

**R v JOHN PALMER**

**SKELTON ARGUMENT (BY COUNSEL) SOLELY IN RELATION  
TO THE MATTER OF THE INDICTMENT**

**UNSIGNED INDICTMENT**

1 It is understood that the trial indictment is not signed.

2 The Administration of Justice (Miscellaneous Provisions) Act 1933, s.2(1) is as follows:

"2(1) Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before a court in which the person charged may lawfully be indicted for that offence, and where a bill of indictment has been so preferred the proper officer of the court shall, if he is satisfied that the requirements of the next following subsection have been complied with, sign the bill, and it shall thereupon become an indictment and be proceeded with accordingly: Provided that if the judge ... of the court is satisfied that the said requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the proper officer to sign the bill and the bill shall be signed accordingly."

[Printed as repealed in part by the Courts Act 1971, s.56, and Sched. 11.]

3 The bill of indictment therefore does not become an indictment until it is signed in accordance with the provisions of section 2(1). In R. v. Morais, 87 Cr.App.R. 9, CA, where the indictment had not been so signed, the proceedings that had taken place were held to be a nullity, even though a judge of the High Court had given leave to prefer the indictment in accordance with the provisions of section 2(2)(b) of the 1933 Act (Archbold 1-232). At page 14 of Morais the LCJ stated:

"It seems to us that this Act was intended, so to speak, to fill the gap which was left by the abolition of the grand jury. It was intended to ensure not only

that the proper requirements had been fulfilled before a trial proper could start, but that also there should be a certification by way of the signature of the proper officer to indicate that he had inquired into the situation and satisfied himself that the requirements of the subsection had properly been complied with. We have come to the conclusion therefore that it is not merely a comparatively meaningless formality that the proper officer's signature should be appended, but it is, as the words of the Act itself prima facie indicate, a necessary condition precedent to the existence of a proper indictment, that the bill should be signed and only then and thereupon does it become an indictment. Therefore in the present case there was no valid indictment, there was no trial, no valid verdict and no valid sentence."

4 It is submitted that *Morais* cannot be distinguished from the instant case. *Morais*, like the instant case, also specifically concerned, at one stage, a joint indictment arising out of separate committals of 2 linked accused; at page 10 the LCJ states:

"On February 19, 1987 a joint indictment against both the appellant and Mrs. Georgiou was preferred and signed. That indictment consolidated the individual indictment laid against each of them."

The indictment is the document upon which the accused was tried; that document arose out of the proposed joinder of Hannon and Andrew Palmer (and then deletion of Hannon) following application by the Crown; the Crown therefore created a new indictment upon which were joined new accused following wholly separate transfer proceedings; it is to be noted that the only hand writing on the trial indictment refers to it as 'joinder indictment'.

5 The indictment is not signed and accordingly the trial was a nullity and the convictions should be quashed.

PETER JOHN KELSON QC

**IN THE COURT OF APPEAL  
[CRIMINAL DIVISION]**

**REGINA**

**v**

**JOHN PALMER**

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**SKELTON ARGUMENT ON NULLITY OF  
PROCEEDINGS BASED ON AN UNSIGNED INDICTMENT**

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1. It is understood that the trial indictment from the Appellant's trial is not signed. This skeleton argument is advanced in support of the Appellant's Appeal Against Conviction and relates solely on the issue of the absence of a signed indictment.
2. The indictment is the document upon which the accused was tried; that document arose out of the proposed joinder of Hannon and Andrew Palmer (and then deletion of Hannon) following application by the Crown; the Crown therefore created a new indictment upon which were joined new accused following wholly separate transfer proceedings; it is to be noted that the only hand writing on the trial indictment refers to it as 'joinder indictment'.

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### Legal Principles and Argument

3. It is well established that "a criminal trial in the Crown Court cannot start until there is a valid indictment" (Archbold at paragraph 1-1). The validity of a trial is therefore necessarily dependant upon the validity of the indictment.
  
4. A bill of indictment becomes an indictment when it is signed in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act 1933, s.2(1) which states:

"Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before a court in which the person charged may lawfully be indicted for that offence, and where a bill of indictment has been so preferred the proper officer of the court shall, if he is satisfied that the requirements of the next following subsection have been complied with, sign the bill, and it shall thereupon become an indictment and be proceeded with accordingly:

Provided that if the judge ... of the court is satisfied that the said requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the proper officer to sign the bill and the bill shall be signed accordingly." [Printed as repealed in part by the Courts Act 1971, s.56, and Schedule 11.]

5. A bill of indictment does not become an indictment until it is signed in accordance with the provisions of section 2(1).
  
6. If an indictment is invalid then all proceedings thereon will be a nullity: *R v Newland* [1988] Q.B. 402, 87 Cr.App.R. 118, CA; *R v Morais*, 87 Cr.App.R. 9, CA. The purported trial "is actually no trial at all". There having been no trial that

had been validly commenced, a conviction resulting from such a trial should consequentially be quashed on appeal as a nullity.

7. The Court of Appeal has a residual jurisdiction and an inherent discretion to quash any conviction resulting from an invalid indictment: *Crane v DPP* [1921] 2 A.C. 299, HL; *R v Newland* [1988] Q.B. 402, 87 Cr.App.R. 118, CA.
8. In *R v Morais* 87 Cr.App.R. 9, CA, the indictment had not been properly signed. This Court held that the absence of a signature on the bill of indictment was fatal and that the proceedings were a nullity, even though a judge of the High Court had given leave to prefer the indictment in accordance with the provisions of section 2(2)(b) of the 1933 Act. The Court held that:

“the Administration of Justice (Miscellaneous Provisions) Act 1933 was intended to fill the gap left by the abolition of the grand jury. It was intended to ensure not only that the proper requirements had been fulfilled before a trial proper could start, but also that there should be a certification by way of the signature of the proper officer to indicate that he had inquired into the situation and satisfied himself that the requirements of the subsection had been complied with. It is not merely a comparatively meaningless formality that the proper officer's signature should be appended, but it is, as the words of the Act itself *prima facie* indicate, a necessary condition precedent to the existence of a proper indictment at all that the bill should be signed and only then and thereupon does it become an indictment. In the present case there was no valid indictment, there was no valid trial, no valid verdict and no valid sentence.”

9. In *R v Jackson and others* [1997] 2 Cr.App.R. 497, CA, the original indictment contained misjoined counts. The judge had directed that new separate bills of indictment be preferred and that they be signed. However, the officer of the court

failed to sign the new bills. The Court of Appeal, distinguishing *Morais*, held that the proceedings upon the indictments were not nullities. The Court held that where a judge has satisfied himself that the requirements of section 2(2) of the 1933 Act had been satisfied in respect of the bills of indictment, and directed that they be signed, the signature of the proper officer of the court was no more than a meaningless formality and should be deemed to exist.

10. In *R v Laming*, 90 Cr.App.R. 450, CA, the appropriate officer of the court had signed the front page of the indictment rather than following the practice indicated by Schedule 1 to the Indictment Rules 1971 and suggested by section 13.9.1. of the Crown Court Manual. It was held that as the officer had signed the indictment, intending thereby to validate it, the indictment was valid.
11. It is submitted that the cases of *Jackson* and *Laming* can be distinguished from the present case. In *Laming* the indictment had actually been signed, it was just the placement of the signature which was in issue. In *Jackson* the appropriate officer had been ordered by the learned judge to sign the indictment, but failed to, and so this Court treated the indictment as though the formalities had been complied with and it had been in fact signed.
12. The case of *Morais* cited above is factually closer to Appellant's in that there was no signature on the indictment and the judge had not given a direction to the appropriate officer to sign it.

**Conclusion**

13. It is submitted that the absence of a signed indictment in the second trial of the Appellant renders the trial and his conviction a nullity. The Appellant respectfully asks that his conviction be quashed.

PETER JOHN KELSON QC

and

ALEXANDER DOS SANTOS

and

CATHERINE PATTISON