

By the Justice Peterkin (5)

SAINT VINCENT

- IN THE COURT OF APPEAL-

Civil Appeal No. 1 of 1974

BETWEEN:

GEORGE HAYWOOD

-APPELLANT

vs

ERRIE DOUGLAS

-RESPONDENT

Before: The Honourable The Chief Justice (Ag.)
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin (Ag.)

H. Samuel for Appellant

G. Isaacs for Respondent

1974, September 17

JUDGMENT

PETERKIN J.A. (Ag)

In this matter the Appellant filed a writ on the 9th June, 1973. His claim was for \$670 being money due and owing as holiday remuneration under the "Industrial Workers Wages Regulations Order, No. 46 of 1970".

The matter was one which clearly called for investigation and so the Appellant should have filed his writ

/under.....

under Order 6, Rule 2, 1 (a) rather than under (b), which deals with liquidated demands only. The record shows that the Respondent, in spite of the fact that no statement of claim was filed, entered appearance on the 18th June, 1973, to the writ. It was an unconditional appearance. Further to this, on the 19th September, 1973, the Respondent filed a Statement of Defence. It was, by and large, a denial of the claim, and he went on further to ask that the action be treated as being frivolous and vexatious.

On the 20th September, 1973, the Appellant filed a request for hearing and the matter duly came on for hearing on the 25th March, 1974. The Respondent had taken no steps whatever, no action I should say, to have the matter struck out either by summons or by motion, but when on the 25th March the matter came before the Judge for trial he raised an objection to the writ in limine and asked that it be struck out. The Learned Judge said that the Appellant had not complied with the Rules, upheld the submission, and dismissed the claim with costs.

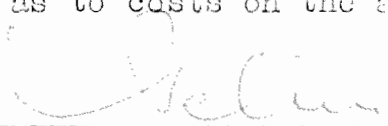
It appears that under Order 2, Rule 1 he had a discretion to do this. However, Order 2, Rule 2 deals with applications to set aside for irregularity any proceedings, any step taken in any proceedings, or any documents, judgment or order therein. It provides

/that.....

that any such application should not be allowed unless it is made within a reasonable time, and before the party applying has taken any fresh step after becoming aware of the irregularity.

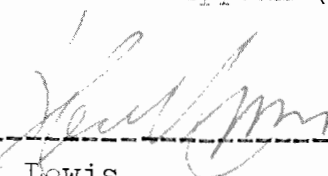
The point at issue here is whether the Learned Judge exercised his discretion correctly in striking out the writ. In the first place the Plaintiff should have filed a statement of claim, this is quite clear and he will have to seek the leave of the Judge to do so. However, in the circumstances of this case, I am of the view that the Judge should not have struck out the action, but rather should have given time to the Plaintiff to file the Statement of course, of Claim in the matter, /making such Order as to costs as he thought fit. In the circumstances I would allow the appeal. I would however order that the costs before the Judge, the costs of the day before the Judge, should go to the Respondent in the matter in any event.

I would make no order as to costs on the appeal.




N.A. Peterkin
Justice of Appeal (Ag.)

I agree.



P.C. Lewis
Chief Justice (Ag.)

I agree.



E.L. St. Bernard
Justice of Appeal.