

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO.94/73

Before: The Hon. President
The Hon. Mr. Justice Graham-Perkins
The Hon. Mr. Justice Hercules

Elfreda Murray v. Donald Brown

Mr. D. Salmon for the appellant.

Miss J. Bennett for the Crown.

20th November, 1973.

HENRIQUES: P,

In this matter the appellant brought proceedings under the Bastardy Law Cap. 35 seeking an affiliation order against the respondent in the Resident Magistrate's Court for the parish of Manchester.

After hearing the evidence of the appellant and her witness, the learned Resident Magistrate proceeded to dismiss the case on the ground that no corroboration had been provided and therefore she was bound to dismiss the case of the complainant.

Learned counsel, who appears for the appellant in this court, has taken one short point, namely, that the learned Resident Magistrate erred in law by failing to hear evidence by or on behalf of the respondent who is the alleged father of the child from whom she could have ascertained whether there was corroboration before dismissing the complaint.

According to the amendment which was made by Act 32 of 1969 to Section 5 of the Bastardy Law Cap. 35, that section now reads as follows:-

"After the birth of such child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person or left at his last place of abode, six days at least before the holding of the court, the Resident Magistrate should hear the

evidence that may be tendered in support of the complaint; and shall also hear any evidence tendered by or on behalf of a person alleged to be the father, and if the evidence of the complainant be corroborated in such material particular by other evidence to the satisfaction of the Resident Magistrate, he may adjudge the man to be **the putative father** of such bastard child."

It seems to us that the section clearly contemplates that not only the complainant and her witness or witnesses should be heard, but that an opportunity should be afforded to the respondent to give evidence and tender such evidence as he thinks fit should be tendered on his behalf.

The case of *Rose v. Jones*, to be found in 6 W.I.R. at page 32, appears to be some authority for that view. Therefore, we are of the opinion that the learned Resident Magistrate erred in dismissing this matter at the end of the complainant's case, without calling on the respondent, and the court, therefore, will allow the appeal, and in accordance with the provisions of Section 9 (2) of Cap. 35, the court will order that this matter be remitted to the learned Resident Magistrate for her to continue the hearing.