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ROYAL COURT
(Samedi Division)

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14th July, 1993

Before: The Bailiff, and
Jurats Blampied and Myles

In the Matter of the Investigation of Fraud (Jersey) Law, 1991.

and

In the Matter of Hoddle Investments Ltd.,
and Chestvale Properties, Ltd

and

In the Matter of the Representation of the Owner of the Account styled "J & N McMahon" and of Mr. Ronald Colin George Probets ("The Representors")

On 13th July, 1993, the Court of Appeal ruled that it did not have jurisdiction to entertain the Representors' appeal against the Judgment of the Royal Court of 7th April, 1993.

On 14th July, 1993, the Representors made a representation to the Royal Court praying: (1) for an extension for a period of 14 days of the stay on the implementation by the Attorney General of the Notice issued under Article 2 of the above Law, (ordered by the Royal Court on 7th April, 1993, pending determination by the Court of Appeal of the Representors' appeal); and (2) if within that 14 day period, the Representors shall have lodged a Petition for Special Leave to appeal to Her Majesty in Council against the said Judgment of 7th April, 1993, for a further stay, pending determination of that appeal.

Advocate R.J. Michel for the First Representor.
Advocate G.R. Boxall for the Second Representor.
J.A. Clyde-Smith, Esq., Crown Advocate,
on behalf of the Attorney General.

JUDGMENT.

THE BAILIFF: On the 7th April, 1993, I gave a Judgment in respect of the exercise of the discretion by Her Majesty's Attorney General of Jersey, of the statutory powers conferred on him under Article 2 of the Investigation of Fraud (Jersey) Law.

That Judgment held that the decision of the Attorney General whether or not to issue a Notice under Article 2 was not reviewable, but that there were some preliminary matters, regarding procedure which could be looked at.

The Judgment was appealed to the Court of Appeal by the First Representor, whose bank in Jersey was under Notice to give information and by the Second Representor. On 7th April, 1993, the Royal Court had also granted a stay on implementation of the Notice by the Attorney General until the Court of Appeal could deal with the matter. At that stage Counsel and the Court believed that the appeal would be heard as if it were a civil appeal.

On 12th and 13th July, 1993, the Crown represented to the Court of Appeal that it had no jurisdiction to hear the appeal because the matter was criminal and was therefore outside the provisions of the Court of Appeal (Jersey) Law, 1961. At some time between the 7th April and 12th and 13th July, 1993, - it does not matter exactly when it was - Mr. Michel for the First Representor and First Appellant, had notified the Crown that the Court of Appeal might itself wish to raise the question of its jurisdiction.

The Court of Appeal has upheld the submission of the Crown. So where does that leave us? In my opinion, the Order of this Court staying execution of the Attorney's Notice would fall with the decision of the Court of Appeal, unless this Court were prepared to renew it.

There is, however, a difference between the position when that stay was originally ordered and the position today. The first question that has to be decided today, in the light of the Court of Appeal's ruling that the matter is criminal, is whether this Court has any jurisdiction to issue what is the equivalent of an injunction against the Attorney General preventing him from carrying out his statutory duties.

Those duties, it has been argued very strongly on behalf of the Appellants, as I will refer to the Representors for the moment, are tantamount to the duties given in other spheres to English Ministers. In my opinion, they are not. In the United Kingdom, the officer or officers responsible for implementing similar legislation are officers of the Serious Fraud Office,

which itself, is answerable, as has been apparent from the recent reports in the United Kingdom to the Attorney General's office. It is, therefore, part of a prosecution service and, as its name implies, an investigative arm of the executive.

The Attorney General in Jersey has sole responsibility for conducting prosecutions and investigating or initiating investigations into crime. I do not consider that the additional duties given to him under the Investigation of Fraud (Jersey) Law, 1991, in any way impinge on that responsibility or reduce its wide powers; in fact they add to his powers, and do not alter his function. He is not the equivalent of a Minister of the Crown; he is the Attorney General responsible to the Crown for prosecutions and investigations of crimes made by the Police. That being so, in my opinion, and it is a matter for me, notwithstanding the very interesting assessment of the position in England by Glidewell L.J. in R -v- Secretary of State for Education and Science *ex parte* Avon County Council, (1991) 1 QB 558; (1991) 1 All ER 282, if we were to extend a stay that would be tantamount to an injunction against the Attorney General, which, in criminal matters, this Court does not have jurisdiction to impose.

Having said that, I am conscious that there might thereby be an injustice done to the Appellants, but I cannot stretch the law, even if such an injustice is likely to arise. If I could, I would, but I believe I cannot. I have been informed that the Notice will be implemented tomorrow; that it is the intention of the Representors to apply for special leave to appeal to Her Majesty in Council, not against the Court of Appeal's decision of yesterday, but against my decision in the Royal Court, of the 7th April, 1993, that the Attorney General's discretion was not reviewable, and, of course, I am conscious of the fact that my ruling today means that if even if they do continue with that application, it will be almost too late and will be almost an empty matter. Be that as it may, the fact is that they are seeking from this Court what is, in my opinion, an injunction in a criminal matter against the Attorney General. As I have said, I do not believe that this Court has power to give it.

My attention has been drawn to what we did in April, when we did not apply our minds to whether the matter was civil or criminal regarding it perhaps as not criminal, but quasi-civil, *per incuriam;* and also to the Judgment of Sir Charles Frossard, on 15th December, 1992, sitting as a Single Judge of the Court of Appeal that on a much more limited and narrow point (an application for a stay, pending an appeal against the Order of this Court of 9th December, 1992, non-suiting the First Representor on the ground that it would be improper to receive an application from an anonymous party). That is not, in my opinion, a precedent for saying that an injunction of this sort, may lie

against the Attorney General in the exercise of his powers under a statute.

Accordingly, I rule that this Court has no power to make the Order sought today.

AUTHORITIES.

R.S.C. (1993 Ed'n): O.59, para 53/1 - 14/9 (p.846);
14/26 (pp. 855-856).

Factortame Ltd., and Ors-v-Secretary of State for Transport.
(1989) 2 AllER 692.

International General Electric Company of New York & Anor
-v-Commissioners of Customs & Excise. (1962) 1 Ch.D. 784.

R.-v-Secretary of State for Education and Science,
ex parte Avon County Council.
(1991) 1 QB 558; (1991) 1 AllER 282.