

ROYAL COURT

25th April, 1990

58.

Before: The Bailiff, Single Judge

Between: Ruby Patricia Skinner (née Ball) Plaintiff

And: John Graeme Boulton Myles First Defendant

And: The Public Health Committee
of the States of Jersey Second Defendant

And: Bois Labesse Party Cited

Reasoned decisions on:

- (1) application by defendants for full indemnity costs; and
 - (2) submission by the plaintiff that the Court has jurisdiction to entertain an application that costs awarded against a party to an action should be paid by that party's advocate or solicitor.
-

Advocate J.G. White for the plaintiff,
Advocate G.R. Boxall for the first defendant,
Advocate A.R. Binnington for the party cited.

Judgment on the first application

BAILIFF: Before I could justify the award of costs other than on the usual scale of taxed costs in the instant case, I would have to be satisfied (as both counsel have submitted and I think by now this Court has accepted in at least two cases) that there were special and unusual circumstances in the instant case.

The main special and unusual circumstance urged upon me by Mr. Boxall is of the admitted inordinate and inexcusable delay of the plaintiff. But as against that Mr. White has pointed out that until 1988 there were some indications from both defendants that they were preparing to go to trial but not to the extent that the Court found that they acquiesced in such delay.

Mr. Boxall has conceded this morning that there have been additional costs but not substantial ones. And my reading of the cases, particularly Preston -v- Preston which had been cited in this Court before indicate that there would have to be substantially increased costs as being one of the important factors enabling the Court to depart from its usual rule.

In the circumstances of this case I do not think I should depart from that rule, and therefore I award taxed costs to both defendants.

Judgment on the second application

The first matter I have to decide in today's hearing is whether the Royal Court has jurisdiction at all to entertain an application that the costs awarded against one of the parties in an action should be paid by that party's advocate or solicitor. As both counsel have said there really is a dearth of authority so far as this Court is concerned, but it is clear from the cases of certainly two to my knowledge which I was concerned as a Crown Officer and one as Deputy Bailiff that this Court has accepted jurisdiction to discipline its officers. There is no doubt that an advocate or solicitor are officers of this Court and subject to its general jurisdiction of overseeing the behaviour of the profession.

Now, Mr. Binnington has suggested that that oversight is confined to a number of direct remedies for unprofessional conduct

such as a fine or admonishment, suspension or striking off. But that an order as sought now is in fact a compensatory order rather than a punitive order and is therefore outside the purview of the Court. Whether that Court consists of the Bailiff sitting alone, or the Bailiff with an Inferior Number or the Bailiff with a Superior Number is not an issue at the moment. What I have to decide is whether the Court however constituted has jurisdiction to entertain an application of this nature.

Mr. Binnington has referred me to extracts from Terrien from where it is quite clear the present oaths of advocates largely derive their origin but nevertheless I would be reluctant to restrict the Court's jurisdiction in the manner suggested by Mr. Binnington. He has argued very cogently that if I were to say the Court had jurisdiction that would be tantamount in effect to judging an issue of negligence between the plaintiff in this case and her former solicitor or advocate.

I do not think there is substance in the point that the plaintiff's present advisers were not concerned with her case and that the application relates only to the plaintiff's former advisers. I think there is no distinction. It is the conduct of those former advisers which this Court has found to have been inordinate and unnecessary in the sense of having delayed.

That being so I have to ask whether I should take a narrow view of this Court's jurisdiction or perhaps a more wide view and I am encouraged to take a somewhat wider view, notwithstanding Mr. Binnington's suggestion that I look to the roots from whence we come, but we have advanced a little further since 1560 and I can find nothing in Terrien to suggest that the Court would be constrained from making such an order. The Court has a number of powers suggested in Terrien but those powers surely are not exclusive. There is nothing in the wording which suggests that they are exclusive.

If one looks at the leading case in England of Myers -v- Elman (1940) AC 282, 290, 292, which is referred to in the work on professional negligence by Jackson & Powell though I hasten to add I

am not expressing any view as to whether the former advisers of the plaintiff were negligent or not, nevertheless in the case of Myers -v- Elman the judge at first instance had ordered the defendant's solicitor to pay part of the plaintiff's costs on the grounds that on discovery the solicitor's managing clerk had filed inadequate affidavits of documents. That decision was reversed by the Court of Appeal but restored by the House of Lords. I cite from the authors at p.224:

"Viscount Morne after reviewing the early authorities said: "These cases did not depend on disgraceful or dishonourable conduct by the solicitor but on mere negligence of a serious character the result of which was to occasion useless costs to the other parties"(and I pause here to say that I have already found that there have been some useless costs incurred by the other parties but not of course sufficiently high for me to make an award against the plaintiff of costs on a full indemnity basis). But I carry on from the judgement referred to in the text book. "Lord Wright pointed out that this was summary jurisdiction which had long been exercised by the Superior Courts. He continued" (and this is the passage which I wish to stress) "..... the underlying principle is that the court has a right and a duty to supervise the conduct of its solicitors and visit with penalties any conduct of a solicitor which is of such a nature as to tend to defeat justice in the very cause in which he is engaged professionally. The matter complained of need not be criminal, it need not involve speculation or dishonesty. A mere mistake or error of judgment is not generally sufficient but a gross neglect or inaccuracy in a matter which it is the solicitor's duty to ascertain with accuracy may suffice".

Now applying those words to this case in my opinion it suffices that where there has been on the part of an advocate gross and inordinate delay in prosecuting a civil action for his client, that to my mind brings that action within the scope of those matters set out by Lord Wright and I propose to take a wide view on the matter; if I am wrong the Court of Appeal can correct me, but in my opinion this Court has jurisdiction to entertain an application of the sort now before it.

Authorities cited:

- Terrien: "De l'Ordre et Style de procéder és Courts Inférieures" Livre 9
Chapitre 6.
- Code of 1771 - Loix Etablies par Différens Ordres du Roi et du Conseil, et
Actes de Parlement.
- Serment des Avocats de la Cour Royale.
- 1861 Commissioner's Report: Evidence 5083-4 and 5144-5.
- Loi (1939) Sur les Honoraires des Avocats et des Ecrivains.
- Royal Court (Jersey) Law 1948 - Article 13.
- In Re an Advocate (1978) J.J. 193.
- The Official Solicitor -v- Alan Evelyn Clore & Others (1983) J.J. 43.
4 Halsbury 37, paragraph 14.
- Rules of the Supreme Court 1988 (as amended) Order 62 rule 11.
- Bahai -v- Rashidian (1985) 3 All ER 385.
- Allen -v- Sir Alfred McAlpine & Sons Limited (1968) 1 All ER 543.
- Jackson & Powell - Professional Negligence (2nd Edition) paragraphs
4.59 to 4.105.
- 4 Halsbury 44, paragraphs 259-262.
- Myers -v- Elman (1940) AC 282, 290, 292.
- Sinclair-Jones -v- Kay (1989) 1 WLR 114, 121, 122.
- McGoldrick & Co. -v- Crown Prosecution Service ("The Times", November
15, 1989).
- Manor Electronics Ltd and another -v- Dickson and others. In re Knight
and others practising as Dibb & Clegg, Barnsley ("The Times",
February 8, 1990).