

Present: Bertram C.J. and De Sampayo J.

1920.

JAYAWARDENA v. WILLIAM.

238-239—D. C. Colombo, 52,053 and 52,152.

*Person acting within limits of his authority—Paying off grudge—Constable using insulting and opprobrious language to person under arrest.*

A person acting within the limits of his authority does not commit an actionable wrong, even when he so acts with the object of paying off a grudge.

A constable who, prompted by personal malice, uses in public insulting and opprobrious language to persons under arrest may render himself liable in damages.

THE facts appear from the judgment.

*Garvin, S.-G.* (with him *V. M. Fernando, C.C.*), for the appellant.

*H. J. C. Pereira* (with him *R. L. Pereira* and *Mendis*), for the respondent.

January 28, 1920. BERTRAM C.J.—

This case has taken some time to argue, but as it involves questions affecting the liberty of the subject, it has points of importance. There are questions of fact and questions of law to be considered. In an appeal on a question of fact, one must have, of course, respect for the findings of the Court below, but when the facts of the case have been discussed for two days and more, and we ourselves have analyzed all that has to be said, naturally we must form our own conclusions, and, therefore, if I state my own conclusions on the facts, it is not that I do not recognize the authority to which a judgment of District Court on a point of fact is entitled.

The learned Solicitor-General has invited us to treat the case of each side as a whole, and to say that because certain parts of the evidence on behalf of the plaintiff are not entitled to credit, we should treat with suspicion and condemnation the whole case. I do not take that view. I feel that it is the duty of the Court, in spite of the defects of the witnesses, to disentangle the actual truth, if the actual truth can be ascertained.

Now, the facts briefly, as I understand, are these. On the morning of November 17 there was an incident between the principal plaintiff Jayawardena and the defendant constable. There is no question in my mind that this left unpleasant feelings in the minds of both. The constable reported the matter to his Sub-Inspector. When he got to the station he made a formal complaint. He

1920.

BERTRAM  
C.J.*Jayawardena  
v. William*

underlined that complaint as against Jayawardena (so I conjecture) by seeing that a correction was made in the Information Book. I impute no bad faith to the correction. It was made at the time. But it shows that the mind of the person taking down the statement was specially directed to the part played by Jayawardena. I have very little doubt that the constable resented the interference of what he considered that Jayawardena had been guilty. Later in the day this same constable happens to be at the level crossing just at the time when the Jaffna Express is due at Veyangoda station. The gates are closed, but people are crossing the line by trespassing through the fence. The gateman draws his attention to that fact. He complains, at any rate, generally. Just at this very moment it happens that there crossed the line with his partner (the plaintiff in the other action) this same Jayawardena, who had come into conflict with the constable earlier in the morning.

Now, whether or not the attention of the constable was drawn specifically to Jayawardena by the gateman I do not think matters very much. His attention, at any rate, was drawn generally to people crossing the line. Seeing this man with his companion, he took steps to have them both arrested. He says himself: "I told the gateman to take them to the station." Acting in pursuance of that direction, he says the gateman "detained" the two persons till the train had passed and "removed" them to the police station. But for these words of the constable, I should have doubted whether any arrest was actually made. I should have been disposed to think that they all proceeded to the station with a view to investigating the charge. But the constable makes it quite clear that there was an arrest, and that he himself was responsible for it. When they got to the station, the matter was inquired into with great tact and intelligence by the Sub-Inspector. He makes, what I think, a very clear and concise record of the occurrence. He inquired into the matter, said quite truly that the constable ought not to have intervened, reprimanded him, and referred the matter to the railway authorities.

Now, the question of fact, in the first instance, is this. Here is a man who has been reprimanded for an excess of action. The reprimand was justified. What was the reason of this excess of action? Was it a mere error of judgment, or was it a thing into which he was impelled by the resentment in his mind about the occurrence in the morning. That is a question of fact. I may say as to that that I am stating the facts as they strike me personally. I feel a very strong impression that had the constable not had the circumstances of the morning to his mind, he would have taken a more moderate course. He would not have insisted on Jayawardena proceeding to the police station. He was reprimanded by his superior officer for taking that course. In ordinary circumstances, he would have acted more judiciously.

There is a further question of fact. It was alleged in the pleadings that the defendant wrongfully and unlawfully insulted the plaintiffs in both actions. This is a question of fact, but I do not know, in the view I take of the law, whether I need say much on the subject. But the opinion I have formed is that the constable seeing Jayawardena, with whom he had come into conflict early in the morning, in this position, did address him in disrespectful and opprobrious language at the railway crossing. As to the law I will say a few words in one moment.

Now, first of all, as to the law on the other point, the question of arrest. The Solicitor-General says that in any case no action lies in respect of the arrest, because under the Railway Ordinance two offences had been committed, and in respect of these offences a police officer may arrest without warrant. The first is a breach of section 36 (2), and the second is a breach of section 32. In my opinion both these points are good. The train was at the time due at Veyangoda. *Prima facie* evidence of that fact was the closing of the gates. It is quite true that the gates were about thirty yards from the end of the platform. But for the protection of the public, it is necessary to close the gates when a train is due at the station. It has been aptly pointed out that these trains are sometimes of great length, and that they may have to go beyond the platform. Too narrow a view must not be taken of a provision designed for the protection of the public against accidents, and the question at what spot a train ought to be considered due must be interpreted in the light of the precautions necessary for the safety of the public at the place where the gates are.

I think it would be taking far too narrow a view to hold that the train was not due at the gates when it was due at the platform thirty yards off, and, therefore, it appears to me that the constable was within his legal rights in making the arrest. Quite, apart from this, the appellant was guilty of a technical trespass, and, therefore, liable to arrest on this ground also. If a man acts within the limits of his authority, even though he may be inspired by mixed motives, even though his mind may be clouded by personal resentment, even though he may feel a personal satisfaction in being able to pay off a grudge against the man with whom he is dealing, yet, nevertheless, he has not committed an actionable wrong.

The next point is the law on the subject of wrongful insult. If a constable uses insulting and opprobrious language to persons under arrest, that action is most reprehensible, and, I am sure, that the police authorities themselves, if they are satisfied with the fact, would take satisfactory measures to deal with a case of this kind. Further, I hold that a person in that position is entitled to appeal to the Courts for protection, both criminal and civil, and that in a proper case, that is to say, if those opprobrious words are uttered in public and by reason of personal malice, in my own opinion,

1920:

BERTRAM  
C.J.*Jayawardena*  
*v. William*

1920.

BERTRAM  
C.J.*Jayawardena  
v. William*

damages may rightly be claimed. I am not able to see, however, in this case, that this ever really was the gist of either of these actions. There is no actual statement of defamation as a cause of action in the plaint. Nor were issues framed which would be framed in such a case, nor does the learned District Judge deal with the action as containing a separate claim in respect of defamation.

In my opinion, although both the plaintiffs resented certain expressions used by the constable, these did not very seriously affect their minds until after they left the police station. I am strongly confirmed in that conclusion by the evidence of the witness Samarasinghe, who appears to me to have given his evidence very fairly, and whose statement that the plaintiff complained to him of the language of the constable seems to me to refer to a complaint after they had left the police station.

I do not think, therefore, that this charge of defamation was ever seriously part of the case. It was only, I think, intended to be alleged by way of aggravation. I say this, in spite of the fact that the words "wrongfully and unlawfully" are used in connection with it. So much for the points of fact and law.

But other points have been gone into, and it is right that I should say a few words in regard to them. In the first place, as I have said, I think that the plaintiffs, though from the point of view of the facts they would be entitled to sympathy, even though they could not succeed on the law, have very greatly destroyed their claim to any sympathy by the evidence they have given. I entertain no doubt myself that much of their evidence was adduced to meet the plea put forward in the answer that the arrest was the arrest of the gatekeeper and not of the constable. It is not necessary for me to go through all these statements. There is one initial statement they made which vitiates the evidence of them both, and that is, they signed their statements without inquiring into their contents, that they were not allowed to read them, and that they put their hands to them without even desiring to know what they contained.

It is quite clear that there is no truth in these statements, particularly when we remember the position of plaintiffs and their relations with the Sub-Inspector. Also their repudiation of the statements recorded in the Sub-Inspector's inquiry in their hearing is, I think, rightly criticised with severity by the Solicitor-General. Further, I think, there is no foundation at all for the suggestion that the constable was actuated by personal malice against Thelenis. A more shadowy ground of malice could hardly be imagined. Further, it is obvious that the evidence of the porter is worthless. He is clearly a witness not so much concerned with the truth as with the effect of his evidence on the side he wishes to favour. There is no reason to think, and it does not appear to be suggested in this Court (although there are one or two expressions in the judgment of the learned District Judge which seem to suggest it), that the

Sub-Inspector's report was otherwise than *bona fide*. These are, briefly, the points on which, I think, comment is necessary. I should say that with regard to the facts, I am stating what is my own impression. The case really turns upon the question of law. The opinion I have expressed must, therefore, be taken simply as my own conclusions and impressions so far as the facts are concerned.

The appeals are allowed. In regard to the costs, I think the appellants are entitled to the costs of the appeal in both cases. With regard to the costs in the Court below, I think that the fairest order should be that there should be no costs on either side.

DE SAMPAYO J.—I agree.

*Appeal allowed.*

1920.

BERTRAM  
C.J.

*Jayawardena*  
*v. William*