

ROYAL COURT
(Probate Division)

188.

14th October, 1996.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff
and Jurats Rumfitt and Jones

FIRST ACTION

Between Stephen John Foster Plaintiff
And Petronella Chernin (née Venhovens);
Michael David Breeze Defendants

SECOND ACTION

Between Petronella Chernin (née Venhovens)
Michael David Breeze Plaintiffs
And Stephen John Foster Defendant

Appeal by the Plaintiff in the First Action from the
Judicial Greffier's Order of 14th June, 1996, ordering
the Plaintiff to pay the costs after striking out the
Plaintiff's Order of Justice.

Appeal by the Defendant in the Second Action from the
Judicial Greffier's Order of 14th June, 1996, striking
out the Defendant's Answer.

Advocate A.P. Begg for the Plaintiff.
Advocate M.St.J. O'Connell for the Defendants.

JUDGMENT

THE LIEUTENANT BAILIFF: This appeal arises out of the Order of the
Judicial Greffier of 14th June, 1996, when he ordered that Mr.
Foster's Order of Justice in the First Action and his Answer in
the Second action be struck out.

The Second Action

Subsequent to the Order of the Judicial Greffier, Mrs.
Chernin and Mr. Breeze made an application to the Royal Court
under Rule 6/7(5) to strike out Mr. Foster's answer and defence in
the Second Action. The Royal Court did so and Mr. Foster's

counsel is seeking leave to appeal from that Order in the Court of Appeal.

At today's hearing, Mr. Foster's counsel, who was not the counsel who appeared before the Judicial Greffier, seeks to raise the point that the Judicial Greffier did not, given the terms of article 11 of the Probate (Jersey) Law, 1949, have jurisdiction.

In the view of this Court, this argument is one which should more properly have been put before the Judicial Greffier, or before the Royal Court when the application, under Rule 6/7(5) was made.

However, it may be appropriate to say, having this morning heard argument, that in the view of the Court, it is one which is wholly without merit. The Greffier is entitled, in our view, to hear applications to strike out under Rule 6/13 and in consequence of Rule 1/1(1). No distinction - as there is with matrimonial causes - is made with probate matters and in the view of the Court the Judicial Greffier properly exercised his power, and with respect, the Royal Court was correct on the facts then before it, to make the Order with it did.

[By consent, the appeal was then dismissed.]

Costs in the First Action

The Executor had to bring proceedings in Jersey to raise the caveat; and Mr. Foster brought his own cross-proceedings.

The proceedings brought by Mr. Foster have been struck out, as being, effectively, without merit.

In those circumstances it is not a case for costs to be paid out of the Estate or for each party to bear their own, but for an order for taxed costs of and incidental to the appeal and to today's hearing.

Authorities
Second Action Appeal

Probate (Jersey) Law, 1949.

Probate (General) (Jersey) Rules, 1949.

Royal Court Rules 1992, as amended: Rule 1/1(1).

R.S.C. (1993 Edition) 0/76/6.8.10,11.

First Action: Costs

4 Halsbury 17. Paras 775-803; 815-819 inclusive.

R.S.C. (1993 Ed'n) Section 62/A4/92: "Probate Action".

Odgers on High Court Pleading and Practice (23rd Ed'n, 1991) p385.

R.S.C. (1988 Ed'n) Section 62/12/20.

Tristram & Coote's Probate Practice; (28th Ed'n, 1995) pp696-706.

Jinkin -v- Cowling [1924] P113.