

MR JUSTICE HAMBLLEN:

Introduction

1. The appellant, the London Borough of Newham, appeals against the decision of District Judge Radford sitting at Waltham Forest Magistrates' Court to acquit the respondents, Muhammad Kamal Ahmed and Dabir Nozrul Ahmed, in respect of two charges of failure to comply with an enforcement notice dated 25 July 2012 by failing (1) to cease use of premises as three self-contained flats and (2) to take the steps specified within the notice, contrary to s.197(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act").

The Background Facts

2. The respondents are the registered proprietors of the property, 43 Rothsay Road, Forest Gate, London. The notice was served on the respondents by sending it to them by Royal Mail post at 261A High Road, South Benfleet, Essex, ("the Benfleet address") on 25 July 2012. This was the respondents' address as it appeared on the Land Registry title at the time the notice was sent.

3. No appeal was brought against the notice which therefore came into effect on 25 August 2012. The last date for compliance was 25 January 2013. The appellant gave written notice on 20 February 2013 to the respondents and/or occupiers of the property that a visit to the property would be carried out to check for compliance.

4. The appellant asked to be contacted in order that a date in time for the visit could be arranged but received no response to that letter.

5. The appellant wrote again on 17 June 2013, indicating that a site visit would be carried out on 25 June 2013 at 2pm. Mr Pavett, a planning enforcement officer, attended at that time but there was no answer, and he could not carry out the visit. He attended again on 25 July 2013, spoke with the occupiers and was able to gain access to the flats on both the ground and first floors of the property. On 26 July 2013, the appellant sent a letter indicating that prosecution for breach of the enforcement notice was now being considered.

6. Information was laid before the Magistrates' Court that the respondents had failed, contrary to s.179(2) of the 1990 Act, to comply with the enforcement notice. On 14 May 2014, the respondents were summoned to appear before the Magistrates' Court on 11 June 2014.

7. On 11 June 2014, the case was adjourned to 6 August 2014, the respondents having appeared unrepresented and contending that they had not received the enforcement notice until the day before and stating that they wished to instruct a solicitor.

8. On 6 August 2014, the respondents again appeared unrepresented. They contended that they did not have any papers. They were reminded that they had told the court on 11 June 2014 that they had received the papers the day before. The respondents were shown an email showing the papers had been sent Mr Ahmed's Hotmail email address. The case was adjourned until September 2014. On 3 September 2014, the respondents failed to attend and the case was adjourned to October 2014.

9. The case was eventually heard on 28 May 2015 at a hearing at which both parties were represented by counsel. In the case stated, the District Judge found as follows:

"A) At all material times the property at 43 Rothsay Road, hereafter "the property", was divided into three separate self-contained flats.

B) The appellant had dispatched the enforcement notice to the respondents on 25 July 2012 at 261A High Road, South Benfleet, Essex SS7 5HA.

C) The enforcement notice had been dispatched by Royal Mail First Class post.

D) The respondent's address on the Land Registry Proprietorship Register of Title for the property at the time the notice was dispatched was 261A High Road, South Benfleet, Essex SS75HA.

E) The respondents were commercial landlords.

F) At the relevant time, July 2012, the respondents lived at 197 Plashet Grove, East Ham, London E6 1BX and the appellant was corresponding with them at this address in respect of unconnected matters."

He further found that:

"The respondents were commercial landlords" and that "the appellant was entitled to rely on the above registered address for service of documents to do with the property."

10. The District Judge invited submissions on section 329(1)(c) of the 1990 Act which requires a notice sent under the act (including an enforcement notice) to be sent:

"[...]In a prepaid registered letter, or by the recorded delivery service."

11. Counsel for the appellant submitted that the certificate of service was silent as to whether registered or recorded delivery post had been used. Counsel for the respondents contended that the notice had not been properly served and

the respondents had known nothing about it until they received a summons for the proceedings.

12. The District Judge ruled that the notice had not been properly served on the respondents because it had not been sent by registered letter or recorded delivery post. As a consequence of this ruling, he acquitted the respondents, but he also observed that he would otherwise have convicted them.

The questions for the opinion of the High Court

13. In the case stated the District Judge identified the following two questions for the opinion of the High Court:

"A) Whether the District Judge was right to hold:

(a) The appellants were entitled to serve the notice at the address shown on the Land Registry Register of Title.

(b) The enforcement notice was not properly served on the respondents because it had only been sent by ordinary post."

14. Section 325(1)(c) of the 1990 Act sets out the methods of service for the notices under that Act. However, section 329(4) states that:

"This section is without prejudice to section 233 of the Local Government Act (general provisions as to service of notices by Local Authorities)." ("the 1972 Act").

15. Section 233(2) of the 1972 Act states that:

"Any notice served by a Local Authority: 'Maybe given to or served on the person in question either by delivering it to them or by leaving it at his proper address or by sending it by post to him at that address."

16. The definition of "by post" is dealt with in Section 26 of the Interpretation Act 1889 as follows:

"Where an Act passed after the commencement of this Act authorises or requires any document to be served by post whether the expression "served" or the expression "give" or "send" or any other expressions used, then unless the contrary intention appears the service shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which a letter would be delivered in the ordinary course of post."

17. Section 233(4) of the 1972 Act addresses section 26 and states:

"For the purposes of this section and of Section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to, or on whom a document is to be given or served, shall be his last known address."

18. In addition, section 233(10) provides as follows:

"Except, as aforesaid and subject to any provision of any enactment or instrument excluding the foregoing provisions of this section, the methods of giving or serving documents which are available under those provisions are in addition to the methods which are available under any other enactment or any instrument made under any enactment."

19. In the appeal by way of case stated in R (on the application of) Gloucestershire County Council v Keyway (Gloucester) Ltd [2003] EWHC 3012 (Admin) Sullivan J, as he then was, considered whether a stop notice served under section 183 of the 1990 Act, subsequent to an enforcement notice served under section 172, had been properly served on the respondent company. Sullivan J set out sections 329(1) (a) to (d) and sub-section 4 (the appeal being concerned with section 329(1)(d) as the respondent was a company), and held as follows at paragraph 13 of his judgment:

"[...] it is plain from subsection 329(4) of the 1990 Act and section 233(10) of the 1972 Act that the newer methods of service contained in the 1972 Act are additional to the older methods of service contained in section 329 of the Act. Thus, it was sufficient for the appellant to have effected service in accordance with either section 233 of the 1972 Act or section 329 of the Act."

20. I agree with Sullivan J's interpretation and conclusion. It follows that pursuant to section 233 of the 1972 Act it was open to the appellant to serve the notice by post and to do so at the Benfleet address if that was the respondent's "last known address".

21. The appellant contends that the Benfleet address was not simply the respondents' last known address, but it was their current known address as demonstrated by the fact that it was their registered address at the material time. The appellant relies on the fact the District Judge found that the Benfleet address was the appropriate address for service. As he stated:

"The appellant was entitled to rely on the above registered address for service of documents to do with the property."

22. The reason that the appellant's application failed was the mode of service used, not the address used for service. The respondents object to this point being raised at this stage. As is common ground, it could have been raised at the hearing before the District Judge but was not, and the respondents contend that it is too late to do so now.

23. In this connection, we were referred to the case of Whitehead v Haines [1965]1 QB 200 and, in particular, of the judgment of Winn J at page 209 D to E, where he stated as follows:

"In my judgment, it would not be right for this court to decline to entertain and determine, on an appeal raised by a case stated, a point of pure law open on the facts found in that case, to a defendant convicted on a criminal charge, which, if sound, might afford him a defence, merely because that legal objection of the charge has been first appreciated after his conviction."

24. It was submitted on behalf of the respondents that this approach only applies to a new point of law sought to be raised by the defence, that the prosecuting authority have to bring their full case forward at the time of the hearing and that it is not in the public interest for them to be allowed to re-litigate matters.

25. Whilst I accept that the Whitehead case concerned a new point of law raised by the defence, in my judgment, in principle the approach applies to any point of pure law, regardless of by whom it is raised. It is in the public interest that lawful decisions are reached.

26. The respondents further submitted that the issue now raised is not a pure point of law and that had it been raised at the hearing, factual issues would have been raised as to whether the Benfleet address was the "last known address" of the respondents. In particular, the respondents contend that their home address was 197 Plashet Grove and that this was known by the appellant. This was, however, an issue raised by them at the hearing and was the subject of findings made by the District Judge. The District Judge found that 197 Plashet Grove was where the respondents lived at the relevant time and that the appellant was corresponding with them at this address in respect of unconnected matters. He also found, however, that the appellant was entitled to rely on the registered address as that for service of documents to do with the property, having regard in particular to the fact that respondents were commercial landlords.

27. In other words, the District Judge drew a distinction between the respondents' home address and that used for business purposes connected with 43 Rothsay Road, as reflected in the Register. He clearly considered that the Benfleet address was the appropriate address for service and the relevant known address. In those circumstances I do not accept that the new point raised raises any issues of fact which have not been addressed by the District Judge in his findings.

28. In summary, on the basis of the District Judge's findings, the Benfleet address was the proper known address for service. As such, the appellant was entitled to serve the notice by sending it by post to that address pursuant to section 233 of the 1972 Act and the District Judge's contrary conclusion is wrong in law.

29. The respondents raise two further objections to the new case advanced by the appellant, namely:

1) The application for the case stated was out of time because it was sent to the Benfleet address.

2) The application notice for appeal by way of case stated was out of time and the requested extension of time should be refused.

30. As to the first ground of objection this was raised before the District Judge who ruled as follows, as set out in the letter from the court dated 25 September 2015:

"In respect of any non-compliance with rule 64.2 the judge does not consider that to be a bar to the case being stated. All parties have had an opportunity to comment on the draft and can argue their positions before the High Court.

"The judge has included an additional relevant fact which he mentioned in his oral judgment and modified the question asked in the light of the representations whether or not it would be wrong in law to allow an appeal on the ground not argued in the trial court is in the judge's opinion an argument for the High Court to consider, not him."

31. The District Judge therefore found that, if there was any non-compliance, it was not material in the light of the fact that the respondents had had a full opportunity to consider and address all issues relating to the proposed case stated. Indeed, they had sought and obtained an extension of time for commenting on the draft provided.

32. In the light of the District Judge's ruling I consider that this point is no longer live but, if it is, I agree with, and reach the same conclusion.

33. As to the second ground of objection, the appellant's notice was served a couple of days late for reasons set out in the notice which seeks an extension of time. It is there said that there were two main reasons for the delay, namely:

1) Initial confusion as to whether the unsigned case stated served on the appellant represented the finalised version.

2) A move to new premises by the appellant's legal section.

34. These reasons are expanded upon in the notice of application. I consider that the reasons there given provide an adequate explanation of the need for an extension of time. Given that explanation, the short period of time of time involved, and the lack of any prejudice to the respondents, I am satisfied that the requisite extension of time should be granted.

35. A further point raised in oral argument is that the applicant's notice was served on the Benfleet address, rather than the Plashet Grove address, but I am not satisfied that this has been established. The appellant's notice refers to the Plashet Grove address as the respondents' address and there is contemporaneous correspondence from the appellant indicating this was the address to which the

documents were sent. In any event, given the delays that have occurred since then, there will have been no prejudice to the respondents even if for some reason they did not see the documents until the end of October 2015.

36. I accordingly reject all the respondent's grounds of opposition to the claimant's application. As a matter of law, the enforcement notice was properly served and the appellant is entitled so to contend.

Conclusion

37. I would answer the questions raised by the case stated as follows:

1) The District Judge was right to hold that the appellants were entitled to serve notice at the address shown on the Land Registry Registered Title.

2) The District Judge was wrong to hold that the enforcement notice was not properly served on the respondents because it had only been sent by ordinary post.

38. LORD JUSTICE LAWS: I agree.

MISS OLLEY: My Lords, I am grateful. I have an application for the appellant's costs.

LORD JUSTICE LAWS: Yes.

MISS OLLEY: Unfortunately, it is not entirely complete, I need to advise the court of the total figure. But may I hand up the schedule?

LORD JUSTICE LAWS: Has your opponent seen it?

MISS OLLEY: I believe she has.

MS COLQUHOUN: No, my Lord. (To Miss Olley) No, I know you have referred to it.

Sorry, I have not seen it. I spoke to my learned friend about it and she said it was incomplete.

MISS OLLEY: Well, then I am mistaken, my Lords, and I apologise. I will pass a copy across to my learned friend as well.

LORD JUSTICE LAWS: If it is incomplete and she has not seen it until this moment, it is not a very promising beginning to an application for a summary assessment of your costs, is it?

MISS OLLEY: It is a most unpromising start, my Lord, I freely admit. Nonetheless, seriously, may I nonetheless pass it up?

LORD JUSTICE LAWS: I will look at your document, but speaking for myself I will take a lot of persuading to grant you a summary assessment, indeed, if there is to be a detailed assessment, I rather think your client should pay for it but we will come to that.

MISS OLLEY: I am afraid I only have one, I am sorry. (Handed)

LORD JUSTICE LAWS: It is all right, we will share. It may not be complete, but it is very long. What are we to make of this, Miss Olley, this seems to be not a schedule but a bundle of documents?

MISS OLLEY: My Lord, the first page constitutes the costs of those instructing me and the sum appearing at the bottom of that page, and to be added to that will be my own costs.

LORD JUSTICE LAWS: That is not what is in the document, is it?

MISS OLLEY: Also, I need to add one number to that, and then advise the court of the total.

LORD JUSTICE LAWS: MS COLQUHOUN, presumably, you accept, or perhaps you do not, that Miss Olley is entitled to her costs in principle before we come to any question of assessment?

MS COLQUHOUN: Yes. My Lord, I actually will submit that it is one of those circumstances where they should not get their costs because of the circumstances of the case.

LORD JUSTICE LAWS: I see, all right.

MS COLQUHOUN: The reason that, the sole reason is that this was a matter that they failed to address before the Magistrates' Court. It is not any failing on the part of the defendant.

LORD JUSTICE LAWS: Yes, I see.

MS COLQUHOUN: Therefore, in those circumstances, yes, of course we did not have to participate, but it seems that reason we are here is nothing to do with the defendant.

LORD JUSTICE LAWS: You are saying that if the section 233 point had been taken in the lower court, would none of us be here?

MISS OLLEY: Well--

MR JUSTICE HAMBLIN: And they had to come to court anyway, to get the relief they have.

MS COLQUHOUN: Indeed, my Lord. So, I think it is, my Lord, one of those circumstances where, with your discretion, and also this is --

LORD JUSTICE LAWS: -- we will come to any question of assessment in a minute.

Miss Olley.

MISS OLLEY: On that point, my Lord, I could make the same point, that if the court had also noticed the full section which it was drawing counsel's attention to, we would not be here either.

LORD JUSTICE LAWS: Sorry, say that again?

MISS OLLEY: With the greatest of respect, we make the same point: that the section was clearly before the court and the court did not notice, either, so we did have to come and the respondents --

LORD JUSTICE LAWS: -- my understanding was that no submissions were made about it to the District Judge, is that wrong?

MISS OLLEY: No submissions were made about the section.

LORD JUSTICE LAWS: Yes, but the piece of paper was in the court bundle. The section 233 was in front of the court.

MS COLQUHOUN: No.

MR JUSTICE HAMBLÉN: It was not, but section 329, which refers to it, was.

LORD JUSTICE LAWS: Yes, which refers to it. I see.

MISS OLLEY: Section 329 should have been noticed, and perhaps equal responsibility lies with those instructing the appellant at that time and the court, but I say that with a measure of deference towards the court.

But the separate point is that the respondents have chosen to defend these proceedings, they have done so vigorously, and we have had obviously to spend time and money dealing with those points.

A lot of extraneous points have been raised with respect to my learned friend and it did turn ultimately on the very simple point of law of whether or not it was permissible to rely on ordinary First Class post.

LORD JUSTICE LAWS: If it is, so far as I am concerned at the moment, anyway, still an "if", we do make an order for costs in your favour, why should we grant you the convenience of a summary assessment when this document is only produced now and is incomplete?

MISS OLLEY: My Lord, you should not.

LORD JUSTICE LAWS: You are not asking for a summary assessment?

MISS OLLEY: I am asking you to, but I do not have that as of right because of the points that my Lord makes. I can tell you the figure to be added into the schedule, and I can tell you the total.

LORD JUSTICE LAWS: Well, you had better tell us that as a matter of information.

MISS OLLEY: Yes.

LORD JUSTICE LAWS: It is your fees, is it?

MISS OLLEY: Yes, part of my fees are in there already.

LORD JUSTICE LAWS: Wait a minute, whoops, are they?

MISS OLLEY: On the second page.

LORD JUSTICE LAWS: The second page is blank.

MISS OLLEY: The second printed page.

LORD JUSTICE LAWS: I am sorry. Oh, I see.

MISS OLLEY: Then the fee for today's hearing is £1,500 plus £300 VAT and that means that the total of my fees and those instructing me is £1,105.80. The bundle behind is, I think, the attempt of those instructing me to give the court as much supporting information as possible. It is not intended to be part of the schedule. It is supposed to support that.

LORD JUSTICE LAWS: All right. Do you want to say anything about this document? (**Indicates**)

MS COLQUHOUN: My Lord, other than it is not a proper schedule of costs. It is not complete, and I am not quite sure what my learned friend is actually asking for: she is not asking for a summary arrest based on this.

LORD JUSTICE LAWS: I think she is, but she is acknowledging that there are some quite powerful reasons why she should not have one.

MS COLQUHOUN: Well, my Lord, even if we had not taken part, there would have had to have been a formal finding, that is the part of the case stated. It might have saved a few hours in court but not even that much, my Lord, and my Lord, indeed I do not even think this is proportionate enough.

LORD JUSTICE LAWS: Anything else, Miss Olley?

MIS SOLLEY: I accept that due to the points made by the court and my learned friend, we might be amenable to a percentage of our costs rather than the whole lot but I leave that in your Lordship's hands.

LORD JUSTICE LAWS: All right, we will rise and see where we get to.

(A Short Adjournment)

LORD JUSTICE LAWS: We shall make an order in favour of the London Borough of Newham for their costs of these proceedings in the sum of £1,000 only.

MIS SOLLEY: My Lord, I am grateful.

LORD JUSTICE LAWS: Thank you.

MS COLQUHOUN: My Lord, in terms of the final order, I just wanted to make sure that we are clear because there are a number of options that you are entitled to do at the end of a case stated, and either to suggest that the matter is remitted --

LORD JUSTICE LAWS: -- oh, I see. In my Lord's judgment, the answer to the two questions posed for the consideration of this court were given.

MS COLQUHOUN: Yes, my Lord.

LORD JUSTICE LAWS: So, you are quite right, there is the question of any further relief on the successful appeal should be granted. It is really up to Miss Olley to ask for any, is it not?

MS COLQUHOUN: It is not relief, my Lord, so much, as what happens when the matter is remitted as a consequence of a successful appeal.

LORD JUSTICE LAWS: Well, what is your submission?

MS COLQUHOUN: My Lord, I pointed out to my learned friend that the appellant's notice asked for the order of a new trial. That is on page 5 of the appellant's notice, and I support that, but if it is not, my understanding is, it is not formally on the order then --

LORD JUSTICE LAWS: I see. No, you are quite right, it has got to be dealt with. Miss Olley, is the right order here to allow your appeal and remit the matter to the Magistrates' Court with an order for a new trial?

MS COLQUHOUN: It would have to be remitted, I think, my Lord, because in any event we have not got to any question of sentencing and such like. It does say "order a new trial" on the appellant's notice when the options are to set aside the order, vary the order, or order a new trial.

But I am just wondering whether there is any utility or any public interest in ordering a new trial, given all the facts have been found and the court has answered the legal question. I think it probably has to go back and that would be conviction, presumably.

LORD JUSTICE LAWS: It goes back, what, we direct that it goes back on the footing that the respondent is guilty of the offence, do we, and it goes back for sentence only, is that it?

MIS SOLLEY: Well, go back with the questions answered and then -- I imagine it would be for the court to then make the decision in accordance with this court's ruling. But I do not think this court would get into --

LORD JUSTICE LAWS: We have not said anything about the merits of the breach allegation of the enforcement notice, have we?

MIS SOLLEY: No. No, that is covered by the facts found by the learned judge.

LORD JUSTICE LAWS: Let us just look at the case stated, again.

MR JUSTICE HAMBLEN: I mean, he said he would have found --

MIS SOLLEY: -- yes, he was very clear this was the only --

MR JUSTICE HAMBLEN: -- he would have convicted had it not been for the service point.

LORD JUSTICE LAWS: There is nothing, only the service point has been argued here. (If we go back on the footing that they are convicted, then).

MR JUSTICE HAMBLEN: Yes.

MS COLQUHOUN: My Lord, perhaps the usual order when it is a prosecution and the defendant has been acquitted, the usual order is for a new trial.

LORD JUSTICE LAWS: Why should you have a new trial when there is no argument as to the merits of the prosecution?

MS COLQUHOUN: My Lord, we would go back to the point about section 233, which is to raise these facts about actually whether that was the proper address, because, my Lord --

LORD JUSTICE LAWS: You cannot do that, we found that the enforcement notice was properly served.

MS COLQUHOUN: My Lord, the appellant's notice asks for an order for a new trial.

LORD JUSTICE LAWS: I dare say, but you are now appearing to submit that you should be entitled to the Magistrates' Court to attempt to upset the judgment here.

MS COLQUHOUN: No. Well, my Lord, I accept that criticism. However, we do want a new trial, my Lord.

LORD JUSTICE LAWS: Why?

MS COLQUHOUN: Because there were various matters, including the way that the matter was prosecuted; and indeed, the findings that were held.

We have been acquitted, my Lord, we are entitled to a new trial, and indeed that was what was the appellant's intentions all along, my Lord. So that is precisely what we were expecting, the reason I rose is because it needs to be clear what comes as a consequence of your judgment.

MR JUSTICE HAMBLIN: But if he goes back before him with the answers to the questions, he can decide whether any further trial is needed or not, can he not?

MS COLQUHOUN: My Lord, as long as the decision is open.

LORD JUSTICE LAWS: Well, what is not open is any question of challenge to the answers to the questions which this court has given.

MS COLQUHOUN: No, my Lord.

LORD JUSTICE LAWS: You understand that?

MS COLQUHOUN: I do, yes, my Lord.

LORD JUSTICE LAWS: As regards the merits of the prosecution, Miss Olley, I do not see in the findings of fact in paragraph 5, notwithstanding the District Judge's assertion that would have convicted the respondent, but I do not see any findings as to breach of the enforcement notice.

MIS SOLLEY: Just a moment, my Lord.

(A Short Pause)

LORD JUSTICE LAWS: It is all concerned with service, is it not?

MR JUSTICE HAMBLEN: Well, it does say that the property was divided into three separate parts.

LORD JUSTICE LAWS: It says, certainly as my Lord says, it says that but that is not, on the face of it, a finding of breach of the notice.

MIS SOLLEY: It is, my Lord.

LORD JUSTICE LAWS: Is it?

MIS SOLLEY: Yes, because that is what, if you go to the notice. The notice is at page 37, and the breach of planning control alleged is without planning permission, the material change of use to three flats, and so the finding of fact that they have been subdivided into three flats means that the breach of planning control is made out.

LORD JUSTICE LAWS: There is no finding that he was not entitled to divide them into three flats.

MIS SOLLEY: Well, he was not, because that was a change without planning permission.

LORD JUSTICE LAWS: I dare say that is the reality, but it is not very satisfactory because it is not actually covered in the case stated. Do we have the power on an appeal of this kind to substitute a conviction?

MIS SOLLEY: I am not clear that you do, no, my Lord.

MS COLQUHOUN: No.

MIS SOLLEY: That does not sound right to me, because the logic is that we come to this court for an opinion on the law and that has been given --

LORD JUSTICE LAWS: I think you are right.

MR JUSTICE HAMBLEN: Then it goes back to the District Judge.

LORD JUSTICE LAWS: The order should be that it goes back to the District Judge for further consideration of the case in the light of the answers given by this court to the questions asked.

MIS SOLLEY: Yes, that would be my submission.

LORD JUSTICE LAWS: Ms Colquhoun, that is not in terms an order for a new trial. It says that the District Judge is to consider what course to take given the answers to the questions.

MS COLQUHOUN: Yes, my Lord. I do not think I can ask for more than that, as long as it is not simply a matter of --

LORD JUSTICE LAWS: Yes, all right.

In addition to the answers to the questions which appear in my Lord's judgment, we will direct that the matter be remitted to the Magistrates' Court. No reason why it should be a different District Judge but it would be better if it were the same one.

MIS SOLLEY: I think it should be the same one, my Lord.

LORD JUSTICE LAWS: To District Judge Radway for further consideration of this case in light of the answers to the question asked in the case stated delivered by this court in these proceedings.

MIS SOLLEY: Grateful.

MR JUSTICE HAMBLEN: All right. Thank you very much for raising that, it is quite right deal with it.