

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT MISC. APPEAL No. 6/66

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R U T H L Y N D A W E S

vs

B A R R I N G T O N D A W E S

Both parties appeared in person

21st March, 1966.

DUFFUS, P.,

This appeal is by Barrington Dawes in maintenance proceedings brought by his wife, Ruthlyn Dawes, for the maintenance of six lawful children of the marriage.

The appellant complains, that the learned Resident Magistrate ordered him to pay £1 per week for the maintenance of each child without taking any evidence as to his means, and he states, that he did not consent for the order to be made against him for £1 per week. He said that he offered through his Counsel, Mr. Polack, to pay 15/- per week for each child, which would have amounted to a total of £4.10/-. On the other hand, the wife, who has appeared in person before us today, informs us that she asked for £9 per week for the six children, and that she informed the learned Resident Magistrate that the appellant was in a position to pay £9 per week as he did work as a haulage contractor with a small motor van, and that when he was not hauling goods he was employed as a duco-man.

The records which have been sent to this Court are endorsed, "By Consent Order to pay 20/- per week for

/ each child"....

each child" and are signed by the learned Acting Resident Magistrate for Kingston. Unfortunately, it would seem that no notes were taken by the learned Resident Magistrate as to what transpired before him. I say this, because no notes have been sent to this Court from the Court below. This Court has on more than one occasion stated how desirable it is that the Resident Magistrate take notes in all proceedings before him, and this is an example of what happens when no notes are taken.

We have listened to the two parties who appeared in person before us, and we are satisfied from what the wife tells us that in fact, there was no consent to the order being made for £1 per week. It seems that the learned Resident Magistrate was endeavouring to persuade the parties to arrive at some agreement, and he no doubt thought they had arrived at an agreement, but it is quite clear that no agreement was arrived at.

In the circumstances, this Court is allowing the appeal and sets aside the order for maintenance which was made on each of the Informations in the Court below, and pursuant to the powers vested in the Court of Appeal by Act 26 of 1965 we remit the cases to the Resident Magistrate's Court for re-hearing generally. There will be no order as to the costs of this appeal.