

ROYAL COURT
(Samedi Division)

34.

17th February, 1995

Before: The Bailiff, and Jurats
Orchard and Herbert

In the matter of the representation of Mr. David Eves concerning the representation of Hambros Bank (Jersey) Limited seeking a declaration of adjudication and renunciation of the real and personal property of the said Mr. Eves.

Advocate A.P. Roscouet for the Representor.
Mr. D. Eves on his own behalf.

JUDGMENT

THE BAILIFF: This is a representation by David Eves and Helga Maria Eves, née Buchel, seeking the setting aside of a Judgment of the Court ordering a *Vicomte chargé d'écrire* on the application of Hambros Bank (Jersey) Ltd ("Hambros") made to the Court on 30th September, 1994.

Although the representation is stated to be in the names of Mr. & Mrs. Eves, we have some doubt as to whether Mrs. Eves has the *locus standi* to present an application of this nature to the Court, but for reasons which will appear in due course, nothing turns upon this at this stage.

The brief history of the matter is that Hambros obtained summary judgments before the Judicial Greffier in two amounts of £100,000 and £28,121.06. Against those summary judgments Mr. Eves appealed to the Royal Court which dismissed the appeal.

Mr. Eves then made an application for leave to appeal to the Court of Appeal which was unsuccessful and subsequently sought both from the Court of Appeal and later from the Judicial Committee of the Privy Council special leave to appeal to the Judicial Committee. Those applications were also unsuccessful.

Mr. Eves moves to set aside the Order *Vicomte chargé d'écrire* principally on the basis of a short passage at page 1v of the 1861 Report of the Commissioners enquiry into the Civil Law which provides "*When final judgment has been obtained a creditor at his choice employs either the Vicomte or one of the dénonciateurs to execute it*". Mr. Eves argues that, because there is outstanding a

claim by Hambros for some £4,500 in respect of which he has been given leave to defend, he is entitled to challenge this part of the claim. In the meantime he submits that Hambros should not be permitted to proceed to execution in respect of that part of their claim on which they have obtained summary judgment.

We cannot accept that argument. There is a total judgment debt of £128,121.06 against which Mr. Eves has no further rights of appeal. It is therefore final.

Rule 9/1 of the Royal Court Rules, 1992, provides:

"Where the Court has granted an act condemning a defendant to pay the amount for which judgment is given, the plaintiff may, without obtaining an acte de prison against the defendant, apply to the Court for an order Vicomte chargé d'écrire".

There can be no doubt that the Court has granted an act condemning this Defendant to pay the amount for which judgment is given and Hambros was therefore entitled, pursuant to the Rules, to make its application for an *acte Vicomte chargé d'écrire*. We accordingly dismiss the representation with costs.

The Court then heard further argument on Hambros' application for an order of adjudication and renunciation of Mr. Eves' property.

THE BAILIFF: Miss Roscouet, we cannot be sure whether we applied our minds on 28th October to the question of whether the time clock continued to tick so far as the two months period is concerned. We were certainly concerned at that time to prevent Hambros from proceeding to apply for the adjudication and renunciation of Mr. Eves' property. And because we have some doubt as to whether we applied our minds to that question of whether or not the time clock was continuing to run, we are inclined to the view that we ought to adjourn Hambros' application for a period so as to make it clear beyond doubt that the statutory period of two months has actually elapsed. I need some guidance from you, I think, as to what is the appropriate period and I may want to hear Mr. Eves as well. It seems to me that Mr. Eves has certainly had 18 days notice from the 10th October until 28th October, and you would argue, presumably, that he has had a further 17 days from the beginning of February until today. You might argue in fact that the clock re-started rather earlier in January, but certainly he's had 17 days.

Advocate Roscouet addresses the Court

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THE BAILIFF: Mr. Eves, before the Court makes an Order in this respect, I think we ought to give you the opportunity of making any submissions that you wish to make, but the inclination of the Court is not to deal with the application of Hambros today for the reasons which I have outlined, but to adjourn the matter for a month until 17th March. Is there anything you wish to say on that?

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Mr. Eves addresses the Court

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THE BAILIFF: The Court will adjourn the application of Hambros for an act of adjudication and renunciation for six weeks until 31st March.

Authorities

Rules of the Supreme Court (1995) O.59/1A.

Words and Phrases legally defined (Butterworths 1989) (3rd Ed'n)
Vol. 2: D-J: meaning of "Final judgment".

Matthews & Nicolle: "The Jersey Law of Property": paras.
7.15 - 7.16; 7.33 - 7.38.

Royal Court Rules 1992: Rule 9/1.

Report of the Commissioners into the Civil, Municipal and
Ecclesiastical Laws of the Island of Jersey, 1861.: p. lv.