

ROYAL COURT
(Samedi Division) 151.

23rd August, 1996

Before: Sir Philip Bailhache, Bailiff
and Jurats Le Ruez and Quérée

| | | |
|----------|---|------------|
| Between: | Petronella Chernin (née Venhovens) Michael David Breeze Executors of the Will of David Chernin, deceased | Plaintiffs |
| And: | Stephen John Foster | Defendant |

Application by the Defendant for an Order, under Rule 9/3 of the Royal Court Rules, 1992, as amended, setting aside a Judgment of the Royal Court in the above action, dated 9th August, 1996, obtained pursuant to the provisions of Rule 6/7(5)(b) of the said Rules.

Advocate M.P.G. Lewis for the Plaintiffs.
Advocate A.P. Begg for the Defendant.

JUDGMENT

5 THE BAILIFF: This is an application under Rule 9/3 of the Royal Court Rules, 1992, by Stephen John Foster, to whom we refer as Mr. Foster, to set aside a judgment obtained against him by Petronella Chernin (née Venhovens) and Michael David Breeze, to whom we shall refer for these purposes as the Plaintiffs.

A judgment obtained on 9th August, 1996, has a history but we think it can be sufficiently adumbrated as follows:

10 On 14th June, 1996, in proceedings before the Judicial Greffier, Mr. Foster's answer to proceedings brought by the Plaintiffs against him was struck out. Mr. Foster has appealed against that decision and we have been told that the appeal is due to be heard before this Court on 14th October, 1996. No
15 application, however, for a stay of the proceedings has been made by Mr. Foster.

Following the decision of the Judicial Greffier, the action came before the Royal Court where it was adjourned on a number of occasions until 9th August. On that day Mr. Begg, on behalf of Mr. Foster, applied for leave to file an amended answer to the Order of Justice. That application was refused and the Court then proceeded to give the default judgment which is now the subject of this application. The application to set aside the judgment obtained on 9th August is opposed by Mr. Lewis for the Plaintiffs on the ground that it is an abuse of the process of this Court. Mr. Lewis argues that even if the Court were to set aside the judgment, Mr. Foster would be in effect 'down a blind alley'. The matter would be restored to the pending list but he would still not be able to pursue the matter because the Royal Court has already refused him permission to file his amended answer. Mr. Lewis contends that Mr. Foster's remedy is to appeal against the default judgment to the Court of Appeal. We agree with the arguments put forward by Mr. Lewis and the application for the setting aside of the Judgment obtained by the Plaintiffs on 9th August, 1996, is accordingly refused.

No Authorities.