

IN THE SUPREME COURT OF BRITISH COLUMBIA

Prince George, B.C.

May 10, 1991

BETWEEN:

LYLE EDWARD BUTLER

PLAINTIFF

AND:

JAMES SALES

DEFENDANT

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE CURTIS

D. BYL, Esq.

MS. P. SCHMIT,

appearing for the Plaintiff

appearing for the Defendant

THE COURT: (Oral) Lyle Edward Butler suffered three fractures of his left cheek-bone and a fracture of his left jaw-bone when James Sales punched him in the face on the 20th of November, 1988, at the Quesnel Civic Arena. Mr. Butler seeks compensation for his injuries, his loss of wages resulting therefrom, and punitive damages.

The defence to this claim is that James Sales was at the time using no more force than was reasonably necessary in the circumstances to defend himself from Mr. Butler. In the alternative, it is argued that if damages are to be awarded to Mr. Butler, they should be reduced by reason of the fact that Mr. Butler provoked Mr. Sales into punching

1 him.

2 On the 20th of November, 1988, Mr. Butler, who was then
3 47 years of age, was in the Quesnel Civic Arena as the
4 manager of the Prince George Fire-fighters Midget Rep
5 hockey team. Mr. Sales, who was at that time 25, was at the
6 arena to play a commercial hockey league game which was to
7 follow the midget game.

8 Shortly before the incident in question, the
9 Prince George midget hockey team was just about to finish
10 a game against the Quesnel team. In the last minutes of
11 play, a fight started between Darryl Kevis, a Prince George
12 player, and Dustin Sales, a Quesnel player, who is the
13 cousin of James Sales. James Sales climbed up on the boards
14 to shout over the plexiglass. He says that he was shouting
15 at the referees to stop the fight, not at the combatants.
16 Other witnesses say he was yelling at Darryl Kevis, "Take
17 your helmet off, you wimp", or words to that effect. All
18 the evidence indicates that Mr. Sales was quite upset and
19 agitated at the time.

20 Immediately thereafter, Mr. Sales walked down the
21 boards toward the Prince George bench, and upon entering
22 the hallway behind the bench, encountered Darryl Kevis, the
23 15 year old who had just been in the fight with his cousin.

24 Mr. Sales gave evidence that he did not expect to meet
25 Kevis there, and was simply going to get his equipment for
26 the next game. He said he did not even know where Kevis was
27 at the time. This, however, is improbable, as he was

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1 walking down the edge of the rink with a clear view of the
2 Prince George bench, where he could not help but see
3 Kevis coming off the ice and going into the hallway.

4 James Sales says that in the process of walking by
5 Kevis, he said, "Why didn't you take your helmet off, you
6 wimp?", or something like that, and was simply proceeding
7 on by him. Mr. Kevis says that Sales grabbed his hockey
8 jersey near his chest and confronted him with this
9 accusation. According to Mr. Butler, he saw Mr. Sales
10 grabbing Kevis by the chest, and sensing trouble, pushed his
11 way between them.

12 At this point, there was a confrontation between
13 Butler and Sales. Mr. Butler testified he told Mr. Sales
14 to get out of there, that he had no business being there,
15 and pushed Mr. Sales twice with his open hands. Mr. Butler
16 says that the second time he pushed Mr. Sales, one hand
17 slipped off Sales' shoulder and actually accidentally struck
18 Mr. Sales in the face. Mr. Sales in his evidence
19 essentially agreed with this version, but characterized
20 Mr. Butler striking his face as a slap. He said Mr. Butler
21 pushed him once with two hands against his chest and stepped
22 forward and pushed him backward again, this time striking
23 his face and causing him to lose his balance.

24 As to what happened next, Mr. Sales' evidence was, and
25 I quote, "I just sort of panicked and that's when I threw my
26 punch." Mr. Sales agreed that Mr. Butler never clenched his
27 fists; his hands were always open.

1 There is no suggestion that there was any agreement to
2 fight. Mr. Sales somewhat reluctantly admitted he knew
3 Mr. Butler was there to protect his player, Darryl Kevis.
4 He also knew that all that was required of him was that he
5 leave the area, and that to do so, all he had to do was
6 continue on the way in which he said he was intending to go.

7 Cross-examination of Mr. Sales revealed numerous
8 significant inconsistencies between the evidence he gave
9 in court, a statement he made to the police shortly after
10 the incident, the instructions he gave to his counsel in
11 order to draw an affidavit to set aside a default judgment
12 in this matter, and the evidence he gave on his Examination
13 for Discovery.

14 It is my conclusion from the evidence given in this
15 trial and my observation of James Sales as a witness that
16 he does not wish to remember the nature of his motivation
17 and his actions at the time this incident occurred. This is
18 illustrated by many details of his evidence.

19 Some examples are his suggestion that he was not sure
20 or could not remember if his punch struck Mr. Butler. In
21 cross-examination, he admitted he put all the power he had
22 into this punch. How he could have failed to know that he
23 had struck the man, I cannot understand.

24 Another example is his answer at question 37 of the
25 Examination for Discovery, when he said, concerning what was
26 said to Darryl Kevis, "I just said something to the effect",
27 then paused and said, "I can't even remember." He remembers

1 clearly enough now what he said, and I am sure he remembered
2 at the time of the discovery.

3 Likewise his explanation that he mixed up the order of
4 events in giving what he was attempting to suggest was an
5 unimportant statement to the police is unconvincing.

6 The evidence satisfies me that Mr. Sales, on observing
7 the fight with his cousin, decided to confront Mr. Kevis on
8 his way to the dressing-room, and when Mr. Butler
9 intervened, he re-directed his aggression toward him.
10 Mr. Butler was simply doing his job, and Mr. Sales, who
11 could easily have complied with a reasonable request to
12 leave, because he was angry, punched Mr. Butler as hard as
13 he could. The punch was wholly uncalled for in the
14 circumstances, and the force thereof far exceeded anything
15 reasonably required to protect Mr. Sales' physical
16 integrity.

17 As a result of Mr. Sales' blow, Lyle Butler suffered
18 three fractures of his left cheek-bone and a fracture of
19 his left jaw-bone. Although the severity of the injury was
20 not immediately diagnosed and Mr. Butler worked for two days
21 after the incident, surgical repair was necessary. Mr.
22 Butler was admitted to the Prince George Regional Hospital
23 for six days, where a rubber packing was placed between his
24 cheek-bone and his skull to reposition his facial bones.
25 His jaw was wired shut with arch bars which were removed in
26 the first week of January. It took about a week after the
27 bars were removed for him to recover full use of his jaw.

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1 I accept his evidence that he was unable to work as a
2 line truck driver for Rempel Trail hauling petroleum
3 products while his jaw was wired shut because he could
4 not be alone and risk suffocation from vomiting. The
5 pain was not severe unless he coughed or sneezed, but
6 unquestionably, the injury caused him great inconvenience
7 until he recovered.

8 His recovery was essentially fully complete after two
9 months following his injury, with the exception of a little
10 numbness in his lower lip. Fortunately as a result of the
11 skill of the attending surgeon, Mr. Butler has not been left
12 with any resulting scarring or disfiguration.

13 Considering these factors, I assess the value of
14 general damages as at the date of the injury to be \$10,000.
15 I consider Mr. Butler's injury to be less severe than that of
16 Mr. Houston in the case cited by the plaintiff, because
17 Mr. Houston had over \$3,000 worth of dental repairs and the
18 related inconvenience and other problems.

19 I find no provocation in the actions of Mr. Butler
20 which warrants a reduction of this award of damages.

21 Mr. Butler was off work for five weeks. I find \$4,500
22 to be a conservative and reasonable estimate of his wage
23 loss during that time.

24 A claim is made for punitive damages, that is damages
25 which go beyond the sum necessary to compensate Mr. Butler
26 for his loss, on the basis of the outrageous nature of the
27 defendant's conduct. Punitive damages are awarded only in

1 unusual cases where the conduct of the wrongdoer has
2 features which warrant a further award against him in the
3 form of punishment.

4 On the evidence in this case, I find that while
5 Mr. Sales' action was unwarranted, it is not established
6 that he went to the hallway with a definite plan to punch
7 Mr. Butler or anyone else. Mr. Sales, because of his anger,
8 made a bad decision in an already tense situation, but for
9 that, he is now called upon to pay a substantial amount in
10 compensatory damages. It would not, in my opinion, be
11 appropriate to call upon him to pay more than the
12 compensatory damages.

13 In summary, the plaintiff shall recover \$10,000 for
14 general damages, \$4,500 for loss of wages. This award will
15 bear interest at the rate allowed by Registrars from time
16 to time on default judgments from the date of the incident
17 on the general damages, and calculated according to the
18 Court Order Interest Act on the wage loss.

19 The plaintiff shall recover the costs of his action
20 on Scale 3, unless counsel have any submission on the issue
21 of costs.

22 MR. BYL: No, My Lord.

23 MS. SCHMIT: No.