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CITATION

These reports are cited thus:

[1978] 2 All ER

REFERENCES

These reports contain references, which follow after 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 2 Halsbury's Laws (4th Edn) para 1535 refers to paragraph 1535 on page 708 of volume 2 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 Digest (Cont Vol B) 287, *7540b*, refers to case number 7540b on page 287 of Digest Continuation Volume B.

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

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] 2 All ER

p 205. **R v Hull Prison Board of Visitors.** Line *j*3: the following line was inadvertently omitted from the foot of page 205, 'in the air, whether for days or for weeks. The same goes for the kind of disciplinary'.

p 214. **Moriarty v McCarthy.** Counsel for the plaintiff: read '*John Wilmers QC* and *Jonathan Playford* instead of as printed. Counsel for the defendant: read '*Michael Wright QC* and *Graeme Hamilton*' instead of as printed.

p 314. **Laundon v Hartlepool Borough Council.** Lines *h*3 and *h*4: the following line was inadvertently omitted, 'dwelling throughout the qualifying period, which included the ten days, so disentitling'. The missing line should follow immediately after line *h*3 which ends with the word 'private'.

p 393. **R H Willis and Son (a firm) v British Car Auctions Ltd.** Line *c*4: read 'claiming £275 being the outstanding hire-purchase instalments on the car. The auctioneers contended' instead of as printed.

p 520. **Warnford Investments Ltd v Duckworth.** Line *d*1: delete comma at end of line, so that it reads 'the original lessee ceases'. Page 522, line *g*6: for 'prove the liquidation' read 'prove in the liquidation'. Page 526, lines *d*3, and *d*4: for 'a person who as principal, undertook towards the lessor, the obligations' read 'a person who, as principal, undertook towards the lessor the obligations'.

Cases reported in volume 2

Re Caines (deceased)
Knapman v Servian and another

CHANCERY DIVISION
MEGARRY V-C
12th, 31st OCTOBER 1977

Pleading – Striking out – No reasonable cause of action – Originating summons – Evidence inadmissable on an application to strike out – Affidavit in support of originating summons – Affidavit constituting evidence and not pleading – Originating summons containing nothing to show no reasonable cause of action – Defendants relying for purpose of application on contents of plaintiff's affidavit in support of originating summons – Whether affidavit constituting 'evidence on an application' to strike out – Whether court entitled to have regard to affidavit in determining application – RSC Ord 18, r 19(1)(a)(2)(3).

By an originating summons the plaintiff brought an action against the executors of a will. In the summons the plaintiff alleged that he was a beneficiary under the will and claimed an order for the administration of the real and personal estate of the testator with all necessary and proper accounts, directions and enquiries. The plaintiff swore an affidavit in support of the summons which disclosed that the testator had died leaving a will and two codicils. By the will the testator had devised 'my freehold dwellinghouse' to his trustees on trust for sale and to hold the proceeds of sale and the net rents and profits until sale in trust to pay the income to his wife for her life and after her death, as to capital and income, in trust for the plaintiff. It emerged however that the house was not his sole property but belonged to him and his wife. Accordingly, by the second codicil the testator gave 'all my share and interest in the net proceeds of sale and the net rents and profits until sale' of the house on the trust declared in the will as to the house. The testator was survived by his wife by a little over four months. Just before her death the plaintiff's solicitors made enquiries about the nature of the testator's interest in the house, in particular whether he was a joint tenant with his wife or a tenant in common. The answer was that he had been a joint tenant but had signed a notice of severance. There was however doubt whether the joint tenancy had been effectively severed because it appeared that the testator's solicitors had not served the notice of severance on his wife. By his summons the plaintiff sought in effect to compel the executors to bring proceedings against the testator's solicitors for their failure to avoid the depletion of the testator's estate by serving the notice of severance in time. By a procedure summons taken out under RSC Ord 18, r 19(1)(a)[a], the executors sought an order dismissing the proceedings

a Rule 19 provides:

'(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—(*a*) it discloses no reasonable cause of action or defence, as the case may be; or (*b*) it is scandalous, frivolous or vexatious; or (*c*) it may prejudice, embarrass or delay the fair trial of the action; or (*d*) it is otherwise an abuse of the process of the court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

'(2) No evidence shall be admissible on an application under paragraph (1)(*a*).

'(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.'

on the ground that the plaintiff had no locus standi to bring them and that they did not disclose any cause of action. At the hearing of the procedure summons the plaintiff's affidavit was before the master. The application was adjourned to a judge before whom the plaintiff, by way of a preliminary objection, contended (i) that the affidavit constituted evidence; (ii) that, in accordance with RSC Ord 18, r 19(2), the judge could not look at the affidavit; and (iii) in consequence it was impossible to say that the originating summons disclosed no cause of action.

Held – (i) The plaintiff's preliminary objection failed for the following reasons—

(a) The words 'so far as applicable' in r 19(3) were to be read as permitting and requiring some degree of flexibility in applying to originating summonses a rule that was drafted for writs and pleadings (see p 4 *c d*, post).

(b) The prohibition in r 19(2) was expressed as being that evidence was inadmissible 'on' an application under r 19(1)(*a*), i e as prohibiting evidence to support or rebut an application, but was not to be construed as enabling a party to object to an affidavit that had already been put in for the purpose of supporting an originating summons, for such an affidavit was not truly evidence 'on' the application but evidence which antedated the application and had been put in for a different purpose. Rule 19(2) could not therefore be construed as amounting to an absolute prohibition against looking at the affidavit in such cases (see p 4 *e f* and p 5 *d e*, post).

(c) Under Chancery procedure the hearing before the judge was properly to be regarded as a continuation of the proceedings begun before the master and not as separate proceedings or even as a separate stage in the same proceedings. Since the plaintiff had made no objection to the use of the affidavit before the master, but had argued his case on the basis of that affidavit, it was too late for him to object to its use in what was merely part of the same proceedings in the same court (see p 4 *j* to p 5 *a* and *d* to *g*, post); dicta of Kindersley V-C in *Leeds v Lewis* (1857) 3 Jur NS at 1290 and in *Re Mitchell* (1863) 33 LJCh at 187, 188 and *Lloyd's Bank v Princess Royal Colliery Co* (1900) 82 LT 559 applied.

(ii) There did not appear to be any basis for the plaintiff's contention that the terms of the second codicil would carry to him any damages that the executors might recover against the solicitors for negligence, for a bequest of 'all my share and interest in the net proceeds of sale' could not be construed as including any damages which the testator was entitled to recover against his solicitors for negligence in failing to ensure that he did have some share and interest in the proceeds of the sale of the house. However, with regard to the issue of severance, it could not be said that it was clear that the plaintiff's case was wholly untenable. The executors' summons therefore failed and would be dismissed (see p 6 *h j* and p 7 *a* to *h*, post).

Notes

For the power to strike out a pleading on the ground that it discloses no reasonable cause of action, see 30 Halsbury's Laws (3rd Edn) 37, 38, para 76, and for cases on the subject, see 50 Digest (Repl) 60-72, *491-563*.

Cases referred to in judgment

Leeds v Lewis (1857) 3 Jur NS 1290, 51 Digest (Repl) 627, *2392*.
Lloyd's Bank v Princess Royal Colliery Co (1900) 82 LT 559, 16 Digest (Repl) 206, *954*.
Mitchell, Re (1863) 33 LJCh 187.
Robertson v Fleming (1861) 4 Macq 167, HL, 43 Digest (Repl) 116, *1053*.
Wenlock v Moloney [1965] 2 All ER 871, [1965] 1 WLR 1238, CA, 50 Digest (Repl) 62, *502*.

Cases also cited

Clowes v Hilliard (1876) 4 Ch D 413.
Esso Petroleum Co Ltd v Mardon [1976] 2 All ER 5, [1976] QB 801, CA.

Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd [1899] 1 QB 86, [1895-9] All ER Rep 244, CA.
Parsons, Re, Stockley v Parsons (1890) 45 Ch D 51.
Randell, Re, Hood v Randell (1887) 56 LT 8, CA.
Republic of Peru v Peruvian Guano Co (1887) 36 Ch D 489, [1886-90] All ER Rep 368.

Procedure summons

By an originating summons dated 25th October 1976 the plaintiff, Eric David Knapman, brought an action against the defendants, (1) Cecil Servian and (2) Frank Kenneth Liddiard Hives, the executors of the will and two codicils dated respectively 10th December 1974, 8th May 1975 and 23rd June 1975 of Harry Edward Ingram Caines deceased ('the testator'), by which he sought an order for the administration of the real and personal estate of the testator with all necessary and proper accounts, directions and inquiries. By a summons dated 21st January 1977 the defendants applied for an order that the plaintiff's action be dismissed on the ground that he had no locus standi to bring the proceedings and that they disclosed no cause of action. The facts are set out in the judgment.

Jonathan Playford for the defendants.
Robert M K Gray for the plaintiff.

Cur adv vult

31st October. **MEGARRY V-C** delivered the following judgment: This procedure summons raises some interesting questions. The summons, which was taken out by the defendants, seeks the dismissal of the proceedings on the ground that the plaintiff has no locus standi to bring them, and that they disclose no cause of action. The proceedings were commenced by an originating summons in which the plaintiff states that he is a beneficiary under the will of Harry Edward Ingram Caines deceased, whom I shall call 'the testator'; and the relief sought is an order for the administration of the real and personal estate of the testator, with all necessary and proper accounts, directions and inquiries. It was common ground between counsel for the defendants and counsel for the plaintiff that the procedure summons was taken out under para (*a*) of RSC Ord 18, r 19(1), relating to pleadings or indorsements of a writ that disclose no reasonable cause of action, and not under paras (*b*), (*c*) or (*d*) of that rule, relating to them being scandalous, frivolous or vexatious, or prejudicing, embarrassing or delaying the trial, or being otherwise an abuse of the process of the court. Rule 19(2) provides that 'no evidence shall be admissible on an application under paragraph (1)(*a*)', and r 19(3) provides that 'this rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition . . . were a pleading'.

That brings me to the first point, raised in a preliminary objection by counsel for the plaintiff. He says that in hearing the procedure summons I must look at the originating summons, and the originating summons alone, for the purpose of deciding whether it discloses any reasonable cause of action, and that I must not look at the affidavit sworn by the plaintiff in support of the originating summons. Of course, unlike a statement of claim in an action begun by writ, most originating summonses are remarkably uninformative documents. They usually ask a series of questions, or state the various forms of relief sought, but most of them disclose little or nothing of what the case is about or what the plaintiff's contentions are. In this case, the originating summons simply asserts that the plaintiff is a beneficiary under the will of the testator, and claims an order for the administration of the testator's estate with ancillary relief, and nothing more. Most of the material that in an action by writ is provided by the statement of claim is, under an originating summons, normally provided by the affidavit in support of the originating summons. But that affidavit.

said counsel for the plaintiff, constitutes evidence, and so is something that, in obedience to RSC Ord 18, r 19(2), I must not look at. Accordingly, it is impossible for the defendants to show that the originating summons discloses no cause of action.

Let me say at the outset that I think that the operation of RSC Ord 18, r 19, in the case of originating summonses is something that the rules committee might with advantage consider. If counsel for the plaintiff's submission is sound, then the application of the rule to originating summonses is likely in most cases to be nugatory. Of course, if under RSC Ord 28, r 8, an order had been made for the affidavits in the case to stand as pleadings, then the difficulty would disappear. But that is not the case here. The question is thus whether r 19(1)(*a*) is inapplicable to the usual reticent form of originating summons, and applies only to those that are more forthcoming.

I can see no grounds on which it could be said that, in making r 19(1) apply to originating summonses, r 19(3) intended to leave most originating summonses outside the practical operation of the rule, and to include only the minority within it. There seem to me to be three considerations which point to r 19(1) being given its full scope in relation to an originating summons such as the one that is before me. First, there are the words 'so far as applicable' in r 19(3). If instead the words had been 'with any necessary modifications', then they would, of course, have given greater support to the contention that r 19(1) applies generally to originating summonses. But I think that even the phrase 'so far as applicable' can be read as permitting and requiring some degree of flexibility in applying to originating summonses a rule that was drafted for writs and pleadings.

Second, the prohibition in r 19(2) is expressed as being that evidence is to be inadmissible 'on' an application under r 19(1)(*a*). In other words, when an application is made under r 19(1)(*a*), the applicant cannot put in evidence to support his application, and the respondent cannot put in evidence to rebut that application. An application under the rule is not to be made into a preliminary hearing. But that ought not to enable a party to object to an affidavit that has already been put in for the purpose of supporting the originating summons; for such an affidavit is not truly evidence 'on' the application, but evidence which antedates the application and has been put in for a different purpose. In short, on an application under r 19(1)(*a*) you must take the proceedings as you find them, though evidence to support or repel the application cannot be added. Views of this kind were, I understand, initially held by counsel for the plaintiff, though on reflection after the hearing before the master he resiled from them. I regard it as being important that the purpose to be discerned in the Rules of the Supreme Court should not be stultified by an over-literal approach to their language.

Third, in this case there is an additional factor, based on what I may call the unity of proceedings in the Chancery Division. When this procedure summons came before the master, he told counsel that he had read the affidavit which the plaintiff had sworn in support of the originating summons. That affidavit was accordingly not formally read to him, but the argument on both sides proceeded on the footing that the affidavit was duly before the master; and no objection to it was made. What counsel for the plaintiff did object to was a further affidavit that counsel for the defendants sought to use; and before me counsel for the defendants disclaimed any reliance on that affidavit, which I have not seen. Accordingly, the present position is that counsel for the plaintiff is objecting to the admissibility of the plaintiff's own affidavit which, without objection, formed the basis of the argument before the master. He contends that although the proceedings before me are not an appeal from the master but merely an adjournment, the proceedings have now reached a new stage, and so it is open to him to object to what he had not objected to before.

The answer to that (or an answer) lies, I think, in what I have called the unity of proceedings in the Chancery Division. When proceedings are adjourned from the master to the judge, this produces no separate proceedings, nor even a separate stage in the proceedings; it is merely a continuation of the proceedings begun before

the master. In Chancery theory, an adjournment from the master to the judge is no more a break in the proceedings than is an adjournment of a hearing before the judge from one day to the next. That seems to me to be well settled in principle; but if authority be needed, see *Leeds v Lewis*[1] and *Re Mitchell*[2]. As Kindersley V-C[3] pointed out in the former case, speaking in days when the present-day masters were called chief clerks, the hearing by the judge 'is merely a continuation of the hearing begun before the chief clerk'. As he said in the latter case[4], the right of the litigant is 'not to have a matter adjourned into Court, but to have it brought before the Judge'; and 'Ordinarily the proceedings in Court are part of the proceedings in chambers'. Further, an order in fact made by a master is nevertheless treated as being an order of the judge: *Lloyd's Bank v Princess Royal Colliery Co*[5]. I do not think that the fact that an order of the master no longer bears the name of the judge (see the amended version of RSC Ord 32, r 14(3)) can have altered the point of principle. I should add that although these authorities were not cited in argument, I put the point to counsel for the plaintiff, and his answers did not persuade me. *Wenlock v Moloney*[6], which he cited, was an appeal from the Queen's Bench Division where the facts and issues were very different.

The question, then, is whether, on the footing that what I am hearing is merely a continuation of the hearing before the master, it is now open to the plaintiff to seek to exclude his own affidavit which, up to this point, has been used without objection. I would answer No to that question. I do not consider that r 19(2) amounts to an absolute prohibition against looking at the plaintiff's affidavit in a case such as this. I think that the rule is directed against the admission of evidence which seeks to support or disprove the contention that no reasonable cause of action is disclosed, and not against an affidavit which is intended to disclose the cause of action. It is one thing for r 19(2) to prevent applications under r 19(1)(*a*) from becoming a preliminary trial of disputed issues, and very much another thing to prevent the court from finding out what the cause of action is.

Furthermore, as the plaintiff made no objection to the use of the affidavit before the master but argued the case on the basis of that affidavit, I think that it is now too late for him to object to its use in what is merely part of the same proceedings in the same court. Master and judge, together or separately, are each merely parts of the same division of the same court. In civil proceedings, of course, a party entitled to object to the admission of evidence may, by failing to object to it in time, allow the admission of what he might have had excluded. No doubt the court itself could, under r 19(2), exclude evidence, despite the failure of any of the parties to object to it; and in most cases no doubt the court would do this. But I think that the court must have some discretion in the matter, and there are some cases in which it would be wrong for the court to exclude the evidence. If ever there was such a case, this is that case.

I may add that even if, contrary to my view, the hearing before the judge on adjournment from the master does constitute a separate stage in the proceedings in the High Court, I very much doubt whether what has been used before the master, whether or not it was treated as being evidence, can, when the case is before the judge, be excluded on the ground that it is inadmissible evidence. What is in is in, and stays in. But primarily I rest my decision on the proceedings before master and judge being all one, as well as on the construction of r 19(2), (3). At the conclusion of the argument on the matter I held that counsel for the plaintiff's preliminary objection failed, and I said that I would give my reasons later. This I have now done.

1 (1857) 3 Jur NS 1290
2 (1863) 33 LJCh 187
3 3 Jur NS 1290
4 33 LJCh 187 at 187, 188
5 (1900) 82 LT 559
6 [1965] 2 All ER 871, [1965] 1 WLR 1238

Once the plaintiff's affidavit is read, it becomes possible to say what the case is about. The testator died on 30th June 1975, leaving a will dated 10th December 1974 and two codicils. The will appointed the two defendants to be the testator's executors and trustees, and they duly proved the will and the codicils. By the will, the testator devised 'my freehold dwellinghouse' to his trustees on trust for sale, and to hold the proceeds of sale and the net rents and profits until sale in trust to pay the net income to his wife for her life, and after her death, as to capital and income, in trust for the plaintiff. By his second codicil, the testator gave 'all my share and interest in the net proceeds of sale and the net rents and profits until sale' of the house on the trust declared in the will as to the house. This codicil was necessary because it appears to have emerged that the house was not the testator's sole property but belonged to him and his wife, so that he was beneficially entitled not to the house but only to an interest under a trust for sale of the house.

The testator was survived by his widow for a little over four months; she died on 5th November 1975. Not long before her death, the plaintiff's solicitors had made enquiries of the defendants' solicitors about the exact nature of the testator's interest in the house. In particular, they enquired whether he had been a joint tenant (presumably with his wife), and whether, if this was the case, any severance of the joint tenancy had taken place. This enquiry elicited the information that the testator had been a joint tenant with his wife and that he had signed a notice of severance, but that as he was in hospital suffering from cancer (from which he died a week later), and his wife was a mental patient, the notice had not been served on her. If, of course, the joint tenancy had not been severed before the testator died, his interest passed by survivorship to his wife. The gift to the plaintiff was thus adeemed, and so failed.

On those facts, one possible line of action for the plaintiff to consider was to sue the testator's solicitors for damages in respect of their failure to serve the notice of severance in time. The obvious difficulty in this is that the solicitors could say that although they owed the testator a duty of care, they owed none to the plaintiff, who was not their client, and so they could not be guilty of a breach of any duty of care owed to the plaintiff. The position, indeed, is a variant of the familiar story of the legatee whose complaint is that a legacy to him has failed because of some negligence in the solicitor in preparing the will, and that he is left without remedy. *Robertson v Fleming*[1], a decision of the House of Lords in a Scottish appeal, is a leading case on this branch of the law. In other jurisdictions, means have been found of providing the disappointed legatee with a remedy[2]; but, so far as I know, these have not yet found a place in English law. I shall say no more about this point, as it is not before me. I mention it, however, as it explains at least part of the course taken by the plaintiff in this case.

I turn, then, to the proceedings brought by the plaintiff. As I have said, these consist of an originating summons which asks for an order for the administration of the estate of the testator, with all necessary and proper accounts, directions and enquiries. By doing this, the plaintiff seeks to compel the executors to bring proceedings for negligence against the testator's solicitors for their failure to swell the estate of the testator (or prevent its reduction) by serving the notice of severance in due time. But, says counsel for the defendants, if this is done all that will happen is that any damages recovered will fall into residue, and as the plaintiff admittedly has no interest in residue, he has nothing which entitles him to require such proceedings to be brought. On that footing, the originating summons should be dismissed because the plaintiff has no locus standi.

If that were all, counsel for the defendants would have a very strong case. But it is not all. The proposed action for negligence is necessarily founded on the proposition that at the moment of his death the testator was a joint tenant of the house. If instead

1 (1861) 4 Macq 167
2 See, for example, (1965) 81 LQR 478

he was a tenant in common, then, of course, the plaintiff appears plainly to be beneficially entitled to the testator's half-share in the proceeds of sale of the house; and on that footing there is prima facie no claim for negligence against the solicitors. Accordingly, a crucial question is whether or not the testator was a joint tenant when he died. Counsel for the plaintiff contends that there are two routes whereby he may succeed in establishing that in equity the testator was a tenant in common. First, there is the conveyance to the testator and his wife, which I have not seen. There may, said counsel for the plaintiff, be some arguable question that on its true construction the conveyance created not a joint tenancy, as the defendants assert, but a tenancy in common. At this stage this is plainly no more than a possibility; but it ought not to be dismissed out of hand. Second, there is the point that was raised by the plaintiff's solicitors at an early stage of the correspondence. This is that the solicitors for the testator may also have been solicitors for his wife, with sufficient authority to receive any notice of severance on her behalf. If this is the case, then the delivery of the notice by the testator to the solicitors may have amounted to service of the notice on his wife, thereby effecting a severance before the testator died.

In addition to these contentions, counsel for the plaintiff staked his claim on another point. If the testator had died a joint tenant, then it was not beyond argument, he said, that the terms of the second codicil would carry to the plaintiff any damages that the defendants might recover against the solicitors for negligence. Counsel for the plaintiff never succeeded in making me see why this was not a hopeless contention. I cannot see how a bequest of 'all my share and interest in the net proceeds of sale' of a house could include any damages which the testator was entitled to recover against solicitors for their negligence in failing to ensure that he did have some share and interest in the proceeds of sale of the house. (In saying that, I naturally do not express any view, one way or the other, on whether there has been any negligence by the solicitors.) A gift of something seems to me incapable of constituting a gift of damages to which the donor is entitled for losing that something. The damages are not the thing given but compensation for its loss. However, I suppose that it is not beyond possibility that with more ample argument counsel for the plaintiff's ingenuity will be able to get even this contention on to its legs.

The issue on severance is quite different. I certainly cannot say that it is clear beyond doubt that the plaintiff's claim is wholly untenable on the face of it. There are obvious difficulties in the path of the plaintiff, and opinions may well differ on his prospects of success; but to say that his chances of succeeding seem at present to be small is not to say that his case is unarguable. I certainly cannot say that it is clear that the plaintiff has no locus standi and has disclosed no cause of action. In the end, I think that counsel for the defendants was constrained to accept that this was so. The plaintiff's contentions certainly seem to have developed considerably since the case was before the master. In those circumstances, it seems to me that the defendants' summons seeking the dismissal of the proceedings must fail and be dismissed.

That is all that is formally before me; but as the estate is not large, and a full administration order is plainly not what the plaintiff really wants, I shall invite counsel to assist me in considering whether I can give directions which will save costs and assist in securing the determination of the real issues.

Application dismissed.

Solicitors: *Waterhouse & Co*, agents for *Hart Brown & Co*, Guildford (for the plaintiff); *Davies Arnold & Cooper* (for the defendant).

Hazel Hartman Barrister.