J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO. 20 of 1973

BEFORE: The Hon. President
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Swaby, J.A.

B E T W E E N CLARENCE ALLEN Plaintiff/Appellant

A N D LLOYD REID et al DEFENDANTS/Respondents

D. McFarlane, Esq. for the Appellant

Respondents not appearing.

February 4, 5, 1974

GRAHAM-PERKINS, J.A.

At the conclusion of the hearing yesterday we allowed this appeal and ordered a new trial before another resident magistrate. We promised to put our reasons therefor in writing and this we now do.

Let it be said at the outset that every one of the issues upon which the learned resident magistrate was required to adjudicate in this case remained, at the end of the day, totally unresolved. What is even more remarkable is that none of those who had anything to do with the conduct or trial of the case seemed to appreciate what those issues were.

The particulars of claim filed on behalf of the plaintiff disclosed a cause of action in trespass in which he alleged that the defendants "on the 14th day of December, 1971 wrongly and unlawfully broke and entered(his)close... and cut down (his) fence and picked breadfruit and cleaned the land..." At the commencement of the trial the defendants, through their attorney, Mr. Cunningham, made certain very significant admissions. They admitted"entering on (the plaintiff's) land on the dates alleged". They admitted,too, the damage alleged by the plaintiff. Quite obviously, therefore, the defendants were admitting

that they had "cut down the plaintiff's fence and picked(his) breadfruit and cleaned his land". Following upon these admissions the defendants, as they were required to do, stated their defence to the plaintiff's claim. Their defence was stated thus: "Defendants own the lands the subject matter of the suit." It is somewhat difficult to understand why the magistrate, at this point, appears to have thought that the defence as stated, and without more, was a sufficient answer to the plaintiff's allegations. Certainly the mere ownership of land does not ipso facto in all circumstances carry with it a right to enter thereon. A landlord, for example, has no right at common law to enter his tenant's premises for any purpose whatever. If the defendants in this case were claiming that they had an immediate right to possession for some reason, and that they entered thereon in pursuance of that right they should have so stated. It is, perhaps, desirable to recall the admonition of MacGregor, C.J., when delivering the judgment of the former Court of Appeal in Wallace v. Whyte, 3 W.I.R. 521. The then learned Chief Justice said:

> "It is t be remembered that Resident Magistrates' Courts are not courts of pleading. Except when a special defence is pleaded under s.150 of the Judicature (Resident Magistrates) Law, the plaintiff has no means of knowing what is the defence until the defendant states it in court at the opening of the trial of the action. It is the defendant's duty then to plead so that his defence is disclosed as if he was pleading to a statement of claim in the High Court."

The magistrate, however,allowed the case to proceed. The plaintiff led evidence to establish that he was, at the material time, in possession of the land. He closed his case. The magistrate made no observation of any kind at that point. All the defendants gave evidence. Victoria Reid, the second-named defendant, was the first to enter the witness-box. She said:

> "My mother died in 1934. She owned land - the land in dispute - before she died. Prior to her death, my mother and I came to an agreement. Mother took sick and was

unable to pay the taxes. She told me and asked me to pay the taxes. She took me to the collectorate and put my name on the tax roll. I have been paying the taxes since 1934 when mother put my name on the roll. She died the same year. She told me to stay on the land. 'You stay here', she said, 'you stay here with your children'. I have remained there from then until now. Since 1934 no one has molested me on the land."

Later in her evidence she said:

"I know the plaintiff. He is my nephew. He came to me and asked me to give him something. That was in 1969. He asked me to give him a house spot on the land. Like a good auntie, I gave him a house spot. Lloyd Reid is my son. Lloyd came to me in November, 1971 and asked me for a house spot too. I gave Lloyd the house spot too. Lloyd cleared up the spot."

In his reasons for judgment the magistrate said:

"During the course of this remarkable trial the plaintiff gave evidence to this effect when examined by his own attorney:

(Clarence Allen, sworn)

'I live at Granville in St. James. I am a blacksmith. I knew Samuel Allen my father. I am a lawful child. I know the land in dispute. My father had no house on the land. I put my house on the land seven years ago. Johnathan, my uncle, has a house on the land too'.

The attorney for the plaintiff took his seat. However, Mr. Cunningham for the defendants duly cross-examined the plaintiff and he too resumed his seat. The matter had been taken no further. The plaintiff's case ended as it had begun. His evidence did not allege or prove one single act of trespass in any one. .. Out of deference to the attorneys involved I heard and accepted as true the evidencee given by the defendants and accordingly gave judgment in their favour."

It is, in our view, a remarkable state of things when a resident magistrate chooses to hear evidence from the defendants in any cause "out of deference to the attorneys involved", notwithstanding that, in his own view the evidence led by the plaintiff fails to establish a cause of action. This certainly introduces a new dimension in the judicial process. What is even more astounding is that it seems to have completely escaped the magistrate that the plaintiff was only required to establish his possession of the land against which he had alleged a trespass by the defendants. He was not required to lead any evidence in support of the acts of trespass he had alleged in his particulars of claim for the very obvious reason that these had been admitted by the defendants. The onus was then on the defendants to justify, if they could, what they admitted.

But that is not all. We do not attempt to speculate as to precisely what evidence the magistrate accepted as true. In their evidence the defendants Winston Reid and Ashbourne Reid impliedly denied ownership of the land. The defendant Lloyd Reid swore that his mother Victoria Reid had given him a house spot on the land and that he had cleared that spot. From the evidence of Victoria Reid, however, it would appear that the house spot she said she gave to her son Lloyd was the same spot she had previously given to the plaintiff. If this be the fact it would follow that Lloyd Reid at least would be guilty of an act of trespass . It is clear, however, that the magistrate did not direct his attention to this aspect of the evidence. Nor does he appear to have appreciated that the evidence of at least three defendants was irreconcilable with their defence as stated. As to Victoria Reid we offer no opinion as to the admissibility of some parts of her evidence, nor do we offer any opinion as to that part of her evidence concerning her relationship to the land. If indeed she does own the land, andif she did put the plaintiff in possession of a part thereof, the latter's position is certainly not weakened.

It will be seen that the issues as to the plaintiff's possession, his right thereto, and the right of entry, if any, in the defendants, inter alia, were not the subject of any ajudication by the resident

magistrate.

For the foregoing reasons we allowed the appeal, set aside the judgment of the resident magistrate and ordered a new trial. We also awarded costs to the appellant in the sum of Forty dollars,