

CATHERINE McALLISTER

.v.

DUNNES STORES LIMITED

Judgment of Mr. Justice Barron delivered the 5th day
of February 1987.

On the 13th July, 1984, the Plaintiff was accused by the Security Manager of the Defendants of theft of various items and as a result was arrested by the Garda Siochana and brought to Cabinteely Garda Station. She was subsequently strip searched. No items were found in the course of that search. She now brings proceedings for assault, false imprisonment and defamation.

The Plaintiff was employed by an independent firm of cleaners who were engaged to carry out cleaning works on the Defendants' premises at Cornelscourt after the premises were closed to the public. On the evenings in question referred to in the evidence the premises closed to the public at 9. p.m. but were not fully ready for cleaning by the cleaners until nearer 10. o'clock. The cleaners so employed comprised two male cleaners, two female cleaners and a supervisor. The male cleaners cleaned the floor and the function of the female cleaners was to polish the floor once it had been cleaned. The supervisor was there to see that the cleaners carried out their work. It was the custom for the cleaners to be brought to the Defendants' premises by car. On their arrival they

obtained their equipment from a small room under the stairs at the back of the premises.

The events of which the Plaintiff complains took place on a Friday evening. In her evidence the Plaintiff said that they had started work late that evening and that she had decided to leave before the job was finally completed. This would have involved her having to walk home. In cross-examination it was suggested to her that the previous evening that she and the other lady cleaner had lifted and examined goods on display. It was put to her that the other cleaner had taken two red jumpers and that she had taken a yellow jumpsuit. They had both then gone to the ladies' toilet. After five minutes they had returned. They then examined further goods. Having done so, they both took ladies' underwear and children's stockings and stuffed them down the waistband of their jeans. They then went back into the ladies' toilet. When they came out they left. All of this was alleged to have taken place between 11.45 p.m. and midnight. The Plaintiff agreed that both of them would have been wearing jeans and a jumper and perhaps also a sleeveless jacket.

It was suggested to the Plaintiff that on the following night they did not commence work until 11.30 p.m. They both started immediately to examine goods. The Plaintiff took off her shoes and tried on a pair on display. Later the other lady cleaner took up a blouse, went to the skirt rail and took up a skirt. She then left the blouse and brought the skirt to the ladies' toilet. The Plaintiff went with her. When they came out they went to the underwear counter and again took underwear which they stuffed down their jeans. They then went into the ladies' toilet.

The Plaintiff denied any suggestion that either she or her companion had done anything other than work on either occasion. The Plaintiff's supervisor gave evidence that he had not noticed anything unusual on either night. It was his job to see that they did their work and he would have noticed if what was alleged had taken place. He said that both of the ladies had wanted to go home on the Friday evening before the job was completed. However they had arrived as usual between 10.15 p.m. and 10.30 p.m.

The arresting Garda Officer gave evidence of arrest. The two ladies were brought to the Garda Station where they waited with him in a small day room. A Ban Garda arrived about an hour later. This latter gave evidence that both ladies' were wearing jeans and jumpers and had no handbags. On a search she found nothing on either of them. Nor was anything found left in the Garda Station.

The Security Manager for the Defendants gave evidence. He confirmed the cross-examination of the Plaintiff. He said that on the Thursday when the cleaners were ready to go the younger of the two male cleaners ran back to the customers service desk, took up an object and ran out again. No evidence was given as to what this object was nor whether such cleaner was entitled to take that object or not. The Court was clearly being asked to make the inference that he was taking something to which he was not entitled. He then gave evidence that after the cleaners had gone he, together with the General Manager for Security and a Security Officer had gone to the ladies' toilet. They found labels in a sanitary bin. Just outside the toilet they found two red jumpers under the counter where the jumpsuits were on display. He said that he had seen both women

pushing brushes under this shelf and had surmised that they had pushed the jumpers with the brushes along the floor to the point where they were found.

He said that they had reported what they had seen to the Guards and were advised to keep a special look-out on the following night. On that Friday night he gave evidence as to what he saw which confirmed the Plaintiff's cross-examination. He also gave evidence that arguments were taking place between the cleaners that evening. Before the cleaners arrived he had checked the sanitary bins in the ladies' toilet, they contained no labels. He had watched the cleaners continuously through a grille from a catwalk which surrounded the shopping area.

Although the Plaintiff did not admit to being involved in arguments on the Friday night she had given evidence to the effect that they were delayed in their work on that evening because a complaint had been made that the floor had not been properly cleaned on the previous evening. The clear inference from her evidence was that the course of events on that particular evening were affected by the nature of that complaint and that accordingly they were delayed in finishing their work. It was for this reason that she wanted to leave early.

The General Manager for Security also gave evidence. He said that a special watch had been kept on Thursday night because the cleaners had been suspected of theft. He was in the Manager's Office and had a total view of the entire floor area. He confirmed the allegations as to the behaviour of the two women. The Plaintiff took the yellow jumpsuit from directly underneath him. His evidence varied from that of the Manager of Security and the Plaintiff's cross-examination in that in

between the two visits by the two women to the ladies' toilet both carried out their cleaning duties over a section of the floor.

He said that on the following night the cleaners did not arrive until 11.30 p.m. They spent little time working and spent much of the time arguing with two male cleaners, apparently shouting across at one another. He confirmed the cross-examination of the Plaintiff.

In cross-examination he said that he could see the ladies' toilet from where he was sitting and that it was about eight feet in a straight line in a porchway. The rails from which the goods were taken were some twenty to twenty five feet away from him. He saw the two red jumpers being brought into a toilet. When the other cleaner came out she still had them and she pushed them under a counter with a brush. When asked about the items which the ladies had shoved down the front of their jeans, he said that when they had done so they were no longer visible even as a bulge.

Both Security Officers gave evidence that a skirt and eight pairs of children's stockings were found in a sanitary bin in the toilets after the cleaners had left on the Friday evening. These items were shown the following morning to a Garda witness but were heavily stained with blood and were only fit to be burned.

It is clear from this short summary of the evidence that there is a total conflict of fact. The issue which I have to determine basically is where does the truth lie.

In her evidence the Plaintiff said that on the night in question there had been complaints from the Defendants about the state of the floor and this delayed them. No other

evidence was given about these complaints. This is the sort of evidence which in many cases is characteristic of an attempt to divert attention from the main issue. It gives rise in the present case to a suspicion that she may not have been telling the truth. Equally the fact that she wished to leave before her work for the evening was completed even though it involved at least a fifteen minute walk is another factor which gives rise also to suspicion.

There are a number of matters which give rise to suspicion in relation to the evidence given on behalf of the Defendants. First of all if the cleaners were under suspicion and a particular watch was made on the Thursday evening there seems to be no good reason why the Guards could not have been called on that evening rather than go through the entire process for a second time on the Friday evening. There are also elements in the evidence which are either unlikely or inconsistent. For example the Plaintiff was cross-examined that so far as the Thursday evening was concerned her misbehaviour was contained in the last quarter of an hour during which she was on the premises. However the General Manager for Security gave evidence that her misbehaviour was spread over a considerably longer period of time. Again the evidence in relation to the sweeping of the red jumpers along the floor and under a counter was totally unconvincing. It was also contradictory in the sense that one witness said that the jumpers were swept along the floor whereas the other witness said that they were brought into the ladies' toilet and only afterwards swept under the counter. Again the evidence did not disclose how the two lady cleaners would have been in the possession of brushes. What they were using were electric polishing machines and no suggestion was made that they brought

these with them when they went to the ladies' toilet. Explanations might be available for these inconsistencies but a significant feature of the evidence generally on behalf of the Defendants was that in some circumstances the Plaintiff and her companion were perfectly open about what they were doing whereas in other aspects of their evidence it was clear that they were trying to conceal what they were doing. Having regard to all these matters it seemed to me that the truth lay with the Plaintiff but nevertheless it was apparent that I would be in a better position to assess the probabilities if I visited the premises. Accordingly I did so and was shown the various places in the premises referred to in the evidence.

The particular selling area can be approached either from the front or from the back. If approached from the back, the entry is initially into a lobby. Off the lobby on the right are the doors to the men's and ladies' toilets and also a door which leads to a small room under the staircase where the cleaners equipment is kept. This staircase leads up to the catwalk from which one of the Defendants' witnesses viewed the events. In passing through the lobby the customer enters the main selling area for clothing. Initially there is an area approximately equal to that of the lobby. This is because the wall forming the left hand side of the lobby continues into the selling area for approximately the same distance as the width of the lobby and then turns at right angles to its left. From this point the selling area continues unimpeded to the front of the shop.

Along one entire side of the shop and reached by the staircase is the catwalk. It is the area where the services for the building are housed. There are a few grilles in the

wall which divide this catwalk from the store. These grilles are built flush with the wall. They are about nine inches wide by three inches high and have approximately six vertical strips leaving about six vertical slits two inches by half an inch through which a person can see if he wishes. Such grilles are just underneath the ceiling of the selling area. Little can be seen through the grille unless the viewer puts his or her eye virtually on the grille. Even then there is no real unimpeded view of the selling area. Such view as there is is of a portion of that area immediately underneath the grille. As the grilles are on the wall which is effectively a continuation of the wall in which the toilet doors are, these doors could never be visible to somebody standing on the catwalk and looking through the grille. The view of the back entrance lobby is dependent upon which grille was being used but in practice even from the nearest grille to it there is no real view of this lobby, and none of the doors to the toilets.

The Manager's Office is on the first floor and is bounded on two sides by a wall to which I have already described as continuing from the lobby into the store and turning left. The only window in this office is on this wall after it has turned left and then there is a complete view of the entire selling area between it and the front of the shop. It has no view at all of the back entrance lobby or the portion of the store immediately inside the doors leading to that lobby. It has no view of the selling area nearest to the wall in which it is situate and the further back the viewer was sitting the further away from this window would the selling area come into his view.

It was quite clear from the layout of the premises

that if the Plaintiff at any time during the evening went to the ladies' toilet the two watchers could only have known that she had moved out of their line of vision. It was always possible that they had deduced that that is where they had gone but even that explanation cannot apply to the evidence of the witness in the office who expressly said that the doors of the toilet were eight feet away in a straight line and that he could see them.

I accept the evidence of the Plaintiff. I also accept the evidence of the supervisor that he was present on both evenings and saw nothing of what was alleged against the Plaintiff. I do not accept the evidence of either of the Security Officers. There is too much basic inconsistency in their evidence. Nor do I think that they could have seen what they allege to have seen, given the positions from which they say they were watching. In my view the evidence against the Plaintiff was deliberately fabricated. She ought not to have been arrested and accordingly there was a false arrest and subsequently a false imprisonment. The Plaintiff is entitled to damages for the insult done to her.

Henry Brown
5/2/87.