

RONALD ROY REBOURS

-v-

JERSEY ELECTRICTY COMPANY LIMITED

AND

M. CANNON (JERSEY) LIMITED

4th October, 1982

DEPUTY BAILIFF: This is a somewhat unusual case for a number of reasons. The events which gave rise to the claim by Mr. Rebours occurred on the 9th December, 1974. Judgment was given on liability only on the 1st December, 1978. We understand that from that judgment Mr. Rebours appealed, or at least lodged an appeal, but that was not pursued. Correspondence which was made available to us showed that in August, 1982, the Deputy Judicial Greffier wrote to Mr. Thacker because, as a result of her discussing matters with Mr. Rebours, she had discovered that he felt that the Court had not specifically dismissed those items in the particulars which had not been proved and he believed therefore, that the judgment on liability, not on quantum of course, extended to the outbuilding to the west of the main structure. It is unusual for a Court to be asked to interpret its own judgment. That is normally a matter for the Court of Appeal if the matter goes on to appeal. But, nevertheless, we think it is clear from our judgment that we considered only those items enumerated on pages 3 and 4 of the judgment which we found had been proved. The other matters had been abandoned tacitly although not formally abandoned, by the plaintiff's advocate at that time. The case is also unusual because a number of matters have been put before us today which more properly should have been put, or been available to us, at the hearing on liability: particularly Mr. Jones' evidence as regards the question of damage to the foundations of the gable. But be that as it may, the judgment shows that we are unable to distinguish with precision between damage caused by the actions of the third party (when the trench was dug), between digging the trench, exposing the foundations and using a heavy roller some little while afterwards, so that it was impossible to say exactly what part of the work caused what damage. We are faced with the position that the plaintiff considers he ought to be

compensated in such a way that he would be given a new house. He has been at pains to express to us his view that either he should have a new house or, perhaps as Mr. Hannam suggested the two walls which were most affected should be taken down and rebuilt on fresh foundations, by the defendants themselves, (through their workmen of course) or they should carry out a course of repairs at their risk. So far as the second matter is concerned this is a novel form of damages that this Court has not in the past awarded and we do not think that it would be right to award that kind of damages now. The law is quite simple. The plaintiff is entitled to have his property reinstated into the condition it was before the incident occurred. Therefore, it doesn't really matter if there has been some conflict of evidence between what we heard today and what we heard at the time of the hearing on liability as to whether the work had damaged the foundations and, therefore, the gables, by undermining the foundations. There is some damage to those gables and the only issue today is how that damage can be put right. Now as I have said Mr. Hannam would demolish the gables and rebuild. On the other hand Mr. Rothwell and Mr. Jones do not agree. If it is not necessary, in their opinion, to do anything more than repair the damage set out on pages 3 and 4 of the judgment as found by the Court. We have examined very carefully the evidence of Mr. Jones and Mr. Rothwell and we think that they are right. We cannot say that it would be a reasonable form of damages to order complete reinstatement in the way Mr. Hannam has suggested. That would be going too far and would be more than actual reinstatement. It would, in fact, be a replacement of something far far better than was there before. We had inadvertently referred to us, through no fault of Mr. Rebours because he doesn't know and isn't expected to know the Rules of Evidence, a document which indicated that there had been some kind of attempted settlement some little while after our original judgment, and which contained various suggestions for putting the repairs in train. We have ignored that document. Therefore, we were left with the evidence, and we can only go on the evidence of today, as to whether the plaintiff had proved the damage to the extent he was claiming, or rather proved the amount he was claiming to put the damage right. Well, the plaintiff hasn't himself produced any figures; the only figures we've had are Mr. Jones called by the defendants and Mr. Rothwell, who was called by the plaintiff, agreed with them to some extent, although he increased the figures of Mr. Jones. We have tried to look at this matter broadly. The figures produced by Mr. Jones, even as altered by Mr. Rothwell, are estimates. Estimates where an old building is concerned are notoriously difficult to do. When one starts one doesn't know what one is going to meet. Therefore, we've made a generous allowance for an increase in the cost of carrying out the remedial works other than, of course, dealing

with any question of underpinning or altering the foundations. We are, therefore, going to award under the first head for repaid the sum of £2,000. Under the second head for inconvenience, distress and so on, and here I refer to our findings in the earlier case for example how Mr. and Mrs. Rebours were certainly distressed at what had happened, with no warning and suddenly faced with this position, we award the sum of £800. We award interest at ten per cent for six years from the date of the incident. And to make it clear, our order for three quarters of the costs up to the last hearing will stand. As regards this hearing if further costs have been incurred by the plaintiff they will be paid by the defendant.

ADVOCATE VALPY: So costs against the defendant?

DEPUTY BAILIFF: Yes.

ADVOCATE VALPY: There's a question of payment into Court, Sir.

DEPUTY BAILIFF: Well, again we heard noises about this at the beginning of the case which we put aside.

ADVOCATE VALPY: I think the normal practise is to ask the Greffier anything in Court.

DEPUTY BAILIFF: Is there anything in Court Greffier (inter)

ADVOCATE VALPY: There is indeed, Sir.

GREFFIER: Well, I can't find it on the file. There is certainly a reference to (inter)

ADVOCATE VALPY: £6,000 I think it was, Sir.

DEPUTY BAILIFF: Is that right, I don't know.

ADVOCATE THACKER: £7,000, Sir.

ADVOCATE VALPY: The plaintiff has not bettered the payment in and, therefore, the usual practise and rule is that costs should go (inter)

DEPUTY BAILIFF: Oh, I see, I beg your pardon, yes, we hadn't realised that there was a payment in, We heard some noises about this at the beginning, but as I said we put that right out of our minds.

ADVOCATE VALPY: That is the position.

ADVOCATE THACKER: There's been correspondence with the Greffe on that very subject.

ADVOCATE VALPY: The Greffier has a jointly signed letter - paid in on behalf of the defendant.

DEPUTY BAILIFF: That letter was notified to the plaintiff was it, that it was paid in? The Greffier's found it. All right, thank you Mr. Valpy. Mr. Rebours did you know that £7,000 had been paid into the Court?

MR. REBOURS: Yes, Sir.

DEPUTY BAILIFF: At the time?

MR. REBOURS: Yes, Sir.

DEPUTY BAILIFF: Well, now what Mr. Valpy is saying about a Rule of Court is that at the end of a case of this nature one inquires about whether money

has been paid into Court. If the award the Court makes is in excess of that amount of money then the Court may, although not necessarily, award costs in full to the plaintiff. If the amount of money paid into the Greffier is in excess, and this is roughly double what we have awarded you, it is customary, although there can be an exception, for the plaintiff to have to pay the costs of the defendant after the date of the payment into Court, do you understand?

MR. REBOURS: Yes, Sir.

DEPUTY BAILIFF: Have you anything to say about that?

MR. REBOURS: No, Sir.

DEPUTY BAILIFF: Well, Mr. Valpy, what do you ask for?

ADVOCATE VALPY: Well, I have to, Sir, it can be referred to the clients concerned, but at this stage I have to do my duty and ask for costs as from the date of payment in, 10th March, which of course would include the bulk of the costs incurred today, bringing Mr. Jones over, yes, it was paid on the 10th March.

DEPUTY BAILIFF: Do you want to say something to us?

MR. REBOURS: I'm just shocked, I'm shocked.

DEPUTY BAILIFF: Well, I'm sorry, Mr. Rebours, that is our usual ruling. You have the right of appeal which you may exercise if you wish. Mr. Valpy can you help us. Is it a rule that's carried out - I don't wish to make it awkward for you - is it a general rule or is it purely discretionary?

ADVOCATE VALPY: It is a general rule and this is why, particularly insurance companies, are extremely anxious, insurance companies particularly, to make payments in because it may assist a settlement and it certainly puts the plaintiff at risk as to costs and the Court can appreciate from the size of the payment in that very real efforts have been made to settle, but all stumbled because of Mr. Rebour's insistence (inter)

DEPUTY BAILIFF: Mr. Rebour, you could have had £7,000 in March you see.

MR. REBOURS: Yes, Sir, but (indistinct)

DEPUTY BAILIFF: I'm sorry but that's the difficulty which faces people, you really want a new house and you can't have a new house. I'm afraid we must make the order.

ADVOCATE VALPY: To be perfectly accurate, Sir, Mr. Rebour did say that he had knowledge of the payment in, but the notice of payment in was given by Advocate Thacker to Advocate Messervy who was then representing Mr. Rebours, and there is the notice, so no doubt Advocate Messervy communicated the payment in to Mr. Rebours who said he knew (inter)

DEPUTY BAILIFF: Well, you actually knew at the time that £7,000 was available?

MR. REBOURS: Yes, Sir.

DEPUTY BAILIFF: And you rejected it?

MR. REBOURS: Yes, Sir.

DEPUTY BAILIFF: That's right. Well, I'm afraid we made the order. Oh, yes, we want to make it clear, Mr. Valpy, that the £800 is not to be abated, only the damages under (A) will be abated, there's a quarter to come off.

ADVOCATE VALPY: Oh, yes, I appreciate that, Sir.

COURT ADJOURNS