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ROYAL COURT
(Samedi Division)

15th December 1997

Before: F. C. Hamon Esq. Deputy Bailiff
and Jurats C. L. Gruchy and S. C. Le Brocq

Between: **Elizabeth Frances Le Prevost** **Representor**

And **Advocate M. J. Backhurst** **Respondent**

Representation by the Representor praying the Court to release the Respondent as General and Special Attorney of the Representor, on the grounds that:

- (1) the Representor no longer resides within the jurisdiction; and
- (2) the Representor is able to look after her own affairs.

Advocate P. de C. Mourant for Mrs. Le Prevost
Advocate J.D. Kelleher for Advocate M.J. Backhurst

JUDGMENT

THE DEPUTY BAILIFF: By a contract made on the 19th day of January 1996 the Court appointed Michael John Backhurst the General and Special Attorney of Mrs. Le Prevost.

Although Advocate Kelleher appeared for Mr. Backhurst in this matter, we also allowed Mr. Backhurst to address us on his fears for the future if the power were to be released.

We have had a very full amount of documentation placed before us and particularly a detailed letter of explanation sent by Mr. Backhurst to Advocate Mourant on 3rd September, 1997.

Having outlined the matrimonial problems faced by Mrs. Le Prevost and the fact that she appeared at that time to be squandering her substantial assets, the letter goes on to say:

“Mrs. Le Prevost accepted my advice and agreed to appoint me her special and general attorney. She fully understood that by so doing she was unable to contract other than through me and that only the

Royal Court could remove me as her special and general attorney. In accordance with the requirements of the law I took her to see the Deputy Bailiff who satisfied himself that she appreciated the significance of her decision before the appointment was made on 19th January 1996.

Having been appointed Special and General Attorney I took steps to ensure that Mrs. Le Prevost's patrimoine was in order. This included taking steps to ensure her uncle, who enjoyed a life interest in her property La Place, St. Ouen, was complying with his obligation to maintain that property. Mrs. Le Prevost told me she had not been near the property since her mother died as she had fallen out with her uncle and wanted nothing to do with him. The property is large and together with its land has, in my opinion, a value in excess of £500,000. The property required some work and this has since been undertaken to my satisfaction. I am fearful that if the Special and General power of attorney is lifted Mrs. Le Prevost will sell the property upon her uncle's death and will squander the proceeds. This property is the last jewel in what was a substantial crown. After this, there is no more. Clearly, this would not be in the best interests of Mrs. Le Prevost herself or of her children."

Mrs. Le Prevost now lives with Mr. Le Prevost in a property in Hampshire. It is owned by a company called Prevost Holdings Limited incorporated in Jersey and controlled by Mr. Backhurst.

Advocate Mourant was able to accept that at the time that the power was given, there was cogent reason for it.

Mrs. Le Prevost has sworn a seven page affidavit. The gist of it (apart from the complaints at the legal charges that have been levied) is that she and her husband have a happily married life in Lymington. Mr. Le Prevost now has a steady job. The divorce from her former husband is absolute. There is a trust fund for the maintenance of the two children (now aged 12 and 13) which will fall in when they come of age. We have a psychiatric report prepared on 19th August 1997 by Mr. Austin Tate, a consultant psychiatrist which concludes with these words:-

"17. Mrs. Le Prevost is a 39 year old twice married woman, who does not describe or exhibit any gross psychiatric illness. She is tense, anxious and worried, but these symptoms and feelings are within normal limits.

18. In summary, I know of no psychiatric reason why Mrs. Le Prevost should not be able to manage her own affairs, which I believe she is capable of doing."

Advocate Kelleher makes it very clear that his client rests "*à la sagesse de la Cour*" but Mr. Backhurst very properly says that he cannot in all conscience

voluntarily agree to release Mrs. Le Prevost because, he fears as did someone else before him "*après moi, le déluge*".

We have to consider what little legal authority is available.

The General and Special Attorney is a power which is equivalent to a voluntary interdiction and the deed contains the words "*sans lequel elle ne pourra agir à ses affaires héréditaires ou mobilières*". Historically, the procedure would have been of great use to a debtor who wished to avoid bankruptcy proceedings.

In a letter written to the Governor on 14th April, 1858, by J.W.Dupré, the Attorney General and R.P.Marett, the Solicitor General, and exhibited in the Commissioners' Report (at 10,613) the authors say:

"By the law of Jersey, a Procurator-General is invested with a complete right of control over the property of the person appointing him, who cannot transact any business without his sanction, or cancel his appointment, except upon proof made before the Court of malversation or other misconduct."

Then there are two further passages later on in the examination.

12,845 (Sir J. Awdry to Mr. F. Godfray):-

"It may be annulled by the court, or by the consent of the procureur général, but cannot be revoked by the party himself? - Just so; and that is always fully explained to the party before the act is passed." And

12,849 (Mr. H. Simon):-

"It is very desirable that some other means of putting an end to the procurations générales should exist. It is very often a matter of complaint, that the person under a procuration générale cannot resume the administration of his property, even after some years, without considerable expense and litigation. Sometimes there are reasons for a person appointing a procureur général for the administration of his property, and in a short time afterwards, he may be disposed to revoke that power, and yet he cannot do it."

So we appear to have a system which binds the constituent to his Attorney in a sort of permanent obligation if the Attorney does not consent to release him or her and where the attorney has not been guilty of misconduct.

There is some advance on that strict view in the work of C.S. Le Gros where he writes in "*de la curatelle et de la Procuration Générale*" citing the case of Alfred Philip Le Rossignol contre le Curateur du bien et de la personne de Monsr. Adolphus Frank D'Allain (Ex 1910 Janvier 15) the decision was "*la cour statuant sur l'appel*

dont s'agit, a trouvé mal jugé, bien appelé. Concluant en disant que le constituant a le droit, le cas échéant que son procureur refuse d'abandonner la procuration, de s'adresser à la Cour Royale par la voie de la Remontrance pour obtenir l'annulation de la procuration moyennant raisons valables." What are the "raisons valables"?

Importantly, we now have the psychiatrist's report which must put aside the concern of Mr. Backhurst who wrote to Mrs. Le Prevost's English Solicitor on 6th September 1996 to say:

"Although no curatorship order, which is the Jersey equivalent to a Court of Protection Order in England, has been made, I am firmly of the opinion that Mrs. Le Prevost is in need of medical help and that a Court of Protection Order should be made in England."

Mr. & Mrs. Le Prevost live, apparently contentedly, outside this Court's jurisdiction.

The divorce settlement is done and dusted and there is a maintenance trust in place for the children during their minority established by the Court.

In our view, Mr. Backhurst has against heavy odds acted with diligence to preserve Mrs. Le Prevost's remaining estate but we cannot see any legal ground for continuing the power and whilst we share the pessimism that emanates from the Attorney, we cannot at this point of the 20th century, allow this mature lady to remain unwillingly shackled in this way.

We have no hesitation in releasing Mr. Backhurst as General and Special Attorney and we so order.

Authorities

Commissioner's Report into the Civil, Municipal and Ecclesiastical Laws of the Island of Jersey (1861). Questions: 10,613; 12,845; 12,849.

Huelin -v- Huelin (1892) - 215 Ex. 464.

Jean Poingdestre "Les Lois et Coutumes de L'Ile de Jersey" (Jersey 1928) pages 198-200.

Le Gros "Traité du droit Coûtumier de L'Ile de Jersey" pages 186-194.