

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 70/71

B E F O R E: The Hon. Mr. Justice Luckhoo, Presiding  
The Hon. Mr. Justice Edun, J.A.  
The Hon. Mr. Justice Graham-Perkins, J.A.

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R. v. MERVIN HARRIS

H. G. Edwards, S.C. and Noel Edwards for the appellant.  
Mrs. E. Sang for the Crown.

October 17, November 5, 1971

LUCKHOOC, J.A.

The appellant Mervin Harris was convicted by the learned Resident Magistrate for the parish of St. Catherine exercising jurisdiction in Clarendon on March 18, 1971 on an information in the following terms -

"Mervin Harris of 6, Wercliffe Place, May Pen in the parish of Clarendon is a person who has failed to pay certain taxes to wit, the amount of forty-five (\$45) dollars for water dues payable to B.O. Farquharson the Collector of Taxes for the parish of Clarendon due to the Mid Clarendon Irrigation Authority for a period in excess of three months namely five (5) quarters due to the 30th June, 1970, which taxes are recoverable by virtue of subsection (1) of section 48 of the Irrigation Law, Chapter 163 and section 23 of the Tax Collection Law, Chapter 375."

The appellant was ordered to pay the sum of \$45 and 20% costs and in default to be imprisoned for 10 days. Against this order the appellant has appealed.

Upon the appeal coming on for hearing Counsel for the Crown Mrs. Sang, submitted in limine, that the proceedings before the learned Resident Magistrate were Petty Sessions proceedings and that there was no right of appeal from an order in such proceedings to this Court. An appeal from the decision of a Resident Magistrate sitting in petty sessions lies to a Judge in chambers by virtue of the Justices of the Peace (Appeals) Law, Cap.107 and an appeal from a Resident Magistrate exercising special statutory summary jurisdiction in relation to an information lies to this Court by virtue of 8.21 of the

Judicature (Court of Appeal) Law, 1962 (No.15). It is necessary to determine the nature of the proceedings which were before the learned Resident Magistrate. Sub-section (1) of S.48 of the Irrigation Law, Cap.160 provides as follows:-

"48. - (1) Any irrigation dues or rates not paid at the expiration of three months after they shall have become due and any percentage increase payable by virtue of section 47 of this Law shall, until paid, be a charge on the lands (including any buildings whatsoever standing thereon) in respect of which they have been imposed, and shall be recoverable by the Collector of Taxes under the provisions of the Tax Collection Law."

By virtue of those provisions irrigation dues or rates remaining unpaid for the specified period are a charge on the land (including the buildings thereon) in respect of which they have been imposed and are recoverable by the Collector of Taxes under the provisions of the Tax Collection Law, Cap.375. In the information itself the provisions of the Tax Collection Law, Cap.375 invoked for the recovery of the irrigation rates alleged to be outstanding for the specified period are those contained in S.28 of that Law. Section 28 of Cap.375 provides as follows:-

"28. In addition to the other remedies given by this Law or any other law relating to taxes, the Collector of Taxes or Assistant Collector of Taxes, may proceed for the recovery of any amount claimed for any taxes, and for the penalty thereon, in a Resident Magistrate's Court, and such proceedings may be brought in the name of such Collector of Taxes, or Assistant Collector of Taxes, who shall describe himself by his name and office, and such proceedings shall not abate by the death, removal, retirement or resignation of such Collector of Taxes, or Assistant Collector of Taxes, but may be carried on and enforced by and in the name of his successor."

That section enables the Collector of Taxes or Assistant Collector of Taxes to proceed for the recovery of any amount claimed for any taxes (which term by S.2 includes irrigation rates levied under the Irrigation Law, Cap.160) and for any penalty thereon in a Resident Magistrate's Court. It specifically provides for such proceedings to be brought in the name of

such Collector of Taxes or Assistant Collector of Taxes who shall describe himself by his name and office and enacts that such proceedings shall not abate by the death, removal, retirement or resignation of such Collector of Taxes, or Assistant Collector of Taxes but may be carried on and enforced by and in the name of his successor. Such proceedings are in the nature of civil proceedings in a Resident Magistrate's Court with the Collector of Taxes or Assistant Collector of Taxes as plaintiff and the defaulting taxpayer as defendant. The proceedings in the instant case purport (as recited in the information) to be brought under this section for the recovery of the amount claimed but in fact are not so brought as they are not in the nature of civil proceedings nor are they brought in the name of the Collector of Taxes. They are brought in the name of the Queen and are in the nature of summary criminal proceedings more appropriate to proceedings under S.47(1) of Cap.375. Proceedings under S.47 (1) of Cap.375 provide that taxes (inter alia) required to be paid to the Collector of Taxes and not paid to him pursuant to the provisions of Cap.375, may be recovered in a summary manner in the parish wherein default in payment was committed or the defaulter resides. The expression "in a summary manner" is defined by S.3 of the Interpretation Act, 1968 (No.3) to mean "before a court of summary jurisdiction". Section 3 defines the expression "court of summary jurisdiction" as follows:-

- "(a) any justice or justices of the peace to whom jurisdiction is given by any Act 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."

For a Resident Magistrate lawfully to exercise a special statutory jurisdiction, such a jurisdiction may be expressly conferred on him by the relevant statute. See (Hart v. Black (1950) 7 J.L.S. 58. No such special statutory summary jurisdiction is conferred in S.47(1) of Cap.375 or by any other provision of that Law relating thereto. The jurisdiction conferred by S.47(1) therefore is limited to a court of petty sessions and where a Resident Magistrate sits in the exercise of that jurisdiction he can only lawfully do so in such a court.

As the record discloses the learned Resident Magistrate purported to sit as Resident Magistrate in the Resident Magistrate's Court for Clarendon and so even if he did sit in relation to a complaint brought under S.47 (1) of Cap. 375 he did not do so sitting in a Court of Petty Sessions.

Mr. Horace Edwards for the appellant sought to show that the Resident Magistrate's Court would have jurisdiction in this matter by virtue of S.65 of Cap.179. He contended that monies paid to the Collector of Taxes as irrigation rates formed part of the public revenue as these monies would in due course be paid by the Collector into public revenue and under S.50 of Cap.168, at the end of each financial year there would be credited to each Irrigation Authority such sum as is equivalent to the aggregate of the irrigation dues and rates collected under Cap.168 in respect of any lands within the relevant irrigation area. Section 65 of Cap.179, however, has no relevance to the recovery of arrears of irrigation rates as such. The proceedings being in fact summary criminal proceedings apparently under S.47 (1) of Cap.375 and intended to be summary criminal proceedings and the Resident Magistrate having assumed a special statutory summary jurisdiction which he did not have can he be set right by this Court on appeal? We think that this Court can do so for the order the Resident Magistrate purported to make was made in the exercise of an assumed special statutory summary jurisdiction. Such an order would be a nullity and cannot stand.

The preliminary objection is overruled. In the circumstances it is unnecessary to hear argument on the grounds of appeal filed. Having regard to the fact that the question of the validity of the Resident Magistrate sitting in a Resident Magistrate's Court as distinct from sitting in petty sessions was fully canvassed during the hearing of the argument on the preliminary objection and to our conclusion thereon, we allow the appeal and quash the order made in the proceedings out of which this appeal arose.