

J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLAND CIVIL APPEAL NO. 2/74

BEFORE: The Honourable Mr. Justice Edun - Presiding
The Honourable Mr. Justice Graham-Perkins, J.A.
The Honourable Mr. Justice Swaby, J.A.

BETWEEN: CAYMAN AGGREGATE & CONCRETE - Defendant/Appellant
PRODUCTS LTD.

AND : KANE CARIBBEAN INC. - Plaintiff/Respondent

John Stafford for Defendant/Appellant
John Harding for Plaintiff/Respondent

26th June, 1974

SWABY, J.A:

This is an appeal from the judgment of the judge of the Grand Court delivered on September 18, 1973, refusing an application by the appellant's Attorney made on the return day September 5, 1973, to state the defence and counterclaim to this suit issued in the form in Schedule D to Section 98 of the Judicature (Administration of Justice) Law, Chap. 74. The trial judge held that the provisions of Section 98 of Chap. 74 were mandatory and that as notice of intention to defend had not been filed by the defendant with the Clerk of Courts within the time specified in the Section for filing such notice he had no power thereafter to allow the defendant to defend the action and was compelled to authorise the Clerk of Courts to enter judgment for the plaintiff. In his judgment the judge stated that in coming to his decision he had given consideration to the provisions of section 152 and also section 114 of Chap. 74.

I do not think that the provisions of section 152 are applicable as those provisions relate to what is to be done if a defendant who has been summoned according to the form in Schedule D does not appear before the Court on the return day. I am, however, of the opinion that the relevant portions of section 114, which state

that :-

" the court may, in any case, civil or criminal make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of his suit....."

does apply and that the judge therefore had power to entertain the application notwithstanding the failure of the defendant to comply with the statutory provisions of section 98, as to the time within which notice of intention to defend must be given and to have allowed the defence and counterclaim to have been stated, upon such terms as the judge thought fit and for the matter to proceed to trial as a summons issued in the ordinary form.

The whole policy of the administration of justice in these courts is to see that each party to any cause or matter should have an opportunity to put forward his case at one and the same time with a view to bringing the litigation between the parties to an end and to reduce the costs. It is not the intention of Section 98 of Chap. 74, that a defendant should be prevented altogether from setting up a defence to a summons in the form in Schedule D for failure to comply with a procedural direction only relating to the notice of intention to defend. I am of the opinion that the judge of the Grand Court ought to have granted the application in question under Section 114 of Chap. 74, the matter thereafter being treated for all purposes as a summons in the ordinary form. I would allow the appeal.

EDUN, JA: I agree.

GRAHAM-PERKINS, JA.: I agree.

EDUN, JA.: The order of this Court is as follows: Appeal is allowed, judgment of the Grand Court set aside; leave to defend granted; Action in Plaintiff No. 60/73 to be listed for the next return day of the Grand Court. Costs of the appeal to the appellant to be taxed or agreed upon. Costs of the Court below to the respondent to be taxed or agreed upon up to the date of and including the application for judgment.