

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 35/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN GEORGE GRAHAM DEFENDANT/APPELLANT
A N D ELVIN NASH PLAINTIFF/RESPONDENT

Ian Ramsay for appellant

Gordon Robinson for respondent

20th November & 20th December, 1990

CAREY, J.A.

On 20th November last, we allowed this appeal, set aside the Order of the Court below and ordered that the suit be removed from the said Court into the Supreme Court. We fixed the costs of the appeal at \$500 and promised to put our reasons in writing. We now fulfill that promise.

The matter arose in this way: On 2nd February, 1990 Mr. Elvin Nash filed a plaint in the St. Andrew Resident Magistrate's Court against Mr. George Graham: it was a running down action. On 12th April, 1990 the defendant filed a counter claim in negligence against the plaintiff. On 8th March one Kathleen Earle filed a writ against the defendant George Graham claiming damages for personal injuries received while she was a passenger in the car driven by Elvin Nash into the rear of which, Graham's car negligently collided. Finally, in this catalogue of proceedings, third party proceedings were filed in the Supreme Court by Mr. George Graham claiming to be indemnified by both Nashs against the claim by Ms. Earle. The result therefore of a collision between two motor vehicles was proceedings in two courts. The Resident Magistrate's Court, St. Andrew was the forum

convenient to Messrs Nash, Senior and Junior, on the one hand, and Mr. Graham on the other for the hearing of the plaint and counter claim. Each side sought special damages for the damage done to their respective motor vehicles. The Supreme Court was the forum chosen by the passenger in respect of her claim for personal injuries. Mr. Graham's third party proceedings brought the Nashs into the Supreme Court. All parties are in the Supreme Court; only Ms. Earle is not before the Resident Magistrate's Court.

This then was how matters stood when Mr. Graham applied in the Resident Magistrate's Court for an order that -

".....all further proceedings in this action be removed into the Supreme Court and consolidated with Suit No. C.L. E025 of 1990 being the action between **KATHLEEN EARLE** and **GEORGE GRAHAM**, the Defendant herein and the Third Parties **ELVIN NASH Snr.** the Plaintiff herein, and **ELVIN NASH Jnr.**, or that this action be adjourned pending the outcome of the said action in the Supreme Court."

On 27th June, 1990 His Honour Mr. E.M. Robinson dismissed the application. The appeal to this Court is from that refusal.

The same points urged upon the learned Resident Magistrate by each side were reiterated before us. Mr. Ramsay submitted that the Resident Magistrate had wrongly exercised the discretion given to him by Section 130 Judicature (Resident Magistrates) Act. Mr. Robinson on behalf of the respondent for his part, said Mr. Nash who initiated action had a right to choose his forum and therefore had a right to be in the Resident Magistrate's Court. He said that in the Supreme Court action this plaintiff is relegated to being a third party, having been brought in by Mr. Graham who, although a defendant in the Supreme Court, has filed a counter claim to the Resident Magistrate's action and wishes the matter resolved in that court. He dismissed, as a contrivance,

the third party proceedings filed by Mr. Graham to get his clients involved in proceedings in the Supreme Court. Moreover, the matter in the Resident Magistrate's Court is a simple one within that court's jurisdiction. The issue in the Supreme Court is between Ms. Earle and Mr. Graham and in that Mr. Wash cannot be involved in that Ms. Earle (the passenger in his client's car), chose to sue Mr. Graham alone. Finally, the indemnity claimed by Mr. Graham is against Messrs. Wash, Senior and Junior an issue the same as that before the Resident Magistrate's Court.

The learned Resident Magistrate held in the first place that the case before him including the counter claim is not a fit case for the Supreme Court. He pointed to the following factors which led him to that view -

- "(1) The claim is for \$10,000 all special damage.
- (2) No general damages are claimed.
- (3) The findings as to the liability is the normal every day function of a Judge.
- (4) The claim is within the jurisdiction of the Court.
- (5) No abstruse points of law are likely to be argued.
- (6) The Plaintiff has consented to the counter claim being tried in this Court."

He discounted altogether the fact that another party had been added by reason of the proceedings filed in the Supreme Court, but gave no reason for that conclusion except a laconic - "I think not."

The Resident Magistrate is required to exercise the discretion conferred on him by Section 130 of the Act, judicially. This court can only interfere with the exercise of that discretion where he is shown to have relied on some wrong principle of law or incorrectly applied a correct principle or did not take into

consideration relevant circumstances. I am supported in this view by the authoritative words of Lord Atkin in Evans v. Bartlam [1937] 2 All E.R. 640 at p. 650. He said -

"Appellate jurisdiction is always statutory; there is in the statute no restriction upon the jurisdiction of the Court of Appeal, and, while the appellate court, in the exercise of its appellate power, is no doubt entirely justified in saying that normally it will not interfere with the exercise of the judge's discretion except on grounds of law, yet, if it sees that, on other grounds, the decision will result in injustice being done, it has both the power and the duty to remedy it."

In the instant case, the learned Resident Magistrate did not, in my view, consider all the relevant circumstances. It was indeed the fact of Ms. Earle's claim for personal injuries which added a new dimension. It was in the interest of all parties involved in the motor vehicle accident to have the issue of liability and the assessment of damages adjudicated upon, so far as possible in the same forum. There would be considerable saving in costs and in time. Plainly, the assessment of personal injuries could only take place in the Supreme Court. The refusal of the Order by the Resident Magistrate would prolong the determination of the issues between the parties. In the one case, there would be hearings in two different courts at some protracted intervals; in the other, there would be a determination in one court. I do not think that there can be any advantage to be gained in the former and justice therefore is better served in the latter.

Mr. Robinson pointed to the fact that liability as between the owners of the cars was before the Resident Magistrate's Court especially in light of the counter claim.

Strictly speaking, the counter claim was not properly before the court because the amount claimed was in excess of the jurisdiction of the Resident Magistrate's Court. The plaintiff i.e. Mr. Nash cannot unilaterally consent to the counter claim in its unaltered form. Apparently, some such consent had been provided. The proper procedure would be for Mr. Graham (the defendant) to expressly abandon the excess above the limit of the court's jurisdiction. Howsoever that might be, the argument in my view, does not address the real question for decision, which was, on balance which was the better forum having regard to the parties, the issues to be determined and the jurisdiction of the court to deal with all those issues at one and the same time. In exercising his discretion in the manner he did, I fear the Resident Magistrate fell into error.

In my opinion, this is enough to dispose of this appeal. It was for these reasons that I agreed that the appeal should succeed and the Order made as appears at the beginning of this judgment.

WRIGHT, J.A.

I agree.

GORDON, J.A.

I agree.