



JUDICIARY OF  
ENGLAND AND WALES

*Judge Howard Riddle, Senior District Judge (Chief Magistrate)*

*In the Westminster Magistrates' Court*

**Thomas Phillips v Thomas Monson**

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This is an application on behalf of Mr Monson (represented by Mr James Lewis QC and Mr Neil Addison) for the withdrawal of two summonses for fraud issued by this court on application by Mr Phillips (represented by Mr Andrew Bird). The power to set aside a summons has been recognized for at least a century, and is confirmed by the CPR 2012 (7.4). This is not an appeal against the decision of the judge who granted the initial summons. It is a new hearing to be decided on the material placed before me.

There is good reason for this power. A summons is normally issued after hearing representations only from the applicant, as happened here. Basic fairness allows further scrutiny if the defendant wishes to be heard. The exercise is limited, however, to applying the same test as is used in deciding whether to issue the summons.

The information on which the summonses are based is contained in correspondence from Mr Phillips to the court from October 2013 to January 2014.

The court must consider whether the offence is known to law and if so whether the essential ingredients of the offence are prima facie present; whether the offence is “out of time”; whether the court has jurisdiction; and whether the informant has the necessary authority to prosecute. In addition to those specific matters the court should consider whether the allegation is vexatious. I must consider the whole of the relevant circumstances.

The essential elements of fraud, for these purposes, are:

- (1) a. dishonestly making a false representation, and
  - b. intending, by making the representation to make a gain for himself or another or to cause a loss to another or a risk of loss to another.
- (2) A representation is false if:
  - a. it is untrue or misleading, and
  - b. the person making it knows that it is, or might be, untrue or misleading.
- (3) Representation means any representation as to fact or law, and may be express or implied.

### **Service of process**

Service of process abroad is covered by the provisions of the Crime (International Co-Operation) Act 2003, as amended. Section 3(5) and (6) state that failure to comply with the process is not a ground for issuing a warrant. These two summonses both state that failure to attend may result in a warrant being issued for Mr Monson's arrest. It is common ground that that is wrong.

### **Are the essential ingredients of the offence prima facie present?**

The way the information was put before the court over a period of time makes it hard to isolate the essential ingredients. I have looked for a direct assertion that Mr Monson made the specific representations set out in the summonses. To this end I have read the 120 pages provided by the prosecutor. I invited Mr Bird to take me to the relevant passages. In the paperwork I find assertions that Mr Monson "has caused to be made statements of fact which are untrue"; assertions that as President of the Church Mr Monson is responsible for statements of the Church; numerous assertions that Mr Monson knew false statements were being made; and assertions that Church doctrine makes the particular statements averred. It would be relatively easy to state explicitly that Mr Monson has made these specific representations, and when and how the misrepresentations were made. This has not been done.

Even if Mr Monson has made the representations complained of, the basis for the complaint that he made them dishonestly (or intending a gain or a loss) is too tenuous. It is not sufficient to found a criminal prosecution.

I do not accept that the essential elements of the offence are present in the information as presented to me.

**Is the prosecution vexatious?**

It is obvious that this proposed prosecution attacks the doctrine and beliefs of the Mormon Church, and is aimed at those beliefs rather than any wrong-doing of Mr Monson personally. The purpose is to use criminal proceedings to expose the false (it is said) facts on which the church is based.

It is inevitable that the prosecution would never reach a jury, even if Mr Monson chooses to attend. To convict, a jury would need to be sure that the religious teachings of the Mormon Church are untrue or misleading. That proposition is at the heart of the case. No judge in a secular court in England and Wales would allow that issue to be put to a jury. It is non-justiciable.

I am satisfied that the process of the court is being manipulated to provide a high-profile forum to attack the religious beliefs of others. It is an abuse of the process of the court.

**Does Mr Phillips have the necessary authority to prosecute?**

Mr Lewis QC argues that Mr Phillips is not an authorized or exempt person under the Legal Services Act 2007, and has committed a criminal offence under s14 of that Act, punishable by imprisonment for up to two years or as a contempt of court. It is not necessary for me to decide that question now, and I do not do so.

For the reasons given above, these summonses are withdrawn.

**20<sup>th</sup> March 2014**