42, 43, 44 one sees:

- (a) they do not relate to the plaintiff;
- (b) the times are recorded in sequence.

The next entry relating to plaintiff is entry No. 45, timed 6:05 which records plaintiff's return from the hospital. Then entries 46, 47, 48, 49, 50, relates to other matters, having nothing to do with plaintiff. Then there is entry No. 51, timed 6:45 p.m., dealing with bail of plaintiff.

It is clear from these entries that the over-writing by the '4' in entry No. 39 and I find as a fact that there is this over-writing was merely to correct an error and must have been done at the time the entry was made at 4:35 p.m. For it to be as Mr. Muirhead suggests would mean that Constable Gordon and other Constables who made the entries 41 - 44(inclusive), 46-50 (inclusive) conspired together to falsify the Station Diary. I reject this suggestion completely.

It should be observed that the constable making the ^{particular} entry has to certify this particular entry by his signature, and all the entries on these pages are so certified.

I find, therefore, that entry No. '39' is accurate in

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relation to the plaintiff having been charged for the offences of abusive language and resisting arrest as there recorded and at the time specified in the record.

I find as a fact that plaintiff was, therefore, charged with these offences, before plaintiff was taken to the Chapleton Hospital.

In relation to entry 39, it states that plaintiff was charged also for indecent language. Constable Gordon stated it was a mistake. That he did not charge plaintiff for indecent language but for abusive and calumnious language and resisting arrest. His evidence is supported by Corporal Reid. I accept their evidence in this regard.

Entry No. 40, timed 4:55 p.m. records when plaintiff was escorted to the hospital and entry No. 45 timed 6:05 p.m. records the time plaintiff returned to the station from the hospital.

I, therefore, find the following facts;

FACTS FOUND:

Find as a fact that plaintiff:

- (1) did use the words "You want two good lick a you back-side, you are a blasted idiot;"
- (2) that plaintiff was arrested and charged for using abusive and calumnious language and resisting arrest. That the constable had the power to arrest for these offences;
- (3) that plaintiff was arrested on these charges before he was taken to the Chapleton Hospital;
- (4) that the plaintiff was told by the constable that he intended to take him to the medical officer for an examination as to whether he was drunk;
- (5) I reject plaintiff's testimony that he was assaulted and arrested and charged for drunken driving.

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DRIVING UNDER THE INFLUENCE OF DRINK:

Plaintiff's case is that he was arrested and charged for the above offence. The defendant's case is that plaintiff was not arrested but detained.

Under section 28(1) Cap. 346 (Road Traffic Law) states:

"Any person who when driving or attempting to drive or when in charge of a motor vehicle on a road or other public places is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle shall be liable etc."

Section 28(3) reads:

"A constable may arrest without warrant any person committing an offence under this section."

There can be no doubt, therefore, of the powers of Police to arrest without warrant any person found committing this offence.

The plaintiff contends that this was a false charge. That he was taken to Dr. Lindo, who said he was not drunk and this charge was not pursued with by the constable.

It is clear that one cannot decide that the charge is false merely on the basis that the medical officer's medical opinion is at variance with the opinion of the constable. It is generally accepted that the medical officer's opinion is decisive in these matter, at least, for the police. This is made clear in the judgment of Lord Denning, M.R., in *Wiltshire vs. Barrett*, 1965, 2 W.L.R. p. 1195 at page 1199 E, in which he was dealing with the interpretation of section 6, Road Traffic Act 1960, which is at one with section 28(1) Cap. 346. Lord Denning states:

"This question has to be answered by examining the contents of this particular statute - see *Bernard v. Gorman*. On examining this statute I find it very similar to the statute considered by this Court in *Trebeck v. Croudace*. Just as Lord Wright in *Bernard v. Gorman* thought that in that context "drunk" meant "apparently drunk" so I think that in this context "committing an offence" means "apparently committing an offence" my reasons are these:

This statute is concerned with the safety of all Her Majesty's subjects, who use the roads in

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this country. It is of the first importance that any person who is unfit to drive through drink should not be allowed to drive on the road and that the police should have power to stop him from driving any further. The most effective way to do it is by arresting him then and there. The Police have to act at once, on the facts as they appear on the spot and they should be justified by the facts as they appear to them at the time and not on any ex post facto analysis of the situation. Their conduct should not be considered as unlawful simply because a jury afterwards acquit the driver."

I can do no better than to adopt these words of Lord Denning to the interpretation of section 28, Cap. 346.

Of course, the evidence is that the constable did not see the plaintiff driving the car on the road. A report was made at the station that plaintiff was driving a motor vehicle which was involved in an accident. That also is the plaintiff's evidence.

In *Wiltshire vs. Barrett*, section 217(1) Road Traffic Act 1960 was being contrasted with section 6. Section 217(1) relates to a person who takes and drives away a motor vehicle without the owner's consent, while section 6 deals with a person driving under the influence of drink or drugs. The question, was powers of arrest under these sections?

Lord Denning said (at page 1200 C):

"It was said that this section (217(1)) expressly empowered arrest on reasonable suspicion. If Parliament intended a like power under section 6 surely they would have expressed it in like language. But I think different considerations apply. Section 217 deals with offences where the power of arrest may be exercised sometime after the offence has been committed. It may be based not on the constable's own observations but on information received from others. Whereas section 6 deals with offences where the power of arrest is to be exercised at the very time when a person is committing the offence or very soon afterwards. So much so, that the constable acts on his own observation. Naturally enough, there is a difference in language."

It will be seen, therefore, that it is the constable's own observations that can justify the arrest and that the arrest may be effected very soon after/^{the}commission of the offence.

The fact that the constable did not see the plaintiff driving at the time he arrested him is of no provided that

the constable has reasonable grounds, for thinking that plaintiff was in charge of the motor vehicle at a time when he was unfit to drive.

See Woodage v. Jones 1975 January Criminal Law Review page 47.

What evidence is there in this case? There is the admission of plaintiff^{himself} that he was driving the motor vehicle and so was in charge of it. That he had driven the car to the Police Station and you have the observation of the police constable as to plaintiff's appearance and conduct at the station and at the hospital.

The fact also that this charge was not proceeded with after plaintiff was examined by Dr. Lindo, would not make the arrest unlawful if originally lawful (see Wiltshire v. Barrett).

I would, therefore, hold that the law is that a police officer may arrest a person without a warrant for driving under the influence of drink although he himself did not see the person driving but where he has reasonable grounds for thinking that the person was in charge of the motor vehicle at a time when he was unfit to drive. That if a person is lawfully arrested in such circumstances and after inquiry by, say the medical officer, it is felt that there was no sufficient ground to proceed^{with the charge of} driving under the influence of drink and so the charge is not proceeded with. That that in itself does not make what was a lawful arrest unlawful. The same would hold if a person is not arrested and charged by the police but detained for the purpose of a medical examination^{to determine} if he is drunk or not.

What comes now to be determined is "Did it reasonably appear to Constable Gordon that plaintiff was unfit to drive, through drink?"

THE EVIDENCE:

Plaintiff stated that he was driving his vehicle when he was involved in an accident at Pennants. He took particulars from the other driver and then he drove to the Police Station. He stated that Constable Gordon who in the course of taking the

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report of the accident asked him if he had taken any particulars from the other driver and he told him yes. That Constable Gordon asked him for these particulars and he told him no. That Constable Gordon demanded the particulars about three times and he refused. That he was in the act of walking away when Constable Gordon leapt over the counter, grabbed him in his waist, held his gun and drew it half way out the holster and said and kept repeating, "Diggs-White, you drunk. I arrest you for drunken driving." That he later told Constable Gordon "If you still think that I have been drinking let alone being drunk then you are a big idiot and a fool." He denied in cross-examination that he was drinking that day and before the accident and when he came to the station he was in an upset and aggressive condition.

He denied that when asked for the particulars he shouted words to the effect, "Me nah give it." That he did not get very annoyed and angry. That he never told him, "Gordon all you want is too good licks at your back-side, you are a blasted idiot" and that he said this more than once.

Mr. Clarke, called by the plaintiff, stated that plaintiff refused to give Constable Gordon the particulars. That on plaintiff's refusal cross-talk developed between them; when Constable Gordon leapt over the counter, held plaintiff and said, "I am arresting you for drunken driving." That he heard the constable say further, "You are drunk." In cross-examination he said plaintiff spoke to Constable Gordon in an ordinary tone of voice. That he spoke firmly not loudly. He stated when the cross-talk between them it was conducted in a moderate tone by both parties but just before Constable Gordon jumped over the counter Constable Gordon was raising his voice.

He denied that plaintiff was loud and conducted himself in a disgraceful manner. He denied that plaintiff told Constable Gordon that "You boy Gordon, you are too stupid you want two good licks at your back-side, your job is too big for you."

Constable Gordon said he asked plaintiff for the registration letter and number of his vehicle and plaintiff

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replied, "You want two good licks a you back-side, you are a blasted idiot." That he told plaintiff if he repeated those words he would arrest him. That plaintiff in an even louder tone repeated the words. That he went around the counter, held plaintiff by his shoulder and told him he was arresting him for abusive and calumnious language. Plaintiff pulled himself away from him. Other policemen came, told plaintiff to go with him as he had arrested him and plaintiff went inside the private section of the Guard Room. That plaintiff became very boisterous at that stage. That plaintiff said, "You boy Gordon, you are stupid, your job is too big for you. I shall surely get some money off you and the Attorney General. Boy, you are my friend." That when he began to write the charges in the Station Diary plaintiff came up to him and started to pull it away and said, "I want to write too." That because of his behaviour he formed the opinion that he was drinking and that is what might have caused the accident so he told plaintiff that he intend taking him to the medical officer for an examination. That plaintiff was taken to the hospital. They waited fifteen to twenty minutes, as Dr. Lindo was not there. Plaintiff was still boisterous. That on the arrival of Dr. Lindo plaintiff grabbed at the doctor's hand and said, "Good evening doctor." That they went into the doctor's office. That in the course of his examination the doctor asked plaintiff questions like 8 x 8. That plaintiff said, "Doctor, you will have to have regard to one's ability. I could pretty well tell you 8 x 8 is 150." That he Gordon told doctor that he (plaintiff) was not an alleged lunatic, but he was involved in an accident some minutes ago and because of his behaviour he formed the opinion that he was drinking and thats what might have caused the accident so he just took him there for an examination. That plaintiff said, "Doctor, you think me drunk?" and the doctor said, "Then why were you behaving like that then," and plaintiff said, "oh, I was at Court in Frankfield today and I won five rape cases in a row so I was just celebrating." That plaintiff then showed the doctor a line on the floor and said, "Doctor,

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all right, let me walk that line." That plaintiff proceeded to march along the line shouting loudly, "left, right, left, right." That after all this the doctor said that plaintiff was drinking but not to the extent where he did not have proper control of the vehicle. Plaintiff was then taken back to the Chapleton Police Station.

In cross-examination he stated that up to time plaintiff refused to give him the particulars, he did not suspect he was drunk. That plaintiff was looking very untidy that evening when he came to the station - not the usual Mr. White. That plaintiff did not tell him he is not drunk. He denied that the doctor said plaintiff is neither drunk nor under the influence of any alcoholic drink at all. That plaintiff did smell of alcohol to him strongly, at the station. That he did not arrest him for being drunk.

Olive Fagan stated he was present at the station. That plaintiff was asked by Constable Gordon for the particulars and plaintiff said, "Ask the other man, don't ask me." That Constable Gordon again asked plaintiff who said, "What you want is two good lick in your back-side, you are a blasted idiot." That plaintiff said this loudly. That the officer told plaintiff if he did not behave he would arrest him. That plaintiff repeated the statement. That Constable Gordon hurried around the counter and arrested and charged plaintiff for using abusive and calumnious language. That plaintiff shook off Gordon's hand and refused to move. That both plaintiff and Gordon were making a lot of noise. That senior officers came and advised White to go with Gordon since he said he had arrested him. That plaintiff went and was told to sit down on a bench prisoners usually sit on. He did not sit down but approached the counter and said, the officer was his friend and he was going to make a lot of money off him. That Constable Gordon was at the counter standing beside the Station Diary with a pen in his hand. He never saw Constable Gordon write in the diary, he drifted away eventually as the excitement was sort of quashed then.

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Corporal Reid gave evidence. He stated he was in the Recreation Room playing table tennis. Heard a commotion in the Charge Room. Went there saw plaintiff speaking to Gordon in a loud tone of voice, Heard plaintiff say, "You are stupid, damn stupid." He returned to the Recreation Room. Heard louder noise coming from the Charge Room. Returned there and saw Constable Gordon attempting to hold plaintiff, who was pushing him away and said he must let him go. Heard Constable Gordon say he was arresting him for abusive and calumnious language. That someone encouraged White to go with the constable. That White went around the counter freely. That White was still behaving boisterously and said to Gordon, "You are a damn fool, damn stupid. You want two good licks in your back-side." He later drove jeep taking plaintiff to the hospital. That at the hospital White was talking in a loud tone, attracting attention. That some of the nurses came from the wards to see what was happening. That when the doctor came, White jumped out, greeted the doctor loudly and extended his hand for the doctor to shake. The doctor was afraid and drew away from him. Constable Gordon spoke to the doctor and the doctor told him to bring White into his office. That the doctor began asking White simple questions, like 8 x 8. White told the doctor that he should take a man's educational standard into consideration, he could jolly well and tell him 8 x 8 was 108. That other questions passed between them and the doctor asked White what caused him to be behaving in that manner. That he told the doctor he had a particularly good day in Court, he had won five rape cases and he had had a little celebration. That Constable Gordon told the doctor he had really carried him there to be examined if he was drunk. That White volunteered to go outside and walk a line. That the floor is tiled so the doctor showed him (White) a line in the tiles and White marched along it saying "left, right, up, up." That White marched down the line, turned about and marched back up to the doctor. That White then asked the doctor, "How was that for a drunkman." That the doctor then told Gordon that from his impression White

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had been drinking but he had not consumed alcohol in such a quantity that he did not have proper control over a motor vehicle. That White was then taken back to the police station.

In cross-examination, he stated that he was present when White was arrested. That he was not arrested for driving under the influence of drink. That White could not be, as you can't arrest a person for this unless the doctor tell you. He must be examined before. He stated that White was charged with using abusive and calumnious language and he think, resisting arrest. He denied that the doctor said White was neither drunk nor under the influence of any alcoholic drink at all.

FINDINGS OF FACT:

I accept the evidence of Constable Gordon and his witnesses and reject the evidence of plaintiff.

I find as a fact:

- (1) That at the time the plaintiff was still in charge of the motor vehicle, which on his own admission, he had been driving on the road.
- (2) That at the station, plaintiff used the words to the constable, and repeated it and he was arrested for abusive and calumnious language.
- (3) That plaintiff was boisterous.
- (4) That he smelled of drink.
- (5) That he appeared untidy.
- (6) That at the hospital, plaintiff conducted himself in the manner described by defendant and Corporal Reid.

I find and so hold that on those facts, it reasonably appeared to Constable Gordon that plaintiff was committing the offence of driving under the influence of drink.

I also find that the constable detained plaintiff for plaintiff to be medically examined and that it was in the constable's power^{so} to do and was reasonable in the circumstances. I reject plaintiff's evidence that he was arrested and charged for this offence,

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MALICE:

Plaintiff, having given his evidence and cross-examined, Mr. Muirhead applied to recall plaintiff on a matter that arose in cross-examination. No objection was taken and the plaintiff was recalled and gave evidence that:

One Nurse Dunkley, is his fiancée. She lived in Chapleton and he visited her there from time to time. That she was in charge of drugs given out by the Sugar Board and that Constable Gordon used to come around to get drugs. That in time Constable Gordon demonstrated to him a certain fondness for the nurse. He saw this himself and he had conversations with Constable Gordon in connection with this nurse two to three times. The gist of this conversation is that Constable Gordon told him in effect, that unless he was prepared to leave the lady entirely to him (Gordon) he would stop at nothing to send him to prison or to get him in trouble.

In cross-examination he stated that this happened in April 1972. He spoke to her. He stated that on one occasion he paid her a surprise visit. It was his last visit, this was about 8:30 - 9:00 a.m. during the last week of April 1972. The doors of the house were ajar and he went in and Nurse Dunkley and Constable Gordon were having a conversation, while standing on the back verandah. Constable Gordon's back was turned in the direction from which he was coming, and Nurse Dunkley was a few yards to his right and was unable to see him (White) also when he approached and he heard part of the conversation. That the conversation went this way:

Constable Gordon said: "Lord nurse, same like how you love Mr. Diggs-White some hate him a would a do anything fe you if you just leave him."

Plaintiff satated that this was verbatim. That Nurse Dunkley said something but it was not clear to him what she said. That Constable Gordon said:

"I must find some way of locking him up before the end of this year,"

and Nurse Dunkley said:

"You would have to shoot him first."

Plaintiff stated he did not make his presence felt, neither did he walk away. That he removed himself without them seeing him. He denied that he was making it up. He stated that Nurse Dunkley left the very next month for abroad, following this incident and has not returned as yet because of this very thing. That that was the last time he went to the house but it was not the last time he saw her. He saw her again the day before she left Jamaica. That was between the end of May 1972 and the beginning of June 1972. That she came to see him at his office in May Pen. That after he overheard the conversation he next saw her again when she came to his office and he never saw her during that period. That she was his fiancée, he had given her a ring. That between the period he had no conversation with her. That when she came to the office she came in tears; very dejected and penitent about the fact that he was arrested and she knew she had something to do with it. He states he does not know if she knew he had heard the conversation between she and Gordon. He states that although he had not seen her he had told other people of the conversation inclusive of her relatives, what he had heard when they asked him why he did not go back. That Constable Gordon had told him between April to May 1972 and before he had overheard the conversation between the nurse and Gordon that 'unless I was prepared to leave the lady to him (Gordon) he would stop at nothing to send me to prison or to get me in trouble'.

Constable Gordon denied these incidents.

I am afraid, I do not believe the plaintiff in this regard and reject his evidence.

For the above reason, I find and so hold that Constable Gordon in arresting and charging plaintiff for using abusive and calumnious language and resisting arrest and in detaining plaintiff to be medically examined for driving under the influence of drink, reasonably and honestly believed that the

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circumstances justified the arrest and detention of
the plaintiff on the above charges.

I would, therefore find for the defendants:

There will be judgment for the defendants
with costs to be taxed or agreed.

W. B. WILLKIE
JUDGE
April 14, 1975
