BEDFORD v. SKEETE

[SUPREME COURT - FULL COURT (Stoby, C.J., and Hanschell, J.)

April 25, 1960]

[1958 - 60] 2 Barb. L.R. 190

Appeal *- Application for leave to appeal to Federal Supreme Court - Question of fact only - Bastardy complaint -Complaint dismissed by magistrate and on appeal to Full Court - Federal Supreme Court Regulations, 1958, reg. 15.*

Facts: The applicant had brought a complaint in a magistrate's court against the respondent alleging him to be the putativefather of her child. The complaint was dismissed by the magistrate, and the applicant then appealed to the Assistant Court[190] of Appeal as she was then entitled to do. Before that court could dispose of the appeal, it was abolished, and itsjurisdiction in such matters transferred to the Full Court of the Supreme Court by virtue of the Supreme Court ofJudicature Act, 1956. The Full Court granted a re-hearing before the Full Court itself as it could properly do in suchappeals and dismissed the appeal. The unsuccessful applicant now sought to obtain the leave of the Full Court to appeal tothe Federal Supreme Court from the decision of the Full Court.

Under the Federal Supreme Court Regulations, 1958, reg. 15, the leave of the court is necessary when a question of factonly is involved.

Held: that a simple question of fact was involved and leave should be refused.

Application refused.

Cases referred to:

(1) Smith v. Williams [1922] 1 K.B. 158.

(2) Credland v. Knowler (1951) 35 Cr. App. Rep. 48.

Statutes and statutory instrument referred to:

(1) Magistrates Jurisdiction and Procedure Act, 1956, ss. 11(1) and 150.

(2) Assistant Court of Appeal Act, 1900.

(3) Supreme Court of Judicature Act, 1956, ss. 16, 36.

(4) Federal Supreme Court Regulations, 1958, reg. 15.

(5) Rules of the Supreme Court, Ord. 58, r. 13(2) U.K.

Mr. W.H. Hanschell for the applicant.

JUDGMENT OF THE COURT: This is an application for leave to appeal in forma pauperis from a decision of the FullCourt.

The affidavit filed in support of the application states that the applicant Geraldine Bedford filed a complaint in themagistrates court, District F, in which she prayed that the respondent Ivan Skeete be deemed the putative father of herchild.

Her application was dismissed without prejudice on April 14, 1958. A dismissal without prejudice was a normal procedureprior to the coming into force of the Magistrates (Jurisdiction and Procedure) Act, 1956. The Act came into force onAugust 16, 1958. Under the old procedure a complainant or informant whose case was dismissed without prejudice couldinstitute proceedings again against the same defendant on the same grounds as in the dismissed complaint and thedefendant could not avail himself of a plea of autrefois acquit.

However, the applicant instead of filing a second application appealed to the Assistant Court of Appeal as she was entitledto do.

The appeal was listed before the Assistant Court of Appeal on August 1, 1958. It was adjourned. On October 16, 1958, theappeal came on for hearing before the Full Court of the Supreme Court. The transfer from the Assistant Court of Appeal tothe Full Court of the Supreme Court took place by reason of the operation of the Supreme Court of Judicature Act, 1956,s.11 (1). [191]

The Full Court, presumably on October 16, 1958, granted the appellant's application for a re-hearing but the re-hearing wasto take place before the Full Court and not before the magistrate.

In so doing the Full Court, no doubt, had regard to the provisions of the Assistant Court of Appeal Act, 1900, whichenabled the court to re-hear a case which was before it on appeal from a magistrate. Section 16 of the Supreme Court ofJudicature Act, 1956, permitted the Supreme Court to continue and conclude in that court any matter which was pending inone of the courts abolished by the Act of 1956 in the same manner in which it would have been continued and concluded inthe former court. As this appeal was lodged before the Assistant Court of Appeal the Full Court had jurisdiction to re-hearit which would not have been the case if the appeal had been lodged in the first instance before the Full Court, as the FullCourt has no jurisdiction to re-hear an appeal from a magistrate, although s. 150 of the Magistrates Jurisdiction andProcedure Act, 1956,

allows it to order such evidence to be adduced before it as may be considered necessary. There is alsopower to re-hear or take fresh evidence and adjudicate again.

On February 20, 1959, the Full Court re-heard the applicant's appeal and dismissed it. It is from this decision that theapplicant seeks leave to appeal to the Federal Supreme Court.

During the argument it was pointed out to counsel for the applicant that the notice in motion was for leave to appeal informa pauperis. There is no provision for appealing in forma pauperis from any decision of the Supreme Court ofBarbados, a defect which it is hoped will be remedied shortly with the co-operation of legal practitioners. An application tobe admitted as a poor person is entirely different from an application for leave to appeal. In order to proceed with thehearing we agreed at the request of counsel to hear this motion as one for leave to appeal.

We were referred to s. 36 (1) of the Supreme Court of Judicature Act, 1956, which provides that:

"The Full Court shall have exclusive jurisdiction to hear and determine appeals from ... (i) decisions ofmagistrates."

Section 36 (3) states that an appeal shall with leave of the Full Court lie to the West Indian Court of Appeal from anyjudgment or order of the Full Court.

Counsel submitted that the proper interpretation of the section was that if counsel certified that there was good ground foran appeal from a decision of the Full Court leave should be granted as a matter of course. We were also referred to theFederal Supreme Court Regulations, 1958.

In our view the right of appeal from the Supreme Court is now governed by the Federal Supreme Court Regulations, 1958.Regulation 15(2)(b) provides for an appeal to the Federal Supreme Court from an order upon appeal from any other court.This is qualified by reg. 15(3) which states:

"No appeal shall lie from an order referred to in sub- paragraph (2) of this regulation - [192]

(a) except -

(i) upon a question of law...

(b) in any other case except with the leave of the Federal Supreme Court or of the superior court from which theappeal was brought."

The effect of the regulation is to give a right of appeal in civil cases from the Full Court to the Federal Supreme Court on aquestion of law, but on a question of fact or mixed law and fact there must be leave.

The regulation itself provides the answer to counsel's submission that this court in applications of this kind sits for thepurpose of endorsing counsel's opinion.

In order to determine whether leave should be granted it is essential that the application should contain the grounds onwhich it is sought to obtain leave.

The court has a discretion to exercise and it would be failing in its duty if it attempted to exercise that discretion withoutknowledge of the facts. We recognise that there are no Full Court rules which regulate the procedure for granting leave. Inthe United Kingdom, by O. 58, r. 13 (2):

"Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration ofthe time for appealing) shall be made ex parte in the first instance; but unless the application is then dismissed or itappears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn theapplication and give directions for the service of notice thereof upon the party or parties affected, and if on theadjourned application leave to appeal is refused the Court may make such order as to the costs of any such party asmay be just."

Counsel submitted that in the absence of any rule this court could regulate its own procedure and give leave without anygrounds being formulated. He cited Smith v. Williams [1922] 1 K.B. 158.

In the absence of a rule we invited counsel to formulate his grounds so that if necessary relevant portions of the evidencebefore the Full Court could be obtained in view of the fact that only one of the members of this court was a member of theprevious Full Court.

Counsel gave the following grounds - (1) The decision was against the weight of evidence; (2) the defendant's denial ofassociation or opportunity to associate was corroboration. He said he would formulate the other grounds when leave wasgranted.

With respect to the proposed ground (1) we were given a short resumé of the evidence given by the applicant and herwitnesses and the evidence of the respondent. It appears that the respondent denied having any intercourse with theapplicant. The magistrate accepted his evidence and dismissed the case without prejudice, as was then permitted. The FullCourt accepted his evidence and [193] dismissed the appeal. We are unable to accede to the argument that in a simpleaffiliation case there ought to be leave on a simple question of fact.

If the second ground is intended to pose a question of law then the applicant has a right of appeal without leave. If it isbased on a question of fact, as it clearly is, then the argument is founded on wrong premises. The principle that a denialmay amount to corroboration was enunciated in Credland v. Knowler (1951) 35 Cr. App. Rep. 48 but the court was atpains to stress that it does not always follow that it must be a corroboration. If the evidence of the respondent that he had nointercourse with the applicant was accepted, any lies which he may have told would affect the weight of his evidence andmight result in his evidence being rejected, but if accepted, the question of corroboration ceases to be of importance.

Where the evidence denying a certain fact is truthful evidence such denial could never amount to corroboration.

We were invited to settle some procedure for future guidance in matters where it was necessary to obtain leave to appeal.We agree that until rules of court are made some recognised procedure is desirable but we think it preferable for the ChiefJustice to issue a practice direction rather than embody the directions in a judgment.

Leave to appeal is refused. [194]