IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1988/G071

BETWEEN	ABRAHAM GRANT		PLAINTIFF
A N D	THE ATTORNEY GENERAL		DEFENDANT

SUIT NO. C.L. 1988/G022

BETWEEN	ABRAHAM GRANT		PLAINTIFF
A N D	THE ATTORNEY GENERAL	FIRST	DEFENDANT
A N D	THE DEFENCE BOARD	SECOND	DEFENDANT
A N D	L/CPL. R. CLARKE	THIRD	DEFENDANT
A N D	PRIVATE C. EDWARDS	FOURTH	DEFENDANT

Actions consolidated by virtue of an Order of the Master dated July 29, 1991.

Mr. L. Heywood for Plaintiff.

Misses M. Henry and N. Fogah for Defendants.

HEARD: 16th, 17th, 19th, 20th, 24th,
25th May and 7th October, 1994.

HARRISON J. (AG.)

Claim

The plaintiff, a ceramist, is seeking damages against the defendants for Assault and Battery, False Imprisonment and Malicious Prosecution, as a result of certain acts committed by servants and or agents of the Crown acting in the course of or purported course of their duties.

On the 25th day of May, 1994, I completed the trial but reserved judgment and promised to deliver same as early as possible. It was not possible to do so before now, and I do apologise for the delay in fulfilling this promise.

Preliminary Objections

Miss Henry made certain objections in limine. With respect to suit G-022/1988 she submitted:

1. That although it was pleaded in the endorsement of the writ that the shooting of the plaintiff was done negligently, there was no allegation of or particulars of negligence pleaded in the Statement of Claim. She therefore argued that this cause of action ought to be struck out.

2. That the claim for assault was statute barred at the date of filing of the writ by virtue of the provisions of section 2 (1) (a) of the Public Authorities Protection Act.

3. That paragraphs 2 and 3 of the Statement of Claim which allege malicious prosecution and false imprisonment should be struck out on the ground that these cause of actions were not pleaded in the endorsement of the writ of summons. She further submitted that the absence of any allegation that the prosecution and imprisonment were done "maliciously and/or without reasonable and probable cause", as required to be pleaded by section 33 of the Constabulary Force Act, was fatal.

In respect of suit G021/88, she submitted:

1. That paragraph 1 of the Statement of Claim should be struck out on the ground, that the cause of action for Assault was also statute barred. This cause of action was not pleaded in the endorsement of the writ and was being alleged now for the first time in the Statement of Claim which was filed on the 22nd January, 1991. It was further contended that there was duplicity in so far as the action for Assault was concerned since it had been already alleged in suit G022/88.

Mr. Heywood, in his response to these objections admitted that the plaintiff was not pursuing a cause of action in negligence. (In fact it would be deemed abandoned since it was not pleaded in the Statement of Claim). In relation to the objection that the cause of action for Assault was statute barred, it was his contention that a ruling was best reserved until evidence was heard having regard to the allegation that the shooting was alleged to have been done intentionally and that a felonious tort was committed. He further argued that the dates per se as to the filing of the writs were not by themselves fatal since section 2 (1) (a) of the Public Authorities Protection Act refers to the continuance of an injury or damage. He referred to and relied upon the authority of Hamlet Bryan v. George Lindo (unreported) SCCA No. 22/85 delivered on the 5th May, 1986 in the Court of Appeal (Jamaica).

Mr. Heywood did not object to the striking out of paragraphs 2 and 3 of the Statement of Claim in suit G022/88. Likewise, he did not object to the striking out of paragraph 1 of the Statement of Claim in suit G021/88. Those paragraphs were ordered struck out of the respective Statement of Claims. I agree with the submission that evidence should be heard in respect of the cause of action for Assault before a ruling was made as to whether or not it was statute barred by virtue of the provisions of section 2 (1) (a) of the Public Authorities Protection Act.

Summary of Evidence

The plaintiff testified, that, on 4/2/87 at about 1:30 a.m. - 2:00 a.m. he left his work shop for home; he walked through a park and proceeded along Third Street, Kingston. He had a radio/tape recorder in one hand a box of orange juice in the other and as he walked through a pathway between apartment buildings where he lives, he heard a voice saying, "don't move." He stopped and looked around, saw no one, and as he was about to step off he heard an explosion and felt a burning sensation to his right lower back. According to him, "by the time I heard the sound I got shot already." He fell to the ground and while there, persons dressed in soldiers' uniform came and stood over him. He was questioned about the whereabouts of his friends but he denied being in the company of friends as he walked home.

He further testified that he was dragged, and taken to a jeep which conveyed him to Kingston Public Hospital where he was admitted in a serious condition and held there in custody.

Upon discharge from hospital he was further taken into custody at Denham Town Police Station and thereafter to the General Penitentiary. He was subsequently placed before the Gun Court on charges of Illegal Possession of a Firearm and Shooting with Intent. He contends that he appeared several times at the Gun Court in respect of the charges until finally the trial Judge told him to go home sometime after June or July, 1987.

Daisy Anderson, was called as a witness for the plaintiff. She testified that she was asleep but got awake during the early morning of the 4th February, 1987. She looked through her window on the second floor of the apartment building saw four soldiers behind a wall on Third Street. She saw the plaintiff turned into the pathway as the men were outside behind this wall. She then heard a voice "Oi" and an

explosion followed. Two of the soldiers then jumped the wall and she saw the "youth" lying face down on the ground. She came out of her room; lie down on her "belly" and next saw four soldiers surrounded the plaintiff.

She further testified that the plaintiff was told to get up and was asked, "whey yuh friend dem deh?" She also heard one of these soldiers saying, "mi nuh like no labourite you know."

Aaron Levy, also gave evidence on behalf of the Plaintiff. He had gotten up out of bed and was on his way to the bathroom when he heard a shot fired. He looked through his window and saw a man lying on the ground. One man came from around the building towards this man on the ground and said, "where is your friends them, where they run gone?" He was unable to say how this man was dressed. Shortly thereafter, he saw another man came from the other side of the building towards the plaintiff. He observed that a walkman radio was beside the man on the ground. He recognized the plaintiff as the man on the ground and that he was lifted by the men and taken out of the premises.

The defendants called Cpl. Robert Clarke and Private MIchael Samuda as witnesses. Both testified that they were on a joint military/police patrol along Collie Smith Drive, Kingston, when a group of men were seen sitting on a wall as their vehicle headed in the direction of Fourth Street. On approach, the men jumped off the wall, opened fire at them and dispersed. Fire was returned by the soldiers.

Samuda and Clarke alighted from the vehicle which went unto Fourth Street and they went in the direction of Third Street. Whilst on Third Street three of the said men who had dispersed were seen running towards them. The men opened fire at them again and both Samuda and Clarke returned the fire. The men then went over a wall and ran towards an apartment building. Meanwhile, both soldiers took cover by a wall awaiting the arrival of their colleagues. When the jeep arrived they went up to the area from which the men had fired. Both Samuda and Clarke went over a wall to search the area. Clarke said he observed an area of darkness and that they "tactically" started to move in that general direction. Blood was seen on the ground heading in the direction the men ran. They next came across an adaptor and a tape recorder and then to a man lying on the ground. This man, who was the plaintiff, was suffering from a gunshot wound and was taken to Kingston Public Hospital where he was admitted.

A report was made to the police and to the military authorities. Samuda and Clarke stated that they had attended the Gun Court once, in respect of the charges which were preferred against the plaintiff but they did not give evidence and were unable to say what had been the outcome of the trial.

The Defence called no other witness and closed its case.

Claim for Assault and Battery

Paragraph 1 of the Statement of Claim in suit G022/88 states inter alia, that Lance Corporal R. Clarke and Private C. Edwards whilst acting in the course of their duty, maliciously and without reasonable and probable cause intentionally shot and injured the plaintiff.

Now, what is the evidence concerning this assault? The plaintiff's evidence indicates that he was shot in circumstances which could be regarded as "cold blooded." Based on his account, he was told not to move as he walked along a pathway, and having disobeyed that order he was shot from behind. The witness Daisy Anderson says she saw four soldiers by a wall and as the plaintiff was coming along her pathway she heard a voice said "Oi" and then an explosion followed.

On the part of the defence, it was contended that the joint military/police party who were on patrol were fired upon by gunmen. They returned the fire and the gunmen it is said dispersed. These men were hotly pursued and whilst walking along Third Street, the soldiers were fired at again. With quick response the soldiers retaliated and the men fled over a wall inside private premises.

It is the evidence of Private Samuda that if someone had been hit in this exchange of gunshots he would have had no difficulty making this out. Such a person he claims, would have been disabled in his movements. Under cross-examination he did say that he would have expected someone who received a gun shot to the stomach to fall instantly.

Whilst on Third Street, it is said that the men were advancing towards the soldiers when they returned the fire. After they broke off they jumped a wall and fled into nearby premises. No further shots were exchanged. According to Cpl. Clarke he is not certain if the men backs were turned to him at any time during the exchange of shots. He is also not certain if he fired at the backs of any of the men. It was his belief however, that the plaintiff was one of the men who fired at him. Under further cross-examination Cpl. Clarke testified that he was able to say with certainty

that the plaintiff was one from the group of five men. He is sure he says, because of the spot of blood he saw in the area when he came over the wall; then there was the tape recorder and finally the bleeding man.

It is beyond dispute that the plaintiff received a gunshot wound which entered the right iliac fossa region with the result that his bowel was protruding through the right abdomen. The medical report, exhibit 1, supports this. In the absence of an eye witness account it would be reasonable to draw an inference that the plaintiff was shot from behind. Counsel for the defence had in fact admitted that it was reasonable to draw this inference. Understandably, she disclaimed responsibility however.

The plaintiff however, gave evidence that he was shot in the right lower back. The witness Anderson testified that she saw the plaintiff walking in the pathway and soldiers were behind him at a wall. As he walked she heard an explosion and he fell. There is overwhelming evidence therefore, to support the view that he was shot from behind.

There is also the issue as to the location where the plaintiff was shot. Was he shot on the roadway or in a pathway leading to private premises? Accoring to Cpl. Clarke someone was shot from the scenario he described which took place along Third Street. He is of the view that the plaintiff was one of the men who fired at him and under cross-examination he admits that person was shot on Third Street the second time he fired shots. There is no evidence that there was a return of fire by the soldiers in the direction that the men jumped over the wall.

Cpl. Clarke maintains that blood stains were seen some 5-8 ft. from the man who was lying on the ground and that he was lying face down, 10 - 15 meters from the wall the men had jumped over. Private Samuda on the other hand saw blood stains 12- 15 feet away from the wall also before he came upon the man lying on the ground. He saw no blood stains on the wall and none as he approached the wall.

Having regard to the above evidence, a few pertinent questions arise for consideration. Is it possible for someone to have been shot on Third Street and no evidence of blood stains seen in the immediate vicinity of the shoot out or leading to the wall where the men went over? Is it possible for blood stains to be seen for the first time some 5 - 8 feet away from the wall over which men jumped? Why are there no blood stains from where they were first seen leading up to the injured man on the ground?

It is also necessary to determine where the tape recorder and adaptor were found. According to Private Samuda, they were seen about 20 ft. away from where the plaintiff was lying on the ground. Cpl. Clarke on the other hand saw them about 4 meters from him. Their evidence was that they saw these items before they got up to the plaintiff. The distinct impression I gather from this evidence is that either the plaintiff flung them behind him or he dropped them first and as he went along he fell. The plaintiff on the other hand, maintains that he fell immediately he was shot, so the inference to draw from his evidence is that these items would fall in close proximity to him. Aaron Levy has lent support to this as he said he saw the radio beside him on the ground.

Finally, the issue as to the number of gunshots discharged that morning must be resolved. The plaintiff and his witnesses heard only one. Both witnesses have agreed that since they were asleep before hearing the one shot, it is possible that other shots would have been fired. The defence on the other hand has maintained that several rounds were discharged, that is, between six to fourteen rounds. These weapons which the gunmen had were said to be automatic and would eject empty cartridges. Interestingly, no spent shells were searched for however, at the scene. The plaintiff was searched and no weapon nor ammunition were found on him.

Now, in this type of case credibility and reliability become relevant issues. There are likely to be contradictions and inconsistencies on the facts in any trial but it is always matter for the tribunal to resolve. I have seen and heard the witnesses so I have had the benefit of assessing their demeanour.

So far as Abraham Grant is concerned I find him to be a soft spoken rastafarian of average intelligence. He was subjected to a thorough cross-examination but at the end of the day he was slightly shaken in my view. He showed great respect and was extremely courteous to the Court. He has certainly impressed me and also convinced me that he is an honest witness. I find him reliable and truthful. I also find that his witnesses have given credible accounts.

The evidence of both Cpl. Robert Clarke and Private Michael Samuda on the other hand, are far from being the truth except to the extent where they state that they were on a joint military/police patrol and had seen a group of men sitting on a wall along Collie Smith Drive; that they ran off upon the approach of their vehicle and that both of them gave chase. I find that this "so called shootout" along Third

Street, between themselves and gunmen, was a "mere sham." Their accounts are in my view incredible, illogical and riddled with serious doubts and inconsistencies. I therefore reject the defence that the plaintiff was injured during a shoot out between themselves and gunmen.

On a balance of probabilities the plaintiff's account seems to me to be more consistent with being shot in the manner he has described with a powerful weapon causing serious injury and which caused him to fall instantly. Both Clarke and Samuda have admitted that they were in possession of S.L.R. Rifles. It is a notorious fact that these weapons do inflict serious harm. It is my view that if someone is shot with such a weapon he would be immobilised instantly and bleeding would also be instantaneous. The plaintiff's evidence vividly describes the likely result when he said, "I see my belly out" ..... "I feel like I was dead."

I find that both Clarke and Samuda gave chase after the men had run and split up along Collie Smith Drive. I also find that whilst pursuing these men the plaintiff was accosted as he walked in a pathway in close proximity to where he lives and was given an order not to move. I further find that he was shot from behind after he stopped, look and continued by stepping forward; that upon being shot he fell instantly to the ground and both Cpl. Clarke and Private Samuda, went up to the plaintiff and asked him for his friends. There is no evidence that the act of stepping off was in any way threatening the person who gave the order not to move. At the material time the plaintiff's back was turned to this person. In the words of Carberry J.A., in Hamlet Bryan's case (supra), "this was a case of a deliberate and gratuitous shooting of the plaintiff..." These words are quite apt in the present case and I adopt them. I therefore hold that there is credible evidence for concluding that the act of shooting the plaintiff was committed by one of these soldiers and there was no justification for discharging a firearm in these circumstances.

The defendant had prayed in aid the provisions of section 2 (1) (a) of the Public Authorities Act, to say that the cause of action for assault would have been statute barred since the writ of summons was filed more than twelve months after the act complained of.

Now, both the pleadings and evidence have revealed that the shooting of the plaintiff occurred on the 4th day of February, 1987. The records have also revealed

that the writs were filed in the Registry of the Supreme Court on the 11th day of February, 1988. The twelve months preiod would therefore have been exceeded by at least eight days.

Section 2 (1) (a) of the above Act provides as follows:

> (1) Where any action, prosecution, or other proceedings, is commenced against any person for any act done in pursuance, or execution, or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty, or authority, the following provisions shall have effect:-
>
> (a) "the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within one year next after the act, neglect or default complained of, or, in case of continuance of injury or damage, within one year next after the ceasing thereof."

Carberry J.A., in Hamlet Bryan's case (supra) stated that in cases where the Public Authorities Protection Act is pleaded, three questions arise for determination:

(1) Is the person or body claiming the protection of the Act, a public Authority within the Act?

(2) Is the Act which is complained of one that falls within the protection of the Act?

(3) If so, from what date does the time period indicated in the Act run?

On the facts of this case, there seems to be no problems in conlcuding that members of the Jamaica Defence Force would fall within the provisions of the Act in so far as question one is concerned. See Mildred Millen v. The University Hospital which shows that armed forces of the Crown are a public authority.

As to question number 2: was the act complained of one that fell within the protection of the Act? Mr. Heywood has argued strenuously that the Act does not protect those officers who are guilty of a malicious act or a felonious tort or crime.

Carberry J.A. had pointedout in the said Hamlet Bryan case (supra) that it was not every act which a public authority does is protected by the Public Authorities Protection Act. The Act protects only acts done in pursuance, or exectuion, or intended

execution of any law, or public duty or authority.

It is stated at page 295, paragraph 615 in the second edition of Halsbury's Laws of England, Volume 26, that:

> "It is sufficient if the defendant has a bona fide belief in a state of facts, which, if true, would make his conduct lawful; and bona fides is presumed, in the absence of cogent evidence to the contrary....."

A defendant who honestly intends to act in execution of a public duty may be protected although he acts in ignorance, or under a mistake, as to the law.

The person claiming protection must, however, have acted colore officii and not for his own benefit; and the act complained of must be in purported execution of the duty and not merely contemporaneous with such execution.....

In Scammel and Nephew Ltd. v. Hurley (1929) 1 K.B. 419, Scrutton L.J. in the course of his judgment observed:

> "To require the application of the Public Authorities Protection Act, the acts must be acts not authorised by any statute or legal power. It would appear, therefore, if illegal acts are really done from some motive other than an honest desire to execute the statutory or other legal duty and an honest belief that they are justified by statutory or other legal authority; if they are done from a desire to injure a person or to assist some person or cause, wtihout any honest belief that they are covered by statutory authority, the Public Authorities Protection Act is no defence, for the acts complained of are not intended execution of a statute but only in pretended execution thereof."

On the facts of the instant case, I hold that the act done albeit done in the execution of duty was without legal justification. This is clearly a case where the action on the part of the soldiers was malicious and without reasonable and probable cause. It was a felonious tort and though done by a person prima facie entitled to the protection of the Public Authorities Protection Act, was one which was not protected by that Act. Accordingly, I hold therefore, that the cause of action for Assault would not be statute barred.

It is settled law that a master is liable for the torts of the servant so long only as they were committed in the course of the servant's employment (see Clerk and

Lindsell on Torts 38th Edition page 328). In the case of Canadian Pacific Railway Co. v. Lockhart [1942] A.C. 541, Lord Thankerton in the course of delivering Judgment in the Privy Council stated inter alia:

> "......The general principles regarding a case of this type are well known, but, ultimatley, each case will depend for decision on its own facts. As regards principles, their Lordships agree with the statement in Salmond on Torts, 9th Ed., p. 95, namely:-
>
> > 'It is clear that the master is responsible for acts actually authorized by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorized, provided they are so connected with acts which he has authorized that they may rightly be regarded as modes - although improper modes of doing them. In other words, a master is responsible not merely for what he authorizes his servant to do, but also for the way in which he does it ... On the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized act as to be a mode of doing it, but is an independent act, the master is not responsible: for in such a case the servant is not acting in the course of his employment, but has gone outside of it.'"

On the evidence of this case, I hold that the Attorney General would be vicariously liable for the conduct of its servants and or agents. On a balance of probabilities, the plaintiff therefore succeeds on his claim of Assault.

False Imprisonment

I am also of the view that the plaintiff has satisfied me on a balance of probabilities that he is entitled to damages in his claim for false imprisonment. I find that in light of the evidence adduced by the plaintiff and which I accept, he would have been imprisoned maliciously and without reasonable and probable cause. What then is the period of this imprisonment? The Statement of Claim alleged that he was arrested on the 4th day of February, 1987 and placed in police custody at Kingston Public Hospital. Further, that the false imprisonment continued until the 16th March, 1987 when he was discharged and placed in custody at Denham Town Police Station and then finally released from custody on the 20th April, 1987. In his evidence - in - chief he testifies that he remained in hospital for 2-3 months. The

medical report, exhibit No. 1, states on the other hand that he was discharged from hospital on the 16th March, 1987. After his discharge, he says that he was taken to the General Penitentiary and one week later he was placed before the Gun Court. He further states in his evidence that before he was taken to the General Penitentiary he was taken to Denham Town Station where he remained for one week. I accept the evidence in exhibit No. 1 that he was discharged from hospital on the 16th March, 1987. I find therefore that he remained in custody for approximately 28 days.

Malicious Prosectuion:

The law is quite settled where this head is concerned. The plaintiff must show first that he was prosecuted by the defendant; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the plaintiff.

In so far as limbs 1, 3 and 4 are concerned, there is no difficulty. It is my view that the plaintiff has proved them.

As to the determination of proceedings the plaintiff alleged inter alia, in his statement of claim that the Crown offered no evidence against him in respect of the charges and he was acquitted. The defence made no admission in respect of this allegation. In support of this limb, the plaintiff gave evidence that he attended the Gun Court several times until finally the trial Judge told him to go home. Is this a determination in law?

So long as proceedings are pending no action lies on the ground that they have been wrongfully instituted. "It is a rule of law that no one shall be allowed to allege of a still depending suit that it is unjust. "(See Gilding v. Eyre (1861) 10 CB(N.S.) 592, 594). It is in fact not necessary however for a plaintiff to prove that he was absolutely in the right but rather that the matter of which he complains was so terminated not to be inconsistent with his right to maintain his action. It seems to me from the relevant authorities that it is enough if the proceeding has been abandoned without being brought to a formal end. In light of the non-admission by the defence, it would have been more appropriate for the plaintiff to have formally proved this determination by production of the official court records. This was not

done; all the plaintiff says in proof of this limb is that he was told by the trial judge to go. In my view, if up to the time of the filing of his writ, which was 11th February, 1988, he was not brought back before the Gun Court to answer these charges, there has been a sufficient determination of proceedings.

I find in the circumstances that all four limbs have been proved by the plaintiff and he therefore succeeds under this claim.

Damages

Assault

There is absolutely no doubt that the plaintiff suffered serious injuries. The medical report which was admitted into evidence by consent reveals inter alia:

> "There was a wound to the right abdomen with bowel protruding throught it. He was prepared and taken to the operating theatre that day. Under general anaesthesia laparotomy was done.
>
> Findings were:
>
> (1) 5cm diameter wound to the right iliac fossa region with full thickness loss of abdominal wall.
>
> (2) Transection of the caecum with faecal spillage.
>
> The following was done:
>
> (1) Right hemicolctomy and ileo-colic anastomosis
>
> (2) Peritoneal lavage with normal saline
>
> Other treatment included:
>
> (1) Antibiotics
>
> (2) Tetanus Toxoid
>
> (3) I.V. Fluids
>
> (4) Analgesics
>
> He recovered satisfactorily post operatively and was eventually discharged from hospital on the 16th March, 1987. He was seen by the Orthopaedic Surgeons while in hospital on the 12th February, 1987. At that time he had evidence of some damage to the nerve supply to the right lower limb. He was last seen in the surgical out patient department on the 16th April, 1987. At that time he was noted to be walking with a limp. His abdominal wound had almost healed. The wound was dressed ..... His injuries have got to be classified

as being serious. However as far as degree of disability is concerned he definitely needs to be re-assessed by the orthopaedic surgeon."

Sgd. Dr. G. Smith

Dept. of Surgery

Kingston Public Hospital.

No evidence has been led to the percentage of disability, but the plaintiff tells this Court that his right leg is now smaller than the left. No doubt this has resulted from the damage to the nerve supply in the right lower limb. He walks with a limp and cannot walk far as he used to. He is now 37 years old and cannot play football which he used to play. In his own words, "my foot don't have any stamina now." He can no longer go to the dance and has lost his girlfriend.

In fixing a reasonable sum to be awarded for pain and suffering and loss of amenities the following awards were referred to by Counsel:

1. Christopher McKenzie (b.n.f. Hortense Barton) v. The Attorney General C.L.1989/M190 before Morris J. Ag. on the 24th September, 1992 at page 56 of "Casenote" Issue NO. 2 - "Personal Injury Awards of the Supreme Court," compiled by K.S. Harrison, Registrar, Supreme Court. In this case the plaintiff had sustained a gun-shot injury to the abdomen causing a large bowel injury. By consent the plaintiff was awarded $150,000.00 Incl. of costs.

2. Clive Boswell v. The Attorney General C.L. 1990/ B207 before MOrris J. Ag. on the 23rd September, 1992 at page 55 of the work mentioned above. The plaintiff in that case sustained a gunshot wound to the right side of his abdomen. There was per-foration of the ileum end of the appendix and hae-matoma of the right psoas muscle. By consent he was awarded $55,000.00 in respect of general damages.

Given the fact that the plaintiff in the present case sustained more serious injuries Mr. Haywood submitted that a greater award ought to be made. The Court must therefore try to arrive at an award which can best meet the justice of the case. It has to be an approximate mean average figure, taking into consideration and bearing

in mind that inflation continues its upward movement unabated. In my view, I would consider that a reasonable award for pain and suffering and loss of amenities under the head of General Damages should be $350,000.00.

False Imprisonment

Counsel cited several cases in respect of damages for false imprisonment. Of them, the most relevant in my view was Chambers v. The Attorney General - C.L.1988/C256 before Smith J. on the 25th April, 1991. The plaintiff there was awarded $20,000.00 for an imprisonment of 25 days. In this case, as I have already mentioned, the plaintiff was falsely imprisoned for approximately 28 days. An award of $100,000.00 would be appropriate in the circumstances.

Malicious Prosecution

I am guided by the authorities cited to me under the head for malicious prosecution. An award in the sum of $50,000.00 would be reasonable in the circumstances.

Exemplary Damages

The plaintiff has pleaded that he is seeking in addition to general damages, exemplary damages in the cause of action for Assault.

This award is usually made in two categories of cases, viz, first, oppressive, arbitrary or unconstitutional action by servants of the government; and secondly, cases in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff - see Rookes v. Bernard [1964] A.C. 1129.

The plaintiff has sought to rely upon the first category, that is, "oppressive, arbitrary and unconstitutional action on the part 3rd and 4th defendants in suit G.022/88. It is my view that this type of case deserves to be visited with such an award and as such I award the sum of $50,000.00 under this head.

Special Damages

The plaintiff's evidence was that before the incident he used to earn $1,000.00 per day from making figurines and selling them to Magic Kitchen Craft Shop and the Crafts Market in Kingston. He further testified that he was unable to work for six months after his release from "jail." He also states that he had a lawyer at

Court and he paid him money. He cannot say how much money was paid. This was the extent to which he sought to prove his special damages.

Now, a plaintiff is required to prove this head of damages strictly, especially where no documentary evidence has been put forward to support the oral testimony - see Hepburn Harris v. Carlton Walker SCCA 40/90 (un-reported) delivered 10th December, 1990. The plaintiff here, has not come up to the required standard and has failed in my view to prove the items of special damages.

Final Judgment

Finally, there shall be judgment for the plaintiff in the sum of $500,000.00 for General Damages made up as follows:

Assault	-	$350,000.00
False Imprisonment	-	$100,000.00
Malicious Prosecution	-	$50,000.00

and $50,000.00 in addition for Exemplary damages with interest thereon on these sums at the rate of 3% from the date of service of the Writ of summons to today. There shall be costs to the plaintiff to be taxed if not agreed.