

would have earned during the period of notice and in her statement of claim only claims £1.

The award of damages will, therefore, be reduced to £28. The award of costs in the magistrate's court to stand. Had the appellants availed themselves of the procedure of paying into court my decision on this point might have been different. The appellants to have the costs of the appeal to be taxed. Out of the judgment debt of £65 paid into court the appellants are to be paid the sum of £37 and the taxed costs of the appeal. The balance to be paid to the respondent.

S.C.

1963

SINGER
SEWING
MACHINE
CO.
v.
GEORGE

[SUPREME COURT]

SULAIMAN BAH Applicant
v.
DIRECTOR OF PRISONS, SENIOR POLICE MAGISTRATE
AND SADU BAH Respondents

Freetown
August 9,
1963

Bankole Jones
C.J.

[C.C. 245/63]

Habeas corpus—Arrest of debtor about to leave country—Debtor not brought before court—Committal to prison by improper person—Debtors Act (Cap. 24, Laws of Sierra Leone, 1960), ss. 4, 5, 6, 7, 8, Form A.

On July 20, 1963, the third respondent caused a summons to be issued in the magistrate's court claiming the sum of £50 from the applicant. The return date for the hearing of this summons was to be August 20. On the same day (July 20), an application was made to the Acting Senior Police Magistrate for the arrest of the applicant on the ground that he was about to leave the country. The magistrate granted this application and issued a warrant for the applicant's arrest. After being arrested, the applicant was brought before a bailiff, Mr. Rahim, who examined him regarding his ability to give bail or security pending the hearing of the summons. Having satisfied himself that the applicant was not prepared to furnish any security or produce any surety, Mr. Rahim caused the applicant to be delivered into the custody of the officer in charge of the magistrates' lock-up in the Law Courts building, Freetown. Later the same day, the applicant was taken to the Freetown Prison, where he was detained until July 26, on which date he moved for a writ of habeas corpus.

Sections 4 through 8 of the Debtors Act provide as follows:

"4. If a plaintiff, in any action or suit, brought or instituted in any court for any cause of action of an amount or value of £10 or upwards shall . . . show to the satisfaction of the court that such plaintiff has a cause of action against the defendant to the amount of £10, and that such defendant is about to leave the [country] . . . the plaintiff may . . . make an application to the court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the action or suit.

"5. If the court . . . shall be of opinion that there is a probable cause for believing that the defendant is about to leave the [country] . . . and that . . . by reason thereof the execution of any judgment . . . which may be made against him is likely to be obstructed . . . it shall be lawful for the court to issue a warrant . . . to bring the defendant before the court,

S. C.

1963

BAH
v.
BAH.

Bankole Jones
C.J.

that he may show cause why he should not give good and sufficient bail for his appearance.

"6. If the defendant fail to show such cause, the court shall order him to give bail for his appearance at any time when called upon while the action or suit is pending. . . .

"7. If the defendant offers, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with costs of the action or suit, the court may accept such deposit.

"8. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the action or suit, or, if judgment be given against the defendant, until the execution of the judgment or decree, if the court shall so order."

Held, granting the application, that a bailiff has no authority to commit a debtor to custody in default of bail or deposit under section 8 of the Debtors Act.

Solomon A. J. Pratt for the applicant.

Constant S. Davies (Acting Senior Crown Counsel) for the first and second respondents.

Nathaniel A. P. Buck for the third respondent.

BANKOLE JONES C.J. On July 26, 1963, the applicant, Sulaiman Bah, by his counsel, moved for a writ of habeas corpus alleging that he was wrongly held in custody contrary to the provisions of the Debtors Act, Cap. 24. In face of the affidavit before this court, an order nisi for the immediate issue of the writ was made and the applicant was granted bail and the return day fixed for August 6, 1963.

On that date the matter was fully argued by counsel. The facts disclosed are as follows: On July 20, the plaintiff/respondent caused to be issued a summons in the magistrate's court claiming the sum of £50. The return date for the hearing of this summons was August 20. On the very day of the issue of the summons, an application was successfully made to the Acting Senior Police Magistrate, His Worship Mr. J. B. Short, for the arrest of the applicant on the ground that he was contemplating leaving the country for good. He was arrested on a warrant under Form A of the Act. Instead of the applicant being taken before the magistrate's court so that "he may show cause why he should not give good and sufficient bail for his appearance" (see section 5 of the Act), he appeared to have been taken to a Mr. Rahim, a bailiff, who proceeded to examine him as to his ability to give security or produce suitable sureties to stand his bail pending the hearing of his summons as directed by the warrant. Having satisfied himself that the applicant was not prepared to furnish any security or produce any surety, Mr. Rahim caused the applicant "to be delivered into the custody of the officer-in-charge, magistrates' lock-up, Law Courts, Freetown, until such time as he can give security or produce the required surety to stand his bail." The applicant was ultimately taken into Freetown Prison and was kept there by the Director of Prisons from July 20 to July 26, without any order of a magistrate so committing him there.

Now, I should have thought that the provisions contained in sections 4 to 8 of the Debtors Act were quite clear and unambiguous. When once a magistrate is satisfied that a defendant/debtor is intending to abscond, he may

cause a warrant for his arrest to be issued. After his arrest, the defendant must be brought before a magistrate in court so that he may show cause why he should not give good and sufficient bail for his appearance on the date of the hearing of the summons. If the defendant fails to show such cause, the court shall order him to give bail for his appearance and his surety or sureties shall undertake in default of such appearance to pay any sum of money which may be adjudged against him in the action or suit with costs. It is only where the defendant neither furnishes security nor offers a sufficient deposit (see section 7) that the court may commit him to custody until the decision of the action or suit or, if judgment is given against him, until the execution of the judgment, that is, if the court shall so order.

In the present case, the applicant, after his arrest, was not taken to a magistrate's court for the necessary inquiry to be made, but was taken to an officer of the court who, unwittingly, in my view, arrogated to himself the functions of a magistrate and caused the applicant to be kept in custody without lawful authority. I find that the respondent, the Acting Senior Police Magistrate, properly exercised his discretion in causing a warrant for the arrest of the applicant to issue. I find also that the plaintiff/respondent is not to blame for the unlawful detention of the applicant. The wrongful act stemmed from the bailiff, Mr. Rahim. In the case of the respondent/the Director of Prisons, it is understandable though inexcusable that he may have thought that the warrant gave him authority to detain the applicant in prison without an order from a magistrate.

In the circumstances, I dismiss the Acting Senior Police Magistrate and the plaintiff from these proceedings. I, however, find that the applicant was wrongfully held in custody by the Director of Prisons and I therefore grant the application for the writ of habeas corpus sought. I make no order as to costs.

[SUPREME COURT]

ARNAUD FRANCE *Appellant*

v.

COMMISSIONER OF POLICE *Respondent*

[Mag.App. 29/63]

S. C.

1963

BAH
v.
BAH.

Bankole Jones
C.J.

Freetown
August 19.
1963

Marke J.

Criminal Law—Careless driving—Car entering main road from side road—Duty of driver on main road to avoid accident by exercise of care and diligence—Road Traffic Act (Cap. 132, Laws of Sierra Leone, 1960), s. 43.

On November 14, 1962, a policeman was driving a police van along Battery Street, Freetown, in the direction of the King Tom police barracks. The van was travelling at about 20 m.p.h. when it collided with a car driven by the appellant, which had just emerged from a side lane and had proceeded into Battery Street to a distance of about 4 ft. 6 in. At this point Battery Street is 13 ft. wide. The driver of the van did not see the car until after the collision. The van was brought to a stop 50 ft. from the place of impact.

Appellant was charged with careless driving in a magistrate's court and was convicted. The magistrate based his decision on *MacAndrew v. Fillard*, 1909