

COURT OF APPEAL

26th May, 1988

Before: The Bailiff, Single Judge

Between

Thomas Joseph Burke

Appellant

And

Sogex International Ltd.

Respondent

(A) Application by Respondent that service of Appellant's notice of appeal be declared invalid, as leave not obtained.

(B) Application by Appellant (1) for leave to appeal; and (2) for enlargement of time within which to serve notice of appeal.

Advocate A.P. Begg for Appellant
Advocate R.J. Michel for Respondent.

Judgment on Appellant's application,
the Bailiff having granted the
Respondent's application.

BAILIFF: To my mind the principle decided by Commissioner Le Cras, following the Court's earlier judgment in Chesterton's -v- Leisure Enterprises (20 Dec '84, J.J. Unreported) is important inasmuch as it lays down certain principles concerning whether one may look behind the payment of a cheque or a negotiable instrument and whether, upon failure to pay, or upon the stopping of a cheque or anything of a similar nature, one is entitled to adduce evidence as to the reasons why the payment should not be made.

In important commercial matters, it is essential for the Island to know from the Court of Appeal whether indeed the Royal Court was correct in Chesterton and whether Mr Le Cras was correct in following Chesterton in the instant case, and therefore I am satisfied that there are sufficiently important matters for me to have grounds upon which to grant leave.

The Judgment below was delivered by Mr Le Cras on the 3rd November, 1987. Mr Begg left it very late for serving his notice of appeal because, as he said, the parties were negotiating. On the 15th December, 1987, Mr Michel took out a summons to strike out the notice of appeal, on the grounds it had not been served within the period prescribed by Rule 3 of the Court of Appeal (Civil) (Jersey) Rules, 1964, but unfortunately he himself fell down over the procedure by failing to serve his summons by the Viscount. This was put right and the summons was finally served on Mr Begg on the 7th January, 1988. On the 22nd December, 1987, Mr Begg himself had a summons served by the Viscount asking for an extension of time, if the original notice was out of time; both applications were set down to be heard on the 6th April, 1988 and were later withdrawn.

The matter remaining to be settled from today's applications is: should the Court exercise its discretion and grant Mr Begg leave to appeal out of time.

I am satisfied it is a proper case for leave to appeal. I am satisfied there is an arguable case and I am satisfied it would be right for me to give leave and I do so and I extend the time until the 7th June, 1988, and costs shall be in the cause.

Authorities referred to at the hearing

Court of Appeal (Jersey) Law, 1961: Art. 13.

R.S.C. 59/14/7: "Applications to the Court of Appeal for leave to appeal".
"Circumstances in which leave granted".

M.R. Carter -v- S.H.A. Lapidus: (1987) J.J. Unreported 87/55.

A.C. Gallie -v- Davies: 14 Apr. '86 J.J. Unreported.

Moran -v- Lloyds (1983) 2 All ER 200.

Jersey Demolition Contractors -v- R.R.B. (1985-86) JLR Part 1 77 C.A.

Authorities referred to in the Judgment

Chesterton's -v- Leisure Enterprises: 20 Dec. '84 J.J. Unreported.