

CP Court of Appeal - Stay of Execution on appeal from Resident Magistrate's Court - Power of Court of Appeal - Rules for judgment not drawn up by Resident Magistrate - Judicature (Resident Magistrate) Act ss 250, 266 - Judicature (Resident Magistrate) Rules 33.1 - Rules 33.1 - Rules 33.1
Order of Warrant of Stay of Execution on appeal from Resident Magistrate's Court - Power of Court of Appeal - Rules for judgment not drawn up by Resident Magistrate - Judicature (Resident Magistrate) Act ss 250, 266 - Judicature (Resident Magistrate) Rules 33.1 - Rules 33.1 - Rules 33.1
JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL

MOTION NO. 6/94

**BETWEEN: THE HON. MR. JUSTICE RATTRAY, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.**

BETWEEN MR. & MRS. VALRIE EDWARDS APPELLANTS/DEFENDANTS

A N D MR. & MRS. DOUGLAS GAREL RESPONDENTS/PLAINTIFFS

R.N.A. Henriques, Q.C. and Miss Antoinette McKain instructed
by Taylor, Deacon and James for Respondents/Plaintiffs

Richard Small and Miss Fara Brown for Appellants/Defendants

May 9, 12 and 24, 1994

RATTRAY P.:

As promised when we gave the decision of this Court on May 12 in favour of the respondents/plaintiffs we now state our reasons.

On the 10th February 1994 His Honour Mr. A.S. Huntley, Resident Magistrate for the Corporate area in an action brought for recovery of possession by the respondents/plaintiffs against the appellants/defendants granted an order of possession in favour of the respondents/plaintiffs for the appellants/defendants to quit and deliver up possession of premises 5 Dublin Castle Close, Gordon Town, St. Andrew, on or before the 6th of May 1994.

The appellants/defendants duly filed notice of appeal on the 22nd of February 1994, followed by grounds of appeal on the 20th of April 1994. On the 26th of April 1994 the appellants/defendants applied to the Resident Magistrate for a stay of execution on the ground that the appeal could not be heard prior to the date of the order for possession, and if the order for recovery of

possession was enforced they would be faced with a fait accompli which could not be rectified by the Court of Appeal. The application for the stay was refused by the Resident Magistrate.

On the 3rd of May 1994 on the application of the appellants/defendants the Hon. Mr. Justice Wright, Judge of Appeal, made an order to stay execution of the Resident Magistrate's order for recovery of possession until the hearing of the appeal. The Court of Appeal is now moved to discharge the order of Wright J.A. The formal order of Wright J.A. shows the respondents/plaintiffs as not being represented at the hearing before him. However, Mr. Richard Small, Counsel for the appellants/defendants informed us that representations were made by Counsel on behalf of the appellants/defendants before Wright J.A. albeit after he had already made his order. These representations failed to move Wright J.A. to reverse or vary the order he had so recently made. We accept this but nothing turns on it.

Mr. Small's submissions made with a view to have excluded from our consideration material in the affidavit of Janet P. Taylor, the Attorney-at-law for the respondents/plaintiffs making references to the non-payment of costs ordered by the Resident Magistrate by the parties he represented on the ground that there was no submission before Wright J.A. to this effect did not find favour with us as we sought to get to the real issues in the matter on a consideration of all the relevant material.

Mr. R.N.A. Henriques, Q.C. has submitted to us that Wright J.A. had no power to make the order staying execution by virtue of the provisions of Section 256 of the Judicature (Resident Magistrates) Act which reads inter alia:

"There shall be no stay of proceedings on any judgment except upon payment into Court of the whole sum, if any, found by the judgment, and cost if any, or unless the Resident Magistrate on cause shown, shall see fit to order a stay of proceedings".

The costs had not been paid and furthermore the Resident Magistrate had not seen fit to order a stay of the proceedings.

The powers of the Court of Appeal are vested in the Court by virtue of the provisions of Section 9 of the Judicature (Appellate Jurisdiction) Act and are:

- "(a) subject to the provisions of this Act the jurisdiction and powers of the former Court of Appeal immediately prior to the appointed day;
- (b) such other jurisdiction and powers as may be conferred upon them by this or any other enactment".

The appointed day is the 5th of August 1962.

With respect to Civil Appeals from the Resident Magistrate's Court the relevant section of the Act is 12(1) which reads:

"Subject to the provisions of this Act, to the provisions of the Judicature (Resident Magistrates) Act, regulating appeals from Resident Magistrates' Courts in civil proceedings, and to rules made under that Act, an appeal shall lie to the Court from any judgment, decree or order of a Resident Magistrate's Court in all civil proceedings".

Mr. Henriques submitted that the question to be decided is whether Wright J.A. had the jurisdiction to grant the stay of execution in the first place and maintained that he did not. The jurisdiction and power, he argued, did not exist in the former Court of Appeal and furthermore there does not exist any enactment which has conferred these powers and jurisdiction on the Court of Appeal. The stay of execution he urged, properly applied for in accordance

with the law before the Resident Magistrate had been refused and there was no material to suggest that the Resident Magistrate was wrong. Wright J.A. therefore erred:

- (a) in exercising a jurisdiction which he did not have; and
- (b) even if he had, the determination in favour of the appellants/defendants had been wrongly made.

Mr. Small relied in his response on:

- (1) the provisions of Rule 33 of the Court of Appeal Rules;
- (2) the provisions of Section 266 of the Judicature (Resident Magistrates) Court Act;
- (3) the inherent jurisdiction of the Court of ensure that the right to appeal of an appellant is preserved.

Rule 33 of the Court of Appeal Rules reads as follows:

"33(1) In any cause or matter pending before the Court, a single judge of the Court may, upon application make orders for -

....

- (c) a stay of execution on any judgment appealed from pending the determination of such appeal, ...

- (2) - and may hear, determine and make orders on any other interlocutory application.

Every order made by a single judge of the Court in pursuance of this rule may be discharged or varied by the Court".

It is sufficient to point out that Rule 33 falls under Title II which is headed: "Civil Appeals from the Supreme Court" and therefore would not apply in the case of a civil appeal from the Resident Magistrate's Court.

Section 266 of the Judicature (Resident Magistrates)

Act reads as follows:

"The provisions of this Act conferring a right of appeal in civil causes and matters shall be construed liberally in favour of such a right; and in case any of the formalities prescribed by this Act shall have inadvertently, or from ignorance or necessity omitted to be observed it shall be lawful for the Court of Appeal, if it appear that such omission has arisen from inadvertence, ignorance or necessity, and if the justice of the case shall appear to so require, with or without terms, to admit the appellant to impeach the judgment, order or proceedings appealed from".

The problem here does not arise because a provision of the Act conferring a right of appeal has not been met through inadvertence, ignorance or necessity to observe any of the formalities prescribed by the Act. The stark question is whether Wright J.A. had the jurisdiction to stay execution of the order of the Resident Magistrate in relation to possession. Section 266 therefore cannot be relied upon to determine that question.

This brings us to the real question - which is whether this Court without any specific statutory authority has an inherent jurisdiction to grant a stay of execution in order to ensure that the right of appeal is not frustrated?

Under the provisions of Section 256 of the Judicature (Resident Magistrates) Act on the appellant complying with certain requirements "the Magistrate shall draw up, for the information of the Court of Appeal, a statement of his reasons for the judgment, decree, or order appealed against". It is consequent on this that the appellant within twenty-one days after he had received a notice of the lodging of the reasons for judgment is required to draw up and serve on the respondent his grounds of appeal and file it with the Court.

The Resident Magistrate not having filed his reasons for judgment the appellants/defendants are unable to move the appeal to the stage where it can come before this Court. The result is that the date for the delivery of possession of the premises 6th of May 1994 would have been long passed before the matter could come on for hearing before the Court of Appeal.

Mr. Small's complaint is that the failure of the Resident Magistrate to perform his duty in this regard would inevitably frustrate the appellants/defendants' right of appeal unless there is a stay of execution. Any order on the appeal in favour of the appellants/defendants would be completely nugatory since they would by then have had to give up possession of the premises.

We agree with Mr. Small's castigation of the Resident Magistrate's delinquency and indeed the disastrous consequences for the appellants which are likely to flow from it. However the remedy which should have been sought by the appellants lay in an application to the Supreme Court for an order of mandamus compelling the Resident Magistrate to give his reasons in good time so as to prevent the adverse effect on the appellants/defendants likely to result from his sloth.

Both the Resident Magistrate's Court and the Court of Appeal are creatures of statute. It is therefore within statutory enactments including Rules of Court that we must search to find any authority for the exercise of our jurisdiction. We are invited to interpret provisions of the Act liberally to support the contention that such an inherent jurisdiction resides in the Court, but first there must be provisions which we have to construe and no provisions have been pointed out to us on which we can place a construction which will result in our having the jurisdiction sought by Mr. Small to be vested in us.

Our researches into the powers and jurisdiction of the predecessors to the Court of Appeal have not unearthed any provisions which would also confer those powers and jurisdiction on those Courts, so that we could have been statutorily authorised to utilise them.

In the circumstances therefore we were compelled to order the discharge of the order made by Wright J.A. which purported to stay the execution of the Resident Magistrate's order for recovery of possession until the hearing of the appeal. We awarded costs to the respondents/plaintiffs.

FORTE J.A.:

I have had the opportunity to read in draft the judgment of Rattray P. and agree with his reasons and conclusions. I have nothing to add.

WOLFE J.A.:

I agree.