Bruges.

COURT OF APPEAL

47.

6th April, 1990

Before: Sir Godfray Le Quesne, Q.C., (President)
D.C. Calcutt, Esq., Q.C., and
L.J. Blom-Cooper, Esq., Q.C.,

Between:	Kenneth Ancrum Forster, trading as Airport Business Centre	Appellant
And:	Harbours and Airports Committee of the States of Jersey	First Respondent
And:	M.R. Lanyon	Second Respondent

Application by the appellant, under Article 14 of the Court of Appeal (Jersey) Law, 1961, and under Rule 2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, for leave to appeal to Her Majesty in Council, against the Judgment of the Court of Appeal of the 24th January, 1990.

Advocate P.C. Sinel, for the applicant,
Advocate S.C.K. Pallot for the respondents.

JUDGMENT

THE PRESIDENT: This is an application for leave to appeal to Her Majesty in Council against a judgment given by this Court on the 24th January of this year. We think it will be useful in the first place to say something generally about the provisions governing the grant of leave to appeal from decisions of this Court.

Article 14 of the Court of Appeal (Jersey) Law, 1961, provides:

"No appeal shall lie from a decision of the Court of Appeal under this Part of this Law without the leave of the Court or the special leave of Her Majesty in Council, except where the value of the matter in dispute is five hundred pounds or more".

'This part of this law' is dealing with civil as opposed to criminal appeals, and this Article is therefore dealing with all decisions of the Court of Appeal in civil matters.

The effect of that Article appears to be, and in our judgment in fact is, to confer upon the unsuccessful party in a case in this Court, in which the value of the matter in dispute is five hundred pounds or more, a right to appeal. The question then arises of how that is to be related to the Privy Council Rules. I turn to the Judicial Committee (General Appellate Jurisidiction) Rules Order 1982. The schedule to that Order contains the procedural Rules which govern appeals to the Judicial Committee, and Rule 2 reads:

"No appeal shall be admitted unless either -
(a) leave to appeal has been granted by the Court appealed from, or
(b) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council".

Article 14 of the Court of Appeal Law resembles very closely provisions which exist in all territories in which appeal lies to Her Majesty in Council. The language used is somewhat puzzling; Article 14 provides that in civil cases in which there is more than five hundred pounds in issue, there shall be an appeal without leave,

whereas Rule 2 of the Privy Council Rules appears to be saying the opposite.

However, these provisions, so far as we are aware, have always been interpreted and reconciled in the same way. The substantive right to appeal is granted in this jurisdiction by Article 14 of the Court of Appeal Law. In a case in which the matter in dispute is worth five hundred pounds or more, there is therefore a right of appeal to Her Majesty in Council. The Judicial Committee Rules are simply laying down the procedure by which that right is to be pursued, or, to use the language which has been used recently by the Judicial Committee itself; are mere machinery for putting into effect the substantive right of appeal conferred.

The Judicial Committee Rules therefore provide that, as a matter of procedure, no appeal shall be admitted unless leave to appeal has been obtained, either from the Court below, or from the Judicial Committee itself. The effect of this is that the unsuccessful party to a case in this Court in which the matter in dispute is worth five hundred pounds or more has a right of appeal, but in order to pursue that right of appeal he must get leave to appeal. The effect of that is that if such a party comes to this Court asking for leave to appeal he is entitled to leave, and the Court, if satisfied that the judgment is otherwise within the terms of Article 14 - a matter to which we shall revert in a moment - and that the sum in dispute exceeds five hundred pounds, has no option but to grant the leave. It will grant it in accordance with well established procedure, in the first place, conditionally. The usual conditions are that the record is prepared within a stated period and security for the respondent's costs is lodged in a stated sum and also within a stated period. When those two conditions have been fulfilled a further application is made to the Court on which an Order granting final leave to appeal is made.

Our attention has been drawn to an unreported case in this Court, Charles Le Quesne (1956) Ltd -v- TSB Channel Islands Limited (10th July, 1987), in which the Act of the Court records that the appellant, whose appeal had been dismissed, made application for leave to appeal to Her Majesty in Council and that leave was refused. There

is no doubt that in that case the sum in issue was more than five hundred pounds, and it appears to us that, if correctly recorded in the Act, the Court's decision on the application for leave to appeal must have been given per incuriam.

A final Order in which more than five hundred pounds is in issue is, as we have said, an Order against which the unsuccessful party has a right to appeal and this Court is bound to make in the first place a conditional Order granting the leave to appeal.

I referred earlier to the case being otherwise within the terms of Article 14. The important question here is whether the decision from which it is sought to get leave to appeal is a decision of the Court of Appeal within the meaning of Article 14. In our judgment the reference in that Article to a decision means a final decision of the Court of Appeal and not an interlocutory decision; a decision, that is to say, by which the rights of the parties are finally decided. We should reach that decision simply as a matter of interpretation of the Article. It is in fact also supported by authority - I refer to the case of Esnouf -v- The Attorney General of Jersey (1883) 8 App. Cas. 304. That was a case, in fact a criminal case, though for this purpose nothing turns upon that, in which a petition for leave to appeal was presented to the Privy Council. Lord Blackburn, in delivering the judgment of the Board, referred to the Order in Council of 1572 by which it is provided:

> "That no appeal in any cause or matter great or small be permitted or allowed before the same matter be fully examined and ended by definitive sentence".

In that case a defendant had been ordered to plead to an information and direction had been given that the information should be tried without a jury. The Order in other words did not dispose of the charge made against the appellant, but provided simply for the manner in which it was to be tried. Their Lordships dealt with the matter in these terms:

"Their Lordships must in the first instance see whether it can be said that the matter has ended in a definitive sentence. It seems pretty clear that the question whether or not he was guilty of this grave offence by the laws of Jersey was not ended by a definitive sentence, it was put in train to be tried by causing him to plead but it has not gone further and it seems therefore impossible to say that there was an end of the matter by a definitive sentence".

We must now turn to the facts of the present case to see whether there had been a definitive sentence, to bring the matter within the terms of Article 14.

The course of the proceedings has been decidedly tortuous, but put briefly what has happened is this. The appellant holds a tenancy from the Harbours and Airports Committee of some premises at the Airport. The length and the terms of the tenancy are in dispute between them. The respondent served upon the appellant a notice to quit. The appellant, having received this notice, started proceedings in the Petty Debts Court on the 21st July, 1988, for a declaration that the notice to quit was invalid. A month later, on the 23rd August, 1988, he started proceedings in the Royal Court by Order of Justice. In those proceedings he made two claims: first, he claimed that he held a valid and subsisting lease of the premises at the Airport and had an option to renew it for a further three years after its expiry, which, as he alleged, would occur on the 12th May, 1990; secondly, he claimed damages.

The Committee put in an Answer in the Petty Debts Court by which they claimed an Order for possession of the premises and the expulsion of the appellant.

When this matter came before the Petty Debts Court on the 15th March, 1989, the Judge decided that the action must be dismissed, because it had been started out of time and service had not been made in the manner required by the Rules. Against that decision the appellant appealed to the Royal Court. The Royal Court held that the Magistrate had been wrong in holding that he had no discretion to

extend the time for service or waive the informality of the service and remitted the action to him so that he might exercise that discretion. The Committee has now sought to challenge that decision of the Royal Court by way of doléance and that challenge is now pending in the Royal Court.

The Committee meanwhile applied to the Royal Court to strike out the proceedings which had been started there by way of Order of Justice. This matter came before the Bailiff on the 30th May, 1989. He struck out the first claim which was the claim for the declaration and stayed the second claim - that is the claim for damages - until the matter should have been decided in the Petty Debts Court.

Against that decision the appellant appealed to this Court. This Court, on the 24th January of this year, varied the Order made by the Bailiff to the extent that, instead of striking out the first claim, they directed that that claim for a declaration, as well as the claim for damages, should be stayed pending the decision of the case in the Petty Debts Court.

It is against that decision of this Court that the appellant now asks for leave to appeal to Her Majesty in Council.

It appears to us that that leave cannot be granted because the decision in question is not a final or definitive decision but merely an interlocutory decision. It does not put an end to the proceedings in the Royal Court, it merely stays further proceedings in the action, pending the determination of the case in the Petty Debts Court. Indeed, the Court of Appeal in delivering judgment expressly contemplated that there might be circumstances in which, after the decision of the Petty Debts Court, this action might still raise questions requiring determination in the Royal Court.

In those circumstances it appears to us impossible to say that this was a final decision or a decision definitively disposing of the rights of the parties.

Mr. Sinel has put the case to us in this way. He says that, in coming to their decision on the 24th January, this Court considered whether the jurisdiction of the Petty Debts Court to entertain an action for possession was an exclusive jurisdiction, thus excluding any jurisdiction of the Royal Court to consider such an action. They held that it was. That, Mr. Sinel says, disposes finally of his right to have the issue with which he is concerned about the nature of his lease decided by the Royal Court. If his action in the Petty Debts Court is unsuccessful, the result, he says, will be that he will have lost all opportunity of establishing in the Courts his rights under his tenancy and therefore the judgment of the Court of Appeal should be treated as a judgment finally disposing of those rights.

The first answer to that is that, for the purpose of applying Article 14, one has to see the precise operation of the Order set out in the Act of the Court of Appeal of the 24th January, 1990. The precise operation of that Act is simply to stay the proceedings in the action. It follows from that that technically that Order was interlocutory and not final.

Secondly, we would add that if in fact it turns out that Mr. Sinel is unable to get his case decided in the Petty Debts Court, that will be because the action in the first place in that Court was irregularly instituted. The loss of the opportunity to have his rights determined will not arise from the judgment of this Court, but from the irregularity of the institution of the proceedings in the Petty Debts Court.

For these reasons we come to the conclusion that the present application does not fall within the terms of Article 14 of the Court of Appeal Law and must therefore be dismissed. This, we may add, has no effect upon the right of the appellant to apply to the Judicial Committee for special leave to appeal. It remains perfectly open to him to take that course if he is so advised.

Authorities

Dow Jones Publishing Company (Asia) Inc. -v- Attorney General of Singapore (1989) WLR 1308.

Court of Appeal (Jersey) Law, 1961: Articles 12, 14, 15.

Judicial Committee (General Appellate Jurisdiction) Rules Order 1982: Rule 2.

Safford & Wheeler: "Privy Council Practice": p.229.

Bentwich (3rd Ed'n): "The Practice of the Privy Council in Judicial Matters" p.53.

Report of the Commissioners on Jersey Law, 1861: paras. 5365-5368.

Esnouf -v- The Attorney General of Jersey (1883) 8 App. Cas. 304.

Charles Le Quesne (1956) Ltd -v- TSB Channel Islands Limited (10th July, 1987) Jersey Unreported.