

UMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW  
CONSOLIDATED SUITS NOS.C.L 1992/H107, C.L. 1992/W114, C.L. 1991/R145

BETWEEN	WINSTON HENRY	PLAINTIFF
AND	SUPT. TRACEY	1 <sup>ST</sup> DEFENDANT
AND	INSP. VANDEL PREDDIE	2 <sup>ND</sup> DEFENDANT
AND	THE ATTORNEY GENERAL	3 <sup>RD</sup> DEFENDANT

BETWEEN	JOAN WEBB	PLAINTIFF
AND	SUPT. TRACEY	1 <sup>ST</sup> DEFENDANT
AND	INSP. VANDEL PREDDIE	2 <sup>ND</sup> DEFENDANT
AND	THE ATTORNEY GENERAL	3 <sup>RD</sup> DEFENDANT

BETWEEN	ROYAL ENTERTAINMENT CENTRE LTD	PLAINTIFF
AND	INSP. PREDDIE	1 <sup>ST</sup> DEFENDANT
AND	INSP. BOOTHE	2 <sup>ND</sup> DEFENDANT
AND	SUPT. TRACEY	3 <sup>RD</sup> DEFENDANT
AND	CPL. HUGH GRANT	4 <sup>TH</sup> DEFENDANT
AND	JENNIFER EDWARDS	5 <sup>TH</sup> DEFENDANT
AND	THE PARISH COUNCIL OF ST. CATHERINE	6 <sup>TH</sup> DEFENDANT
AND	THE ATTORNEY GENERAL	7 <sup>TH</sup> DEFENDANT

Mr. Earle Witter, Mr. B.E Frankson and Mr. M. Frankson instructed by Gaynair and Fraser for the Plaintiffs.

Mr. C. Green and Mr. C. Cochrane instructed by The Director of State Proceedings for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants.

Mr. Dennis Morrison Q,C for the 5<sup>th</sup> and 6<sup>th</sup> Defendants.

Heard : May 5, 6, 7 September 24, 1997.

KARL HARRISON J

Causes of Actions

These suits were consolidated for trial by order of the Master of the Supreme Court. At the commencement of trial however, the plaintiffs discontinued their actions against Jennifer Edwards ( the Mayor of Spanish Town) and the St. Catherine Parish Council, with no order as to costs.

Both Henry and Webb are claiming against the defendants to recover damages for malicious prosecution. The suit filed on behalf of the Royal Entertainment Centre Ltd seeks to recover damages for trespass and detainment. The cause of action for conspiracy to defraud and injure the plaintiff company in its business was abandoned during the trial.

### The Pleadings

Let me begin with the actions for trespass and detainee. The statement of claim in respect of Royal Entertainment Centre Ltd in suit C.L 1991/R145 alleges inter alia:

“ 7 - On or about the 8<sup>th</sup> day of September 1991, at Lot 1 Old Harbour Road.....the first, second and fourth defendants along with other policemen.....unlawfully and maliciously and without reasonable and probable cause entered upon the plaintiff's close and trampled down the herbage and trespassed thereon, and disrupted a dance in progress therein, chased away the plaintiff's patrons and seized and carried away goods and chattels the property of the plaintiff and then placed the same in custody of the 3<sup>rd</sup> defendant at Spanish Town Station....”

The defence to the above allegations state inter alia :

“ 6 ..... on the 8<sup>th</sup> day of September, 1991 residents in the vicinity of Old Harbour Road.....made reports at the Spanish Town Police Station that a loud noise was emanating from premises 1 Old Harbour Road.....

Consequent on these reports the 1<sup>st</sup> and 2<sup>nd</sup> defendants and other police officers went to premises 1 Old Harbour Road in the Parish of St. Catherine and seized musical equipment which were taken to the Spanish Town Police Station.

Further the entry of the Police Officers on the said premises and the seizure of equipment therefrom were done under and by virtue of and in pursuance of powers conferred upon them by section 12(1) of the Towns and Communities Act.”

.....

“This defendant will contend that .....2 racks were delivered to Winston Henry on the 8<sup>th</sup> day of October, 1991 and that the delay in so doing was necessitated by the pursuit of proceedings under section 12(1) of the Towns and Communities Act.

Further, this defendant denies that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants converted the goods.....”

I now turn to the cause of action for malicious prosecution. The statement of claims filed on behalf of Henry and Webb in suits C.L 1992/H107 and C.L 1992/W114 respectively, allege inter alia that :

“4. On or about the 25<sup>th</sup> day of September, 1991, at Spanish Town in the Parish of St. Catherine the first Defendant unlawfully and maliciously and without reasonable and/or probable cause induced or caused or procured the second defendant to lay a false charge

against the Plaintiff for breach of section 12(1) of the Towns and Communities Act.

5. Further and/or in the alternative on or about the 25<sup>th</sup> day of September 1991 at Spanish Town in the Parish of St. Catherine, the First and/or Second Defendant unlawfully and maliciously and without reasonable and/or probable cause laid a false charge against the plaintiff and thereafter maliciously prosecuted and/or caused the Plaintiff to be maliciously prosecuted on the said false charge, namely breach of section 12(1) of the Towns and Communities Act."

In defence to these actions, the defendants have pleaded inter alia:

" Save that it is admitted that on the 25<sup>th</sup> day of September 1991..... the second defendant preferred a charge against the plaintiff for breach of section 12 (1) of the Towns and Communities Act paragraph 4 of the statement of claim is denied. This defendant will contend that the said charge was preferred on the direction or advice of the Clerk of the Courts for the Parish of St. Catherine."

#### The Evidence

The evidence revealed that the Royal Entertainment Centre Ltd (hereinafter called "The Centre") is a private company doing business at 1 Old Harbour Road, Spanish Town. The premises is used as a venue for dances and stage shows and both Henry and Webb are Directors and shareholders of the Centre.

On the 6<sup>th</sup> September 1991, the police from Spanish Town Police Station, visited the Centre. The plaintiff Joan Webb testified that Supt. Tracey was present; he ordered the music operator to cease playing music and left a message for Winston Henry to see him at his office. Henry said he attended a meeting with the Superintendent on the 7<sup>th</sup> and they discussed matters pertaining to music being played at the Centre. Henry further testified that the Superintendent told him of complaints being made by persons, including the Mayor and a Church opposite to the Centre .

A dance was planned to take place on Sunday, the 8<sup>th</sup> September and Henry said he told the Superintendent of the event but he was told to cancel it. He was also told that if the event was not canceled he would "close down" the Centre and also revoke the permit for his licensed firearm. The Superintendent testified however, that he had not threatened to "close down" the place nor to revoke his firearm permit, but he did tell him that he was running a business and that he should comply with the law.

Two sound systems ("Kongal" and "Strike Force") were scheduled to play at the Centre on the 8<sup>th</sup> September. Henry said that after he left the meeting with the Superintendent, he called a meeting of Directors of the Royal Entertainment Centre Ltd and informed them of what had transpired. The Superintendent testified that sometime during the night he overheard a transmission from Police Control and that it concerned the Royal Entertainment Centre. He came to the conclusion that Henry "did not put his act together" so, he gave instructions for the police at Spanish Town

Station and Mobile Reserve to proceed to the Centre.

At about 10 :00 p :m Insp. Preddie led a team of policemen to the Centre. He testified that on their arrival he was greeted with loud music coming from the premises. He also said that this music could be heard from about ½ of a mile from the Centre as they proceeded along Old Harbour Road. The police entered the premises, caused the music to be turned off and seized the musical equipment. Preddie then took the equipment to Spanish Town Police Station where they were handed over to Supt. Tracey.

Henry also testified that his Attorney - at - Law, Mr. Arthur Kitchin and himself were present at the Centre when the police arrived. Preddie on the other hand said that Henry was nowhere in sight and that only Miss Webb was seen in the company of Mr. Kitchin. Although he knew Henry, he did not know Miss Webb and it was a Cpl. Grant who had identified her to him.

Statements were collected and submitted to the Clerk of the Courts who advised that Henry should be prosecuted for a breach of section 12(1) of the Towns and Communities Act.

### Findings

The evidence reveal that the following issues were not in dispute:

1. A dance was held at the Royal Entertainment Centre on the 8<sup>th</sup> day of September 1991 and music was provided by two "sound systems" viz, "Kongal" and "Strike Force".
2. The police seized music racks and boxes containing musical equipment.
3. Mr. Kitchin was at the Centre on the night of the 8<sup>th</sup> September.
4. The Clerk of the Courts had advised that Henry be prosecuted for a breach of the Towns and Communities Act.
5. There was no advice from the Clerk of the Courts for the prosecution of Webb.
6. The prosecution of both Henry and Webb terminated in their favour.

I find these additional facts:

1. There was loud music coming from the Centre on Inspector Preddie's arrival.
2. There is a residential area adjoining the premises on which the Centre is located.
3. A service was in progress in a Church across the road from the Centre.

4. There were a number of patrons in attendance at the dance.

5. It was Mr. Henry, and not Miss Webb, who was at the Centre along with his Attorney at Law, Mr. Kitchin.

6. On the 7<sup>th</sup> September, 1991 Supt. Tracey had informed Mr. Henry about complaints he had received regarding the playing of music at the Centre.

7. Supt. Tracey had overheard a transmission from Police Control on the night of the 8<sup>th</sup> September and that it concerned the Centre. As the Commanding Officer for the Parish of St. Catherine, he gave instructions to his officers to proceed there along with police officers from the Mobile Reserve.

8. Supt. Tracey had not threatened to "close down" the Centre if the planned event had taken place on the 8<sup>th</sup> September. I also find that he did not tell Mr. Henry that he would send a number of policemen there to carry out any threat and that he would have revoked his licensed firearm permit.

9. Investigations carried out by Insp. Preddie revealed that both Henry and Webb were Directors and shareholders of the Royal Entertainment Centre Ltd.

10. Written statements from Insp. Preddie, Cpl. Grant, Insp. Boothe, Sgt. Wilson and officers from a patrol unit were submitted to the Clerk of the Courts for the Parish of St. Catherine.

### The Law

By statute, the plaintiffs are required to allege and prove by virtue of section 33 of the Constabulary Force Act that the police acted either maliciously or without reasonable and probable cause. Section 33 states as follows:

" Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable and probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."

Section 12 of the Towns and Communities Act (described hereafter as the "Act" ) seeks to address the problem of noise nuisance. It is an offence for anyone who sings or operates any noisy instrument or sound system during prescribed hours in a public place or in the vicinity of a residence. The section states inter alia :

" 12(1) .....every person who sings or make sounds or plays any musical or noisy instrument or operates or causes or permits to be operated any loudspeaker, amplifier, microphone, gramophone or other instrument of a similar nature:

(a) between the hours of 6 o'clock in the morning and 9:30 p.m in the evening in any public place or in or in connection with any shop or business or other premises to which the public are admitted or in any other premises of any kind or

(b) between the hours of 9:30 o'clock in the evening and 6 o'clock in the morning in the vicinity of any house or any other inhabited premises, after having been required by the occupant or any inmate of any house or office or other premises or by a Constable to desist (emphasis supplied) from making the sounds or noises caused by such singing or such instrument because such sounds or noises are audible beyond a distance of one hundred yards(emphasis supplied) from the source thereof or an account of the serious illness of any person or for any other reasonable cause, shall be guilty of an offence against this section and a constable may seize and detain for so long only as may be necessary for the purposes of any investigation, trial or inquiry any instrument by means of which the offence was committed."

Section 12(2) of the said Act provides:

"12 (2) - The occupier of any premises upon which any contravention of subsection (1) takes place shall be guilty of an offence against this section unless he proves affirmatively either -

(a) that he was not present upon the premises at the time of the contravention, or

(b) that he took all reasonable steps to prevent the contravention of subsection (1).

### Re Henry

Mr. Green submitted that the circumstances relating to Insp. Preddie hearing loud music coming from the Centre during the night, the fact that there is a residential area adjoining the Centre and that a Church service was in progress at the material time, were all factors which the Court should take into consideration in finding that he had reasonable and probable cause for taking necessary action. He further contended that although the defendants did not adduce any evidence to show that the music operator or occupant of the premises were asked to desist from making noise, this did not amount to a lack of reasonable and probable cause on the part of Insp. Preddie. He argued that this requirement was only vital to the prosecutor's success at the criminal trial.

Mr. Frankson submitted on the other hand, that there was no evidence in the case which would have caused Insp. Preddie to honestly believe that Mr. Henry had caused or permitted any noise at the premises during the night of the 8<sup>th</sup> September. He submitted that there was evidence to show that Supt. Tracey had acted with malice and this caused Preddie to have prosecuted Winston

Henry.

Henry was charged on information by Insp. Preddie for a breach under section 12(1) of the Act that he :

“....unlawfully did cause instruments to wit: sound system to be operated on premises to wit: Royal Entertainment Centre at Old Harbour Road in the Parish of St. Catherine at a volume that was audible beyond one hundred yards to the annoyance of citizens, at 9:00 p.m on the 8<sup>th</sup> day of September 1991.

Contrary to section 12 (1) of the Towns and Communities Act”

The Defence denied that Insp. Preddie had maliciously caused the plaintiff Henry to be charged, and contended that the said charge was preferred “on the direction or advice of the Clerk of the Courts for the Parish of St. Catherine.” The Towns and Communities Act provide as follows:

“12 (3) - No prosecution under this section shall be commenced against any person without the written consent being first had and obtained of the Clerk of the Courts for the Parish in which the offence is alleged to have been committed.”

The correspondence from the Clerk of the Courts (part of Ex. 1) states as follows:

“ Having perused the statements I must advise that Winston Henry be charged pursuant to section 12 of the Town (sic) and Communities Act.”

In my view, section 12 (3) is quite explicit. It is the written consent which is required and not a direction or advice of the Clerk of the Courts. The Superintendent did receive an advice however. What then is the position where the police having taken legal advice before instituting the charge has acted upon this advice? Can a plaintiff in these circumstances succeed in a cause of action for malicious prosecution?

Mr. Frankson submitted that it was not in every case that a prosecutor is protected by the mere fact that he had received legal advice. He argued that so far as the present case is concerned, the prosecutor would be obliged to show the facts which were laid before the Clerk of the Courts. Of course, statements of persons who are not called as witnesses at the trial may be admitted in evidence. Although this evidence is classified as hearsay, it would be admissible not as proof of the truth of the contents. See Subramaniam v Public Prosecutor (1956) 1 W.L.R 965 and Flemming v Myers and The Attorney General (un-reported) SCCA 63/85 delivered December 18, 1989.

The case of Panton v Sherwood (1961) 4 W.L.R 163 is quite instructive. The facts of that case reveal that the respondent, the Chief of Police of the Cayman Islands, laid two informations against the appellant. The charges were dismissed and the appellant then brought an action for damages for malicious prosecution against the respondent which was dismissed. The informations had been drafted by the stipendiary magistrate of the Cayman Islands who was also legal adviser to the

Government who had instructed the respondent to bring the charges. On appeal, it was contended that the respondent had been actuated by malice. It was held in that case, that the fact of the respondent having taken legal advice before instituting the charges and acted on the direction of a legal authority were important elements in considering the issue of malice. The appellant had failed to discharge the onus of proving malice which was essential to the appellant's cause of action.

It is admitted that the charge against Mr. Henry was dismissed by the Resident Magistrate, but has he established on a balance of probabilities that the prosecution was malicious and/or without reasonable and probable cause? I do not accept the argument that the defendants would be obliged to produce the statements to show the facts which caused the Clerk of the Courts to give his advice. It was not only the statement of Insp. Preddie which was submitted but other statements were put before the Clerk of the Courts. The Clerk of the Courts stated that he had perused the statements in advising the Superintendent. The advice was that Winston Henry should be charged pursuant to section 12 of the Towns and Communities Act.

It is my considered view therefore, that the case of *Panton v Sherwood* (supra) is most persuasive. The Superintendent had received advice from the Clerk of the Courts and he gave instructions to Insp. Preddie to have the charges preferred. It could not be said that the Superintendent and Insp. Preddie were acting maliciously in those circumstances. The evidence presented on behalf of the defendants, also show that there was reasonable and probable cause for the prosecution of Henry. No objection was taken when Insp. Preddie testified that he heard loud music coming from the Centre during the night, on his arrival there. There was unchallenged evidence given by Insp. Preddie that the Centre adjoined a residential area. It is further my view that even though the police did not request the occupants of the premises to desist from playing loud music, there was evidence nevertheless which could have established reasonable and probable cause for the police to take immediate action upon their arrival at the Centre. The plaintiff has therefore failed in my view to prove on a balance of probabilities that his prosecution was malicious or without reasonable and probable cause. His cause of action for malicious prosecution is therefore dismissed.

#### Re Webb

Let me look now at the evidence as it touches and concerns the prosecution of Miss Webb. Mr. Witter submitted that in order to show that there was reasonable and probable cause for prosecuting Webb the defendants need to have shown:

1. That between 6:00 a.m and 9:30 p.m she personally caused or permitted sounds to emanate from the Royal Entertainment Centre which sounds were either (a) audible beyond a distance of 100 yards from the Centre or (b) those sounds were to the annoyance of persons seriously ill or © for any other reasonable cause.
2. That she was required by the police to desist from causing the sounds to emanate.
3. That the prosecution under section 12 was commenced with the written consent of the Clerk of the Courts.

He submitted that the defendants failed to provide evidence meeting any of the requirements stated above. It was also his view that the Court ought to disregard any evidence given by Preddie regarding noise, as this fact was not pleaded in the defence nor was it referred to in the opening of the defence. Finally, he submitted that not only was the information charging Webb contrary to law, but it disclosed no offence known to law. Accordingly, no arguable defence had been pleaded and the defence filed was ineffectual.

It is now necessary to look at the evidence of Insp. Preddie. He said he saw Miss Webb at the Centre during the night of the 8<sup>th</sup> September and that she was identified to him by Cpl. Grant. He paid little or no attention to her up to the time he was there. His investigations revealed however, that she was Manager, Director and shareholder of the Royal Entertainment Centre Ltd. He subsequently laid the information and caused a summon to be served upon her for a breach of section 12(1) of the Towns and Communities Act.

Insp. Preddie was asked by Mr. Witter in the course of cross-examination:

"The Clerk ruled that Mr. Henry should be charged under the Towns and Communities Act, why did you proceed against Miss Webb?"

His response was:

"I served summons on Miss Webb due to the fact that she was present on location at the time of my visit and from my investigation she was Co-Manager and shareholder of the Centre."

He was further asked:

"Did you apply to the Clerk of the Courts for consent to prosecute Miss Webb under section 12?"

He said:

"Yes...I applied same time I made application in respect of Henry. I applied through the office of the Divisional Officer. I submitted certain statements in respect of the application. Statements were written by me and other police officers. The other police officers were Cpl. Grant, Insp. Boothe, Sgt. Wilson and officers of a patrol unit."

He finally admitted that he did not receive a ruling for the prosecution of Miss Webb. He said that the request he "routed" was for the Clerk of the Courts to advise if a prosecution of Miss Webb should take place. He received a ruling in respect of Henry but, he commented :

"I was struck by this circumstance. I had submitted the same set of statements for a ruling in respect of both Henry and Webb."

Despite the advice, he summoned both. He said he knew that no prosecution could proceed without the consent of the Clerk of the Courts. He acted on his own when he took the decision to lay the information against Miss Webb. According to him, he knew he had reasonable cause to summon her.

The Towns and Communities Act provides as follows:

12 (3) - No prosecution under this section shall be commenced against any person without the written consent being first had and obtained of the Clerk of the Courts (emphasis supplied) for the Parish in which the offence is alleged to have been committed."

The correspondence from the Clerk of the Courts was un-ambiguous. It advised the prosecution of Henry only. The decision by Preddie to summon Miss Webb was therefore, most unfortunate in my view. This could only be regarded as an act of defiance of the Clerk of the Courts as he did not see it fit to "advise" on her prosecution. Preddie it was, who said he was struck when he did not receive a ruling in respect of Miss Webb because he had submitted the "same set of statements" in respect of both Henry and Webb. It was suggested by Mr. Witter that the only inference to draw from Preddie's evidence is that he was activated either by spite or ill-will or by some sinister or improper motive where Miss Webb was concerned. I would not think so. The plaintiff herself is unable to say whether Insp. Preddie has any ill-feeling against her.

It is crystal clear that the defendants have failed to prove the allegation in the Defence that her prosecution was as a result of direction or advice given by the Clerk of the Courts. The failure on the part of the Police to request the operator of music to desist from making noise would in my view, prevent a successful prosecution under section 12 (1) (b) of the Towns and Communities Act. I hold in the circumstances of this case, that Miss Webb's prosecution was without reasonable and probable cause.

The statement of claim alleged that Supt. Tracey unlawfully, maliciously and without reasonable and probable cause induced or caused or procured Insp. Preddie to lay a false charge against the plaintiff. The defence admitted that Insp. Preddie was the person who had preferred the charge against her. In response however, to a suggestion put by Mr. Witter to Supt. Tracey, he agreed that he was the person who had put the prosecution in motion against Miss Webb although he was aware of the "advice" of the Clerk of the Courts.

Mr. Green submitted that in order for the plaintiff to succeed in the cause of action for malicious prosecution she must prove inter alia, that there was malice and lack of reasonable and probable cause. I do not really agree with him. The Court of Appeal's judgment in the case of Peter Flemming v Det. Cpl. Myers and the Attorney General (un-reported) SCCA 63/85 delivered on the 18<sup>th</sup> December, 1989 is of tremendous assistance on this issue. The majority were of the view that there was no need for both elements of malice and lack of reasonable and probable cause to be proved. Forte J.A expressed himself thus:

"...In respect of the claim for malicious prosecution something ought to be said. In the case of Glinski v McIver (1962) 2 W.L.R 832 at page 856 Lord Devlin in his speech affirmed that at common law in order to succeed in an action for malicious prosecution:

"...the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting..."

However, by virtue of section 33 of the Constabulary Force Act in Jamaica, a plaintiff suing a police officer for malicious prosecution as a result of an act done in the execution of his duty is required to prove that the defendant acted either maliciously or without reasonable and probable cause..."

Morgan J.A, at page 32 of the judgment said:

"...In a case of malicious prosecution the onus of proving malice rests on the plaintiff who must prove that the law was wrongfully set in motion without reasonable and probable cause or instituted with malice. Malice can be expressed or implied and can sometimes be inferred from want of reasonable and probable cause, but it is not bound up with it..."

I further hold, that in view of the above decision, the plaintiff can succeed in this action upon proof of either malice or lack of reasonable and probable cause. This plaintiff is therefore entitled to an award for damages in respect of malicious prosecution.

#### Re Royal Entertainment Centre Ltd.

Finally, there is the cause of action in trespass and detinue. Mr. Green submitted that the police had reasonable and probable cause for entry on the premises and since this entry was lawful they were not guilty of any act of trespass. He also submitted that if the Court were to find that there was reasonable and probable cause to have prosecuted the plaintiffs, the defendants would not be guilty of wrongfully detaining the goods seized.

Mr. Frankson on the other hand, submitted that the plaintiff had discharged the burden cast upon it. Furthermore, he said that the police had entered the premises unlawfully. Their motive was improper and accordingly they would be liable in trespass ab initio.

In view of my finding that Insp. Preddie had reasonable and probable cause to prosecute and furthermore since there was no malice on his part or on the part of Sup. Tracey, I hold that the entry of the police on the premises and the seizure of musical equipment, would not constitute a trespass and neither would the defendants be guilty of detinue.

Section 12 (1) (b) of the Towns and Communities Act provides that where an offence is

committed, the Constable may seize and detain for so long, as may be necessary for the purpose of any investigation, trial or inquiry any instrument by means of which that offence was committed. The items were seized by the police on the 8<sup>th</sup> September 1991, and released on the 8<sup>th</sup> October, 1991. The Clerk of the Courts did not advise prosecution until September 23, and within a matter of two days, the informations were laid charging Henry and Webb. I am of the view that it was quite necessary in the first place to await the Clerk of the Courts response regarding the statements which were submitted. It is also my view that the time within which the goods were detained was most reasonable. It was quite reasonable also for the police to have kept the seized items in their custody until the trial had taken place. What is clear, is that the items were returned on the very date that the Resident Magistrate made his order for their release.

I also agree with Mr. Green that the plaintiff had failed to prove that it was the police who had removed a decibel meter and the music rack referred to in the statement of claim, from the Centre. Accordingly, the plaintiff would not be entitled to compensation for the loss of these items. The plaintiff would also not be entitled to any loss of profit from the dance which came to a premature end on the night of the 8<sup>th</sup> September. Neither would the plaintiff be entitled to recover the sum claimed for the hireage of any musical equipment as set out in the statement of claim.

### Conclusion

I now turn to the quantum of damages to which Miss Webb would be entitled to receive as compensation for the malicious prosecution.

Mr. Witter had submitted that a sum of \$350,000.00 would be adequate compensation in the circumstances. He also submitted that the conduct of the police should be visited with an additional award for either exemplary damages or aggravated damages. I am not convinced that this case is deserving of either exemplary damages or aggravated damages. I take into consideration the plaintiff's feelings when she told the Court that she felt that her "dignity was trampled upon" when she was prosecuted by the police. I hold that an award of \$40,000.00 would be most appropriate and I hereby make this award. I allow the sum of \$30,000.00 under special damages, being the cost of Counsel's fee to defend her at the criminal trial.

There shall be judgment for the Plaintiff Joan Webb against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as follows:

#### 1. Re Webb

General damages - The sum of \$40,000.00 with interest thereon at the rate of 3 % per annum from the date of service of the Writ of Summons up to today.

Special damages - The sum of \$30,000.00 with interest thereon at the rate of 3% from the 8<sup>th</sup> September, 1991 up to today.

The plaintiff will have her costs taxed if not agreed.

2. There shall be judgment for the Defendants against the plaintiffs in suits C.L. 1992/H107 and C.L. 1991/R 145 with costs to the defendants to be taxed if not agreed.