

COURT OF APPEAL

239.

13th December, 1996.

Before: Sir Philip Bailhache, Q.C., Bailiff,  
Single Judge.

Between:	Petronella Chernin (née Venhovens) Michael David Breeze Executors of the Will of David Chernin, deceased	Plaintiffs/ Respondents
And:	Stephen John Foster	Defendant/ Appellant

Application for leave to appeal under Article 13(e) of the Court of Appeal (Jersey) Law, 1961, and if such leave is granted, appeal by the Defendant/Appellant against:

- (1) so much of the Order of the Royal Court (Samedi Division) of 9th August, 1996, as: (a) refused the Defendant/Appellant's application for leave to file an amended Answer; (b) ordered that a caveat obtained by the Defendant/Appellant preventing the Plaintiffs/Respondents from obtaining a Grant of Probate in respect of the Deceased's Jersey assets should be cleared off; (c) directed the Judicial Greffier to admit the Will of the Deceased to Probate; and (d) ordered the Defendant/Appellant to pay the taxed costs of the action; and
- (2) the Order of the Royal Court (Samedi Division) of 23rd August, 1996: (a) refusing the Defendant/Appellant's application to set aside a default judgment obtained against him on 9th August, 1996; and (b) ordering the Defendant/Appellant to pay the taxed costs of his application.

Application by the Defendant/Appellant under Rule 16 of the Court of Appeal (Civil)(Jersey) Rules, 1964, for an Order staying execution of the Judgment of the Royal Court of 9th August, 1996, pending determination of the Defendant/Appellant's application for leave to appeal against the said Judgment.

Advocate M.St.J. O'Connell for the Plaintiffs/Respondents.  
Advocate A.P. Begg for the Defendant/Appellant.

JUDGMENT

**THE BAILIFF:** Mr. Begg applies to me today as a Single Judge of the Court of Appeal for a stay of the order of the Royal Court of the 9th August, 1996, ordering *inter alia* that probate be granted to

the Will of David Chernin dated the 24th January, 1992. Having heard arguments for some three-quarters of an hour, counsel for Mrs. Chernin has drawn my attention to a decision of a Single Judge of the Court of Appeal, Sir Peter Crill, on the 28th November, 1996, which ordered the Defendant/Appellant to pay the sum of £1,500 as security for the costs of his applications for leave to appeal - such sums to be paid within two months of the date of the order - and further directed that the said applications be stayed pending payment of that sum of money. Mr. Begg concedes that the sum of £1,500 has not been paid, and on the face of it therefore, the Court has no jurisdiction to hear this application.

Mr. Begg has now asked me to adjourn the hearing of the application so that he can make enquiries and perhaps procure payment of the sum which Crill J.A. ordered to be paid. It seems to me that the difficulty in the way of acceding to that application is that, if I have no jurisdiction to hear the application until payment of £1,500 has been made I have no jurisdiction to grant an adjournment. The position quite simply is that I do not have jurisdiction to hear the application, because the Court of Appeal has ordered that the appeals be stayed pending payment of the sum of £1,500, I therefore refuse the application for an adjournment and I dismiss the application. So far as the costs of this application are concerned, because neither counsel drew my attention at the beginning of the hearing to the order of the single judge of the 28th November, 1996, I propose to make no order as to costs.

No Authorities.