

as an alternative to Mr. Brewis; and I have no doubt that the Court had ample jurisdiction under the Act to appoint Mr. Winter. I am satisfied that Kekewich J. exercised the wisest discretion, and, indeed, I should have come to the same conclusion myself.

C. A.
1900
DOUGLAS
v.
BOLAM.

VAUGHAN WILLIAMS L.J. I agree.

Solicitors: *Poole & Robinson; Flux & Leadbitter.*

W. L. C.

In re J. L. YOUNG MANUFACTURING COMPANY,
LIMITED.
YOUNG *v.* J. L. YOUNG MANUFACTURING COMPANY,
LIMITED.

C. A.
1900
Oct. 30.

[1896 Y. 2056.]

Practice—Evidence—Affidavit—“Information and Belief”—Irregularity—Inadmissibility—Costs—Rules of Supreme Court, 1883, Order XXXVIII., r. 3.

An affidavit of information and belief, not stating the source of the information or belief, is irregular, and therefore inadmissible as evidence, whether on an interlocutory or a final application; and a party or solicitor attempting to use such an affidavit will do so at his peril as to costs.

THIS was an appeal by one Ashford, claiming to rank as a debenture-holder in a company called “J. L. Young Manufacturing Company, Limited,” from an order of Stirling J. refusing to admit his claim. The order was made in a debenture-holder’s action in which a receiver had been appointed and judgment pronounced directing the usual inquiries as to debenture-holders. The master in his certificate found against Ashford’s claim, and that finding was affirmed by the order of Stirling J.

The evidence used before the master and in the Court below for and against the claim consisted mainly of affidavits containing statements made in the common form, on the “information and belief” of the deponents, without indicating the source of the information and belief.

C. A. *E. H. Coumbe*, for the appellant.
 1900 *Martelli*, for the respondent, the receiver.

J. L. YOUNG
 MANUFACTUR-
 ING
 COMPANY,
 LIMITED,
In re.
 YOUNG
 v.
 J. L. YOUNG
 MANUFACTUR-
 ING
 COMPANY,
 LIMITED.

The Court, in allowing the appeal, made the following observations upon the affidavit evidence:—

LORD ALVERSTONE C.J. This case is one of general importance as regards the practice of the admissibility of evidence by affidavit. In my opinion some of the affidavits in this case are wholly worthless and not to be relied upon. I notice that in several instances the deponents make statements on their “information and belief,” without saying what their source of information and belief is, and in many respects what they so state is not confirmed in any way. In my opinion so-called evidence on “information and belief” ought not to be looked at at all, not only unless the Court can ascertain the source of the information and belief, but also unless the deponent’s statement is corroborated by some one who speaks from his own knowledge. If such affidavits are made in future, it is as well that it should be understood that they are worthless and ought not to be received as evidence in any shape whatever; and as soon as affidavits are drawn so as to avoid matters that are not evidence, the better it will be for the administration of justice.

RIGBY L.J. I will add a few words to what the Lord Chief Justice has said with regard to affidavits and the way in which they are often framed.

In the present day, in utter defiance of the order (Rules of the Supreme Court, 1883, Order xxxviii., r. 3) (1), solicitors have got into a practice of filing affidavits in which the deponent speaks not only of what he knows but also of what he believes, without giving the slightest intimation with

(1) Order xxxviii., r. 3, is as follows: “Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.”

regard to what his belief is founded on. Or he says, "I am informed," without giving the slightest intimation where he has got his information. Now, every affidavit of that kind is utterly irregular, and, in my opinion, the only way to bring about a change in that irregular practice is for the judge, in every case of the kind, to give a direction that the costs of the affidavit, so far as it relates to matters of mere information or belief, shall be paid by the person responsible for the affidavit. At any rate, speaking for myself, I should be ready to give such a direction in any such case. The point is a very important one indeed. I frequently find affidavits stuffed with irregular matter of this sort. I have protested against the practice again and again, but no alteration takes place. The truth is that the drawer of the affidavit thinks he can obtain some improper advantage by putting in a statement on information and belief, and he rests his case upon that. I never pay the slightest attention myself to affidavits of that kind, whether they be used on interlocutory applications or on final ones, because the rule is perfectly general—that, when a deponent makes a statement on his information and belief, he must state the ground of that information and belief.

VAUGHAN WILLIAMS L.J. With regard to affidavits of the sort before us, it is not quite a sufficient or satisfactory remedy to throw upon the party upon whose behalf such affidavits are put forward the liability of paying the costs of those affidavits. The only more satisfactory remedy is one which I am aware is difficult, if not impossible, to apply as the law stands: namely, that no one should pay for these affidavits at all, and that the solicitor who has drawn these affidavits and made copies of them, and so forth, should be left out of pocket thereby.

RIGBY L.J. Vaughan Williams L.J. has gone rather further than I did just now, but I quite concur with what he has said. (1)

Solicitors : *F. E. Paynter ; D. A. Romain.*

(1) See *Bidder v. Bridges*, (1884) *Anthony Birrell, Pearce & Co.*, [1899] 26 Ch. D. 1, *Bonnard v. Perryman*, 2 Ch. 50. [1891] 2 Ch. 269, 287-8, and *In re*

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