

ROYAL COURT
(Samedi Division) 212A.
13th November, 1996

Before: The Judicial Greffier

Between	Rose Elizabeth Lee, widow of Edward James Piller	First Plaintiff
And	Michael Robert Crosthwaite and Marilyn Ann Buckler, his wife	Second Plaintiffs
And	Katherine Pierce	Third Plaintiff
And	Paul Michael Van Neste	Fourth Plaintiff
And	Sandra Rosina Hilton, wife of John Charles Blackburn	Fifth Plaintiff
And	William James Bromley	First Defendant
And	John O'Brien Rice and Jeanie Lois Lamb, his wife	Second Defendants

The effect of an agreement to adjourn *sine die*
a Summons to strike out.

Advocate A.P. Begg for the Plaintiffs.
Advocate D.F. Le Quesne for the First Defendant.

JUDGMENT

THE JUDICIAL GREFFIER: This action, the facts of which are not relevant to this Judgment, commenced in October, 1992, and the First Defendant issued a Summons which is dated 19th November, 1992, seeking to strike out the Order of Justice upon various grounds. A date was fixed for the hearing of the Summons on 30th November, 1992, but the lawyers for the respective parties, who were those present before me, reached some agreement over the telephone which was confirmed by a joint letter written to me and dated 1st December, 1992, which reads as follows:-

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"We write to confirm what was conveyed to you on the telephone yesterday; the parties wish to vacate the date for the hearing of the Summons (30th November, 1992 at 2.30 p.m.). They have agreed that the Summons may be adjourned *sine die* on four days notice".

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Earlier this year, the First Defendant gave notice for the fixing of a further date for the hearing of the Summons which was fixed for this day. The Plaintiffs' advocate opposed the striking out application, which related to the form of the Order of Justice, on the basis that the application was being brought too late.

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The First Defendants' advocate submitted that the Plaintiffs' advocate was prevented, by his agreement to the adjournment, from taking this point.

5 After the agreement to adjourn, there had been applications brought by the Plaintiffs by way of attack on the form of the First Defendant's Answer and, subsequently, in March, 1993, there was an application to set the action down on the hearing list and discovery had then followed albeit extremely slowly over a number
10 of years.

 There did not seem to me to be anything in the agreement reached between the parties preventing the Plaintiffs or their lawyer from taking the point that the application has been brought
15 late. In my view, very significant events occurred subsequently, namely, the application to strike out part of the First Defendants' Answer, which could conveniently have been a forum for raising the issues on this application to strike out; and the application to set down on the hearing list, which could also have
20 conveniently been a forum for raising the issues contained in this Summons. It does not seem to me that, if somebody agrees to an application's being adjourned he thereby agrees - even if the adjournment is for a lengthy period - that he will never subsequently take any point in relation to that application's
25 being revived and continued late in the day. Accordingly, I considered the issue of the timing of the bringing of the application to strike out and decided that more than three years after the action had been set down on the hearing list was far too late for an attack on the form of the pleadings by way of striking
30 out to be heard.