(Appeal Against Preliminary Decision)

IAIN STEWART TAYLOR

Appellant

against

ANDREW HAUGHNEY

Respondent

(Procurator Fiscal, Portree)

High Court of Justiciary

1982 SCCR 360

16 June 1982

CATCHWORDS: Summary procedure - Language of proceedings - Whether competent to conduct part of trial in Gaelic - Whether English-speaking accused entitled to have proceedings interpreted into Gaelic

HEADNOTE:

The appellant, whose first language was English, was charged on summary complaint in Portree. He moved the sheriff to be allowed to speak in Gaelic himself and to have the remainder of the proceedings translated into Gaelic by an interpreter to be appointed by the court for that purpose. The sheriff refused the motion and the appellant appealed under s344(2A) of the Criminal Procedure (Scotland) Act 1975.

Held, that the language of the courts in Scotland was English and that an interpreter could be appointed only for a person who did not understand English.

Alex McRae (1841) Bell's Notes 270 followed.

CASES-REF-TO: Case referred to in the opinion of the court:
Alex McRae (1841) Bell's Notes 270.

Cases cited in Commentary:
Handley v Pirie 1976 JC 65; 1977 SLT 30.
English v Smith 1981 SCCR 143; 1981 (Notes) 113.
Sillars & Ors v Smith 1982 SCCR 367.
Henderson v Ingram 1982 SCCR 135.
Alex McRae (1841) Bell's Notes 270.

INTRODUCTION: Iain Stewart Taylor was charged on summary complaint in the sheriff court at Portree that:

'(O)n 3rd May 1981 or on 4th May 1981, at the road sign on the Kyleakin - Portree public road and at the entrance to Ashaig Airstrip, Isle of Skye, in the District of Skye and Lochalsh, you did wilfully and maliciously damage the said road sign by obliterating the words therein with white paint, and spray-painting the words "Port Adhair" in red paint on said road sign.'

On 19th January 1982 the accused's solicitor tendered a plea of not guilty in his absence. The minute of that date concludes by recording that the accused's solicitor 'moved the court to have the trial held in Gaelic. The sheriff stated that before this could be done the accused would require to show that he had an insufficient command of the English language.' Trial was fixed for 14th April 1982. On that date the proceedings, as recorded in the minute of proceedings, were as follows:

'The trial, Procurator Fiscal, Portree against Iain Stewart Taylor was called and a person entered the dock. On being asked by the clerk of court if he was the said Iain Stewart Taylor he spoke in a language other than English. On being asked the same question by the sheriff this person again spoke in a language other than English. Mr D Ferguson, Solicitor, Portree, stood up and stated that he appeared for the accused Iain Stewart Taylor and he also confirmed that the person in the dock was the said accused.

The accused having been asked by the sheriff if he was adhering to his previous plea of not guilty again spoke in a language other than English. At this stage the prosecutor moved the court to note the plea as one of not guilty and he also moved the court to proceed to trial. Mr Ferguson moved the court to have the trial held in Gaelic. The prosecutor objected on the grounds that this plea was time-barred in terms of section 334(1) of the Criminal Procedure (Scotland) Act 1975. The sheriff having heard Mr Ferguson in reply, repelled the prosecutor's objection.

Thereupon Mr Ferguson, on behalf of the accused, addressed the court on his motion to have the trial held in the Gaelic language. The sheriff, having heard the prosecutor in reply, repelled the accused's motion and ordered the trial to proceed.

At this stage Mr Ferguson moved the court, in terms of section 334(2A) of the Criminal Procedure (Scotland) Act 1975, to grant him leave to appeal against said decision. The sheriff, having heard the prosecutor in reply, granted leave to appeal and adjourned the diet of trial until 30th June 1982 at 10.00 am and ordained the accused then to appear.'

The accused then appealed by note of appeal to the High Court in respect that:

'1. (No objection was taken to competency or relevancy of the complaint.) At the first diet a motion was made for the trial to be heard in the Gaelic language. The sheriff reserved judgment on the motion subject to proof of competence of accused in English language, as per minute by clerk of court dated 19th January 1982.

2. The decision which it is desired to bring under review by the High Court is the decision of the sheriff to repel the motion to have the trial or part thereof heard in Gaelic.

3. The grounds of appeal are that the sheriff was not entitled in law to repel the motion to have the trial or part thereof heard in Gaelic.'

In his report the sheriff (Scott Robinson) stated, inter alia:

'At the trial diet on 14th April 1982, at which I presided, the appellant appeared with Mr Donald Ferguson, Solicitor, Portree, who is fluent in Gaelic. Mr Ferguson, speaking in English, made a formal motion that the proceedings be conducted in Gaelic and requested leave to be heard in support of the motion. The procurator fiscal objected on the ground that the motion was incompetent by virtue of the provisions of section 334(1) of the Criminal Procedure (Scotland) Act 1975, as amended. Having heard Mr Ferguson and the procurator fiscal on the question of competency, I held that good cause had been shown why the motion should be heard. My reasons for so doing were (1) that Sheriff Fulton's decision of 19th January 1982 had not foreclosed the matter and (2) the subject was of general interest and importance and one upon which a decision should be given.

Thereafter Mr Ferguson addressed me at length upon the motion. He said that the appellant desired:

(1) to identify himself in Gaelic and to plead in that language,

(2) to take the oath and give evidence in Gaelic,

(3) himself to address the court in Gaelic,

(4) that any other words spoken in the court relative to his case should be translated into Gaelic,

(5) and that for these purposes an interpreter of Gaelic be appointed by the court.

Mr Ferguson also asked for a ruling as to the professional duty of a Gaelic-speaking solicitor whose client instructs him to conduct the proceedings in Gaelic and particularly whether the solicitor could insist upon addressing the court in Gaelic.

In answer to questions by me, Mr Ferguson, after consultation with the appellant, conceded that (a) the appellant's first or native language was English and (b) that the appellant was equally fluent in English and in Gaelic.

In support of his motion Mr Ferguson submitted:

(1) Gaelic was a language indigenous to Scotland. It was not a foreign language.

(2) The appellant had a fundamental right to have the proceedings conducted in Gaelic, or at least with the aid of a Gaelic interpreter, if he so chose.

(3) Where a person was equally fluent in Gaelic and in English, he had a fundamental right to choose in which language he should address the court.

(4) The laws and usages of the Western Isles and Skye were orginally Celtic and legal and public affairs were conducted in Gaelic, at least prior to the tenth century. Today in Skye, the two languages stood side by side and Gaelic was in common use.

(5) He referred to the United Nations Charter of Human Rights, article 6, and to a Resolution of the European Parliament, No 1/965/80. The latter approved as a basic right that people should be allowed to use their own language. Here the appellant regarded Gaelic as one of his own languages.

(6) The Welsh Language Act 1967 had allowed the free use of Welsh in legal proceedings. The British Nationality Act, Schedule 1, paragraph 1(1)(c), recognised Scottish Gaelic as a language qualification for British nationality. With regard to the taking of the oath, Mr Ferguson referred to the Act of 1690, c22 (the Confession of Faith).

(7) Finally reference was made to Fulton v Noble (Scottish Land Court, 13th January 1982) where both parties had requested that proceedings be conducted in Gaelic and the court had agreed.

In reply, the procurator fiscal submitted that the language of the criminal courts of Scotland had from time immemorial been English. An interpreter was always provided by the court and paid for by the Crown where an accused had an insufficient command of the English language. The accused in this case had no such difficulty. Other considerations apart, it would be a gross waste of public funds if interpreters were to be provided in cases such as the present one. He submitted the trial should proceed at once and be conducted entirely in English.

Having adjourned to consider these submissions, I repelled the motion for the appellant and ordered that the trial proceed forthwith in English and without an interpreter. My reasons for so doing were as follows:

(1) It was a matter of admission that the appellant's first language was English. He was not therefore a native Gaelic speaker and his knowledge of that language must have been subsequently acquired. It was also admitted that he was equally fluent in English and in Gaelic.

(2) The appellant could not therefore by any standards be said to be a person who had no English or whose command of that language was so inadequate as to deprive him of reasonable understanding of the proceedings.

(3) Proceedings in criminal trials in Scotland have from time immemorial been conducted either in the Scots vernacular or in more modern times in English. I could find no authority (and none was quoted to me) which allows a person accused in a criminal trial and who is fluent in English, to elect trial in any other language or to be provided with an interpreter.

(4) I referred to Bell's Notes to Hume on Crimes, p270, and to the case of Alexander McRae (Justiciary Court, Edinburgh, 8th January 1841). It was there held incompetent to examine a witness in Gaelic, through an interpreter, when as was shown the witness could speak English "with perfect distinctness". This view of the law is accepted by Macdonald (5th edn) at p299 and the cases there cited. Dickson on Evidence, Vol I (Grierson's edition), para 328, says, with regard to declarations, that if the prisoner does not understand English, his declaration must be translated from the language in which it is emitted and, after being taken down in English, it must be interpreted and read back to the prisoner in his own tongue.

I took the view that these authorities were binding upon me and were conclusive against the appellant's motion.'

The appeal was heard on 16th June 1982 by the Lord Justice-Clerk (Wheatley), Lord Hunter and Lord Dunpark.

COUNSEL: Counsel For the appellant: Dorian, instructed by Pairman Miller & Murray, WS, for Christie & Ferguson,

JUDGMENT-READ: On 16th June 1982 the following opinions were delivered.

PANEL:

Lord Justice-Clerk (Wheatley), Lord Hunter and Lord Dunpark

JUDGMENTS: LORD JUSTICE-CLERK. The appellant was charged with wilfully and maliciously damaging a road sign by obliterating words thereon with white paint and spray-painting words in

Gaelic in red paint on the road sign. The merits or demerits of the charge do not concern us in this appeal. What transpired was that when the case called in court the appellant who speaks fluent English and also speaks fluent Gaelic made a formal motion that the proceedings should be conducted in Gaelic and requested leave to be heard in support of that motion. The sheriff allowed him to do so and the appellant made certain representations. Having heard the procurator fiscal in reply the sheriff refused the motion. An appeal has now been taken against that decision of the sheriff. The sheriff has set out in great detail his reasons for refusing the motion. I content myself with saying that I thoroughly endorse the reasons which he gave and I think he was fully justified in refusing the motion. In particular I draw attention to the fact that the sheriff referred to the case of Alexander McRae in the Justiciary Court, Edinburgh, 8th January 1841, which is referred to in Bell's Notes to Hume on Crimes, p270. That was a case in identical circumstances where a similar motion was made and refused. The authority of that decision was accepted by counsel for the appellant and the sheriff's reasons were not challenged in any way. That being so, manifestly this appeal is a hopeless one and accordingly I move your Lordships to refuse it.

LORD HUNTER. I agree.

LORD DUNPARK. I agree.

DISPOSITION: Appeal refused.

SOLICITORS: Solicitors, Portree.
For the respondent: Osborne, QC, A-D, instructed by the Crown Agent.

APPENDIX: COMMENTARY

This case, like Sillars & Ors v Smith, infra, p367, is mainly of historical interest, its legal outcome being a foregone conclusion. So far as interpreters are concerned it is a fortiori of Alex McRae in which 'the Court held it to be quite incompetent to examine in the Gaelic language, through an interpreter, a Gaelic witness who could speak English with perfect distinctness, although strongly pressed to do so by counsel for the prisoner, who expressed a decided apprehension of misunderstandings'.

No question was raised as to the competency of an appeal under s334(2A) of the 1975 Act, and the prosecution's objection to the accused's motion being stated at the trial rested on the requirement of s334(1) that objections to competency should be raised at the first calling (cf, Henderson v Ingram, supra, p135). But there is an argument that the appeal was incompetent, and that s334 has no application in this case. Section 334(2A), as inserted by s36 of the Criminal Justice (Scotland) Act 1980, applies only to appeals against a decision relating to 'such objection ... as is mentioned in subsection (1) above'. Section 334(1), as amended by para 54(a) of Schedule 7 to the 1980 Act, refers only to 'an objection to the competency or relevancy of the complaint or the proceedings'. The instant appeal must have been treated as an appeal on a decision on an objection to the proceedings, although the nature of the accused's motion was not so stated in the sheriff court. 'Proceedings', however, in s344(1), which deals with preliminary matters, can hardly have been intended to include the way in which the trial was conducted. The reference to the competency of the proceedings in s344(1) was directed to objections to the proceedings in the sense of the prosecution as a whole, objections to the competency of the proceedings being objections such as those to jurisdiction, or those based on time bar. If a trial starts when the accused is called upon to plead (see

Handley v Pirie, 1976 JC 65; 1977 SLT 30; English v smith, 1981 SCCR 143; 1981 SLT (Notes) 113), it was too late to appeal under s334; and if the trial had not started there were no incompetent 'proceedings' against which to object or appeal| Indeed, it may be that 'competency or relevancy of the complaint or the proceedings' is a rare Parliamentary example of something like chiasmus| On the other hand, the spirit of s334(2A) is to avoid the expense of a trial which may turn out to have been wasted because of some radical defect, and from that point of view the case was an appropriate one for an appeal under the subsection.