David Eves and Helga Maria Eves (née Buchel) v Hambros Bank (Jersey) Ltd and HM Attorney General

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	19 June 2000
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Text

[2000] JRC 108

Royal Court

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff sitting as a Single Judge

David Eves
First Plaintiff

and

Helga Maria Eves (née Buchel)
Second Plaintiff
and

Hambros Bank (Jersey) Limited
Defendant

and

Her Majesty's Attorney General
Amicus Curiae

Advocate A. D. Hoy **for the Plaintiffs**;

Advocate K. O. Dixon **for the Defendant**;

P. Matthews, **Esq., Crown Advocate, for the *Amicus Curiae***.

Authorities

Le Couillard -v- Renouf (1900) 220 Ex 510 .

Le Cocq -v- de Gruchy (1909) 226 Ex 204 .

Matthews & Sowden: "The Jersey Law of Trusts" (3 rd Ed'n): p.204.

de Ferrière: Dictionnaire de Droit et de Pratique (1740): Tome 1: p.992.

Houard: Dictionnaire de la Coûtume de Normandie (1780): Tome 2: p.714.

Ebert -v- Venvil [1999] 3 WLR 670 .

Commonwealth Trading Bank -v- Inglis [1974] 131 CLR 311 .

Stewart -v- Auckland Transport Board [1951] NZLR 576 .

Eves & Ors -v- St Brelade's Bay Hotel, Ltd. (1998) JLR N.5 ; (10 th February, 1998) Jersey Unreported, Cof A.

Bremer Vulcan -v- South India Shipping [1981] 1 All ER 295 .

Draft Civil Proceedings (Vexatious Litigants) Jersey Law 200–

Supreme Court Act 1981: s.42.

Royal Court (Jersey) Law 1948: Article 11.

Royal Court Rules 1992, as amended: Rule 6/13.

Packer -v- Packer [1954] P.15 .

C. Le Masurier Ltd & Clarke -v- Alker & Northern Inn, Ltd (1992) JLR 123 CofA

Bastion Offshore Trust -v- Finance & Economics Committee (1991) JLR N1 ; (9 th October, 1991) Jersey Unreported CofA.

Mayo -v- Bank Cantrade (1998) JLR 173 CofA.

Gouriet -v- Union of Post Office Workers [1978] A.C. 435 .

Pirunico Trustees (Jersey) Ltd -v- Jefferson Seal (2 nd December, 1996) Jersey Unreported.

Butterworths: Litigation: The Journal of Contentious Business. Vol.18 No.7. (May, 1999).

Barette & Ux -v- Le Moignan et Ux (1899) 219 Ex.452 .

I.H. Jacob: The Inherent Jurisdiction of the Court (1970) Current Legal Problems 23.

Representation of Woolley (2 nd December, 1991) Jersey Unreported.

Picot -v- A.G. (23 rd February, 2000) Jersey Unreported.

In re Harbours and Airports Committee (1991) JLR 316

Johnson -v- Valks (23 rd November, 1999) TLR.

IN THE MATTER OF

an application by the Defendant, pursuant to the Royal Court's inherent jurisdiction, for an Order that the Plaintiffs be jointly and severally enjoined from commencing any proceedings or taking any further steps in existing proceedings (whether in the Royal Court or in the Petty Debts' Court) whatsoever against the Defendant or any of its servants or agents, unless the Plaintiffs have first obtained leave from the Royal Court to do so.

Judgment on the issue of whether, as a matter of law, the Royal Court has jurisdiction to grant the relief sought.

Bailiff

THE

Introduction

1 This summons was issued by Hambros Bank (Jersey) Limited (“Hambros”) in the context of proceedings instituted by the plaintiffs, David Eves and Helga Maria Eves (“the plaintiffs”) in May, 1998. The summons seeks orders –

“(1) that pursuant to the Royal Court's inherent jurisdiction the plaintiffs should [not

sic] be jointly and severally enjoined from commencing any proceedings or taking any further steps in existing proceedings, (whether in the Royal Court or the Petty Debts Court) whatsoever against [Hambros] and any of its servants or agents unless the plaintiffs have first obtained leave from the Royal Court to commence and/or take further steps in such proceedings; and

(2) that the plaintiffs pay the costs of and incidental to this summons on a full indemnity basis."

2 There is a long history of litigation between the parties which goes back to 1992. When the summons came before the Court for the first time it was ordered to be served upon the Attorney General in order that he might act as *amicus curiae*. The Attorney General has been represented by Crown Advocate Matthews who adopted a neutral rôle having regard to the fact that both parties were represented by counsel. I am indebted both to Mr. Matthews and indeed to Mr. Dixon and to Mr. Hoy for their researches and for their very helpful submissions. It was agreed between the parties that the summons raised two issues which should be dealt with separately, *viz* –

(i) whether, as a matter of law, the Royal Court has jurisdiction to grant the relief sought and, if so,

(ii) whether the relief should in fact be granted.

3 This judgment is concerned only with the first issue.

Hambros' contentions

4 Mr. Dixon's submission was that the Royal Court has and has always had an inherent jurisdiction to grant the relief sought but, if not, that it should now claim that jurisdiction for itself. The Royal Court was a creature of the customary law and had an inherent jurisdiction to regulate its own procedure. This was epitomised by the maxim *"La Cour est toute puissante"*. This inherent jurisdiction allowed the Court, in counsel's submission, a plenitude of judicial power in all matters concerning the general administration of justice.

5 Mr. Dixon asserted that the court had in the past exercised its inherent jurisdiction to declare litigants hors de cour with the result that they were forbidden to litigate further. He cited the cases of Le Couillard -v- Renouf (1900) 220 ex 510 and Le Cocq -v- de Gruchy (1909) 226 ex 204. Mr. Dixon derived some support for this assertion from a short passage in Matthews and Sowden: The Jersey Law of Trusts, (3rd Ed'n), page 204, where it is stated — "Indeed, litigants may even be declared 'Hors de Cour' and hence forbidden to litigate further." I think, with respect to the learned authors, that this statement goes a little too far. The procedure of declaring litigants Hors de Cour was, according to De Ferrière — Dictionnaire de Droit et de Pratique, 1740 Tome I, page 992, "une prononciation dont se sert le Juge pour renvoyer les parties, sur le fondement que l'affaire a été intentée

prématurément avant l'échéance de la dette, ou avant l'évènement de la condition de laquelle elle dépendoit. Un Juge peut encore mettre Hors de Cour, lorsque l'affaire ne lui paroît pas assez instruite de part et d'autre, faute par les parties d'éclaircir les faits, ou de justifier les moyens de droit qui peuvent servir à la décision de la cause".

6 The parties were not necessarily forbidden from returning to court. Once the cause of action had matured, it was open to them to re-commence the litigation. It was not in those circumstances a *"chose jugée"*. Houard — Dictionnaire de la Coûtume de Normandie 1780, Tome 2, page 714 defines the procedure more succinctly but perhaps less clearly. ***"En matière civile, le Hors de Cour se prononce lorsque les deux parties paroissent avoir un tort égal"***. Against the background of those definitions, it is clear that the Court in *Le Couillard -v- Renouf* and *Le Cocq -v- de Gruchy* was not inventing a new jurisdiction, nor indeed exercising any jurisdiction to deal with vexatious litigation.

7 Counsel was not able to produce any authority tending to show that the Court has previously exercised the precise jurisdiction which would need to be invoked in order to grant the relief sought. The Court has, of course, invoked its inherent jurisdiction in various other ways to prevent abuses of its procedures, for example by striking out and by granting *quia timet* injunctions. But in the end counsel for Hambros was really driven to rely substantially upon a recent decision of the English Court of Appeal where a High Court decision to grant relief very similar to that set out in the summons was upheld. The case was *Ebert v Venvil* and another [1999] 3 WLR 670. The headnote of the report is in the following terms –

> ***"The plaintiff, who had been made bankrupt, commenced a series of vexatious proceedings in the High Court against his trustee in bankruptcy, the bankruptcy petitioner and a bank.*** In the first action, the judge made an order which prohibited the plaintiff from making any further applications or taking any steps concerning matters involving or relating to the bankruptcy proceedings without the leave of the court. In the second action, the judge prohibited the plaintiff from issuing any new proceedings in the High Court or in any county court against the bank or its legal representatives concerning any matters involving or relating to the bankruptcy proceedings. In both cases, the judge refused the plaintiff's applications for leave to appeal.

On the plaintiff's applications to the Court of Appeal for leave to appeal –

> ***Held, dismissing the applications, that the High Court had an inherent jurisdiction to prevent the initiation, without the leave of the court, of civil proceedings which were likely to constitute an abuse of process; that, as part of the High Court's supervisory jurisdiction in relation to the county court, such an order could, in appropriate circumstances, apply to county court as well as High Court proceedings, that the order needed to be sufficiently certain so as to enable the person at whom it was directed to know what he was, and was not, entitled to do; and that, accordingly, since the orders made by the judge met that requirement, leave to appeal would***

be refused."

8 Lord Woolf M.R. declined to follow decisions of the High Court of Australia in *Commonwealth Trading Bank -v- Inglis* (1974) 131 CLR 311 and of the Supreme Court of New Zealand in *Stewart -v- Auckland Transport Board* [1951] NZLR 576. He stated –

"We prefer to approach the issues from a standpoint of principle. Doing so, the starting point must be the extensive nature of the inherent jurisdiction of any court to prevent its procedure being abused. We see no reason why, absent the intervention of a statute cutting down the jurisdiction, that jurisdiction should apply only in relation to existing proceedings and not to vexatious proceedings which are manifestly threatened but not yet initiated. In this connection we have gained considerable assistance from the article by I. H. Jacob. "The Inherent Jurisdiction of the Court" (1970) 23 C.L.P. 23 . ***Reading that article as a whole, we find it strongly supportive of the approach that we have indicated."***

9 Later in his judgment Lord Woolf stated –

"The general approach of the courts in recent years has been not to restrict the inherent jurisdiction of the court but to adopt a broad approach where this is appropriate."

10 Mr. Dixon invited me to adopt this approach and to claim a similar jurisdiction for the Royal Court. He submitted that I might take comfort from a dictum of Southwell JA in proceedings involving the same plaintiffs when he stated in *Eves & others -v- St. Brelade's Bay Hotel Limited* (1998) JLR N5, (10th February, 1998) Jersey Unreported –

"It is a matter of concern that in cases of this kind litigants in person may pursue too large a number of applications or actions and appear before the courts on too many occasions, without good effect. I say that, not specifically in relation to Mr. Eves, but as a general matter. I think that there would be something to be said for the authorities looking generally at the position of litigants in person, and considering whether there should be any filter by which they are enabled to come to the courts to pursue actions and applications."

The plaintiffs' contentions

11 Mr. Hoy submitted that there was no inherent jurisdiction to make the order sought, and that the Court ought not to claim it. It had never been done before. He contended that the deprivation of a right of access to the Court was such a serious matter that it should only be done under statutory authority. Counsel referred me to the judgment of the High Court of Australia in *Commonwealth Trading Bank -v- Inglis* where the court stated –

"In our opinion, it is not surprising that the courts do not appear (so far as

we have been able to discover) to have taken the further step of intervening in a summary way to prevent the commencement, except by leave, of actions and other proceedings by a particular person or persons but have limited themselves to exercising their powers in relation to proceedings which have been taken in a court and have thus been placed under its control. It may be that the exercise of supervision, by means of a requirement that leave should be obtained for the bringing of proceedings, could have been justified logically as a proper safe-guard against abuse of the court's process in cases where it was shown to be probable that a person would continue bringing groundless proceedings. But, in our opinion, it is apparent that the courts, both in England and in this country have declined to regard themselves as having power to do so, except where such power has been conferred upon them by an Act of Parliament or by rules promulgated under statutory authority."

...

"But the making of unwarranted and vexatious applications in an action which is pending in the court is, in our opinion, a matter over which there is an inherent power in the court to exercise control. There is an essential difference, in our opinion, between regulating the conduct of such an action so as to prevent the court's process from being abused, on the one hand, and impeding a particular person in the exercise of a right of access to the court, on the other hand."

12 Counsel submitted that I should follow the Australian approach rather than that of the English Court of Appeal. Mr. Hoy contended that the exercise of the Court's inherent jurisdiction should be limited to procedural matters which are before it. He cited the judgment of Lord Diplock in *Bremer Vulcan -v- South Indian Shipping* [1981] 1 All ER 295 where his Lordship stated –

"The High Court's power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent it being used to achieve injustice. Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between then as to their respective legal rights. The means provided are Courts of Justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the Court is compulsory. So, it would stultify the constitutional role of the High Court as a Court of Justice if it were not armed with power to prevent its process being misused in such a way as to diminish its capability of arriving at a just decision of the dispute. The power to dismiss a pending action for want of prosecution in

> cases where to allow the action to continue would involve a substantial risk that justice could not be done is thus properly described as an 'inherent power' the exercise of which is within the 'inherent jurisdiction' of the High Court."

13 Finally Mr. Hoy referred to the draft Civil Proceedings (Vexatious Litigants) (Jersey) Law 200– which was before the States. Such legislation would not have been deemed necessary, he submitted, if the Court had the inherent jurisdiction which was now being claimed by Hambros.

Contentions of the amicus curiae

14 Mr. Matthews drew attention to the statutory power to restrain vexatious litigation in civil proceedings which had been possessed by the English Court for over 100 years. That power was now contained in section 42 of the Supreme Court Act 1981. It was clear however from the judgment of Lord Woolf in *Ebert -v- Venvil* that the English Courts had acted to restrain vexatious litigants from instituting fresh proceedings before statute had intervened. The present statutory position in Jersey was that the court could, by virtue of Rule 6/13 of the Royal Court Rules 1992, strike out any claim or pleading which was, inter alia, vexatious or an abuse of the process of the court. There was however no statutory equivalent in Jersey to the "Civil Proceedings Order" in England and Wales. Counsel submitted that the absence of any such statutory provision in Jersey did not mean however that the court did not possess inherent jurisdiction to restrain vexatious litigants.

15 Generally Mr. Matthews supported the contentions of counsel for Hambros, and I need not repeat them.

Conclusion

16 It is on the face of it surprising that the researches of counsel have unearthed no previous instance of the courts acting to prevent vexatious litigation from being instituted. Even acknowledging that this is a small jurisdiction, one might have expected to find some such cases. Perhaps the reason is that until relatively recently litigants were obliged to employ the services of counsel and the oath of the advocate provides a filter against abuse. The relevant part of the oath provides –

> *"Vous n'entreprendez ni ne soutiendrez, soit en demandant ou défendant, aucune cause qui vous paroîtra denuée de tout droit, on intentée on soutenue par méchanceté."*

17 Be that as it may it seems to me that I should approach the matter from the standpoint of principle paying close regard, naturally, to the jurisprudence of the Island, by which I mean the decisions of the courts. The absence of precedent does not mean either that there is no inherent jurisdiction to grant the relief sought or that such jurisdiction should not be

asserted. I respectfully adopt the celebrated dictum of Lord Denning in *Packer -v- Packer* [1954] P 15 at 22 –

> ***"What is the argument on the other side?*** Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on: and that will be bad for both" .

18 What then is to be gleaned from the jurisprudence as to the inherent jurisdiction of this Court? In *C. Le Masurier Ltd. & Clarke -v- Alker & Northern Inn Ltd.* (1992) JLR 123 CofA, at 130 Blom-Cooper JA stated –

> ***"What is the true nature of an inherent jurisdiction?*** The locus classicus on this subject is to be found in the speech of Lord Morris of Borth-y-Gest in *Connelly v. D.P.P.* ([1964]) A.C. at 1301):
>
> > ***"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction.*** I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process." [Emphasis supplied.]
>
> ***…***
>
> ***"It can readily be seen that the invocation of the inherent jurisdiction is limited to practice and procedure but within the adjectival part of the litigious process it is a virile and viable doctrine."***

19 It is clear that the Court's inherent jurisdiction can co-exist with a statutory jurisdiction. Thus in *Bastion Offshore Trust Co. Ltd. -v- Finance and Economics Committee* (1991) JLR N 1, (9th October, 1991) Jersey Unreported, CofA, Neill JA stated –

> ***"One feature of the inherent jurisdiction is that it can exist alongside an identical or similar rule of court.*** The court does not lose its power because a rule is made (though there may be many cases where the Court will have no need to look outside the text of the rule). Striking out pleadings is the classic example of overlap of powers. The fact that the Rules of the Supreme Court in England make express provision for striking out and dismissing an action or pleading has been held not to displace the Court's inherent power to do so. As Sir Jack Jacob said in his lecture: 'The inherent jurisdiction of the court is a most valuable adjunct to the powers conferred on the court by the Rules.'"

20 It does not therefore seem to me to be relevant that the States are about to consider a draft

law entitled Civil Proceedings (Vexatious Litigants) (Jersey) Law 200–. Even if such a law had been adopted and were in force, its provisions are not inconsistent with the inherent jurisdiction which the Court is now being asked to exercise.

21 In *Mayo -v- Cantrade* (1998) JLR 173 CofA, Smith JA, in delivering the judgment of the Court of Appeal, while stating that there was "no unifying principle from which the boundaries of inherent jurisdiction may be divined" went on to cite with approval the following extract from an article by Sir Jack Jacob :

> ***"…[T]he essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused.*** Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law. The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner."

22 Smith JA continued — "In our view, the vital clue to the nature of inherent jurisdiction in its procedural setting … is necessity. The court has a particular procedural power because it has to have it to be a court in any meaningful sense". The Court went on to observe that that approach was antithetical to a definition of inherent jurisdiction based upon fairness or perceptions of justice. Fairness and justice would be major factors to take into account when deciding whether or not to exercise a discretion, but they could not determine whether or not an inherent jurisdiction existed.

23 While I might perhaps strain at this leash, I must accept that, for the time being at least, the inherent jurisdiction of the Court is circumscribed by the doctrine of necessity. I observe in passing that this approach is arguably more restrictive than that recently adopted by the English Court of Appeal in *Ebert -v- Venvil*, but I should nevertheless apply it.

24 Is it necessary therefore for the Court to assert an inherent jurisdiction to prevent its procedure from being abused by proscribing vexatious litigants from pursuing another party without the leave of the Court? In my judgment the answer must be in the affirmative. It cannot be right to contemplate a state of affairs where a vexatious litigant can relentlessly pursue another party, causing him to incur expense and perhaps to suffer anxiety and distress, but where the Court is powerless to act unless proceedings are actually in train. The Court must have the power to prevent its process from being abused in this way. This is not merely a question of fairness and justice; this is, in the words of Sir Jack Jacob, "a power to maintain [the Court's] authority and to prevent its process being obstructed and abused".

25 It is true that on one view the relief sought by Hambros would perhaps go beyond what Smith JA in *Mayo -v- Cantrade* thought was the legitimate area of exercise of the inherent jurisdiction. The learned Judge of Appeal found that that area was to be defined by reference to the function of the court in civil proceedings. He cited Lord Diplock in *Gouriet -v- Union of Post Office Workers* [1978] AC 435 at 501 –

> ***"The only kind of rights with which courts of justice are concerned are legal rights; and a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed."***

26 What is in question here is the power of the Court to prevent a person from invoking its jurisdiction at all, unless of course he obtains leave to do so. The Court in *Mayo* was however not concerned with vexatious litigation but with the proper ambit of the inherent jurisdiction (if it was there) in the context of existing proceedings. Furthermore a person does have a legal right not to be subjected to vexatious litigation. He asserts that right either by seeking to strike out the litigation or, as I have found, by seeking to prevent the litigation from being instituted without the leave of a judge.

27 In my judgment the Royal Court does have jurisdiction to grant the relief sought by Hambros and the first question should therefore be answered in the affirmative.