

ROYAL COURT
(Samedi Division)

232.

9th December, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles and Gruchy

Between:	John Gerald Patrick Wheeler Curator of José Raphael Barreto Deceased	Representor
And:	Maria Cecilia Barreto (née Nunis)	First Respondent
And:	Mr. G. Barreto	Second Respondent
And:	Mr. A. Barreto	Third Respondent
And:	Miss M. Barreto	Fourth Respondent

Representation by the Representor seeking directions as to the assets
of the Estate of the deceased, presently held by the Representor as bare trustee.

Advocate A.D. Hoy for the Representor.
Advocate C.M.B. Thacker for the First Respondent.
Advocate D.M.C. Sowden for the Second, Third
and Fourth Respondents.

JUDGMENT

5 THE DEPUTY BAILIFF: This is an extremely unusual case. A relatively
impoverished Madeiran gardener lived in Jersey for some time after
marrying a Portuguese lady in Madeira in about 1960. He was
apparently a good and conscientious worker who had worked for Mr.
Vatel the landscape gardener for some thirteen years.

10 In 1988 Mr. Barreto suffered an horrendous car accident - he
was run down - and sustained very serious head injuries; a curator
had to be appointed for him on 11th November, 1988. As a result
of that accident he was awarded some £102,000 in damages. He
appeared to progress but died in August, 1995.

15 The point that we would have to decide is whether, under the
Wills and Successions (Jersey) Law 1993, the parties were in a
state of desertion as, if they were, that would disentitle Mrs.
Barreto to her late husband's estate. Therefore it is entirely a

win or lose situation as far as she is concerned. There are no children and Mr. Barreto died intestate. The case comes for hearing before us today and the witnesses that have been summoned are here in Court.

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Miss Sowden asked for an adjournment today in somewhat strange circumstances. On 27th October, 1995, the Court ordered amongst other things, that Mr. Santos Costa of her firm should represent the interests of the two brothers and the sister of Mr. Barreto who live in Madeira and directed that they be summoned to appear before the Court today.

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Miss Sowden has presented to us a letter dated 4th December, from Advocate Prada who practices in Funchal. That letter says that the mother and the three brothers, which means the two brothers and the sister of the late José Raphael Barreto, had just contacted him. They had apparently told him that Mr. Barreto had been separated from his wife for approximately nine years. Then there is this strange sentence and I quote: "It was she who left him to go and live with another man apparently a Greek". He then goes on to say "It ought to be easy to arrange in Jersey to get evidence since there are many Madeirans who know the case well". It continues to say that he would have replied before but he did not have the time because "they" (that is the relatives) "only came to see him today" (and today is 4th December) and he has learned that "there will be a hearing before the Royal Court today" (which is 9th December). We then have a diary sheet from Mr. Costa dated 5th December and it says "I spoke this morning to Dr. Prada who was consulted yesterday by the mother and brothers of Mr. Barreto deceased". That of course is the brothers and sister of Mr. Barreto deceased. The diary note goes on to say this: "Once contact was made they made it perfectly clear that there were several people not only in Jersey but in Madeira who knew the history of Mr. Barreto and his wife and knew about her abandoning him. Dr. Prada was in no doubt from his conversation with the mother and brothers that witnesses could easily be brought to court to assist the court in determining the issue and those witnesses had material evidence to put before the court". That is a somewhat enigmatic statement but we must take it as we find it.

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The law on this matter is perfectly clear: the Court has a discretion as to how it will act. Lord Denning in Oesterreicher -v- Secretary of State for the Environment [1978] 2 All ER pp.82-89, in something of a truism, said at p.86: "Sometimes a refusal of an adjournment is unfair but quite often is fair; it depends on the circumstances of the particular case".

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We would go on to say this: natural justice requires that any party to proceedings should be given a reasonable opportunity to present his case and that indicates a reasonable opportunity to prepare his case before being called upon to present it.

Mr. Thacker this morning - and we are very grateful to him for the preparatory work that he has done on the law and the facts - really put to us that everything is ready for the hearing. We are not convinced of that. It is very unsatisfactory but in the particular circumstances of this case where everything stands or falls on the evidence of desertion, if there are witnesses, according to this Advocate Prada in Funchal, then he must produce them before the Court. What we are not prepared to do is to allow this matter to drag on forever and therefore we have provisionally marked 2nd January, 1997, for the adjourned hearing. That may not be suitable for counsel and if it is not suitable for counsel then they must attend upon the Bailiff's Secretary as soon as possible to make an early alternate date, but that is the date when this Court is prepared to sit to hear the matter.

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Authorities

RSC (1995 Ed'n) O.35 R.3.

Walker -v- Walker [1967] 1 All ER 412-415.

Oesterreicher -v- Secretary of State for the Environment [1978] 2
All ER 82-89.

R -v- Thames Magistrates' Court ex parte Polemis [1974] 2 All ER
1219-1225.