A

MANORAMA RAJU

v.

GURNAM SINGH AND ANOTHER

[COURT OF APPEAL, 1975 (Gould V.P., Marsack J.A., Henry J.A.), 17th, 20th March] B

Civil Jurisdiction

Tort—false arrest and imprisonment—arrest as an absconding debtor—warrant issued pursuant to judicial process—action for damages—proof of malice—Magistrates' Courts Rules 0.20 rs. 2, 3.

C

On 9th November 1972, the second respondent issued a summons against the appellant claiming $684.79c in respect of goods ordered and supplied to the appellant. On 15th November, the second respondent filed an *ex parte* motion for the issue of a warrant for the arrest of the appellant under Magistrates' Court Rules 0.20 r.2. The appellant was duly arrested and brought before a magistrate who granted bail until the hearing.

It subsequently transpired that the appellant was not liable for the debt, nor was she about to leave Fiji. Proceedings were discontinued against her and a fresh summons was issued against her husband who settled the action for $150.00. D

The appellant issued an action (inter alia) for malicious arrest which was dismissed by the Supreme Court.

Held : On the whole of the evidence, the respondents had acted without reasonable and probable cause and from indirect and improper motives and, therefore, maliciously. E

Cases referred to :

Quartz Hill Gold Mining Co. v. Eyre 11 Q.B.D. 674.
Varawa v. Howard Smith Co. Ltd (1911) 13 C.L.R. 35.
Daniels v. Fielding 16 M. & W. 200.
Castrique v. Behrens 3 El. & E. 709.
Gilding v. Eyre 10 C.B. N.S. 592. F
Parton v. Hill 12 W.R. 753.
Nicholson v. Coghill 4 B. & C. 21.
Allen v. Flood [1898] A.C. 1.
Bromage v. Prosser 4 B. & C. 255.

Appeal against the dismissal of an action by the Supreme Court for false arrest and imprisonment as an absconding debtor.

V. Chand for the appellant. G

H. A. L. Marquardt-Gray for the respondents.

Magistrate's Courts Rules—Order 20.

Rule 2. *If the court, after making such investigation as it may consider necessary, shall be of the opinion that there is probable cause for believing that the defendant is about to leave Fiji..... and that.....by reason thereof the execution of any decree which may be made against him is likely to be obstructed or delayed, it shall be lawful for the court to issue a warrant to bring the defendant before the court, that he may show cause why* H *he should not give good and sufficient bail for his appearance.*

Rule 3. *If the defendant fails to show cause as aforesaid, the court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit* :.....

The following judgments were read : [20th March 1975]

A

HENRY J. A.

This is an appeal against the dismissal of an action brought by appellant alleging that respondents had falsely and maliciously and without reasonable and probable cause (1) issued a writ of summons in the Magistrate's Court at Suva claiming the sum of $684.79 for debt, (2) obtained from the said Court an *ex parte* order for the issue of a warrant for her arrest as a debtor about to B abscond, and, (3) caused appellant to be arrested, imprisoned and held to bail to answer the said claim. Appellant claimed $100 for special damages and $20,000 for general damages. The claim for special damages was abandoned. The learned judge held that malice had not been proved and dismissed the action with costs.

C Appellant's husband traded in Suva under the name of Raju's Furniture Shop. At a time not proved in the case second respondent supplied goods to Raju's Furniture Shop. The date must, according to a claim for interest, have been prior to April 1972. The evidence is clear and uncontradicted that appellant was then in no way concerned either with Raju's Furniture Shop or with the incurring of the alleged debt. Appellant's husband left Fiji on September 2nd 1972, for a holiday in Canada. Within about a week first D respondent called on appellant who knew him but did not know he was concerned in the business of second respondent. First respondent told appellant that her husband owed money to second respondent.

Appellant told first respondent that her husband was on holiday and that she knew nothing about the claim. Appellant asked first respondent to wait until her husband's return. First respondent made threats both to appellant E and her father. These will be given in more detail later.

As a result of such threats appellant's father advised her to pay $100 on account of the claim made. This was paid by cheque on October 5th and handed over to first respondent by appellant's father. The cheque was drawn on the bank account of Raju's Furniture Shop and signed by appellant. The circum- F stances surrounding the granting of authority to appellant so to sign cheques were not canvassed in evidence. No receipt or other record was produced in respect of this payment. It is important to note that the issue of this cheque gave first respondent knowledge of appellant's authority to operate the said bank account. The next attack on appellant was the issue of a writ of summons against her in the Magistrate's Court at Suva. This summons was filed on November 9th. It required the attendance of appellant on December 13th to G answer the suit. In it appellant was described as " agent for Raju's " Furniture Shop ". This was the only reference to agency. The particulars of claim and an annexed statement of account are of interest because in both documents appellant appears to be treated as the principal debtor. The claim reads as follows :—

H " The Plaintiff Claims from the defendant the sum of $684.79c (*SIX HUNDRED AND EIGHTY-FOUR DOLLARS AND SEVENTY NINE CENTS*) being an amount due and owing to the Plaintiff by the Defendent for Building Materials supplied and delivered full particulars plus interest particulars of which are annexed hereto and marked with the letter " A ". "

Annexure ' A ' was in the following form :— A

" Mrs Manorama Raju, No. 4630
c/- Raju's Furniture Shop,
Suva.

Bought of H. B. Singh Ltd.
Agents for H. B. Singh (Fiji) Ltd.
Lautoka Dealers in Motor Parts, B
Electrical Goods and Hardwares
Electrical Contractors

Terms monthly, Overdue accounts subject to 10 percent interest per annum.

	$757.46
Interest at 10% p.a. from 30.4.72 to 30.9.72	27.33 C
	$784.79
5.10.72 By Cash	100.00
To Balance	$684.79 " D

The summons was served on appellant on November 16th.

The day before the summons was served, namely, on November 15th, second respondent filed an *ex parte* motion for the issue of a warrant for the arrest of appellant. This application was made under the provisions of Order XX, E rule 2, of the Magistrate's Court Rule. The rule reads :—

" If the court, after making such investigation as it may consider necessary shall be of opinion that there is probable cause for believing that the defendant is about to leave Fiji, or that he has disposed of or removed from Fiji his property, or any part thereof, and that, in either case, by reason thereof the execution of any decree which may be made against F him is likely to be obstructed or delayed, it shall be lawful for the court to issue a warrant to bring the defendant before the court, that he may show cause why he should not give good and sufficient bail for his appearance. "

First respondent swore an affidavit in support. The following paragraphs are relevant :— G

(2) " That Manorama Raju (father's name Kedarvellu Pillay), the above-named defendant is the agent of the firm of Raju's Furniture Shop and as such, is justly and truly indebted to the plaintiff company in the sum of $684.79c being the balance of the sum due and owing to the plaintiff company for goods sold and delivered and interest accrued full particulars of which have been supplied to the defendant from time to time. H

(3) " That the plaintiff company has caused a writ of summons to be issued out of this Court at its suit against the said defendant.

(4) " That the said defendant is about to leave the Dominion or alternatively, is endeavouring the leave the said Dominion, if she is not immediately apprehended, as appears, from the following circumstances that I have been informed by reliable sources and an employee of an airline company that she is booked to depart Nadi for Sydney on the 17th day of December 1972 and that she is also booked to depart Sydney for Canada immediately thereafter AND may possibly change her departure date to an earlier date in order to join her husband in Canada. "

Appellant was arrested on November 27th and brought before a Magistrate. She was represented by Counsel who told the Court that the case would be contested. An application was made for bail. The matter of a passport was raised. Appellant undertook not to have a passport issued before the case was decided. She surrendered her passport which was not then current. Counsel for second respondent said he had no objection to appellant's release on bail in her own recognisance for $100 on condition that no passport be issued. The bail bond, upon execution of which appellant was released, required appellant's appearance in Court on December 13th and any subsequent adjournment.

Appellant's husband returned on November 29th—just two days later. There is no evidence which deals in any detail with subsequent events except that a second summons was issued on January 24th 1973 claiming the same debt. The defendant named was appellant's husband who was described as trading as Raju's Furniture Shop. The particulars of claim were identical except that it was said that particulars of the account had been supplied *to the defendant*. These words were not included in the summons against appellant. This may only be co-incidental but it is clear that, whilst it is most likely particulars had been so supplied to appellant's husband, the evidence is to the effect that none had been supplied to appellant. The statement of account annexed was the same as that served on appellant except that it was dated December 31st 1972, and was now in the name of appellant's husband who was further described as " trading as Raju's Furniture Shop ". The action against appellant was discontinued on the next day. The action against appellant's husband, although for $684.79c and costs, was settled for $150 by entering a consent judgment for that amount. No explanation for the settlement at this lesser sum has been forthcoming. It is not without interest to note that appellant was arrested for an alleged debt of $684.79.

At the trial of the present action both appellant and her father gave evidence. First respondent did not give evidence although from the above recital of facts he was a material witness. The only explanation of his failure to give evidence at trial was that he was in London. Clearly this does not amount to a satisfactory explanation for the complete absence of any testimony from him. However, respondents elected to proceed without evidence from first respondent. A brother of first respondent, who was also a director of second respondent, was called by respondents. His evidence-in-chief is unimportant but in cross-examination he said :—

" Gurnam Singh is my brother. In 1972 he was a director of H. B. Singh Ltd. The action against the plaintiff was discontinued, not because I knew it was wrongfully instituted. Raju Furniture Shop owed us money ; not Manorama Raju personally. The writ against Manorama Raju and the later writ against Wardaraju were in respect of the same debt. Wardaraju had incurred the debt. "

I turn now to the evidence called on behalf of appellant. She deposed that her husband was the sole owner of Raju's Furniture Shop ; that she had nothing to do with it and had had no dealings with it. It is convenient to set out part of her evidence at length. It reads :— A

" When my husband left he did not tell me anything about his owing any money to the defendants. While my husband away, I saw Gurnam Singh. One week after by husband's departure. I don't know if he had anything to do with H. B. Singh's business. Gurnam came and saw me at my father's shop. I told him my husband had gone to Canada for a holiday. B He told me my husband owed money to his Company. I said I knew nothing about it. He said if I did not pay the money he would have me locked up or issue a summon. I still said I did not know anything about it. Asked him to wait until my husband returned. I never owed any money to either of the defendants. He said he would have my shop closed and our order at Courts Limited cancelled. Gurnam went away, but came back several times. Kept asking for money. Said he would close the shop and C take our car which was under my husband's name. "

It is, in my view, important to cite the only cross-examination proferred on this evidence. It was :—

" I have said that in 1972 I had no dealings with H. B. Singh Ltd. either in my personal capacity or for my husband. I did pay $100 to H. B. Singh & Co. This was by Raju Furniture Shop cheque, and I got a receipt for it. D

" I was arrested on 27th November 1972. The bailiff showed me a copy of the court order. "

The father of appellant deposed as follows :—

" Wardaraju left for Canada 2nd September and returned 29th November 1972. He went for a holiday. My daughter did not make any arrangements to go to Canada. As far as I know she had made no reservations to go anywhere. I know Gurnam Singh. He is a director of H. B. Singh Ltd. E He came to see me a few days after Wardaraju had left. He said " your son-in-law has ran away to Canada ". I said he had gone for a holiday and would be back. He said Wardaraju owed him money and that he was a crook. I told Gurnam to go away. He said he would fix us up and put my daughter into prison. A few days later a European lady came to see me. I came to know later she was the wife of one of H. B. Singh brothers. She said Wardaraju owed more than $600. I said " Give me a F statement and I will write to Wardaraju ". She did not give me a statement. I was fighting an election. I was embarrassed. "

It is important to note also that no attempt was made to cross-examine this witness.

Reference ought to be made to the failure of respondents to produce any records or evidence to show that there was any ground for believing that G appellant was responsible for the debt or to explain how her name appeared as the principal debtor in the statement of account annexed to the summons. Someone in authority on the part of second respondent must have given instructions for the preparation of that document. No explanation was tendered to show why appellant was named in the summons as agent for Raju's Furniture Shop. No attempt was made to explain why it was asserted in the affidavit that particulars of the alleged debt had been delivered *from time to* H *time to the defendant,* that is, to appellant herself. In short, so far as concerns liability, no evidence was given at the trial of this action to establish any basis upon which respondents might, even mistakenly, think appellant was liable for the debt. Her evidence, which shows that there was no such basis,

was not even challenged. The probable basis seized on for naming her as agent appears to be the issue of the cheque, but, of course, the earlier threatening conduct of first respondent is relevant in assessing the bona fides of respondents in naming appellant as a defendant.

A condition precedent for the issue of the warrant for arrest was proof of probable cause for believing that appellant was about to depart from Fiji. Appellant has sworn categorically that she had no such intention. She was not cross-examined on this evidence. No attempt was made on behalf of respondents to establish any of the grounds put forward in paragraph 4 of first respondent's affidavit in support of the issue of the warrant. " Reliable sources " and " an employee of an airline company " were mentioned. A specific date for departure and a possible change were stated. If this information existed it should either now be brought forward or at least some reasonable explanation given for swearing to such matters. Appellant does not know who the reliable sources and the employee are. She can do no more than give a general denial and leave respondent's counsel to put to her in cross-examination the matters upon which first respondent relied to swear his affidavit. The inescapable conclusion on the evidence as it stands, is that first respondent had no basis for swearing paragraph 4 of his said affidavit. This affidavit cannot be relied on at the trial as evidence of the truth of the assertion made. It proves only what was sworn in the earlier proceedings.

Appellant's claim is based on allegations that respondents acted falsely and maliciously and without reasonable and probable cause. There is an action for " abuse of the process of the Court " under which different considerations arise, but appellant has not so framed this action so the issues raised by such an action may be put to one side. Appellant must therefore prove malice and absence of reasonable and probable cause. Generally speaking no action will lie for instituting civil proceedings even though done maliciously and without reasonable and probable cause. That applies to the issue of the summons against appellant. If, however, civil proceedings are of a kind that necessarily involve damage to a person's credit or reputation or to his property or an invasion of his personal liberty, an action will lie if the proceedings are taken maliciously and without reasonable and probable cause : *Quartz Hill Gold Mining Co. v. Eyre* 11 Q.B.D. 674, per Bowen L.J. at pp. 690-1 ; and *Varawa v. Howard Smith Co. Ltd.* (1911) 13 C.L.R. 35 per O'Connor, J. at p. 72, Order XX, rule 2, is a modern form of the original process for a writ of capias ad respondendum. It has been described as the issue of a mesne process during the pendency of an action. In *Daniels v. Fielding* 16 M. & W. 200, Rolfe, B. examined a similar provision enacted in the United Kingdom by Act 1 and 2 Victoria C.110. In a number of cases it has been held that an action will lie for the issue of such a mesne process if done maliciously and without reasonable and probable cause. The result, in my opinion, is that the issue of the summons was not actionable but the issue of the warrant for arrest was actionable on proof of malice and want of reasonable and probable cause.

The gist of an action for malicious arrest on such a warrant is a defendant's imposition on the judicial officer who granted the order, some false statement made maliciously and without reasonable and probable cause which satisfied him that the conditions necessary to grant it have been fulfilled : *Daniels v. Fielding* (supra) at pp. 206-7. This was recognised, and the various authorities were discussed at length, in *Varawa v. Howard Smith Co. Ltd.* (supra) although Griffith C.J. said at p. 53 that the actual arrest is the act of the party and not of the Court. Thus it would appear that respondents are liable for the statements made in support of the issue of the warrant and for the subsequent arrest if malice and want of reasonable and probable cause are

proved. These are the acts of respondents which are attacked. The propriety of the act of the Magistrate in granting the warrant is not an issue in this case. From the authorities just cited, and as a matter of principle, when such issues are kept in mind, the conclusions of the judicial officer who granted the order authorising the issue of a warrant are irrelevant. For the same reasons the conduct of appellant and her counsel when brought before Court on warrant are not relevant to the question of liability. The learned Judge was in error in taking these matters into account when coming to a conclusion that malice had not been proved.

The first requisite is proof that the proceedings have been successfully terminated in favour of the plaintiff who seeks damages. Some proceedings may not from their nature be capable of successful termination in which case such proof is not necessary. These proceedings were so capable. Thus the question is, have they been so terminated : *Castrique v. Behrens* 3 El. & E. 709, 721. In *Gilding v. Eyre* 10 C.B. N.S. 592, 604-5, it was said a plaintiff might, upon the facts deposed to, have obtained his discharge from custody, but he was not bound to do so, and his yielding to the result, not of the action of the Court, but of the defendant's acts, cannot deprive him of the remedy for the wrong he has sustained. Isaacs, J. in *Varawa v. Howard Smith Co. Ltd.* (supra) said at p. 89 :—

> " With the determination of the action in favour of the defendant, the order, which is only a precautionary measure for Plantiff's security in case he gets judgment, necessarily falls with all other efforts on the Plaintiff's part to obtain redress. No specific order is necessary to efface it. "

It need not be a final determination of the cause of action but it must be final so far as the suit or proceeding itself is concerned : *Parton v. Hill* 12 W.R. 753, 754. A discontinuance is sufficient : *Nicholson v. Coghill* 4 B. & C. 21. Therefore the proceedings did terminate in favour of appellant.

The learned Judge said that there was no allegation of any formal irregularity in the warrant nor was there any suggestion that appellant was arrested without proper authority. Order XX, rule 2, clearly requires proof that, by reason of one of the earlier grounds (in this case an intention to leave Fiji), the execution of any decree made against the defendant was likely to be obstructed or delayed. There was no express proof of or finding on this and one may pause to consider what might have been advanced on this if it had been raised. Moreover, there was no inquiry, as there might well have been, into the use of the word " agent " in the summons and the misleading and vague statement in the affidavit that as agent appellant was " justly and truly indebted " in respect of particulars of goods sold and delivered " full particulars of which have been *supplied to the defendant* from time to time ". (The underlining is mine).

These matters are mentioned only in passing so as to draw attention to the fact that the decision to issue the warrant is far from satisfactory and the learned Judge should have taken no comfort from the fact that a Magistrate saw fit to act on the information before him.

The only question dealt with in the judgment was malice which the learned Judge found was not proved. The question of respondents' acting without reasonable and probable cause was not decided. Yet, if they did so act, this was relevant to a decision on malice. *Quartz Hill Gold Mining Co. v. Eyre* (supra) and *Halsbury's Laws of England* 3rd Edition Vol. 25 p. 362 para. 706. Two specific findings made were, first, that respondents' *sole* concern at the time of arrest was to ensure appellant's appearance to answer the claim, and, secondly, that respondents were motivated mainly by an anxiety to recover the money from Raju's Furniture Shop particularly in view of the

cheque for $100 signed on its behalf and paid by appellant. There is no
A evidence in this proceeding which can support the first finding. Moreover, this finding is in conflict with the next finding which, in my judgment, was the true aim of this particular attack on appellant personally. The inquiry is, however, not into what respondents were anxious to obtain from appellant as a result of the proceedings, but what was the quality of their acts and what was their motive in so attacking appellant personally and causing her to be arrested and brought before the Court and put on bail, for a debt now
B acknowledged to have been incurred by her husband and for which no grounds have been advanced to support liability on her part.

There are three issues to be determined on the evidence, namely, (1) did respondents have any reasonable grounds for believing that appellant was responsible for payment of the debt ; (2) did respondents have any reasonable grounds for believing that appellant was about to depart from Fiji, and (3)
C did respondents act maliciously ? These will be dealt with in turn. First, did respondents have any reasonable grounds for believing appellant was responsible for the debt ? At the earliest interview first respondent said it was her husband's debt. Appellant had had no dealings with respondents. Appellant had had no connection with her husband's business. Threats were made that her freedom would be interfered with although, at this stage, clearly, to the knowledge of respondents appellant had nothing to do with the incurring of the debt.
D Respondents knew appellant's husband was on holiday and that appellant wished the matter, of which she knew nothing, be held up till his return. But after the cheque was paid, following serious threats, respondents had knowledge of appellant's authority to sign cheques on the bank account of Raju's Furniture Shop. The attack on appellant which followed was her arrest on an ex parte application and before any proceedings had been served on her. Appellant was described as agent for Raju's Furniture Shop but the
E claim for judgment was against her personally, and, of course, the warrant of arrest was personal. Did respondents have any reasonable grounds for believing appellant was an agent personally liable for the debt ? No evidence was called to show they had any such grounds or any such belief. The only fact in their possession was a cheque signed by appellant on behalf of Raju's Furniture Shop. This appears to be the genesis of the use of the word agent but a perusal of the documents disclose a series of false assertions to support agency.
F The inference is clear that the statement of account in appellant's name was not in accord with the records of second respondent and that her name was deliberately substituted for some other name after the cheque was paid. The particulars of claim are misleading in that a fair reading of them is that the goods had been supplied and delivered to appellant. Whether as agent or not is beside the point. There was in fact no such delivery. No claim of agency was made either in the particulars or the annexed statement. The affidavit in
G support of the motion for the warrant of arrest is false in its assertion that full particulars of the claim had been supplied to appellant from time to time. No attempt has been made to justify the statement in that affidavit that as agent for Raju's Furniture Shop appellant is " justly and truly indebted " to second respondent. In my opinion the proper finding on the evidence at the trial was that respondents had no grounds, reasonable or otherwise, for believing that appellant was responsible for the debt either as agent or personally
H and that matters known to be false were put before the magistrate who made the order.

Next, did respondents have any reasonable grounds for believing appellant was about to depart from Fiji ? The grounds, which satisfied the magistrate, were not supported by any evidence in the trial of the present action. Appellant

has denied any intention of leaving Fiji or taking any step which might be construed as an attempt to leave Fiji. No attempt was made to cross-examine her on the contents of the said affidavit. Even in the absence of first respondent other evidence should be available for the assertions made in the affidavit. In that state of the evidence in this action the proper finding is that respondents had no grounds for the assertions made in support of the warrant of arrest and accordingly such assertions were false.

On the question of malice, the Court may look at the whole of the evidence. It is not confined to the summons and the obtaining of the warrant. Threats were made against appellant personally in an endeavour to get payment of a debt incurred by her temporarily absent husband. When these threats were only partially successful proceedings, based on false assertions, were brought, obviously for the purpose of putting into effect earlier threats against her person in an endeavour to co-erce appellant into using her husband's funds in his absence to pay a claim for debt which had nothing to do with appellant personally either as agent or otherwise. In the light of the findings made and on the whole of the relevant circumstances the correct conclusion is that respondents acted without reasonable and probable cause and from indirect and improper motives and therefore maliciously. Appellant clearly proved her case.

I would allow the appeal with costs and set aside the judgment in the Supreme Court and order that the case be remitted to the Supreme Court for the assessment of damages and costs of the trial.

GOULD V. P.

I have had the advantage of reading the judgment of Henry J.A. in this appeal and am entirely in agreement with his reasoning and conclusions.

The opinion of the Court being unanimous the appeal is allowed with costs and there will be the further orders specified in the judgment of the learned judge of appeal.

MARSACK J. A.

I have had the advantage of reading the detailed and careful judgment of my learned brother Henry and fully agree both with his conclusions and with the reasons upon which they are based. I should, however, like to add a short comment on the learned trial Judge's finding that there was no proof of malice.

The word " malice " has been considered in many judgments of high authority ; but it is generally recognised that its meaning is correctly stated in *Bromage v. Prosser* 4 B. and C. 255, cited with approval by some of the Law Lords in *Allen v. Flood* [1898] A.C. 1 :

> " Malice, in its legal sense, means a wrongful act done intentionally without just cause or excuse. "

Here there can be no doubt that the action taken by the respondents was wrongful. It consisted of misleading the Magistrate into making an order for the arrest of the appellant by an affidavit which not only alleged that she was about to leave the country permanently, but also that she was " justly and truly indebted " to respondents in the sum of $684.79. No evidence was adduced to support the first allegation, which was in fact false. There was no ground whatever for the assertion that the appellant was indebted to the respondents in that or any other sum. Any amount that was owing to respondents by the Furniture Shop business—and it would seem that that was considerably less than $684.79—was owing by her husband. Respondents asked for the

arrest of the appellant personally, and that could be based only on her personal
A indebtedness ; yet it was perfectly clear, to the knowledge of the respondents, that there never was a debt from the appellant herself to the respondents. The result was the arrest and incarceration of the appellant, a definitely wrongful act. It was also one made without just cause or excuse, for the reasons stated. So in my opinion the trial Judge was not justified in deciding that he was unable to infer any malice on the part of the respondents.

There is the further point that malice may be implied from the want of
B reasonable and probable cause : 25 *Halsbury* 3rd Ed. para 706. Sir Trevor Henry has given adequate grounds for holding that the respondents acted without reasonable and probable cause ; and I cannot usefully add anything to what he has said.

I agree that the appeal must be allowed, with the consequences set out in his judgment.

Appeal allowed ; remitted to Supreme Court for assessment of damages and costs.