

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1979 B186

BETWEEN DONALD BRYAN PLAINTIFF
A N D DETECTIVE BROWN FIRST DEFENDANT
A N D THE ATTORNEY GENERAL FOR JAMAICA SECOND DEFENDANT

H. Haughton Gayle instructed by Scott, Gayle and Company for the Plaintiff.

Karl Harrison instructed by the Director of State Proceedings for Second Defendant.

Heard on: June 8, 9, 10 and 17, 1981
December 3, 1981 and May 23, 1982

JUDGMENT

CAMPBELL J.

On August 1, 1979, an Austin Cambridge motor car registered and numbered X-7171 was seized by the first defendant while being plied as a taxi on the Old Harbour Road in the parish of Saint Catherine.

The driver of the car Stanford Jackson was arrested and was taken into custody for unlawful possession of the car. He appeared before the Resident Magistrate's Court in Spanish Town on August 2, 1979 to answer the charge of unlawful possession.

On or about August 30, 1979, the charge of unlawful possession was abandoned and there was substituted therefor a charge of Larceny of the car and the case was transferred for trial in the Resident Magistrate's Court, Half Way Tree in the parish of Saint Andrew.

Stanford Jackson was bailed to attend this court on September 6, 1979, but on his appearance on that date there was no hearing as the necessary documents effecting the transfer from the

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court in Spanish Town had not then been received. The transfer of documents was however effected in due course, the trial went underway, and Stanford Jackson was dismissed of the charge of Larceny on July 9, 1980, and the car ordered to be returned to him. The car was duly returned to him on July 14, 1980.

While the trial on the charge of Larceny was still pending, the legal advisers of the plaintiff believing that the case would not be proceeded with, commenced action on October 8, 1979, claiming on his behalf in detinue also damages for wrongful detention of the car, alternatively damage for its conversion.

The Statement of Claim averred ownership of the car in the plaintiff and that it was being lawfully operated by Stanford Jackson his servant or agent at the time when it was seized by the first defendant. The Statement of Claim further alleged that the seizure was wrongful, malicious and without reasonable or probable cause.

The Defence of the second defendant was not filed until April 24, 1980, by which time the criminal charge against Stanford Jackson was actively in progress. The second defendant admitted the seizure of the vehicle by the first defendant its servant, but contended that there was reasonable and probable cause therefor. Further that the car was "in custodia legis" pending the hearing and determination of the criminal charge in consequence of which the demand by the plaintiff for its return had been lawfully refused.

The reply was filed on August 29, 1980 by which time the criminal charge against Stanford Jackson had ended favourably to him. The plaintiff in order to meet the defence that the car was being held "in custodia legis" asserted a new wrongful detention namely, detention between July 9, 1980, when the order of the Resident Magistrate was made for the return of the car and July 14, 1980 when it was returned. For good measure the plaintiff pleaded in his reply damages occasioned to the car consequent on alleged failure and or neglect by the defendants to take proper care of it while it was "in custodia legis". This damage was additional to the damage for loss of use pleaded in the Statement of Claim.

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Dealing with the claim for damage based exclusively on the alleged wrongful detention between July 9 and July 14, 1980, this by itself is without merit. The time lapse between the date of the order for the return and the actual date of return was well within a reasonable time for complying with the aforesaid order having regard to the intervening week-end between the two dates. In any case, the evidence of the first defendant which I accept in regard to this issue is that the plaintiff and Stanford Jackson proceeded with him to the Commissioner's office at Old Hope Road on July 9, 1980, to collect the car. The four tyres of the car were deflated whereupon the plaintiff left saying he was going for a wrecker and did not return until July 14. It was the delay of the plaintiff in securing a wrecker to remove his car that occasioned this slight delay. Jackson himself said the car could not be driven when it was returned.

The two main issues raised on the pleadings which called for determination at the trial were firstly ownership in the plaintiff of the motor car which entitled him to immediate possession so to sustain his cause of action and secondly whether the seizure of the motor car was wrongful. If the seizure on August 1, 1979, was wrongful and was without reasonable or probable cause then notwithstanding the return to him of the said car, the owner, if entitled to immediate possession, would be entitled to damages for its wrongful detention between August 1, 1979, and July 14 both in regard to loss of use and to any deterioration in its condition flowing from its detention.

The trial which could have been concluded in less than the three days allotted, extended over a period of five days not because of any complexity in the issues raised but largely because of the extensive and exhaustive cross-examination of the first defendant who though not a defendant on trial before me was called as a witness for the second defendant. Regarding this aspect of the matter it is a matter of profound regret that Learned Attorney for the plaintiff should have taken the purely technical objection to the formal

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amendment sought by the second defendant to the Defence, the effect of which would have been to make it a defence for both defendants. What tactical advantage the plaintiff's attorney hoped to gain by his objection is not easily discernible. The end result however was that Counsel for the second defendant withdrew his application and the trial proceeded against the second defendant alone even though his liability would depend primarily on proof of wrong doing by the first defendant.

The ownership of the car was an issue with regard to which the plaintiff and his Counsel appeared to have been over preoccupied. The plaintiff's evidence is that he bought the car from one Winston James in 1975. He paid \$1,600.00 for the car. He produced a registration book Exhibit 2 in which he appeared as the registered owner by transfer from Winston James. He had given the car to Stanford Jackson to operate on his behalf as a taxi on a mutually satisfactory income sharing arrangement. He was supported in his evidence by Winston James his vendor who admitted selling the car to the plaintiff. The evidence of Winston James is that he himself bought the car from one Mr. Jones who had recently arrived from England. He had known this Mr. Jones for barely five to six weeks before he bought the car from him. He did not produce the United Kingdom registration booklet which he says he obtained from Mr. Jones when he purchased the car. He said he had it at home. Mr. Jones on the evidence of Winston James cannot now be found. He Winston James sold the car to the plaintiff about three to four months after buying it. The plaintiff says that he obtained a hackney carriage licence for the car in November, 1977, which with the insurance certificate were in the car when it was seized by the first defendant.

This evidence satisfies me only insofar as it establishes that the plaintiff was the registered owner by transfer from Winston James. Beyond this neither the plaintiff nor Winston James has satisfied me on a balance of probability that in the circumstance

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in which each acquired the car, they did not each have reasonable grounds for suspecting that the car may have been stolen.

However, the registered ownership of the car was in the plaintiff. Equally he was, on the evidence, entitled to immediate possession from Jackson. He would accordingly be entitled to recover damages for its wrongful detention and or for conversion against any person (other than the true owner or someone acting in right of the true owner) who without lawful justification seized and detained the car and who refused to deliver up the same on demand having been made to do so.

This therefore brings me to the next question namely, whether the first defendant committed an actionable wrong in seizing and detaining the car. He will have done so if he acted without reasonable or probable cause.

The evidence of Detective Patrick Brown is that at the material time he was attached to Operation Squad at the office of the Commissioner of Police, 103 Old Hope Road and had as his main duty the detection and seizure of stolen cars for which duty he had received specialised training. He said that on August 1, 1979, his suspicion was first aroused when he saw a green Austin Cambridge car with its rear looking like a Morris Oxford being driven on the Spanish Town Highway. He stopped the car and enquired of the driver Stanford Jackson who the owner of the car was, to which Jackson replied that one Donald Bryan was the owner, Detective Brown said he asked how and where he could get in touch with Donald Bryan to which Jackson replied that Bryan lived in Hartford district off the Old Harbour road but that he did not know how contact could be made with him as he is always on the street driving another taxi. Detective Brown said he asked Jackson for the particulars relating to the car and was shown an English Registration booklet. Jackson on the other hand said he was never asked for any registration booklet, rather it was he who invited Detective Brown to inspect the local registration booklet which the latter declined to do. I accept in this respect the evidence of Detective Brown that he asked for the particulars relating to the car and was shown an English registration

booklet and further that the local registration booklet was only produced about a week after August 1, 1979.

Continuing his evidence Detective Brown said he examined the car and discovered that firstly the frames mounted on the engine on which the chassis and engine numbers of the car were engraved showed evidence of being tampered with in that the original frames which were riveted had been removed and different frames screwed on. Secondly the floor under the driver's seat where the chassis number is also engraved had been welded out without any number appearing. Thirdly the rear of the car had the Austin Cambridge lens welded out and were replaced by Morris Oxford lens. He asked Jackson to explain these peculiarities to which Jackson replied that he did not know as he had got the car in that condition. He took Jackson and the car to Spanish Town Police Station where he was charged for unlawful possession.

Jackson's evidence on what took place on the road when the car was stopped differs in every significant respects from the evidence of Detective Brown. Jackson said no examination of the engine section of the car took place either on the road or at the Spanish Town Police Station. He said that he had stopped on the Old Harbour Road to let off a passenger when the first defendant approached him saying he had been looking for the car a long time and that it was a stolen car. Jackson said he replied that it could not be a stolen car since Bryan had bought it a long time ago. He said he offered to show Detective Brown the registration booklet but the latter said he did not wish to see it. Detective Brown ordered him into the police car while he Brown went into Jackson's car and they proceeded to Spanish Town Police Station where he was asked for the registration book, the insurance certificate, his licence and the taxi licence. He said he took these from the car and handed them over to Detective Brown who gave him back his licence but kept the others. He denies that Detective Brown ever asked him where the owner of the car could be found.

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I reject Jackson's version as to what took place on the road and at the station with regard to the taking of the car into custody by Detective Brown. Jackson in my view is not a credible witness. He told a deliberate untruth when he said that Detective Brown, Bryan and himself engaged in a conversation at the Court at Spanish Town on August 3, 1979, even though Bryan himself is adamant that he first met Detective Brown some 15 days after the car was seized.

Again Jackson's evidence that Detective Brown stated that he did not wish to see the registration booklet when invited to look at it appears inconsistent with the latter requesting to see the booklet at the Spanish Town Police Station. Jackson was clearly suppressing and distorting the facts.

I accept Detective Brown as a truthful witness. I further accept his version of what took place on the road and at the station as the correct version. I find also that Jackson did not hand over to Detective Brown any insurance certificate or any hackney licence. Equally he did not on that date produce the local registration booklet. It was produced later.

The tampering with the frames on which the chassis and numbers are engraved, the welding out of the area under the driver's seat where the chassis number is also engraved, the existence of the Oxford Morris Lens on the Austin Cambridge car, the inability of Jackson to produce the local registration book which would identify the registered owner, and the inability of Stanford Jackson to assist Detective Brown in immediately locating Bryan whom he stated was the owner, all had the cumulative effect of creating a situation where Detective Brown could on reasonable grounds have honestly believed that the car had been unlawfully obtained by Jackson.

Subsequent to the seizure of the car by Detective Brown, one Murdock identified the car as his by pointing out certain identifying marks. It was as a result of this that the charge of unlawful possession against Jackson was dropped and there was

substituted therefor the charge of Larceny.

The fact that Jackson was subsequently acquitted of this charge does not retroactively erode the reasonable ground on which Detective Brown acted. Infact the acquittal of Jackson does not establish that the car was not stolen.

In my view, the circumstance in which Jackson came to be in possession of the car which was confirmed by Bryan who gave evidence in the larceny charge showed clearly that whoever may have stolen the car it was not Jackson. His acquittal of the charge of larceny was in the light of the evidence adduced in court inevitable irrespective of Murdock's evidence of ownership.

Detective Brown when asked under cross-examination whether after July, 1980, he was now satisfied that Bryan was the true owner of the car said:

" After 9th July, 1980, I was still not satisfied that Bryan was the true owner of the car. I still believed that Murdock was the true owner of the car".

Detective Brown's answer to learned Counsel is in my view fair and is justified having regard to the identifying marks on the car which Murdock is said to have pointed out to the Resident Magistrate. Had it been Winston James who was on trial for larceny before the Resident Magistrate the end result might well have been different.

I find as a fact that Detective Brown the first defendant had reasonable grounds for believing that car X-7171 was unlawfully possessed by Jackson, accordingly its seizure on August 1, 1979 was not an actionable wrong. The continued detention of the car in custodia legis during the substituted charge against Jackson following on the claim to ownership by Murdock was also reasonable and justified. The first defendant has therefore committed no tort for which the second defendant can be made liable.

In the circumstance the plaintiff fails in his action. There will accordingly be judgment for the second defendant dismissing the plaintiff's claim with costs to be agreed or taxed.