AMADJEI AND OTHERS v. OPOKU WARE
[1963] 1 GLR 150

Division: IN THE SUPREME COURT

Date: 20TH FEBRUARY, 1963

Before: SARKODEE-ADOO, CRABBE AND BLAY JJ.S.C.

False imprisonment—Arrest—Submission to control—What constitutes arrest—Effect of saying, "You are arrested."

False imprisonment—Malice—False complaint—Inability to inform suspect of the ground for his arrest—Evidential value of police records.

Evidence—Documentary—Station diary and patrol book—Record of orders on which police acted—Evidential value in action for false imprisonment.

HEADNOTES

Two policemen, on normal patrol duty, were informed by the respondent, the Kwabenghene, that the appellants, A., B., C., D. and E. were holding unlawful meetings and should be arrested. The policemen went to A.'s house, where on their orders they were joined by B., C., D. and E. The appellants were being questioned when the respondent also arrived at A.'s house and demanded their arrest, whereupon one of the policemen said to the appellants, "You are arrested."

Shortly afterwards the appellants were taken by the police to the respondent's house. They were followed by a large crowd. At the Ahenfie the police asked the respondent what offence the appellants had committed. When they received no satisfactory answer the police allowed the appellants to go home. The whole incident lasted two hours.

The appellants brought an action in the High Court, Accra, claiming from the respondent damages for false imprisonment. At the trial the police station diary and patrol book containing entries which corroborated the appellants' evidence were tendered and admitted in evidence without objection.

Ollennu J. (as he then was) dismissed the appellants' action, holding that they had failed to prove arrest, that their evidence was not to be believed, and that "even if the defendant [respondent] did request the police to arrest, the police were in no way affected by the said request and threats. They treated it with contempt. . . ."

Held, allowing the appeal:

(1) arrest does not mean simply that a person is taken by the police to a police station. There is an arrest whenever there is a restraint of liberty, with or without actual confinement. Bird v. Jones (1845) 7 Q.B. 742; 115 E.R. 668 considered.

(2) (Per Crabbe J.S.C.) There is an arrest when a police officer makes it plain to someone that he

cannot go out of the presence or control of that officer, and when a suspected person makes a real submission to a request or command by a police officer. Warner v. Riddiford (1858) 4 C.B.(N.S.) 180; 140 E.R. 1052 and Grainger v. Hill (1835) 5 Scott 561 applied.

(3) (Per Crabbe J.S.C.) An arrest is malicious or unlawful when it is made without reasonable or probable cause, and, unless the arrested man is caught red-handed, when the arresting officer fails to inform the suspect as soon as is practicable that he is being arrested and also the grounds for his arrest. Christie v. Leachinsky [1947] A.C. 573, H.L. and John Lewis & Co. Ltd. v. Tims [1952] A.C. 676, H.L. applied.

(4) (Per Blay J.S.C.) The respondent went beyond the role of a mere informer. His complaint, which was false and recklessly made, was the cause of the arrest of the appellants. Danso v. Abaka (1956) 2 W.A.L.R. 167, C.A. distinguished.

(5) (Per Blay J.S.C.) The station diary and patrol book had evidential value. The trial judge should have read the entries in them as a whole for when so read they showed the order or complaint on which the police acted.

CASES REFERRED TO

(1) The Glannibanta (1876) L.R. 1 P.D. 283; 24 W.R. 1033, C.A.

(2) Codjoe v. Kwatchey (1935) 2 W.A.C.A. 371

(3) Nii Azuma III v. Fiscian (1953) 14 W.A.C.A. 287

(4) Danso v. Abaka (1956) 2 W.A.L.R. 167, C.A.

(5) Bird v. Jones (1845) 7 Q.B. 742; 115 E.R. 668; 15 L.J.Q.B. 82; 10 J.P. 4

(6) Warner v. Riddiford (1858) 4 C.B. (N.S.) 180; 140 E.R. 1052

(7) Russen v. Lucas (1824) Ry. & Mood. 25; 171 E.R. 930

(8) Grainger v. Hill (1835) 5 Scott 561; 4 Bing. N.C. 212; 7 L.J.C.P. 85

(9) Christie v. Leachinsky [1947] A.C. 573; [1947] 1 All E.R. 567; 176 L.T. 443; 63 T.L.R. 231; 111 J.P. 310, H.L.

(10) John Lewis & Co. Ltd. v. Tims [1952] A.C. 676; 1 T.L.R. 1132; [1953] 1 All E.R. 1203; 116 J.P. 275, H.L.

NATURE OF PROCEEDINGS

APPEAL from a judgment of Ollennu J. delivered in the High Court, Accra, on the 1st March, 1962 (unreported) dismissing a claim by the plaintiffs-appellants for £G5,000 damages for false imprisonment. The facts are set out in the judgment of Blay J.S.C.

COUNSEL

G. R. McV. Francois for the appellants.

Twum-Barima for the respondents.

JUDGMENT OF BLAY J.S.C.

The appellants who were plaintiffs in the court below together claimed against the respondent £G5,000 damages for false imprisonment. It appears from the evidence that the appellants are important citizens of the town of Kwabeng in the Akim Abuakwa traditional area, of which the respondent is the chief.

The appellants' case was that the respondent on the 28th October, 1961, made a false charge against them to the police whereupon they were arrested, detained and subsequently escorted through the streets of Kwabeng to the Ahenfie, the residence of the respondent; that after their detention lasting for about two hours, i.e. from 3 p.m. to 5 p.m., they were released by the police who said they could find nothing against them as the respondent refused to prefer any formal charge against them. The defence of the respondent was that he did not cause the arrest of the appellants or any of them.

The action was tried before Ollennu J. (as he then was) in the High Court, Accra, and the appellants' claim was dismissed by him with costs. It is from this judgment that the appellants have appealed to this court on seven grounds, namely, that:

"(1) The learned judge failed to appreciate the legal meaning of arrest in a case of false imprisonment.

(2) The learned judge erred in not considering the chain of circumstances initiated by the defendant in causing the arrest of the plaintiffs, culminating in an order to the police to arrest the plaintiffs.

(3) The learned judge entirely failed to appreciate the evidential value of exhibits A and B which recorded the orders of the defendant upon which the police acted.

(4) The learned judge erred in accepting what he liked from the said exhibits A and B and rejecting material evidence.

(5) There was no basis whatsoever for the learned judge's rejection of the plaintiffs' evidence when the defendant had admitted most of the same.

(6) The learned judge confused the police evidence of a request for an order to take the plaintiffs to Anyinam with an order for their arrest at Kwabeng.

(7) The malice of the defendant against the plaintiffs as shown in the evidence adduced in court was not considered by the learned judge and he erred thereby."

Counsel in arguing grounds (1) to (5) of the grounds of appeal referred in extenso to the evidence adduced at the trial both in support of the appellants' case and in support of the defence.

From the evidence on record the following facts clearly emerge: Two constables of the Ghana Police Force stationed at Anyinam, namely, Constable Daniel Kwadjo Danso and Escort Constable Abudulai Fulani, paid a routine visit to the village of Kwabeng on the 28th October, 1961. While there, they went to the Ahenfie to report their arrival to the respondent who is the chief. At the Ahenfie the respondent handed to them a

piece of paper with the names of the appellants written on it and said that they were people holding an unlawful meeting against the state at Opanin Asante's house. According to the police the respondent asked that those persons be arrested but the respondent denies this and says that he only asked that the matter be investigated.

Opanin Asante is the second appellant herein. The constables left the Ahenfie and went to Opanin Asante's house and while there talking to Opanin Asante, the respondent followed and arrived at the house about fifteen minutes after they had got there. The constables as well as Opanin Asante say that the respondent again repeated his demand that the appellants be arrested and went on to threaten the

constables that he would report them to their superior officer if they did not effect the arrests. This is denied by the respondent who says that he went to Opanin Asante's house merely to find out whether the constables had been able to find the house. The respondent left Asante's house and went to the Ahenfie and later on the constables took the appellants to him and asked that they be told what offence the appellants had committed and upon which they could be taken to the police station. Upon the respondent refusing to prefer any specific charge against the appellants the constables asked them to go to their respective houses as they, the constables, could find nothing against them. This part of the story is accepted by the respondent who says that he told the police that he had not asked them to bring anybody to him.

The events of the day at Kwabeng were recorded in two official books carried by the constables, namely a station diary and a patrol book, which were admitted in evidence and marked exhibits A and B respectively. Exhibit B was signed by the respondent at the request of the constables.

The constables say that after the respondent had followed them to Opanin Asante's house and threatened that he would report them to their superior officer if they did not arrest the appellants, they sent messengers to call the other appellants to Asante's house and detained them there for questioning before taking them to the Ahenfie of the respondent as already stated. The appellants admit this and say further that they were marched through the street to the Ahenfie with one constable walking in front of them and one behind and with a large crowd following, some of whom wept while others jeered.

It was upon these facts that the appellants claimed that they were entitled to damages against the respondent for false imprisonment.

The learned trial judge, having heard the evidence, posed himself two issues which he rightly said had to be decided in order to determine the liability of the respondent. These he stated as follows:

> "(1) whether the plaintiffs were in fact arrested, and if they were,
>
> (2) whether their said arrest and detention were caused by the defendant; that is, whether the arrest of the plaintiffs, if they were arrested, was done upon order of the defendant or was influenced by the defendant."

The learned trial judge then continued:

> "To determine whether or not the plaintiffs were arrested and detained the court has to take the whole of the evidence, direct and circumstantial, into consideration. Mere assertion by the plaintiffs and evidence by the police that the plaintiffs were arrested and detained will not justify a finding of arrest if the assertion is inconsistent with other undisputed facts."

With that statement of the learned judge I am in complete agreement.

I, however, disagree with the learned trial judge when he goes on to assert that on the evidence in the present case there was no arrest of the appellants except he means by "arrest" that which the word connotes when a person is taken by the police to the police station. In the present case, the evidence as already adverted to, is that that the two constables sent for the three appellants who were not already in Asante's house and in that house detained them with Asante for the purpose of questioning on the complaint made by the respondent; that after questioning, the constable marcked them through the street to the Ahenfie of the respondent. The evidence of the second appellant on that point is:

> "On my arrival back at Kwabeng two policemen came to my house. They were Ghana police. This was at about 3 p.m. The police asked me some questions; while he was still questioning me, all at once the chief of Kwabeng, the defendant, rushed to my house and shouted to the police saying, 'He is C. E. Asante! Arrest him, also arrest Appiah Korang, Amadjei, Kwaku Amoah, Opanin Kwadjo Amankwa, arrest them.'

Thereupon the police said to me, 'You are arrested."

The witness then continued:

"He then asked me if I knew the people mentioned, I replied I did. The police then sent a boy from my house to go and call them to my house; they came to my house. They are the other plaintiffs in this case."

He said further:

"We were escorted by the police to the house of the defendant, a big crowd following us. One of the police walked in front of us and the other behind us, and the crowd surrounded us in surprise."

The evidence of the first appellant on the point is as follows:

"I was at a funeral in the afternoon of the 28th October, 1961, at Kwabeng; while there a messenger came and in consequence of what he said I went with him to the house of the first plaintiff. The third, fourth and fifth plaintiffs also came there. The police I met there told us that we should accompany him to Anyinam, he said that the defendant had alleged that we had committed some wrong. The police started with us to go to Anyinam, on the way he said he would first take us to the house of the chief. He took us to the Ahenfie. He made us sit down there for about two hours. We left the house of the first plaintiff at about 3 p.m. and left the Ahenfie at about 5 p.m."

The evidence of the general police constable on the point is as follows:

"We started making investigations; whilst so engaged the defendant came to the house accompanied by a certain young boy and asked us why we had not arrested the people up to that time. Then pointing to Opanin Asante he said, 'Arrest this man, Amadjei, Appiah Korang, Kwaku Kumah, Amankwa and all the people whose names I have given to you on the piece of paper!'"

He then continued:

"After the chief had gone away we arrested the people; the other people were brought to the house of Asante and we arrested them. I took them to the chief's house to find out from him the offence they had committed for which they should be arrested."

Indeed the respondent himself admits indirectly that the appellants were arrested when in cross-examination he deposed:

"When I wrote on exhibit B that I would go and see the sergeant myself, what I intended to do was to go and tell the sergeant that the constables did not know their work; that they went and brought people to me when I had not asked them to bring people to me."

In the face of such a preponderance of evidence I do not see how the learned trial judge could have come to the conclusion that the appellants were not arrested by the police.

The learned judge in his judgment has the following passage:

"It is very strange that if the plaintiffs were detained by the police as alleged, the two policemen who must have effected the detention have not been sued together with the defendant."

With all due respect to the learned trial judge I do not see how on the evidence the appellants could have sued the two constables with any hope of success. In my view the evidence on record shows that the appellants were arrested and detained by the police and had suffered restraint of liberty sufficient to support an action of false imprisonment. In my opinion therefore the first issue posed by the learned judge should have been answered in the affirmative.

I now turn to the second issue posed by the learned trial judge which in this case is the more important one, namely, whether the arrest and detention of the appellants were caused by the respondent. I come to

the consideration of this issue fully conscious of the principle that:

> "Great weight is due to the decision of a Judge of first instance, whenever, in a conflict of testimony, the demeanour and manner of witnesses who have been seen and heard by him are material elements in the consideration of the truthfulness of these statements. But the parties to the cause are nevertheless entitled as well on questions of fact as on questions of law to demand the decision of the Court of Appeal, and that Court cannot excuse itself from the task of weighing conflicting evidence and drawing its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."

See The Glannibanta.1 See also Codjoe v. Kwatchey2 which was cited with approval in Nii Azuma III v. Fiscian3 where the principle is stated as follows:

> "The Appeal Court is not debarred however from coming to its own conclusion on the facts and where a judgment has been appealed from on the ground of the weight of evidence the Appeal Court can make up its own mind on the evidence; not disregarding the judgment appealed from but carefully weighing and considering it and not shrinking from over-ruling it if on full consideration it comes to the conclusion that the judgment is wrong. . ."

In the light of the above principle I will now proceed to examine the learned judge's findings as contained in the last paragraph of his judgment, where he said:

> "I do not believe the evidence led on behalf of the plaintiffs that the defendant ordered the police to arrest the plaintiffs and I do not believe that the defendant threatened to report the police to their superior officer if they failed to arrest the plaintiffs. But even if the defendant did request the police to arrest, the police were in no way affected by the said request and threats. They treated it with contempt, they sought and obtained authority from their superior officer and acted as directed by their superior officer."

With respect I do not take the same view having regard to the evidence on record. The learned judge also gave no reasons for disbelieving the evidence. The evidence in support of the appellants' case that the defendant caused their arrest and detention is contained in the testimony of the second appellant and of the two policemen.

The second appellant testified that in his house the respondent ordered the police to arrest the appellants and that if that was not done he would report the police to their superior officer. The two policemen testified in corroboration of the evidence given by the second appellant as to what took place in Asante's house. Then there is the documentary evidence in the form of entries made in exhibits A and B which were tendered and admitted in evidence without objection. The entry in exhibit B was signed by the respondent. Learned counsel for the appellants has urged that the learned judge entirely failed to appreciate the evidential value of exhibits A and B which recorded the orders of the defendant upon which the police acted. And also that the learned judge erred in accepting what he liked from the said exhibits A and B and rejecting material evidence.

In my view there is some justification for that contention. The entry in exhibit A reads as follows:

> "No. 3461 Gc/2 D. K. Danso and No. 9177 Ec/2 Abudulai Fulani with village patrol book and licensed premises books returned from Area Two off village patrol duty and reported that having touched Kwabeng, Nana

> Kwabenghene put before them that one C. E. Asante, Appiah Korang, Amadjei, Boadu, Kwaku Kumah, Kwadwo Amankwa and others should be arrested. When case was being investigated by them, the chief himself came to the house and told patrolmen to arrest the above-named people. The patrolmen put the men

before the chief but he could not say what offence they have committed hence they were allowed to go to their houses."

The entry in exhibit B is as follows:

"Patrolmen arrived at this locality and met the Kwabenghene at his palace. He told men that there is something going on at his area or town which is not legal. For this reason he would like men to check up, and let the superior officer know something out of it. Men therefore touched the house of one C. E. Asante whom the chief of Kwabeng alleged have assembled unlawfully in the house of Opanyin Asante. Men were there when the Kwabenghene arrived and told men to arrest the following people: C. E. Asante, Appiah Korang, Amadjei, Boadu, Kwaku Kuma, Kwadwo Amankwa and others. Men having had this news at Opanyin C. E. Asante's house sent all the above people to the Ahenfie, and put them before the Kwabenghene to know the offence they have actually committed. The Kwabenghene told men to put before the said suspects whether they have not assembled unlawfully. In turn the said suspects told him that they are not prepared to answer any question not until they have gone to where he wants them to appear. The Kwabenghene put before men that they should arrest the above persons. Constable Danso in turn told Nana Kwabenghene that not until he has told them the actual offence they have committed, before they would arrest them. Nana Kwabenghene could not tell the offence they have committed. The men were therefore asked to go to their individual houses. Nana stated he would touch the police station himself to make his report. (Sgd.) D. K. Danso."

The learned judge seems to have accepted the penultimate parts of these entries which dealt with the refusal of the respondent to make any charge against the appellants and the constables' consequent refusal to make formal arrests. He ignored the earlier and equally important parts which dealt with the taking of the appellants by the constables to the respondent's Ahenfie and what led to it. In my opinion the two entries when read as a whole show that the constables had rounded up the appellants on either the order or the complaint of the respondent and they were taken to him in the Ahenfie and that it was only when he had then refused to prefer any charge or charges that the constables refused to make any formal arrests in the sense understood by the police and allowed the appellants to go home.

In Clerk and Lindsell on Torts (12th ed.), p. 289 the law is stated as follows: "A false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause." And also at p. 293 it is stated that:

"If the arrest or other trespass is effected by a purely ministerial officer and not under the authority of any court, the defendant must clearly be answerable if he in fact authorised the act in question. It is not necessary that he should in terms have made a request or demand; it is enough if he makes a charge on which it becomes the duty of the constable to act.

But it is quite a different thing if a party simply gives information, and the constable thereupon acts according to his own judgment. In such a case the informer incurs no responsibility."

In the present case the respondent went beyond the role of a mere informer. In the first place he made a false complaint against the appellants to the two constables when they arrived at Kwabeng. His own evidence on the point shows that the complaint he made was either false or recklessly made without caring whether it be true or false. He then followed it up by going to Asante's house to demand the arrest of the appellants and threatening the constables with a report to their superior officer if they failed to satisfy his demands. In my view the constables were obliged to act as they did.

Even after the constables had refused to arrest the appellants and to take them to the police station, the respondent was not satisfied and decided, as recorded in exhibit B, to go to Anyinam and pursue his complaint. The respondent's evidence that he decided to go to Anyinam to report the constables because they had brought the appellants to him when he had not asked them, the constables, to do so, is too naive

to be accepted. With respect to the learned trial judge, I do not think the facts in Danso v. Abaka4 are on all fours with the present case. In that case the defendants did no more than communicate their suspicions to the police, who then used their own judgment to effect the arrest of the plaintiff. Learned counsel for the respondent has argued forcibly and ably in support of the judgment of the learned judge, but in my opinion the evidence on record is so overwhelming that I find it impossible to agree with the conclusions of the learned trial judge. In the result, I would allow this appeal, set aside the judgment appealed from together with the order for costs and enter judgment for the appellants awarding them damages and costs. The facts of the case are such that in my view substantial damages should be awarded to the plaintiffs. I would therefore award to each plaintiff the sum of £G400. I would also assess fee to counsel in the court below at 150 guineas and order that other costs be taxed. Court below to carry out.

JUDGMENT OF SARKODEE-ADOO J.S.C.

I am in complete agreement with the judgment read by my brother Blay and cannot usefully add anything. To state my own reasons would be tantamount to a repetition of that contained in the judgment.

JUDGMENT OF CRABBE J.S.C.

I also agree. But since we are differing from the decision appealed from I think I should out of respect for the judge of the court below add a few words of my own.

The plaintiffs' statement of claims reads as follows:

> "The plaintiffs' claim is for: £G5,000 (Five Thousand Pounds) damages from the defendant for maliciously causing the plaintiffs' arrest and detention and giving them into the custody of a policeman upon a false charge then made by the defendant; and causing the plaintiffs to be imprisoned at the Ahenfie, Kwabeng for over two hours."

In his judgment the learned trial judge stated two issues which he thought emerged from the evidence, namely, whether the plaintiffs were in fact arrested; and whether their said arrest and detention were caused by the defendant. The answer to the second question depended to a large extent on whether an affirmative answer could be given to the first. It was therefore necessary for the learned trial judge to make a positive and unequivocal finding on the first issue.

The whole judgment was curiously devoted mainly to an examination of the evidence on the second issue, except in one paragraph where the learned trial judge made the following finding on the first issue:

> "The natural inference from that piece of evidence is that the police defied the defendant and refused to arrest the plaintiffs if indeed the defendant requested them, the police, to arrest the plaintiffs."

The first ground of appeal argued by counsel for the appellants is that, "The learned judge failed to appreciate the legal meaning of arrest in a case of false imprisonment." This court is reluctant to disturb the findings of fact by a trial judge, and before it does so it must be satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion.

It is therefore necessary to examine the evidence and determine whether it was sufficient to amount in law to arrest and false imprisonment.

The evidence of the arrest was first given by the plaintiffs, and this is what the second plaintiff said in part:

> "The police asked me some questions; while he was still questioning me, all at once the chief of Kwabeng,

> the defendant, rushed to my house and shouted to the police saying, 'He is Asante! Arrest him, also arrest Appiah Korang, Amadjei, Kwaku Kumah, Opanin Kwadjo Amankwah, arrest them.' Thereupon the police said to me 'You are arrested.'"

He continued:

> "I had on a suit at the time, at my request the police allowed me to change but they refused to allow me to have my meals.
>
> We were escorted by the police to the house of the defendant, a big crowd following us. One of the police walked in front of us and the other behind us, and the crowd surrounded us in surprise."

Finally he said: "We were kept at the Ahenfie for over two hours., we left there for our houses after 5 p.m." The evidence of the second plaintiff was substantially confirmed by the evidence of the other three plaintiffs.

The next important witness who gave evidence on the issue of arrest was Constable No. 3461 Daniel Kwadjo Danso. The evidence of this witness which I consider most vital on this issue is contained in the following:

> "After the chief had gone away we arrested the people; the other people were brought to the house of Asante and we arrested them. I took them to the chief's house to find out from him the offence they had committed for which they should be arrested."

He then added, "We arrested the people at about 3 p.m." His evidence was in a large measure supported by his colleague, Escort Police No. 9177 Abudulai Fulani.

It is one thing to disbelieve the evidence of the plaintiffs and the constables, and it is quite another to decline to infer from their evidence that there was no arrest. Provided their evidence is believed, I cannot think of any better prima facie evidence of an arrest.

One important element in an arrest is an imprisonment or the total deprivation, however brief, of the liberty of another without lawful excuse or justification. There need not be an actual confinement, and as Coleridge J. pointed out in Bird v. Jones5:

> "Some confusion seems . . . to arise from confounding imprisonment of the body with mere loss of freedom: . . . imprisonment . . . includes the notion of restraint within some limits defined by a will or power exterior to our own."

In his dissenting judgment in the same case Lord Denman also said6:

> "As long as I am prevented from doing what I have a right to do, of what importance is it that I am permitted to do something else? . . . If I am locked in a room, am I not imprisoned because I might effect my escape through a window, or because I might find an exit dangerous or inconvenient to myself, as by wading through water . . . ?"

There is an arrest if a police officer makes it plain to someone that he cannot go out of the presence or control of that officer. In Warner v. Riddiford7 the defendant, the owner of a beer-house, put the plaintiff in charge thereof to carry on the business as his servant at weekly wages, with an agreement for a month's notice to determine the service. Having given him a week's notice, the defendant made up the account and required the plaintiff to pay him the balance; and, on the plaintiff's refusal to accede to this request on the ground that he had not received the stipulated month's notice, the defendant brought in a superintendent and a sergeant of police, one of whom, on the plaintiff's attempting to go upstairs, refused to permit him to do so, and ultimately only allowed him to go accompanied by an officer. After some further altercation about the money, and the plaintiff's again refusing to hand it over at the request of the

superintendent, the latter asked the defendant if he should take him: it did not appear what answer the defendant made, but the officer took the plaintiff into custody, and entered a charge of embezzlement against him at the station-house, and afterwards carried him before the magistrates, by whom he was discharged. The court held that this was an arrest because it was meant to be conveyed to the mind of the plaintiff that he should not go out of the presence or control of the officer.

The evidence of the events in the house of second appellant and manner in which they were marched to the Ahenfie where they were detained leaves me in no doubt that the appellants were taken under

the control of the police officers and could not go out of the presence of these officers.

It is sufficient to put a suspect into the position of an arrested person if he submits to the request or command of the police officer. The submission must be a real one and not a ruse to enable the suspect to escape. If he escapes there will be no arrest: see Russen v. Lucas.8

In Pollock on Torts (15th ed.), p. 163, it is stated:

> "Laying on of hands or other actual constraint of the body is not a necessary element; and, if 'stone walls do not a prison make' for the hero or the poet, the law none the less takes notice that there may be an effectual imprisonment without walls of any kind. 'Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or in the stocks, or even by forcibly detaining one in the public streets.' And when a man is lawfully in a house, it is imprisonment to prevent him from leaving the room in which he is."

In my view there was arrest when the constable said to the second appellant, "You are arrested" and prevented him and the other plaintiffs from leaving the house. Such words amount to an arrest if the person to whom they are addressed submits: see Grainger v. Hill.9

After a careful and anxious consideration of the evidence and applying the law I have come to the irresistible conclusion that the two police officers arrested the plaintiffs.

The next question to determine is whether the arrest was malicious or unlawful. An arrest is malicious in the sense that it is made without reasonable or probable cause. If it was lawful then the appellants cannot complain of the manner in which their arrest was effected. There can be no doubt that when the police constables took the appellants into custody in the house of the second appellant they had no reasonable grounds for suspecting that the appellants had committed any offence. When the defendant rushed into the house of second appellant the police constables requested him to state a charge against the appellants but he gave no heed and left the house. All this time and up to the time the appellants were taken to the Ahenfie the police constables had not told the appellants the grounds for their arrest. A person who is arrested without a warrant is entitled to know as soon as is reasonably practicable that he is being arrested and also the grounds for his arrest. If the officer arresting fails to inform the suspect accordingly the arrest would be unlawful, unless the arrested man is caught red-handed and the crime is patent to high heaven. Thus in Christie v. Leachinsky10 Viscount Simon said:

> "If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true

> ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment."

In this instant case the two constables could not have told the appellants the crime for which they were being arrested because the police officers themselves did not know. An arrest can be justified only on the ground made known to the suspect at the time of the arrest.

In his evidence to which I have already referred in this judgment Constable No. 3461 Daniel Kwadjo Danso said:

> "After the chief had gone away we arrested the people; the other people were brought to the house of Asante and we arrested them. I took them to the chief's house to find out from him the offence they had committed for which they should be arrested."

To my mind this was clearly an unlawful act, for a police officer is not entitled to take a person into custody and then later on go about collecting evidence to justify his action. As Lord Porter said in John Lewis & Co. Ltd. v. Tims11:

> "Those who arrest must be persuaded of the guilt of the accused; they cannot bolter up their assurance or the strength of the case by seeking further evidence and detaining the man arrested meanwhile . . ."

On the second issue whether the arrest and detention were caused by the defendant I find myself in entire agreement with the reasoning and conclusion of my brother Blay and I cannot usefully add anything.

DECISION

Appeal allowed.

J. D.