

ROYAL COURT
(Samedi)

26th March, 1996

61.

Before: P.R. Le Cras., Esq., Lieutenant Bailiff and
Jurats Bonn and Herbert

Between Lily Ellen Mary Le Maistre Plaintiff
(néé Seed)

And Roger Sydney Benest Defendant

Application by the Plaintiff for an *Acte à de prison*

On 4th March, 1993, the Judicial Greffier, in relation to the Plaintiff's application for summary judgment, and pursuant to Rule 7/1(1) of the Royal Court Rules 1992, ordered the Defendant to pay the Plaintiff:

- (1) The sum of £19,338.82;
- (2) Interest at the rate of 17% per annum upon the said sum of £19,338.82 from the 1st December, 1992, until the date of payment; and
- (3) The taxed costs of the Plaintiff in the original action. (The sum of £1,490.16 being quantified on taxation).

Advocate Mrs. M.E. Whittaker for the Plaintiff
Advocate A.P. Begg for the Defendant

JUDGMENT

THE LIEUTENANT BAILIFF: This is an application for an *Acte à peine de prison* contested by the Defendant.

5 It was accepted before us by the Plaintiff that the Court had a discretion as to whether to grant the Act. Counsel for the Plaintiff urged that the Plaintiff is entitled to her Act and that the *onus* is upon the Defendant to satisfy the Court that the Order should not be granted, see Bianchi -v- Gentile (12th July, 1990) Jersey Unreported at p. 2:

5 *"The granting of an Acte à peine de prison is discretionary and it is not obligatory upon the Court to do so if it satisfied that the Defendant is making strenuous efforts to repay the amount.*

We are satisfied these efforts are being made by the Gentili family."

10 We think that is correct but even if the *onus*
is the other way we would still have no hesitation in granting the Act on the evidence before us. The consistent failure of Mr. Benest to give either proper information, or to take reasonable steps to meet the Plaintiff's claim, together with his evidence
15 which we found to be less than satisfactory, disqualify him from the relief which he claims.

The *Acte à peine de prison* is granted.

Authorities

Bianchi -v- Gentili (12th July, 1990) Jersey Unreported.

Gray -v- Nadin (27th January, 1994) Jersey Unreported.

Pelido (C.I.) Ltd., t/a Zebra Hire Cars -v- Leighton (20th February, 1991) Jersey Unreported.