

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 140 of 1957

Between:

CHEEB SINGH

Plaintiff

v.

1. MEEHA SINGH

2. SARBAN SINGH

Defendants

Assault—whether summary conviction a bar to subsequent civil action—
Offences Against the Person Act 1861.

The plaintiff sued in the Supreme Court for damages for an assault in respect of which the defendants had already been prosecuted and convicted in the Magistrate's Court. It was contended that by reason of section 45 of the Offences Against the Person Act 1861 the summary proceedings were a bar to this action.

Held.—The whole of the Offences Against the Person Act 1861 has been repealed in the Colony (although the repealing section is omitted from the Revised Edition of the Laws of Fiji 1955). Hence the prior conviction in the Magistrate's Court was no bar to this action.

Case cited:

In re Dukhi, Supreme Court Civil Action No. 56 of 1953.

R. A. Kearsley for the Plaintiff.

P. Rice for the Defendants.

KNOX-MAWER, Ag. J. (19th August, 1960).

The plaintiff seeks damages for an assault allegedly inflicted upon him by the two defendants upon the evening of 23rd July, 1956.

The attention of the Court has been drawn to a preliminary issue of law. This concerns the application or otherwise of section 45 of the Offences Against the Person Act 1861. This provides that summary criminal proceedings for assault are a bar to subsequent civil proceedings for the same cause. However, section 415 of the Penal Code No. 18 of 1944 expressly repealed, *inter alia*, the whole of the Offences Against the Person Act 1861. (see Schedule part 1). This repealing section of the Penal Code is omitted from the Revised Edition of the Laws of Fiji 1955, an omission sanctioned by section 4 (1) (b) of the Revised Edition of the Laws Ordinance No. 10 of 1955. Despite the provisions of section 7 (2) of Ordinance No. 10 of 1955, such an omission does not revive the operation of an Act which has, by earlier legislation, been specifically repealed. Moreover, there is a decision of this Court upon this question, namely *In re Dukhi* Civil Action No. 56 of 1953. In that case the

then Chief Justice held that " There is no provision in our laws which provides that no other proceedings may follow a conviction on a charge of assault in a Court of summary jurisdiction ". I respectfully agree.

Dealing now with the general issues, it is impossible for this Court to ascertain with any degree of certainty exactly what happened during the incident which gave rise to these proceedings. I can merely state such facts as I find conclusively established upon a review of the whole of the evidence.

On the evening of 23rd July, 1956, there were two bitterly divided parties from this neighbourhood. The plaintiff belonged to one party, the two defendants to the other. They met that night and a general fight ensued. In the course of that fight the plaintiff was wounded with a knife by defendant No. 1. I have no doubt, particularly having regard to the medical evidence, that defendant No. 1 inflicted the injuries upon the plaintiff's feet while the plaintiff was pinned to the ground. I cannot say by whom, if by anybody, defendant No. 1 was assisted. But certainly I find that defendant 1 is liable for the damages flowing from the injuries sustained by the plaintiff in consequence of defendant 1's attack upon him. For it is clear that defendant 1 has in no way shown that these injuries which he wilfully inflicted upon the plaintiff were justifiable on the grounds of self defence, defence of any other person, or defence of property.

It is necessary therefore to assess the damages to be awarded against defendant 1 in favour of the plaintiff. The injuries sustained to the plaintiff's left foot as a direct result of defendant 1's assault upon him were particularly serious, and Dr. Simpson has said that the efficiency of the foot has been decreased thirty per cent. The plaintiff was clearly incapacitated for a lengthy period with consequent loss. On the other hand I have no doubt that his claim for special damages is grossly exaggerated, as indeed is his claim for general damages. After careful consideration I assess the total damages awardable at £300. The plaintiff is awarded judgment against defendant 1 for this amount, together with an order for two thirds of his costs as taxed if not agreed. I have deprived him of this portion of his costs because a genuinely peace loving citizen could have avoided the melee in the first place.

The claim against defendant 2 is dismissed.

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