12B.

COURT OF APPEAL

24th January, 1990

Before: J.M. Chadwick, Esq., Q.C., (President)
R.D. Harman, Esq., Q.C., and
A.C. Hamilton, Esq., Q.C.

Between	**Kenneth Ancrum Forster, trading as Airport Business Centre**	Appellant
And	**The Harbours and Airports Committee of the States of Jersey**	First Respondent
And	**Michael Ross Lanyon**	Second Respondent

Appeal against the Judgment of the Royal Court (Samedi Division) of the 30th May, 1989, striking out the Appellant's request below for declaratory relief, and staying his action for damages.

Advocate P.C. Sinel for the Appellant
Advocate S.C.K. Pallot for the Respondents.

JUDGMENT

THE PRESIDENT: We have before us an appeal by Kenneth Ancrum Forster, against a judgment of the Royal Court given on the 30th May, 1989, whereby paragraph (1) in the Prayer to the plaintiff's Order of Justice was struck out on the grounds that it was an abuse of the process of the Court.

The respondent to the appeal, The Harbours and Airports Committee of the States of Jersey is the operator of the States of Jersey Airport at St. Peter. The plaintiff trades at the Airport under the name, Airport Business Centre.

In or about June of 1986, the plaintiff approached the Airports Committee for permission to establish his business in premises within the Airport buildings. As a result the plaintiff was let into possession of two areas; that is letting No. B209, comprising 189 sq. ft. on the ground floor and letting No. B210, a further 338 sq. ft. on the first floor. The plaintiff asserts that he has spent a substantial sum in equipping the premises as a business centre.

The primary dispute between the plaintiff and the Airports Committee is as to the terms on which he was let into possession of those premises.

The plaintiff claims that it was agreed that he should have a lease for three years with an option to renew for a further three years. There is some uncertainty in the plaintiff's pleading as to when that agreement was made. It is alleged, variously, that the agreement was finalised on the 26th August, 1986, on the 4th September, 1986, and on the 12th May, 1987. But it is from that latter date that the plaintiff asserts, in his Order of Justice, that the three year term commenced. On that basis the term would expire in May of 1990 and so would still be current.

The Airports Committee assert that it was always made clear to the plaintiff that he was being granted a monthly tenancy only. The Committee accept that they knew the plaintiff was hoping to obtain the security of a longer tenure but say that that was never agreed.

There is a further dispute as to the activity that the plaintiff was to be permitted to carry on at the premises. He says that it was expressly agreed that he could provide facilities there to customers and staff of a hire car company.

The Airports Committee, who no doubt have obligations to other hire car companies to whom premises at the Airport have been let, deny this. They say that it was a breach of the terms of the tenancy for the plaintiff to provide such facilities. The Committee have other grounds of complaint as to the plaintiff's conduct, including late payment of rent and electricity charges.

Attempts to remonstrate with the plaintiff in relation to the car hire business led to a confrontation on the premises which the plaintiff describes as a 'harassment'. The plaintiff complains that by reason of the alleged harassment he is unable to develop and expand his business. That complaint is the foundation of a claim for damages.

It was in those circumstances that the Airports Committee issued a notice to quit on the 23rd June, 1988, pursuant to the Loi (1919) sur la location de biens-fonds. That notice was issued on the basis that the plaintiff's tenancy was a monthly tenancy. The date upon which the plaintiff was required to give up possession under that notice was the 1st August, 1988.

The plaintiff responded to that notice by commencing two sets of proceedings. First he issued a summons in the Petty Debts Court on the 21st July, 1988, seeking a declaration that the notice to quit was invalid. The grounds on which that declaration was sought were, first, that the Airports Committee were estopped from serving a notice to quit in the circumstances that they had allowed him to expend money in the belief that he had a longer tenancy than from month to month; secondly, that he had agreed with the Airports Committee for a lease of six years; and thirdly, that there had been the creation of a new tenancy by the acceptance of rent by the Committee on the 23rd June, 1988.

Those proceedings having been commenced in the Petty Debts Court, the plaintiff then began further proceedings in the Royal Court. He commenced those proceedings by Order of Justice issued on or about the 23rd August, 1988. The Airports Committee is named as first defendant to those proceedings. In those proceedings the plaintiff sets out the agreement for lease to which I referred earlier. That is to say an agreement for a three year lease with an option to renew for a further three years. He also claims damages for alleged harassment. I read the Prayer.* The plaintiff asks that the Court declare:

> "1(a) That the plaintiff has a valid and subsisting lease in respect of the premises known as B209 and B210 Jersey Airport expiring on the 12th May 1990, with an option exercisable at the sole discretion of the plaintiff for a further three years.
>
> (b) That during the continuance of his lease as set out above the plaintiff may continue to trade in the manner set out in paragraph 8 of the Order of Justice".

Paragraph 8 asserts an express agreement that the plaintiff should be allowed to place pre-booked hire car arrangements at his premises.

Paragraph 2 of the Prayer asks that the first and/or second defendants be ordered to pay general damages and costs and interest, I should mention that the second defendant to the Order of Justice is the Director of the States of Jersey Airport.

It can be seen at once that the effect of the two sets of proceedings that have been commenced by the plaintiff is that both the Royal Court and the Petty Debts Court are being asked to decide matters in which one of the questions at least is identical; that is to say whether there was an agreement between the plaintiff and the first defendant for a lease of which the term has not yet expired. I put it in that way because the lease which the plaintiff asserts in the Petty Debts Court proceedings differs in its terms from that which he asserts in the Royal Court.

Although one issue in the two proceedings is the same there are other claims which do not coincide. There is nothing in the Royal Court proceedings which is comparable to the claims based on an estoppel or a new tenancy which have been raised in the Petty Debts Court. There are no claims in the Petty Debts Court relating to the restrictions on trading or for damages for harassment. So that although the two proceedings overlap they cannot be said to be wholly coincident.

In September, 1988, the Airports Committee filed an Answer in the Petty Debts Court. By that Answer the Committee sought the expulsion of the plaintiff from the defendants' premises. At about the same time the Committee put in an Answer in the Royal Court, Samedi Division, covering much the same ground and again asking for an Order for expulsion.

On the 23rd January, 1989, the plaintiff applied to the Deputy Judicial Greffier to stay the proceedings in the Petty Debts Court in favour of the Royal Court proceedings. That application was refused and there has been no appeal from it.

On the 15th March, 1989, the matter came before the Magistrate in the Petty Debts Court. He decided that the plaintiff's summons in that Court, challenging the notice to quit, was both out of time and incorrectly served. The effect, as he held, was that the plaintiff was shut out from contending in that Court that the notice to quit was bad, in the sense that it had been served without right.

The plaintiff appealed that decision to the Inferior Number of the Royal Court. That Court held that the Magistrate had been in error in taking the view that he had no discretion to extend the time for the service of the plaintiff's summons, or to waive the informality in that service. That decision was given on the 18th October, 1989, and the matter was remitted by the Royal Court to the Magistrate for a rehearing to consider whether he should exercise his discretion to allow the plaintiff to raise the contentions set out in his summons; and, if so, to hear those contentions on their merits.

That is the present position in relation to the Petty Debts Court proceedings. But we have been told that the decision of the Inferior Number is itself being challenged by the Airports Committee by way of doleance and that that representation may come before the Superior Number in due course.

We were told also that an application had been made by the plaintiff to the Petty Debts Court for a stay of proceedings in that Court but that that application has not been proceeded with.

In the meantime, the Airports Committee, as defendant in the proceedings commenced by the Order of Justice, had made application that the plaintiff's claim in that action be struck out on the grounds that it was an abuse of the process. It was that application that came before the Bailiff sitting alone on the 30th May, 1989. He ordered that the whole of paragraph 1 of the Prayer, which I have read, be struck out and he further ordered that paragraph 2 of that Prayer, which related to the claim for damages, should be stayed, pending determination of the plaintiff's appeal against the judgment of the Petty Debts Court given on the 25th March, 1989. That appeal, as I have said, has now been determined in favour of the plaintiff, subject to whatever relief the Royal Court may give hereafter on the doleance. It follows that the position now is that the stay of paragraph 2 of the Prayer is no longer operative.

In his judgment the Bailiff said this:

> "My interpretation of the authorities which have been shown to me leads me to say that whilst there is a general principle to avoid duplication of proceedings, that only applies where the same relief can be obtained in either of the tribunals concerned. As I have just said, there are limits to what the Magistrate is entitled to do and to award. He cannot, for example, as Mr. Sinel, counsel for the plaintiff, quite rightly said, give a declaratory judgment or award damages or grant an injunction. In the instant case the plaintiff is applying to this Court for a declaration regarding his lease. Assuming that if the lease were to continue until the date he says it does, he can exercise certain powers under it, it seems to me that those are matters which could be duplicated between this Court and the Magistrate's Court and in those

circumstances it would not be right for me to allow the matter to continue in this Court. The authorities are quite clear - I don't think I need to cite them - that where there are these duplication possibilities the Court should not encourage them".

And then he explains the form of the Order that he, in the event, made.

In my judgment the Bailiff was clearly correct to approach the matter on the basis that where there are possibilities of duplication the Court should not encourage them. Indeed, the Court should act in such a way that possibilities of duplication are reduced or eliminated so far as may be.

The principle is most clearly set out in a judgment of Buckley, J., in the case of Thames Launches Limited -v- Corporation of Trinity House (1961) 1 All ER 26. The Judge said, at p.32 in that case:

"I understand the principle to be that if there are two courts which are faced with substantially the same question, it is desirable to be sure that that question is debated in only one of those two courts, if by that means justice can be done. It does not appear to me, with all respect to Sir George Jessel, M.R., that it would make any difference whether the problems which confronted one court were of a wider and more general nature than the problems which confronted the other court. I can see that there would be a fair matter of argument if there were two proceedings going on in Court A and Court B and the proceedings in Court A relating to a number of questions only one of which was raised in the proceedings in Court B and was the only question raised in that court. That would be a very strong argument for saying that the convenient course would be to allow that question to be dealt with in the proceedings in Court A which would dispose of the matter raised in the proceedings in Court B. Whereas if the reverse course were taken, the same would not apply. The problem whether a particular question which is raised in substantially identical terms in Court A and Court B should be allowed or should not be allowed to proceed in both courts is one which ought to admit of a solution which prevents the matter being pursued in two separate

> proceedings notwithstanding that the question raised in one court or the other may involve problems of a wider character".

It follows from that statement of principle, which has equal application in the courts of this Island as in those in England, that the question which the Bailiff had to consider, as he did, was which of the two courts, the Royal Court or the Petty Debts Court, was the more appropriate for the resolution of the questions raised between the parties.

It was urged before us by Mr. Sinel, and it is clearly right, that there are issues raised in the Royal Court which are not raised also in the Petty Debts Court. Accordingly it is said that that is the Court which should be allowed to decide the matter; on the ground that that is the Court which can give the most complete relief. That latter submission requires a more critical examination.

The Bailiff was addressed as we have been, on the question whether, by virtue of the Loi (1946) concernant l'expulsion des locataires réfractaires, the Petty Debts Court had exclusive jurisdiction to deal with matters affecting expulsion of refractory tenants. He did not find it necessary to decide that question. He accepted that it was the invariable practice in the Island that such claims were brought in the Petty Debts Court and that that practice should not be disturbed. It was, I think, primarily on that basis that he took the view that the Petty Debts Court was the appropriate Court. He said in the penultimate paragraph of his judgment:

> "Therefore, Mr. Whelan", (counsel for the Airports Committee) "I'm going to give you your striking out Order, not because the plaintiff has done anything wrong, but because there would be a duplication and because the practice has been and I'm not prepared to disturb it that the Magistrate deals with matters of this nature".

The cases cited to the Bailiff on this point - Le Roux -v- Le Gallais (1956) 250 Ex 50, 136; Paisnel -v- Taylor (1968) 257 Ex 154, 170; Vine -v- Lamb (1969) 257 Ex 437, 490, - were cited to us also.

On examination, it does not seem to us that the question whether or not the Petty Debts Court has exclusive jurisdiction to make orders for expulsion was the subject of a decision by the Royal Court in any of those cases. In each of those cases the issue was whether the defendant was licensee or tenant; and on its being decided that the defendant was tenant it was clearly accepted by the parties and by the Court that the matter could not proceed in the Royal Court. That was a matter that appears to have received no detailed argument. Those cases clearly support the Bailiff's view, expressed in his judgment, that as a matter of practice claims for expulsion have not been dealt with in the Royal Court in cases where the defendant is a tenant; but they do not, I think, go further than that.

In order to decide the present appeal it is necessary to examine whether that practice is founded on law.

The 1946 Law is described in its long title as a law to augment the powers of the Petty Debts Court in relation to the expulsion of refractory tenants. Article 1 of the law is in these terms: "Toute cause en expulsion de locataire sera de la compétence de la Cour pour le recouvrement de menues dettes (ci-après désignée "la Cour") .....".

At first sight that would suggest that the law is concerned merely to extend the competence or jurisdiction of the Petty Debts Court without in any way affecting whatever jurisdiction might lie in the Royal Court. However, that view does not withstand an analysis of the circumstances in which the 1946 law came to be enacted and a proper appreciation of the purpose of other provisions contained in it.

The law relating to the expulsion of tenants, prior to 1946, was contained in the Loi autorisant l'expulsion de locataires réfractaires enacted in 1887. Under Article 1 of that 1887 Law it is clear that in cases falling within that law an exclusive jurisdiction was given to the Judge of the Petty Debts Court in all matters where the annual rent of the property tenanted did not exceed £10. In cases where the annual rent exceeds that sum, jurisdiction is explicitly given to the Royal Court.

From 1887 to 1946 therefore the position appears to have been that the Royal Court would not have exercised jurisdiction to make orders for the expulsion of refractory tenants in cases falling within the 1887 Law, if the rent was less than, or equal to, £10 per year and would only have exercised the jurisdiction given to it by that Act in cases where the rent was in excess of that sum.

The 1946 Law, at Article 7, expressly repealed the 1887 Act. It therefore expressly repealed the jurisdiction given to the Royal Court by Article 1 of the 1887 Act. Accordingly the question which falls to be considered is whether there is some residual jurisdiction in the Royal Court which has either persisted since before 1887 or is in some way revived by the repeal of the 1887 Law.

That question has to be answered in the light of the other provisions of the 1946 Law. The 1946 Law sets out a comprehensive code for dealing with all possession cases between landlord and tenant where the tenancy is not a contract lease. It provides by Article 2 that a tenant who wishes to take objection to the notice to quit may apply within one month of having received it to the Court for a declaration as to its validity.

It then goes on to provide in Article 3 (3A) in these ter "La Cour aura le pouvoir de surseoir au jugement ..... ou à l'exécution dudit jugement si la Cour estime que l'expulsion sommaire du locataire pourrait lui causer un préjudice plus grave que celui qui pourrait être causé au propriétaire si le locataire restait en possession, et que le locataire mérite un délai .....". That gives the Court power to impose a delay by suspending its judgment in all cases where it considers that the hardship that would be caused to the tenant by expulsion is more grave than that which would be caused to the landlord by allowing the tenant to remain.

That is a power which was unlikely to have been thought to exist at all in the Royal Court in 1946; and in my judgment the statutory power in the 1946 Law is considerably wider than that which has subsequently been identified in the case of de Carteret -v- Applegate (1985-86) J.L.R. 236.

It would be surprising, therefore, if when enacting the 1946 Law the States of the Island had intended that the protection which is clearly afforded to tenants through Article 3 (3A) could be circumvented by landlords bringing their proceedings for expulsion in the Royal Court rather than in the Petty Debts Court.

In my judgment, looking at the legislation as a whole, the inescapable conclusion is that since 1946 the only court with jurisdiction to make an order for the expulsion of a locataire refractaire in all cases other than those of contract leases is the Petty Debts Court. Further, the procedure which has been laid down for taking objection to the notice to quit and for the consideration of cases of hardship is the procedure in the 1946 Law.

It does not follow, as was suggested by counsel for the Airports Committee, that the Royal Court has no jurisdiction to make a declaration as to the existence or as to the terms of a tenancy. It is necessary only to look at the English case of Francis -v- Yiewsley and West Drayton Urban District Counsel (1957) A.C. 136 to see that to take away that jurisdiction from the Royal Court would require very clear words. There is nothing in the 1946 Law which has that effect.

But on the real issue which is in contention between the parties, that is to say whether the plaintiff should be expelled from the premises at the Airport, exclusive jurisdiction is now vested in the Petty Debts Court. The Royal Court would not have jurisdiction to make an Order for expulsion.

Because that is the real issue between the parties, the Bailiff was right in holding that the dispute should be resolved, at least on that point, in the Petty Debts Court. That Court can decide whether or not this plaintiff has a tenancy for a greater term than from month to month. If it decides that he has then it will not make an order for his expulsion. If it decides that he has not, then it has powers which can be exercised under Article 3 of the 1946 Law to alleviate the hardship that might thereby be caused to the tenant.

If questions remain to be decided between the parties after that primary matter has been resolved, they can be dealt with in the Royal Court proceedings; but it would be inappropriate to litigate those questions first in the Royal Court in circumstances in which the real relief to which they would lead is one which the Royal Court is not empowered to grant.

In those circumstances I would dismiss this appeal, subject to one matter. The Bailiff struck out paragraph 1 of the Prayer of the Order of Justice. In my view the more appropriate Order would be to stay proceedings on paragraph 1 of the Order of Justice until the summons in the Petty Debts Court and the claim for possession have been determined. It may be that after that determination there will be no live question under paragraph 1 to be answered by the Royal Court, but it is not impossible to foresee circumstances in which the questions raised by paragraph 1 would still have to be decided. Further, it would clearly be convenient for such questions to be decided (if at all) at the same hearing as questions raised under paragraph 2 of the Order of Justice. Accordingly, I would vary the Bailiff's Order to the extent of directing that all proceedings in the Royal Court commenced by the Order of Justice be stayed pending the determination of the proceedings in the Petty Debts Court.

HARMAN, J.A: I agree.

HAMILTON, J.A: I agree that the Order should be pronounced in the terms as proposed by the President of the Court. In doing so I particularly agree with the construction of the statute of the law of 1946 which he has indicated in his judgment. It appears to me regarding the terms of that law as a whole against the legislative background of the law of 1887 which it repealed and replaced that the law was intended to vest in the Petty Debts Court a jurisdiction to deal with all cases which are concerned with the expulsion of tenants other than those which are expressly excluded by the law itself.

Authorities

Loi (1891) sur la Cour pour le recouvrement de menues dettes.

Loi (1887) autorisant l'expulsion de locataires réfractaires.

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

Loi (1946) concernant l'expulsion de locataires réfractaires.

Royal Bank of Scotland -v- Citrusdal Investments, Limited (1971) 3 All ER 550.

R.S.C. (1988 ed'n) O.15 r.16.

Francis -v- Yiewsley and West Drayton Urban District Council (1957) A.C. 136.

Pyx Granite Company Limited -v- Ministry of Housing (1960) A.C. 260.

Barwick & ors. -v- South Eastern and Chatham Railway Companies (1926) 1 KB 187.

Anisminic Limited -v- Foreign Compensation Commission and Another (1968) QB 867.

Paisnel -v- Taylor (1968) 257 Ex 154, 170.

Vine -v- Lamb (1969) 257 Ex 437, 490.

Le Roux -v- Le Gallais (1956) 250 Ex 50, 136.

Halsbury's Laws of England (4th ed'n) Vol. 37; para. 446.

Thames Launches Limited -v- Corporation of Trinity House (1961) 1 All ER 26.

Williams -v- Hunt (1905) 1 KB 512.

Stephenson -v- Garnett (1898) 1 QB 677.

Grand Junction Waterworks Company -v- Hampton U.D.C. (1898) 2 Ch. 331.

Barraclough -v- Brown (1897) A.C. 615.

Bull -v- A.G. for N.S.W. (1916) 2 A.C. 564.

de Carteret -v- Applegate (1985-86) J.L.R. 236.