

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 12/90

BEFORE: THE HON. MR. JUSTICE ROWE, - PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN CRAFTON McCREATH PLAINTIFF/APPELLANT
AND DESNOES & GEDDES LTD DEFENDANT/RESPONDENT

Nelton Forsythe for Appellant

Anthony Pearson for Respondent

May 21 & July 23, 1990

ROWE, P.:

We allowed the appeal and ordered that the case be remitted to the Resident Magistrate for hearing on the merits. As the Resident Magistrate had declined jurisdiction, out of deference to him, we set out our reasons herein.

Section 71 of the Judicature (Resident Magistrates) Act falls under that portion of the Act with the sub-title "Jurisdiction of Resident Magistrate's Court" (a) "Common Law" and the relevant sections read:

"Each Court shall, within the parish for which the Court is appointed, have jurisdiction in all actions at law, whether such actions arise from tort or from contract, or from both, if -

(a) the amount claimed does not exceed ten thousand dollars, whether on balance of account or otherwise; and

(b) either

(i) the cause of action arose wholly or in part within the local jurisdiction of the Court; or "

This provision was judicially considered in this Court in Singh v. Davis (1969) 14 W.I.R. 28. Waddington J.A. identified the five choices of jurisdiction which the section afforded the plaintiff and placed as No. 1:

"The jurisdiction in which the cause of action arose wholly or in part."

Singh v. Davis was concerned with whether the defendant was carrying on his business in the parish of Kingston and is no guide to the interpretation of the provision as to where the cause of action arose wholly or in part.

In the instant case the plaintiff alleged in his particulars of claim that he purchased a bottle of Heineken beer at a parlour in Hope Bay, Portland on October 5, 1988 and as a result of drinking the beer he fell violently ill and had to seek medical attention. As a consequence he claimed the sum of \$10,000.00 from the defendant for their negligence. Because the cause of action sounded in negligence, it was necessary for the Court to decide whether the cause of action arose wholly or partly in Portland. The learned Resident Magistrate decided firstly, that on the authority of Singh v. Davis the defendant was not carrying on his business in Portland and secondly on the authority of Distillers Co (Bio-Chemicals) Ltd v. Thompson (1971) 1 All E.R. 694; [1971] A.C. 458 the cause of action arose in the parish where the Heineken beer was manufactured.

There is a crucial distinction between the Distillers case and the instant appeal in that the two statutes to be construed have quite different provisions. Section 18 (4) of the Common Law Procedure Act of New South Wales, Act 21 of 1899 as amended gave jurisdiction to the Court if the judge was satisfied:

"That there is a cause of action which arose within the jurisdiction."

In Jamaica, Section 78 of the Judicature (Resident Magistrates) Act does not limit the jurisdiction so narrowly as it provides for the Resident Magistrate's jurisdiction where the cause of action arises wholly or in part within his parish. Further, in the judgment of Lord Pearson in the Distillers' case, it is made clear that that case was dealing with very special circumstances not at all generally applicable to local situations. Lord Pearson said at page 467E (A.C. Report):

"The last event might happen in a particular case to be the determining factor on its own merits, by reason of its inherent importance, but not because it is the last event. Decisions under statutes of limitations are not applicable. The question in that context being when did the cause of action accrue so that the plaintiff became able to sue, the answer is that the cause of action accrued when it became complete, as the plaintiff could not sue before then. But when the question is which country's courts should have jurisdiction to try the action, the approach should be different; the search is for the most appropriate court to try the action, and the degree of connection between the cause of action and the country concerned should be the determining factor."

It was argued before the Resident Magistrate that as Heineken beer is manufactured by the respondent in the parish of St. Andrew, any plaintiff who wishes to sue the manufacturer in negligence on an allegation that he has suffered damage through consumption of the brew would have to bring his action in St. Andrew or in a parish in which the respondent carried on or used to carry on his business. We do not accept that in negligence the cause of action arises in respect of a particular plaintiff at the time of manufacture of an indifferent product. Damage is an essential ingredient in the tort of negligence.

For purposes of this appeal one sentence from the judgment of Lord Pearson at (1971) A.C. 467H provides the complete answer. He said:

"In a negligence case the happening of damage to the plaintiff is a necessary ingredient in the cause of action."

We respectfully adopt that proposition of law and in its application to Section 72 of the Judicature (Resident Magistrates) Act, it shows beyond question that on the allegation of the appellant that he suffered damage by drinking the beer at Hope Bay, the cause of action arose, in part, in the parish of Portland.

We were constrained to allow the appeal and remit the case to the Resident Magistrate for Portland for a hearing. We fixed costs against the respondent at \$400.00.