

SUPREME COURT LIBRARY
KINGSTON
JAMAICA

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 143/85

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Ross, J.A.

R. v. PAUL BESWICK

Mrs. M. M. Macaulay and T. Ballantyne for appellant.

A.F. Smith and W. Douglas for Crown.

February 14, 1986

ROWE, P.:

This is a note of the oral judgment delivered by me on February 14, 1986.

The appellant, a practising Attorney-at-Law, was charged on information with a breach of the Road Traffic Act, alleging that he failed to stop at a traffic light which was showing red in the direction in which he was proceeding. His trial came on before Her Hon. Miss Francis sitting as Judge of the Traffic Court for Kingston and St. Andrew on October 3, 1984. A plea of not guilty was entered, the trial commenced, and not being completed on that day, was part-heard

and adjourned to October 26, 1984 for continuation. On October 26, His Hon. Mr. Lopez, performing the duties of Judge of the Traffic Court, in the absence of Her Hon. Miss Francis, who was on leave, acceded to a request by the appellant to change his plea from not guilty to one of guilty and the appellant was fined \$20 or 7 days imprisonment.

A few days later, that is on November 2, 1984, His Hon. Mr. Lopez vacated his order of October 26, 1984, saying:

"Order made on 26.10.84 vacated.
Fine to be remitted in toto."

Her Hon. Miss Francis resumed duties and on March 5, 1985 continued the hearing which had commenced before her on October 3, 1984. She ruled that whatever His Hon. Mr. Lopez had done on October 26 was a nullity and consequently the appellant's plea of autrefois acquit could not avail him. The trial continued with the appellant taking no part in the factual presentation and he was convicted and fined \$40 or 7 days imprisonment.

The issue on appeal was whether the conviction and sentence recorded on October 26, 1984, by His Hon. Mr. Lopez was a valid order or was a nullity. Samuels v. Smithson [1939] 3 J.L.R. 151 concerned a civil case tried in Jamaica. There the case began before one resident magistrate, was part-heard and later continued and completed by a different resident magistrate. The Jamaican Court of Appeal held that, where as in that case, the second resident magistrate sitting as judge and jury, heard only about one-third of the evidence and merely read the notes of the other two-thirds and thereafter gave a judgment, it was in reality no trial at all and ordered a new trial. The Court declined to lay down any

general hard and fast rule as to what procedure should be followed when one magistrate has began a trial, left it incomplete and it is later continued by another magistrate.

In R. v. David Ebanks [1944] 4 J.L.R. 158 the trial was on indictment and was governed by the provisions of the Resident Magistrates' Law, Cap. 432. There the resident magistrate who made the order for indictment died before the trial was concluded. An acting resident magistrate went to St. Elizabeth where the case had commenced, and he, purporting to apply the terms of the statute, made a fresh order for indictment on the same information and proceeded to try the case. On appeal it was held that where there has been a commencement but not a determination of the trial on the first order for indictment, from any cause, it is necessary for a nolle prosequi to be entered as to the first indictment and that the proceedings be recommenced with a fresh information and complaint. Of course, this was a case in which the resident magistrate having died, there was no possibility of his continuing with the trial.

R. v. Ebanks has invariably been followed in Jamaica and we have no reason to doubt that it is good law and ought to be followed. However, R. v. Ebanks was a trial on indictment and the instant appeal concerns a trial on information. Mr. Smith submitted that the principles enunciated in R. v. West [1962] 2 All E.R. are apposite to this case, and that Her Hon. Miss Francis was justified in treating the order of His Hon. Mr. Lopez of October 26, 1984,

as a nullity and that there was no necessity to seek first an order of the Court of Appeal declaring such action a nullity.

We are of the view that a resident magistrate who commences a trial within his jurisdiction has exclusive jurisdiction over that case and that if another resident magistrate purports to intermeddle in such a trial, for whatever reason, such intermeddling is a nullity. We are of the view that Her Hon. Miss Francis could validly examine what His Hon. Mr. Lopez had done in the case which had been commenced before her and could determine whether there was an effective legal conviction by His Hon. Mr. Lopez. We hold that His Hon. Mr. Lopez did not have jurisdiction to continue the part-heard case against the appellant and consequently the doctrine of functus officio did not apply. The decision in Paynter v. Lewis [1965] 8 W.I.R. has no application to this case. In R. v. West, supra, the justices had purported to exercise a jurisdiction which they never had and those same justices were then able to properly exercise the jurisdiction which in fact they had. His Hon. Mr. Lopez, although assigned to be the Judge of the Traffic Court had no jurisdiction to continue a case already begun before another magistrate and in what he purported to do, the appellant was never in peril.

The appeal is dismissed.