

CAYMAN ISLANDS

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO: 1/80

BEFORE: The Hon. Mr. Justice Zacca - President (Ag.)  
The Hon. Mr. Justice Kerr, J.A.  
The Hon. Mr. Justice Rowe, J.A.

BETWEEN                      LORNA BODDEN                      PLIANTIFF/APPELLANT  
A N D                              JAMES LAWRENCE                      DEFENDANT/RESPONDENT

Mr. O. L. Panton for Appellant.

Mr. R. D. Alberga Q.C. for Respondent

June 17, August 12, 1980

ROWE J.A.

At the conclusion of the hearing of the appeal on June 17, 1980 we dismissed the appeal with costs to the respondent to be taxed or agreed and promised to put our reasons in writing. This we now proceed to do.

The appellant's action for goods sold and delivered was heard in the Summary Court of the Cayman Islands on October 7, 1977 before the learned Stipendiary Magistrate, His Lordship Mr. Milton Hercules who gave judgment for the appellant in the sum of \$108.98 and Costs \$60.00. The respondent, being dissatisfied with the judgment gave verbal notice of appeal whereupon the learned Magistrate ordered him to enter into a "Cash bond in \$300.00 in prosecution of appeal." He complied with this order on October 10, 1977 and on the hearing of his application for a stay of

Execution he complied with a further Order of the Court to pay into Court the full amount of the judgment. When the appeal came on for hearing before Summerfield C.J. on July 25, 1979, Counsel for the respondent could aver "\$408.98 in court".

In support of one of his grounds of appeal from the decision of the learned Magistrate, the now respondent, filed an affidavit alleging that there were extremely serious omissions from the notes of evidence. Neither that affidavit nor the affidavit in reply were referred to the learned Magistrate for his comments. See R. v. Junor et al (1933) J.L.R. 24, and consequently on the hearing of the appeal before Summerfield C.J., Counsel on both sides agreed that there would have to be a new trial if the plaintiff/respondent's preliminary point that the appeal was not properly before the Court as Section 41 (1) of the Summary Jurisdiction Act was not properly complied with, did not succeed. The preliminary point did not succeed and that same point forms the subject matter of Grounds 2 and 3 of the instant appeal. They read:

Ground 2

"That the appellant not having complied with Section 41 (1) of the Summary Jurisdiction Law, Law 10 of 1975, in that no Costs of the Appeal in the sum of \$25.00 were paid into Court."

Ground 3

"That the Learned Chief Justice ought to have found that in the event that no such costs having been paid into Court ought to have disallowed the appeal, in accordance with the above Section which reads, "rights of Appeal shall cease and determine"."

Notwithstanding the drafting style, we understand the grounds.

Section 41 (1) of the Summary Jurisdiction Law provides:

41 (1) "An appellant shall either give oral notice of appeal in court, if the respondent is present at the time, immediately after the giving of the decision against which he desires to appeal, or shall deliver a written notice of appeal, signed by the appellant or his legal representative, to the Chief Clerk and to the respondent within seven days after such decision is given; and in either case, within a further period of seven days after the first such period, shall deliver to the Chief Clerk and to the respondent a statement in writing, signed by the appellant or his legal representative, setting forth the grounds of his appeal and shall enter into recognizance, with or without sureties as the court may direct, in such sum, not exceeding the amount (if any) in issue in the appeal and a further sum not exceeding twenty-five dollars in respect of the costs of the appeal, as the court shall direct, for the due prosecution of the appeal and the compliance by the appellant with all judgments, orders or other decisions of the Grand Court in the matter, and, if the appeal be not allowed the payment of any sum adjudged to be paid together with all costs of the proceedings in the court and in the appeal, if the Grand Court shall so direct."

In his careful judgment, Summerfield C.J. held that the order for the Cash Bond in the sum of \$300.00 was ultra vires but that in complying with it, the present respondent had met in substance the maximum requirements as to security for costs. Mr. Panton argued before us that Section 41 (1) must be strictly complied with and that the giving of security for costs was a condition precedent non-compliance with which would cause the appeal to cease and determine.

In Welds v. Kingston Ice Making Co., Ltd. and Smith (1962) 5 W.I.R. 56, the Jamaican Court of Appeal held that the giving of security for costs as required by Section 256 of the Resident

Magistrate Law, Cap. 179 (J) was a condition precedent and could not be treated as a formality. In that case the statute expressly laid down the sum to be lodged as "security....for the payment of any costs."

The provisions of Section 41 (1) of the Summary Jurisdiction Act can be conveniently compared with Section 16 (2) of the Court of Appeal Law, Law 9 of 1975 which provides:

16 (2) "The appellant shall at the time of lodging the notice of appeal required by subsection (1) deposit in the Grand Court the sum of fifty dollars as security for the due prosecution of the appeal together with such further sum as security for costs of the appeal as the Judge of the Grand Court may direct and such security for costs may be given by the appellant entering into a bond by himself and such sureties and in such sum as the Judge of the Grand Court may direct, conditioned for the payment of any costs which may be awarded against the appellant, and for the due performance of the judgment of the Court."

There is no doubt under the Court of Appeal Law that a cash sum of \$50.00 for the due prosecution of the appeal must be deposited in Court and that this is quite separate from the amount of Security for Costs which is not fixed by the statute but left to the discretion of the Court and which may be by way of a cash deposit or by bond.

The first point to be noticed in relation to Section 41 (1) of the Summary Jurisdiction Law is that the Section does not in terms mention a money deposit and it appears to us that it is impossible to import a local custom as an aid to statutory interpretation which would entirely contradict the language of the statute. The next significant point is that the appellant is required to enter into recognizance with or without sureties as the

Court may direct, in such sum, not exceeding the amount (if any) in issue in the appeal and a further sum not exceeding twenty-five dollars, in respect of the costs of the appeal, as the Court shall direct, for the due prosecution of the appeal..... Only one recognizance is required and on the grammatical construction of the sentence the single recognizance is to reflect the two amounts (if both are relevant) as fixed by the Court. The Court has a liberty to insist upon full protection for the successful litigant in the event of an appeal, or to facilitate an appellant with an arguable case but whose financial circumstances might be out of step with the merit of his case.

In providing as it has done in Section 41 (1) the legislature might very well have intended to avoid the evil consequences of cases like Welds vs. Montego Bay Ice Company (Supra). Be that as it may, the learned Magistrate was clearly right when he essayed to fix a global sum for the bond into which the appellant ought to enter. Where, however, the learned Magistrate fell into error, is when he failed to make an accurate arithmetical calculation as to the outer boundaries of his jurisdiction under Section 41 (1). He imposed a burden upon the present respondent, which was not his to bear, but gallantly he made no point of it. He complied and gave to the appellant a protection greater and more abundant than her legal rights required.

We agree with the learned Chief Justice that there was substantial compliance with the statute and full compliance with

6.

the order of the Court. As Section 41 (1) stands there is no necessity for the Court in fixing the amount of the recognizance to apportion it as to what is attributable to damages and what to the costs of appeal. So, however, that litigants might become aware of the mind of the Court, the recommended practice is that the Court should disclose the manner in which it has exercised its discretion.