

THE HAIN PROSECUTION FOR CRIMINAL CONSPIRACY

by Francis Bennion

This note was prepared by FB at the behest of Ivan Lawrence MP. He was helping me and wished to have details of all aspects of my private prosecution of Peter Hain in 1972. It forms a brief but informative note of the case.

Outline of events

The case dragged on for over five years. I began work on it the day the cricket tour was cancelled 21 May 1970. I was in private practice as a legislative draftsman and used my own staff and office to gather evidence and research the law. On 27 January 1971 I applied in person at South Western magistrates' court for summonses against Hain for criminal conspiracy. They were brusquely refused. I went to Owen Stable QC who advised *mandamus* but this was refused by the Divisional Court. Summonses were obtained at Bow Street, where after a 5 day hearing Hain was on 8 October 1971 committed for trial. The DPP refused our request to take over the prosecution on the ground of my ill-health. I was joined as prosecutor by Freedom Under Law Ltd. a company I had formed. The trial at the Central Criminal Court took 21 days. Hain was convicted of conspiracy to disrupt a Davis Cup tennis match and fined £200 with £50 costs. The jury disagreed on the three other counts relating to disruption of rugby and cricket fixtures. I did not feel able to face a retrial and he was formerly acquitted on these counts.

Hain opposed my application for costs and it took three hearings to get an order for their payment out of central funds. Costs-lodged for taxation were:

A. Legal fees £37,788.01.

B. Personal costs of prosecutors (some incurred on the direct instructions of leading counsel) £8,546.

On A the taxing officer allowed £15,000 but deducted from that £4,000 in respect of contributions by members of the public (totalling £14,382.42). B was completely disallowed. On appeal the Chief Taxing Master of the Supreme Court found the allowable costs under A £22,787.25 but on 4 June 1974 this was reduced to £20,000 by Melford Stevenson J. B remained completely disallowed. On 19 June 1975 the Court of Appeal Criminal Division rejected my application to appeal further on costs. Altogether the case involved me in 15 different court appearances occupying the whole or part of 42 days. With the abortive *mandamus* costs the total prosecution costs were £39,148.83. I am having to stand a net deficit of £4,766.41.

Causes for concern

I accept that I must stand the deficit, and do not wish any further action taken about it. I am however concerned about the light thrown by the following aspects of the case on the effectiveness of the right of private prosecution.

1. The South Western magistrate brusquely refused a summons on evidence which ultimately led to a conviction.
2. Although Hain had been committed for trial and the prosecutor was seriously ill the DPP refused to take over the prosecution. This meant that the normal practice of a retrial after jury disagreement was not followed.

3. The taxing authorities at the Central Criminal Court acted throughout as if the prosecution were to be discouraged. They took account of public contributions, though the law is otherwise. They made no proper inquiry about the amount of these and took an arbitrary figure. They allowed less than half the costs later found by the Chief Taxing Master to be allowable. They disallowed item B on the erroneous ground that once solicitors had been retained responsibility for the conduct of the prosecution was theirs not mine. They reduced to less than half the committal costs found allowable by Bow St., giving no reason.

4. Melford Stevenson J. knocked nearly £3,000 off the costs allowed after a 2-day hearing by the Chief Taxing Master. He did so in breach of the principles of natural Justice, without hearing the parties and giving no reasons. This is the point on which I feel deepest resentment.

5. For 50 days the Courts Administrator at the Central Criminal Court, Mr. L. Boyd, refused to carry out his duty under section 14(1) of the Costs in Criminal Cases Act 1973 and pay me the additional £9,000 found by Melford Stevenson J. He wanted to pay this to my former solicitors, who had already been paid more than the £20,000 payable from central funds. Finally I had to give in, being thus forced to forego the possibility of getting taxation of the solicitors' profit costs which I claimed were excessive. This was of course a criminal offence by Mr. Boyd, and deprived me of some £120 interest - more than half Hain's fine. In correspondence Mr. Boyd showed a mixture of discourtesy and incompetence. He got facts, figures and law wrong, he appeared to misunderstand the whole basis of what he was doing and made no attempt to answer our careful arguments. He ignored our request for a meeting to iron out the difficulties. His conduct was disgraceful.

6. The Bar rule that briefs must be marked before trial is waived in the case of prosecutions by the DPP or police. In such prosecutions counsel get only what is allowed on taxation from central funds. The waiver does not apply to private prosecutors who are bound to be out of pocket because brief fees will not be allowed in full on taxation and there will be excess solicitors' fees as well. (I laboured under the delusion that my lawyers would not charge more than was allowed on taxation - a point not referred to in Owen Stable's written opinion that costs would almost certainly be awarded out of central funds.)

7. Delays meant that the prosecutors were out of pocket for very long periods. Although the state paid only half the total costs even this payment was not completed until nearly two years after the trial.

Conclusion

If private prosecution is to be an effective constitutional safeguard the following principles must be clearly established:

- (a) a private prosecution must not be treated by the authorities as a second-class prosecution;
- (b) counsel and solicitors should be prepared to accept only what is payable out of central funds (except where the prosecutor misconducts himself and is denied costs);
- (c) contributions by members of the public should be disregarded;
- (d) reasonable non-legal costs of the prosecutor should not be excluded;
- (e) the DPP should take over a prosecution where the defendant has been committed for trial;
- (f) As the Lord Chief Justice said in this case, there should be a proper appeal procedure for prosecutors on costs. The projected regulations under s. 17(2) of the Costs in Criminal Cases Act 1973 (providing such an appeal) should ensure that the requirements of natural justice are met.

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For full version of abbreviations click 'Abbreviations' on FB's website

References:

None