

ROYAL COURT

March 12th, 1991

41A.

Before the Judicial Greffier

BETWEEN Sheelagh Lesley Le Cocq PLAINTIFF
AND Penelope Ann Gillespie DEFENDANT

Summons before the Judicial Greffier to strike out the Plaintiff's Order of Justice and Reply as being vexatious and/or an abuse of the process of the Court. Alternatively, to strike out paragraphs 3, 6 and 9 of the Order of Justice as the claims made therein are allegedly prescribed.

Advocate C.J. Scholefield for the Defendant

The Plaintiff appeared in person

JUDGMENT

JUDICIAL GREFFIER:

This action is brought by the Plaintiff, Mrs. Le Cocq, who was the warden of a cat sanctuary at St. Peter (hereinafter referred to as "the sanctuary") during 1987. The action arises from the circumstances surrounding Mrs. Le Cocq's removal from her position as warden of the sanctuary. Mrs. Gillespie is a veterinary surgeon and was one of the two veterinary surgeons whose services were used at that time by the sanctuary.

The allegations made by Mrs. Le Cocq against Mrs. Gillespie are as follows:-

- (a) that Mrs. Gillespie owed a duty of care to Mrs. Le Cocq in relation to the work which Mrs. Gillespie did for the sanctuary;

- (b) that by releasing to the sanctuary a number of cats who were infected with ringworm, Mrs. Gillespie was in breach of that duty of care;
- (c) that between 1st July 1987 and 15th August 1987 Mrs. Gillespie, her husband and her veterinary nurse all contracted ringworm and that Mrs. Gillespie was in breach of her duty of care to Mrs. Le Cocq by failing to warn her of that infection;
- (d) that between 17th August 1987 and 19th August 1987, Mrs. Gillespie deliberately gave false information to the benefactor of the sanctuary, blaming the sanctuary for passing ringworm to her surgery;
- (e) that by reason of the negligence of Mrs. Gillespie and her subsequent false allegations, the sanctuary was closed, the Plaintiff removed from her position as warden of the sanctuary and President of the Jersey Cats' Protection League, lost her accommodation, had her reputation in the Island damaged, consequentially suffered a nervous breakdown and was unable to work for two months and suffered considerable financial loss.

I propose to begin with the claim of the Defendant to have parts of the Order of Justice struck out on the basis of prescription. It is well established law that as Rule 6/13 is very similarly worded to Order 18 Rule 19, the White Book is authoritative in relation to the interpretation of Rule 6/13. I quote now from a section from paragraph 18/19/7 starting on line 7 of page 329 of the 1991 White Book -

"Thus, where the statement of claim discloses that the cause of action arose outside the current period of limitation and it is clear that the defendant intends to rely on the Limitation Act and there is nothing before the Court to suggest that the plaintiff could escape from the defence, the claim will be struck out as being frivolous, vexatious and an abuse of the process of the Court (Riches v. Director of Public Prosecutions [1973] 1 W.L.R. 1019; [1973] 2 All E.R. 935, C.A., as explained in Ronex Properties Ltd. v. John Laing Construction Ltd., above)."

As all the claimed rights of action are in tort, the appropriate prescription period is that set out in Article 2 (1) of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960 which states -

"The period within which actions founded on tort may be brought is hereby extended to three years from the date on which the cause of action accrued."

Paragraph 3 of the Order of Justice contained an allegation that a kitten called "Nellie" was released to the sanctuary on 29th July, 1987 and homed on 1st August, 1987. In paragraph 4 of the Order of Justice it is alleged that Nellie was returned on 15th August, 1987 suffering from ringworm and that this was confirmed by the examination of another veterinary surgeon on 17th August, 1987. Any claim in relation to negligence in relation to Nellie would have been prescribed by 30th July, 1990, whereas the summons in this action was served on 17th August, 1990, and the defendant has pleaded prescription in relation to that allegation and accordingly, that part of the claim should be struck out as vexatious and an abuse of the process of the Court.

Paragraph 5 of the Order of Justice refers to a cat known as "Blackie" who was taken to Mrs. Gillespie's surgery on 30th July, 1987 and discharged to the sanctuary on 15th August, 1987. It is alleged in paragraph 6 of the Order of Justice that ringworm was noticed on Blackie on 15th August, 1987 and this was confirmed by another veterinary surgeon on 17th August, 1987. Again, the Defendant has pleaded prescription and any right of action relating to the release of Blackie would be prescribed and that part of the claim should be struck out as being vexatious and an abuse of the process of the Court.

Paragraph 9(c) of the Order of Justice contains consequential allegations arising from Nellie and Blackie and these should also be struck out in as far as they refer to those cats.

The allegations in relation to a third animal namely a kitten called "Ginge" would not be prescribed inasmuch that that animal was only released to the sanctuary on 24th August, 1987. There is an allegation in paragraph 7 of the Order of Justice that Ginge was released to the sanctuary suffering from ringworm.

Paragraph 8 of the Order of Justice contains an allegation that Mrs. Gillespie, her husband and her veterinary nurse all contracted ringworm between 1st July, 1987 and 15th August, 1987 and that Mrs. Gillespie failed to warn the sanctuary of the infection. Any such failure which occurred prior to 17th August, 1987 would also be prescribed and it appears to me that Mrs. Le Cocq could only seek to rely upon failure from 17th August, 1987 onwards. The allegation of deliberately giving

false information would not be prescribed as that is alleged to have occurred between 17th August, 1987 and 19th August, 1987.

I turn now to the application for the dismissal of the Order of Justice as being vexatious and/or an abuse of the process of the Court.

I quote first a section from the commencement of paragraph 18/19/3 on page 326 of the 1991 White Book -

"It is only in plain and obvious cases that recourse should be had to the summary process under this rule The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable". The summary remedy under this rule is only to be implied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the Court or the case unarguable It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action."

I quote now from a section at the commencement of paragraph 18/19/4 of the 1991 White Book -

"On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute.... It has been said that the Court will not permit a plaintiff to be "driven from the Judgment seat" except where the cause of action is obviously bad and almost incontestably bad.... On the other hand, a stay or even dismissal of

proceedings may "often be required by the very essence of justice to be done".... so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless litigation."

The section in relation to the meaning of the word vexatious is paragraph 18/19/15 and I now quote part thereof as follows:-

"Frivolous or vexatious" - By these words are meant cases which are obviously frivolous or vexatious, or obviously unsustainable."

I quote now from paragraph 18/19/17 -

"Abuse of the process of the Court" - Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court". This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation."

There is a very close link in the English practice between a matter being frivolous or vexatious or an abuse of process of the Court and the exercising of the inherent jurisdiction of the Court and I quote now from the beginning of paragraph 18/19/18 of the 1991 White Book -

"Inherent jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para. (1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process."

Further down in the same paragraph at the top of page 340 is a section which reads :-

"The inherent jurisdiction is a most valuable adjunct to the powers conferred on the Court by these rules. When application is made to the inherent jurisdiction of the Court, all the facts can be gone into; and affidavits as to the facts are admissible."

I quote now a section about half way down on page 341 from the same paragraph, which is as follows :-

"So, too, any action which the plaintiff clearly cannot prove and which is without any solid basis, may be stayed under this inherent jurisdiction as frivolous and vexatious."

Finally, I quote the last sentence of the same paragraph :-

"In a case where an alleged infringement of patent was based on what the plaintiff reasoned (without any evidence) that the defendants must have done, it was held that on the question of the inherent jurisdiction, the Court is entitled to look at evidence, and after looking at evidence that the plaintiff's case was speculation and accordingly the action was struck out (Upjohn Co. v. T. Kerfoot and Co. Ltd. [1988] F.S.R.1)."

The question immediately arises as to the relationship between Rule 6/13 and the inherent jurisdiction of the Court as exercised in England. Although the position under the inherent jurisdiction of the Royal Court in relation to this area prior to the enactment of this Rule is unclear, it appears to me that as the concepts of the English inherent jurisdiction and the matter being frivolous and vexatious or an abuse of

the process of the Court are so closely intertwined, our Rules must be held to include the full breadth of jurisdiction afforded in England under the inherent jurisdiction in relation to striking out. Thus, I propose to follow the principles set out under paragraph 18/19/18 of the English White Book.

I also note that by virtue of the practice direction dated 15th November, 1988, it is a requirement in Jersey that every application to strike out any claim or pleading under sub-paragraphs (b), (c), and (d) of Rule 6/13, should be supported by an affidavit.

Advocate Scholefield produced the affidavit of a major benefactor of the sanctuary (hereinafter referred to as "the benefactor"), who amongst other things adopted certain statements contained in the draft affidavit of another potential witness. Included with the draft affidavit were copies of certain documents including -

- (a) a draft service agreement between Mrs. Le Cocq and the Cats' Protection League (Jersey) Limited;
- (b) a letter from the then director of the Cats' Protection League to Mrs. Le Cocq dated 25th August, 1987;
- (c) a letter dated 1st September, 1987 from the benefactor to the said director; and
- (d) a letter from the said director to Mrs. Le Cocq dated 4th September, 1987 by which she was dismissed as warden of the sanctuary with immediate effect.

The question immediately arose as to whether I should receive such evidence. The allegations in the Order of Justice appeared to me, on the face of the document to be unlikely. The Upjohn case is a clear authority for receiving evidence in such a case. I therefore decided to receive the evidence in order to determine whether these were allegations which the Plaintiff "clearly could not prove and which were without any solid basis," or "were based upon speculation without any evidence", which are tests set out in paragraph 18/19/18.

A number of matters became apparent at the hearing as follows:-

- (a) that Mrs. Le Cocq had not understood the nature of the service agreement that she had entered into with the Cats' Protection League (Jersey) Limited (which was a Jersey company acting as the nominee of the Cats' Protection League, an English charity). Under this agreement, which was described as a service agreement, the Cats' Protection League (Jersey) Limited retained possession, management and control of the sanctuary (or shelter as it is referred to in that document) and Mrs. Le Cocq was acting as their appointee and on their behalf in running the sanctuary. However, Mrs. Le Cocq has pleaded, and told me, that she was running the sanctuary on behalf of the Jersey Cats Protection League, an independent Jersey organisation, of which she was President;

- (b) that the sanctuary was visited on 23rd August, 1987 by a Mr. W. R. Bowers, the shelter supervisor of the Cats' Protection League, who made a number of complaints which led to the letter from the director of the Cats' Protection League dated 25th August, 1987;
- (c) that on 1st September, 1987, after he and his wife had visited the sanctuary, the benefactor wrote a lengthy letter to the director of the Cats' Protection League detailing numerous complaints against Mrs. Le Cocq;
- (d) that on 4th September, 1987 and apparently as a direct result of those complaints and for reasons set out in that letter, Mrs. Le Cocq was dismissed.

Paragraph 2 of the Order of Justice alleges that Mrs. Gillespie owed a duty of care to Mrs. Le Cocq. However, it is apparent from Mrs. Le Cocq's own pleadings and from the documents, that she did not employ Mrs. Gillespie directly but merely as the agent of either the Cats' Protection League (according to the service agreement) or the Jersey Cats' Protection League (according to Mrs. Le Cocq). A duty of care clearly arose by virtue of the contractual relationship between Mrs. Gillespie and the organisation running the sanctuary but there was no contract directly with Mrs. Le Cocq and I cannot see that Mrs. Le Cocq has any reasonable claim that a duty of care in relation to the treatment of the cats was due to her. Furthermore, I have already excluded the releasing of two of the cats by virtue of prescription.

The third cat, Ginge, was not according to the Order of Justice released until after ringworm had been diagnosed in Nellie and Blackie, and after the visit of Mr. Bowers and so it is difficult to see how the release of Ginge could have led to Mrs. Le Cocq's dismissal.

The allegation of failure to inform the sanctuary of the infection in Mrs. Gillespie, Mr. Gillespie and the veterinary nurse with ringworm must also fail as there was no duty of care to Mrs. Le Cocq personally.

The allegation of dismissal by reason of the giving of false information blaming the sanctuary for passing the ringworm to Mrs. Gillespie's surgery simply does not stand up in the light of the terms of the letters dated 25th August, 1987 and 4th September, 1987. The only possible relevant reference in the letter of the director of the Cats' Protection League dated 25th August, 1987 is that contained in paragraphs 4 and 5 on the first page. The essence of the allegation in paragraph 4 is that Mrs. Le Cocq had re-homed a cat with ringworm and that the League was in danger of being sued by the recipient who had caught the disease from the animal. The director mentions that in the report it was suggested that because the cat had spent a considerable time at the veterinary surgery there was no need for it to be placed in isolation. The director thoroughly disagreed with this decision as in such a place it could well come in contact with other animals suffering from some infection or the other. He concluded with the words "isolation pens have been provided at the Chateau and they must be used." The essence of that complaint is not that a cat or cats at the sanctuary had ringworm but that they were not properly isolated after

returning from the veterinary surgery and thus, whether or not the cats or any particular cat caught ringworm at the surgery was irrelevant to that complaint.

The complaint in paragraph 5 of that letter was to the effect that no report of ringworm had been made to headquarters. Nowhere in that letter is there any complaint that the surgery had been infected by the sanctuary.

In the benefactor's letter of 1st September, 1987 there is similarly absolutely no allegation along the lines complained of in the Order of Justice. In fact, the only mention of ringworm is contained in a short paragraph in which the benefactor mentions that he had advised Mrs. Gillespie's husband that Mrs. Le Cocq had told the inspector that the cats at the sanctuary had caught ringworm from the surgery together with a statement that this did not please Mrs. Gillespie's husband.

In the letter of dismissal dated 4th September, 1987, there is no allegation along the lines of that contained in paragraph 9 namely that the sanctuary had passed ringworm to Mrs. Gillespie's surgery. In paragraph 5 of that letter is an allegation that Mrs. Le Cocq had failed to use the isolation facilities provided for incoming cats, this resulting in the spread of infection, namely ringworm. But that is consistent with the fourth paragraph of the letter of 25th August, 1987. There is also a complaint in paragraph 7 of failure to notify the outbreak of infection.

It is neither my responsibility nor that of any other Court trying this matter to determine whether or not Mrs. Le Cocq was properly dismissed. The present action relates solely to the responsibility of Mrs. Gillespie for that dismissal. The documents which I have read, show clearly and conclusively that that dismissal was for totally different reasons to those alleged in the Order of Justice.

The question before me is as to whether the case of Mrs. Le Cocq is so weak that it is clear that the claim is obviously unsustainable and cannot succeed. I am satisfied that the application of the principles underlying the inherent jurisdiction in England allows me to look at evidence as to the facts. I am also satisfied that Mrs. Le Cocq's case is so weak as to be obviously unsustainable. There is no evidence to support her claim, for the reasons set out above, and the allegation in relation to the false information having led to dismissal clearly cannot be proved, is without any solid basis and is based on speculation. Accordingly, I find the claim to be vexatious and I am striking out the whole of the Order of Justice upon this basis, dismissing the action, and ordering that Mrs. Le Cocq pay taxed costs of and incidental both to this hearing and to the action.

AUTHORITIES.

Royal Court Rules, 1982: 6/13.

R.S.C. (1991 Ed'n): O.18. r.19/3,4,7,17,18,

Law Reform (Miscellaneous Provisions) (Jersey) Law, 1960: Article 2(1).