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THE ROYAL COURT OF JERSEY
Samedi Division

176.

6th October, 1992.

In the Representation of Mr. Barrie Raymond Cooper

Before: F. C. Hamon, Esq., Commissioner,
Jurat J. H. Vint, and
Jurat A. Vibert.

The Representor in person.
Miss S. C. Nicolle, Crown Advocate, on behalf of the Attorney General.

THE COMMISSIONER: This is a Representation brought by Mr. Barrie Raymond Cooper (who is not unknown to this Court) on an *ex parte* application on a Friday afternoon. It was placed *au bas de la liste* by the Judicial Greffier whom Mr. Cooper had courteously contacted to seek advice, and this afternoon Crown Advocate Nicolle appeared so that the views of the Attorney General could be expressed. The representation is short. We set it out in full:-

> *"The representation of Barrie Raymond Cooper shows that on 24 September 1991, the Attorney-General for Jersey tendered advice to the States Assembly on the appliance of the Royal Veto in such manner as to effectively forestall the formation of a Special Committee to investigate the circumstances pertaining to the sale of the property known as No.5, St. Saviour's Crescent, for which transaction the Attorney-General held ultimate responsibility in his capacity as Her Majesty's Receiver-General.*
>
> *Whereas this matter is of personal concern to all Island residents, and the suppression of an independent enquiry into the affair was to the detriment of the general public, as no evidence was provided to show those, or indeed any, of the special interests of Her Majesty that could be prejudiced or remotely compromised by the outcome of the proposed investigation.*
>
> *Whereas the intervention of the Attorney-General, as legal adviser to the States on one hand and as an agent for the Crown on the other, was a direct conflict of interest and duty. That advice, accordingly was neither impartial nor objective, as it misdirected the States and affronted the*

general public, and was therefore uncon tutional, bringi the Crown into disrepute and mistrust.

Therefore, the Royal Court is respectfully entreated to require the Attorney-General to show adequate justificatio for his intervention and so be directed to withdraw the advice given to the States on this fundamental issue.

Signed:

"Barrie R. Cooper."

After hearing both Mr. Cooper and Crown Advocate Nicolle we dismissed the Representation. We reserved our reasons and now set them out.

1. Mr. Cooper has no *locus standi*. In Berger v. Committee of Agriculture et au (1977) 264 Ex 1, the Court held that the Represent in that case had no *locus standi*. Mr. Berger (who was, in his own words, "*a lover of all animals and in particular pigeons*") had brougl a representation to protest against the culling of pigeons on the basis that the defendants had exceeded the terms of the licence granted to them by the first defendant and were, for example, culling domestic pigeons as opposed to feral pigeons. The Court found that ***"the plaintiff had not suffered particular, direct and substantial damage over and above that suffered by the public at large and that h therefore had no locus standi to apply either for the injunction sought or for the revocation of the licence granted by the first defendant, the correct procedure being to bring the matter complained of to the attention of the Attorney General"***.

We cannot see that the Representor in this matter has suffered any damage at all let alone "particular, direct and substantial damage over and above that suffered by the public at large". Mr. Cooper in a letter to the Judicial Greffier stated (and repeated before us) that "*as this matter affects the rights of all Island residents, in one respect or another, it is open to any individual to seek lawful redress*". That is unfortunately not the la as we understand it. We cannot see that Mr. Cooper has any legal interest in this matter.

2. Who to sue?

Even if Mr. Cooper had *locus standi* (which he has not) and even if the veto had been exercised (which it was not) the complaint that Mr. Cooper alleges is brought against no one in particular other than the Attorney General who was giving advice to the States at a States Assembly. Article 37 of the States of Jersey Law, 1966 states that no civil proceedings may be brought against any member of the States for words spoken before the States. By Article 1 of the same law the Attorney General is a member of the States. The Court cannot cite him as a defendant nor convene him as a respondent. But in any event if Mr. Cooper had read the Court of Appeal judgment *Ex parte*

Coo : (1979) JJ.181 at page 183 he would have seen the impossibility of his stance. The judgment of that court reads as follows:.

> ***"When the case came on today we asked Mr. Boxall who appears for Mr. Cooper to satisfy us of the jurisdiction which the Royal Court was exercising in entertaining this Representation. It is clear that there was no action before the Royal Court. No defendant had been cited and there was no action claiming any form of relief.***
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> ***It might have been possible if Mr. Cooper had brought an action against an appropriate defendant for him to ask the Court to make some declaration regarding these matters, but that is not what he did. He brought no action of any kind nor did he cite any defendant before the Court. He simply came before the Court himself and asked the Court to, and I quote the words of the Representation, "Establish the lawfulness of his detention at the La Moye Prison."***
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> ***In our judgment there was no jurisdiction enabling the Court to enter upon a procedure of this kind. This is not merely a technical matter. If suggestions are made that some citizen has been unlawfully detained that is plainly a serious suggestion and it is necessary that it should be made in due form, and that those who are alleged to have been responsible for the illegal detention should be given the opportunities which the Law prescribes to justify their action. If applications of the kind which have been made in this case were to be permitted the proper procedure would be set aside and the protection which that procedure is designed to give all parties concerned would be lost.***
>
> ***It appears to us that the Royal Court, probably out of some desire to assist Mr. Cooper, thought it better not to deal summarily with the Representation but first to inquire into the facts, and that is why they asked the Attorney General for his assistance. We say this because we do not think that it would be right to infer that the Royal Court was deliberately assuming jurisdiction to deal with a Representation of this kind. We think rather what they did was to ascertain what the facts giving rise to it were and then to dismiss the application."***

Mr. Cooper read at length from the final report of the Jersey Judicial and Legal Services Review Committee. This was of interest but has no legal authority. We say this in deference to the obvious care that Mr. Cooper has taken to prepare his address to us.

Accordingly, and for the reasons stated we dismiss the application.

AUTHORITIES.

States of Jersey Law, 1966: Articles 1 & 37.

Berger-v-Committee of Agriculture et au (1977) 264 Ex 1.

Ex parte Cooper (1979) JJ 181.