

Judgment of Resident Magistrate not dealing with  
real question between parties - Ct of Appeal  
cannot do judgment of Resident Magistrate -  
S(251) Indicative JAMAICA (Resident Magistrate's Court)

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 7/91

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.  
THE HON. MR. JUSTICE BINGHAM, J.A. (Ag.)

BETWEEN WILLLOUGHBY SMITH PLAINTIFF/APPELLANT  
AND LEVI WATSON DEFENDANT/RESPONDENT

H. Haughton-Gayle for plaintiff/appellant  
Miss Sharon Henry for defendant/respondent

May 13 and June 4, 1991

WRIGHT, J.A.:

The plaintiff, as legal owner of a parcel of land at Maidstone in the parish of Manchester, which he purchased from the Colonial Secretary of Jamaica in 1944, claims that, by a written conveyance from the said Colonial Secretary, access to the said land was reserved to him by a right-of-way across lands belonging to the Moravian Church of which the respondent was the Pastor. He claimed damages for trespass and an injunction on the basis that the respondent sought to restrict his right-of-way to six feet whereas he claimed a twelve foot right-of-way which he wished to improve to accommodate vehicular traffic. When his intentions were ascertained, the respondent objected and advised the appellant that what he was entitled to was a six-foot bridle-track and if he wished to make any alterations he would have to apply to the appropriate officers of the Church so the matter could be given the necessary attention. This done,

the application was rejected and it was pointed out that the bridle-track had never been used for vehicular traffic and that any such change of user would not be permitted. The Church's main concern was that the bridle-track passed close by its Basic School and children would be endangered were any such change of user permitted. Accordingly, the respondent erected two columns confining the bridle-track to the six feet which the Church conceded. Regarding this as trespass and/or interference with his right-of-way, the appellant sued. The defence denied the twelve-foot right-of-way but admitted a right-of-way of six feet and no more.

The appellant was not able to produce the document which he contended supported his claim alleging that the document was destroyed in 1951 by hurricane. Several witnesses testified before His Hon. Mr. W. L. V. Sang, Resident Magistrate for the parish of Manchester on May 9, 1989, when judgment was reserved and on July 10, 1989, judgment was entered for the defendant: cost to be agreed or taxed.

After examining the methods by which an easement can be created including provisions of the Prescription Act, the learned Resident Magistrate recorded at number (xiv) of his findings the following:

"The Court holds that on the evidence tendered, the Plaintiff has not established that he has acquired an easement over the Church property which is recognizable at law."

This appeal really concerns this finding because counsel on both sides agreed that such a finding does not accord with the evidence. Not only has the appellant testified to the long continued user of the right-of-way without interference, not just by the appellant but by some twenty-four families, but witnesses for the respondent admitted the existence of a track there.

Section 190 of the Judicature (Resident Magistrates) Act enjoins the Resident Magistrate to ascertain the real question between the parties and to do justice accordingly. It is obvious that the real question here is not the existence of a right-of-way but what is the width of that right-of-way and what user thereof is permitted. The finding under reference is at best ambiguous and certainly has not dealt with the real question between the parties. In addition, it is pregnant with the grounds for further disputes. 7

As authorized by section 255 of the Judicature (Resident Magistrates) Act, the Court amended the judgment to read:

"The Plaintiff/Appellant is entitled to the existing 8ft. right-of-way, limited to non-vehicular traffic. Costs of appeal to Respondent fixed at \$300.00"

Such a determination was agreeable to both sides who wished for an amicable conclusion to the matter.

MORGAN, J.A.:

I agree.

BINGHAM, J.A. (Ag.):

I agree.