

ROYAL COURT

30th March, 1989

Before: The Bailiff, sitting alone, by virtue
of Rule 3/6 of the Royal Court (Jersey)
Rules, 1982

Representation of John Philip Sauvage

Advocate S.C. Nicolle for the Crown
Mr. J.P. Sauvage (representing himself).

JUDGMENT

THE BAILIFF: This is a representation by Mr. Sauvage for an order directing the Police Court Magistrate to produce some notes taken by his predecessor, Mr. Wilde, at a hearing before him in March, 1983, in a civil case when the Island Development Committee actioned Mr. Sauvage for the costs of removing a heap of manure. The case was defended, but judgment was given against Mr. Sauvage.

There is pending before this Court an action by Mr. Sauvage relating to the refusal of the Island Development Committee to allow him to build a shed on some land, and it is in respect of that case that Mr. Sauvage says that he requires the production of Mr. Wilde's notes.

In the course of his opening remarks Mr. Sauvage made a number of derogatory references to Mr. Rondel, the Police Court Greffier. I find nothing in the papers to substantiate such allegations and accordingly I disregard them.

This matter is unusual in that it is not customary for the Royal Court to order the production of notes of the lower Court unless there is an appeal pending to it, which is not so in the present case. Or, it may well be, of course, that the notes might be needed with reference to the best evidence rule, and the authority for that is McKinley -v- McKinley (1961) 1 All ER 476. In that respect it is open when the case comes up for Mr. Sauvage, if Mr. Wilde can come to Jersey, is persuaded to come to Jersey, to call him as a witness, so he would not be prevented from seeing the notes, if they are indeed relevant.

But looking at the authorities which Miss Nicolle has produced to us, the Royal Court has refused to entertain jurisdiction in cases of this nature where there is no action before it; that is the case with the Representation of Cooper (1979) JJ 181. But I can distinguish that case, because although there is no action here, the facts are not quite the same and the request is not quite in the same vein. And therefore I do not feel that that is sufficient authority to allow me to refuse the request on its own.

However, there are some other cases, ex parte Haddican (1980) 41 PC 382 and ex parte Whitby, unreported, 29th June, 1988 which make it clear that the Royal Court will not, in the exercise of its inherent jurisdiction give instructions to the Police Court Magistrate.

The best evidence rule was in fact considered in the Privy Council case of Ramlochan -v- R. (1956) 2 All ER 577, and there the Privy Council said at page 578 that they considered it desirable to express their opinion on the point raised, that is, the point of the notes:-

"No authority has been cited to show that a party is entitled as of right to access to a judge's notes in a previous trial, for use in a subsequent trial, and, in their Lordships' opinion, no such right exists, apart from any statutory provision".

Then their Lordships go on to consider the question of the best evidence rule.

It may well be, when the case against the Island Development Committee comes to Court, that the Court will feel that the best evidence that may be necessary insofar as it is relevant will be those notes, but that will be a matter for that Court. Sitting as I am on this ex parte application I do not feel justified in being able to make the order sought for by Mr. Sauvage. Moreover, it is said that Mr. Sauvage and Mr. Bower were both present at the hearing, and indeed from the letter from Mr. Wilde it appears that Mr. Bower was there - there was a tape recording of some sort, and he heard Mr. Bower's voice.

Be that as it may, anyone who was present in that Court whom Mr. Sauvage wishes to summon to depose as to what was said, if indeed it was relevant, may be summoned in his appeal in respect of the Island Development Committee.

Lastly, where there is no precedent for making a novel order, because this would be a novel order, the cases of re. Muir (1839) 3 Moo PC 150, and re. the Assignees of Manning (1840) 3 Moo PC 164, and re. Whitfield (1845) 5 Moo PC 157, make it clear that without such a precedent the Court should be very careful before making any novel order.

Under all the circumstances, and looking at the authorities I have mentioned, and those referred to by Miss Nicolle, I am unable to agree to your request, Mr. Sauvage. The application is refused with costs.

Authorities

Re the Representation of Cooper (1979) JJ 181.

Ex Parte Haddican (1980) 41 PC 382.

Ex parte Whitby (unreported, 29th June, 1988).

McKinley -v- McKinley (1960) 1 All ER 476.

Ramlochan -v- R. (1956) 2 All ER 577.

Re Muir (1839) 3 Moo PC 150.

Re the Assignees of Manning (1840) 3 Moo PC 164.

Re Whitfield (1845) 5 Moo PC 157.

Loi (1902) sur la Cour pour le Recouvrement de Menues Dettes (Appels).

Article 17, Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.

R. -v- Morgan (1844) 1 Cox CC 109.

R. -v- Morgan (1852) 6 Cox CC 107.

R. -v- Harvey (1858) 8 Cox CC 99.