

JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL No. 96/1969

BEFORE: The Hon. Mr. Justice Luckhoo, Presiding  
The Hon. Mr. Justice Fox J.A.  
The Hon. Mr. Justice Smith J.A. (Ag.)

ERNEST JOHNSON v. REYNOLDS JAMAICA MINES, LTD.

HAROLD GENTLES v. REYNOLDS JAMAICA MINES, LTD.

Mr. R. H. Williams for the respondents

Mr. Hugh Small for the appellants.

31st July, 1970

LUCKHOO J. A.:

On these appeals coming on for hearing it was submitted in limine on behalf of the respondents, Reynolds Jamaica Mines, Ltd., that no right of appeal exists in relation to the orders made by the learned Resident Magistrate in the Resident Magistrate's Court for the parish of St. Ann on the 5th May, 1966.

The respondents, the holders of mining leases in various parts of the parish of St. Ann and the owners and operators of bauxite mines in those areas, had made application to the learned Resident Magistrate pursuant to section 57 of the Mining Law, Cap. 253, for a right of passageway over the respective lands of the appellants, Ernest Johnson and Harold Gentles, at Orange Park in the parish of St. Ann. The learned Resident Magistrate proceeded to hear and determine the applications and in each case made an order granting a right of passageway in certain terms in favour of the respondents over the lands of the appellants with an award of compensation to the appellants.

Section 57(1) of the Mining Law, Cap. 253 in so far as it

relates to this matter provides as follows:-

"If the holder of a licence or mining lease, or a person having permission under section 32 to mine on an area the subject of an application, is desirous of obtaining a right of passageway over lands outside the area covered by the licence, lease or application, or if the holder of a water right is desirous of obtaining a right of passageway for the purpose of such a water right, but is unable to obtain consent to such right, or on such terms as he considers reasonable, from the owner or occupier of the land over which the right is denied, he may apply to a Resident Magistrate for an order granting such right of passageway;"

The appeals purport to be brought by virtue of the provisions of section 251 of the Judicature (Resident Magistrate's) Law, Cap. 179. That section in so far as it is here relevant provides as follows:-

"... an appeal shall lie from the judgment, decree or order of a Court in all civil proceedings ..."

By section 2 of Cap. 179, 'Court' is defined as follows:-

"'Court' means the Court in which the Resident Magistrate sits in the exercise of the civil or criminal jurisdiction assigned to him as such."

Counsel for the respondents, Mr. R. H. Williams, has submitted that the provisions of section 251 of Cap. 179 must be limited to the jurisdictions which have been expressly conferred by that Law and that as no right of appeal is expressly conferred by the Mining Law in relation to orders made by a Resident Magistrate under section 57 of that Law no right of appeal can enure to any of the parties against an order made under and by virtue of the provisions of that section. Mr. Williams observed that in contrast certain other enactments - the Land Acquisition Law, Cap. 204, section 32(2) and the Land Clauses Law, Cap. 207, section 30 - specifically provide a right of appeal against the determination of the Commissioner of Land in the former and of the Resident Magistrate in the latter. If this submission is well founded it would seem that the entire proceedings from which the appeals

have been launched are vitiated for the record discloses, as my brother Fox will point out, that both parties and the learned Resident Magistrate proceeded upon the basis that the applications were brought in the Resident Magistrate's Court and the orders made by the learned Resident Magistrate purport to be orders made in and under that jurisdiction.

Counsel for the appellants, Mr. Hugh Small, on the other hand submitted that the learned Resident Magistrate in the instant case was adjudicating in civil proceedings and this he could only do in his capacity as a Resident Magistrate in a Resident Magistrate's Court. In this regard Mr. Small observed that the applications were filed in the Resident Magistrate's Court for the parish of St. Ann. Mr. Small contended that the provisions of section 251 of Cap. 179 embraced the orders made by the learned Resident Magistrate and therefore the appeals were validly brought.

The expression 'court of summary jurisdiction' is defined in section 2 of the Interpretation Law, Cap. 165 (in force at all relevant times) as follows:-

"court of summary jurisdiction means -

- (a) any justice or justices of the peace to whom jurisdiction is given by any Law for the time being in force, or any Resident Magistrate sitting either alone or with other justices in a Court of Petty Sessions;
- (b) a Resident Magistrate exercising special statutory summary jurisdiction;"

In these matters the learned Resident Magistrate was exercising a special statutory summary jurisdiction. He was therefore sitting as a court of summary jurisdiction in each case on an application which could truly be regarded as a civil proceeding. It is true that he was not sitting in the exercise of any of the jurisdictions specified in Cap. 179. But section 251 of Cap. 179 does not confine the right of appeal in civil proceedings to cases where the Resident Magistrate sits in the exercise of one or more of the jurisdictions specified in that Law. It embraced all those proceedings where a Resident Magistrate sits in the exercise of the civil jurisdiction assigned to him as a Resident Magistrate (other than those

specifically excluded by the section) and therefore includes proceedings under section 57 of the Mining Law as indeed it does those under section 12(2) of that Law.

It is interesting to observe that no specific right of appeal is given in respect of orders made on application to 'the Resident Magistrate's Court' under section 12(2) of the Mining Law (which relates to determination of proceedings in the Resident Magistrate's Court for compensation for disturbance of surface rights of an occupier by the holder of mining rights) and reference in section 12(3) to the Court of Appeal is only by way of specifying payment within a fixed period after an award made by the Court of Appeal where there has been an appeal brought against a decision pronounced in the Resident Magistrate's Court. Of course orders made under that section 12(2) are caught by the provisions of section 251 of Cap. 179, and there is therefore a right of appeal available in respect of those orders.

I would hold that an appeal lies from orders made under section 57 of the Mining Law, Cap. 253 and that the objection taken in limine is not well founded.

FOX J.A.:

By virtue of the provisions of Section 3 of the Judicature (Resident Magistrates) Law, Cap. 179, Resident Magistrates' Courts have been established in the several parishes in the island. The provisions of Section 4 of the Law make it lawful for the Governor General to appoint Resident Magistrates for the purpose of discharging the business of these Courts. The fact of such appointment empowers a Resident Magistrate to exercise and administer the civil and criminal jurisdiction and the duties of any Resident Magistrates' Court in the island. He is the Judge in that Court. The provisions of Section 143 of the Law direct that actions and suits shall be commenced in a Court by the lodging of a 'plaint' and 'particulars' with the Clerk of the Court, who must then issue and caused to be served upon the defendant a summons in the form and manner specified. The Law contains numerous provisions regulating procedure before, at, and after trial, and defining the powers and duties of the Resident Magistrate and the officers of the Court at these different stages.

In this matter, the company filed separate actions in the Resident Magistrate's Court for the parish of St. Ann. The particulars accompanying the complaints were in the form of an application under the provisions of Section 57 of the Mining Law, Cap. 253 for rights of passageway over the lands of the respondents. The Clerk of the Court issued his summons. The respondents were served. The cases came on for trial. The Resident Magistrate for the parish of St. Ann sat in his Court in St. Ann's Bay and heard the evidence. The entire proceedings throughout were in accordance with the provisions of the Judicature, (Resident Magistrates) Law. At the end of the case there were submissions by Counsel for the company and by the Solicitor for the respondents. The Magistrate gave judgments granting the applications, and in accordance with further provisions in Section 57 of the Mining Law, determining the amount of compensation to be paid to the respondents. Their Solicitor gave verbal notice of appeal and applied for a stay of execution pending the hearing of the appeal.

In resisting the application, Counsel for the company submitted, inter alia, that there was no right of appeal. By virtue of the provisions of Section 57(1) of the Mining Law, the company was entitled to "apply to

a Resident Magistrate for an order granting a right of passageway" over the lands of the respondents. The Resident Magistrate could make the order and award compensation to the respondents. In doing this the Resident Magistrate was not functioning in his capacity as a Resident Magistrate in his Court, but in his capacity as a Resident Magistrate exercising the special statutory jurisdiction given to him by the provisions of Section 57 of the Mining Law. These provisions were silent as to an appeal to the Court of Appeal. The provisions of Section 251 of the Judicature (Resident Magistrates) Law which enabled an appeal "from the judgment, decree or order of a Court in all Civil proceedings" to the Court of Appeal, and the provisions of Section 11 of the Judicature (Appellate Jurisdiction) Law 1962 to a similar effect, did not give a right of appeal from a judgment of a Resident Magistrate exercising his special statutory jurisdiction under Section 57 of the Mining Law. The Court of Appeal was a creature of Statute. It could exercise only such powers as were conferred upon it by Law. It was not empowered to hear appeals from judgments of Resident Magistrates under Section 57 of the Mining Law, and consequently it had no jurisdiction to review, or competence to pronounce upon the Magistrate's decision. Such seems to have been the tenor of Counsel's submission to the Magistrate. The application for stay of execution was refused.

Before us a preliminary objection to the hearing of the appeal was made by the Company in terms of Counsel's submissions to the Magistrate. I should perhaps make it clear that Counsel at the trial was not the Counsel who argued the appeal. A reply to these submissions which the situation automatically suggests is in terms of estoppel. An examination of the record places it beyond question that the company commenced and pursued proceedings in the Resident Magistrate's Court. Judgments were delivered in its favour. The formal orders which were entered by the Solicitors for the company, and signed by the Resident Magistrate are headed "In the Resident Magistrates' Court for the parish of Saint Ann", and refer to the findings of "this Court". The Respondents appeal. Counsel for the Company then says, for the first time, that the proceedings were never at any stage proceedings in the Resident Magistrate's Court. There were always proceedings in which the Resident Magistrate sat in a special statutory capacity which is altogether distinct from the

capacity when he sits as a Resident Magistrate in his Court. The company surely should not be able to repudiate a factual and legal situation which it had itself initiated, and which had received its unqualified support right up to the stage of judgments in its favour. But if the submissions in its behalf are correct, and it is so that the Resident Magistrate is capable of exercising only a special statutory jurisdiction under Section 57 of the Mining Law from which no appeal lies to this Court, there would seem to be no room for operation of the principles of estoppel. This Court is without jurisdiction, and that is an end of this appeal; but perhaps not of the matter. Because, if the orders which the Resident Magistrate made are orders of his Court in the purported exercise of his jurisdiction under the Judicature (Resident Magistrates<sup>s</sup>) Law, they are orders respecting a matter as to which the Resident Magistrates<sup>s</sup> Court would have had no authority to adjudicate, and absolutely void.

Frumpton v. Pettis 3 Lev. 23, Briscoe v. Stephens 2 Bing. 213.

Happily for the company, however, in the view which I take of the preliminary objection, it is spared the rigors of this Pyrric victory, and the burden of commencing litigation de novo before the Resident Magistrate in a special statutory capacity under Section 57 of the Mining Law. For, in my view, although the meaning of the words "Resident Magistrate" in the Section is clear, this solves only the factual aspect of the problem. The legal effect which is to be given to the words remains a matter of considerable difficulty. It is in this area that there is ambiguity. Did the Legislature intend to designate the Resident Magistrate sitting as such in his Court, or the Resident Magistrate functioning in a special statutory capacity? Counsel for the company pointed out that, under the provisions of Section 12(2) of the Mining Law, the owner or occupier of land to whom compensation was payable as a consequence of the carrying out of mining operations upon his land, could "take proceedings in the Resident Magistrates<sup>s</sup> Court without limit of amount". He compared these provisions with those in Section 57 where the holder of a license or a mining lease who was desirous of obtaining a right of passageway over lands could "apply to a Resident Magistrate for an order", and he submitted that the difference in the language used in the two sections was deliberate and for the purpose of pointing the distinction

between "proceedings in the Resident Magistrates' Court" and "proceedings before the Resident Magistrate in a special statutory capacity".

The force of these submissions cannot be ignored. They would have been stronger if the difference in language had been as between "apply to the Resident Magistrates' Court" and "apply to the Resident Magistrate". As the Law is, the latter phrase could imply that the application was to be made to the Resident Magistrate as such, and that the form of the proceedings in the application should be in the nature of proceedings in his Court - as well as the contrary implication. The problem is to determine the intention of the Legislature as to the effect of the words "Resident Magistrate" in Section 57. In this respect, there are other considerations which should be taken into account. The Mining Law must be considered as a whole. It is designed to facilitate and regulate mining operations in the Island. A prominent feature of its policy is in the provisions for compensation to the owners and occupiers of land whose rights have been adversely affected by such operations. In Section 12, the award of compensation is undoubtedly the result of adjudication by the Resident Magistrate in his Court. To my mind, this is revealing as to the adjudicating tribunal intending<sup>ed</sup> to be described by the words "Resident Magistrate" in Section 57. Because in that section, the Magistrate is empowered not only to determine the amount of compensation, but also to decide whether the right of passageway over land should be granted, and it is reasonable to think that where functions are substantially the same, and relate to the same subject matter, there would be no difference in the machinery created for their performance. It should also be noticed that the Mining Law contains no provisions as to the procedure to be followed in making applications to the Resident Magistrate. The Legislature must have intended the proceedings to be in accordance with the Judicature (Resident Magistrates') Law, as, in effect, they were in these cases. This, too, is a pointer as to the capacity in which the Magistrate was required to function in discharging his duties under Section 57.

Certain inconveniences arising out of the construction for which Counsel argued tend also to invalidate that construction. If the contention of Counsel is correct, the company could have applied to any Resident Magistrate, in any place, not necessarily Jamaica, at any time, and in any



manner. It would be surprising if the Legislature intended such a result. This difficulty would disappear if the application to a Resident Magistrate in Section 57 was understood to be the same as proceedings in the Resident Magistrates' Court in Section 12, and governed by the Law and the Rules of that Court.

An equally serious objection to Counsel's contention is that, if he is right, the Legislature would have intended that a person who considered himself wronged by the decision of a Magistrate's order under Section 57 would have no right of recourse to this Court though he would have such a right in the analogous situation of a decision under Section 12. This would certainly arouse alarm. If the Legislature intended that there should be no right of appeal to this Court, and that the order of the Magistrate should be final, a clear statement to that effect would have appeared in the Law. The Legislature would not have allowed this important matter to depend upon construction of the words in the Law. It would have been specific.

In my view, the application in Section 57 is to be made to the Resident Magistrate sitting as such in his Court, because this construction carries out the more probable intention of the Legislature as to the effect of the provisions. The order of the Resident Magistrate under the Section is therefore a judgment of his Court from which an appeal lies to this Court.

I would disallow the objection.

SMITH J.A.:

There is no right of appeal to this Court unless that right is conferred either by the Constitution, the Judicature (Appellate Jurisdiction) Law, 1962 or some other Law. The 'appellants' claim this right by virtue of section 251 of the Judicature (Resident Magistrates') Law, Cap. 179, as, it was said, the adjudications of the learned Resident Magistrate in these proceedings were adjudications of a civil, as opposed to a criminal, jurisdiction and were exercised by him in a Resident Magistrate's Court. It was said that a Resident Magistrate has no jurisdiction to exercise any civil or criminal jurisdiction outside of the Resident Magistrate's Court except where by statute he is given power to do so.

It was pointed out that the form of the proceedings taken by the mining company was the form used in bringing civil proceedings in a Resident Magistrate's Court and that the applications were heard by the learned Resident Magistrate in that capacity sitting in a Resident Magistrate's Court. It was said that the only way in which the Resident Magistrate could have exercised that jurisdiction is under the Judicature (Resident Magistrates') Law. It is true that the proceedings were filed in the form stated and that, apparently, the Resident Magistrate sat in adjudication on the applications in a court house where sittings of the Resident Magistrate's Court are usually held. All this, however, does not clothe the proceedings with a character not conferred by statute and, in my view, would not invalidate the proceedings if it turns out that the Resident Magistrate's jurisdiction under section 57 of the Mining Law is not exercisable in a Resident Magistrate's Court.

The applications by the mining company for rights of passageway over the lands of the 'appellants' were made to the Resident Magistrate under section 57 of the Mining Law, Cap. 253. That section gives a Resident Magistrate power to make an order granting a right of passageway and to award compensation to the owner or occupier of the land over which the right of passageway is granted. These powers are, undoubtedly, civil in nature. It is to be noted that applications under the section must be made to a 'Resident Magistrate'. This is significant, as I shall endeavour to show.

Section 251 of the Judicature (Resident Magistrates') Law states

that "an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings". "Court" as here used is defined in section 2 of the Law as "the Court in which the Resident Magistrate sits in the exercise of the civil or criminal jurisdiction assigned to him as such". Section 11 (1) of the Judicature (Appellate Jurisdiction) Law, 1962 provides that "an appeal shall lie to the Court (of Appeal) from any judgment, decree or order of a Resident Magistrate's Court in all civil proceedings". Contrast these provisions with those relating to criminal appeals. Section 293 of the Judicature (Resident Magistrates') Law, states that "an appeal from any judgment of a (Resident) Magistrate in a case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction, shall lie to the Court of Appeal". Section 21 of the Judicature (Appellate Jurisdiction) Law, 1962 provides that "an appeal shall lie to the Court (of Appeal) from any judgment of a Resident Magistrate in any case tried by him on indictment, or on information in virtue of special statutory summary jurisdiction". The point to notice is that in civil proceedings the appeal is from the judgment etc. of a Resident Magistrate's Court, while in criminal proceedings the appeal is from the judgement of a Resident Magistrate.

If the Judicature (Resident Magistrates') Law is examined it will be seen that jurisdiction in civil and criminal proceedings is conferred on the Court, not on the Resident Magistrate. Section 4(2) provides that "every Resident Magistrate so appointed shall be Judge of such one or more of the Resident Magistrates' Courts as shall at the time of his appointment or thereafter be assigned to him, shall have and exercise the jurisdiction or jurisdictions thereof, and shall be styled the Resident Magistrate for the parish or parishes of". Section 65 of the same Law provides as follows:

"Each Magistrate shall preside in the Resident Magistrate's Court of the parish, and shall there, to the amounts, and to the extent, and in the manner hereinafter provided, have and exercise the civil and criminal jurisdiction hereinafter assigned to the said Court, and shall also have and exercise jurisdiction in all cases in bankruptcy under the provisions of the Bankruptcy Law and in the recovery of all penalties or

" forfeitures to the Crown, and of fines in the nature of penalties, under all statutes and Laws now or hereinafter to be in force relating to the public revenue, and in cases under the Bastardy Law, and in all such causes, enquiries, and matters civil or criminal in which by any law any special jurisdiction, duty or power is given to or imposed on any Judge of a District Court, the Magistrate shall, within his parish, have, exercise and perform such jurisdiction, duty or power."

Apart from the specific matters referred to, this section authorises a Resident Magistrate to exercise in a Resident Magistrate's Court only the civil and criminal jurisdiction assigned to the Court in the sections of the Law following section 65. The reference in the latter part of the section to "all such causes, enquiries, and matters civil or criminal in which by any law any special jurisdiction, duty or power is given to or imposed on any Judge of a District Court" does not give the Resident Magistrate any general power. This, as it says, refers to powers formerly exercised by Judges of the old District Courts.

It follows from the above that, prima facie, the right of appeal given by section 251 is from judgments etc. in civil proceedings in which the Court has jurisdiction under the provisions of the Judicature (Resident Magistrates') Law. The legislature, however, has the power to extend both the civil and criminal jurisdiction of the Resident Magistrate's Court, and has done so from time to time in various statutes. Whenever this is done and it is clear that it is the ordinary jurisdiction of the Court itself that is being extended the rights of appeal in sections 251 and 293 apply automatically to the new jurisdiction. In the many statutes in which the ordinary jurisdiction of the Resident Magistrate's Court has been extended it will be seen that, without exception, wherever the civil jurisdiction of the Court is being extended the term used is "Resident Magistrate's Court". In criminal matters the extension is usually in respect of the trial of offences not specified in the Judicature (Resident Magistrates') Law and the reference is almost always to the "Resident Magistrate" and not the "Resident Magistrate's Court". An example in relation to the civil jurisdiction of the Court is to be found in the

Mining Law itself in section 12(2) which provides for the taking of proceedings in the Resident Magistrate's Court without limit of amount for the recovery of the compensation referred to in section 12(1). Other examples may be seen in the Co-operative Societies Law, Cap. 75, section 54, the Dividing Fences Law, Cap. 101, section 7, the Excise Duty Law, Cap. 119, section 108 and the Irrigation Law Cap. 168, section 48(2).

It is well known that a Resident Magistrate is given powers under various statutes which are not exercised by him in a Resident Magistrate's Court. Under the electoral laws he may count votes, and he is the authority for the grant or refusal of licences under the Registration of Clubs Law, Cap. 339, the Metal and Jewellery (Control of Second-hand) Law, Cap. 247 and the Bicycles (Control of Second-hand) Law, Cap. 39. Under the Enquiry Into Causes of Fires and Accidents Law, Cap. 115 he is the authority with power to make enquiries into the origin of fires or occurrences causing injury to persons or property. These, and other such powers and functions, are conferred on the Resident Magistrate independently of his primary function as Judge of the Resident Magistrate's Court to which he is assigned.

Reference has already been made to section 12(2) of the Mining Law, which authorises the taking of proceedings in a Resident Magistrate's Court in relation to compensation payable under that section. As I have indicated, this is an example of the extension of the ordinary civil jurisdiction of the Resident Magistrate's Court under the Judicature (Resident Magistrates') Law. If, as contended on behalf of the 'appellants', an application to a Resident Magistrate under section 57 means an application to him in the exercise of his civil jurisdiction in a Resident Magistrate's Court, there is no difference between the jurisdiction conferred by this section and that conferred by section 12. Yet the terminology used to confer the jurisdiction is different. Why is this so? If the intention of the legislature in section 57 was simply to extend the civil jurisdiction of the Resident Magistrate's Court one would have expected the words 'Resident Magistrate's Court' to be used in that section as well. Reference to the provisions of three statutes which were in force before the Mining Law was enacted in 1947 may serve to elucidate the matter.

Under the Kingston and Saint Andrew Building Law, Cap. 191 the Resident Magistrate for Kingston is given power (see section 64) to settle differences between adjoining owners of party structures regarding the security to be given by one owner to the other for payment of costs and compensation, or between joint owners of premises as regards expenses to be borne by them (see section 73(c)). These matters are civil in nature and, on the contention of the 'appellants', would have to be exercised by the Resident Magistrate within the ordinary jurisdiction of the Resident Magistrate's Court for Kingston, thus giving an aggrieved party a right of appeal under the Judicature (Resident Magistrates') Law. But we find that section 83 of the Law (Cap. 191) provides that "proceedings in the Resident Magistrate's Court for Kingston in respect of any matter arising under this Law shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such Court or as near thereto as circumstances permit". And section 84 expressly gives a right of appeal to an aggrieved party "in the same manner and upon the same terms in and upon which he might have appealed from the decision of such Court in any case within the ordinary jurisdiction of such Court".

Under the Lands Clauses Law, Cap. 207 a Resident Magistrate is the authority for settling questions of disputed compensation between the promoter of an undertaking and the owner of lands taken or required for, or injuriously affected by the execution of the undertaking (see section 23). Section 26 requires a plaint to be filed in the Resident Magistrate's Court and the matter to be enquired into in Court. Yet section 27 provides that the Resident Magistrate "shall have in every such proceedings the same power and jurisdiction over such proceedings and over the parties, witnesses, and all other persons in all respects, as if such proceedings were an action in such Resident Magistrate's Court". And section 30 gives a right of appeal from "the judgment or order of a Resident Magistrate in any such proceeding on any point of Law". Section 66 is also interesting. It gives the promoters of an undertaking the right to apply to the Resident Magistrate to deliver possession of land and provides that upon such application the Resident Magistrate shall deliver possession of any such land "in the same way as nearly as may be as such Resident Magistrate

would deliver possession of land upon a judgment for recovery of possession of land in his Court".

A Resident Magistrate is given power under the Mental Hospital Law, Cap. 242, to make orders after enquiry for the reception of persons into the mental hospital (see sections 19 to 22). Section 24 provides that the Resident Magistrate shall in the exercise of the jurisdiction conferred by that Law have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction. Section 36 provides for the recovery of amounts due on account of patients to be recovered in the Resident Magistrate's Court without limitation as to amount, clearly distinguishing between matters within the ordinary jurisdiction of a Resident Magistrate's Court and matters not, namely, those in sections 19 to 22.

These statutes demonstrate the point I seek to make, contrary to the contention put forward on behalf of the 'appellants', that where legal authority is given to a Resident Magistrate to adjudicate on a matter which is civil in nature he does not necessarily exercise that authority within the ordinary civil jurisdiction of a Resident Magistrate's Court so as to invest the proceedings with rights available in respect of proceedings in that Court. If the 'appellants' contention is right then sections 83 and 84 of the Kingston and Saint Andrew Building Law and sections 27 and 30 of the Lands Clauses Law are otiose.

The statute, and a very modern one, which best illustrates the way in which the legislature discriminates between the jurisdiction and functions of a Resident Magistrate and the Resident Magistrate's Court is the Housing Act, 1968 (Act 55 of 1968). Sections 18(6) and 21(3) and (4) provide for the recovery in the Resident Magistrate's Court, as civil debts due to the Crown, of expenses incurred by the Minister in demolishing a house under a demolition order or in the execution of works. These are clear extensions of the ordinary jurisdiction of the Resident Magistrate's Court. Then under section 23, on written application to him, a Resident Magistrate may empower the owner or mortgagee of a house in respect of which a notice requiring the execution of works has been served, or a demolition order has been made, to execute the works or demolish the house

on default of another owner or mortgagee. This has nothing at all to do with a Resident Magistrate's Court and sub-section (3) of the section provides that any order made by the Resident Magistrate shall be final. Section 30 calls for special notice. Under sub-section (1) of that section a Resident Magistrate may order vacant possession of land or building to be given to the Minister on complaint made in the circumstances set out in the sub-section. Sub-section (2) enables the Minister to recover in the Resident Magistrate's Court, as a civil debt due to the Crown, any expenses incurred by him in obtaining possession of any land or building under sub-section (1). And sub-section (3) provides for the punishment of certain offenders on summary conviction before a Resident Magistrate. Sub-sections (2) and (3) are extensions of the ordinary civil and criminal jurisdictions of the Resident Magistrate's Court, whereas the power given to the Resident Magistrate under sub-section (1) is not concerned with his Court. Under section 31 a lessor or lessee of premises in respect of which any order or scheme under the Act has become operative may apply in writing to a Resident Magistrate for an order for the determination or variation of the lease. In making the order the Resident Magistrate may attach conditions for the payment of compensation or damages by any party to the proceedings to another party thereto. Any doubts as to whether or not the powers conferred on a Resident Magistrate by sections 30(1) and 31, which are civil in nature, are exercisable in a Resident Magistrate's Court are removed by section 53 which provides that "any person aggrieved by any decision of a Resident Magistrate may appeal to the Court of Appeal". The grant of this right of appeal would be quite unnecessary if the Resident Magistrate exercised these powers within the civil jurisdiction of a Resident Magistrate's Court. Be it observed that the right of appeal in section 53 is not concerned with the extensions of the civil jurisdiction of the Resident Magistrate's Court in sections 18, 21 and 30(2).

I know of no presumption in favour of a right of appeal. Learned Counsel for the 'appellants' submitted that in the absence of a specific enactment taking away the right of appeal this right must exist. He cited no authority which supports this submission. *Re D. C. An Infant* (1966) 10 W.L.R. 280 was cited by both learned Counsel. In that case it was held



that there was no right of appeal from an order made by a Resident Magistrate's Court in proceedings under the Adoption of Children Law, 1956. In delivering the judgment of the Court of Appeal Duffus, P. said (at page 281):-

"The matter is one which has caused us considerable anxiety as it would be a grave injustice to deny a person a right of appeal if such a right existed. On the other hand, the Court of Appeal which is a creature of statute cannot go outside of the Law and clothe itself with a jurisdiction which it may not have. No person has an automatic right of appeal from a Court. The right of appeal must be given by the Legislature and it is usual to set out in the relevant statute in clear language the right of appeal and the powers vested in the appellate Court. Similarly, when the Legislature intends that the order of a Court or other body or authority shall be final, a clear statement to this effect usually appears in the relevant Law."

The last sentence in this passage does not support Counsel's submission referred to above. The fact that the legislature does not state in a statute that the order of a Court or other body shall be final does not create a right of appeal. There was no such statement in the Adoption of Children Law in relation to proceedings in a Resident Magistrate's Court yet it was held that there was no right of appeal. The burden is on the person claiming that he has a right of appeal to show that he has been given that right by statute either expressly or by clear implication.

It is to be observed that even where jurisdiction is given to a Resident Magistrate's Court, as distinct from a Resident Magistrate, outside of the Judicature (Resident Magistrates') Law this does not necessarily create an automatic right of appeal. An example of this is the Adoption of Children Law, as *Re D. C., An Infant* (Supra) shows. Another example is the Workmen's Compensation Law, Cap. 418 where claims for compensation and other applications under the Law are made to a Resident Magistrate's Court and a right of appeal is created by the Law itself.

I have endeavoured to show by the rather lengthy examination of our statutes, and there are many more to which I could have referred, that

when a power is given by the legislature to a Resident Magistrate it is not necessarily one exercisable in a Resident Magistrate's Court and under the provisions of the Judicature (Resident Magistrates') Law. Further, that whenever the ordinary civil jurisdiction of the Resident Magistrate's Court is being extended it is the jurisdiction of "the Court" that is extended and not of the Resident Magistrate. This has to be so for the sake of accuracy and consistency because, as already stated, the civil jurisdiction is conferred by the Judicature (Resident Magistrates') Law on the Resident Magistrate's Court and not on the Resident Magistrate.

When the relevant provisions of the Mining Law are looked at in the light of these considerations the significance of the reference to "Resident Magistrate's Court" in section 12 as against "Resident Magistrate" in section 57 should be revealed. It is because the jurisdiction to be exercised under section 12 is that of the Resident Magistrate's Court under the Judicature (Resident Magistrates') Law as extended by that section why reference is made in the section to an appeal to the Court of Appeal. In my opinion, the jurisdiction conferred on the Resident Magistrate by section 57 falls into the category where a right of appeal has to be shown to exist independently of section 251 of the Judicature (Resident Magistrates') Law. The fact that the Clerk of the Courts is the person on whom the duty is placed by sub-section (4) of section 57 to post a copy of the Resident Magistrate's order to the Commissioner of Mines is no indication that the Resident Magistrate is exercising functions in a Resident Magistrate's Court. Under the electoral laws the deposit to be made by an applicant for a recount of votes is required to be made with the Clerk of the Courts but this does not alter the fact that the Resident Magistrate does not count the votes in exercise of his functions in a Resident Magistrate's Court.

I regret that I must respectfully dissent from the conclusions of my learned brethren. In my judgment, there is no right of appeal from an adjudication of a Resident Magistrate under section 57 of the Mining Law and I would uphold the preliminary objection.

LUCKHOO J.A:

By a majority the objection taken in limine is  
overruled.