



[2019] JMSC Civ. 68

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2016 HCV 01621**

<b>BETWEEN</b>	<b>VANETTA NEIL</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JANICE HALSTEAD</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Obiko Gordon instructed by Frater, Ennis & Gordon for the Claimant**

**Ms. Suzette Edwards for the Defendant and appearing with Mr. Evan Evans**

**Heard: 18<sup>th</sup> April, 2018 & 8<sup>th</sup> April, 2019**

**Civil Practice and Procedure– Notice of Application for Court Orders to strike out claim - Rule 26.3 (1) (b) of the Civil Procedure Rules - The Limitation of Actions Act 1881 (Jamaica) - English Limitation Act of 1623 21 James 1 Cap 16 - English Limitation Act 1980 - The Interpretation Act - Whether the claim is statute barred and an abuse of the process of the Court.**

**Cor: Rattray, J.**

[1] The Claimant, Vanetta Neil, by way of Claim Form and Particulars of Claim filed on the 21<sup>st</sup> April, 2016, instituted these proceedings to recover damages as a result of an assault and battery she allegedly sustained on the 3<sup>rd</sup> January, 2009. It is alleged that on that day, the Defendant Janice Halstead, without reasonable and probable cause, maliciously and unlawfully attacked and chopped the Claimant on her left hand with a machete, causing her to sustain personal injuries. The Defendant in her Defence

filed on the 13<sup>th</sup> October, 2016, denied that she attacked the Claimant. She insisted that it was the Claimant who attacked her with a knife and that she was defending herself against the Claimant. The Defendant also maintained that the claim brought by the Claimant is statute barred pursuant to the **Limitation of Actions Act**, on the ground that it was filed more than six (6) years after the alleged incident.

[2] On the 13<sup>th</sup> October, 2016, the Defendant filed the instant Notice of Application for Court Orders, which seeks to have the Claimant's claim struck out as an abuse of process of the Court and for judgment to be entered in favour of the Defendant. The pleaded grounds on which the Defendant relies to support the Application are as follows: -

- a) Section 46 of the **Limitation of Actions Act** provides that where the **United Kingdom Statute 21 James I, Cap 16** which has been recognized and is now esteemed, used, accepted and received provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action was accrued;
- b) Rule 26.3 (1) (b) of the **Civil Procedure Rules (CPR)** provides that the Court may strike out a Statement of Case or part of a Statement of Case if it appears to the Court, that the Statement of Case or part to be struck out is an abuse of process of the Court or is likely to obstruct the just disposal of the proceeding;
- c) The Claimant's right to bring the cause of action has been extinguished.

[3] The Application was supported by the Affidavit of the Defendant filed on the 13<sup>th</sup> October, 2016 and her Further Affidavit filed on the 20<sup>th</sup> July, 2017. In response, the Claimant relied on her Affidavit filed on the 27<sup>th</sup> April, 2017. Also in support of the Application, the Defendant relied on Skeleton Submissions and Authorities filed on the 15<sup>th</sup> June, 2017. In like manner, the Claimant relied on Skeleton Submissions and

Authorities filed on the 16<sup>th</sup> November, 2017, as well as a Supplemental List of Authorities filed on the 10<sup>th</sup> January, 2018.

[4] The Claimant in her Affidavit deponed in so far as is relevant the following: -

*“3. That this Claim arose out of an assault that occurred on the 3<sup>rd</sup> of January, 2009 when the Defendant unlawfully attacked me inflicting serious injuries to my person, and I suffered loss and damages as a consequence. That this was the subject of a criminal matter before the Saint Ann’s Bay Parish Court with **Information Number 2180/2007** where the Defendant pleaded guilty to unlawful wounding on the 2<sup>nd</sup> of November, 2012.*

*4. That I instructed my Attorneys-at-law to file a civil suit to recover damages for the injuries that I suffered. As a result **Claim No. 2014/HCV-00631** was filed on the 6<sup>th</sup> of February, 2014.*

*5. After the filing of **Claim No. 2014/HCV-00631**, my Attorneys-at-law sent Claim Form and Particulars of Claim to the Bailiff for the parish of Saint Ann under cover letter dated the 10<sup>th</sup> of February, 2014. Attached hereto and marked “**VN 1**” for identity is letter dated the 10<sup>th</sup> of February, 2014 to the Bailiff for the parish of Saint Ann.*

*6. That the bailiff subsequently returned the documents and informed my Attorneys that the Defendant could not be found, as she had apparently relocated. That at the time an application to substitute service was not pursued as no additional information as to the location of the Defendant could be obtained.*

*7. That there being no more information that was forthcoming pertaining to the whereabouts of the Defendant, **Claim No. 2014/HCV-00631** having been expired, was discontinued and pleadings were filed anew. That Notice of Discontinuance was filed by my Attorneys on the 17<sup>th</sup> of March, 2016 and **Claim No. 2016/HCV-01621** was filed on the 21<sup>st</sup> of April, 2016.*

*8. That the matter has therefore been brought anew as a result of the Defendant’s seemingly evasive conduct, and not by virtue of any reluctance on the part of myself to bring the matter before the Court.*

*9. That the matter before the St. Ann’s Bay Parish Court was not completed until the 2<sup>nd</sup> of November, 2012. That it would have been impractical to commence a civil suit in the Supreme Court prior to the conclusion of **Information 2180/2007** that was before the Saint Ann’s Bay Parish Court, as settlement was contemplated at the time with a view to resolving the matter without a trial. That in these circumstances, I ask that this Honourable Court find that the limitation period did not start to run until the conclusion of the matter before the criminal court, which is the 2<sup>nd</sup> of November, 2012.*

*10. I therefore ask that this Honourable Court find that the Claimant has sought to bring this matter before the Court on numerous occasions and as soon as was reasonably practical.*

11. *That the Defendant will suffer no real prejudice should this Claim proceed as filed. That on the contrary if the Claim is struck out it would cause severe prejudice to myself as I would be unable to recover damages for the injuries that I have suffered at the hands of the Defendant.*"

[5] Counsel Ms. Edwards on behalf of the Defendant submitted that the Claimant's cause of action accrued on the 3<sup>rd</sup> January, 2009, and that the limitation period for instituting civil proceedings would have expired on the 2<sup>nd</sup> January, 2015. She further submitted that the Claimant's claim was filed on the 21<sup>st</sup> April, 2016, over a year outside the said limitation period, and as such, the Court ought to strike out the claim as an abuse of process, pursuant to Rule 26.3 (1) (b) of the **CPR**. That particular Rule gives the Court the power to strike out a party's Statement of Case or a part thereof, which it considers an abuse of the process of the Court and reads, in so far as is relevant: -

*"...the court may strike out a statement of case or part of a statement of case if it appears to the court -*

***(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;***

[Emphasis supplied]

[6] In support of her submissions, Counsel relied *inter alia* on the dicta of Lord Diplock in the case of **Hunter v Chief Constable of the West Midlands Police and Others** [1982] A.C. 529, where at page 536 he said that: -

*"...this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people..."*

[7] Ms. Edwards also contended that if her client is obliged to answer this claim, she would suffer an injustice, as her client did not contemplate, that with the passage of over six (6) years, the matter would have been resurrected by the Claimant. The Claimant she argued, had ample time within which she could have brought her claim, and her failure to do so, should not prejudice the Defendant. Counsel further argued that her client ought to be entitled to rest assured, that she is protected from the Claimant

bringing a stale claim against her. She urged the Court, that regard should be given to the analysis of Edwards J (Ag) (as she then was), in the case of **Shaun Baker and Anor v Angella Scott-Smith** (unreported), Supreme Court, Jamaica, Claim No. 2009 HCV 05631, a judgment delivered on the 3<sup>rd</sup> May, 2010, where she opined at paragraph 58: -

*“...It is only fair and just for a potential claimant, who has a good claim, not to be shut out from the courts to which he has turned for redress. It is however, also justice for a potential defendant to, at some point, be able to rest with the full knowledge that he will not be asked to answer to the merits of a claim, which due to the passage of time, he can no longer adequately respond to...”*

[8] Counsel also relied on the case of **Donovan v Gwentoy's Ltd** [1990] 1 WLR 472, where at page 479, Lord Griffiths stated that: -

*“The primary purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is a claim with which he never expected to have to deal.”*

[9] Counsel Mr. Gordon in his reply, conceded that the limitation period in respect of actions founded in tort had not changed from six (6) years, and that his client's claim was filed outside the relevant limitation period. However, he submitted that based on the **English Limitation Act 1980**, this Court is empowered to extend the limitation period in respect of his client's cause of action. To arrive at such a conclusion, he submitted that it is important for the Court to have an appreciation of section 42 of the **Interpretation Act**, which reads: -

*“Where in any Act reference is made to any provision of a United Kingdom Act and that provision is subsequently repealed and re-enacted without substantial modification, the reference in such Act to the provision of the Act so repealed shall, if the context so requires and unless the contrary intention appears, be construed as a reference to the provision so re-enacted.”*

[10] He also highlighted to the Court section 2 of the **English Limitation Act 1980**, which provides that: -

*“An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.”*

[11] Counsel argued that the implication of section 42 of the **Interpretation Act**, is that if an Act of our Parliament relies on a provision found in a United Kingdom Act, that has since been repealed by a provision that has not substantially modified the original provision, then the said Act of our Parliament can be taken to rely on the new provision.

[12] He submitted that on the face of it, there was no substantial modification to the **English Limitation Act 1980**, in respect of actions founded in tort, as the period remained the same as it was in the **Statute of Limitation 1623**. He contended that since there was no substantial modification in respect of both Acts, then pursuant to section 42 of the **Interpretation Act**, the Court is empowered to consider the provisions of the **English Limitation Act 1980**, in particular section 33 (3). That section outlines the factors the Court should consider when deciding whether to extend the limitation period and include: -

*“(a) the length of, and the reasons for, the delay on the part of the plaintiff;*

*(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 ... or (as the case may be) by section 12;*

*(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;*

*(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;*

*(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;*

*(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.”*

[13] Mr. Gordon submitted that the limitation period of six (6) years is recognized as law, but argued that it is equally recognized that such law cannot possibly be expected to accommodate the circumstances of every case, without unjustly dealing with some of them. He further argued that the Court must ask itself why it is compelled to strictly rely on a law that is over three centuries old, which has been repealed by its own authors,

and in the same breath, prohibit itself from examining new provisions laid down by said authors, even in a new persuasive light.

[14] The striking out of a party's Statement of Case should always be a matter of last resort, and should only be ordered by the Court in plain and obvious cases. This point was emphasized by the learned authors of the text, **Blackstone's Civil Practice 2015**, where it was stated at page 549 that: -

*"Under the old rules it was well settled that the jurisdiction to strike out was to be used sparingly. The reason was, and this has not changed, that the exercise of the jurisdiction deprives a party of its right to a trial, and of its ability to strengthen its case through the process of disclosure and other court procedures such as requests for further information. Further, it has always been true that the examination and cross-examination of witnesses often changes the complexion of a case. It was accordingly the accepted rule that striking out was limited to plain and obvious cases where there was no point in having a trial."*

[15] A claim that has been brought after the expiration of the limitation period may well be viewed as a "plain and obvious case" in which there is "no point in having a trial." If so, such proceedings ought to be struck out by the Court as an abuse of process. Stephenson LJ in **Ronex Properties Ltd v John Laing Construction Ltd and Others** [1983] QB 398, at page 408 expressed this position: -

*"...There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiffs' claim as frivolous and vexatious and an abuse of the process of the court, on the ground that it is statute-barred. Then the plaintiff and the court know that the Statute of Limitations will be pleaded; the defendant can, if necessary, file evidence to that effect; the plaintiff can file evidence of an acknowledgment or concealed fraud or any matter which may show the court that his claim is not vexatious or an abuse of process; and the court will be able to do, in I suspect most cases, what was done in **Riches v. Director of Public Prosecutions** [1973] 1 W.L.R. 1019: strike out the claim and dismiss the action..."*

[16] Donaldson LJ in the above mentioned case of **Ronex Properties Ltd v John Laing Construction Ltd and Others**, also expressed similar sentiments when he opined at page 405: -

*"Where it is thought to be clear that there is a defence under the Limitation Act, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case, he can seek to strike out the claim on the ground*

*that it is frivolous, vexatious and an abuse of the process of the court and support his application with evidence. But in no circumstances can he seek to strike out on the ground that no cause of action is disclosed.”*

[17] Stuart Sime in his book, **A Practical Approach to Civil Procedure**, 12<sup>th</sup> edition, also noted at page 89 that: -

*“Expiry of a limitation period provides a defendant with a complete defence to a claim. Lord Griffiths in **Donovan v Gwentoy**s [1990] 1 WLR 472 said, ‘the primary purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is a claim with which he never expected to have to deal’. If a claim is brought a long time after the events in question, the likelihood is that evidence which may have been available earlier may have been lost, and the memories of witnesses who may still be available will inevitably have faded or become confused. Further, it is contrary to general policy to keep people perpetually at risk.*

*Limitation is a procedural defence. It will not be taken by the court of its own motion, but must be specifically set out in the defence... Time barred cases rarely go to trial. If the claimant is unwilling to discontinue the claim, it is usually possible for the defendant to apply successfully for the claim to be struck out ... as an abuse of the court’s process...*

*Normally, the only consequence of the expiry of a limitation period is that the defendant acquires a technical defence to the claim. The claimant still has a cause of action, but one that cannot be enforced...”*

[18] The Jamaican **Limitation of Actions Act**, at section 46, provides that the **United Kingdom Statute 21 James I. Cap. 16, (Statute of Limitation 1623)** has been adopted and recognized as part of the laws of Jamaica. That section provides that: -

*“In actions of debt, or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence in any of the Courts of this Island, of a new or continuing contract, whereby to take any case out of the operation of the United Kingdom Statute 21 James I. Cap. 16, which has been recognized and is now esteemed, used, accepted and received as one of the statutes of this Island, or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby, or his agent duly authorized to make such acknowledgment or promise; and where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said enactment, so as to be chargeable in respect or by reason only of any written acknowledgement or promise made and signed by any other or others of them:*

*Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment, of any principal or interest made by any person whatsoever:*



*Provided also, that in actions to be commenced against two or more such joint contractors, or executors, or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by the United Kingdom Statute aforesaid as to one or more of such joint contractors or executors, or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgement or promise, or otherwise, judgment may be given, and costs allowed for the plaintiff, as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.”*

[19] In the case of **Lance Melbourne v Christina Wan** (1985) 22 JLR 131, Rowe P (as he then was) in commenting on the **Limitation of Actions Act**, had this to say at page 133: -

*“The present version of the Limitation of Actions Act is divided into four parts. Part I deals with limitation of actions in relation to land, Part II Crown Suits limitation, Part III with Boundaries and the fourth Part with limitations in relation to debt and contract.*

*Apparent on the face of the Statute, then, is the fact that the Limitation of Actions Act of Jamaica does not within its own four walls contain the detailed statutory provisions limiting the time within which actions in Tort may be brought. To find the applicable statutory provision for Jamaica in this regard one must have recourse to a Statute of the United Kingdom passed three hundred and sixty-two years ago. And it is fairly difficult to locate a copy of that Statute in any of the Libraries of Jamaica. As time continues to pass, the difficulty will increase.”*

[20] Section 3 of the **Statute of Limitation 1623** provides that: -

*“And be it further enacted, That all actions of trespass quare clausum fregit, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrears of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say) (2) the said actions upon the case (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue and replevin for goods or cattle, and the said action of trespass quare clausum fregit, within three years next after the end of this present session of parliament, or within six years next after the cause of such actions or suit, and not after; (3) **and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of this present session of parliament, or within four years next after the cause of such actions or suit, and not after;** (4) and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken, and not after.”*

[Emphasis supplied]

[21] Rowe P in the above cited case of **Lance Melbourne v Christina Wan** at page 134 also posited that: -

*“No uniform period of limitation was prescribed for all forms of action. A distinction was drawn between "actions upon the case" on the one hand and "actions of trespass, assault, battery, wounding and imprisonment" on the other hand. In respect of actions upon the case the primary rule was that a six year period of limitations is created, whereas in assault the period was only four years. Actions upon the case was sub-divided into two groups, viz., "slander" and "other actions upon the case".”*

[Emphasis supplied]

[22] The learned President continued at page 135 by stating that: -

*“...Sections 3 and 7 of the 1622 Limitation Act were repealed in England by the Limitation Act 1939 (2 & 3 Geo 6 c. 21). A uniform limitation period of 6 years was prescribed for all actions founded on simple contract or on tort and that time could be extended, if the person against whom it was running was under a disability, to a date not exceeding one year from the date when the person ceased to be under disability (see sections 2 and 22 thereof). Modifications were made to the Limitations Act of 1939 in England in 1954 and again in 1975 whereby new time limits were imposed for personal injury cases arising out of actions for negligence, nuisance or breach of duty. For these types of cases the time limit for bringing actions was reduced to three years with power to the court to disregard the time limit if it would be inequitable to prevent the actions from proceeding.*

*The Parliament of Jamaica has had previous opportunities to address itself to the necessity of providing a relevant time limit beyond which actions in tort ought not to be commenced in Jamaica. This is demonstrated by the earlier references herein to the occasions when the Limitation Act of 1882 has been amended. As far as I know it was not the fault of the appellant that an action was not brought in his name within time to obtain damages for his exceptionally severe injuries. No one protected him then and upon his coming of age, the law as it now stands has shut him out from ever raising the issue. This cannot be right. The Limitation of Actions Act ought to be amended as a matter of national priority to set an appropriate time limit in actions for tort and especially for personal injuries and to give protection to those under disability by preserving their rights until a prescribed period has elapsed after the cessation of the disability.”*

[23] Carberry JA at 137 page of the above mentioned case opined that: -

*“As has been indicated by Rowe, P. we in Jamaica are still affected by the English Statute of Limitations of 1623, 21 James I.C. 16. It is a statute "received" into our own Statute of Limitations: see sections 46, 47, 49 and 53. What has happened in the past is that we have from time to time reenacted in Jamaica various Limitation of Actions statutes passed in England, dealing with real property, mercantile law, etcetera, but have failed to keep up to date, and in particular to adopt legislation comparable to the English Limitation Act of 1929 or the Law Reform (Limitation of Actions & C) Act, 1954.*

*The consequence of this is that in 1984 the argument before us became one as to which was the appropriate form of action available to the plaintiff, trespass or case? Could the plaintiff bring his action as one of trespass so as to get the benefit of an extension due to disability, which applied to trespass but not to case? In construing this statute we were dealing with English law at a period in which the forms of action themselves had not fully developed, and which antedated by several hundred years the emergence of negligence as an independent tort. Professor Maitland in the latter part of the nineteenth century, even after the passage of the Common Law Procedure Act, remarked "the forms of action we have buried but they still rule us from their graves". In construing the act of 1623 this was alas true and it was unavoidable. In my opinion the plaintiff's action in this case was on the authorities, correctly construed as an action on the case...*

...

*One further word: Rowe, P., in his judgement has remarked of the 1623 Act that "no uniform period of limitation was prescribed for all forms of action". Our own law Reform Committee, as long ago as 1966 under the chairmanship of the then attorney general and Minister of Justice, the late V.B. Grant Q.C. devoted a considerable period of time to consideration of our own Limitation of Actions act and the English Act of 1939 and went so far as to submit recommendations for the enactment of a new statute of limitations based on the 1939 Act. That no further action has been taken on it since then is a matter for some regret. It might be noted that the amendment to the 1939 Act made in England in 1954, to cut down the period of limitation for bringing personal injury actions from six years to three years, has led on occasion to attempts to revive the forms of action and plaintiffs in negligence actions, barred by the three year period, have attempted to present their case as a case of trespass, to which the six year period still applied. The courts have been faced with a problem similar to that raised in our instant case, but have found it possible to so interpret the new wording of the Limitation of Actions Act as to defeat the attempt to evade it, see *Kruber v Crzesiak* (1963) V.L.R. 621 (an Australian case on a similar statute) followed by the Court of Appeal in England in *Letang v Cooper* (1964) 2 all ER 929; (1965) 1 QB 232; a case in which a lady sunbathing in Cornwall on a piece of grass where cars parked, was run over by a driver parking his Jaguar motor car who did not expect or see her. She brought her action more than three years after the accident and argued that she was suing in trespass to which a six year limitation applied. The attempt to evade the limitation period did not succeed. The court there was able to avoid the invitation to go back to the old forms of action, and Lord Denning M.R. found himself able to say "the truth is that the distinction between trespass and case is obsolete. We have a different division altogether."*

*For the reasons given by Rowe, P., and above, the courts in Jamaica are not able to ignore that distinction in these cases and **the need to revise our Statute of Limitations and to bring it into the twentieth century remains a current problem for our legislature though whether we update it to 1939 or to 1954 must be a matter for their anxious consideration.***

[Emphasis supplied]

[24] Under the **Statute of Limitation 1623**, the limitation period in respect of actions founded upon the case, such as negligence is six (6) years. However, the limitation

period in respect of actions founded on assault and battery, as in the present case, is four (4) years.

[25] After 1623, the law in England in respect of the limitation period, underwent several amendments. However, the law in Jamaica remained the same, as those amendments were not adopted as part of our laws. Edwards J (Ag) in the above cited case of **Shaun Baker and Anor v Angella Scott-Smith**, outlined the history of the amendments in respect of the limitation period in England as follows: -

*“52. After 1623, several changes were made in England to the Limitation Act; but the period remained six years, until the Limitation Act of 1954 which reduced the period to three years, for personal injury claims. The Limitation Act was amended in 1975 and again in 1980, in response to recommendations in the Law Commissions Paper as well as to improve on the new provisions introduced in the Limitation Act 1963. The 1980 amendments gave the court the power to extend the limitation period, if it was equitable to do so.*

*53. That Act made a great change in the law of limitation in England. This change meant that, in England at least, in personal injury cases, a plaintiff is not absolutely barred by the three year time limit. The judges in England have the discretion to extend the limit where it is equitable to do so, in the circumstances of the individual case. Unfortunately, our legislators have not yet seen it fit to so extend the courts powers to exercise any such discretion and in my view outside of statute, no such discretion exists. Section 3 of the 1623 Act still applies. As Rowe J said as far back as 1985, in **Lance Melbourne v Wan**, 22 JLR 131 at p135:*

***“As the law now stands there is for Jamaica a rigid rule that actions for negligence must be brought within a period of six years from the time the cause of action arose and any failure to do so will render the action statute barred.”***

*55. Section 11 of the Limitation Act 1980 (UK), provides a specific time limit for actions in respect of personal injuries. Section 11 (3) and (4) provide that an action shall not be brought after the expiration of a period of three years after the date on which the cause of action accrued.*

*56. Section 33 of the said Act provides for an exception to the operation of section 11 if it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which:*

*(a) the provisions of s. 11 ... of this Act prejudice the plaintiff;*

*(b) any decision of the court under this subsection would prejudice the defendant... the court may direct that those provisions shall not apply to the action.*

57. In acting under section 33 the court is empowered to have regard to all the circumstances of the case and more in particular to such factors as;

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11...

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

[26] The Court referred to the case of **Andrew Gillespie v Cons. Denton Clarke and Ors** (unreported), Supreme Court, Jamaica, Suit No. C.L. G-068 of 2002, a judgment delivered on the 11<sup>th</sup> September, 2003. There the Plaintiff sought to recover from the Defendants, damages for assault, malicious prosecution and false imprisonment in relation to an incident that occurred on the 13<sup>th</sup> August, 1996. An Application was made by the 6<sup>th</sup> Defendant, the Attorney General of Jamaica, seeking *inter alia* to strike out the Plaintiff's Statement of Claim and Endorsement, and to dismiss the action on the ground that it was statute barred. Anderson J came to the conclusion that the alleged assault and false imprisonment had not been brought within the four (4) year limitation period applicable to an action in trespass. The learned Judge ultimately struck out the claims for assault and false imprisonment and allowed the malicious prosecution claim to continue, as he was of the view that it was not statute barred.

[27] The Court does not agree with Counsel Mr. Gordon's interpretation of section 42 of the **Interpretation Act**. Section 42 of that Act envisages a situation where a provision of a United Kingdom Act, which forms a part of the laws of Jamaica, has been repealed

and re-enacted in a new Act without substantial modification. I am of the view, that section 42 does not apply where an entire Act of the United Kingdom, which forms part of the laws in Jamaica has been repealed and re-enacted in a new Act in the United Kingdom. The **Statute of Limitation 1623** in its totality was repealed in England and not just a provision, and was later re-enacted in the **English Limitation Act 1980**. I am therefore satisfied in the circumstances, that section 42 of the **Interpretation Act** offers no assistance to the Claimant or to the Court, in determining the outcome of this matter.

**[28]** Moreover, the **English Limitation Act 1980** was re-enacted with substantial modifications with respect to the earlier **Statute of Limitation 1623**. In particular, section 11 of the **English Limitation Act 1980**, provides a limitation period of three (3) years in respect of personal injury matters, and section 33 gives the Court the power to extend the limitation period in respect of personal injury claims, if it is equitable to do same. These provisions are substantial modifications from that of the **Statute of Limitation 1623**. Under that Act, the Court had no such discretion to extend the limitation period. Further, under the **Statute of Limitation 1623**, the limitation period in respect of actions on the case is six (6) years and four (4) years for assault and battery. As a consequence, even if the Court were to accept Mr. Gordon's submissions in relation to section 42 of the **Interpretation Act**, the Court is still not in a position to properly consider the **English Limitation Act 1980**, in light of the substantial modifications carried out with respect to that Act.

**[29]** Furthermore, on a proper interpretation of the **English Limitation Act 1980**, the power to extend the limitation period under section 33, is only applicable in relation to personal injuries claims, caused as a result of negligence, nuisance or breach of duty, and not with respect to assault and battery, the cause of action of the Claimant before this Court. I have arrived at this view based on a careful analysis of sections 11 and 33 (1) of the **English Limitation Act 1980**.

**[30]** The relevant provisions of Section 11 of the **English Limitation Act 1980**, provide as follows: -

*“(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.”*

*(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.*

*(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.*

*(4) Except where subsection (5) below applies, the period applicable is three years from-*

*(a) the date on which the cause of action accrued; or*

*(b) the date of knowledge (if later) of the person injured...”*

[Emphasis supplied]

**[31]** Section 33 (1) of the above mentioned Act also provides that: -

*“If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which-*

*(a) the provisions of section 11 or 11A or 12 of this Act prejudice the plaintiff or any person whom he represents; and*

*(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents; the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.”*

**[32]** In the circumstances, the limitation period in respect of the Claimant’s cause of action, that is, assault and battery is four (4) years as set out in the **Statute of Limitation 1623**, which is still the law in Jamaica. On the facts of the present case, the alleged attack on the Claimant took place on the 3<sup>rd</sup> January 2009. The limitation period in respect of instituting these proceeding would expire four (4) years after that date, that is on the 2<sup>nd</sup> January, 2013. Even if my finding is flawed in that regard and the six (6) year limitation period is the applicable time frame within which such an action ought to have been instituted, this action would still have been statute barred, with the effective date in those circumstances being the 2<sup>nd</sup> January, 2015.

**[33]** In the final analysis, the Court finds that at the time these proceedings were instituted on the 21<sup>st</sup> April, 2016, this action was already statute barred. Therefore, having considered the Submissions, as well as the Authorities cited by Counsel on behalf of the parties, the Court hereby make the following Orders: -

- 1) The claim filed herein by the Claimant is struck out;
- 2) Judgment is entered in favour of the Defendant as the claim is statute barred;
- 3) Costs of this Application and costs in the claim awarded to the Defendant, such costs to be taxed if not agreed.