



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 17

P1105/23

OPINION OF LORD BRAID

In the Petition and Complaint of

JAMES EASDALE AND ALEXANDER EASDALE

Petitioners

for

Breach of interdict granted by this court on 5 May 2023

Petitioners: E Campbell; Morton Fraser MacRoberts LLP

Respondent: Party

22 February 2024

Introduction

[1] In this petition and answers procedure, the petitioners assert that the respondent, Paul Hendry, who resides in Pevensey, England, has wilfully and repeatedly breached the terms of an interdict granted against him on 5 May 2023, in contempt of the authority of this court; and they invite the court to inflict such punishment by way of imprisonment or fine, as the court deems appropriate.

The interdict

[2] In terms of the interdict granted on 5 May 2023, Mr Hendry was interdicted:

“...from (other than by way of complaint to the police, Crown Office or similar relevant authority) defaming the [petitioners] by making, publishing or otherwise

disseminating, within Scotland, statements, whether orally or in writing, alleging (whether directly or by implication) that [the petitioners], or either or both of them, is (or has been) involved in or associated with serious or organised crime.”

One plank of Mr Hendry’s argument is that the order was unclear because (unlike the undertaking he later gave) it did not state “directly or indirectly within Scotland”.

However, there is nothing ambiguous or unclear about what Mr Hendry was interdicted from doing: disseminating, within Scotland, defamatory statements about the petitioners that they were involved in or associated with serious or organised crime. All of the words and phrases used are readily understandable; as is the notion that material which is published on the internet and is available to the public within England, will also be available in Scotland. The insertion of the words “directly or indirectly” is not necessary to convey the meaning (or width) of the interdict; indeed, arguably, it adds nothing, since I am struggling to think of an example of what “indirect” publication would involve.

Jurisdiction

[3] Since another plank of Mr Hendry’s argument is, in essence, that he thought that he was beyond the reaches of the Court of Session, this is a convenient point at which to deal with jurisdiction. As the original summons, in which not only interdict but also damages were sought, made clear, the basis of jurisdiction was that the harm in respect of which the petitioners were suing had occurred, and would continue to occur, across the whole of Scotland. Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 contains the rules for the allocation of jurisdiction within the United Kingdom. Rule 3(c) provides that in matters related to tort, delict or quasi delict (which includes defamation), a person domiciled in one part of the United Kingdom (for example, England) may be sued in the courts for the place where the harmful event had occurred or may occur (in this case, Scotland). Accordingly,

this court had jurisdiction over Mr Hendry. Jurisdiction having been established, the court then also had jurisdiction to interdict him from committing future wrongful acts within Scotland (but not elsewhere): *William Grant & Sons Irish Brands Ltd v Lidl Stiftung & Co* KG 2021 SLT 889. For that reason, the interdict was, and remains, confined to the prohibition of disseminating defamatory material within Scotland. Since the court had jurisdiction over Mr Hendry, the order was effective against him as soon as it was made; there was no requirement, in order for it to become effective in Scotland, for it to be registered elsewhere; and of course, there is no question of the order operating within any other jurisdiction, since it strikes only at wrongs committed within Scotland. The court also has an inherent jurisdiction to deal with and to punish contemptuous breaches of its own orders.

[4] For completeness, as *William Grant* also made clear, had Mr Hendry been domiciled within Scotland, he could have been interdicted from publishing defamatory material anywhere in the world. Had proceedings been raised against him in England, an injunction having worldwide effect could likewise have been granted. As it is, the interdict correctly applies only to Scotland. There would be nothing to prevent Mr Hendry from going to a public park in Pevensy and pontificating to the populace there about the Easdales (although if he did so, an injunction might swiftly follow, along with a further damages action). But what he cannot do, by virtue of the interdict, is to publish or disseminate material which makes its way to this jurisdiction, wherever in the world he happens to be.

History of these proceedings

[5] Following service of the petition, alleging numerous breaches of the interdict, Mr Hendry first appeared to answer the alleged breaches by video link, on 15 December

2023. On that date he undertook not to disseminate any further defamatory material regarding the petitioners, in Scotland either directly or indirectly, those latter words being used at my suggestion since I was not at that time satisfied that Mr Hendry would not use a specious argument in an attempt to justify further publication. He further said that he would set any videos on YouTube which mentioned the petitioners to private and delete any posts by him mentioning the petitioners on X (formerly Twitter). So far as can be ascertained he has complied with that undertaking, and done what he said he would do. I told Mr Hendry that it was in his best interests to seek legal advice and representation (as, in fairness, the petitioners' solicitors have repeatedly told him throughout). Following sundry further procedure, in the course of which Mr Hendry said that he was unable to secure legal representation, a hearing on the petition and Mr Hendry's answers thereto, took place on 7 February 2024. At a pre-proof hearing on 31 January 2024, Mr Hendry intimated that he did not dispute the facts relied upon by the petitioners - discussed more fully below, but, in brief, that he was the author of material published on-line on YouTube and X which was defamatory of the petitioners, contrary to the terms of the interdict. He confirmed that he did not wish to cross-examine any of the petitioners' witnesses on the content of their affidavits. However, he did dispute, and continues to dispute, that he had done so in deliberate defiance of the court's order.

The issues

[6] At the pre-proof hearing, the court ordered that the ambit of the final hearing would be restricted to the issue of whether the breach by Mr Hendry of the terms of the interdict amounted to a contempt of court. That is the first issue which remains to be resolved. The other is whether, in the event that contempt is established, what punishment is appropriate.

[7] Oral evidence at the hearing on 7 February 2024 was restricted to the former issue. That necessitated the leading of some evidence from Mr Hendry, who adopted a written statement which he had previously lodged. The bulk of the time at the hearing was taken up with cross-examination. No evidence was formally led by the petitioners, who relied upon the undisputed affidavits of the petitioners and their solicitor, along with the productions previously lodged (and to all of which, in petition procedure, I am entitled to have regard).

Undisputed background

[8] The following account is taken from the undisputed material which is before the court. In March 2023, Mr Hendry, who dubs himself, among other things, Pevensey Paul, published defamatory material about the petitioners on YouTube and X (formerly Twitter). In that material, which was accessible within Scotland, he alleged directly, and by implication by using expressions such as “gangsters” and “thiefdom”, that the petitioners are involved in or associated with serious and organised crime in Scotland. Proceedings were raised by the petitioners and interim interdict was obtained on 28 March 2023, in the terms set out above. That interdict was personally served on Mr Hendry by process server on 1 April 2023. Mr Hendry did not defend the action and perpetual interdict was granted, in absence, on 5 May 2023. In addition, decree was granted for payment to each of the petitioners of damages of £200,000 plus interest. That was intimated to Mr Hendry by email on 9 May 2023. The extract decree was registered in England and Wales on 13 July 2023, and, on the strength of that, a statutory demand for payment was served on Mr Hendry on 26 October 2023.

[9] Although the terms of the interdict were initially observed by Mr Hendry, the statutory demand appears to have stirred him back into action. From 24 November 2023 until on or about 8 December 2023,¹ he repeatedly broadcast a series of live stream videos on YouTube, the subject matter of which was to detail that the petitioners (and others) were involved in serious or organised crime in the Greenock area. During the videos, Mr Hendry made clear, in terms, that his intention was to hound the petitioners and to continue to broadcast in similar terms on a regular basis. Between these dates, videos were broadcast either daily (until 27 November 2023) or, after that date, almost daily. On some days, more than one video was broadcast. The videos were lengthy and repetitive, sometimes running for more than two hours. On various occasions Mr Hendry encouraged viewers to record and share his broadcasts.

[10] Mr Hendry accepts that his allegations in the videos referred to the petitioners (for whom he used derogatory and insulting names, which I find it unnecessary to repeat). Common themes throughout the videos were that the petitioners were at the top of a pyramid of organised crime in Greenock, that they had been involved in numerous murders over decades, that they were involved in the importation of drugs and guns through Greenock, that they were involved in a child abuse ring and blackmail and that they were involved in money laundering. Those statements were all defamatory of the petitioners in that they alleged that the petitioners were and are involved in or associated with serious organised crime: precisely what Mr Hendry had been interdicted from doing.

[11] During the first video Mr Hendry said that he was sending out a link to the YouTube channel with the username “Pevensey Paul” to people whom he knew. He encouraged

¹ In fact, until 15 December 2023, but the petitioners do not found upon any material published after 8 December 2023.

viewers to record the broadcast that he would be making on the Pevensey Paul YouTube Channel. A second live stream video was broadcast on 24 November 2023. Following complaints by the petitioners' agents, the operators of YouTube disabled access to the defamatory statements made by Mr Hendry to persons identified as accessing those services from within the United Kingdom. However, at least the first video remained accessible not only to persons outwith the United Kingdom (which of course was not prohibited by the interdict) but also to persons within the United Kingdom, including Scotland, who could access the services by means of a Virtual Private Network (VPN) which disguises the location of the user. In subsequent videos Mr Hendry encouraged users to take steps to avoid the UK restriction by using a VPN.

[12] During the second video, Mr Hendry made clear that he intended to continue making similar broadcasts. By way of example, he said:

"But as I said to you before, and will continue to say, as long as I can't go to jail for it, I do not care. I do not care. And I will continue to expose the Easdales, the Greenock organised crime group day after day, after day, after day. I'm coming back on here later on tonight. I'll probably do it through YouTube....You can't put me in jail for it, so I don't care. It doesn't mean one thing or the other."

[13] In total, Mr Hendry broadcast at least twelve videos in which he made defamatory statements about the petitioners by alleging that they were involved in serious organised crime (he also published two other videos referencing the petitioners, on 27 November (video 7) and 5 December (video 11), which did not breach the interdict). Each video has had at least one thousand views. In addition, he has tweeted to similar effect on X. He did so on repeated occasions on 23 November 2023 and again on 24, 25, 26, 27 and 28 November and 1 December 2023. Some of the tweets contained links to the YouTube videos. All of them, directly or indirectly, connected at least one of the petitioners to organised crime.

Mr Hendry's position

[14] In his answers to the petition, Mr Hendry admitted that he was the author of the videos and posts in question, but claimed his motivation was because of a hate campaign against him and he "wanted to make sure the truth was out there." As noted already, he claimed that there was a lack of clarity in the terms of the interdict insofar as it omitted the words "directly or indirectly". He said that led him to believe that "speaking about the [petitioners] from England which was then sent to America then published worldwide was not in fact a breach of interdict" and that the petitioners' objective was to stop him speaking about them (which is indeed true, since he speaks about them only in defamatory terms), and that he has stopped since 15 December 2023. He has renewed his undertaking never to speak of the petitioners again within Scotland, either directly or indirectly.

[15] In his evidence, Mr Hendry formally adopted, on oath, a written submission which he had lodged in advance. In that submission, he repeated and elaborated on the stance that he had not believed that he was breaching the terms of the interdict, because he was residing in England, and because the interdict had not been registered for enforcement in England. He repeatedly made reference to the omission of the words "directly or indirectly" from the interdict. He repeated those beliefs in cross-examination. He said that he had believed he was not in breach of the interdict because, so far as he was concerned, he was publishing within England, from where his broadcasts went to the United States of America, from where they were published in different countries around the world, over which he had no control. He also said that after the money provisions of the decree were registered for enforcement in England and Wales, he had expected the interdict provisions likewise to be registered and that, until they were, he had thought that the interdict was not enforceable. He was waiting for a further registration before he stopped publishing [although if he did

not think he was publishing in Scotland in any event, it is not clear why registration in England would have made any difference].

The law

[16] What is required to establish contempt was recently reiterated by the High Court of Justiciary in *Murray v HM Advocate* [2022] SLT 647. Contempt of court is constituted by conduct that denotes wilful defiance of, or disrespect towards, the court; or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself; where a court order prohibited a particular action, and a person deliberately does something which breaches that order, that is sufficient to prove the crime of contempt, including any mental element since the mental element relates to the deliberate nature of the act, not to whether the person in their innermost thoughts meant to breach the order. There are dicta to similar effect in *Beggs v Scottish Ministers* 2005 SC 342 at para [30]; and *Robertson & Gough v Her Majesty's Advocate* 2008 JC 146 at para [29].

Decision

[17] There is no question but that Mr Hendry deliberately published the material in question; and that he did so repeatedly. There is also no question but that the material is defamatory of the petitioners since it alleges (repeatedly) that they were and are involved in organised crime. All of that is accepted by Mr Hendry. The only live factual issue is whether or not the material was disseminated in Scotland. That question admits of only one rational answer: clearly it was. The YouTube videos were accessible within Scotland and were disseminated here, as would have been well known to Mr Hendry. He was or ought to have been aware that the original YouTube broadcast giving rise to the interdict had been

published within Scotland, and constituted a wrong here, otherwise the court would have had no jurisdiction over him; and that the broadcasts in November and December 2023 would similarly be available in Scotland. Even assuming Mr Hendry's description of how YouTube videos technically come to be published around the world to be accurate, that is irrelevant: the route by which material on the internet, originating in England, comes to be published in Scotland is neither here nor there. To adapt a hypothetical example put to Mr Hendry in cross-examination, had he mailed, in New Zealand, an article defamatory of the petitioners for publication in the Scotsman, it would have mattered not whether, *en route*, the aeroplane carrying it had landed in other jurisdictions before arriving in Scotland. It is equally irrelevant to consider the cyber-route followed by a YouTube broadcast. In any event, Mr Hendry's claim that he did not intend to publish in Scotland, or know that his videos would be broadcast here, is preposterous. His very *raison d'être* for resuming his broadcasts was because he perceived that he was being bullied by the petitioners, prompting him to go on to the offensive. There would have been little purpose to his tirades if they were not capable of being observed by the petitioners, or those who knew them, within Scotland. Still further, the content of some of the posts was clearly aimed directly at the petitioners and intended to be observed by them, as the following excerpt from the second video (in particular, the last five words) shows:

"So you billionaires, Easdale brothers...come ahead. And yes, there are parallels between you and the Kray brothers...Tell them I'm coming and hell is coming with me. Yes, it is coming with me, because this is personal, Easdales."

[18] Accordingly I simply do not believe Mr Hendry when he states that he did not intend to publish or disseminate material in Scotland. That is precisely what he intended to do, and what he achieved.

[19] A slightly different point is raised by Mr Hendry's assertion that he did not believe that the interdict was enforceable against him, because it had not been registered for enforcement in England & Wales. I would observe it is difficult to reconcile this with Mr Hendry's supposed belief that he was not publishing in Scotland: if that were genuinely the case, then the interdict would not have prevented his broadcasts whether it had been registered in England & Wales or not. Be that as it may, even if it were true that Mr Hendry held this belief, it would have amounted to no more than ignorance of the law, which is irrelevant. Mr Hendry had been told repeatedly by the petitioners' solicitors to seek legal advice, but chose, for whatever reason, not to do so. In any event this argument proceeds on the, admittedly unchallenged, basis that the interdict was not registered in England. The averments in the petition suggest otherwise; as does the statutory demand which was served on Mr Hendry on 26 October 2023 which did refer to the Scottish decree as having been registered in its entirety. The difference between the order for payment of £400,000 and the interdict, of course, is that the former did require to be enforced in England, whereas the latter simply prohibited Mr Hendry from doing certain acts in Scotland and as such, it did not have to be enforced in England at all: it simply had to be observed. In the event, I am unclear as to what Mr Hendry thought he was waiting for, before he intended to observe the interdict; but since I do not believe that the absence of registration played any part in his thinking it is of no moment.

[20] In fact, perusal of what Mr Hendry said on his broadcasts suggests that he simply but erroneously did not think he could be jailed for breaching the interdict, and that was why he was broadcasting.

[21] In summary, I do not accept Mr Hendry's evidence as to what was in his mind when he was publishing the defamatory material in November and December 2023; but, as

counsel for the petitioners submitted, even if I did it would have made no difference, since Mr Hendry was aware of the terms of the interdict and deliberately published, in Scotland, material which breached it; to be exact, twelve defamatory YouTube broadcasts and a similar number of tweets, all of which alleged that the petitioners or one or other of them are involved in organised crime.

[22] For all of these reasons, I find that Mr Hendry's conduct denotes wilful defiance of, or disrespect towards, the court; and as such I find him to be in contempt - indeed, an egregious contempt, given the blatant and repeated repetition of the interdicted conduct.

Sentence

[23] It remains to decide what sentence is appropriate. As the petitioners' counsel acknowledged (less so, perhaps, the petitioners, in their affidavits) that is solely a matter for this court. It is important to bear in mind that what falls to be punished is not the making of defamatory statements (or what might these days be described as the spreading of fake news) as such, but the flagrant and repeated disregard of an order of this court. That said, it is relevant to have regard to the consequences of the offending behaviour on those persons who were supposed to have the protection of the interdict. It is important to convey to anyone, wherever situated, that orders of this court must be observed. On the other hand, I do acknowledge that as soon as the severity of his conduct was brought home to Mr Hendry at the first hearing on 15 December 2023, he undertook to desist forthwith and he has observed that undertaking; he has also shown respect to the court on the occasions when he has appeared before it. I am prepared to accept that although he was intentionally defying the court, he did not appreciate the severe consequences which could be visited upon him.

If he did not know, previously, that he was liable to be jailed for breaching the interdict, he knows now.

[24] I propose to fix, in the first instance, a hearing for Thursday 29 February 2024 at 9.30am at which Mr Hendry will have the opportunity to address me on what disposal is appropriate. The options which I have in mind which are the only sentencing options open to me (other than admonition, which would not be appropriate for a contempt of such severity) are: (1) to obtain a criminal justice social work report (or the equivalent, from Mr Hendry's local authority), with a view to the possible subsequent imposition of a term of imprisonment; (2) to impose a financial penalty; or (3) to defer sentence for good behaviour (which in practical terms would equate to the imposition, in England, of a suspended sentence, since any repetition of the contempt would likely result in a custodial sentence then being imposed for the breaches with which I am currently dealing, let alone any future breach). At that hearing, Mr Hendry will have the opportunity to address me as to which of these options I should adopt.

[25] Finally, in view of his health difficulties, Mr Hendry may again attend by video link; but if I decide upon option 1, he will require to attend any future hearings in person.