

Court of Appeal, 25th March, 1982

Bisson v. Ferbrache

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President:

The appellant, who is represented by Advocate Godfrey, appeals against an order of the Deputy Bailiff whereby he was ordered to furnish security in the sum of £500.00 in respect of a pending appeal by him against an order that he should convey his undivided half share in the former matrimonial home to his wife. The grounds of appeal, as put into writing in accordance with the rules, are simply that the Single Judge did not have due regard to the financial affairs of the respondent and in particular did not have due regard to the fact that the respondent would have very good prospects of discharging any liability of costs in the said appeal, if the order of the Royal Court as aforesaid is varied, and did not have due regard to the fact that the appellant's ability to furnish security for costs in this appeal had been adversely affected by the said order.

Before us Mr. Godfrey has put in four written submissions. The main burden of his appeal is that his client is insolvent and has considerable liabilities, which he now estimates in the sum of £40,000, and that therefore the order for security is one which he is unlikely to be able to meet, with the result that it would abort his appeal. Mr. Godfrey also sought variously to suggest that the order is so manifestly wrong that his appeal against the order for security should be allowed. That is a point not covered by his notice of appeal, and, as we elicited, not taken by him below, and it is a point which we rule is not open to him before us, for the very simple reason that

it would require an investigation of circumstances which this Court, on the material placed before it, is quite unable to undertake. The rules provide that proper notice of any such point should be given in order that both sides may properly prepare their arguments and the material requisite for it, and in order that the Court should give proper assistance upon the matter.

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The point not having been taken below, and not being covered in any of the notices of appeal, it was, we thought, quite wrong to allow it to be taken before us.

Effectively, that leaves only the point that it is said that the appellant has no means from which to furnish this security, and therefore that the appeal by him would be aborted by this order. No specific criticism has been advanced against the sum ordered by the learned Deputy Bailiff. In our view, that argument fails in limine. The power to order security is, of course, a discretionary one; in order to succeed before us, Mr. Godfrey would have to show that in some way the learned Deputy Bailiff wrongly exercised his discretion. He did not point to any matter which could constitute a wrong exercise of the discretion. We have not got the benefit of knowing the precise reasons for this order, but it is not very far to seek. It is, as Mr. Olsen has pointed out, a settled practice to order security in the case of the impecuniosity of an appellant, where he appears not to have the means to pay the costs if his appeal should fail. The wording of the rule under which this matter proceeds in Jersey is, significantly, entirely the same as the Order in England, Order 59 Rule 9. Mr. Olsen has referred us to the relevant notes in the White Book relating to the English rule, he has cited to us the cases of Harlock v. Ashbury (1881) 19 Ch.Div. 84, and Williams v. Williams (1953) 2 All E.R. 474, and whilst plainly those cases, and the White Book, would not necessarily preclude the matter, they are of guidance. There is no suggestion that the practice in Jersey is any different from the practice in England, which has long since been settled, and in those circumstances it seems to us that the arguments raised by Mr. Godfrey are very good arguments in favour of making the order which was made. In those circumstances the appeal must be dismissed, and must be dismissed with costs.

Mr. Clvde: I agree that the application should be refused.

Mr. Pownall: I agree.