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certain information, individual (C) granted interim non-disclosure injunction and media company (X) given notice thereof. C and D compromising claim on terms that interim injunction would continue. Judge granting X's application to set aside interim injunction (first decision) and making order for costs in their favour. In fresh proceedings then issued by C against X and others, judge refusing C's application for an interim non-disclosure injunction to restrain publication by them of the information (second decision). C's application for permission to appeal against the first decision stayed pending determination of C's application to appeal against the second decision. Court of Appeal granting C permission to appeal against second decision but dismissing appeal ([2011] EWCA Civ 808). **Held**, refusing C's application for permission to appeal against the first decision, (1) exceptionally, an appeal which is academic between parties may be allowed to proceed if the Court is satisfied that it would raise a point of some general importance, (2) in this case there was some force in the submission that the judge's view that the interim injunction ceased to have interim effect when C and D settled their differences raised such a point, (3) however, following the publication of the Practice Guidance (issued in August 2011), that point should now only be of limited relevance, (4) where proceedings are settled on terms that an interim injunction remains on foot, the injunction should be discharged by the court, at least as far as a third party is concerned, unless it can be justified against that party, (5) in the circumstances, the possibility that, if the appeal were successful, the judge's order for costs would be varied would be a disproportionate reason for granting permission to appeal. Court releasing this judgment for citation. ***Jockey Club v Buffham*** [2002] EWHC 1866 (QB), [2003] Q.B. 462, ***Gawler v Raettig*** [2007] EWCA Civ 1560, December 3, 2007, CA, unrep., ref'd to. (See ***Civil Procedure 2011*** Vol.1 paras 25.1.9, 52.0.11, 52.3.4 & B3-001, and Vol.2 paras 9A-77, 12-55 & 15-40.)

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Standard disclosure – application to limit – variation of order

CPR rr. 3.1(7), 31.5, 31.6 & 31.19. SOCA (C) commencing proceedings against company and its beneficial owner for recovery order under the Proceeds of Crime Act 2002. At CMC Master making order for standard disclosure. For the purpose of excluding from standard disclosure certain documents in its control on which it did not wish to rely in the proceedings and which, although they adversely affected the defendant's (D) case (r. 31.6(b)(ii)), did not adversely affect its own case (r. 31.6(b)(i)), C making application to the judge. C (1) explaining that it did not realise that it had the documents in its control until discharging its duty of search (r. 31.7), and (2) submitting (a) that the documents did not fall within the scope of standard disclosure, or (b) if they did, the judge had jurisdiction under r. 31.5 to limit its disclosure obligations so as to exclude the documents and to vary the Master's order. Judge accepting these submissions and granting application accordingly ([2011] EWHC 1929 (QB)). **Held**, dismissing D's appeal, (1) contrary to C's submission, the documents fell within the scope of standard disclosure, as r.31.6(b)(ii) is not restricted to documents which adversely affect the other party's case as against only a party other than the disclosing party, (2) the wording of r.31.5 suggests that separate orders are envisaged, with that under para.(1) being a direction and that under para.(2) being an order dispensing with or limiting standard disclosure, (3) consequently, the exercise of the power conferred by r.31.5(2) is not confined to the same occasion as that on which an order for disclosure is made under r.31.5(1),

(4) where a court exercises its power under r.31.5(2) to limit an order for standard disclosure of documents made in unlimited terms it is in effect varying the order, and there is no real difference between the circumstances in which the court may exercise that power and those in which an order may be varied under r.3.1(7), (5) there was a public interest ground for non-disclosure of the documents but there was no good reason why C should have been required to make an application under r.31.19 rather than under r. 31.5. ***Lloyds Investment (Scandinavia) Ltd v Ager-Hanssen*** [2003] EWHC 1740 (Ch), ***Roult v North West Strategic Health Authority*** [2009] EWCA Civ 444, [2010] 1 W.L.R. 487, CA, ref'd to. (See ***Civil Procedure 2011*** Vol.1 paras 3.1.9.1, 3.1.9.2, 31.5.4, 31.6.2 & 31.19.1.1.)

- **SUN STREET PROPERTIES LTD v PERSONS UNKNOWN** [2011] EWHC 3432 (Ch), *The Times* January 16, 2012 (Roth J.)

Possession proceedings against trespassers – service of claim form – notice of hearing

CPR rr.1.1, 3.1(2)(a), 55.5, 55.6 & 55.8, Practice Direction 55A para.3. Chancery Guide paras 5.4, 5.42 & 14.13. Upon trespassers occupying building owned by company (C), and anticipating that others persons may join them, C applying to High Court without notice for an interim injunction prohibiting persons unknown (D) from entering and remaining on the property, and for an order shortening to 45 minutes the two day "date of hearing" time limit fixed by r.55.5(b). Judge granting applications and directing that service should be effected by affixing the claim form to the property. At 9.10pm on same day, process server serving documents (including the claim form) at the property accordingly, and at 10.00pm, on C's telephone application, judge making possession order. Unsealed and sealed possession orders affixed to the property in subsequent days. D applying to set aside the possession order and the interim injunction. **Held**, dismissing the applications, (1) although the form of service of a claim form is as stipulated by r.55.6, where the defendants are not represented it is the obligation of the claimant to take reasonable steps to give them adequate notice of the hearing, (2) in this case, D received no adequate notice of the telephone hearing which led to the possession order and had no opportunity to put their case to the court, however (3) in the circumstances, for the court to set aside the possession order without considering the merits would not be (having regard to the overriding objective) an appropriate or sensible course, (4) on the merits D had no defence to C's claim for possession, further (5) the interim injunction was properly granted and was not used as a means for circumventing the Pt 55 procedure. ***Hackney London Borough Council v Findlay*** [2011] EWCA Civ 8, [2011] H.L.R. 15, CA, ***Hampshire Waste Service v Persons Unknown*** [2003] EWHC 1738 (Ch), [2004] Env. L.R. 9, ***Secretary of State for the Environment Food and Rural Affairs v Meier*** [2009] UKSC 11, [2009] 1 W.L.R. 2780, SC, ref'd to. (See ***Civil Procedure 2011*** Vol.1 paras 3.1.2, 55.4.5, 55.5.3, 55.6.4 & 55APD.6, and Vol.2 paras 1A-30, 1A-134 & 11-6.)

- **THEWLIS v GROUPAMA INSURANCE CO LTD 2012] EWHC 3 (TCC), January 5, 2012, unrep. (Judge Behrens)**

Offer to settle – whether a Part 36 offer

CPR rr.36.1 & 36.11. Insurers (D) of residential property disputing insured's (C) claim for subsidence damage. C issuing claim form on May 25, 2011. Before proceedings commenced, by letter C making (on September 24, 2008) offer to settle and D rejecting it (on October 1, 2008). The rejected offer (a) stated that it was made pursuant to Pt 36, (b) was expressed to remain open for acceptance for a period of 21 days, and (c) provided that it could be accepted after that period only if costs were agreed or the court gave permission. After date (in February 2012) fixed for trial of claim, on October 17, 2011, D purporting to accept that offer and making application for a declaration that, by operation of r.36.11, the proceedings had been stayed. C submitting that his offer was not a Pt 36 offer and therefore r.36.11 did not take effect. **Held**, dismissing D's application, (1) in drafting the offer letter, C appeared to have had in mind the terms of Pt 36 as they stood before that Part was amended with effect from April 6, 2007, (2) in terms the offer did not comply with r. 36.2 (cf former r.36.5) and therefore was not a Pt 36 offer, (3) as a matter of construction the offer was not open for acceptance after 21 days. ***Carillion JM Ltd v PHI Group Ltd*** [2011] EWHC 1581 (TCC), [2011] B.L.R. 504, ***C. v D.*** [2011] EWCA Civ 646, [2012] 1 All E.R., CA, ***Epsom College v Pierse Constructing Southern Ltd*** [2011] EWCA Civ 1449, December 13, 2011, CA, unrep., ref'd to. (See ***Civil Procedure 2011*** Vol.1 paras 36.1.3.1 & 36.2.1.)

Practice Guidance

- **PRACTICE GUIDANCE (COURT PROCEEDINGS : LIVE TEXT-BASED COMMUNICATIONS (NO. 2)** [2012] 1 W.L.R. 12, Sen Cts

CPR r.39.2. Contains guidance about the use of live, text-based electronic communications from courts in the course of trials to be considered by courts, parties and their legal representatives when application made to permit such use. Applies to court proceedings which are open to the public and to those parts of proceedings which are not subject to reporting restrictions. Issued by Lord Judge C.J. Replaces with immediate effect interim guidance in *Practice Guidance (Court Proceedings : Live Text-based Communications)*, [2011] 1 W.L.R. 62. (See ***Civil Procedure 2011 Supplement 2*** para.39.0.6.)

In Detail

NOTICE OF OBJECTION TO ADMISSIBILITY OF PARTICULAR DOCUMENTS

In civil proceedings, all relevant evidence is admissible unless there is a rule excluding it. In the CPR, r.32.1(1) states that the court may "control the evidence" by giving certain directions and r.32(2) states that the court may use its power "under this rule" to exclude evidence that would otherwise be admissible. Those directions are directions as to (a) the issues on which the court requires evidence, (b) the nature of the evidence which it requires to decide those issues, and (c) the way in which the evidence is to be placed before the court. Presumably, in this context "this rule" means the whole of r.32.1, including sub-rule (3) which states that the court "may limit cross-examination". So the court may exclude evidence that would otherwise be admissible, not only where that is a consequence of the making of directions of the type referred to in r.32.1(1), but also where it is a consequence of limiting cross-examination.

Rule 32.2(1)(a) states that the general rule is that any fact which needs to be proved by witnesses at trial is to be proved by their oral evidence. Rule 32.4(2) states that the court will order a party to serve on other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial. Rule 32.5(1) states that if (a) a party has served a witness statement, and (b) he wishes to rely at trial on the evidence of the witness who made the statement, he must call the witness to give oral evidence "unless the court orders otherwise or he puts in the statement as hearsay evidence". Rules 32.5(5) states that if a party has served a witness statement does not (a) call the witness to give evidence at trial, or (b) put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence.

Nowadays, routinely courts direct that parties need not call particular witnesses to give oral evidence at trial but may rely on their witness statements. This enables considerable savings to be made in trial time and costs in relation to evidence that is necessary and uncontested.

In the Civil Evidence Act 1995 (see White Book 2011 Vol.2 para.9B-1068), "hearsay" is defined as "a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated" (s.1(2)(a)). Until the matter was altered by legislation, hearsay evidence was (subject to exceptions) excluded. Section 1(1) of the 1995 states: "In civil proceedings evidence shall not be excluded on the ground that it is hearsay". (Considerable inroads into "the rule against hearsay" had been made earlier by the Civil Evidence Act 1968 in an attempt to make it possible for the attendance at trial of witnesses to be dispensed with, but that legislation and the rules of court supplementing it were complicated and in practice did not have the desired effect. The 1995 Act was the result of recommendations made by the Law Commission designed to overcome the weaknesses of the earlier legislation and took the bolder step of abolishing the rule entirely (subject to safeguards) instead of attempting to expand or strengthen exceptions to it).) Where a party is permitted to rely on the statement of a witness at trial without calling that witness to give oral evidence for the purpose of proving matters stated in the statement, in effect he "puts in the statement as hearsay evidence".

Section 1(1) of the 1995 Act makes all hearsay admissible and covers hearsay that was admissible before the Act came into force (by way of common law or legislative exception) as well as that which was not. A consequence of this is that the sections which follow s. 1 and which impose "safeguards" in relation to hearsay evidence (ss.2 to 4) apply to all forms of hearsay. Section 2(1) states that a party proposing to adduce hearsay evidence in civil proceedings shall give to the other party or parties to the proceedings (a) such notice (if any) of that fact, and (b) on request, such particulars of or relating to the evidence, as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay. Rules of court supplementing s.2 are found in CPR Pt.33. Rule 33.2(1)(b) states that, where hearsay evidence is contained in a witness statement of a person who is not being called to give oral evidence, the party proposing to adduce that evidence complies with the notice requirement of s.2(1)(a) by serving the witness statement on the other parties "in accordance with the court's order". Rule 33.2(2) adds that, when serving the witness statement, the party intending to rely on the hearsay evidence must (a) inform the other parties that the witness is not being called to give oral evidence, and (b) give the reason why the witness will not be called on. Section 2(3) makes provision for the notice requirement to be waived. Section 2(2)(a) of the 1995 Act allows that provision may be made by rules of court specifying classes of proceedings or evidence in relation to which the requirements of s.2(1) do not apply. Such rules are found in r.33.3. That rule states (amongst other things) that the duty to give notice of intention to rely on hearsay evidence does not apply where the requirement is excluded by a practice direction (r.33.3(c)). It is important to notice that s.2(4) of the Act states that a failure to comply with the

requirements of s.2 as supplemented by r.33.2 "does not affect the admissibility of the evidence" but may be taken into account in assessing the weight to be given to the evidence and may be penalised in costs.

Section 3 of the 1995 Act states that rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the permission of the court, call that person as a witness and cross-examine him. This section is now supplemented by CPR r.33.4. That rule states that an application for permission must be made not more than 14 days after the day on which notice of intention to rely on hearsay evidence was served in accordance with r.33.2. In the case of *Polanski v Condé Nast Publications Ltd* [2003] EWCA Civ 1573, [2004] 1 W.L.R. 387, CA, the Court of Appeal stated that if a court gave permission under s.3 but the witness nevertheless failed to attend for cross-examination on his statements at trial, "the court would then be bound to exclude the statements from evidence". On appeal to the House of Lords, the majority disagreed with this proposition ([2005] UKHL 10, [2006] 1 W.L.R. 637, H.L.). Baroness Hale noted that there is nothing in s.3 or the CPR which provides or suggests that if the maker does not attend for cross-examination his statement becomes inadmissible, and explained (op cit at para.74):

"The substantive law following the 1995 Act, therefore, is that relevant hearsay is always admissible; there are various procedural safeguards aimed at reducing the prejudice caused to an opposing party if he is not able to cross-examine the maker of the statement; but the principal safeguard is the reduced – even to vanishing – weight to be given to a statement which has not been made in court and subject to cross-examination in the usual way. The court is to be trusted to give the statement such weight as it is worth in all the circumstances of the case."

The provisions referred to above pre-date the coming into effect of procedural rules requiring the pre-trial disclosure of witness statements as developed before the CPR came into effect and as strengthened by procedural innovations contained in the CPR. In some respects, the hearsay rules and the rules as to witness statements do not sit easily together. The resulting procedural dissonance was apparent in the recent case of *Charnock v Rowan* [2012] EWCA Civ 2, January 20, 2012, CA, unrep., where the Court of Appeal referred to some of the provisions referred to above (for summary of this case, see "In Brief" section of this issue of CP News).

At the trial of this personal injury case, the defendant (D) set about attacking the allegations made by several claimants as to whiplash injuries suffered in a road accident. In particular, D sought to bring out inconsistencies in the claimants' evidence which would bear the inference that one and all of them were unworthy of belief and that they had colluded. In cross-examining the claimants, D put to them statements in the reports prepared by a medical expert (S) who had examined them on behalf of the defence in which S recorded discrepancies between what some claimants told him and what they had previously told other doctors. Those reports were exchanged before trial in the usual way and received in evidence at the trial, but S was not required to attend the trial and did not attend. There was no objection from the claimants to this line of cross-examination.

The trial judge gave judgment for the claimants. In his written judgment, in presaging his conclusions, the judge noted that the claimants had not had the opportunity of cross-examining S on the variant statements in his reports (certainly, D had given no notice of intention to rely on hearsay under r.33.2) and expressed an opinion as to the weight to be attached to them in these circumstances. On appeal to the Court of Appeal, amongst other submissions, D contended that there was "no procedural defect" in the preparation or presentation of their case and, therefore, "no power in the judge to attenuate the value of the evidence they adduced of previous inconsistent statements by a number of the claimants".

In the event, the Court found that it was not necessary "to adjudicate on the arguments advanced by the parties on the procedural requirements for the admissibility and admission of hearsay evidence contained in documents". Nevertheless, Sir Stephen Sedley (with whom Gross L.J. and Mann J. agreed) did express some views on the matter. His lordship said (at para.24):

"It may be that, at least in essentially straightforward litigation like the present, the answer to his problem lies in ensuring that the opposing case is properly pleaded, if need be by amendment following disclosure. … From that point the obligation will lie on each party's lawyers to go through the agreed documents with the client or witness and take instructions on any discrepant evidence, albeit hearsay, relevant to the pleaded issues. But a party which has failed to plead its case with sufficient clarity may well find itself barred from adducing any evidence, hearsay or not, in support of an unpleaded contention."

In conclusion it may be noted that the boldest of the submissions made by D in this case (and one for which Sir Stephen Sedley seemed to have some sympathy) was based on s.2(2)(a) of the 1995 Act and r.33.3. As was noted above, s.2(2)(a) allows that provision may be made by rules of court specifying classes of proceedings or evidence in relation to which the notice of intention to rely on hearsay requirements of s.2(1) do not apply, and, in implementing this section, r.33.3 specifies (amongst other things) that the duty to give such notice does not apply where the requirement is

excluded by a practice direction (r.33.3(c)). D submitted that para.27.2 of Practice Direction 32 (Evidence) is a practice direction provision which has that exclusionary effect and which relieved them of any duty to give notice of intention to rely on hearsay evidence under r. 33.2 in this case. Paragraphs 27.1 and 27.2 deal with agreed bundles of documents for hearings (see White Book 2011 Vol.1 para.32PD.27). Routinely, such bundles contain exchanged witness statements (see Practice Direction 39A (Miscellaneous Provisions Relating to Hearings) para.3.2), and in this case the bundle prepared for the court included S's witness statement. Paragraph 27.1 states that the court may give directions requiring the parties to use their best endeavours to agree a bundle or bundles of documents for use at any hearing. Paragraph 27.2 states that all documents contained in such bundles "shall be admissible at that hearing as evidence of their contents" unless a party gives written notice of objection to the admissibility of particular documents, or the court orders otherwise. D's submission was that, if the claimants wished to object to the hearsay evidence in S's witness statement they should have done so when the bundle of documents was agreed and that in the absence of such objection, by operation of para.27.2, S's witness statement was admissible at trial as evidence of its contents. There are, of course, objections to this submission, not least of which is that it reverses, not expressly but by implication, the notice requirements derived from s.2(1) of the 1995 Act, and it assumes that a failure of a party to give timely notice under r.33.2 may subsequently be cured by agreeing a bundle of documents.

The problem which arose in the Charnock case is not unusual. In their reports in personal injury cases, medical experts routinely record the contextual circumstances, as derived from what they are told by the parties they examine and from other sources, upon which their opinion is sought and note discrepancies. It might be expected that, until the effect of para.27.2 is authoritatively clarified, solicitors acting for claimants in personal injury cases will take particular care to consider what should and should not be agreed when bundles of documents are prepared for use as trial.

SERVICE OUT OF CLAIM IN RELATION TO CONTRACT

CPR r.6.36 states that the claimant may serve a claim form out of the jurisdiction of the court if any of "the grounds" set out in para.3.1 of Practice Direction 6B apply. (Such grounds are often described as "jurisdictional gateways".) Paragraph(1) of r.6.36 states that an application for permission must set out which ground is relied on. Paragraph (3) of the rule states that the court will not give permission unless satisfied that England and Wales is the proper place in which the bring the claim.

Sub-paras. (6) to (8) of para.3.1 are headed "Claims in relation to contract". Sub-paragraph (6) states in effect that the claimant may serve a claim form out of the jurisdiction with the permission of the court under r.6.36 where:

"A claim is made in respect of a contract where the contract –

(a) was made within the jurisdiction;

(b) was made by or through an agent trading or residing within the jurisdiction;

(c) is governed by English law; or

(d) contains a term to the effect that the court shall jurisdiction to determine any claim in respect of the contract."

In this sub-paragraph, the phrase "in respect of a contract" has given rise to difficulty. It came under scrutiny in the recent Court of Appeal case of *Global 5000 Ltd v Wadhawan* [2012] EWCA Civ 13, January 19, 2012, CA, unrep. (For summary of this case, see "In Brief" section of this issue of CP News.) In this case the claimant's (C) claim was formulated against the defendant (D) as a claim for damages for breach of an alleged contract of guarantee which was collateral to a purchase and sale agreement between C and a company. D was not a party to the sale agreement (which C alleged had been repudiated). As Rix L.J. explained in giving the lead judgment on the appeal, two substantial issues arose. One was whether, for the purpose of obtaining permission to serve out of the jurisdiction, C could rely on the agreement, as the contract governed by English law "in respect of" which the claim is made, when it might be said that its claim was really "in respect of" the alleged guarantee. The other was whether the alleged guarantee existed at all, and for the purpose of that enquiry whether the test was that of a "good arguable case", which applies to the jurisdictional basis of an application to serve out of the jurisdiction, or only a "serious issue to be tried", which is the merits test which applies to those parts of the claim which do not have to be made good to the higher standard applicable only to those ingredients which are essential to the jurisdictional "gateway" in question.

His lordship further explained (para.7) that the two issues were linked in the following way.

"If the alleged guarantee does not even reach the merits test of a "serious issue to be tried", then the question as to the proper interpretation of para.3.1(6)(c) does not matter, for it will be irrelevant whether or not the guarantee has to meet the standard of the "good arguable case" test. If, however, the case in favour of the existence of the guarantee

contract were to meet the merits test but not the jurisdictional test, then it would be essential to know whether in such a case the existence of a contract *under* which a claim is made needs to meet the jurisdictional test when there is another contract *in respect of* which the claim is made which (as is common ground) would meet that test."

In the event, the Court held there was no good arguable case for the existence of the alleged contract of guarantee because C's allegation to that effect did not meet the merits test of "a serious issue to be tried". Consequently, the Court did not have to reach a concluded view on the issues raised in argument concerning the scope of the phrase "in respect of a contract". However, as the matter is of some importance, and as it had been fully argued, Rix L.J. (with whom Sullivan & Lewison L.JJ. agreed) gave his opinion on it (see paras 40 to 64).

After reviewing the authorities, noting differences between the wording of para.3.1(6) and the comparable pre-CPR provision (RSC Ord.11. r.1(1)(d)) and taking into account the submissions of counsel, Rix L.J. concluded that four possible tests were revealed.

His lordship said that, put shortly, the question may be expressed to be whether, where a claim is made under contract A, and that contract is collateral to another contract B, so that the claim can be said to be in some sense "in respect of" contract B, it is sufficient for the purposes of para.3.1(6)(c) that there is a good arguable case as to the existence of contract B and that it is governed by English law, even if there is no good arguable case of the existence of contract A or of its being governed by English law (para.41). If in truth the claim is made under or pursuant to contract A, which is plainly also a claim being made "in respect of" contract A, and indeed the paradigm example of such a claim, can the claimant choose to say, without being gainsaid, that the claim is instead being made "in respect of" another contract, contract B, just because it suits him to do so where contract B both exists and meets a contractual jurisdictional gateway but contract A very arguably does neither? (para.61).

In his lordship's opinion, the answer to this question was, no. His lordship conceded that para.3.1(6) is expressed in terms of "in respect of" and not "under", and is thus intended to embrace both the standard case of claims being made under a contract and other cases of claims which are not under a contract but in respect of one. But the question nevertheless arises as to which contract, A or B, the claim is made "in respect of" in the exceptional case where the claimant wishes to bring a claim under contract A but does not wish to apply for permission to serve out in respect of that contract, but in respect of another contract, B.

Rix L.J. added (para.64) that it would be highly anomalous that jurisdiction could be obtained against a defendant not within the jurisdiction by reference to a contract to which he was not a party. There could be no rational basis on which a foreigner who owes no allegiance to the jurisdiction of the English court could properly be brought to face trial before the court on the basis of a claim under a contract for whose existence there was no good arguable case or which (for the sake of argument) could not be shown to the standard of a good arguable case to be governed by English law, or made within the jurisdiction etc, merely on the basis of an allegation that, if that contract had existed, there would be a collateral connection to another contract to which he is not even a party (but which can be shown to exist and to be governed by English law etc).

In agreeing with the opinion expressed by Rix L.J. on this appeal, Lewison L.J. said (para.68) that the essential difference between the parties was that counsel for the claimant started with a contract over which this court had jurisdiction and then sought to bolt a claim onto it. Whereas counsel for the defendant started with the claim in fact made and asked: in respect of what contract is it made? In his lordship's opinion, since the focus of r.6.37(1) and para.3.1 of the Practice Direction 6B is on claims, the claim seems to me to be the right place to begin. Once that is acknowledged to be the right starting point then for the reasons given by Rix L.J., in this case it was plain that the contract "in respect of" which the claim was made was the alleged contract of guarantee.

Although the opinions expressed by the Court of Appeal in this case on para.3.1(6) were obiter, doubtless they will prove to be highly persuasive.

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