

HOOK v. CUNARD STEAMSHIP CO., LTD.

[WINCHESTER ASSIZES (Slade, J.), March 12, 13, 20, 25, 1953.]

False Imprisonment—Merchant ship—Member of crew—Right of master, at common law, to arrest and confine.

A The master of a merchant ship is justified at common law in arresting and confining in a reasonable manner and for a reasonable time any sailor or other person on board his ship only if he has reasonable cause to believe, and if he does in fact believe, that the arrest and confinement are necessary for the preservation of order and discipline, or for the safety of the vessel or persons or property, on board.

B On the issue of damages for false imprisonment, *Walter v. Alltools, Ltd.* (1944) (171 L.T. 371), followed.

AS TO THE RIGHT OF THE MASTER OF A SHIP TO IMPRISON A PERSON ON BOARD HIS SHIP, see HALSBURY, Hailsham Edn., Vol. 33, p. 43, para. 75.

Cases referred to:

- C (1) *Christie v. Leachinsky*, [1947] 1 All E.R. 567; [1947] A.C. 573; [1947] L.J.R. 757; 176 L.T. 443; 111 J.P. 224; 2nd Digest Supp.
 (2) *Aldworth v. Stewart*, (1866), 4 F. & F. 957; 14 L.T. 862; 176 E.R. 865; 41 Digest 670, 5008.
 (3) *The Lima*, (1837), 3 Hag. Adm. 346; 166 E.R. 434; 41 Digest 233, 728.
 (4) *Walter v. Alltools, Ltd.*, (1944), 171 L.T. 371; 2nd Digest Supp.

ACTION for damages for false imprisonment.

- D The plaintiff entered the service of the defendants, the Cunard Steamship Co., Ltd., in 1909. By a contract in writing, dated Apr. 1, 1949, the defendants agreed to employ him as a lounge steward for two years from the date of the contract, and on June 24, 1950, when the defendants' ship, R.M.S. Queen Elizabeth, left Southampton for New York, he was serving as a steward in the first class passenger lounge of the ship. Up to that time his character and reputation were unblemished. Among the first class passengers in the ship were Dr. Greenberg and his wife, their daughter Linda, aged ten years, and their son, aged six years. On the evening of June 25, Captain Cove, the commanding officer of the ship, instructed the staff captain to investigate a complaint by Dr. Greenberg. His daughter, Linda, alleged that an indecent assault had been committed against her in the lounge that evening, and, in the presence of, among others, the staff captain, the chief steward, the master at arms and Dr. Greenberg, she identified the plaintiff as the person responsible, but no one told the plaintiff at the time what was alleged against him. Dr. Greenberg was about to strike the plaintiff, but the staff officer intervened and told the chief steward that the plaintiff was to work in the pantry for the rest of the voyage away from the passengers. Dr. Greenberg then said that he wanted the plaintiff put under lock and key. The plaintiff was taken away before he could say anything, and was confined for the night in a cabin, with a sentry outside the door. On the same evening, Dr. Greenberg told Captain Cove that, in his opinion, the plaintiff was mentally unbalanced and would be a danger to the other children in the ship, as well as to Linda, if he were left to go about the ship. Dr. Greenberg demanded that the plaintiff should be kept under restraint and said that, if this were not done, he would consider it his duty to inform the parents of other children among the passengers of the facts. He also stated that, when the ship arrived in New York, he would have the plaintiff arrested and prosecuted. On the following morning the plaintiff was brought before the captain. He denied the accusation made against him, and the chief steward told the captain of his long service and good record. There was no evidence in corroboration of Linda's story, and a statement signed by Dr. Greenberg which was before the captain, and which

purported to be her account of the incident, was inconsistent with the account which she had given in the presence of the staff captain, which account was taken down at the time by the master at arms and was also before the captain. The captain ordered the plaintiff to be kept under restraint in the isolation hospital for the remainder of the voyage and until after the first class passengers had disembarked at New York. The two doctors of the ship, having examined the plaintiff on the captain's orders, reported that he seemed normal. Early on June 29, the Queen Elizabeth reached New York, the first class passengers completed their disembarkation by 9 a.m., and the plaintiff was set free between 9 and 10 p.m. On the return voyage the plaintiff was given administrative duties in the catering department. There was a large number of child passengers on that voyage. On July 6, after the Queen Elizabeth reached Southampton, the plaintiff was discharged from his employment in the ship, and on Nov. 7, 1950, the defendants dismissed him from their employment.

By the writ and statement of claim the plaintiff claimed damages not only for false imprisonment, but also for breach of contract and wrongful dismissal. Before the action came into court the defendants paid into court the full amount of the claim for damages for breach of contract and wrongful dismissal, and the plaintiff accepted that sum. By their amended defence, the defendants maintained that the arrest and imprisonment of the plaintiff was lawful. After saying that the action was taken on the authority of the master following a complaint to him by Dr. Greenberg, they went on to say:

“The said action was reasonable and proper and in the interest of preserving good order in the ship in that the said complaint appeared to be well-founded, the said Dr. Greenberg threatened to do violence to the plaintiff and expressed his fear that the plaintiff might do violence to the child, the nature and force of the accusation justified the plaintiff being required to submit to medical examination and/or observation and rendered it highly undesirable that he should continue his duties. Further or alternatively the master had reasonable cause to believe and did believe that the said arrest and imprisonment was necessary for the preservation of order in the ship and the safety of child passengers by reason of the matters hereinbefore mentioned and the risk of a repetition of the conduct complained of.”

At the hearing of the action, the captain gave the following reasons, inter alia, for his action in keeping the plaintiff in confinement: (a) that there might be some truth in Dr. Greenberg's assertion that the plaintiff was mentally unbalanced and might be a danger to the passengers, (b) that, if Dr. Greenberg carried out his threat of informing other passengers, it might create a state of alarm in the ship amongst the passengers and loss of order amongst the ship's company, and (c) that it might be more comfortable for the plaintiff, in view of Dr. Greenberg's threatening attitude toward him. The captain went on to say that, in navigating a big passenger ship with due regard to the safety and comfort of the passengers, he could not ignore the possibility of adverse circumstances arising at any time, and that he had to take steps to see that through them no harm came to his ship or to his passengers. SLADE, J., found that the plaintiff was mild-mannered, disciplined and reliable. In connection with the finding that the plaintiff was not informed of the charge against him before he was put under restraint, the learned judge referred to *Christie v. Leachinsky* (1).

Skelhorn for the plaintiff.

Molony for the defendants.

SLADE, J., stated the facts, and continued: In the first place, I have to ask myself: In what circumstances does the law recognise the right of the master or anyone deputed by him to imprison someone who is on board the

ship which he is commanding when the ship is on the high seas? I am, of course, dealing only with the right at common law, as opposed to the statutory right under the Merchant Shipping Acts in circumstances which do not arise in this case. There is very little authority on the point. In HALSBURY'S LAWS OF ENGLAND, Hailsham ed., vol. 33, p. 43, para. 75, the law is stated in this way:

A "The master of a merchant ship is justified at common law in arresting and confining in a reasonable manner and for a reasonable time any sailor or other person on board his ship, if he has reasonable cause to believe that such arrest or confinement is necessary for the preservation of order and discipline or for the safety of the vessel or the persons or property on board."

B I think that that statement requires to be amplified, and that, not only should the master of the ship have reasonable cause to believe in the necessity of the confinement for any one of the purposes stated, but he should, in fact, believe that the confinement is necessary for that purpose: that is to say, that the confinement must comply not only with the objective but also with the subjective requirements in that respect.

C The word "necessary" or "necessity" is, I think, vital. That requirement derives some support from a direction given to the jury in *Aldworth v. Stewart* (2), which was cited by counsel for the plaintiff. In that case a passenger on board a passenger ship was imprisoned for insolence to the captain, the justification pleaded by the captain being that it was necessary for the due preservation of discipline. CHANNELL, B., in summing-up to the jury, said (14 L.T. 862):

D "It was undoubtedly necessary that the captain of a ship should be intrusted with considerable authority, and it was true as a general proposition that the captain had some authority over the passengers as well as over the crew. But this authority was based upon necessity, and was limited to the preservation of necessary discipline and the safety of the ship. It was true that the captain was not bound to wait for actual mutiny, and he might arrest any movements towards it on the part of the passengers or crew. But then there must be some act calculated, in the apprehension of a reasonable man, to interfere with the safety of the ship or the due prosecution of the voyage."

E That is the objective test. Counsel for the defendants cited a passage from the judgment in *The Lima* (3), where SIR JOHN NICHOLL said (3 Hag. Adm. 349):

F "The maritime law and the legislature have always considered this valuable class of persons, the British mariners, as highly claiming encouragement and protection; but, on the other hand, the maintenance of order, discipline, and the authority of the commanding officer on board, are essential to the safety of navigation, and the great commercial interests of the country."

G What, therefore, is the authority of the commanding officer on board? In the view which I take of this case it becomes unnecessary for me to decide whether the right, whatever it is, is limited to the master or commanding officer of the ship, or whether he is in any circumstances entitled to delegate it.

H I will, therefore, apply it to the master of a ship. To justify the imprisonment of the plaintiff, based on the justification as pleaded in this case, I hold that the defendants must prove, in accordance with the standard of proof which arises in a civil action, namely, the preponderance of probability, first, that the master, Captain Cove, had reasonable cause to believe that the arrest and confinement of the plaintiff were necessary for either (a) the preservation of order in the ship, or (b) the safety of one or more of its passengers (I say "one or more" so as to include not only Linda but Dr. and Mrs. Greenberg and the

little son), and, secondly, that the master, in fact, believed that the arrest and confinement were necessary for either of those purposes. The parties have agreed in this case that I am to treat the arrest and confinement alleged in the statement of claim as being the single tort of false imprisonment.

Again, it is necessary to underline the word "necessary". The question which I have to decide is not: Did Captain Cove believe the accusation against Hook to be true? The answer to that is, of course, that he did, and that Dr. Greenberg did. Nor is the question: Had he reasonable grounds for believing the accusation to be true? I am prepared to accept that he had. The question is: Had he reasonable grounds for believing that the imprisonment of the plaintiff was necessary either for the preservation of order in the ship or for the safety of one or more of its passengers. That, as I have said, is the objective test. I have no hesitation whatever in arriving at the conclusion that the plaintiff's imprisonment was in no way necessary and that there were no reasonable grounds for believing it to be necessary for either of those purposes. It is true that, on the return voyage, Dr. Greenberg could no longer make the wild threats and the extravagant statements which he had previously made, because he would not be there to make them, but, if there were grounds for believing that the plaintiff was really the sort of ogre that he was painted as being, I cannot see, if he remained at large, why the children should have been any more safe on the return voyage than they were on the outward voyage.

That is sufficient to dispose of the defence, but, as the case may go further, I feel it desirable that I should express my view on the second question, and I find as a fact that neither the master nor the staff captain, in fact, believed that the arrest and confinement of the plaintiff were necessary for either of those purposes or at all. I acquit them entirely of any malice in the sense of ill will or spite towards the plaintiff. On the contrary, I am satisfied that they felt considerable concern for him, a trusted servant of so long standing with their company and under a two years contract with the company. But, in spite of their disclaimers, I am satisfied that they did not order the confinement of the plaintiff, and the continuation of the confinement, because they, in fact, believed that it was necessary for any of the purposes which I have mentioned, but that they did it to placate Dr. Greenberg, and, by placating Dr. Greenberg, to avoid what Captain Cove described as "unwelcome publicity". [HIS LORDSHIP reviewed the evidence in support of his conclusion, and continued:]

No one in this action has ever ventured to suggest that there was any justification for the accusation made by the child, Linda, against the plaintiff, and it is fortunate for the defendants that I, not sitting with a jury, am able to make it clear that there is no vestige of ground, nor has any vestige of ground been suggested by the defendants, for casting the slightest aspersion on the plaintiff's character. I am, therefore, able to vindicate him in this court, and it is not necessary for me to vindicate him by visiting a heavy sum of damages on the defendants for their conduct in this matter as a jury might well have done, that being the only way in which they could have made it clear that that is no stain of any kind on his character. On the issue of damages, I am required by the decision of the Court of Appeal in *Walter v. Alltools, Ltd.* (4) to bear in mind that in an action for false imprisonment, as was said by LAWRENCE, L.J. (171 L.T. 372):

"The general principle . . . is that any evidence which tends to aggravate or mitigate the damage to a man's reputation which flows naturally from his imprisonment must be admissible up to the moment when damages are assessed. A false imprisonment does not merely affect a man's liberty, it also affects his reputation. The damage continues until it is caused to cease by an avowal that the imprisonment was false."

[After reviewing the evidence in regard to the plaintiff's dismissal from the

defendants' service, HIS LORDSHIP assessed the damages to which the plaintiff was entitled in respect of the false imprisonment at the sum of £250.]

Judgment for the plaintiff.

Solicitors: *Waller, Chesshire & Co.*, Southampton (for the plaintiff); *Lampport, Bassitt & Hiscock*, Southampton, agents for *Hill, Dickinson & Co.*, Liverpool (for the defendants).

[Reported by CONRAD OLDHAM, Esq., Barrister-at-Law.]

A

LEWIS v. CARMARTHENSHIRE COUNTY COUNCIL.

[CARMARTHENSHIRE WINTER ASSIZES (Devlin, J.), March 6, 31, 1953.]

B *Negligence—Schoolmaster—Child at nursery school—Permitted to run on to highway—Injury to vehicle driver in avoiding child—Liability of education authority.*

A child, aged four years, while at a nursery school, was made ready to go out for a walk and was left with another child in a classroom. The child left the classroom and ran on to the highway, causing the driver of a lorry to swerve violently so that the lorry struck a telegraph post, as a result of which the driver was killed. On a claim by the wife of the driver against the defendants as the education authority,

C

HELD: any person who allowed a young child to stray into a busy street should anticipate, not only that the child might be injured, but also that other users of the road might be injured; in the circumstances the defendants owed a duty of care to the deceased and were in breach of that duty; and, therefore, the plaintiff was entitled to damages.

D

Hay (or Bourhill) v. Young ([1942] 2 All E.R. 396), applied.

AS TO THE DUTY TO TAKE CARE, see HALSBURY, *Hailsham Edn.*, Vol. 23, pp. 568-587, paras. 823-840; and FOR CASES, see DIGEST, Vol. 36, pp. 12-21, Nos. 33-101, and Digest Supps.

E

Cases referred to:

- (1) *Hay (or Bourhill) v. Young*, [1942] 2 All E.R. 396; [1943] A.C. 92; 111 L.J.P.C. 97; 167 L.T. 261; 2nd Digest Supp.
- (2) *Haynes v. Harwood*, [1935] 1 K.B. 146; 104 L.J.K.B. 63; 152 L.T. 121; Digest Supp.
- (3) *Glasgow Corpn. v. Muir*, [1943] 2 All E.R. 44; [1943] A.C. 448; 112 L.J.P.C. 1; 169 L.T. 53; 107 J.P. 140; 2nd Digest Supp.
- (4) *Hambrook v. Stokes Brothers*, [1925] 1 K.B. 141; 94 L.J.K.B. 435; 132 L.T. 707; 36 Digest 123, 819.
- (5) *Cutress v. Scaffolding (Great Britain), Ltd.*, [1953] 1 All E.R. 165.

F

ACTION for damages for negligence.

G

On Apr. 19, 1951, between 12.15 and 12.30 p.m. a child named David Morgan, aged four years, was at a nursery school at Ammanford and in the charge of the defendants, the school authority. The nursery school was in a building situated behind the junior school which adjoined College Street, a main street and a busy thoroughfare with plenty of traffic. The mistress in charge of the nursery school took David Morgan and another child into a classroom to get them ready for a walk. She left them in the classroom while she went to the toilet, but when she got outside she found that another child had fallen and cut itself and she was occupied for about ten minutes in attending to this other child. While the mistress was away, the two children left the classroom and David Morgan reached the main street, along which the deceased was driving a lorry. David Morgan ran into the road, putting himself in imminent peril of death or injury, the deceased swerved his lorry violently to avoid him, the lorry hit a telegraph post, and the deceased was killed. The deceased was a married

H