

JERSEY / JUDGMENT

AG -v- Y [2010] JRC 097A (25 May 2010)

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JUDGMENT

THE commissioner: 1. Counsel for the defendant has applied to recuse me from presiding over the trial of his client on three counts of indecent assault against a victim to whom I shall refer as "Mr X". The basis of the application is that, at a time when the defendant's father Y had a part-time job in the offices of Bailhache and Bailhache, I had entered a room and "appeared to have seen [Y] sexually abusing one of his daughters and that Mr Bailhache did nothing about it". The quoted passage comes from a letter dated 20th May, 2010, from Crown Advocate Baker to the Bailiff's Judicial Secretary. During oral submissions Mr Haines stated that his client had not been present on this alleged occasion, and that he was merely reporting what his sister had told him. The occasion would have been at some time between 1982 and 1984. 2. I had no evidence before me as to the age of the child at the time of this alleged assault, but she was apparently between 11 and 13. It is a matter of record that Y was convicted of sexual offences against his daughters in the early 1980's and sentenced to a term of imprisonment. More recently he has been convicted of indecent assault upon Mr X and sentenced to a further term of imprisonment. Mr Haines told me that one line of defence might be that the assaults upon Mr X were in fact committed by Y. 3. The recollection of the defendant's sister is mistaken because, as I stated in open court, I have never witnessed any person sexually abusing a child, or indeed an adult, far less condoned any such action or done nothing about it. Furthermore I was appointed as Solicitor General in January 1975 and thereafter had no reason to visit and did not visit the offices of Bailhache and Bailhache other than on very rare occasions. I was not a partner of the firm from 1975 onwards and did not employ Y in the 1980's. 4. Nonetheless, I approached the matter on the basis that the defendant holds a genuine but mistaken view that I might have witnessed his father committing some act of indecency against his sister. 5. The question for me is whether in the circumstances a fair minded and informed observer might be led to conclude that there was a real possibility that I might be biased against the defendant. It is an objective test. See *Baglin-v-Attorney General*

[2005] JCA 064 at paragraph 6. There is a useful passage from a judgment of the Constitutional Court of South Africa in *President of Republic of South Africa-v-South African Rugby Football Union 1999 (4) S. A. 147* which has been cited several times in the courts of Jersey, and which elaborates the test:- "It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has

not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial". 6. I also take note of the observations of Southwell, Commissioner, in *Hirschfield-v-Abacus (CI) Limited*

[2000] JLR 420 at 424 that:- "Judges should not accede with too much readiness to suggestions of apparent bias, because to do so would inappropriately encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour (*Locabail* ([2000] Q. B. at 479-480)). "Judge shopping," like "forum shopping," is not to be permitted". 7. In *States Greffier-v-Les Pas Holdings Ltd*

[1998] JLR 196 at 204, the Court of Appeal expressed the view, obiter, that:- "no application for recusation should be made without strong grounds to support it, and no such application should be granted unless such strong grounds are clearly established". 8. Applying those principles to the facts of this case, I conclude that the fair minded and informed observer would not conclude that there was a real possibility of bias. The application for recusal is accordingly refused. *Authorities Baglin-v-AG*

[2005] JCA 064. *President of Republic of South Africa-v-South African Rugby Football Union* 1999 (4) S. A. 147. *Hirschfield-v-Abacus (CI) Limited*

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