

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 6/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

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|---------|---------------|-------------------------|
| BETWEEN | GORDON MORGAN | 1ST DEFENDANT/APPELLANT |
| AND | ALSTON BRIGHT | 2ND DEFENDANT/APPELLANT |
| AND | JOY MAE HALL | PLAINTIFF/RESPONDENT |

David Henry for Appellants

E.F. DeLisser for Respondent

3rd October, 1990

CAREY, J.A.:

This is an appeal against an order of Parkin J, in the Supreme Court whereby in granting an adjournment because a notice of assessment had been short served, he ordered costs to be, in the cause. The appeal is taken against that order for costs on leave being granted by the learned judge.

The matter is wholly unarguable.

The presence of the defendant (the present appellant) on the date set for hearing, can only be attributed to good manners on his part seeing that he was not ready to proceed. There was absolutely no need for him to be present. It was the plaintiff on whom lay the duty of ensuring timely service who was in default and the result of the order of the learned judge was that it was possible, in the event of the case going against him for the respondent to be called upon to pay these costs. No blame certainly could be attributed to him.

Mr. DeLisser was endeavouring to argue before the court that because in the course of the proceedings before the judge, there had been an enquiry as to whether the defendant was ready to proceed and he had neglected to respond that entitled the learned judge to make the order he did. We think that argument is wholly unattractive. The fact of the matter was that the judge was not entitled to ask any such question. If the defendant wished to proceed, he would have so stated. The only order the court could properly have made as regards costs in this matter was that costs should be borne by the party in default. Costs follow the cause. The adjournment was occasioned by the plaintiff.

In the circumstances, the appeal must be allowed and the order as to costs below varied to costs to be paid by the respondent.

WRIGHT, J.A.:

I concur with the judgment of Carey J.A. and have nothing to add.

GORDON, J.A. (AG.)

I also concur.