Neutral Citation Number: [2004] EWHC 359 (QB)

Case No: JS/04/0010

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 March 2004

Before :

THE HONOURABLE THE HONORABLE MR JUSTICE TUGENDHAT

- -

Between :

NEIL LENNON	**Claimant**
- and -	
SCOTTISH DAILY RECORD AND SUNDAY MAIL LTD	**Defendant**

- -
- -

Richard Parkes QC and William Bennett (instructed by **Darlingtons**) for the **Claimant**
Manuel Barca (instructed by **Goodman Derrick**) for the **Defendant**

Hearing dates: 24 February 2004

- -

Judgment

MR JUSTICE TUGENDHAT:

1. The Defendant in this claim for libel applies to dismiss or stay the action on the grounds that Scotland is the more appropriate forum in which to bring this claim, alternatively that the words complained of are incapable of bearing the meanings pleaded by the Claimant.

2. The Claimant is a well known footballer who plays for Celtic. The Defendant publishes the Daily Record. The action is brought in respect of articles published in the Daily Record on 20th December 2002.

3. The words complained of will need to be set out in full when I come to consider the issue of meaning. For the purposes of the application for a stay they can be summarised as follows. The page 1 story (which continued on pages 6 and 7) is headed "Toon cops will quiz ALL Celtic squad". It recounts that members of the Celtic team emerged from a nightclub in Newcastle and chased a Daily Record photographer, Paul Chappells, robbing him of £12000 worth of camera equipment. It is fundamental to the claim that the court find that the Claimant will have been understood by readers to have been one of the guilty players, or, in a lesser meaning, probably one of the players.

Forum non-conveniens - The correct approach in law

4. Both counsel agree that there is jurisdiction to order a stay of proceedings brought in England if on the principle of *forum non-conveniens* the action ought to be tried in Scotland. However, jurisdiction cannot be conferred on a court by agreement, and both counsel drew my attention to the possibility that there might in fact not be such jurisdiction and invited me to consider whether there is or not.

5. The point is discussed in Gatley on Libel and Slander 10th ed para 24.35 note 99. It arises from a note in the 3rd cumulative supplement to Dicey & Morris on Conflict of Laws 13th ed para 12-014. That reads:

> "… in cases where the Judgments Regulation … confers jurisdiction on the courts for the place where the harmful event occurred, as would be the case under Art 5(3) of the Regulation …, it would be inconsistent with the Regulation … for a stay of proceedings to be ordered in favour of the courts of another place (such as Scotland) within the United Kingdom".

6. The Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act") brought the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters into English law. A further Act of that name in 1991 Act did the same for the Lugano Convention, which introduced a number of EFTA states into the same legal framework. The Brussels Convention itself laid down jurisdictional rules as between member states, not as between parts of member states such as England and Scotland. The 1982 Act (s16 and schedule 4) provided an equivalent set of rules for the parts of the United Kingdom. Since then, the Judgments Regulation (Council Regulation (EC) No.44/2001 of 22nd December 2000) has resulted in amendments to the 1982 Act, introduced by the Civil Jurisdiction and Judgments Order 2001, SI 2001 No 3929.

7. The Regulation, Art 1 provides that 'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member

State'. Accordingly, the defendant, being domiciled in the United Kingdom, must be sued in the United Kingdom. The requirements of the Regulation are met, whether the defendant is sued in England and Wales, or in Scotland.

8. Art 5 of the Regulation provides:

> "A person domiciled in a Member State may, in another Member State, be sued …. (c) In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful act occurred or may occur'."

9. That has no application to the present case. The defendant is being sued in the United Kingdom (in England), and is not being sued in another Member State.

10. The 1982 Act s.16, (as amended by SI 2001 No 3929) reads as follows (so far as is relevant):

> '(1) The provisions of Schedule 4 (which contains a modified version of Chapter II of the Regulation) shall have effect for determining, for each part of the United Kingdom, whether the courts of law of that part, or any particular court of law of that part, have or has jurisdiction in proceedings where
>
> (a) the subject matter of the proceedings is within the scope of the Regulation as determined by Art 1 of the Regulation (whether or not the Regulation has effect in relation to the proceedings); and
>
> (b) the defendant or defender is domiciled in the United Kingdom or the proceedings are of a kind mentioned in Art 22 of the Regulation (exclusive jurisdiction regardless of domicile)'.

11. Schedule 4 now reads as follows:

> 'Art 1 Subject to the rules of this Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part.
>
> Art 2 Persons domiciled in a part of the United Kingdom may be sued in the courts of another part of the United Kingdom only by virtue of rules 3 to 13 of this schedule.
>
> Art 3 A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued …. (c) In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful act occurred or may occur'.

12. Section 49 of the 1982 Act was not amended by the Judgments Regulation or the 2001 Order. It therefore still reads:

> 'Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any

> proceedings before it, on the grounds of forum non conveniens or otherwise, where to do so is not inconsistent with the 1968 Convention or, as the case may be, the Lugano Convention'.

13. In *Cumming v Scottish Daily Record & Sunday Mail Ltd* [1995] EMLR 538, Drake J held that the Brussels Convention 1968, as incorporated into English law by the 1982 Act, did not prevent English courts from applying the doctrine of *forum non conveniens* with respect to territorial jurisdictional disputes within the United Kingdom, as opposed to such disputes between the United Kingdom and any other Contracting State (in relation to which the 1982 Act applied the allocation regime prescribed by the Convention).

14. The Judgments Regulation has made no difference to the juridical principle identified by Drake J in *Cumming*. Article 5 to the "old" Schedule 4 to the 1982 Act provided as follows, which is substantially similar to the words of the amended Schedule set out above :

> 'A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued: … (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or in the case of a threatened wrong is likely to occur'.

15. Put simply, the position always was, and remains, that no legislation allocating jurisdiction within the United Kingdom will be inconsistent with the Brussels Convention, or the Lugano Convention or the Regulation, because those instruments allocate jurisdiction between Member States. Scotland and England and Wales are two separate jurisdictions, but they are parts of the United Kingdom, not separate Member States. See Collins and Davenport 110 LQR 325 and Dicey & Morris13th ed para 12-014.

16. Accordingly, in my judgment, the agreement between counsel properly reflects the law applicable in this case.

17. The footnote in the Supplement to Dicey & Morris appears to me to be addressed to a different factual scenario from the one applying here. If the defendant were domiciled in the Republic of Ireland, then Art 1 of the Regulation would require that it be sued in Ireland, subject to Art 5. If the action were brought against it on a newspaper distributed by it in England then the English courts would be the courts of the place where the harmful event occurred (within Art 5(3)). The question might then arise whether the English court was entitled to stay the action on the ground that Scotland was a more appropriate forum. The answer to that question might then depend on whether 'the place' referred to in Art 5(3) is (a) the United Kingdom, or (b) a part of the United Kingdom, namely England. If 'the place' is the United Kingdom, then it would not appear to be inconsistent with the Regulation to stay the proceedings in favour of the courts of Scotland (any more than it would be inconsistent with the Regulation to transfer the case from London to Newcastle). But if 'the place' is to be understood as meaning one of the three jurisdictions which make up the United Kingdom, namely Scotland, Northern Ireland or England and Wales, then an inconsistency appears. The authors of the footnote appear to interpret 'place' in Art 5(3) of the Regulation as referring to a part of the United Kingdom, for example Scotland, as opposed to England and Wales. Whether they are right or not does not

arise in the present case. Since this has not been argued before me, I express no view upon it.

18. Both counsel also agree on the general principles which are embodied in the doctrine of *forum non conveniens*. I am content to take them as summarised by Mr Barca for the Defendant in his Skeleton argument as follows, deriving them from *Spiliada Maritime Corporation v. Cansulex* [1987] AC 460 (HL), where Lord Goff reviewed and re-stated the requirements for granting a stay on principles of *forum non conveniens*.

19. In a case where the defendant has been served within the jurisdiction, the approach to be adopted by the court is essentially as follows:

    i) "The basic principle is that a stay will only be granted on the grounds of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice". (476B-C)

    ii) Initially, the burden rests upon the Defendant, "... not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum": (477D-E)

    iii) In considering this initial question, the court considers whether there are "connecting factors" which point to the conclusion that some other forum is prima facie more appropriate, in the sense of being "that with which the action has the most real and substantial connection". Such "connecting factors" include those affecting convenience and expense, the law affecting the relevant transaction, and the place where the parties respectively reside or carry on business. (477F-478B)

    iv) If the court's conclusion at this stage is that there is "... some other available forum which is prima facie clearly more appropriate for the trial of the action, it will ordinarily grant a stay, unless the plaintiff can discharge the burden of showing that there are nonetheless circumstances by reason of which justice requires that a stay should not be granted. In this inquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions." (478C-D).

    v) At 475D-476B, Lord Goff explicitly stated that "it was necessary to strike a note of caution regarding the prominence given to a "legitimate personal or juridical advantage" of the plaintiff", indicating (at 482B-483D) that such an advantage was not decisive and was just one factor to be considered in assessing "the interests of all the parties and the ends of justice".

20. Lord Goff also recognised (at 478F-479C and 481B-G) that where a claimant brought proceedings only with the permission of the court, and not as a matter of right, the court's jurisdiction to permit service out of the jurisdiction was "extraordinary" and to be exercised consistently with principles of comity. This is not a factor in cases where the two jurisdictions in question are both within the UK, because service will be as a matter of right.

21. One “juridical advantage” which parties habitually perceive is the fact, where it be such, that damages are more generously awarded in one jurisdiction as compared with the other. Claimants are attracted to jurisdictions which award higher damages and defendants by those which award lower damages, other things being equal.

22. Here Mr Barca submits that it is a well-known fact that awards for damages in defamation are higher in England than Scotland. This, he submits, is because Scots law only permits general damages to be awarded by way of a solatium for the “affront” caused by the libel. The absence of any allowance in the award for public vindication means that awards are invariably modest (and often nominal) in the absence of any evidence of actual damage by way of economic loss or injury to health. He cites Norrie on Defamation and Related Actions in Scots Law (1995), at pp 164-73. He submits that the English courts must thus be vigilant to ensure that they are not used as a vehicle to circumvent what claimants perceive to be the less “remunerative” attitude to damages under Scots law. Any other approach, he argues, would result in the English courts having a jurisdictional trump-card with respect to any defamatory Scottish publication involving a comparatively small cross-border publication.

23. I am not impressed by this submission. The argument is symmetrical. The fact that the jurisdiction contended for by a defendant in an application for a stay is more favourable to defendants generally would, on this footing, result in Scottish courts having a jurisdictional trump-card.

24. Lord Goff addressed this question at p483 as follows:

> ‘Clearly, the mere fact that the plaintiff has such an [juridical] advantage in proceedings in England cannot be decisive. As Lord Sumner said of the parties in the *Société du Gaz* case, 1926 S.C.(H.L.) 13, 22:
>
> "I do not see how one can guide oneself profitably by endeavouring to conciliate and promote the interests of both these antagonists, except in that ironical sense, in which one says that it is in the interests of both that the case should be tried in the best way and in the best tribunal, and that the best man should win."
>
> Indeed, as Oliver L.J. [1985] 2 Lloyd's Rep. 116, 135, pointed out in his judgment in the present case, an advantage to the plaintiff will ordinarily give rise to a comparable disadvantage to the defendant; and simply to give the plaintiff his advantage at the expense of the defendant is not consistent with the objective approach inherent in Lord Kinnear's statement of principle in *Sim v. Robinow*, 19 R. 665, 668.
>
> The key to the solution of this problem lies, in my judgment, in the underlying fundamental principle. We have to consider where the case may be tried "suitably for the interests of all the parties and for the ends of justice." Let me consider the application of that principle in relation to advantages which the plaintiff may derive from invoking the English jurisdiction. Typical examples are: damages awarded on a higher scale; a

> more complete procedure of discovery; a power to award interest; a more generous limitation period. Now, as a general rule, I do not think that the court should be deterred from granting a stay of proceedings, or from exercising its discretion against granting leave under R.S.C. Ord. 11, simply because the plaintiff will be deprived of such an advantage, provided that the court is satisfied that substantial justice will be done in the available appropriate forum.'.

25. Defendants applying for a stay will commonly advance their case by setting out what they submit the issues of fact in the action are likely to be, what witnesses will be required to give evidence, and what the issues of law will be, and how they will be presented. Powerful arguments can be advanced on the basis that, for example, the main issue in the action is one of fact where all or most of the witnesses are in the jurisdiction contended for by the defendant, or that the issues of law are ones governed by the law of the jurisdiction contended for by the defendant.

26. In a libel action where the central issue is meaning it might also be possible to argue in an appropriate case that the tribunal of fact, usually a jury, should be drawn from the community within which the words complained of had a substantial circulation. There may be cases where the reasonable reader of a Scottish newspaper would have a knowledge or understanding relevant to meaning (or for that matter to reference) which a tribunal elsewhere (for example a London jury) might lack. There are cases where the issue of meaning, or the seriousness of a meaning, is sensitive to facts known, or understandings held, amongst particular communities.

27. That is not how the defendants have advanced their case before me. When I asked what the issues were likely to be (none being identified in their skeleton argument) I was told that it was unlikely that the defendants would attempt to prove the truth of the allegation of involvement in robbery which the claimant alleges is the meaning of the words complained of. I was told that the central issues will be the meaning of the words complained of, and, if that is resolved in favour of the claimant, then damages. Since the claimant is suing only on the publication in England, issues other than damages (see Norrie p186) would in principle fall to be decided by English law. It was not suggested, nor could it have been, that on the particular facts of this case an English jury would be less well equipped to decide the issue of meaning than would a Scots jury.

28. In fact it is unrealistic to contemplate the trial of the precise claim in this action in Scotland. If the proceedings are stayed, and if the claimant is minded to sue in Scotland, the realistic outlook would be that he would then sue on the Scottish publication, as well as all foreign publications, without either side considering it necessary to plead or prove either English or any other foreign law. That is what commonly happens in libel actions in England. So unlike almost all other types of litigation where the issue of *forum conveniens* is considered, the realistic outcome here (if the defendant succeeds) would be that this action (specifically on the English publications) would not be tried at all, but an entirely different action (on Scottish publications, with or without worldwide publication) would be pursued in Scotland under Scots law.

29. Not being in a position to advance arguments such as the convenience of witnesses, or the difficulty of proving foreign law in the claimant's chosen jurisdiction, or the

appropriateness of an English jury, the arguments on what is the appropriate forum were directed by Mr Barca at the merits of the claim. He pointed out that the defendants, and other newspapers circulating in Scotland had published a great deal of material concerning the claimant on days either side of 20th December (the date of the publication sued on) and that the claimant had not sued on these. He cast doubt on the motivation of the claimant, pointing to the fact that proceedings were issued only just within the one year English limitation period, and that the only letter before action had been on 20th December itself, and had referred to publications on 19th December, not those now sued on.

30. The defendants also point out that on 20 December 2002, over 20 times as many copies of their newspaper were sold in Scotland as in England: 461,294 copies compared with a mere 22,069 in England. Using their own, and commonly accepted calculations, it can be taken that the readership would have been up to three times those figures. But these figures seem to me to assist the claimant rather than the defendant. 22,069 copies, and up to three times as many readers, represent a substantial circulation upon which to sue for libel. The fact that there may be twenty times as many readers in Scotland is not, of itself, a reason for not suing in England.

31. In summary, Mr Barca accepted that the action is not an abuse of process, although he submitted that it comes close to that. I do not find these arguments helpful on this application. If a claimant brings the action in England as of right, and if the defendant otherwise fails to satisfy the burden of showing that Scotland is a more appropriate forum, it does not seem to me that the alleged weakness of his case on the merits, or his failure to sue on other possible libels, is a reason for holding that Scotland is the more appropriate forum.

32. Mr Parkes QC for the claimant submits that other relevant facts relied on by the Claimant may be summarised as follows. The Claimant was born in Northern Ireland but left it in October 1987 when he was aged sixteen. He then played for English clubs for thirteen years, until December 2000, when transferred to Celtic. He has played for Celtic since December 2000 (ie for two years at the date of publication). As a Celtic player he has a reputation in England. He played for Leicester City since February 1996 and made his home in Leicester. That is where he has put down roots and where his permanent home remains. He has many friends there, both within and outside football, and returns there as often as he can (two to three weeks in the summer and at least five times per season). His connections there remain strong, and he was made "Leicester City's Best Player in the Last Decade" at a dinner in spring 2003. He is likely to retire there when his career is over. His 11 year old daughter lives in Manchester with her mother. He visits her at least once a fortnight. He has played international football for Northern Ireland and captained the team until forced to give up international football by "Loyalist" terrorist threats. Those events were widely publicised in England. The Claimant presently has a flat in Glasgow, and has great affection for Scotland and Celtic. If he leaves Celtic the chances are that his next club would be English. The incident referred to in the article took place in England.

33. None of these matters is in issue. On the other hand, the defendant emphasises that the Claimant does now live in Scotland, and plays for a Scottish team.

34. The Claimant also states that (as a Northern Irish Roman Catholic) he is unhappy about the religious sectarianism of Glaswegian life, and does not want to conduct libel litigation against a sectarian backdrop. This is a submission that appears to assume

that litigation in Scotland would be conducted in Glasgow. Mr Barca submits that a libel action such as this would almost certainly be litigated in Edinburgh. I do not need to make any finding on this submission, and do not do so. However, I do observe that there have been criminal cases in involving allegations of assault by famous footballers, and it is sometimes considered appropriate that such cases be tried away from the place where the footballers in question habitually play, in order that the jury should appear independent and impartial. There could be similar arguments in a case such as the present.

35. The upshot is that I accept that the Claimant has real connections with England, as he does with Scotland, and that he has an existing and substantial reputation in both jurisdictions.

36. In support of his contention that England is the appropriate forum, Mr Parkes QC makes the following submissions:

> i) The relevant tort (the "harmful event" within Schedule 4, Art 3(c) of the 1982 Act) occurred in England, by publication of a very substantial number of copies of the Daily Record. The Claimant only sues on publication in England, where damage is presumed (*Shevill v Press Alliance* [1996] AC 959).
>
> ii) There is a general presumption, on which the Claimant is entitled to rely, that the natural forum in which to try a dispute is that of the jurisdiction where the tort was committed (*The Albaforth* [1984] 2 Ll Rep 91; *Berezovsky v Michaels* [2000] 1 WLR 1004). That is a "weighty factor" pointing to the appropriateness of the English jurisdiction.
>
> iii) The Claimant plainly has an important reputation to defend in England, and the English courts are the natural forum for achieving vindication of a reputation in England (*King v Lewis* [2004] EWHC 168 (QB)).
>
> iv) It is uncertain what (if any) substantive defences might be pleaded, but it is unlikely that there could be any significant difference in terms of costs and convenience between trying the Claimant's complaint in England or in Scotland (none being suggested in the Defendant's evidence).

37. I accept Mr Parkes QC's submissions. The defendant has failed to satisfy me that Scotland is the appropriate forum for the trial of the action, that is to say, that it is the jurisdiction in which the case may be tried more suitably for the interests of all the parties and the ends of justice. The application for a stay will be dismissed.

Meaning – the applicable principles

38. The applicable principles are uncontroversial. The judge's function, namely to delimit the range of meanings of which the words are capable and to rule out any meanings outside that range, is an "exercise in generosity, not in parsimony" (*Berezovsky v Forbes* [2001] EMLR 45 at [16], per Sedley LJ). Eady J produced an "impeccable synthesis" of the authorities (Lord Phillips MR, on appeal: [2001] EWCA Civ 1263 at [7]) in *Gillick v. Brook Advisory Centres*:

> 'The proper role for the judge when adjudicating a question of this kind is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably

> capable, exercising his or her own judgment in the light of the principles laid down in the authorities and without any of the former Order 18 Rule 19 overtones. If the judge decides that any pleaded meaning falls outside the permissible range, then it will be his duty to rule accordingly. In deciding whether words are capable of conveying a defamatory meaning, the court should reject those meanings which can only emerge as the produce of some strained or forced or utterly unreasonable interpretation. The purpose of the new rule is to enable the court to fix in advance the ground rules and permissible meanings, which are of cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the claimant's reputation but also for the purpose of evaluating any defences raised, in particular, justification and fair comment.
>
> The court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naive or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task'.

39. Mr Barca also submits that in assessing the attitude and disposition of the "hypothetical reasonable reader", as summarised by Neill LJ in *Gillick*, the Court must apply contemporary standards of reasonableness relevant to an age of almost constant exposure to all manner of media (traditional and electronic). It would be wrong to hark back to a time when the courts were perhaps prepared to assume a greater potential for suggestibility among members of the public. As Eady J observed in *Lukoviak v Unidad Editorial SA* [2001] EMLR 46 (at para 47, speaking in the context of qualified privilege):

> "Under the Human Rights Act 1998, the courts must have regard to the latest developments in the jurisprudence of the European Court of Human Rights. This would include the situation when an English judge is called upon to rule on 'social or moral' duty. It would seem also to be necessary, in view of the elasticity of this form of qualified privilege, for a judge to have an eye to the continuing changes in social conditions in most of the developed countries. It is necessary, in particular, to take account of the rapid growth in electronic communications over the last few years and the consequences of now living, in effect, in a global village. Moreover, the media are now widely recognised as having the right, and

> indeed duty, to impart information and ideas, and especially with regard to matters of public interest: see e.g. *Bladet Tromsø v Norway* 29 EHRR 125, *Thorgeirson v Iceland* 14 EHRR 843, *Reynolds v Times Newspapers Ltd* (cited above), and *McCartan Turkington v Times Newspapers Ltd* [2000] 4 All ER 913. Correspondingly, the public is more readily acknowledged nowadays as having a right to receive such information and to be kept up to date. It is perhaps also fair to say that ordinary citizens are now perceived by the courts, both domestic and international, as having stronger stomachs and more discriminating judgment than was traditionally recognised."(emphasis added by the defendant)

40. Mr Barca explicitly recognises that that passage is in the context of qualified privilege, and there is no corresponding passage in relation to meaning. Nevertheless, it seems to me that there is force in his point that a modern readership can be treated as more discriminating and better able to understand what they read. The ordinary reader must presumably now be credited with having achieved a level of education which was not widely accessible to earlier generations.

41. Mr Parkes QC also relies on *Jameel v The Wall Street Journal* [2003] EWCA Civ 1694. At paras [9] and [14] Simon Brown LJ (as he then was) drew attention to what a judge's ruling excluding a meaning really amounts to. At para [9] he said it involves his saying that 'no reader could reasonably understand the words to bear any meaning outside the range delimited … by the judge; and that it would be "perverse" for any jury to do so…'

42. The words complained of, as set out in the Particulars of Claim, are as follows:

(*on the front page*)
Toon cops will quiz ALL Celtic Squad
EXCLUSIVE
By ROBERT FAIRBURN
Detectives are preparing to travel to Scotland to quiz the entire Celtic squad after their Christmas night of shame in Newcastle.
Officers in Northumbria are now studying CCTV footage – and also have appealed for witnesses.
The move comes after Daily Record photographer Paul Chappell's £12,000 cameras were taken from him outside Buffalo Joe's nightclub in Newcastle, on Tuesday night. The digital memory cards were stolen.
Three Celtic players – Bobby Petta, Johan Mjallby and Joos Valgaeren – were held in police cells on suspicion of robbery.
They were released on police bail on Wednesday evening.
They are due to return to Gateshead police station on March 24, when they will find out whether they have been charged, if bail will continue or the case has been dropped.
A Northumbrian Police source said last night: "This is not finished by a long shot. We intend to travel north and speak to anyone else who might have been involved."
The police have held on to the damaged cameras for forensic tests. They also took Paul's jacket, shirt and camera bag to assist their inquiries.
The Record told yesterday how the (*text continues on page 7*)
Cops head to Glasgow to quiz Celts
FROM PAGE ONE

Celtic party had been involved in a rumpus with bouncers at Buffalo Joe's and were snapped by Paul and other photographers.
Several players surrounded Paul and wrenched his cameras from him, ripping out the digital cards. . .
(immediately above **Cops head to Glasgow to quiz Celts** appeared copies of two previous front pages of the Daily Record which read as follows)
(first reproduction of a former Daily Record front page)
EXCLUSIVE
THE TRUTH BEHIND CELTIC STARS' SHAME
THUGS & THIEVES
"I was terrified . . . they were out to give me a doing."
(second reproduction of a former Daily Record front page)
CELTIC STARS RUN AMOK
Lennon led away in handcuffs
(the following article appeared on page 6)
Our man hands over clothes as evidence
by ROBERT FAIRBURN
The clothes worn by Record photographer Paul Chappells during the Newcastle fracas have been taken for examination by police.
In the wake of his allegations, officers took his jacket and shirt and they will be examined by forensic experts as they search for key evidence to identify his attackers.
They have also kept his badly damaged cameras for fingerprinting and possible DNA testing.
Paul had joined other photographers situated outside Buffalo Joe's.
The Celtic party was already inside.
. . .
Journalists from another newspaper were inside when trouble broke out and the players were ejected.
Paul captured the scene before his flash attracted the attention of the Celtic party and he was chased, pinned to the ground and had his kit removed and damaged.
When officers from Northumbria Police interviewed Paul later at his Newcastle hotel, it was evident they were taking the matter very seriously.
They took away his coat and also a grey shirt for evidence purposes.
His cameras were already in the possession of the police but a camera bag was also taken the following morning with the police anxious not leave any stone unturned during the investigation.
(in the adjacent column to **Our man hands over clothes as evidence** appeared the following piece)
RECORD DEBATE
What do you think of the behaviour of Celtic players in Newcastle?
. . .
They have let the club down badly. It's amazing how Neil Lennon can chase a photographer down but he can barely run on the pitch!

43. The meanings pleaded by the Claimant are that the Claimant pursued and robbed a Daily Record photographer of £12,000 worth of camera equipment, or that it is highly likely that he did so. In other words there is a higher pleaded meaning of actual guilt of robbery, and a lesser meaning expressed in terms of that being 'highly likely'. Less defamatory meanings than either of these could be formulated as possible meanings.

44. Mr Parkes QC submits that the real issue is how far the articles are capable of implicating the Claimant. He stresses the following factors in his submission:

i) It is plainly suggested that a substantial number of Celtic players were involved in the incident outside Buffalo Joe's: see the headline, "Toon cops will quiz all Celtic squad"; and that the entire party had been involved in a rumpus with bouncers and was ejected together from the nightclub, to be photographed by Mr Chappells, whereupon he was chased and set upon. "Several" players are said to have surrounded Mr Chappells and taken his equipment. The arrest of three players (not including the Claimant) for robbery is said to be far from the end of the matter, and further evidence is sought with a view to identifying his attackers. Hence it is made clear that more players are under suspicion of involvement than the three arrested on suspicion of robbery.

ii) Four players are described as having been arrested, three on suspicion of robbery and one for arguing with the police. The reference to the Claimant as having been arrested places him squarely with the group under investigation and at the scene of the incident, even though his arrest was not on suspicion of robbery.

iii) Crucially, a reader's observation is printed that "It's amazing how Neil Lennon can chase a photographer down but he can barely run on the pitch".

45. Mr Barca's submissions are as follows. He says that the 20 December articles are simply incapable of ascribing guilt or a suspicion of guilt to the Claimant with respect to the "stolen" cameras. The front page article expressly identifies the three players (Valgaeren, Mjallby and Petta) who were held in police cells for 18 hours on suspicion of robbery, and who were due return to Gateshead police station the following March to find out whether they were to be charged or bailed, or the case was to be dropped. It is made abundantly clear that these three players are the only ones facing charges and that the police would be interviewing other Celtic players present during the "night of shame" not as potential further suspects, but as part of the "appeal for witnesses". Continuing from the front page on page 7, the same article again makes it clear that it was Petta, Mjallby and Valgaeren who "were led away for questioning". By way of contradistinction - further highlighted by the use of italics - the very next paragraph expressly records that the Claimant "was arrested after arguing with a police officer, but was later released without charge." For good measure, the article on page 8 also identifies Mjallby, Petta and Valgaeren as the "three players arrested in Newcastle" who "hung their heads in shame as they passed the Press" during a charitable visit to a Glasgow hospital. Since the main (front-page/page 7) article plainly identifies the police's three suspects facing charges, and specifies precisely why the Claimant was arrested and later released without charge (namely, after arguing with an officer), Mr Barca submits that only an unreasonable reader avid for scandal could conclude that the Claimant was still under "suspicion of robbery" (still less that he was actually guilty) by reference to the photomontage and/or the text message. Taken at face value (even to a reader who had read or knew nothing of the previous two days' reports in the Daily Record) the text message reasonably suggests (albeit incorrectly) no more than that the Claimant chased a photographer: it is of itself incapable of conveying any inference that the Claimant stole a photographer's cameras.

46. The words are, in my judgment, plainly capable of bearing the meaning that someone robbed Mr Chappells. A reasonable reader could well understand that to be the allegation being made by Mr Chappells which the defendant is reporting. Similarly,

there is no doubt that the text message sent by the reader is capable of bearing the meaning that the Claimant chased Mr Chappells down.

47. But there is no express allegation that the Claimant was party to a robbery. If that meaning is to be derived from the words complained of, then it must be by inference. It seems to me that only a reader who was unduly suspicious and avid for scandal could understand the words complained of, taken as a whole and in their context, as meaning that the Claimant robbed a Daily Record photographer of £12,000 worth of camera equipment. I would regard a reader who understood that as utterly unreasonable and perverse.

48. It is less clear whether any one but such a reader could understand the words complained of to mean that that was highly likely, as opposed to something less, such as probable or possible. However, my task is not to decide what the words do mean, but to delimit the range of meanings of which the words are reasonably capable, and to reject any pleaded meaning that falls outside the permissible range. Treating this, as I must, as an exercise in generosity, not in parsimony, I find that the lesser pleaded meaning is within the permissible range.