J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLANDS CRIMINAL APPEAL No. 4/76

BEFORE: The Hon. Mr. Justice Luckhoo, J.A. (Presiding)
The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Watkins, J.A.

R E G I N A

vs.

FRANK MOSS
LEROY A. McMASTERS
WILMOT PLATT

Mr. N. Hill, Q.C. for the appellants.

Mr. D.A. Scharschmidt for the Crown.

October 6; November 19, 1976

WATKINS, J.A.:

The appellants were convicted on December 24, 1975 by Mr. J.K. Shaw stipendiary magistrate for the Cayman Islands on a charge of being in possession without lawful excuse of a controlled drug, to wit:- ganja, contrary to section 3(1)(K) of the Misuse of Drugs Law No. 13 of 1973 of those Islands. All the appellants were subsequently sentenced to varying terms of imprisonment. Their appeal to the Grand Court was dismissed on June 2, 1976 by Moody J. They then sought to bring a further appeal to this Court and in furtherance thereof they sought to move the Court to grant an enlargement of time in which to comply with certain procedural requirements necessary to the perfection of the right of appeal asserted.

On October 6, 1976 we dismissed the motion and ordered that the appeal be struck out, promising to put our reasons in writing. This we now do.

ATTORNEY GENERAL'S CHAMBERS

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The only issue debated before us was as to whether a right of appeal from the Grand Court to this Court in the instant circumstances was granted by law. Urging the affirmative Counsel for the appellants placed great reliance on section 233 of the Judicature (Administration of Justice) Law Cap. 74, the ipsissima verba of which read:

> " An appeal from any judgment of the Grand Court shall lie to the Court of Appeal but such appeal shall be for matter of law only, and not for matter of fact. "

He urged that in compliance with the primary rule of construction, namely that words should be given their plain, ordinary literal meaning, the expression "any judgment" in section 233 would extend to include a judgment of the Grand Court in exercise of its appellate jurisdiction over an inferior court, as in the instant case. The Judicature (Administration of Justice) Act confers upon the Grand Court original and appellate jurisdiction in civil and criminal causes. The original criminal jurisdiction of the Court is expressed in precise terms by section 220:

> " For the purposes of the criminal law the Court shall have and exercise the same jurisdiction to try all treasons, capital felonies, and all felonies and misdemeanours committed within the Islands, whether the same be at common law or by statute, as the Circuit Courts of Jamaica now have or hereafter may have within their respective local jurisdiction and as fully and effectively to all intents and purposes. And it shall be lawful for the said Court to hear and determine any offences committed within the Islands over which by any Law, jurisdiction is given to the Resident Magistrates' Courts of Jamaica within the local jurisdiction of such Courts respectively. "

It is clear that the jurisdiction conferred by this section upon the Grand Court is an original and not an appellate jurisdiction and that the judgments of the Court pursuant to the exercise of this jurisdiction must be judgment on matters arising at first instance and not by way of appeal. The succeeding sections down to section 232 seek to regulate matters affecting the exercise of this original jurisdiction and appertain to the mode of initiating criminal proceedings by indictment before the Court, enforcement of attendance of witnesses, bringing up prisoners for trial or on examination, the payment of witness expenses, change of venue and execution of sentences

of death. Then follows section 233. In Becke v. Smith 150 English Reports (Exchequer Division) p. 724 at p. 726 Parke B. said "It is a very useful rule, in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further". Looking at the statute as a whole and in particular to those provisions conferring criminal jurisdiction, and considering the arrangement and sequence of these provisions it seems plain that the intention of the Legislature was two-fold, firstly, to confer upon the Grand Court a wide criminal jurisdiction over grave crimes and secondly, to grant an appeal from that Court in the exercise of that original criminal jurisdiction to this Court. To construe the words "any judgment" in section 233 to embrace judgments of the Grand Court in exercise of an appellate jurisdiction over inferior courts is not warranted by the tenor of the provisions nor consistent with what appears to be the clear intention of the Legislature.
In the course of argument reference was also made to the Judicature (Appellate Jurisdiction) Law Cap. 73 which confers jurisdiction on this Court to entertain appeals both civil and criminal from the Grand Court. Section 9 thereof, however, expressly limits the right to persons convicted on indictment in the Grand Court, and so the appeal allowed under this Law is an appeal as well from the Grand Court in exercise of an original and not an appellate jurisdiction.

Mr. Scharschmidt for the Crown relied on section 3 of the Justices of the Peace (Appeals) Law. That section provides that "any person aggrieved or affected by any judgment of any Justice or Justices exercising jurisdiction in Petty Sessions or in the Petty Courts of the Islands or otherwise may appeal therefrom to the Grand Court". Section 4 of this Law may also be conveniently referred to.

It provides that "the right of appeal shall extend to all Laws already or to be hereafter passed giving summary or civil jurisdiction to Justices unless where otherwise expressly provided". Counsel argued with some conviction that in the absence of any other statutory provisions extending the right of appeal beyond the Grand Court these provisions under reference confer a right of appeal to the Grand Court and no further. The question to which, perhaps more importantly, these sections give rise is as to whether they confer a right of appeal from a decision of the Stipendiary Magistrate in exercise of his special statutory summary jurisdiction in the light of the definitions of "summary" and of "court of summary jurisdiction" in the Interpretation Law of the Islands and in the light of the fact that the offence with which the appellants were charged is made triable "on summary conviction before the Magistrate", that is to say, in exercise of his special statutory summary jurisdiction, and not as Magistrate sitting whether alone or with Justices in Petty Session. (See Hart v. Black (1956) 7 JLR 56). As no arguments were addressed before us on this aspect of the matter we refrain from pronouncing thereon but we notice with relief the relevant reforms introduced by the recently enacted Summary Jurisdiction and Civil Procedure Code Laws of the Islands.

For the reasons stated above we struck out the appeal and dismissed the motion.