

COURT OF APPEAL

7th April, 1992

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Before: Sir David Calcutt, Q.C., (President)
L.J. Blom-Cooper, Esq., Q.C., and
Lord Carlisle, Q.C.

Ex Parte Representation of Simon Charles Ogden applying for leave to appeal under Article 18(2) of the Court of Appeal (Jersey) Law, 1961 from the Judgment of the Royal Court (Samedi Division) of 3rd March, 1992, whereby the Court refused to order that an Advocate of the Court should continue to represent the Representor, contrary to the wish and intention of the Advocate.

Leave to appeal was refused by the Bailiff sitting as a Single Judge of the Court of Appeal on 16th March, 1992.

Miss S.C. Nicolle, Crown Advocate,
Amicus Curiae.
Mr. S.C. Ogden on his own behalf.

JUDGMENT

THE PRESIDENT: On 3rd March, 1992, the Royal Court (Samedi Division) held, amongst other things, that the Royal Court had no power to order an advocate to represent a particular client against that advocate's will.

Had it held that the Court had the power contended for, then the Court would have gone on to consider whether, in the circumstances of the case, it was right to order Advocate Hoy to continue to represent Mr. Ogden contrary to Advocate Hoy's will. But holding that it had no such power, it did not go on to consider the subsidiary question.

From that decision Mr. Ogden applied for leave to appeal. The Bailiff, sitting as a Single Judge of the Court of Appeal, refused leave. Mr. Ogden has now appeared before us in person and he has assisted the Court very considerably. The Court has also been assisted by Miss Nicolle, acting as *Amicus Curiae*.

There is, as one might expect, a background to this case and there are a number of other issues which may well arise in due course for consideration by the Court. But our concern is in respect of the one issue which I have outlined at the outset

of this Judgment, and no other. We are concerned simply and solely with the power of the Royal Court, as I have already outlined it.

In the Judgment of the learned Deputy Bailiff, which runs to some twelve pages, he set out in pages 1-5 the background history to this matter. We are not concerned with that, although we have obviously read it by way of background.

The Deputy Bailiff set out the issue to be determined by the Royal Court on 3rd March, 1992, and which is now to be determined by this Court, at p.6 of his Judgment. His review of the Law - and it was simply a point of Law to be decided by him and by him alone, in the light of the submissions which were made to him and of his understanding of the matter - is set out from the top of p.6 through to the middle of p.12 of the Judgment.

We have asked Mr. Ogden whether there is any point in the Judgment between pages 6 and 12 which he contests. There is no point which he contested in the exposition of the law by the learned Deputy Bailiff. Equally, we have asked Miss Nicolle whether there is any point about which she is able to suggest that the learned Deputy Bailiff may have been in error and, again, there is no point that she has been able to detect where there was an error on the learned Deputy Bailiff's part,

Miss Nicolle, in addition to the matters which were before the Court, referred the Court to the first Report of the Commissioners appointed to inquire into the State of the Criminal Law in the Channel Islands, and in particular in Jersey, which was published in London in 1847, and, she drew our attention to question 14 which is in this form:

"Is the party charged entitled to the assistance of counsel and other legal advisers? If so, of how many? By whom are the advisers selected? Where the party accused is unable to defray the expenses of legal assistance, has he any and what means of obtaining it?"

And then there are the various responses which were obtained to that question and three of them have been cited to us, but it is sufficient for my purposes if I set out simply what is recorded at question 14 by Sir John de Veulle. He said:

"From time immemorial an accused has been entitled to the assistance of counsel, and such other legal advice as he may need. He may have as many counsel as the limited number of the Bar will permit him; but only one can plead, the same rule applying in civil as well as criminal cases. The accused selects his own counsel; but, where there is

any difficulty in his doing so, the chief magistrate selects one for him. The members of the Bar act for an accused party gratuitously; and the inability to defray the expense of counsel never, therefore, prevents his obtaining that assistance".

The other answers which have been supplied for our assistance are to the same effect but there is no need for me to read them.

That, of course, was an inquiry which related to the state of the Criminal Law in this Island, but we have obviously had regard to that and to the helpful submissions which have been made to us by Miss Nicolle. Miss Nicolle submitted that there was nothing of which she was aware which would entitle a Court to order an advocate to represent a particular person contrary to that person's will.

This Court has carefully considered all that has been urged upon us. We have taken into account all the matters which concerned us but at the end of the day we see no reason to differ from the conclusion on the law reached by the Deputy Bailiff and we take that view for the reasons which he gave in his Judgment between pages 6 and 12.

I think we would merely add this: Coming, as each member of this Court does, from a different jurisdiction from the one we are presently sitting in, it is outwith the experience of any of us that a Court has the power to order an advocate to represent or to continue to represent a party contrary to that advocate's will.

We are very far from suggesting that it might be so in this particular case, but it could be that in some circumstances an advocate who has no reasonable basis for not continuing to represent his client, might conceivably be in breach of his professional duty and so expose himself to the risk of disciplinary professional proceedings. But that is very different from saying that this Court has the power to order an advocate to represent or to continue to represent his client against his will, which is the point which this Court has to determine.

In the view of this Court the learned Deputy Bailiff was correct in his decision and accordingly we refuse this application.

Authorities

First Report of the Commissioners appointed to inquire into the
State of the Criminal Law in the Channel Islands (1847):

First series of questions: p.5: Question 14.

p.10: Answer 14 of Sir J. de Veulle.

p.15: Answer 14 of Philip de Ste.
Croix, Esq.

p.34: Answer 14 of Procureur
Général & Avocat Général.

Loi (1961) sur l'exercice de la profession de droit à Jersey.

Ex Parte Representation of S.C. Ogden (3rd March,
1992) Jersey Unreported.