

JERSEY / JUDGMENT

AG v Davis [2001] JRC 189 (03 September 2001)

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JUDGMENT

THE Commissioner: 1. Kevin Davis was indicted on the 22 nd June, 2001, on eleven counts, ten of which are brought under the provisions of the Fire Service (Jersey) Law, , as amended. The remaining count is one of malicious damage. Counts 1 to 3 are contraventions relating to false fire alarms and Article 16 of the Law. There is no dispute that there is no right to trial by jury on these 3 counts. Count 6 is the count of malicious damage. It is a common law offence and is to be tried by a jury. 2. The dispute lies with counts 4, 5, 7, 8, 9, 10 and 11. Each of these counts alleges the malicious setting fire to property belonging to another, contrary to Article 17

(2) of the Fire Service (Jersey) Law, 1958 . It is alleged on each of these counts that on different dates in 2000 certain property of Seymour Services Ltd was maliciously set fire to. The property on 2 of the counts is a waste paper basket and on each of the other counts, a pillow case, a bed sheet, furniture and towels. 3. Advocate Pearmain makes application for a jury trial on these counts. Article 1 of La Loi (1864) Régplant la Procédure Criminelle states: Toute personne traduite, en vertu d'un renvoi par le Juge du tribunal pour la Répression des Moindres Délits devant la Cour Royale, sous prévention de crime ou de délit, sera jugée - soit, a une des Assises ci-après établis, par la Cour, avec l'assistance d'une enquête composée de vingt-quatre hommes choisis comme est ci-après réglé - soit par le Nombre Inférieur de la Cour sans enquête. Le prévenu aura la faculté en tout cas d'élire d'être jugé avec l'assistance de l'enquête. S'il ne fait pas élection d'être ainsi jugé, la Cour lors de sa présentation devant elle décidera, eu regarde à la nature et la gravité du cas et ouï les conclusions de la Partie Publique, de quelle manière la poursuite aura lieu. 4. Advocate Pearmain argues, quite rightly, that Article 17 (2) of the Fire Service (Jersey) Law is a major offence carrying a serious maximum penalty, namely that: Any person who maliciously sets fire to any material to which this Act applies, being the property of another, shall be liable to a term of imprisonment not exceeding ten years. She argues that because there is the ingredient in the statutory offence of the common law crime of arson, the accused has a right to choose his form of trial. 5. At this point I do not concede the argument is in any way assisted by invoking Article 16 of the Interpretation (Jersey) Law, 1954 which reads: Where an Act or omission constitutes an offence under two or more enactments, or both under an enactment and under the customary law of the island, whether such enactment was passed

before or after the commencement of this law the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those enactments, or under the customary law, but shall not be liable to be punished twice for the same offence. 6. That article gives the Attorney General the right to choose a mode of prosecution. But, it is the right of the Partie Publique and not that of the accused, who is merely protected by ensuring that he is not punished for a crime and a contravention arising out of the same offence. It is a form of double jeopardy protection for the accused, but a form of choice for the Crown. 7. The two leading cases that we have looked at are those of AG-v-Pennington

(1970) JJ 1349 , and AG-v-Weston

(1979) JJ 141. In Pennington , which involved an infraction of the Housing (Jersey) Law, 1949 , the defendant argued that the Court had an inherent right to order the mode of trial in all criminal and quasi-criminal cases and that the most appropriate mode of trial for that case was an Assize. The argument was strenuously opposed by the Attorney General of the day and the Court entered into a very comprehensive background to the way in which trials for common law offences, i.e. crime ou délit , and statutory offences or contraventions , had been dealt with over a very long period of time. In the course of its judgment, the Court said at 1353: What is clear is that the second class of offences, that is contraventions, were invariably tried by the Inferior Number. The Court continued its careful analysis of the criminal procedures and stated at 1357: What stands out, however, is that during the period presently under review, that is to say 1864 to 1949, no case has been found which would tend to show that a person brought before the Inferior Number, no matter how he was presented and charged with a statutory offence was ever tried by a jury. The Court reached a decision that the Law of the Island makes no provision for a trial by jury for an offence created by Article 14 paragraph 1(C) of the Housing (Jersey) Law 1949 , which is a contravention . 8. I might, perhaps, explain that distinction drawn by pointing out that, for example, the Loi

(1884) sur les Matières Explosives says that any person charged under the law shall be dealt in conformity with the dispositions of the 1864 law. That is an exception but it does not make a rule. 9. AG-v-Weston followed the case of Pennington but, for the first time, argument was taken on earlier cases referred to in the Pennington case. The Court said at page 143: A judgment which confined itself to a finding on the facts alone could not be said to establish any principles, still less to rule on any submissions of law that might have been made. Such a judgment cannot be cited as an authority, for example, in matters of procedure merely because one particular method was adopted without argument. 10. Advocate Pearmain readily conceded that Pennington and Weston were not on all fours with the present case. But her argument narrowed to one major submission, namely that the offences in the counts that are presently before me are all offences having the same ingredient as the common law offence of arson and, because of that, the accused is entitled to choose his mode of trial. 11. She relied strongly on PG-v- Nicolle and Harper

and to the careful trawling by the defence counsel in the Weston application, where a decision in cases was shown to be in direct contrast to the statement made by the Court in Pennington, that no case has been found which would tend to show that a person brought before the Inferior Number, no matter how he was presented and charged with a statutory offence, was ever tried by a jury. Advocate Pearmain drew consolation in the judgment at 148, which reads: Commenting on the above cases, the Attorney General submitted that those concerning Le Feuvre, Biard , Sauve , L'Homme , Butlin and Cobden related to offences that were crimes known to the common law before the statute and that, therefore, they could be distinguished. 12. I agree with Crown Advocate O'Connell that they could be distinguished, but that a comment by the Attorney General of the time cannot establish a legal precedent. The certainty of the Court in reaching its decision in Weston is unarguable. However, Advocate Pearmain turned to PG-v- Nicolle and Harper , where she said that a clear precedent had been created. In my judgement, after careful consideration of it, that case is not in point. Nicolle and Harper were arrested and brought before the Inferior Number. Both applied for trial by jury in respect of one of the allegations made against them. This was opposed by the Attorney General. The Court heard argument - one has no inkling of what that argument was - and went on: Considérant que les faits reprochés aux prévenus, dans les paragraphes desdites préventions, s'il fussent établis par la preuve, constitueraient un crime de droit commun, a jugé que les prévenus ont le droit d'être poursuivis en ce qui concerne lesdits faits en conformité des prescriptions de l'Article 14 de ladite loi. This was a procedural point under Article 14. The matter was referred to the Police Court, as it then was, and on 11 th January, 1949, some two months later, it came back to the Royal Court for a jury trial. Even if submissions of law were made in Nicolle and Harper there is no way of discerning what those arguments were. 13. In my view, in this case, the Attorney General has decided to prosecute under a statutory provision, so he has brought a contravention before the Court, which is no less a contravention because it contains the elements of the common law offence of arson. Accordingly, while I am very grateful to Advocate Pearmain for the care that she has taken to prepare her case and indeed to both counsel for the lucidity of their arguments, I dismiss the application. Authorities P. G.-v- Nicolle and Harper (1948) 32 P. C. 245. Loi (1864) réglant la procédure Criminelle : Articles 1, 14. AG-v-Pennington (1970) JJ1349. AG-v-Weston (1979) JJ 141. AG-v-Wild (1978) JJ89. Interpretation (Jersey) Law, 1954: A.16. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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