JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S APPEAL NO. 50/82

BEFORE: THE HONOURABLE MR. JUSTICE CARBERRY, J.A.
THE HONOURABLE MR. JUSTICE CAREY, J.A.
THE HONOURABLE MR. JUSTICE CAMPBELL, J.A. (AG.)

R. v. SEAFORD HOPE

Mr. Horace Edwards, Q.C., with Mr. A. Hinds for the Appellant.
Mrs. M. McIntosh for the Crown.

4th June, 1982

CAREY, J.A.:

The appellant in this matter, Seaford Hope, was charged on an information which reads as follows:

> "..... unlawfully threatened Miriam Hyatt in the following words, to wit - 'anyhow you and Cheryl go a court I going to kill the two a unoo' - she being a crown witness in the case R. v. Janet Smith for Larceny Dwelling contrary to section 16(n) of the Criminal Justices Act."

On that information the appellant was convicted and sentenced on the 18th of September of last year in the Clarendon Resident Magistrate's Court to pay a fine of Five Hundred Dollars and in default of payment six months imprisonment at hard labour. One must assume from the form of the endorsement that the learned Resident Magistrate was purporting to exercise his special statutory summary jurisdiction. The point on appeal is that:

> "The learned Resident Magistrate has no jurisdiction to try any accused summarily without special statutory provision vesting him with such authority. The offence charged is a common law offence triable on indictment. The learned Resident Magistrate has no jurisdiction to try the accused summarily."

Mrs. McIntosh for the Crown has quite candidly and, we think, correctly conceded that this conviction cannot stand.

The offence of threatening a witness is an indictable misdemeanout at common law, and if authority is wanted

for that proposition we would refer to an old edition of Archbold, 35th Edition, paragraph 3451, which states as follows:

> "At common law interference with witnesses in courts of Justice, by threats or persuasion, to induce them not to give evidence is a misdemeanour punishable on indictment or information."

and the authority which is given is the case of R. v. Lawley, 2 Str. 904 and R. v. Steventon (1802) 2 East 362.

A Resident Magistrate undoubtedly has power under the Judicature (Resident Magistrates) Act, section 268 (1)(f) to try offences which are punishable at common law offences. That being so the purported exercise by the learned Resident Magistrate of his special statutory summary jurisdiction was wholly misconceived. We would point out that section 16(n) of the Criminal Justice Act creates no offence triable by the Resident Magistrate. That section plainly allows a Court of Record in the Island to punish a large number of offences categorised in the section by imposing imprisonment with or without hard labour. It is merely a procedural section.

We would wish to point out that the offence of threatening a witness is a contempt of the court and where that court is the Supreme Court, may be triable summarily by a judge of the Supreme Court. See R. v. Shaw; R. v. O'Connor, 15 J.L.R. 207 per Robotham J.A. (Ag.) at p. 209B. It may be possible for the Resident Magistrate to try on indictment such contempt in his court as a common law misdemeanour. But what is perfectly clear is that there is no power in the Resident Magistrate to hear such a matter in the exercise of his special statutory summary jurisdiction.

In the result, therefore, this appeal is allowed, the conviction quashed and the sentence set aside.

We have not thought it necessary to make any comment with regard to the facts in view of the conclusion at which we

have arrived. So that there may be no doubt in the matter, this court cannot in the circumstances order a new trial as there has not so far been a trial. The whole proceedings amounted to a nullity. It will be a matter for the prosecution to determine whether they will ask for an order for trial on indictment before a Resident Magistrate of the parish.