

JERSEY / JUDGMENT

AG -v- X [2014] JRC 057 (04 March 2014)

[2014] JRC 057

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is a judgment on the challenge of the defendant to the issue of an Indictment against him by the Attorney General directly in the Royal Court. The circumstances are these. 2. On 21 st August, 2013, the defendant was brought before the Magistrate's Court having been charged by a Centenier with two acts of gross indecency on a 4 year old child in St Helier. It is alleged that the offences took place in July and August 2013. Reserved pleas were entered and the Relief Magistrate granted the defendant conditional bail. Bail was continued at the return date on th September, 2013, when the case was remanded for a plea and jurisdiction hearing to take place on 20 th September, 2013. On that day, not guilty pleas were entered and the Assistant Magistrate declined jurisdiction, ordering a committal date of 1 st November, 2013. On that date, the Prosecution were apparently not ready for a paper committal and the matter was further adjourned until 15 th November, 2013, when the committal papers were ready, but an adjournment was requested by the Defence in order to review the committal papers. On 29 th November, 2013, Advocate Le Guillou on behalf of the defendant did not signify consent to a paper committal and the Assistant Magistrate remanded the case to th December, 2013, when a date was to be fixed for what is described as an old style committal when the evidence of the witnesses is heard orally by the Magistrate. Bail was continued on the same terms, and on 4 th December, 2013, the defendant was formally remanded to 20 th December, 2013, for a directions hearing regarding the old style committal. 3. The conditions of bail included, among other conditions, a requirement that the defendant appear in the Magistrate's Court on Friday 20 th December, 2013, at 9:30am. The defendant signed the bail form which includes the statement "I have received a copy of this form. I know when I must be back in Court and understand the bail conditions". 4. There is no dispute that when the defendant arrived at the Magistrate's Court on th December, 2013, he was arrested by a States of Jersey police officer on the instructions of HM Attorney General and brought before the Royal Court when he was indicted on two counts of committing an act of gross indecency on a female child then aged 4 years. On that day, he entered a not guilty plea under protest as to the power of the Attorney General to indict him directly into the Royal Court and directions were given for skeleton arguments to be delivered by the defendant and by the Crown with a hearing date on 27 th January, 2014. On that day, I ruled that the Attorney General did have power to indict the defendant directly into the Royal Court in this case, and reasons were reserved. This judgment contains those

reasons.

5. In summary the defendant submits:- (i) That the Attorney General has no power to institute proceedings in the Royal Court as a matter of customary law once proceedings have been commenced elsewhere. This is particularly so in circumstances where the charges brought in the Magistrate's Court had followed advice being taken from the police legal advisers, who are lawyers accountable to the Attorney General and members of the Law Officers' Department. (ii) The manner in which the powers had been exercised in the instant case was not in fact in accordance with any customary law power, and therefore the power to indict had been exercised *ultra vires*. (iii) Any customary law power to present a defendant directly before the Royal Court on a crime *ou délit* has fallen into disuse and no longer forms the customary law; and/or (iv) The defendant had been unlawfully detained and presented in the Royal Court, there being no power of arrest and it was therefore an abuse of process to permit the Indictment to proceed.
6. The Attorney General submitted that he had power as a matter of customary law:- (i) To institute criminal proceedings directly in the Royal Court without the matter having been committed from the Magistrate's Court. (ii) To exercise that power in the case of all offences, including crime. (iii) Accordingly to authorise the arrest of an offender for the purposes of presenting him to the Royal Court for prosecution there; and (iv) To exercise those powers in the case of an accused person against whom proceedings in the same matter were in train in the Magistrate's Court.
7. I record that I am told by Crown Advocate Redgrave that the main evidence against the defendant is the testimony of the child, now aged 5, and certain admissions made by the defendant under caution. I am also advised that the defendant is arguing for exclusion of those admissions, and that argument is listed to occur before me on 13th March, 2014.
8. The Attorney General's case is that the moment it became apparent that there would be an old style committal which would require, if a *prima facie* case was found, a 5 year old child to attend in different courts on two occasions to give evidence of acts of gross indecency committed upon her, it was plainly and obviously appropriate that an alternative procedure for bringing the defendant to trial should be adopted if that could lawfully and properly be found. Crown Advocate Redgrave submitted that there was such a lawful and proper alternative, namely by direct presentation of the defendant to the Royal Court by the Attorney General in exercise of his customary law powers in that regard. These are referred to in Article 5 of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949 (the "1949 Law") which is in these terms:- "5. Saving Nothing in this law shall derogate from the powers of the Attorney General to institute proceedings before the Royal Court in respect of any offence."
9. The reference in Article 5 of the 1949 Law does not describe what the Attorney General's powers in this respect are, and it is therefore material to determine the nature of those powers for the purposes of determining the present application.
10. Until 1853, all criminal matters in Jersey were dealt with by the Royal Court. What is now known as the Magistrate's Court was first established by the Loi (1853) établissant La Cour pour la Repression des moindres délits ("the 1853 Law"). It was in the same year that the States established a court for the recovery of petty debts. The 1853 Law required the judge of the Petty Debts Court to sit four days a

week or more if necessary to hear and judge "causes de police" which could be judged summarily, and in respect of which punishment would not exceed a fine of £5.00 or eight days imprisonment. Further provision was made in Article 1 as follows:- " LE * * * * *

Juge de la Cour pour le Recouvrement de Petites Dettes , siégera quatre jours la semaine , et plus s'il est nécessaire , à dix heures du matin , dans un local désigné par les Etats , afin d'entendre et juger les Causes de Police qui peuvent être traitées et jugées sommairement , et dont la punition n'excédera pas cinq livres sterling d'amende ou huit jours d'emprisonnement . Il entendra les témoins dans les causes plus graves où le prévenu aura été saisi , afin de décider s'il y a lieu à le détenir en prison, ou s'il doit être libéré , ou s'il doit être admis à caution ; dans ce dernier cas , le Juge fixera le montant du cautionnement qui devra être fourni ." 11. There is no provision in the 1853 Law for a remand to the Royal Court of the more serious cases where the accused had been arrested. It seems to me to be clear that the passage of the 1853 Law created a court of summary jurisdiction in relation to minor criminal offences (causes de police) and conferred power on the judge in the more serious cases to determine whether or not bail should be granted. 12. In some respects no doubt the passage of this legislation flowed from the first report of the Commissioners appointed by Her Majesty Queen Victoria to enquire into the state of the criminal law in the Channel Islands. The first report referred to the position in Jersey and the second report to that in Guernsey. The Commissioners' report contains some valuable information as to the position which existed in 1847. The report concludes with some recommendations. It is apparent that the recommendations were not all adopted, and indeed the 1853 Law does not reflect the recommendations of the Commissioners in terms. I make this point because underlying part of Advocate Bell's submissions was the contention that the Loi (1864) sur la Procédure Criminelle ("the 1864 Law") was adopted to remedy the defects which the 1847 Commissioners' report had identified. In my view, the Commissioners' report of 1847 is extremely helpful in identifying the position as it then existed, but it is not helpful as an aid to construction of subsequent legislation adopted by the States. 13. What is plain is that in 1847, in cases which would ultimately end up before a jury, the defendant was presented before the Cour de Samedi when the Attorney General would read the police officer's report, if there was one, and the basis upon which the prisoner had been arrested, and would then put in his own accusation or indictment. The defendant was then called upon to plead. If the defendant pleaded guilty, the Attorney General might then state his conclusions, namely his view as to the law and what would be a proper

judgment.

The defendant would then be sentenced, unless the offence was so serious as to make it appropriate that judgment should be given by the full court, in which case there would be a remand to that court. If however the plea was not guilty, the defendant was either remanded in custody or given bail, and the Attorney General given leave to produce witnesses to inform the court. Such witnesses would be sworn, and their evidence taken down in writing. At the close of these preliminary arrangements, the defendant would be further remanded and the charges

would be considered by an enditement which was a jury of 13 persons made up entirely of the police. There was provision for the defendant to request the benefit of a grand jury of 24. The detailed provisions for trial are not relevant, however, for present purposes. Today it is sufficient to recognise that the proceedings were commenced by an indictment of the defendant by the Attorney General directly before the Royal Court. There was no other way of proceeding, and it is indeed for that reason that what is known in England and Wales as a private prosecution has not been known under the law of Jersey. 14. The defendant's submissions turn on the proposition that the 1864 Law materially changed these arrangements so as to remove, in effect, the ability of the Attorney General to indict directly into the Royal Court, or alternatively, to do so in circumstances such as the present where the defendant had already been charged in the Magistrate's Court. Slightly different considerations apply to each of those alternative submissions and I take first the Attorney General's submission that he had a general right to indict directly into the Royal Court notwithstanding the passage of the 1864 Law. Discussion 15. In my judgment the 1853 Law when originally passed did not provide for a committal process. Furthermore it did not substantially affect what would happen in the Royal Court when the defendant was presented there. Its limits were that the court of summary jurisdiction was established and the magistrate was conferred power to hear witnesses in more serious cases and determine whether the defendant should be held in prison or granted bail. 16. It may well be that by 1864 the practice had evolved for a committal from the judge of what is now known as the Magistrate's Court to the Royal Court. Article 1 of the 1864 Law is in these terms:- "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 , à une des Assises ci-après établies , 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 égard à la nature et la gravité du cas , et ouï les conclusions de la Partie Publique, de quelle manière la poursuite aura lieu." 17. There appears by this date to have been a " renvoi par le Juge ". 18. As then adopted, Articles 13-21, which are currently the basis for what is described as the committal process come under the heading "de la prevention"

- in other words the detention of the defendant. Article 19 provides for committal - when the enquiry into the matter has been completed, the judge shall decide whether to free the defendant or send him before the Royal Court to submit to its process. 19. It is to be noted that there is nothing in the 1864 Law, whether under this part of it or otherwise which explicitly removes the right of the Attorney General to indict a defendant before the Royal Court. The thrust of Advocate Bell's submission on behalf of the defendant is that the 1864 Law flows from the Commissioners' Report of 1847 in general terms, and that accordingly one has to take the approach that it was intended to remove one of the drawbacks of the criminal procedure which was identified in 1847, namely that a person could be indicted in the Royal Court without any form of committal process. Advocate Bell adds to that submission the contention that the Attorney General did not have power to cause a person

to be arrested and presented to the Royal Court, and therefore there was no basis after the 1864 Law had been passed upon which a defendant could be made to appear in the Royal Court other than pursuant to the 1864 Law. 20. I have already mentioned Article 5 of the 1949 Law which contains the explicit reference that that law did not derogate from the powers of the Attorney to institute proceedings directly in the Royal Court. It would seem to follow that it was certainly the view in 1949 that the Attorney had some powers to do so. As was said by the Court in AG v Pennington

[1970] JJ 1349 :- "The Attorney General, whose office is very ancient, possessed extensive powers; he was ex-officio, public prosecutor, and every suit involving the application of a penal law was instituted through him and with his approbation. He could moreover initiate proceedings by authorising the proper officers to effect an arrest, by filing an information with the court or by issuing a summons." 21. At this point, it is plain that the position as understood in 1970 was that the Attorney General did have power to initiate proceedings directly in the Royal Court in 1847, and he did then have power to authorise the proper officers to effect an arrest. As to the latter power, it is to be noted that the decision in Pennington is consistent with an answer given by Advocate François Godfray to the Commissioners in 1847. Advocate Godfray was one of the six advocates who then comprised the Jersey bar and had been a Parish Connétable for some 14 or 15 years serving in that capacity in three different parishes including that of St Helier. In the minutes of evidence presented to the Commissioners, Advocate Godfray said this:- "There is one thing I should wish to state: that the Attorney General, whenever he thinks proper, may call upon the Constable or Centenier, upon the Attorney General's responsibility, to arrest a person and bring him before the court. The Bailiff and Governor have also the same power. I state this because it was not clearly stated by the Attorney General. Q587 Have you known instances of that? A A great many. The Attorney General confers with the police or in some cases even against their opinion, he would exert that power. Q588 You think that is quite a matter of course? A Yes." 22. At the time the 1864 Law was passed, the Court established under the 1853 Law was limited to dealing with "Causes de Police"

- these prosecutions had apparently been removed from the jurisdiction of the Royal Court. In 1865, the competence of the 1853 court was expanded to include " délits ". As is reported by Sir Robert Le Masurier , Bailiff in Pennington at page 1355:- "In 1865 there was passed the "Loi étendant la compétence de la Cour des Moindres Délits et définissant sa jurisdiction". The preamble to that Law indicates that the Law of 1853 had proved defective in two respects
- "causes de police" defined its jurisdiction imprecisely and its punitive powers were insufficient. The purposes of the Law of 1865 were expressed as being - "... de conférer à ce Magistrat des pouvoirs plus étendus , tant par rapport aux délits de sa compétence qu'aux punitions qu'il est autorisé à infliger" The offences of which the Court could take cognizance were, accordingly, defined and the Magistrate was empowered to try them provided the appropriate sanction did not exceed imprisonment for one month or a fine not

exceeding ten pounds. Article 1 of that Law puts it beyond question that the Court was competent to deal with some "contraventions"." 23. Directly relevant for the purposes of the present case, Sir Robert Le Masurier then went on to say this:- "Now by Article 74 of the Law of 1864 the jurisdiction of the Royal Court "en matière correctionnelle " was preserved, but that Law made no mention of any right being reserved to the Attorney General to present a person suspected of having committed a "crime" or " délit " before the Royal Court without prior examination before the Magistrate. That the Attorney General continued to exercise that right is beyond question and that he possessed it was statutorily recognised in 1949 as we shall see. An examination of the procedure followed between 1864 and 1949 reveals a consistent pattern according to which persons suspected of having committed an offence were brought before the Royal Court and according to which they were presented." 24. Thus Sir Robert Le Masurier described the Attorney General's right to indict directly as " beyond question". This would seem to be consistent with practice and indeed precedent. In 1883, the Royal Court decided the case of Procureur General v Philip Esnouf

[1883] 10 CR 56. In this case there was a challenge by the defendant to the Attorney's inherent power to present an offender directly before the Royal Court. The defendant had suggested in a newspaper of which he was the editor and publisher that justice was not equally available to rich and poor in the Island. The Attorney of the day considered that the letter constituted a criminal libel and he presented a representation to the Royal Court requesting that Esnouf be arrested and presented to answer for his crime and the Court so ordered. The defendant entered a plea in bar to the effect that the procedure adopted by the Attorney to bring him before the Court was illegal. He relied upon Article 14 of the 1864 Law, and contended he should first have been presented before the police court. The Royal Court decided as follows:- " Considérant qu'il n'existe aucune Loi qui mette de côté le droit du Procureur Général de la Reine d'instituer des poursuites au moyen d'une Représentation faite devant la Cour Royale. Que dans cette cause il s'agit d'une accusation grave portée vers le corps de la Police de cette île en general. Vu d'ailleurs l'Acte de la Court en date du 14 Octobre , 1882, en vertu duquel la saisie de la personne dudit Sieur Esnouf est ordonnée afin qu'il soit présenté en Justice, la Court a écarté la pretention dudit Sieur Esnouf et a jugé qu'il doit plaider à l'action ." 25. The defendant's appeal to the Superior Number against this decision was refused. In my judgment, the cases of Esnouf and Pennington make it plain that the Court has decided on a number of occasions that the passage of the 1864 Law did not remove the Attorney's power to indict a defendant directly into the Royal Court. 26. There was some argument before me as to whether the right to present a defendant in the Royal Court upon the report of the Connétable had fallen into disuse. I do not regard that as material for the purposes of what I have to decide. The defendant has not been presented in the Royal Court upon the report of a Connétable . He has been indicted directly by the Attorney using the Attorney's customary law powers so to do. I note from the contentions of Crown Advocate Redgrave that the Attorney has indicted directly before the Royal Court on a number of occasions in more recent times - Cohen in 1975, Michel in 2006, Warren in 2009, Barette in 2010 and

Rzeszowski in 2012, and Corr in 2013. 27. Advocate Bell submitted that the position as set out in Pennington has been superseded by a number of statutory provisions. He relied first of all upon the Police Force (Jersey) Law 1974 (the "1974 Law"). I do not think that the passage of this legislation assists the defendant at all. Article 3(2)(c) expressly refers again to the powers of the Attorney General, albeit in slightly different terms:- "There shall be expressly reserved to a Connétable and a Centenier the powers of - ... (c) the formal charging of any person with an offence, without prejudice to the customary powers of the Attorney General in the prosecution of offences." 28. The 1974 Law provides expressly that the Attorney can give directions as he thinks appropriate to a Connétable, or a Centenier or anyone else where the Connétable or Centenier has declined to charge any person and a member of the States Police Force has referred the matter to the Attorney. 29. Article 3 of the 1974 Law contains a statutory power of arrest in these terms:- "(1) Where a police officer with reasonable cause suspects that any person has committed, is committing or is about to commit, an offence he may arrest that person." 30. The same provision appears in Article 16 of the States of Police Force (Jersey) Law 2012. 31. Neither provision has any impact on the powers of the Attorney to request the police officer to arrest a particular person. In my judgment, if the Attorney directs a police officer to arrest a member of the public and bring him to the Royal Court, one would assume, in the absence of evidence to the contrary, that the police officer had reasonable cause to suspect that the person in question had committed, was committing or was about to commit an offence, as there is a presumption of regularity to be applied to any such request by the Attorney who is the *partie publique* and has an overall responsibility in relation to the prosecution of criminal offences. 32. Advocate Bell also submitted that the powers of arrest had been affected by the Human Rights (Jersey) Law 2000 ("the Human Rights Law") and the adoption of the Convention as part of domestic law. It was submitted that to purport to effect an arrest in breach of specific statutory obligations would be to exercise a customary law power in breach of the defendant's rights under Article 5 of the Convention. I agree that the Court must ensure that it acts consistently with the European Convention and that it upholds the Convention rights of members of the public including the defendant. I disagree with the contention however that the arrest of the defendant was contrary to Article 5. In my judgment, the arrest was consistent with Article 5.1(c), as the arrest took place for the purpose of bringing the defendant before the Royal Court as a competent legal authority, the defendant being reasonably suspected of having committed an offence. As the defendant was produced immediately to the Royal Court, there was no breach of Article 5.3 of the Convention. The police had power to arrest for the reasons given and in my judgment had reasonable cause to arrest because they had been requested by the Attorney so to act and there is no evidence to suggest that the presumption of regularity does not apply. 33. For all these reasons I am satisfied that the Attorney General has a general right to indict a defendant directly in the Royal Court, and may in an appropriate case direct the police to arrest a defendant for the purposes of presenting him to that Court. The lawfulness of the arrest of course remains open to potential challenge pursuant to a claim that Article 3 of the 1974 Law or Article 16 of the States of Jersey Police Force Law 2012

(when that Article comes into force) have not been complied with. The exercise of the Attorney's powers in this case 34. The thrust of the defendant's submissions under this heading is that even if the Attorney generally has power to indict directly into the Royal Court, he could not do so in this case because proceedings had already been commenced in the Magistrate's Court. Advocate Bell submitted that the Attorney had chosen to bring proceedings in the lower court, because it was clear from the documents disclosed that the officer in charge of the case has discussed it at length with legal advisers at Police Headquarters. It was said that it was not open to the Attorney to change his mind. He is landed with the decision to bring the proceedings in the Magistrate's Court. 35. I generally accept the submission of Advocate Bell that consistent with the decision of this Court in *AG v Le Cocq*

[1991] JLR 169 the various criminal procedure statutes must be taken together and interpreted as a whole. 36. I also accept the general statement that given the legislation adopted since and including the 1949 Law (and in particular the 1949 Law, the Loi (1996) (Amendment No. 6) *réglant la procédure criminelle*, and the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, the legislature has now made statutory provision for a committal process. We take from the various statutes the conclusion that this is the process that should usually be adopted. Such a conclusion meets too with good common sense because:- (i) The Magistrate may sometimes reach a conclusion that a committal is not necessary and deal with the matter himself, thus exercising the summary jurisdiction that has been conferred; and/or (ii) There may not be a convenient mechanism otherwise for dealing with disclosure in an administratively efficient way prior to the procedure in the Royal Court, enabling the defendant to have an informed basis on which to enter a plea; and/or (iii) Preliminary points can be taken at an early stage in some cases which may assist the efficient administration of criminal justice. 37. Nonetheless, for the reasons I have given, the Attorney does have a power to indict directly in the Royal Court. The question is whether he has a free rein to do so. After all, he is the *partie publique*. If he has a jurisdiction to indict directly, is that susceptible to any control by the Royal Court? 38. In my view it is. In exercising his powers of indictment directly into the Royal Court, the Attorney as an officer under the Crown is required to act reasonably and in accordance with the law. The powers of the Attorney are not conferred so as to allow him, as a matter of theory, to act as a loose cannon in the administration of justice. His exercise of powers is susceptible to review at least on the normal grounds of illegality, irrationality and procedural impropriety. There is no reason of public policy why the Court should not exercise such review powers in this area of the criminal law not least because the Attorney was himself invoking the jurisdiction of the Court by bringing the prosecution directly before it. 39. In my judgment, the nature of the Court's review goes wider than traditional judicial review. Furthermore, the presumption of regularity to which *Birt*, Deputy Bailiff, as he then was, referred in *Acturus Properties Limited v AG*

[2001] JLR 43 and to which I referred earlier in the context of a request made by the Attorney that the putative defendant be arrested and brought to court, does not apply with the same full force to decisions of the Attorney to indict directly before the Royal Court as it does to decisions of the Attorney taken pursuant to the Investigation of Fraud (Jersey) Law 1991 or to have a person arrested. I reach that conclusion because the legislature has made statutory provision for a committal process and in my judgment it follows that the Attorney must show some reason why it is necessary or appropriate in the interests of justice for the indictment to be brought before the Royal Court directly. It is *prima facie* necessary where the defendant has been returned to the Island on a warrant pursuant to the Indictable Offences Act 1848 because that warrant has been issued by the Bailiff. There may be other examples. It may be appropriate to indict directly into the Royal Court for a number of reasons. The reason which is advanced in this case is that preliminary steps had been taken for an old style committal which, if committal had taken place, would have required a 5 year old child to give evidence before two courts. In *AG v Michel*, the reason lay in the concern that UK resident witnesses might not be prepared to come to the Island twice to give evidence. There may be other legitimate reasons which the Attorney may advance. In each case, the Court will consider the particular facts to identify whether a departure from the norm - committal - is justified. 40. The Royal Court's review of a decision by the Attorney to indict directly before it is tantamount to a consideration as to whether the laying of the indictment is an abuse of process. Abuse of process comes in a variety of forms. The expression is usually applied in criminal cases to objections that there is something so flawed in the approach of the investigating or prosecuting authorities, or in the arrangements made by the executive which resulted in the presence of the defendant in the jurisdiction at all, that it would be unfair to permit the trial to continue. In these cases the remedy is often an order by the Court that the criminal proceedings be permanently stayed, thus bringing them to an end. The objection made here does not give rise to such a remedy. If I had come to the conclusion that no good reason had been shown in the interests of justice for the indictment to be brought directly in this court, the remedy would have been different and an appropriate order made that the proceedings in the Royal Court be temporarily stayed while the committal proceedings went forward. In this case, in my judgment the issue does not arise. The decision by the Attorney that he should indict directly before the Royal Court so as to avoid a particularly vulnerable witness of the age of five giving evidence twice, especially where a sexual offence is involved, is one which is not only hard to criticise, but one which is plainly and obviously right. 41. Advocate Bell contended that the defendant has rights under the Human Rights Law which confer upon him a legitimate and reasonable expectation that the committal process envisaged by the statutes be complied with. In my judgment, the legitimate expectation which the defendant had was that the law should be complied with, and in this context, the law includes the Attorney's rights to indict directly into the Royal Court, whether proceedings have started in the Magistrate's Court or not and subject to the rights of control which the Royal Court exercises through its abuse of process jurisdiction. 42. It was contended by Advocate Bell that the defendant was facing the same charges in

two courts at the same time and that that cannot be right. If there were any reasonable possibility of the defendant facing such a contest in jurisdiction between the two courts, one might have had more sympathy with that argument. The fact is, however, that the Magistrate's Court is a court of inferior jurisdiction to the Royal Court. Once the Royal Court has assumed its jurisdiction, there is in my judgment no doubt at all that its assumption of jurisdiction will be respected by the Magistrate's Court, and in the extraordinarily unlikely event that it were not, the Royal Court as the superior court would move promptly to quash any continuing exercise of the Magistrate's Court jurisdiction. This legal theory is reflected precisely in the practicalities of the way the instant case was handled. Enquiry was made by the Crown of the Magistrate's Court Greffier as to what procedure would be adopted in that Court if the defendant were to be presented on Indictment in the Royal Court, and the advice was given that the defendant need not attend the Magistrate's Court as previously directed - in other words he would not be treated as being in breach of his bail conditions if he failed to appear - and that the Magistrate's Court Greffe would call the case every four weeks until the defendant had been dealt with in the Royal Court, with no need for either the prosecution or the defence to appear when the case was called. It was kept "rolling", as the proceedings and administration officer put it until such time, I am advised by Advocate Redgrave, as the question of this Court's jurisdiction had been resolved. 43. To hold that the Attorney could not indict directly in the Royal Court simply because proceedings had already commenced in the Magistrate's Court would be to permit procedure to triumph over substance. The critical question is whether the defendant will receive a fair trial, for the purposes of Article 6 of the European Convention, on the indictment which has been laid against him. For these purposes, I proceed on the assumption that he will have received, if he has not received already, full disclosure of all relevant material. He has the advantage of being able to make the same submissions before the Royal Court as to the law which he might have made before the Magistrate, and he will have the same rights to test the prosecution evidence in the Royal Court as he would have had before the Magistrate. The fairness of the trial includes fairness to the prosecution as well as to the defence, and it is not in the public interest, nor fair to the prosecution, that a 5 year old child be required to give evidence twice. The Attorney's decision to indict directly in this case was therefore not an abuse of process, notwithstanding that charges had already been laid in the Magistrate's Court. Authorities Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. Loi (1853) établissant La Cour pour la Repression des moindres délits . Loi (1864) sur la Procédure Criminelle . AG v Pennington

[1970] JJ 1349 . Procureur General v Philip Esnouf [1883] 10 CR 56. Police Force (Jersey) Law 1974. States of Police Force (Jersey) Law 2012. Human Rights (Jersey) Law 2000. AG v Le Cocq

[1991] JLR 169 . Loi (1996) (Amendment No. 6) réglant la procedure criminelle . Criminal Justice (Evidence and Procedure)(Jersey) Law 1998. Acturus Properties Limited v AG

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