

JERSEY / JUDGMENT

McGorrin v Pascoe [2002]

JRC 59 (12 March 2002)

[2002] JRC 59

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

The Commissioner: 1. On 1st October 2001, this Court (differently constituted) delivered a judgment in this continuing saga. We declined to have an action commenced on 14th January 1988 struck out. We followed the reasoning of the Master, whose decision had (not surprisingly) been appealed. The reasons are set out in the judgment. We will not rehearse them here. At the conclusion of the judgment we said this: "As the Master rightly says, it would be totally wrong for him to make any orders in proceedings in the High Court. Particularly serious now is that after thirteen years of professional torpor, the defendant has died and Rigby continues to prevaricate unscathed. We must recall, however, that the remedy sought is essentially for an account. A very substantial sum of money belonging to the plaintiff has disappeared and there is an admission that part of that sum is acknowledged by the defendant to be due. These are exceptional circumstances. We are not minded to interfere with the Master's discretion, but we would urge upon him to take the most stringent steps to bring this matter to trial in the near future. It may well be that once the Executor Trustee Company has taken out probate, Advocate Begg, who has argued so well before us today, may receive more constructive instructions." 2. As this Court surmised, Advocate Begg did receive instructions and our judgment will come before the June sitting of the Jersey Court of Appeal. 3. The Master pressed on. An order was made on 7th January 2002. That order reads:- "1. Unless by 5.00 p.m. on 14th February 2002 the defendant files with this Court a copy of the answers to a Scott Schedule as required in the proceedings before the English Court, Chancery Division, Liverpool District Registry 1989 M No 2009A, then the answers of the defendant in the above actions shall be struck out without further order and to that extent the application of the defendant for an extension of time as prescribed in paragraph (2) of the order of the Court dated 18th October 2001 is hereby granted and 2. the costs of this application shall be costs in the cause." 4. Advocate Begg wishes us to re-awaken the order of 18th October 2001 which again was an "unless" order. He wishes us to examine the meaning of the word "extant" in that part of the order which says (in the alternative) - "...if the said proceedings in England are no longer extant". 5. The order of 18th October was not appealed. An extension was sought before compliance had to be made. 6. The Master has given us his reasons for his decision of 7th March. In his summary he says - a) I noted the fact that the defendant has taken no action whatsoever in the Jersey proceedings since my order of 18th October. b) I regarded the summons

issued by the defendant as being somewhat cynical and disingenuous. Indeed, it might be regarded as the type of "interlocutory game" much criticized by the Court of Appeal in its judgment of 27th July 2000 in *In re Esteem Settlement*. I saw no merit in the argument that proceedings which had been stayed indefinitely in the United Kingdom could properly or reasonably be regarded as still extant. c) No affidavit or other expert evidence had been put before me to support Advocate Begg's contention to the contrary. This was despite the fact that these were matters of English law in which at least affidavit evidence might have been adduced. d) Notwithstanding my view of the position, I took note of the fact that an application was to be made to the English High Court on 30th January 2002. In all the circumstances, I considered that the justice of the case demanded a short extension after that time to give the defendant the opportunity to comply with the obligations as set out in paragraph (2) of my order of 18th October 2001. I did consider, however, that the defendant should be made subject to the discipline of an "unless order". 7. It seems clear to us that the proceedings in the High court in Liverpool are now otiose. That has been recognized by English solicitors. The Master has, in his order of 18th October 2001, made a decision that the documents required by this Court are to be filed with this Court, regardless of whether an order of the English High Court has been satisfied. 8. We are determined to put an end to these procedural games. On 13 th February 2002, the Master, on the application of the defendant, stayed his order of 7 th January 2002 until 7 th March 2002 (that is, until we heard the appeal) or until further order. 9. We order that the documents required to be filed by the Master on 7th January be filed within 14 days of today's date but that further proceedings be stayed until the decision of the Court of Appeal has been made. If the order of the Court of Appeal upholds our judgment of 1st October, then the parties shall within seven days of the judgment being delivered attend before the Master who will no doubt conduct a hearing in such manner as he considers procedurally expedient. No Authorities. Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2002/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/mcgorrin-v-pascoe-2002-jrc-59-12-march-2002>

Prepared on 29 October 2026 · Esheria