JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 58/87

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

BETWEEN	WINSTON ALEXANDER BROAD	PLAINTIFF/APPELLANT
A N D	PORT SERVICES LTD.	DEFENDANT/RESPONDENT

Richard Millingen for Appellant

Gordon Robinson for Respondent

July 13, 1988

ROWE P.:

This is an appeal by the plaintiff Winston Alexander Broad against an Order made by the Master on the 13th of July 1987, whereby the Master set aside the interlocutory judgment which had been entered on the 22nd of January, 1985 against the respondent Port Services Limited. The Master ordered that the interlocutory judgment entered on the 22nd of January, 1985 against the defendant and all subsequent process be set aside and granted leave to the defendant to file and deliver its defence within fourteen days of the date of that Order and that the costs thrown away and the costs of and incidental to the Summons should be to the plaintiff to be agreed or taxed.

Among the Grounds of Appeal filed by the appellant was a Ground 4 (g) which complained that the Master has and had no jurisdiction to make the Order to which we have referred.

In his argument before us this morning Mr. Millingen has said that after the interlocutory judgment was entered into, a number of important steps were taken in the action, including an Order to proceed to assessment, on which occasion both parties to the suit were represented by counsel and the other important step was that the parties attended at the trial when the respondent was represented by counsel. During the assessment proceedings an application for amendment of the Statement of Claim was made. There was fullsome objection to the amendment and the learned trial judge after a keen contest made an order granting the application for amendment. Mr. Millingen submitted that the Master was acting as if it had appellate jurisdiction, when the principle of law is that a Court of co-ordinate jurisdiction has no appellate power over another such Court and that the Master has no jurisdiction either, directly or indirectly, to overrule a decision made by a judge after a hearing of the merits. He was there referring to the hearing of the application to amend which he said was keenly contested.

We thought that this point, if it was determined in the favour of the appellant, was sufficient to dispose of the appeal and therefore we called upon Mr. Gordon Robinson to see what answer he could make to the point raised by Mr. Millingen. Mr. Robinson has submitted that although steps were taken by the respondent after the interlocutory judgment was entered into, when at the hearing of the assessment, the application made and granted to amend the Statement of Claim, which amendment was completely out of line with, and of much greater severity than that which was originally pleaded the trial judge adjourned the case so as to give the defendant an opportunity to put in whatever defence it wished whether challenging liability or damages or both. He said that the election whether or not to defend a liability rested with the respondent and was

available to him right up until there was a final determination and judgment of the competent Court on the assessment of damages.

We cannot agree with Mr. Gordon Robinson. This was a case in which the respondent, for reasons best known to itself, submitted to an interlocutory judgment, participated in the setting down of the case for assessment, attended Court at the hearing of the assessment, participated fully in the trial before the judge who was hearing the case, and being dissatisfied with the way in which the assessment was going, sought as one of my brothers rightly put it, to pull the judge from off his bench, by going before the Master and asking the Master to interfere with the conduct of the assessment by setting aside the interlocutory judgment.

Mr. Gordon Robinson was unable to show any authority which would permit such a course and we are clearly of the view that having submitted to the assessment, and having entered upon it, if there was anything which was going wrong in the assessment, the only course open to the respondent was to appeal against the decision of the judge either then or when the matter had been finalized. It is impermissible in the circumstances of this case for a Master to embark upon any hearing which would disrupt the proceedings at trial before the judge.

We therefore think that the Master had no jurisdiction in this particular case to set aside the interlocutory judgment and that the appeal ought to be allowed and the order of the Master set aside and that there be costs to the appellant to be agreed or taxed.