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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. 311 of 1969

BETWEEN CLIFTON WRIGHT PLAINTIFF
AND THE COLLECTOR GENERAL
AND THE ATTORNEY GENERAL DEFENDANTS

Heard: 28th July, 1976, 2nd November
1976, 24th May, 1977

M.B. Frankson instructed by J.H.N. Forrest for Plaintiff

R.D. Codlin for defendants.

17th June, 1977

Malcolm, J

ASSESSMENT OF DAMAGES

In 1962 the plaintiff bought in Miami and imported into the island eleven coin operated amusement machines, popularly known as "one armed bandits". The first man to have brought these machines into the island is reputed to have had one arm - hence the name. The plaintiff put these machines in various clubs in Kingston and Ocho Rios. Each machine was fitted with a "bank" and the plaintiff would make periodic checks, clear money from the banks and pay the owners of the clubs a commission of 10%.

On the 25th October, 1968 the plaintiff visited the locations where the machines were placed and discovered that they had all been removed. He subsequently learnt that they had been seized by the Collector General for Jamaica. On the 14th August, 1969 some 9½ months later 8 of the machines were returned to the plaintiff. Three were never recovered.

On the 25th of April, 1969 the plaintiff filed in this Court a Writ of Summons to recover damages for "the wrongful detention and/or conversion by the first named defendant of eleven coin operated amusement machines the property of the plaintiff". An appearance was entered by the defendants, a statement of claim filed, and on the 20th May, 1971 an order was made in Chambers granting leave to the plaintiff to enter judgment

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against the second named defendant, the Attorney General.

On the 2nd June, 1971 an Interlocutory Judgment was duly entered wherein it was adjudged "that the defendant return the goods claimed by the plaintiff or their value to be assessed, damages to be assessed and costs". This matter first came up for assessment on the 15th May, 1972 when it was not reached and was adjourned sine die. On the 24th May, 1977, five years later, evidence and addresses were completed, truly a good example of the law delays.

The plaintiff Clifton Wright testified that in 1962 he bought the eleven machines in Miami and they were shipped to Jamaica consigned to a Mr. Tony Melville a friend and business associate. The machines cost \$150 each. On his return to the island the consignee duly handed him the necessary papers and he collected his machines. Three photo-static copies of the custom entry forms were by consent tendered in evidence.

It is of interest to note what Mr. Reginald Irvine, Collector General who testified in this case had to say on this aspect of the matter. He said, "Prior to 1964 one could go to Miami and bring down coin operated machines - after 1964 one would have to get an import licence. Prior to 1964 one-armed bandits could be brought in on payment of custom duty. Post 1964 they could only be brought in if certain other requirements were met".

The plaintiff went on to state that the eleven machines were placed in different locations, chiefly in club premises. They were seized on the 25th October, 1968 by officers of the Collector General's Department. Eight notices of seizure were tendered in evidence. He stated that between the time of the seizure and the return of 8 of the machines he lost "a considerable sum of money". In fact he stated that his loss for the 9½ months period was \$26,000.

In support of his claim he called Mr. Ernest Royale a Registered Public Accountant. He testified that he prepared a return of income for the plaintiff in connection with his profit and loss account. Weekly collections from the machines were made and from them he prepared schedules. Bags came in with money bearing location and the amount. This schedule

was on a form created by him and formed part of his accounts. The schedule was tendered in evidence and showed takings for the period January 1968 to October 1968. The figure for this period was not aggregated but showed gross weekly takings which ranged from \$360 to \$952.

Elsie Bowen and Elton Mitchell, club owners on whose premises some of the plaintiff's machine were located gave evidence at the assessment. The former testified that between \$70 and \$80 per week was collected from one machine and \$80 - \$100 from another. Mr. Mitchell said that the machine in his club "earned" about \$160 per week.

I have already briefly touched on evidence given by Mr. Reginald Irvine the Collector General. He said, inter alia "all the machines seized by officers of my Department. It is to my knowledge that Warrants were used in respect of premises mentioned by Mr. Wright". Five search Warrants under the Customs Law were tendered in evidence. He described some of the duties of the custom's Branch of his Department and said that their duties included the collection of custom duty leviable by law and the seizure of un-customed goods. To Mr. Frankson he said that "one could say that although we knew that the machines could have properly been brought in we just went ahead and seized Mr. Wright's machines". He did not accept the suggestion that this was "high handed attitude, a display of arrogance and insolent behaviour". In his view this conduct was justified and excusable having regard to the high incidence of the smuggling of these machines into the island.

He submitted that by November 1968 the plaintiff had satisfied his department that he had brought the machines into the island properly and said, "I wont give an opinion as to why in the light of all this the plaintiff's machines were not returned until the 14th August, 1969".

Mr. Codlin for the defence sought at this late stage to impeach the judgment. This clearly he could not do. He submitted that this was a case of damnum sine injuria and cited Bradford Corporation vs. Pickles [1895] A.C. 587. The exercise on which I am now engaged is one of assessing damages consequent on the entry of Interlocutory Judgment in default of Defence. What ought the defendants to have done? They could have entered

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a Conditional appearance and apply within the time directed to strike out the Writ. They could have entered an appearance, filed a defence and apply to have the Writ and Statement of Claim struck out. They could event at a late stage have applied to have the Interlocutory Judgment set aside. In short they could have raised the issue of illegality generally. On this point Mr. Frankosn for the plaintiff submitted that if it was going to be the contention of the defendants that the plaintiff was not entitled to have damages assessed in his favour because the law does not recognise his claim, that is a question that must be raised on the pleadings and issue joined thereon. I agree with this view. What Bradford's case decided is that where a person has a right to do an act and in doing so causes injury to another no damages are recoverable. Did the Collector General have a right to seize the plaintiff's machines? That was not established.

I turn now to the question of the quantum of damages. Under Special Damages the plaintiff claims monetary loss for a period from the 25th October, 1968 to the 14th August, 1969. I make allowance for a reasonable time from seizure up to a time when the Collector General ought to have satisfied himself that the machines had been properly imported into the island. In my view he had so satisfied himself by the end of November, 1968. I allow a period of 8 months for loss of earnings from the machines. What weekly takings should the court allow? I make a reduction in the figures given by Mr. Royale and allow \$400 per week. After the deduction of the 10 percent commission payable this figure will be further reduced to \$360 per week. I accordingly allow under this item a sum of \$11,520.

The other item under Special Damages relates to the three machines that were never returned. The plaintiff alleges that he paid \$160 for each machine. Taking into account depreciation from the time the machines were bought to the time of seizure I allow \$100 for each machine making a total of \$300 for this item. For Special Damages I award the sum of \$11,820.

The plaintiff claims General Damages for detinue and/or conversion. On this particular aspect of the matter Mr. Frankson stated that he was not

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prepared to say that the conduct of the Collector General was so oppressive as to warrant exemplary damages but that the plaintiff was denied the use of his goods and this qualified him for substantial compensation. Mr. Codlin on the other hand urged that the user to which the machines could have been put is the type of user on which the law frowns. He cited the case of Burns vs. Edman [1970] 1 A.E.R. 886. In that case the Court held that the maxim "ex turpi causa non oritur actio" would apply so as to disentitle a widow from claiming damages for the death of her husband in a motor accident. During his life-time he had no honest employment and the support he gave his family came from the proceeds of criminal offences. The question of public policy arose. In my view Burns' case is clearly distinguishable from the instant case and has no application here.

On the question of the measure of damages Mr. Frankson referred to Clerk and Lindsell on Torts (14th edition) at paragraphs 396 and 397 which deal with aggravated damages and the distinction to be drawn between aggravated and exemplary damages. It is well settled law that for a plaintiff to recover damages under either of these heads he must establish that the defendant committed the tort with a malicious intent. It was not established that Collector General acted with such intent in effecting the seizure of the plaintiff's machines. Accordingly it is my view that in this case an award of neither type of damages is indicated. Although the Collector General committed a tort it was done in the course of his public duties and his was an honest effort to track down and seize uncustomed goods.

Under General Damages for the deprivation of the use of his goods I award the plaintiff the sum of \$300. Accordingly there will be final judgment for the plaintiff for \$12,120 being \$11,820 Special Damages and \$300 General Damages and costs to be agreed or taxed.

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