

ROYAL COURT
(Samedi Division)

36.

20th February, 1996

Before: The Bailiff, and Jurats
Coutanche, Blampied, Orchard, Gruchy,
Le Ruez, Herbert and Potter.

Petition of *doléance* of John James Lagadec.

On 2nd November, 1995,

the Petitioner was acquitted by the Inferior Number of the Royal Court on 2 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972. (Count 1: MDEA; count 2: cannabis resin) and on 2 counts of possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978. (Count 3: MDEA; count 4: cannabis resin).

The Court refused the Petitioner's application for costs, but allowed witness costs.

Application to the Superior Number to review the decision on costs.

Advocate S.E. Fitz for the Petitioner.
W.J. Bailhache, Esq., Crown Advocate.

JUDGMENT

5 THE BAILIFF: This application by way of *doléance* arises out of the refusal of the Deputy Bailiff to award defence costs to John James Lagadec after he had been acquitted of charges involving the unlawful importation of drugs. The grounds of the application are set out in the representation in this way:

10 "The Applicant contends that he has grounds of complaint arising from the decision of the Learned Deputy Bailiff not to grant him costs in that the Learned Deputy Bailiff failed to exercise his discretion judicially when considering the question of costs in that he failed to

give defence counsel the opportunity to put forward arguments in support of the application for costs and failed to give reasons for the refusal".

5 Miss Fitz, who appeared for Mr. Lagadec, referred us to a passage in Re Doléance of Barker (1985-86) JLR 284, where the learned Commissioner said this:

10 "Before allowing a doléance, the court has to be satisfied that there has been an excess of jurisdiction or a breach of natural justice which needs to be remedied, as a doléance is a remedy "in last resort" when all other doors are closed and a grave injustice will remain unless remedied. This being so, the onus to show this is on the
15 petitioner and can only be described as a heavy burden".

20 There is no question here of want of jurisdiction, or indeed of excess of jurisdiction. The Costs in Criminal Cases (Jersey) Law, 1961, clearly vests jurisdiction in the Court which means, in this context generally, that the Deputy Bailiff had the power to decide whether or not to award costs. Article 2(1) of the Law provides:

25 *Subject to the provisions of this Article, where any person is prosecuted or tried before a court to which this Article applies, the court may -*

30 *(c) if the accused is discharged from the prosecution or acquitted, order the payment out of public funds of the costs of the defence".*

Paragraphs (4) and (5) of Article 2 continue:

35 *The costs of the defence payable under sub-paragraph (c) of paragraph (1) of this Article shall be such sums as appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred by him in carrying on the defence and to compensate any witness for the defence for the expense, trouble or loss of time
40 properly incurred in or incidental to his attendance and giving evidence.*

45 *Notwithstanding that the court makes no order under sub-paragraph (c) of paragraph (1) of this Article for the payment of the costs of the defence, it may order the payment out of public funds of such sums as appear to the court reasonably sufficient to compensate any witness for the defence for the expense, trouble or loss of time
50 properly incurred in or incidental to his attendance and giving evidence".*

The question therefore reduces to a question of whether or not there was a failure of natural justice.

5 There are no transcripts before us of what took place before the Inferior Number, but both counsel agree that what happened was that after the acquittal had been announced Miss Fitz made her application for costs. The Crown Advocate was not called upon to reply and the Deputy Bailiff announced his decision.

10 Miss Fitz suggests that the discretion vested in the Deputy Bailiff was not exercised at all because the Judge did not consider the relevant principles and did not give his reasons for arriving at his decision.

15 We cannot accept that the Deputy Bailiff did not apply his mind to the question because he did exercise the power under Article 2(5) to differentiate between witness costs and defence costs. He granted the application in respect of the former, but refused the application in respect of the latter.

20 The Crown Advocate submitted - and we agree - that the Deputy Bailiff is an experienced trial Judge, who must have had in mind the relevant principle set out in the oft cited case of A.G. -v- Bouchard (1989) JLR 350. The principles are set out compendiously in the headnote to that case in this way:

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35 *"Since the court was empowered under art. 2(1)(c) of the Costs in Criminal Cases (Jersey) Law, 1961 to order that the defence costs of a person acquitted from conviction or discharged from prosecution be borne by public funds, it would direct that such defence costs should normally be paid out of public funds unless there were strong reasons indicating otherwise, e.g. where the defendant's acquittal or discharge arose from a mere technicality, or where his conduct had brought suspicion upon himself and misled the prosecution into thinking that its case against him was stronger than it really was".*

40 We are not in a position to consider how the Deputy Bailiff applied those principles to the facts of this case and we do not consider that it is proper, in the context of a petition by way of *doléance*, that we should attempt to do so. The discretion is clearly vested in the Judge and the statute allows for no right of appeal. We are only concerned to decide whether there was a grave
45 injustice which requires to be remedied.

50 Although Miss Fitz did not address arguments in support of her application, it was open to her to do so. We think that it would have been preferable that the Deputy Bailiff, having obviously considered beforehand how he might exercise his discretion, should have invited submissions. His failure to do so cannot, however, in our judgment, be categorised as a failure of

natural justice such as to warrant the entirely exceptional remedy of *doléance* being applied.

5 So far as the failure to give reasons is concerned we again think that it would have been desirable in the context of the acquittal of Mr. Lagadec that the reasons should have been deployed. Again, however, it was open to counsel to have requested those reasons at the time.

10 In our judgment the applicant has not satisfied the heavy burden which the law lays down to show that there has been a grave injustice. The law allows the Judge a discretion as to whether or not to grant defence costs. There is no evidence before us to suggest that that discretion was not properly exercised and the
15 application is accordingly refused.

Authorities

Report of the Commissioners into the Civil, Municipal and Ecclesiastical Laws of Jersey (London, 1861): p.liv: Doléance.

Le Gros: "Traité du Droit Coûtumier de Jersey (Jersey, 1943): pp.155-6, 158.

Poingdestre: Les Lois et Coûtumes de l'Ile de Jersey (Jersey, 1928): pp.235-7: des Doléances.

Ex parte Charles Nicolle (1879) 5 AC 346.

Re Doléance of Barker (1985-86) JLR 284.

Costs in Criminal Cases (Jersey) Law, 1961.

Court of Appeal (Jersey) Law, 1961.

A.G. -v- Bouchard (1989) JLR 350.

A.G. -v- Anthony (20th January, 1992) Jersey Unreported; (1992) JLR N.6.

Le Geyt: Manuscrits sur la Constitution, les Lois, et les Usages de cette Ile: Tome III: pp.339-344: des Doléances et Dénys de Justice.

Re Doléance of Harbours and Airport Committee (1991) JLR 316.