

ROYAL COURT

145.

8th October, 1990

Before: The Deputy Bailiff, sitting  
as a Single Judge

---

Evidence (Proceedings in Other Jurisdictions)  
(Jersey) Order, 1983 ("the Law")  
Re: Johan Lampaert, Joel de Smet and Petrus Celi  
Ex parte the Court of Appeal of Brussels  
(Indictment Division)

---

Summons by interveners for costs.

---

Advocate S.C. Nicolle for the Crown  
Advocate S.J. Habin for the interveners.

---

**JUDGMENT**

DEPUTY BAILIFF: This is a summons served by three gentlemen called interveners in ex parte the Court of Appeal of Brussels (Indictment Division). However, the first paragraph really deals with costs in respect of an application by Imacu Limited, Michael William Forrest and Johan George Lampaert, and therefore I think that I must treat it as a separate summons.

In my judgment there can be no doubt that when the Court heard the original request issued by the Investigating Judge of the Court at First Instance at Belgium, presented by the Acting Attorney General,

and made an Order in the terms of the request and the subsequent representation seeking the discharge of the Order thus made, it was dealing with a matter of a criminal or quasi-criminal nature.

As Crown Advocate Nicolle stated, the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983, deals, within this jurisdiction, solely with criminal proceedings. The Order extended to Jersey only sections 1, 2, 3, 5, 9 and 10 of the Evidence (Proceedings in Other Jurisdictions) Act, 1975. Sections 4, 6, 7 and 8, dealing with civil proceedings were omitted. Moreover specific provision was made that sections 1, 2 and 3 shall not extend to Jersey except for the purposes of section 5 and accordingly shall have effect in Jersey only for the purposes of criminal proceedings. Consequently the Order is a Criminal Law procedure enactment.

Thus, the Civil Proceedings (Jersey) Law, 1956, which was a Law to revise the Law with regard to the awarding of costs in Civil Proceedings and provides that the costs of and incidental to all proceedings in the Royal Court, shall be in the discretion of the Court, does not apply.

Costs in Criminal matters are dealt with by the Costs in Criminal Cases (Jersey) Law, 1961. That Law applies, inter alia, to the Royal Court sitting as a Court of Assize or "en Police Correctionnelle" or dealing with a matter of a criminal or quasi-criminal nature brought before the Court by the Attorney General.

It is not necessary for me to decide whether the original application was a matter brought before the Court by the Acting Attorney General or merely presented by him because Article 2 of the Costs in Criminal Cases (Jersey) Law, 1961, enables the Court to award costs only where any person is prosecuted or tried before the Court.

It follows that Mr. Habin cannot rely on either of the Laws referred to.

In default of statutory provision Mr. Habin relies on an inherent jurisdiction. But I accept Crown Advocate Nicolle's submission that

the inherent jurisdiction to deal with the question of costs in criminal matters is restricted to those cases where the Court deals with those criminal matters themselves as part of its inherent jurisdiction. The same principle applied to the inherent civil jurisdiction, prior to the enactment of the 1956 Law.

Crown Advocate Nicolle submitted examples where the legislature had acknowledged the necessity to make and had made particular provision for the award of costs. These were the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, the Protection of Animals (Jersey) Law, 1980, and the Bankers' Book Evidence (Jersey) Law, 1986. Mr. Habin sought to explain these away as provisions to extend the inherent jurisdiction. His argument may be partly valid as regards the Protection of Animals (Jersey) Law, 1980, where expenses incurred by a veterinary surgeon which would not otherwise form part of the costs of the prosecution are made recoverable as such. I do not accept his argument in relation to the other two enactments and, in particular, Article 7 of the Banker's Book Evidence (Jersey) Law, 1986, makes necessary provision that the costs of any application to the Court under or for the purposes of the Law shall be in the discretion of the Court, with additional provision for an order for payment of costs by the bank in certain circumstances albeit the bank was not a party to the proceeding.

Mr. Habin submits that on policy grounds it would be totally inequitable for me to rule that I have no jurisdiction, that for me to do so would be oppressive, that it could lead to individuals being deprived of their rights, and that justice must be seen to be done.

That final submission in the words used was coming close to showing disrespect to the Court. The Court must not legislate. The idea of equitable construction in the construction of modern statutes is not tolerated. I commend to him what Willes J said in 1871: "We sit here as servants of the Queen and the legislature. Are we to act as regents over what is done by Parliament with the consent of the Queen? I deny that any such authority exists. The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them".

That citation, substituting States for Parliament, applies here. As Crown Advocate Nicolle said: "If there is inequity, the remedy is amendment to the legislation and not a forced distorted interpretation". The example which she gave of the failure of the legislature to provide a right of appeal from a decision of the Juvenile Court in the original Children (Jersey) Law, 1969, is a good example. The Court refused to grant a right of appeal - no doubt to the potential distress and hardship of the intending appellant who possibly felt deprived of justice - and amending legislation followed.

Therefore I decline Mr. Habin's invitation to legislate.

For the reason I have given I find that I have no jurisdiction to award costs and paragraph 1 of the Summons is dismissed. Accordingly, the other three paragraphs fall away.

Authorities cited

Evidence (Proceedings in Other Jurisdictions) (Jersey) Order, 1983.  
Civil Proceedings (Jersey) Law, 1956.  
Costs in Criminal Cases (Jersey) Law, 1961 (Article 2).  
Thames Investments and Securities plc -v- Benjamin and Others (1984)  
3 All ER 393.  
Martin -v- Earl Beauchamp (1883) 25 Ch. D. 12, C.A.  
M'Cabe -v- The Governor & Company of the Bank of Ireland (1889) 14  
AC 413.  
Royal Court Rules, 1982, Rule 4/1(4)-(5).  
Davest Investments Limited -v- Bryant (1982) JJ 213.  
Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, Article 17.  
Protection of Animals (Jersey) Law, 1980, Article 7.  
Bankers' Book Evidence (Jersey) Law, 1986, Article 7.  
Pamplin -v- Fraser (No.2) (1984) WLR 1385.  
Chapman -v- Chapman (1985) WLR 599.  
Ruban -v- Attorney General (1987-88) JLR 204.  
R.S.C. (1988 Ed'n): 0.21/2-5/16  
0.23  
0.62 r.28.