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QUEEN'S BENCH DIVISION (UK)

R v CAMBERWELL GREEN STIPENDIARY MAGISTRATES; ex parte CHRISTIE

Lord Widgery CJ, O'Connor and Lloyd JJ

27 January 1978

[1978] QB 602; (1978) WLR 794; [1978] 2 All ER 377

JUSTICES – COMMITTAL PROCEEDINGS – JOINT COMMITTAL – SEPARATE CHARGES CAPABLE OF BEING TRIED ON ONE INDICTMENT – DEFENDANTS NOT CONSENTING TO JOINT COMMITTAL PROCEEDINGS – WHETHER JOINT COMMITTAL PROCEEDINGS VALID.

An information was laid against the applicant, alleging that she had wilfully ill-treated a child contrary to section 1 of the *Children and Young Persons Act* 1933. A separate information was laid against the child's father, with whom the applicant had been living at the material time, alleging that he was guilty of murder. A Stipendiary Magistrate, contrary to wishes of the applicant and the child's fathers decided that committal proceedings in relation to the two informations should be heard and determined together.

On applications for prerogative orders including an order of prohibition to prohibit the Magistrate from hearing and determining joint committal proceedings—

HELD: Applications refused. That the established practice of justices was to hold a joint committal if the charges alleged in the informations could properly be the subject matter of counts in one indictment; that, since there was no statutory provision which could affect that practice, it was permissible for the magistrate to adopt the established practice and join both charges in one committal proceedings.

***R v Assim* (1966) 2 QB 249, CCA, applied**

***Aldus v Watson* (1973) QB 902, DC, considered.**

LORD WIDGERY CJ: In these proceedings Mr Shaw moves on behalf of one Sylvia Christie for an order of prohibition to prohibit Mr Guymer, the metropolitan stipendiary magistrate at Camberwell Green, from proceeding or further proceeding with the hearing and determination of committal proceedings under section 7 of the *Magistrates' Courts Act* 1952 in which the applicant is charged with an offence under section 1 of the *Children and Young Persons Act* 1933, together with Keith Fraser who is charged with murder. That is the order of prohibition which is sought.

Then the applicant seeks an order of mandamus directing the metropolitan stipendiary magistrate sitting as aforesaid to hear and determine the committal proceedings of the applicant and the said Keith Fraser separately. Finally, there is sought an order of *certiorari* to remove into this court with a view to its being quashed a decision made by the metropolitan magistrate sitting as aforesaid on December 5,1977 that the committal proceedings in relation to the applicant and the said Keith Fraser be heard concurrently.

The background to the case so far as is necessary to consider the point of law involved is quite simple. The applicant was living at the material time with Keith Fraser. There was a child of that union. There were other children born of a union between the applicant and her husband, but they are irrelevant for present purposes. Keith Fraser also had one child of a previous relationship, Richard.

The charges brought against the applicant and Keith Fraser relate to the prosecution allegation that, Richard having died on September 11, 1977, Keith Fraser was guilty of the murder of the child. Furthermore there is an information laid against the applicant that under section 1 of the *Children and Young Persons Act* 1933 she was a party to wilful ill-treatment of the child.

The point at issue is quite a short one. The magistrate has made it clear that he intends to proceed

with committal proceedings relative to both the applicant and Keith Fraser, notwithstanding the fact that they do not wish to be so joined in committal proceedings.

This case raises in stark form the question as to whether the magistrate can insist on concurrent committal proceedings where there are two informations, and where the defences are separate and where the defendants in the proceedings are unwilling that those proceedings should be concurrent.

Mr Shaw has put his argument very compactly. He says, as is undoubtedly the case, that the *Magistrates' Courts Act* 1952 is a statute conferring power upon the magistrates' court, and that if one wants to see whether a magistrates' court has a power to do or not to do a certain thing then one should look at the Act and the Rules to see whether the power is conferred. He submits that if the power is not conferred, then the court does not enjoy that power. He says, and there is no doubt about this, that there is nothing in the Act, or indeed in any other Act, to indicate that the magistrate has power to conduct concurrent committal proceedings. Indeed one may observe there is no such power which says he has not either, but that is the state of the statutory provisions, and Mr Shaw's argument that that means in the absence of express power his contention should succeed is clear enough to follow.

There is only one authority which is appropriately cited at this point, this being an area in which there is a considerable dearth of authority. That is *Aldus v Watson* (1973) QB 902. I do not find it necessary to go through the facts of that case in detail. There were a number of defendants who had been riding motor cycles in a fashion which would disturb and incommode other road users. In the end they were charged with an offence of using the road without due consideration for other road users. They were tried by the justices, and on conviction appealed to this court on the ground that the justices had no power to order a joint trial of defendants who were charged on separate informations unless the defendants consented to be tried jointly. Accordingly, the justices were wrong in trying the informations together and the convictions should be quashed. Understandably, Mr Shaw attaches importance to that case. He says that that was a situation where justices were contemplating summary trial of two or more persons concurrently and the authorities say they cannot do it. It is a short step, he would say, from there to a situation like the present where someone wants the justices to conduct committal proceedings concurrently, and where on Mr Shaw's argument they are unable to do it.

He also seeks to say that, unless his submission is acceded to here, there will be an incompatibility between the Act and the usage of the justices. He chooses as his most vivid illustration of that, section 18 of the *Magistrates' Courts Act* 1952, which provides that proceedings may begin before a magistrate as committal proceedings and subsequently become a summary trial. He said that if the two defendants can be combined in concurrent committal proceedings initially, it may not be long before an order is made whereby a summary trial is substituted, and then the difficulty presented by *Aldus v Watson* will be immediately apparent, because under *Aldus v Watson* a concurrent summary trial will be unlawful, Therefore, says Mr Shaw, one will get into a very distinct difficulty if his submission is not right.

Mr Worsley, on the other hand, recognising that there is very little authority here, makes, as I understand it, his main point that we are not dealing here with matters of substantive law. We are dealing here with matters of practice. He says that, if and in so far as we are dealing with matters of practice, then it is permissible for the courts to work out their own practice in their own way, and it is not necessary to find specific statutory authority for the doing of acts which are properly to be classified as part of the general practice He cites as his principal authority *R v Assim* (1966) 2 QB 249; 50 Cr App R 224. *Assim* is dealing with the joinder of offences and offenders on indictment, and the principle for which it is constantly referred to is accurately expressed in the headnote in 50 Cr App R 224, which headnote is itself an exact copy of a passage in the judgment of the court. This is what it says:

> 'Questions of joinder, whether of offences or of offenders, are matters of practice on which the court has, unless restrained by statute, inherent power both to formulate its own rules and to vary them in the light of current experience and the needs of justice. There has never been a clear, settled and general practice based on principle with regard to the occasions when joinder of offenders is in practice correct.

> As a general rule it is no more proper to have tried by the same jury several offenders on charges of committing individual offences that have nothing to do with each other than it is to try together distinct offences committed by the same person. Where, however, the matters which constitute the individual offences of the several offenders are, on the evidence, so related, whether in time or by other factors, that the interests of justice are best served by their being tried together, then they can properly be the subject of counts in one indictment and can, subject always to the discretion of the court be tried together. Such a rule includes, but is not limited to, cases where there is evidence that the several offenders acted in concert. Joint trials are appropriate to incidents which, irrespective of there being a joint charge in the indictment, are contemporaneous (as in cases relating to affray), or successive (as in protection racket cases), or linked in a similar manner (as in the case of two individual defendants committing perjury in the same trial with regard to the same or a closely related fact) but the operation of the rule is not limited to such cases.'

The principle that joinder is a matter of practice, if established, goes a very long way to solving all the problems which have arisen in this case. I think that it is proper for us to accept the decision in *Assim* as laying down a principle that these are matters of practice, and I think that from there we can inquire into whether there is an established practice of joinder in committal proceedings which will by virtue of the *Assim* doctrine become authoritative properly to be followed by individual courts.

There seems to me to be no answer to the contention that the experience of practice is overwhelming that where two offences, which can properly be tried together on indictment are the subject of committal proceedings, they can be the subject of concurrent committal proceedings without the necessity of obtaining the consent of the parties concerned. When one goes beyond that test of asking whether the two offences could appear together in the same indictment, it may be that other practical rules supersede, but that is the situation in the case before us.

Since it cannot be challenged that both the defendants in these two informations could be tried together, it seems to me that we can properly adopt the principle that where the two offences could be tried together then they could be the subject of current committal proceedings as well.

I would not think it necessary to go beyond that today, and indeed I think it is probably wise not to be too far reaching in *dicta* which are concerned with matters of practice. Practice should vary from time to time, and the variation and correction of practice should not be restricted by excessively wide judgments already appearing in the law reports.

I content myself, therefore, with a limited approach to this problem, finding what is sufficient to answer the question posed to us, that as a matter of practice it is permissible to join in one committal proceedings two or more proceedings if those defendants could be joined together in an indictment. Applying that principle to the present case, the magistrate was entitled to do as he did, and I would refuse the applications.

O'CONNOR J: I agree. **LLOYD J:** I also agree.
