; [2017] **JMSC Civ. 27**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV01684

BETWEEN	**VINCENT LEE FERGUSON**	**CLAIMANT**
AND	**AIR JAMAICA LIMITED**	**DEFENDANT**

Mrs. Gilda Ward and Mrs. Angella Cousins-Robinson for the claimant

Mr. John Graham and Ms. Peta-Gaye Manderson for the defendant.

Negligence – Concealment by fraud – Statute of Limitations - Whether airline liable for luggage after passenger convicted – Whether Warsaw Convention governs the claim – Whether the claim is statute barred under the Warsaw Convention – Whether the claimant can seek a remedy to the exclusion of the Warsaw Convention.

Heard: January 26, 2017 and February 24, 2017

WINT-BLAIR, J (AG)

[1] I have been greatly assisted by both written and oral submissions from counsel appearing in the matter. In this judgment I will reference the evidence and submissions only to the extent necessary to explain my findings and decision. The parties may rest assured that in order to arrive at my decision I have considered all the evidence and submissions.

[2] The claimant has filed a claim in negligence and concealment by fraud. He seeks damages for the loss of his luggage held by the defendant company. The facts of this case as found at the trial were that on April 7, 2002, Mr. Vincent Ferguson, the claimant, boarded a flight in Montego Bay, St. James bound for

Fort Lauderdale, Florida, United States of America ("USA.") He disembarked and made his way through the airport. He had made the trip using a ticket issued to him by a travel agent and a boarding pass issued to him by a representative of Air Jamaica Limited ("Air Jamaica") when he checked in at the airport. His luggage consisted of two pieces of checked luggage and a briefcase. The two pieces of checked luggage were tagged according to airline procedure.

[3] Upon Mr. Ferguson's arrival at the Fort Lauderdale airport he cleared Immigration and proceeded to US Customs. He noticed that there were Customs agents with dogs. He was called over to a ramp where he saw his luggage open. He was then placed in a room with other passengers. His luggage was checked, he was told that he would be detained as contraband had been found in his luggage. His luggage was seized. He was arrested, charged, convicted and sentenced. He served a term of imprisonment in the USA. That case is now on appeal and irrelevant to the case at bar.

[4] At trial Exhibit 3A was Mr. Ferguson's Inmate Property Inventory Form, Exhibit 3B and 3C were separate United States ("US") Customs Chain of Custody Forms. In 2003, Mr. Ferguson wrote to US Customs concerning his luggage with no response. Exhibit 3B and 3C provide agreed evidence that Sophia Chen of Air Jamaica signed for 2 items of luggage belonging to Vincent Ferguson. The date on which she took possession of the items belonging to the claimant is stated on Exhibit 3B as April 14, 2002 and on Exhibit 3C as April 14, 2003. Both counsel were invited to make submissions to account for the difference in the date. Mrs. Cousins-Robinson submitted that 2003 was the correct year which meant that the airline had held Mr. Ferguson's luggage for a year with no attempt to contact him. Mr. Graham submitted that the year 2002 was correct which meant that the airline had received Mr. Ferguson's luggage in accordance with US Customs protocol upon arrest. The evidence relating to how Air Jamaica came to take custody of the luggage belonging to Mr. Ferguson was set out in Exhibit 2, the court order, to which I shall shortly arrive. Mr. Ferguson said in his

witness statement that items from his luggage were used at his trial in the USA This is supported by Exhibit 3B at box number seven (7) which reads:

"IS PROPERTY TO BE HELD AS EVIDENCE

1. YES - GIVE LINE ITEM NOTED
2. NO"

[5] In box number seven (7) there is a box in which the maker of the document should indicate either number stated above. It is marked with a 1. The property listed on Exhibit 3B is described as luggage, 2 pieces to be specific. This means that the luggage was held as part of the evidence to be used at Mr. Ferguson's trial. Consequently, the date on which Sophia Chen received the luggage in question was more probable as being on April 14, 2003 given that the trial had yet to be conducted in April of 2002 (the date of arrest being April 7, 2002.) It also accords with her witness statement at Exhibit 3C.

[6] On December 12, 2006, Mr. Ferguson petitioned the United States district court for the state of Florida by way of a motion for the return of seized property. The motion was denied by Judge Frederico Moreno, United States District Judge for the state of Florida. This order made on January 30, 2007 became Exhibit 2 and was served on Mr. Ferguson whilst incarcerated. Exhibit 2 indicated that cash in the amount of USD$940 had been turned over to the US Marshal Service for Mr. Ferguson's commissary fund at the correctional institution. The remainder of his property had been handed over to a representative of Air Jamaica by US Customs as per US Customs procedure. It is clear from the evidence, that the representative was Sophia Chen.

[7] Exhibits 3A-C had formed a part of the record of proceedings in the United States District Court, Miami, Florida, USA. They were inventory and chain of custody documents outlining how Mr. Ferguson's property was handled while in the custody of US officials.

[8] Mr. Ferguson had been put on notice that his property was in the possession of officials in the United States up to the date of his conviction. It was his evidence that items of his were used at his trial in the United States. Mr. Ferguson therefore, knew where his luggage was. It was this knowledge which prompted his filing of the motion for the return of seized property in 2006. His evidence was that his case was pending in 2003 when he wrote to US customs enquiring about his luggage. He said his case was still pending in 2006 but not what aspect of his case this was. This motion was denied in 2007 as the property was no longer in the possession of the US authorities; this was the substance of Exhibit 2. His witness statement says he then began writing and making telephone calls to Air Jamaica. Mr. Ferguson's witness statement says that Air Jamaica made contact with him by letter dated September 16, 2009. He also wrote to the Board of Directors. He went on to say that the Board responded. None of these letters were tendered by Mr. Ferguson at this trial.

[9] Mr. Ferguson arrived in Jamaica in 2009 and made contact with Air Jamaica by telephone. He went to their offices and filled out a claim form itemizing his belongings. He made several other telephone calls and wrote another letter to the Board of Directors. Again, this letter was not in evidence. I find that there was merely an assertion that there had been communication between the parties.

[10] He stated that his luggage was not handed over to his relatives despite having provided the names and addresses of relatives in the USA and in Jamaica. He has not stated the names of these relatives nor whether they made any efforts to contact or collect his luggage from the airline on his behalf. He goes on to state that the airline should either have delivered his luggage to him or his relatives or it should have refused to accept his luggage whereupon he would have been able to receive compensation from the US government.

[11] It was made clear from Exhibit 2, the court order, that the US Customs policy was to return the luggage of convicted persons to the airline on which they had

travelled. Air Jamaica, then, had a duty to comply with US Customs policy and the learned Judge addressed this in the order which had been served on Mr. Ferguson. Thus, the defendant accepted the luggage.

[12] It is quite clear from the evidence of Mr. Ferguson that he had expected the airline to deliver his luggage to him. This expectation was not supported by any evidence. Mr. Ferguson called one witness Iceline Stewart. She too stated that she was never contacted by Air Jamaica nor did they deliver the luggage to Mr. Ferguson's address. It would appear that Ms. Stewart relied on the same expectation as well. It was this witness who stated that she had packed Mr. Ferguson's luggage for his trip in 2002. She gave no evidence of what items she had packed and did not assist in proving the loss of the items claimed.

[13] It is of note that Exhibit 3A indicates that cash in the amount of USD$940.00 was seized in a bag by Officer S. Stumpf on April 7, 2002, as well as two other pieces of luggage all belonging to Mr. Ferguson. In respect of the items Mr. Ferguson claims were in his luggage or upon his person, the Broward Sheriff's office Inmate Property Inventory and Transfer Form which was Exhibit 1 indicates that the following items were taken from him:

> "Cash in the sum of USD$940.00, 1 Bracelet, 1 necklace, 2 rings, 1 watch, 2 belts, a set of keys, 1 wallet, 1 Jamaican driver's licence, 4 credit cards, 1 tan shirt and court paperwork in folder."

The form contains the words: "Inmate is wearing:" Under which is recorded by hand "various items".

Exhibit 1 also states that the Sheriff's office received one briefcase and two suitcases. It is certified by DS Barone with Identification number 4423 and dated April 7, 2002. It is also initialled by Mr. Ferguson in the space which asks for an acknowledgment of the property that was in his possession at the time of his arrest, excluding property held as evidence. Exhibits 1 and 3A make it demonstrably clear that three pieces of luggage were seized and these had been

accounted for at the time Mr. Ferguson was handed over to the Sherriff's office. None of this evidence is in dispute.

[14] The claimant had been allowed to file a supplemental witness statement setting out the value of the items he claimed. He acknowledged that USD$940.00 was turned over to the US Marshal Service on his behalf. He indicated in his witness statement that he had been possessed of cash totalling J$14,000.00 and USD$750.00. He had carried some of the cash in his briefcase and some in his pocket. It is strange that knowing this to be the case, Mr. Ferguson would have initialled Exhibit 1 indicating that the only cash taken from him was USD$940.00 He stated further in his witness statement that this cash was turned over to the defendant as a part of his luggage. There was no evidence in this trial of the loss of any additional cash as this had not been pleaded. Neither was this loss raised at the hearing of the motion for reasons best known to the claimant. I view the loss of cash as stated as a fabrication.

[15] Exhibit 3A is Customs Form 6051 bearing number 0981706. It does not contain the name or signature of Sophia Chen. This form is evidence of the chain of custody of one bag belonging to the claimant. It is the bag in which cash in the sum of USD$940 was found. This bag was not noted in her witness statement in which she described receiving luggage and signing customs Form 6051 bearing number 0981707. Based on this bit of evidence, Air Jamaica received only two pieces of luggage. There is a missing piece. The claimant has alleged that the defendant is responsible for his loss. The evidence shows that there is a bag which the defendant never received. This missing bag was the briefcase. This cannot be held against the defendant. The items in the briefcase are therefore excluded from any claim for which Air Jamaica could be held liable.

[16] It is equally strange that the claimant would have signed for jewellery he wore upon his person at the time of his arrest, yet also claim that some of the same items of jewellery were in the luggage returned to the defendant. The items of jewellery which were on Mr. Ferguson's person could not have also been in his

luggage. They were part of his property as a prisoner and had been inventoried. There is no record of what became of these items of personal property. There was no chain of custody document admitted in evidence to show what became of the items he had been wearing after the date of his arrest as set out on Exhibit 3A. He cannot say with certainty what was placed where. He also cannot say whether these items were transferred directly from the custody of the Sheriff's office to Air Jamaica. How did three pieces of luggage as seized by US customs, transform into to two pieces of luggage at the time of the handing over to Air Jamaica? What was the explanation for the missing bag? These were matters properly to be dealt with at the motion for the return of seized property heard by Judge Moreno in the United States.

[17] The evidence also discloses that at his trial items from his luggage were used as evidence. In his witness statement, he did not say whether any items of jewellery were used as evidence, nor did he say from which piece of luggage the items used at trial would have emerged. Further, the particulars of claim outlines the following items in paragraph (a):

"One large briefcase consisting of but not limited to:

> 1 wallet with cash, 2 ATM cards, 1 visa card, 2 bank books, I Gold with diamond wedding ring, 1 family treasure gold ring, 1 huge gold with diamond bracelet, 1 huge gold necklace, 1 very big gold with diamond pendant, 1 white gold with silver watch, 1 set medical records, 30 CDs, several wedding videos and tapes, 1 driver's licence, 1 passport with Canadian and US visas, I TRN card, 1 national ID, 5 family members express original birth certificate, 1 car title, 1 set car keys with alarm system, 25 keys for house and business, 3 sets of important business records, 1 original married [sic]certificate, claimant's original birth certificate, 1 Scotia bank loan balance sheet, all receipts for almost everything I owned including receipts for the loss of property and a host of other personal items."

[18] Mr. Ferguson's evidence as contained in his supplemental witness statement was that he wore: " 1 bracelet, 1 necklace, 1 big gold and diamond pendant on the necklace, he had 2 rings wore one, the other was in the briefcase, a wallet

was on his person and 1 belt was on his person. His jewellery was accounted for in Exhibit 1. Exhibit 1 listed cash in the sum of USD$940.00, 1 Bracelet, 1 necklace, 2 rings, 1 watch, 2 belts, a set of keys, 1 wallet, 1 Jamaican driver's licence, 4 credit cards, 1 tan shirt and court paperwork in folder."

[19] Mr. Ferguson's evidence demonstrates that there is an inconsistency between his pleadings and Exhibit 1 in respect of the jewellery he was wearing upon his arrest. He accounted for the items on Exhibit 1 therefore, the watch, one ring, one belt are additions to his evidence after the fact. He was wearing the jewellery and, the other belt was in his luggage. There is a glaring inconsistency between his particulars of claim as set out above and his evidence in the supplemental witness statement as well as Exhibit 1. I find him less than credible on this fact. He could not have been wearing the jewellery which was simultaneously in his briefcase. It is also difficult to understand why jewellery which was so high in value would be placed in a briefcase if it can be said to have been placed there at all. A finding which I am unable to make.

[20] Added to that, there can be no reconciliation on the evidence of the missing briefcase and jewellery worn by Mr. Ferguson with the luggage received by the defendant. In other words, Mr. Ferguson has failed to prove on a balance of probabilities that the airline received that which he claims they have lost.

[21] On the evidence presented, Mrs. Cousins–Robinson's submission that Air Jamaica had the bag for one year cannot be correct, in that, if the representative of the airline signed for the luggage in 2003 it means that the luggage was not in their custody before then. It would have been still in the custody of the United States government having not been released to anyone including Mr. Ferguson.

[22] Mr. Graham elected to call no evidence, resting on his submissions. He submitted that the there was no cause of action known as concealment by fraud and that the Limitations of Actions Act barred the action filed by the claimant. He cited the case of **Bartholomew Brown and another v JNBS** [2010] JMCA Civ. 7

a decision of the Court of Appeal in which Harrison, JA in delivering the judgment held that the case **Sheldon v RHM Outhwaite** (1995) 2 ALL E.R. 560 did not apply in Jamaica. Harrison, J.A. examined the law regarding limitation of actions going all the way back to 1623. At paragraph 38 the learned Judge of Appeal sets out the following statement of the law:

> *"The law governing limitation of actions in Jamaica is not in our view, in an entirely satisfactory state. Section 46 of the Limitation of Actions Act explicitly drives one back nearly 400 years to the United Kingdom Statute 21 James 1 Cap 16, a 1623 statute (and the first limitation statute passed in England). Section 46 acknowledges that statute as one which has been recognized and is now esteemed, used, accepted and received as one of the statutes of this Island." The significance of this is to be found in section 41 of the Interpretation Act, which provides as follows:*
>
> > *"All such laws and statutes of England as were prior to the commencement of 1 George 11 Cap 1, esteemed, introduced, used and accepted, or received, as laws in the Island shall continue to be laws in the Island, save in so far as any such laws or statutes have been, or may be repealed or amended by any Act of the island."*

[23] Harris, J.A. went on to detail the reception into our law and the result for actions based in contract and tort as follows:

> *"The statute referred to in this section, 1 George 11 Cap 1, was passed by the legislature in Jamaica in 1728 and confirmed by the Crown on 22 May 1729. 1728 is therefore the date as at which all statues of England previously "…esteemed, introduced, used, accepted, or received…" in the island fall to be treated as part of the laws of Jamaica."*
>
> *The result of this tortuous journey is that actions based on contract and tort (the latter falling within the category of "actions on the case" are barred by section 111, subsections (1) and (2) respectively of the 1623 statute after six years."*

[24] The judgment goes on to cite the case of **John Muir v Lester Morris** (1979) 16 JLR 39. In that case, the cause of action arose in negligence. The appellant was aggrieved by an order refusing an application to set aside an ex-parte order

to renew a writ of summons and ordering substituted service thereof. The Court held:

> *"Actions on the case (other than slander) were by Imperial Statute 21 James I Ch. 16 Sec III (2) barred after 6 years. This Statute is declared by Section 46 of the Limitations of Actions Act to be "recognized and is now esteemed, used and accepted and received as one of the Laws of this Island."*

[25] In reviewing **Sheldon v Outhwaite** (supra) Harris, J.A. stated that it was a case which relied upon the construction of section 32(1) of the UK Limitation of Actions Act, 1980 of which there is no equivalent section in Jamaica.

[26] Mrs. Cousins-Robinson argued as did the appellants in the case of **Bartholomew Brown** (supra) that time did not begin to run against Mr. Ferguson until the facts grounding the cause of action in negligence was discovered by him in 2006. The Court of Appeal in **Brown** distinguished the case of **Sheldon** held it inapplicable and said:

> *"Both of these decisions turn on the true construction of section 32 of the UK Limitation Act 1980 (as amended in 1986 and 1987.) Section 32(1) provides that where in the case of an action for which a period of limitation is prescribed by the Act, either (a) the action is based upon the fraud of the defendant or (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant, or (c) the action is for relief from the consequences of a mistake, then the period of limitation does not begin to run until the fraud, concealment or mistake is discovered by the plaintiff.*
>
> *"This section has no equivalent in Jamaican law and it therefore follows, in our view, that neither of the decisions of the House of Lords upon which Mr Brown has relied has any application to this case. Although the equitable doctrine of fraudulent concealment does have a limited area of operation by virtue of section 27 of the Limitation of Actions Act (reproducing section 26 of the English Real Property Limitation Act 1833), it is clear that by its terms that that section is only applicable to suits for the recovery of land or rent, which the Browns action is not."*

[27] Section 27 of the Limitations of Actions Act provides:

> *"In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered."*

[28] There being no equivalent section to the UK section 26 or 32 in the Jamaican Limitation of Actions Act the claimant could only have placed reliance on the equitable doctrine of fraudulent concealment in an action concerning the recovery of land or rent. As the instant case does not fall under this head, fraudulent concealment does not apply. This means that the claim is statute barred and fails.

[29] In response, Mrs. Cousins-Robinson argued that concealment by fraud operated to extend time. She relied upon the cases of **Sheldon v R H M Outhwaite Ltd** (1995) 2 All ER 560 which has already been shown to be inapplicable to this jurisdiction. She also relied upon the case of **Beaman v A.R.T.S., Ltd**. (1949) 1 All E.R. 465 which concerns section 26 of the English Limitation of Actions Act. This case is also not helpful given the law as set out in the cases of **Bartholomew Brown** and **John Muir** (supra).

[30] I now turn to the Warsaw Convention which was signed on the 12th day of October, 1929 by His Majesty King George the Fifth of the United Kingdom on behalf of Jamaica. The UK Carriage by Air Act of 1932 was therefore received into Jamaican law. The Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953 extended the provisions of the Warsaw Convention of 1929 to Jamaica (see **Janet Morgan v Air Jamaica Ltd**. 2007HCV02231.)

[31] Article 1(1) of the Convention "applies to all international carriage of persons, luggage or goods, performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking."

[32] Article 22 limits the liability of the carrier:

> *"Article 22.1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.*
>
> *2. In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.*
>
> *3. As regards objects of which the passenger takes charge himself, the liability of the carrier is limited to 5,000 francs per passenger.*
>
> *4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65 ½ milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures."*

This provision has been interpreted by the House of Lords in the case of **Sidhu v British Airways** [1997] A.C. 430, which examined the Warsaw Convention of 1929 as amended in 1955. I am persuaded that the interpretation is applicable to assist this court in construing the provisions of the 1929 Convention. In that case Lord Hope in delivering the unanimous judgment on behalf of the House of Lords stated:

> *"Article 22(1) begins simply with the words "In the carriage of persons." Article 22(2)(a) begins with the words "In the carriage of registered baggage and of cargo." The intention which emerges from these words is that, unless he agrees otherwise by special contract – for which provision is made elsewhere in the article – the carrier can be assured that his liability to each passenger and for each package will not exceed the sums stated in the article. This has obvious implications for insurance by the carrier and for the cost of his undertaking as a whole. Article 22(4) makes provision for the award in addition, of the whole or part of the costs of the litigation. But this is subject to the ability of the carrier to limit his liability for costs by an offer in writing to the plaintiff. The effect of these rules would, I think, be severely distorted if they could not be*

applied generally to all cases in which a claim is made against the carrier…."

[33] Article 18 covers losses sustained in the event of the destruction or loss of or damage to luggage during the carriage by air. Carriage by air is defined to mean the period during which the luggage or goods are in the charge of the carrier, whether in an aerodrome, or on board an aircraft, in the case of a landing, outside an aerodrome, in any place whatsoever. The limits on article 18 are set out in article 24 which provides:

"In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention."

[34] Lord Hope interprets the provisions of articles 18 and 24 to mean:

"The intention seems to be to provide a secure regime, within which the restriction on the carrier's freedom of contract is to operate. Benefits are given to the passenger in return, but only in clearly defined circumstances to which the limits of liability set out by the Convention are to apply. To permit exceptions, whereby a passenger could sue outwith the Convention for losses sustained in the course of international carriage by air, would distort the whole system even in cases for which the Convention did not create any liability on the part of the carrier. Thus the purpose is to ensure that, in all questions relating to the carrier's liability, it is the provisions of the Convention which apply and that the passenger does not have access to any other remedies, whether under the common law or otherwise, which may be available within the particular country where he chooses to raise his action. The carrier does not need to make provision for the risk of being subjected to such remedies, because the whole matter is regulated by the Convention."

[35] In answering the question of liability, Lord Hope gives primacy to the Convention. He found that its language, objects and structure when construed using a purposive approach pointed to the aim of achieving a uniform international code applicable in all the courts of all the high contracting parties without reference to the rules of their own domestic law. In respect of carriage by air he concluded that:

"The Convention does not purport to deal with all matters relating to contracts of international carriage by air. But in those areas with

which it deals – and the liability of the carrier is one of them – the code is intended to be uniform and to be exclusive also of any resort to the rules of domestic law."

An answer to the question which leaves claimants without a remedy is not at first sight attractive. It is tempting to give way to the argument that where there is a wrong there must be a remedy. That indeed is the foundation upon which much of our own common law has been built up…

… Alongside these principles, however lies another great principle, which is that of freedom to contract. Any person is free, unless restrained by statute, to enter into a contract with another on the basis that his liability in damages is excluded or limited if he is in breach of contract. Exclusion and limitation clauses are a common feature of commercial contracts, and contracts of carriage are no exception. It is against that background, rather than a desire to provide remedies to enable all losses to be compensated that the Convention must be judged. It was not designed to provide remedies against the carrier to enable all losses to be compensated. It was designed instead to define those situations in which compensation was to be available. So it set out limits of liability and the conditions under which claims to establish that liability, if disputed were to be made. A balance was struck, in the interests of certainty and uniformity.

… The conclusion must be therefore that any remedy is excluded by the Convention, as the set of uniform rules does not provide for it. The domestic courts are not free to provide a remedy according to their own law, because to do this would be to undermine the Convention. It would lead to the setting alongside the Convention of an entirely different set of rules which would distort the operation of the whole scheme.

The Convention is, of course, tightly drawn on these matters. This has been done in the interests of the carrier, whose exposure to these liabilities without the freedom to contract out of them was a principal consequence of the system which it laid down. Were remedies outside the Convention to become available, it would encourage litigation in other cases to restrict its application further still in the hope of obtaining a better remedy, against which the carrier would have no protection under the contract. I am in no doubt that the Convention was designed to eliminate these difficulties. I see no escape from the conclusion that, where the Convention has not provided a remedy, no remedy is available."

On the claim as presented, it was open on the facts to find that the carrier, Air Jamaica had undertaken the carriage. The claimant's luggage was legitimately in the custody of the defendant company. Having assumed the risk, by taking the luggage from US Customs, the provisions of the Warsaw Convention then governed the carriage and was deemed to be applicable to any claim against Air Jamaica.

[36] Therefore, not only is there a statutory bar to proceeding against the defendant after two years pursuant to articles 22 and 23 of the Convention, outside of its four walls, there is no other remedy available to a claimant. The decision of the House of Lords was cited with approval in **Janet Morgan v Air Jamaica Ltd.** (supra) by Sykes, J who held that the Warsaw Convention to which Jamaica is a party is the source of the cause of action and remedy in all cases brought against an airline engaged in international travel in which a claim is brought in the courts of any of the contracting parties to the Convention. I adopt ipsissima verba, the statement of law as laid down by Sykes, J and add my own words for emphasis:

> *"Any cause of action or remedy against Air Jamaica, **[or any other airline]** in Jamaican courts, arising from an international flight is governed exclusively by the Warsaw Convention. The normal municipal law of Jamaica is excluded. The practical consequences of this, is that the six year limitation period which normally applies to tort actions does not apply where the convention applies."*

[37] The claimant's claim fails on the facts and law. I make the following orders as a consequence:

1. Judgment for the defendant.
2. Costs to the defendant to be taxed if not agreed.