15 pages.

5th February, 1991 21A.

Before the Judicial Greffier

BETWEEN	Melva House Limited	PLAINTIFF
AND	Bowshot Limited	FIRST DEFENDANT
AND	Regal Construction (Jersey) Limited	SECOND DEFENDANT
AND	Regal Construction (Jersey) Limited	THIRD PARTY

SUMMARY

Application by the Plaintiff to strike out the whole of the Second Defendant's answer in the exercise of the Court's inherent jurisdiction.

Advocate R.J. Michel for the Plaintiff

Advocate D.F. Le Quesne for the Second Defendant

JUDGMENT

JUDICIAL GREFFIER:

This is an action brought by the Plaintiff Melva House Limited relating to certain defects in a property 13 Duhamel Place, St. Helier. The Plaintiff claims to have a right of action both by virtue of the assignment from the First Defendant of all its rights under a building contract by virtue of negligence and by virtue of breaches of building by-laws. The Order of Justice runs to 11 pages and 23 clauses.

The Second Defendant's answer consists mainly of brief paragraphs in which corresponding paragraphs of the Order of Justice are either admitted, not admitted or denied. On some occasions paragraphs of the Order of Justice are denied save and except for a specific admission and on other occasions a paragraph of the Order of Justice is admitted

save for a specific denial. At the end of the answer of the Second Defendant is paragraph 24 which states, "except where express admissions have been made, each allegation in the Order of Justice is denied as if individually and separately denied."

The general complaint of the Plaintiff is that the Second Defendant's pleading is inadequate and amounts to little more than a bare denial.

However, the relevant paragraph of the summons read as follows:-
"2. The whole of the Second Defendant's answer should not be struck out by the Court in the exercise of its inherent jurisdiction;".
Although the first paragraph of the summons relating to paragraph 7(d) of the Second Defendant's answer was clearly under Rule 6/13(c) and (d), there was no such reference in paragraph 2. The Plaintiff's advocate applied during the course of the summons to amend paragraph 2 in order to add an application under the provisions of Rule 6/13(c) and 6/13(d) but I refused that application as the Second Defendant's advocate indicated that he had not had any notice of this and that as he had believed that the first paragraph of the summons relating to paragraph 7(d) would result in a consent order (which is in fact what did occur at the hearing), he had not prepared in relation to Rule 6/13(c) and (d).

In order to succeed in the striking out of the whole or any part of the Second Defendant's answer under this heading the Plaintiff had to overcome the following hurdles:-

(1) Firstly, the Plaintiff had to show that the inherent jurisdiction of the Royal Court covered this particular situation;

(2) Secondly, the Plaintiff had to show that the inherent jurisdiction extended to the Judicial Greffier, in the absence of a specific Rule on the point, in this particular situation;

(3) The Plaintiff had to show that the whole pleading or parts thereof, infringed some rule of pleading in such a way as to enable the inherent jurisdiction of the Court to come into operation.

The Plaintiff in fact alleged that the pleading constituted a breach of Rule 6/8(1) of the Royal Court Rules which reads as follows:-

"Every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits."

Rule 6/8(1) of the Royal Court Rules is almost identical to Order 18 rule 7(1) of the Rules of the Supreme Court 1965, as amended. Similarly, Rule 6/8(2) corresponds with Order 18 Rule 7(2), Rule 6/8(3) corresponds with Order 18 Rule 7(3), Rule 6/8(4) corresponds with Order 18 Rule 7(4) and Rule 6/8(5) corresponds with Order 18 Rule 8(1). However, the specific English rule in relation to admissions and denials is Order 18 Rule 30 which reads as follows:-

"13.- (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under Rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressed or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage is deemed to be traversed unless specifically admitted."

There is no specific Rule in the Royal Court Rules which corresponds with Order 18 Rule 13. Section 18/13/5 of the 1991 White Book reads - "Traverse must be specific, not general - Every allegation of fact must be specifically denied or specifically not admitted.
What is apparently one allegation may in reality amount to two or more. Thus an allegation "that the defendant broke into and entered the plaintiff's field" contains two allegations:

(1) that the field is the Plaintiff's; and

(2) that the Defendant entered it.

If the Defendant desires to deny both allegations he must do so separately....."

A general denial, or a general statement of non-admission, of allegations of facts is not a sufficient traverse thereon. On the other hand, it would not seem necessary for the pleader to copy out each allegation of fact which he denies or refuses to admit. Notwithstanding the earlier cases to the contrary, since 1893 it has become a common practice for the Defendant to plead in the defence that he denies "each of the allegations contained in paragraph 2 of the Statement of Claim," or "each of the allegations in paragraph 2 other than 'some allegation' which is specifically admitted".

Nowadays, almost every pleading on behalf of a defendant contains a general traverse, e.g. "save as hereinbefore specifically admitted, the defendant denies each and every allegation contained in the statement of claim as though the same were herein set out and traversed seriatim". In dealing with a long and complicated statement of claim or counterclaim, and especially with allegations which are more or less immaterial, this practice is often convenient. It should not, however, generally be adopted in dealing with the essential allegations. So far as concerns the allegations which are the gist of the action the denial should be as precise as possible, e.g., "The defendant never spoke or published the said words to any of them," though a mere general denial

has been held sufficient though irregular."

Advocate Michel referred me to the case of Bates -v- Bradley [1982] J.J. 59 in which case the defendant had filed a bare denial. In the second paragraph on page 65 of that Judgment the President of the Court of Appeal said, "in my judgment it cannot be said that that document was in fact a nullity. In my view it was an answer, albeit an imperfect answer. It seems that the defendant could not have complained if an application had been made to strike out that answer under Rule 6/13; and if such an application had been made, the defendant could not, in my view, have complained if a peremptory order had been made requiring him to file a fuller answer. But the application was not being made under Rule 6/13; and, as I have already said, it cannot be said that the document which was filed was no answer at all; it was an answer, albeit an imperfect one."

Advocate Michel also referred me at length to Bullen and Leake and Jacob's Precedents of Pleadings 12th edition chapter 7 and I quote now from page 82 thereof beginning with the first paragraph -
"Because the traverse is generally expressed in the negative, it is especially necessary to be careful that every material allegation of fact is specifically dealt with. Thus, in traversing a statement it is generally necessary to change the word "and," whenever it occurs, into "or" and the word "all" into "any". Thus if the Plaintiff asserts - "the defendant broke and entered the said shop and seized, took and carried away all the furniture, stock-in-trade, and other effects which were therein." the correct traverse will be -

"The defendant denies that he broke or entered the said shop or seized, took or carried away any of the furniture, stock-in-trade, or other effects which were therein." Sometimes two traverses are necessary completely to deny one allegation in the statement of claim. This is so whenever it is desired to traverse a compound allegation, consisting of several distinct facts. Thus, if the plaintiff has averred that - "The defendant broke and entered the plaintiff's close called Blackacre" the defendant, if he wished to deny at the trial not merely the alleged trespasses, but also the ownership of the close, must expressly traverse both, and each in a separate paragraph thus -

1. "The defendant denies that he broke or entered the close called Blackacre."
2. "The said close is not the close of the plaintiff".

In fact, each several allegation contained in a statement of claim which is denied by the plaintiff should be categorically denied in the defence.

Thus, if the statement of claim alleges that "a bill of lading of goods shipped by the plaintiff was signed by A B as the defendant's agent," it would not be correct simply to state in the defence that the defendant denies or does not admit the paragraph in question. The proper mode of denying such a paragraph is to single out the particular part of it which the Defendant desires to deny (e.g. that A B was the Defendant's agent), and to deny that only, or, if it is desired to deny the whole, to break up the compound allegation and deny

each part of it separately. Thus, the Defendant might plead two or more of the following allegations:

(i) No goods were shipped by the plaintiff.

(ii) No bill of lading was given for any goods shipped by the plaintiff.

(iii) No bill of lading for any goods shipped by the plaintiff was signed by A B as the defendant's agent.

(iv) A B was not the defendant's agent to sign any such bill.

(v) No bill of lading for any goods shipped by the plaintiff was signed by any agent of the defendant.

Although a general denial or general statement of non-admission of allegations of fact is not a sufficient traverse of them and although the practice until 1893 required the defendant to traverse specifically every allegation of fact made in the statement of claim, yet since 1893 it has become common practice for the defendant to plead a general denial or general statement of non-admission, provided, however, he is specific when he does so, as for example -

"each of the allegations contained in paragraph 6 of the statement of claim is denied" or "each of the allegations contained in paragraph 6 of the statement of claim is denied other than (some allegation) which is specifically admitted."

The principle is that it is not necessary for the pleader to copy out each allegation of fact which he denies or refuses to admit, so long as he makes clear which allegation of fact he is traversing. Indeed, nowadays, almost every defence contains a general denial, as for example -

"save as hereinbefore expressly admitted, the defendant denies each and every allegation contained in the statement of claim as though the same were herein set out and traversed seriatim." This practice should not generally be adopted in dealing with essential allegations, which should be traversed specifically, but it is nevertheless a convenient practice in dealing with a long or complicated statement of claim, especially with allegations which are more or less immaterial, or to ensure that there will be no implied admission arising from the non-traverse of a material allegation."

The remedy in England in relation to a pleading which contravenes these Rules is under Order 18 Rule 19 (1)(c) which is the equivalent of our Rule 6/13(c). I quote now the opening section of paragraph 18/19/16 on page 337 of the 1991 White Book -

""Tend to prejudice, embarrass, or delay the fair trial of the action." - The Court is "disposed to give a liberal interpretation" to these words. At the same time parties must not be too ready to find themselves embarrassed. "The Rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that Rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass, and delay the trial of the action, it then becomes a pleading which is beyond his right". If the defendant does not make it clear how much of the statement of claim he admits and how much he denies, his pleading is embarrassing."

The section on inherent jurisdiction is paragraph 18/19/18 of the 1991 White Book. The start of this reads -

"Inherent jurisdiction - Apart of all rules and Orders and notwithstanding the addition of para. (1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process. In such cases it will strike out part of an indorsement of a writ; or set aside service of it; or will stay, or dismiss before the hearing, action which it holds to be frivolous or vexatious; and removes from its files any matter improperly placed thereon. And this jurisdiction is in no way affected or diminished by this rule."

I note from this that in England a pleading which broke the pleadings rules set out above, would not be dealt with under the inherent jurisdiction of the Court.

On examining the defendant's pleading in detail I find that there are numerous paragraphs which offend the English rules. There is no problem with the paragraphs which admit paragraphs of the Order of Justice. However, the position is identical in relation to the paragraphs which deny and the paragraphs which do not admit a paragraph of the Order of Justice. This appears to me to be an acceptable formula only where there is one single allegation contained in the paragraph of the Order of Justice. Advocate Le Quesne for the defendant indicated to me that his intention, in each case when he put in a denial or non-admission was to deny every fact alleged therein. But on examination of some of the denied paragraphs I found that his intention was to admit certain facts therein but to deny the total

effect thereof. In my view this is an unsatisfactory state of affairs and one that ought to be remedied.

I am aware that the pleading practice used by Advocate Le Quesne in this case is very widespread in Jersey and has been in use for a number of years. However, it is objectionable on a number of grounds as follows:-

(a) firstly, because logically it is not clear as to precisely what is being admitted and what denied;

(b) secondly, because this allows defendants to get away with pleadings which mean almost nothing and which do very little to limit and define the issues between the parties; and

(c) because such pleadings are very difficult for the Judicial Greffier or for the Royal Court Inferior Number to read and readily comprehend.

In practice, one is not able to read such an ansver and to understand what it is saying without having to read each paragraph of the Order of Justice in conjunction therewith.

Accordingly, I am of the opinion that, in future, the English practice ought to be adopted in Jersey as set out in the quotations from the 1991 White Book and from Bullen and Leake and Jacob's Precedents of Pleadings.

I am not, however, going to go on and examine the defendant's pleadings paragraph by paragraph for the reasons which will become apparent.

Having determined that the defendant's pleading or parts thereof are embarrassing to the plaintiff and to the fair trial of the matter and should be treated as being so for the purposes of Jersey Law, I must now come to the question as to whether that can be remedied by the inherent jurisdiction of the Court.

Advocate Michel drew my attention to the fact that the Royal Court had always had Rules of procedure and practice going back well before the first Rules of Court and deduced that these arose from the inherent jurisdiction of the Court to order its own procedure. I am sure that that must be right and indeed, in the case of Clore -v- Stype Trustees (Jersey) Limited, Jersey Judgments 1984 page 13 the Royal Court decided that it had an inherent jurisdiction to hear an application from Trustees for directions as to the future conduct of litigation concerning a Trust.

However, it appears to me that it is one thing to say that the Royal Court has in general an inherent jurisdiction to order its own procedure and practice and quite another thing to seek to exercise that jurisdiction in a way in which it has not been previously exercised and in an area of law which is now covered by a Rule of Court. If the Royal Court has always exercised a jurisdiction to remedy such defects in pleadings as this then that jurisdiction would not be taken away by the Rule of Court but if the Royal Court has not in the past exercised such a jurisdiction, then, as a Rule has now been provided, it would appear to me to be wrong to seek to exercise the inherent jurisdiction in the area covered by the Rule. Neither counsel brought any

authorities to my attention in relation to the past practice of the Royal Court and I am of the opinion that considerations such as this in the period prior to the first Royal Court Rules would probably have been considered too esoteric to have concerned the Court. Accordingly, I do not believe that striking out an embarrassing pleading of this kind was historically part of the practice of the Court and I therefore hold that the inherent jurisdiction of the Court does not apply to such a case.

As a result of my decision on that part I do not need to go on to consider the question as to whether any such inherent jurisdiction has been delegated to the Judicial Greffier. However, I shall give my decision on this point in any event. The wording of the definition of the Court in Rule 1/1(1) of the Royal Court Rules, 1982, as amended, is - ""the Court", except in the provisions of these Rules mentioned in the First Schedule hereto means any division of the Royal Court, the Bailiff or the Greffier;". I find that to be significant as it appears to me that the intention underlying the Royal Court Rules was to give the Greffier, subject to the right of appeal to the Inferior Number by way of re-hearing set out in Rule 15/2(1), the power to deal with all matters before the Royal Court except those which were clearly outside of his remit, such as the trials of actions, the granting of injunctions and those matters listed in the First Schedule to the Rules. It therefore appears to me that the powers of the Judicial Greffier in relation to interlocutory matters which are within his area of delegated authority are not merely restricted to those set out in the Royal Court Rules, but would include any power exercisable by the

Royal Court. Examples of this are unless orders made in order to enforce previous decisions of the Judicial Greffier and Orders for Costs. The power to make these is not specifically in the Rules but must exist by delegation from the Royal Court. Accordingly, if I had found that such matters could be dealt with by the exercising of the inherent jurisdiction of the Court, I would have found, as this is clearly an interlocutory matter within the authority of the Greffier, that such inherent jurisdiction would have been extended by delegation to the Judicial Greffier.

Although this application is refused, clearly the defendant will need to amend his answer in an appropriate manner. I shall need to be addressed by both parties on the question of costs.

AUTHORITIES.

re Robinsons Settlement, Gant-v-Hobbs (1912) 1 Ch. 717.

Wallersteiner-v-Moir (1974) 3 AllER 217.

Harris-v-Gamble (1878) 7 Ch.D.877.

Bates-v-Bradley (1982) JJ 59.

Bullen & Leake & Jacob's Precedents of Pleadings (1975) 12th Ed'n: pp.73-91.

Channel Islands & Int'l Law Trust & Ors-v-Pike & Ors (30th January, 1990) Jersey Unreported.

Royal Court Rules, 1982, as amended: 1/1(1); 6/8(1)(2)(3)(4)(5); 6/13; 15/2(1)

RSC: 0.18, r.7(2)(3)(4); r.8(1); r.13/5; r.19(1)(c); r.19/16,18; r.30;

Clore-v-Stype Trustees (Jersey) Ltd. (1984) JJ 13.