

MISSOURI PACIFIC RAILROAD COMPANY *v.* YANCEY.

Opinion delivered October 29, 1928.

1. FALSE IMPRISONMENT—AGENT'S AUTHORITY—JURY QUESTION.—In an action against a railroad company for an illegal arrest and imprisonment by an employee thereof, it was a question of fact whether such employee was acting within the general scope of his authority as special agent for defendant.
2. FALSE IMPRISONMENT—AGENT'S AUTHORITY—EVIDENCE.—To warrant the submission to a jury of the question whether one arresting and imprisoning plaintiff was acting within the general

scope of his authority as agent for defendant railroad company, evidence for plaintiff, when viewed in its most favorable light, must be sufficient to make it appear that the false arrest was caused by an agent acting within the scope of his authority.

3. FALSE IMPRISONMENT—AGENT'S AUTHORITY—SUFFICIENCY OF EVIDENCE.—In an action against a railroad company for the illegal arrest and imprisonment of plaintiff by an employee thereof, on the issue whether such employee acted within the general scope of his authority, evidence that the employee at the time of the arrest told plaintiff that he was arresting plaintiff for having broken into a box-car of defendant *held* sufficient to warrant a verdict for plaintiff.
4. DAMAGES—COMPENSATORY DAMAGES.—Actual damages are given to compensate a person for an injury done when none was intended, or, in other words, where the injury was the result of negligence.
5. FALSE IMPRISONMENT—DAMAGES.—A person injured by false imprisonment is entitled to recover for pain and suffering experienced, for any illness caused thereby, for the sense of shame and disgrace endured, and for any other element which was the natural consequence of the injury received.
6. FALSE IMPRISONMENT—EXEMPLARY DAMAGES.—The general rule is that exemplary damages will never be allowed for false imprisonment brought about in good faith, without malice in fact or law, or any element of willfulness or wantonness.
7. FALSE IMPRISONMENT—EXEMPLARY DAMAGES.—Where plaintiff was arrested by a railroad employee in the yards of defendant railroad company at 11 P. M. while in company with one charged with having stolen from a box-car, several nights before, the arrest not being accompanied with abuse or cruelty, and plaintiff being immediately turned over to an officer, he was not entitled to exemplary damages.

Appeal from Chicot Circuit Court; *Turner Butler*, Judge; reversed.

STATEMENT OF FACTS.

J. E. Yancey sued the Missouri Pacific Railroad Company to recover damages on account of his illegal arrest and imprisonment in jail by one of the employees of said defendant while acting within the scope of his employment. The defendant denied liability.

According to the testimony of J. E. Yancey, he was twenty-three years old, and had resided at Dermott,

Arkansas, for the past eight years. He had served four years in the employment of the defendant railroad company at McGehee, Arkansas, but had not been in the employment of the company for some time prior to the time of his arrest. On the 16th day of January, 1928, he left his home at Dermott, about seven o'clock in the evening, and came to McGehee. About eleven o'clock P. M., in company with Bill Stockton, he went to the yards of the defendant for the purpose of seeing Jim Pearson, who, he knew, was on night duty. As they walked along by a train, R. L. White jumped out from behind a box-car and threw a flashlight in their faces. He had a pistol, and some one who was with him had a sawed-off shotgun. White and his companion arrested witness and Stockton, and delivered them to the night marshal, who placed them in jail. Immediately after the arrest, White turned to Stockton and told him that he ought to lock him up in another case about taking some cigarettes belonging to the railroad. White told Yancey that a box-car belonging to the railroad company had been robbed a few nights before, and that he was arresting them because they had had something to do with it. White delivered Yancey and Stockton to the town marshal, who put them in jail about 11:30 that night, and kept them there until about 6 o'clock the next afternoon. The jail was dirty, and there was nothing for them to sleep on except a couple of stretchers. Yancey took a cold on account of the poor accommodations in the jail, and has suffered from the cold ever since.

According to the evidence for the defendant, the town marshal of McGehee had told R. L. White about burglaries which had been committed at McGehee, and had given him a description of the suspected parties. Yancey and Stockton fitted the description, and White arrested them at the instance of the marshal, and delivered them to him. The marshal placed Yancey and Stockton in jail because he suspected them of being the parties who had burglarized some houses in McGehee

a few nights previous to that time. White was a special agent of the railroad company at McGehee, and arrested Yancey and Stockton on the night in question because the town marshal of McGehee had given him a description of two men who had been burglarizing houses in McGehee, and asked him to arrest them for him. After arresting Yancey and Stockton, he turned them over to the night marshal, and had nothing further to do with the matter. White did not arrest them in his capacity as special agent for the railroad company. As special agent it was his duty to arrest people interfering with railroad property. He never arrested any one in the yards of the company unless they were interfering with railroad property while he was in the discharge of his duty as special agent. He arrested Yancey and his companion for the city marshal and delivered them to him immediately, and had nothing further to do with the matter. He carried the men about two hundred yards from the place where he arrested them, and delivered them to the night marshal.

There was a verdict and judgment in favor of the plaintiff for \$1,500, and the defendant has prosecuted an appeal.

*E. B. Kinsworthy*, for appellant.

*E. P. Toney*, *N. B. Scott* and *Golden & Golden*, for appellee.

HART, C. J., (after stating the facts). The first assignment of error is that the testimony is not legally sufficient to warrant the verdict. In this contention we cannot agree with counsel. The question whether White, as alleged by the plaintiff, was acting within the general scope of his authority as a special agent for the defendant company, was one of fact. To warrant a submission of the question to the jury, the evidence for the plaintiff, when viewed in its most favorable light, must be sufficient to make it appear that the false arrest was caused by an agent acting in the scope of his authority. *Dickinson v. Muse*, 135 Ark. 76, 204 S. W. 609. White testified that he had authority to arrest persons in the

yards of the railroad company who were interfering with railroad property. Yancey testified that, after he had arrested him, White told him that he was arresting him because some one had broken into a box-car of the defendant a few nights previously, and that he was suspected of being that party. Notwithstanding White's denial of this and his testimony to the effect that he had arrested Yancey at the request of the marshal of McGehee as one suspected of burglarizing some houses in McGehee a few nights previously, the jury was warranted in returning a verdict in favor of the plaintiff. The testimony of the plaintiff was of a substantial character, and, if believed by the jury, showed that the plaintiff was arrested by White because he was suspected of having broken into a box-car of the defendant a few nights before, and it turned out that the plaintiff had nothing to do with that crime. He was kept in confinement in the city jail from about 11:30 one night until about 6 o'clock the next afternoon, when he was turned out by the city marshal because it had been ascertained that the plaintiff had nothing to do with breaking into the box-car of the defendant.

The next assignment of error is that the court erred in submitting to the jury the question of punitive damages, and in this contention we think counsel is correct. Actual damages are given to compensate a person for an injury done when none was intended, or, in other words, where the injury was the result of the negligence of the defendant in the action. In such a case the injured party is entitled to recover for the pain and suffering experienced by his false imprisonment, any illness caused by it, the sense of shame and disgrace endured by him, and any other element which was the natural consequence of the injury the plaintiff received by the treatment of the defendant. On the other hand, exemplary damages will not be awarded in this State on account of negligence alone, however gross. *Ward v. Blackwood*, 41 Ark. 291, 48 Am. Rep. 41; *St. Louis S. W. Ry. Co. v. Owings*, 135 Ark. 56, 204 S. W. 1146; *Hodges v. Smith*, 175 Ark. 101, 298 S. W. 1023.

According to these cases, to justify an award for punitive damages there must be malice, express or implied, or some element of willfulness or wantonness.

The general rule is that exemplary or punitive damages will never be allowed where the false imprisonment was brought about in good faith, without malice in fact or in law, and there is no element of wantonness or recklessness on the part of the party making the arrest. 25 C. J. 565; and 11 R. C. L., § 36, page 821. Tested by this rule, we do not think there is any testimony in the record which would warrant the submission of punitive damages to the jury. There is nothing whatever from which the jury might legally infer that White was actuated by malice, express or implied, in arresting the plaintiff. The plaintiff was accompanied by another person who had been charged with stealing cigarettes from a box-car of the railroad company, and the occasion was quite out of the ordinary. The arrest was made in the yards of the company, at 11 o'clock at night, which was an hour when no person was likely to have any business there. White was charged with the duty of protecting the property of the railroad company, and was in the discharge of his duties at the time he made the arrest. As soon as he arrested the plaintiff, he carried him to the depot, some two hundred yards away, and at once delivered him to the night marshal. He had nothing further to do with the matter. The arrest was not accompanied by any abuse or any act of cruelty or oppression. All the accompanying circumstances show that White acted in good faith, and we can find no element of punitive damages in the whole transaction. Therefore the court erred in submitting the question of punitive damages to the jury. For that error the judgment must be reversed, and the cause remanded for a new trial.