LLOYD'S LIST
LAW REPORTS

Editor :
E. S. MATHERS
of the Middle Temple, Barrister-at-Law

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CASES CITED

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

STATUTES CONSIDERED.

CONTENTS

NOTE:—These Reports should be cited as "[1962] 2 Lloyd's Rep."

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CORRIGENDUM

BROWNING v. THE WAR OFFICE AND RANCE, [1962] 2 Lloyd's Rep. 363, at p. 363.

Col. 2 (lines 4, 5 and 6) should read:

into account, damages should be reduced by £5000—Appeal allowed, damages being reduced from £32,111 to £14,411.

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Of the Middle Temple, Barrister-at-Law

[1962] VOL. 2] FRIDAY, SEPTEMBER 14, 1962 [PART 1

COURT OF APPEAL

Mar. 27, 28, 29, 1962

DANIELS v. WHETSTONE ENTERTAINMENTS, LTD., AND ALLENDER

Before Lord Justice HOLROYD PEARCE, Lord Justice DAVIES and Mr. Justice BUCKLEY

Master and servant—Employment—Unauthorized act of servant—Visitor to dance hall assaulted by steward inside and outside dance hall — Liability of steward's employers for both assaults.

Assault—Liability of employers for unauthorized act of servant—Whether in course of his employment.

Personal injuries sustained by plaintiff visitor to first defendants' dance hall when he was struck by second defendant (steward employed by first defendants to keep order and eject unruly persons)—Further and more serious injuries sustained by plaintiff when he was struck by second defendant while he was standing outside dance hall talking to friend—Claim by plaintiff against both defendants for damages for assault — Evidence that plaintiff was first struck by defendant because he thought, mistakenly, that plaintiff had hit him; that shortly afterwards plaintiff was standing outside dance hall, not intending to return; that first defendants' manager saw second defendant outside dance hall in a rage and ordered him into dance hall; that second defendant refused to go in and struck plaintiff, fracturing his skull—Award, by Lawton, J., of £5 damages against both defendants in respect of first assault; and £1500 damages against second defendant in respect of second assault — Appeal by plaintiff contending that £5 damages for first assault were inadequate; and that judgment in respect of second assault should also have been given against first defendants — Whether second defendant acting within scope of his employment on second assault.

———*Held*, by C.A., (1) that, as to first assault, there was no fault in assessment of damages; (2) that, although second defendant was authorized by first defendants to eject disorderly persons by use of force, and forcibly to prevent their return (which did not mean that his authority to act terminated at threshold of dance hall), there was a complete break between second defendant's authorized province of operation and subsequent events, in that once plaintiff had left dance hall, showing no inclination to return, second defendant was *functus officio*; that second defendant had repudiated manager's orders to return; and that his second assault on plaintiff was an act of private retaliation and not within second defendant's scope of employment—Plaintiff's appeal dismissed.

The following cases were referred to:

Beard v. London General Omnibus Company, [1900] 2 Q.B. 530;

Canadian Pacific Railway Company v. Lockhart, [1942] A.C. 591;

Carlson v. Hotel West, Ltd. and Phelan, [1950] 2 W.W.R. 129;

Limpus v. London General Omnibus Company, (1862) 1 H. & C. 526;

London County Council v. Cattermoles (Garages), Ltd., [1953] 2 All E.R. 582;

Pettersson v. Royal Oak Hotel, Ltd., [1948] N.Z.L.R. 136;

Plumb v. Cobden Flour Mills Company, Ltd., [1914] A.C. 62;

Warren v. Henlys, Ltd., [1948] 2 All E.R. 935.

This was an appeal by the plaintiff, Raymond Daniels, from a judgment of Mr. Justice Lawton at Liverpool Assizes on June 22, 1961, awarding him damages for assault against the first defendants, Whetstone Entertainments, Ltd., owners of the Plaza Ballroom, St. Helens, and the second defendant, Frank Francis Allender, a steward employed by the first defendants.

By his statement of claim, the plaintiff said that the first defendants were at all material times the owners, and had the management and control of, the Plaza Ballroom, Duke Street, St. Helens, Lancaster. The second defendant was a steward employed by the first defendants.

The plaintiff alleged that on Mar. 5, 1959, at about 10 15 p.m., the plaintiff paid to the defendants the sum of 2s. 6d. to enter the ballroom and was lawfully and peacefully on the premises when the second defendant, ejecting the plaintiff from the ballroom, assaulted him by punching him and kicking him and thereby caused him serious injury.

In his further and better particulars of the statement of claim, the plaintiff said that he was at the door of the ballroom which led into the foyer, and he was being held by Geoffrey Graham Cunliffe. He said that the first assault took place at the door leading to the foyer, and the second assault took place on the pavement immediately outside the main entrance to the first defendants' premises.

By their defence, the first defendants said that, if (which was not admitted) the second defendant was employed by these defendants at the material time and (which was denied) he assaulted the plaintiff as alleged, they denied that the second defendant was acting with their authority or within the scope of his employment in so doing.

According to the defence of the second defendant, he admitted that on Mar. 5, 1959, he took part in ejecting the plaintiff from the Plaza Ballroom, and said that such ejecting occurred after the plaintiff's licence to remain had been withdrawn and when he was a trespasser. This defendant contended that, if (which was not admitted) the plaintiff sustained any injury, it resulted from the use of such force as was reasonably necessary to eject and remove him from the first defendants' premises.

Further, or in the alternative, this defendant said that, if (which was not admitted) the plaintiff sustained any injuries, they were sustained while he was being ejected as aforesaid and when he assaulted this defendant who inflicted such injuries in self-defence.

Mr. Justice Lawton treated the case as involving two separate assaults. In respect of the first assault he gave judgment against both defendants in the sum of £5, and in respect of the second assault he gave judgment against the second defendant in the sum of £1500.

The plaintiff appealed contending (1) that the damages of £5 given in respect of the first assault were inadequate, and (2) that the judgment in respect of the second assault should have been given against the first defendants as well as against the second defendant.

The further facts and arguments are sufficiently set out in their Lordships' judgments.

Mr. J. Stanley Watson, Q.C., Mr. George J. Bean and Mr. R. K. Bain (instructed by Messrs. Pritchard, Englefield & Co., agents for Messrs. S. Hall & Co., of St. Helens) appeared for the appellant plaintiff; Mr. E. Martin Jukes, Q.C., and Mr. A. Michael Maguire (instructed by Messrs. Berrymans, agents for Messrs. Barrell & Co., of Liverpool) represented the respondent first defendants. The second defendant did not appear and was not represented.

JUDGMENT

Lord Justice HOLROYD PEARCE: I will ask Lord Justice Davies to give the first judgment.

Lord Justice DAVIES: This is an appeal from a judgment of Mr. Justice Lawton at Liverpool Assizes on June 22, 1961, in an action for damages for assault arising out of incidents which took place at the Plaza Ballroom at St. Helens on Mar. 5, 1959. The Judge treated the case as one involving two separate assaults. In respect of the first he gave judgment against both defendants in the sum of £5 without costs and ordered that the defendant company should have the costs after the date of a payment into Court. In respect of the second assault he gave judgment against the second defendant, Mr. Allender, for the sum of £1500 and costs.

From that judgment the plaintiff appeals, and on the appeal two questions were argued. First, it was contended that the damages of £5 given in respect of the first assault were inadequate, though it is doubtful if that contention is covered by