

IN THE CROWN COURT AT INNER LONDON

BETWEEN:

AHMED BALOGUN

Appellant

and

HIGHBURY CORNER JUSTICES

Respondents

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SKELETON SUBMISSIONS  
ON BEHALF OF THE CROWN

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1. The Appellant (and five others) was found to be in contempt of court under S 12 of the Contempt of Court Act 1981 (the 1981 Act) at Highbury Magistrates Court on 6 January 2003.
2. The Appellant has appealed to the Crown Court against both conviction and sentence.
3. **The question before this Honourable Court is does it have jurisdiction to hear this appeal?**
4. **Conclusion**

**It is respectfully submitted that this Honourable Court has no jurisdiction to hear this appeal against conviction. The correct court for the Appellant is the High Court by way of Judicial Review for the finding of contempt on 6 January 2003. However the appeal against conviction and sentence for the substantive offence still lies in this Honourable Court.**

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*Palmer*<sup>5</sup>. Here May LJ considered the matter at length; and although his conclusions are, strictly speaking, *obiter*, they must have considerable weight and be highly persuasive.

**6. Article 6 of the European Convention on Human Rights**

- i. In any event, would a Crown Court as constituted for an appeal against a decision of the Magistrates of contempt in the face of the court be an "independent and impartial tribunal"<sup>6</sup>?
- ii. The test is "whether the events in question give rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the judge was not impartial"<sup>7</sup>
- iii. Applying this test to such matters as contempt such an observer may rightly question the role of Magistrates sitting in a case where another magistrate may have to give live evidence about his or her own actions on the bench. Such a possible conflict of interest should obviously be avoided by the case being heard at the High Court.
- iv. Even if the statutes were obscure or contradictory the risk of bias in the Crown Court should indicate that the advisable route is to the High Court.

Bruce Tattersall  
Chancery Chambers

24/4/03

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<sup>5</sup> (1985) 149 JP 609 at 612-3

<sup>6</sup> Article 6 (1)

<sup>7</sup> per Browne-Wilkinson LJ *Regina v. Bow Street Metropolitan Stipendiary Magistrate and Others*, ex parte Pinochet Ugarte (No. 2) HL (Lord Browne-Wilkinson, Lord Goff of Chieveley, Lord Nolan, Lord Hope of Craighead and Lord Hutton) [2000] 1 AC 119.

prohibiting the proceedings which it was

for example under s. 46 of the Children and Young Persons (Scotland) Act 1937 as amended. The power to prohibit or restrict reports of proceedings involving a young person under 16 formerly contained in s. 169 of the Criminal Procedure (Scotland) Act 1975 has been replaced by an absolute ban (Criminal Justice (Scotland) Act 1980 s. 22).

Offences of contempt of magistrates' courts

12.—(1) 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.

(2) In any such case the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £500, or both.

(3) The court shall not deal with the offender by making an order under section 19 of the Criminal Justice Act 1948 (an attendance centre order) if it appears to the court, after considering any available evidence, that he is under 17 years of age.

(4) A magistrates' court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(5) The following provisions of the Magistrates' Courts Act 1980 apply in relation to an order under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence, namely: section 86 (restriction on fines in respect of young persons); sections 75 to 91 (enforcement); section 198 (appeal to Crown Court); section 186 (overnight detention in default of payment); and section 142 (1) (power to rectify mistakes).

GENERAL NOTE

This section gives to magistrates a power which county court judges have under s. 157 of the County Courts Act 1959. Phillimore recommended a like power (para. 37), though the maximum penalties have been considerably increased. The power of any court to commit for insults to itself is open to abuse. Where one person is victim, prosecutor and judge, justice is hardly seen to be done. The person committed may justifiably complain that he has not been judged by "the independent and impartial tribunal" required under Article 6 of the European Convention.

Although the Act was described by its backers as a liberalising statute (cf. Lord Hailsham's letter to *The Times*, April 30, 1981) this is one of at least five sections which extend the law of contempt. In addition, while Phillimore recommended that the maximum penalty for insulting magistrates should be seven days and £70 (para. 37) the section prescribes one month and £500. Phillimore's proposal was modelled on the penalty which magistrates could impose on recalcitrant witnesses. The two have been kept on a par by expanding the existing power (Sched. 2 Part III—amending Magistrates Courts Act 1980 s. 97 (4)). It is a common pattern for liberalising legislation to increase maximum penalties for conduct which is not decriminalised. See "Permissiveness and Control"—edited by National Deviancy Council (1979).

For Northern Ireland see Sched. 4: (s. 18 (2)) this section does not extend to Scotland. s. 21 (4).

Subs. (1). "Wilfully" was copied from the County Courts Act 1959 which in turn dates from 1846. It was criticised as an archaism inside and outside Parliament (Ashworth—[1981] *Crim.L.R.* 73). Government spokesmen repeatedly said that the offence was intended to require *mens rea* (Lord Hailsham, *Hansard*, Vol. 417 col. 191; Attorney-General, S.C.A. May 14, 1981 col. 220). The House of Lords

grants a power to prohibit from the public. It says that it is from the public. In *A.C.* 417 it is that justice in *Sexual Offences (Amendment) Act 1975* there is clearly a power of confidence or other action. The Lords were given general power to take *Loreburn* (p. 446) said "No" and Viscount *Lackmail* victims are often been held to be contempt *Att-Gen.* [1975] 1 *Q.B.* 1013. *Att-Gen. v. M. & P. Ltd.* [1979] *A.C.* 440, in a committal hearing on not to be contempt but the how far the courts have cases not involving official administration of justice is *Viscount Haldane* in *Scott* used to quash an order of *obscure publications* *ions, The Times*, June 19,

probably, in accordance with directions and not simply

the identity of Colonel B en under s. 12 this would proved in accordance with of court orders that the *L.R.* 144, C.A.) A private . For the absence of any

no power at common law to ever, an established practice identity of the complainant in to prohibit the publication of libel publication is con- or other matters from the y have this power. The although the view has been ly examined in open court, if justice cannot otherwise " (MacPhail, *The Law of pan* 7.02). A court which power to withhold from the Scottish courts do; of course, on of their proceedings, as,



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