

COURT OF APPEAL

167.

28th September, 1992

Before: J.M. Collins, Esq., Q.C. (President).
R.D. Harman, Esq., Q.C., and
E.A. Machin, Esq., Q.C.

<u>Between:</u>	Douglas John Woolley	<u>Appellant</u>
<u>And:</u>	Michael Forrest	<u>Respondent</u>

Application by the Appellant (the Plaintiff below), under Article 13 (e) of the Court of Appeal (Jersey) Law, 1961, for leave to appeal from the Order of the Royal Court (Samedi Division) of 10th April, 1992, whereby the Appellant's application, under Rule 6/7(5) of the Royal Court Rules, 1982, that the Court should pronounce judgment against the Respondent (the third defendant below) was dismissed.

Leave to appeal was refused by the Royal Court on 10th April, 1992.

The Appellant on his own behalf.
Advocate S.J. Habin, for the Respondent.

JUDGMENT

THE PRESIDENT: This is an application for leave to appeal from an Order of the Royal Court of the 10th April, 1992, dismissing an application by Douglas John Woolley, the Appellant, that the Court should pronounce judgment against the Respondent pursuant to Rule 6/7(5) of the Royal Court Rules, 1982, as amended.

We have considered two matters this morning; first of all whether to grant leave to appeal and secondly the substance of Mr. Woolley's grounds of appeal. Having heard Mr. Woolley we think it right to grant leave to appeal and so therefore we now turn to the substance of the appeal itself.

The Appellant commenced these proceedings by an Order of Justice of 6th December, 1991, which was served on the Respondent to this appeal who is the Third Defendant in the proceedings, on 13th January, 1992. The matter was placed on the pending list

pursuant to Order 6/7(1) of the Royal Court Rules, 1982, as amended, on 28th February, 1992.

An Answer was served on behalf of the Third Defendant on 26th March, 1992, by letter of 25th March, and this service was outside the twenty-one days prescribed by Rule 6/7(3) of the above Rules. The Answer had, therefore, been served out of time but was filed some two weeks prior to the hearing of the application for judgment by the Royal Court.

By the terms of Rule 6/7(5) provision is made as follows:

"The Plaintiff may, after giving not less than 24 hours' notice to the Greffier and to the Defendant, ask the Court to pronounce judgment against the Defendant (a) where the time limit for filing an Answer including an Answer to a counter-claim, has expired and no Answer has been filed".

This Rule has been construed and applied by this Court in the case of Bates -v- Bradley (1982) JJ 59. In that case, as in this, it appears that by the time the matter came before the Court on the application, an Answer had been filed, no Answer having been filed when notice of the application had been given. Such notice in that case was given on 2nd June, 1981, and it was common ground that up until the time that notice had been given, no Answer had been filed. It was either filed later on the same day, or on the following day. Upon those facts the President of the Court of Appeal referred to the Rule with which we are concerned, (Rule 6/8(2) of the Royal Court Rules, 1968) and said this:

"I have already read that Rule and it seems to me that on a true construction of that Rule before jurisdiction can arise to make the application which is there referred to, two conditions precedent must each have been fulfilled. First, time must have expired and secondly no answer must in fact have been filed. Here, in my judgment, an Answer had in fact been filed, albeit out of time. In those circumstances it seems to me that there was no jurisdiction to make an application and no jurisdiction for the Court to make an order under that particular Rule".

The words which I have been quoting were those of Mr. Calcutt, as he then was, who was presiding in the Court of Appeal and sitting with Mr. Clyde and Mr. Hoffman, as they then were, who in each case agreed. And so it became the decision of the Court.

It seems to us that the facts of the present matter are indistinguishable with the facts which formed the basis of the decision of the Court in Bates -v- Bradley.

Following that decision, as we do, we dismiss this appeal on the same ground, namely that by the time the matter came before the Court on the application, the Answer had been served and filed.

Authorities

Royal Court Rules, 1982: 6/7.

Royal Court Rules, 1968: 6/8(2).

Barker -v- The Viscount & Ors. (10th May, 1991) Jersey Unreported.

Barker -v- The Viscount & Ors. (22nd May, 1991) Jersey Unreported.

Bates -v- Bradley (1982) JJ 59.