

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

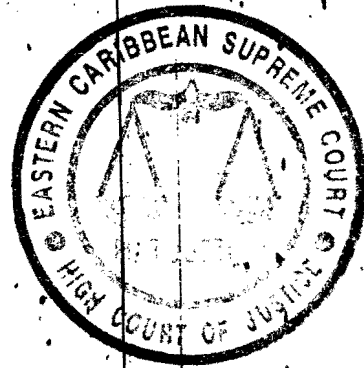
SUIT NO 211 OF 1993

BETWEEN:

URICA WILLIAMS

AND

ALFRED CHARLES



PLAINTIFF

DEFENDANT

A.F. Williams for the plaintiff
C.D. Dougan QC and Ms. A Young for the defendant.

2nd December, 1997
Delivered December 1997

JUDGMENT

BAPTISTE J.

This action was commenced by a specially endorsed writ of summons dated 17th May, 1993.
The Statement of Claim states as follows:

- "1. On the 5th day of December 1992 the Plaintiff and the Defendant were attending a dance at Tode's Disco at Byrea.
2. The Defendant asked the Plaintiff for a dance and was told that the Plaintiff was not dancing with him.
3. The Plaintiff moved away and the Defendant walked behind the Plaintiff and pulled the Plaintiff's pants and the Plaintiff pushed the Defendant.
4. The Defendant cuffed the Plaintiff in the face resulting in the Plaintiff falling to the ground. The Defendant then kicked the Plaintiff.
5. The Defendant later cut the Plaintiff on her face with a knife, the Plaintiff in consequence received an injury taking eleven (11) sutures.

6. As a result of the action of the Defendant, the Plaintiff received injuries suffered loss and damage.

PARTICULARS OF INJURY:

Deep laceration extending from prime of the left ear to the corner of the mouth that laceration required eleven (11) sutures."

The Plaintiff as a consequence claims damages, further or other relief and costs.

The Defendant in his defence filed on the 25th of June, 1993 admitted paragraphs 1 and 12 of the Statement of Claim but denied paragraphs 3, 4, 5 and 6 thereof.

Paragraphs 2 to 8 of the defence states:

- "2. The Defendant contends that when the plaintiff refused to dance with him on the night of the 6th December, 1992, he courteously asked the Plaintiff her reason for so doing thereupon the Plaintiff assaulted the Defendant by spitting into her face.
3. Soon thereafter the Plaintiff further assaulted the defendant by striking him violently on the chest with a Hairoun pint. The defendant retaliated by slapping the Plaintiff and both parties held on to each other. In the process the Plaintiff tore off the defendant's long sleeve Rayon shirt.
4. In the fight that ensued, both the Plaintiff and Defendant fell to the floor whereupon the Defendant was kicked on the head by someone unknown.
5. The Plaintiff went out of the building and returned in about five minutes with a broken bottle in her hand and accompanied by about fifteen men.
6. The Plaintiff unlawfully pointed the said broken bottle towards the face of the Defendant, who to protect himself as he was entitled to do knocked away the Plaintiff's hand and held on to her hand holding the said broken bottle so as to avoid being injured by the Plaintiff.
7. A crowd gathered and the Plaintiff in an attempt to plunge at the Defendant stumbled and fell to the ground while holding the broken bottle.

8. No admission is made as to the alleged or any injuries loss or damage.

COUNTERCLAIM

The Defendant repeats paragraphs 2, 3, 4, 5 and 6 of the defence and says that as a result of the Plaintiff's assaults on him he suffered great indignity, pain, loss and damage.

PARTICULARS OF SPECIAL DAMAGE

Cost of Rayon shirt \$75.00.

And the Plaintiff claims damages."

In her examination in chief, the Plaintiff testified that on the 6th of December, 1992, she was at Uncle Tode's disco at Byre, where there was a dance going on. The Plaintiff came and asked her for a dance. She refused and walked away. While there standing the Defendant came behind her, started pulling her pants and danced behind her. She pushed him, he cuffed her in her face, she fell on the ground and he started kicking her. The Plaintiff deposed that while on the ground he cut her with a knife. A cousin of hers took the Defendant off her and took her outside. She went straight to the Georgetown Hospital where she was seen by one Dr. Leacock. She explained that she got twenty two stitches in all, eleven outside and eleven inside.

Ivor Williams who testified on behalf of the Plaintiff said.

"I know the defendant. I know him from the fight on 6th December, 1992. I was at Uncle Tode's disco. As I was going inside I saw them on the floor, that is Urica and Alfred Charles. He was on top of her. I pushed him off because she is my cousin. After I push him off he ran off. He had a switch blade knife in his hand. I took off Urica from the floor. I saw blood and I saw a cut on her jaw. I took her to Georgetown Hospital. It was a very big cut. It was bleeding. When I pulled him off he ran through the door with a knife. I am sure about that."

The Defendant's version of the events differs markedly from that of the Plaintiff. He stated in examination in chief:

"... On 6th December, 1992 I went to a disco in Byrea. While there I saw the Plaintiff. I did not know her before. When I saw her she was standing drinking a beer. I went to her and asked her whether I could dance with her please. She walked away. After I walked behind her and asked her why she did not want to dance with me. After, she spit in my face. I wiped my face and told her because I

asked her for a dance, you spit in my face. She had a Hairoun bottle in her hand. She lashed me with it in my chest. She held the bottle in her hand. It was a hard blow. She held the bottle in her hand. After, I slapped her because she lashed me with the bottle. After I slapped she we hold on and fight..."

The Defendant further stated that the Plaintiff ripped off his rayon shirt. According to the Defendant, the fighting stopped. The Plaintiff then went outside returned with a broken bottle in her hand, looked until she found him and pushed the bottle in front of his face. He then knocked away her hand she insisted on coming and they began wrestling for the bottle. The wrestling took them to the ground. The Defendant deposed that he felt a bottle to his head and a kick, but he did not know who did that. After he got away he ran. He went to work next morning, got a call from the police, a case was made against him and it was dismissed. The Defendant further denied having a knife or cutting the Plaintiff.

In cross examination the Defendant said that he remembered asking the Plaintiff for a dance and she refused. He did not pull her pants and danced behind her. He stated that she had half a beer in her hand. He did not see the Plaintiff with any cut. The broken bottle she had had three sharp pieces. The Defendant further explained that he did not get the broken bottle from the Plaintiff. He in fact left her with the bottle. The Defendant further testified that about fifteen men came around him and he ran outside. He denied that Ivor Williams pulled him off the Plaintiff. According to the Defendant he does not know how the Plaintiff got cut. In fact it was in court the next morning he realised that she got cut.

As can be seen there are substantial differences in the evidence of the parties as to what happened at the disco. It is however incontrovertible that the Defendant asked the Plaintiff for a dance, she refused and at the end of it all, she ended up with a cut from her ear to her mouth, and had to be taken to the Georgetown Hospital for treatment.

I find as a fact that the plaintiff and the Defendant were complete strangers before the 6th of December 1992. On the 6th of December, 1992 both happened to be attending a dance at Uncle Tode's disco at Byrea. The Defendant came and asked the Plaintiff for a dance and she refused. I accept the evidence of the Plaintiff that she walked away and while standing, the Defendant came behind her and started pulling her pants and danced behind me. She pushed him and he felled her with a cuff to the face. He started kicking her and while she was on the ground he cut her with a knife.

I find that the Plaintiff's version of events is more consistent with credibility. I find the Plaintiff and her witness to be more credible than the Defendant and I accept their evidence. In cross examination, learned counsel for the Defendant Mr. C. Dougan QC tried to impugn the

credibility and veracity of the Plaintiff and her witness. Although some discrepancies appeared in their evidence. I am of the view that in substance they remained unscathed.

The Defendant would like this court to believe that after the Plaintiff refused his invitation to dance and walked away, he simply walked behind her and asked her why she did not want to dance with him and she spat in his face. I do not believe that that is what the Defendant did. I am inclined to the view that he did more than that and I accept the Plaintiff's evidence that he pulled her pants and started dancing behind her and she pushed him.

I totally reject the Defendant's assertion that he and the Plaintiff fought two times at the disco. That the second fight occurred when the Plaintiff went outside and returned with a broken bottle with three prongs and searched for him.

If, as the Defendant contends the Plaintiff returned to the disco accompanied by fifteen men, it is not unreasonable to conclude that he would have been the recipient of a severe beating by these men, overwhelmed as he would have been by the mere force of numbers. This however was not the case, for according to the Defendant, nobody did anything at all. He ran away. The Defendant deposed in cross-examination, "about fifteen men came around me. I ran outside." I view the evidence of the Defendant with grave suspicion and I reject it. None of these fifteen men intervened. None of these fifteen men made any attempt to stop the Defendant. I accept the evidence of Ivor Williams that when he saw the Plaintiff on the ground people were trying to run.

I also accept the evidence of Ivor Williams that he saw the litigants on the floor with the Defendant on top of the Plaintiff and he pushed the Defendant off the Plaintiff. The Defendant ran off with a switch blade knife in his hand. He saw blood coming from a very big cut on the jaw of the Plaintiff and he took her from the floor and carried her to the Georgetown Hospital.

The medical report of Dr. Leacock stated that the Plaintiff had "a deep laceration extending from the pinna of the left ear to the corner of the mouth that laceration required eleven (11) sutures".

Learned counsel for the Defendant submitted that a cut with a knife is likely to be straight and the Plaintiff's scar is curved. The accepted evidence is that the Defendant is right handed and the cut was inflicted when the Plaintiff was on the floor lying on her back with the Defendant above her. In my view that would place the left side of her face closer to his right hand and in the struggle there would be no inconsistency between the type of wound sustained and the nature of the object used to inflict it.

Learned Queen's Counsel further submitted that if the court finds there was a fight, the court must rule that it is against public policy to approach the court for damages. It is obvious that

there was a fight. The court also notes that the defendant in his counter claim is claiming damages so the Defendant himself has approached the court for damages.

Learned Queen's Counsel also referred to the doctrine of *ex turpi causa non oritur actio*. In *Clerk and Lindsell on Torts* 17th edition paragraph 12.08 page 588 it is stated "... moreover when the act consented to constitutes a crime and the Plaintiff is a participant in mutual criminal activity, a civil action between the parties may be barred on grounds of public policy, *ex turpi causa non oritur actio*. It is my view that this doctrine has no applicability to the facts and circumstances of the present case and there are no public policy considerations which can operate to thwart the Plaintiff's claim for damages.

I am satisfied that the Plaintiff has proven her case on a balance of probabilities. I conclude that on the 6th of December, 1992 at Uncle Tode's disco at Byrea the Defendant cut the Plaintiff with a knife causing a deep laceration extending from the left ear to her mouth and leaving a scar on the left side of her face. All of this occurring as a result of the Plaintiff exercising her legitimate right of refusal in relation to a request for a dance made by the Defendant. Such refusal not going down well with the Defendant. There is no substance in the Defendant's counterclaim and that counterclaim is dismissed.

With respect to general damages, learned counsel for the Plaintiff Mr. A. F. Williams asked the court to make a minimum grant of \$15,000.00. Counsel also referred the court to *Cornillac v St. Louis*, 7 WIR 491. Learned Queen's Counsel Mr. Dougan stated that no evidence of pain and suffering was given and that the Defendant had not pleaded pain and suffering.

In British Transport Commission v Gourley 1956 AC 185 at 206 Lord Goddard said:

"In an action for personal injuries the damages are always divided into two main parts. First there is what is referred to as special damages, which has to be specially pleaded and proved ... and is generally capable of substantially exact calculation. Secondly there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering, and the like..."

Pain and suffering then is not an item of special damage but one of the class of items to be considered in assessing general damages. It does not therefore have to be pleaded.

In *Cornillac v St. Louis* 7 WIR 491 the considerations which ought properly to have been borne in mind in assessing general damages in personnel injury cases were listed as:

(a) The nature and extent of injuries sustained;

- (b) The nature and gravity of the resulting physical disability;
- (c) Pain and suffering;
- (d) Loss of amenities;
- (e) The extent to which pecuniary prospects were affected.

In the instant case the relevant considerations would be items "a" and "c" being the nature and extent of injuries sustained and pain and suffering. There was no resulting physical disability, loss of amenities or evidence that the Plaintiff's pecuniary prospects were affected in any way. With regard to the nature and extent of injuries sustained, the medical evidence is that the Plaintiff had "a deep laceration extending from the pinna of the left ear to the corner of the mouth that laceration required eleven (11) sutures" With regard to pain and suffering, it is inconceivable that the Plaintiff would not have endured pain and suffering. There is however no evidence as to its severity, extent or duration.

In all the circumstances of the case including the fact that a permanent scar was left on the Plaintiff's face a sum of \$10,000.00 would represent fair compensation to the Plaintiff.

Judgment is accordingly entered for the Plaintiff. The Defendant's counter claim is dismissed and it is ordered that the Defendant pays the Plaintiff the sum of \$10,000.00 in general damages and costs to be taxed if not agreed.


Davidson Kelvin Baptiste
High Court Judge (Ag.)

27 January 1998