



20 July 2016

PRESS SUMMARY

Willers (Appellant) v Joyce and another (in substitution for and in their capacity as executors of Albert Gubay (deceased)) (Respondent) (2) [2016] UKSC 44

On appeal from [2015] EWHC 1315

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEAL

The substantive issue in this appeal is dealt with in the first judgment (*Willers v Joyce and another (1)*). But the appeal raises the important issue of the status of decisions of the Judicial Committee of the Privy Council (JCPC) in the courts of England and Wales.

For the purposes of the appeal, the Court was invited to assume that Mr Gubay controlled a leisure company, Langstone, of which Mr Willers was a director. Mr Willers was later dismissed as director of Langstone and in 2010 Langstone sued Mr Willers for alleged breach of contractual and fiduciary duties in pursuing litigation. On 28 March 2013, Langstone discontinued its claim against Mr Willers.

Mr Willers asserted that the claim brought against him by Langstone was part of a campaign by Mr Gubay to do him harm. Consequently he sued Mr Gubay for malicious prosecution. It was not disputed that the alleged actions of Mr Gubay constituted the necessary ingredients for a claim in malicious prosecution (on the assumption Mr Willers could substantiate such claims at trial), the question was whether a claim in malicious prosecution could be brought in relation to civil proceedings by a private person against another private person. The High Court was faced with a House of Lords decision which conflicted with a later JCPC decision. In *Gregory v Portsmouth City Council* [2000] 1 AC 419, the House of Lords rejected the contention that a claim in malicious prosecution could be brought in relation to civil proceedings. In the later case of, *Cramford Adjusters v Sagcor General Insurance* [2014] AC 366, the JCPC reached the opposite conclusion. The High Court judge concluded that if there was a decision of the House of Lords (or the Supreme Court) which was binding on her as a first instance judge, she could only follow a decision of the JCPC to the opposite effect if, for all practical purposes, it was a foregone conclusion that the Supreme Court will follow the decision of the JCPC. On the facts she did not consider it a foregone conclusion and therefore followed *Gregory v Portsmouth* and struck out the claim.

JUDGMENT

The Supreme Court's unanimous judgment specifies the circumstances in which the JCPC can decide that the earlier House of Lords or Supreme Court decision was wrong. Lord Neuberger gives the judgment of the Court.

The Supreme Court of the United Kingdom

Parliament Square London SW1P 3BD T: 020 7960 1886/1887 F: 020 7960 1901 www.supremecourt.uk

REASONS FOR THE JUDGMENT

In a common law system the doctrine of precedent is fundamental. Decisions on points of law by more senior courts have to be accepted by more junior courts. Otherwise, the law becomes anarchic, and it loses coherence clarity and predictability [4]. The doctrine is, of course, seen in its simplest and most familiar form when applied to the hierarchy of courts. On issues of law, (i) Circuit Judges are bound by decisions of High Court Judges, the Court of Appeal and the Supreme Court, (ii) High Court Judges are bound by decisions of the Court of Appeal and the Supreme Court, and (iii) the Court of Appeal is bound by decisions of the Supreme Court [5].

The House of Lords ceased to be bound by its own decisions following the Practice Statement (Judicial Precedent) [1966] 1 WLR 1234 which emphasised that, while the Law Lords would regard their earlier decisions as “normally binding”, they would depart from them “when it appears right to do so” and that now applies to the Supreme Court [7]. Subject to established classes of exceptions, the Court of Appeal is normally bound by its previous decisions and a High Court Judge will normally follow previous High Court decisions [8-9].

There is no doubt that, unless there is a decision of a superior court to the contrary effect, a court in England and Wales can normally be expected to follow a decision of the JCPC, but there is no question of it being bound to do so as a matter of precedent. There is also no doubt that a court should not, at least normally, follow a decision of the JCPC, if it is inconsistent with the decision of another court which would otherwise be binding on it (as summarised in [5-9]) [16].

However there is an exception to this. In an appeal to the JCPC that involves an issue of English law on which a previous decision of the House of Lords, Supreme Court or Court of Appeal is challenged, the members of the JCPC can, if they think it appropriate, not only decide that the previous decision was wrong, but also can expressly direct that domestic courts should treat their decision as representing the law of England and Wales [19-21]. This is sensible, not least bearing in mind that the JCPC panel normally consists of the same judges as the Supreme Court [21].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html