

3~4 Digest

A Monthly Review of Relevant News, Cases and Articles

Volume 6 Number 3

March 2000

With the approach of the coming into force of the European Convention on Human Rights, the courts are being asked to consider new issues. In Re Hawk Insurance Company Ltd Arden J rejected the submission that a provision excluding recourse to the courts in a scheme of arrangement was contrary to Article 6 of the Convention. Gabriel Moss QC and Sandra Bristoll appeared on behalf of the Company.

The Digest is now available electronically. If you would prefer to receive the Digest in the future by e-mail please contact Paul Cooklin or Nicola Skinner.

Chambers welcomes its new tenant, on completion of his pupillage, Daniel Bayfield. This edition of the Digest was compiled by Tom Smith, a pupil in Chambers, and digests material up to 29 February 2000.

Lucy Frazer

GENERAL NEWS

Introduction of the Insolvency Bill

The long-awaited Insolvency Bill was introduced into the House of Lords on 3 February 2000 and published on 4 February. The Secretary of State for Trade and Industry, Stephen Byers, said that he hoped the new insolvency regime will help to promote entrepreneurship and responsible risk-taking in the UK both of which he said were key elements in fostering a more competitive nation.

DTI comments on Select Committee criticisms

The DTI also published its response to the criticisms of the House of Commons Trade and Industry Select Committee on the draft clauses of the Bill. A number of the comments made by the Committee were accepted by the DTI and in particular the draft clause which would have required charge-holders who appoint an administrative receiver to notify the company has now been dropped from the Bill.

The DTI commented that it does not regard the most detailed proposal in the Bill, the CVA moratorium, to be a panacea for companies in financial difficulty. However, it does regard the availability of a general stay of creditor actions as an essential first element in the procedure if the rescue of potentially viable businesses is to be facilitated.

Insolvency figures for 1999 fourth quarter

There were 3,450 company insolvencies (compulsory liquidation and creditors' voluntary liquidations) in England and Wales in the fourth quarter of 1999.

This figure represents a decrease of 0.5% on the 3,468 insolvent liquidations in the previous quarter and an increase of 1.6% on the 3,397 insolvent liquidations in the corresponding quarter of 1998.

The total number of insolvent liquidations for 1999 was 14,280, representing 1.2% of the active companies on the companies register at the start of the year. This is the same percentage as the previous year and has stayed fairly constant since the mid-1990s.

ADMINISTRATION

In re Cosslett (Contractors) Ltd, Smith v Bridgend County Borough Council *CCH Company Law Newsletter*, Issue 47. CA. (Lord Woolf MR, Laws and [] LJ)

The council had contracted with the company for it to carry out land reclamation works. The company ran into financial difficulties and the council took possession of plant belonging to the company pursuant to a contractual right to use the plant to complete the contract and to sell it and apply the proceeds in satisfaction of any sums due from the company under the contract. After the company had gone into administration the council disposed of the plant to a third party.

The Court of Appeal had previously held in **In re Cosslett (Contractors) Ltd** (digested at Vol. 3, No. 6) that the council's right to sell the plant on completion of the works was a floating charge which was void against the administrator for want of registration under s.395 Companies Act 1985. The Court of Appeal now held that the administrator could recover the plant under s.234 of the Insolvency Act 1986 if it was in the council's possession after completion of the work. However the administrator was not entitled to maintain a claim against the council in conversion once the plant was no longer in its possession.

Environment Agency v Clark *CCH Company Law Newsletter*, Issue 48.

The prohibition in s.11(3)(d) of the Insolvency Act against bringing proceedings against a company in administration without leave covers all judicial and quasi-judicial proceedings and includes criminal proceedings. However, in a case where there had been sustained pollution of the environment over a long period of time the Environment Agency would be given leave to bring such proceedings.

In re Maxwell Fleet and Facilities Management Ltd (In Administration) [2000] 1 All ER 464. Ch Div. (Jules Sher QC)

The making of an administration order does not stop time running under the Limitation Act 1980. Further, where a person had a claim under s.19(5) of the Insolvency Act time began to run for limitation purposes only when the administration ended as this was the occasion for the enforcement of the employees' rights.

In re Maxwell Fleet and Facilities Management Ltd (In Administration) (No.2) *The Times*, 23 February 2000. Ch Div. (David Mackie QC)

A company in administration which hived down its business to a subsidiary company and then on to a third company through a series of transactions, passed on liability for its employees to the ultimate transferees

where the hive-down was to be considered as a single transfer for the purposes of regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.

In re T and D Industries plc Ch Div. Digested at Vol.6, No.1. Now further reported at [2000] 1 All ER 333. [Richard Adkins QC]

ARBITRATION

Cleveland Structural Engineering (Hong Kong) Ltd v Advanced Specialist Treatment Engineering Ltd *The Times*, 7 February 2000. QBD. (Colman J)

An arbitration application would be treated as having been commenced when the claim form was filed, even though it had not yet been served on the respondent.

Bouyges UK Ltd v Dahl-Jensen UK Ltd *The Independent*, 7 February 2000. QBD. (Dyson J)

An adjudicator's award in a dispute relating to a building contract would not be enforced by the court if it purported to determine questions outside the adjudicator's terms of reference, because such an award would be of no effect in law. If, however, the award answered the right question but in the wrong manner, the court would not interfere.

Harbour and General Works Ltd v Environmental Agency CA.

Digested at Vol.5, No.5. Now further reported at [2000] 1 Lloyd's Rep. 65.

Pacol Ltd v Joint Stock Co. Rossakhar [2000] 1 Lloyd's Rep 109. QBD (Comm Ct). (Colman J)

In a case where there had been a clear admission by one party of liability to another an arbitrator would not be entitled to reopen the admission without a specific application by the party who made it, together with the provision to the other party of the opportunity to object. Otherwise there would be a danger that the award would be made on a basis on which the parties had not had a reasonable opportunity of making the subject of their submissions or the subject of evidence. This would amount to a serious irregularity within the meaning of s.68(1) Arbitration Act 1996.

Walker v Rowe QBD (Comm Ct).

Digested at Vol.6, No.2. Now further reported at [2000] 1 Lloyd's Rep 116.

Wealands v CLC Contractors CA.

Digested at Vol.6, No.1. Now further reported at [2000] 1 All ER (Comm) 30.

BANKING

Christofi v Barclays Bank plc CA

Digested at Vol. 5, No. 5. Now further reported at [1999] BPIR 855.

Lloyds Bank plc v Independent Insurance Co Ltd

CA.

Digested at Vol.4, No.10. Now further reported at [2000] 1 QB 110.

Smith v Lloyds TSB Group plc [2000] 1 All ER (Comm) 53. QBD. (Blofeld J)

Liquidators of a company issued a cheque payable to the Inland Revenue. The cheque was subsequently lost from their possession, the name of the payee fraudulently altered and paid into an account in a false name at the defendant bank. The liquidators claimed the sum paid under the cheque alleging that they had suffered loss by reason of the bank's wrongful interference with the cheque. Held that a bank was not liable for the face value of a cheque which had been materially altered, before the cheque came into its possession, without the consent of the persons liable.

[Marion Simmons QC]

Ward and McCormack: "Subrogation and Bankers' Autonomous Undertakings" [2000] LQR 121.

BANKRUPTCY

Ashurst v Coe Ch Div.

Digested at Vol. 5, No. 1. Now further reported at [1999] BPIR 662.

[Lucy Frazer]

Butterworth v Souter *New Law Online*, 14 February 2000. Ch Div. (Neuberger J)

Petitioning creditors agreed to the debtor's application to set aside their statutory demand and for the annulment of the bankruptcy at a time after the trustee in bankruptcy had been appointed. It was not however clear whether the creditors were maintaining that the debt was ever actually owed. In the circumstances it was therefore least unjust to order the creditors and the debtor to be jointly liable for the trustee's costs.

Cadogan Estates Ltd v McMahon CA.

Digested at Vol.5, No.4. Now further reported at [1999] BPIR 849.

Rooney v Cardona Ch Div.

Digested at Vol.5, No.4. Now further reported at [1999] BPIR 954.

[Anthony Zacaroli]

Re Cook (A Bankrupt) [1999] BPIR 881. Ch Div. (Stanley Burnton QC)

The definition of a person "dissatisfied" by the act of a trustee in bankruptcy under s.303 of the Insolvency Act 1986 should be given a wide meaning. Such a person could include the former solicitor of the bankrupt.

Re a Debtor (No 87 of 1999) Ch Div.

Digested at Vol.6, No.2. Now further reported at *The Times*, 14 February 2000.

Garrow v Society of Lloyd's [1999] BPIR 885. CA. (Morritt, Brooke and Robert Walker LJ)

The Court of Appeal upheld the judgment of Jacob J to set aside a statutory demand served on the applicant. On the evidence the judge had been entitled to reach the conclusion that the applicant had a genuine and serious cross-claim to equal or exceed the amount of the demand. Further the terms of the Lloyd's reconstruction and renewal plan did not extend to preventing the applicant from asserting that he had a cross-claim of sufficient size to enable him to ask the bankruptcy court to exercise its discretion to set aside the demand.

Decision of Jacob J digested at Vol.5, No.4 affirmed.

[Lexa Hilliard]

Glenister v Rowe CA.

Digested at Vol.5, No.3. Now further reported at [1999] BPIR 674.

[Mark Arnold]

In re Greenacre Publishing Ltd Ch Div.

Digested at Vol.5, No.1. Now further reported at [2000] BCC 11.

Hope v Premierpace (Europe) Ltd [1999] BPIR 695. Ch Div. (Rimer J)

A bankruptcy order would be discharged and the petition dismissed where it was almost inconceivable that the bankruptcy order would have been made if the district judge had known the reasons for the debtor's non-attendance. Further, in the absence of any investigation of the merits of the petition at the annulment hearing the district judge ought to have allowed the application on the grounds that there had been a plain breach of the rules of natural justice when the bankruptcy order had been made.

[Sandra Bristoll]

Mond v Hyde CA.

Digested at Vol.4, No.7. Now further reported at [1999] BPIR 728.

[Lexa Hilliard]

Ord v Upton CA.

Digested at Vol.6, No.2. Now further reported at [1999] BPIR 775. Noted at *Insolvency Intelligence*, Vol.13, No.2, 15.

Pollard v Ashurst *New Law Online*, 15 March 2000. Ch Div. (Jacob J)

The court considered the vesting of ownership of property owned by the bankrupt in another Brussels Convention country in the trustee in bankruptcy. Such property vests in the trustee but he does not have perfect title and the bankrupt will hold the property for the trustee under English trust law. Where the trustee then applies for an order for sale of the property, the proceedings are not bankruptcy proceedings so the Brussels Convention applies. However, the proceedings to enforce the trust are not proceedings in rem within article 16(1) but are in personam. The court had jurisdiction over the bankrupt by virtue of his domicile in England and therefore the court could make an order in personam for the bankrupt to convey the property to the trustee or sell the property at the best price reasonably obtainable.

Shephard v Wheeler *The Times*, 15 February 2000. Ch Div. (Lawrence Collins QC)

While the bankruptcy of an applicant for a grant to act as administrator of an estate pursuant to section 116 of the Supreme Court Act 1981 was a matter of verifiable public record, it could not be assumed that the probate registrar would or should learn of it by routine searches. The failure to disclose such information could result in the revocation of any such appointment.

Skjevesland v Geveran Trading Company Ltd *Unreported*, 23 February 2000. Bankruptcy Chambers. (Registrar)

Where a statutory demand has been served on the debtor by a creditor company the debtor is not entitled to set-off against the demand a cross-claim that lies against a separate company even though the companies were owned and controlled by the same person. There was no evidence of any relationships of agency and this was not a case where the corporate veil should be pierced by reason of oppression.

[David Marks]

Re Sobey (A Bankrupt) Ch Div.

Digested at Vol.4, No.10. Now further reported at [1999] BPIR 1009.

[David Marks]

Treharne v Brabon *Unreported*, 3 March 2000. Ch Div. (Jonathan Parker J)

The court considered whether a number of property transactions entered into by a debtor prior to his bankruptcy were transactions at an undervalue contrary to s.339 of the Insolvency Act or transactions defrauding creditors contrary to s.423. Held that:

(1) a transaction entered into by the debtor's wife as mortgagee of the property owned by the debtor was not a transaction "entered into" by the debtor for the purposes of s.339;

(2) on a sale of mortgaged property by the mortgagor the value of the consideration provided by the mortgagor was the value of the land free of the mortgage and not the value of the mortgagor's equity of redemption;

(3) under s.423 it was sufficient to show that it was a substantial purpose of the debtor to put assets beyond the reach of a person who was making, or might at some time have made, a claim against him and it was not necessary to show that this was the dominant purpose.

[David Marks, Stephen Atherton]

COMPANY

Re Benfield Greig Group plc *New Law Online*, 21 February 2000. Ch Div (Arden J)

The shares of a deceased member were valued and transferred automatically on death pursuant to the company's articles of association. The executors brought an unfair prejudice petition claiming that (1) the valuation was too low and (2) they had been assured by the directors that the shares would not be transferred compulsorily. The court held that the valuation was in accordance with the articles which provided that it was to be final and binding. Further, the giving of the assurances did not give rise to equitable considerations or unfair prejudice. The kind of equitable considerations on which a s.459 petition could be founded arose between members; in this case the directors' powers did not include entering into any such understandings on behalf of members.

Halle v Trax BW Ltd *CCH Company Law Newsletter*, Issue 47. Ch Div. (Scott V-C)

In a derivative action brought by one shareholder who owned 50 per cent of the shares in a company against a director of the company who also owned 50 per cent of the shares, the claimant was not entitled to an indemnity for the costs of the proceedings out of the company's assets pursuant to the rule in **Wallersteiner v Moir (No.2)**. It could not be said that the claimant was a minority shareholder nor that the defendant was in control of the company.

Re Hoicrest Ltd [2000] 1 WLR 414. CA. (Kennedy and Mummery LJ)

On any application to rectify a company's register under s.359 of the Companies Act 1985 the court has a wide discretion under subsection (3) to decide any question relating to the title of a party to be registered as a member. Although the court would not make an order which would require a company to register a transfer of shares without delivery to it of a proper instrument of transfer in contravention of s.183, in

light of the overriding objective in the CPR it was appropriate in the circumstances to give directions for the trial of a preliminary issue on whether the applicant had title to the shares as claimed.

Re Powerhouse Promotions Ltd *New Law Online*, 16 February 2000. Ch Div. (Blackburne J)

In circumstances where a company's shares had no realistic value due to it being insolvent, a petition for unfair prejudice was bound to fail as the petitioner had no interest in the company capable of being unfairly prejudiced.

Scotto v Petch Ch Div.

Digested at Vol.6, No.2. Now further reported at *The Times*, 16 February 2000 and *CCH Company Law Newsletter*, Issue 47.

CONFLICT OF LAWS

AIG Group (UK) Ltd v The Ethniki [2000] 1 All ER (Comm) 65. CA. (Evans and Thorpe LJJ and Jonathan Parker J)

The correct approach to the identification of the relevant contractual obligation for the purposes of article 5(1) of the Brussels Convention the Enforcement of Judgments in Civil and Commercial Matters 1968 was to identify the principal obligation the claim depended upon or which it was based substantially upon. A condition precedent to the liability of one party under a contract could quite properly be such an obligation.

Decision of Colman J digested at Vol.4, No.9 affirmed.

Caltex Trading Pte Ltd v Metro Trading International Inc (Glencore International AG, third parties)(Sea Victory Shipping, fourth parties) [2000] 1 All ER (Comm) 108. QBD (Comm Ct). (Rix J)

In determining whether a party had submitted to the jurisdiction of the court, the appropriate test was whether, in all the circumstances of the case, the party had voluntarily recognised that the court had jurisdiction to hear and determine the claim which was the subject matter of the relevant proceedings.

Lubbe v Cape plc CA.

Digested at Vol.6, No.1. Now further reported at [2000] Lloyd's Rep 139.

Messier-Dowty Ltd v Sabena *New Law Online*, 21 February 2000; *The Independent*, 29 February 2000. CA. (Lord Woolf MR, Hale LJ and Lord Mustill)

The correct approach in deciding whether to grant a negative declaration was one of discretion rather than jurisdiction. Whilst the court should not be reluctant to grant a negative declaration where it would help to ensure that the aims of justice were achieved, there

might be other reasons why to do so would be a misuse of the court's procedure. In the present case both as an issue of domestic law alone and as an issue under the Brussels Convention, the grant of negative declaration was not justified and would be inconsistent with resolving the English proceedings justly.

National Justice Compania Naviera SA v Prudential Assurance Co Ltd ("The Ikarian Reefer" (No. 2)) CA.

Digested at Vol.6, No.2. Now further reported at [2000] Lloyd's Rep 129.

UBS AG v Omni Holding AG [2000] 1 All ER (Comm) 42. Ch Div. (Rimer J)

For a claim to fall within the insolvency exception in article 1 of the Lugano Convention, it is not sufficient that the claim is related to the winding-up of an insolvent company. Rather the claim must derive directly from the winding-up. Therefore a claim by a liquidator to recover a company's pre-liquidation debts does not fall within the exception provided for by article 1. In contrast, it is probable that claims in a compulsory liquidation by a liquidator under s.238 or s.239 of the Insolvency Act do fall within that exception since such claims require the existence of an insolvency regime for the company.

CONTRACT

Raiffeisen Zentralbank Osterreich AG v Cross-seas Shipping Ltd *The Times*, 1 February 2000; [2000] 1 All ER(Comm) 76. CA (Henry, Thorpe, Potter LJJ)

An alteration to a deed or instrument made after signature by one of the parties without the other's knowledge nullified the agreement only when the change altered the parties' rights and obligations.

Appeal from decision of Cresswell J digested at Vol.5, No.3 dismissed.

CORPORATE INSOLVENCY

Everson v Secretary of State for Trade and Industry *The Times*, 1 February 2000. ECJ.

Where a company registered in one member state of the European Community had an established branch in another member state, the relevant guarantee institution responsible for settling employee's outstanding claims in the event of the employer's insolvency was that of the state where the employees were employed.

Re Grey Marlin Ltd Ch Div.

Digested at Vol.5, No.4. Now further reported at [2000] 1 WLR 370.

Re Hawk Insurance Company Ltd *Unreported*, 24 January 2000. Ch Div. (Arden J)

A scheme of arrangement pursuant to s.425 of the Companies Act 1985 contained a provision setting out a procedure for the resolution of disputes by a scheme adjudicator and stated that the decision of the adjudicator was final and binding and that all recourse to the courts was excluded. Arden J supplemented her earlier judgment in relation to the Dispute Resolution Procedure proposed in the Scheme of Arrangement and indicated certain modifications to be made to these provisions. Arden J indicated that subject to the incorporation into the proposed Scheme of suggested modifications to the Dispute Resolution Procedure no points had been drawn to her attention which would lead the Court to decline to sanction the proposed Scheme of Arrangement as contrary to public policy (save for the issue presently under appeal) which relates to the class of creditors when a simplified valuation method is adopted.

The court held that the adjudication provision did not infringe the right to a fair trial conferred by article 6 of the European Convention on Human Rights as (1) the adjudication provision was not truly compulsory as all creditors who voted at the creditors' meeting had been unanimously in favour of the scheme and extensive steps had been taken to publicise the creditors' meeting to all creditors, (2) all creditors had the safeguard of judicial scrutiny of the scheme before it is sanctioned and (3) there were strong commercial reasons for having scheme adjudication provisions.

Therefore with careful drafting it ought to be possible to exclude recourse to the courts (apart from narrow exceptions such as fraud) in a scheme adjudication process without contravening public policy or the Convention on Human Rights.

[Gabriel Moss QC, Sandra Bristol]

In re Inside Sport Ltd Ch Div.

Digested at Vol.4, No.10. Now further reported at [2000] BCC 40.

[Hilary Stonefrost]

Jyske Bank (Gibraltar) Ltd v Spjeldnaes (No. 2)

Ch Div.

Digested at Vol. 4, No. 9. Now further reported at [2000] BCC 16.

Re Latreefers CA.

Digested at Vol.6, No.2. Now further reported as **Stocznia Gdanska SA v Latreefers Inc** at *The Independent*, 15 February 2000.

[Gabriel Moss QC, Martin Pascoe]

Lombard North Central plc v Brook [1999] BPIR 701. Ch Div. (HH Judge Behrens)

The provision in a lease purchase agreement for the

payment of agreed damages on automatic termination of the agreement was a contract to pay a certain sum on a specified event and was not a penalty. Accordingly the creditor was entitled to have its proof admitted for the full amount of the agreed damages for voting purposes at the creditors' meeting.

In re Norditrack (UK) Ltd [2000] 1 WLR 343. Ch Div. (Arden J)

The administrator of a company applied for an order pursuant to s.18 of the Insolvency Act discharging the administration order so that the company could be placed into a creditors' voluntary liquidation. The Court held that a conditional resolution for a voluntary winding up could not be passed, rather the court should make an order that the discharge took effect that afternoon (at which time the meeting of the company to consider the voluntary liquidation was to be held) and the order of the court lie in the office until the solicitors for the administrators lodge with the court the draft order for the hearing together with a certificate that the resolution was duly passed. If the resolution was not passed the parties were to return to court in the afternoon.

Official Receiver v Environment Agency CA.

Digested at Vol.5, No.5. Now further reported at [1999] BPIR 986.

Re Park Air Services plc HL

Digested at Vol.5, No.2. Now further reported at [1999] BPIR 786.

[Richard Adkins QC]

Phillips v Brewin Dolphin Bell Lawrie Ltd CA.

Digested at Vol.6, No.1. Now further reported at [1999] BPIR 797.

Re R S & M Engineering Co. Ltd CA.

Digested at Vol.6, No.1. Now further reported at [1999] BPIR 975.

Re Richbell Information Services Inc. Ch Div.

Digested at Vol.4, No.10. Now further reported at [2000] BCC 111.

[Simon Mortimore QC, Mark Arnold]

Triffit Nurseries v. Salads Etc. Limited Ch Div.

Digested at Vol.5, No.1. Now further reported at [2000] BCC 98.

[Simon Mortimore QC]

Ridgway: "Corporation Tax in Insolvencies: Equitable Set-off and Crown Debts", *Insolvency Intelligence*, Vol.13, No.2, 9.

Anderson: "Insolvency Act 1986, s.176 – a distressing section", *CCH Company Law Newsletter*, Issue 47.

Husband: "Application by a Petitioning Creditor for

the Appointment of a Provisional Liquidator”, *Tolley’s Insolvency Law & Practice*, Vol.16, No.1, 3.

COSTS

Holder v APC Supperstone Unreported, 30 November 1999. Ch Div. (Evans-Lombe J)

A charging order is security for all costs and expenses of enforcing the charge including future contingent and unquantified expenses.

[Stephen Atherton, Adam Goodison]

Levvand v Barasch *New Law Online*, 15 February 2000. Ch Div. (Lightman J)

Authorities which indicated that a foreign claimant should be ordered to provide security for costs if he failed to show that he had fixed and permanent property in England were out of date and should no longer be cited. The simple and single criterion for ordering security was what was just in the circumstances of the particular case. The existence of assets within the jurisdiction and their character were relevant. But the court would not infer a risk of dissipation unless there was reason to question the probity of the claimant.

Locabail (UK) Ltd v Bayfield Properties Ltd (No. 3) *The Times*, 29 February 2000. Ch Div. (Lawrence Collins QC)

On an application to order costs against a non-party, the question for the court was whether it was just and reasonable to make such an order and was to be made only in exceptional circumstances. While maintenance and/or bad faith on the part of the person funding the litigation were relevant considerations, neither was a prerequisite to making such an order.

DAMAGES

Total Liban SA v Vitol Energy SA QBD (Comm Ct).

Digested at Vol.5, No.5. Now further reported at [2000] 1 All ER 267.

DIRECTORS AND DISQUALIFICATION

Re Westminster Property Management Ltd, Official Receiver v Stern *The Independent*, 10 February 2000; *CCH Company Law Newsletter*, Issue 47. CA. (Henry and Robert Walker LJJ and Scott Baker J)

The use of statements obtained under section 235 of the Insolvency Act 1986 in disqualification proceedings brought under the Company Directors

Disqualification Act 1986 did not necessarily involve a breach of Article 6(1) of the European Convention on Human Rights.

Appeal from the decision of Scott V-C digested at Vol.6, No.2 dismissed.

INSURANCE

Agnew v Lansforsakringsbolagens AB *The Times*, 23 February 2000. HL. (Lords Nicholls, Woolf, Cooke, Hope and Millett)

Claims by reinsurers to set aside reinsurance contracts on the grounds of misrepresentation and non-disclosure by the insurers did not fall within article 7 of the Lugano Convention as “matters relating to insurance” but (Lords Hope and Millett dissenting) fell within article 5(1) as “matters relating to a contract”, the place of performance of the obligation in question being London, where the obligation to disclose was to be performed.

Appeal from the decision of the Court of Appeal digested at Vol.4, No.1 dismissed.

Caledonia North Sea Ltd v London Bridge Engineering Ltd *The Times*, 8 February 2000. Court of Session, Inner House. (Lords Rodger, Sutherland, Coulsfield and Gill)

An insurer who had indemnified the insured party by meeting claims for damages had two methods of recovering his expenditure from a contractor who had given the insured an indemnity for such claims. The insurer could raise an action in his own name to enforce his right of relief for the whole sum. Alternatively, he could bring proceedings in the name of the assured against the indemnifier on the basis of the contract of indemnity.

Jones v Society of Lloyd’s; Standen v Same *The Times*, 2 February 2000. Ch Div. (Rattee J)

The true nature of the contracts between the Society of Lloyd’s, Equitas, names and others, resulting from the acceptances of Lloyd’s 1996 settlement offer, was that each name was offered an option, either to pay (a) his true liabilities, less debt credits, by 30 September 1996 or (b) his full underwriting liabilities, without any such reduction at some later date. Accordingly, the amount by which sum (b) exceeded sum (a) could not be regarded as an unenforceable penalty.

[Lexa Hilliard]

INTERNATIONAL INSOLVENCY

Re Southern Equities Corp Ltd. (in liq.), England v Smith [2000] BCC 123. CA. (Morritt and Laws LJJ and Jonathan Parker J)

On an application for examination from the Australian court pursuant to s.426 of the Insolvency Act 1986, the relevance of s.236 of the Act was limited. The court had chosen to apply the law of Australia and should have directed itself by reference to the principles of that law (which were as much directed to avoiding the oppression of the examinee as the principles underlying s.236). Further, if the request was properly made by the requesting state, the English court must give weight to that request and to the duty under s.426(4) to assist the foreign court.

[Gabriel Moss QC]

Pugh: "Section 426 of the Insolvency Act 1986 – recent developments in the application of the court's discretion", *Tolley's Insolvency Law & Practice*, Vol. 16, No.1, 6.

LIMITATION

Global Financial Recoveries Ltd v Jones *The Times*, 23 February 2000. Ch Div. (Robert Englehart QC)

A claim to recover the shortfall after the realisation of mortgaged property securing a loan founded on an express provision in a mortgage agreement made under seal, was a claim upon a specialty, governed for the purposes of the Limitation Act 1980 by s.8(1) of that Act.

PROCEDURE

Bird v. Hadkinson, Ch Div.

Digested at Vol.5, No.3. Now further reported at [1999] BPIR 653.

[David Marks]

General Mediterranean Holdings SA v Patel QB (Com Ct).

Digested at Vol.5, No.5. Now further reported at [2000] 1 WLR 272.

Instance v Denny Bros Printing Ltd *The Times*, 28 February 2000. Ch Div. (Lloyd J)

The protection afforded to without prejudice communications extended to subsequent litigation connected with the same subject matter and was not limited to things relevant to the original dispute nor to statements which in the context of that dispute were against the interests of the maker of that statement.

Kemper Reinsurance Co v Minister of Finance PC.

Digested at Vol.4, No.7. Now further reported at [2000] 1 AC 1.

[Martin Pascoe]

Memory Corp plc v Sidhu CA

Digested at Vol.6, No.2. Now further reported at *The*

Times, 15 February 2000 and at [2000] 1 All ER 434.

Riverpath Properties Ltd v Bramhall *The Times*, 16 February 2000. Ch Div. (Neuberger J)

The court has power under rule 23.11 CPR to set aside an order made at a hearing where one of the parties was not present even after the order has been perfected.

Stanton v Callaghan CA.

Digested at Vol.4, No.7. Now further reported at [2000] 1 QB 75.

Stevens v Gullis CA

Digested at Vol.6, No.1. Now further reported at [2000] 1 All ER 527.

Reichhold Norway ASA v Goldman Sachs International CA

Digested at Vol.5, No.5. Now further reported at [2000] 1 WLR 173.

Worsley v Tambrands Ltd *The Times*, 11 February 2000. CA. (Auld and Tuckey LJ)

Where the issues to be determined in an action were inextricably bound together and the evidence concerning them could not be separated, it was plainly wrong for the judge, seeking to save court time and the parties' costs, to make an order for one of them to be heard as a preliminary issue.

Practice Statement (Companies Court) Ch Div.

Digested at Vol.6, No.2. Now further reported at [2000] 1 WLR 209.

Practice Direction (Reading list time estimates)

The Times, 1 February 2000; [2000] 1 WLR 208; [2000] 1 All ER 640. (Scott V-C)

From January 11 2000 a reading list together with an estimated length of reading time and an estimated length of hearing signed by all advocates must be prepared in all matters where the lodging of bundles was required in both Chancery and Queen's Bench Divisions.

PROPERTY

Ashworth Frazer Ltd v Gloucester City Council

Digested at Vol.6, No.2. Now further reported at *The Times*, 3 February 2000.

Barrett v Morgan HL

Digested at Vol.6, No.2. Now further reported at [2000] 1 All ER 481 and at [2000] 2 WLR 284.

Burton v Camden London Borough Council *The Times*, 23 February 2000; *The Independent*, 25 February 2000. HL. (Lords Browne-Wilkinson, Nicholls, Steyn, Hobhouse and Millett)

A secure joint tenancy which was non-assignable by virtue of s.91(1) Housing Act 1985 could not be turned into a sole secure tenancy by the execution of a deed of release whereby one tenant released her beneficial interest under the tenancy to the other tenant.

Appeal from decision of the Court of Appeal digested at Vol.4, No.1 upheld.

Grindal v Hooper *The Times*, 8 February 2000. Ch Div. (John Jarvis QC)

A clause in a conveyance specifying that any notice to sever the joint tenancy of the property would not be effective unless annexed to the conveyance could not operate to prevent a severance of the beneficial interests where that severance had been carried out in accordance with section 36(2) of the Law of Property Act 1925. Such a clause was to protect the purchaser to ensure he acquired good title. It did not affect the rights of the parties between themselves. Neither did such a clause afford any protection to a purchaser who was not a bona fide purchaser for value.

Herkanaldu v Lambeth LBC *CCH Company Law Newsletter*, Issue 48. Ch Div. (David Vaughan QC)

A legal charge which was due to be discharged prior to or on completion was not a matter going to title but was merely a conveyancing matter which could be dealt with by or on completion, and was therefore incapable of founding a right to rescission.

Lee v Lee [1999] BPIR 926. CA. (Stuart-Smith and Buxton LJJ and Rattee J)

A trustee in bankruptcy disclaimed a lease in the name of the bankrupt under sections 315 and 317 of the Insolvency Act. An order vesting the lease of the property was made under section 320 in favour of one of the mortgagees. After the mortgagees had been paid in full there remained a surplus. The trustee was entitled to lay claim to any surplus which remained, as against the wife of the bankrupt, whose claim was disputed by the trustee, notwithstanding the effect of the disclaimer.

Appeal from decision of Ferris J digested at Vol.4, No.1 dismissed.

[Richard Hacker QC, Stephen Atherton]

VCS Car Park Management v Regional Railways North East Ltd CA.

Digested at Vol.6, No.2. Now further reported at [2000] 1 All ER 403.

TORT

Gregory v Portsmouth City Council *The Times*, 2 February 2000; *The Independent*, 1 February 2000; [2000] 2 WLR 306; [2000] 1 All ER 560. HL. (Lords Browne-Wilkinson, Nicholls, Steyn, Hobhouse and Millett)

The malicious institution of internal disciplinary proceedings could not give rise to a claim for damages for malicious prosecution. Their Lordships declined to review the tort of misfeasance in public office pending the appeal from the decision of the Court of Appeal in **Three Rivers D.C. v Bank of England** digested at Vol.4, No.10 (heard 24 to 27 January).

Khodaparast v Shad [2000] 1 All ER 545. CA. (Stuart-Smith, Otton and Potter LJJ)

Malicious falsehood is a species of defamation and it is well-established that aggravated damages might be awarded in defamation for additional injury to feelings caused by a defendant's conduct. Therefore there is no reason in principle why a claimant cannot recover aggravated damages in a claim for malicious falsehood.

Kuddus v Chief Constable of Leicestershire *The Independent*, 17 February 2000. CA. (Beldam and Auld LJJ, Sir Christopher Staughton)

As a matter of law exemplary damages cannot be awarded in an action for the tort of misfeasance in public office.

Law Society v KPMG Peat Marwick Ch Div.

Digested at Vol.6, No.1. Now further reported at [2000] 1 All ER 515.

TRUSTS

Abrahams v Trustee in bankruptcy of Abrahams Ch Div.

Digested at Vol.5, No.5. Now further reported at [1999] BPIR 637.

[Lexa Hilliard]

Collins v Jones *The Times*, 3 February 2000. Ch Div. (Stanley Burnton QC)

Rectification of a unilateral document would not be granted in order to amend the document to produce a result in keeping with the general intentions of the draftsman when it was impossible to achieve precisely what the draftsman had sought to do using the method he had selected.

Banner Homes Group plc v Luff Developments Ltd

The Times, 17 February 2000; *The Independent*, 11 February 2000. CA. (Stuart-Smith, Evans and Chadwick LJJ)

For an arrangement or understanding between potentially rival purchasers of property, whereby only one of them would bid for it but the other would subsequently obtain some interest in it, to give rise to a constructive trust, it was necessary that there be either advantage to the acquiring party or detriment to the non-acquiring party, but it was not necessary to establish both. Where the acquiring party obtained the benefit of keeping the non-acquiring party out of the

market in reliance on an understanding that they would both acquire an interest in the property, the court would impose a constructive trust for the non-acquiring party.

X v A Ch Div.

Digested at Vol.6, No.1. Now further reported at [2000] 1 All ER 490.

VOLUNTARY ARRANGEMENTS

Inland Revenue Commissioners v Adam and Partners Ltd Ch Div.

Digested at Vol.5, No.5. Now further reported at [1999] BPIR 868.

Fletcher v Vooght *Unreported*, 28 February 2000. Ch Div. (Lloyd J)

It was not possible to have a valid individual voluntary arrangement without the court having first made an interim order even in the case where the debtor did not need protection on an interim basis against pressure from his creditors in order to gain time to formulate his proposal for a voluntary arrangement. There was a legitimate purpose in the requirement of an interim order in such a case, namely, that neither the creditors' nor the debtors' funds should be spent in considering a proposal for an arrangement unless the proposal had been considered in an objective and professional way by the nominee and vetted by the court.

[Lexa Hilliard]

Heritage Joinery v Krasner [1999] BPIR 683. QBD. (Owen J)

Neither a nominee nor a supervisor owed a duty of care to post-arrangement creditors save where he had made a negligent misrepresentation when under a duty not to do so which then resulted in loss.

Khan v Mortgage Express Ltd *Unreported*, 14 January 2000. Ch Div. (Geoffrey Vos QC)

The court considered the effect of an IVA on the rights of secured creditors. The defendant mortgagee had valued its security and proved in the IVA for the shortfall on which it had received a dividend. The question was whether the defendant's security interest was now limited to the value it had placed on it for the purposes of the IVA. The court held that:

(1) the terms of the IVA incorporated the Insolvency Rules governing the admission and the proof of debts;
(2) notwithstanding that the supervisor had issued a certificate of completion the terms of the IVA had not ceased to apply;

(3) even if the IVA had terminated, the terms of IVA incorporating the Insolvency Rules provided that a secured creditor is not automatically barred from revaluing his security even if the IVA has come to an end;

(4) the learned judge left open the wider question whether in the absence of the Insolvency Rules there is a general rule that a secured creditor cannot rely on its security to the extent that it has proved in respect of it.

[Antony Zacaroli]

Rutstein: "Voluntary Arrangement: Contracts or Not?-Part 2", *Insolvency Intelligence* Vol.13, No.2, 11

SEMINARS

Marion Simmons QC gave a talk on the legal implications of information received by regulatory bodies at the Disciplinary Conference 2000 organised by the Academy of Experts on 4 February 2000. The talk particularly focussed on the impact of the European Convention on Human Rights and the forthcoming Human Rights Act on the use of information by a regulator.

[Marion Simmons QC]

William Trower gave a talk on Human Rights in insolvency to the Insolvency Lawyers Association on 19 January 2000.

[William Trower]

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