The Appeal of Summary Jurisdiction

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In June 2010, the Ministry of Justice announced the proposed closure of 103 Magistrates Courts in England & Wales and after undertaking a consultation exercise, on December 14, 2010 the Justice Minister Jonathan Djanogly published a list of 93 magistrates' courts now set for oblivion, stating "substantial savings will be made from not having to maintain so many buildings". The figures mean that approximately one-third of all magistrates courts will close and the move is said to be beneficial by focussing the attendance of justice agencies at a single accessible location within a community. With this in mind, practitioners at the Criminal Bar may wish to consider why courts of Summary Jurisdiction exist, and the possible implications for the administration of justice without there being so many of them.

History and Function

The power exercised by justices of the peace to conduct a trial without a jury in lesser specified offences is known as "summary jurisdiction" and has a long history that developed through the enactment of various statutes, codified in the Summary Jurisdiction Acts of 1848 (11 & 12 Vict. C. 42) and 1879 (42 & 43 Vict. C.49) see Stephen: *A History of the Criminal Law of England*[1]. What we now know as "magistrates courts" have been created since 1972 by the Courts Act 1971 and were developed from "Petty Sessions", themselves courts of Summary Jurisdiction stemming from the late 19th Century, empowered to deal with the minor criminal cases and the overspill of matters from the "Quarter Sessions" (courts having criminal jurisdiction in England, together with Assizes, since 1388, but later replaced by the Crown Court by the 1971 Act). Quarter Sessions were local courts traditionally held at four set times each year and sat in each county and county borough, whereas the main Petty Sessions were held in divisions and based on the historic "hundreds" (groups of parishes).

It has thus been the case for many hundreds of years, and now into the 21st century, that most petty offences punishable by imprisonment for less than six months may be tried summarily by justices of the peace, with Indictments being referred up to the Crown Court if jurisdiction is declined, although all criminal cases must pass through the justices, to determine what mode of trial is appropriate. The ancient principle, observed throughout the common law world, is that common law "is a stranger to trial without a jury"

Procedure, Evidence and Victims

A trial in the magistrates court by its summary jurisdiction, or "summary trial" may be presided over by two, or three lay justices and their legal advisor, or a District Judge. A typical afternoon session may involve the hearing of several witnesses to determine whether a complainant has made a genuine accusation of assault and hear from the defendant to examine any claims they were acting in self-defence. On the other hand, the range of summary, and either-way offences that magistrates are empowered to hear are also broad, and in many cases so technical that expert evidence is needed, a week or longer may be spent for example, hearing whether the treatment of an abandoned dog amounted to cruelty within the meaning of the Animal Welfare Act 2006, or from company directors as to whether the sewage discharge from their golf course had breached the Environmental Protection Act 1980 and even if did, whether there was "reasonable excuse" or they had used "best practical means" within the meaning of the act, so as to not be liable

Today, magistrates' courts may impose fines of up to £5,000 and when given the choice, many a defendant will opt to elect the right to trial by jury, as statistically speaking, there is a greater possibility that they will receive an acquittal by this means through their ordinary fellow citizens, rather than by a summary trial. However, the purpose and benefit of summary jurisdiction is that many thousands of offences can be efficiently processed and tried openly in public, with a level of expertise, yet without the often over-whelming formalities of the Crown Court and include the involvement of interested individuals from the local community.

Re-action to Closures

The concern already raised by the Magistrates Association is that the closure of their courts means the principle of community justice will be diminished:

"Magistrates have expressed grave concern about the impact of court closures and their responses to the consultation have provided clear evidence that closures will adversely impact on court users and easy access to justice. For those areas this is a shattering blow to community summary justice ..."

What has transpired is that the government proposal means that victims and witnesses will be expected to travel further to attend courts, with the impact on offenders (and lawyers) finding little sympathy. Campaigners say crime victims have spoken out about the importance of local magistrates' courts and how having to travel to an unfamiliar area to give evidence would make such an experience more daunting. The closures will have particular

1 (1883) 3 Volumes reprinted by Routledge/Thoemmes 1996

impact in rural areas and parts of Wales[2], where drives have been begun to fight their demise.

Conclusion

The Government's decision to so drastically reduce the number of magistrates' courts that exist (and thereby dramatically increase the number of cases the remaining courts will hear) is set to undoubtedly have a profound impact on summary trials. The summary jurisdiction of magistrates enables them to conduct short trials, or longer if necessary, recognize wrong-doing and impose punishments in local communities. As the un-relenting impact of the cuts in public spending continues, the closure of magistrates' courts affects the ability of justices of the peace to deal with lesser offences in many given localities, a legal customary practice that has a history in England going back centuries.

In time, there may be yet further pressures upon magistrates' courts to reduce their trials, as the Justice Secretary Ken Clarke has now proposed the implementation of reductions in sentences of 50% for early guilty pleas to do just this: offering a justice system that seems ever more akin to that from the other side of the Atlantic, quite accustomed to massive court-houses that process pleas and hand down hundreds rehabilitative orders in a single morning[3].

With inevitable pressure being put on the surviving magistrates' courts to take on work-loads from other courts, the dilemmas they will likely often face will be as to how many trials they can realistically hear on a given day, then how much time can be allocated to a particular case, whether to conduct trials without crucial witnesses, the victim, or the defendant themselves. There is no overt threat to the power of the magistrates court to conduct trials, yet without primary legislation and a statutory footing, the Government's latest cost-saving measure to close and consolidate so many courts, may go so far as to create a new form of lower criminal court, with little encouragement that they should be conducting trials at all. ■

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2 http://www.bbc.co.uk/news/10677982

3 http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2009.pdf

Loss of Control

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The new partial defence of "loss of control" which came into force on October 4, 2010 (Coroners and Justice Act 2009) is more restrictive than the old law of provocation, which will continue to govern offences of murder committed before that date. In this article we try to set out the comparisons and anomalies that arise as a result of Parliament's intention to limit the circumstances where defendants can successfully claim they were provoked and highlight some of the practical difficulties which may arise in a criminal trial

Background

The law of provocation was seen as too lenient on those who kill out of anger and too severe on those who kill out of fear of violence. The new law of loss of control will make it easier for victims of domestic violence to establish manslaughter but harder for those who go looking for violence or claim their reaction was to marital infidelity. Cases such as *Ahluwalia* and *Sara Thornton* (No.2 – heard in December 1995) led to a development of the law of provocation so that those who killed as a result of a slow burn reaction, rather than an immediate loss of control, could rely upon the defence of