Judgement Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1980 M 244

BETWEEN	JOYCE MORGAN	PLAINTIFF
A N D	JAMAICA OMNIBUS SERVICES LIMITED	DEFENDANTS
	KINGSTON & ST. ANDREW CORPORATION	

J. W. Kirlew, Q.C. and E. H. Jones instructed by R. S. Macpherson & Co. for plaintiff
Dennis Goffe and Donovan Jackson instructed by Myers, Fletcher & Gordon, Manton & Hart for defendants.

HEARD: April 25 & 26, 1985; June 27, 1985; February 20, 1986; March 19, 1986; July 4, 1986 & March 26, 1987

PATTERSON, J

This case came before the Court for assessment of damages, and when the award was handed down on the 4th July, 1986, I promised to deliver reasons in writing.

The plaintiff suffered severe injuries when an omnibus owned by the first defendant, in which she was a passenger, collided with a truck owned by the second defendant. The defendants did not contest liability to pay damages to the plaintiff for her loss and injuries. A majority of the various items of special damages claimed by the plaintiff were either admitted or agreed as proved by the defendants. The item which was vigorously contested was that for:

> "Loss of earnings at U.S.$120 per week for 140 weeks from the 4th February, 1980 to 10th September, 1982 and still continuing."

The defendants conceded that the plaintiff suffered total loss of earnings for three years, i.e. 1980, 1981 and 1982, but contended that thereafter she should have mitigated her loss and therefore they were liable for at most, a loss of only one half of her earnings. It was accepted that on the evidence, the plaintiff had proved loss of earnings at U.S.$95 per week, and on that basis, the defendants submitted that

the court should assess the past loss of earnings for the first three years at the full rate of U.S.$95 per week, and thereafter, at no more than half the rate, i.e. U.S.$48 per week, up to the date of assessment. At the time of the submission (20/2/86), the defendants calculated this item of special damages to be U.S.$22,840.83.

The plaintiff, on the other hand, while agreeing that her calculable loss of earnings was at the rate of U.S.$95 per week, insisted that she had not been able to earn any amount whatsoever from the time of the accident up to the trial date, and continuing. In the event, she asked the court to award damages for total loss of earnings up to the date of assessment, amounting to a total of U.S.$30,681.66.

I was not satisfied that the plaintiff was totally incapacitated for the full period. The medical evidence did not support her claim. I was satisfied that on a balance of probabilities she could have done some light work after four years, although she would not have been able to earn the same amount as she did prior to the accident. I considered U.S.$47.50 per week to be a reasonable sum. Consequently, I awarded her a total sum of U.S.$25,953.00 for this item of special damages, made up as follows:

Loss of earnings from 11/1/80 for 4 years @ U.S.$95 per week =	U.S.$19,760.00
Loss of earnings for 2½ years (up to the date of assessment - 4/7/86) @ U.S.$47.50 per week	U.S.$ 6,175.00
	U.S.$25,935.00

Both the plaintiff and the defendants submitted that the court ought not to enter a separate judgment for this item of damage expressed in U.S. dollars, but that this amount and any other item of damage calculated in U.S. dollars should be converted to Jamaican dollars, as the judgment could only be given for a sum of money expressed in Jamaican dollars. I agreed with this submission. A judgment of this court, which in effect adjudges that one party do recover money from the other party, must be expressed in the currency which is the legal tender of Jamaica. The Jamaican currency

is the only legal tender acceptable in Jamaica.

The question arose therefore, as to the rate of exchange that should be used to convert such sums as were calculated in a foreign currency to the Jamaican equivalent. This was so because of the violent fluctuating rates of exchange between the Jamaican dollar and the U.S. dollar over the past fifteen years or thereabout. The defendants led evidence in proof of the various rates of exchange over the last six years, and Mr. Goffe, for the defendants, contended that the principle by which the court ought to be guided in making the conversion had been settled from as far back as 1921, if not before. He submitted that the amount of a loss consequent on a tortious act fell to be determined at the date when it was suffered, and, therefore, the items of damages which were calculated in U.S. dollars should be converted into Jamaican dollars at the rate of exchange prevailing at the time of the breach, and not at the time of judgment or any other time. Applying that principle, and based on the various rates of exchange given in evidence, he urged the court to effect the conversion by using the proved yearly average rate of exchange, viz: 1980, 1981 and 1982 - 1 U.S. dollar to Ja.$1.78; 1983 - 1 U.S. dollar to Ja.$1.80; 1984 - 1 U.S. dollar to Ja.$4.00; 1985 - 1 U.S. dollar to Ja.$5.45; 1986 - 1 U.S. dollar to Ja.$5.50. The future loss of earnings should be converted at the prevailing rate of 1 U.S. dollar to Ja.$5.50.

In support, the court was referred to a number of cases, beginning with the "Celia (Owners) v. Volturno (Owners) [1921] All ER Rep. 110. The question in that case, was "at what date ought the rate of exchange to be fixed in order that those damages which were originally assessed in lire should be converted into sterling?" Lord Buckmaster, in his speech had this to say (at page 112),

> "A judgment, whether for breach of contract or for tort, where, as in this case, the damage is not continuing, does not proceed by determining what is the sum which, without regarding other circumstances, would at the time of the hearing afford compensation for the loss, but what was the loss actually proved to have been incurred either at the time of the breach or in consequence of the wrong." (emphasis mine)

Further on, he added,:

> "In cases where, as in the present, the damage is fixed and definite, and due to conditions determined at a particular date, the amount of damage is assessed by reference to the then existing circumstances, and subsequent changes would not affect the result. If these damages be assessed in a foreign currency the judgment here, which must be expressed in sterling, must be based on the amount required to convert this currency into sterling at the date when the measure was properly made, and the subsequent fluctuation of exchange, one way or the other, ought not to be taken into account." (emphasis mine)

The defendants adopted the views expressed by Lord Parmoor, when he accepted the argument for the respondents (page 117) that "the amount of loss consequent on a tortious act, such as a collision at sea, falls to be determined at the date when it is suffered, that the probability of subsequent alterations in the rate of exchange is immaterial, and that the risk of alteration in the rate of exchange is one which affects generally the financial transactions between the two countries and is in no way connected either with the tortious act or with the ascertainment of the amount payable to the injured party."

Mr. Kirlew, for the plaintiff, contended that the court in the Celia case made it quite clear that the principle therein enunciated applied only in cases where the damage is fixed and definite, and is not continuing. He submitted that where the "damage is continuing or is not fixed or definite, but has to be assessed, or has to be arrived at by accounting or is dependent on a certificate, official or otherwise, or on a judgment, then the date of assessment, or when the account is tendered or a certificate given or a judgment delivered is the appropriate time for conversion." He referred to a number of cases which may not be particularly helpful, in the light of more recent cases. He submitted that the breach-date rule ought not to be followed, and that conversion should be made at the rate of exchange on the day of assessment.

The defendants referred the court to the Privy Council decision in Syndic In Bankruptcy of Nasrallah Khoury v. Khayat /1943/ 2 All ER 406 and in particular to the opinion of Lord Wright at page 409 which reads:

> "There remains the more serious question which is: At what dates must the rate of exchange be calculated? There can, their Lordships apprehend, be now no doubt as to the English Law on this point. It is true that different views have been taken at different times and by different systems of law. Indeed, there are at least four different alternative rules which might be adopted. The rate of exchange might be determined as at the date at which payment was due, or at the date of actual payment, or at the date of the commencement of proceedings to enforce payment, or at the date of judgment. English law has adopted the first rule, not only in regard to obligations to pay a sum certain at a particular date, but also in regard to obligations the breach of which sounds in damages, as for an ordinary breach of contract, and also in regard to the satisfaction of damages for a wrongful act or tort."

Here, Lord Wright enunciated the settled general principles of the breach-date rule, which, as he pointed out had been established for many years before and was again enunciated by the House of Lords in the Celia case. The Privy Council plainly followed the decision of the House of Lords. The defendants argued that this court was bound by that decision, and must therefore apply the date of breach rule in order to convert to Jamaican dollars those items of damages which were calculated in U.S. dollars. In support of this point, they referred the court to the judgment of Duffus P. in Allen v. Byfield (No.2) /1964/ 7 W.I.R. 69 (at page 71) when he said:

> "We desire to pronounce that this court is bound by the decisions of the Privy Council and that this court, whilst bound by the decisions of the Privy Council, are only too glad to accept the authority and decisions of the House of Lords. But where there is a conflict, regretfully, between those eminent, high judicial authorities, this court however is bound by the decisions of the Privy Council."

The English courts adhered to the breach-date rule for conversion for many years, and the rule was again confirmed after careful scrutiny in the case of In re United Railways of Havana and Regala Warehouses Ltd. /1961/ A.C. 1007. Viscount Simonds, in his speech, made it clear that:

> "It is established by authority binding on this House that a claim for damages for breach of contract or for tort in terms of a foreign currency must be converted into sterling at the rate prevailing at the date of breach or tortious act."

He accepted as a correct statement of law, the propositions put forward in Dicey's Conflict of Laws (7th Edition - page 114):

> "For the purpose of litigation in England (a) a debt expressed in a foreign currency must be converted into sterling with reference to the rate of exchange prevailing on the day when the debt was payable."

However, by 1974, the English courts appear to have had second thoughts about the matter (See Schorsch Meier GmbH v. Hennin /1975/ 1 All ER. 152). The plaintiffs, in that case, sued the defendants for an amount owing expressed in deutschmarks, proved that amount and asked for judgment in deutschmarks, declining to adduce evidence of the equivalent in sterling. The action was dismissed, and on appeal to the Court of Appeal, Civil Division, it was held:

> "The appeal would be allowed for the following reasons:
>
> (i)(per Lord Denning MR and Foster J) Since the courts were no longer precluded from ordering a defendant to pay a sum of money or from granting a decree of specific performance for the payment of a sum of money, there was no longer any justification for the rule that judgment could only be given for a sum of money in sterling. Accordingly, where the currency of the contract was a foreign currency, the English courts had power to give judgment in that currency."

The judgment could be satisfied by payment in the foreign currency or by the equivalent in sterling at the time of payment.

In 1961, in the Havana case (supra), it was Lord Denning who had said,

> "... if there is one thing clear in our Law, it is that a claim must be made in sterling and the judgment given in sterling."

He explained the reason for the change thus in the Schorsch Meier case (supra) (pages 155-156):

> "Why have we in England insisted on a judgment in sterling and nothing else? It is, I think, because of our faith in sterling. It was a stable currency which had no equal. Things are different now. Sterling floats in the wind. It changes like a weathercock with every gust that blows. So do other currencies. This change compels us to think again about our rules. I ask myself: why do we say that an English court can only pronounce judgment in sterling? Lord Reid in the Havana case thought that it was 'primarily procedural'. I think so too. It arises from the form in which we used to give judgment for money. From time immemorial the courts of common law used to give judgment in these words: 'It is adjudged that the plaintiff do recover against the defendant £X in sterling.' On getting such a

> judgment the plaintiff could at once issue out a writ of execution for £X. If it was not in sterling, the sheriff would not be able to execute it. It was therefore essential that the judgment should be for a sum of money in sterling; for otherwise it could not be enforced."

He continued:

> "Those reasons for the rule have now ceased to exist. In the first place, the form of judgment has been altered. In 1966 the common law words 'do recover' were dropped. They were replaced by a simple order that the defendant 'do' the specified act. A judgment for money now simply says that: 'It is this day adjudged that the defendant do pay the plaintiff' the sum specified: see the notes to RSC Ord 42, r 1, and the appendices. That form can be used quite appropriately for a sum in foreign currency as for a sum in sterling. It is perfectly legitimate to order the defendant to pay the German debt in deutschmarks. He can satisfy it by paying the equivalent sum in sterling, that is, the equivalent at the time of payment.
>
> In the second place, it is now open to a court to order specific performance of a contract to pay money. In Beswick v. Beswick the House of Lords held that specific performance could be ordered of a contract to pay money, not only to the other party, but also to a third party. Since that decision, I am of opinion that an English court has power, not only to order specific performance of a contract to pay in sterling, but also of a contract to pay in dollars or deutschmarks or any other currency.
>
> Seeing that the reasons no longer exists, we are at liberty to discard the rule itself. Cessante ratione legis cessat ipsa lex. The rule has no support amongst the juridical writers. It has been criticised by many. Dicey says:
>
> > 'Such an encroachment of the law of procedure upon substantive rights is difficult to justify from the point of view of justice, convenience or logic.' "

Lawton LJ had this to say (at page 159):

> ".... Time has swept away nearly all the reasons why our courts were reluctuant to give judgment in a foreign currency."

The House of Lords came to much the same decision in 1975 in the case of Miliangos v. George Frank (Textiles) Ltd. /19757 3 All ER. 801. There it was held (Lord Simon of Glaisdale dissenting):

> "Where a plaintiff brought an action for a sum of money due under a contract he was entitled to claim and obtain judgment for the amount of the debt expressed in the currency of a foreign country if the proper law of the contract was the law of that country and the money of account and payment was

> that of the same country. If it is necessary to enforce the judgment that amount was to be converted into sterling at the date when leave was given to enforce the judgment."

It could be argued that the Miliangos case brought about a change in the breach-date rule only in the limited sense expressed in the headnote quoted above, and that its scope should be confined to such cases. Indeed, Lord Wilberforce was at pains to point this out when he said (at page 813):

> "I make it clear that, for myself, I would confine my approval at the present time of a change in the breach-date rule to claims such as those with which we are here concerned, i.e. to foreign money obligations, sc obligations of a money character to pay foreign currency arising under a contract whose proper law is that of a foreign country and where the money of account and payment is that of that country, or possibly of some other country but not of the United Kingdom."

Further on in his speech, Lord Wilberforce expressed his views on the established general rule in the following terms:

> "I therefore see no need to overrule or criticise or endorse such cases as the Volturno or Di Ferdinando v. Simon, Smits & Co. Ltd. I would only say, in agreement with Scrutton LJ that the former case leaves a number of difficulties unsolved and that the mere fact that as a general rule in English law damages for tort or for breach of contract are assessed as at the date of the breach need not preclude, in particular cases, the conversion into sterling of an element in the damages, which arises and is expressed in foreign currency, as at some later date. It is for the courts, or for arbitrators, to work out a solution in each case best adapted to giving the injured plaintiff that amount in damages which will most fairly compensate him for the wrong which he has suffered." (emphasis mine)

Here, Lord Wilberforce makes a distinction between a case where the entire damages is expressed in a foreign currency and one where only "an element in these damages" is so expressed, as regards the breach-date rule of conversion.

In 1978 the House of Lords was faced once more with the question of the currency in which judgment could be given for damages for tort and damages for breach of contract and consequently, the conversion date. The House considered the problems in the cases of Owners of mv Eleftherotria v. Owners of the mv Despina R - The Despina R and Services Europe Atlantique

Sud (SEAS) v. Stockholms Rederiaktiebolag SVEA - The Folias, /1979/ 1 All ER. 421.

Lord Wilberforce commenced his opinion in the following manner, (page 425):

> " My Lords, in Miliangos v. George Frank (Textiles) Ltd. this House decided that a plaintiff suing for a debt payable in Swiss francs under a contract governed by Swiss law could claim and recover judgment in this country in Swiss francs. Whether the same, or a similar, rule could be applied to cases where (i) a plaintiff sues for damages in tort, or (ii) a plaintiff sues for damages for breach of contract were questions expressly left open for later decision. These questions were regulated before Miliangos as to tort by Owners of Steamship Celia v. Owners of Steamship Volturno, The Volturno and as to contract by Di Ferdinando v. Simon, Smits & Co. Ltd, which decided that judgment in an English court could only be given in sterling converted from any foreign currency as at the date of the wrong. Now these questions are directly raised in the present appeals in each of which your Lordships have the advantage of judgments of the Court of Appeal and of judgments of high quality at first instance. These enable the House, as it could not have done in Miliangos, to consider some of the problems which may exist in the varied cases of torts and breaches of contract."

Lord Wilberforce considered the breach-date rule enunciated in the Celia (Owners) v. Volturno (Owners) (supra) and continued (at page 426).

> " My Lords, I do not think that there can now be any doubt that, given the ability of an English court (and of arbitrators sitting in this country) to give judgment or to make an award in a foreign currency, to give a judgment in the currency in which the loss was sustained produces a juster result than one which fixes the plaintiff with a sum in sterling taken at the date of the breach or of the loss. I need not expand on this because the point has been clearly made both in Miliangos, and in cases which have followed it, as well as in commentators who, prior to Miliangos, advocated abandonment of the sterling breach-date rule. To fix such a plaintiff with sterling commits him to the risk of changes in the value of a currency with which he has no connection; to award him a sum in the currency of the expenditure or loss, or that in which he bears the expenditure or loss, gives him exactly what he has lost and commits him only to the risk of changes in the value of that currency, or those currencies, which are either his currency or those which he chosen to use."

And then further on he continued (at page 427):

> " My Lords, in my opinion, this question can be solved by applying the normal principles which

> govern the assessment of damages in cases of tort (I shall deal with contract cases in the second appeal). These are the principles of restitutio in integrum and that of the reasonable foreseeability of the damage sustained. It appears to me that a plaintiff, who normally conducts his business through a particular currency, and who, when other currencies are immediately involved, uses his own currency to obtain those currencies, can reasonably say that the loss he sustains is to be measured not by the immediate currencies in which the loss first emerges but by the amount of his own currency, which in the normal course of operation, he uses to obtain those currencies. This is the currency in which his loss is felt, and is the currency which it is reasonably foreseeable he will have to spend."

The decision of the House of Lords is properly summarised in the headnote which reads:

> "Held - Where a plaintiff had suffered damage or sustained loss in a foreign currency as the result of a tort committed against him and had used his own currency whether sterling or otherwise, to obtain the amount of foreign currency required to make good the damage or loss or if his loss could only be appropriately measured in his own currency, then applying the principle of restitutio in integrum and having regard to the fact that English courts and arbitrators were able to award damages in currency other than sterling, the plaintiff's loss or damage was to be measured in his own currency, and not in the foreign currency or necessarily in sterling, provided his own currency was the currency in which his loss was felt and was the currency which it was reasonably foreseeable he would have had to spend, by virtue of being the currency in which he generally operated or with which he had the closest connection. If the plaintiff was not able to show that the currency he had expended to obtain the foreign currency was the currency in which he normally conducted his operations, his loss or damage was to be measured in the currency in which it immediately arose."

I examined the English decisions with a view of arriving at the present state of the English law on this issue. There can be no doubt that the English courts have power to award damages for tort (and for breach of contract) in currency other than sterling in appropriate cases. That being so, the breach-date rule for conversion has lost its effect and a judgment expressed in a foreign currency will be converted to sterling at the rate of exchange prevailing at the date when leave is given to enforce the judgment. This certainly was not "the English law on this point" mentioned and referred to above by Lord Wright in the

Syndic in Bankruptcy case. The decision in that case runs contrary to the present "English law on this point", and I had to consider whether or not I was bound to follow the Privy Council decision in the light of the recent developments in the English law.

I did not find it necessary to look further than the recent decision of the Privy Council in Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd. and others [1985] 2 All ER. 947. In that case, it had been suggested that even if English courts were bound to follow its own decisions, the Judicial Committee is not so constrained. Both the appellant and the respondent banks had accepted that the general principles in the law governing the relationship of banker and customer (the same in Hong Kong as in England) had been laid down by the decisions of the House of Lords in London Joint Stock Bank Ltd. v. McMillan [1918] A.C. 777 and in Greenwood v. Martins Bank Ltd. [1933] A.C. 51. Since those decisions, however, the law in England had developed as is evidenced by the decisions of the House of Lords in Liverpool City Council v. Irwin [1976] 2 All ER. 39 and of the Privy Council in Overseas Tankship (UK) Ltd. v. Morts Dock and Engineering Co. Ltd, The Wagon Mound [1961] 1 All ER. 404 and the House of Lords in Anns v. Merton London Borough [1972] 2 All ER. 492, and so the question now was whether the two House of Lords decisions in 1918 and 1933, represented the existing law.

Lord Scarman, in his speech in the Tai Hing case, (supra), had this to say (at page 958):

> " It was suggested, though only faintly, that even if English courts are bound to follow the decision in Macmillan's case the Judicial Committee is not so constrained. This is a misapprehension. Once it is accepted, as in this case it is, that the applicable law is English, their Lordships of the Judicial Committee will follow a House of Lords decision which covers the point in issue. The Judicial Committee is not the final judicial authority for the determination of English law. That is the responsibility of the House of Lords in its judicial capacity. Though the Judicial Committee enjoys a greater freedom from the binding effect of precedent than does the House of Lords, it is in no position on a question of English law to invoke the practice statement of July, 1966 pursuant to which the House has assumed the power to depart in certain circumstances from a previous decision of the House. And their Lordships note, in

> passing, the statement's warning against the danger of disturbing retrospectively the basis on which contracts have been entered into. It is, of course, open to the Judicial Committee to depart from a House of Lords decision in a case where, by reason of custom or statute or for other reasons peculiar to the jurisdiction where the matter in dispute arose, the Judicial Committee is required to determine whether English law should or should not apply. Only if it be decided or accepted (as in this case) that English law is the law to be applied will the Judicial Committee consider itself bound to follow a House of Lords decision. An illustration of the principle in operation is afforded by the recent New Zealand appeal, Hart v. O'Connor /1985/ 3 WLR 214, in which the Board reversed a very learned judgment of the New Zealand Court of Appeal as to the contractual capacity of a mentally disabled person, holding that, because English law applied, the duty of the New Zealand Court of Appeal was not to depart from what the Board was satisfied was the settled principle of that law."

The principles enunciated here by the Board are clear, and I felt sure that should the Board be confronted with the same problem that arose in the Syndic In Bankruptcy case, they would now decline to follow the decision in that case, and would hold instead, that the breach-date rule is no longer "the English law on this point."

Having formed that view, I did not think myself bound by the Syndic In Bankruptcy case, nor by the breach-date rule, and I looked to what the justice of the present case dictated, and "a solution best adapted to giving the injured plaintiff that amount in damages which will most fairly compensate her for the wrong which she has suffered."

The plaintiff's claim for special damages was itemized and as I have pointed out earlier, many of these items were admitted. In so far as the claim for loss of earnings was concerned, it was itemized as " (n) Loss of earnings at U.S.$120 per week for 140 weeks from 4th February, 1980 to 10th September, 1982 and still continuing."

The plaintiff is a permanent resident of the United States of America and at the time of the accident, she was on leave of absence until February from her job as a machine operator with "Knomark Inc.", at 132-20 Merrick Boulevard, Springfield Gardens, Jamaica, New York 11434, U.S.A. She started working with that company on the 2nd August, 1979, and the purpose of her visit to Jamaica was to accompany "her last two

children" to the U.S.A. She had obtained permanent residence status for those children. Her job awaited her on her return to the U.S.A. and the post remained open to her long after she had met the accident. The plaintiff had suffered loss of earnings in U.S. dollars; that was the currency in which such loss was expressed. It was the only currency in which the loss of earnings could be appropriately measured; it was the currency in which the loss of earnings was effectively felt or borne by her. The defendants did not dispute this fact. It was for these reasons that the court assessed this item of special damages in a sum expressed in U.S. dollars, and converted such sum to Jamaican currency, using the rate of exchange existing on the date of assessment.

My reasons for arriving at that date of conversion were many and compelling. I formed the view that an award of special damages must be expressed in one gross sum which will reflect the total amount awarded for all the various items claimed and proved. The principle of restitutio in integrum weighed heavily on my mind, but I was also convinced that my judgment must be expressed in Jamaican currency, and especially so because of the circumstances in this case. I was aware that the assessment date conversion may not give the plaintiff the exact amount of U.S. dollars lost, because of the many fluctuations in the rate of exchange that may occur between the time of assessment and actual payment. Nevertheless, the court sought to achieve as just a result as possible, converting the foreign currency loss into Jamaican dollars at a rate prevailing at the time of assessment, which when paid, may provide the plaintiff with a sum in U.S. dollars bearing a reasonable relationship to her loss of earnings sustained.

Quite apart from my views expressed above, I have already stated that I agreed with the submissions of both parties that the judgment ought to be expressed in Jamaican currency. I had been reminded of the provisions of the Judgments and Awards (Foreign) (Reciprocal Enforcement) Act, and the Exchange Control Act, both of which seem to suggest that judgment should be expressed in Jamaican dollars. Then there is the

Judicature (Civil Procedure Code) Law which sets out the form in which judgment should be entered, again suggesting that it should be in Jamaican dollars. Jamaica has not had a change in the form of judgment as that which took place in England in 1966 by the dropping of the words "do recover."

Both the plaintiff and the defendants agreed that the amount awarded for loss of prospective earnings and which would form a part of the general damages should be converted from U.S. dollars into Jamaican dollars at the prevailing rate of exchange on the date of assessment. I assessed this item at U.S.$24,700.00 which when converted at the rate of U.S.$1 to Ja.$5.50, amounted to U.S.$135,850.00.

The court had anxious moments in arriving at the date of conversion which would prove just to the plaintiff in this particular case and has not formulated any hard and fast rule as to the date of conversion to be applied in other cases. It may well be that the date of payment may prove to be more just to the plaintiff in an appropriate case.

No other point was argued, and I awarded $154,072.90 special damages and $245,850.00 general damages with interest at 3% per annum on the special damages from 4th January, 1980 to 4th July, 1986 and 3% per annum on $110,000.00 of the general damages from 28th September, 1981 to 4th July, 1986. By and with the consent of the parties, a stay of execution for six weeks was ordered in respect of $100,000.00 of the total award.