ROYAL COURT
(Samedi Division)

21st December, 1988

Before: Commissioner F.C. Hamon, and
Jurats Baker and Orchard

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| Between | Brian Morin | Plaintiff |
| And | Enid Beatrice Bourke | Defendant |

Plaintiff on His own Behalf.
Advocate S. Slater for Defendant.

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JUDGMENT

COMMISSIONER HAMON: This is an application for a striking out under Rule 6(13) of the Royal Court Rules, 1982. The application for a striking out is yet again in the normal general form, namely that the plaintiff's claim should be struck out on the grounds that it discloses no reasonable cause of action; it is frivolous or vexatious; it is otherwise an abuse of the process of the Court; it is within the inherent jurisdiction of the Court so to do in all the circumstances of the case.

Recently, in the case of Lazard Brothers and Co. (Jersey) Limited -v- Bois and Bois, Perrier and Labesse, we cited the case of Carl-Zeiss Stiftung -v- Rayner & Keeler Ltd. et al (1969) 3 AER 897 at page 909, where Buckley LJ. said:-

"When a party to an action seeks to obtain an order striking out some part of his opponent's pleading, it is in my judgment incumbent on him to indicate clearly what he wants to be struck out".

It would have been helpful in the circumstances of this case if we had had some indication of the complaint that the defendant had against the pleading, because on a first reading of the Court papers we could see no conceivable ground why the application was being made.

Unfortunately the papers in support were filed with this Court late in the day and it was only when we read them that we were surprised to find that the parties had not only formally agreed to arbitrate on the matters in dispute, but a final arbitration award had been made on the 14th April, 1988.

The matter in dispute is a building dispute and although the final arbitration award was made some eights months ago it was only very recently that the plaintiff went to see the Bâtonnier to tell him that he had parted company with his legal advisers. The Bâtonnier wrote a letter to the Judicial Greffier, dated the 20th December (that is yesterday) which reads:-

> "I refer to my telephone call to Mr. Belhomme of this morning with reference to the summons to be heard at 10.00 a.m. tomorrow, Wednesday the 21st December. The plaintiff, Mr. Morin, has referred the summons to me with a request for legal aid. In the time available it is impossible to make the appointment for the hearing tomorrow. I therefore have to request that the summons be adjourned to a new date to enable a legal aid certificate to issue to the plaintiff".

We saw that letter shortly before we came into Court.

In normal circumstances we would have had no hesitation in allowing an adjournment to be made. The circumstances of this case, however, are particularly unusual and because the Plaintiff was not in Court this morning, it was necessary to summon him to Court. It is clear from the explanation that he gave us that he was under a misunderstanding and we do not criticise him for not being here at the appointed time.

We wanted the Plaintiff in Court because we wished to question him as to his reasons for seeking alternative legal advice. It became very clear to us that his complaints were centred entirely around the arbitration award. He told us that he had not wanted to go to arbitration but was really persuaded by his lawyers so to do. That when he got to arbitration he felt that the proceedings before the arbitrator had been mishandled and that in any event he did not agree with the arbitration award.

Now, those are questions upon which his new legal advisers will be able to give him sound legal advice. They do not in any way help him to oppose the application for a striking out. We are entirely satisfied that even if the Plaintiff had been assisted by a legal adviser present in Court this morning, our decision would have been the same. This is a case where it is abundantly clear that there must be a striking out on the ground (if for no other) that it is within the inherent jurisdiction of the Court so to do in all the circumstances of the case.

It would be quite wrong for us to allow an action before the Royal Court to proceed any further when there is and has been passed to this Court a final arbitration award. If the plaintiff does not agree with that award then he must take action to have it set aside (if such action is available to him) and we will go no way whatsoever towards either encouraging him or discouraging him in the action that he has to take. That is a matter that must be decided by him and his new legal advisers.

In the circumstances of this unusual application we think that it would be wasting everybody's time if we allowed the matter to continue one moment longer.

We therefore order that the Representation be struck out and the defendant must have her costs.

Authorities referred to in the judgment:-

Lazard Brothers & Co. (Jersey) Limited -v- Bois and Bois, Perrier and Labesse JJ 15th November, 1988 - as yet unreported.

Carl-Zeiss Stiftung -v- Rayner and Keeler Ltd. et al (1969) 3 AER 897 at p. 909.