

ROYAL COURT
(Samedi Division)

9th July, 1996. 124A.

Before: The Deputy Bailiff and Jurats
Herbert and Potter.

Between T.S. Engineering, Limited. Plaintiff
And Raymond David Bisson Defendant

Application by Defendant for adjournment:
Expert witnesses not available.

Advocate D.M.C. Sowden for the Plaintiff.
Advocate P.M. Livingstone for the Defendant..

JUDGMENT

THE DEPUTY BAILIFF: This case continues the hearing of the 12th June, 1996. In that judgment we gave the defendant a delay in these terms:

"We found this matter difficult, particularly where, as Miss Sowden has pointed out the plaintiff has behaved impeccably. But because we can see no way that this case can be conducted properly if it comes to trial and because we are satisfied that Mr. Livingstone is not at fault, we are minded, in our discretion, to grant a delay of about four weeks. We cannot be more specific than that because the Court will be in vacation. We merely wish to stress that an inordinate delay will not be tolerated and that if Mr. Bisson fails to put his affairs in order by the time of the adjourned hearing, a further delay will be most unlikely".

Mr. Livingstone has managed to re-assure us this morning that from the moment we delivered our judgment, he has not been dilatory.

He was advised of the adjourned dates - the 10th, 11th and 12th July, 1996 - on the 12th June. If those dates were, in fact, set down in his absence, we find that procedure to have been wrong, and it may be, if those circumstances apply, that Mr. Livingstone in that matter is indeed more sinned against than sinning.

He was unable to concur with the dates suggested because, he told us, he had not yet ascertained the availability of his witnesses. He arranged to see Mr. Porrett on the 13th June, and dictated a letter to a firm in St. Malo called Chatelais et Le Gall. That firm only replied on the 4th July. It is clear to us that a representative of the firm will be an essential witness, but again that witness is not able to come to Jersey this week as the firm are, in their own words "*dans la saison estivale avec une charge de travail très importante notamment dans le secteur de la plaisance*".

There is one other witness, Mr. Graham Perkins, who is based in Guernsey. It apparently took Mr. Bisson some time to locate him as he is now no longer working on his own account but is employed by Condor. He was in the United Kingdom and despite daily messages to Condor from Mr. Livingstone, only replied on his return on 3rd July. He now has all the necessary documentation before him, but he sent a facsimile to Mr. Livingstone on 5th July to say that the dates of the agreed hearing were not acceptable to him due to his work commitments.

An accountant has been appointed under the legal aid fund and has prepared a report. Miss Sowden, in her reply, questioned why an expert had to come from Guernsey. That may, indeed, be a matter of concern or interest when experts are available in Jersey, but this Court cannot decide for a party who his expert or other witness shall be.

Miss Sowden also felt that evidence could have been taken on commission or by Affidavit. The first of these alternatives is unrealistic when one examines the time constraints. The second is probably unpalatable in the terms of the facts that have to be decided.

There was urged upon us at the last hearing, the pressing question of a possible *désastre*. That possibility has apparently faded away, although another judgment by a firm called Aquamar Fisheries for £3,000 approximately was obtained recently, but as that company is part owned by Mr. Porrett, a possibility of a *désastre* in those circumstances is not really a live issue.

Otherwise, although not in very great detail, we have more or less rehearsed the matters that were raised before us on 12th June. As has been said by both parties, we must act in the interests of justice. Miss Sowden says that it cannot be in the interest of justice to allow further delay and that her client will suffer prejudice. They will suffer delay and inconvenience; of that there is no doubt, but we cannot see that any great prejudice will actually be suffered by the Plaintiffs.

She has, she told us, two witnesses, ready, willing and able to come from Grimsby, Mr. Merresy and an employee of T.S. Engineering, Mr. Johnson. She told us that arrangements had been made but we are not certain what, in fact, that means. Again, we have to say that the matter is not satisfactory but Mr.

Livingstone has convinced us that the reasons are understandable, and we are impressed by the efforts that have been made by Mr. Livingstone to comply with our directions.

In the circumstances we will again adjourn, but again Mr. Bisson must pay the costs thrown away on a indemnity basis. We are somewhat comforted by the fact that as from the beginning of July, 1996, Interest on Debts and Damages (Jersey) Law, 1996, allows interest both on judgment debts and costs.

We will say this, however. When we have heard the evidence and assessed the importance of the evidence of the witnesses for the Defendant, we will weigh the question of costs carefully in the balance.

No Authorities.