

EDWARD WALWORTH BELL *Appellant.*23rd January,
1920.

v.

CLAUD EMILE WRIGHT - *Respondent.*

Assault and false imprisonment—Picquet of soldiers temporarily occupying Law Courts in aid of the civil power—Civilian forcing his way in against Military Officer's orders, and forcibly ejected by him.

On the night of the day of the Armistice at the close of the Great War, the brother of the Respondent entered the Law Courts to make a complaint to the Commissioner of Police. The Respondent, hearing of this, endeavoured to force his way into the building, which was in the occupation of the Military, who were assisting the Police in keeping order.

The Appellant, a Military Officer on duty, ordered the Respondent to leave the building, and on his refusal, forcibly ejected him.

Held that the judgment of the Supreme Court should be varied by reducing the damages from twenty pounds to five pounds, and by setting aside the order giving the Respondent (Plaintiff) costs, and ordering that each party should pay their own costs, both in the Supreme Court and in the Court of Appeal.

Appeal from a judgment of Parodi, Acting C.J., in the Supreme Court of the Colony of Sierra Leone.

McDonnell, Acting A.G., for Appellant. Graham with him cites:—

Price *v.* Seely, 10 Ch., and F., p. 28.

Noden *v.* Johnson, 1851, L.J.N.S., Q.B., Vol. 20, p. 95.

Manual of Military Law, Chap. XII., pp. 113-225.

A. J. Shorunkeh-Sawyer for the Respondent cites:—

Powell on Evidence, 6th Ed., p. 163.

Taylor on Evidence, 8th Ed., p. 1593.

Rex *v.* Graham and Burnes, 16 Cox., C.C., p. 420.

Heddon *v.* Evans, 35 T.L.R., p. 642.

Colonial Securities Trust Co. *v.* Massey (1896), 1 Q.B., p. 38.

Edmundson *v.* Machell, 2 Term Rep., p. 4.

Graham in reply.

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This is an appeal from the judgment of Mr. Justice Parodi (when acting as Chief Justice), dated April the 5th, 1919, awarding the Plaintiff £20 damages, with costs, for assault and false imprisonment.

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The facts, although the record is of unusual length, in reality lie within a very narrow compass, and may be conveniently stated as follows:—

During the early days of November, 1918, there was, in the opinion of the Executive, such a state of unrest as to necessitate troops being sent down to Freetown to assist the Police in keeping order. On the evening of November 11th, 1918, the Defendant, in command of half a company of these soldiers was in Freetown, and the soldiers under him were based on the Police Station at the Law Courts, and subsequently a picquet under Defendant's command proceeded to the neighbourhood of the Grand Hotel, and it was whilst there that Dr. Wright drove past in his motor car which led, he (Wright) asserts, to the Defendant's making certain remarks to him at which he (Wright) took umbrage. He also stated that his motor car and his boy were struck by one of the soldiers, and, in consequence of this, he proceeded to the Police Station at the Law Courts where he made a complaint to the Acting Commissioner of Police.

The Plaintiff hearing of this, left Mr. Dawson's house, where he was, and came to the Law Courts, accompanied by Messrs. Dawson, Mudge and M'Carthy, and attempted to enter the buildings, but was peremptorily told by the Defendant, who by this time had returned to his base, to go back down the steps and, when he refused to do so, caught him by the throat, and Plaintiff, closing with him they rolled down the steps locked together; the Plaintiff was afterwards seized by the native soldiers, and, as he asserts, somewhat roughly handled, although no medical evidence has been called before the Court on that particular point. It is, in consequence of this fracas, that these proceedings were instituted.

Now with regard to these facts, which I have endeavoured to set out as briefly as possible, I desire to make the following observations:—

I altogether fail to understand why it was at all necessary for Dr. Wright to rush off to the Police Station to report the incident just adverted to, since, as there is no evidence that there was any danger to his person or his property, it could very easily have been officially reported to the Commissioner of Police through the usual channel next morning.

A similar criticism must be made with regard to the Plaintiff's hurried departure from Mr. Dawson's house to the Law Courts, making due allowance for fraternal solicitude, where, on

arrival, he appears to have insisted at all hazards in attempting to force his way into the building when peremptorily ordered by a Military Officer not to do so. There seems to be an idea prevalent that, because a place is a public place, the public have always an absolute right of entry there. This is not so; circumstances may arise which may make such entry inadmissible, and the fact that the picquet was based on this part of the building seems to me a good reason for refusing the public a right of entry on this occasion. Both Dr. Wright and his brother, the Plaintiff, are, by their position in this community, persons who are expected at any rate to exercise self-control, but I feel bound to say that, in acting as they did on this occasion they, in my opinion, became indirectly partly responsible for the unfortunate incidents which immediately followed. A formal protest would have adequately met the case.

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I cannot but think, coming to the conclusion from Mr. McCarthy's remarks about the Nigerian officers, and from the facts and circumstances surrounding this entire transaction as we now know them, that the Plaintiff and his associates, far from having their feelings under control, were in a state of excitement; indeed, I should be sorry to think they were otherwise considering what actually occurred. And it seems to me that the Plaintiff, from the very fact that he belongs to the same profession as myself, ought to have appreciated the fact that it is not advisable to use force against authority, even if you are strictly within your rights, except in case of urgency, and in this case there was no such urgency.

So far as the Defendant is concerned, he is a soldier, and he was, as I believe, placed through no fault of his own, in a difficult and equivocal position, and it seems to me a matter for great regret that his instructions and orders were not far more explicit and definite, and there seems to have been a lack of that mutual understanding between the two forces which is so necessary in such circumstances, and which, in this case, resulted in the Defendant being so placed that, if he wished to exercise his right of preventing the public intruding upon the place in which his picquet was stationed, he also prevented the public access to the charge room where the police were stationed at night.

The Defendant was in command of soldiers temporarily occupying part of the Law Courts, and when the Plaintiff attempted to enter this building and insisted on his right to do so, the Defendant, on his own admission, assaulted him, instead

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of merely arresting him, or ordering him to be arrested. Although without doubt he received, in my opinion, considerable provocation, and was apparently highly exasperated at the conduct and demeanour of Plaintiff and his associates, yet for what he did on that occasion he is in law answerable to the Plaintiff in damages.

Whilst fully realising the difficult position in which the Defendant found himself it is quite clear that he also appears to have lost control of himself, and acted in a way that can only be a matter for regret which has resulted in his being embroiled in a lengthy and anxious and an expensive litigation.

I have most carefully and anxiously regarded this matter from every standpoint, and, taking all the circumstances surrounding this entire matter into consideration, and with all respect to the learned Judge who tried this case, I think that the judgment appealed from should be varied to this extent, that the damages should be reduced from twenty pounds to five pounds, and that each party in the Court below should pay their own costs, and, so far as this Appeal Court is concerned, each party should pay their own costs.

PENNINGTON, J.

I concur.

PARODI, J.

I agree to the conclusion arrived at by the learned President, but I fail to find any reason whatever for altering my views as regards the facts I found on the evidence in the Court below, or any authority for altering my view of the law which governs this case.