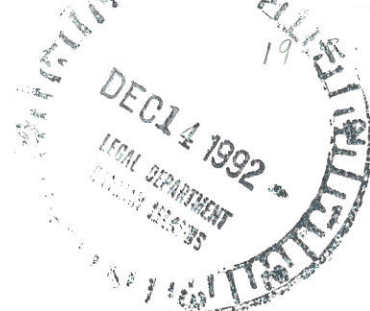


upheld on Appeal



19.8.93

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IN CHAMBERS ON THE 10TH AUGUST 1992

CAUSE #164/92

BETWEEN	JOHN MITCHELL REA	PLAINTIFF
AND	DETECTIVE INSPECTOR BRIAN GIBBS	FIRST DEFENDANT
	COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE FORCE	SECOND DEFENDANT
	THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS	THIRD DEFENDANT

Mr. C. Quin for plaintiff
Mrs. J. Banks for defendants

MALONE C.J.

JUDGMENT

The plaintiff's application is for a trial of this cause by a jury. The application is made under section 25 of the Judicature Law No.11 of 1975 which is as follows:

"25. When one party to a civil cause applies for the case to be tried by a jury and the court is of the opinion that the matter is one that can be properly so tried a jury of seven persons shall be empanelled for the trial of the issues between the parties and the verdict declared by the foreman to be that of five or more of such jury shall be accepted by the court."

This is a novel application as to the best of my knowledge, a civil cause has not in many years (if at any time) been tried in this island by a jury. Indeed I think it is safe to say that a civil cause tried by a jury is a rare event in the former British Caribbean. I can recall only one instance of a civil cause so tried. That was a case of nuisance in Barbados about Forty years ago when a special jury since (abolished) was selected. It is against that background that the legislation should, I think, be considered as the rarity of a civil trial by

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a jury in the region cannot be the result of chance or of a general wilfulness to refuse applications for the trial by jury of a civil cause. To my mind in the islands where it is permitted, it is not unreasonable to suppose from the fact that a civil trial by jury is a rarity, that civil causes are not usually tried by a jury because of a general opinion that a trial so conducted is not desirable. The relatively recent amendment made in 1986 to the Criminal Procedure Code Law No.13 of 1975 by the addition of a new section 121A is itself indicative that even in criminal trials the Legislature recognises that trial by jury may not always be desirable. That amendment is in part as follows:

"(1) If an accused person is of the opinion that, due to the nature of the case or of the surrounding circumstances, a fair trial with a jury may not be possible, he may, at any time, before the jury is empanelled, elect to be tried by a judge alone."

The English practice is governed by section 69 of the Supreme Court Act, 1981. It specifies the issues that:

"shall be tried with a jury unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury."

Subject to the "unless" provision of section 69, the occasions demanding trial by jury are when the court is satisfied there is in issue:

- (a) a charge of fraud against the party applying for trial by jury;
- (b) a claim in respect of libel, slander, malicious prosecution or false imprisonment; or
- (c) any question or issue of a kind prescribed for the purposes of this paragraph.

From that analysis of section 69, it is apparent that under that

section a question as to whether a jury is a suitable tribunal cannot arise on an issue specified by that section, save as stated in the "unless" provision, since, subject as aforesaid, the issues that shall be tried by a jury are specified. Whereas under the law of the Cayman Islands, as the sole test is whether the matter can properly be tried by a jury a wider discretion exists. Account can be taken both of the nature of the matter and of the nature of a jury.

In this case the action is for a declaration that the obtaining of a production order was malicious with damages for maliciously obtaining the order and for trespass to the goods and property of the plaintiff. The action is not one of those specified in section 69 of the Supreme Court Act 1981, nevertheless it is akin to an action for malicious prosecution and shares with the actions specified in section 69, the feature that it is of a nature that could reflect on the reputation of the plaintiff. The action is not one that will involve prolonged examination of documents or accounts or any scientific or local investigation. Therefore, it can properly be said that it fits the provisions of section 69 like a glove. In England the action would be triable by a jury. The English law as I have pointed out is not, however, the same as ours.

The first and second defendants are senior police officers. In fact the second defendant is the Commissioner of Police. They are therefore senior officers of an organisation that is constantly, whether for good or ill, under the close scrutiny of the public. In a community with a small population like that of the Cayman Islands the Police necessarily have a high profile which may command undue respect or may command the reverse. Whichever it be, such prominence, in my view, makes the action one that cannot properly be tried by a jury even though the cause is of a kind fit for trial by a jury. It might be otherwise if, as may happen here, the parties to the cause had only formal connection to these Islands.

Accordingly as I am of the opinion that this matter cannot be properly tried by a jury, the application for a trial by jury is refused.

Denis Malone
Sir Denis Malone

19th August 1992.