

JERSEY / JUDGMENT

MacKinnon v Regent Trust and ors [2005] JCA 066A (19 May 2005)

[2005] JCA 066A

COURT

COURT OF APPEAL

BEFORE

R. C. Southwell, Esq., Q. C., President;
P. D. Smith, Esq., Q. C., and
Sir de Vic Carey, Bailiff
of Guernsey.

Between

Andrew Kinross MacKinnon
Plaintiff/ APPELLANT

And

The Regent Trust Company Limited
First Defendant/ RESPONDENT

And

Kenneth James MacKinnon
Second Defendant

And

Elizabeth Victoria MacKinnon (née Sharman)
Third Defendant

And

Sebastian James MacKinnon
Fourth Defendant

And

Benjamin Thomas Skok MacKinnon
Fifth Defendant

And

Thomasin Anne Skok MacKinnon
Sixth Defendant

And

Sophie Linda Skok MacKinnon
Seventh Defendant

And

Alistair Kinross MacKinnon
Eighth Defendant

And

Ian James MacKinnon
Ninth Defendant

Application by the Second Defendant for leave
to appeal to Her Majesty in Council.

Advocate

N. M.

Santos

Costa for the Plaintiff/ APPELLANT.

Advocate J. P. Speck for the First Defendant/

RESPONDENT.

Advocate C. G. P. Lakeman for the Second,
Third, Eighth and Ninth Defendants.

Advocate M. L. Preston for the Fourth, Fifth,
Sixth, and Seventh Defendants.

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JUDGMENT

SMITH JA: 1. These are the reasons for the decision of this Court refusing the Appellant leave to appeal to Her Majesty in Council. 2. The Court's power to give leave is set out in Article 14 of the Court of Appeal (Jersey) Law 1961 (as amended) in the following terms: "No appeal shall lie from a decision of the Court of Appeal under this Part without the leave of the Court or the special leave of Her Majesty in Council, except where the value of the matter in dispute is ten thousand pounds or more". 3. The power was considered by this Court in *Foster (t/a Airport Business Centre) -v- Harbours and Airport Committee* 1990 JLR 82 . In that case it was held that a party to a decision of the Court of Appeal in civil matters involving a subject matter of a value of £500 (now £10,000) is entitled to appeal to the Privy Council as of right. However, the Court construed "decision" as meaning a final or definitive decision disposing of the parties' rights and it is clear from the judgment of the Court, delivered by Le Quesne JA, that this means the ending of the proceedings in the courts of Jersey (see p. 87). 4. Our decision, confirming the striking out of one of the Appellant's two heads of claim, does not finally or definitively dispose of the rights of the parties, nor does it end the proceedings presently before the Royal Court. This is because the Appellant has pleaded another head of claim (grounded on the maxim *donner et retenir ne vaut*) which was not the subject matter of the strike out application and remains unaffected by the outcome of it. Accordingly, applying the *Foster* decision to the instant case, our ruling is not a decision within the meaning of Article 14 and the Appellant has no right of appeal notwithstanding that the value of the matter in dispute exceeds ten thousand pounds. 5. The decision in *Foster* not only accords with the history of the appeal to the Privy Council which long predates the foundation of this Court (see *Showlag -v- Mansour* 1993 JLR7) and with the high authority (*Esnouf -v- Att. Gen . (Jersey)* (1883) 8 App. Cas. 304) but also common sense. If, in the circumstances of the case a right of appeal were to lie, subject only to the ten thousand pounds value requirement being met, it would mean that a plaintiff asserting numerous causes of action of which a number were determined against him by the Court of Appeal at various stages during the course of the proceedings could claim the right to bring a series of appeals to the Privy Council. The absurdity of this tends to confirm that the interpretation of Article 14 propounded in *Foster* must be correct. 6. It was suggested in the alternative, though faintly, that if the Appellant was not entitled to leave to appeal to the Privy Council as of right, this Court had a discretion to grant leave. In our opinion we have no such jurisdiction. If our determination of this appeal is not a "decision" within the meaning of Article 14 we cannot grant leave. We have no power to grant leave other than that conferred by Article 14. Authorities Court of Appeal (Jersey)

Law 1961 (as amended) Foster (t/a Airport Business Centre) -v- Harbours and Airport Committee
1990 JLR 82 . Showlag -v- Mansour 1993 JLR7. Esnouf -v- Att. Gen. (Jersey) (1883) 8 App. Cas. 304.
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