

This Sporting Life

The Bar has been indolent since the last issue and has either played no sport of note or, has been too busy to write it up for posterity.

Bar News publishes instead a statement of claim issued out of the London High Court and an opinion thereon, published through the good graces of McKeand.



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[]
Between
HOMO SAPIENS BRITANNORUM Plaintiff
and
GOD THE FATHER,
GOD THE SON,
GOD THE HOLY GHOST Defendants
To the Defendant's GOD THE FATHER, GOD THE SON and GOD THE HOLY GHOST of no fixed abode.

1981 . G . No.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within [14 days] after service to this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying ACKNOWLEDGEMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Central Office of the High Court this day of 1981

Advocatis Diaboli.

Note: This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form



MIKE GATTING

Statement of claim

1. At all material times the Defendants were and are partners in a firm called The Holy Trinity
2. On or about the first day the 1st Defendant created heaven and earth.
3. On or about the second day the 1st Defendant created the firmament and divided the waters which were under the firmament from the waters which were above the firmament.
4. On or about the sixth day the 1st Defendant created man in his own image.
5. In or about the 600th year of Noah the 1st Defendant resolved to destroy man by flooding the earth.
6. In or about the 600th year of Noah the 1st Defendant covenanted with Noah and his seed after him that there would not "any more be a flood to destroy the earth" the aforesaid covenant being sealed with a bow in the clouds.
7. In or about the 18th Century the Plaintiffs invented a game called cricket relying on the aforesaid covenant.
8. In or about April 1981 the Defendants caused it to rain incessantly in breach of the aforesaid covenant.
9. Because of the rain the Plaintiffs have been unable to engage in the game of cricket and have thereby suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

- (1) There has been an absence of the sound of leather on willow
- (2) There has been an absence of the smell of new mown grass
- (3) That the score is never 320 for 3 on a sunny summer's afternoon
10. The Plaintiffs believe they will continue to suffer loss and damage unless the Defendants are restrained.

AND the Plaintiff claims

1. An injunction against the Defendants to restrain them from causing the rains to fall, and
2. Damages, and
3. Costs.

(Signed)

THIS WRIT was issued by Messrs. Theodore Goddard & Co., of 16 St. Martin's-le-Grand, London, EC1A 4EJ

Reference: 117

Telephone 01-606 8855

Solicitor for the said plaintiff whose address is: This Other Eden, Demi-Paradise.

OPINION

I am asked to advise Homo Sapiens Britannorum in his claim for an Injunction and Damages against God The Father and Others.

I see no difficulty in establishing that the Defendants covenanted as alleged. However, Paragraph 4 of the Statement of Claim should be amended by substituting "Englishmen" for "man". It would be quite impossible to prove that anyone living south of Dover was created by the First Defendant in his own image. Indeed, all the evidence is to the contrary. Moreover, the Court will take judicial notice of the fact that the First Defendant is a member of the M.C.C. It follows from the above amendment that the Title of the suit should be amended to read "Homines Sapientes Albi Anglini Saxonii Protestantes Britannorum".

It seems certain that, if they have not already done so, the Defendants will instruct Charles Russell & Co. Such a step will not necessarily be fatal either to the Plaintiffs' (as they now are) or the Defendants' case. But the essential consideration is whether or not it can be proved that the Plaintiffs relied on the breach of covenant. Various Defences are open to the Defendants other than the question of contract, in particular that the facts disclose an act of God. I do not think that this latter Defence is open to them because it cannot be right in principle for them to rely on a Defence which involves one or all of them being the author of the Plaintiffs' misfortune.

It is, nevertheless, a difficult question as to whether the Plaintiffs were acting as reasonable men in relying on the covenant. It seems likely that the Court will import into its construction of the contract the notion of the reasonable men. This is a favourite device of the judiciary and only Lord Diplock, who normally presides in the House of Lords, can give a definitive, if embarrassingly turgid, answer to this unanswerable proposition. Lord Bridge will undoubtedly do his best to provide a solution but this may not be good enough for ordinary men like the Plaintiffs.

On balance, I feel that the Courts will uphold the Plaintiffs' claim and find them to have acted reasonably. It is surely not unreasonable to expect cricket to be played in this country during May and June. In various parts of the world it is considered proper to play cricket during the Winter (see *Boycott v. Gandhi* 79 Commonwealth Reports, 1981, p. 836).

In my opinion, the Plaintiffs should proceed with their claim at least until a Defence is filed. Any payment into Court should be considered with care, bearing in mind that the Defendants mitigated the damages by providing much sunshine in August and September.

Notwithstanding this mitigation, if the Plaintiffs succeed, their Damages will be enormous and of great benefit to the Marylebone Cricket Club, whose servants the Plaintiffs and everyone else are.

ROGER GRAY

Queen Elizabeth Building,
Temple, E.C.4.

November 10th, 1981.