

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Petition for trans-  
mission of Judge's notes of evidence in re The  
Appeal of Baudains v. the Liquidators of the  
Jersey Banking Company and another, from  
the Royal Court of Jersey; delivered July 7th,  
1888.*

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Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

THIS is an application that the Royal Court of Jersey, or the Bailiff or Greffier thereof, may be directed to transmit to the Registrar of the Privy Council without delay, the notes of evidence taken by the bailiff of the said Court on the hearing of the appeal in this case. Those notes are the notes of the Judge; and in cases where it is the Judge's duty to take notes it may be most proper to have the Judge's notes before the Privy Council—in fact it is a matter of common practice in jury trials; but by the law and practice of Jersey it is not the Judge's duty to take notes; on the contrary the Judge appears to be forbidden to take notes which shall form part of the record. In that case the Judge's notes are mere private memoranda for the assistance of his own memory; and he may only take down such points as he desires to direct his own attention to in the conduct of the case. Such notes might be misleading to the last degree. There might be an important point taken down for one party, and the counter point for the

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other party, which would qualify it, not taken down; and though such notes might suit the purpose of the Judge very well, it would be very improper to have them before the Court of Appeal. The prayer of the petition therefore cannot be granted.

But the Petitioner goes on to pray further relief; and though he does not in his petition point to the taking of further evidence in Jersey under the order of Her Majesty in Council, he now asks at the bar that such further evidence shall be taken. Their Lordships agree that it is quite competent to them to take such further evidence in a proper case; but in this case they are not disposed to give any assistance to the Petitioner. The ground on which the Royal Court of Jersey refused leave to appeal was that there were no formal notes in writing taken during the trial. The rule of practice is laid down in an article passed in the year 1885, which, rendering it in English, is as follows:—"It shall not be permissible to either party after the evidence in the case has begun to demand that the depositions shall be reduced into writing except in a case susceptible of appeal to Her Majesty in Council;" and then:—"The reduction into writing shall be demanded when the evidence is entered on." In this case there was no such demand, and there is no reduction into writing; and on that ground the Royal Court thought that they ought to refuse the leave to appeal. Their Lordships do not desire to pronounce any opinion in this case whether the omission to demand the formal reduction into writing should be an absolute peremptory ground for refusal of appeal in every case; but applying themselves to the case before them they find that it was in fact the ground on which the leave to appeal was refused in the present case. When the Petitioner

applied for special leave to appeal from that order he did not disclose the ground on which leave had been refused by the Court. If he had disclosed it, the matter which is now debated on this petition would have been debated when the leave to appeal was applied for, and it is a matter which might well have influenced their Lordships' decision. Now until the filing of the affidavit of the Greffier of the Royal Court in this case, it did not appear what was the ground for refusing the leave to appeal. M. Baudains the Petitioner, who himself is a lawyer, has answered that affidavit, and he says in his affidavit in answer that he is not aware of any law under which the want of such formal reduction into writing is a ground for refusing leave to appeal. But he does not state that he could not have found out what the real ground for refusing the leave to appeal was, so as to let this Committee know it when they were asked to grant special leave to appeal. He does not even state that he does not know that ground, or that he did not know it when he presented his petition. The result is that their Lordships have been induced to make an order upon imperfect materials, and in the absence of materials which might have influenced their judgement when they made that order. It is a matter of extreme importance that a party should bring before their Lordships all that is material to guide their judgement; otherwise orders may be made here, and are made sometimes, in the absence of knowledge of what ought to be known; and an amount of trouble disturbance and expense is caused to the parties, which is of great public mischief. The least that a Petitioner can do who has—speaking in no invidious sense not imputing any intention to M. Baudains—but who has in fact misled their Lordships by presenting a petition not stating the true nature of the question raised in

the Court below—would be to come forward at the earliest moment to say that he did not know, that he could not by ordinary inquiry have known, what the grounds of the judgement were, and therefore to excuse himself for not having brought the proper materials before this Committee. M. Baudains has not done that. He has had his attention drawn to the fact by the affidavit of the Greffier; he has answered the affidavit of the Greffier on a matter of law; and he has not answered the affidavit of the Greffier on the much more important matter of fact.

The case therefore is one in which their Lordships are not disposed to lend any assistance to the Petitioner; and in the exercise of their discretion they will humbly advise Her Majesty to dismiss this petition with costs.