

JERSEY / JUDGMENT

AG -v- Homer [2009] JRC 132 (26 June 2009)

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JUDGMENT

THE commissioner: 1. This is an application made on behalf of Russell Shelton Homer for the exercise of the Court's discretion under Article 2 of the Costs in Criminal Cases (Jersey) Law 1961 to order that his costs be paid out of public funds. The power of the Royal Court to order that the costs of an acquitted or discharged person are paid out of public funds arises from that article, the relevant parts of which are as follows:- (1) Subject to the provisions of this Article, where any person is prosecuted or tried before a court to which this Article applies, the court may - (c) if the accused is discharged from the prosecution or acquitted, order the payment out of public funds of the costs of the defence. I note the terms of the Article are " the court may ", in other words the Court has a discretion and counsel agree that the exercise of these powers is in the unfettered discretion of the Court in the light of the circumstances of each particular case. 2. It is accepted, as was made clear in the earlier case of the AG-v-Bouchard

[1989] JLR 350 that in the ordinary way an order should normally be made unless there are positive reasons for making a different order. It is accepted that such reasons may be where the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him is stronger than it is, in which case the defendant can be left to pay his own costs. 3. In a later case, that of Romeril-v-AG 2001/71 the Court said this:- "It sometimes happens that a Magistrate who has reached the conclusion that an accused person should be acquitted nevertheless feels that the accused's conduct is worthy of criticism in some way. It is tempting in such circumstances to seek to penalise him by refusing to award him costs. This is not an appropriate reaction. If an accused person has been acquitted he has been found to be not guilty of the offence with which he has been charged. Other than in exceptional circumstances, and the practice direction sets out an example of such circumstances, he should receive an order of costs." 4. The defendant Russell Homer has been acquitted by a jury following my directions on the law to the effect that he had no case to answer. I had observed during the course of the trial that it was a great pity that he had not made it plain that the documents in question had been created on a date different from that which they bore. It has been conceded that he acted foolishly. Neither of those matters of course constitute criminality : he has been acquitted of the offences with which he was charged. Nevertheless I have to consider, when faced with an application for payment of defence costs, whether I can justifiably grant it in the circumstances of the present case. 5. I note

that albeit the defendant has now been acquitted, he has suffered great financial hardship as a result of these proceedings and there has been substantial delay in the prosecution of this case. Should the Court now deprive him of his costs? I have referred to my unfettered discretion, I have referred to the principles as to how that discretion should be exercised. I bear in mind that the defence costs should normally be granted unless there are positive reasons against it. 6. Having considered the matter with care I take the view that there are no positive reasons in this case why I should not grant defence costs. I have had the advantage of receiving careful submissions both from defence Advocate Steenson and from Crown Advocate Yates and I am grateful to both of them for their assistance in this matter. 7. So despite my observations which I have referred to, I take the view that it would be wrong in this case to deprive the defendant of his costs and accordingly I make an order that the costs of the defence be paid out of public funds. Authorities Costs in Criminal Cases (Jersey) Law 1961. AG-v-Bouchard

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