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5th August, 1986.

In the matter of the representation of
Her Majesty's Attorney General in relation to
MB.

BAILIFF: This is an application by the Education Committee(indistinct)....
under the Children Law, and to whom has been committed the care of the
child MB.

It is unnecessary
for the Court to set out the history of these parents and their children - it
is well known to us and we cannot but sympathise with them in the plight
they find themselves due to circumstances over which they have no control.
It is highly unlikely that they will have the children returned to them - they
are not competent to have them - but nevertheless the application today has
to be construed very carefully in accordance with the law. We have no doubt
that the intention of the Committee is a good intention and probably it would
be in the best interest of all the children if they were adopted in England,
but that is not the point that we have to decide. We are not asked to decide
at this stage whether it would be a good thing or not for the children to be
adopted, but whether there is a power in this Court to make the Order which
Miss Nicolle on behalf of the Committee asks.

The Committee asks us, exercising our power under paragraph
7 of Article 30 of the law (which provides: "The Royal Court may, on the
application of the Attorney General, vary or revoke any order committing a
child to the care of a fit person") to authorise the Committee to place the
child for adoption in the United Kingdom, and as a corollary, to provide that
the order designating the Committee as a fit person with whom the child has
been placed should terminate upon the making of any such adoption order.

Mr. Le Cocq, for the parents, opposes the application. He does so on
two grounds - firstly, on the facts themselves because of the question of access
and perhaps improved later conduct, but basically on the argument that the
Court has no power to make the order that is sought.

It is quite clear that as Miss Nicolle has said, the Childrens Law of
1969 was enacted for the protection and welfare of children but that does
not, in our view, entitle us to go outside the terms of the statute unless we
have to by necessary inference. If one looks at the Children (Jersey) Law-
1969 one sees that the Court has specific powers given to it under that law.

Where it is satisfied that an order should be made for various reasons set
out in Article 27, it may make one of four orders set out in Article 28. That
is to say, it may "commit the child", as it was then drafted in 1969, "to an

'approved school', (it is now varied) or "(b) commit him to the care of any fit person whether relative or not", which in fact is what this has done, "who is willing to undertake the care of him; or (c) order his parent or guardian to give an undertaking that he will exercise proper care and guardianship and to give such security in such amount as the Court may determine for the carrying out of the undertaking; or (d) without making any other order, or in addition to making an order under either sub-paragraph (b) or (c) of this paragraph, make an order, to be known as a 'supervision order', placing him for a specified period, not exceeding three years, under the supervision of a probation officer or an officer of the Committee".

And then there are specific powers as I have said in Article 30, paragraph 7, under which the application is made, but in addition to that there is a further paragraph - paragraph 9 of Article 30 - as follows: "Where the Committee represents to the Attorney General that, in its opinion it is desirable to do so in the interests of any child who has been committed to the care of a fit person, the Attorney General may apply to the Royal Court and the Court may, if it thinks it desirable and in the interests of the child so to do, revoke the order committing him to the care of a fit person, and, where it revokes that order -

- (a) commit him to the care of another fit person, whether a relative or not, who is willing to undertake the care of him; or
- (b) order him, if he is under the age of eighteen years, to be sent to an approved school; (now altered) or
- (c) order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or
- (d) without making any other order or any addition to an order under sub-paragraph (a) or (c) of this paragraph, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the Court".

Now, it seems to us that the argument which Miss Nicolle has advanced, that there is a distinction between sub-paragraph 7 and sub-paragraph 9 and therefore the Court is not restricted to the original powers which it has under Article 28, would have greater force if the words or "or revoke" was not in sub-paragraph 7. If the word "vary" was there alone and the word "revoke" was there standing alone, as indeed it does, in sub-paragraph 9. We regret we cannot accept the argument she has advanced in respect of those paragraphs and there is a further point which has to be considered. Our attention has been drawn, quite rightly, by Miss Nicolle, to Section 26 of the Children & Young Persons Act 1969 which refers to transfers between England or Wales, and the Channel Islands or the Isle of Man whereby the Secretary of State

may, by order, designate for the purposes of the section an order of any description which (a) a court from the Isle of Man or any of the Channel Islands is authorised to make by the law for the time being in force for that country and (b) provides for the committal to the care of the public authority of a person who has not attained the age of eighteen and (c) it appears to the Secretary of State to be of the same nature as a care order other than an interim order. It is not necessary for me to read the whole of that section, but there is a reference to that section which is set out in Halsbury, the fourth edition, volume 24 at paragraph 762 which deals with the section I have just mentioned, and what is interesting is that over the page the following paragraph appears: "An authorisation given to a local authority under these provisions ceases to have effect when (1) the local authority is informed by the Secretary of State that he has revoked it - that is section 24/4(a) or (2) the relevant order to which the authorisation relates ceases to have effect by fluctuation of time under the laws of the place where the law was made or the local authority has been informed by the relevant authority that the order has been discharged under that law - that is section 26/4(b) and section 26/4(c) - or (3) the person to whom the relevant order relates is again received into the care of the benevolent authority and that is section 26/4(c). The purpose we conceive section 26 of the Children & Young Persons Act 1969 to fulfill, is to allow for what we think are temporary transfers although they could, under special circumstances, be permanent - for example, where the parents themselves against whom or in respect of whom an order is made, move to England and it is desirable in order that they can exercise access, that the child follows them but at the same time placed in care in England so as to be under the control of a local authority there in the same way as it is under the control of the Education Committee here. We do not think that the section is designed to effect a permanent transfer in the manner suggested by Miss Nicolle.

Furthermore, looking at the statutes, we have to ask ourselves, is the Education Committee able to give consent for adoption. Whereas the adoption act in England makes it quite plain that local authorities cannot, our own law is silent. We are inclined to say that unless the law gives specific power to the Committee, we would find it difficult to say, but we are not making ruling on this, that indeed we ought to imply a power. That is not a matter on which we have been asked to express an opinion today. The power of the Committee as a fit person is of course defined by Article 30, paragraph 4. "The person to whose care a child is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were his parent, and the person so committed shall continue in his care notwithstanding any claim

by a parent or any other person. It does not seem to us that the powers given to the Committee authorise it to deal with the adoption of the children and furthermore we think that the law does not envisage that the children would be sent outside the jurisdiction of this Court permanently. It is not in our view specifically provided for and if it is desired that there should be these powers then they should be specifically provided for in the appropriate legislation.

We therefore decline to make the order and we order the Committee to pay costs.

....(indistinct).... expressing a view as to the desirability or not, whether these children should be adopted or permanently taken away from these parents - we are not being asked to decide that today.