

"We feel bound to hold that there has been such a violation of the proper form of legal process as to vitiate the conviction."

In my view, the same principles apply to this case. I therefore hold that the magistrate acted on wrong principles in amending the original charge before him by substituting an entirely new and different charge. Since the substituted charge was without legal foundation the magistrate could not properly adjudicate on that charge. In the circumstances I hold that the trial of all the appellants was a nullity. The appeal having succeeded on this ground consideration of ground 3 does not arise. I therefore quash the convictions of all the appellants and order that the sentences imposed on them be set aside. I further order that they be discharged forthwith. I also order that the fine of £100 imposed on the sixth appellant Hajah Tigida, if already paid, be refunded to her.

Order accordingly.

ROBERTS v. LEIGH

SUPREME COURT (Cole, J.): July 20th, 1964
(Misc. App. No. 31/1964)

- [1] **Criminal Procedure — appeals—affiliation proceedings—appeal from affiliation proceedings is criminal appeal:** An appeal from affiliation proceedings is an appeal from criminal proceedings and is governed by the rules applicable to criminal appeal proceedings (page 82, lines 14–17).
- [2] **Criminal Procedure—appeals—appeals against conviction—leave to appeal to be obtained within time limit:** Where a defendant has pleaded guilty and no appeal against conviction lies except by leave of a judge, such leave should be obtained within the time limited for appeal (page 82, lines 34–38).
- [3] **Family Law — illegitimacy—affiliation proceedings—appeals—appeals are criminal appeals:** See [1] above.
- [4] **Family Law — illegitimacy—affiliation proceedings—single woman—marriage since birth of child and residence with husband a bar to proceedings:** A woman cannot obtain an affiliation order where she has married since the birth of her illegitimate child and is at the time of the application living with her husband (page 83, lines 2–6).

[5] **Family Law — illegitimacy—affiliation proceedings—single woman—meaning of single woman:** The term “single woman” in the Bastardy Laws Amendment Act, 1872, s.3 is not confined to unmarried women, but also includes married women who are reduced to the condition of single women by widowhood or otherwise (page 83, lines 10-13).

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The respondent took out a summons against the applicant for affiliation in the Senior Police Magistrate’s Court, Freetown.

The applicant, who was the putative father of the respondent’s children, was ordered by the magistrate’s court to pay maintenance in respect of them. The applicant applied for an extension of time within which to appeal from this conviction. He contended principally that he was recorded by the magistrate as having pleaded guilty when he did not do so and that since at the time of the action the respondent was a married woman, the magistrate was wrong in law to have made the order. The applicant further contended that he was unrepresented before the magistrate and was not permitted to give evidence, and that before the records of the magistrate could be found and searched, the time within which to appeal had elapsed.

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Case referred to:

(1) *Stacey v. Lintell* (1878), 4 Q.B.D. 291; [1874-80] All E.R. Rep. 1166, distinguished.

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Statutes construed:

Courts (Appeals) Act, 1960 (No. 18 of 1960), s.4:

“(1) Any person aggrieved by a decision of a magistrate in criminal proceedings may appeal from the decision to the Supreme Court:

Provided that no appeal shall lie—

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. . .

(b) against conviction, where the defendant pleaded guilty, except by leave of a judge. . . .”

“(3) Unless the Supreme Court grants more time, an appeal in criminal proceedings shall be brought within twenty-one days from the day on which the decision complained of was given by the magistrate.”

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Bastardy Laws Amendment Act, 1872 (35 & 36 Vict., c.65), s.3:

“Any single woman who may be with child or who may be delivered of a bastard child . . . may either before the birth or at any time within twelve months from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child

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paid money for its maintenance . . . make application . . . for a summons to be served upon the man alleged by her to be the father of the child. . . .”

5 *Smith* for the applicant;
Wyndham for the respondent.

COLE, J.:

10 This is an application by the applicant for the granting of more time within which to appeal from the decision of the Senior Police Magistrate, Freetown, sitting on June 10th, 1964, when he ordered the applicant to pay to the respondent the sum of £6 a month for the maintenance of three children of the respondent of whom the applicant was said to be the putative father. The order was made under the Bastardy Laws Amendment Act, 1872, s.3. According to 15 s.4(3) of the Courts (Appeals) Act, 1960, an appeal in criminal proceedings (which this one is) should be brought within 21 days from the day on which the decision complained of was given, unless the Supreme Court grants more time. The grounds on which this application is based are: (a) that the defendant was not represented by counsel before the magistrate; (b) that he was not permitted to give evidence; (c) that he was recorded by the magistrate as having pleaded guilty which he did not do; (d) “That at the time of the action the complainant was and she is still a married woman and in the circumstances the senior police magistrate was wrong in law to make the order”; (e) that before the records of the 20 magistrate could be found and searched, time within which to appeal had elapsed.

25 It should be noted that this application was made on July 13th, 1964, 33 days after the expiration of the time within which to appeal. In my opinion, action was not promptly taken by the applicant as it should have been. Furthermore, the applicant stated in his affidavit in support of this application that he was recorded by the magistrate as having pleaded guilty. Whether or not he did so is beside the point at this stage. According to the proviso to s.4(1) of the Courts (Appeals) Act, 1960, no appeal against conviction should lie where the defendant pleaded guilty except by leave of a judge. In my opinion such leave should be obtained within the time limited for appeal. There is no evidence before me that such leave has been obtained nor is there any such application before 30 me.

40 The applicant alleged in his affidavit that at the time of the

proceedings and the order the respondent was a married woman and therefore could not bring the proceedings. He relied on the case of *Stacey v. Lintell* (1) which laid down the proposition that proceedings of this nature could not be brought when the mother has married since the birth of the child and was at the time of the application living with her husband. There is no allegation in the affidavit in question that at the time of the proceedings or order the respondent was living with her husband. Mere allegation or proof of marriage in my view is not sufficient; for as Lush, J. in the above-cited case said, *inter alia* (4 Q.B.D. at 294): "the term 'single woman' is not confined to unmarried women, but may include married women who are reduced to the condition of single women by widowhood or otherwise." [These words do not appear in the report of the case at [1874-80] All E.R. Rep. 1166.]

Taking all the circumstances into consideration I do not think that justice would be done if I granted the application. I accordingly refuse it.

Application dismissed.

DAVIES v. DAVIES

SUPREME COURT (Marke, J.): July 24th, 1964
(Divorce Case No. 25/63)

- [1] **Evidence—judicial notice—notorious facts—mental state of pregnant woman:** Judicial notice can be taken of the mental state of a pregnant woman who has been threatened with violence during labour (page 85, lines 6-15).
- [2] **Evidence—opinion and belief—opinions of experts—medical evidence—desirable in divorce suit based on cruelty:** Where in a charge of cruelty the alleged injuries are such that a medical practitioner ought to have been consulted, medical evidence is desirable to support the allegation (page 87, line 36—page 88, line 7).
- [3] **Family Law—divorce—cruelty—medical evidence desirable to support charges:** See [2] above.
- [4] **Family Law—divorce—cruelty—test of cruelty—danger or reasonable apprehension of danger to life or health:** To sustain a petition on the ground of cruelty, the court must be satisfied that there is danger or a reasonable apprehension of danger to the life, limb or health, bodily or mental, of the petitioner (page 87, lines 31-33).

The petitioner petitioned for divorce on the ground of cruelty.