JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 49/71

BEFORE: The Hon. Mr. Justice Luckhoo, Presiding
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

B E T W E E N ALLAN ARSCOTT JUDGMENT CREDITOR/RESPONDENT

A N D GEORGE THOMAS JUDGMENT DEBTOR/APPELLANT

W.K. Chin See for the Appellant.

H.D. Carberry for the Respondent.

8th October and 12th November 1971

EDUN J.A.

In the proceedings before the learned Resident Magistrate for the parish of St. Ann, Allan Arscott asked the Court for an order that the deputy clerk of courts pay out to him the sum of $76.65c. It appears that Allan Arscott obtained a judgment against George Thomas on 6th June 1961 in the sum of $67.63c. and up to the date of his application in 1970 the judgment debt amounting then with interest to $81.14c. was unsatisfied. In 1968 George Thomas in plaint 825/68 obtained judgment against Allan Arscott and after execution for the amount thereon the sum of $76.65 was deposited by the bailiff with the clerk of courts.

The learned resident magistrate at the end of the hearing ordered that the sum of $76.65 then standing to the credit of George Thomas in suit 825/68 in the books of account of the deputy clerk of courts St. Ann, be paid out to the judgment creditor Allan Arscott. Against that order George Thomas has appealed.

Learned counsel for the appellant on the first ground of appeal submitted that the learned resident magistrate erred in law when he held that the authority of the Attorney General was not necessary before the money held by the clerk of courts could be released for attachment of the judgment debt. He relied upon s.235 of the Judicature (Resident Magistrates) Law Cap. 179 which provides, thus -

"Property in the hands or under the control of any public officer in his official capacity, shall be liable to attachment in execution of a judgment, with the consent of the Attorney General, and property in custodia legis shall be liable to attachment by order of the Court.

The attachment shall take effect from the service of the summons on such officer, or in the case of property in custodia legis, from the date of the order of the court."

Learned counsel for the respondent submitted that in the instant case there was money standing in the name of the judgment debtor and that the authority for paying it out rested with the resident magistrate; there was therefore no necessity for the judgment creditor to seek the consent of the Attorney General.

In our view, there are two separate categories of property considered by section 235 -

1 property in the hands or under the control of any public officer in his official capacity; where leave (by consent of the Attorney General) is necessary before such property can be attached; and

2 property in custodia legis which shall be liable to attachment by order of the court.

We venture to say that in the first category is included property which by virtue of the law has been vested as, for example, in the Commissioner of Lands or certain other Crown property in the Accountant General: see Crown Property (Vesting) Law 1960 replacing the Colonial Secretariat Law Cap.67, and the Chief Secretary (Vesting of Property) Law No.3 of 1958. Those public officers acquire a special property in their official capacity, that is, neither for themselves nor as agents for anyone nor for any private purposes. So too money in the hands of a receiver is not in custodia legis in the same way as if it were in the hands of a sequestrator: In re Hoare, Hoare v. Owen (1892), 3 Ch. 94. Sterling J. at p.99 said:-

"A receiver cannot be more the agent of the plaintiff than a sequestrator; Walker v. Bell 2 Madd.21, is an authority to shew, that rents received by sequestrators are not considered as vesting in the plaintiff, but are in custodia legis; and there must be a further order before they can be applied for the benefit of the defendant; and if other parties come in the meantime, and establish a prior right, they become entitled to them."

In the instant case the deputy clerk of courts was holding the sum of $76.65 which the bailiff by virtue of a process paid to him in accordance with Order 2 Rule 22 of the Resident Magistrates Court Rules. By rule 30 of those rules the deputy clerk of courts held that sum as "suitors moneys" and he had to account for it in accordance with Order 2 Rules 31 - 48. There is no doubt that the deputy clerk of the courts was an "officer" and that he held the money in his capacity as clerk but it cannot be said that the sum of $76.65 was in his hands or that he had control of it, in the sense that he had any better right to it than the bailiff. In other words, apart from his keeping that money, he could not invest, assign, transfer or in any way deal with it. At all times, that money belonged to George Thomas until it was otherwise disposed of by an order of the court.

We are here concerned with the second category, whereby on the actual seizure of goods by a bailiff, the goods are placed in custodia legis. In Giles v. Grover (1832) 131 E.R. 563 Patteson J. makes the position quite clear in his judgment at p.567 -

> "..... It is undoubtedly true, that the sheriff does, by the seizure, acquire a special property in the goods. He may maintain trespass or trover for them: Wilbraham v. Snow 86 E.R.37, Mildmay v. Smith 85 E.R.1139; he is answerable to the creditor if they be rescued; and he is bound to sell them: Clerk v. Withers 92 E.R. 211. But on full consideration it seems to me that this property vested in the sheriff by seizure is merely that which results from his being the appointed officer of the law to enable him to sell the goods and raise the money, not that thereby the property is taken out of the debtor. The goods are, in substance, in custodia legis, the seizure made by the officer of the law is for the benefit of those who are by law entitled, it is made against the will of the debtor, and no property is transferred by any act of his to the sheriff. In this respect it differs from all cases of special property, and of charges on goods created by the debtor while he has the absolute dominion over the goods."

Patteson J., was one of the majority of judges of the Court of Exchequer Chamber expressing the above view. On appeal, the House of Lords dismissed the appeal and affirmed the views of the majority of judges.

We therefore do not agree that in cases like the present the authority of the Attorney General is necessary before the money held by the clerk of courts can be paid out to Allan Arscott, a judgment creditor.

The second ground of appeal reads thus:

"That the learned resident magistrate erred in law when he held that the judgment debt could be enforced after a lapse of 6 years without obtaining leave to proceed."

Learned counsel for the appellant submitted that though Allan Arscott obtained judgment against George Thomas in 1961 it was not until 1968 when the sum of $76.65 was paid by the bailiff to the deputy clerk of courts for and on behalf of George Thomas that Allan Arscott made application for the money to be paid to him. He argued that it is not clearly stated in the Laws of Jamaica whether a judgment debt was barred after 6, 12 or 20 years. However, he submitted that if the debt upon which the judgment was obtained was in trespass, assumpsit or on the case, recovery of the debt was barred after 6 years, but if on specialty, after 12 years. In the instant case, he said, the original action was based on debt and therefore the judgment debt could not be enforced after a lapse of 6 years without leave. Counsel for the respondent submitted that from a perusal of ancient English legislation and our present law, the limitation period is 20 years.

By s. 46 of the Limitation of Actions Law, Cap. 222, the operation of the Imperial Statute 21 James I Cap. 16 (1623) "..... has been recognized and is now esteemed, used, accepted and received as one of the laws of this island ....." That statute, however, applies to all actions arising out of simple contracts and to all actions of tort at common law. It does not apply to an action brought on a statute for its statutory debt, or on a record (Jones v. Pope) (1666) 1 Wms. Saund. 37) or other specialty (see also Jones v. Pope).

The period of limitation for actions of debt upon an indenture of demise, or for actions of covenant or debt upon any bond or other specialty, or for actions of debt or scire facias upon a recognizance (in England until 1939) was 20 years after the accrual of the cause of such actions: Civil Procedure Code Act (1833) (3 & 4 William 4, C. 42) s. 3. There are not in Jamaica provisions similar to the Limitation Act (U.K.) 1939. Before the Act of 1833 there was no limitation in England for those actions but there was a presumption on the expiration of 20 years from the time when the cause of action accrued that debts in respect of which such actions could be brought were paid, unless any acknowledgment of the debt or any part payment of interest

had been made: per Jessel M.R. in Sutton v. Sutton (1882) 22 Ch. D. 511 at p. 515. But apart from that presumption, when judgment has been recovered by a plaintiff, the cause of action is changed into a matter of record and the inferior remedy is merged into the higher: King v. Hoare (1844) 3 M & W 494. Further, section 52 of the Limitation Law (Jamaica) Cap. 222 provides:-

> "All bonds and every other writing obligatory whatsoever, whereon no payment has been made or action brought within the space of twenty years from the time they respectively became or shall become due, or from the last payment thereon, shall be null and void to all intents, constructions and purposes whatsoever: ....."
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> "A bond is the plainest and simplest kind of specialty ..."

See dictum of Maule J. in Cork & Bandon Rail Co. v. Goode (1843 - 1860) A.E.R. Reprint p.671 at p.673.

From the foregoing provisions of law and decisions mentioned we are of the view that the limitation period for the recovery of the fruits of a judgment debt in Jamaica shall not be less than a period of 20 years.

In the instant case the period of limitation of 20 years had not yet expired at the time when Allan Arscott sought to recover the sum of $76.65 and though it had been stated by the learned magistrate in his reasons for judgment "that the limitation period did not apply" to the proceedings before him we see no reason to disagree with the judgment in any other respect. For the reasons given the appeal is dismissed. Judgment of the learned resident magistrate is affirmed with costs of $40.00 to the plaintiff/respondent against the defendant/appellant George Thomas.