

COURT OF APPEAL

16th March, 1992

38.

Before: The Bailiff, Single Judge

Representation of Simon Charles Ogden seeking (1) leave to appeal to the Court of Appeal, under Article 13 (e) of the Court of Appeal (Jersey) Law, 1961, from the decision of the Royal Court (Samedi Division) of 3rd March, 1992, refusing to order that his Advocate should continue to represent him contrary to the Advocate's wish and intention; and (2) an Order under Rule 15 of the Court of Appeal (Civil) (Jersey) Rules, 1964, as amended, that the hearing of applications by himself and by Hambros Bank (Jersey) Limited and Ephrath Investments Limited arranged for 25th March, 1992, in the Royal Court, be stayed.

Mr. Ogden on his own behalf.

Advocate N.F. Journeaux for Hambros Bank (Jersey) Ltd.,
and Ephrath Investments, Limited.

Judgment on Application for leave to appeal

BAILIFF: This is an application by Mr. Simon Charles Ogden for leave to appeal against a decision of the Court of the 3rd March, 1992. The decision was in fact that of the Deputy Bailiff alone as it related purely to a matter of law, though he sat with Jurats.

The issue before the Court on that day was whether the Royal Court had the power to order that an advocate should continue to represent a client contrary to the advocate's wish and intention.

The Court gave a very clear ruling that it did not consider that it had that power. Accordingly the question of whether or not the Court should exercise its discretion over the use of that power to order Mr. Hoy to continue to represent Mr. Ogden did not arise. It follows that the appeal, if leave is given, would be on the narrow issue as to whether the Court was right in deciding it had no power to order Mr. Hoy to continue to represent Mr. Ogden.

The position of Mr. Ogden is a difficult one. A *dégrèvement* has been ordered. Certain legal matters were of concern to the Greffier and on 10th January, 1992, he made a representation to the Court seeking directions, on some eight points. The Court ordered that the *Attournés* be convened and that they be responsible for summoning some several additional parties to appear on the 31st January, 1992. On that day, Mr. Ogden, according to the judgment of the Deputy Bailiff of the 3rd March, 1992, which is not in dispute, presented a document entitled "Affidavit" sworn before the Deputy Viscount, in answer to the Judicial Greffier's representation. In that document Mr. Ogden made certain allegations. As a result the Court ordered that the document be sent to the Attorney General, to investigate the matter from the criminal point of view. The Court, on that day, also fixed the 14th February, 1992, for the hearing of the Judicial Greffier's representation. Finally, the Court ordered that a new advocate be appointed to advise and represent Mr. Ogden. As a result, Advocate Robinson was appointed.

On the 7th February, 1992, Mr. Ogden, on his own behalf, presented a representation asking for an annulment of the Act of Renunciation of the 29th February, 1991, as having been made *ex parte* and fraudulently, for an order staying the Judicial Greffier's representation, and for a direction that Advocate Hoy should continue to represent him. The application for the

annulment of the Act of Renunciation is now to be heard on 25th March, 1992, in the Royal Court, and the Greffier's representation has in the interim been stayed. The Court, on 3rd March, as I have said, refused to direct Advocate Hoy to continue to represent Mr. Ogden.

There is also outstanding before the Court a summons dated 13th February, 1992, by Hambros Bank (Jersey) Limited, one of the original creditors, requiring Mr. Ogden to show cause why the Court should not order that the Court's Order of the 7th February, 1992, staying and adjourning the Judicial Greffier's representation, be quashed and the *dégrévement* proceed without delay. The summons also asks that Mr. Ogden's affidavit and representation of the 31st January, 1992 and the 7th February, 1992, respectively, be struck out in whole or in part to the extent that they seek the annulment of the Act of Renunciation of the 29th November, 1991, on the ground that they are scandalous, frivolous and vexatious and otherwise an abuse of the process of the Court.

That is really all I need say by way of background to today's application except that on 3rd March, 1992, the Court in its judgment said that it found it difficult to understand why Hambros Bank chose to proceed by way of summons rather than by filing an answer to Mr. Ogden's representations of the 7th February; however the Deputy Bailiff abridged time to allow the summons to be heard on 20th February, 1992. That was put off following a further representation by Mr. Ogden on the 14th February, 1992, and will now also be heard on 25th March.

After hearing Mr. Ogden and Miss Nicolle, the Crown Advocate who had been joined as *Amicus Curiae*, the Court gave a judgment, which, as I have said, was effectively the judgment of the Deputy Bailiff because it dealt with a point of law alone, although the third person singular was used, rather than the

first person singular, something that has perhaps been criticised slightly in Foster (20th January, 1992) Jersey Unreported. The Court ruled that it did not have power to order an advocate to represent a client against his wishes. It is against that ruling that Mr. Ogden seeks to appeal to the Court of Appeal and he asks me for leave this afternoon as a Single Judge.

There are a number of matters which are set out in more detail in Mr. Ogden's written statement of grounds for appeal on which he would seek to rely; I take them briefly in order, so that Mr. Ogden may understand the reasons for my decision, which I shall give in a moment.

The first reason that he gives for asking the Court of Appeal to reverse the ruling of the Court of the 3rd of March, was that there was on the Bench at that hearing, Jurat the Honourable J.A.G. Coutanche, who was, he said, "*a former chairman and a present director of the opposite party*". That is not relevant; it would only become relevant, or might become relevant, if the Court had ruled that it had power to order an advocate to continue to represent a client and then went on to consider whether it ought to exercise its discretion and so order accordingly; in such a case, of course, the Jurats would play their proper part. But, the Jurats had no part to play in the finding and therefore that argument is not one which, in my opinion, the Court of Appeal could entertain.

Secondly, Mr. Ogden says that the President, that is to say the Deputy Bailiff, refused to hear witnesses. Again the question of witnesses would only have been relevant if the ruling in law had been in favour of Mr. Ogden's submission. Because the Court found that it had no power to order an advocate to continue to represent a client, the question of witnesses did not arise.

Thirdly, it is said that the Court, that is to say the Deputy Bailiff, "*Judge law with Jurats, contrary to the Court of Appeal's wishes*". That is not a ground for appeal. In any case, as I have already pointed out, the Court has to sit with the Bailiff and Jurats unless it is purely a matter of law. It might have been perhaps better if the Deputy Bailiff had sat alone; but it was necessary for the Jurats to sit with him as the Deputy Bailiff might have ruled that the Court had power to use its discretion. In that case the Jurats would have had to be there to continue with the hearing, and avoid an adjournment, which would not have been helpful. The constitution of the Court was quite in order.

Fourthly, it is said that the Court "*heard fact*". The only way you can hear fact is to hear evidence; no evidence was heard, and all the Court did was to set out in résumé undisputed facts about the case leading up to the application which was before the Court. I can find no grounds there for asking the Court of Appeal to interfere.

Fifthly, the Court "*failed to allow for his abridgment of time*"; I think what is meant is that Mr. Ogden did not have sufficient time to prepare for the hearing on the 3rd March. Of course, it is very much a legal point and it might have been better if Mr. Ogden had some legal representation; but he wanted Mr. Hoy, that was the point the Court had to decide. He would not have Mr. Robinson, and Mr. Robinson could not appear, so the fact that no one was representing him was really Mr. Ogden's own fault and it cannot be laid at the door of the Court in the way that is now suggested.

So far as the criticism in Mr. Ogden's written submission of certain parts of the hearing is concerned, I find very little in that which would concern the Court of Appeal. Under

paragraph (f) there is an allegation that the Court did not take into account the affidavit and, (f) 1. suggests that there should have been an adjournment *sine die* ; but on page 12 of the Judgment the Court clearly has regard to the fact that if Mr. Robinson is going to act, a delay will have to be granted to enable him to prepare. As to what the length of that delay should be, I really do not know, I am not here to decide on that. Clearly the Court had in mind that Mr. Robinson should act for Mr. Ogden. I find it difficult to accept that an experienced advocate, which Mr. Robinson is, could not grasp his brief and become fully acquainted with the arguments in sufficient time. As regards the amount of time that was needed that would be a matter for Mr. Robinson in consultation with Mr. Journeaux.

As far as the affidavit is concerned, it really is not relevant to the question of whether or not the Court has the power to order an Advocate to appear, nor is the accountant's letter, nor in fact are the remaining matters set out under paragraphs (f) and (g) of Mr. Ogden's written statement of grounds for appeal, and therefore I have to ask myself whether there are grounds which the Court of Appeal could entertain on this very narrow point. I have come to the conclusion there are not and therefore leave is refused.

Judgment on application for a stay of proceedings in the Royal Court fixed for 25th March, 1992, pending determination of an application for leave to appeal to the full Court of Appeal.

BAILIFF: The Court of Appeal Judgment in Cridland -v- Declercq (22nd January, 1992) Jersey Unreported, C of A, is not in point. There is an appeal pending in the sense that if Mr. Ogden does not like my decision today he can go to the full Court for leave, and therefore I could exercise power to order a stay under Article 18 of the Court of Appeal (Jersey) Law, 1961, if I

felt I had those powers; but I do not really think I have. I think the matters which are set down for hearing on the 25th March, 1992, are fundamental to the whole of these proceedings, not "*incidental thereto*"; therefore if any application is to be made for a stay it must be made to the Royal Court. I shall leave it to the Court below, the Royal Court, to decide but I think it preferable for the application to be made to the same Court as constituted to hear the application for directions about Mr. Hoy, because they are fully seized of the matter. However, that is a matter for Mr. Ogden to decide. I think it would be preferable, I can say no more than that. I cannot make an order because I am not empowered to make an order. So, proceedings will continue on the 25th March, unless the Royal Court otherwise decides, Mr. Ogden.

Authorites

Court of Appeal (Jersey) Law, 1961: Article 18.

Court of Appeal (Civil) (Jersey) Rules, 1964: Rule 15.

Cridland -v- De Clercq (22nd January, 1992) Jersey Unreported,
C. of A.

In re Dégrevement Remise des Biens of Barker (1985-86)
JLR 1.

Foster -v- Attorney General (20th January, 1992)
Jersey Unreported, C. of A.