

## IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006 HCV 04143
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BETWEEN DONALD DENTON

CLAIMANT

AND

THE ATTORNEY GENERAL FOR JAMAICA

DEFENDANT

Mr. Oraine Nelson instructed by K. Churchill Neita and Company for Claimant.

Miss Carol Barnaby instructed by Director of State proceedings for Defendant.

Heard: 10<sup>th</sup> March, 2010 and 7<sup>th</sup> May 2010

Malicious prosecution; seizure of motor vehicle; whether done with reasonable and probable cause; solicitation; whether amounts to malice.

**In a society in which the Constabulary is held in reproach because of the Tyrian purple stain of corruption, it is easy to allege an improper motive in the launch of a prosecution. Therefore, the court has to scrupulously weigh the evidence to ensure that the righteous individual Cons is not made to unjustifiably bear the yoke of the opprobrious name of the collective. Equally, the court as the legal and moral guardian of the society, must not be slow to unmask the wolves lurking behind the cloak of authority. The court finds the allegation of malice in the instant case to be of this character. The allegation of malice is as hollow as a subterranean cavern, with a shell of unrivalled fragility.**

**CORAM: E.J. BROWN, J. (AG.)**

1. Downtown Kingston is a vibrant commercial center and the hub of transportation to and from several other parts of the city and elsewhere in the island. At its core stands the historic St. William Grant Park. That park is ringed by four parades, forming a quadrangle. Each parade takes its name from its geographical position in relation to the park. North Parade is landmarked by the Ward Theatre and the Captain's Bakery. South Parade is best known as the location of the Kingston Parish Church. East Parade is renowned as the site of the Coke Methodist Church and East Queen Street. West Parade is notorious for the location of the Heywood St. market and Orange and West Queen Streets, the latter leading to Spanish Town Rd.
2. On the 20<sup>th</sup> January, 2006, the defendant's servant or agent Spl Cons Darren Pennant, was on foot patrol along North Parade. He was attired in his uniform and in the company of at least one other member of the Island Special Constabulary Force. Theirs was the task to, among other things, perform traffic

enforcement duties. These duties commenced sometime before 11.30 am that day.

3. At about 12.30 pm, whilst Spl Cons Pennant was so detailed, Mr. Denton drove his brown Toyota Hiace, registered 9409 ER, from the direction of Orange Street, that is, along West Parade, and stopped at North Parade in the vicinity on the Captain's Bakery. There he set down a number of passengers. Before Mr. Denton could continue his journey, he was interdicted by Spl Cons Pennant with the resultant seizure of Mr. Denton's motor vehicle. It is that interdiction which forms the basis of this claim, which was filed on the 17<sup>th</sup> November, 2006, together with the requisite particulars of claim.

## **THE CLAIM**

4. The claimant alleged that Spl Cons Darren Pennant unlawfully and, or without reasonable and probable cause seized the claimant's motor vehicle, registered 9409 ER, and proffered false charges against the claimant for operating a taxi without a road license and maliciously prosecuted the claimant on the

said charges, in consequence of which the claimant suffered loss and damage.

5. At paragraph five (5) of the particulars of claim, the claimant averred that Spl Cons Pennant, "acting falsely and maliciously and, or without reasonable and, or probable cause issued the Claimant with a Traffic Ticket which summoned him to attend the Traffic Court, on the 21<sup>st</sup> February 2006, to answer charges of Operating a Taxi Without a Road License." It was further averred at paragraph six (6), "that on divers days the Claimant attended the Traffic Court, ..., to answer the aforesaid charges and on the 8<sup>th</sup> day of August, 2006 Her Honour Mrs. Marcia Dunbar Green, Resident Magistrate for the parish of St. Andrew, having heard the evidence dismissed the aforesaid charges on the basis that the Police Officer's statement failed to prove the essential ingredients of the offences charged."
6. The averments in the particulars of claim continued at paragraphs seven (7) and eight (8). In the former it was alleged "that the seizure of the Claimant's motor vehicle was unlawful and without reasonable and probable cause and, or amount

to excessive use of force wholly unwarranted in the circumstances.” In the latter paragraph the claimant said, “further that the actions of the said Police Officer constitutes (sic) an abuse of his statutory powers and were due for (sic) improper motive in the pretended execution of his duties.”

7. The defendant filed a defence on 23<sup>rd</sup> February, 2007. The essence of the defence was that the Spl Cons acted lawfully in the seizure of the claimant's motor vehicle by virtue of the relevant provisions of the **Road Traffic Act** and the **Transport Authority Act**. Further, “that the defendant had reasonable and probable cause for preferring the charge and for causing to be taken proceedings against the claimant and in so doing he did not act with malice.” The claimed damage was also denied.

## **THE CLAIMANT'S EVIDENCE**

8. This court only heard from the protagonists. In his witness statement Mr. Denton said he had journeyed that morning from his home parish, Manchester, to Kingston to renew his visa at the American Embassy, 5 Oxford Road, Kingston 5. Upon completion and while at the car park, he decided to take two

ladies and a child whom he had seen earlier inside the embassy to downtown Kingston. On reaching Orange Street, his intended path to Spanish Town Road was blocked by an articulated bus. Mr. Denton described this as a minor road which the court understood to be West Queen Street.

9. Not being able to make that turn, Mr. Denton drove around the St. William Grant Park and stopped in the vicinity of the Captain's Bakery. As soon as he had set down the passengers, Spl Cons Pennant walked towards him. The Spl Cons requested and received his documents. Mr. Denton then said, "after this he started to tell me that if I made the matter go to Court the judge would fine me \$15,000.00 and I would also have to pay \$6000.00 for wrecker fee if I let them take the vehicle. I understood him to be bargaining with me but I said nothing."
10. Spl Cons Pennant's colleague took the ignition key for Mr. Denton's vehicle. He was allowed to remove his personal belongings from the vehicle and it was towed away by the wrecker. That colleague told Mr. Denton that he had spoken to the occupants of his vehicle and they said they did not know

him. To that Mr. Denton replied that he wouldn't know everyone that he carried in his vehicle. Mr. Denton requested that the passengers be questioned in his presence concerning his receipt of any money from them. However, he was told that they had already left.

11. In a brief amplification of his witness statement, Mr. Denton said he wasn't picking up any passengers. Further, that he didn't leave North Parade, went to Cross Roads and returned to North Parade later the same day. Neither did he collect money from the persons exiting his vehicle nor gave back money to them at North Parade that day.

12. In cross examination Mr. Denton asserted that he had legitimate business at the embassy on the day in question. When pressed he produced a document to learned counsel for the defendant. Questioned on the document, he agreed that a visa was issued to him on the 18<sup>th</sup> January, 2006. He explained that he had gone to the embassy on a date prior to the 20<sup>th</sup> but was asked to return on the 20<sup>th</sup> with his land title, while his passport was retained. Although he had a receipt for the

appointment on the 18<sup>th</sup> there was nothing to evidence the return visit. However, he said that he got back his passport two days later with the visa stamped in it. He jettisoned the assertion in his witness statement that he had gone there to renew his visa. He contended that he had gone to apply for a visa.

13. Concerning the passengers, under cross examination Mr. Denton said he picked up the passengers at the gate of the car park, across the road from the embassy. He never found out their names. The passengers first asked to be taken to Half Way Tree Road but along the way he learnt they wished to go downtown. Although he thought this an important fact to mention, he admitted that it was omitted from his statement.
14. Mr. Denton denied there was a commercial transaction between himself and the passengers. The passengers were within his view as Spl Cons Pennant walked towards his vehicle. However, he was no longer able to see the passengers when Spl Cons Pennant's colleague came from the back of the vehicle and spoke to him. He said even if he wanted to call back the passengers he couldn't because they were already



gone. The claimant denied having told Spl Cons Pennant that he was "just trying to make a money."

15. Mr. Denton further testified that at the Traffic Court he and Spl Cons Pennant gave evidence and the case was dismissed. At this juncture, by consent, a letter dated 6<sup>th</sup> October, 2006, an annexure to the particulars of claim, was tendered and admitted into evidence. That was a letter issued under the hand of the Clerk of the Courts and purported to be an authenticated representation of the official record of the court and is extracted below:

On the final date of hearing, the matter was disposed of due to the officer's statement failing to indicate all the facts necessary for the offence. As a result of the insufficient facts, there was no evidence offered and the matter disposed of.

Notwithstanding that exhibit, Mr. Denton insisted that the police officer and himself were sworn and gave evidence at the Traffic Court.

## **THE DEFENDANT'S EVIDENCE**

16. For the defendant, Spl Cons Pennant certified in his witness statement that he had first seen the claimant's vehicle at North Parade that morning at about 11.30. A "loading man" shouted 'Cross Roads' and persons boarded the vehicle after which the claimant drove off. He became suspicious as the registration plates on the vehicle were private. Being on foot and thereby unable to follow the vehicle, Spl Cons Pennant made a note of the registration of the vehicle and the time in his notebook.
17. At 12.30 pm, the same vehicle returned to North Parade. In addition to the setting down of passengers, Spl Cons Pennant said the disembarking passengers handed money to the claimant who in turn passed money to them. There was then a repeat of the morning's activities with the loading man shouting Cross Roads. This time Spl Cons Pennant acted. While the claimant was handing the documents to him, the claimant allegedly said, "officer is a ting mi a try man fi mek a money." He issued the claimant with a ticket with the option of paying a fine at the Inland Revenue Department.

18. That option not having been exercised by the claimant, the Spl Cons was subpoenaed to attend court and submit his statement. This is what he said transpired at the Traffic Court, "the Clerk, during the course of the trial submitted to the Magistrate that there was not enough in my statement to show that Mr. Denton went on a journey so that the offence was not made out. The case against Mr. Denton was dismissed." Spl Cons Pennant asserted that the prosecution was without malice and with reasonable and probable cause.
19. Spl Cons Pennant's evidence under cross examination did not depart from the path it took in his witness statement. He disagreed with the suggestion that he prosecuted Mr. Denton for the purpose of obtaining money from him. Further, he denied that he told Mr. Denton that it would cost \$15,000.00 if he went to court and \$6,000.00 for wrecker fees. Meeting with equal rebuff was the suggestion that the claimant had invited him to speak to the passengers who the claimant had set down.

20. In answer to the court, Spl Cons Pennant explained that he never thought of speaking to the disembarking passengers as he was trying to prevent Mr. Denton from driving away. In that event the passengers left before he "could have thought of speaking to anyone of them." He further said that although he observed that money was changing hands, he could not say how much was received by Mr. Denton or the amount Mr. Denton returned. His restraint in prosecuting Mr. Denton at 11.30 am was by virtue of his training which dictated his response. By permission, in answer to learned counsel Ms Barnaby, Spl Cons Pennant elaborated that at 11.30 am he did not see any exchange of money and had therefore formed the view that that transaction was incomplete.

## **THE CLAIMANT'S SUBMISSIONS**

21. It was conceded by counsel for the defendant that no issue was joined on the question of the claimant being prosecuted by Spl Cons Pennant while he was acting as the servant or agent of the defendant. Also meeting learned counsel's frankness was the fact of the prosecution ending in the

claimant's favour. This has made it unnecessary to consider those aspects of the submissions of learned counsel for the claimant. Attention is now adverted to the other planks of counsel's submission.

22. Learned counsel identified as the third issue for determination whether Spl Cons Pennant acted with malice and without reasonable and probable cause at the time of setting the law in motion. He submitted that the resolution of this issue turned on the question of the credibility of the witnesses. On this score, he submitted that the evidence of the claimant is to be preferred.

23. The latter contention was grounded on three premises. First, although Mr. Denton had the option of paying a fine and avoiding the inconvenience of attending court, he chose to have the matter determined by the court. Secondly, Mr. Denton consistently attended court every time he was required to do so. That counsel contrasted with the attendance record of Spl Cons Pennant. Of the five court dates, Spl Cons Pennant attended only twice. Counsel argued that Mr. Denton's

evidence that the Spl Cons was not in attendance on the penultimate and ultimate days ought to be accepted. He posited that that must have been the case as, had Spl Cons Pennant been present the Clerk of the Courts would have requested of him a further statement so the prosecution could properly go ahead. Thirdly, Mr. Denton would not have been so brazen as to operate an illegal taxi in the presence of uniformed officers.

24. It was further submitted that it was incumbent on the Spl Cons to enquire of the passengers if Mr. Denton had entered into a contract of hire with them or he was merely a beneficiary of their generosity. This was cast as a failure of the Spl Cons since the passengers were at the back of the vehicle while the Spl Cons himself was at the vehicle. That failure, learned counsel urged, raises the inference that he was not interested in ascertaining the truth but only to further his motive of extorting money from Mr. Denton.

## THE DEFENDANT'S SUBMISSIONS

25. On behalf of the defendant, learned counsel Ms Barnaby submitted that the issues to be resolved are reducible to five. First, did Spl Cons Pennant observe Mr. Denton exchanging monies with persons exiting the motor vehicle at the material time? Secondly, did Spl Cons Pennant reasonably believe that Mr. Denton was operating his motor vehicle as a public passenger vehicle without a road license at the material time? Thirdly, did Spl Cons Pennant seize Mr. Denton's vehicle maliciously or without reasonable and probable cause? Fourthly, was Spl Cons Pennant's prosecution of Mr. Denton malicious? Lastly, is Mr. Denton entitled to any of the reliefs claimed?
26. In her written submissions learned counsel appears to have treated with the first three issues together. It was learned counsel's submission that, in accordance with **section 22 (1) of The Constables (Special ) Act**, a Spl Cons while acting as such is clothed with all the "powers, authorities, privileges and immunities," among other things, of a constable of the

Jamaica Constabulary Force. Consequently, the Special Constable is entitled to the strictures place on claimants suing in tort enacted under **section 33 of the Constabulary Force Act**. That is, a claimant stands in peril of being non-suited or have judgment entered against him if he fails to prove that the "act was done either maliciously or without reasonable or probable cause."

27. Having demonstrated that the defendant had the statutory authority to seize Mr. Denton's vehicle, by virtue of the provisions of the **Transport Authority Act** and the **Road Traffic Act**, counsel turned her attention to the question of malice. Learned counsel argued that "in order to be successful in his claim ... the Claimant must also go on to prove that he was prosecuted without reasonable and probable cause and that it was malicious." For this position counsel cited **Martin v Watson [1995] 3 All ER 559; Herniman v Smith [1938] 1 All ER 1,7; Glinski v McIver [1962] 1 All ER 696,741** and **Flemming v Myers & The Attorney General (1989), 26 J.L.R. 525, 535.**



## APPLICABLE LAW

28. The ingredients of the tort of malicious prosecution were distilled in **Wills v Voisin (1936), 6 WIR 50,57** as follows:
- a. That the law was set in motion against him on a charge of a criminal offence;
  - b. That he was acquitted of the charge or that otherwise it was determined in his favour;
  - c. That the prosecutor set the law in motion without reasonable and probable cause;
  - d. That, in setting the law in motion, the prosecutor was actuated by malice.

This authoritative statement of the law, as it appears in **Clerk and Lindsell on Torts** 16<sup>th</sup> edition, was approved in **Martin v Watson**, *supra*, by the House of Lords. To this must be added the gloss placed on the common law position as a result of **section 33 of the Constabulary Force Act**, according to the dictum of Forte, J.A. (as he then was). In **Flemming v Myers & The Attorney General**, *supra*, at page 535, Forte J.A. said ingredients (c) and

(d) are disjunctive. Therefore, the claimant need only establish one or the other to succeed.

29. This decision has been criticized by the learned author of **Commonwealth Caribbean Tort Law** 3<sup>rd</sup> edition as unjustified since it dilutes the protection offered at common law and, is repugnant to the manifest intention of parliament, which was to increase the protection of constables, not whittle it away. It appears that the learned Justice of Appeal (as he then was), concluded that the presumption that a statutory provision was not intended to change the common law, was rebutted by the ordinary linguistic meaning of the words used in section 33, which are arguably unambiguous. Whatever the misgivings of the learned author, that is the current declaration of the law and *stare decisis* demands that it be followed by this court. Since the parties are *consensus ad idem* on the first two ingredients, focus will be placed only on the remaining two.

30. So, what is reasonable and probable cause? The quintessential statement of the law in this area has been held by the House of Lords in **Herniman v Smith**, *supra*, at page 316,

to be the one so perspicuously articulated by Hawkins J. in

**Hicks v Faulkner 8 Q.B.D. 167,171:**

I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.

31. In **Glinks v McIver [1962] 2 WLR 832,857**, Lord Devlin

expounded on the passage above in these words:

This does not mean that the prosecutor has to believe in the probability of conviction: **Dawson v Vandasseau (1863) 11 WR 516, 518**. The prosecutor has not got to test the full strength of the defence; he is concerned only with the question of whether there is a case fit to be tried. As Dixon J (as he then was) put it, the prosecutor must believe that 'the probability of the accused's guilt is such that upon general grounds of justice a charge against him is warranted': **Commonwealth Life Assurance Society Ltd v Bain (1935) 53 CLR 343, 382**.

The inquiry is directed at the probability of guilt, not conviction.

Further, the test to show an absence of reasonable and probable cause is both subjective and objective.

## **RATIOCINATION**

32. The salient facts upon which Mr. Denton was prosecuted are, his vehicle wore private registration plates, the soliciting of passengers for his motor vehicle by so-called loader men on two occasions, these loader men were shouting a particular destination, disembarking passengers handed money to Mr. Denton and he in turn handed money to them. Assuming those facts to be true, was Spl Cons Pennant justified in thinking that Mr. Denton was probably guilty of the offence of operating his motor vehicle as a public carrier without a road license?
33. This case is the epitome of irony. The Spl Cons, from his evidence, was anxious not to act precipitately, yet that appears to be the reason for the failure of the prosecution. Likewise, counsel for Mr. Denton urged that before ticketing the claimant, Spl Cons Pennant should have interrogated the passengers to confirm that Mr. Denton was operating for hire and not gratis. However, Mr. Denton agreed with Spl Cons Pennant that the passengers had already left. The court does not find that for the purpose of the prosecution, it was

necessary for the Spl Cons to have spoken to the passengers, having regard to his earlier observations.

34. Learned counsel for Mr. Denton contended for the implausibility of the claimant operating his vehicle as a taxi in the presence of uniformed officers and from an address in Manchester and rested his case on the legitimacy of the claimant's business at the US embassy. In a somewhat similar vein, the cross examination of the claimant concentrated on falsifying the contention of *bona fide* business at the embassy.
35. However, the real question for the court is whether Mr. Denton had the opportunity and the geographic facility to do what was alleged? Under cross examination Mr. Denton said that while he had a specific time to attend at the embassy for his first appointment, that was not the case for the second visit. So, temporally, he was at large in the City of Kingston. Secondly, although he was unfamiliar with the name of the streets in Kingston, he knew the way from downtown to Cross Roads. Thirdly, even though he claimed not to know his way around the city, he made no enquiries of the intended passengers who

wanted to go to Half Way Tree Road as to where that was. Lastly, while motive is not an ingredient, if it were necessary, it would be amply supplied by the claimant's disavowed utterance to the Spl Cons when the documents were requested. That motive was perhaps driven by the desire to make the trip pay for itself.

36. The court does not find that it was at all implausible that Mr. Denton was openly operating his motor vehicle illegally as a public carrier. In the court's fact-finding faculty, the court is permitted to use common sense and local knowledge. In this vein, it may be said without risk of contradiction, that the ubiquity of the illegal operator pervades the length and breadth of the public transportation sector like metastasized cancer. These illegal operators neither await the cover of darkness nor the absence of uniformed state agents to ply the several routes. Alas! They are undeterred by daylight or the presence of authority.
37. The court accepts Spl Cons Pennant's testimony that he observed Mr. Denton engaged in the activities described.

Accepting as the court has, that Spl Cons Pennant spoke the truth concerning his observations, the court also finds that he honestly believed Mr. Denton to be guilty of committing the offence complained of. Finding these allegations to be true, would they lead the ordinarily prudent and cautious man, placed in the position of Spl Cons Pennant, to the conclusion that Mr. Denton was probably guilty of operating his private motor vehicle as a public carrier for hire without being the holder of a Road License?

38. Would the ordinarily prudent and cautious man standing at North Parade observing Mr. Denton's vehicle parked and men who solicit passengers for public passenger vehicles shouting Cross Roads and pointing at Mr. Denton's vehicle think those men were doing it for the fun of it? Or would he think that Mr. Denton's vehicle was there for the purpose of transporting members of the travelling public for hire? Would that reasonable man seeing the same vehicle depart and return within the space of an hour, and in addition to the earlier activities, observes disembarking passengers handing money to

Mr. Denton and Mr. Denton handing back money to them, think that was a gratuitous exchange of money?

39. Would the reasonable man not think that the passengers were paying for the service just provided and Mr. Denton was making change? In the judgment of this court, the ordinarily prudent and cautious man would come to no other conclusion than that Mr. Denton was operating his private motor vehicle for hire without the prerequisite of a Road License. Accordingly, there was not want of reasonable or probable cause in the prosecuting of Mr. Denton. Since the facts establish the presence of reasonable and probable cause, it was not incumbent on Spl Cons Pennant to make any further inquiries, to adapt the words of Cave J in **Brown v Hawkes [1891] 2 Q.B. 718,721.**

40. Attention is now turned to the question of malice, in accordance with the learning in **Flemming v Myers & The Attorney General**, *supra*. That is, although Mr. Denton has failed to prove an absence of reasonable and probable cause, the claim may yet succeed if malice can be established. Indeed,



as Lord Devlin so wisely observed in **Glinski v McIver**, *supra*, at page 857, "he could have believed in guilt and still have been actuated by improper motives in launching the prosecution." At page 856 of the judgment Lord Devlin said, "malice, ... , covers not only spite and ill-will but also any motive other than a desire to bring a criminal to justice." A further exposition of the subject is provided by Cave J in **Brown v Hawkes**, *supra*, at page 722:

Malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing (sic) what the motive was and that it was wrong, or by shewing (sic) that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor.

41. The question becomes, notwithstanding the fact of Spl Cons Pennant's observations, was he actuated by an improper motive in prosecuting the claimant? To put the question squarely and unvarnished, was Spl Cons Pennant spurred by a desire to bring Mr. Denton to justice or the unpalatable desire to line his pocket with the fruits of Mr. Denton's labour? The intellectual gaze of the court must now be fixed upon what the

'bargaining' Mr. Denton understood Spl Cons Pennant to have embarked upon.

42. The court accepts that the issue of credibility looms large in this case. What then of the alleged solicitation by Spl Cons Pennant? Mr. Denton is merely told of the possible fine and wrecker fees. In the present climate of endemic, burgeoning all-pervading corruption in the society as a whole and particularly in one of its microcosms, the Constabulary Force, if such information was gratuitously given, it would be reasonable for Mr. Denton to understand it as a request for a bribe. And if there was an admission that it was made the court would have had no difficulty in ascribing to it the meaning given by Mr. Denton.

43. On the contrary, the statement was staunchly denied. The court therefore has to look to see if there is anything in the evidence which tends to make it plausible. The statement was uttered once and there was no follow up. There was not even an oblique utterance from Spl Cons Pennant to ensure that his entreaty had not fallen on deaf ears. Neither did Mr. Denton

seek any verification. Thereafter, neither party abandoned the prosecution, in spite of the disparity in attendance at the Traffic Court. Although counsel for Mr. Denton argued that this was indicative of Mr. Denton's belief in his case, no less can be said on behalf of the Spl Cons and it is the latter's conduct that must bear scrutiny.

44. In light of this, the court must ask itself if this is the probable conduct of a Spl Cons whose sole motive was to obtain a personal advantage. Not only did the Spl Cons attend court to swear to the allegations against Mr. Denton, he wrote and submitted a statement. The court finds this conduct consistent with that of an officer anxious to prosecute his case without any ulterior motive. Additionally, having observed him in the witness box, he was found to be a credible witness with the result that his denial was accepted as the truth.

45. At the risk of being sententious, the dictum of Cave J in **Brown v Hawkes**, *supra*, page 723 is quite apposite:

while, on the one hand, it is most important to firmly restrain any attempt to make the criminal law serve the purposes of personal spite or any other wrongful

motive, on the other hand, it is equally important, in the interest of the public, that where a prosecutor honestly believes in the guilt of the person he accuses, he should not be mulcted in damages for acting on that belief except on clear proof, at all events reasonable suspicion, of the existence of some other motive than a desire to bring to justice a person whom he honestly believes to be guilty.

46. In a society in which the Constabulary is held in reproach because of the Tyrian purple stain of corruption, it is easy to allege an improper motive in the launch of a prosecution. In the words of the old adage, "you hang a dog by its name." Therefore, the court has to scrupulously weigh the evidence to ensure that the righteous individual Cons is not made to unjustifiable bear the yoke of the opprobrious name of the collective. Equally, the court as the legal and moral guardian of the society, must not be slow to unmask the wolves lurking behind the cloak of authority. In requiring claimants to prove both elements now declared to be disjunctive, the common law recognized a danger in prosecutions becoming stultified if honest prosecutors who failed to obtain sustainable convictions could thereafter be prosecuted willy-nilly.

47. The court finds the allegation of malice in the instant case to be of this character. The allegation of malice is as hollow as a subterranean cavern, with a shell of unrivalled fragility. The court finds that Spl Cons Pennant was actuated by no other motive than a desire to bring Mr. Denton to justice. Therefore, he ought not to be mulcted in damages. Having decided the issue of liability against Mr. Denton, it is unnecessary to consider the question of damages and the submissions in relation to it. Judgment is given for the defendant with cost to be taxed if not agreed.