

2A. CIVIL R.M. Court Trial Statutory requirement for Resident Magistrate to enter final judgment on claim and counter claim: S151 Judicial Office (Resident Magistrates) Act. Appeal - statutory requirement for Resident Magistrate to prepare and lodge Reasons for Judgment: S256 Industrial (Resident Magistrates) Act.

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 5/91

At. of appeal emphasis necessity for compliance with statutory requirements.

COR: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

*Appeal dismissed
No case referred to
(also vide K.H.
(velip1 pleu)
✓ comp*

BETWEEN	LORNA MORGAN	PLAINTIFF/APPELLANT
A N D	GLORIA REID	FIRST DEFENDANT
A N D	RICHARD BROWN	SECOND DEFENDANT

Mr. L.L. Cousins for the Plaintiff/Appellant

Mr. A.G. Gilman for the Defendants/Respondents

May 13 and June 4, 1991

BINGHAM J.A. (AG.)

This is an appeal from a judgment of His Honour Mr. Roy Stewart Resident Magistrate for the Parish of Saint Catherine upon a claim for wrongful Levy brought in the Linstead Court on 1st October, 1990, in which judgment was entered for the defendants with costs.

On 13th May following the hearing of the matter we dismissed the appeal and affirmed the judgment of the learned Resident Magistrate. The respondents costs were fixed at \$300.00.

The claim arose as a consequence of a claim and counter-claim for Slander involving the plaintiff/appellant and the 1st defendant/respondent which action was heard on the 22nd February, 1988. Judgment was entered for both parties on the respective claims for identical sums, being \$450.00 with an order for costs, such costs to be taxed if not agreed. As is the established practice in such matters, at the request of the presiding Magistrate, the Attorneys-at-Law for each party, after consultation arrive at a mutual agreement as to their respective costs and the record would be endorsed accordingly with the judgments and the agreed costs. The final endorsement would be a notation "judgment

satisfied" or if there is excess final judgment would entered accordingly. This is in keeping with the well known maxim that there ought to be a finality to law suits.

It has now taken more than three years for this matter to be resolved by way of an appeal. That this has resulted, is due to a failure on the part of the Resident Magistrate who heard the original action to comply with the statutory requirement laid down by section 191 of the Judicature (Resident Magistrate's) Act, to enter a final judgment in the matter. Such a failure on the Magistrate's part meant that the judgments on the claim and counter-claim remained orders of the Court which upon the costs being determined could be enforced by way of the procedure laid down for execution of civil judgments. It was such a course taken by the 1st named defendant/respondent through her Attorney-at-Law, (2nd named defendant/respondent), that resulted in the claim which is now the subject of this appeal. In coming to our decision we found that there was no merit in the appeal. We sought to reduce our reasons into writing out of our concern as to the manner in which the procedural requirements of the Judicature (Resident Magistrates) Act, in so far as it governs civil appeals from that Court, were not adhered to by the Resident Magistrate.

It may be convenient at this stage to refer to the notes of evidence taken by the Magistrate at the hearing of the claim for wrongful levy brought in the Linstead Court on 1st October, 1990. At the end of the evidence there is the following notation:-

"Court

Difference between case referred to - Hank vs Green and present case two distinct judgments. Entitled to proceed on their respective judgments. It may be that trial judge erred in handing down his judgment, that is not stating a final judgment. Judgment for the defendant with costs. Reid - to be agreed or taxed. Brown - \$750.00. Verbal Notice of Appeal."

As the judgment which was delivered was not one to which both parties were in agreement section 255 of the Act did not apply. There was the need for the Resident Magistrate and the parties to ensure that the provisions of section 256 of the Act were strictly complied with. This section which governs civil appeals states:-

"256. The appeal may be taken and minuted in open Court at the time of pronouncing judgment, but if not so taken then a written notice of appeal shall be lodged with the Clerk of the Courts, and a copy of it shall be served upon the opposite party personally, or at his place of dwelling or upon his solicitor, within fourteen days after the date of the Judgment; and the party appealing shall, at the time of taking or lodging the appeal, deposit in the Court the sum of twenty dollars as security for prosecution of the appeal, and shall further within fourteen days after the taking or lodging of the appeal give security, to the extent of two hundred dollars for the payment of any costs that may be awarded against the appellant, and for the due and faithful performance of the judgment and orders of the Court of Appeal. Such last-mentioned security shall be given either by deposit of money in the Court, or by the party appealing entering into a bond, with two sureties to be approved by the respondent, or, in case of dispute, by the Clerk of the Courts with an appeal to the Magistrate. No stamp duty shall be payable on such bond. 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 costs if any, or unless the Magistrate, on cause shown, shall see fit to order a stay of proceedings. On the appellant complying with the foregoing 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....."

The Attorney-at-Law for the appellant faithfully complied therewith by filing a Notice of Appeal and lodging a sum of \$220.00, \$200.00 being "security for the payment of any costs that may be awarded" against his client arising out

of the hearing of the appeal. This was done on 5th October, 1990, well within the time allotted for doing such acts as were necessary to perfect the appeal.

The next requirement ought to have been for the learned Resident Magistrate to prepare and lodge his Reasons for Judgment. Up to the time of the hearing of this matter there is nothing to show that this had been complied with. A document was presented to the Court on the morning of the hearing of the matter purporting to be "Reasons for Judgment." It bears the seal of the Resident Magistrate's Court for the Parish of Saint Catherine and a signature purporting to be that of the learned Magistrate, but it is undated and there is no date stamp on it indicating when it was lodged in the Court's Office at Spanish Town.

Both Counsel who appeared before us and who also appeared in the hearing of the action in the Court below, stated that they were not in receipt of any such Reasons for Judgment. It must be patently clear that written reasons for judgment constitute a condition precedent to the filing of the Grounds of Appeal which by virtue of the statutory requirement should be prepared and filed within twenty-one days of the receipt of such reasons. (Vide section 256 referred to supra). It appears, therefore, that from the manner in which it was drawn up, this undated document which now forms a part of the Record of Appeal was regrettably, clearly an after-thought on the part of the Resident Magistrate.

Learned Counsel for the appellant, however, not content to await the filing of the "Reasons for Judgment" prepared and lodged his Grounds of Appeal on 21st October, 1990. In so acting the appellant in this matter certainly could not be accused for being out of time. This is so as there is no proof that any reasons for judgment were ever lodged and served upon the Attorneys at Law for either of the two parties and time would only start to run against the appellant after such an act had been done by the Resident Magistrate, which he was in default of so doing. On a further examination of this document it appears to

have been hurriedly prepared and only differs in substance from the comments at the end of the Notes of Evidence (referred to *supra*) following the heading "Court" by the substitution of the words "Reasons for Judgment."

As section 256 of the act mandates a Resident Magistrate "to draw up for the information of the Court of Appeal, a statement of his reasons for judgment etc." these words taken literally must mean that this requirement has some importance attached to it. It is through these reasons that a Court of a review, such as this Court, is afforded the opportunity to examine the thought-process by which the Magistrate arrived at his decision. Needless to say what was trotted out as being reasons for judgment in this case leaves much to be desired as no particular care or proper attention was given to drawing up this document which passes for such.

We are, however, comforted by the fact that what has occurred in this matter is not a frequent practice and it is fervently to be hoped that such a situation is not repeated in the future.