

## WILLIAMS v. HARMAN

SUPREME COURT (Dobbs, J.): January 31st, 1966  
(Mag. App. No. 4/66)

- [1] Family Law — illegitimacy—affiliation orders—enforcement—no enforcement by criminal charge but through procedure of Bastardy Laws Amendment Act, 1872, s.4: Failure to pay maintenance under an affiliation order cannot be made the subject of a criminal charge and the order should be enforced through the procedure laid down in s.4 of the Bastardy Laws Amendment Act, 1872 (page 368, lines 29-33).
- [2] Family Law — maintenance—affiliation orders—enforcement—no enforcement by criminal charge but through procedure of Bastardy Laws Amendment Act, 1872, s.4: See [1] above.

The appellant was charged in the Police Magistrate's Court No. 3, Freetown, with disobeying an order to pay maintenance under an affiliation order.

The charge stated that the appellant had disobeyed an order to pay maintenance to the respondent under the terms of an affiliation order by falling five months in arrears with the payments. At the trial he pleaded guilty and was convicted of disobeying a maintenance order but also of contempt of court, with which he had not been charged. He obtained leave to appeal against his conviction for the maintenance offence on the ground that on the admitted facts he could not in law have been convicted of the offence charged. On appeal, the court considered the proper procedure to be followed for the enforcement of an affiliation order and also considered the propriety of the conviction for contempt.

Statute construed:

Bastardy Laws Amendment Act, 1872 (35 & 36 Vict., c.65), s.4, as amended:

The relevant terms of this section are set out at page 368, line 35—page 369, line 27.

*S. B. Davies* for the appellant.

The respondent appeared in person.

DOBBS, J.

The appellant appeared before the learned magistrate in Court No. 3 at Freetown on the following charge which I set out verbatim:

"The accused is charged with contravening the Bastardy Act,

1872, in that he in February 1965 at Freetown Police Magistrate's Court No. 3, in the Police District of Freetown in the Western Area of Sierra Leone, did disobey an order made by the police magistrate for him to pay monthly maintenance of Le16 for Olive Williams as from the end of February 1965. He is now in arrears in the sum of Le80 for the months of June-October, 1965. Contrary to the Bastardy Act, 1872."

After several adjournments the case came up before the learned magistrate in Court No. 3 on January 6th, 1966 and was disposed of as appears on the record, from which I shall quote verbatim:

"Accused present. Accused pleads guilty.

*Order*

First Count: Disobeying a maintenance order contrary to Bastardy Act, 1872, s.4, 3 months' imprisonment or Le200 fine.

Second Count: Contempt of court. One month's imprisonment."

This was signed by the magistrate.

The appellant has obtained leave to appeal, despite his plea of guilty, under s.42(1)(b)(ii) of the Courts Act, 1965, in that on the admitted facts he could not in law have been convicted of the offence charged. I do not need to go into the grounds of appeal in detail. Suffice it to say they amount to a submission of complete irregularity.

Examination of the purported charge with its reference to an "order . . . to pay . . . maintenance" and to the Bastardy Act, 1872, shows clearly that we are here concerned with failure by the appellant to pay monies due under an affiliation order. The relevant statute was misquoted in the charge and should have been the Bastardy Laws Amendment Act, 1872.

Now failure to comply with an affiliation order is not a criminal offence and therefore cannot be made the subject of a criminal charge to which a plea of "guilty" or "not guilty" is appropriate. The procedure to be adopted for enforcement of affiliation orders is contained in s.4 of the Bastardy Laws Amendment Act, 1872, the relevant portion of which reads as follows:

" . . . [I]f at any time after the expiration of fourteen clear days from the making of such order as aforesaid it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant under his hand and seal, cause such putative father to be brought before any two justices, and in case such putative father neglect or refuse to make payment

of the sums due from him under such order, or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant under their hands and seals, cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain, without bail or mainprize, for any term not exceeding three calendar months unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied."

This provision is to all intents and purposes the same as that contained in s.4 of our Married Women's Maintenance Act (*cap.* 100) and calls for similar procedure.

It is quite clear from the record that this procedure was not followed. I accordingly hold that the conviction and sentence on the so-called first count were bad in law.

With regard to the so-called second count I am at a complete loss to understand how this conviction came about. There was certainly no second count written on the charge sheet before the court and there was no record of the appellant having pleaded to such a charge. There was no record of his having behaved in the face of the court in a manner contemptuous of the court. I do not see how this conviction can be supported at all.

The result is that the appeal is allowed. The sentence of three

months' imprisonment or Le200 fine in respect of the so-called first count is set aside and the conviction quashed. I do not feel I can make an order for costs against the respondent who was the complainant in the court below because I am sure she merely made her complaint and assumed that the due process of law would be carried out. I do however order that Le10 deposited by the appellant for the cost of the records be repaid to him in full together with any other sum he may have deposited to abide the costs of appeal. I should make it clear that this decision does not affect the right of the respondent to take the proper steps to try to obtain payment under the affiliation order.

*Order accordingly.*

KAMARA v. GATEWAH and MACAULEY

SUPREME COURT (Dobbs, J.): January 31st, 1966  
(Civil Case No. 127/65)

- [1] Civil Procedure—default of appearance—assessment of damages on default judgment—order for assessment by Master, if not drawn up, discharged by award at trial of action against co-defendant: An order, which has not been drawn up, for the assessment of damages by the Master and Registrar against a defendant who has not appeared is discharged by an award of damages against him by the court at the trial of the action against his co-defendant who has appeared (page 377, lines 17–33).
- [2] Civil Procedure—judgments and orders—default judgment—assessment of damages—order for assessment by Master, if not drawn up, discharged by award at trial of action against co-defendant: See [1] above.
- [3] Civil Procedure—judgments and orders—discharge of order before drawn up—order, not drawn up, for Master to assess damages against one defendant—order discharged by award against that defendant at trial of action against co-defendant: See [1] above.
- [4] Road Traffic—negligence—damages—measure of damages—inconvenience—inconvenience of attending hospital, etc., included in general damages: General damages for negligence in a motor accident case may include a sum for the inconvenience, arising from the accident, to which the plaintiff has been put, including inconvenience resulting from loss of use of the plaintiff's damaged vehicle and the inconvenience of attending hospital, making a statement to the police and the like (page 376, lines 16–22).