IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

24th February, 1988

Before: Commissioner P.R. Le Cras
assisted by Jurats P.G. Baker
and Mrs M.J. Le Ruez

BETWEEN	Gordon Clifford Laurens	PLAINTIFF
AND	The Jersey Mutual Insurance Society	DEFENDANT

Interlocutory judgment on the defendant's application to amend its answer by the addition thereto of two new paragraphs. The plaintiff is 76 years of age .

Advocate J.G. White for the plaintiff
Advocate R.J. Michel for the defendant

JUDGMENT

COMMISSIONER LE CRAS: The principles, on which leave to amend pleadings is given, are well set out, first in very brief form in the Royal Court Rules and at rather greater length in the Rules of the Supreme Court. In view of the similarity between the two sets of rules on this point, the Court has had no hesitation in taking into account the English cases which have been cited

by counsel. There is no necessity to go through them in detail other than to say that it is clear that this is a matter for the discretion of the Court. The Rules guiding this discretion are set out in detail in the Rules of the Supreme Court, Order 20/5, 8/6, and I read from them:

"It is a guiding principle of cardinal importance on the question of amendment that generally speaking all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings". (See the remarks of Jenkins LJ., in G.L. Baker Ltd -v- Medway Building and Supplies Ltd [1958] 1 WLR 1216 p.1231; [1958] 3 All ER 540, p.546).

"It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights... I know of no kind of error or mistake, which if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy and I do not regard such amendment as a matter of favour or grace... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right".

Those are the remarks of Bowen LJ., in the case of Cropper -v- Smith (1883) and agreed with by A.L. Smith LJ., in 1896. In another old case, Tildesley -v- Harper, Bramwell LJ., said:

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting 'mala fide' or that by his blunder he had done some injury to his opponent which could not be compensated for by costs or otherwise". And again: "However negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without

injustice to the other side. There is no injustice if the other side can be compensated by costs". That was Master of the Rolls, Lord Brett, in Clarapede -v- Commercial Union.

The point was further considered recently in the House of Lords in Ketteman -v- Hansel Properties Ltd (1987) 2 WLR at p.312. The passage was cited to us at p.339, and I read that passage beginning at 'E':

"Mr Ogden submitted that the authorities obliged the Judge to allow an amendment no matter how late it was made, nor for what reason, provided the other party could be properly compensated by an award for costs".

He relied upon the authorities set out in the Supreme Court Practice and in particular the decision of Lord Brett, the Master of the Rolls, in Clarapede -v- Commercial Union Association, which I have just cited.

"This was not a case in which an application had been made to amend during the final speeches and the Court was not considering the special nature of the limitation defence. Furthermore, whatever may have been the rule of conduct one hundred years ago, today it is not the practice invariably to allow a defence which is wholly different from that pleaded to be raised by amendment at the end of the trial, even on terms that an adjournment is granted and the defendant pays all the costs thrown away. There is a clear difference between allowing amendments to clarify the issues in dispute and those that permit a distinct defence to be raised for the first time. Whether an amendment should be granted is a matter for the discretion of the trial Judge and he shall be guided in the exercise of the discretion by his assessment of where justice lies. Many and diverse factors will bear upon the exercise of this discretion. I do not think it possible to enumerate them all or wise to attempt to do so, but justice cannot always be measured in terms of money and in my view a judge is entitled to weigh in the balance the strain the litigation imposes on litigants, particularly if they are personal litigants rather than business corporations. The anxieties occasioned by facing new issues, the raising of false hopes and the legitimate expectation that the trial will determine the issues one way or the other. Furthermore, to allow an amendment before a

trial begins is quite different from allowing it at the end of the trial to give an apparently unsuccessful defendant an opportunity to renew the fight on an entirely different defence. Another factor that the judge must weigh in the balance is the pressure on the Courts caused by the great increase in litigation and the consequent necessity that in the interest of the whole community, legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age. There will be cases in which justice will be better served by allowing the consequences of the negligence of the lawyers to fall upon their own heads rather than by allowing an amendment at a very late stage in the proceedings".

In all these questions the Court has to consider the balance as between the parties and here it is quite clear that the Court has to consider the balance between the strain on Mr Laurens, Senior, and the determination of the real question in controversy. The circumstances in which the application has been made at a late stage are perfectly clearly before us and have been put to us by counsel for the defendant.

In the present circumstances, the Court has come to the conclusion that, notwithstanding the late application and the effect which this application has on Mr Laurens, the interests of justice require that the defendant be permitted to amend its defence in the manner sought by its counsel.

Authorities referred to in the judgment:-

The Supreme Court Practice (1988 edition) Order 20/5 - 8/6. In particular the following cases:-

G.L. Baker Ltd -v- Medway Building and Supplies Ltd (1958) 1 WLR 1216 at p.1231.

Cropper -v- Smith (1883) 26 Ch.D at p.719 - 711.

Shoe Machinery Co -v- Cultan (1896) 1 Ch. at p.112.

Tildesley -v- Harper, 10 Ch. D pp.396, 397.

Clarapede -v- Commercial Union Association 32 W.R. p.263.

Ketteman -v- Hansel Properties Ltd (1987) 2 WLR at pp.312, 339 (letter 'E').

Other authorities referred to in relation to the application:-

The Supreme Court Practice (1988 edition) Order 20/5 - 8/11 and Order 20/5 - 8/12.

Adams -v- Naylor (1946) 2 All ER 241.

The Supreme Court Practice (1988 edition) Order 18 r. 19.

Sun Life Assurance -v- Jervis (1944) 1 All ER 469.

Windsor Refrigerator -v- Branch Nominees (1961) 1 All ER 277.

Sumner -v- William Henderson & Sons (1963) 2 All ER 712.

Avon C C -v- Howlett (1983) 1 All ER 1073.

Ainsbury -v- Millington (1987) 1 All ER 929.

Broad Street Investments -v- National Westminster Bank (1985-86) JLR 6.

Bullen and Leake on Pleading (chap. 11 - amendment of pleadings), pp. 123, 124, 125, 131 and 132.

Moss -v- Malings 1886 CHD 603.