19 pages.

ROYAL COURT
(Samedi Division) 130

Hearing Dates: 20th, 21st July, 1992.
Judgment Delivered: 21st July, 1992.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
Single Judge.

Between:	Geoffrey Arthur Alker and Northern Inn, Limited	Appellants
And:	C. Le Masurier, Limited	Respondent

Appeal from decision of the Petty Debts' Court Judge of 3rd June, 1992, that he had no discretion to adjourn eviction proceedings.

Application by Appellants for stay of eviction proceedings or, in the alternative for an order remitting proceedings to the Petty Debts' Court.

Advocate M.M.G. Voisin for the Appellants.
Advocate N.M.S. Costa for the Respondent.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an appeal from a decision of the Petty Debts' Court of the 3rd June, 1992, when the learned Assistant Magistrate granted an immediate eviction order, suspended by the agreement of the parties until the 31st October, 1992.

The judgment contains, *inter alia*, the following statements:

On the 15th December 1988, the Plaintiff, owner of the premises used as an Inn and restaurant known as L'Auberge du Nord, situate in the parish of St. John, (hereinafter called "the premises") gave the Defendants, notice to quit the premises on the 25th December 1989.

Both Advocates on behalf of the parties agreed that under Article 1(3) of the Loi (1919) sur la location de bien-fonds

one year's notice to quit the premises expiring on Christmas Day could be given at any time.

In this Judgment the Court shall not rehearse, as it is unnecessary for the purpose of this Judgment, the facts of the case, save to the extent, that the notice to quit expired on the 25th December 1989, and as the Defendants remained in possession, it was necessary for the Plaintiff to institute eviction proceedings in this oourt, which proceedings have been adjourned on various occasions by agreement.

The case was called on the 28th May, 1992, before the Court, when inter alia, the Court was requested to give judgment at the behest of the Plaintiff, whilst the Defendants requested a further adjournment of the proceedings, basing their requests upon the adjudication of various proceedings which are to take place before the Privy Council, and the Royal Court. The Plaintiff resisted the application for an adjournment and requested an eviotion order, albeit with an agreed stay of execution until the 31st October, 1992.

The Court was referred to many authorities by the parties, but it is common ground that "toute cause en expulsion de locataire" will lie within the jurisdiction of the Petty Debts' Court.

Thus this Court has to enquire if these proceedings have been brought properly, and it is not contended that they were not, and therefore, the Court has to consider the Law on the matter.

I shall refer to Article 3 of the Loi (1946) concernant l'expulsion des locataires réfractaires, which states:
Article 3 (3)

> *"Sous la réserve des dispositions de l'alinéa (3A) de cet Article, la Cour, s'il y a lieu, en présence du défendeur ou sur son défaut, et après s'être assurée que toutes les formalités prescrites par la loi ont été dûment remplies, autorisera le Vicomte ou un membre assermenté de son Département à mettre le propriétaire en possession du biens-fonds et à en expulser sommairement le locataire".*

In the Loi (1948) (Amendement) concernant l'expulsion des locataires réfractaires, the 1946 Law was amended by the insertion in that Law of a new paragraph 3(A) which is as follows:

"La Cour aura le pouvoir de surseoir au jugement en vertu de l'alinéa précédent ou à l'exécution dudit judgement si la Cour estime que l'expulsion sommaire du locataire pourrait lui causer un préjudice plus grave que celui que pourrait

être causé au propriétaire si le locataire restait en possession, et que le locataire mérite un délai:

Etant entendu que les dispositions de cet alinéa ne s'appliqueront pas s'il s'agit -

(a) des maison, offices et terres d'une contenance excédant deux vergées; ou

(b) des terres avec ou sans édifices, mais sans maison, d'une contenance excédant une vergée".

It was argued by the Defendant that the use of the words "s'il y a lieu" in Article 3 (3) (supra) gave the Court a discretion to grant or refuse an order, and taken with the Petty Debts' Court (Jersey) Rules, 1967 Rule 17 - which gives the Court power (inter alia) to make practice directions, that the Court could order that these proceedings could be adjourned pending proceedings in the upper Courts. This is a novel interpretation of the Law and Rules, and one the Court does not subscribe to. This Court has not, and at this stage of these proceedings, will not make a direction that these proceedings be stayed, for to do so, would:

(a) be an attempt to circumvent the provisions of the aforesaid Article 3 (supra),
and
(b) would involve the Court "moving the goal-posts" to suit the ends of one party to the prejudice of the other.

Therefore, the request of the Defendants for an adjournment is denied, for this Court was constituted by Statute, and unless Statute gives the Court a discretion, it is bound by Statute, as this Court is not a Common Law Court which would give its jurisdiction a broader scope, and discretion.

Thus this Court is bound by the aforesaid Article 3 as amended by the Article 3A (supra), and unless the parties agree, which they do not, then this Court will not order a further adjournment.

As the aforesaid Proviso to Article 3A of the 1948 Law does not give this Court any discretion in suspending the effects of an Eviction Order in this case, the Court has no choice but to grant an immediate eviction order, suspended, by the agreement of the parties, until the 31st October, 1992. This order shall contain the usual provisions for the payment of the costs of the proceedings, and the payment of rental to

date when possession of the premises is given up to the Plaintiff".

From this the appellant, Mr. G. Alker, appealed asking that the order be set aside on the grounds that the learned Assistant Magistrate erred in law in holding that the Petty Debts' Court had no discretion to adjourn the proceedings, and coupled this with a request that the Royal Court should stay the eviction proceedings either until the Privy Council had determined whether or not to give leave to appeal, or until the determination by the Royal Court of proceedings between the parties now fixed to commence on the 19th October, 1992; or that the Royal Court remit the proceedings to the Petty Debts' Court so that it might exercise its discretion in considering the appellants' application for an adjournment of the eviction proceedings.

Because this litigation has a long and complicated history the Court proposes to set out the background and the reasons more fully than it might otherwise do. The Court was advised by Mr. Voisin that the progress has been as follows. Proceedings began when Messrs. C. Le Masurier, the respondents in the instant appeal, served a notice to quit (referred to by the learned Assistant Magistrate) on the 15th December, 1988, to expire on the 25th December, 1989.

No objection was then taken as to whether the notice was ***"sans droit"*** or ***"informe"*** under Article 2(1) of the Loi (1946) concernant l'expulsion des locataires réfractaires, as the notice was thought to be a merely precautionary measure. In addition, Mr. Alker received advice that Messrs. C. Le Masurier could not proceed as they would be estopped on equitable grounds, a point on which it was then thought the Petty Debts' Court did not have jurisdiction to adjudicate.

Negotiations took place but broke down in October or November, 1989, as a result of which Mr. Alker brought proceedings before the Royal Court.

The basis of these proceedings was that Messrs. C. Le Masurier had allowed Mr. Alker to spend money on the premises against an undertaking by Messrs. C. Le Masurier that the tenancy would continue; and hence Messrs. C. Le Masurier were estopped from seeking to evict Mr. Alker.

The Order of Justice sought an order, in effect, for an extended tenancy, or, in the alternative, damages; and in addition included an injunction, restraining Messrs. C. Le Masurier from taking proceedings in the Petty Debts' Court until the Royal Court had determined the issue.

Messrs. C. Le Masurier thereupon made an application to the Royal Court to raise the injunction so that they could take eviction proceedings.

This was heard on the 19th June, 1990, when the learned Bailiff refused to lift the injunction.

Messrs. C. Le Masurier then appealed to the Court of Appeal who gave judgment on the 10th April, 1991. The Court of Appeal struck out the interim injunction but maintained the "*fins*" of the Order of Justice (*v. infra*).

The judgment covered several points and for the sake of completeness, the Court will set out those passages on which reliance was placed before us.

These were:

"It is accordingly necessary to consider whether a Magistrate sitting in the Petty Debts Court has statutory power to deal with an equitable objection to a notice to quit, and if he has, whether the practice and procedure of that Court inhibits him in exercising that power.

In my opinion there can be no serious doubt that he has such power. Nor in my view on the basis of the material placed before us is there any reason to suppose that the practice and procedure of that Court is not such as can be adapted and applied to entertain and where appropriate give effect to such a contention.

On the matter of statutory power, the issue is one simply of construction of the Law of 1946 as read against the statutory provisions under which the Petty Debts Court was established and now operates. The critical provision in the Law of 1946 is Article 2(1) and in particular the phrase "sans droit". It was argued that that phrase was not apt to embrace a situation in which, by conduct, a landlord had disabled himself from insisting on the removal of his tenant in the circumstances in which the relative notice to quit was served. I am unable to accept that argument. I can see no reason in principle why the expression "sans droit" should be read in a restrictive sense. It appears to me to cover any situation in which the landlord either never had the right to insist upon a notice to quit of the kind served, or had lost such a right by conduct or otherwise. The Law of Jersey has never, we were informed, had a division of legal and equitable jurisdictions which was at one stage an aspect of English jurisprudence."...

"It is to be noticed that the 1946 Law envisages in Article 2(2) that the ruling by the Magistrate will be

"sommairement". A similar provision applicable to both the Royal Court and the Petty Debts Court in their respective jurisdictions is to be found in the 1887 Law which the 1946 Law repealed and replaced. However, it was not argued that this provision was such as to prevent justice being done in circumstances where an objection based on equitable estoppel was advanced. Nor do I consider that it inhibits an appropriate investigation of and adjudication upon such an objection. Presumably it is intended consistently with the general objective of the Petty Debts Court that procedure should be expeditious and without the formal pleading requirements of the Royal Court. This is perfectly consistent with a jurisdiction concerned with whether possession of property should or should not be given up on a particular date and with the provision that the objection be taken within a month of the notice."...

"I should add that there may indeed be circumstances in which justice or convenience may require the staying of proceedings in the Petty Debts Court. For example, if during the dependence of litigation in the Royal Court as to the terms of a tenancy, the landlord chose to serve a notice to quit in an attempt to pre-empt the Royal Court proceedings, the appropriate course might well be for the tenant to take objection in the Petty Debts Court, but for the latter proceedings to be stayed until resolution of the issue in the Royal Court. Such are not, however, the circumstances here."...

"It was accepted in argument by the Appellants that the raising of the interim injunction would not automatically result in their obtaining an Order for possession. That was because, although the month for taking an objection had long expired, there remained a discretion in the Magistrate to accept an objection out of time. This was decided by the Royal Court on appeal from the Petty Debts Court in the <u>Forster</u> litigation and is referred to at page 5 of this Court's judgment in that case. That decision by the Royal Court was in my view plainly correct. The time limit of one month is in my opinion a directory and not a mandatory requirement. This consideration does not appear to have been brought to the attention of the Bailiff in the present case and may have influenced his view on the matter of the interim injunction."...

"In all these circumstances the appropriate Order in my view to be pronounced by this Court is to allow the appeal to the extent of raising the interim injunction contained in the Order of Justice of the 15th December, 1989; to refuse the appeal insofar as it relates to striking out Prayer 2(a) of the Prayer of that Order of Justice; to remit to the Royal Court the present proceedings insofar as relating to Prayer 2

heads (a) to (d) inclusive with an Order to stay until the final determination of any objection which may be taken in the Petty Debts Court against the notice to quit served in December, 1988, or until further Order of the Royal Court."

The first step therefore was to require a final determination by the learned Assistant Magistrate of any objection which might be taken in the Petty Debts' Court against the notice to quit.

In consequence Mr. Alker lodged a late notice of objection. This was, however, deferred for some time because, unbeknownst to the Court of Appeal when it gave its judgment on the 10th April, 1991, the Superior Number of the Royal Court had in October, 1990, overruled the decision of the Inferior Number of 18th October, 1989, in the case of Forster -v- Harbours and Airport Committee (18th October, 1989) Jersey Unreported; (1989) JLR.N.6., mentioned in the judgment of the Court of Appeal of the 10th April, 1991.

The reasons for this were not given by the Superior Number until the 11th November, 1991.

Mr. Alker's advisers took the view that the Petty Debts' Court must follow the judgment of the Superior Number, as the Court of Appeal did not have the chance to consider the specific point.

In these circumstances a decisions was then made not to proceed with a late objection but to leave it "à la table"; and instead Mr. Alker applied to the Court of Appeal for a rehearing of the decision of April, 1991.

This was heard by the Court of Appeal and refused (8th April, 1992) Jersey Unreported, when they referred, *inter alia,* to the problems of an unco-ordinated Court structure in Jersey, and I cite the passage at p.11 of that judgment:

We cannot leave this case without observing that there is one unfortunate aspect which reveals an unco-ordinated court structure in Jersey. Appeal from the Petty Debts' Court is to the Royal Court. In the decision of the Superior Number of the Royal Court in Forster, a decision given on 11th October 1990, it was held that the parties could apply by doléance to the Superior Number of the Royal Court for what effectively would amount to a judicial review and a re-hearing. The Superior Number in the Forster decision seems to show that there is no right of appeal to the Court of Appeal when the litigation began in the Petty Debts' Court. Hence Jersey is left with an interpretation of the Law by the Superior Number which does contradict the intention of the Court of Appeal, yet cannot be appealed to the Court of

Appeal. This is an unsatisfactory state of affairs, but we would dismiss this application".

Following that decision of the Court of Appeal Mr. Alker, on advice, decided that the objection to the notice to quit would not be pursued; and, in consequence, sought to bring the proceedings on in the Royal Court. Due to a variety of circumstances, none of which are discreditable to the parties, these proceedings are not due to be heard until the 19th October, 1992.

Messrs. C. Le Masurier then brought forward the proceedings in the Petty Debts' Court, and sought an order. We may perhaps add that both parties, for obvious reasons, had agreed that in no circumstances would any order take effect until the 31st October, 1992.

The Petty Debts' Court, as set out above, then heard the parties and made the order about which complaint is now made.

Since the 3rd June, 1992, Petty Debts' Court decision, the Privy Council, apparently strongly favouring the view of the Court of Appeal as against that of the Superior Number, has refused to give leave to appeal: so that part of the notice of appeal now falls.

Although Mr. Alker is seeking one of two remedies, it was made quite clear to the Court that the remedy which he favoured in preference to the other was for the order of the Petty Debts' Court to be stayed, in one form or another, until after the Royal Court had adjudicated on the dispute which must be heard there. His suggestion was that, initially, the Petty Debts' Court should stay the action until the 31st January, 1993, and make a further stay if necessary, with, of course, leave to Messrs. C. Le Masurier to reapply if Mr. Alker should fail in, or abandon his proceedings in the Royal Court.

Mr. Voisin based his argument on the grounds that the Magistrate had erred in finding that he had no discretion first on the wording of Article 3(3) of the 1946 Law:

"Sous la réserve des dispositions de l'alinéa (3A) de cet Article, la Cour, s'il y a lieu, en présence du défendeur ou sur son défaut, et après s'être assurée que toutes les formalités prescrites par la loi ont été dûment remplies, autorisera le Vicomte ou un membre assermenté de son Département à mettre le propriétaire en possession du biens-fonds et à en expulser sommairement le locataire".

He contended that the words ***"s'il y a lieu"*** (which, he said, appeared in the original Law and so related not to the new and special provisions of the 1948 Law relative to Article 3(3A) but

to the general powers and duties of the Court) must give a discretion to the Magistrate.

He urged that the words amounted to the equivalent of the English phrase "as it thinks fit" (see 4 Halsbury 1(1) para. 27).

He further referred the Court to Maxwell: Interpretation of Statutes at p.36 as authority for the proposition that every word in a statute is to be given a meaning. In particular, he submitted, if the words meant no more than "if there were a tenancy" then it would say so.

Mr. Voisin then dealt with the point of whether the requirement was to give the order ***"sommairement"***. He made first the point that the Article did not provide for this: it was the Viscount who was to so act on the order being given; and second (Maxwell: p.101) that there is judicial authority to the effect that even if there were a requirement that the Court should give an order forthwith, this means at any reasonable time thereafter. As to Article 2(2) of the Law, where there is a requirement for the Magistrate to rule a ***"sommairement"*** this is dealt with by the Court of Appeal in its judgment of the 10th April, 1991, on p.10 already cited.

He then went on to urge that the Court has, as a matter of practice, exercised for years a power to adjourn: and that if the Court did not have that power, the consent of the parties would not give it that power. The acquiescence of the parties cannot, he submitted, (4 Halsbury 10 para. 718) invest the Court with a power which it does not otherwise have.

Here, he submitted, the learned Assistant Magistrate has confused substantive law with procedure. He referred the Court to 4 Halsbury 37 para. 10:

> ***"Meaning of "practice and procedure". The Rules of the Supreme Court are a form of delegated or subordinate legislation, and the Supreme Court Rule Committee is empowered to make rules only within the strict limits defined by statute, whether contained in the Supreme Court Act 1981 or any other Act. The overriding limitation on the powers of the rule committee to make rules is that they must be confined to regulating and prescribing the practice and procedure to be followed in the Supreme Court, and they must not therefore extend into the area of substantive law. There is thus at the outset a vital and essential distinction between substantive law, and procedural law. The function of substantive law is to define, create or confer substantive legal rights or legal status or to impose and define the nature and extent of legal duties. Everyone is entitled to enjoy such legal rights or status but equally is liable to perform or comply with his legal duties. The function of***

practice and procedure is to provide the machinery or the manner in which legal rights or status and legal duties may be enforced or recognised by a court of law or other recognised or properly constituted tribunal. Perhaps the term "practice" is narrower than the term "procedure", since practice may be limited to the habitual, repetitive or continuous use of practical methods or modes of proceeding, whereas "procedure" refers to the mode or form of conducting judicial proceedings, whether they be to the whole or part of the suit. The distinction may rarely be invoked, since the terms are almost invariably used in conjunction".

Mr. Voisin's point here was that the power to grant an adjournment is not part of substantive law, but that it is part of practice and procedure.

Thus, even without the words "***s'il y a lieu***" the Petty Debts' Court could say, in effect, yes, you are entitled to your order but not here and not now.

Mr. Voisin then referred the Court to the passages in the judgment of the Court of Appeal of April, 1992:

"The starting point for determining the precise scope of a court's jurisdiction is the instrument establishing the court. This Court is entirely the creature of statute."

......

"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 <u>Connelly -v- DPP</u> [1964] AC 1254 at p.1301:

"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are <u>necessary to enable it to act effectively within such jurisdiction</u>.

I would regard them as powers which are inherent in its jurisdiction. A Court must enjoy such powers in order <u>to enforce its rules of practice</u> and <u>to suppress any abuse of its process</u> and to defeat any attempted thwarting of its process".
(underlining supplied)

In that case the preferment of a second indictment to an indictment containing the single count of murder was held not to be characterised as an abuse of the process of the Court. It was treated by the House of Lords as a matter of practice and procedure to enable the Court effectively to perform its undoubted jurisdiction. That is to say, the Court was endorsing a practice <u>within</u> the jurisdiction of the Court of

Criminal Appeal, a statutory creation. It is to be noted that Lord Reid entered the important caveat that "there must always be a residual discretion to prevent anything which savours of abuse of process" (at p.1296)".

The Petty Debts' Court, Mr. Voisin submitted, must in any case have at least this residual discretion, although it is a creature of statute. Mr. Alker's object, he submitted, was to preserve the *status quo* pending the hearing before the Royal Court. He referred the Court to the remarks of the learned Bailiff in the Royal Court of the 19th June, 1990, at pp. 6,7 and 10:

"The difficulty which faces this Court is this: to allow the defendants to proceed in the Petty Debts Court - because it is clear from the judgment of the learned Court of Appeal in the case which I have just mentioned, that of Forster -v- Harbours and Airports Committee, that the question of expulsion of refractory tenants is within the sole competence of the Petty Debts' Court - would be to deprive the plaintiffs absolutely of certain rights which they claim they now have. In our view a subsequent adjudication of damages, if found to be due by this Court, would be insufficient compensation. Furthermore, although the Court of Appeal in the Forster case upheld the principle which this Court had already stated in the Court of first instance that it was the Petty Debts' Court which had the sole competence to deal with the eviction of refractory tenants, it also said that this Court was not precluded from adjudicating on the terms of a tenancy; it said that it would require very clear words in any statute, such as the 1946 Law, to preclude this Court from adjudicating on a lease. So this Court is not shut out from looking at a lease. We think that if, as I say, we allowed the defendants to proceed in the Petty Debts' Court then the law if it took its course would conflict without any doubt in our view with the principles of Equity which we have followed in this Court.

It seems to us at this stage that the question of damages is very important. If Mr. Alker and his company were evicted, he would not only lose his house, but he would lose the chance of recovering, if his claims are well founded, from the defendants, the money which, he has claimed, he has expended on their property. They would as he has said, and claimed, be exercising a case of unjust enrichment.

It seems to us that at this stage damages in such a case if Mr. Alker and his company are right, would be inadequate. There is of course authority for suggesting that the Court will find that in certain cases damages where property of this nature is affected, are inadequate".

The Royal Court, and subsequently the Court of Appeal (v. supra) have expressly decided that paragraph (a) of the amended Order of Justice *(inter alia)* shall be tried by the Royal Court. This paragraph reads:

> *"that the First Defendant withdraw the notice to quit so that the Second Plaintiff might remain in occupation as Tenant of the premises for such period and at such rental as the Court might deem just; or in the alternative; ...."*

Mr. Voisin further put it in this way: if the learned Assistant Magistrate is right in law i.e. that he has no discretion, then the judgment must by its terms be incorrect for he would have no power to suspend its effect, even by agreement until 31st October, 1992; and if he is wrong in Law then Mr. Alker is entitled to consideration.

The learned Magistrate should, he submitted, be required to defer the hearing until after the order of the Royal Court on the main proceedings when all would be clear to him.

Mr. Voisin then cited a line of cases as authority for his submission on how discretion ought to have been exercised.

He first cited the Headnote in the case of Airport Restaurants Limited -v- Southend-on-Sea Corporation (1960) 2 All ER 888, as follows:

> ***"Tenants who had been given notice in the form prescribed by the Landlord and Tenant Act, 1954, s. 25 (1) and the regulations made thereunder to terminate their "tenancy" of business premises of which the rateable value did not exceed £500 applied to the county court for a new lease. Subsequently the tenants were advised that the premises might in law be held by them under two tenancies, and that the notice to terminate their "tenancy" might therefore be invalid. The tenants immediately issued a writ in the High Court claiming a declaration to this effect, and then applied to the county court to adjourn the hearing of their application for a new lease until after the conclusion of the High Court proceedings. On appeal against a refusal of this application for adjournment,***
> ***Held: the further hearing of the county court proceedings would be adjourned until judgment in the High Court proceedings, because otherwise there would be a grave risk of injustice to the tenants who, if they were forced to prosecute their application for a new lease and failed thereon, might be held in the High Court to have thereby estopped themselves from contending that the notice to terminate the tenancy was invalid.***
>
> ***Appeal allowed.***

Then at p.890:

"ORMEROD, L.J.: I agree. Counsel for the landlords has submitted that the reason why the learned county court judge exercised his discretion as he did was, in the first place that he was influenced by what he regarded, on the authorities, as the likely outcome of the High Court proceedings, and secondly that he thought that on the balance of the prejudice which might be occasioned to the parties the discretion ought to be exercised in favour of rejecting the application for an adjournment. In view of the fact that the High Court proceedings are pending, it is not advisable, as my Lord has said, for anything more to be said in this court than is necessary; and I for my part would go no further than to say that, on consideration of the authorities and of the facts as we know them, there is plainly room for argument.

So far as the balance of prejudice is concerned, I find it hard, and I have found it hard throughout the hearing, to understand why there should be any considerable prejudice against the landlords if this adjournment is allowed. True, it may be some considerable time before the matters are finally disposed of and either a new tenancy is granted or the landlords are able to take possession; but it appears to me that delay is bound to happen in almost any event, having regard to the fact that High Court proceedings are pending and that there may possibly be an appeal from the decision of the High Court, whatever that decision may be.

Although it may very well be that there might be a further delay of three months at the end of those proceedings, as counsel for the landlords has said, if the matter cannot be decided now in the county court, that does not appear to me to amount to the grave prejudice which the learned county court judge seems to have had in mind when he was considering this matter. In all the circumstances I agree that this appeal should be allowed and that there should be an adjournment of the matter pending the hearing of the High Court proceedings, as otherwise it does seem possible that serious injustice may be done to the tenants.

HARMAN, L.J.: "....It does seem to me that to allow two sets of proceedings to go on about the same, or practically the same, matter, in two different courts at one and the same time must prima facie be a course which the court should avoid".

He then referred the Court to passages in the case of Hinckley and South Leicestershire Permanent Benefit Building Society -v- Freeman (1941) 1 Ch. 32, first to the Headnote and then pp. 38, 39 and 40:

"The Court has an inherent power to adjourn for a definite period on such terms as it thinks just a summons by a legal mortgagee for possession of the mortgaged property brought after the mortgagor has made default in payments due under the mortgage deed.
There is nothing ultra vires in the direction of the Chancery Judges to their Masters (Annual Practice, 1940, p.1143) that "when possession is sought and the defendant is in arrear with any instalments due under the mortgage or charge and the Master is of opinion that the defendant ought to be given an opportunity to pay off the arrears, the Master may adjourn the summons on such terms as he thinks fit . . . ."

"It is a novel proposition to me that this Court has not power to adjourn any matter on any proper ground. No doubt the Court would not arbitrarily postpone the hearing of a matter indefinitely, because to do so might lead to defeating justice altogether; and a mere arbitrary refusal to hear a particular case is not a course which any judge would take or which would ever become a recognized thing. But to say that the Court has not inherent power to direct that any matter which comes before it should stand over for a period if the Court thinks that that is the proper way to deal with the matter, is an entirely novel proposition to me.

FARWELL, J.: "....but it is quite beyond anything that I have ever before heard suggested to say that the Court has no jurisdiction under its own procedure in a proper case to direct that a matter shall stand over for such period as the Court, in all the circumstances, thinks justice requires".

After referring to Robertson -v- Cilia (1956) 3 All ER 651, which this Court does not find in point on this submission, he referred the Court to the statement in Maxwell -v- Keun & Others (1928) 1 KB 645, of Atkin, L.J.:

"The result of this seems to me to be that in the exercise of a proper judicial discretion no judge ought to make such an order as would defeat the rights of a party and destroy them altogether, unless he is satisfied that he has been guilty of such conduct that justice can only properly be done to the other party by coming to that conclusion. I am very far from being satisfied that that is so in this case; on the other hand, I am quite satisfied that very substantial injustice would be done to the plaintiff by refusing the application that this case should be postponed, and that that is the result of the present order".

Mr. Alker, Mr. Voisin submitted, had a claim which could only be heard in the Royal Court as only that Court could grant the relief which he claims. Both the Royal Court and the Court of Appeal have decided that he should be able to bring his case

forward in that Court, and for the Petty Debts' Court to make the order which it did would mean, if it were allowed to stand, that he might well be barred *ipso facto* from that relief which the Courts have decided that he is entitled to seek.

In his answer, Mr. Costa put the case for Messrs. C. Le Masurier on several grounds, which might perhaps be summarised as follows:

First, Mr. Alker should, as envisaged by the Court of Appeal, have challenged the notice so that the learned Assistant Magistrate could deal with it. That he chose not to avail himself of his rights to challenge the notice prevents him now from applying for a stay of the proceedings.

Once the notice to quit was not challenged, the learned Magistrate was seized of the proceedings and when asked to deal with them had no alternative but to do so.

He had no discretion to adjourn the proceedings pending the outcome of other proceedings elsewhere, and indeed no discretion to do so. On the authority of Robertson -v- Cilia at p.654 there was no right for the Court to stand the case over indefinitely without the consent of the parties.

Second, as was conceded before this Court, the Petty Debts' Court has sole jurisdiction in eviction proceedings of the present nature; and the Royal Court does not have power to order the expulsion of the tenant in the present case.

It follows from this that the Royal Court cannot stop Messrs. C. Le Masurier from bringing eviction proceedings (a point which was also conceded).

In these circumstances the Petty Debts' Court should deal with the hearing first, after which the Royal Court would be free to deal with the questions before it. Had it been the intention of the legislature when enacting the 1946 Law, as amended, to allow a stay of Petty Debts' Court proceedings pending the outcome of the Royal Court proceedings it would have said so; and to accept the contentions of Mr. Voisin would lead to a jurisdictional nonsense.

To allow the Royal Court to hear the case would mean overriding the jurisdiction of the Petty Debts' Court which has been given to it by the legislature. Furthermore, as the Royal Court cannot order expulsion, the only person who can seek a decision there is Mr. Alker.

It would be inappropriate to litigate in the Royal Court when it was not the court in which the real relief which Messrs. C. Le Masurier sought would be given (see Forster appeal at p.11).

Third, Mr. Costa urged that if there is a discretion, there must be a reason for that discretion. The mere refusal of the Royal Court and the Court of Appeal to strike out ground (a) of the amended Order of Justice does not mean that the Court will create a new tenancy. The Royal Court cannot put the party back and create a new tenancy: if the Petty Debts' Court put him out, out he must go. Any argument as to the existing tenancy should have been heard in the Petty Debts' Court and all the authorities indicate that the case should be sent back to the Petty Debts' Court and dealt with there (see the Court of Appeal judgment of April, 1991, pp. 11 & 12). Messrs. C. Le Masurier, he claimed, had no remedy in the Royal Court.

The Petty Debts' Court has heard the case on its merits and has ordered the eviction of the tenants. There was, he submitted, no equitable basis for an application to the Royal Court for a stay. The proceedings have been heard out there and the judgment should stand. Damages should be the only remedy available to Mr. Alker; Messrs. C. Le Masurier has, as he stated, no remedy which they may claim in the Royal Court.

He conceded, as the Court thinks he had to, that both the Royal Court and the Court of Appeal had decided *(inter alia)* that paragraph (a) of the "fins" should be heard in the Royal Court. He asked this Court, in order to determine whether there is a discretion and how it should be exercised, whether there is a remedy available for Mr. Alker.

This, however, this Court declines to do as this point is not before it on this appeal.

Finally, on the question of the meaning and effect of the words ***"s'il y a lieu"***, Mr. Costa submitted that they can only mean "where appropriate"; and that the giving of a definite right to grant a *"sursis"* in subsequent legislation meant that no such right existed previously.

It is quite clear on these submissions that Messrs. C. Le Masurier want, if they possibly can, to eject Mr. Alker from the premises before the case is heard, so that he is limited in his claim for damages.

Both the Royal Court (on the 19th June, 1990) and the Court of Appeal have decided that "fin" (a) of the amended Order of Justice shall be heard before the Royal Court.

In its judgment of the 19th June, 1990, the Royal Court at p.10 stated quite clearly ***"It seems to us that at this stage damages in such a case if Mr. Alker and his company are right, would be inadequate"***.

This Court has further very much in mind the remarks (v. supra) at p.11 of the Court of Appeal Judgment dated 10th April, 1991, and again at p.13 (v. supra) which in the view of this Court give a clear indication as to how the Court of Appeal considered that the litigation should proceed.

The final determination of the objection has been affected by virtue of Mr. Alker withdrawing it, and the case is now, as envisaged, due to come back to the Royal Court on the 19th October, 1992.

Furthermore, the words ***"s'il y a lieu"*** must have a meaning and this Court prefers the wider interpretation placed on it by Mr. Alker's counsel than the narrower construction contended for by counsel for Messrs. C. Le Masurier. Apart from that, this Court bears in mind (v. supra) the remarks of the Court of Appeal at p.8 of its judgment of April, 1992, that ***"there must always be a residual discretion to prevent anything which savours of abuse of process"***.

This remark, in the view of the Court, is entirely complementary to that of Atkin L.J., in Maxwell -v- Keun (v. supra).

The Court finds, therefore, that the learned Magistrate was wrong to find as he did that he had no discretion. The Court further finds that the result of this failure, and hence the order which was made, has the possibility of causing a grave injustice to Mr. Alker and that this was precisely the possibility to which the Court of Appeal referred in its judgment of 10th April, 1991, at p.11.

The appeal by Mr. Alker is therefore allowed.

The problem arises now as to what order to make. Bearing in mind the views of the Court of Appeal which this Court respectfully endorses, the Court orders that the judgment of the learned Magistrate be set aside and the proceedings be stayed until resolution of the issue in the Royal Court.

Authorities

Maxwell: Interpretation of Statutes pp. 33-39.

Forster -v- Harbours and Airport Committee (30th May, 1989) Jersey Unreported.

Forster -v- Harbours and Airport Committee (18th October, 1989) Jersey Unreported.

Forster -v- Harbours and Airport Committee (24th January, 1990) Jersey Unreported.

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Alker and Anor. -v- C. Le Masurier, Ltd and Anor. (19th June, 1990) Jersey Unreported.

C. Le Masurier Ltd and Clarke -v- Alker and Northern Inn Limited (10th April, 1991) Jersey Unreported C. of A.

C. Le Masurier Ltd and Clarke -v- Alker and Northern Inn Limited (8th April, 1992) Jersey Unreported C. of A.

4 Halsbury 10 paras. 701-720.

4 Halsbury 37 paras. 10-16.

4 Halsbury 1(1) paras. 27-32; 72.

4 Halsbury 44 para. 934.

Airport Restaurants Limited -v- Southend-on-Sea Corporation (1960) 2 All ER 888.

Hinckley and South Leicestershire Permanent Building Society -v- Freeman (1941) 1 Ch. 32.

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Cutner -v- Green (1980) JJ 269.

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Loi (1919) sur la location de bien-fonds.

Loi (1946) concernant l'expulsion des locataires refractaires.

Loi (1948) (Amendement) concernant l'expulsion des locataires réfractaires.

Petty Debts' Court (Jersey) Rules, 1977.