IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN COMMON LAW

SUIT NO. - C.L. 1975 B 012

BETWEEN	DILLON BAKER	PLAINTIFF
AND	SYDNEY NELSON)	
AND	GLADSTONE WALTERS)	DEFENDANTS
AND	LOUIS GORDON)	
AND	LOUIS GORDON	THIRD PARTY

H. Haughton Gayle for Plaintiff.

Gordon Robinson holding for Mr. Piper instructed by Judah, Desnoes, Lake, Nunes, Scholefield & Company for first and second named Defendants.

Mr. E. Alcott for third Defendant.

Heard: 25th - 29th October, 1982, 1st - 3rd November, 1982 and 31st March, 1983

J U D G M E N T

Theobalds, J:

After several days of hearing I had reserved judgment in this matter for the purpose of reading over the copious notes of evidence. Long though these notes might have been and as numerous as the Exhibits were, the issues in the case were relatively simple. Nonetheless a critical and searching analysis of the evidence has to be undertaken in order to arrive at a judgment which can be supported. The plaintiff in a four page amended Statement of Claim in which he outlined in detail the entire history of his dealings with the first, second and third named defendant (or third party) claimed damages as against the first and second named defendants for trespass to land and wrongful or improper distress and sale. Further or in the ...

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alternative the plaintiff claimed as against the first and second named defendants the sum of $1,530.00 as money paid by the plaintiff to the said defendants under threats by the said defendants to seize and sell the plaintiff's goods and also included a sum of $30.00 wrongfully demanded by the second named defendant as Bailiff's fees at the time of the said seizure. The plaintiff also sought an Injunction in the usual terms to restrain the first and second named defendants or either of them from seizing or interfering with the plaintiff's goods or otherwise trespassing on the plaintiff's premises. Finally the plaintiff sought an indemnity against the third named defendant in respect of the value of the said goods and in respect of any costs which the plaintiff may have been found liable to pay the first and second named defendants.

The plaintiff, a young man probably making his first excursion into the harsh and unconscionable world of business was attracted and dazzled by an offer made to him by the third named defendant, a man of vast business experience and cunning, probably making his last excursion into the said field of business. I say this because he appears for all practical purposes to be in the twilight of his years; a man understandably preoccupied with making arrangements for as comfortable a retirement as his business acumen and expertise can devise. Indeed he describes himself as a retired businessman. Had the arrangement or deal with the plaintiff gone through without the knowledge and interference of the first named defendant (Mr. Sydney Nelson), Mr. Granville Louis Gordon (the third named defendant) would have been comfortably provided for the balance of his natural life. Unfortunately for Mr. Gordon fate - as fate is often wont to do - in the guise and form of Mr. Sydney Nelson (the first named defendant) stepped in and upset the applecart so to speak. Coincidentally, Mr. Gordon had himself dealt with Mr. Sydney Nelson and the subject matter of that deal was the same restaurant, bar and fixtures at 34 Wellington Street, Spanish Town in the parish

of St. Catherine which forms the subject matter of the Suit now before this Court. Mr. Nelson although describing himself as a retired truck proprietor was not quite as retired as might have suited Mr. Gordon's purposes. Everything might have gone through peacefully and without event had Mr. Nelson slept on his rights. His retirement was not sound enough. Whenever Gordon, for whatever reason, defaulted in his monthly instalments of $500.00 it disturbed Nelson's slumber and he took himself off to 34 Wellington Street which by now was or ought to have been, in "the sole, quiet and undisturbed possession" of young Mr. Dillon Baker (the plaintiff). He disturbed Baker's possession and in so far as he took along with him the second named defendant Mr. Gladstone Walters (a landlord bailiff and Assistant Resident Magistrate's Court bailiff), Walters too disturbed Baker's possession. It was this "disturbing" state of affairs which eventually culminated in this action being brought before this Court. In order therefore to properly understand the issues it is necessary to outline the factual situation in some detail.

The plaintiff is a bar and restaurant proprietor. It appears that in March 1974 he was approached by the third named defendant with a view to purchasing premises 34 Wellington Street in Spanish Town popularly known as the Moonglow Restaurant. According to the plaintiff, and I believe him, Gordon at that time represented himself to be the owner of these premises which is situate in the commercial section of the town and which contained at the time the usual fixtures and stock and utensils which normally would be used in the running of such a business.

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Eventually on the 10th April, 1974, the parties reached an Agreement whereby the stock, goodwill and fixtures were to be acquired by the plaintiff from Mr. Gordon for the amount of $500. Supportive of this agreement and transaction the parties tendered and admitted by consent a photocopy of a receipt for $500 which was marked Exhibit 1. It should here be pointed out that at a previous trial before Wilkie J, which never reached finality the original of this receipt along with other documents had been tendered in evidence. Over the years these originals having been mislaid all the parties had agreed to the use of photocopies whenever possible. This attitude on all sides is to be commended.

In relation to the building and land which comprised 34 Wellington Street there was a further agreement whereby the plaintiff was to lease same for a period of five (5) years at a monthly rental of $500. The first month's instalment having been paid on the 10th April, 1974 the plaintiff was duly put in possession. Shortly after this the first named defendant Sydney Nelson first appeared on the plaintiff's scenario and unfortunately not, as the plaintiff may have wished, as a customer of the Moonglow Bar and Restaurant. Nelson introduced himself to the plaintiff Baker and enquired from the plaintiff whether any money had been left there for him by Gordon. Baker having replied in the negative Nelson promised to return and it was on one of these subsequent visits that Nelson explained to Baker that he, Nelson, had owned and operated the Moonglow Restaurant and Bar for a period in excess of thirty-five (35) years and on his retirement from the business had sold out to Gordon. He said

that Gordon had acquired the goodwill in the premises from him for $10,000.00 and had paid down $5,000.00 and was to complete his balance of $5,000.00 by monthly payments of $500.00. All this was substantially the case being advanced by both plaintiff Baker and defendant Nelson and indeed was evidenced by an Agreement in writing dated the 2nd March, 1974 between Nelson and Gordon tendered and admitted in evidence as Exhibit 8. Nelson in addition produced a document allegedly signed by Gordon which gave him the power to repossess "everything in the premises" if each $500 monthly payment was not made within fourteen (14) days of the due date. Naturally the plaintiff was alarmed and protested vociferously. He then and there warned Nelson that he (Baker) having purchased the stock and fixtures at 34 Wellington Street from Gordon the said goods in question were now his property and he should collect whatever arrears he claimed to be owing from Gordon and leave the goods and fixtures alone. Gordon happened by at the precise point in time and now commences a display of that utter brazenness which to my mind is characteristic of Gordon's demeanour throughout this case. He proceeds to castigate Nelson in no uncertain terms, denies owing anyone any money, and even threatens to sue Nelson for "what he does not have" if he should dare to touch anything on the premises. This is the gentleman with whom Gordon had the month before entered into a contract in writing (Exhibit 8) relative to the goods, fixtures and stock at 34 Wellington Street. Even as regards a particular item of equipment in the shop, namely a deep freeze, (referred to as a Dairy

Farmers fridge) Mr. Gordon was prepared to be untruthful. Gordon claimed that this item was his property he having purchased same from Nelson. I accept Nelson's evidence that this particular item was not his to sell and was expressly excluded from the original agreement drawn up between himself and Gordon. It is noted that this particular item has throughout been referred to as "Dairy Farmers fridge". Another item, referred to as "John Elliot juke-box", was also expressly excluded from the sale and I find that Gordon was at all times aware that this was so. These are my findings of fact and show how unscrupulous a man Gordon is when he tells Baker that he (Gordon) had purchased the Dairy Farmers fridge from Nelson.

There are several reasons why I accepted Baker's evidence in preference /to Nelson's in those areas where they are in conflict. It was always in issue as to how the parties travelled from 34 Wellington Street to Gutters on the 20th July, 1974, so fittingly referred to by Counsel as "the Gutters day". This was the day of the alleged levy on Baker's goods by Nelson and the second named defendant Walters. This was the day that at least three of the four contestants to this Suit were together for the first time. These three were the plaintiff Dillon Baker and the first named and second named defendants Sydney Nelson and Gladstone Walters respectively. This was the day on which certain events took place which formed the substance of the complaint by Baker against the first and second named defendants in respect of the actions for trespass to land and the improper and illegal seizure and sale

and sale of the plaintiff's goods. I believed both the plaintiff Baker and his witness Mrs Baker when they swore that Baker and the defendants travelled to and arrived at Gutters in Baker's car. This would mean that both Mr. Wilson and Mr. Walters were not being truthful when they claimed that the journey was made in Mr. Walter's car. A tribunal of fact is entitled to ask itself why was an issue being made of a seemingly relatively unimportant matter as by what means a journey from Spanish Town to Gutters was made. The plaintiff in his evidence in chief (before the matter was in issue) swore that he transported Nelson, Walters and others in his car. As a judge of fact I asked myself why would he say so if it were not so. What has he to gain by fabricating on this point? Why do Nelson and Walters both come along afterwards and say the plaintiff Baker is lying about such a trivial and unimportant point? Why should Nelson and Walters lie? One is entitled to assume that sane human beings, unlike animals, do things for a reason and with some purpose and the only reason which suggests itself is that Walters had to find some explanation to offer to the Court for Exhibit (2) a receipt allegedly signed by him for $30.00 which Baker said was paid by him (Baker) to Walters on demand as Bailiff's fees. Walters while admitting that he collected $30.00 from Baker said the amount was not for Bailiff's fee but for the use of his (Walters) car from Spanish Town to Gutters and back according to the Pleadings. So naturally Walter's car would have had to be brought into the picture, so atrivial unimportant matter is made a live issue in the case. It now becomes a finding of fact that Baker's car was

the car used that morning and both Nelson and Walters become untruthful and unreliable witnesses. They both did irreparable damage to their credibility by fabricating over a relatively unimportant matter.

One untruth leads to another. Walters did irreparable harm to his credit when on being shown Exhibit (2) (the receipt for $30.00 above-mentioned) he reacts as follows and in the following sequence:

(1) "This receipt there is a difference in that I do not <u>really</u> admit the <u>number</u> and the <u>date</u> as the one that was given to Baker." (The underlining mine)

(2) "The signature is not Walters".

(3) "Not my signature".

(4) "The handwriting is not mine".

(5) "I normally sign 'Gladstone Walters'".

(6) "I never sign 'G. Walters'".

I venture to suggest that a normal truthful person who is presented with a bogus (or at least a forged) receipt would react by denying first of all the handwriting and signature and then gravitate to other matters such as the number and the date, Walters does not do this. What does he mean by (5) and (6) above? At (6) he says he never signs "G. Walters". Is this because "G. Walters" is the signature at the foot of Exhibit (2). By what means is he able after a lapse of some eight (8) years, to "really" claim that such atrivia as the date and number on the receipt are incorrect

and, without refreshing his memory from a duplicate, how is he able to aver that on his receipt were the words "$30.00 for the use of my car LK 1319". Walters is so determined to put his car on the scene at Gutters that he goes so far as to identify it on his version of the receipt by Registration number. He also needs that car so that he can leave Gutters to go on his official duties as an Assistant Resident Magistrate Court bailiff "to execute a Warrant of Commitment on behalf of one Ivy Tater". It is vital to his defence that he should not be at Gutters during the discussions and had he gone there in Baker's car he would have had to remain there throughout; he would not have had any means or excuse for leaving the scene. I accepted Baker's evidence that the Inventory of Goods (Exhibit 3) was written up by Walters on Nelson's dictation and that this was done at Gutters. All that Walters' evidence is designed to do is to deny every detail of the account that Baker had given. Odd indeed it is that Nelson having invited Walters (if Nelson is to be believed at all) to accompany him to the Moonglow Club and Restaurant at 34 Wellington Street and on to Gutters, that Walters should leave everybody at Gutters during the climax of the discussion and go off on "a frolic of his own", driving his own car while only holding a Provisional Driver's Licence and also at the time not being under the supervision of a fully licenced driver. This behaviour sounds odd to say the least, particularly so for an Assistant Resident Magistrate Court Bailiff. While he could legitimately expect payment by the debtor for his services as a bailiff in marking goods and writing up an Inventory of the goods

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the subject of the levy, there was no reason why, if Walters evidence is to be believed, he should expect Baker to pay for the use of the car from Spanish Town to Gutters because it was Nelson and not Baker who asked Walters to "follow" them to Gutters. It was at Nelson's invitation and not Baker's why Walters was there at all. The use of the word "follow" in this context merits some observation. It has been used by Baker, Nelson and Walters alike. The modern Oxford Dictionary defines "follow" as "to go or come after a person or thing" and this is the normal meaning of that word. As used by Baker it could be readily understood for it would simply mean that he requested Nelson to come behind him to Gutters to see his stepfather, he Baker going there in his own car. It would therefore give credence to Baker's version that Nelson arrived at 34, Wellington Street in Nelson's own car, a Morris Minor. Nelson's use of the word is somewhat puzzling but he gives his meaning as "we all go in one car". But Walters swore that Nelson asked him if he Walters could follow them down to Gutters, so it is difficult to ascribe Nelson's meaning to the word 'follow'. I have already indicated my finding as to why Walters had to fabricate in relation to the use of his (Walters) car for the trip to Gutters. It is clear that Nelson also had to participate in that fabrication and why he attempts to corroborate Walters on that point; for it is on Nelson's invitation that Walters got himself involved in this matter anyhow. No doubt Nelson feels an obligation to assist him in drawing his chestnuts out of the fire. A perfect example of how tangled a web is woven when the art of deception

is first practiced whatever may be the motive for so doing. This finding could be strengthened by Walters statement that Nelson and himself have been very close friends over a period of several years and that he (Walters) actually grew up as a part of Nelson's family. I wish to emphasize that my finding in this regard is not necessarily infallible, indeed no finding is, but the close family relationship between the two could certainly justify an inference that both would be disposed to assist one another by their testimony. To put it simply neither Nelson or Walters impress me as being independent or impartial witnesses. I place little or no reliance on their credibility.

Turning now to an examination of Louis Gordon's evidence, I reject the suggestion made by Learned Counsel Mr. Alcott on behalf of his client that here was an old man of eighty (80) plus who was being "advantaged" by both Baker and Nelson. First of all there is no direct evidence as to his age and this should have come from Gordon himself or some witness called on his behalf. It cannot properly be put in the form of an address. Indeed there is every evidence (although not so admitted by Mr. Gordon) that he had devised a plan whereby on an outlay of $5000.00 (deposit paid by him to Mr. Nelson as a down payment on the business at 34 Wellington Street) he was to receive an income from Baker of $500.00 per month for the first year, $300.00 per month for the second and third, fourth and fifth years respectively. After a lapse of six years he would have made a profit in excess of $15,000.00 on his capital outlay. And this would have been possible without having the burden of running the business at

34 Wellington Street himself. He could have paid off the balance of $5,000.00 owed by him to Mr. Sydney Nelson in a period of ten months and then sit back and enjoyed a steady monthly income of $500.00 per month initially reducing to $300.00 per month. Here is every sign of an astute businessman and not as Learned Counsel Mr. Alcott urged in his final summation "an old man who has made a fool of himself". A further indication, in my view, that Gordon is no fool is in respect of the Consent Judgment entered into by Gordon in favour of the first named defendant Sydney Nelson. On Gordon's own admissions he would have owed Nelson an amount in the vicinity of $5,000.00 balance on the purchase price of $10,000.00 on the transaction at 34 Wellington Street. Without the assistance of counsel he is able to secure a Consent Judgment for $2,900.00 plus costs. He has been able to reduce his liability by some forty percent (40%) when clearly the documentary evidence was against him. What seems to have escaped Mr. Gordon is that by consenting to a judgment in favour of Mr. Nelson he is estopped from denying the basis of that claim, namely that Nelson and himself had indeed been parties to an Agreement in writing dated 2nd March, 1974 and that he (Gordon) was in breach of that Agreement and was therefore admittedly liable to Nelson. These admissions could only have the effect of strengthening Baker's allegations against Gordon in the case now up for judgment. If Gordon is to be regarded as truthful when he swore under re-examination that he "did not know Nelson could take the equipment from anybody else but me (Gordon)", then perhaps this erroneous belief could explain why he did in fact dispose of the goods to Baker. Exhibit 1 in my view is

is clear and unequivocal. It is a receipt signed by G. Louis Gordon for $500.00 paid to him by Dillon Baker for goods, merchandise and stock at Moonglow Restaurant. If Gordon had no right of property in these goods, then he had no right to sell them or to collect money from Dillon Baker or anybody else as purchase money for them and if he purported to sell in the admitted belief that Nelson could not seize the goods then his entire transaction would have been fraudulent. The question now would be whether or not Baker could be said to have been a party to that fraud and if so could he have acquired any title to these goods. It seems clear to me that there is absolutely no scintilla of evidence that Baker was involved in any fraud. He was unaware at the time of his purchase that Nelson had any interests in the goods, stock and fixtures at 34 Wellington Street and there was no way that he could have been aware of Nelson's interest. Nelson's duty it was to have taken steps to protect his interests in the goods by taking from Gordon and registering a Bill of Sale thereon. In the absence of any such security then a purchaser for value from Gordon in open market without prior notice of an encumbrance acquires a perfectly good title. Baker acquired such a title and Nelson lost his rights to recover any money owed to him by Gordon by seizure of the goods. And this is so in spite of provision to the contrary in the Agreement for Sale for this is in fact what Exhibit (1) is in effect. Very little assistance was given to this Court on this very important issue in this Case, but it is clear that if Exhibit 1 is accepted as a genuine document the entire stock, fixtures and goodwil passed to Baker

on payment of the sum of $500.00. It was urged with vigour by Learned Counsel for Gordon that $500.00 was a hopelessly inadequate consideration and therefore that there was a total failure of consideration. He did not pursue this submission any further than that, but it seemed to me that this contention was that a total failure of consideration would mean that no property in the goods passed to Baker from Gordon. He based his submission on inadequacy of consideration on the evidence given by the plaintiff's witness, Mrs Ivy Baker, that the value of the stock at 34 Wellington Street was "more than $500 - about $7,000-8,000". Now Mrs Baker is herself a shopkeeper and can therefore be assumed to have some knowledge of the value of stock in a business place. In any event she is the plaintiff's witness and though not falling in the category of an expert there is no good reason why her estimate should not be accepted although it has not escaped my attention that while $7000-8000 appears high for what she describes as the stock namely "like fridge, drinks and a little rum" the same Mrs Baker places the monthly rental on 34 Wellington Street at the ridicoulously low figure of $50.00 per month. Her competence as a valuator must be immediately open to question; and no tribunal of fact would consider itself bound by her figures. In any event there is an inherent fallacy in counsel's submission because it is a well known principle of contract that a court does not enquire into the adequacy of consideration. Consideration is a matter for the contracting parties and them alone to decide and in the absence of fraud and

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within the bounds of the criminal law a party is held by his contract. You cannot accept $500.00 for goods, merchandise and stock and then turn around and claim inadequacy or failure of consideration whatever may be the true value thereof. In any event the same witness Mrs Ivy Baker went on to say (and it was never suggested to her that she was being untruthful) that "Gordon say he was selling for $500.00 because $500.00 per month he would have to pay". Clearly this refers to Gordon's liability to Nelson for $500.00 per month under the terms of his lease of the Moonglow Restaurant Exhibit (1) and this $500.00 payment would cover rental owed by Gordon to Nelson for the first month. All future $500.00 payments made by Baker to Gordon would be used by Gordon to settle Gordon's monthly liability under his lease from Nelson. It is clear that Gordon structured his Agreement with Baker in such a way that without dipping his hand in his own pocket he (Gordon) would collect $20,450.00 in all from Baker without the burden of having to manage the business at 34 Wellington Street himself. It was in these circumstances that I would accept Mr. Haughton Gayle's submission that Gordon could afford to give Baker the goods and merchandise for nothing. Five hundred ($500.00) stated in Exhibit 1 may have been for no other purpose than to make the contract binding and to obviate the possibility that argument could be put forward at some time in the future that the said contract was not binding due to a lack of consideration.

Altogether there were a total of eleven exhibits tendered - some could be put in the category of crucial or of prime importance in proof of the case, some not so crucial, and

some carrying little or no weight. I shall endeavour to put each Exhibit into one of the above categories in order that this judgment would be more easily understood. I have already explained how in the majority of the Exhibits copies and not the originals come to be tendered in the evidence.

Exhibit 1:

Receipt signed by G. Louis Gordon and dated 10th April, 1974 for the amount of $500.00 received from Dillon Baker for goods, merchandise and stock at Moonglow Restaurant. This Instrument speaks for itself and accepting, as I do, the plaintiff's explanation for its raison d'etre, and rejecting, as I do, the explanation of the third named defendant then it would follow that Exhibit 1 goes a far way in proof of the plaintiff's case.

Exhibit 2:

Receipt signed by G. Walters and dated the 20th July, 1974 for the amount of $30.00 "on behalf of G.L. Gordon levy made by Bailiff". But for the absence of any explanation from either side as to how the name G.L. Gordon appears in the body of this receipt, again I accept the plaintiff's version of the circumstances under which this document was written. I have already expressed certain strong views in relation to the account given by the second named defendant Mr. Gladstone Walters, and so far as the claim against this gentleman for $30.00 is concerned, there can be no answer to it.

Exhibit 3:

An Inventory of Goods levied on G.L. Gordon on 20th July, 1974 on behalf of S. Nelson. Here again this document

speaks for itself, corroborates in my view the plaintiff's account of how it came to be, and gives the lie to the version given by both Sydney Nelson and Gladstone Walters. Even down to its last line "These goods was (sic) not taken", support is given in a material particular to the plaintiff's case.

Exhibit 4:

Canadian Imperial Bank of Commerce Cheque No. A60482 dated 23rd July, 1974 in the sum of $1000.00 drawn by Dillon Baker in favour of S. Nelson. The only contest in relation to this Exhibit is that while the plaintiff claims he paid the amount on his own behalf under threat of a levy the payee Nelson claims it was paid on behalf of G.L. Gordon. There is no question that Gordon was indebted to Nelson, but the goods having passed to Baker under a straight sale I accept that the payment was made by Baker under threat of levy.

Exhibit 5:

Canadian Imperial Bank of Commerce cheque No. A67844 dated 27th August, 1974 in the sum of $500.00 drawn by Dillon Baker in favour of Sydney Nelson. Baker distinguishes this cheque from Exhibit 4 on the basis that the latter was paid under duress while Exhibit 5 was a voluntary payment to Nelson. It is not appreciated by me where the distinction lies but this $500 cheque forms no part of the plaintiff's claim in damages, and no further comment in relation to this Exhibit is either necessary or justified.

Exhibit 6:

A photocopy of an Original Agreement dated 10th April, 1974 between Granville L. Gordon and Dillon Baker re 34 Wellington Street, Spanish Town, the terms whereof are set out at length therein. It is not without significance that in that Agreement Gordon is described as the owner of premises 34 Wellington Street and undertakes as owner to be responsible for repairs to equipment in excess of $50.00.

Exhibit 7:

Consent judgment in suit C.L. B012/1975 the significance and importance of which I have already commented upon elsewhere in this judgment.

Exhibit 8:

An original and stamped Agreement for Sale dated 2nd March, 1974 between Sydney Nelson and Louis Gordon relative to the business at 34 Wellington Street. It is one of the recitals in this Agreement that Sydney Nelson is the owner of the business including fixtures and goodwill which comprises a bar and restaurant at 34 Wellington Street and that the owner of the premises is one Alexander Barrett. This Agreement is an indication of the business acumen of Mr. Gordon for within less than a month after taking over the business he has successfully negotiated with Dillon Baker for a resale on terms far more favourable to Gordon than the extent of his own liability to Nelson. I have already commented on this elsewhere in this judgment.

Exhibits 9 & 10:

Two specimen handwriting of the defendant Gladstone Walters painfully and laboriously extracted from him under cross-examination by plaintiff's attorney. These hand-writings having been done in my presence are clearly admissible.. As long as I remind myself of the danger of attempting to make comparisons without the assistance of an expert betweeh Exhibits 9 and 10 and Exhibits 1 and 3 which are in dispute it is my view that Exhibits 1 and 3 were written by Gladstone Walters. The specimen handwriting being properly admitted it is my view that it is unavoidable that comparison should be made and opinions formed by a tribunal of fact whose duty it is to decide on the genuineness or otherwise of the disputed writing. It is noted that in the case of R.v.Rickard /1908/ 13 C.A.R. [illegible] a Court of Criminal Appeal formed its own opinion as to hand-writing without expert evidence. If this was done in a criminal case where the onus probandi is high how much more would the argument of logic permit such an exercise where the burden of proof is on a balance of probability only. The line "Total Ballance of deth $3000" speaks most eloquently for itself in my view. Let me hasten to add however that whether this comparison is properly made or not I accept the evidence of Dillon Baker in preference to that of Gladstone Walters in so far as it relates to Exhibits 1 and 3. Further elucidation in justification of this finding is made elsewhere in this judgment.

Exhibit 11:

Letter dated 28th May, 1974 from G. Louis Gordon to Dillon Baker. In this letter the writer admits owing Nelson certain moneys but does not stipulate what for. It would be a reasonable inference however that this money is in respect of Exhibit (8) mentioned above.

From my analysis so far of the evidence and my comments on the several Exhibits it should be obvious that on all issues of fact I was more impressed by the testimony of the plaintiff and his witness than by the defendants. I make specific findings of fact as follows:

(1) The second named defendant acted at all material times as the servant or agent of the first defendant and together they both trespassed on premises 34 Wellington Street in the lawful possession of the plaintiff.

(2) On several occasions during the months of May and June 1974 the first named defendant Nelson wrongfully threatened to levy on the goods of the plaintiff to recover money which was owing to him by the third named defendant.

(3) That under threat above-mentioned the plaintiff paid to the first named defendant on or about the 20th day of July, 1974 the sum of $1,000.00 and on the day of 20th July, 1974 the sum of $30.00 to the second named defendant as bailiff's fees. Both of these payments were not voluntary, but in respect of a third payment of $500.00 on 27th August, 1974 it is the plaintiff's evidence that this payment was voluntary. The amount of $500.00

cannot therefore be allowed.

(4) That Baker's car was used on the trip to Gutters. It is convenient to indicate at this point that while in his Pleadings Walters claimed that Baker was taken back to Spanish Town in his (Walters) car, at the trial Walters testified that Baker did not return to Spanish Town with him. He remained at Gutters!

(5) The Inventory Exhibit 3 was written up by Walters on dictation from Sydney Nelson.

(6) Sydney Nelson expressly excluded from his Agreement for Sale with Gordon the two items namely a Juke box and a Dairy Farmers deep freeze and that at all times Gordon was aware of this.

There will be a judgment for the plaintiff against the first and second named defendants in respect of both the claims for trespass and illegal and improper distress. In respect of both these heads of damage I accept the submissions made by learned counsel for both these defendants that in respect of the claim for trespass and illegal distress only a nominal sum should be awarded for general damages. I consider the figure of $250.00 under each of these heads appropriate. In addition the amounts of $1000.00 and $30.00 are awarded the plaintiff against the first and second named defendant under the head of special damages that is moneys actually paid over by him under duress or threat of levy. There will therefore be a judgment for the plaintiff against the first and second defendants for $1,530 with costs to be agreed

or taxed. An Injunction is also granted restraining the first and second named defendants or either of them whether by themselves or their agents or servants from trespassing on the premises lawfully in the possession of the plaintiff and interfering with the stock, fixtures and equipment.

The Counter Claim by the third named defendant Gordon against the firstnamed defendant which was filed pursuant to an order of the Master in Chambers has no merit in it and stands dismissed with costs to the first named defendant to be agreed or taxed.

I wish to close by expressing regret at the delay in writing this judgment, but the complexity of the pleading necessitated a careful analysis of the evidence and I believe this has been done.

Puisne Judge.