

87/22

Royal Court.

In the year one thousand nine hundred and eighty-seven, the thirtieth day of April.

30th April, 1987.

Before: The Bailiff (sitting alone by virtue
of the provisions of Rule 3/6 of the
Royal Court Rules, 1982.)

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BETWEEN	J.K. Fruit and Vegetable Catering Limited	PLAINTIFF
AND	Harbour Lights Hotel Limited	DEFENDANT

—

Application by the defendant for leave to appeal
to the Court of Appeal on costs.

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Advocate J.G.P. Wheeler for the defendant
Advocate C.M.B. Thacker for the Plaintiff

Judgment

The Bailiff I am grateful to Counsel for drawing my attention to the authorities, which I have considered. I note that as regards certainly one of the grounds of appeal, even if I were to refuse leave the English authorities seem to show that the defendant could go direct to the Court of Appeal; but even if that is so, I am conscious of the fact that you, Mr. Wheeler, have been courteous enough to bring the matter before the Court and I think that that was the right thing to do; because had you gone to the Court of Appeal solely on the ground of lack of exercise of judicial discretion and then had not succeeded, then it would have placed the Court of Appeal in a difficult position as to whether they should hear you on the other grounds, when I have not had an opportunity of considering your submissions on those other grounds, by way of applying for leave. Therefore you were quite right, I think, to apply to me today for leave.

But having said that, and having been satisfied that it was not incumbent on me to hear either party on the question of costs, unless I wanted to do so, nor to

give my grounds for the exercise of my discretion, I am satisfied that in exercising my discretion I did not, as far as I am aware, go outside the bounds of my powers in so doing, and having had regard to the facts of the case, which I need not repeat here -it was for that reason that I exercised my discretion the way I did - I refuse leave.

Referred to

Smiths Ltd -v- Middleton: (1986) 2 All ER

Marshall -v- Levine and Anor: (1985) 2 All ER 177

Jones -v- McKie and Mersey Docks and Harbour Board:(1964) All ER 842