5 pages.

ROYAL COURT
(Samedi Division)

8th February, 1993. 22

Before: The Bailiff and Jurats Vint and Orchard.

Between: **Fox Marine Services Limited.** **Plaintiff**

And: **Rodney Buesnel.** **Respondent**

Preliminary Point of Law: whether the Plaintiffs are entitled to judgment in their claim, brought on a countermanded Bill of Exchange

---

Advocate P.C. Harris for the Plaintiff.
Advocate J. Melia for the Defendant.

JUDGMENT

THE BAILIFF: There is a preliminary point to decide in this case, although the practical effect would not really have much bearing on the eventual result.

This case arises out of work done by the Plaintiff on the engine of the Defendant's boat. After the Plaintiff had tendered two accounts there was eventually a balance left over of £2,773.01; a summons was issued for £3,188.96 on the 31st May, 1990. The difference between the amount of the outstanding balance, and the figure in the summons is accounted for by contractual interest which, we were told, is chargeable because: (1) the right to charge interest was posted at the entrance to the Plaintiff's works and (2) the amount of interest was included on the reminders sent to the Defendant. Those two matters are denied but we have as yet heard no evidence on these points because we have to decide, first, as a preliminary matter, whether a cheque which was tendered after the summons had been issued for the full amount entitles the Plaintiff, without further ado this morning, to judgment.

I interpolate here to say that even if we do give judgment for the Plaintiff on this point it will not dispose of the matter because we will have to stay execution of that judgment pending determination of the Defendant's counter-claim.

There is some dispute as to whether the cheque was tendered with or without conditions; whether part of the tendering was related to the reclaiming of a pump. Again we have heard no evidence about this. However, the fact remains that on the 8th June, the cheque was countermanded without notice.

Counsel for the Plaintiff has drawn our attention to a very recent and important case in the Court of Appeal: Burke -v- Sogex (30th September, 1992) Jersey Unreported C. of A. The Court, there, examined carefully the question of whether after a cheque had been issued - and in that case dishonoured - it was permitted, except in a number of specified defences, to file a counter-claim. The Court went through the facts of that case, which need not concern us, and also examined an earlier case which had been determined by this Court: Chestertons -v- Leisure Enterprises (1985-86) J.L.R. 271 @ 273. In that case, it seems that the Court took a slightly wider view than the Court of Appeal was prepared to take, of the effect of a cheque being issued, and indeed, the learned Commissioner in the Court below in Burke -v- Sogex, also took a wider view; and it was that wider view that was changed by the Court of Appeal who felt that it would be proper to follow English procedure in relation to Bills of Exchange and particularly the House of Lords case from which they cited very fully of Nova (Jersey) Knit Ltd -v- Kammgarn Spinnerei GmbH (1977) 2 All E.R. 463.

The Appeal Court decided that the proper approach was to revert to the narrower construction of the position as established in the Nova case, and cited a number of extracts from that case; in particular a passage from Lord Dilhorne's speech which is at page 5 of their judgment:-

> ***"Bearing in mind the intrinsic nature of a bill of exchange, 'an unconditional order', which the appellants were entitled to regard as a deferred instalment of cash, and the fact that cross-claims, unless based on fraud, invalidity or failure of consideration are not allowed, it appears to me that seldom, if ever, can it be right while denying the right to bring a cross-claim, to allow a cross-claim to operate as a bar to execution and to prevent the holder of a bill of exchange receiving the deferred instalment of cash which the parties agreed he should get".***

It is important, I think, to decide whether English law has been imported into Jersey in a manner that is foreign to our jurisdiction. It is quite clear from a careful reading of the Burke -v- Sogex judgment that that is not the position. At page 6 of that judgment the Court of Appeal was careful to cite two Jersey authorities, and in particular C.S. Le Gros' "Traité du Droit Coutûmier de l'Ile de Jersey", the chapter *"De la Lettre de Change et du Billet à Ordre"*, in which the learned Author said this:

> ***"Enfin, pour terminer, il convient de remarquer que nous suivons en général les dispositions de l'acte de parlement "The Bills of Exchange Act, 1882" en tant qu'elles ne sont point contraires au droit statutaire et à la jurisprudence de cette île".***

Furthermore, at the bottom of that page there is an extract from Chapter 5 "Negotiable Instruments" of Matthews and Nicolle: "The Jersey Law of Property", where the authors trace the development of *pièces signées*, which undoubtedly this cheque was, and I quote:

> ***"As a result of these characteristics, negotiable instruments have played a very important rôle in the modern financial world, particularly by being used in place of cash".*** I stress those words ***"particularly by being used in place of cash".***

In this case, in our view, cash, in the form of a Bill of Exchange, was tendered by the Defendant to the Plaintiff after he had received the Plaintiff's summons. The fact that that cheque was subsequently countermanded, as opposed to being dishonoured, as in Burke -v- Sogex, is irrelevant.

Miss Melia has drawn our attention, quite properly, to an earlier case heard before a Single Judge of the Court of Appeal, Field Aircraft Services (Exeter) Ltd -v- Kenton Utilities and Developments Ltd, International Air Charter Ltd and Haddican, (12th May, 1980) reported in (1987-88) J.L.R. 87. The question here was an *arrêt conservatoire* taken out on a *pièce signée* which was countermanded; the learned judge said, and I quote from line 22 of his judgment:

> ***"Nevertheless, the situation now seems to have clarified itself to this: that the order that was originally made for a distraint could only have been supported if there were a pièces signée. To produce a cheque which has been countermanded seems to me not to satisfy that requirement, because it is not an admission of a debt: it is a notification of a dispute as to a debt, by the very fact that the countermanding words are written across the top of the cheque".***

That is quite true, however, that judgment was not examined by the Court of Appeal and insofar as any conflict exists between the Court of Appeal decision in Burke -v- Sogex and that case, the judgment of the Court of Appeal will prevail.

Accordingly, we are going to give judgment for the plaintiff in the sum of £3,188.96 with contractual interest to continue on the original sum of £2,773.01. In other words you are not

getting interest on interest, Mr. Harris; we cannot give you that. It will be contractual interest.

The question of costs will be left over pending the hearing and determination of the counterclaim.

Authorities

Burke -v- Sogex International (30th September, 1992) Jersey Unreported C. of. A.

Field Aircraft Services, Ltd -v- Kenton Utilities & Ors. (1987-88) J.L.R. 78.

Chestertons -v- Leisure Enterprises (1985-86) J.L.R. 271.

Nova (Jersey) Knit -v- Kammgarn Spinnerei (1977) 2 All E.R. 463.

Matthews and Nicolle: The Jersey Law of Property (1991): Chapter 5: "Negotiable Instruments".

C.S. Le Gros: "Traité du Droit Coutûmier de l'Ile Jersey": p.317.