

Hilbony

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL No. 54/76

BEFORE: The Hon. Mr. Justice Luckhoo, J.A. (Presiding).  
The Hon. Mr. Justice Swaby, J.A.  
The Hon. Mr. Justice Watkins, J.A.

Reginald Cameron - Plaintiff/Respondent

vs.

Clarendon Parish Council - Defendants/Appellants

Mr. H.D. Carberry for Defendants/Appellants.

Plaintiff/Respondent unrepresented.

October 15, November 17, 1976

WATKINS, J.A.:

This is an appeal from the judgment dated November 17, 1975 of His Hon. Mr. L.L. Cousins resident magistrate for the parish of Clarendon in which he found in favour of the plaintiff in an action seeking damages for breach of contract and for trespass occasioned by and in the course of the disconnection by order of the defendants of the plaintiff's water supply. After hearing arguments on behalf of the defendants/appellants, the plaintiff/respondent not appearing and unrepresented, the Court took time for consideration.

The facts agreed in the court below were simple and straightforward. The plaintiff had taken possession on April 1, 1974 of premises No.4 Arnold Drive situated in Oliver Gardens, a suburb of May Pen, Clarendon. Later that year, on July 18, the plaintiff signed a document, exhibit 7, described by his Counsel as a contract between himself and the Parish Council in respect of a supply of water. The plaintiff paid all bills duly submitted to him for payment for water used in respect of those premises since his occupation on April 1. The immediate outgoing occupant had not been equally diligent however. He had vacated the premises indebted to the Council to the extent of thirty-six dollars. Called upon to discharge these arrears, the plaintiff refused. On March 5, 1975 the plaintiff's water supply was disconnected by order of the Council. The plaintiff then relented.

He paid the arrears due as well as a re-connection fee of four dollars on March 13. Seven days later the water supply was restored and thereafter the plaintiff brought his action.

The argument urged in the court below on behalf of the plaintiff was that the relationship between him and the Council subsisted in contract, that thereunder he was liable to pay only for so much water as he had used on and after April 1, that all claims in respect thereof had been duly paid and that accordingly the disconnection of his water-supply was in breach of contract. Consistent with the Special Defence which they had filed the Defendants through their Counsel pleaded the authority of section 32(1)(g) of the Parishes Water Supply Act and Regulation 8 of the relevant By-Laws made thereunder (Jamaica Gazette May 26, 1938 pp 696 et seq.). The ipsissima verba of these provisions are as follows:

"Sec. 32(1). Every Parish Council may make by-laws -  
(g) for the cutting off and stoppage  
of water to premises -  
(i) if the water rate in respect of such  
premises is in arrears and unpaid."

Regulation 8. "The Superintendent may cause the supply of water to be cut off and stopped from any property, building or premises in respect of which the water-rates or any instalment thereof or any payment for work done is in arrears for a period exceeding one month and such stoppage of the supply may be maintained until the water rates accrued or payable and all payment for work done in respect of such premises shall be fully paid."

In his reasons for judgment the learned resident magistrate observed. "I rejected the submissions of the Council's attorney-at-law that the Parish Council has the right to cut off the supply of water if the water-rate in respect of such premises is in arrears and unpaid and that it does not matter if the arrears were due and owing by the plaintiff or any one else. I accepted the plaintiff's submission that the regulations do not apply in the instant case where the plaintiff is not in arrears and has fulfilled the contractual obligations, and that

the proper remedy in the circumstances was a suit of debt against the plaintiff's predecessor."

From this narrative of the agreed facts, of the arguments urged on either side, and of the decision of the court below the issues that arose for determination are not difficult to discern. They may be thus stated: (i) Was the plaintiff's obligation to pay for water supplied one that subsisted under a contract or one imposed by law? and (ii) Did the Council have statutory power to disconnect the water supply in circumstances in which the arrears due had accrued prior to the occupation of the relevant premises by the plaintiff? The answers to both questions involve some examination of the Parishes Water Supply Act. Pursuant to section 4 thereof the Parish Council of any parish may from time to time apply to the Minister to authorise the construction by the Council of water works or the enlargement or improvement of any water works. Where such authorisation is granted it then becomes lawful for the Minister to define the limits of the district (which may if the Minister thinks fit comprise the whole parish) for which such water supply shall be provided (section 5). Other sections of the Act prescribe the mode of calculation of the rate, the incidence thereof, and the method of payment or enforcement. Thus section 15(a) provides inter alia that the rate may be calculated either by reference to the value of property in respect whereof the same is made payable or by a combination of that principle together with one based on the quantity of water supplied. Section 16(b) deserves to be quoted in extenso. It says: "Any such rate shall be made payable in respect of all property in such district in which a service pipe is laid provided that such property be occupied" and section 16(c) states that "any such rate shall be payable in advance for such period (not being less than one or more than twelve months) as the ... Council, ..... shall fix, and shall be paid by the person in possession of such house ..... during the whole or any part of such period", and by statutory definition "person in possession of property" includes the owner, occupier, mortgagee in possession, or other person in actual possession of such property". Pursuant to section 14 all advances made to any parish for or towards the construction, enlargement, improvement or maintenance of water works, constructed under the

Parishes Water Supply Act become charges upon and primarily payable out of the rates levied within the district for which such water supply is provided. By authority of section 20 every person resident within a district is entitled to be supplied with water from the public water supply of such district provided he pays the rates, and by this same section such a person so entitled is made subject to the rules and regulations promulgated pursuant to the exercise of the power given by section 32. Finally a reference to section 21 is necessary inasmuch as this section deals with the question of contracts as such for the supply of water. It provides that "subject to the obligations imposed by the last preceding section (already referred to), any Parish Council having a public water supply may enter into contracts with ..... any person or persons whomsoever, for the supply of water in such quantities, at such times, and in such manner and at such prices, payable in such manner and at such times, as may be agreed on, to or for any premises not situated within a district ....."

Turning now to the first issue, it was not in dispute that the premises No.4 Arnold Drive, Oliver Gardens is located in the May Pen water supply district of the parish of Clarendon. Being so located it did not lie within the competence of the Parish Council to supply water to these premises on the basis of a contract. To have done so would have been contrary to section 21 of the Act and the resulting contract would have been illegal and void. In fact located within the water supply district as it was and already equipped with a service pipe the premises were by virtue of section 16(a)(b) and (c) exigible for water rates and the occupant Mr. Cameron was by virtue of section 20, and subject to the terms thereof entitled to be supplied with water without recourse to any formal application therefor. To describe exhibit 7 in these circumstances as a contract was erroneous and to urge the case on behalf of the plaintiff on the basis of a non-existing contract was wholly unavailing. In R. v. Campbell (1910)

1 Stephens pp. 1941-3 the then Full Court said:

"The Board (meaning the Parochial Board, the predecessor of the Parish Council) are empowered to supply water within a certain district as defined and limited by the Governor in Council, and to fix a water rate to be raised

and paid throughout such district. In the exercise of these powers they do not deal privately by contract with individual householders, but publicly with the occupiers of all houses within the district, and the rate is payable not as a price of water sold, but for a contribution to public expenditure by the Board."

These observations of the Full Court seem very apt to the instant circumstances and I respectfully adopt them. The contention of the plaintiff, founded as it was in notions of contract at common law, that it was outside the terms thereof for the Council to have discontinued his water supply on the grounds of the existence of arrears not arising under the contract cannot be sustained. The allegation of breach of contract therefore fails.

This conclusion does not however dispose of the matter.

It remains to deal with the second issue, namely whether on the agreed facts the Parish Council was statutorily empowered to disconnect the water supply. Under the Parishes Water Supply Act, it may be repeated, water rate is not merely a payment for the supply of the commodity, but an imposition sanctioned by and under the Act "in respect of all property in such district in which a service pipe is laid, provided that such property be occupied" (s.16(b)). This rate is payable in advance for the prescribed period by the person in possession during the whole or any part of such period, and is recoverable in manner provided under the Tax Collection Act (s.16(c)), that is to say, by distress and sale, by summary proceedings or by suit in the Resident Magistrates' Courts. In addition to these methods section 32 of the Act, as already noticed, empowers a Parish Council to make by-laws for the cutting off and stoppage of water to premises if the water-rate in respect of such premises is in arrears and unpaid. Regulation 8 promulgated in exercise of this power in substance repeats the provision of section 32 with the addition that the relevant arrears must be in respect of a period exceeding one month. This is a peremptory power given to Parish Councils by Parliament and the exercise of it is made subject to but two limitations. Firstly water-rate must be outstanding and unpaid for more than one month. Next such outstanding and unpaid rates must be in respect of particular premises. Whether the occupant

who suffers by reason of the disconnection of the water supply is the person by whom the indebtedness was actually incurred is wholly irrelevant. Doubtlessly his recourse, if he pays the arrears, is to recover same from the actual debtor. In the instant case the relevant premises fell within a water supply district of the parish and the arrears due were in respect of those premises. The initial disconnection was therefore authorised in law and the alleged trespass occasioned in so doing is unsustainable.

For the foregoing reasons therefore I would allow the appeal and set aside the judgment of the court below with costs to the appellant in the court below to be agreed or taxed and costs of appeal in the sum of \$50.

LUCKHOO, J.A.:

I agree.

SWABY, J.A.:

I agree.

LUCKHOO, J.A.:

The appeal is allowed. Judgment of the Court below is set aside with costs to the appellant in the court below to be agreed or taxed and costs of appeal fixed at \$50.