

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CONSOLIDATED CIVIL SUITS NOS 228, 229, 230 & 231 OF 1997

BETWEEN:

GUY HADLEY

Plaintiff

and

ATTORNEY GENERAL AND WILLISFORD CAESAR

Defendants

ANDREW HADLEY

Plaintiff

and

ATTORNEY GENERAL AND WILLISFORD CAESAR

Defendants

ROCKY PUNNETT

Plaintiff

and

ATTORNEY GENERAL AND WILLISFORD CAESAR

Defendants

SCOTT HADLEY

Plaintiff

and

ATTORNEY GENERAL AND WILLISFORD CAESAR

Defendants

Mrs Margaret Hughes-Ferrari for Guy Hadley and Rocky Punnett.

Mr Keir Starmer for Andrew Hadley and Scott Hadley.

Mr Donald Browne, Solicitor General, and Crown Counsel, Miss Dawn Lewis,
for the defendants.

2000: May 23, 24 25, 26
August 4

JUDGMENT

- [1] Adams, J.: The actions brought by the respective plaintiffs were consolidated and heard together as one trial.
- [2] The allegation by all of the plaintiffs is to the effect that on the 2nd day of July 1996 they were involved in an altercation with the second named defendant, Sergeant of Police, Willisford Caesar and as a consequence they were assaulted by members of the Royal Police Force including the said second named defendant. They all further allege that the second named defendant maliciously and without reasonable and probable cause laid an information before the Chief Magistrate against them all for the offences of –
- (a) assaulting a police officer in the execution of his duty contrary to section 196 of the Criminal Code
 - (b) assault causing actual bodily harm contrary to section 193 of the Criminal Code and
 - (c) criminal damage contrary to section 267 (1) of the Criminal Code and
- They also allege that they were falsely imprisoned by the defendant Caesar.
- [3] The plaintiffs have all accordingly approached this Court seeking in their statements of claim –
- (a) Damages including aggravated and exemplary damages.
 - (b) Costs.
 - (c) Interest pursuant to section 26 A of the West Indies Associated States Supreme Court (Saint Vincent) (Amendment) Act 1970.
- [4] The plaintiffs, Guy Hadley, Andrew Hadley and Scott Hadley are brothers. Rocky Punnett was a friend of theirs. It was not in dispute that on the 2nd July 1996 they had all gone to play tennis at a place described as “Haddon Court”. It was

common ground that after the game of tennis was over all the plaintiffs went to a bar known as “Sids Pub” having arrived there in the vicinity of 6:00 p.m. The three Hadley brothers had gone to “Sids Pub” in a car while their friend Rocky Punnett rode to the pub on his motorcycle.

[5] I accepted the evidence of Andrew Hadley which was really not disputed when he said “around 8:00 – 8:30 p.m. we decided to leave and paid one bill and proceeded downstairs... to get to the road one needs to walk down stairs of the pub. After we got to road we were standing outside the pub on the pavement (not on the road); that is all four of us. At that point we were all discussing what we would do the following day and I was at the same time searching for a missing hundred dollar bill which belonged to me. I did not find it. While there a man unknown to me passed us walking away from the police station (east – west) and going towards Victoria Park; he was in plain clothes”.

[6] It is what happened shortly after the four plaintiffs set eyes upon the defendant Caesar that undoubtedly gave rise to a terrible incident, and its unfortunate consequences.

[7] The plaintiffs’ version of what took place when they saw the defendant Sergeant Caesar was essentially the same and it suffices therefore to quote what Andrew Hadley had to say about the Sergeant’s conduct:

“Having passed us by a good 5-10 ft he then turned, walked up to Rocky and said to him “why did you hit me with that bat?” Rocky said “I did not hit you with any bat (racquet). Rocky had the bat (racquet) in a ruck sack which he was carrying on his back. After Rocky had replied to the man my brother Scott said to the man “nobody hit you with a bat please leave us alone”.

[8] Sergeant Willisford Caesar, the second named defendant gave a contrary version as to what took place. This is what he had to say:

“..... Sometime after 9:00 p.m. I left the Central Police Station to go to the Kentucky Fried place to get something to eat. I did not reach that place. I was walking to get to “Kentucky Fried”. I took the back street route in order to get there. As I got to the Stanley’s Shoe Shop (a business place) which was adjacent to Sids Pub I was walking in the “corridor” of Back Street i.e. side walk; while on sidewalk approaching “Sids”, I saw four gentlemen in a group formation standing on sidewalk I did not know any of the men. These four men were in a position which formed a circle. The sidewalk was about 8-10 ft wide. I would say it was difficult in any way to pass them then..... as I was passing one of the men who had a racquet in his hand was making movements with the racquet. The person with the racquet was backing me. As I was passing him his hand came down with the racquet and hit me on my abdomen. I stood up immediately and said “you struck me with the racquet.....” It appeared to have been an accident.”

The Sergeant went on to swear that when he had said “you struck me with the racquet” that man to whom he was speaking did not respond. Instead, according to the Sergeant, one of the other four responded saying “you did not get hit” and after he the Sergeant insisted that he had been hit the very man said “you did not get fucking hit”. The Sergeant said that the men “circled around” him and were passing their fingers in his face whereupon he told the men he was a policeman in plain clothes. He said the men appeared to be under the influence of alcohol.

I have come to the determination that the Sergeant, Willisford Caesar, was in fact taunted by the behaviour of the men; that he was hit by the racquet held by one of them, and as the Sergeant himself conceded, the hit with the racquet might have

been an accident; I need to add that according to the Sergeant one of the men had chucked him and he the Sergeant had reciprocated.

[9] I have also concluded based on what I consider to have transpired between the men, that the Sergeant was understandably annoyed by the behaviour of the men and thereafter there was an escalation of emotion with the awful result that somehow all the plaintiffs while indisputably in the custody of the police ended up receiving injuries of varying degrees of seriousness on the very evening of 2nd July 1996.

[10] The evidence from Wayne Murphy who operated the bar on the evening in question is illuminating. His evidence was to the effect that Sgt Caesar had gone to him when he Murphy was in the bar and asked to use the telephone. According to Murphy, Sergeant Caesar told him that some guys had hit him downstairs and he needed a phone to call the police. Another witness, Ossie Robertson said that the Sergeant looked “excited”. It is quite certain that from the drift of the evidence that this was taking place not long after there had been the sidewalk incident between the defendant Sergeant and the plaintiffs.

[11] The evidence plainly shows that after Sergeant Caesar had left the hostile company of the four plaintiffs on the sidewalk he went to the bar known as “Sids” to make the phone call to his police colleagues, and it would appear from the evidence that the four plaintiffs returned to the bar around the same time at the invitation of some friends who had come upon them at the very sidewalk after the incident with the defendant Caesar was over.

[12] I consider that the return of the four plaintiffs to the pub along with their friends and the presence of the defendant Caesar in the very pub at the same time led to a resumption of hostilities between them all; as to the course hostilities took I accepted the evidence of Joanna Gravel, one of the friends of the plaintiffs who had invited them to return to the pub. I accepted in that regard also, the evidence

of Ossie Robertson a customer, and of Wayne Murphy who was serving behind the bar.

[13] These three witnesses all testified to conduct of the defendant that in my view made him the aggressor.

[14] Joanna Gravel swore that she was at a table with the plaintiffs at the pub “when a man came up to my table and hit Scott. I had never seen the man before. I saw the defendant Sergeant Caesar in Court. He is the man I am speaking about. Scott had not done anything to cause the defendant to hit Scott. Defendant hit Scott on one side of the face. Scott jumped up and held the man from behind. Wayne Murphy and Andrew soon separated the men”.

[15] The witness Ossie Robertson testified that:

“I saw an individual come up into the bar. I now know him to be defendant Caesar..... I heard him ask for a beer. He asked Wayne. He said “sell me a beer so I could lick up those fucking white people up there”. I heard him ask twice for the beer. He appeared to be somewhat excited. Murphy did not sell defendant a beer and said that he was not prepared to have defendant cause trouble”.

I was quite impressed with the witness, Ossie Robertson since although he was not as articulate as one would have wished, he struck me as being quite detached from any possible bias or subjective interest in the matter. He spoke of a “scuffling” between Scott Hadley and the defendant and understandably (having regard to how events unfolded) does not appear to have witnessed the blow on the face of Scott Hadley referred to by the witness, Joanna Gravel. This witness, Ossie Robertson went on to speak of being at the pub when the defendant Caesar left after the altercation with Scott Hadley. Robertson went on to say that he was still at the pub when the defendant returned thereto with a number of other

policemen. According to this witness on the arrival of the police, Wayne Phillip opened the gate leading to the pub (which had been closed following upon the *fracas* between the defendant Sergeant and Scott Hadley).

The witness Robertson continued:

“Immediately after the gate was open Caesar began to ascend the steps. I saw him hit Rocky with his hand. He hit Rocky twice. The second hit was with open hand and I am not sure whether first one was open hand or fist. Caesar’s watch became undone. Rocky Punnett had not done anything to Caesar before Caesar hit him. The hitting of Punnett by Caesar was deliberate”.

It is pertinent to recall at this stage that it was the very Rocky Punnett whose racquet had come into contact with the Sergeant at the very beginning on the sidewalk.

[16] Wayne Murphy, the bartender at “Sids” pub said when speaking of the defendant Sergeant. “I was in the bar and a gentleman came to the bar and asked to use the telephone. That man was the defendant Caesar. He said to me that some guys had hit him downstairs and he needed a phone to call the police. He went into the kitchen and after several attempts at dialing the number I went to assist him. He got through on the phone and spoke for a while. The phone I believe was giving trouble. I left the defendant speaking and went to the area of the bar. After that I saw the plaintiffs all come upstairs. Sergeant Caesar soon came out of the kitchen and when he looked in their direction he said to me “sell me a beer, let me burst their fucking face”. He spoke of his having parted the men engaged in the scuffle at the pub.

[17] I shall describe the sidewalk incident as the “first episode” in the drama that unfolded on the evening of 2nd July 1996. I shall describe the presence of the

four plaintiffs and the defendant in “Sids” pub and the scuffling which then took place between Scott Hadley and the defendant as the “second episode”. Had it all ended there this judgment might have been unnecessary. This was not to be so, for it is admitted on both sides that a group of policemen (no doubt as a result of the phone call of the defendant Sergeant who after the scuffle left the premises at the request of Wayne Phillip) arrived at Sids pub and to put it vulgarly “all hell broke loose”. The ultimate consequence of all this was that when they were examined by a doctor on the very evening of the 2nd July, the plaintiffs between them had evidently sustained a large quantity of injuries – of varying degrees of seriousness – How did this come about? Where were the plaintiffs when they received the injuries found by the doctor? And at whose hands did they receive these injuries?

[18] The arrival of the group of policemen at “Sids” pub in response to the efforts of the defendant Sergeant is described by three witnesses to whom I have referred namely Joanna Gravel, Ossie Robertson and Wayne Murphy. They described the events of what I would consider the “third episode”, which began with the arrival of the group of policemen at “Sids” pub ending with the examination of the plaintiffs by the doctor that very evening.

[19] Joanna Gravel swore that after the defendant Caesar had had the scuffle with Scott Hadley she saw the defendant leave the building. She said that after that she looked through the window and saw a crowd gathering outside. She said she told the plaintiffs that they should call a lawyer. The plaintiffs she said expressed the view that that was unnecessary, finished their drink and began to leave the pub. According to this witness when the plaintiffs reached the bottom of the steps. Wayne Phillip opened the gate. She then proceeded to testify as follows:

“I saw Caesar then hit Rocky by the bottom of the stairs. I saw this from the top of the stairs. I don’t remember if fist was open or clenched. I saw

Rocky put his hand to his forehead and when he put his hand there was blood pouring down his face”.

This witness' evidence was reinforced by Ossie Robertson who swore that:

“Immediately after the gate was open Caesar began to ascend the steps. I saw him hit Rocky on face with his hand. He hit Rocky twice. The second hit was with open hand and I am not sure whether first one was open hand or fist. Caesar's watch became undone. Rocky Punnett had not done anything (hit) to Caesar before Caesar hit him..... I did not know Caesar before that night”.

Wayne Murphy's evidence was to the effect that:

“When I opened the gate it appeared as if all hell had broken loose. I saw Rocky Punnett with blood coming from eye-brow”.

I accepted without reservation the evidence of these three witnesses, Gravel, Robertson and Wayne Murphy, and in my view the standard of proof of the assault by this police Sergeant on Rocky Punnett went far beyond that required in civil proceedings. It is to be noted that a fourth witness Barbara Robin made her contribution in adding to what these three witnesses had said when she swore that she saw Caesar hit Rocky Punnett and that when she saw blood coming she started to scream and cry. Asked why she was doing that she said “I was crying because of the injury which Rocky had received”. The assertion that all hell broken loose is understandable when one considers what happened outside of the pub when the police arrived and after the hitting of Rocky Punnett by the defendant Sergeant.

[20] The opposing versions as between the police and the plaintiffs as to the confrontation on the road outside the pub deserve attention.

The substance of the evidence given by the police was to the effect that these citizens were not beaten by the police in the vicinity of the pub on that evening or elsewhere. The allegation of the plaintiffs was that they were; but it seems to me that the very defendant Sergeant Caesar provided adequate room (by the answers he gave in cross examination) for the view that the plaintiff's version was to be accepted.

I look at some of the answers that Sergeant Caesar gave under cross examination. In answer to Mr Starmer, for example, Sergeant Caesar admitted that when he went with the police contingent and saw the plaintiffs "I did not see any of the plaintiffs with injuries when I got to "Sids" pub around 9:00 p.m. No one has suggested in this case that the injuries suffered by the plaintiffs were inflicted after they left station on the night of 2nd".

The Sergeant admitted that "The police were in full control between the time the men were placed in the police vehicle to the time the police arrived at the station". In addition to admitting that the police were in full control of the men during the relevant period the Sergeant swore that he was not aware that the plaintiffs were in the custody of any person or persons or authority other than the police of the State of Saint Vincent and the Grenadines. He testified that he did not see "any of the plaintiffs being cuffed or kicked that evening".

In my view he was not speaking the truth when he said he did not hit any of the plaintiffs. Where in the name of reason did these men get the injuries from? Injuries shown to Dr Garraway between 11:30 p.m. and midnight and photographed by Tony Da Silva who swore that he set out for the Maryfield Hospital where he took the photographs just after 11:00 p.m.

The photographs are there for all to see and indicate the injuries in clear fashion. I find as a fact that these injuries were received at the hands of the police during the period they were placed in the police vehicle and when they left the station.

No record of any injuries sustained by these men was to be found at the station. The defendant Sergeant swore that it was police practice for a record to be made of injuries received by persons who are in police custody. He said he could not think of any reason why a record would not have been made that night.

In the course of the proceedings it was disclosed by Counsel appearing for the defendant that the custody records and officers note books relating to this case were unavailable.

- [21] Perhaps this is the appropriate stage to make reference to a watch which became the subject matter of a charge of malicious damage brought by Sergeant Caesar against Rocky Punnett, and which charge the plaintiffs contend was purely malicious and instituted without reasonable and probable cause.

The defendant Sergeant swore in relation to the watch as follows:

“The injury that Punnett received was accidental not intentional. It was when I raised my hand to hold on to him for the purpose of arresting him that he hit my hand and my hand with the watch on it hit his eye, falling to the ground. I recovered my watch and kept it in my person.”

Testifying in relation to a watch Superintendent of Police David Charles swore as follows:

“I do not recall Sergeant Caesar telling me anything on the night of the 2nd about a watch. I now say Sergeant Caesar did tell me that two chains

were burst from his neck and he could not find his watch. I did see watch that night. That was when Punnett handed it over to Sergeant Caesar.”

But which watch could Punnett be handing over? The defendant Caesar had sworn that he had recovered his watch and “kept it in my person”. What was Superintendent Charles talking about? Perhaps the answer lies in this evidence given by Rocky Punnett relating to his presence in the police station on the night of 2nd July. This is what he said:

“Sergeant Caesar sat behind a desk and was writing. He then stopped what he was doing. I was searched by a gentleman. I put my hands up and the man walked across the room from my right, put his hand in my pocket and produced a watch. I did not have a watch in my pocket before. There was no watch in my pocket. Sergeant Caesar then said “we have him for stealing also”.

For my part it does appear and manifestly so that as between the defendant Sergeant and his superior officer Charles, and in relation to their testimony about the watch, logic had suffered a serious aberration.

[22] I accepted the evidence of Ossie Robertson as to what had happened in relation to the watch and which evidence quoted earlier in this judgment was to the effect that after the police contingent had arrived and the gate at “Sids” pub was opened Sergeant Caesar went straight to Rocky Punnett and hit him on his face and that it was during the hitting that “Caesar’s watch became undone”. From the circumstances I have come to the conclusion that the charge eventually brought in relation to the watch, and the others were maliciously prosecuted; the ingredients of the tort of malicious prosecution were clearly established by proof that:

- (a) There was a prosecution which had caused the plaintiffs’ damage.
- (b) The prosecution was instituted or continued by the defendant.

- (c) The prosecution was terminated in the plaintiff's favour.
- (d) The defendant acted without reasonable and probable cause.
- (e) The defendant acted maliciously.

I found as a fact that the plaintiffs' version of what took place was substantially true and that Sergeant Caesar had no good reason to arrest any of the plaintiffs. The wrongful arrest of all the plaintiffs led inevitably to their false imprisonment during the period they entered the police van up to the time they were released at the station.

[23] The injuries found by Doctor Garraway tell their own story. It is important to note that there was no challenge of the evidence of the injuries sustained by the plaintiff Andrew Hadley. There was no challenge by Counsel for the defendants as to the extent of the injuries he received, nor that the doctor's opinion that the injuries of Andrew Hadley were "serious and life threatening". I make the observation that this was the most badly injured of all the plaintiffs as the medical certificate put into evidence indicates. These were the injuries of Andrew Hadley as set out in that document.

- (1) A superficial laceration consistent with a fingernail injury across the left collar-bone.
- (2) Two large abrasions 5 x 3 cm across the front of the chest. These were swollen red, tender and fresh with crusted blood and some fresh bleeding.
- (3) Three contusions with abrasions and swelling. The two on the upper back about 7 x 25 cm. The one across the kidney area 12 x 2.5 cm.
- (4) Abrasion right knee.
- (5) Abrasion on the shin.

- (6) Deep laceration right corner of mouth 2 cm long. This was sutured (stitched).
- (7) Eight large contusions to the head with significant swelling, redness and tenderness around the entire circumference of the skull.
- (8) Several abrasions. Two of the abrasions one at each parietal aspect (side) of the skull were large and bleeding.

This plaintiff spent three days in the Maryfield Hospital. There was no fracture of the skull or the spine on X-ray.

I am satisfied that injury (6) above was accounted for by Andrew Hadley when he testified that:

“I was dragged by about four policemen who were holding my arms, legs and body. I was off the ground and I was hit by fists and feet and batons. At one stage I fell to the ground and then a policeman hit me on my mouth with a boot.

[24] Rocky Punnett's injuries as testified to by the doctor were a contused wound 1.5 cm long below the left eyebrow and a contusion with swelling and tenderness at the back of the skull. A skull X-ray revealed no fracture. The face of this plaintiff was covered with crusted (clotted) blood with some fresh bleeding from the contused wound 1.5 cm just referred to. I have found it to be a reasonable conclusion that the wound to the eyebrow about which the doctor testified was the injury inflicted by the defendant Caesar and the infliction of which was described by Joanna Gravel, Ossie Robertson and Rocky Punnett himself.

[25] Scott Hadley according to Dr Garraway suffered the following injuries–

- (1) Contusion with swelling and tenderness on the left arm 6 x 2.5 cm.
- (2) Three contusions with swelling and tenderness stepwise along the left side of the back each about 18 x 2.5 cm extending from the scapula to the kidney area.
- (3) Towards the center and right side of the upper back, there were two largely circular contusions about 7 cm in diameter.
- (4) An abrasion 2.5 cm wide x 7 cm long over the right upper back.

The doctor went on to say that the entire upper back was swollen, tender, and red with dried (clotted) blood and some fresh blood oozing from the abrasion. It is note worthy that the witness Scott Hadley was the plaintiff who alleges (and was supported by others in this regard) that he was taken into an “alleyway” while hand cuffed and there “thrown to the ground by Sergeant Caesar and beaten on my back with a baton”. No wonder then that the doctor was able to observe that “the entire upper back was swollen” and “fresh blood was oozing from the abrasion”. For some moments at least barbarism reigned supreme at the Kingstown Police Station in the State of St Vincent and the Grenadines. The defendant Caesar undoubtedly was on the throne!

[26] Guy Hadley's injuries were described by Dr Garraway as not serious. The doctor swore that this plaintiff was suffering from a superficial laceration 2.5 cm long in the middle of the forehead with bleeding; an abrasion to the nose with bleeding; a contusion on the left side of the face near to the left eye and a laceration on the proximal palmer aspect of the middle finger of the right hand 2 cm long. There was according to the doctor “fresh bleeding from this wound”. The doctor's opinion as to the stress resulting from this experience of Guy Hadley shall be borne in mind when the question of damages falls to be considered.

[27] I turn now to the question of damages. In the 1992 edition of their work “Civil Actions against the Police” the learned authors tell us “there are four basic types of damages each serving different functions. The most common type of damages

are compensatory. In the majority of ordinary tort cases these are the only type of damages awarded. The second type of damages are aggravated. These are awarded when the defendant's conduct has aggravated the plaintiff's damage. The third type of damages are exemplary or punitive damages. These are now awarded only in a very limited class of cases including however many police cases. The final type of damages are nominal. These are awarded in certain types of case when the plaintiff's rights are infringed but no loss is suffered".

[28] In this case I propose to award compensatory, aggravated and exemplary damages for which indeed both counsel for the plaintiffs have contended. I must of course take into account special financial loss where such has been proven and place it under the heading of compensatory damages.

[29] Let me start then with the compilation of the compensatory damages. These I should indicate are damages to be considered as being "at large" in the sense that no specific sum of money can be considered the precise equivalent of the loss of liberty, the suffering of pain, or the injury to reputation; all of these are matters to be taken into account but upon which no specific monetary equivalent can be placed.

[30] In relation to Andrew Hadley, his injuries have been already recounted. They were the worse suffered by any of the plaintiffs. I propose to use the guidelines set out in the case of Thompson v. Commissioner of Police 1997 2 AER p 762 cited by counsel for the plaintiffs. I am mindful of the reminder therein that basic or ordinary damages are what would be granted to compensate the plaintiff for the injury or damages he has sustained. I should give aggravated damages only if they have been claimed by the plaintiffs and where there are aggravating features about the defendant's conduct that justify the award of aggravated damages. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or prosecution which shows that they behaved in a high handed, insulting, malicious, or oppressive manner either

in relation to the arrest or imprisonment, or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted. (See Broomes case 1972 1 AER p 801 at 836).

Bearing these principles in mind and in particular the conduct of the defendant which was wrongful almost from beginning to end I award in relation to the plaintiffs as follows:

<u>Andrew Hadley</u>		
<u>Compensatory Damages</u>		
Special Damages	-	\$ 5,544.00
Assault and battery	-	5,000.00
False imprisonment	-	4,000.00
Malicious prosecution	-	<u>15,000.00</u>
	TOTAL	<u>\$29,544.00</u>
Aggravated damages	-	\$30,000.00

Since I propose to award one sum in favour of the plaintiffs and against both defendants in relation to the exemplary damages, I should leave that as the final award to be made in this judgment.

<u>Scott Hadley</u>		
<u>Compensatory Damages</u>		
Special damages	-	\$ 3,234.00
Assault & Battery	-	3,000.00
False imprisonment	-	4,000.00
Malicious prosecution	-	<u>15,000.00</u>
	TOTAL	<u>\$25,234.00</u>
Aggravated damages	-	\$30,000.00

Rocky Punnett

Compensatory Damages

Special damages	-	\$ 602.00
Assault & Battery	-	2,000.00
False imprisonment	-	4,000.00
Malicious prosecution	-	<u>15,000.00</u>
TOTAL		<u>\$21,602.00</u>

Aggravated damages	-	\$30,000.00
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Guy Hadley

Compensatory Damages

Special damages	-	\$ 2,922.00
Assault & Battery	-	10,000.00
False imprisonment	-	4,000.00
Malicious prosecution	-	<u>15,000.00</u>
TOTAL		<u>\$31,922.00</u>

Aggravated damages	-	\$30,000.00
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[31] I must now deal with the last award and that is an award in respect of exemplary damages. The learning on this subject indicates that it is quite usual to award exemplary damages in actions against the police for what might be described as oppressive or arbitrary behaviour. In the case of Thompson (supra) it is stated that exemplary damages should be awarded if, but only if, the jury consider that the compensation awarded by way of basic or aggravated damages is in the circumstances an inadequate punishment for the defendants. There is no doubt in my mind that conduct such as I have found was displayed in this case before me warrants punishment of a kind.

I must bear in mind that an award of exemplary damages is in effect a windfall for the plaintiffs. As was asked in the case of Gosswell v Commissioner of Police when dealing with the penal nature of exemplary damages, “by what touchstone should one judge that to be a sufficient sum to punish him? The problem becomes the greater once one recognizes the inevitable overlap between aggravated and exemplary damages in the first place; it is the very fact that injuries are inflicted by someone abusing his position of power which makes them the more painful to bear and at the same time exposes the tortfeasor to liability for an exemplary damages award. The learned judge in Goswell went on to say “with these thoughts in mind it seems to me that really what the Court is required to do in these cases is to mark its disapproval of the oppressive or arbitrary conduct in question tempering its outrage of course with the thought that the exemplary damages will constitute a windfall for the plaintiff”.

I have already awarded compensatory damages and in addition aggravated damages to each of the plaintiffs bearing in mind all the mental and physical agony that would have resulted from police conduct in this case and the humiliation and insults that were intrinsically a part of the suffering to have been experienced by the plaintiffs in this case. I think the aggravated damages in this case have been liberally given.

Against this background of thinking I do not feel that the total award of exemplary damages to the plaintiffs should exceed the single sum of \$30,000.00. That single sum is awarded to the four plaintiffs as such damages, to be divided among them.

The defendants will pay the costs of the plaintiffs certified fit for two counsel to be taxed if not agreed.

Odel Adams
High Court Judge