

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUITS NOS. 2 of 1992 & 4 of 1992

IN THE FULL COURT

BEFORE: The Honourable The Chief Justice
The Honourable Mr. Justice Patterson
The Honourable Mr. Justice Clarke

IN THE MATTER of the application of
MICHAEL TROUPE and

IN THE MATTER of the application of
GLADSTONE JEMMISON

for an Order of Certiorari

AND

IN THE MATTER of the Recognizances
and Sureties of the Peace Act

Regina v The Resident Magistrate for St. James
ex parte Michael Troupe

Regina v The Resident Magistrate for St. James
ex parte Gladstone Jemmison

Canute Brown & Clive Mullings for applicant Troupe

Frank Phipps, Q.C. & George Thomas for applicant Jemmison

Samuel Bulgin for Director of Public Prosecutions

Andrew Irving instructed by the Director of State Proceedings
for the Attorney General.

February 12, 1992

ZACCA, C.J.:

The applicants, Michael Troupe and Gladstone Jemmison each filed a notice of motion seeking an order of certiorari to quash orders of the learned resident magistrate for the parish of St. James committing them to prison for non-payment of forfeited recognizances. Both motions were heard together, and on February 12, 1992 we granted the motions for certiorari to go, and quashed the orders of the resident magistrate.

Fitzroy Craigie was arrested and charged for offences, under the Dangerous Drugs Act. He was granted bail and the applicants stood surety for him; the applicant Michael Troupe in the sum of \$300,000.00 and the applicant Gladstone Jemison in the sum of \$500,000.00.

The applicants signed the bail bond but the notice required by s. 4 of the Recognizances and Sureties of the Peace Act was not delivered to either of the applicants.

S. 4 states :

" Every Judge, Justice, or other officer before whom any recognizance shall be entered into, is hereby required to give or cause to be given to each of the persons or sureties entering into recognizance, at the time of doing so, a written notice in the form or to the effect in the Schedule B, adapting the same to the particular circumstances of each case; and every such Judge, Justice or other officer shall in every such recognizance mention the names in full and the profession, trade or occupation of every person entering into such recognizance, and the parish or place of his residence. "

The notice informs the sureties of their obligations and the penalties involved for default in ~~appearance~~.

S. 2 of the Act provides the method by which recognizances are enforceable where there is default in appearance.

S. 2 states :

" In all recognizances taken in or returnable to any court, when any person shall make default therein, it shall be lawful for such court to issue a warrant to the Bailiff, in the form in Schedule A, for recovery by distress and sale of the goods and chattels of such person of the penalty of such recognizance and of the sum of one dollar for costs; and in default of payment or recovery of such penalty and costs, the person so making default shall be liable to be imprisoned for a period not exceeding six months :

Provided always, that it shall be lawful for such court, on cause shown, to remit the penalty and costs in whole or in part, or to discharge the recognizance without issuing a warrant of distress on such terms as such court may think fit. "

In the instant case, Fitzroy Craigie's bail was extended for him to appear before the Court on 2nd December 1991. On that day he failed to appear.

In their affidavits, both applicants stated that they saw Craigie on 1st December, 1991 and they discussed his attendance at court.

On the afternoon of 2nd December, 1991 both applicants became aware that Craigie had failed to appear in Court. The police was contacted by them and the applicants went in search of Craigie. He was seen at his home in the evening and the applicants attended at the police station and accompanied by the police went to Craigie's home where he was taken into custody by the police.

The Bonds of both applicants were ordered estreated by the resident magistrate. A warrant of Distringas and Capias was issued to the Bailiff of the Resident Magistrate's Court for the parish of St. James. This was with respect to the applicant Troupe. It appears that no such warrant was issued for the applicant Jemmison.

The applicants appeared in Court on 3rd December, 1991. The police executed the warrant on Troupe at the Court and he was taken into custody. The warrant was never sent to the Bailiff. The applicant Jemmison was taken into custody at his home by the police at 4.30 a.m. on the morning of the 3rd December. Later that morning he appeared in Court.

The explanation given by Craigie's Attorney-at-Law for his non-appearance was that he was in Kingston on the 2nd December, 1991 seeking medical attention. He returned to Montego Bay in the evening of that day.

The resident magistrate after hearing submissions from the applicants' Attorneys-at-Law and having been told by the Attorney-at-Law for Jemmison that he had no means of paying the bond, ordered that Jemmison pay the bond or

serve 6 months imprisonment.

The applicant Troupe was given until 23rd December 1991 to pay the bond. On that date he was unable to do so and the resident magistrate ordered him to pay the bond or serve 6 months in prison.

Based on the evidence in the affidavits it is difficult to understand the resident magistrate's finding that the non-appearance of the defendant was due to the applicants' wilful breach or culpable neglect.

Although the applicants were not in attendance at Court at the commencement of the proceedings on the 2nd December, 1991, as soon as they ascertained, on that very day, that the accused had not appeared, they contacted the police and assisted the police in finding the accused and he was taken into custody that day, albeit in the evening after Court had already adjourned.

The circumstances of this case were such that the discretion in the resident magistrate could have been exercised in remitting the penalty in whole or in part, or discharging the recognizance without issuing a warrant of distress - (see proviso to S.2 of the Act).

The Recognizances and Sureties of the Peace Act sets out the specific procedure to be followed for the entering into recognizances and the manner in which they are enforceable in the event of default. We are of the view that these provisions which are penal in nature, should be strictly followed.

In the instant case no notice was delivered under S. 4 and in one case no warrant was issued to the Bailiff. In the case where the warrant was issued to the Bailiff, it was never delivered to the Bailiff. These warrants should be executed by the Bailiff and not by a police constable.

It is only in default of payment after the warrant has been issued and executed, that the resident magistrate has the power to imprison the person making the default.

It is to be noted that there is no provision for the sentence of imprisonment to be at hard labour. In the instant case the applicants were ordered to be imprisoned for 6 months at hard labour.

We therefore set out the procedure to be followed :

(1) a notice under S. 4 of the Recognizances and Sureties of the Peace Act should be given to the surety. The recognizance will require the defendant to personally appear on a fixed date. It is usual for the court to make the recognizance continuous, in which case the words to the effect "and at every time and place to which the proceedings may from time to time be adjourned" will be inserted in the recognizance and the notice. This provision obviates the necessity for a new recognizance each time the hearing is adjourned, or otherwise the recognizance is void on the appearance of the defendant on the fixed date.

(2) When a defendant fails to honour his recognizance by not appearing at the time and place to which his case was adjourned, the recognizance entered in by the defendant and his surety is enforceable under the provisions of section 2 of the Recognizances and Sureties of the Peace Act. The section provides that :

(a) A warrant (known as a warrant of "Distringas and Capias") should be issued to the Bailiff of the Resident Magistrate's Court. The Bailiff is required and commanded to levy the sum named therein upon the goods and chattels of the surety and to make payment of the monies so levied to the clerk of the courts for the parish ;

- (b) the warrant further requires and commands the Bailiff that if he cannot levy the said sum mentioned therein, "by reason of there being no goods or chattels to be found belonging to the said surety", then that he takes the body of the said surety and lodge him in a named prison to await the decision of the Court unless the said surety gives sufficient security for his appearance at such Court ;
- (c) the resident magistrate should consider the proviso to S. 2 having regard to the circumstances of each case.