ame ROYAL COURT (INFERIOR NUMBER) 15pages.

15th August, 1989.

Before Mr. V. A. Tomes, Deputy Bailiff
Jurat M. G. Lucas
Jurat D. E. Le Boutillier

Vekaplast Heinrich Laumann K.G., Plaintiff,

- v -

T. A Picot (C.I.) Limited, and

Vekaplast Windows (C.I.) Limited, Defendants

Advocate Mrs. M. E. Whittaker for the Defendants
Advocate C. M. B. Thacker for the Plaintiff

This was an application, by means of a Summons, whereby the defendants sought leave to appeal against the order of the Court of the 21st August, 1986, on three grounds:-

"1. That at the time of the original action there was insufficient discovery of documents to the Court; and that such is now available and should have been available in order for the Court to reach a just and fair decision.

2. That the Court failed to consider adequately such documentary evidence as was submitted in the light of oral evidence given during the hearing.

3. That the Order of the Court was wrong in law having regard to all the circumstances of the case."

During the hearing it became apparent that ground 1 referred only to a single letter, referred to as "crucial" by counsel for the defendants. It was now conceded that although the letter in question had not been referred to specifically during the trial of the action, it had been included in the list furnished by the plaintiff in accordance with Rule 6/16(1) of the Royal Court Rules, 1982, (the Rules) relating to discovery and inspection of documents and had thus been available for inspection by the defendants, who were entitled to take a copy, in accordance with Rule 6/16(4) of the Rules. Accordingly, ground 1 of the grounds of appeal was withdrawn.

Mrs. Whittaker also conceded that, the order made being a consent order, (a matter to which we shall return later), ground of appeal 2 was wrong in that the Court, not having had to consider its decision, could not be said to have failed to consider anything. She therefore amended, without objection,

ground 2 to claim "that the Court was not given the opportunity to consider adequately such documentary evidence as was submitted in the light of oral evidence given during the hearing".

By agreement, therefore, the Court had to decide whether or not to grant leave to appeal on the basis of ground 2 (as amended) and ground 3 alone. In the event, Mrs. Whittaker did not address us on ground 2, as amended, and the application proceeded on the basis of ground 3 alone.

The Act of the Court of the 21st August, 1986, is defective, in that it fails to record the fact that the defendants, through their counsel, conceded that they could not maintain a defence to paragraph (a) of the prayer of the Order of Justice and that it followed that the plaintiff was entitled to an order in the terms of paragraph (a); furthermore that the defendants could not realistically oppose additional orders in the terms of paragraph (c) of the prayer provided paragraph (c) was sub-divided to restrict the order against the second defendant to the Bailiwick of Jersey.

Effectively therefore, with the exception of the order as to costs, the order of the 21st August, 1986, was a consent order. The defendants acknowledged this to be the case.

Article 13 of the Court of Appeal (Jersey) Law, 1961, (the Law) provides for limitation on appeals, the relevant part of which reads:-

"No appeal shall lie under this part of this Law .....

(c) without the leave of the Court making the order, from any order -

(i) made with the consent of the parties;

or

(ii) as to costs only which by Law are left to its discretion".

Hence the present application.

Because the Inferior Number of this Court made the order, it is the leave of the Inferior Number that is required by the defendants; it is arguable whether leave is required from the Court that made the order, constituted as it was when the order was made (v. Warren -v- T. Kilroe & Sons Ltd. and another (1988) 1 All E.R. 638 which turned on S 18(1)(h) of the Supreme Court Act 1981, which provides that no appeal shall lie without the leave of the Court or tribunal "in question" as opposed to leave of the Court "making the order" in Article 13(c)). Because of the delay on the part of the defendants it was not presently possible for the Court to sit as consitituted on the 21st August, 1986,

Jurat Misson l g since retired. But the Court sat constituted as nearly as possible the same, as both the Deputy Bailiff and Jurat Le Boutillier sat with Jurat Misson, so that a majority of the Court was the same, with Jurat Lucas replacing Jurat Misson.

Rule 3 of the Court of Appeal (Civil) (Jersey) Rules, 1964, (the Appeal Rules), requires that every notice of appeal shall be served within one month from the date on which the judgment or order of the Court was pronounced.

Whilst the Court of Appeal or a judge thereof has power to enlarge the time appointed by Rule 3 - and if the present application had been successful the learned Bailiff would have sat in Chambers, as a single judge of the Court of Appeal, to make an order enlarging time - the fact that the application for leave to appeal was out of time by nearly three years is a factor which, in our opinion, could have been taken into account by this Court. If it were not for the separate provisions of the Law and the Appeal Rules, an application for an extension of time for appealing where leave to appeal is also required should be treated as a composite application for leave to appeal and for an extension of time and should be made to the same Court or Judge (v. Supreme Court Practice (the White Book) 1988, p.865, 59/4/4.) We recommend that the necessary amendments should be made to the Law and/or Appeal Rules to allow for this. An application to enlarge the time for an appeal when the litigant has had his trial and lost should not generally be granted unless there is material on which the Court can exercise its discretion (Ratnam -v- Cumarasamy (1964) 3 All E.R. 933 P.C.).

However, Mr. Thacker did not address the question of delay before us and it did not form any part of our decision in the present case.

At the conclusion of the hearing we unanimously dismissed the application for leave to appeal and said that we would reduce our reasons into writing later, which we now do.

Because the Rules and the Appeal Rules are substantially in accord with the Rules of the Supreme Court, it is usual and proper to have regard to the Supreme Court Practice (the White Book) and to English cases.

Mrs. Whittaker relied on paragraph 59/14/7 of the White Book, at page 900, as follows:-

> "Circumstances in which leave granted. The Court of Appeal will grant leave if they see a prima facie case that an error has

been made (see (1907) 123 LTJ. 202) or if the question is one of general principle, decided for the first time (Ex p. Gilchrist, re Armstrong (1886) 17 Q.B.D. 521, per Lord Esher M.R. p528), or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see per Bankes L.J., in Buckle v Holmes (1926) 2 K.B. 125 P.127)"

She claimed that all three of those grounds applied to the defendants' application. Therefore, the Court must deal with each of those grounds.

1. **Prima facie case that an error has been made:** Counsel claimed a fundamental error on the part of Advocate R.J. Michel, counsel who had represented the defendants in 1986, and submitted that he had conceded the issue of ownership of the trade marks and names "Vekaplast" and "Vella" and "Vekaplast Windows", against the wishes of Mr. Terence Allan Picot, the managing director of the defendants and, indeed, not merely without instructions from Mr. Picot to do so but directly contrary to his instructions not to do so. Mrs. Whittaker claimed that this occurred in the middle of the cross-examination of Mr. Picot, as if he had been taken by surprise; that at the time the defendants had very little knowledge of the law and were reliant upon counsel's advice; that Mr. Picot was unaware of the full implications of what was being agreed by the defendants' counsel at the time; that Mr. Picot is hard of hearing and at the time did not have hearing aids and that some of what was happening "went over his head", although he was aware of the gist of it; that Mr. Picot had already indicated to Mr. Michel before the trial of the action resumed on the 19th August, 1986, that he did not wish to concede the issue of ownership; that Mr. Picot was not happy with what was done at the time and that the defendants were left with a feeling that justice had not been done.

Mrs. Whittaker conceded that Mr. Picot was present at the time; that perhaps he should have stopped Mr. Michel from conceding the case; that the matter was not an easy one; and that the major hurdle to be overcome by the defendants was that the order was made by consent. Nevertheless, she argued, it was a proper case for appeal even against an order made by consent because of the fact that the evidence had been more or less completed and the case should not have been conceded at such a very late stage, because legal submissions might well have caused the Court to reach a different conclusion. The consent order had been made on a number of legal premises that were wrong and the defendants sought leave on the basis that they felt that in all the circumstances of the case, the consent order was wrong; the defendants

should be given the opportunity of presenting their case on appeal and receiving an adjudication; it would be open to the Court of Appeal at the end of the day to adjudicate on the case itself or order a new trial. Counsel said that she had been unable to find any case where an appeal had followed a consent order.

Mr. Thacker argued, but submitted no authority to support his argument, that the error referred to in the White Book must be an error of the Court, in the judgment, and could not be an error of counsel. He further submitted that a consent order could not fall into error unless the order made was ultra vires or contained some similar defect. Mrs. Whittaker, who similarly failed to produce any authority, maintained that the error could be on the part of counsel and that, where there was an obvious error, the Court could use its discretion to have the error taken into consideration by the Court of Appeal.

The Court has made its own researches: The reference (1907) 123 LT.J. 202 is to a page of the Law Times June 29, 1907. It is not a report of a case or practice direction as such, but is included in the column "Occasional Notes" (p 201) which contains "all sorts of useful information". The relevant extract reads:-

> "In the Court of Appeal on Wednesday, in an application for leave to appeal from the judgment of the Divisional Court on appeal from a County Court, the Court said that they required a note of the judgment of the Divisional Court before they decided whether to give leave to appeal or not. Lord Justice Vaughan Williams said that in applications for leave to appeal from the Divisional Court in County Court cases he felt that it was desirable to have before them the grounds of the decision of the Divisional Court. The Act of Parliament had made the Divisional Court (the Court) of Appeal in County Court cases, and it was not sufficient for giving leave to appeal that this Court might have come to a different conclusion. In his opinion, unless they could see that there was a clear case of something having gone wrong, they ought not to give leave to appeal." The underlining is ours.

That does not settle the question whether an error by counsel, as opposed to an error by the Court, can justify leave. But it seems to us that "a clear case of something having gone wrong" must include an error on the part of counsel.

In a recent case in the Court of Appeal, Criminal Division, R v Ensor, March 14, 1989, Crim. L.R. 562 the Court said that:-

" in general the Court would not regard as a ground of appeal an allegation that trial counsel took a decision which later turned out to have been mistaken (R v Novac & others (1977) 65 Cr. App. R 107 and R v Gautum February 27, 1987, (1988 Crim. L.R. 109 followed; R v Irwin February 19, 1987 distinguished.) However the Court accepted that if a lurking doubt existed that an appellant had suffered an injustice as a result of flagrantly incompetent advocacy the conviction should be quashed (R v Swain March 12, 1987, (1988 Crim. L.R. 109 (Note).)"

In the present case, the defendants do, in effect, allege that they have suffered an injustice. The Court's researches show that in cases where counsel has exceeded his authority or acted contrary to instructions, the Court can interfere.

Neale v Gordon-Lennox (1900-3) All E.R. Rep 622 HL decided that where counsel has authority from his client to agree to a reference (to arbitration) upon certain conditions, and he disregards such limitations and agrees to an order of reference unconditionally, the Court has a discretion not to enforce such order against the wish of the client. But in that case the facts were undisputed. Counsel had obtained in writing from his client a distinct consent upon certain terms. The condition was one of supreme importance to the client. Without further authority, counsel had ignored the essential condition of the bargain by which the case was referred.

In Marsden v Marsden (1972) 2 All ER 1162 Fam.D., in the course of a hearing of a petition for divorce, counsel for the wife, contrary to express instructions, undertook on her behalf to release a charge on the matrimonial home and to abandon her interest therein. Furthermore, against express instructions not to do so, he entered into an agreement with counsel for the husband providing for the maintenance of the wife and children. The agreement was presented to the Court by both counsel and the judge made an order in terms of the agreement. The wife applied to the Court to set aside the order. The Court granted the application on, inter alia, the ground that in cases, unknown to the other party, where the usual authority of counsel was limited by express instructions and counsel had nevertheless entered into a compromise for which he had no authority, the Court had power to interfere and might, in the exercise of its discretion, set aside the compromise and order based on it if grave injustice would be done by allowing the

compromise to stand. In that case the judge received affidavits and oral evidence from the wife and her solicitor, and her previous counsel, aware of the contents of the affidavits and of the date, time and venue of the making of the application, failed to appear or to put in evidence in any form.

At p.1165, Watkins, J, said this:

"With regard to the circumstances in which the Court should interfere to set aside an order based on a compromise, I have been referred to a number of authorities. They all show that the Court should view such applications as this with extreme caution and the Court will not grant such an application except in a case which calls clearly for interference with the order made. It is a discretionary remedy to be exercised with care and with regard to the injustice or otherwise of allowing an order to stand."

In Purcell v F.C. Trigell Ltd. (1970) 3 All E.R. 671 the Court of Appeal considered whether, on appeal, assuming the Registrar to have given leave, it could set aside a consent order. The Court held that there was no ground for setting aside the consent order, for a consent order, whether interlocutory or final, must be given full contractual effect and could only be set aside (Lord Denning MR differing) on grounds which would justify setting aside a contract, and in that case no such grounds existed. Lord Denning differed only on the ground that there was a larger discretion as to orders made on interlocutory applications than as to those which are final judgments. In the present case we are dealing with a final order and thus the Court of Appeal was unanimous that no appeal lies from an order made with the consent of the parties, except in circumstances in which a contract may be set aside or varied, such as mistake, misrepresentation, and so forth.

However, in Siebe Gorman & Co. Ltd. v Pneupac Ltd. (1982) 1 All E.R. 377 the Court of Appeal considered the meaning of a 'consent order'. At page 380 Lord Denning MR, said this:

"We have had a discussion about 'consent orders'. It should be clearly understood by the profession that, when an order is expressed to be made 'by consent', it is ambiguous. There are two meanings to the words 'by consent'. That was observed by Lord Greene MR in Chandless-Chandless v Nicholson (1942) 2 All E.R. 315 at 317. One meaning is this: the words 'by consent' may evidence a real contract between the parties. In such a case the Court will only interfere with such an order on the same grounds as it would with any other contract. The other meaning is this: the words 'by consent' may mean 'the parties hereto not objecting'. In such a case there is no real contract

between the parties. The order can be altered or varied by the Court in the same circumstances as any other order that is made by the Court without the consent of the parties. In every case it is necessary to discover which meaning is used. Does the order evidence a real contract between the parties? Or does it only evidence an order made without objection?"

An example of a consent order being negatived by misrepresentation is to be found in Thorne v. Smith (1947) 1 All E.R. 39. In that case a landlord's claim for possession of a house within the Rent Restriction Acts specified no grounds, but over a long period the landlord had repeatedly stated by letter to the tenant that he wanted possession for himself and had convinced the tenant of the truth of his statement. In the circumstances, the tenant, on the advice of his counsel, consented to judgment for possession. The tenant vacated the house, and the landlord on the same day inspected the house, but instead of taking steps to enter into occupation he gave instructions to house agents to sell the house and in due course it was sold with vacant possession. In an action by the tenant under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, S.5(6), for a declaration that the order giving the landlord possession of the house was obtained by misrepresentation and/or the concealment of material facts and that he was entitled to recover compensation for damage or loss sustained by him as the result of the order, the county court judge, though satisfied that on the merits the tenant had fully established a right to substantial damages, gave judgment for the landlord on the ground that a claim which was based on an order obtained by consent where there had been no hearing by the Court was not competent under S.5(6). The Court of Appeal held that the landlord had obtained the order for possession by misrepresentation within S.5(6) and the tenant was entitled to damages. At page 41, Scott L.J. said this:-

"If the misrepresentation was fraudulent, the tenant who had submitted to a consent judgment because of the landlord's representation that he wanted the house for his own occupation could have brought a common law action for damages for deceit and the consent judgment would have been no defence. In addition, he would have been entitled to have that judgment set aside by bringing an action for the purpose, and the two causes of action could have been included in the one writ. In the second place, even without an allegation and proof of fraud, if the judgment had been obtained by innocent misrepresentation, the tenant could in equity have had the judgment set aside, as in the case of any contract obtained by misrepresentation..."

In Wilding v. Sanderson (2) (1897) 2 Ch. 534, at p. 550, Lindley, L.J., said:

"It was conceded, and in my opinion it is clear, that the order of Nov. 23, 1894, being a consent order based on and intended to carry out an agreement come to between the parties, ought to be treated as an agreement, which could be properly set aside on any ground on which an agreement in the terms of the order could be set aside. Mistake is one of such grounds".

It is regrettable that none of the foregoing authorities was put to the Court by counsel but the Court appreciates that members of the Jersey Bar are extremely busy and that time is limited. Nevertheless, it would have been helpful if the Court could have had the benefit of being addressed by counsel on the authorities.

The Court has come to the following conclusions:-

1. Leave to appeal may be granted if the Court can see a prima facie case that an error has been made, whether that error has been made by counsel or by the Court; the test is that there must be a clear case of something having gone wrong.

2. Where there is a consent order, the Court must view an application for leave to appeal with extreme caution and the Court should not grant the application except in a case which calls clearly for interference with the order made.

3. In the present case the consent order is to be regarded as having full contractual effect. It was not an order upon an interlocutory, preliminary or procedural matter. It was intended to dispose of the action in its entirety. When the Court was asked for an adjournment it was with a view to settlement and the Court was told that it might be needed only to ratify an agreement upon which the parties could dispense with the action. We are satisfied that the consent in this case evidenced a real contract between the parties and was not a case of 'the parties not objecting'.

4. The Court is not satisfied that the defendants have suffered an injustice. A prima facie case that an error was made has not been made out by the defendants. The Court does not accept that Mr. Picot was taken by surprise. A stage was reached in his evidence when it seemed clear that he was claiming a right of user rather than proprietorship of the trade marks and names. Mr. Thacker had discussions with his clients and with Mr. Michel. At the request of

the parties the Court then granted a formal adjournment ...il 2.30 o'clock in the afternoon on the basis that the Court ... uld probably be asked to ratify an agreement between the parties to dispose of the action; Mr. Michel informed the Court that probably only costs would be in dispute at that stage. At 2.30 p.m. Mr. Michel conceded paragraphs (a) and (c), with qualifications, of the prayer of the Order of Justice and Mr. Thacker withdrew paragraph (b). The Court then heard arguments on the matter of costs and retired. When the Court returned it delivered an order which clearly is in two parts: 1) the agreed position on paragraphs (a) (b) and (c) and 2) its decision on paragraph (d), described as "the only real dispute this afternoon", relating to costs. Mr. Picot was present in Court throughout the proceedings. Of course, the Court has no knowledge of the extent to which Mr. Picot was concerned in the discussions and negotiations inter partes or of the extent of consultations between Mr. Michel and Mr. Picot. Instructions given prior to that day are not, in our view, relevant. We are not satisfied that Mr. Picot was not fully aware of what was being done in the name of the defendants on that day. The Deputy Bailiff and Jurat Le Boutillier, who sat throughout the trial of the action, cannot accept the submission that the case as regards ownership of the trade marks and names should not have been conceded at such a late stage or that legal submissions might well have caused the Court to come to a different conclusion. Their view is that the case for the plaintiff on the issue of ownership was overwhelming and clearly apparent early on during the May hearings. As the Court said in its decision on the question of costs, in the unanimous view of the Court there never could be a valid argument that the plaintiff did not own the trade names worldwide long before the action was commenced and the claims to ownership contained in the answer were never tenable.

The defendants made a very seriousallegation against Mr. Michel, a senior advocate of this Court, to theeffect that he had acted directly contrary to instructions. We have no hesitation in saying that such an allegation should be supported by a fully detailed affidavit. Mrs. Whittaker complained that there were no guidelines in the form of either rules or a practice direction.We are not saying that every application for leave to appeal has to be supported by affidavit. But an examination of the authorities we have cited, in particular Marsden v. Marsden, where counsel was similarly alleged to have acted contrary to express instructions, would have made it abundantly clear that the Court should have had before if affidavit evidence from Mr. Picot and that Mr. Michel should

have been made aware of the contents of the affidavit and of the date, time and venue of the making of the application in order that he might have had the opportunity to appear or to put in affidavit evidence prior to the hearing. Mr. Thacker went further: he had the impression that Mr. Michel's course of action on the 21st August, 1986, was being conducted with the understanding and consent of Mr. Picot; therefore the detailed affidavit that should have been filed by Mr. Picot and any affidavit filed in response by Mr. Michel should have been served on him, Mr. Thacker, so that he, and the representatives of the plaintiff who were present, also could have had the opportunity of submitting affidavits. In the special circumstances of this case, we agree, because what happened during the adjournment and at meetings involving Mr. Thacker and the representatives of the plaintiff as well as Mr. Michel, with or without Mr. Picot, is a question of fact upon which Mr. Thacker and the representatives of the plaintiff were in a position to testify.

In default of evidence we rejected the allegation made against Mr. Michel and because there was no prima facie case that an error had been made, we refused leave to appeal.

Because the effect of our decision was to leave the consent order undisturbed and of full contractual effect, it followed that leave to appeal could not be granted on either of the other grounds advanced on behalf of the defendants. Nevertheless, because they were canvassed before us we think it right to make some comment.

2. **The question is one of general principle, decided for the first time:** the questions of general principle raised by the action, according to Mrs. Whittaker, were a) acquiescence by the plaintiff in the use of the trade marks and names by the defendants; b) joint proprietorship of the trade marks and names by the defendants with the plaintiff; and c) the interpretation and application of Articles 9, 20 and 21 of the Trade Marks (Jersey) Law, 1958.

a) acquiescence was pleaded in paragraph 10 of the defendants' answer only as a second alternative to the plea denying that the plaintiff had any legal ownership or entitlement to the trade marks and names and to the first alternative denying that the plaintiff had any control, ownership or exclusive right to the use of the trade marks and names. Acquiescence in the use of the trade marks and names could not be relevant, in our opinion, to an action relating to ownership and sole, or exclusive, use. The plaintiff had admitted, in paragraphs 3 and 4 of its Order of Justice, a policy of allowing the use of its trade names to companies trading in its products, on a non-exclusive basis.

b) the claim to joint proprietorship of the plaintiff's trade marks and names was not even pleaded in the defendants' answer; it was at no time before the Court during the hearing of the action; it could not properly have been introduced for the first time in the closing speeches of counsel, as Mrs. Whittaker alleged, without any foundation for it having been laid in evidence.

c) there is no reference to the Trade Marks (Jersey) Law, 1958, in the pleadings. The proviso to Article 9(2) refers to an action for infringement in respect of any use of a trade mark prior to its registration. Article 20(2) also refers exclusively to use. Again, these refer to use only and not to sole or exclusive use. Article 21 saves rights of action for passing off. This provision appears to the Court to benefit the plaintiff, who may have a passing-off action against the defendants. But the Court was not here concerned with passing off.

Generally, Mrs. Whittaker argued that there was a paucity of judgments in local cases in the area of trade mark law and nothing that bore on the relationship between registration in Jersey of a trade mark or name and the application of United Kingdom Trade Mark law to Jersey.

Mrs. Whittaker cited Ex parte Gilchrist, In re Armstrong (1886) 27 QBD, 521 and referred the Court to the 'obiter dicta' of Lord Esher, MR., at p.527:-

> "I desire to add this. The Divisional Court refused an application for leave to appeal from their decision, but leave to appeal was given by this Court. The jurisdiction which the judges of the Divisional Court have to give or to refuse leave to appeal from their own decisions is a very delicate one. Merely to say that they are satisfied their decision is right is not, I venture to suggest, a sufficient reason for refusing leave to appeal, when the question is one of principle and they have decided it for the first time. If that was carried to its legitimate conclusion, they ought to refuse leave to appeal in every case".

That citation really has no relevance to the present application. In our judgment, no question of principle fell to be decided by the action brought by the plaintiff, which was concerned only with the ownership of the trade marks and names and the claim to sole and exclusive use by the defendants, as suppliers and manufacturers of products bearing those names, of the trade marks and names in Jersey. But even if a question of principle did arise - and we note that counsel for the defendants failed, on invitation, to formulate the question - certainly no question, whether of general principle or otherwise, was 'decided' by a consent order.

3. A question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage:

Basically, the points advanced by Mrs. Whittaker were the same as those advanced as matters of general principle and it is not easy to differentiate between matters of general principle and matters upon which a decision of the Court of Appeal would be to the public advantage.

Mrs. Whittaker cited Buckle v. Holmes (1926) 2 KB 125 where, at page 127, Bankes L.J. said this:-

> "We gave leave to appeal in this case, not because we thought there was any real doubt about the law, but because the question was one of general importance and one upon which further argument and a decision of this Court would be to the public advantage. This case has now been further and very fully argued, with the result that I am clearly of the opinion that the judgment of the Divisional Court was right."

Mrs. Whittaker argued that the statement could apply to the case before us; with increasing international trade involving this Island, it would be, she said, to the public advantage to receive answers to the questions raised by the litigation; further hearings would be necessary to conclude the action.

Mr. Thacker pointed out that in Buckle v. Holmes, the plaintiff's application for leave to appeal having been refused, he afterwards obtained leave from the Court of Appeal on condition of paying the costs incurred by both sides on the appeal to the Court of Appeal and on any further appeal to the House of Lords.

In Buckle v. Holmes, a decision had been made by the county court and by the Divisional Court on appeal. The case involved the question of liability of cat owners for damage caused by their cats when trespassing on neighbours' land. There was a clear public advantage in cat and land owners knowing where they stood when such damage occurred. We are quite unable to find a similar public advantage in the present case.

In reality, the present application for leave to appeal was a device to seek a re-hearing of the original action. In the event of leave having been granted it would have been necessary for the defendants to ask the Court of Appeal to order that the judgment be set aside and that a new trial be had; it would then have been necessary for the defendants to seek leave to amend the

pleadings to reflect the basis upon which the defendants wished the case to be re-argued. In effect the cause would have become an entirely new action effectively setting aside the consent order. In the view of this Court that would have amounted to an abuse of the process of the Court.

Accordingly, leave to appeal was refused and we ordered that the defendants should pay the plaintiff's costs on a taxation basis.

Authorities

R.S.C. 0.59/14/7 (1988) Ed'n).

R.S.C. 0.59/4/4 (1988 Ed'n).

Court of Appeal (Jersey) Law, 1961, Art. 13.

Ex Parte Gilchrist re Armstrong (1886) 27 QBD 521 at p.528.

Buckle -v- Holmes 2 KB 125 at pp. 126 & 127.

Trade Mark (Jersey) Law, 1959: Article 9(2),,20 & 21.

Royal Court Rules, 1982, (as amended): Rule 6/16.

Warren -v- T. Kilroe and Sons, Ltd & Anor (1988) 1 All ER 638.

"Occasional Notes" (1907) 123 L.T.J. 202.

R. -v- Ensor (14th March, 1989) Crim. L.R. 562.

Neale -v- Gordon-Lennox (1900-3) All E.R. 622 H.L.

Marsden -v- Marsden (1972) 2 All E.R. 1162 Fam. D.

Purcell -v- F.C. Trigell, Ltd (1970) 3 All E.R. 671.

Siebe Garman and Company, Ltd -v- Pneupac Ltd (1982) 1 All E.R. 377.

Thorne -v- Smith (1947) 1 All E.R. 39.

Wilding -v- Sanderson (2) (1897) 2 Ch. 534 at 550.

Court of Appeal (Civil) (Jersey) Rules, 1964: Rule 3.

Ratnam -v- Cumarasamy (1964) 3 All E.R. 933.