

ROYAL COURT
(Samedi Division)

105A.

17th July, 1990

Before: The Bailiff, assisted by
Jurats Myles and Le Ruez

Between: Victor Hanby Associates Limited Plaintiff
And: John Hyde Oliver Defendant
And: Victor John Belton Hanby Third Party
(The First Action)

And Between: John Hyde Oliver Plaintiff
And: Victor John Belton Hanby First Defendant
And: Victor Hanby Associates Limited Second Defendant
(The Second Action)

Contempt of Court - civil contempt -
standard of proof.

Advocate P.C. Sinel for Mr. Oliver.
Advocate J.G.P. Wheeler for Mr. Hanby and
Victor Hanby Associates, Ltd.

JUDGMENT

THE BAILIFF: This matter arises from a representation of Mr. Oliver, the plaintiff in the second action. The actions have now been consolidated.

The allegations in the representation are that Mr. Hanby was less than frank and in fact was in contempt of this Court's order when he swore an affidavit in the action on the 5th September, 1989. It is not necessary for us to go into the background of this case because the substantive matters are still to be tried. I must however say this: the case concerns the programming of a security system at the ABN Bank and that system was made, or at least worked on by Mr. Hanby or his company and is called the Stamps system. It is not necessary to go into that matter further except to say that the system is on a hard copy in computers from which from time to time copies may be taken and put on what are called disquettes. You can either have a copy of the source on disquette, or a copy from the computer's library and again it is not necessary for me to go into the details of the way these matters work.

What is said to have gone wrong is that Mr. Oliver - who himself had unfortunately incurred this Court's displeasure by failing to obey its orders and had in fact been jailed for that contempt - had on the 23rd August, last year, obtained an Order of Justice requiring Mr. Hanby and his company, (for the purposes of this case the allegation is against Mr. Hanby) to hand over all copies of the disquettes and the source in their possession, care, custody and control relating to the Stamps system to the Viscount immediately upon the Order being served on the defendants by an Officer of the Royal Court. Mr Hanby is also required to give a full and frank explanation of his and his company's dealings with the Stamps system since the institution of the first action.

The Viscount attended at the premises on the 23rd August, 1989, and took possession of a number of disquettes.

In his affidavit to which I have previously referred of the 5th September, 1989, Mr. Hanby said, at paragraph 21: "ABN then provided me with a copy of the source on disquettes; these disquettes were subsequently returned to ABN. A programmer was subsequently utilised by myself to debug problem programmes that ABN had found, correct

faults in programmes previously written by Mr. Oliver, modify and amend existing programmes and develop and produce new programmes and sub-systems as per ABN's request and as were produced for under the maintenance and support contract in operation".

When we heard evidence it was apparent to us that in fact Mr. Milner had been responsible for doing what Mr. Hanby had said he had done, but nevertheless during that time Mr. Milner was at least working for Mr. Hanby or his company.

Mr. Hanby's affidavit then continues in the relevant part as follows: "A copy of this original source was made by myself as a security copy on disquette in December, 1988, and held at Victor Hanby Associates Limited's office. This copy which is the sole copy of the original Stamps software which was in my possession was given to the Viscount's officer on the 23rd August, 1989, at the time of service of the Order of Justice upon me". Secondly, Mr. Hanby deposes, in paragraph 22: "Over the period November, 1988 to the present, as indicated, Victor Hanby Associates Limited's staff, without Mr. Oliver's help or involvement in any way modified Stamps and added considerably to it". We pause there a moment to say the word 'considerably' was construed by Mr. Milner himself to mean 'qualitatively' and not 'quantitatively' by the introduction of extel interface for the purposes of assisting the listing of securities by the bank. The affidavit continues: "This new version of Stamps which is the current working version of Stamps at ABN was copied to disquette in May, 1989, as a security copy and kept at Victor Hanby Associates Limited's office. These disquettes were also handed to the Viscount's office on the 23rd August, 1989. No other copies have been made by myself, Victor Hanby Associates Limited's staff or contractors to the best of my knowledge. The Stamps source code has been used solely and exclusively in regard to supporting contractual undertakings between the partnership and ABN and which have been in existence since July, 1988, and which I, following Mr. Oliver's abandonment of the partnership obligations have unilaterally had to meet".

Following that affidavit on the 11th June, 1990, this year, the parties at the request of the plaintiff, met at the plaintiff's house

where the disquettes which had been handed over by Mr. Hanby were examined by the parties. According to the affidavit of Mr. Oliver and as accepted by Mr. Wheeler on behalf of Mr. Hanby, none of the Stamps system or only very minor parts were found in any of those disquettes which had been in the Viscount's possession, after being handed over by Mr. Hanby.

In the affidavit of Mr. Oliver, dated the 26th June, 1990, in support of his representation there is reference at paragraph 6 to the 25 disquettes held by the Viscount consisting of: "(a) six disquettes containing two copies of the Stamps system which had been handed in by myself; (b) two disquettes containing miscellaneous procedures and non-important sources; (c) five disquettes containing Algemene Bank Nederland N.V. customers' records, prices and other information; (d) twelve disquettes containing a file called 'DATA' of which I have no personal knowledge but believe, on the basis of my own computer knowledge experience and research carried out by myself, to be blank".

As I say it is accepted by Mr. Hanby through his counsel that what Mr. Oliver says in his affidavit as to what was missing from the disquettes is correct.

Accordingly, Mr. Oliver now seeks to have Mr. Hanby committed for contempt because it is said Mr. Hanby did not in fact hand over to the Viscount all the disquettes and copies of the source of the 'stamps' system which he had in his possession at the time he was ordered to hand them over on the 23rd August, 1989.

In order to succeed in an application of this sort, it is accepted by both parties and Mr. Sinel accepts that the burden is on him to show that Mr. Hanby did not hand over all the copies he had and this has to be shown beyond reasonable doubt. In other words the standard of proof is a very strong standard of proof and that is evidenced by the case of Re Bramblevale Limited (1970) 3 All ER 1004. On the second page of that judgment Lord Denning M.R. says this at letter (h): "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved; to use the time honoured phrase it must be proved beyond reasonable doubt. It is not

proved by showing that when a man was asked about it he told lies. There must be some further evidence to incriminate him. Once some evidence is given then his lies can be thrown into the scale against him but there must be some other evidence".

There has to be some other evidence in this case, even if we were satisfied that the appellant in swearing his affidavit was telling lies in respect of handing over all the copies to the Viscount. Re Bramblevale Limited was accepted in this Court as being the proper law to apply here in Skinner et uxor -v- Le Main et uxor et anor (30th April, 1990) Jersey Unreported. In respect of the law there the Court cited on p.10 the well-known text book on this subject, "Borrie and Lowe's Law of Contempt". At p.393 it says as follows: "Even if the contempt powers are sought to be invoked the courts will be reluctant to exercise their powers and will do so only in the clearest cases namely where an offender having had proper notice of the order has been shown beyond all reasonable doubt to have committed the offence. In most cases this will mean that the offender will have been shown to have been deliberately or wilfully disobeying the court order".

By adopting those remarks we think that the Court was also accepting the test propounded by Lord Denning in the Bramblevale case. That being so I directed the Jurats that they had to be satisfied beyond reasonable doubt that when Mr. Hanby swore his affidavit on the 5th September, 1989, he was in fact in contempt of Court because in fact he did not hand over all the copies of the Stamps system which he was ordered to do in accordance with the Order of Justice of the 23rd August, 1989. The Jurats were quite satisfied that it is impossible to say beyond reasonable doubt that he was in contempt of Court.

There are a number of other explanations that could be given; the evidence was by no means clear. As far as paragraph 21 of Mr. Hanby's affidavit is concerned, the copies could well have been interfered with in some way by Mr. Milner who himself said that he put the disquettes in the rack and used them again. Mr. Hanby gave evidence as regards the disquettes himself. It is impossible to say that these allegations have been proved beyond reasonable doubt and accordingly the

application does not succeed. I think that I shall make an order for costs, Mr. Sinel.

Authorities cited

Re Bramblevale Limited (1970) 3 All ER 1004.

Skinner et uxor -v- Le Main et uxor et anor (30th April, 1990)

Jersey Unreported.

4 Halsbury 9 pp 33 to 68.
