THE ALL ENGLAND LAW REPORTS

1979

Volume 2

Editor
PETER HUTCHESSON
Barrister, New Zealand

Assistant Editor
BROOK WATSON
Barrister, New South Wales

Consulting Editor
WENDY SHOCKETT
of Gray's Inn, Barrister

London
BUTTERWORTHS

ENGLAND	Butterworth & Co (Publishers) Ltd 88 Kingsway, **London** WC2B 6AB
AUSTRALIA	Butterworths Pty Ltd, **Sydney, Melbourne,** **Brisbane, Adelaide** and **Perth**
CANADA	Butterworth & Co (Canada) Ltd, **Toronto** Butterworth & Co (Western Canada) Ltd, **Vancouver**
NEW ZEALAND	Butterworths of New Zealand Ltd, **Wellington**
SINGAPORE	Butterworth & Co (Asia) Pte Ltd, **Singapore**
SOUTH AFRICA	Butterworth Publishers (Pty) Ltd, **Durban**
USA	Mason Publishing Co, **St Paul,** Minnesota Butterworth Legal Publishers, **Seattle,** Washington; Boston, Massachusetts; and **Austin,** Texas D & S Publishers, **Clearwater,** Florida

1979
Reprinted 1985

ISBN 0 406 85124 7

Printed and bound in Great Britain by Butler & Tanner Ltd
Frome and London

REPORTERS

House of Lords

Mary Rose Plummer Barrister

Privy Council

Mary Rose Plummer Barrister

Court of Appeal, Civil Division

Mary Rose Plummer Barrister
Sumra Green Barrister
Avtar S Virdi Esq Barrister
J H Fazan Esq Barrister
Frances Rustin Barrister

Court of Appeal, Criminal Division

N P Metcalfe Esq Barrister
Sepala Munasinghe Esq Barrister

Courts-Martial Appeals

N P Metcalfe Esq Barrister

Chancery Division

Jacqueline Metcalfe Barrister
Evelyn M C Budd Barrister
Hazel Hartman Barrister

Queen's Bench Division

Jacqueline Charles Barrister
M Denise Chorlton Barrister
J M Collins Esq Barrister
Janet Harding Barrister
Lea Josse Barrister
Gwynedd Lewis Barrister
Deirdre McKinney Barrister
K Mydeen Esq Barrister

Family Division

Georgina Chambers Barrister

Revenue Cases

Rengan Krishnan Esq Barrister

Admiralty

N P Metcalfe Esq Barrister

Employment Appeal Tribunal

S H J Merali Esq Barrister

MANAGER

John W Wilkes Esq

House of Lords

The Lord High Chancellor:
Lord Elwyn-Jones (resigned 5th May 1979)
Lord Hailsham of St Marylebone (appointed 5th May 1979)

Lords of Appeal in Ordinary

Lord Wilberforce
Lord Diplock
Viscount Dilhorne
Lord Salmon
Lord Edmund-Davies
Lord Fraser of Tullybelton
Lord Russell of Killowen
Lord Keith of Kinkel
Lord Scarman

Court of Appeal

The Lord High Chancellor

The Lord Chief Justice of England: Lord Widgery

The Master of The Rolls: Lord Denning

The President of the Family Division: Sir George Gillespie Baker

Lords Justices of Appeal

Sir John Megaw
Sir Denys Burton Buckley
Sir John Frederick Eustace Stephenson
Sir Alan Stewart Orr
Sir Eustace Wentworth Roskill
Sir Frederick Horace Lawton
Sir Roger Fray Greenwood Ormrod
Sir Patrick Reginald Evelyn Browne
Sir Geoffrey Dawson Lane
Sir Reginald William Goff
Sir Nigel Cyprian Bridge
Sir Sebag Shaw
Sir George Stanley Waller
Sir James Roualeyn Hovell-Thurlow Cumming-Bruce
Sir Edward Walter Eveleigh
Sir Henry Vivian Brandon
Sir Sydney William Templeman

Chancery Division

The Lord High Chancellor

The Vice-Chancellor: Sir Robert Edgar Megarry

Sir John Patrick Graham
Sir Peter Harry Batson Woodroffe Foster
Sir John Norman Keates Whitford
Sir John Anson Brightman
Sir Ernest Irvine Goulding
Sir Raymond Henry Walton
Sir Peter Raymond Oliver
Sir Michael John Fox
Sir Christopher John Slade
Sir Nicolas Christopher Henry Browne-Wilkinson
Sir John Evelyn Vinelott

Queen's Bench Division

The Lord Chief Justice of England

Sir Alan Abraham Mocatta
Sir John Thompson
Sir Helenus Patrick Joseph Milmo
Sir Joseph Donaldson Cantley
Sir Hugh Eames Park
Sir Stephen Chapman
Sir John Ramsay Willis
Sir Graham Russell Swanwick
Sir Patrick McCarthy O'Connor
Sir John Francis Donaldson
Sir Bernard Caulfield
Sir Hilary Gwynne Talbot
Sir William Lloyd Mars-Jones
Sir Ralph Kilner Brown
Sir Phillip Wien
Sir Peter Henry Rowley Bristow
Sir Hugh Harry Valentine Forbes
Sir Desmond James Conrad Ackner
Sir William Hugh Griffiths
Sir Robert Hugh Mais
Sir Neil Lawson
Sir David Powell Croom-Johnson
Sir Tasker Watkins VC
Sir John Raymond Phillips
Sir Leslie Kenneth Edward Boreham
Sir John Douglas May
Sir Michael Robert Emanuel Kerr
Sir Alfred William Michael Davies
Sir John Dexter Stocker
Sir Kenneth George Illtyd Jones
Sir Haydn Tudor Evans
Sir Peter Richard Pain
Sir Kenneth Graham Jupp
Sir Robert Lionel Archibald Goff
Sir Stephen Brown
Sir Gordon Slynn
Sir Roger Jocelyn Parker
Sir Ralph Brian Gibson
Sir Walter Derek Thornley Hodgson
Sir Anthony John Leslie Lloyd
Sir Frederick Maurice Drake
Sir Brian Thomas Neill
Sir Roderick Philip Smith
Sir Michael John Mustill
Sir Barry Cross Sheen
Sir David Bruce McNeill
Sir Harry Kenneth Woolf
(appointed 24th April 1979)

Family Division

The President of the Family Division

Sir Reginald Withers Payne
Sir John Brinsmead Latey
Sir Robin Horace Walford Dunn
Sir Alfred Kenneth Hollings
Sir John Lewis Arnold
Sir Charles Trevor Reeve
Sir Francis Brooks Purchas
Dame Rose Heilbron
Sir Brian Drex Bush
Sir Alfred John Balcombe
Sir John Kember Wood
Sir James Peter Comyn
Sir Ronald Gough Waterhouse
Sir John Gervase Kensington Sheldon
Sir Thomas Michael Eastham
Dame Margaret Myfanwy Wood Booth

CITATION

These reports are cited thus:

[1979] 2 All ER

REFERENCES

These reports contain references, which follow the headnotes, to the following major works of legal reference described in the manner indicated below.

Halsbury's Laws of England

The reference 35 Halsbury's Laws (3rd Edn) 366, para 524, refers to paragraph 524 on page 366 of volume 35 of the third edition, and the reference 26 Halsbury's Laws (4th Edn) para 577 refers to paragraph 577 on page 296 of volume 26 of the fourth edition of Halsbury's Laws of England.

Halsbury's Statutes of England

The reference 5 Halsbury's Statutes (3rd Edn) 302 refers to page 302 of volume 5 of the third edition of Halsbury's Statutes of England.

English and Empire Digest

References are to the replacement volumes (including reissue volumes) of the Digest, and to the continuation volumes of the replacement volumes.

The reference 44 Digest (Repl) 144, *1240*, refers to case number 1240 on page 144 of Digest Replacement Volume 44.

The reference 28(1) Digest (Reissue) 167, *507*, refers to case number 507 on page 167 of Digest Replacement Volume 28(1) Reissue.

The reference Digest (Cont Vol D) 571, *678b*, refers to case number 678b on page 571 of Digest Continuation Volume D.

Halsbury's Statutory Instruments

The reference 12 Halsbury's Statutory Instruments (Third Reissue) 125 refers to page 125 of the third reissue of volume 12 of Halsbury's Statutory Instruments; references to subsequent reissues are similar.

CORRIGENDA

[1978] 3 All ER

p 225. **Re Roberts (deceased)** line *f*6. For 'effected' read 'affected'.

[1979] 1 All ER

pp 961–963. **Practice Direction.** The amounts appearing in the *VAT* column should appear in the *Disbursements* column.

[1979] 2 All ER

p 323. **Perrini v Perrini.** Line *f*4: for 'decree, an English court could not recognise' read 'decree, because of the rule that an English court would not recognise'.

p 394. **Re Osoba (deceased).** Counsel for the plaintiff: for *J H James QC* read *J H Hames QC*. Line *j*1: add after England 'provided there had been no severance of the mother's and the daughter's joint tenancy since the date of the testator's death'.

p 697. **Williams & Glyn's Bank Ltd v Boland.** Line *d*3: for '1978' read '1979'.

p 1017. **Meade v London Borough of Haringey.** Line *a*1: for 'was ultra vires' read 'was not ultra vires'.

Cases reported in volume 2

R v Manchester Supplementary Benefits Appeal Tribunal, ex parte Riley

QUEEN'S BENCH DIVISION
SHEEN J
1st, 9th NOVEMBER 1978

Supplementary benefit – Resources – Income resources – Wages paid in arrear at termination of employment – Benefit claimed for two weeks following termination of employment – Whether entitlement to benefit – Whether last week's wages to be treated as income resources for period following termination of employment – Supplementary Benefits Act 1976, Sch 1, Part III – Supplementary Benefits (General) Regulations 1977 (S I 1977 No 1141), reg 3.

The respondent, a student, obtained employment during the summer vacation of 1977. The employment commenced on 26th July. His wages were payable in arrear on a Thursday. He was paid a full week's supplementary allowance for the week beginning Thursday 28th July in accordance with reg 3[a] of the Supplementary Benefits (General) Regulations Act 1977, because his first week's wages were not payable until Thursday 4th August and until then he was treated as having no resources. The employment terminated on Saturday 10th September. On Thursday 15th September the respondent received from his former employers a normal week's wages of £66, paid in arrear, and £20·80 for two days' holiday pay. He claimed a supplementary allowance for the two weeks following the termination of his employment on the ground that he had no resources for those weeks and his supplementary benefit requirement, calculated under the Supplementary Benefits Act 1976, was £11·35 per week. The Supplementary Benefits Commission refused the claim on the ground that the £86·80 received by him on 15th September from his former employers was to be treated as his income resources, within Sch 1, Part III, to the 1976 Act, for the two weeks following the termination of his employment, and therefore his resources for those weeks exceeded his requirements. The respondent appealed to the Supplementary Benefits Appeal Tribunal which allowed the appeal on the ground that the £86·80 was to be disregarded in calculating his resources. The commission applied for an order of certiorari to quash the tribunal's decision on the ground of error of law.

Held – Where a claimant for benefit was paid weekly in arrear, the final payment made at the termination of the employment was to be treated as his income resources for the one or two weeks which followed the termination of the employment, even though the payment was the product of work during an earlier period. Under reg 3 of the 1977 regulations benefit was payable at the beginning of the employment because, his wages being payable in arrear, the claimant was treated as then having no resources, and correspondingly, benefit ought not to be paid at the end of the employment when the claimant had his last week's wages in hand. It followed that the £86·80 fell to be treated as the respondent's income resources for the two weeks for which benefit was claimed and that his resources for those weeks exceeded his requirements. Accordingly, he was not entitled to benefit and the tribunal's decision would be quashed (see p 4 *f g* and p 5 *d e*, post).

Dictum of Lord Denning MR in *R v Preston Supplementary Benefits Appeal Tribunal, ex parte Moore* [1975] 2 All ER at 811 applied.

---

a Regulation 3 is set out at p 3 *d*, post

R v West London Supplementary Benefits Appeal Tribunal, ex parte Taylor [1975] 2 All ER 790 distinguished.

Notes

For calculation of earnings for the purpose of entitlement to supplementary benefit, see Supplement to 27 Halsbury's Laws (3rd Edn) para 947A.

For the Supplementary Benefits Act 1976, Sch 1, Part III, see 46 Halsbury's Statutes (3rd Edn) 1083.

Cases referred to in judgment

R v Preston Supplementary Benefits Appeal Tribunal, ex parte Moore, R v Sheffield Supplementary Benefits Appeal Tribunal, ex parte Shine [1975] 2 All ER 807, [1975] 1 WLR 624, CA, Digest (Cont Vol D) 711, 94*Ac*.

R v West London Supplementary Benefits Appeal Tribunal, ex parte Taylor [1975] 2 All ER 790, [1975] 1 WLR 1048, DC, Digest (Cont Vol D) 712, 94*Ad*.

Application for judicial review and certiorari

The Supplementary Benefits Commission ('the commission') applied for judicial review and an order of certiorari to quash a decision of the Supplementary Benefits Appeal Tribunal ('the tribunal') given in Manchester on 21st April 1978 allowing the appeal of the respondent, David John Riley, against the refusal of the commission to pay him supplementary allowance for the two weeks from 16th September to 29th September 1977 inclusive which followed the termination of his employment on 10th September, and deciding that supplementary allowance was payable to him for those weeks. Pursuant to RSC Ord 53, r 5(2), the Divisional Court directed that the application be heard by a single judge. The facts are set out in the judgment.

Harry Woolf for the commission.

Stephen Bickford-Smith for the respondent.

Cur adv vult

9th November. **SHEEN J** read the following judgment: In these proceedings counsel moves on behalf of the Supplementary Benefits Commission ('the commission') for judicial review and an order of certiorari to quash a decision of the Supplementary Benefits Appeal Tribunal ('the tribunal') given in Manchester on 21st April 1978. Pursuant to RSC Ord 53, r 5(2), the Divisional Court directed that the application should be heard by a single judge.

The point raised is one of principle which will affect many who claim supplementary benefits. It arose in this way. The respondent is a student who obtained employment during the summer vacation of 1977 with British Dredging of Swansea. He started work on 26th July and continued until 10th September when he returned to his home in Manchester. He received a full week's supplementary allowance for the week beginning 28th July because his first wages from his work would not be paid until 4th August. After his employment had ceased he made another claim for a supplementary allowance which was refused by the commission on the grounds that having regard to his resources he was not entitled to a supplementary allowance. The respondent appealed to the tribunal against the decision of the commission. The tribunal decided that the respondent was entitled to a supplementary allowance for the two benefit weeks immediately following his claim, which allowance should have been calculated on the basis that no part of the sum of £86·80 previously received from his former employer should be regarded as income resources for the benefit weeks. The commission contends that this decision of the tribunal is wrong in law.

The purpose of the Supplementary Benefits Act 1976 is to provide financial support for those who are in need. Every person in Great Britain over the age of 16 and under pensionable age is entitled to a supplementary allowance if his resources are insufficient

to meet his requirements. The amount of any supplementary benefit to which a person is entitled is the amount by which his resources (as calculated in accordance with the Act) fall short of his requirements (as calculated in accordance with Part II of Sch 1 to the Act).

Resources are not defined in the Act, but Part III of Sch 1 prescribes the method by which a person's resources are to be calculated. For these purposes capital which does not exceed £1,200 is wholly disregarded: see Sch 1, para 19. It is clear from this schedule that income resources are treated on the basis of weekly income. Section 6 of the Act provides:

> '(1) Except as provided in the following provisions of this section and in section 9(1) of this Act . . . for any period during which a person is engaged in remunerative full-time work he shall not be entitled to supplementary benefit.
>
> '(2) The Secretary of State may, by regulations made under this subsection, make provision for postponing the exclusion of persons becoming engaged in remunerative full-time work from a right to supplementary benefit under subsection (1) above for such period from the beginning of their engagement as may be specified in the regulations.'

Regulation 3 of the Supplementary Benefits (General) Regulations 1977[1] provides:

> 'Section 6(1) of the Act (exclusion of persons in full-time employment) shall not apply to a person becoming engaged in remunerative full-time work until the expiration of a period of 15 days from the beginning of the engagement.'

It is clear that the reason for this provision is that wages are usually paid at the end of the period in which they are earned, and that therefore a person may not have any resources to meet his requirements at the commencement of his employment. After the first pay day income resources are available to cover the requirements of the next period of employment, and so on throughout the whole employment.

The respondent's supplementary benefit requirement, as calculated in accordance with Part II of Sch 1 to the Act, was £11·35 per week and his supplementary allowance pay day was Friday. The question for decision is whether on Friday, 16th September 1977, and on the following Friday, 23rd September, the respondent had resources in excess of £11·35 for each week. The relevant facts are these. On Thursday, 8th September, the respondent received a normal week's wages of £66. He ceased work on Saturday, 10th September. On Thursday, 15th September, he received from his former employers the sum of £86·80 which was made up of £66, which was a week's wages held in hand, and £20·80 being two days' holiday pay. Is this money to be disregarded?

Capital is accumulated wealth, a description which is not appropriate to the money in question. Therefore that money cannot be disregarded by reason of para 19 of Sch 1 to the Act. The case for the commission is that the money was 'earnings' which, although the product of earlier work, fell to be treated as resources for a period after the employment had ceased equivalent to at least the period during which it was earned. The money was cash in the hands of the respondent and, as such, was 'resources' available to him. The respondent received a supplementary allowance during the first week of his employment when he was earning a full week's wages and the commission contends that both ends of his employment should be treated in like manner. If this is not correct in principle a person could work for two weeks and earn two weeks' wages without his right to a supplementary allowance being interrupted or affected in any way.

The first reason stated by the tribunal for their decision was that 'it has been clearly decided by the Court of Appeal that the word "resources" refers to notional resources and not actual resources'. The tribunal had in mind *R v Preston Supplementary Benefits Appeal Tribunal, ex parte Moore*[2]. In that case a student, John Moore, claimed a supplementary allowance on the ground that his resources were less than his requirements. Moore was

1 SI 1977 No 1141

2 [1975] 2 All ER 807 at 811, [1975] 1 WLR 624 at 630

in receipt of an annual education grant payable in three instalments in advance. That grant was intended to cover a period of 52 weeks. The grant was paid in three instalments; the third instalment of £245 was paid at the beginning of the summer term. By the end of the summer term, on 30th June 1972, he had spent all the money which had been granted to him. He applied for supplementary benefit while seeking employment. The Supplementary Benefits Commission calculated his resources by attributing the annual grant as referable to 52 weeks from 1st September 1971 to 31st August 1972. The tribunal refused Moore's application for a supplementary allowance. On appeal it was argued on behalf of Moore that because he had spent the whole of the grant and had nothing left he had no resources after 30th June 1972. In dealing with this submission Lord Denning MR said[1]:

> 'It [resources] is not defined in the 1966 Act, but there are many indications that it refers to notional resources and not actual resources . . . his earnings are to be calculated at a weekly sum, even though they are paid monthly or quarterly. Suppose he is paid monthly in advance. He may spend it all in the first day or two in buying a new stove or a suit of clothes. Yet his resources during the whole of that month are to be taken as the weekly equivalent.'

In this part of his judgment Lord Denning MR is saying that for the purposes of seeing whether a man is entitled to a supplementary allowance his earnings are to be calculated on a weekly basis for comparison with his weekly requirements. And if a man is paid monthly in advance he is deemed to be paid the equivalent weekly amount. By way of contrast Lord Denning MR continued his judgment with the words[2]:

> 'Suppose he is paid monthly in arrear, he has no actual resources in the first month and he is not to be regarded as notionally having them; but thereafter he has resources which are to be calculated at a weekly sum and when he leaves at the end of the last month, he has a month's pay in hand as his resources for the following month.'

If this last sentence had been necessary to the decision in *Moore's* case[3] it would have been decisive of the point now in issue. Although I accept the submission of counsel for the tribunal that in its context this sentence is not binding on me, nevertheless in my judgment it is the answer to the problem which has been posed. A supplementary allowance may be paid to a man who has full-time employment during a period of 15 days from the beginning of his employment because during that period he has no resources, even though he has been earning income throughout that period. When that employment ceases he will in fact have resources to cover him over the next week or two weeks as the case may be.

The tribunal dealt with this point in giving their second reason for holding that the respondent was entitled to a supplementary allowance. The tribunal relied on a decision of the Divisional Court in *R v West London Supplementary Benefits Appeal Tribunal, ex parte Taylor*[4]. That was a decision on very special facts. A mother and her illegitimate child had been deserted by the child's father. In 1966 a court had ordered the father to pay maintenance. That order was not enforced and the mother supported her family for six and a half years. In 1972 the mother was granted a supplementary allowance under the Supplementary Benefit Act 1966. Proceedings were then taken against the father which resulted in the mother receiving a lump sum of £704·75. The question then arose as to how this should be treated by the Supplementary Benefits Commission when the mother continued to claim a supplementary allowance. The commission decided that the sum

1 [1975] 2 All ER 807 at 811–812, [1975] 1 WLR 624 at 630
2 [1975] 2 All ER 807 at 812, [1975] 1 WLR 624 at 630
3 [1975] 2 All ER 807, [1975] 1 WLR 624
4 [1975] 2 All ER 790, [1975] 1 WLR 1048

in question was not capital and that it should be spread over a period of 44 weeks as part of the mother's resources. On appeal it was held that the money in question should have been spread over the period when it accrued. That is, however, quite different from earnings which are paid in arrear and accrue at the end of the weekly or monthly period of employment. May J made this clear when he said[1]:

> 'If an income resource found by the commission comprises current or future income, such as earnings or receipts under a court order, then it will be received periodically and its weekly equivalent will be a simple question of calculation. The difficulty arises in this and similar cases where the found income resource comprises arrears of periodic payments. This is income which ought to have been received in the past.'

In contrast to this, wages which are paid on their due date, albeit in arrear, are not 'income which ought to have been received in the past'.

The tribunal gave a third reason for reaching a decision inconsistent with the views of Lord Denning MR in *Moore's* case[2] to which I have referred. I do not agree with the tribunal that the wording of the regulations prescribing the calculation of 'net weekly earnings' appears to envisage that earnings should be 'attributed to the week in which they were actually earned'. But equally I do not think that it would be decisive of this application if the regulations were to be so read. A person's resources consist of his capital resources and his income from earnings or investments. At the time when the respondent applied for a supplementary allowance he had resources (which were not capital) in excess of his requirements. In my judgment the commission was right to refuse his application, and the decision of the tribunal should be quashed.

Order accordingly.

Solicitors: *Solicitor, Department of Health and Social Security; Lamport, Bassitt & Hiscock*, Southampton (for the respondent).

Janet Harding Barrister.

1 [1975] 2 All ER 790 at 794, [1975] 1 WLR 1048 at 1052
2 [1975] 2 All ER 807, [1975] 1 WLR 624

Re Shilena Hosiery Co Ltd

CHANCERY DIVISION
BRIGHTMAN J
7th, 8th, 9th NOVEMBER, 1st DECEMBER 1978

Company – Compulsory winding-up – Avoidance of disposition made with intent to defraud creditors – Jurisdiction of Companies Court to hear summons in liquidation seeking that relief – Exercise of discretion – Liquidator seeking declarations that contracts between company and two other companies made when company was unable to pay its debts but before winding-up order void – Whether claim for relief required to be commenced by writ – Whether claim for relief arising in consequence of winding-up – Law of Property Act 1925, s 172(1) – RSC Ord 5, r 2(b).

On 18th February 1977 when it was trading at a loss a company agreed to pay another company ('Lindsey') £88,000 for the cancellation of an agency contract with Lindsey. On 5th April on the service of a notice by a creditor under s 223 of the Companies Act 1948 the company was deemed to be unable to pay its debts. On 15th April the company entered into a further agreement with another company ('Larboard') to sell its factory premises to Larboard at a price later alleged to be less than the market value. On 30th May the Companies Court ordered that the company be wound up. The liquidator issued summonses in the winding-up seeking declarations that the agreements of 18th February and 15th April were void against him, under s 172(1)[a] of the Law of Property Act 1925, because they were made with intent to defraud the company's creditors. Lindsey and Larboard took the preliminary point that the Companies Court had no jurisdiction to hear a claim for relief under s 172 by way of summons in the liquidation because RSC Ord 5, r 2(*b*)[b], required proceedings in which a plaintiff alleged fraud to be begun by writ unless there was express statutory provision to the contrary, and where the claim in a summons in the liquidation was not one under the 1948 Act the Companies Court had no jurisdiction to decide the merits of a claim which raised an issue between the company and a stranger. If the court did have jurisdiction to entertain the summonses, Lindsey and Larboard contended that the court should in its discretion decline to grant the relief sought. The liquidator served notices of motion against Lindsey and Larboard seeking declarations that the summonses were properly brought in the Companies Court and that the court should exercise its discretion by granting the relief sought.

Held – (1) The Companies Court had jurisdiction to grant relief under s 172 of the 1925 Act on a summons in a liquidation because (i) that court was part of the High Court, and not a separate court with its own jurisdiction, and every High Court judge had jurisdiction to grant relief under s 172, (ii) RSC Ord 5, r 2(*b*), did not go to jurisdiction but only to procedure and (iii) a claim to set aside a transaction under s 172 could properly be litigated in the Companies Court even if it was not based on any section of the Companies Act 1948 (see p 9 *j* to p 10 *b* and *h* to p 11 *a*, post).

(2) The court would in its discretion hear the summonses because the claims for relief under s 172 arose in consequence of the winding-up (see p 11 *e* to p 12 *a f*, post); dicta of Jessel MR in *Re Union Bank of Kingston-upon-Hull* (1880) 13 Ch D at 809–810 and of Salter J in *Re F & E Stanton* [1927] All ER Rep at 500 applied; *Re Centrifugal Butter Co Ltd* [1913] 1 Ch 188 distinguished.

Per Curiam. The decision in the instant case will not affect the existing practice, that third party proceedings are not normally available in the Companies Court, in relation

---

a Section 172(1) is set out at p 9 *f*, post
b Rule 2, so far as material, is set out at p 10 *e f*, post

to a claim against a stranger which does not arise in consequence of the winding-up (see p 12 *g*, post).

Notes

For the powers of the court in a winding-up, see 7 Halsbury's Laws (4th Edn) para 1500. For the Law of Property Act 1925, s 172, see 27 Halsbury's Statutes (3rd Edn) 593.

Cases referred to in judgment

Centrifugal Butter Co Ltd, Re [1913] 1 Ch 188, 82 LJ Ch 87, 108 LT 24, 20 Mans 34, 10 Digest (Reissue) 1023, *6249*.

Deadman Re, Smith v Garland [1971] 2 All ER 101, [1971] 1 WLR 426, (Digest (Cont Vol D) 1046, *193Ab*.

Harrison, Re, ex parte Butters (1880) 14 Ch D 265, 43 LT 2, CA, 4 Digest (Reissue) 49, *408*.

Rolls Razor Ltd, Re, (No 2) [1969] 3 All ER 1386, [1970] Ch 576, [1970] 2 WLR 110, 10 Digest (Reissue) 1143, *7111*.

Singer (A) & Co (Hat Manufacturers) Ltd, Re [1943] 1 All ER 225, [1943] Ch 121, 112 LJ Ch 113, 168 LT 132, CA, 10 Digest (Reissue) 1125, *6971*.

Stanton (F & E) Ltd, Re [1928] 1 KB 464, [1927] All ER Rep 496, 97 LJKB 131, 138 LT 175, [1927] B & CR 187, DC, 10 Digest (Reissue) 908, *5304*.

Union Bank of Kingston-upon-Hull, Re (1880) 13 Ch D 808, 49 LJ Ch 264, 42 LT 390, 10 Digest (Reissue) 1184, *7368*.

Vimbos Ltd, Re [1900] 1 Ch 470, 69 LJ Ch 209, 82 LT 597, 8 Mans 101, 10 Digest (Reissue) 877, *5073*.

Cases also cited

Anderson, Re (1870) 5 Ch App 473.

Belmont Finance Corpn Ltd v Williams Furniture Ltd [1979] 1 All ER 118, [1978] 3 WLR 712, CA.

Cadogan v Cadogan [1977] 1 All ER 200, [1977] 1 WLR 1041; *rvsd* [1977] 3 All ER 831, CA.

Crawford v M'Culloch 1909 SC 1063.

Eichholz, Re [1959] 1 All ER 166, [1959] Ch 708.

Hutton (a bankrupt), Re, Mediterranean Machine Operations Ltd v Haigh [1969] 1 All ER 936, [1969] 2 Ch 201.

Hyams, Re, ex parte Lindsay v Hyams (1923) 130 LT 237, [1923] All ER Rep 510, CA.

Ilkley Hotel Co, Re [1893] 1 QB 248, DC.

Independent Automatic Sales Ltd v Knowles and Foster [1962] 3 All ER 27, [1962] 1 WLR 974.

Leslie (J) Engineers Co Ltd (in liquidation), Re [1976] 2 All ER 85, [1976] 1 WLR 390.

Lloyds Furniture Palace Ltd, Re [1925] Ch 853.

Oakwell Collieries Co, Re [1879] WN 65.

Pollard, Re, ex parte Dickin (1878) 8 Ch D 377, CA.

Selangor United Rubber Estates Ltd v Cradock (No 3) [1968] 2 All ER 1073, [1968] 1 WLR 1555.

United English and Scottish Assurance Co, Re (1868) 3 Ch App 787.

Wool Textile Employers' Mutual Insurance Co Ltd, Re [1955] 2 All ER 827, [1955] 1 WLR 862.

Motions

By a summons issued on 22nd February 1978 in the winding-up of Shilena Hosiery Co Ltd ('Shilena') the liquidator of Shilena sought against Larboard Investments Ltd ('Larboard') (1) a declaration that an agreement in writing that Shilena should sell to Larboard factory premises at Waterside North in Lincoln for £50,000 and accept a lease-back of the premises on terms set out in the agreement was void against the liquidator under s 172 of the Law of Property Act 1925; (2) alternatively, a declaration that Shilena