appeal

13th Jan 1982

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Judgment - Barry Frederick Venton

The appellant, Barry Frederick Venton, is a building contractor and is the principal of a firm of building contractors known as Barry Venton Ltd. In the year 1972 this firm carried out certain building works for Gerald Stuart Golder who owned premises at 18 Broad St. and 59 King St., St. Helier. The work was planned, designed and supervised by Martin Lionel Dodd, an architect who practised under the firm name of Martin L. Dodd and Partners. Sydney Pearson was at the material time the Building Law Enforcement Officer working under the direction of the Chief Building Inspector of Jersey. From time to time he inspected the progress of the building work.

Work on the building commenced in early March 1972. Some five weeks later on the 20th April 1972, when work was in progress on the second floor, the external wall on the west side moved outwards. This made it necessary to demolish and rebuild the whole of the west external wall of the property down to the first floor level. In consequence the building owner Golder brought a civil action against the building contractors, Barry Venton Ltd and Dodd ~~and Pearson~~ for damages for the loss he had sustained, claiming that the defendants, namely the building contractors and the architects ~~and the building inspector~~, were negligent, had not undertaken proper precautions and had not exercised the appropriate standard of care in respect of the building work carried out. The defendants to this action filed detailed defences, but it is unnecessary to set out the allegations and counter allegations made by the respective parties.

It is sufficient to say that on the 24th August 1974 this litigation culminated in the Royal Court (Inferior Number) giving judgment for all ~~three~~ two defendants.

The Appellant, Dodd and Pearson had each of them given evidence on oath in the civil action. Two years later they were charged with perjury. The indictment included two counts of perjury against Dodd, two against the appellant Venton, and three against Pearson. Count 4 of the indictment alleged against the Appellant that in the civil action

he had "knowingly and wilfully committed the crime of perjury by making on oath a false statement material to those proceedings on the subject of building works carried out on the property Numbers 18 Broad Street and 59 King Street, in the Parish of St. Helier between the 8th March 1972 and the 20th April 1972, namely that the old joists of the first floor of the building were removed and replaced with new joists in bays of may be three or four at a time". In Count 5 he was charged with a similar offence alleging that he had falsely stated on oath that the old joists of the second floor were removed and replaced with new joists "two, three, at a time .... at the very most".

Both Dodd and Pearson were acquitted of all charges. The Appellant was found guilty on Count 4 and not guilty on Count 5. Against this conviction the Appellant now appeals.

The criminal trial was long and painstaking, lasting for seven days. The evidence involved complicated matters. No criticism is made of the Learned Deputy Bailiff's careful and detailed summing up, either in respect of the law or the evidence given at the trial, except on very narrow and limited issues clearly and succinctly set out in the Amended Grounds of Appeal filed on the Appellant's behalf.

Firstly, it was submitted that the Learned Deputy Bailiff erred in law in holding that the question of materiality was a question of law for him to decide; secondly, if contrary to this submission, the question of materiality was one of law for the Judge, the Learned Deputy Bailiff was wrong in law in directing the jury that the evidence given by the Appellant in the civil action in relation to the joists on the first floor was material to the civil action.

The Perjury Act 1911, which was an act to consolidate and simplify the law relating to perjury and kindred offences, provides by Section 1(1) that "the question whether a statement on which perjury is assigned was material is a question of law to be determined by the Court of Trial". This Act does not apply to Jersey. It was contended on the Appellant's behalf that on this point the law of Jersey would follow

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by analogy the common law of England, and this statutory provision was a creature of statute which did not reflect the common law. It was submitted that the appropriate law to be applied in Jersey was the law as it stood in England prior to the passing of the Act. Reference was made to Russell on Crime (page 30) wherein the view is expressed that before the Perjury Act 1911 there were conflicting decisions as to whether materiality was a question for the Judge or for the jury to determine, and the authorities cited in support of this proposition were referred to in detail; namely R v. Lavey (1850) 3 C and K 26 and R v. Goddard (1861) 2 F & F.361 on the one side and Regina v. Courtney (1856) 7 Cox 111 (Ir.) and Regina v. Gibbon (1862) L and C 109 on the other. Having considered these authorities we have come to the conclusion that the better view is that which appears in the case of Courtney and that the statutory provision therefore did in fact reflect the common law of England. At page 119 Monahan C.J. said:

> "For my part I shall, in future rule that the question of materiality is for the Judge, unless I hear express authority to the contrary" and with this view Richards B concurred.

Jackson J at page 120 said "It does appear to me after being referred to a great deal of authority, that the uniform practice has been for the Judge to determine it as a question of law and no case has been cited to throw doubt upon it before the case of Lavey. I think that case may be explained so as not to affect the previous course of justice".

In our judgment the Learned Deputy Bailiff rightly decided that materiality was a matter for him to decide.

In considering the second limb of the Appellant's argument we have no difficulty in finding that the evidence given by the Appellant in the civil action in relation to the joists on the first floor was material. At the close of evidence in the criminal case the Learned Deputy Bailiff heard submissions made by Advocate Day on the Appellant behalf and the Solicitor General and ruled that the evidence was

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material. In our judgment this was right. The Royal Court was concerned in the civil action with determining the responsibility for the insecurity and partial collapse of a wall and the removal of the lateral support which was afforded to it. The question whether the joists on the first floor were removed all at once, or three or four at a time, in our view was very material. The evidence given by the Appellant - inaccurately, as is now admitted - demonstrated the method of work which in his view should have been adopted and the method appropriate in order to maintain a safe structure. We do not accept the argument that the second floor was totally isolated from the first floor operations and that the evidence regarding the latter was not relevant to the proceedings. Indeed, accurate and truthful evidence regarding the operations on the first floor might well have had an important bearing and great influence on the Court's decision in the civil action.

The third ground of appeal is that the Learned Deputy Bailiff in his summing up failed to put the Appellant's defence adequately and in sufficient detail. It was submitted that the Appellant in giving the evidence he did in the civil action (about which there was no disagreement) did not do so dishonestly, but innocently and mistakenly as a result of failure of memory and confusion. In the criminal trial he eventually admitted that he had made an "innocent error". He said that a day or so before giving evidence in the criminal trial he had seen for the first time a plan which indicated the direction of the joists in the north west section of the first floor. This meant that it would have been impossible for him to have removed them in bays of three or four at a time and therefore that the evidence he had given in the civil action as regards the replacement of the joists on the first floor must have been wrong. Undoubtedly this evidence was crucial to the Appellant's defence, and it represented a complete change of the line which his counsel had been taking up to that point in the

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criminal trial. It was submitted that the Learned Deputy Bailiff was at fault in not referring to this evidence in detail and presenting to the jury the reasons for the Appellant's change of mind. We find little substance in this submission. In our judgment the Learned Deputy Bailiff clearly and adequately directed the jury's attention to the Appellant's defence and to the explanation he had given as to his change of mind. The fact that there was no specific reference to the sudden emergence of the plan, which caused the Appellant's change of mind, does not in our judgment invalidate the summing up in any way. The Appellant's evidence alone amounted to some 70 pages of closely typed transcript and it is not to be expected that each and every piece of evidence should be referred to in the summing up. We have no doubt that the acceptance or rejection of the explanation given by the Appellant and how it came to be given was adequately presented for the jury's consideration in arriving at their verdict, and no doubt it was a major issue in the address to the jury of the Appellant's advocate.

The totality of the evidence, including the evidence as to the police interviews with the Appellant, established an overwhelming case against him and in our judgment the Appellant was rightly convicted.

We were also referred to a minor matter, namely that the Learned Deputy Bailiff wrongly inferred to the jury that the Appellant had said to Sergeant Le Vesconte that he, the Appellant, had taken out all the joists on the north west section of the first floor at once. This ground of appeal was not pressed and in any event was not in our judgment of any significance.

For these reasons the appeal is dismissed.