

ROYAL COURT
(Samedi Division)

96

23rd May, 1996

Before: The Deputy Bailiff and Jurat P.G. Blampied OBE
and Jurat P.J. de Veulle

Between	Rex Robert Wright	Plaintiff
And	(1) Rockway Limited (2) Adam Lisowski (3) Brian Thorn (4) G. Garments Limited	Defendants

Application by the Plaintiff under Rule 6/18(1) of the
Royal Court Rules 1992, as amended, for leave to adduce
evidence on liability, by Affidavit
rather than *viva voce*.

Advocate R.J.Michel for the Plaintiff
The First Defendant did not appear and was not represented.

THE DEPUTY BAILIFF: This is an application by Rex Robert Wright, the plaintiff in this action, asking for leave to adduce evidence on liability by affidavit rather than by himself appearing before the Royal Court to give that evidence "viva voce".

5

10

The facts of the case (which for the purposes of this application concern only the first of the four defendants) detail severe injury caused to the plaintiff by reason of an accident that occurred on 29th September, 1990, in Bangkok where he was working as a boat-builder on a yacht. An air-gun exploded, he claims, because a cylinder which was fitted to it contained not air but oxygen. The claim is disputed. There are other disputes contained within the pleadings.

5 The procedural complications arise because, according to his
detailed affidavit, he is at present unemployed and resides in
Auckland, New Zealand. His only income in New Zealand is his
superannuation of NZ\$ 9,484.98 (after tax.) He has deposed that he
10 has a current bank balance of NZ\$ 5,526.17 but he owns no real
property nor investments. He has a car which he might sell and if
he borrowed a further NZ\$ 3,000 he could then afford to travel to
Jersey. It does not require deep consideration to appreciate that
such a journey under such circumstances and with the physical
15 injury that he has suffered would cause significant financial
hardship and personal inconvenience. We should add that Mr.
Wright is 69 years old. The action was called on 4th September,
1992 when the first defendant had it placed on the pending list,
an amended Order of Justice was settled on 3rd February, 1994, and
20 the action between the plaintiff and the first defendant was set
down for hearing on 28th November, 1994. The first defendant has
its registered office in Jersey. It owns the motor vessel Michel
Adam upon which the accident occurred. The Michel Adam is
registered in the Registry of British Ships held at White Rock,
Guernsey. There are injunctions filed in Guernsey.

25 There is a further complication. Advocate Michel, who appears
for the plaintiff, has been informed by Advocate Lacey who appears
for the first defendant that she no longer acts and because of the
provisions of Rule 15/4 she has no instructions but is passing on
such material as she receives to a lawyer in Munich, who is
apparently known to Mr. Michel in that they have had dealings in
this case.

30 We have no doubt that the defendant is aware of this hearing
today and could easily have appeared had it chosen to. The case on
liability is set down for hearing on 10th June and discovery by
list has been made and all the documents have been inspected.
There is no doubt that the first defendant is ready for trial.

35 On 7th March, 1996, Advocate Lacey wrote to the Judicial
Greffier, copying the other parties in this way:

40 *"We hereby notify you that we no longer act on behalf of
the First, Third or Fourth Defendants. Whilst we accept
that until such time as notice of change of Advocate or
Solicitor is filed with you we remain the address for
service of all communications in respect of those
45 Defendants, you should be aware that we in fact no longer
act on their behalf and your file should be noted
accordingly."*

By Rule 6/18 of the Royal Court Rules (1992):

50 *"Subject to these Rules and to any other enactment
relating to evidence, any fact required to be proved at
the hearing of any action by the evidence of witnesses*

shall be proved by the examination of the witnesses orally and in open court".

5 There is nothing in the provisos to the Rule that gives any further guidance on the question that we have to decide. An immediate problem is that it seems to us important that the plaintiff should be cross-examined. On that basis alone, it would seem difficult to conceive how he could give any evidence on affidavit that would be of assistance to the Court in a case
10 strongly disputed on its facts. The case will be supported as we see it mainly by the evidence of the plaintiff and the defendant in the interests of justice may need to have the opportunity of fully cross-examining the plaintiff and it seems to us to be self-evident that the cross-examination should normally take place
15 before the tribunal that is to try the case. What the justice of the case requires is that justice be done not only to the plaintiff but also to the defendant.

20 Mr. Michel amended his application before us this afternoon in this way:

25 *"2. In the alternative, the Court should order, pursuant to Rule 6/18(4) of the Royal Court Rules, 1992, as amended, that the evidence of Mr. Rex Robert Wright, the Plaintiff, be taken on commission before a competent tribunal in Auckland, New Zealand, and further that such evidence, if the appropriate facilities exist, be recorded on video or by similar electronic means, and that the transcript of the evidence and a copy of the recording be delivered to
30 the Royal Court, through the agency of Messrs. Crills, Advocates, acting on behalf of Messrs. Buddle Findlay & Co., Solicitors of Auckland, New Zealand, representing the Plaintiff."*

35 If we look further into Rule 6/18(4), we see that any party may apply to the Court for a commission or for letters of request to examine a person who is a party or witness in any suit and who is not in the island at the time of the application". In Finance & Economics Committee of the States of Jersey v. Bastion Offshore Trust Company Limited (9th October, 1991) Jersey Unreported CofA; (1991) JLR N.1 the Court of Appeal said this at page 16 of its judgment:

45 *"So far as English law is concerned the inherent jurisdiction of the court has been said to be a virile and viable doctrine, and has been defined as being:*

50 *the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due*

process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them. (Halsbury's Laws Vol. 37 4th Ed'n Practice and Procedure paragraph 14).

Reference is there made to a lecture on the topic given by Sir Jack (then Mr. I. H.)Jacob in 1970 and published in 23 Current Legal Problems pp 23-52. The definition quoted above first appeared in that erudite and authoritative lecture and it has been approved judicially in Canada and New Zealand.

One feature of the inherent jurisdiction is that it can exist alongside an identical or similar rule of court. The court does not lose its power because a rule is made (though there may be many cases where the Court will have no need to look outside the text of the rule). Striking out pleadings is the classic example of overlap of powers. The fact that the Rules of the Supreme Court in England make express provision for striking out and dismissing an action or pleading has been held not to displace the Court's inherent power to do so. As Sir Jack Jacob said in his lecture: "The inherent jurisdiction of the court is a most valuable adjunct to the powers conferred on the court by the Rules."

Essentially, we feel that a solution to the problem that we face may be for a commission to be held in New Zealand as Mr. Michel suggests, making use of videolink facilities which could then be sent to Jersey. That would in the particular circumstances of this case give this Court the opportunity to consider the demeanour and the way in which Mr. Wright gave his evidence and it might give an opportunity for him to be cross-examined. It is the opportunity to cross-examine which seems to us important. If it is not taken then there can be no complaint.

We intend, bearing very much in mind that the case is set down for June 10th, to defer the matter and to ask the Viscount as a matter of urgency to make enquiries on our behalf of the judicial authorities in New Zealand to see whether a videolink facility exists. If it does exist, and if there is not going to be delay in setting up the commission then we can consider if we can go further and issue a request to that Court.

Once we have the information we can either set in motion the alternative procedure set out by Advocate Michel in his amendment or we can give him what might be the Pyrrhic victory of his original application.

Costs are held over at Mr. Michel's request.

Authorities

Royal Court Rules 1992, as amended: Rule 6/18.

Finance & Economics Committee -v- Bastion Offshore Trust Company,
Limited (9th October, 1991) Jersey Unreported CofA; (1991) JLR.
N.1.

Burslem -v- Burslem (1892) 67 LT 719.

R.S.C. (1985 Ed'n) Vol 1: O.38.

R.S.C. (1995 Ed'n) Vol 1: O.38.