

**IN THE INNER LONDON CROWN COURT****BETWEEN****AMHED BALOGUN****V -****HIGHBURY CORNER MAGISTRATES****SKELETON ARGUMENT ON BEHALF OF THE  
ATTORNEY GENERAL**

1. By a notice of appeal dated the 13<sup>th</sup>, January 2003 Mr. Balogun seeks to appeal against the finding made by Deputy District Judge Pigott on the 6<sup>th</sup>, January 2003 that Mr. Balogun was in contempt of court. (Section 12 a, Contempt of Court Act 1981)
2. The narrow issue in this case is whether or not the Crown Court has jurisdiction to hear an appeal against conviction and/or sentence, imposed by the Magistrates Court for contempt.
3. The appellate jurisdiction to challenge a conviction for contempt derives from Section 13 (1) of the Administration of Justice Act 1960 (A.J.A. 1960). This section gives the right to appeal `any order or decision of a court in the exercise of its jurisdiction to punish for contempt of court`.
4. Appeal shall lie: Section 13 (2) (a) `from an order or decision of any inferior court not referred to in the next following paragraph to the High Court`. `Inferior court` must prima facie include the Magistrates Court.
5. `Court` is defined in section 13 (5) as `any tribunal or person having power to punish for contempt`. The appellate court having the power to `reverse or vary the order or decision of the court below`: section 13 (3) (A.J.A. 1960.)
6. An `order or decision` includes an order or decision of the High Court, Crown Court, County Court and Magistrates Court under sub section 3 of section 63 of the Magistrates Court act 1980. (See Section 5 subsections (a) – (c) A.J.A 1960) But does not include `references to orders ....under any provisions of the Magistrates Court Act ... except sections 38 and 142. (A.J.A. section 5

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(c) All other Magistrates' Court orders are expressly excluded from the appeal provisions of the Administration of Justice Act.

- 7. However, in *Re Hooker* (1993) C.O.D. 190, Kennedy J. in the Divisional court stated that the appeal was brought under section 13, A.J.A. 1960, " which provides that where a magistrates' court makes an order, an appeal shall lie from such an order to this court ". No challenge was made in that case to the courts jurisdiction and no reference was made to the *R v Havant Justices, ex parte Palmer* (1985) Crim. L. R. 658.
- 8. Orders made under the magistrates' jurisdiction under section 12 of the Contempt of Court Act 1981 are brought within the terms of section 108 of the Magistrates Courts Act 1980 which provides for appeal to the Crown Court. This follows the recommendation of the Phillimore Committee which recommended that there should be a right of appeal to the nearest Crown Court against a finding of contempt.
- 9. The issue of jurisdiction was dealt with by May L.J. in *R v Havant Justices ex parte Palmer* (1985) Crim L.R. 658 when a comparison was made between section 13 (1) of the A.J.A. 1960 and section 12 (5) of the 1981 Act.
- 10. May L.J. accepted that 1960 Act might appear to give the right of appeal against a finding of contempt under section 12, but the matter is made clear by the second part of subsection 1 of section 13 of the A.J.A. 1960 and that section 13 did not afford a right of appeal in respect of section 12 contempts.
- 11. The Crown Court's jurisdiction under section 12 (5) was limited to hearing appeals against the penalty imposed. Section 12 (5) refers to an `order` and not to a `decision` or `finding` of contempt. By implication the only means of challenge would therefore be by way of judicial review, although it remains to be seen whether the Divisional Court will follow the precedent of *Re Hooker*.

Brendan Morris  
18, Red Lion Court  
26<sup>th</sup>, April 2003



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**Held, refusing the application:**

The case of *Ex p. Meikle* should not be distinguished as the Regulations are directed towards the offences not towards the offender in the absence of *mala fides* on the part of the Prosecutor. Such *mala fides* was not evident in this case.

Cases considered: *R. v. Derby Crown Court, ex p. Brooks*, 80 Cr.App.R. 164; *R. v. Great Yarmouth Magistrates, ex p. Thomas* [1992] Crim.L.R. 116; *R. v. Norwich Crown Court, ex p. Parker and Ward* [1992] Crim.L.R. 500; *R. v. Wirral District Magistrates, ex p. Meikle* [1990] Crim.L.R. 801.

*N. Guest* (Howletts) for the applicants; *I. D. Winter* (Crown Prosecution Service) for the respondents.

S.M.K.

**Appeal****Re Hooker (Patricia) and the Contempt of Court Act 1981**

Divisional Court  
CO/2478/92

November 13, 1992

Kennedy L.J. and Waterhouse J.

*Contempt of Court Act 1981—use of tape recorder by shorthand writer without leave of the court—requirement of some element of defiance or intolerable conduct—alleged contemnor to be given an opportunity to take advice and to apologise.*

Appeal under section 13 of the Administration of Justice Act 1960 in respect of an order made by Miss Audrey Jennings, a stipendiary magistrate sitting at Wells Street Magistrates' Court, that the appellant had committed a contempt and should be fined £500.

The appellant is an experienced freelance court shorthand writer. On September 15, 1992 she was asked by her former employers Harry Counsell & Co. to attend Wells Street Magistrates' Court to transcribe evidence being given in committal proceedings in which a firm of solicitors had an interest. She arrived at the court at 10.25 am, shortly before the hearing and had with her a tape recorder. She omitted however to ask permission to use it although she had some recollection that such permission was required. At about 11.10 am the clerk of the court drew the existence of the tape recorder to the attention of the magistrate who then stopped the proceedings and, according to the appellant, forthwith ordered its confiscation. The magistrate then rose to consider what procedure she should follow.

Section 9(1) of the Contempt of Court Act 1981 provides:

**FOOL!**  
shorthand  
writer  
← Not the same as  
a Defendant  
in Dock  
Accused of  
Contempt

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“ . . . it is a contempt of court—

(a) to use in court . . . any tape recorder . . . except with the leave of the court.”

Section 12(1) of the Act provides:

“A magistrates’ court has jurisdiction under this section to deal with any person who—

(a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.”

Section 12(2) further provides that the court may commit an offender to custody for a specified period not exceeding one month or impose a fine not exceeding £2,250 or both.

The Divisional Court had before it affidavits from the appellant, counsel for the Crown, Mr Carter-Manning, the magistrate and the clerk of the court.

When the magistrate returned to court the appellant, who appeared to be in some distress, was called into the witness box. Counsel for the Crown was not allowed to make representations on her behalf. The appellant was told to stand up straight. According to the magistrate the appellant showed no signs of remorse. In the result the appellant was ordered to pay a fine of £1,000 and told that she could not leave the building until it had been paid. She then sought the assistance of Harry Counsell & Co. who provided a letter to the court apologising for her conduct and suggesting that the fine should be reduced to £500, as subsequently it was.

YES!  
BUT NOT  
by the same  
Judge  
alleging,  
Trialing  
and  
EXECUTING  
Contempt!

**Held, allowing the appeal:**

In construing the words “otherwise misbehaves” in section 12(1)(b) regard had to be had both to the fact that this was a criminal statute and that the other prohibitions in section 12 were qualified by the word “wilfully.” Thus it followed that some element of defiance, or at least conduct such that the court could not reasonably be expected to tolerate, had to be postulated. The appellant’s conduct lacked these two attributes and thus it followed that there was no power to punish under section 12.

In her affidavit the magistrate had suggested (a) that the appellant’s conduct had had an effect on the proceedings, (b) that as an experienced court reporter she should have known better, (c) that there had been an absence of apology or remorse, and (d) that the amount of the fine should cause the appellant and her employers to take a serious view of what had occurred. The appellant’s conduct had not, however, had any effect on the proceedings until the magistrate had interrupted. Moreover it was precisely because the appellant was an experienced court reporter that she regarded her conduct as innocuous. It was equally clear, at least on the face of some of the affidavits, that there had been considerable remorse and in the circumstances it was perhaps not wholly surprising that there had been no apology if the appellant had been harried in the witness box as she had alleged. As to likely effect of the fine on her employers it was to be observed that she had no employers, she being self-employed, and there

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was no reason why Harry Counsell & Co. should, effectively, be fine one remove.

A simple investigation, when the tape recorder was first noted, would soon have brought the real facts to light and the magistrate could then have decided to grant the necessary leave. If a formal investigation as to whether there had been a contempt was nevertheless to be undertaken it was necessary to think in terms of allowing the applicant to have legal advice. In *Balogh v. St. Albans Crown Court* [1975] 1 Q.B. 73 the Court of Appeal had set out the considerations to which a court should have regard. Essentially it was clear that a court should be very slow to act in a contempt matter without giving reasonable thought to the problem with which it was faced and without giving the person who was alleged to be in contempt an opportunity to take advice and to apologise. Sometimes it was necessary to act at once but, as the Court of Appeal had emphasised, that situation was rare indeed.

In the present case not only should no order have been made under section 12 but the whole situation should never have developed in the way it had. Although the ingredients of section 9(1) had been present, in that sense that the tape recorder had been used without the leave of the court, such facts did not constitute a contempt where the finding had been arrived at in a way which the appellate court considered to be wholly unsatisfactory—see *R. v. Moran* (1985) 81 Cr.App.R. 51, *K* (1984) 78 Cr.App.R. 83 and *R. v. Renshaw* [1989] Crim.L.R. 811. While an element of *mens rea* might not necessarily be present in section 9(1) that was a point which might be argued on another occasion. The proper course was for the court to set aside the finding of contempt.

Cases considered: *Balogh v. St. Albans Crown Court* [1975] 1 Q.B. 73; *K* (1984) 78 Cr.App.R. 83; *R. v. Moran* (1985) 81 Cr.App.R. 51; *R. v. Renshaw* [1989] Crim.L.R. 811.

*S. John* (Russell Jones & Walker, London) for the appellant; *I. Burnet* (Treasury Solicitor) for the respondent.

R.A.V

### R. v. Registrar of Criminal Appeals, ex p. Pegg

CO/1242/92

December 14, 1992

Rose L.J. and Pill J.

*Registrar of Criminal Appeals—refusal to relist appeal after dismissal by Court of Appeal, Criminal Division—whether Registrar's decision susceptible to judicial review.*

Renewed application for leave to move for judicial review, following refusal by Popplewell J., in respect of a decision of the Registrar of Criminal Appeals not to re-list the applicant's appeal before the Court of Appeal, Criminal Division.

On March 25, 1985, in the Crown Court at St. Albans, the applicant was

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