

9th January, 1987.

COURT OF APPEAL

Before: D.C. Calcutt Esq., Q.C. (President)
J.M. Chadwick Esq., Q.C., and
R.D. Harman Esq., Q.C.

Between	Barrie Raymond Cooper	Appellant
And	Her Majesty's Attorney General	Respondent

Application by the Appellant for an Order that the Respondent
furnish the Court and the Appellant with copies of a
Report/Opinion submitted by the Law Officers of the Crown
to the Privy Council

The Appellant on his own behalf

Advocate S C Nicolle on behalf of the Attorney General

Judgment

PRESIDENT: Mr Barrie Raymond Cooper, who is the appellant in a case which is pending before the Court of Appeal, applies today for an order for the release to the Court of Appeal and to him of a Report/Opinion which was made in circumstances which I will presently describe, by the law officers of this Island to the Privy Council. Since the appeal is, as I have indicated, pending before this Court, I propose to say no more than I regard as absolutely necessary to enable us to dispose properly of this matter.

Very briefly, the position, as I understand it to be, is this: Mr Cooper was detained in June of 1961 in the Jersey General Hospital and he asserted that his detention there and at that time was unlawful. He petitioned the Privy Council about this matter and the matter was duly considered by the Privy Council. There is before us a record of the order which was made by the Privy Council and it is in these terms:

At the Court of Buckingham Palace, the nineteenth day of May, 1976, present - The Queen's Most Excellent Majesty in Council. Whereas there was, at this day, read at a board, a report from the Right Honourable the Lords of the Committee of the Council for the affairs of Jersey and Guernsey, dated the fifth day of May, 1976, in the words following, that is to say ... and then it's a quote:

"Your Majesty, having been pleased by your general order of reference of the twenty-second day of February, 1952, to refer

unto this Committee the humble petition of Mr Barrie Cooper, seeking compensation for his alleged unlawful detention at the Jersey General Hospital in June, 1961, the Lords of the Committee, in obedience to Your Majesty's said order of reference, have taken the said petition into consideration and do, this day, agree humbly to report as their opinion that Mr Cooper's detention was unlawful by virtue of the failure of the Constable of the Parish of St Helier to act judicially and to consider the evidence in a proper manner and humbly to recommend that the Jersey authorities be so informed, through Your Majesty's Lieutenant Governor of Jersey, in order that the said authorities may consider the issue of an acknowledgment of the injustice done to Mr Cooper and the grant of compensation to him. Her Majesty, having taken the said report into consideration, is pleased by and with the advice of her Privy Council to approve thereof."

I should make it perfectly plain, if it is not plain already, that the matter which came before the Privy Council in these circumstances came before it, not as part of the system of appellate jurisdiction from the courts of this Island, but as part of the prerogative right which Mr Cooper apparently enjoys in common with others to petition the Privy Council where he believes himself to have been grieved.

Now, it was in the course of the Privy Council's consideration of Mr Cooper's petition that the law officers of this Island apparently provided a report or an opinion to the Privy Council. That report, as I understand it, is a confidential report written for the assistance of the Privy Council. It appears, from the papers before us, that it has long been a source of anxiety to Mr Cooper that he has not been able to obtain a copy of that report for himself. He has, so he asserts, been allowed to read the report but he has not been allowed, so he tells us, to take notes nor, as I have said, has he been allowed to have a copy for himself.

The Attorney General of this Island, who is respondent to this appeal, now pending before the Court of Appeal, resists an order requiring the supply to Mr Cooper of this report and, in effect, two points are taken. The first point that is taken is that it is not a relevant document on the hearing of the pending appeal but, even if that be not so, the second point is taken that it is a matter of public interest immunity as the result of

which Her Majesty's Attorney General would be entitled to say that this is not a document which should be ordered to be disclosed.

We have considered, first, the question of irrelevance because if, without considering any question of public interest immunity, Mr Cooper fails on that ground, then the second matter does not arise for our consideration. The appellant's representation to the Royal Court was made on the 13th December, 1985. It is set out on pages 1 to 4 of the Act of Court of the 30th June, 1986. There is no need for me to read the whole of that document, it is sufficient if I read the relief which the appellant was claiming and which is set out at the top of page 4 of the Act of Court and it is in these terms:

- (a) to accept that it was wrong not to register the Order in Council and that the Court had no right to assign its lawful authority to the States in assembly;
- (b) to declare that the waiver conceived by the Attorney General to circumvent the Royal Court was illegal and null and void and should be set aside;
- (c) to register the Order in Council; and
- (d) to commission a judicial committee to enquire into the matter so that the Court may order the States in default to pay the plaintiff the full sum of compensation with interest and sundry costs ensuing from the defaults of the States and the Attorney General and other Crown Officers.

Now, it is to be noted that there is no express reference to the report and it does not appear to me to have been relevant to the issues which had to be determined by the Court. The complaint appears to relate - and understandably so - to what happened after the Privy Council had advised Her Majesty and after Her Majesty had approved that advice and that, as I have already indicated, is something which happened on the 19th May, 1976.

The representation by Mr Cooper having been made to the Royal Court, the action was placed on the pending list; in due course, the respondent filed an answer; in due course, the matter came on for hearing by the Royal Court on the 30th June. The record of the hearing which took place on the 30th June, 1986, is set out in the documents which are before us and it is quite plain that, if one looks at the record between pages 32 through to page 35, that there were, indeed, references made to the report of the law officers to the Privy Council. On the 30th June, 1986, judgment

was given; there were, in the course of that judgment, three references to the report but, as it seems to me, none of the references was material to the matters which the Royal Court had to determine.

First, there was a reference which was recorded on page 3 of the judgment but the context in which it was referred to was that it explained the circumstances in which it appeared to the Court that the appellant - that is Mr Cooper - had dispensed with the services of his advisers.

The second and third references to the report are to be found on pages 5 and 6 of the decision but, again, the context in which the references were made were in the context of a recital of the contents of letters written by Mr Cooper.

The judgment dealt with the matters raised by the representation and to which I have already specifically referred but - and not surprisingly - did not consider the appellant's complaint that he had not been able to have a copy of the report.

Against that decision, the appellant, Mr Cooper, now appeals to this Court and, in due course, that appeal will be heard. The notice of appeal is in these terms:

Take notice that, on appeal from the judgment of the Samedi Division of the Royal Court, at the hearing of the action on the 30th June, 1986, the plaintiff will ask the Court of Appeal to order that the said judgment be set aside and further take notice that the grounds of the appeal are:

- (1) that the Court misdirected itself by citing Article 15 of the Royal Court (Jersey) Rules, 1948, which was invalid and misapplied as the matter at issue before the Court ensued from an Order in Council, dated 22nd February, 1952, under the prerogative of the Sovereign in Council;
- (2) that the Court failed to apply itself to the submissions of the plaintiff on the same default of the Court on 11th June, 1976, as to the statutory duty of the Court to register and ensure the proper and effective implementation of the Order in Council concerning the false imprisonment of the plaintiff;
- (3) that the Court should have granted the prayer of the plaintiff's representation in accordance with constitutional and judicial procedures and provisions;

and that is signed by the present appellant.

Again, it is to be noted that there is no reference in that notice of appeal to the report which Mr Cooper now seeks and, in my view,

that report does not and could not arise as a relevant document on the hearing which will take place in due course before the Court of Appeal.

In those circumstances, it seems to me that the submission which has been made to us by Miss Nicolle on behalf of Her Majesty's Attorney General is sound and it is upon that basis that I would dismiss this application. I would merely add that, in those circumstances, I have not gone on to consider what my view would be with regard to public interest immunity. For my part, I would dismiss this application.

MR CHADWICK: I agree with the judgment which the President has just delivered. Like him, I find it impossible to see how the report, which Mr Cooper seeks to have produced, could have been relevant to the issues which the Royal Court had to consider in his action or to the matters which would be before the Court of Appeal on an appeal from the judgment of the Bailiff. I would also dismiss this application on those grounds. I, too, would not wish to express any view as to the application of a claim for Crown privilege in these circumstances.

MR HARMAN: I also agree.

PRESIDENT: Do you want to say anything?

ADVOCATE NICOLLE: No thank you, Sir.

PRESIDENT: You don't make any application?

ADVOCATE NICOLLE: No, Sir.

PRESIDENT. Very well. Thank you very much. Well then, Mr Cooper, the appeal will come on and you will argue it in due course, no doubt. Thank you very much.