

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE COURT MISCELLANEOUS APPEAL No. M(c) 1/66

BEFORE : The Hon. Mr. Justice Duffus, President  
The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Waddington

Mr. Norman Hill with Mrs. K. Coore for Sylvia Maria Samuel,  
the mother of the child - Appellant

Mr. A. Mundell for the Adoption Board

Emily Taylor - Respondent - in person

30th Nov. 1st, 2nd, 5th  
14th December, 1966

In the Matter of an Application  
for the adoption of a child -D.C.

Duffus P.,

On this matter coming before the Court of Appeal on appeal from an Adoption Order made by the learned Resident Magistrate for Portland on the 4th July last, a preliminary point arose for the consideration of the Court as to whether the Court was seised of jurisdiction to hear the appeal. The Court was informed that this was the first appeal in respect of an Adoption Order made under the Adoption of Children Law of 1956, Law 75 of 1956. This law which was enacted on the 22nd of December, 1956, came into force on the 2nd of January 1958 by proclamation issued by the Governor. Provisions for the adoption of children have existed in the United Kingdom and other Commonwealth countries for many years prior to 1956, but Law 75 of 1956 introduced for the first time into Jamaica legislation for the adoption of children.

/Under.....

Under Section 9 of the law the Court may upon an application made in the prescribed manner by a person domiciled in the Island make an order authorising the applicant to adopt a child. Under section 20(1) the Court having jurisdiction to make adoption orders shall be the Supreme Court of Judicature or at the option of the applicant any Resident Magistrate's Court within the jurisdiction of which either the applicant or the child resides at the date of the application for the adoption order.

There is no specific provision in the law giving the right of appeal in respect of adoption orders from either the Supreme Court or the Resident Magistrate's Court. Learned counsel for the appellant submitted, however, that an appeal lay from orders made in either court by virtue of Rule 15 of the Adoption of Children Rules 1956, contained in the Second Schedule of the law. This rule reads as follows :-

" 15 - Subject to the foregoing rules the Rules of the Supreme Court of Judicature shall apply in respect of all proceedings under the Law in the Supreme Court and the Resident Magistrate's Law shall apply in respect of proceedings under the Law in a Resident Magistrate's Court as if the application were a complaint and the respondents were defendants and the notice under Rule 5 were a Summons. "

He submitted that the clear intent and purpose of this rule was to apply the Resident Magistrate's Law, Cap. 179 to all proceedings under the Adoption of Children Law which were conducted in a Resident Magistrate's Court and that as a direct result thereof the provisions in the Judicature (Resident Magistrate's) Law, Cap. 179, relating to appeals from the judgments of a Resident Magistrate applied to the Adoption of Children Law 1956, and he further submitted that the effect of the words "as if the application were a complaint and the respondents were defendants and the notice under rule 5 were a summons" indicated that when proceedings for adoption were taken in the Resident Magistrate's Court they were heard by him as if they were quasi-criminal proceedings and not civil proceedings, so that an appeal would

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lie under Section 293 of that Law (Cap. 179) which provides -

" 293. An appeal from any judgment of a Magistrate in any case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction shall lie to the Court of Appeal....."

He further submitted that the word "information" was synonymous with the word "complaint" used in Rule 15 and as the Resident Magistrate was acting under the special statutory jurisdiction conferred on him by section 20(1) of the Adoption of Children Law that a right of appeal to this Court was conferred on the appellant.

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.

Attractive though the arguments presented by learned counsel for the appellant have been it seems that there are a number of grave problems which cannot be lightly glossed over. The first point with which I will now deal is whether an "information" and a "complaint" can be said to be the same thing for the purpose of conferring a right of appeal under section 293 of Cap. 179. In my view, they are different and ought to be clearly distinguished. Both words have been in common use in English criminal jurisprudence for a very long time and in Jamaica, their origin is to be found in the Justices of the Peace Jurisdiction Law, Cap. 188. This Law, as the /title....

title implies, confers on Justices of the Peace their jurisdiction to deal with various matters. Part 1 of that Law appears to have come into being in its original form in or about the year 1850 and since that time there have been amendments. Section 2 thereof is as follows :-

" 2. In all cases where any information shall be laid before one or more of Her Majesty's Justices of the Peace for any parish within this Island, that any person has committed, or is suspected to have committed, any offence or act within the jurisdiction of such Justice or Justices for which he is liable by law, upon a summary conviction for the same before a Justice or Justices, to be imprisoned or fined, or otherwise punished; and also in all cases where a complaint shall be made to any such Justice or Justices upon which he or they have, or shall have, authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such Justice or Justices to issue his or their summons (according to Form (1) in the Schedule hereto) .....

This Section makes it clear that an "information" has to be laid in order that a summons may be issued to any person who has committed or is suspected to have committed an offence for which he is liable to be imprisoned or fined or otherwise punished, but that it is not necessary for an "information" to be laid in those cases which are not offences whereby the Justices have authority to make orders for the payment of money or otherwise. In these latter cases the Justices issue their summons upon a "complaint" being made.

Clear examples of "complaints" are to be found in Jamaica in the Bastardy Law, Cap. 35 which authorises a single woman to make a "complaint" on oath or affirmation (vide Section 3) and the Maintenance Law, Cap. 232, as amended by Act 26 of 1965, which authorises certain persons to make "complaints". The primary object of these two laws is to enable the courts to make orders for the payment of money and come within the courts' civil jurisdiction rather than the criminal jurisdiction, the primary object of which is to order punishment for offences. The distinction between an information and a complaint was recognised in England at least one /hundred....

hundred years ago. In Paleys' Law and Practice of Summary  
Convictions 4th Ed. (1856) at p. 55 in the section headed

"Information or Complaint" is found the following statement :-

" The proceeding, which forms the groundwork of a  
conviction, is termed "laying" or "exhibiting an  
information," while the similar proceeding for the  
obtaining of an order of justices is termed "making  
a complaint".

This distinction is preserved throughout the stat. 11 & 12 Vict. c.43  
.....(Sir John Jervis' Acts, 1848).

This distinction between "information" and "complaint" has become  
somewhat blurred in England due to the indiscriminate use of the  
two words in some statutes, but the distinction still exists and a  
clear line of demarcation between the two is now drawn in the  
Magistrates' Court Act 1952 (U.K.).

Part I of that Act headed "Criminal Jurisdiction and  
Procedure" uses the word "information" not the word "complaint" in  
respect of process for the initiation of proceedings for criminal  
offences.

Part II is headed "Civil Jurisdiction and Procedure" and  
the word "complaint" not the word "information" is used throughout  
in respect of proceedings under that part of the Act. Specific  
reference to this distinction is made in a footnote which appears  
in most editions of Stone's Justices Manual. It appears as Note(j)  
on page 70 of Vol. 1 of the 94th Edition (1962) thus :-

" This Act uses the expression "information" in  
connection with offences and "complaints" for  
civil proceedings (see ss.1, 43). Many old  
statutes use these expressions indiscriminately,  
cf. Offences Against the Person Act, 1861, s.42.  
Throughout this work alterations have been made,  
where necessary, to accord with the uniform  
nomenclature which this section enacts. "

It was submitted by learned counsel for the appellant  
that under the Judicature (Resident Magistrates) Law, Cap. 179,  
"information" and "complaint" were one and the same. He relied on

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on the use of these words in section 272 which reads :

" 272. On a person being brought or appearing before a Magistrate in court or in Chambers, charged on information and complaint with any indictable offence the Magistrate shall.....make an order which shall be endorsed on the information and signed by the Magistrate ....."

It is to be observed that the words are "information and complaint" they are not "information or complaint". The expression "charged on information and complaint with any indictable offence" appears to be derived from Form 15 which is to be found in Part II of the Schedule to the Justices of the Peace Jurisdiction Law, Cap. 188, which is headed "Information and Complaint for Indictable Offences" and reads " The information and complaint of C.D. ....taken.... ..before the undersigned one of Her Majesty's Justices of the Peace....." This Form derives its authority from section 29 of the Law which provides -

" 29. In all cases where a charge or complaint (according to Form (15) in the Schedule hereto) shall be made before any one or more of Her Majesty's Justices of the Peace for any parish within this Island that any person has committed or is suspected to have committed any treason, felony or indictable misdemeanour or other indictable offence whatsoever .....then and in every such case if the person so charged or complained against shall not then be in custody, it shall be lawful for such Justice or Justices to issue his or their warrant to apprehend such person, and to cause him to be brought before such Justice or Justices or any other Justice or Justices for the same parish to answer such charge or complaint....."

Quite clearly here the word complaint is being used in respect of proceedings which are criminal only and this may be another example of what Stone's Justices Manual refers to as the "indiscriminate use" of the expression. It is to be noted that section 29 of the law speaks of charge or complaint and does not /use....

use the words "information" or "complaint", whereas Form 15 uses the expression "information and complaint". It would seem, therefore, that the expression "information and complaint" in section 272 of Cap. 179 must be limited to the meaning which it carries in respect of indictable offences and ought not to be extended to summary matters.

Section 293 of Cap. 179 confers a right of appeal from any judgment of a Magistrate in any case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction. It does not confer a right of appeal in respect of judgments of a Magistrate in cases tried by him on complaint. The Magistrate has authority to hear complaints when exercising his Petty Sessions jurisdiction, which is conferred by section 63 of Cap. 179. This section enables him when sitting alone in a Court of Petty Sessions to exercise all the powers and authority which may be exercisable by any two or more Justices associated and sitting together. Appeals from a Resident Magistrate exercising his Petty Sessions jurisdiction do not lie to the Court of Appeal but go to the Circuit Court of the parish or to a Judge of the Supreme Court, vide Cap. 187, Section 3, and under Section 50 thereof a dissatisfied party may apply within three days of the judgment for a case to be stated on a point of law for the opinion of the Court of Appeal. That this is so is clear from the proviso to Section 293 of Cap. 179 which reads :-

"  
Provided that nothing herein shall be deemed to apply to any case adjudicated on by any Magistrate whether associated with other Justices or not which is within the cognisance of Justices in Petty Session, but an appeal may be had in any such case subject to the law regulating appeals from Justices in Petty Sessions. "

(See Hart v Black 7 J.L.R.56, a decision of the former Court of Appeal, where the Magistrate's Petty Sessions jurisdiction is carefully examined.)

It might be that an appeal from <sup>an</sup> adoption order made by a Resident Magistrate would lie to the Circuit Court or to a Judge of the Supreme Court or to this Court by way of a case stated pursuant to the law regulating appeals from Justices in Petty Sessions, as envisaged

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by the proviso to Section 293(supra), but when this was canvassed by the Court learned counsel for the appellant submitted that it would not be so as the jurisdiction under Section 20(1) of the Adoption Law 1956 was a special statutory summary jurisdiction conferred on the Resident Magistrates Court, and as concurrent jurisdiction had not been conferred on Justices of the Peace an appeal would not lie under the Justices of the Peace (Appeals) Law, Cap. 187. It was not necessary for this Court to give any further consideration to this aspect as what it had to consider was whether it could entertain this appeal and not whether the appeal could be entertained by a judge of the Supreme Court.

To return to the question whether the appeal lay to the Court of Appeal under Section 293 of Cap. 179, an examination of the further provisions governing appeals made pursuant to that Section indicates that these appeals are in respect of cases which are entirely criminal in their nature and not cases which are quasi-criminal or civil. The heading to section 293 is -

" Criminal Appeals "

The marginal note to Section 297 reads -

" Liberation of accused under recognisance pending appeal "

and the provisions of the section refer only to a person who has been convicted of a criminal offence and can have no possible application to an adoption order. The same remarks will apply also to section 298 which concerns the attendance of the accused at the hearing of the appeal and to section 303 which refers to "errors and defects" appearing in an indictment or information on which there has been a conviction, and, finally, section 305 which sets out the powers of the Court of Appeal, makes it clear beyond doubt that the only powers which the Court of Appeal has in respect of appeals under section 293 concern criminal cases on which there has been a conviction.

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Learned counsel for the appellant submitted that the words of section 305(a) -

"The Court of Appeal may dismiss the appeal or may allow the appeal and quash the conviction or may allow the appeal and order a new trial ;"

were sufficiently wide to enable this Court either to dismiss the present appeal or to allow the appeal or to order a new trial, but to place such an interpretation on the section, which must be read as a whole including the several provisos, would place an interpretation on it which it cannot possibly bear.

For these reasons, it is abundantly clear that the right of appeal given by section 293 of Cap. 179 cannot apply to an adoption order made by a Resident Magistrate.

During the course of argument learned counsel for the appellant submitted that the provisions of the Adoption of Children Law, 1956, were very similar to the Adoption of Children Act, 1926 (U.K.), and that notwithstanding the absence of any express provision in the English Act for appeals, that an appeal always lay in so far as it came within the ordinary jurisdiction of the appellate court from an adoption order or from a refusal to make an order. With the assistance of counsel we examined the various statutory provisions in England and it is clear that the appeals lay there because of the specific provisions of the various statutory enactments which are not the same in Jamaica.

There seems to be no doubt that an appeal <sup>would</sup> lie to this Court had the adoption proceedings been in the Supreme Court instead of the Resident Magistrates Court, and had the matter come to this Court by way of a case stated, under Section 50 of Cap. 187, different considerations would have applied. If it was the intention of the legislature to give a right of appeal to the Court of Appeal from an order made by a Resident Magistrate in adoption proceedings it could have been clearly stated as was done in the Bastardy Law, Cap. 35 which gives jurisdiction to Resident Magistrates to hear complaints under that law. Section 9(1) gives the right to appeal to the Court of Appeal "in manner provided by any law in force for /the time....

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the time being regulating appeals in cases tried by a Resident Magistrate on indictment or on information in virtue of a special statutory summary jurisdiction,"and section 9(2) sets out the powers of the Court of Appeal.

For these reasons the Court regretfully came to the conclusion that it had no jurisdiction to entertain this appeal.

Dated this 14th day of December, 1966.

*[Signature]*  
President.

I agree. *[Signature]* Judge of Appeal.

I agree. *[Signature]* Judge of Appeal.