# THE HIGH COURT
# JUDICIAL REVIEW

**2024 IEHC 681**
**2023 No. 1420 JR**

**BETWEEN**

**LEROY DUMBRELL**

**APPLICANT**

**AND**

**A JUDGE OF DUBLIN METROPOLITAN DISTRICT COURT AND THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS**

**EX TEMPORE JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 25th day of November 2024.**

## INTRODUCTION

**1.** This matter comes before me following a refusal by the District Court Judge to certify a case stated by way of appeal pursuant to s. 4 of the Summary Jurisdiction Act 1857 (hereinafter "the 1857 Act"). Under s. 4 of the 1857 Act, a District Court judge "*shall*" upon request, state a case to the High Court either on a consultative basis or via appeal by way of case stated, unless the said judge is of the opinion that the question to be stated is frivolous. Where the District Judge refuses to certify on the grounds that the point of law is "*frivolous*", s. 5 of the 1857 Act provides for application to be made for an order of *mandamus* requiring the Judge to state the case.

**2.** Leave to proceed by way of judicial review was granted *ex parte* (Hyland J.) by order dated the 15th of January, 2024 to seek:

(a) An order of *mandamus* by way of an application for judicial review, directing the District Court to state a case to the High

Court in proceedings entitled *DPP (Garda Declan Kearney) v Leroy Dumbrell*, bearing case number 2022/207374.

(b) A rule pursuant to section *5* of the Summary Jurisdiction Act 1857 calling on the District Court to show cause why a case should not be stated in proceedings entitled *DPP (Garda Declan Kearney) v Leroy Dumbrell*, bearing case number 2022/207374.

**3.** The issue I must determine is whether the learned Judge was entitled to refuse to state a case because the question of law which the Applicant seeks to pursue by way of appeal is frivolous.

**FACTUAL BACKGROUND**

**4.** The Applicant came before Dublin Metropolitan District Court on the 12th September, 2023, prosecuted by Garda Declan Kearney in the name of the Director of Public Prosecutions [hereinafter "the DPP"] on a single offence of possessing stolen property, namely an American passport, on November 15th, 2022, at Temple Lane, Dublin 2 contrary to s. 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 [hereinafter the "2001 Act"]. The Applicant was represented by Counsel and the matter proceeded to hearing (Judge John Hughes presiding).

**5.** Garda Kearney was the sole witness for the prosecution and the defence did not call any evidence. Garda Kearney gave evidence as follows:

(a) On the 15th November, 2022, he was on mobile patrol with another member of An Garda Siochana along Temple Lane Dublin 2. Here Garda Kearney observed two males engaged in a suspected drug transaction. As gardai approached the males, the second man fled while the Applicant stayed. A search was conducted under the Misuse of Drugs Act 1977 (as amended).

(b) No drugs were found during the search. The Applicant was found to be in

possession of an American passport in the name of another person. Garda Kearney believed this passport to be stolen and cautioned the Applicant that he was not obliged to say anything but anything he did say may be taken down in writing and given in evidence. The Applicant was asked to give an explanation or account for having possession of the passport but could not do so.

(c) The Applicant was arrested and conveyed to Irishtown Garda Station where he was later charged and released on station bail.

**6.** Counsel for the Applicant did not cross-examine Garda Kearney and the Applicant did not go into evidence. At the conclusion of the evidence, Counsel for the Applicant sought a dismissal of the charge. He submitted that for the prosecution to prove the charge of possession of stolen property pursuant to s. 18 of the 2001 Act, it must be established beyond reasonable doubt that:

(a) The Applicant had possession of property;

(b) The property had been stolen;

(c) The Applicant had no lawful authority or excuse for possessing said property; and

(d) The Applicant was aware, or reckless to the fact, that said property was stolen.

**7.** Counsel submitted that the prosecution had failed to establish to the criminal standard of proof either that the property was stolen, and/or that the Applicant had no lawful authority or excuse for possessing the property in circumstances where no evidence had been given by the rightful owner of the property confirming same, nor had any justification been offered as to why that evidence was not available, despite evidence appearing from the prosecution that it would have been possible to track the

person down and secure that evidence if it existed. Counsel further submitted that the Applicant's *mens rea* as to whether the property was stolen did not arise in circumstances where the DPP had failed to first prove that the property was in fact stolen. Thus, Counsel submitted that all the court could be satisfied of beyond reasonable doubt was that the Applicant had possession of the property when searched. Counsel referred the court to *DPP v. Cooney* [2015] IEHC 239 and *Zadecki v. DPP* [2021] IEHC 553.

**8.** Counsel submitted that in *Zadecki,* judicial review proceedings were pursued on the basis that there was no evidence that the property in question was stolen and thus the court did not enjoy jurisdiction to convict the applicant. In *Zadecki*, the accused was found with a PPS card and Leap card in the name of two separate persons respectively. When asked for an explanation, the accused responded that they belonged to his friends but could not provide any further details. The High Court ruled in answer to that question of law that it was a case of weak evidence of the cards being stolen, but not a case of no evidence.

**9.** Counsel submitted that in contrast with *Zadecki* this was a case of no evidence, with any supposed evidence as to the property being stolen requiring significant supposition by the court and being very weak, at best, in light of the criminal standard of proof to be met. Counsel submitted that this was compounded by the fact that no evidence had been given by the supposed owner of the property and no evidence had been given by Garda Kearney as to why this was not available.

**10.** Garda Kearney, *qua* prosecutor and not witness, responded to the Applicant's submissions, reiterating his evidence and emphasising that the Applicant was given an opportunity to account for the origin of the passport under caution and had failed to do so. Counsel for the Applicant responded that it was for the prosecution to prove all elements of the offence and that to allow the suggested inference be drawn from the Applicant's exercise of his right to silence was impermissible.

**11.** Having considered the submissions, the court convicted the Applicant, summarising the submissions of both parties before determining that the prosecution had proven their case beyond reasonable doubt, with the requisite proofs under s. 18

capable of inference in circumstances where the passport was in the name of another and issued by a non-Irish body. In ruling against the Applicant, the court included in its recitation of the evidence the suggestion that the Applicant provided no explanation to the Gardaí. The court concluded its ruling by holding as follows:

> *"In this case, the item concerned which was a passport was located in -- there has been no evidence to say that item was stolen. But the Court is being asked by the prosecution to infer from the circumstances that it was, in fact, stolen because it was a document that was personal to an individual, and not only that, it was not a document that was issued within the state. Having considered the burden of proof which is beyond a reasonable doubt, not to a point of mathematical certainty, not beyond a shadow of a doubt, but beyond as reasonable doubt, I don't have a doubt in respect of the matter and in the circumstances, I am satisfied to convict the accused."*

**12.** In support of this finding the court referred to *DPP v. Cooney* [2015] IEHC 239; *Zadecki v. DPP* [2021] IEHC 553; *R. v. Sbarra* (1919) 13 Cr. App. R. 118; *R. v Fuschillo* [1940] 2 All E.R. 489; *People (DPP) v. O'Hanlon* (Unreported, Court of Criminal Appeal, 1st February 1993); *The People (DPP) v. McHugh* (2002] 1 I.R. 352; and *DPP v. Valentine* [2007] IEHC 267.

**13.** The court proceeded to sentence on the charge. In lieu of passing sentence, the charge was taken into consideration with an unrelated prosecution for which the Applicant was sentenced. Recognisance for appeal was fixed in the Applicant's own bond of €100 with €100 to be lodged.

**14.** On 20th September, 2023, (eight days later) a Notice of Appeal by way of case

stated was lodged with the registrar sitting at the Dublin Metropolitan District Court (Judge John Hughes presiding), also entering his recognisance before the court. The question posed on the case stated as drafted was:

> *Was I correct as a matter of law in finding that there was sufficient evidence before me to convict the Defendant of the offence as charged?*

**15.** The court allowed the Applicant to enter the recognisance, but the Judge indicated he was refusing to state an appeal by way of case stated, on the basis that he believed the issue to be settled and the court had applied the authorities as outlined in his judgment correctly, making particular reference to *Cooney* and *Zadecki.* His ruling, as recorded on the transcript, was in the following terms:

> *"All right, I recall Mr Dumbrell's case in relation to it. I have signed his recognisance and am refusing his application to state a case for the reasons is that I had set out on the day in question that the law set out and I applied Siddiqui [Zadecki] and the other cases, so I'm refusing it on that basis."*

**16.** The following day the case was mentioned again on the application of the Applicant. The court was asked to confirm that it was deeming the application frivolous, and the court confirmed this to be the case in the following exchange with Counsel:

> *"COUNSEL: I think the Court's response as to why it was refusing to state the case was the reasons as set out in the judgment and you were satisfied with your ruling.*
>
> *JUDGE: Yes.*
>
> *COUNSEL: Can I take it, Judge, that you're treating the question as frivolous?*
>
> *JUDGE: Yes. The - I think - to be honest with you, in respect of that term is that I note that that is the term that it must be stated as that.*
>
> *COUNSEL: Yes.*

*JUDGE: It's that I'm slow to call any legal argument as a frivolous - but for the purpose of that I am stating that on the basis that the law is well settled and that I decided the law on the basis of Zadecki v. Director of Public Prosecutions [2022] IEHC 602 and the contents that are set out in that.*

*COUNSEL: Yes. That's fine. Thank you, Judge."*

**DISCUSSION AND DECISION**

**17.** Section 2 of the 1857 Act (as extended by s. 51(2) of the Courts (Supplemental Provisions) Act, 1961) provides that where a party to proceedings determined summarily before the District Court is dissatisfied with a determination as being "*erroneous in point of law*" they may apply in writing within fourteen days after the same to the District Judge to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of the Superior Courts.

**18.** Pursuant to s. 4 of the 1857 Act, which uses language of bygone days, if a District Court judge were to:

> *"be of opinion that an application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall on request of the appellant, sign and deliver to him a certificate of such refusal. Provided, that the justice or justices shall not refuse to state a case application for that purpose is made to them by or under the direction of Her Majesty's Attorney General for England or Ireland, as the case may be".*

**19.** It appears that the Judge's discretion to refuse to state a case is curtailed and is limited to cases which the District Judge considers to be "*frivolous*". It was refused in this case because the District Judge considered the law well-settled, and he was satisfied that he had decided the case in accordance with established principles.

**20.** I have been referred to a range of authorities during written and oral submissions including *Luke v. Bracewell* (1948) 82 I.L.T.R. 123; *State (Turley) v. O'Floinn* [1968]

I.R. 245; *Sports Arena Ltd. v. O'Reilly* [1987] I.R. 185; *People (DPP) v. O'Hanlon* (unreported Court of Criminal Appeal, February 1, 1993); *Proes v. Revenue Commissioners* [1998] 4 I.R. 174; *FitzGerald v. DPP* [2003] 3 I.R. 247; *Valentine v. DPP* [2007] IEHC 267; *DPP (Lavelle) v. McCrea* [2010] IESC 60; *DPP v. Clifford* [2013] IESC 43, [2013] 2 I.R. 396; *DPP v. Cooney* [2015] IEHC 239; *Donnelly v. Ireland* [2015] IEHC 125, [2015] 4 I.R. 406; *DPP v. Pires* [2018] IESC 51; *DPP v. Taylor* [2018] IESCDET 139; *DPP v. CC* [2019] IESC 94; *DPP v. AC* [2021] IECA 100; *Zadecki v. DPP* [2022] IEHC 602; *NTA v. Anderson* (unreported, High Court, September 25, 2024); *R. v. Newport (Salop) Justices* (1929) 93 J.P. 179 and *R. v. Fuschillo* [1940] 2 All E.R. 489.

**21.** The starting point for my consideration must be that the Applicant enjoys a statutory right of appeal, be it to the Circuit Court under the Courts of Justice Act, 1924 or the High Court pursuant to ss. 2 and 4 of the 1857 Act, subject in the case of an appeal under s. 4 of the 1857 Act to a condition that the appeal not be "*frivolous*" in the opinion of the District Judge. It is established that where a judge refuses to state a case which is in fact, not frivolous, an applicant is entitled to an order of *mandamus,* compelling him or her to do so (see S*tate (Turley) v O'Floinn*) As reiterated in *Sports Arena Ltd. v O'Reilly* (Blayney J.) in reliance on S*tate (Turley) v O'Floinn*, it is open to the High Court on such an application to form its own opinion as to whether the application for a case stated was frivolous.

**22.** In this case, the Applicant elected to proceed by way of case stated to the High Court, rather than appeal to the Circuit Court. His right to do so can only be circumvented where the question of law is frivolous. The question which the Applicant seeks to raise is as to whether there was a sufficiency of evidence to support a conviction in this case. There is ample authority for the proposition that the adequacy of evidence is a question of law or mixed question of law and fact. The leading authority in this regard is *State (Turley) v O'Floinn* where O'Dalaigh C.J. held that the question of whether there was sufficient evidence in law to support a conviction was not a question of fact, but of law. Given that there was a stateable question of law to be decided in that case as to sufficiency of evidence to support a conviction, he was satisfied that the application for a case stated could not be regarded as merely frivolous, and held that the prosecutor was entitled to have the issue determined by the High Court by

way of a case stated.

**23.** Moreover, whether there is evidence to support a finding of fact is also a question of law *(Luke v. Bracewell* (1948) 82 I.L.T.R. 123; *FitzGerald v. DPP* [2003] 3 I.R. 247; *DPP (Lavelle) v McCrea* [2010] IESC 60, at para. 25; *DPP v Pires* [2018] IESC 51, at para. 25). In *Luke v Bracewell*, Andrews L.C.J. stated that the question as to whether there is any evidence to support a finding of fact "*is itself a matter of law*".

**24.** The importance of the question constituting a "*question of law*" as a precondition of the jurisdiction to state a case was emphasised in the judgment of Hardiman J. in *FitzGerald v. DPP* where he stressed that such an appeal is not available where a party is dissatisfied with the decision of the District Court on the grounds that the judge has taken one view, rather than another, of the evidence or has accorded credence to one witness and withheld it from another. Instead, where a defendant is dissatisfied on these grounds, he may appeal by way of rehearing to the Circuit Court. Hardiman J. went on to say that while the question of whether there is sufficient evidence in law to support a conviction is not a question of fact, but of law. He explained that this is because the ingredients of an offence are always known as ascertainable and the question of whether there is evidence to support the existence of each of them is a wholly legal question. On the other hand, where the concern is with the inferences of fact which may be drawn from evidence, this is not a question of law but of fact. He identified as a useful method of approaching the issue of whether the question raised related to a matter of fact or of law is to ask if the case were being tried by judge and jury, would the issue be for determination before the judge or for the jury.

**25.** In *Proes v Revenue Commissioner,* the High Court (Costello P.) identified principles to be applied on a case stated identifying inferences from primary facts as mixed questions of fact and law and where the trial judge adopted a wrong view of the law, his conclusions should be set aside. He added that if a trial judge's conclusions are not based on a mistaken view of the law, they should only be set aside if he drew inferences which no reasonable judge could draw.

**26.** A similar conclusion to that in *State (Turley) v O'Floinn* as reached by Birmingham J. (as he then was) in *DPP v. Valentine* when he found that the High Court should not entertain a case stated involving a determination of issues of fact, but the question of whether there was sufficient evidence in law to support a conviction, was a question of law. Applying the approach developed by Hardiman J. in *FitzGerald v. DPP*, he observed that had the case which was heard by the District Judge been dealt with by judge and jury, the question of whether there was evidence to establish one of the ingredients, namely whether the property appropriated was owned by the entity referred to on the indictment and whether the appropriation was without the consent of the owner, would have been a matter for the trial judge. He was reinforced in this view by the fact that the issue was raised with Judge Watkin as an application for a direction at the close of the prosecution case.

**27.** In *DPP v Pires & Ors.* [2018] IESC 51, the Supreme Court (Dunne J.) reconsidered the limited scope of an appeal by way of case stated. The court rejected the submission made in that case wherein the question posed, which turned on whether the District Court judge had correctly applied the principles in *DPP (Moyles) v. Cullen* [2014] IESC 7 to the facts of the three cases before the District Court, was an impermissible review of the findings of fact made by the District Judge, outside the scope of the case stated procedure. She was satisfied that the question raised was one which properly came within the scope of the case stated procedure.

**28.** Based on the foregoing I have concluded that the question identified by the Applicant is a question of law which is amenable to resolution by way of case stated. If the case were being tried by judge and jury, the issue of whether the matter could go to the jury by reason of insufficiency of evidence would be one for the judge. A question would only arise for the jury where a judge had refused a direction on being satisfied as to a sufficiency of evidence. Accordingly, I am satisfied that the question posed is a question of law and the real issue on this application is whether this question is rendered frivolous because the law is clear and settled.

**29.** In *FitzGerald v. DPP* the Supreme Court considered circumstances in which a question might be considered "*frivolous*". The Court found that a question could be deemed frivolous where no question of law arose or where it would be pointless in the circumstances to grant the request for a case stated, for example, where the same question had already been asked and answered. At p. 254, Keane C.J. commented that the purpose of the provision to decline to state a case on the grounds of it being frivolous was:

> " *...on the ground that a determination was erroneous in law is not abused by litigants pursuing pointless appeals with no prospect of success and consequences in both costs and delay".*

**30.** A case stated may be frivolous on the basis that an issue of law arises, but that the issue has been determined and no argument is possible *(R. v. Newport (Salop) Justices* (1929) 93 J.P. 179, at p. 180; *FitzGerald v. DPP* [2003] 3 I.R., 247, at p.267 *per* Hardiman J.). It is indeed submitted on behalf of the DPP that the District Judge correctly concluded that the law is settled and proceeded to convict on the basis of established principles, and that the question of law presented is vexatious. In arriving at this conclusion, the Judge referred most especially to the findings in *DPP v. Cooney* [2015] IEHC 239 and *Zadecki v. DPP* [2022] IEHC 602 when delivering his decision to convict the Applicant.

**31.** Both these cases concerned challenges to convictions by way of judicial review on the basis of weak evidence. In *Cooney*, the issue was raised by consultative case stated, whereas *Zadecki* was a challenge by way of judicial review to a conviction based on weak evidence. The issue identified as a question of law on behalf of the Applicant is indeed very similar to the issues raised in those cases, in that it asks whether there was a sufficiency of evidence to convict, however, the factual underpinning and the way the question is raised is different when compared with both *Cooney* and *Zadecki*.

**32.** In *Cooney,* the District Court judge was satisfied to refer questions to the High Court by way of consultative case stated, asking if the Court could convict absent irrefutable evidence that the property was taken without the consent of its owner – self-evidently a different question to that which arises here. The evidence comprised of

contradictory explanations from the accused in relation to his possession of a bicycle with identification markings deliberately obliterated. The contradictory statements were considered material and Noonan J. observed as follows (at paras. 18-19):

> *"In the present case, if the only evidence against the defendant was that he had reservations as to whether or not the bicycle was stolen, that would not be a sound basis for sustaining a conviction. Without more, it would not amount to satisfactory proof beyond a reasonable doubt that the bicycle was stolen. However, it seems to me that the evidence in this case goes significantly further. When challenged, the defendant gave mutually contradictory accounts of his possession of the bicycle, the latter of which, as clearly highly suspicious i.e. that he had purchased the bicycle from an unknown youth for €30. In addition to that, there was objective evidence that the bicycle was highly likely to have been stolen at some point having regard to the fact that the identification markings on it had been deliberately obliterated."*

**33.** In placing weight on these contradictory accounts, the Court found that there was more than ample evidence of a circumstantial nature before the District Court which could justify any reasonable person in concluding that the property in question was in fact stolen.

**34.** In *Zadecki,* the accused person had also provided contradictory accounts in relation to his possession of a PPS card and a Leap card in two different names. While relief was ultimately refused by the High Court in *Zadecki* because the court was satisfied that the evidence, although weak, was not so weak as to deprive the District Court of jurisdiction to convict having regard to authorities such as *Sweeney v. DPP* [2014] IESC 50 which establish that the court will only intervene to find a want of jurisdiction on the basis of want of evidence in "*extreme cases*", it is of some significance that Simons J. was nonetheless satisfied that the threshold of arguable grounds had been met in granting leave to proceed by way of judicial review. In *Zadecki,* there were two cards that could not have belonged to one person. The court was entitled to draw an inference from the applicant's cautioned remarks. Here there is no such evidence. Fundamentally in *Zadecki* the issue was one of jurisdiction, rather than adequacy of evidence.

**35.** In my view, the facts in this case while similarly involving a case of weak evidence (necessarily conceded as such on behalf of the DPP), are not directly comparable with the facts in either *Cooney* or *Zadecki*. The evidence here does not include a contradictory account of how the Applicant came to be in possession of the allegedly stolen passport which might have been relied upon to infer guilt, unlike either of the other two cases. In distinction to each of the other two cases, this case stands or falls on the unexplained possession of a foreign passport in a different name alone. Counsel for the Applicant submits that it is not open to infer guilt from a lack of explanation being forthcoming in the prosecution of an offence under s. 18 of the 2001 Act.

**36.** The potential significance of inculpatory or contradictory statements is well-illustrated by the case of *R. v. Fuschillo* cited on behalf of the Applicant. In that case, a conviction for feloniously receiving a substantial quantity of sugar (then a rationed commodity) was upheld although, apart from the Appellant's own statements, there was no evidence of the ownership of the sugar or of the fact that it had been stolen. When caught the appellant remarked "*I don't know why I took it in. I'm a fool. This means going away*". When asked about its provenance he said, "*Be satisfied, and take it away, but don't take me*". He later said "*Can't we do something about this? For the old lady's sake, take the stuff away, and don 't charge me.*" This was held to be sufficient evidence of the property being stolen.

**37.** By contrast with *Cooney* and *Zadecki*, there was nothing said by the Applicant to the Garda in this case which would allow the court to infer the material was stolen. It is impermissible to draw any inference from the Applicant's silence in the absence of any of the circumstances provided for in legislation which permit an inference to be drawn (such as ss. 18, 19, 19A of the Criminal Justice Act, 1984 or s. 9(6) of the Firearms and Offensive Weapons Act, 1990, which allows for an inference to be drawn from a failure to give an explanation where an individual is found in possession of a knife and the constitutionality of which was considered in *Donnelly v Ireland* [2015] 4 I.R. 406, in view of the presumption of innocence and the right to silence). However, no such provision is to be found in s. 18 of the 2001 Act as would allow an adverse inference to be drawn from the silence of the Applicant.

**38.** The absence of a statement from which inferences may properly be drawn seems to me to be a potentially material point of distinction between this case and each of the earlier two cases of *Cooney* or *Zadecki*, where it was permissible to have regard to the contents of the statements made thereby adding to evidence of "*suspicious*" possession alone. In so finding, I do not ignore that in making his ruling in this case, the District Judge did not draw an inference from the Applicant's silence, although he did recite the fact that he had given no explanation. While it may well be found that the ruling in this case was not tainted by an improper inference drawn from the Applicant's failure to explain how he came to be in possession of the American passport, it seems to me that an issue as to the sufficiency of evidence remains either way. Although *Cooney* and *Zadecki*, relied upon by the District Judge in making his ruling and in refusing to state a case, are related cases with similar issues, the question posed as to the adequacy or sufficiency of evidence to ground a s. 18 conviction where the accused is in possession of an item with no other evidence in the form of inferences from contradictory statements made or other evidence, means that an issue arises as to whether there is sufficient evidence to support the conviction for theft.

**39.** The Applicant has foregone an automatic right of appeal to the Circuit Court in favour of a statutory right of appeal, in respect of a contended erroneous finding of law which is subject only to a threshold of frivolity. As a limitation on his right of appeal, the threshold for what constitutes a frivolous argument should not, in my view, be elevated in a manner which would frustrate the Applicant pursuing a stateable argument that the evidence in this case was simply so inadequate or weak that it is insufficient as a matter of law to ground a conviction. A threshold of non-frivolity is not a burdensome threshold and I do not have to be satisfied that it is an issue upon which the Applicant is likely to succeed. To be non-frivolous, it is not required that an argument be more than stateable or arguable.

**40.** Given my view that the threshold is necessarily a low threshold, I am satisfied that the question of law which has been identified on behalf of the Applicant in the draft case stated cannot properly be considered "*frivolous*" within the meaning of s. 5 of the 1857 Act.

**CONCLUSION**

**41.** In my opinion, the District Judge erred insofar as he failed to acknowledge that it is arguable that the facts in this case do not support a conviction in reliance on inferences open on the evidence in the manner seen in *Cooney*, *Zadecki* and other cases cited by him. As the application for a case stated cannot properly be considered frivolous, I am satisfied that the District Court did not enjoy a jurisdiction to refuse the Applicant's application to state a case. Accordingly, I propose to grant an order of *mandamus* directing the District Court to state a case and/or a rule under s. 5 of the 1857 Act. I will hear the parties in relation to the form of the order and any related or consequential matters.