

CA Practice and Procedure - Costs - Default Judgment - adjourned sine die and Order that Costs be paid in the cause -
Defendant - Judgment entered against Defendant - costs to be awarded to plaintiff (plaintiff's default judgment regular and plaintiff affected minimally. Appeal allowed, order for costs in the cause set aside, order that costs to JAMAICA plaintiff)
No costs referred to

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 34/88

See SCCA 33/88
(same parties/same)

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

Civil Procedure
(Costs)

BETWEEN NORMAN BECKFORD

PLAINTIFF/APPELLANT

AND ALCAN PRODUCTS OF JAMAICA LIMITED

DEFENDANT/RESPONDENT

Orrin K. Tonsingh for Appellant

Robert Baugh for Respondent

January 24, 1989

ROWE, P:

Gordon, J., at the hearing of the assessment for damages on the 25th of May, 1988, ordered that the hearing be adjourned sine die and that the costs of the day be costs in the cause.

Default judgment which had been entered against the defendant/respondent was set aside on the day before the date set for the assessment of damages. The judgment for default was a regular judgment and was set aside because the defendant/appellant had shown to the satisfaction of the Master that there were triable issues and at the time when the default judgment was set aside, it was ordered that the costs of the plaintiff should be paid by the defendant/respondent. Consequently, the appellant is saying that the order made by the learned trial judge as to costs was wrong in principle, for two reasons. Firstly, it was possible that this defendant/

respondent, if he succeeded completely, at the hearing of the case, could receive costs for the day of assessment; and secondly, that this was a case in which the appellant had done nothing wrong, had had his summons for assessment set down in a regular way and yet he was not given costs as a successful litigant was entitled to.

We have looked at the history of the matter. In this case default judgment was entered on the 20th of August, 1987. An application to set it aside came before the Court on the 21st of April, 1988 and on that occasion it was adjourned to the 5th of May for the defendant to be given an opportunity to file an additional affidavit. The matter came up again on the 5th of May at which time the affidavit, having been served on the 4th of May, had not yet been placed on the file and therefore could not have been used by the respondent without the consent of the appellant and so the case was further adjourned to the 24th of May, 1988. The default judgment was on that occasion set aside with costs to the plaintiff.

This is a case in which, as Mr. Tonsingh has submitted, the plaintiff has acted in a normal way; the judgment was regular and therefore the learned trial judge had no basis in law for placing the plaintiff at risk in relation to the question of costs in the event that the case, when completed, was decided completely against him. We think he is correct. We think also, that the point made by Mr. Baugh that the true order should have been an order that there would be no order as to costs is not the correct order in the instant case as there is nothing on which the plaintiff could be faulted.

We think that the appeal should be allowed; that the order that costs be costs in the cause should be set aside, and an Order that the plaintiff should have the costs thrown away including the costs of May 25, 1988 be substituted. The appellant will have his costs of the appeal to be agreed or taxed.