

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 61 of 1974

BEFORE: The Hon. President (Ag.)
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Robinson, J.A.

BERTIE HENRY v. SAMUEL LEE

S.C. Morris for the appellant.

N. Wright for the respondent.

Heard - February 11, 1975

REASONS FOR DECISION

LUCKHOO, P. (Ag.):

On February 11, 1975 we dismissed this appeal and promised to put our reasons therefor in writing. This we now do.

On October 20, 1972, judgment in the sum of \$535 with costs agreed at \$59.15 was entered for one Azariah Bailey against the parties to this appeal, Bertie Henry and Samuel Lee, in the Resident Magistrate's Court for the parish of St. Thomas in a claim by Bailey against Henry and Lee to recover damages upon the allegation, that on May 3, 1971, Henry being the servant or agent of Lee so negligently drove and managed a motor car the property of Lee that the car collided with Bailey's motor cycle causing injury to Bailey. At the time of the accident there was in force a comprehensive policy of

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insurance in respect of Lee's car which had been effected with the National Employers Ltd. The judgment debt in favour of Bailey together with incidental expenses all totalling \$822.15 was fully satisfied by that company as a result of the issue of a warrant of levy against both Lee and Henry whereupon Lee brought proceedings to recover contribution or indemnity from Henry in that sum. On May 28, 1974, judgment was entered for Lee against Henry in those proceedings in the sum claimed in the Resident Magistrate's Court for the parish of St. Thomas. It is against that judgment that this appeal was brought.

The sole ground of appeal argued was "that the learned Resident Magistrate acted without jurisdiction as the claim as set out in the particulars was not one of negligence and the amount was for a sum in excess of six hundred dollars."

The claim was as follows -

"The plaintiff claims to recover contribution and or indemnity from the defendant in the sum of Eight Hundred and twenty-two dollars and fifteen cents (\$822.15) being moneys paid on the plaintiff's behalf to the use and benefit of the defendant in the parish of St. Thomas as a result of a warrant of levy issued against both parties herein in plaint No. 266/72 being Azariah Bailey v. Bertie Henry and Samuel Lee the particulars of which are as follows:

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|----|------------------------------------------------------------------------------------------------------------|-----------|
| 1. | Paid by the plaintiff's insurers in settlement of judgment debt and costs in plaint 266/72 | \$694. 15 |
| 2. | Paid by the plaintiff's insurers in settlement of bailiff's commission re warrant of levy in plaint 266/72 | 25. 00 |
| 3. | Paid by plaintiff's insurers in settlement of cash fees issuing warrant of levy in plt. 266/72 | 3. 00 |
| 4. | Paid by plaintiff's insurers, attorney costs defending action in plt. 266/72 | |

100. 00
\$822. 15 "

Mr. Morris for the appellant Henry contended that the action as filed was founded on a statute and/or a contract of record and sounded in quasi contract under the principle of indebitatus assumpsit whereby the Resident Magistrate's jurisdiction was limited to a claim which did not exceed \$600 (s. 71 of the Judicature (Resident Magistrates) Law, Cap. 179). While the Law Reform Tortfeasors Law, Cap. 214 s. 3 gave the Resident Magistrate jurisdiction to entertain a claim for contribution or indemnity against a joint tortfeasor, Mr. Morris contended, no limit in the amount of such a claim is mentioned in that section and one must go back to the fact that the action is based on a contract of record so that the amount of \$600 is the limit of the Resident Magistrate's jurisdiction.

This contention was fully answered by the submissions made by Mr. N. Wright on behalf of the respondent Lee. Mr. Wright submitted that the relationship which resulted between the appellant and the respondent in consequence of which the respondent was able to seek to recover contribution and/or indemnity could have been based on any one of three sections, viz. -

- (i) a claim under the Law Reform Tortfeasors Law, Cap. 214;
- (ii) a quasi contractual claim;
- (iii) a claim for a breach of the common law duty of care by a bailee to his bailor.

In the instant case the respondent chose to base his claim under the Law Reform Tortfeasors Law, Cap. 214. That claim arose out of the tort of negligence and a claim in negligence is cognizable by the Resident Magistrate if it does not exceed the sum of £1000. Here the claim was for less than that sum. In that event the learned Resident Magistrate had jurisdiction in the claim brought by the respondent.

We were of the view that Mr. Wright's submissions were well founded and accordingly dismissed the appeal affirming the order of the learned Resident Magistrate with costs \$50 to the respondent.