Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C364of 1994

BETWEEN	JOHN CASSIE	PLAINTIFF
A N D	DETECTIVE SERGEANT WILLIAMS & ATTORNEY GENERAL	DEFENDANT

Maurice Frankson and Sean Kinghorn for the plaintiff instructed by Gaynair and Fraser.

Patrick Wells for the defendant instructed by the Director of State Proceedings.

HEARD: November 10, 12, 1998 and February 10, 2000

Reckord, J.

This action was began by the plaintiff filing a Writ of Summons dated 13th of October, 1992.

It was endorsed as follows:-

> "The plaintiff's claim is against the defendant to recover possession of his motor car which was unlawfully detained by the first defendant who refuses to deliver same on demand.
> The plaintiff also claims damages for detinue.
> The plaintiff further claim is against the defendants to recover damages for false imprisonment and/or unlawful detention for that on or about the 20th day of December, 1991, the first defendant falsely and maliciously and without reasonable and/or probable cause unlawfully took the plaintiff into custody at the Maverley Police Station without charge where he was kept for approximately 24 hours after which he was unconditionally released.

THE PLAINTIFF"S CASE

The plaintiff is a machinist from Lauriston, St. Catherine. On the 3rd of September, 1991, he bought a 1974 Ford Cortina motor car from one Altimond Halstead for $25,000.00 for which he received a receipt which he tendered in evidence. The vehicle was transferred in his name on the 30th of October, 1991, and the plaintiff received a certificate of title from the Collector of Taxes which was also tendered.

Mr. Cassie testified that he was driving the car from the 30th of October, 1991, until the 17th of December, 1991, when it was seized by Corporal Woodstock of Mobile Reserve and returned to him on the 19th December, 1991. "Since that time I have not been driving the car because it was seized a second time on 20/10/91 (sic) by Sergeant Williams of the Maverley Police Station. Since then the car has not been returned to him. Sergeant Williams said it was a stolen motor vehicle - he referred to the steering wheel, seats and piece of carpet in the trunk. That same day Sergeant Williams took him into custody at Maverley Police Station. He was never charged. The Sergeant said that he had stolen the car and that the police had now broken the stealing ring. He was at the station from about 5:00 p.m. the Friday and kept in the guard room until the following evening when he was released.

On several occasions the plaintiff asked Sergeant Willia and other policemen to return the car to him. Sergeant Williams refused. On the 23rd of September, 1992, he complained to

Assistant Superintendent of Police Roy Martin who agreed to return the car if he entered into a bond of $30,000.00. He signed the bond, and took it to the Inspector at Maverley who refused to deliver the car to him.

The plaintiff contacted his Attorneys-at-law who made claims for the car without success. On the 15th of October, 1998, he had the car valued by Mr. Young of Motor Insurance Adjusters Limited. He tendered the report in evidence. He paid $1,500.00 for the valuation report.

Mr. Cassie said he had used the car to transport his children to and from school in Kingston. He now had to use a taxi at a cost of $600.00 per day for this purpose. He also had to use a taxi, to do his other business. It now cost him about $1,000.00 per day for transportation.

The plaintiff said in cross-examination that while Sergeant Williams was at his home, a Mr. Graham drove up and after looking at the car, claimed it as belonging to him. Sergeant Williams ordered him into the police jeap and took him to Maverley; At the station Sergeant Williams again questioned him. He told the sergeant he had bought the car from Mr. Halstead. They drove to Mr. Halstead home in Duhaney Park early next morning. He was not seen. He was taken back to the station and released at 2:30 P.M. on Saturday.

The plaintiff admitted that the car was not transferred to him by Mr. Halstead but by one Mr. Milton Ashley from whom Mr. Halstead had bought it. Mr. Halstead never showed him a certificate of title. He did not know either Mr. Halstead or

Mr. Ashley before - It was a standard drive car - He had repaired and ducoed it. He was not aware that there was a criminal case in Court concerning the said car. He denied that Sergeant Williams told him about the criminal case and invited him to come to Court. He had looked at the serial number and chasis number of the car when he bought it and saw nothing unusual. The last time he had seen the car was the 15/10/98 - the date of the valuation.

The plaintiff now had two children going to school in Kingston. He now had a taxi which he purchased in 1995 and takes the children sometimes to school.

In re-examination the plaintiff said that Mr. Graham said that the seats, steering and carpets in the trunk resembled his but the car was not his.

THE DEFENDANTS' CASE

Detective Sergeant Errol Williams is attached to the Special Anti-Crime Task Force. While stationed at Maverley in December, 1991, he became aware of investigations concerning a Cortina motor car registered 7676AS. He later spoke to Mr. Robert Graham.

On the 20th December, 1991, he went to Thompson Pen Road, Lauriston in St. Catherine to the home of the plaintiff, accompained by Mr. Graham, his son and Corporal Grant. He told the plaintiff he was investigating a case of larceny of a 1974 white Cortina and he had information that he had the car. The plaintiff told him the police had seized the car and returned it to him. At that stage Mr. Graham came

in the yard and claimed the car which was parked there as belonging to him, identifying several parts fixed to the car. The plaintiff told him he had bought the car from Mr. Altimond Halstead of a Duhaney Park address in Kingston.

Sergeant Williams said he told the plaintiff that since Mr. Graham had claimed the car he would have to take him to the Maverley Police Station to carry out further investigations. He said the plaintiff was very co-operative and promised to assist him in locating the person from whom he bought the car.

In the early morning of Saturday 21st December he went with the plaintiff to the home of Mr. Halstead in Duhaney Park but never found him. They returned to the station and he told him anytime he wished to leave he could do so as he was just there assisting in his investigations- He was not detained.

The first defendant said he continued investigations into the theft of the car. He saw the plaintiff at a gas station and told him that Halstead was in custody at Half-Way-Tree charged for steading a number of cars and that he wanted the plaintiff to come to Court as a witness for the prosecution.

On the 8th of October, 1993 he arrested and charged Altimond Halstead with larceny of the white Cortina motor car. He was taken before the Ocho Rios Resident Magistrate's Court when he pleaded guilty to receiving the stolen motor car.

Detective Sergeant Williams said the car is still at the Maverley Police Station - He told Mr. Cassie he could come and claim the car but he had not done so. He admitted

that the plaintiff had asked him to return the car to him but he could not do so since his investigations proved that it belonged to Mr. Graham. The plaintiff had been at the station for about sixteen hours not twenty-four as claimed by the plaintiff.

Under cross-examination, Detective Sergeant Williams said he obtained the title for the car from the Collector of Taxes in Linstead. "By virtue of the document, I am satisfied that the plaintiff is the owner of the vehicle." He never charged the plaintiff with any offence. He would not say he detained the plaintiff on the 20th of December, 1991. He told the plaintiff that he came to the station at his own volition. About two hours after the interrogation he told the plaintiff that "he was not being arrested or detained, but was free to remain to assist me in my investigation." He could not recall the time they arrived at the station or the time the plaintiff left the station. He later discovered that the car in question was not the one sold to the plaintiff. "I honestly believed he did not know that the car was stolen."

This was the case for the defence.

ADDRESSES

Mr. Kinghorn submitted that the plaintiff had legal possession of the car; the police seized and detained it and refused to return it when demand made for it. The plaintiff was a bona fide purchaser for value

without notice - the defendant said he honestly believed that the car was stolen. All the ingredients for detinue had been established.

On the claim for false imprisonment, counsel referred the Court to the Law of Torts in the West Indies by Gilbert Kodilinye at page 9: The circumstances under which the plaintiff was told by Detective Sergeant Williams to go to the Maverley Police Station were such that the plaintiff merely submitted to the authority of the police which he could not resist.

Damages for Detinue

See Halbury's Laws of England 3rd Edition Volume 38 paragraph 1317.

Value of car in 1991 - $85,000.00

Valuation in 1998 - $10,000.00

Loss of use from 20/12/91 to date of trial 10/11/98 - 2512 days.

For 5 days week - 1781 days @ $600.00 per day for children = $1,068,600

- 1781 days @ $1,000.00 per day for plaintiff =$1,781,000

cost for valuation =$ 1,150

Damages for False Imprisonment

Counsel for plaintiff referred to two cases in which the Court awarded $50,000.00 for false imprisonment.

C.L. S415/92 - Leroy Samuels vs. Attorney General - 48 hours.

C.L. F152/93 - Davis Fuller vs. Attorney General - 48 hours.

Counsel asked for an award of $50,000.00.

Total claim is for $1,282.150.00

Counsel for the defendant submitted that the facts of the case does not establish a case of detinue. As to the claim for false imprisonment counsel said there was no evidence of intimidation or coersion to get the plaintiff to the station. He was not locked up; was only in the guard room - He asked the Court to reject the claim - it was outrageously high - Any award should not be higher than $15,000.00.

Mr. Wells further submitted that the seizure of the car was based on reasonable and possible cause - There was a conviction in relation to this car - Between 1991 and 1994 the failure of the police to return the car cannot in those circumstances amount to detinue. From 1994 to today detinue could not arise as there were two claimants for the car. The plaintiff could have come to the Court and asked for an order for the return of the car.

On the claim for damages for loss of use counsel for the defendant said that figure bordered on the absurdity; the plaintiff had a duty to mitigate his loss. Although he bought a taxi in 1995 he is still claiming travelling expenses for the children for three days per week - This claim should be rejected.

FINDINGS

There does not seem to be any great difference in the case for the plaintiff and that of the defendants. In fact, as far as the essentials of the two claims made by the plaintiff are concerned the first defendant has acknowledged them all.

In the claim for detinue , the Detective Sergeant Williams has admitted seizing the plaintiff's car even after he was shown the certificate of title; that the plaintiff demanded the return of the said car and that he refused to return same. Indeed, Sergeant Williams admitted that the car was still at the station on the date of the trial of this action.

> "Detinue is an action to recover goods, based on a wrongful refusal by the possessor of the goods to restore them to the owner" (see a concise dictionary of law - 2nd Edition, 1990)

It is patently clear from the evidence that the plaintiff lost possession and use of his car because of the wrongful detension by the defendants. I find that the plaintiff was a bona fide purchaser for value without notice of any wrongdoing by the seller Mr. Halstead.

The adjusters placed a value on the car at $80,000.00 when it was seized in 1991. After over eight years it is hardly of any use. All the moveable parts should be seized up by now as intimated in the adjusters report. The plaintiff is therefore entitled to the full value of the car at the time he lost possession.

The plaintiff's claim for damages for loss of use of the car from 1991 to the present is far fetched especially in view of the necessity for him to mitigate his loss. He claims he purchased a taxi in 1995, but nevertheless his claim is for up to the date of trial. His evidence is unsupported and I,

reject it as grossly exaggerated. However there is uncontraverted evidence that the plaintiff lost use of the car. This could be replaced within a reasobable time - say three months at the rate of $500.00 per day - 90 days x $500.00 = $45,000.00

With respect to the plaintiff's claim for damages for false imprisonment, the defendant again has agreed substantially with the particulars as claimed. He has admitted that he took the plaintiff to the station on Friday afternoon and he left on Saturday. By his calculation the plaintiff was there for about sixteen hours - He was quick to add that the plaintiff spent no time in the lockups but was at all times in the guard-room. He did not arrest or charge the plaintiff, neither did he detain him, but admitted that he told the plaintiff that since Mr. Graham had claimed the car he would have to take him to the station for further investigations.

Under any interpretation, these words are clear. The plaintiff was not allowed to drive his car to the station - He had to travel with Detective Sergeant Williams who told him at the station that he was free to remain at the station and assist him in his investigation.

It is observed that the plaintiff was told that he was "free to remain", not "free to leave". Further the plaintiff spent all night at the station. He claimed he was not released until 2:30 o'clock on the Saturday evening. He had spent about 21½ hours at the station. Was the plaintiff free to leave the station at any time he cared?

I think not.

> "False imprisonment is the unlawful restriction of a person's freedom, not necessarily in a prison. Any complete deprivation of freedom of movement is sufficient, so false imprisonment includes unlawful arrest and unlawfully preventing a person leaving a room or a shop. The restriction must be total. False imprisonment is a form of trespass to the person, so it is not necessary to prove that it has caused actual damage"
> (see Concise dictionary of Law, second edition, 1990).

Clearly, the plaintiff was in the custody of the police from the moment he was told he had to go to the station, and I so find.

In the two cases to which the Court was referred the award for false imprisonment was $50,000.00; albeit for forty eight hours, made between 1994 and 1995. This sum is equivalent to about double that amount at todays evaluation. I am of the view that a reasonable assessment for this claim is the sum of $50,000.00.

In summary, damages for detinue is assessed as follows:-

Value of car ----------	$ 80,000.00
Loss of use ----------	$ 45,000.00
Valuator's Report ----------	$ 1,150.00
	$126,150.00
Damages for False Imprisonment assessed at ----------	50,000.00
	$176,150.00

Accordingly, there shall be judgment for the plaintiff with damages assessed at $176,150.00 with interest @ 6% from date of service of Writ to 12/11/98.

Costs to the plaintiff to be agreed or taxed.