

3 pages.

ROYAL COURT
(Samedi Division)

128.

4th October, 1993

Before: The Bailiff, and
Jurats Orchard and Herbert

<u>Between:</u>	David Eves	<u>First Plaintiff</u>
<u>And:</u>	Helga Maria Eves (née Buchal)	<u>Second Plaintiff</u>
<u>And:</u>	The Tourism Committee of the States of Jersey	<u>Defendant</u>

Application by the Defendant for Orders:

- (1) striking out paragraphs of the Plaintiffs' Order of Justice on the basis they disclose no reasonable cause of action; and
- (2) that the questions of (a) whether the Plaintiffs' sole remedy against the Defendant is an appeal pursuant to Article 22 of the Tourism (Jersey) Law, 1948, from the Defendant's decision to revoke the registration of the "Glendale Hotel" as a Guest House; and (b) if not, whether the Defendant owes the Plaintiffs a duty of care in its performance of its duties under the said Law, should be determined as preliminary issues.

Advocate T. J. Le Cocq for the Defendant.
Advocate Mrs. S. Sharpe for the Plaintiffs.

JUDGMENT

THE BAILIFF: This is a summons by the defendants in this action to strike out certain passages in the Order of Justice as infringing the Rule in Foss -v- Harbottle (1843) 2 Hare 461. It is not

necessary for me to enunciate that Rule; it is well known and accepted by this Court and Mrs. Sharpe, for the plaintiffs, acknowledges that the Law is as stated by Mr. Le Cocq, and that in fact there is no defence in strict Law to the summons.

Furthermore, Mr. Le Cocq has told us that although the Order of Justice was obtained personally by the two plaintiffs and therefore without the benefit of legal advice in February, 1993, in June of this year, following an application for an extension of time on behalf of the defendants within which to file pleadings, he and either Mr. Eves or Mrs. Eves appeared before the Judicial Greffier. Afterwards Mr. Le Cocq explained either to Mr. Eves or to Mrs. Eves, or to both - it is not clear to us exactly who was present - the implications of the Rule in Foss -v- Harbottle. The plaintiffs therefore have had from June until now to seek legal advice and the fact that they obtained the advice of Mrs. Sharpe only two weeks ago is not something that we find sufficiently convincing to allow us to set aside, or at least to postpone, the clear effect of Foss -v- Harbottle.

Mrs. Sharpe has conceded that the Law is clear but she has suggested that the summons should be put off for a time to enable her to investigate the possibility of reinstating the company, but she does not know what the repercussions of that might be. If the company were reinstated then she would ask in due course that it be joined as co-plaintiff. However, that would raise matters of prescription and if the defendants have a perfectly proper legal argument to advance now, we do not think it is for us at this stage to prevent their advancing that argument, nor, if it is correct, from obtaining judgment in their favour.

In relation to the two questions to be considered as preliminary issues, in the second part of the summons, Mrs. Sharpe has conceded that those matters should be dealt with first.

So far as the first part of the summons is concerned - the striking out of the offending paragraphs in the Order of Justice - we make the order.

Costs shall be in the cause.

Authorities

Foss -v- Harbottle (1843) 2 Hare 461.

Royal Court Rules (1992): 6/13 and 6/19.

Cooper -v- Resch (1987/88) JLR 428.

Poole -v- Poole (1987/88) JLR N.2.

Lazard & Co -v- Bois & Bois, Perrier & Labesse (15th November, 1988) Jersey Unreported.

Picot -v- Crills (1st December, 1989) Jersey Unreported.

Luce -v- Brown (14th May, 1991) Jersey Unreported.

R.S.C. (1993 Ed'n) p.p. 303-305; 331-335.

Tourism (Jersey) Law 1948.

Administrative Decisions (Review) (Jersey) Law 1982.

Louis -v- E. Troy Limited (1970) JJ 371.

Macready -v- Amy (1950) JJ 11.

Jones -v- Department of Employment (1988) 1 All ER 725.

Governors of the Peabody Donation Fund -v- Sir Lindsay Parkinson & Co Limited & Others (1984) 3 All ER 529 HL.

Caparo Industries PLC -v- Dickman (1990) 1 All ER 568 HL.

Murphy -v- Brentwood District Council (1990) 2 All ER 908 HL.