

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 15/98

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON MR. JUSTICE HARRISON J.A.

REGINA
vs
CECIL JULY

Lord Gifford Q.C. and Christopher Malcolm instructed by Taylor,
Deacon & James for Appellant

Dawn Eaton for the Crown

20th July, and 30th November 1998

FORTE J.A.

On the 21st January, 1998, the appellant was cited and subsequently convicted of contempt of court by the learned Resident Magistrate for the parish of St. Elizabeth sitting in Black River. The contempt arose during the hearing of an application before the Court, for the variation of a maintenance order and other related matters including the payment of arrears of maintenance. During the hearing, the Court expressed the desire to have a Probation Officer's report, dealing comprehensively with the circumstances concerning the children and the parties. It was at this stage that the appellant intervened and the following

account of what transpired thereafter is recorded by the learned Resident

Magistrate as follows:-

"Mr. July tells the Court that that is wrong. Court tells Mr. July, Court has already ruled and Mr. July continues to argue. Court tells Mr. July to take his seat. Mr. July refuses to take his seat and continues to argue about what the Court has already ruled on giving the impression that the Court's ruling is wrong. Mr. July would not yield. Court says to Mr. July, 'You know you are being rude?' Mr. July replies to Court stressing 'You are rude. Court asks Mr. July 'Are you saying the Court is rude?'. Mr. July replies 'Yes, you first called me rude'. Court says 'I am citing you for contempt of Court'. Sergeant, take him into custody until the rising of the Court".

The appellant was thereafter placed in custody but was brought back before the 'rising of the Court' and offered bail in his own surety in the sum of ten dollars (\$10.00) and ordered to return to Court on the 28th January, 1998 to show cause why he should not be 'convicted' for contempt of Court.

On the 28th January, 1998, Lord Gifford appeared for the appellant at which time legal submissions were made and overruled and consequently on the 29th January, 1998, the appellant gave sworn evidence in his defence. The relevant part of his evidence reads as follows:

"The Judge also asked the Probation Officer for a report on this. I asked the Judge if he could suspend the payment of the maintenance for the child involved, pending the outcome of the report. The Judge said 'No'. I said to the Judge that it would create hardship on my client to have the child, paying maintenance to the mother who did not have the child and I said that would be unjust. The Judge flared up and said 'You are rude, you are rude'. I said to him " I am not rude and if I am rude you are

rude too'. I was merely pointing out to the Judge that it was ridiculous to call me rude and I had no intention to call him rude. The Judge said 'You are calling the Court rude?' and he cited me for contempt. I did not reply to the Court asking me if I was calling the Court rude".

In the end the learned Resident Magistrate convicted the appellant and sentenced him to be imprisoned for three days in the local jail, and suspended the sentence for six (6) months. The learned Resident Magistrate in determining the sentence expressly based it on two grounds:-

"(i) Quite apart from statute Sec. 194 there must be some inherent power in the Court to control its proceedings so that Court be not held out in ridicule or Court insulted and this can be tested on appeal.

(ii) Court also relies on the Criminal Justice Administration Act Section 16 (c) and/or (1) for 'any unlawful resistance to a Magistrate in the due discharge and execution of his duty' or (1) 'slandering words to a Magistrate in the due discharge of the duties of his office' for which the sentence is prescribed at the end of the Section to be 'imprisonment in the discretion of the Court'."

In respect of (ii) we agree with the submission of Lord Gifford, that the appellant was never charged under that statute, and consequently the sentence imposed cannot be based on its provisions. Nothing further will therefore be said of this.

Before us Lord Gifford also challenged the learned Resident Magistrate's reasons expressed in (i) supra, in the following ground:

" The learned Resident Magistrate erred in law in finding that he has an inherent jurisdiction beyond Section 194 of the Judicature (Resident Magistrate) Act".

For convenience and in the interest of clarity, the provisions of Section 194 are hereunder set out:

"194 - If any person shall wilfully insult the Resident Magistrate or any officer of any Court under this Act, during his sitting or attendance in the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Constable or Bailiff or officer of the Court with or without the assistance of any other person, by the order of the Magistrate, to take the offender into custody and detain him till the rising of the Court; and such Magistrate shall be empowered, if he shall think fit, to impose upon any such offender a fine not exceeding twenty dollars for every such offence, and in default of payment thereof, to commit the offender to prison for any time not exceeding one calendar month, unless the fine shall be sooner paid, and in case of a subsequent offence within six months, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to prison for any time not exceeding one calendar month".

The question in issue, was settled by this Court as long ago as 1981, in the case of *Lloyd Minto v Reg.* RMCA 110/81 delivered on 13th November, 1981 (unreported). Having regard to the dicta of Carberry, J.A. therein, there is really no necessity to add to his words and all need be said is that we confirm his conclusions therein. In the circumstances, we make no apology for stating fully his statement on this principle of law. He said (at pg 4):

"It will be noticed that the Resident Magistrate's power to commit for contempt is limited to contempts committed in the face of the court and of a specified nature. Further, there is a limit with regard to the penalty; the limit is twenty dollars (\$20.00) for each such offence and in default thereof to commit to

prison for a time not exceeding one calendar month; and in the case of subsequent offences committed within six months to commit directly to prison, again for a time not exceeding one month.

Now there is an abundance of authorities that show that, apart from statute, the power of the Resident Magistrate to commit for contempt applies only to a contempt committed in the face of the court, and I mention three of them: (a) *R v Lefroy*, [1873] L.R. 8 Q.B. 134. That case is authority for the proposition that inferior courts of record can only punish for contempt committed in the face of the court. The second authority is *R v Broniptou County Court Judge*, [1893] 2 Q.B. 195, again, a case to like effect. These cases have been followed and applied in Jamaica with regard to the Resident Magistrate's Court. See *R. v Alphanso Harris* [1986] 11 J.L.R. page 1 at page 4.

In that case Moody, J.A. delivering the judgment of this court said:

'By Section 10 of Cap. 179, the Judicature (Resident Magistrate's Law, the Resident Magistrate's Court was made a court of record and by Section 194 power was given to the Magistrate to deal with misbehaviour in court . This power is clearly confined to the instances given and to the extent limited. The Resident Magistrate's Court as an inferior court does not have the general authority which the superior courts have - *R. v. Lefroy*. The power is not inherent in the Resident Magistrate's Court as it is in courts of record, and is given by the Judicature Law which makes them courts of record and gives them a limited power over contempts of court'."

In my view, the appellant's behaviour before the learned Resident Magistrate amounted to a 'wilful insult' of the Court. Counsel has a duty to

himself and to the honourable profession of which he is a member, to treat tribunals before which he appears, with respect, and to act with proper decorum. To tell the learned Resident Magistrate that he is rude, is not a privilege which he can enjoy without punishment, and certainly in itself amounts to a wilful insult of the Court. For those reasons, we dismissed the appeal against conviction, allowed the appeal against sentence, and removed the sentence of three days imprisonment, and substituted therefor, a sentence of twenty dollars (\$20 .00) and in default a sentence of imprisonment for three (3) days.

DOWNER, J.A.

I agree.

HARRISON, J.A.

I agree.