

JUDGEMENT

COLLETT J.A.

This appeal turns upon the question whether or not certain provisions of Section 5 of the Estates Proceedings Law (1995 Revision) and Section 4 of the Torts Reform Law (1996 Revision) have been both impliedly repealed by the Limitation of Actions Law 1991. If so, then Graham J. was correct in refusing to strike out as being time-barred the claim of Carolyn Cupidon (as administratrix of the estate of Dean Alfrence Knight, deceased) in Grand Court Cause No. 144 of 1997 and the claim of Aleta Jo Sturdevant and Mellon Bank N.A. in Cause No. 134 of 1998. If not, then he should have acceded to the summonses taken out for that purpose by the appellants, Estanislao Cruz Martinez and Charles Emerson Boxwell and Parrots Landing Watersports Park Ltd., in those two actions respectively. The point is entirely one of construction.

Prior to the enactment of the 1991 Law there is no doubt that, upon the uncontested state of facts and chronology of these two actions, they would have by now become Statute barred. This is the plain effect of that part of the proviso to section 4(1) of the Torts (Reform) Law which reads - "every such action shall be commenced within one year of the death of such person"; together with Section 5 of the Estates Proceedings Law which reads - "no proceedings shall be maintainable in respect of a cause of action in tort under Section 2 unless - (a) the proceedings were pending at the date of death; or (b) the cause of action arose not earlier than one year before death and suit is filed in court in respect thereof and later than one year after the personal representative or representatives took out representation."

A careful reading of the 1991 Law, now reproduced as the Limitation Law (1996 Revision) leaves no doubt that it was intended as a comprehensive reforming statute closely modelled upon the United Kingdom Statute, The Limitation Act 1980, for the purpose of setting out new and consistent periods of limitations in respect of legal proceedings of every description coming before the courts of the Cayman Islands. So much is clear not only from the scope and range of its legislative provisions but also from the Memorandum of objects and reasons which accompanied the legislation at its introduction into the Legislative Council.

Section 13 of the 1991 law is concerned with actions in tort based upon negligence, nuisance or breach of duty where damages are claimed for personal injury and subsection (4) provides a period of three years running from the date on which the cause of action accrued (or the date of knowledge if later of the person injured) within which such an action must ordinarily be brought. Subsection (5) then goes on to provide:

“(5) if the person injured dies before the expiration of the period mentioned in subsection (4), the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of Section 2 of the Estates Proceedings Law shall be three years from (a) the date of death; or (b) the date of the personal representative’s knowledge whichever is the later.”

Quite clearly there is repugnancy between this provision and that of Section 5 of the Estates Proceedings Law quoted above in that different and inconsistent time limits are laid down for the bringing of this class of action.

Section 16 of the 1991 law is concerned with fatal accidents. Subsection (2) provides:

“(2) None of the time limits given in the preceding provisions of this Law apply to an action under Part II of the Law of Torts Reform Law [the Tort (Reform) Law] but no such action shall be brought after the expiration of three years from - (a) the date of death; or (b) the date of knowledge of the person for whose benefit the action is brought, whichever is the later.”

Repugnancy likewise exists between this provision and that of the proviso to Section 4 (1) of the Torts Reform Law in that different and inconsistent time limits are laid down.

It is important to investigate and if possible to determine how it is that such an unsatisfactory result has been achieved before attempting to construe the Legislation as a whole. The key undoubtedly lies in the differing historical contexts in which it came to be enacted respectively in the United Kingdom and in the Cayman Islands. Counsel has helpfully taken us through the courses of this legislative history. In England and Wales the Common Law originally did not countenance the survival of any actions in tort beyond the death of the plaintiff or give any remedy for wrongfully causing death. The situation in the Cayman Islands was not unnaturally the same.

That was altered by legislation in both of these jurisdictions. In 1846 Lord Campbell’s Act for the first time introduced a cause of action for wrongfully causing death in favour of dependants of the deceased. Similar legislation was enacted in Jamaica and, when the Cayman Islands

adopted Jamaican legislation later in the 19th Century, the Jamaican Act of 1846 became Cap. 54 of the Cayman Islands Statutes. It was later amalgamated into the Torts (Reform) Law: Section 5 remained part of it, in force throughout.

Survival of personal actions after death was enacted in the United Kingdom by the Law Reform (Miscellaneous Provisions) Act 1934 and the Cayman Islands followed suit in 1974 by enacting the Estates Proceedings Law. That Law included the limitation provision of the proviso to Section 4(1) in its present form despite the fact that the United Kingdom had by the Law Reform (Limitations of Actions, etc.) Act 1954 already substituted in respect of actions in England and Wales a three year period for the one year limitation period enshrined in the earlier legislation.

So it came about that when the United Kingdom Parliament enacted the Limitation Act 1980, the old one year periods of limitation in England and Wales had already been abolished. Naturally, there was no need, therefore, to deal with the old enactments by way of express repeal. When, however, the draftsman of the Cayman Islands 1991 Act came to select the U.K. 1980 Act as his model, it seems to have escaped his attention that, in respect of survival of actions and of fatal accidents litigation, the old time limits on proceedings in the Cayman Islands had remained intact. Had this difference been then appreciated it is inconceivable that these earlier repugnant provisions would not have been specifically repealed in the 1991 Act or else Sections 13 and 16 modified.

Had the matter stood there, I should have had no hesitation in holding that the later inconsistent provisions of Sections 13 and 16 of the 1991 Law had effected an implied repeal of the earlier enactments. Unfortunately, there are further complications to be considered. These basically stem from Section 44(1) of the 1991 Act itself. This reads, so far as is relevant:

“(1) This Law does not apply to any action or arbitration for which a period of Limitation is prescribed by or under any other Law...”

That provision is a straight crib of Section 39 of the U.K. 1980 Act but there, of course, it could not operate so as to revive the old limitation periods which had already been specifically repealed in 1954. In the Cayman Islands, however, where the old limitation periods were still in force, these words taken in their literal meaning are apt to operate as a savings clause preserving Section 5 of the Estates Proceedings Law and the proviso to Section 4(1) of the

Torts (Reform) Law in their entirety. The issue is further complicated by an express reference to Section 44(1) in Section 16(3) of the 1991 Act, where it is stated that the application to an action under part II of the Torts (Reform) Law of the time limit in subsection (2) of that section “shall be subject to Section 44(1).”

It is little wonder then that Counsel for the Appellants contend here strongly that the Cayman Islands preserve the old time limits alongside the new and that the courts have no alternative but to acknowledge that intention and give effect to it. Implied repeal, it is said, cannot occur in the face of a specific saving provision and no authority has been cited to us where such a repeal has been upheld in those circumstances. On the other hand Counsel for the Respondents has pointed to the manifold absurdity of a result which would see the Legislature putting in place new time limits with one hand while with the other preserving old ones which would invariably operate so as to nullify the new. We are faced with a dilemma: either adopt a literal construction which ill accords with common sense, or else a purposive construction which leaves the Court open to a charge of judicial legislation.

In the light of the analysis already undertaken of the historical differences between the two jurisdictions, I am not impressed by the argument that the Cayman Legislative Council has deliberately opted to preserve the old periods of limitation. I prefer the route of purposive construction, but how can this be reconciled with the manifest need to give effect to every provision of the 1991 Law including specifically Section 44(1) and Section 16(3)?

The answer, I am convinced, lies in the examination of the purpose of Section 39 of the 1980 U.K. Limitation Act which, as we have already seen, was the draftsman’s model for Section 44(1) of the 1991 Cayman Law. The commentary in Halsbury’s Statutes under Section 39 supplies a most helpful list of some eighteen public general statutes of the United Kingdom which provide for particular limitation periods applicable to these specific statutes, none of which are mentioned by name or number in the 1980 Act itself. There are, in Cayman Islands Legislation also many enactments which include such specific limitation periods quite apart from the Torts (Reform) Law and the Estates Proceedings Law. Upon the premise that the draftsman of the 1991 Cayman Law and the Legislative Council were under the impression that Section 44(1) was accomplishing no more than the U.K. Parliament had done by enacting Section 39 of the 1980 Act, it is logical to confine the effect of Section 44(1) to the accomplishment of a similar purpose here.

What is required, therefore, is to refine Section 44(1) by qualifying the reference to “any other Law” so as to read: “any other Law except a Law expressly referred to herein”, thereby excluding from the ambit of the savings clause the Torts (Reform) Law and the Estates Proceedings Law, both of which receive express mention in Section 16 and 13 respectively. The justification for this approach is the necessity of giving effect to every provision of the 1991 Law consistent with its manifest reformatory purpose. That approach can also be justified when tested by the well recognised ‘mischief rule’ of construction.

What is the mischief which prompted the enactment of the 1991 Law, in particular Sections 13 and 16? It must have been the illogicality and injustice of the one-year rule applying only to survival of personal actions and to fatal accident litigation. What was the remedy appointed by the Legislature? It must have been to substitute a uniform period of three years limitation for such actions consistent with other parts of the 1991 Law. The task of the courts then is to construe the Law so as to advance the remedy and suppress the mischief.

In these circumstances, I am satisfied that the learned Grand Court Judge reached the correct and appropriate conclusion. I would, therefore, dismiss these appeals with costs.

[Handwritten signature] J.A.

ZACCA P.

I agree.

[Handwritten signature]
KERR J.A.

I agree.

