

QUEEN v. NUGENT and CUNNINGHAM.REASONS FOR JUDGMENT.

Mann C.J.

DABAUL. 26/6/58

I have come to the conclusion that the accused Cunningham should be acquitted. Whatever view I took of the facts I would not be prepared to find beyond reasonable doubt that Cunningham committed any assault. My impression of Cunningham was that whilst he is a powerful man, well able to look after himself, he is not the type of man to go looking for trouble, nor would he go looking for a victim weaker than himself. I gained the impression that he would not be prepared to tell lies to get himself out of trouble, and I accept his evidence as substantially accurate and reliable, except as to the details of the attack on Sweeney in relation to which I think that his recollection has leaned somewhat in favour of his friend Nugent.

I think the two witnesses who were able to give the most detailed description of the events leading up to the attack in question were Cunningham and Stone, and moreover they were the only two witnesses who were not directly involved in any of the hostile exchanges that took place. Both showed a commendable sense of responsibility and did their utmost to stop an ugly situation from developing. I think that neither Sub-Inspector Curtis nor the witness Sweeney was in a favourable position to form an accurate impression of details and I think that Sweeney's recollection is entirely unreliable because experience shows that a witness's recollection of events immediately prior to suffering violent shock is usually unreliable and frequently entirely absent.

On the Saturday afternoon in question, many Club members, including those directly involved in the incidents leading up to the dispute, had been drinking solidly for periods up to six hours without showing any inclination to go home. It is only to be expected under these circumstances that some individuals in a large group of people affected by drink will cause trouble. The physically strong will become violent and knock over the furniture, and interfere with other people's comfort, and become belligerent if any resentment is shown. The physically weak may tend to pass unwisely offensive remarks about their behaviour. I think that in this case this is exactly what happened. The card players' remarks were overheard and strongly resented and when Mr. Stone directed that all of them should leave the Club premises they became sufficiently annoyed and sufficiently reckless to repeat their offensive remarks. For this reason I would not blame Nugent very much for anything that was done up until the time of his attack on Sub-Inspector Curtis, because I think that it is quite plain that neither Cunningham nor Stone, who were both acting with tact and reason, was in the slightest danger of attack. If matters had been allowed to stop at that stage, I think that Cunningham and Stone

between them could have got Nugent out of the Club premises without further damage.

I think that Nugent was in a very aggressive mood and generally he did not create in my mind the same favourable impression as Cunningham. He was not a member of the Club and as a visitor by courtesy should have been especially careful of his behaviour. He had, in fact, far too much to drink and since he was in that condition I can well understand his strong resentment of the offensive words uttered. Having heard the evidence of two of the card players I entirely reject their claim to have acted inoffensively.

I accept it that Nugent did not know the identity of Sub-Inspector Curtis when he appeared on the scene, but I do not believe him when he said that he did not hear Curtis say that he was a Policeman. I think that his remark 'You are only a bloody boy' indicates clearly enough that he did hear the remark and that he had become so enraged that he was scornful of the show of authority by Curtis, and prepared to attack him without warning. Nugent's suggestion that he mistook Curtis for Flemming and that this explained the reference to 'boy' does Nugent, no credit.

I think that by this time Cunningham was trying to get Nugent out of the Club as fast as he could, and that Nugent had gone so far that he was prepared to attack anybody who got in his way, and I think that Cunningham well realised that this was the position. I think that Sweeney was probably unwise to get within range of them or to try to stop them, but coming freshly upon the scene he could have had no idea of what would ensue. I think that the attack on Sweeney was entirely unjustified, and that he presented no threat to either of the two men, either of whom was obviously more than a match for Sweeney..

I do not accept the Crown case that Sweeney was struck three times. He had two severe cuts which might have been caused either by kicking or punching. The only blows he received were very hard and would certainly have left marks. I think it unlikely that the second blow was a punch on the chin. Having regard to the description of both accused of the slumped attitude in which Sweeney was sagging at the time, I think it unlikely that Nugent could have reached the point of his chin. If on the other hand the first blow had been on the chin, it is unlikely that the second would have reached the eye. I think it more likely that only one punch was delivered, and I accept Stone's evidence that he saw Nugent kick Sweeney in the face. I would not suggest that Nugent would do such a thing when sober, but it is by no means uncommon experience to find people

under the influence of drink attacking policemen and kicking fallen people in the face. They are things which few people would do when sober.

On the evidence then, I am satisfied that Mugent attacked and assaulted Sweeney, causing two severe wounds on his face and I therefore find him guilty of the offence charged.