6 pages.

ROYAL COURT

(Samedi Division)

67.

22nd May, 1991

Before: The Deputy Bailiff and
Jurats Le Boutillier and Herbert

Between:	**James Barker**	Plaintiff
And:	**The Viscount**	First Defendant
And:	**Peter de Gruchy**	Second Defendant
And:	**Frederick John Benest**	Third Defendant
And:	**Malcolm Leslie Sinel**	Fourth Defendant
And:	**Michael Cameron St. John Birt**	Fifth Defendant
And:	**Mark Sylvanus Dorey Yates**	Sixth Defendant

Application by the Plaintiff seeking judgement pursuant to Rule 6/7(5) of the Royal Court Rules, 1982, against the first, second and third defendants.

Mr. J. Barker on his own behalf
Advocate F.J. Benest on behalf of the First, Second and Third defendants

---

JUDGEMENT

DEPUTY BAILIFF: On the 10th May, 1991, the Plaintiff complained that he had given notice of an ex-parte application for judgement under Rule 6/7(5) of the Royal Court Rules, 1982, as amended, in respect of the first, second and third defendants and that the application was not on the list.

Rule 6/7(5) reads as follows:

> Where the time limited for filing an answer has expired and no answer has been filed, the plaintiff may, after giving not less than twenty-four hours' notice to the Greffier and to the defendant, ask the Court to pronounce judgement against the defendant.

This action was placed on the pending list on the 5th April, 1991, the time for filing an Answer expired on the 26th April, 1991; no Answer had been filed by any of the first, second and third defendants. Mr. Benest accepted full responsibility for this but we think it is to be regretted that the Viscount, an officer of his department and an advocate of this Court should have found it necessary, in particular in an action brought by a litigant in person, to breach the strict requirements of Rule 6/7(3). On the 3rd May, 1991, the plaintiff served notification on the first, second and third defendants of his intention to apply on the 10th May, 1991, for judgement under Rule 6/7(5). Mr. Benest personally filed all three Answers at the Judicial Greffe before 12 o'clock noon on the 8th May, 1991 (the 9th May being a public holiday). Consequently the Greffier did not list the plaintiff's action on the 'Table' for the 10th May, 1991.

The plaintiff complained that he had thus been denied the right and the opportunity to ask the Court, in the exercise of its discretion, to pronounce judgement against the defendants.

Advocate Begg, an officer of the Court, intervened to suggest that the matter was resolved by the Court of Appeal case of Bates -v- Bradley (1982) J.J.59.

When the Court, as then constituted, retired, and, as the decision involved a question of law alone, I exonerate Jurats Coutanche and Hamon from all responsibility for the decision, there was drawn to my attention the following paragraph of the judgement, containing the 'ratio decidendi'.

> Accordingly, the question arises whether the plaintiff in fact had jurisdiction to make an application under Rule 6/8(2). I have already read that Rule, and it seems to me that on a true construction of that Rule, before jurisdiction can arise to make an application which is there referred to, two conditions precedent must each have been fulfilled. First, time must have expired and secondly no answer must in fact have been filed. Here, in my judgement, an answer had in fact been filed, albeit out of time. In those circumstances it seems to me that there was no jurisdiction to make an application and no jurisdiction for the Court to make an order under that particular Rule.

That paragraph related to the "making of an application". I believed that the application was "made" when notice of it was given, in this case the 3rd May, and that the application was "heard" when the matter came before the Court, in this case the 10th May.

Consequently, I gave judgement in the following terms:

> Whilst we are grateful to Mr. Begg, we have examined Bates -v- Bradley (1982) J.J.59, and it is not directly in point.
>
> In that case an answer had been filed before the application under Rule 6/8(2) of the 1968 Rules, the equivalent of Rule 6/7(5), was made.
>
> The answer was an imperfect one but had been filed. The position here is different. Mr. Barker made his

application on the 3rd May. At that date no answer had been filed, but an answer was filed on the 8th May, before the list for today was prepared.

The Greffier, using a time honoured practice, omitted the application from the list on the ground that an answer had been filed and the case had been restored automatically to the pending list.

That decision of the Greffier effectively deprived Mr. Barker of his right under Rule 6/7(5) to ask that because an answer had not been filed within time, the Court should pronounce judgement.

The decision whether or not to pronounce judgement is, of course, discretionary, but an applicant cannot be deprived of the opportunity to make the request.

Therefore, we direct the Greffier to place Mr. Barker's application on the list of Rule 6/7(5) applications, but because of the impossibilities of dealing with such matters on a Friday afternoon, we adjourn the application to Wednesday, 22nd May, at 10.00 a.m. when the Court, no doubt differently constituted, will consider the application.

However, a reading of the whole of the judgement in Bates -v- Bradley has demonstrated that I was in error.

The plaintiff in Bates -v- Bradley gave notice of his application under Rule 6/7(2) of the 1968 Royal Court Rules (the then equivalent of Rule 6/7(5) on the 2nd June, 1981. Accaording to the judgement the Answer was filed on 2nd or 3rd June, 1981. According to the appellant's case (we have had the advantage of inspecting the Court of Appeal File) the Answer was filed on the same day, i.e. 2nd June, 1981. On the 3rd June, 1981, Advocate M.J. Backhurst wrote to the appellant enclosing a copy of the Answer...and I quote..."which I have today filed with the Greffier". The Answer is undated. Be that as it may, we are satisfied that the Answer (a straightforward denial of indebtedness, replaced later by an amended Answer) was filed as a result of, and after, the receipt by Mr. Backhurst, of the appellant's application under Rule 6/8(2).

Consequently, we agree that the facts in the present case are indistinguishable from the facts in Bates -v- Bradley. As the Court of Appeal said at p.63 "It is accepted that up until the time when that notice of intention was given, no answer had in fact been filed". The difference of view is between a notice of intention and the making of an application.

I would respectfully recast the relevant paragraph of the Court of Appeal's decision as follows:

> "Accordingly, the question arises whether the plaintiff in fact had jurisdiction to have his application under Rule 6/8(2) (now 6/7(5)) heard. It seems to be that on a true construction of that Rule, before jurisdiction can arise to hear the application which is there referred to, two conditions precedent must each have been fulfilled. First, time must have expired and secondly no answer must in fact have been filed. Here, in my judgement, an answer had been filed, albeit out of time. In those circumstances it seems to me that there was no jurisdiction to hear an application and no jurisdiction for the Court to make an order under that particular Rule".

Because we are undoubedly bound by the decisions of the Court of Appeal we have no jurisdiction to make the order sought by the plaintiff. His application is dismissed.

We might add this, that in order to prevent the kind of difficulty which arose in this case, we recommend that the Judicial Greffier should, in any case involving a litigant in person, either list the case on the 'Table' in order that he may witness the restoration to the pending list or write to the litigant in person advising him of and the reasons for the decision to omit the application from the 'Table'.

AUTHORITIES

Bates -v- Bradley (1982) J.J.59.