

ROYAL COURT

2nd December, 1991.

179A.

Before: The Bailiff, single Judge.

In the matter of the Representation of Douglas John Woolley, requesting the Royal Court to direct the Deputy Bailiff to sign an Order of Justice in an action between Mr. Woolley and Mr. Stephen Kingsley and others as prospective defendants.

Mr. Woolley on his own behalf.

Advocate J. A. Clyde-Smith representing the
Attorney General (who was convened as *Amicus curiae*)

JUDGMENT

BAILIFF: Mr. Douglas John Woolley has brought a Representation to this Court. Mr. Woolley has a claim against a company and some individuals arising out of the salvage of a ship which was formerly the "Queen Elizabeth", at Hong Kong in 1972.

He has already attempted to bring an action against the company but that company was dissolved and the attempt by Mr. Woolley to have it revived failed in this Court and before the Court of Appeal. He now therefore wishes to bring an action against the individuals. To that end he presented an Order of Justice to the Deputy Bailiff and on 21st June, 1991, the Secretary to the Bailiff, on the instructions I assume of the

Deputy Bailiff, wrote a letter to Mr. Woolley making it clear that the Deputy Bailiff had refused to sign the Order of Justice because he had already advised Mr. Woolley by letter dated 10th January, 1989, that any action on the original alleged contract was long since time-barred.

The Deputy Bailiff, however, through the Secretary, indicated that if Mr. Woolley were to produce an Order of Justice against the proposed defendants, showing how a cause of action could arise against them, as opposed to the company, within the past ten years and if it was contractual and supported by an affidavit, the Deputy Bailiff would be prepared to consider that application with an open mind.

Before the Royal Court Rules, 1982, were changed, it was not possible for individuals to bring an action in this way; they had to be represented by a member of the legal profession. That has all now changed and individuals may apply to the Bailiff or the Deputy Bailiff for a remedy, limited by the Rules to an Order of Justice or Representation as the case may be.

The narrow issue I have to decide is not whether the Deputy Bailiff had a discretion because there is a discretion, perhaps somewhat limited according to the evidence given to the Royal Commission in 1861, but nevertheless there is a residual discretion as to whether an Order of Justice should be signed. The matter for argument today is not therefore whether the Deputy Bailiff had a discretion, but whether he exercised it for the wrong reason.

The first point I have to deal with is that Mr. Woolley has presented a *Remonstrance*. However, Rule 6/2(1) of the Royal Court Rules, 1982, says:

"Unless otherwise directed by the Court and save as provided by any enactment, every action in the Court shall be instituted by a simple action or by Order of Justice".

Mr. Woolley doesn't actually comply with either of those requirements.

However, Rule 7/6 provides as follows:

"Subject to Rule 7/7 non-compliance with any rules of court, or with any rule of practice for the time being in force shall not render any proceedings void unless the Court so directs, but the proceedings may be set aside either wholly or in part as irregular or amended, or otherwise dealt with in such manner and on such terms as the Court thinks fit."

And Rule 7/7(1):

"No proceedings shall be void or be rendered void or wholly set aside under Rule 7/6 or otherwise, by reason only of the fact that the proceedings were begun by a means other than that required in the case of the proceedings in question."

It is clear to me that I have a discretion to allow this application notwithstanding that it was not presented in the proper form and therefore I propose allowing it, in the sense of receiving it, and regarding it as a Representation.

It is trite law and it appears in many judgments of this Court that prescription is a defence that does not extinguish the right of action but is something that has to be pleaded by the defendants if they wish to raise it. For many years, the Courts have accepted that to be the position and it is succinctly mentioned in Bullen and Leake and Jacobs: Precedents of Pleadings (13th Ed) at page 1287, where in the second paragraph it reads:

"In general, the operation of the Limitation Acts does not extinguish the debt or other cause of action but merely

bars the remedy of bringing the action after the lapse of the specified time from the date when the cause of action arose"

It goes in the third paragraph:

"So, a statement of claim will not be struck out simply because on the facts as pleaded, it appears that the cause of action arose before a relevant statutory period of limitation, since it is for the defendant to raise this defence and the Plaintiff maybe able to counter such defence... but where it is clear that the defendant intends to rely on the relevant Limitation Act and there is nothing before the Court to suggest that the plaintiff could escape from that defence, it is only rarely open to the Court to strike out the statement of claim as disclosing no reasonable cause of action. (See for a full discussion on pleading and limitation Ronex Properties Limited-v- John Laing (1983) QB 398 C.A." to which I will now turn.

Of course, in Jersey the period of limitation is ten years for a contractual claim.

In Ronex Properties, the question of a defence and the proper procedure was examined very carefully by a strong Court, consisting of Stephenson and Donaldson LLJ, and Sir Sebag Shaw. On page 404, Donaldson LJ. at letter C said this:

"Authority apart, I would have thought it was absurd to contend that a writ or a third party notice could be struck out as disclosing no cause of action, merely because the defendant may have a defence under the Limitation Acts. Whilst it is possible to have a contractual provision whereby the effluxion of time eliminates a cause of action, -and there are some provisions of foreign law which have had that effect- it is trite law that the English Limitation Acts bar the remedy and not the right; and furthermore, they do not even have this effect unless and until pleaded. Even when pleaded, they are subject to various exceptions such as acknowledgement of a debt or concealed fraud which can be raised by way of reply. Concealed fraud has, we are told been pleaded by the plaintiffs in this case as against the defendants, but whether the personal representatives will or can adopt a similar attitude vis-a-vis Clarkes can only really emerge if ever they get to the stage of delivering a reply in the third party proceedings."

That part of the judgment is not particularly relevant but the Lord Justice continues:

"Accordingly authority apart, I would have unhesitatingly dismissed the application to strike out upon this ground. The answer might well have been different if Clarkes had relied upon any ground other than failure to disclose a reasonable cause of action but in that event all concerned would have adduced evidence and we would have been able explore the factual basis upon which it is said that the Limitation Acts do, or as the case may be do not, apply".

And it is really not for me sitting this morning, to examine the question whether limitation acts do or do not apply and I would not like it to be thought that giving the ruling which I am about to give in a moment, in any way indicates that this Court has applied its mind to the facts or as to whether Mr. Woolley does indeed have a proper claim or not.

I continue with Donaldson LJ's judgment on page 405, where at letter A he says:

"Where it is thought to be clear there is a defence under the Limitation Acts, the defendant can either plead that defence and seek the trial of preliminary issue or in a very clear case, he can seek to strike out the action upon the ground that it is frivolous, vexatious and an abuse of the process of the Court and support his application with evidence. But in no circumstances can he seek to strike out on the ground that no cause of action is disclosed".

And a similar passage is to be found in the judgment of Stephenson LJ on page 408, where he says:

"I agree and desire only to add a few observations on the limitation point. There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be impossible to say that he say he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiff's claim as frivolous and vexatious and an abuse of the process of the Court on the ground that it is statute-barred. Then the plaintiff and the Court knows that the Statute of Limitations will be pleaded; the defendant can if necessary file evidence to that effect; the plaintiff

can file evidence of an acknowledgement or concealed fraud or any matter which may show the Court that his claim is not vexatious or an abuse of process; and the Court will be able to do in I suspect most cases what was done in Riches v. Director of Public Prosecutions, (1973) 1 WLR 1019: strike out the claim and dismiss the action."

I think that is the procedure *mutato mutandis*, having regard to our own Rules of Court, which applies to a case of this sort. I can have some sympathy with the Deputy Bailiff because, as Mr. Clyde-Smith has indicated and indeed as I know myself, Mr. Woolley is a prolific letter writer and has been before this Court on many other occasions. Even so, because the Deputy Bailiff limited the grounds for his refusal to sign the Order of Justice to the one matter of prescription, it is on that one matter that I find myself able to rule that that was not the correct decision and therefore I am satisfied that on the presenting of a fresh Order of Justice to me, I would be prepared to sign it.

However, I should add that the Deputy Bailiff required an Affidavit and having regard to the circumstances disclosed in the papers, I would also require an affidavit; and so, Mr. Woolley, if you were to present a fresh Order of Justice in the same terms, albeit with your affidavit, I shall be prepared to sign it.

Authorities

Albright -v- Wailes (1952) JJ 31

Bullen and Leake and Jacobs: Precedents of Pleading (13th Ed)
Section 64.

Ronex Properties Limited -v- John Laing Construction and Ors.
(1983) QB 398 C.A.

In the matter of the Doléance of James Barker (1985-86) JLR 284.

Minutes of Evidence taken before the Commissioners appointed to
inquire into the Civil, Municipal and Ecclesiastical Laws of the
Island of Jersey (1861): p.526: Question 10,778.

Royal Court Rules, 1982: Rule 6/2(1); 7/6; 7/7(1).