Royal Court.

(Samedi Division)

24 March 1998

Before Sir Godfray Le Quesne, QC, Commissioner,

and Jurats Rumfitt and Tibbo

AG

-v-

Robert John Young

Alfred George Williams

ROBERT JOHN YOUNG

6 counts of inducement to take part in arrangements with respect to the management of property by statements known to be misleading, false or deceptive, contrary to Article 12(c) of the Investors (Prevention of Fraud)(Jersey) Law, 1967: (counts 1A, 2C, 3A, 4A, 5A, 6.)

ALFRED GEORGE WILLIAMS

5 counts of inducement to take part in arrangements with respect to the management of property by statements known to be misleading, false or deceptive, contrary to Article 12(c) of the Investors (Prevention of Fraud)(Jersey) Law, 1967: (counts 1A, 2A, 3A, 4A, 5A); and

5 counts of inducement to take part in arrangements with respect to the management of property by the reckless making of statements which were misleading, false or deceptive, contrary to Article 12(c) of the Investors (Prevention of Fraud)(Jersey) Law, 1967: (counts 1B, 2B, 3B, 4B, 5B).

Ruling by the Commissioner on whether, when the Jurats retire to

consider their verdict, the Commissioner should retire with them.

CE Whelan Esq, Crown Advocate

Advocate D F Le Quesne for RJ Young

Advocate S Young for AG Williams

JUDGMENT

THE COMMISSIONER: In this case, I raised with counsel the question whether when the Jurats retire to consider their verdict I should retire with them or not. This question was extremely was expressly left open by the Court of Appeal in its recent judgment in the case of Snooks -v- Attorney General (26 September 1997) Jersey Unreported CofA. I quote a short passage from that judgment:

"We heard some argument as to whether, having delivered a summing-up in open court, the presiding judge should any longer retire with the Jurats, since initially, they alone are the judges of fact. We make no observation on this point, other than to suggest that this is an issue which merits careful consideration by the Royal Court."

That is the consideration which this Court is now endeavouring to give to that issue.

I told counsel at the end of last week that I should be grateful for their help about this. They have provided that help very effectively, by putting before me today a statement of the view, to which they all subscribe, about the course which should be taken. In view of the importance of establishing this matter of practice and of the invitation given by the Court of Appeal, I am delivering a ruling on the subject in the light of the agreed view which has been put before me.

The traditional practice in trials before the Inferior Number has always been for the Bailiff, or whoever was presiding, and the Jurats to retire together to consider the verdict. This practice has prevailed even since the introduction of the present law contained in the Royal Court (Jersey) Law, 1948.

I say "even since" that Law was introduced, because, by Article 13, paragraph 2, that Law provides as follows:

"In all causes and matters civil, criminal and mixed" - there follow some words irrelevant for our purpose - ***" the Jurats shall be the sole judges of the fact."***

That statement, apparently very straightforward, is in fact qualified by paragraph 4 of the same Article which reads:

"In all causes and matter, civil, criminal or mixed, the Bailiff shall have a casting vote whenever the Jurats, being two in number, are divided in opinion as to the facts…."

If one reads those two paragraphs of the Article together, the result is that, while the Jurats are given the primary responsibility for the decision of facts, the Bailiff has not been deprived completely of functions in relation to matters of fact. If the Jurats, having considered the matters of fact, are divided

in opinion - I speak of cases in which there are only two Jurats sitting - then the Bailiff is vested, by paragraph 4, with a function as to matters of fact, because he is given a casting vote. It is, therefore, necessary to devise some procedure which respects the primary responsibility of the Jurats and also the potential responsibility of the Bailiff in relation to matters of fact.

A further relevant consideration arises from the law as to the constitution of the Inferior Number of the Royal Court. The Inferior Number is constituted by the Bailiff or his deputy and at least two Jurats. The Court consists of those three persons. It follows that some specific authority must be found to justify the discharge of any part of the Court's functions in an Inferior Number trial by two only of the three.

An analogous position has arisen in respect to questions of law. The Law of 1948 constitutes the Bailiff the sole judge of law . It was, nevertheless, the practice after the passage of that Law for the two Jurats and the Bailiff all to sit while questions of law were discussed. The decision was then taken by the Bailiff alone.

Provision has now been introduced into the rules of the Royal Court allowing the Bailiff to sit alone when dealing with a matter which the Law of 1948 commits to his sole decision; in other words when dealing with a question of law.

The relevance of this, as has been submitted to me this morning, is that, although the Law says that the Bailiff should be the sole judge of the law, it was thought necessary to provide by legislation for the Bailiff to sit alone without the Jurats, when discharging that function.

Analogously, it has been submitted, although the primary responsibility as to the facts is given to the Jurats, in the absence of any specific legislative justification, it seems at least doubtful whether that part of the function of the court ought to be discharged by two members sitting without the third.

There is one other matter which I should mention as relevant to this. If the Jurats, being two only are divided in opinion as to the facts, the Bailiff is given a casting vote. It would seem to be very illogical if the Bailiff should be required to exercise that casting vote without hearing the rival arguments, and the different points of view held by the two Jurats respectively. This points strongly to the propriety of the Bailiff, at some stage at least, sitting with the Jurats while they are considering the facts and having the opportunity of knowing what their differing views are.

All counsel appearing before me have agreed that these considerations lead to the conclusion that the proper course is to maintain the traditional practice as to retirement in Inferior Number trials. That is to say, the Bailiff or his deputy should continue to retire with the Jurats when the questions of fact have to be decided.

It is clear that proper respect has to be paid to the provision of the 1948 Law, that at the outset the Jurats are the sold judges of fact. It is the responsibility of the Bailiff to see that the law is properly observed. When he retires with the Jurats, it is, therefore, his responsibility so to control and confine his contributions to the discussion that the decision in the first place is the decision of the of the Jurats alone.

It is possible that some question of law may arise in the course of the retirement which did not arise in open court. When that happens, the Bailiff can choose between two courses. He may immediately adjourn into court and there hear argument, if necessary, and deliver a ruling upon the point which has arisen. Alternatively, he may give directions out of court to the Jurats and then announce when they return to court what directions he has given.

It is essential that any directions given on law should be given in a way which makes them available to all parties to the case. It may well be that the Bailiff or his deputy will generally prefer the first of the courses which I have mentioned. That course has the advantage that, before giving any ruling

upon the new question of law which has arisen, the Bailiff will have heard any submissions which counsel on either side may wish to make to him as to what his ruling should be.

I will only add a word about the only authority which anyone has found dealing with this question . There is a brief reference to it in the judgement of the Court of Appeal in the case of Attorney General -v- Paisnel, (1972) JJ 2201. In that case, the Bailiff presiding at a trial before the Inferior Number, had summed-up the case to the Jurats in public - the first time, I believe, that that had ever been done. As the Bailiff pointed out at the time, he was led to do it by the great importance of the particular trial which he was conducting and the quite exceptional degree of public interest which it had aroused.

Having summed-up the evidence, he then asked the Jurats to retire alone without him and consider their verdict. When the matter came before the Court of Appeal, this innovation was drawn to the Court's notice by the Attorney General, and the Court, in its judgment said this:

"It appears to us that the course which was adopted was perfectly consistent with the provisions of the law and entirely appropriate in a serious case such as this."

Having myself delivered that judgment, I will now say that, according to my memory, with all the defects which have developed over 25 years, my recollection is that no argument took place on the point, certainly no argument of the thoroughness of the considerations which have been put before us today.

It may or may not have been right to say that the course then adopted was consistent with the Law, but I am satisfied that the agreed view which counsel have put before me represents the better course to be adopted for the future. That is, therefore, the course which I shall adopt in this case.

Authorities

AG -v- Paisnel (1972) JJ 2201 CofA

Snooks -v- A.G. (26 September 1997) Jersey Unreported CofA

Royal Court (Jersey)Law, 1948: Article 13
