> Diplock had in mind. The expression "commercial law" should be given no narrow construction. The expression "strong evidence that the arbitrator . . . made an error of law" suggests first what might otherwise be called on the leave application a strong prima facie case and second an error of law not manifest on the face of the award and demonstrable by evidence".

The Court concluded that leave to appeal was correctly refused by Rogers CJ CommD on the basis that there was no manifest error of law on the face of the award nor was there strong evidence of an error of law made by the arbitrator.

(Special leave to appeal to the High Court from this decision was refused on 3 August, 1992.)

POWER OF COURT TO STAY ARBITRATION PROCEEDINGS WHERE PARTIES SEEK APPOINTMENT OF SPECIAL REFEREE UNDER SUPREME COURT RULES

Supreme Court of New South Wales (Unreported)
Giles J.
23 April 1992
McCaffrey v The Council of the Shire of Port Stephens.

The plaintiff had claimed monies due under a road construction contract. The contract was in the standard NPWC Edition 3 form, clause 45 of which was an arbitration clause. The defendant however did not seek a stay of the court proceedings pursuant to section 53 of the Commercial Arbitration Act. Rather, it joined with the plaintiff in indicating to the court that the matters in dispute were suitable for reference to a special referee under Part 72 of the Supreme Court Rules.

His Honour considered whether he had the power to stay the arbitration proceedings even though neither party had applied for a stay. He decided that he did not.

Firstly, section 53 of the Commercial Arbitration Act did not give him power to stay the proceedings since Section 53 required application to the court by a party to the proceedings. Secondly, he considered whether he could call upon the court's inherent jurisdiction to prevent an abuse of its process. He concluded that the proceedings brought in the face of an agreement to have disputes between the parties determined by arbitration was not an abuse of process.

His Honour was not happy with the result. He thought it inappropriate that

busy court lists should be clogged up with cases where the parties had agreed that their disputes be resolved by arbitration. He suggested the possibility of amending Part 72 to enable a matter to be sent to a special referee as if under an arbitration agreement where there was an arbitration agreement in existence between the parties covering the matters in dispute in court proceedings.

REMOVAL OF ARBITRATOR—MISCONDUCT APPLICATION TO STRIKE OUT CLAIM—ABUSE OF PROCESS

Supreme Court of Victoria, Unreported.
Smith J.
27 August, 1992.
Nauru Phosphate Royalties Trust v Matthew Hall Mechanical and Electrical Engineers Pty Ltd and Anor

These proceedings arose out of an arbitration in which a mechanical services contrator claimed monies due from a proprietor. The arbitrator had given various directions with respect to the provision of particulars by the contrator. The proprietor was not satisfied with the adequacy of these directions and made application to the court to have the arbitrator removed on the grounds of misconduct. It further sought to have the proceedings stayed or dismissed as being an abuse of process and/or frivolous and vexatious and embarrassing. It also sought orders requiring the contractor to provide further and better particulars of its claim.

The application to remove the arbitrator for misconduct was brought under Section 44 of the Commercial Arbitration Act. The basis of the application was that the proprietor had been denied natural justice in that because the arbitrator had not ordered that sufficient particulars of its claim be provided by the contractor it had not been adequately informed of the case which it had to meet.

His Honour was referred to the comment of White J. in South Australian Superannuation Fund Investment Trust v. Leighton Contractors Pty. Ltd. (1990) 55 SASR 327 (see case note in The Arbitrator Vol. 9 p.175, February, 1991) that in long complex arbitrations the pleading practice of the Supreme Court should be followed as closely as possible. His Honour was also referred to the criticism of this approach by Rogers CJ CommD in Imperial Leatherware v. Macri & Anor (1991) 22 NSWLR 653 at 661 (see case note in The Arbitrator, Vol. 10 p. 20, May 1991). His Honour preferred the approach of Rogers CJ.

After considering the pleadings in some detail, His Honour was of the view that the proprietor would not be taken by surprise by the case presented for