

NMLS

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO: 28/06

**BEFORE: THE HON. MR. JUSTICE HARRISON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MRS. JUSTICE McCALLA, J.A.**

BETWEEN ROSETTA SIMPSON APPELLANT
AND PETRIE HALLAHAN-TIBBS RESPONDENT

Debayo Adedipe for the appellant

Winston Young and Miss Latoya Green for the respondent

16th, 21st March and October 5, 2007

HARRISON, P.

This is an appeal from the judgment of the Resident Magistrate for the parish of Clarendon in a claim for recovery of possession in respect of land lot 2A Rosembly Drive, May Pen in the parish of Clarendon and registered at Volume 1123 Folio 344.

The appellant/defendant Rosetta Simpson was the wife of one Leon Simpson whose mother Viola Walters had in her will, dated the 9th November 1999, given land to Leon, Doreen and Petrie Hallanhan as joint tenants. Doreen died in December 1999 and on her death it was Leon Simpson who endorsed her

death on the title leaving Hallahan and himself as joint tenants. When Leon Simpson died in 2004, that joint tenancy given by Viola Walters would then belong to Petrie Hallahan as the sole survivor in accordance with the jus accrescendi rule. When the matter came up for trial Petrie Hallahan was claiming that she as the sole survivor under the will of Viola Walters, was entitled to recovery of possession though Rosetta Simpson was then occupying the property.

The Will of Leon, admitted in evidence before the learned trial judge has not been probated.

The defence as stated before the Learned Resident Magistrate was that the defendant was claiming to be entitled to remain on the property as an executor of Leon Simpson and that the property was purchased by Leon Simpson and his mother together. She maintained that both of them furnished the purchase money but the transfer was in Viola's name only. Leon Simpson was therefore beneficially entitled to the beneficial interest in the property although the legal estate was in his mother Viola Walters. The mother, Viola, was only entitled to half share and that is what she really could have given and which she was in fact giving that is, her half share to Leon, Doreen and Petrie. That gift by Viola was to the exclusion of Leon's half share to which he was entitled because of his contribution to the purchase and the building of the house.

The defendant sought to give evidence before the Learned Resident Magistrate in a statement of what she alleged that Viola had told her. The

evidence would have been that she Viola and also Leon were persons who had contributed to the property and so Leon was entitled to a share in the property. That in itself would have been, in our view, admissible evidence under section 31(1) of the Evidence Amendment Act and that is based upon the fact that a declaration against one's proprietary interest is admissible evidence that a court may consider. Of course, it is a fact for the Resident Magistrate having admitted the evidence to say whether or not, in the circumstances of the case, it is credible. It is evidence that the Resident Magistrate may consider and so come to the determination whether the plaintiff/ respondent was entitled to recovery of possession. The fact that the evidence was admissible but was not admitted means that the learned trial judge did not have the opportunity to consider it and come to a determination as to the truth or otherwise of that statement.

Mr. Young before us argued that what Viola was doing was giving the entire property to three persons and not her half share only. That there was no question of the evidence leading to the fact that Leon owned a half share. However, even assuming that he did, then it would mean that Leon is bound by the doctrine of election, having elected to share in the property. It means that he was not claiming a half share in the property. All of that would be evidence that has to be considered in the context of the declaration against interest having been admitted. The Resident Magistrate would have been entitled to consider that aspect also, which is an alternative argument, as to who was rightly in possession or entitled to possession of the property.

This court also addressed its mind to section 251 of the Judicature (Resident Magistrates) Act which deals with the question of the appeal being considered on the basis of evidence that was disallowed. The section inter alia reads:

“251. Subject to the provisions of the following sections, an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order; ...
And the Court of Appeal may either affirm, reverse, or amend the judgment, decree, or order the Court; ... or remit the cause to the Court with instructions or for rehearing generally...
 Provided also, that an appeal shall not be granted on the ground of the improper admission or rejection of evidence; ... unless in the opinion of the Court of Appeal, some substantial wrong or miscarriage has been thereby occasioned in the trial,...” (Emphasis added)

Mr. Young himself directed us to section 60 of the Civil Procedure Rules which states that the court is not bound to allow the appeal in respect of evidence that has been disallowed unless it is considered that it is a substantial wrong or miscarriage of justice.

Mr. Adedipe did rely on section 251 which strictly applies to this appeal. He argued that where there is a miscarriage of justice involving the wrongful rejection of evidence, the Court may determine the appeal despite that wrongful rejection of evidence. He relied also on ***Gardener v Lewis*** [1998] 53

WIR 236, in support of his personal claim despite the existence of the registered title in the survivor.

We are of the view that the evidence was admissible and wrongly rejected by the Learned Resident Magistrate. He did not give himself the opportunity to consider it properly in the context of all the other evidence, that included, the conduct of Leon from the time of the making of his mother's will to her death in 1993, in addition to the endorsement and transmission in 1999 and further his activity on Doreen's death in 1999. All those would have been factors that would assist the court to determine the credibility of the defendant/appellant in respect of the statement against the proprietary interest, in order to determine who had that right to possession. We do not think that we could properly exercise the power to determine the matter in the circumstances of this case. The details and substance of the evidence could not have been considered, as a matter of fact. In the circumstances this matter will be remitted.

The appeal is allowed, the evidence of the statement against proprietary interest was wrongly disallowed, and the matter is remitted to the Resident Magistrate's Court, Clarendon to be retried before a different Resident Magistrate. Costs of Ten Thousand Dollars (\$10,000.00) are to be paid by the respondent.

K. HARRISON, J.A:

1. This is an appeal from the judgment of the Senior Resident Magistrate for the Parish of Clarendon who on September 12, 2005 ordered the Appellant to deliver up possession of 2A Rosembly Drive, May Pen, Clarendon ("the property") registered at Volume 1123 Folio 344 of the Register Book of Titles to the Respondent.

2. We heard arguments over a period of approximately two days and concluded at the end thereof that the appeal should be allowed with costs of \$10,000.00 to the Appellant. It was further ordered that the matter be remitted to the Clarendon Resident Magistrate's Court for a re-trial to take place before a different Magistrate.

The Background Facts

3. The property in dispute was transferred to Viola Alberta Walters, grandmother of the Respondent, on September 24, 1986. She died and Probate of her Will was granted to her Executors on April 1, 1993. A transfer on transmission was made to the Executors on January 20, 1999. Thereafter, the property was transferred on November 9, 1999 to Doreen Dixon, Leon Simpson and the Respondent as joint tenants. They were the beneficiaries under the will of Viola Walters. Dixon died on the 29th December 1999 and her death was noted on the title for the property on March 6, 2002 by Leon Simpson. Leon

Simpson died on the 20th January 2004. The respondent is the surviving joint tenant and the sole registered owner on the Title.

4. The Respondent filed a plaint in the Clarendon Resident Magistrate's Court on the 18th November 2004 against the Appellant Rosetta Simpson, widow of Leon Simpson, seeking recovery of possession of the property. The evidence revealed that the appellant had been living on the property since the death of her husband.

5. The trial commenced before the learned Senior Resident Magistrate and the Appellant stated her defence to the claim as follows:

"1. Defendant is one of the Executors of the estate of Leon Simpson;

2. Property subject to this action was purchase (sic) by Leon Simpson and his late mother Viola Walters with both of them furnishing purchase money. Transfer was taken in Viola's name only;

3. After the property was purchase (sic) both Viola Walters and her son Leon Simpson completed the unfinished house thereon using their joint resources.

4. At the date of her death both Viola Walters and her son Leon Simpson were equally beneficially entitled to the property subject to this action.

5. The executors of Viola Walters could not properly convey any (sic) to him devises any greater interest than Viola Walters had (sic) the date of her death.

6. At the time of her death the executors of Viola Walters could only effectively devise ½ share of the

property and only this could have been transferred to the devisees as joint tenants.

7. A transfer by the executors resulted in Leon Simpson being entitled to ½ share an entitlement on a joint tenant of the other ½ (sic).

8. The plaintiff is not entitled to possession.”

6. During her testimony, the Appellant attempted to give evidence about a conversation which she claimed she had with her mother-in-law, Viola Walters about the property. The learned Resident Magistrate ruled however, that that evidence was inadmissible.

7. The Appellant gave evidence nevertheless, about her marriage to Leon Simpson and that it had taken place in 1990. She also testified that she had known her mother-in-law for a number of years. She could not recall the date when the property was bought but she said that she was present along with her late husband when it was bought and that the house was in an “un-finished state”. She also spoke of attending to Viola Walters during the period that she was not in the best of health. She claimed that she knew a Petrie Hallahan from she was a child but testified that the plaintiff was not the Petrie she had known.

8. The will of Leon Simpson was admitted in evidence as an Exhibit. Counsel for the Appellant, informed the Court that the will has not yet been admitted to Probate.

The Reasons for judgment

9. The learned Resident Magistrate having ruled during the trial that the conversation between the appellant and Viola Walters was inadmissible stated in his reasons for judgment that the defendant had no other evidence to support or confirm her allegations. His findings can be summarized as follows:

1. That it was clear from the evidence that Leon Simpson had the duplicate certificate for the property and that it was he who had noted Doreen Dixon's death on the title.
2. That Leon Simpson knew that he was registered on the certificate of title as a joint tenant.
3. That during Simpson's lifetime he had no dispute with his mother over the ownership of the land and that he made no claim against his mother or her executors with regards to the ownership of the land.
4. That he never challenged the gift as set out in the Will. He accepted the gift and acted on it and made his Will and devised the land to his wife as he was entitled to do.
5. That the land would have devolved to the appellant if he was the sole survivor.
6. That the defendant was her husband's executor. She therefore stood in his shoes and could be in no better position than he would have been.

7. That Leon Simpson's failure to prosecute any claim that he may have had was fatal to the defendant's case.

8. That the defendant had no evidence to support her case.

9. That the defendant's own conduct was inconsistent and contradictive. She had offered to purchase the property from the plaintiff and had her Attorneys at Law sent a transfer to the plaintiff to execute. That this transfer made no mention of the equitable interest that was the gravamen of her case. That this was a recent invention by the defendant as she sought to retain possession and thereby "deprive the plaintiff of her case" and that it was clear that the defendant sought to use this as a shield to prevent the plaintiff from possession.

The ground of appeal

10. There is one ground of appeal and it states as follows:

"The learned Resident Magistrate wrongly refused to admit evidence or allow questions to be asked of the Plaintiff about what her deceased mother-in-law had told her about the acquisition of the property subject of the action and thereby wrongfully excluded admissible evidence of a declaration by her against her pecuniary interest and a substantial wrong or miscarriage was thereby occasioned in the trial".

The submissions

11. Mr. Adedipe submitted that since the Appellant's late husband had purchased and improved the property with her late mother-in-law, Leon Simpson

was thus equally entitled to it along with her. In the circumstances, he submitted that the devise by Viola Walters in her will could only pass her share in the property. The Appellant, he said, would remain entitled to her late husband's share in equity. He referred the Court to the case of ***Gardener v Lewis*** (1998) 53 WIR 236 at pp. 238 – 239 where their Lordships in the Privy Council stated inter alia:

"In ***Frazer v Walker*** [1967] 1 AC 569 at page 585 Lord Wilberforce said:

'... their lordships have accepted the general principle that registration under the Land Transfer Act 1952, confers upon a registered proprietor a title to the interest in respect of which he is registered which is (under sections 62 and 63) immune from adverse claims, other than those specifically excepted. In doing so they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim *in personam*, founded in law or in equity, for such relief as a court acting *in personam* may grant...' " (emphasis supplied)

12. Mr. Adedipe submitted that the substance of the ***Gardener*** case is that a person registered as sole proprietor is not immune from personal claims. He also submitted that a resulting trust would accrue to the benefit of Leon Simpson and he would have acquired a beneficial interest in the property. When asked what would have been the effect of such a claim, Mr. Adedipe said:

"The interest in the property would have been established and the plaintiff would not have been entitled to recover possession of the property".

13. In his oral submissions to this Court, Mr. Adedipe submitted that the appellant had no documentary evidence in support of her husband's claim and that what she sought to rely on was the conversation she had with Viola Walters which amounted to a declaration against Viola Walters proprietary interest. He therefore submitted:

"1. If there was admissible evidence of the contribution and that evidence was accepted by the court that would have established Simpson's interest at the time of his mother's death to a beneficial interest on the principle of a resulting trust."

That beneficial interest he said,

"would be accorded a right by the law, despite the fact that his mother was the sole registered proprietor.

2. Had the Appellant been permitted to testify she would have been able to give as much details of what her mother -in-law told her."

14. When pressed by the Court as to what was this declaration against the mother-in-law's interest he had intended to adduce below he said:

"The declaration is that the son and herself pooled money to purchase lands in May Pen with an uncompleted house on it. The son was then working in England. He sent money to her in Jamaica to join with money she had herself for the purpose of purchasing the specific property in May Pen, 2 Rosembly Drive. That he sent further money to her to assist in the completion of the building and that she, the mother-in-law, was the one who actually did the transaction and she took title in her name alone because she was the one who was here. That the property belonged to her son and herself".

15. This declaration, he submitted, was made sometime after Leon Simpson and the appellant were married in 1990. He submitted that the declaration would have been the material for consideration by the learned Resident Magistrate in order to decide whether the mother was the sole proprietor or whether her ownership was subject to some beneficial entitlement in her son.

16. For his part, Mr. Young, Counsel for the Respondent, submitted in his skeleton arguments that although a statement against interest can be admitted in evidence under section 31A of the Evidence Act ("the Act") it should be excluded if, in the opinion of the Court the prejudicial effect of that evidence outweighs its probative value. Section 31A of the Act provides as follows:

"31A. In any proceedings a statement which, before the 30th day of March 1995, would by virtue of any rule of law, have been admissible in evidence of any fact stated therein, shall continue to be admissible as evidence of that fact by virtue of this section."

17. Mr. Young submitted that the probative value of the hearsay evidence sought to be adduced by the appellant would have little or no value and that it would have been proper for the court to exclude the evidence under section 31L of the Evidence Act. This section states:

"31L. It is hereby declared that in any proceedings the court may exclude evidence if, in the opinion of the court, the prejudicial effect of that evidence outweighs its probative value."

18. Mr. Young submitted that the conduct of Leon Simpson would have to be taken into consideration especially where he did nothing to sever the joint

tenancy or to make a declaratory application that he was entitled to a one half share of the property. He submitted that on the death of Viola Walters no attempt was made by him to sever the half share which he was entitled to. Furthermore, he argued that when the registration was made on transmission he would have been alerted at that stage that he was getting one-third (1/3) of Viola's share and he did nothing about it. He submitted that Leon Simpson should have made his claim during the lifetime of Viola or immediately upon her death.

19. Mr. Young submitted in the alternative that when Viola Walters made her will and gave the entire legal interest to Simpson, Hallahan and Dixon as joint tenants Simpson would have accepted the gift to the exception of his half share.

20. Accordingly, he submitted that the appeal should be dismissed.

The principles of law

21. Mr. Young agreed as he did in his skeleton arguments, that the deceased's declaration against interest could have been admitted pursuant to section 31A of the Evidence Act. He argued nevertheless that the declaration would have to be excluded in light of the provisions of section 3L of the Evidence Act.

22. Normally a party would not be allowed to testify about a conversation between someone else and that person without the latter being called to give

evidence. That conversation would be ruled as inadmissible since it would be in breach of the hearsay rule. It was submitted however, that the statement attributed to Viola Walters, who is now deceased, would be admissible as a declaration against her interest in the property.

23. Section 31A of the Evidence Act clearly provides for the reception of such evidence if it would have been admissible by virtue of any rule of law prior to the commencement of the Evidence (Amendment) Act of 1995.

24. The learned authors of "Phipson on Evidence" 30th Edition, state inter alia at paragraph 24-09 under the heading "Rule":

"Declarations, oral or written, made by deceased persons as to facts within their personal knowledge and consciously against their proprietary or property interests, are admissible in proof of the matters stated. The declarations may be oral or written".

25. The grounds for reception are set out at paragraph 24-10 which states as follows:

"The grounds of reception are: (1) death; and (2) the presumption that what a man states against his interest is probably true, see *Ward v Pitt; Lloyd v Powell Duffryn Steam Coal Co.* [1913] 2 KB 130, 138, the reasoning being that "it is very unlikely that a man would say falsely something to which he knows that truth if his statement tends to his own pecuniary disadvantage.

The admissibility of a declaration against interest must be judged at the time when it is tendered".

26. It is abundantly clear that it is section 251 of the Judicature (Resident Magistrates Court) Act and not Rule 60 of the Civil Procedure Rules (2002) upon which Mr. Young relies, which governs this appeal. Section 251 states as follows:

"251. Subject to the provisions of the following sections, an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order; and also upon any ground upon which an appeal may now be had to the Court of Appeal from the verdict of a jury, or from the judgment of a Judge of the Supreme Court sitting without a jury.

And the Court of Appeal may either affirm, reverse, or amend the judgment, decree, or order of the Court; or order a nonsuit to be entered; or order the judgment, decree, or order to be entered for either party as the case may require; may assess damages and enter judgment for the amount which a party is entitled to, or increase or reduce the amount directed to be paid by the judgment, decree or order; or remit the cause to the Court with instructions, or for rehearing generally; and may also make such order as to costs in the Court, and as to costs of the appeal, as the Court of Appeal shall think proper, and such order shall be final:

Provided always, that no judgment, decree, or order of a Court shall be altered, reversed, or remitted, where the effect of the judgment shall be to do substantial justice between the parties to the cause:

Provided also, that an appeal shall not be granted on the ground of the improper admission or rejection of evidence; or on the ground that a document is not stamped or is insufficiently stamped; or in case the action has been tried with a jury, on the ground of

misdirection, or because the verdict of the jury was not taken on a question which the Magistrate was not at the trial asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned in the trial, and if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and allow the appeal as to the other part only, or as to the other party or parties.” (emphasis supplied)

27. The final proviso to the section is very important. An appeal shall not be granted on the ground of the improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been occasioned in the trial and “if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties.”

28. The Probate of Viola Walters was made available to the Court for perusal and the will states inter alia:

“To my son Leon Simpson of England, my grand-daughters Doreen Dixon of England and Petrie Hallanhan of U.S.A all my interest in my land with building thereon situated at No. 2 Lot Part of Andersleigh, May Pen in the Parish of Clarendon to be held jointly.”

29. Leon Simpson’s will which was admitted as Exhibit 2 at the trial states inter alia:

“I **Give Devise And Bequeath** all my interest in property situate at Lot 2, Part of Andersleigh, May

Pen in the Parish of Clarendon to my wife **ROSETTA
SIMPSON.**"

The question which calls for determination is: what "interest" is being devised in the respective wills?

Conclusion

30. It must be obvious, I think, that prima facie what Viola Walters is said to have declared was something against her interest. That evidence in my view was admissible and ought not to have been rejected. The learned Senior Resident Magistrate should have used the opportunity to hear all of the evidence in the matter before him. He was also obliged in my view, to consider the evidence which touched upon the conduct of Leon Simpson. It would also have been necessary for him to construe the words "all my interest" in the respective wills of Walters and Simpson. Having regards to what transpired during the trial, he would not have been in a position to make a proper determination of all the issues that he is called upon to resolve.

31. I therefore agree with the Honourable President when he concluded that the evidence concerning the declaration against the proprietary interest of Viola Walters was wrongly disallowed. It is my view that a substantial miscarriage had been occasioned in the trial and I entirely agree that a re-trial should take place.

McCALLA, J.A.:

On September 12, 2005 the learned Senior Resident Magistrate for the parish of Clarendon ordered Rosetta Simpson (the appellant) to deliver up possession of premises situated at 2a Rosembly Drive, May Pen, Clarendon, to Petrie Hallahan-Tibbs (the respondent).

The sole ground of appeal from that decision is stated as follows:

"The learned Resident Magistrate wrongly refused to admit evidence or allow questions to be asked of the plaintiff about what her deceased mother-in-law had told her about the acquisition of the property subject of the action and thereby wrongly excluded admissible evidence of a declaration by her against her pecuniary interest and a substantial wrong or miscarriage was thereby occasioned at the trial."

After hearing submissions of Counsel on both sides on March 21, 2007, we allowed the appeal and granted costs of Ten Thousand Dollars (\$10,000) to the appellant. We also ordered that the matter be remitted to the Clarendon Resident Magistrate's Court for re-trial before another Resident Magistrate.

My brothers Harrison P and Harrison J.A. have set out the facts relating to the circumstances in which the matter came before the learned Senior Resident Magistrate, the reasons for his decision, as well as the submissions advanced by Counsel for each party. There is no necessity for me to repeat them especially having regard to our conclusion previously stated herein, I am in agreement with their

reasoning and conclusion and will confine myself to making a few comments, mainly for emphasis.

The basis on which the appellant sought to resist the action for recovery of possession was that her deceased husband Leon Simpson and his mother Viola Walters, who pre-deceased him, had both furnished the purchase money for the property although it had been conveyed in the sole name of Viola Walters, for convenience, as Leon resided in England at the time the conveyance was taken.

Accordingly, the appellant sought to establish that on Viola's death only a half share of the property could have been subsequently transferred by her executors to Doreen Dixon, Leon Simpson and the respondent as her husband Leon Simpson, was in equity, the owner of the other half share of the property.

At the trial, the appellant testified that she was present at the time that the property was purchased. She had lived on that property with her husband until his death, he had effected improvements thereto, and she has continued to live on the property after Leon Simpson's death.

During the course of the trial she was precluded by an adverse ruling as to the admissibility of giving evidence of a conversation she had with Viola Walters concerning the property. In that conversation Viola had stated that the property belonged to both her (Viola) and Leon Simpson. The learned Resident Magistrate in her reasons for her decision

stated that Leon Simpson's failure to prosecute any claim that he may have had was fatal to the appellant's case.

The case of ***Frazer v Walker*** [1967]1AC 569 is authority for the proposition that the indefeasibility of a registered title by virtue of the Registrations of Titles Act, does not defeat the right of a claimant to bring an action in personam against a registered proprietor.

The appellant had no documentary evidence on which she could have relied to support her case that Leon Simpson had a half interest in the land which was the subject matter of the claim for recovery of possession by the respondent. She only had "what my mother-in-law told me about."

The only evidence on which she sought to rely was her conversation with Viola Walters. The evidence which the appellant sought to adduce was that Leon Simpson had sent monies from England to his mother Viola Walters, which monies she pooled with her own, to purchase the property in question. Viola had taken title in her sole name for convenience, but the property belonged to both Viola and Leon.

The probative value of that evidence, which if accepted, would amount to a declaration against the interest of Viola, would fall to be considered by the learned Resident Magistrate along with evidence of the conduct of Leon Simpson in relation to the property, during the lifetime of Viola Walters and subsequent to her death. Leon Simpson

had devised "all his interest" in the said property to the appellant Rosetta Simpson. Viola Walters had devised "all her interest" in the said land to her two granddaughters (one of whom was the respondent) and her son Leon Simpson to be held jointly. The only remaining joint tenant was the respondent, who sought to recover possession of the land.

The question as to whether the respondent was the sole legal and equitable owner, to the exclusion of the half interest which the appellant sought to establish belonged to her by virtue of Leon Simpson's entitlement could only have been properly determined after a consideration of that evidence. The appellant ought not therefore to have been precluded from giving evidence, which, if found to be credible, could have established that Leon Simpson was entitled to a half share of the property. It is only after due consideration of all the evidence that the merits of the defence and the issue before the learned Magistrate could be properly determined.

I accordingly, endorsed the views of my learned brethren that the evidence which the learned Resident Magistrate ruled was inadmissible ought to have been admitted to be considered by him, along with the other evidence in the case. It was admissible as an exception to the hearsay rule and the failure to do so resulted in a miscarriage of justice which must result in a new trial.

HARRISON, P.

ORDER:

The appeal is allowed, the evidence of the statement against proprietary interest was wrongly disallowed, and the matter is remitted to the Resident Magistrate's Court, Clarendon to be retried before a different Resident Magistrate. Costs of Ten Thousand Dollars (\$10,000.00) is to be paid by the respondent.

