ROYAL COURT

8th December, 1987.

Before the Deputy Bailiff, assisted by Jurats Coutanche and Le Ruez.

Nicos Sophianou Plaintiff.

The Defence Committee Defendant.

Advocate W.J. Bailhache for Plaintiff.

Advoocate S.C. Nicolle for defendant.

Judgment on preliminary issue of whether to allow amendment of plaintiff's pleadings.

The Deputy Bailiff: Leave to amend is refused. The grant or refusal of leave is discretionary and whilst the Court recognizes the difficulties of Mr. Bailhache, coming into the case at so late a stage the Court cannot ignore the passage of time. Whilst the Court accepts that the right of the defendant to claim against the parish a third party would not be lost by prescription - we rely on the case of Bell -v-Heating and Ventilating Engineering Company Limited and others, kindly produced to us by Mr. Bailhache - we think that in practice it would be virtually impossible to bring such a claim because of the passage of time. Whilst much of the delay can be explained away by the difficulties of legal representation and finance the plaintiff must still accept responsibility for the substantial part of the delay. But our decision is not based directly on that delay but because there would be injustice to the defendant in having to meet a charge of malice at so late a stage. If the plaintiff succeeds on wrongful arrest and here the burden is on the defendant to show justification, then in the assessment of damages the Court would take into account the detention subsequent to that arrest and whether the detention is of one day or eight days would not in the opinion of the Court be very significant in the quantum of damages. We leave over the question of costs incidental to this application.

Cases cited in the Judgment.

Bell -v- Heating and Ventilating Engineering Company & Ors:

2nd September, 1985, Jersey Judgment as yet unreported.