

23rd September, 1986

Before J.D.A. Fennell, Esq., O.B.E., Q.C., (President),
J.M. Collins, Esq., Q.C.,
J.M. Chadwick, Esq., Q.C.

A.G. -v- George Edward Piggott

JUDGMENT OF THE COURT

THE PRESIDENT: Mrs. Whittaker, Mr. Attorney, we propose in this case not to reach a concluded decision, but in effect to give an indication as to the way that this matter should proceed if it is to go further. And what I propose to do is simply to set out the position and then give leave to you, Mrs. Whittaker, to file evidence within seven days upon the Attorney, for the Attorney then to consider it and in short to say whether he requires Mr. Piggott to attend for a cross-examination and/or further to consider his position. That is the thrust of what I am about to say.

In this application, George Edward Piggott seeks leave to withdraw a notice of abandonment that was given on 6th February, 1986, in respect of an appeal against sentence by the Royal Court on 17th December, 1985, for an offence of larceny which had been committed on the 26th September, 1985.

The position so far as notice of abandonment and the withdrawal of notice is clearly set out in the decision of this Court in the case of the Attorney General -v- Bernard Joseph Doyle and I read from page 94 of the judgment: "It has been made quite clear by this Court in the case of Cuthbertson and Cairney that the withdrawal of the notice of abandonment cannot be permitted unless it is shown that something amounting to mistake or fraud took place. It is for an applicant to establish that and in our judgment, on the material before us, the applicant entirely fails to establish that it was under the influence of any mistake much less any fraud that he abandoned his appeal on 31st October, 1977".

So there is a burden upon the applicant to show that he abandoned his appeal in circumstances amounting to mistake or fraud. The situation we have been presented with in this case is that the applicant has declined to attend today and has simply left Mrs. Whittaker, who is the advocate appearing on his behalf, advancing as the reason for the withdrawal of the notice of the abandonment of the appeal what he said in a letter to the Judicial Greffier on the 4th August, 1986. I quote:

"On the 6th February, I was told that my advocate was here to see me. I told the officer I was not in any mood to see anyone. He went away and returned about ten minutes later and he said: "Do you want to abandon your appeal?" That was the last thing in my mind. The officer gave me the impression that I could pursue my appeal at a later date and so mistakenly led me to believe that my abandonment only applied as a deferment until such time as I was able to take further proceedings. At this time my wife was seriously ill in hospital and it was that that was uppermost in my mind on that day. At no time did I question the officer's advice in this matter. I think that I was at an unfair advantage and some pressure was used i.e. the advocate was waiting, etc., etc. Everything was done in a rush. This must be wrong. I should have had time for legal advice to see what the actual position was before I signed that form and no way could I face an advocate on that day".

That is the only evidence which we have before us. We think that that is in an wholly unsatisfactory state, and if the matter were to end there, we would be left in no doubt that the applicant had failed to discharge the burden upon him. We think that fairness demands that Mrs. Whittaker shall be invited to review the matter with her client again and accordingly we propose to make these orders:

First, if the applicant is to proceed with this application, he must swear within seven days an affidavit relating to the circumstances in which he withdrew his appeal on 6th February, 1986, and setting out all material matters.

Secondly, that must be served upon the Attorney General, who shall be entitled to require the applicant to attend for cross-examination and also to consider whether he wishes to call by way of rebuttal or otherwise the officer in whose presence it was said that this notice of abandonment was signed and against whom the allegation is made. We, of course, desire to say that there is no burden on the Attorney, but no doubt in the discharge of his public duty he will want to investigate the matter and to assist the Court in the best way he can.

We conclude by saying that in our view we are extending an indulgence to Mr. Piggott and that if he does not pursue the matter in the way that we have indicated by such an affidavit within seven days then this application will fail. But to be satisfied in our own minds that there has been no injustice, we think that this is the right course to take and accordingly we treat this hearing as, in effect, a summons for directions.

Perhaps I should indicate, as Mr. Collins has suggested I should and I gladly accept this suggestion, that by 'fail' I mean, if this order is not complied with, that the application will fail without further order of this Court.