

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 125/2002

**BEFORE: THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE HARRISON J.A. (AG.)**

BETWEEN	THE ATTORNEY-GENERAL	APPELLANT/ DEFENDANT
AND	LEROY JOHNSON	RESPONDENT/ PLAINTIFF

**Susan Reid-Jones instructed by Director of State Proceedings
for the Appellant**

Aisha Mulendwe for the Respondent

February 9 & April 2, 2004

FORTE, P.:

The respondent brought an action in the Supreme Court against Cons. Ronald Thomas and the appellant jointly and each of them severally for false imprisonment and unlawful assault committed against him on or about the 3rd day of January 1997.

On the 13th December 2001, the appellant brought a summons in the Supreme Court to strike out the Action on the following ground:

"The actions for False Imprisonment and Assault be struck out and dismissed pursuant to Caption XVI,

section III of the Statute of Limitations on the ground that they disclose no reasonable cause of action as they are statute barred."

The summons was heard by Jones, J (Ag.) who ordered the summons to be struck out, and gave leave to appeal to this Court. At the hearing counsel for the respondent relied on dicta in *Riches v. Director of Public Prosecutions* [1973] 2 All E.R. 935, which found that a pleading may be struck out as disclosing no reasonable cause of action where the facts alleged fell outside of the limitation period.

Before us, the issue argued concerned whether or not the actions were brought outside of the limitation period. Counsel for the appellants however filed four grounds of appeal all of which related to the same issue. They read:

- "1. The learned Judge erred in law in holding, on the basis of Section 33 of the Constabulary Force Act, that all actions against a Constable when acting in the execution of his duty are deemed to be actions on the case with a limitation period of six (6) years.
2. The learned Judge erred in law by depriving the Defendant/Appellant of the Statutory Defence available to it.
3. The learned Judge erred in law in failing to acknowledge that Section 33 of the Constabulary Force Act is not concerned with statutory limitations on actions.
4. The learned Judge erred in law by failing to hold that any amendment to the law regarding the limitation periods applicable to police officers cannot be accomplished without clear and unambiguous words to that effect."

A good point of departure in determining the merit of these grounds is section 33 of the Constabulary Force Act. It reads:

"33. Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."

It is readily noticed, that the section does not speak to any period of limitation on which such an action must be brought. To determine this fact, it is therefore necessary to refer to the Limitation of Actions Act. However, there is no such provision in that Act. As Rowe, P., said, after tracing its history, in *Melbourne v. Wan* [1985] 22 J.L.R. 131 at 133:

"The present version of the Limitation of Actions Act is divided into four parts. Part I deals with limitation of actions in relation to land. Part II Crown Suits limitation, Part III with Boundaries and the fourth Part with limitations in relation to debt and contract. Apparent on the face of the Statute, then, is the fact that the Limitation of Actions Act of Jamaica does not within its own four walls contain the detailed statutory provisions limiting the time within which actions in Tort may be brought. To find the applicable statutory provision for Jamaica in this regard one must have recourse to a Statute of the United Kingdom passed three hundred and sixty-two years ago."

As it was then (1985) so it is today in the year 2004. It is expected that after repeated suggestions by this Court, and which I now again repeat, the

legislature will soon address this, and legislate time periods within which actions in Tort ought to be brought.

As Rowe, P did in the cited case, so will we have to do i.e. resort to the English Limitation Act of 1623 21 James I Cap. 16. (See section 46 of the Limitation of Actions Act where the United Kingdom Statute 21 James 1 Cap. 16 is recognized and received as one of the Statutes of this Island.)

Before doing so, however, it is necessary to look back at section 33 of the Constabulary Force Act and in particular the words "shall be an action on the case as for a tort," and reflect upon their meaning. The answer was given by Carey, J.A. in the case of ***Ebanks v. Crooks*** [1996] 52 W.I.R. 315 at 318 when he said speaking of section 33:

"In construing the provision it is necessary to look at its wording. It seems to me that the section treats an action *for acts done by police officers in execution of their office* as an action on the case. It can thus be regarded as a deeming section."

Those words, with which I then agreed and with which I still agree declared that an action brought against a Constable for any act done in the execution of his office, no matter what the cause of action may be, shall be brought as an action on the case. The real issue to be decided in this appeal is what is the limitation period for actions on the case as for a tort, and for this it is necessary to look back to the English Statute of Limitation of 381 years ago. What are its provisions? Unfortunately, the copy of the Statute available to us is hardly

legible and so I rely on the relevant extracts cited by Rowe, P., in the **Melbourne** case (supra). It is necessary to set out section 3 which is relevant:

"3. And be it further enacted, that all actions of trespass quare clausum fregit, all actions of trespass, detinue, action sur trover, and replevin for taking aways of goods and cattle, all actions of account, and upon the case, other than such accounts as concern that trade of merchandise between merchant and merchant, their factors or servants, all actions of debt for arrears of rent and all actions of assault, menace, battery, wounding and imprisonment or any of them which shall be sued or brought at any time after the end of this present session of Parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say)

- (2) The said actions upon the case (other than for slander) and the said actions for account and the said actions for trespass, debt, detinue and replevin for goods or cattle and the said action of trespass quare clausum fregit, within three years next after the end of this present session of parliament, or within six years next after the cause of such actions or suit, and not after;
- (3) and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of this present session of parliament, or within four years next after the cause of such actions or suit, and not after;
- (4) and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken and not after."

Rowe, P., gave a useful interpretation of these provisions, with which I agree.

He said:

"No uniform period of limitation was prescribed for all forms of action. A distinction was drawn between 'actions upon the case' on the one hand and 'actions of trespass, assault, battery, wounding and imprisonment' on the other hand. In respect of actions upon the case the primary rule was that a six year period of limitations is created, whereas in assault the period was only four years. Actions upon the case was sub-divided into two groups, viz., 'slander' and 'other actions upon the case'. For slander the limitation period was restricted to *two years* next after the words were spoken, as compared with six years for 'other actions upon the case'."

Remembering then, that any action brought against a Constable for any act done in the execution of his office, is mandated by section 33 of the Constabulary Force Act to be an action on the case, the limitation period gleaned from the English Limitation Act of 1623, is six years.

The respondent's cause of action arose on January 3, 1997 and his action was brought on January 11, 2001 which would bring the action within the limitation period.

For the reasons, stated herein, I would dismiss the appeal and confirm the order of the Court below with costs of the appeal to the respondent to be taxed, if not agreed.

HARRISON, J.A.

I agree.

HARRISON, J.A. (AG.)

I agree.