

ANTIGUA & BARBUDA**IN THE COURT OF APPEAL OF THE
MAGISTERIAL CRIMINAL APPEAL NO.8 OF 1995****BETWEEN:****TREVOR WATKINS****Appellant****and****COMMISSIONER OF POLICE****Respondent****Before:**

The Hon. Mr. C.M. Dennis Byron	Justice of Appeal
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal [Ag.]

Appearances:

Mr. Ralph Francis for the Appellant
Ms. Carol Malcolm, [Ag] and Mr. Keith Thorn for the Respondent

1996: February 16; 26.

Judgment**BYRON, J.A.**

When this appeal came on for hearing the record was amended by consent to show that the appellant had contended *in limine* before the learned Chief Magistrate that there was no jurisdiction in District "A" to hear the informations laid against him since the alleged offences were committed in Magisterial District "B" and that he had ruled that it was within his competence as Chief Magistrate to try any matter regardless of its place of origin. We allowed the Notice of Appeal to be amended to include a challenge to this ruling. At counsels' request we agreed to deal with it as a separate preliminary issue on the ground that if the appellant succeeded it would become unnecessary to adjudicate on the substantive appeal.

The background was that two complaints without oath headed "In the Magistrate's Court Bolans District "B" were issued and signed by the Magistrate for District "B" alleging that the appellant had committed offences against the Misuse of Drugs Act on "30th August 1994 at Paerns Point in the Parish of St.Mary in the Magisterial District "B" in Antigua." These matters were determined by His Worship Mr. Murio Ducille, Magistrate District "A" (the Chief Magistrate) in the St.John's Magistrate Court District "A" in the Parish of St.John sitting at Nevis Street in the City of St.John. The appellant was

convicted and sentenced.

Adjudication involves answering two questions. First does the Chief Magistrate have a superior or different jurisdiction to that exercisable by any other Magistrate? And second can any Magistrate hear District "B" matters in District "A"?

The Magistrate's Code of Procedure Act (The Act) governs the powers and jurisdiction of magistrates in Antigua and Barbuda. It was originally enacted in 1892 and has been amended from time to time over the past 100 years. The source of their jurisdiction and powers is set out in section 7 as follows:

"7. A Magistrate shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon Magistrates or Justices of the Peace either at common law or by virtue of any Act now in force, or which may hereafter be vested in or imposed upon such Magistrates by virtue of any such Act."

This section preserves the powers and jurisdiction derived from the ancient common law and conferred by statutes. Both counsel for the appellant and the Respondent have given us the assurance that they assiduously searched and could find no statutory provisions outside of The Act enabling the exercise of special jurisdiction by the Chief or any other Magistrate in the circumstances of this case. I think that it is likely to be instructive to look at the position in England for a historical perspective before examining The Act to determine the extent of the powers and jurisdiction conferred by statute.

The English Position

According to the learned editors of Halsbury's Laws of England the duty of keeping the peace, in ancient times, lay primarily on the holders of certain executive offices. It was in the fourteenth century that the process of conferring purely judicial powers on the keepers of the peace began to develop. In 1361 the title "justice of the peace" was first given to the office of magistrate by the Justice of Peace Act 1361. At the beginning of the twentieth century the law concerning justices of the peace was derived from a number of statutes, some centuries old. The effect of legislation in the middle of this century was to simplify and consolidate this branch of the law and subsequently to reform it, notably by extending the powers of magistrates sitting in magistrates courts. The legislation which principally effected these objectives were the Magistrates' Courts Act 1952, the Criminal Justice Act 1967, and the Criminal Law Act 1977 as these have been amended from time

to time.

In England the power and jurisdiction of a magistrate has always been limited to the specific geographical locality to which he has been assigned. In more recent times there have been statutory variations to facilitate the administrative desirability of enabling a magistrate to perform out of his assigned area when necessary. In dealing with the current position in England the 4th edition of Halsbury's Laws of England volume 29 paragraph 207 states:

"The commission of the peace is the authority under which justices exercise their jurisdiction. It is the commission which gives justices the ancient common law powers of conservators of the peace in addition to the statutory powers more recently conferred."

and paragraph 222 states:

"The local limit of a justices jurisdiction is in general the boundary of the county to the commission of the peace to which he is assigned. However, a justice of the peace for a county may act as a justice for that county in any adjoining county."

The territorial limitations on the jurisdiction exercised by magistrates in England and the exceptions thereto are clearly explained in para 225 and 226 which I reproduce in part as follows:

"225.. .A magistrates' court for a county has jurisdiction to try all summary offences committed within the county, and, where a person charged with a summary offence appears or is brought before the court under its extended jurisdiction in respect of joint trials, it has jurisdiction to try that offence also. A magistrates' court for any area before which a person is tried for an offence has jurisdiction to try him for any summary offence for which he could be tried by a magistrates court for any other area.

A magistrates' court for a county has jurisdiction as examining justices over any offence committed by a person who appears or is brought before the court, whether or not the offence was committed within the county...

226...In the following circumstances the jurisdiction of a magistrate's court may be extended beyond the county.

An offence committed on the boundary of two or more countries,...may be treated as having being wholly committed in either.

An offence committed ...in or on a vehicle or vessel engaged in a journey or voyage through two or more counties,..may be treated as having been committed in any of those counties.

A person aiding and abetting ..may be tried either in the area where the principal is convicted or in that in which he aided...

The jurisdiction of justices whose district is situate on the sea coast is extended to vessels lying or passing off that coast.."

Statutory Position in Antigua and Barbuda

District Magistrates have concurrent jurisdiction

Today, the position in Antigua and Barbuda is almost identical to that in England as their reforms and extensions, to a large extent, have been adopted locally. The Act provides for each magistrate to be a district - magistrate assigned to a specific geographical district. The sections of the act which accomplish this are as follows;

Section 2, the definition section, states:

"In this Act ...

"Magistrate" means a District Magistrate and any justice of the peace authorized by this or any other Act to perform the duties of a District Magistrate."

Antigua and Barbuda is divided into three Magisterial Districts A, B, and C by virtue of sections 3 and 4 of The Act. The boundaries of several districts in Antigua were last defined by an Order of the Executive Council of the Leeward Islands made for the Presidency of Antigua (as it then was) on 3rd October 1924. Section 11 empowers the Minister to appoint the times and places when magistrate's courts shall be held in the several districts. By the Magistrate's Court (District "A") Order, 1984 it was ordered that the magistrate's court for District "A" shall be held at the premises at the Corner of Nevis Street and Temple Street in the City of St. John. Other orders made provision for sittings in District "B" in the Villages of Parham, Bolans and All Saints.

Provision is made for the assignment of magistrates to districts, by section 6 as follows:

"6. (1) The Governor-General may assign one or more Magistrates to a district or may assign a Magistrate to more than one district.

(2) Where more than one Magistrate is assigned to a district, each such Magistrate shall exercise concurrent jurisdiction in that district with the other or others so assigned.

(3) Every Magistrate wherever assigned shall have jurisdiction throughout Antigua and Barbuda."

Section 6(3) does not supersede section 6(1). It merely supplements the powers conferred on the Governor-General by allowing a magistrate who has not been assigned to a particular district to have jurisdiction in that district. This is similar to the provision in England permitting a justice of the peace to act as a justice in any adjoining county.

The designation "Chief Magistrate" is not provided for in the statute. Section 6 establishes that each magistrate has a concurrent jurisdiction with every other magistrate assigned to the district in which he exercises

jurisdiction. This clearly negatives the contention that the Chief Magistrate has a jurisdiction which exceeds that of other magistrates.

At this stage I can answer the first question raised by this appeal. The Chief Magistrate does not have a jurisdiction which is different in any way to that derived from the common law and conferred by statute on a district magistrate. No judicial or jurisdictional powers are derived from that title, which seems to do no more than indicate an administrative position. The rationale, that the competence to try District "B" matters in District "A" is attached to the position of Chief Magistrate, is therefore quite wrong.

District Magistrates' Jurisdiction has Geographical Limits

In England section 2(1) of the Magistrates' Courts Act provides

"A magistrates' court for a county shall have jurisdiction to try all summary offences committed within the county."

In Antigua and Barbuda no such specific provision exists but it seems clear that the entire Act is premised on the assumption that the jurisdiction of the district magistrate is limited to the boundaries of his district. Examples abound.

Section 22 sets out the matters over which the magistrate is empowered to exercise jurisdiction. In so far as it is relevant to this debate it states:

"Every Magistrate shall have jurisdiction

(a) To receive complaints and information of all offences and cause to be brought before him either by summons or warrant, all persons charged with such offences;

(c) To investigate all charges which he is not empowered to try summarily and to dismiss the accused or to commit him for trial before the High Court;

(d) (i) To try summarily and to convict and sentence all persons charged with committing offences which he is empowered to try summarily by any Act;"

I digress, briefly, to point out that here again no distinction is made between magistrates indicating that each district magistrate has the same jurisdiction regardless of seniority.

The magistrates' jurisdiction is based on the commission of the offence within his district and on the presence within his district of the person suspected of crime. Section 23 sets out the territorial limits of the jurisdiction by providing that the magistrate can issue his summons for indictable matters if the offence was committed within the district or the person accused is present in the district and for summary matters if the person accused is within the district. Its terms are:

"23. In all cases where a charge or complaint is made before a magistrate

(a) That any person has committed or is suspected of having committed any indictable offence within the limits of the jurisdiction of such Magistrate or that any person guilty or suspected to be guilty of having committed such offence as aforesaid out of the jurisdiction of such Magistrate is to be found or likely to be found within the limits of the same;

(b) That any person being within the jurisdiction of such Magistrate has committed or is suspected of having committed any offence punishable on summary conviction;

(c), (d)

the Magistrate may issue his summons..."

The subsequent conduct of the proceedings are statutorily connected to the magistrate who issued the process subject to particular provisions to facilitate administrative requirements similar to those in England. For example, Section 35 makes specific provision for the execution of a magistrate's warrant by a peace officer in any part of Antigua and Barbuda without being backed by the magistrate in any other district. Section 36 provides that the person apprehended must be brought before the magistrate issuing the warrant, or any other magistrate acting for him. Section 40 enables a different magistrate to hear and determine the case.

The territorial nature of the magistrate's jurisdiction is again confirmed by section 29 of the Act which provides for offences committed within the waters of Antigua and Barbuda by prescribing that

"..the same may be dealt with by the Magistrate off the shores of whose district the ship...may be at the time of the commission of the offence, or near to the shore of whose district the ship ..., after the commission of the offence, may anchor or touch...."

Section 229 suggests that the Act is premised on the ancient principle that the Magistrate's jurisdiction is limited by the boundary of his district by specifically prescribing for the circumstances where an offence may have a connection with more than one district and providing an option to hear specific types of cases in St.John's instead of the district in which they were committed.

Section 229: For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act whether past or future, the following provisions shall have effect -

(a) Where the offence is committed in any
.....water,.....

(b) Where the offence is committed on the boundary of the districts of two or more Magistrates or within the distance of five hundred yards of any such boundary, or is begun within the district of one Magistrate and completed within the district of another Magistrate, such offence may be tried by any one of such Magistrate;

(c) Where the offence is committed on any person or in respect
.....of.....any
.....vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in inland navigation, the

person accused of such offence may be tried by any Magistrate through whose district suchvehicle, or vessel passed in the course of the journey or voyage during which the offence was committed;

(d) An offence which is authorized by this section to be tried by any Magistrate may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the district of such Magistrate;

(e) All offences against the laws relating to the revenue, the post office, shipping, ports and quarantine that may by any Act be tried, determined and adjudged by any Magistrate shall, at the option of the prosecutor, complainant or informer, be so heard, tried, determined and adjudged at the chief town in Antigua and Barbuda, instead of in the district in which the offence charged is alleged to have been committed."

I pause here to emphasise that section 229(e) makes particular provision for the hearing, of the specific matters it mentions, in District A instead of the district in which the offence charged was alleged to have been committed. This supports the conclusion that if it were not for this statutory exception all such matters are to be heard in the district in which they were alleged to have been committed and is further confirmation that the jurisdiction of each magistrate is subject to the geographical limitation of the district.

I think that I can now answer the second question raised on this appeal. The jurisdiction of each district magistrate is limited by the provisions of The Act. In this case the offence with which the appellant was tried was one capable of being heard either on indictment or summarily. By virtue of the provisions of section 23 the magistrate for District "B" had jurisdiction on the ground that the offence was alleged to have been committed within the limits of the district as well as on the ground that the person accused was alleged to be a person within the said district. This was therefore a matter within the jurisdiction of District "B". The police recognised this, and processed the matter in District "B" until the trial. The learned Chief Magistrate did not purport to function as the District "B" Magistrate, as the record of the trial commenced with the notation that it is in District "A". But there seems to have been some confusion as a perusal of the record revealed that the notes of evidence and his Reasons For Decision were signed "Murio Ducille District Magistrate District "A", whereas the conviction sheet is signed "Murio Ducille District Magistrate District "B".

There was no evidence as to whether he was additionally assigned to District "B", under the power vested in the Governor-General by section 6(1). I do not think that materially affects the case because, even if the Governor-

General did not so assign him, the provisions of section 6(3) could empower him to function in District "B". However the provisions of section 11 and the statutory instruments made by virtue of the power it conferred on the Minister would make it necessary for him to sit as such at the times and places appointed by the Minister's Order. In that case if he was acting as the magistrate for District "B" he would not be authorised to sit in the place appointed for the District "A" Court except in the cases specifically prescribed by statute as, for example, cases relating to the revenue, the post office etc. as provided in section 229(e). This was not such an exception. No such power was conferred by the Misuse of Drugs Act or by any other Act to which our attention was drawn.

I would therefore rule that the learned Chief Magistrate was not entitled to hear this matter in District "A." It is required to be heard in District "B" by a magistrate entitled to exercise in jurisdiction in the district. The effect of this must be that the appellant has not been validly tried. In the circumstances I order that the convictions and sentences be set aside and the proceedings on these informations against the appellant be heard in District AB".

C.M. DENNIS BYRON
Justice of Appeal

SATROHAN SINGH, J.A.

I have had the advantage of reading beforehand the judgment of my brother BYRON in this matter. Persuasive judicial authority, supportive of his conclusion that the matter in this Appeal being a "District B" matter, could not have been legally heard in "District A", can be seen in **D'OLIVIERA, COMPTROLLER OF CUSTOMS AND EXCISE v CHASE (1964) 7 W.I.R. 18**, a case from the Full Court of Appeal of Guyana. In D'Oliviera's case, LUCKHOO C.J., dealing with a not too dissimilar issue expressed this opinion at p.21:

"Although a magistrate may be appointed for the colony, when he is sitting within a certain judicial district he can properly exercise his judicial powers in respect of the trial of summary conviction offences only if the offence is alleged to have been committed within the limits of that district"

"Where a complaint is made before a magistrate that any person has committed or is suspected to have committed, any summary conviction offence within his jurisdiction, the magistrate may issue his summons directed to that person to enforce the appearance of that person as a defendant. A magistrate has no authority to issue a summons to a defendant where the offence is committed at a

place outside of the limits of his judicial district and a magistrate of one judicial district cannot properly hear and determine a complaint for a summary conviction offence made before a magistrate of another judicial district unless it is so authorised by statute."

I would therefore concur with the judgment of BYRON, J.A. and with the Order therein proposed.

SATROHAN SINGH
Justice of Appeal

ALBERT MATTHEW
Justice of Appeal [Ag.]