The London School of Economics and Political Science

Caseflow Management: A Rudimentary Referee Process,
1919-70

Michael Paul Reynolds

A thesis submitted to the Department of Law of the London School of Economics for the degree of Doctor of Philosophy,
London, July 2008
Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without the prior written consent of the author.

I warrant that this authorisation does not, to the best of my belief, infringe the rights of any third party.

Michael P Reynolds
Abstract

This thesis discovers that a form of caseflow management was practised by Official Referees in England more than 70 years before the Woolf reforms. It also describes an innovative concept of judicial sponsorship of settlement at an early interlocutory stage. For its time it was revolutionary. Such process created a distinct subordinate judicial culture which promoted economy and expedition in the management of complex technical cases. This culture was facilitated by the referees' subordinate function as officers of the High Court and the type of casework undertaken.

The essential elements of my theory of rudimentary micro caseflow management emerge from a study of the methods used by Sir Francis Newbolt K.C. These are analysed and discussed by way of a literature review, qualitative and quantitative analysis. I conclude that this form of rudimentary caseflow management and judicial settlement process made the court more efficient. This process, identified as Newbolt's "Scheme," is traced from its inception through the judicial activities of Newbolt and other referees who followed this approach whether actively or passively.

Having traced the origin and reasons for such officers this study considers the senior and subordinate judicial figures involved, their influence and encouragement as to the employment of innovative interlocutory techniques. Contemporaneous records including reports and correspondence are analysed in considering these innovations.

The analysis is supported by the results of a quantitative study of Judicial Statistics between 1919 and 1970 and other contemporaneous judicial records including the referees' notebooks and judicial time records known as Minute Books.

A number of conclusions are drawn which suggest a correlation between such techniques and levels of efficiency providing an interesting comparison for those interested in wider questions of civil justice reform.

281 words
Acknowledgements

This research arose out of an interest in civil litigation and alternative dispute resolution both from practice as a solicitor and an arbitrator, and from a study of these subjects at Master’s level. The interface between these diverse disciplines has always fascinated me and therefore the opportunity of undertaking doctoral research on the court where I practised was particularly inviting. My interest also stems from observations as an arbitration pupil to the last Senior Official Referee, John Newey QC and the business-like and “user friendly” way, in which he and those appearing before him conducted interlocutory proceedings. Further impetus for my research stems from an interest in the Access to Justice Movement and civil justice reform. It seemed to me that many of the recent reforms may have had their origin in what was the Official Referees’ Court and that what they did decades ago has only recently been adopted across the system as a whole. This thesis does not set out to prove that, but certainly demonstrates an undiscovered prototype model which may teach us further lessons and contribute to the literature on this subject.

Procedural reform is not necessarily the collective responsibility of judges, lawyers and parties to litigation. Today it goes beyond that to all those eminent academics who have enriched our knowledge of the system and who have an essential role to play within that system. All must strive for greater procedural efficiency and effectiveness as well as economy, learning from the experiences of the past. As Professor Marc Galanter wrote:

Lawyers and judges have a joint responsibility with the academic community to foster and support the development of a cumulative body of reliable knowledge about the working of legal institutions, and they have a heavy stake in its development.1

It is fitting that this study was undertaken at the London School of Economics part of whose expanding modern complex now inhabits the former referees’ chambers in Portugal Street and one of whose founders, Lord Haldane, Lord Chancellor of England, was a strong supporter of the referee’s office. It was Haldane who in the military field had said that “economy and efficiency were not incompatible,”

---

1 How to Improve Civil Justice Policy, 77 JUDICATURE 185 (1994).
theme which finds much in empathy in an entirely different context with the hero of this story Sir Francis Newbolt K.C.

This study and its completion would not have been possible without the inspiration, patience and encouragement of Professor Simon Roberts my supervisor. For many years he has been a leading exponent of a more enlightened and efficient resolution process. In that endeavour he was joined by Professor Michael Zander, my second supervisor, who in the field of civil justice reform must be regarded as a legend in his own time.

Neither would such study and research have been feasible without the facilities extended to me by the LSE Law Department, the LSE library, the National Archive, and Lambeth Palace Library. I would like to thank Mr Justice Jackson, Mr Justice Dyson (as he then was), Judge Anthony Thornton QC, and Judge Edgar Faye QC who were kind enough to discuss aspects of the Official Referees' role.

To my family I owe a debt of enormous forbearance.
Table of Contents

Chapter 1
A Study in Rudimentary Caseflow Management

1.1. Incipient micro-caseflow management 23
1.2. Caseflow management theory 24
1.3. Purpose of research study 24
1.4. Importance and interest 25
1.5. Hypothesis 27
1.6. Research questions 28
1.7. Use of research 28
1.8. Evolution of the referee 29
1.9 Limitations on research 33
1.10 Methodology 34
1.11 Organisation of study 37
1.12 Contribution to research in civil justice and dispute resolution 38

Chapter 2
In Chancery: The Inception of Micro Caseflow Management

2.1 Macro-management problems in the civil justice system 39
2.2 Judicial overload and backlog 39
2.3 First Report of the Commissioners 1869 42
2.4 The Official Referee: reasons for creation 42
2.4.1 Chancery and Common Law practice 42
2.4.2 Experts 44
2.4.3 Juries 45
2.4.4 Arbitrators 45
2.5 The Judicature reforms 46
   (a) Administrative reform 47
   (b) Procedural reform 47
2.6 Pioneers of caseflow management: Selbourne and Cairns 49
2.6.1 Lord Selbourne 49
2.6.2 Selbourne’s macro and micro objectives 49
2.6.3 A judge without jurisdiction
2.6.4 Rules of the Supreme Court
2.6.5 Lord Cairns 1874-80
2.7. Importance of chambers business
2.8. Legacy of the Commission
2.9 The growth in referral business
2.10 Conclusions at macro-level-general
2.11 Conclusions at macro-level-specific
2.12 Conclusions at micro-level

Chapter 3
Rudimentary Prototypes in Caseflow Management Techniques (1919-1949)

3.1. A beginning
3.1.1 Sir Francis Newbolt
3.1.2 Lord Birkenhead
3.1.3 Sir Edward Pollock
3.1.4 Sir Tom Eastham
3.1.5 William Hansell
3.1.6 George Scott K.C
3.2. Definition of theory
3.3. Micro caseflow management
3.4. Events leading to the invention of caseflow management and judicial settlement
3.5. Explanation of theory
3.6 Against the theory
3.7 Exposition of the basis for a theory: Newbolt’s first report to the Lord Chancellor
3.8 Discussion and analysis of elements of rudimentary caseflow management
3.8.1 Early procedural evaluation and rudimentary informal referee resolution
3.8.2 Judicial intervention promoting expedition and economy
3.8.3 Experts
   (a) Use of single joint expert/court expert
   (b) Expert determination and investigators of fact
   (c) Experts and settlement
3.9 Application of proportionality on costs
4.5.5 As to special pleadings 152
4.5.6 As to preliminary issues 152
4.5.7 As to geographic location 153
4.6 Summary 153

Chapter 5
Efficiency and Economy in Referee Caseflow Management

5.1 Impact of Newbolt’s “Scheme” 155
5.2 Quantitative analysis 156

PART A CASEFLOW

5.3 Data Collection 1: Judicial Statistics 1919-70 158
5.3.1 Testing the hypothesis 158
5.3.2 Trial averages 160
5.3.3 Testing the anti-hypothesis 161
5.3.4 Key to caseflow management earlier resolution 162
5.4 Statistical Conclusions and formulaic analysis before and after the war 162
5.4.1 Testing efficiency by averages—“For hypothesis” Tests 1 164
      Test 2 166
5.4.2 Against the hypothesis 168
5.4.3 Testing comparative periods 171
5.4.4 Application of formulaic analysis 172
5.4.4.1 Analysis of disposal rates 172
5.4.4.2 Formula A Test 176
5.4.4.3 Formula B Test 177
5.4.4.4 Formula C Test 179
5.4.4.5 Formulaic conclusions 180
5.4.4.6 Summary of findings from formulae applied to years 1919-70 181
5.4.5 Comparative average analysis of (a) Newbolt period 1920-36 182
      (b) Eastham period 1936-54 182
      (c) Richards period 1954-70 182

PART B EXPENDITURE OF TIME

5.5 Statistical analysis of time expended 184
5.5.1 Average trial time 184

PART C MICRO-CASEFLOW MANAGEMENT

5.6 Data collection 2: Minute Book/judge’s notebook analysis 1959-62 186
5.6.1 Data analysis: Minute Books 186
5.6.2 Time expended (Judicial Statistics) 187
5.6.3 Time expended (Minute Books) 189
5.6.4 Caseflow time management analysis 190
5.6.5 Micro-caseflow management elements 191
5.7 Data analysis 2: Minute Books 1965-67 192
5.7.1 Time expended (Judicial Statistics) 1965-67 193
5.7.2 Time expended (Minute Books) 1965-67 194
5.7.3 Caseflow time management analysis 1965-67 195
5.7.4 Micro-caseflow management elements 1965-67 197

PART D CONCLUSIONS AS TO QUANTITATIVE ANALYSIS
5.8 Summary and general conclusions 199
5.9 Direct best evidence of micro-caseflow management 201
5.9.1 Proportionate usage of rudimentary caseflow management 1959-62, and 1965-67 205
5.9.2 The utility of micro-caseflow management 205
5.9.2.1 Before the war (1919-38) 206
5.9.2.2 After the war (1947-70) 206
5.9.2.3 Case and non case-managed (1959-62) 207
5.9.2.4 Case and non case-managed (1965-67) 207
5.9.3 Possible extent of referee case-managed cases 207
5.10 Specific conclusions on quantitative analysis 208

Chapter 6
The Implementation of Micro-caseflow Management.
6.1 Synthesis of macro and micro-caseflow management 216
6.1.1 Macro-caseflow management level 216
6.1.2. Subordinate jurisdiction as a facet of macro-caseflow management 219
6.1.3 Aspects of subordinate jurisdiction 220
6.1.4 Conclusions as to subordinate jurisdiction 223
6.2 Evaluating contradictory trends and results of the two periods 224
6.2.1. Significance of the “Scheme” 226
6.2.2 Effectiveness of the “Scheme” 227
6.2.3 General conclusions 228
6.2.4 Analysis of backlog 229
6.3 Referee micro-caseflow management overview
6.3.1 Backlog problem
6.3.2 Possible effect of caseflow management
6.3.3 Nature of referrals and probable cause of delay
6.4 Research limitations
6.5 Referee workload
6.6 Conclusions

Chapter 7
Expedition and Economy in Caseflow Management: Conclusions and Recommendations

7.1 Research questions
As to:
(a) why the office of referee was invented and what caused and facilitated case-flow management?
(b) what was Newbolt's "Scheme," and what were the reasons for his application of this rudimentary form of case management?
(c) what was the impact of such "Scheme" according to the literature review of the archival materials that survive and what conclusions can be drawn?
(d) to what extent did Newbolt's "Scheme" promote expedition and economy in the court's work?
(e) to what extent, if at all, did the referees promote settlement and save costs?
(f) what was the impact of this "Scheme" as ascertained by qualitative and quantitative analysis of Judicial Statistics and the original court records?

7.2 Discussion of hypothesis of efficiency and economy
7.3 Support for hypothesis of efficiency and economy
7.4 The advantage of a subordinate judicial official
7.5 The procedural judge
7.6 Synthesis from study
7.7 For hypothesis
7.8 Against hypothesis

Chapter 8
In Pursuit of Justice

8.1 Key findings from research
8.2 Of Woolf and Newbolt; contrasting case management concepts
8.3 The "Scheme" and ADR concepts
8.4 Reconciling critiques 268
8.5 A new model judge 270
8.6 Ariadne’s thread 272
8.7 Sailing on the *Arbella* 276

**List of charts**

- Chart C.1.1 Referrals 1876-98 30
- Chart C 5.1 Caseflow management analysis 170
- Chart C.5.2 Percentage of cases settled or disposed of before trial 173
- Chart C.5.3 Percentage of cases tried withdrawn or transferred (Formula A) 176
- Chart C.5.4 Percentage of cases tried to cases brought in (Formula B) 177
- Chart C.5.5 Percentage of cases tried to cases referred (Formula C) 179
- Chart C.6.1 Overall comparison 224
- Chart C.6.2 Backlog analysis 1919-70 230
- Chart C.6.3 Mean average analysis of backlog 1919-70 231

**List of tables**

- Table T 1.1 Numbers of referees in post 32
- Table T.2.1 Rate of increase of actions 1859-66 41
- Table T.2.2 Rate of increase of actions 1868-69 41
- Table T. 2.3 Annual referrals 1876-98 60
- Table T 3.1 Amounts recovered 89
- Table T.4.1 Number of trials 1949-54 144
- Table T.4.2. Total referrals and trials 147
- Table T.4.3. Total cases withdrawn and disposed of and percentages of same 147
- Table T.4.4. Percentage of trials and disposals 148
- Table T.4.5. Average percentage of referrals resolved before and at trial 148
- Table T.4.6 Referrals, disposals and trials 149
- Table T.4.7 Average apportionments of referrals, disposals and trials 149
- Table T.4.8 Percentage of cases disposed of, tried and disposed to referrals 149
- Table T.5.1. Referral workload and average efficiency 159
- Table T 5.2. Trial workload and time spent 159
- Table T 5.3 Average trial times and trials per referee 161
- Table T 5.4 Backlog calculations 161
Table T.5.5 Referrals
Table T.5.6 Trials
Table T.5.7 Settlements, disposals and transfers
Table T.5.8 Backlog
Table T.5.9 Increase in caseload
Table T.5.10 Comparison of cases at beginning and end of research periods
Table T.5.11 Comparative periods 1919-27 and 1957-64
Table T.5.12 Comparison of trials, disposals and backlog 1932-38
Table T.5.13 Highest trial efficiency pre-war
Table T.5.14 Highest trial efficiency post-war
Table T.5.15 Formulae findings
Table T.5.16 Comparative average analysis
Table T.5.17 Average days sat per referee
Table T.5.18 Average time per trial
Table T.5.19 Referrals 1959-62
Table T.5.20 Expenditure of time
Table T.5.21 Notional time
Table T.5.22 Carter time recorded 1959-62
Table T.5.23 Carter's share of caseload
Table T.5.24 Carter's sittings 1959-62
Table T.5.25 Case type/time spent (Minute Books and notebooks) 1959-62
Table T.5.26 Case type time related analysis 1959-62
Table T.5.27 Referrals 1965-67
Table T.5.28 Expenditure of time
Table T.5.29 Average times per case
Table T.5.30 Walker-Carter turnover rates
Table T.5.31 Day sittings analysis
Table T.5.32 Case type/time spent Minute Books and notebooks
Table T.5.33 Case type/time spent (Minute Books and notebooks)1965-67
Table T.5.34 Case type time related analysis 1965-67
Table T.5.35 Usage of micro caseflow management tools
Table T.5.36 Proportion of usage
Table T.5.37 Proportionate usage of caseflow management tools
Table T.5.38 Average time per case
Table T.5.39 Hypothetical application 208
Table T.5.40 Micro-caseflow management elements 1959-62 211
Table T.5.41 Micro-caseflow management elements 1965-67 214
Table T.6.1 Newbolt/Richards comparison 226
Table T.6.2 Referral influx 1919-21 227
Table T.6.3 Rates of disposal before trial 1928-31 227
Table T.6.4 Rates of disposal before trial 1963-66 228
Table T.6.5 Number of referees’ notebooks 234
Table T.6.6 Referees’ caseload and value of cases 235
Table T.6.7 Summary of average annual caseload and disposals per referee 238
Table T.7.1 Comparative disposal rates 248

Table of statutes
Common Law Procedure Act 1854, s. 3
Chancery (Amendment) Act 1858, s.3
Supreme Court of Judicature Act 1873, ss., 56 and 57
Supreme Court of Judicature Act 1925, ss., 88 and 89
Supreme Court of Judicature Act 1894, s. 1(5)
Administration of Justice Act 1932
Administration of Justice Act 1956, s.15

Rules of the Supreme Court
1873 Rules of the Supreme Court 1873
r. 34 (Proceedings before an Official Referee)
r. 35 (Effect of the Decision of the Referee).
1875 Rules of the Supreme Court
O. 36 r. 2.
1883 Rules of the Supreme Court
O.36
O.36 r.19A
O. 37A
1957 Rules of the Supreme Court
O. 36A, r.1, r.2, r.5(2)
1996 Civil Procedure Rules
Amendments to Rules of the Supreme Court
RSC (No.1) 1933.
RSC (No.2) 1934
RSC (No.1) 1957

Annual Practice 1930
Notes on the practice before the Official Referee. pp. 640-641
Annual Practice 1955
Notes on Practice for Referees pp. 632 and 633.
### Table of reported cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Report</th>
<th>Volume</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albemarle Supply Company Limited v Hind and Company</td>
<td>1928</td>
<td>1 KB</td>
<td>307</td>
<td>61</td>
</tr>
<tr>
<td>American Braided Wire Company v Thompson</td>
<td>1890</td>
<td>44 Ch Div</td>
<td>274</td>
<td>63</td>
</tr>
<tr>
<td>Anantapadmanabhaswami v Official Receiver of Secunderabad</td>
<td>1933</td>
<td>AC</td>
<td>396</td>
<td>61</td>
</tr>
<tr>
<td>Audley Land Company Ltd v Kendall</td>
<td>1955</td>
<td>WLR</td>
<td>639</td>
<td>222</td>
</tr>
<tr>
<td>Baroness Wenlock v River Dee Company</td>
<td>1887</td>
<td>19 QBD</td>
<td>155</td>
<td>62</td>
</tr>
<tr>
<td>Beaman v A.R.T.S.</td>
<td>1949</td>
<td>1 KB</td>
<td>550</td>
<td>61</td>
</tr>
<tr>
<td>Bickerton v Northwest Metropolitan Hospital Board</td>
<td>1970</td>
<td>1 W.L.R. 607</td>
<td>1 ALL ER 977 at pp.979, 989</td>
<td>269</td>
</tr>
<tr>
<td>Biddell Brothers v E Clemens Horst Company</td>
<td>1911</td>
<td>1 KB</td>
<td>934</td>
<td>61</td>
</tr>
<tr>
<td>Bradlaugh v Newdegate</td>
<td>1883</td>
<td>11 QBD</td>
<td>1</td>
<td>62</td>
</tr>
<tr>
<td>Burrrard v Calisher</td>
<td>1878</td>
<td>19 Ch Div</td>
<td>644</td>
<td>61</td>
</tr>
<tr>
<td>Commercial Bank of Canada v Great Western Railway Company of Canada</td>
<td>1865</td>
<td>16 Eng Rep 112 1809-1865</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Cole v Kelly</td>
<td>1920</td>
<td>2 KB</td>
<td>107</td>
<td>61</td>
</tr>
<tr>
<td>Cropper v Smith</td>
<td>1884</td>
<td>26 Ch Div</td>
<td>700</td>
<td>63</td>
</tr>
<tr>
<td>Cruikshank v The Floating Swimming Baths Company</td>
<td>1876</td>
<td>1 CP</td>
<td>260</td>
<td>216</td>
</tr>
<tr>
<td>Davies v Property and Reversionary Investments Corporation</td>
<td>1929</td>
<td>2 KB</td>
<td>61</td>
<td>223</td>
</tr>
<tr>
<td>Dunkirk Colliery v Lever</td>
<td>1878</td>
<td>9 Ch Div</td>
<td>25</td>
<td>219</td>
</tr>
<tr>
<td>Elder v Auerbach</td>
<td>1950</td>
<td>1KB</td>
<td>373</td>
<td>61</td>
</tr>
<tr>
<td>Gathercole v Smith</td>
<td>1881</td>
<td>7 QBD</td>
<td>626</td>
<td>61</td>
</tr>
<tr>
<td>Gyles v Wico</td>
<td>1740</td>
<td>2 Atk</td>
<td>141</td>
<td>43</td>
</tr>
<tr>
<td>Hornby v Cardwell; Hanbury (Third Party)</td>
<td>1881</td>
<td>8 QBD</td>
<td>329</td>
<td>60</td>
</tr>
<tr>
<td>Hulland v William Sanders &amp; Son</td>
<td>1945</td>
<td>KB</td>
<td>78</td>
<td>63</td>
</tr>
<tr>
<td>Hutchinson v Gillespie</td>
<td>1838</td>
<td>12 Eng Rep 997 1809-1865</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>In re Married Women’s Property Act 1882 Re, Humphrey and Humphrey</td>
<td>1917</td>
<td>2 KB</td>
<td>72</td>
<td>61</td>
</tr>
<tr>
<td>In re Piers</td>
<td>1898</td>
<td>1 QB</td>
<td>628</td>
<td>60</td>
</tr>
<tr>
<td>Jackson v Rotax Motor and Cycle Company</td>
<td>1910</td>
<td>2 KB</td>
<td>937</td>
<td>61</td>
</tr>
<tr>
<td>Jebara v Ottoman Bank</td>
<td>1927</td>
<td>2 KB</td>
<td>254</td>
<td>61</td>
</tr>
<tr>
<td>Jenkins v Bushby</td>
<td>1891</td>
<td>1 Ch</td>
<td>484</td>
<td>60</td>
</tr>
<tr>
<td>Joshua Henshaw and Son v Rochdale Corp</td>
<td>1944</td>
<td>KB</td>
<td>382</td>
<td>63</td>
</tr>
<tr>
<td>Joyner v Weeks</td>
<td>1891</td>
<td>2 QB</td>
<td>31</td>
<td>60</td>
</tr>
<tr>
<td>Kay v Field &amp; Co</td>
<td>1886</td>
<td>10 QBD</td>
<td>241</td>
<td>63</td>
</tr>
<tr>
<td>Lady de la Pole v Dick</td>
<td>1885</td>
<td>29 Ch Div</td>
<td>351</td>
<td>62</td>
</tr>
<tr>
<td>Lascelles v Butt</td>
<td>1876</td>
<td>2 Ch Div</td>
<td>588</td>
<td>60</td>
</tr>
<tr>
<td>Leigh v Brooks</td>
<td>1876</td>
<td>5 Ch Div</td>
<td>592</td>
<td>62</td>
</tr>
<tr>
<td>Lowe v Holme and Anor</td>
<td>1883</td>
<td>10 QBD</td>
<td>286</td>
<td>63</td>
</tr>
<tr>
<td>Marsh v James</td>
<td>1889</td>
<td>40 Ch Div</td>
<td>563</td>
<td>61</td>
</tr>
<tr>
<td>Miller v Pilling</td>
<td>1882</td>
<td>9 QBD</td>
<td>736</td>
<td>62</td>
</tr>
<tr>
<td>Ormerod and Others v The Todmorden Joint-Stock Mill Company (Limited)</td>
<td>1882</td>
<td>8 QBD</td>
<td>664</td>
<td>61</td>
</tr>
<tr>
<td>Osenton v Johnston</td>
<td>1942</td>
<td>AC</td>
<td>130</td>
<td>32</td>
</tr>
<tr>
<td>Pirelli v Oscar Faber &amp; Partners</td>
<td>1983</td>
<td>2 AC</td>
<td>1</td>
<td>235</td>
</tr>
<tr>
<td>Porter v Tottenham Urban Council</td>
<td>1915</td>
<td>1 KB</td>
<td>778</td>
<td>63</td>
</tr>
<tr>
<td>Potter v Jackson</td>
<td>1880</td>
<td>13 Ch Div</td>
<td>845</td>
<td>62</td>
</tr>
<tr>
<td>Presland v Bingham</td>
<td>1888</td>
<td>41 Ch Div</td>
<td>268</td>
<td>60</td>
</tr>
</tbody>
</table>

**Page 16**
Proudfoot v Hart [1890] 25 QBD 42
Phillips v Homfray [1883] 24 Ch Div 439
Reigate v Union Manufacturing Company (Ramsbottom) Limited and Elton [1918] 1 KB 592
Cop Dyeing Co Ltd [1918] 1 QB 54
Richards v May [1883] 10 QBD 400
Roche foucauld v Boustead [1897] 1 Ch 213
Rockett v Clippingdale [1891] 2 QB 31
Rose and Frank Co v J.R. Crompton and Bros [1923] 2 KB 271
Rosenthal v Alderton and Sons [1946] KB 375
Rowcliffe v Leigh [1876] 4 Ch Div 661
Saxby v The Gloucester Wagon Company [1881] QBD 305
Strongman v Sincock [1955] 2QB525
Sutcliffe v Thackarah [1974] AC 727
T Tilling Limited v Dick Kerr & Co Ltd [1905] 1 KB 562
Tucker v Linger [1882] 21 Ch Div 18
Turnock v Sartoris 43 Ch Div. 150 (1889)
Union Bank of London v Ingram 20 Ch Div 463 (1882)
Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 529


Woolfe v Wexler [1951] 2 KB 154

Table of Unreported cases
(B. Denotes page number in Bibliography)

Albert Colegate v D Raymark (Married Woman) [1949] J.114/6 p.181 123,130,152 [PRO II (FR) 082]
Allied Ltd v Peerless Representative (London) Ltd [1947] J.114/3 p. 64 [HPIM1193]
Alloy and Fibreboard Co Ltd v F Superstein [1966] J.115/6 Case file: 120,253
Barrow Brothers (Builders Lancaster) Limited v Haworth [1962] 110,143,211,
J.116/1 p. 296. [CIMG 0200] 213. B.37,56

17
Cecil v Ewell [1948] J.114/1 p. 252 109,113,132
Cowley Concrete Ltd v Alderton Construction Co.Ltd. [1966] J.115/1 247. B.4
Case File [HPIM 2685]
DNL Stepgamy Limited v Millicent (Birmingham) Limited [1950] 223
J.114/14 p.247. [CIMG 0089]
and 199 [SH 101132-101134]

[HPIM2800]

[HPIM 2010]

Gloucestershire County Council v Henry William Richardson (Trading as W.J. Richardson & Son) and Ocean Accident and Guarantee Corporation Limited, [1966] Case File [HPIM 2733]


J.116/1 p.170 [ CIMG 0184.] B.31


B.61

B.27

Jack Hyman Sockel v Isaac Francis Salmon Matthew Francis [1950] 135,142
J.114/15 p.179 [CIMG 0466-68] B.63

James Conlon T/a J Conlon & Sons v Lloyds (Builders) Limited [1952] 115,201
J. 114/21.64[CIMG0063] B.36


[FR 072-074]

Jayes (Engineers) Ltd v Housegoods Limited. [1949] J.114/6 p.79 [PRO II (FR074)] 130,202, 223


B.47


B.34-35


B.82

B.45

Mory & Co Limited v Regan Brothers (Haulage) Limited [1965]
J.116/3 p. 25 [CIMG. 0098] B.42
[CIMG 0108] 24 March 1966
B.108
Plant Machinery v HP Thomas Limited [1960] J. 114/2. p.93
[HPIM 1790]
R. Corben & Son Ltd v Forte (Olympics) [1962] J.116/1 p.242 [HPIM 2088]
B.34
B.111
[HPIM 1963] also: [CIMG 0160; and SH 101353] B.123
B.60
[CIMG 0190]
[HPIM 2113]
Shopfitting Centre Ltd v Revuelta [1962] J.116/2 p.5.[SH 101775]
B.37
Titler v Brown & Another [1956] J114/35 p.100 [HPIM 2771-2773] and [CIMG 0089] 139
T kendel & Co v AT A Scientific Progress Ltd [1951] J.114/16 p.133 70
W H Armfield Ltd v John England Perfumers [1950] J.114/19 p.82 134
[HPIM 2186] B.70
[HPIM 1217] 202
William George Mellie v Mrs A Mellie (Married Woman) [1947] 112,125,220 B.113
J.114/4 p.112 [HPIM1217] 109
[CIMG 0049]
Bibliography

Parliamentary Papers and Reports 1
Civil Judicial Statistics 2
House of Commons Debates 2
National Archive Materials 3
Papers of Roundel Palmer, Lord Selbourne 6
Books 6
Reference Books 7
Journals 7
Newspapers 9
Correspondence 10
Appendices 11
Chronologies 14
Sample Return of Judicial Statistics 1880 19
Data Collection: Official Referees’ Notebooks and Minute Book records 22

Statistical data spreadsheets 126
The true function of the court, it is submitted, is especially in commercial cases under consideration, not to conciliate or exhort the parties, as is sometimes suggested, much less to hurry them, or to deprive them of perfect freedom of action, but to use the available machinery of litigation to enable them to settle their disputes according to law without grievous waste, and unnecessary delay and anxiety: and in particular to show them how this, if desired, may be accomplished. The only so-called concessions which the parties can be said to make are made not only voluntarily, but in their own direct pecuniary interest. This has little, or nothing, to do with the common-place saying of ordinary life that a man loses nothing in the long run by forbearance, fair dealing, or generosity.

Sir Francis Newbolt

CHAPTER 1

A STUDY IN RUDIMENTARY CASEFLOW MANAGEMENT

1.1 Incipient micro-caseflow management

This study makes the large claim that micro-caseflow management was practised by the Official Referees in the early part of the twentieth century decades before the 1996 civil justice procedural reforms. In it we also discern the judicial sponsorship of settlement as advocated and practised by Sir Francis Newbolt and his colleagues in that court. Such study may lead us to draw wider conclusions in the context of civil justice. This thesis seeks to establish that a rudimentary case management regime was practised in this court as early as the 1920s. This was long before other courts and jurisdictions experimented in these interlocutory practices, although the process of preliminary issues was advocated as far back as 1867 in the First Report of the Commissioners. Two facets of caseflow management are explored at micro and macro-level. Micro, in the context of how the referees managed their work more effectively and efficiently, and macro in the sense of how the Judicature Commission and the superior judiciary facilitated the more efficient delegation and disposal of business.

This study concerns two significant periods in the evolution of micro-caseflow management in that court: 1919-38, and 1947-70. Within this second period a more detailed forensic study is focussed upon the years 1959-62 when the court’s Minute Books provide the first definitive evidence of time expended. That is supported by a further detailed study of the years 1965-67. Whilst there is some empirical evidence of rudimentary caseflow management in the Lord Chancellor’s Office files, and in the

2 F. Newbolt, ‘Expedition and Economy in Litigation’ (1923) 39 LQR 440.
3 Official Referee(s) hereafter referred to as "referee(s)." The “court” is the Official Referees’ court unless otherwise indicated.
contemporaneous judicial records of the court itself, as well as in an article authored by its chief exponent, Sir Francis Newbolt,\(^6\) in *The Law Quarterly Review*, there is little evidence of it in the official law reports. After Newbolt’s retirement the practice evolved through his successors Sir Tom Eastham QC,\(^7\) Sir Walker Carter QC,\(^8\) and Sir Norman Richards QC\(^9\)

1.2 Caseflow management and theory

Caseflow management in this context is synonymous with what is identified in Chapter 3 as Newbolt’s “Scheme.” This has two principal manifestations. The first is the activist approach involving a more robust stance of judicial management demonstrated by judicial intervention at interlocutory and trial stage. The clearest demonstration of this was where Newbolt led settlement discussions in chambers. The second manifestation is a more traditional role, a passive approach, with the referee being non-interventionist during the interlocutory and trial stages. In the latter, the parties manage progress, but the referee facilitates resolution by granting adjournments or stays to assist settlement discussions between the parties. These approaches are illustrated by case studies and examples in Chapters 3 and 4 covering the pre and post-war eras.

We need to be clear that Newbolt’s “Scheme” was a self-conscious scheme; he invented it. This is confirmed in his report to Lord Birkenhead\(^10\) dated 5 July 1920, and in his seminal article\(^11\) as well as other evidence analysed in Chapter 2. He clearly believed in the efficiency of his “Scheme” from which my theory of micro-caseflow management emanates.

1.3 Purpose of research study

The central purpose of this study, confined to the research periods, is to consider the origins and evolution of caseflow management in this court and the various devices associated with it in bringing about a more expedient process. The study also considers those involved and why it was invented. It gives an explanation as to the origin of a form of caseflow management in England in the 1920s, and describes the interlocutory procedural devices used by the referees from that time. The process or “Scheme” is analysed in Chapters 3, 4, and 6 and examined in quantitative terms in Chapter 5. The

---

\(^{*6}\) n.2.

\(^{7}\) 1936-1954.

\(^{8}\) 1954-1971.

\(^{9}\) 1963-1978.

\(^{10}\) LCO4/152. HPIM 561-567 and CIMG 0008

\(^{11}\) n.2.
latter demonstrates a time saving where it appears to have been applied. Newbolt and
his colleagues (like arbitrators) could only use such devices where the parties consented.
Incidents of caseflow management are illustrated in the cases of Newbolt, Eastham and
Carter in varying degrees, and whilst Newbolt’s reports and writings confirm the
existence of the “Scheme,” no contemporaneous judicial records (notebooks or Minute
Books) of his time have survived the war. On the other hand, there is a considerable
amount of archival material of his successors that survives as described below.

1.4 Importance and Interest
The “Scheme” is important in understanding to what extent appropriate caseflow
management can be effective at a subordinate judicial level and in ascertaining the
relationship between informal and formal dispute resolution in a court setting. It is
important for other reasons because:
1. It demonstrates macro-caseflow management by judicial delegation and the
   advantage of a subordinate judge;
2. It shows the benefit of informal proceedings at an interlocutory stage with a
   subordinate judge who understands the issues in the case. Such judge may act as
   a facilitator promoting earlier settlement with party consent and without
   unnecessary waste of time or money in certain cases;
3. It demonstrates how time and costs may be saved by an interventionist (activist)
   and a non-interventionist (passive) approach to the case.
4. It considers the relative success of the “Scheme” in qualitative and quantitative
   terms;
5. It analyses the relative success of the “Scheme” in qualitative and quantitative
   terms;
6. It synthesises the study with recent trends in civil justice and ADR.

The hypothesis in favour of efficient referee caseflow management is of particular
interest in the context of the times. Newbolt wrote his report in 1920. This was eight
years before a justice of the Municipal Court in New York wrote about his attempts at
conciliation and mediation in court in the mid 1920s.12 Newbolt was not undertaking the
same activity as Justice Lauer. He was not conciliating or mediating at trial stage, but
facilitating settlement at the first summons for directions hearing.

12 Lauer, ‘Conciliation-A Cure for the Law’s Delay,’ 156 ANNALS 55 (1928)
Here we trace the origin of caseflow management in England and consider Newbolt’s model “Scheme” for earlier resolution. Our analysis juxtaposes the implementation of informal and formal management methods extending the judge’s traditional non-interventionist role. It is argued that cases were resolved more efficiently because of the subordinate status of the referee’s office which enabled informal “discussions in chambers.” This would be difficult for a High Court judge who could be criticised for compromising his independence. In any event the High Court judge had no real procedural opportunity for this because he did not give directions for trial. The “Scheme” was operable at the first summons for directions stage after referral from a master or High Court judge because the pleadings would be closed and all material issues identified.

Such discovery of early caseflow management is of importance and interest to all those interested in civil justice reform. This is because the traditional perception of the English High Court judge before 1996 was that he did not enter the arena or the debate between the parties. He was not a manager of the process, or an interventionist. He was not concerned with settlement, or with interlocutory matters before trial. He remained aloof, symbolised by his elevated physical location in the courtroom itself. There could be no suspicion of bias; the judge had to be seen to be independent. Thus, we may argue that a subordinate judge, operating a more informal process, through Newbolt’s “discussions in Chambers,” might be less prone to such suspicion, and, more importantly, resolve cases quicker and more cheaply. Newbolt’s “Scheme” and this study therefore questions our perception about a judge’s role and what it should be.

There were differing views about the status of the referee.

Roland Burrows described them as:

---------------

 Roland Burrows, 56 LQR 504-513 at p. 506.

 On the other hand, Newbolt claimed:

--------------------

13 n.5 p. 438.
15 Burrows, Roland Official Referees (1940) 56 LQR 504-513 at p. 506.
16 LCO 4/152 Newbolt to Schuster 1st April 1923. [HPIM 0637]. As may be discerned from the subsequent analyses in Chapters 4, 5, and 6 as well as the appendices such heavy cases appear to have been the exception and not the norm. Sir Claude Schuster was the Lord Chancellor’s Permanent Secretary (1915-44) and Clerk of the Crown in Chancery (1944-54).
or, as Eastham argued in his Memorandum:\footnote{LCO 4/417. [HPIM 0938]}

The work done by the Official Referees is only comparable with that done by High Court Judges when trying long non-jury actions and it is more difficult, important and requires more legal experience (all these Official Referee’s are King’s Counsel of at least 10 years standing) than the work of County Court Judges, Stipendiary Magistrates, Masters of the High Court and Registrars in Bankruptcy.

And subsequently Sir Brett Cloutman’s expressed the view:\footnote{Official Referee (1948-63) LCO 2/7739 [HPIM 0814] Memorandum citing Order 36A Rule 7 RSC}

The truth is that for half a century or more he has not been a referee at all, but a judge of the heaviest cases in contract.

The referee’s role was exceptional for the reasons explained in Chapter 2 embodying a combination of functions resembling:

- a jury in giving a verdict;
- a master in dealing with interlocutory issues,
- an arbitrator in acting with the parties consent,
- and a judge in conducting the hearing and giving judgement.

He was a quadri-functionary created by the Judicature Commissioners who were influenced by a number of factors described in Chapter 2. As The Times reported the referee was “one of the most striking novelties in the Judicature Act of 1873.”\footnote{The Times May 29, 1876; p. 11; Issue 28641; col A.} Yet the referees had what Edgar Faye termed “an inauspicious start.”\footnote{E.Fay, \textit{Official Referees’ Business}, p.17. (London: Sweet & Maxwell, 2nd ed, 1988)}

The utility of the office did not really emerge until Newbolt’s time and the acquisition of the Queen’s Bench non-jury list. This sudden heavy influx coincided with Newbolt’s innovations. He was able to effectively manage interlocutory and trial process. Interlocutory process was more effective because of the commercial approach adopted by solicitors who readily appreciated the benefit to clients of earlier settlement.

It is contended in Chapter 5 that the “Scheme” may have been used in up to a quarter of all referrals.\footnote{See paragraph 5.9.3. and Table T 5.39}

1.5 Hypothesis

The hypothesis is that the invention and evolution of a rudimentary caseflow management and consensual interlocutory process made referees more effective. This is demonstrated in Chapters 3 and 4 by examples of Newbolt’s activist style compared to Eastham’s passive approach. We also discern an amalgam between the two facets of
macro and micro caseflow management inherent in the organisational reforms of Selbourne and Cairns, and the Newbolt “Scheme.” The latter having two manifestations: the traditional and more passive approach as demonstrated at times by Eastham and Carter, and again, the activist approach of Newbolt and also of Carter considered in Chapters 3 and 4.

The hypothesis is further demonstrated by quantitative and qualitative analyses and literature reviews in other chapters. The underlying concept here is that the referees developed their own judicial culture in dealing with complex technical cases making their practice distinctive facilitated by their unique function and role in the High Court.

1.6 Research questions

To test the hypothesis that the invention and evolution of a rudimentary caseflow management and consensual interlocutory process made referees more effective, we address the following research questions:

(a) why the office of referee was invented and what caused and facilitated case-flow management?

(b) what was Newbolt’s “Scheme”, and what were the reasons for his application of this rudimentary form of case management?

(c) what was the impact of such “Scheme” according to a literature review of the archival materials that survive, and what conclusions can be drawn?

(d) to what extent did Newbolt’s “Scheme” promote expedition and economy in the court’s work?

(e) to what extent, if at all, did the referees promote settlement and save costs?

(f) what was the impact of this “Scheme” as ascertained by qualitative and quantitative analysis of Judicial Statistics and the original court records?

1.7 Use of research

This research examines the effectiveness of the “Scheme.” Its value lies in its challenge to the traditional view of the judge’s role in litigation: that it is no part of the judge’s duty to be involved in settlement. In the English adversarial system it was for the parties to present and prove their respective cases. If they chose to settle it was a matter for them. In that system little attention was paid to the judge’s case management role save some debate from time to time as to comparisons with the inquisitorial system and
interventionism. At the time of Evershed it was thought that "a robust summons for directions" would resolve matters more quickly. But generally case management was unknown in England. Thus, this discovery may come as some surprise. The findings are of considerable interest in the context of what has now been introduced right across the court system without knowledge of this. The research highlights the role of an inferior judge and the advantage that enjoyed; indeed it may provide a role model. It thus indicates a secondary theme as to the role of the judge in relation to settlement and possibly suggests a way forward without giving offence to the concept of judicial independence. Newbolt's singular achievement seems to be that he was able to facilitate settlement without compromising the procedural or substantive legal rights of the parties either procedurally or substantively. There is no record of any referee ever being appealed in relation to, or any critique of the "Scheme." Whilst Chapter 3 considers the understandable reserve of Lord Birkenhead such reservations did not restrain or prohibit Newbolt's practices. The "Scheme" should not therefore be seen as an impediment to justice, or an abuse of judicial process.

We conclude that the use of the research is to allow us to consider what a judge is and what he ought to be in the context of caseflow management.

1.8 Evolution of the referee

This study traces the evolution of the referee over the course of a century from 1867 to 1967. In naming the new court officer a "referee" the Judicature Commission deliberately invented a new subordinate judge that would enable High Court judges to function more effectively. At macro-level, the referees reduced the High Court caseload and backlog. At micro level, they revolutionised the judicial process inventing a rudimentary form of caseflow management. An essential ingredient of that was their active involvement in earlier resolution. They, in particular, Newbolt, shifted the focus from trial to informal case management resolution which is analysed in Chapters 3 and 4. Such development at micro level might not have been foreseen by the Commissioners, but there were lessons learned from the pre-1873 role of a referee that suited their objectives.

---

22 Final Report of the Committee on Supreme Court Practice and Procedure. July 1953 (Cmd. 8878). This had been appointed on 22 April 1947 under the chairmanship of Sir Raymond Evershed subsequently Master of the Rolls to enquire into the practice and procedure of the Supreme Court and to consider what reforms should be introduced for the purpose of reducing the cost of litigation and securing greater efficiency and expedition in the despatch of business.
That earlier role dated from the eighteenth century where matters of detail or account “ad computandem” were referred to a master or an arbitrator. *Woodbridge v Hilton*, was one of these early referrals to an arbitrator to settle “all differences save costs.” References were made under the Common Law Procedure Act 1854 and in the Court of Chancery described in Chapter 2. There were references from the Judicial Committee of the Privy Council in cases such as, *Hutchinson v Gillespie*, and in *Commercial Bank of Canada v Great Western Railway Company of Canada* in 1865, where counsel included Sir Roundell Palmer, and Sir Hugh Cairns with Lord Chelmsford presiding. Interestingly all three were involved in the creation of the referees’ office which in itself provided an excellent example of the blending of Chancery and Common Law practice, a principal feature of the Judicature Acts.

The first referees were appointed under Section 83 Judicature Act 1873. The Act invested the referee with the powers of a High Court judge giving referees more teeth than the prior legislation or Chancery practice. We can see in Chart C.1.1 below how their jurisdiction grew with referrals increasing from under 100 in 1877 to over 300 in 1890.

**Chart C.1.1 Referrals 1876-98**

![Chart showing referrals 1876-98](chart.png)

*Source: Returns of Civil Judicial Statistics 1876-98*

---

23 28 Eng. Rep. 1202 1557-1865
24 Other cases included the referral to a County Court judge having High Court powers. *Re: Anna Booth.* 5 C.B. (N.S.) 539. p.218. Costs were taxed on High Court basis per Crowder J.
A steep rise in the 1880s coincided with substantial amendments to the *Rules of the Supreme Court*. Order 36 dealing with referees was amended giving them power to hold trial at any place,\(^{27}\) order discovery and production of documents,\(^{28}\) order costs at interlocutory and judgment stages,\(^{29}\) and significantly a power to give orders on directions after reference.\(^{30}\) It was that power that enabled Newbolt to initiate his innovative chambers discussions as described in Chapter 3.

In 1888 referees were permitted to transfer cases between each other\(^{31}\) and in 1889 the Senior Official Referee\(^{32}\) was required to make a return of cases to the Lord Chancellor and Lord Chief Justice so that work could be monitored. In 1893 referees were empowered to inspect property, an important caseflow management tool.\(^{33}\) The Judicature Act of 1894 provided that appeals lay to the Divisional Court. In 1900 the referees moved premises from their chambers in Portugal Street to the West Wing of the Law Courts.

In 1920 a dynamic era of procedural innovation began when Lord Birkenhead appointed two referees: George Scott and Francis Newbolt, who joined Sir Edward Pollock. Their appointments were practically coincidental with the acquisition of the non-jury Queen’s Bench list which trebled the workload of the referees in the two years from 1919 to 1921. Such a sudden and steep rise in caseload necessitated the invention of a more efficient working system in the form of the “Scheme.” Scott invented his “Scott” or “Scott’s schedule” as Eastham called it. This document summarised the pleadings in terms of: the items in dispute, their value, description of the contract or the works, the remedial work and its cost with columns in the schedule for the parties’ comments and the referees’ decision. This device facilitated early settlement by defining the issues of fact and quantum and may be considered an element of the “Scheme.”

It is arguable that the referees’ profile was raised by Section 1 Administration of Justice Act 1932 enabling appeals to the Court of Appeal on a point of law only, circumventing the Divisional Court, so that appeals from the referees were to Lords Justices of Appeal.

---

\(^{27}\) Order 36 Rule 48. RSC 1883.

\(^{28}\) Order 36 Rule 50. RSC 1883

\(^{29}\) Order 36 Rule 5. RSC 1883 (Dec. 1899)

\(^{30}\) Order 30 RSC 1883. Referees gave directions soon after the referral.

\(^{31}\) Order 47A RSC 1883 (Dec. 1888)

\(^{32}\) The Senior Official Referee was so called because he was the most senior serving referee. He had no particular authority over the other referees save that his clerk on his advice allotted cases by the rota.

\(^{33}\) *McAlpine v Calder* [1893] 1 Q.B.545
and not to High Court judges. This resulted in a temporary loss of professional negligence actions as there was no appeal on a matter of fact. This however was subsequently restored under Order 58 r.4 (1) Rules of the Supreme Court.

In 1938 referees were accorded the title of “Your Honour” following concern by Newbolt and his colleagues over status and ranking below County Court judges. The establishment of four referees in 1873 was reduced to three in 1889 and further reduced to 2 in 1932 as in Table T.1.

<table>
<thead>
<tr>
<th>Years</th>
<th>1919-31</th>
<th>1932-42</th>
<th>1943-47</th>
<th>1948-56</th>
<th>1956-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>Numbers</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

Diminution in manpower in the periods 1932-42 (from 3 to 2 referees) and 1956-70 (from 4 to 3 referees) was a critical factor, despite evidence of rudimentary caseflow management activity. These reductions took place at times when referrals were increasing the pressure on the referees to be more efficient. This increasing jurisdiction is more particularly described in chapter 2 and their effectiveness analysed in chapter 5.

Whilst the Evershed Committee made a number of recommendations in the early 1950s it did not recommend an upgrade in the referees’ status to that of High Court judge. The reason was that Sir Tom Eastham Q.C in his evidence to the committee advised against such change. The Committee stated:

> We are satisfied that the Official Referees fill a very useful function in particular types of case and that a change in their status would bring about no advantages to the litigant and would not achieve any saving in costs. We therefore recommend no change in this respect.

It is significant that the Committee considered there would be no advantage to the litigant here. Whilst the referees’ wanted to abolish referrals for enquiry and report under Section 88 Judicature Act 1925 the Committee favoured the widening of jurisdiction for “convenience, economy, expedition or otherwise.” but would not recommend the abolition of enquiry and report, because of the advantage to the litigant.

---

34 Rules of the Supreme Court (No.4), 1932; Appeals from Official Referee’s Order, 1932. Appeals on points of law could be brought against an interlocutory order or judgment of the referee. Conway (Theo) Ltd v Henwood (1934) 50 T.L.R. 474, C.A.
35 Osenton & Co v Johnson [1942] AC 136 where the House of Lords decided that a party could be deprived of a right of appeal in the event of an error of fact by the referee.
36 Permitted such an appeal on a question of fact involving a charge of fraud or a breach of professional duty and then further to permit an appeal on a matter of fact with leave of the referee or the Court of Appeal.
37 n.22 p.162.
The implication in both cases was that a subordinate judge might affect resolution more quickly and cheaply than a High Court judge. After Evershed, the most significant change was the abolition of the office of the Official Referee in 1970 under the Courts Act 1971 following the recommendations of the Beeching Report. Under this statute referees became circuit judges.

1.9 Limitations on research

This study has been constrained by the surviving contemporaneous documentary records of the periods 1867-87 and the main study periods of 1919-38 and 1947-70. References are made to the First Report of the Commissioners, and to correspondence with various Lord Chancellors’ Secretaries. This work was principally sourced from the National Archives, with documentation from the British Library, BLPES, The Times archive, Judicial Statistics, the Law Reports and Journal publications. It focuses on Newbolt, his contemporaries and his successors. The following archive series were examined at the National Archives:

<table>
<thead>
<tr>
<th>Prefix/reference</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>T.</td>
<td>H.M. Treasury Records</td>
</tr>
<tr>
<td>P.R.O.</td>
<td>Domestic Records of the Public Records Office.</td>
</tr>
<tr>
<td>H.O.</td>
<td>Home Office records.</td>
</tr>
</tbody>
</table>

The essential evidence upon which this study is based is recorded in a digital archive of approximately 3,850 documents in the HPIM, CIMG, S.H., A, and I.M. digital camera series taken by the author at the National Archives in Kew between 2003 and 2006. It comprises: 23 Lord Chancellors Office files, 6 files of records of the Supreme Court of Judicature and related courts; 5 Home Office files, 2 Treasury files, 54 Notebooks of Sir Tom Eastham, Sir Kelly Walker-Carter and Sir Brett Cloutman V.C, QC and three Minute Books.

The Lord Chancellor’s files (“L.C.O.” Series) cover the periods between 1921 and 1971 and relate to matters of jurisdiction, appointments, salaries, duties, powers and status, whilst the J series contain a random sample of case files, judges notebooks and minute books. The notebooks extend over the period 1944-84; case files from 1962, and Minute

---

40 Report of the Royal Commission on Assizes and Quarter Sessions 1969 (Cmnd. 4153)
Books from 1959. None of the judges’ notebooks or personal records of the pre-war period survive, neither does there exist any *Judicial Statistics* for the wartime period and the immediate post-war period to 1946. These materials appear in categories J.115, J.116, and J.114. These materials are not comprehensive.

It was only in 1974 when Lord Denning enquired into the state of these records as Superintendent of the Public Records Office that the referees were asked to retain their records for a specified time. The principal research has therefore focused on these archives and particularly the judges’ notebooks for evidence of caseflow management. With the exception of Eastham’s notebooks, the other referees’ notebooks and correspondence were barely legible and could only be read with some difficulty or computer aided enhancement.

*Judicial Statistics* are also incomplete and no records are available for this court in the years 1940-46. This is confirmed by the House of Lords librarian. The format of the *Judicial Statistics* was changed in 1920 and descriptive analysis as to the nature of cases discontinued. Further research was undertaken at the British Library and the Lambeth Palace library, with searches and enquiries being made at the High Court library, the Technology and Construction Court, and The House of Lords library. Informal discussions were held with Mr Justice Dyson (as he then was), Mr Justice Jackson and Judge Anthony Thornton QC, and former Judge Edgar Fay QC. These judges, who formerly practised as counsel in the court, gave me the benefit of anecdotal reminiscences and they confirmed more enlightened approach of some referees.

1.10 Methodology

The initial research for this study was carried out at B.L.P.E.S. consisting of a study of the historical context and background against which the judicature reforms of the nineteenth century took place. This was important to establish the reasons for the creation of the office and the difficulties with the system at that time. This initial research focussed upon the *First Report of the Commissioners* (1869) and the earlier and subsequent legislation regarding referrals. This research formed the basis for Chapter 2: In Chancery. A review was also carried out of all the reported cases featuring

---

42 PRO 69/269.
43 Author’s Archive taken with four types of digital camera (ranging from 2-9 mega pixels) at the National Archives under special licence.
44 Letter from Mr Vollmer. Bibliography and Appendix p.127.
45 Considerable amounts of useful information were omitted e.g. the number of cases defended and undefended.
referees and of journal articles. Apart from the reported cases describing the jurisdiction of the court and Judge Edgar Fay's book *Official Referees' Business* very few published works exist, although there is an abundance of literature on the subject of construction law.

Apart from the Judicature Commissioners' recommendation for the creation of the office which appertains to macro-caseflow management, there was no evidence of micro-caseflow management. This, if it existed, could only be found in court records or other contemporary documents. There was some hint of this in Fay:47

*...they not infrequently themselves make suggestions with a view to rendering the trial more manageable or shorter or less expensive.*

Save for Newbolt's article in the *Law Quarterly Review* that refers to what is described here as Newbolt's "Scheme," there was no recognition in the *Rules of the Supreme Court* that the "Scheme" ever existed. Not even Newbolt's books: *Out of Court* and *Summary Procedure in the High Court* give any hint of the practices he employed as a referee, although in the latter his mastery of procedural law is evident. If such evidence existed therefore it had to be found in the surviving archival materials. Thus, the most important research for Chapter 3 and subsequent chapters focussed on the contemporaneous materials at the National Archive with some ancillary material at the British Library and Lambeth Palace Library; in particular, the files referred to at 1.9 above with initial emphasis on the Lord Chancellors' files. These revealed Newbolt's correspondence with Birkenhead which led me to the discovery of Newbolt's "Scheme." This provided key information for the qualitative analyses and literature reviews in Chapters 3 and 4 as well as background for Chapter 5. Chapter 5 presents a quantitative analysis of *Judicial Statistics*, the Minute Books and judges' notebooks based on the surviving judges notebooks (1944-70) and Minute Books (1959-67). All the judges' notebooks for 1944-70 were reviewed with 26 being selected, digitally photographed, and examined for evidence of the "Scheme." This selection was made so that each year was covered by at least one notebook, save that all notebooks and Minute Book records were selected for the quantitative analyses of 1959-62 and 1965-67 in Chapter 5. That chapter and Chapter 6 contains analysis of existing *Judicial Statistics* between 1919 and 1970. The selection was made after review of the National Archive

---

46 n.20  
47 n.20 p. 7 para 1-06.  
48 n.2 p.427.  
49 Newbolt, Sir Francis. *Out of Court*. (London Philip Allan & Co. 1925)  
50 Newbolt, Frank. *Summary Procedure in the High Court* (London: University of London Press. 1914)
Catalogue and a preliminary review of a selection of Notebooks. Once that initial study had been carried out after examination of the relevant Lord Chancellors a review was undertaken of the notebooks from 1944 to 1960.

Each year's statistics were examined and photographed then inserted in the appended spread sheet. Various statistical tests and analyses were conducted and formulae applied to ascertain the average efficiency of the court and to measure backlog. A quantitative examination was then conducted of referees' Minute Books from 1959-62 and 1963-65 to ascertain the actual average time recorded with a view to comparing the non-case managed and case managed time.

Detailed research was carried out on the Times digital archives for bibliographical references to the referees and books and articles written by them. A literature review of modern case management was carried out by reviewing the recent civil justice reforms, the CPR, Lord Woolf's Reports and his lectures and the writings of leading academics here and in the United States.

In terms of research methods, Chapter 2 is written in the form of a literature review and qualitative analysis of the Commission, its reports and other contemporaneous materials. Chapters 3 and 4 follow the same methodology save that they focus on National Archive materials described above. The literature review in Chapter 4 like that of Chapter 3 refers only to original documents filed at the National Archive, they being: the Lord Chancellors' Office files in L.C.O Series 4; being 4/152, 4/153, 4/154, and 4/417; the J. Series Referees' Notebooks for the period 1946-1960, being J.114/3, J.114/4, J.114/14, J.114/15, J.114/16, J.114/17, J.114/21, J.114/28, J.114/34, and J.114/35; Case files J.115/1, J.115/6, J.115/10, J.115/23, J.115/28, J.115/49, and J.115/56. Minute Books for the period 1959-1967 being J.116/1 to J.116/4 inclusive were also reviewed for this purpose. The study was extended however after numerous requests and enquiries concerning missing Minute Books as a result of which J.116/2 and J.116/4 were discovered.

All the material for this study was selected after a thorough review of the above evidence which is catalogued in the Bibliography. All relevant files were digitally photographed.

The surviving early court files were also examined and a selection was made on a

---

52 These being notes of the time spent in the court.
53 Lord Denning agreed that only a sample of these files should be retained. PRO. 69/269
random sampling basis. Two case files outside the research period (1973 and 1974) were examined to see whether there were any significant departures from the “Scheme,” as described in the second research period.

Chapter 6 presents a further qualitative and quantitative analysis as well as a synthesis of the preceding chapters based on the same sources, with Chapter 7 being a synthesis of earlier findings. Chapter 8 synthesises the study in relation to its contribution to current literature on ADR and Access to Justice.

1.11 Organisation of study

Thus in order to understand these phenomena and the effect and evolution of Newbolt’s “Scheme” this study is organised into eight chapters.

The first explains the research and subject matter.

The second considers the inception of micro-caseflow management.

The third describes the invention of the “Scheme”, the theory and its elements.

The fourth is a continuation of the third with post war models of caseflow management in the court.

The fifth provides a quantitative analysis from the published public data and unpublished archival data.

The sixth is a further analysis of the evolution of caseflow management after the war and the seventh chapter provides a synthesis of earlier findings. The eighth concludes with recommendations and conclusions.

What emerges is an interesting juxtaposition between the official judicial role and the informal process practiced by the referees demonstrating the effects that may be obtained with elements of micro-caseflow management. This is set in context in chapter 8.


1.12 Contribution to research in civil justice and dispute resolution

The study makes the following contributions to research in this field:

1. The very important discovery as to referee caseflow management in the 1920s and onwards;
2. It demonstrates that the referees were ahead of their times in procedural development;
3. It attempts to measure judicial efficiency in relation to case managed cases and non-case managed cases;
4. It analyses Judicial Statistics as not previously analysed in any publication in England regarding this court;
5. It suggests that there is a benefit in having subordinate judicial officers for certain roles;
6. It suggests that part of the judicial function encompasses settlement in certain circumstances;
7. It further suggests that there might be advantage to the extent that the proceedings are in a court of law, and resolution achieved according to rules of court and to law.
8. Newbolt’s “Scheme” provided a judicial blueprint for more expedient and cost effective litigation.
9. It hypothesises that this rudimentary process may have been used in up to a quarter of all referrals or used in some facet in 5,404 cases and was capable of producing an 80 per cent saving in expert witness costs in Newbolt’s time.

---

56 See: Table T.5.35 see also para. [7.3.3]
57 n.2 p. 427 see also para. [7.5.8]
CHAPTER 2

IN CHANCERY: THE INCEPTION OF MICRO CASEFLOW MANAGEMENT.

This chapter is both a literature review and a qualitative analysis in which we consider:

> the symptoms of systemic failure in the pre-1873 system which led to the creation of the referee's office;
> the relevant recommendations of the Judicature Commissioners and the reasoning behind them;
> their objectives at macro-level and those of Newbolt at micro level;
> the referees' diverse jurisdiction which provided a creative foundation for the evolution of interlocutory innovation.

2.1 Macro-management problems in the civil justice system

The problem with the legal system in the early to mid-nineteenth century which led to the judicature reforms of the 1870s was endemic. The system was described by the Attorney General on 9 June 1875 as:

> "...having grown up during the Middle Ages, was incapable of being adopted to the requirements of modern times"

and that:

> it was beyond controversy, that in many instances our procedure was impracticable and inconvenient, for no one practically conversant with its details could deny that there were certain great defects in them which ought to be remedied.

The Attorney in the same debate spoke of the great waste of judicial power within the Common Law Courts with four judges on the same bench and the "great defect" represented by the Terms and Vacations of the legal year. The great defect he further described as the divide and conflict between the competing jurisdictions of equity and Common Law. This resulted in delay, duplication and contradictory decisions at first instance with separate appellate regimes for courts of Chancery and Common Law with single judges adjourning a question of law to a four-man court rendering two trials necessary.

2.2 Judicial overload and backlog

An analysis of Returns of Judicial Statistics in this period suggests systemic failure in the Superior Courts. By way of example: the Court of Chancery. Here the problem

---

62 The Courts of Chancery, Common Pleas, and Exchequer Chamber.
was acute. Proceedings in Chambers in the Chancery Court increased from a Cause List total of 28,083 in 1861 to 42,726 in 1870-71; an increase of 152 per cent, or an average yearly increase of 1,464 cases. Proceedings in Chancery as a whole increased from 69,008 in 1861 to 84,730 in 1870, an increase of 122 per cent; or an additional 15,722 matters in Chancery as a whole.\textsuperscript{63} Things were so bad that one solicitor had written to \textit{The Times} to say there were 507 cases in Chancery and it would take three years to complete them.\textsuperscript{64} Clearly backlog and judicial overload were a problem and thus there was some justification for the promotion of a radical review of the civil justice system at that time.

As a Leader in \textit{The Times} stated:\textsuperscript{65}

\begin{quote}
The Exchequer Chamber sat 5 days in all; out of eight cases from the Queen's Bench Division, after two days sitting six were left in arrear; out of nine cases in the Common Pleas, six were left in arrear, after two days sitting. The last time the court sat was at the end of June, and it cannot sit again before next February at the earliest.
\end{quote}

Further evidence of the problem is provided from the debate on the Judicature Bill in June 1873. The Bill was based upon the recommendations of the Judicature Commissioners\textsuperscript{66} and their report published in 1869. Its remit focussed on investigating the operation and effect of three aspects: first, the constitution of the courts in England and Wales; second, the separation and division of jurisdictions between the various courts at macro-level, and third, the distribution and transaction of judicial business of the courts, and courts in chambers at micro level. Additionally the Commission considered whether there were sufficient judges and the position of juries.

In debating the Bill, the Attorney General, Sir Richard Baggallay, thought that the problem might be overcome if the judges extended their sittings by six weeks per year.\textsuperscript{67} He reported that the position may have been even worse on any given day in 1870, 1871, 1872, and 1873 as there were respectively 302, 461, 431, and 536 cases pending in

\textsuperscript{64} H.C. Deb. Vol CCVI (3\textsuperscript{rd} Series) 30 June 1873. Col 1587. The Chancery Court dealt however with 1000 cases per year according to the Solicitor General.
\textsuperscript{65} \textit{The Times} 4 December 1872 p.9. Issue 27551, col c.
\textsuperscript{66} In September 1867 Queen Victoria appointed the Judicature Commissioners. They included; Lord Justice Cairns\textsuperscript{66} of the Court of Appeal in Chancery, Sir James Wilde a judge of the Court of Probate Divorce and Matrimonial Causes, Sir William Page Wood, a Vice-Chancellor, Sir Colin Blackburn, a judge of the Court of Queen's Bench, Sir Montague Smith, a judge of the Court of Common Pleas, Sir John Karslake, Attorney General, William Jones Vice Chancellor of the County Palatine of Lancaster, Henry Rothey, Registrar of the High Court of Admiralty, Sir William Phillimore, a judge of the High Court of Admiralty Sir Robert Collier and Sir John Duke Coleridge as Solicitor General appointed as Commissioners on the 25 January 1869.
\textsuperscript{67} At that time the court sat for 27 weeks of the year. H.C. Deb Vol CCVI. Col 1588. 30 June 1873
that court. Mr. Morgan, a chancery barrister, speaking in the same debate, said that "there never was such a block in Chancery as at present……The judges were worn out with Court work before they went into Chambers." He said that there had been a 123 per cent increase in cases from 1,844 cases in 1863 to 2,275 cases in 1871. He also reported that some of the judges had "completely broken down" under the strain. Clearly relief for the judiciary was urgently required.

The problem as a whole was alarming. The Return of Judicial Statistics for 1866 discloses that there was a great increase in the business of the Courts. As compared with 1859 (the year in which the number was lowest since the Statistics commenced) the increase in 1866 amounts to 46,890, or 54 per cent. As compared with the average of the eight years 1858-65, the increase in 1866 was 28,475, or 27 per cent. This influx of work overloaded an outmoded system and its effect is demonstrated at Table 2.1 below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Writs issued</th>
<th>Percentage Increase on earlier year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1859</td>
<td>86,270(^{60})</td>
<td></td>
</tr>
<tr>
<td>1863</td>
<td>100,042</td>
<td>16%</td>
</tr>
<tr>
<td>1864</td>
<td>113,158</td>
<td>13%</td>
</tr>
<tr>
<td>1865</td>
<td>119,097</td>
<td>5%</td>
</tr>
<tr>
<td>1866</td>
<td>133,160</td>
<td>12%</td>
</tr>
</tbody>
</table>

Sources: Returns of Civil Judicial Statistics 1859, and 1863-66

Whilst 1866 may be regarded as the high water mark of civil litigation, The Return of Judicial Statistics for 1869 states that there was a "great decrease" in the number of writs issued in 1868 as compared to 1866.

<table>
<thead>
<tr>
<th>Year</th>
<th>Writs issued</th>
<th>Percentage Increase on earlier year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1868</td>
<td>82,876</td>
<td>1%</td>
</tr>
<tr>
<td>1869</td>
<td>83,974</td>
<td></td>
</tr>
</tbody>
</table>

Sources: Returns of Civil Judicial Statistics 1868 and 1869.

The percentage decrease as between 1866 and 1868 was 38 per cent. In 1875 after enactment of the Judicature Act 1873 the number of writs issued declined to 68,950.\(^{72}\)

\(^{68}\) H.C. Deb Vol. CCVI Col 1590.
\(^{69}\) 1867 [3919] Return of Judicial Statistics 1866
\(^{70}\) 1867 [3919] Return of Judicial Statistics 1866 Image 141 of 206 of which only 27.5% were contested; only 23,762 appearances were entered.
\(^{71}\) 1869 [C.195] Return of Judicial Statistics 1866 Image 146 of 221
2.3. First Report of the Commissioners 1869

This Commission was chaired by two successive Lord Chancellors and former Attorneys General, Lord Selbourne (formerly, Sir Roundell Palmer) and Lord Cairns (formerly, Sir Hugh Cairns). Their report was first published in 1869. No evidence was published with the report but we may conjecture that the Commissioners debated it in their meetings. Sir John Hollams wrote up the minutes of the meetings and then prepared a draft report.

This was followed by two Judicature Bills introduced by Lord Hatherly in 1870. These Bills failed to command support in the House of Commons and were sent down by the Lords to the Commons after heavy criticism from the judiciary and members of Parliament. The scheme for the administration and organisation of the courts incorporated in the original Bill was revised by Chief Justice Cockburn and his senior colleagues. This revision formed the basis of the reintroduced Bill in 1873.

2.4. The Official Referee: Reasons for creation

2.4.1. Chancery and Common Law practice

The Judicature Commissioners were aware of the practice in Chancery of a referral process. In their report the Commissioners stated:

...questions involving complicated inquiries, particularly in matters of account, are always made the subject of reference to a Judge at Chambers. These references are practically conducted before the Chief Clerk, but any party is entitled, if he think fit, to require that any questions arising in the course of the proceedings shall be submitted to the judge himself for decision. In such a case the decision of the judge is given after he has been sitting in court all day hearing causes.

This was not ideal and it was suggested to the Commissioners that the judges found this difficult because Chancery judges were too busy with other work.

According to Burrows the reason why the Judicature Commission recommended the appointment of referees was the practice of the old Common Law and Chancery Courts. These two macro-caseflow management processes were already developed. First, a process whereby the master or chief clerk would report to the judge or otherwise direct

---

73 n.5
74 Hansard. Lords. 13 February 1873 col.334.
75 Hansard. Lords. 13 February 1873 col.335-6.
76 n.4 p.13.
77 But there is no evidence cited at p.13 of the First Report as to who made that submission, but presumably members of the Bar.
78 n.5 p.13
79 n 15
80 The Common Law Courts also had power to delegate to a Master.
an issue to be tried by a Common Law judge sitting with a jury. In the former case the report would be embodied in the judge's judgment. Second, Chancery matters could be referred to an expert not a lawyer. This might well be the genesis of modern "expert determination", although in the Chancery practice the expert's view was not final and binding but incorporated into the judgment. Furthermore, under Section 3 of the Common Law Procedure Act 1854, a judge could direct a reference of an account before trial or the taking of an account at trial under Section 6 of that statute. He could direct that any preliminary question of law should be decided by way of special case or otherwise. Under this power the judge could decide the matter himself summarily, or order that it be referred to an arbitrator appointed by the parties, or to an officer of the court, or in country cases, to a county court judge. In such matters the award or decision was enforceable as if it were the verdict of a jury. Here we have the genesis of the referee. As Judge Fay wrote, the officers of the court in those times were masters. The innovation was the reference to an arbitrator in the course of the proceedings (a compulsory reference in accounts cases). Fay says that it was Holdsworth who concluded that in respect of Section 3 Common Law Procedure Act 1854:

It was this extended use of arbitration by the courts which induced the Judicature Commissioners to recommend and the Judicature Acts to create the office of official referees.

Holdsworth may be right, but Sir Roland Burrows QC who was Lord Birkenhead's former private Secretary wrote:

The reason for the recommendation is to be found in the practice of the Courts of Common Law and of Chancery.

Whether the inducement was the practice of arbitration or litigation a new model was created: a court officer and a subordinate judge with a referral jurisdiction to deal with matters of enquiry and report, reference for a preliminary issue, and the taking of an account.

---

81 Gyles v Wiccox (1740) 2 Atk. 141.
82 n.15 pp. 504-513.
83 According to Burrows (n.13 p. 510) Section 3 of the Common Law Procedure Act 1854 took into account the practice of the Court of Chancery of ordering reference to officers of the court or specially qualified persons to inquire and report, and the other the practice of making consent orders for arbitration.
84 n.20.
85 Holdsworth, History of English Law, Vol.XIV, p.198
86 n.15 p.504
The Commissioners also considered Section 3 Chancery (Amendment) Act 1858 which provided that the Court of Chancery could make provision for the assessment of damages or any question of fact arising in any action or proceeding to be tried by a special or common jury. Juries were not always appropriate in understanding complex scientific and technical issues and this in the common law context influenced the Commissioners towards the use of the referee in such matters.\footnote{20. \textit{p.10}}

Interestingly, ten years before the Judicature Commission’s First Report Dr Clifford Lloyd, an Irish Jurist, gave evidence to a similar commission.\footnote{The evidence of Dr B Clifford Lloyd QC, Dublin 12 November 1862 to the Royal Commission to enquire into Superior Courts of Common Law and Courts of Equity of England and Ireland. \textit{First Report. Parliamentary Papers} [1863] [3228]}

In his evidence on the working of the Irish Chancery Act he referred to the position of a referee and converting: “the office of Master from that of a referee to a judge with original jurisdiction.” He concluded that the subordinate office of a referee was more akin to that of a master. Section 172 of the Superior Courts of Common Law (Ireland) Act 1864 provided for matters of account to be referred by the judge to an arbitrator, or officer of the court, or to a referee who was empowered to make an award or issue a certificate effective as the verdict of a jury.

\subsection*{2.4.2 Experts}

In their \textit{First Report} \footnote{5. \textit{p.5}} the Judicature Commissioners considered that there was a class of case unfit for jury trial and in many cases the disputants were compelled to arbitrate.\footnote{5. \textit{p.12}. The parties could not however be compelled to do so until the enactment of the Common Law Procedure Act 1854 where disputes had been referred to a barrister or an expert. Barristers could not be expected to give such matters the continuous attention they deserved. Experts were not}

This was an important part of their consideration, as was the recommendation of the Patent Law Commissioners\footnote{Report 29 July 1864. Patent Law Commissioners.} regarding the judge trying such cases with assessors whom he selected, or alone without a jury unless the parties required. They considered it might be desirable to have the aid of scientific assessors during the whole or part of the proceedings.\footnote{5. \textit{p.14} para 4.}

The Commissioners also considered referrals under the Common Law Procedure Act 1854 where disputes had been referred to a barrister or an expert. Barristers could not be expected to give such matters the continuous attention they deserved. Experts were not

\footnote{20. \textit{p.10}}\footnote{The evidence of Dr B Clifford Lloyd QC, Dublin 12 November 1862 to the Royal Commission to enquire into Superior Courts of Common Law and Courts of Equity of England and Ireland. \textit{First Report. Parliamentary Papers} [1863] [3228]}
\footnote{5. \textit{p.5}}
\footnote{5. \textit{p.12}. The parties could not however be compelled to do so until the enactment of the Common Law Procedure Act 1854 where disputes had been referred to a barrister or an expert. Barristers could not be expected to give such matters the continuous attention they deserved. Experts were not}
\footnote{Report 29 July 1864. Patent Law Commissioners.}
\footnote{5. \textit{p.14} para 4.}
recommended because they were unfamiliar with the law of evidence and rules of procedure and the risk that they would allow irrelevant questions.

2.4.3 Juries
The Judicature Commission were critical of the role of the jury in some cases. They reported:

The Common Law was founded on the trial by jury, and was framed on the supposition that every issue of fact was capable of being tried in that way; but experience has shown that supposition to be erroneous. A large number of cases frequently occur in practice of the Common Law Courts which cannot be conveniently adapted to that mode of trial.93

The Commissioners further concluded:

...there are several classes of cases litigated in the courts to which trial by jury is not adapted, and in which the parties are compelled-in many cases after they have incurred all the expenses of a trial-to resort to private arbitration.94

The practical problem with the Common Law Procedure Act 1854 was that the referee had no authority over practitioners and witnesses and this led to constant adjournments.

2.4.4 Arbitrators
Arbitration may have had an influence on the Commissioners as Holdsworth suspected because the Commissioners recommended that a party to an action could apply to a High Court judge for the appointment of a referee, or the judge himself appoint one.95
Under the Common Law Procedure Act 1854 the parties could be compelled to arbitrate the dispute where the matter related wholly or partly to accounts or where they had agreed in writing.96 But the Commissioners were also alive to the difficulties caused by arbitration which they expressed as:

The Arbitrator thus appointed is the sole judge of law and fact, and there is no appeal from his judgement, however erroneous his view of the law may be, unless perhaps when the error appears on the face of his award. Nor is there any remedy, whatever may be the miscarriage of the Arbitrator, unless he fails to decide on all matters referred to him, or exceeds his jurisdiction, or is guilty of some misconduct in the course of the case.97

There was also public disquiet about that alternative process as The Times leader commented:98

The especial scandal of the Common Law - we mean the system of compulsory arbitration, so often imposed at the eleventh hour upon the unwilling suitor because the judge will not,

93 n.5. p.5.
94 n.5. p.12.
95 n.5. p.14
96 n.5. p.12.
97 n.5. p.13.
98 The Times 22 April 1869:p 8; Issue 26418; col F.
or cannot, entertain his case - is to be removed, and official and other referees will act under the court.

It was said that arbitrators regulated their own fees and that:

The result is great and unnecessary delay, and vast increase of expense to suitors....Fees were large, adjournments frequent and erroneous results could not be rectified on appeal.  

The problem was exacerbated because counsel and witnesses were frequently involved in other matters necessitating adjournments.  
The Commissioners therefore sought to avoid references whether to an arbitrator, expert or barrister and compel parties to litigate before a referee. They considered they had good reason to replace juries and arbitrators at that time because a common jury could not handle complex matters of fact, arbitration was costly and there was much delay.
The Commissioners concluded that this caused:
great and unnecessary delay, and a vast increase of expense to suitors.

The referral to a referee would be compulsory and the referee would sit from day to day. In this way delays and appeals would be avoided and the referee would replace a special jury, an arbitrator, an assessor and an expert.
In that respect referees were an essential tool of more efficient macro-caseflow management.

2.5. The Judicature reforms
The Commission had a dual purpose: to reconcile the rival systems of Common Law and Equity and to resolve technically complex cases where a jury of laymen had difficulty. Thus, the terms of reference of the Commission included an enquiry into the civil courts apart from the House of Lords, but including:

……...the operation and effect of distributing and transacting the judicial business of the courts, as well as courts in chambers,
(a) Administrative reform
The background against which the office of referee was invented was momentous. The judicature reforms transformed the litigation landscape with equitable and legal remedies available in one Supreme Court of Judicature. Trial by jury had been the cornerstone of the civil justice system predicated on the supposition that every issue of fact was capable of trial in that way but a large number of cases could not be adapted to that mode. But many suitors favoured arbitration because of “the defects of the inadequate procedure.” There had to be a transfer and blending of jurisdiction of equity and law, a conclusion independently reached by two other judicial commissions enquiring into the Common Law Courts (1850) and into Chancery (1851). There was also the litispendence problem of concurrent actions in the Common Law and Chancery courts producing different outcomes at first instance and in their separate appeal courts. Thus, the Judicature Commissioners considered that:

> It seems to us that it is the duty of the country to provide a system of tribunals adapted to the trial of all classes of cases and be capable of adjusting the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried.

They had in mind a more flexible system adapted to the needs of all types of cases. In the context of the referee it might be interpreted as justifying the “Scheme.” The “manner most suitable” inferred some flexibility in the process applied.

(b) Procedural reform
Another objective of the Judicature Commission was to make recommendations for the: more speedy economical and satisfactory despatch of the judicial business transacted by the courts.

In order to affect this, the Judicature Commission recommended:

> That as much uniformity should be introduced into the procedure of all Divisions of the Supreme Court as is consistent with the principle of making the procedure in each Division appropriate to the nature of the case, or classes of cases, which will be assigned to each; such uniformity would in our opinion be attended with the greatest advantages, and after a careful consideration of the subject we see no insuperable difficulty in the way of its accomplishment.

---

105 n.s. p.5
106 n.s. p.5
107 n.s. p.6
108 n.s. p.13
109 Author’s italics.
110 n.s. p.4
111 n.s. pp 10,11.
The Commissioners decided to recommend that great discretion should be given to the Supreme Court as to the mode of trial and that any questions should be capable of being tried in any Division. They concluded that there should be three modes of trial: before a judge, jury or a referee.

It is interesting to note that the Commissioners also recommended the use of short statements, as distinct from pleadings, to be called a “Declaration” constituting the plaintiff's cause of complaint and a similar statement from the defendant constituting an “Answer.” They warned, as Newbolt was to warn half a century later, about pleadings that were open to “serious objection.” They went on to say:

Common Law pleadings are apt to be mixed averments of law and fact, varied and multiplied in form, and leading to a great number of useless issues, while the facts that lie behind them are seldom clearly discernable.

They suggested the best system to be:

...one, which combined the comparative brevity of the simpler forms of Common Law pleading with the principle of stating intelligibly and not technically, the substance of the facts relied upon as constituting the plaintiff's or the defendant's case as distinguished from his evidence.

Regrettably, pleadings were not simplified because of the complexity of certain cases, but certainly Newbolt (as will be noted in Chapter 3) dispensed with them altogether in at least one action. Despite the Commissioners’ purpose a “Judicature Commissioner” writing to The Times anonymously in August 1880 wrote:

But I unhesitatingly assert that the present system of pleadings is often productive of enormous delay and expense, with little, if any corresponding advantage. I have now lying before me the pleadings in an action recently commenced which, although yet incomplete, have already reached the length of upwards of 2,500 folios. I have another case before me in which a statement of claim 260 folios in length has just been delivered. I could refer to other similar cases in my own experience, but I will content myself by mentioning one in which, although an action to recover the amount of two promissory notes, the pleadings extended to upwards of 200 folios in length. It may be said these instances are exceptional and that they are taken from the Chancery Division; but few, I think will deny that prolixity is on the increase in the Common Law Division also.

I think I may with confidence, assert that the Judicature Commissioners did not anticipate that these results would follow from their recommendation that the plaintiff and defendant should respectively deliver a statement of complaint and defence, which statements were to be “as brief as the nature of the case will admit.”

---

112 n.5 p. 13
113 n.5. p.13
114 n.5. p. 11. A Reply would be allowed but not any further submissions with “special permission” of the judge.
115 n.5. p.11.
116 n.5. p.11.
117 Chapter 3 para. 3.11 and n.5 p. 430.
118 The Times 16 August 1880 p. 11 Issue 29961; col G. Reputedly, Lord Bowen.
2.6 Pioneers of caseflow management: Selbourne and Cairns

The principal pioneers of the referees’ office were Lords Selbourne and Cairns as they were responsible for drafting the enabling legislation, as well as piloting that legislation through Parliament, and making the administrative arrangements. Both Lord Chancellors were Classics’ scholars: one from Oxford, the other from Dublin. Lord Selbourne was a distinguished member of the Church of England, and Lord Cairns was described by Lord Chief Justice Coleridge as “a person of severe integrity.”

2.6.1 Lord Selbourne, Lord Chancellor of England

In 1872 Roundell Palmer became Lord Chancellor in succession to Lord Hatherly. He pioneered the Supreme Court of Judicature Bill that took effect in 1873. In his *Memorials Personal and Political 1865-1895* he wrote:

> It was a work of my own hand, without any assistance beyond what I derived from the labours of my predecessors; and it passed substantially in the form in which I proposed it.

He acknowledged support from Lords Cairns, Hatherly, Westbury, Romilly, Lords Justices Cockburn, James, Mellish and Bovill, Chief Baron Kelly, the Solicitor General and the Attorney General.

As to the *First Report* he says:

> Much as I profited by the experience and work of others, I might without presumption take to myself some credit for the initiative, advancement and completion of this work...If I leave any monument behind me which will bear the test of time it may be this.

2.6.2. Selbourne’s macro and micro objectives

Selbourne introduced the referee into the wider public domain in his historic speech in the House of Lords on the second reading of a third Judicature Bill on the 13 February 1873. His predecessor Lord Hatherly had had difficulty in introducing two previous Bills: the High Court of Justice Bill and the Appellate Jurisdiction Bill. Both Bills were read a second time in 1870, but were lost in committee and withdrawn.

---

119 Lord Selbourne, Magdalen College; Lord Cairns, Trinity College.
121 1872-74 and again in 1880-85.
122 Lord Selbourne Memorials Personal and Political 1865-1895 (London: Macmillan & Co, 1898)
123 n.122 Vol. 1 p.301
124 n.122 p.300.
125 Hansard (3rd Series). 13 February 1873. Col 331
126 The Times 14 February 1873. p.7; Issue 27613;col B.
confirmed that this movement for reform came from Parliament and the judiciary itself.\(^\text{127}\) The superior judiciary\(^\text{128}\) appear to have been the most vociferous critics of the outdated legal system. He said that the reforms sprang from the advancement of society, the increase in legal business, and separation of the superior courts. The aims of the Bill were directed to more efficient macro-management in the unification of legal and equitable jurisdictions; a single undivided jurisdiction; provision as far as possible for cheapness, simplicity and uniformity of procedure; and an improvement in the constitution of the Court of Appeal.\(^\text{129}\)

Under the new arrangements cases could be transferred for the efficiency of business.\(^\text{130}\) The emphasis here was clearly on efficiency, cheapness, simplicity, and uniformity. It was also on practicality.

Regarding the new officer of the court, the referee, he said:

> It is proposed to retain trial by jury in all cases where it now exists, except in one particular. Your Lordships know that there is a class of cases which the parties may take to the Assizes, and in some instances must take there, and which are yet totally unfit to be tried by a jury at all. The result is that the parties are compelled to take such cases out of court and submit them to arbitration; and as no provision has been made by law for the conduct of these arbitrations, the consequence is that very great expense frequently arises out of them. It was a very valuable recommendation of the Judicature Commission that public officers to be entitled "Official Referees" should be attached to the court, to deal with cases of this kind, and to whom such cases should be sent at once without the useless expensive form of a jury trial. The Bill proposes that such cases should be sent to reference, even if the parties do not consent, and it also provides for the appointment, where the parties may desire it of special referees. The proposal in the Bill is that they shall determine all questions of fact or account, leaving questions of law to be determined by Divisional Courts. I venture to think that will be found a valuable and important provision.\(^\text{131}\)

Selbourne thus recommended the creation of the referee.

Whilst this was a subordinate jurisdiction it had the germ of a flexible process which provided an opportunity for caseflow management.

Selbourne and his successors' roles were critical here in relation to the new referees. Under Section 83 of the Judicature Act 1873, he was responsible for referee appointments, qualifications and tenure in office with the concurrence of the Heads of

\(^{127}\) The Report was presented to Parliament in 1869.
\(^{128}\) Description of senior judges in the pre-1873 system.
\(^{129}\) The Court being constituted by the enactment there was concern about manpower.
\(^{130}\) Although judges would be enabled to transfer cases to official referees one referee could not transfer a case to another. In 1888 the Rules were changed to enable the Lord Chancellor and the Lord Chief Justice to transfer cases from one referee to another having regard to the state of business. (RSC December 1888.)
\(^{131}\) Hansard. Commons. 13 February 1873 col. 346. The Hansard reports here are in indirect speech.
Divisions subject to Treasury sanction. The Treasury limited the number of referees to four. This created a tension with the judiciary at times when the lists were overloaded. This overload created a backlog further justifying Newbolt's "Scheme."

Lord Selbourne's objectives were echoed in the House of Commons by the Solicitor General speaking on the 10 July 1873:132

Referees were to be appointed without the consent of the parties for conducting any enquiry which could not, in the opinion of the court, be conducted in the ordinary way. The Bill proposed as regarded documents, to continue the present practice of the Court of Chancery, and it was quite impossible that questions of detail should be examined in court except on appeal. Accounts in Chancery were never taken in court, but were referred to chambers in some way or other, and were taken by an officer termed a Chief Clerk. At Common Law such matters were referred to a master or to an arbitrator. They could not be taken in court at all.

The Solicitor General went on to say:

The intention of the clause (Clause 54-Power to direct trials before referees) was to prevent useless expenditure of that description, and that references should be made without the consent of the parties. Clients were often disgusted at finding that heavy expenditure incurred in the preliminary stages of a trial were thrown away, on their case going to arbitration.

The Lord Chancellor's and the Solicitor General's speeches confirm the objective of avoiding unnecessary cost through referrals to arbitrators, and also to relieve High Court judges of detailed factual examinations. They also confirm the reason for the creation of the office of the referee answering the first research question. They incidentally disclose an understanding of the difficulties of judicial macro-management. In many respects there is empathy between Selbourne, Baggallay and Newbolt in relation to delay and cost. All these concepts are relevant to what Newbolt and some referees attempted in later years and the roots of what Newbolt developed have their origin in concept here.

2.6.3. A judge without jurisdiction

However, it is important to appreciate that the referees had no inherent jurisdiction as Burrows stated:133

....an Official Referee as such has no jurisdiction. He can only try such actions as by law can be and by order are referred to him and his decisions are not of authority for other cases.

In other words, the referee had no jurisdiction other than what was referred. The Commissioners designed a flexible role for referees whereby they could refer the matter back to the judge or resolve the issue themselves.

132 Hansard. Commons. 10 July 1873. col.174.
133 n.15. p. 506.
The Referee should be at liberty, by writing under his hand, to reserve, or pending the reference to submit any question for the decision of the Court or to state any facts specially with power to the Court to draw inferences; and the verdict should in such case be entered as the Court may direct. In all other respects the decision of the referee should have the same effects as a verdict at nisi prius, subject to the power of the Court to require any explanation or reasons from the referee, and to remit the cause or any part thereof for reconsideration to the same, or any other Referee. The referee should, subject to the control of the Court, have full discretionary power over the whole or any part of the costs of the proceeding him. 134

The fact that the judge could direct where the trial took place was a departure from the centralist policy of the courts being in one building in London. The referee was to investigate the case and report his findings to the High Court judge. He was also given power to hear the case de die in diem (from day to day) and to adjourn if necessary. His primary task was to relieve the High Court judge of complex factual analysis and compile a report. Thus, where the parties consented a matter could be referred. Where the parties did not consent to a referral, the judge could only refer the case to a referee if it involved a prolonged examination of documents, or accounts, or an investigation of scientific or local matters on a question or issue of fact or account. 135 Section 83 of the Judicature Act 1873 provided that the numbers and qualifications of the referees were to be determined by the Lord Chancellor and with the concurrence of the Heads of Divisions and the sanction of the Treasury. 136

2.6.4 Rules of the Supreme Court

A greater appreciation of what Lord Selbourne was attempting is evident from his personal directions and orders to three lawyers who were employed with the task of drafting the first Rules of the Supreme Court. 137 In his general directions dated 25 November 1873, Selbourne set out the guidelines for the draftsmen:

Substance of the Work

.....the object is now to frame one general system of procedure which shall be as far as possible uniform in every Division of the High Court and equally applicable to all kinds of actions and suits. In constructing this system, the utmost attainable degree of conciseness and simplicity is to be aimed at; all superfluous steps (such as applications for orders or praecipes of Court, when mere notice between parties might be sufficient) should be dispensed with; and all occasion for any unnecessary expense and delay, should, as far as practicable be cut off.

There is empathy here with Newbolt's "Scheme" in eradicating unnecessary expense and delay. The draftsmen were also to adapt:

134 n.5. p.14
135 Judicature Act 1873, s 57
136 Referees were appointed under s.84 of that Act and the Treasury determined their salary under s.85.
137 89.M.S. 1866 ff.75-78 Papers of Lord Selbourne. Lambeth Palace Library Letter from Roundell Palmer to Henry Cadman Jones, Tristam (Thomas Hutchinson) and Arthur Wilson.
Selbourne’s objective was clear: simple concise rules for all actions without any unnecessary or uneconomic steps. The lawyers were referred to Chancery practice and the Common Law Procedure Acts\footnote{Chancery Practice Amendments Acts 1850, 52, 58, and 60. Common Law Procedure Acts were passed in 1852, 54, and 60.} and other states’ procedures e.g. the New York Code of Civil Procedure and the Indian Procedure Act 1859.\footnote{89.M.S. 1866 ff.77v78 Papers of Lord Selbourne. Lambeth Palace Library}

At macro-level the essence of the proposals was designed to bring about a fundamental reorganisation of the courts and make them more efficient. A key part of the reform was the referral system relieving High Court judges of complex technical cases and avoiding lengthy jury trials. In that respect the referee’s role was critical in alleviating cost and delay in complex factual cases. This was given expression in the rules regarding referees. The \textit{Rules of the Supreme Court 1873-75} provided for trials by the referee at first instance in accordance with Sections 56 and 57 of the Judicature Act 1873. \footnote{The Rules 34 and 35 of the Rules of Procedure were appended in a Schedule to the Judicature Act 1875 provided for proceedings before an Official Referee and described the effect of the referee’s decision. See: Preston, Thomas \textit{The Supreme Court of Judicature Act 1873}. London. William Amer.}

\textbf{Section 56:} Subject to any rules of court and to such right as may now exist to have any particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal may be referred to the court or by any Divisional Court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee and the report of such referee may be adopted wholly or partially by the court and may (if so adopted) be enforced as a judgment of the court.

\textbf{Section 57:} In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers, the court or judge may at any time on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties.
2.6.5. Lord Cairns 1874-80

Whilst Selbourne may have been the architect of the legislation it was Cairns who sustained the office of the referee. Arguably without Lord Cairns’ support the Judicature Bill would never have been passed by the House of Lords nor might the Treasury have been willing to support the appointment of four referees. Cairns had a particular concern as he chaired the Commission which authored the First Report and the creation of the referee’s office.

Lord Cairns was the first Lord Chancellor to operate under the new court system. Whilst Selbourne and Hatherly were also instrumental in creating the concept of the referee, Cairns ensured its survival. He succeeded in macro-managing the unification of the courts of Equity and Common Law and codifying procedural law. In the particular context of this study the referees owed their existence possibly more to him than any other Lord Chancellor. He shared the “very strong” opinion of the Presidents of Divisions that referees should be substituted for arbitrators. His unequivocal support for the office is evident in the earliest correspondence commencing with his secretary’s letter to the Lords Commissioners of H.M. Treasury:

Nov 12th 1875

Sir,

I am directed by the Lord Chancellor to enclose for the information of the Lords of the Treasury the opinion and determination of the Lord Chancellor and of the Heads of the Divisions of the High Court of Justice as to the numbers, qualifications, and tenure of office of the Official Referees in pursuance of Section 83 of the Judicature Act 1873 and I have to ask the sanction of the Treasury.... that these Official Referees should be substituted for arbitrators pro hac vice, that the number of Official Referees will not be sufficient and that a greater number will be required: but they (Presidents of Divisions) think that within first instance the experiment may be tried with four Referees, that is to say one for each of the four Divisions, Chancery, Queen’s Bench, Common Pleas and Exchequer.

The salary of these Official Referees has to be fixed under Section 85 by the Treasury with the concurrence of the Lord Chancellor.

The Lord Chancellor is of the opinion that looking to the judicial character of the functions which these Referees will have to perform, to the circumstances that they will have to give up all private practice and that their work will be ejusdem generis with but certainly higher than that which the Masters who receive £1,500 a year now perform. The salary specified ought not to be less than £1,500 and competent men cannot be got for less, and this opinion is held very strongly by the Presidents of the Divisions.


143 The salaries of judges in 1873 were: Lord Chancellor: £10,000, Lord Chief Justice: £8,000, Vice President of Division: £5,000 and a special allowance of 10 guineas per day for judges on circuit. M.S. 1865. Papers of Lord Selbourne. Lambeth Palace Library. Letter 27 January 1873 Lord Cairns to Lord Selbourne.
The Lord Chancellor understands that upon references to Masters of the Common Law Courts of matters of account it has been the practice to charge a fee for each hour of the Master's time occupied, which fee went into the general revenue.

The Lord Chancellor thinks it would be open to the Treasury to consider whether some charge should be made to the suitors to the reference for the time of these Official Referees that may be occupied and that this whole charge of the Official Referees may be lightened.

The Lord Chancellor would be obliged to Their Lordships if they would give the subject of this letter their immediate attention as it is highly desirable that the Official Referees be appointed as soon as possible there being already cases which have been referred to them and are now waiting for trial before them.

Yours G

This letter underlines the uncertainty as to manpower resource. Lord Selbourne had thought three referees sufficient; Cairns four.

The Treasury reply\(^{144}\) acknowledged the referees “higher” status.

Treasury Chambers 19 November 1875

My Lord,

In reply to Mr Graham's letter.... I am directed by the Lords Commissioners of Her Majesty's Treasury to state that My Lords observe that it is proposed to appoint a referee for each of the four Divisions of Chancery, Queen's Bench, Common Pleas and Exchequer, but they also do not understand whether it is intended that the Referee shall be exclusively attached to the service of the Division to which he is appointed, or shall be available for duties in another Division if necessity should arise.

With reference however to the present proposal and to the opinion which it is stated that the Presidents of the Divisions entertain that the number of four Referees will not be sufficient but that more will hereafter be required, my Lords would desire to submit to your Lordship some observations which it appears to them should be fully considered before their sanction to the present proposal is given.

When the Judicature Act was before the House of Commons My Lords caused enquiries to be made of your Lordships predecessor as to the probable number of Official Referees whom it would be necessary to appoint, and were informed by Lord Selbourne that in the first instance he considered that three would be sufficient, only one for each of the second third and fourth Divisions of the High Court from which this class of references would come, the first or Chancery Division being already sufficiently provided for by the Chief Clerks in Chancery.

As it is now proposed to appoint a Referee for the Chancery Division also, My Lords would be pleased to be informed whether the point has been considered as to the aid which the Chief Clerks might give in disposing of References from the Chancery Division or to what extent if a Referee is appointed for this Division in addition to the Chief Clerks, the labours of these latter officers might be lightened as to render some reduction of their number practicable.

As regards also the appointment of Referees for the Queen's Bench, Common Pleas and Exchequer Divisions of the High Court and as regards the suggestion that a greater number than four of these may hereafter be required My Lords perceive with reference to the class of cases which will be heard by the Referees (See Section 57 of the Judicature Act 1873) that it is stated by your

---

\(^{144}\) Letter Laws to Graham. 19 November 1875 LCO 1/73 [HPIM0449]
Lordship that their duties are ejusdem generis, although certainly higher than those which have hitherto devolved upon the Masters under the Common Law Procedure Acts the class of cases referred to the Masters is understood to have been so important in character, and the number of them to have been on the increase: but if the appointment of Official Referees would have a tendency to lessen the references hitherto made to the Master, the consideration will arise now for it will be necessary to retain the foremost number of the latter officer.

The Legal Department's Commissioners have stated their opinion as your Lordship is no doubt aware that a reduction might be made of four out of the whole number of Masters, as vacancies arise, if this opinion appears to have been formed on grounds apart from any questions of the appointment of Official Referees.

Your etc

Laws.

This Treasury reply indicates that the office involved a compromise between masters and referees, with acknowledgment of the referee's higher status, but with provision for the referees to have chambers and clerks themselves.145 Lord Cairns' reply on the 24 November 1875 stated that he did not think there would be so many references from the Chancery Division as from other Divisions so that the fourth referee might not be so fully occupied.146 Lord Cairns based his view on estimates of references from the Divisions and asked the Treasury to note that the referee would operate under a compulsory reference different from the Common Law Act Procedure 1854. The referees would be sitting from 10 a.m. until 4 p.m., about 200 days per year on an hourly fee basis which in Lord Cairn's words "would afford a wholesome check against any laxity of practice."

Cairns succeeded in obtaining funds for four referees147 against Treasury opposition.148 On the 18 February 1876, he confirmed the appointment of four Queen’s Counsel to the Treasury: Mr J. Anderson,149 Mr G. Dowdeswell,150 Mr C. Roupell,151 and Mr H. Very,152 albeit Lord Selbourne appointed Anderson in 1873.153 There had been some delay and cases had already been referred to the referees.154 On the 24th February 1876 the Treasury agreed to Cairn's proposal that the referees could appoint their own clerks

---

145 LCO 1/73. [HPIM0455]
146 LCO 1/73. [HPIM0457] the reason being the employment of the Chief Clerk of Chancery.
147 Lord Selborne, had suggested three referees with a referee appointed to the Chancery Division.
148 Letter. Laws to Graham. LCO 1/73. 19/11/75.
149 James Anderson QC was educated at Edinburgh University and was a member of the Faculty of Advocates of Scotland. He resigned as a referee because of bad health in 1886. He was a member of the Counsel of Legal Education, a Mercantile Law Commissioner, Examiner to the Inns of Court, Examiner in the Court of Chancery and stood as a liberal candidate contesting two Scottish constituencies in 1852 and 1868.
150 In post 1876-89.
151 In post 1876-87.
152 In post 1876-1920.
153 LCO 1/73. [HPIM0458]
as clerks of the High Court commensurate with the duties of the clerks to the Chief Clerks.

It was in this way that Lord Cairns secured the referees’ position.

2.7. Importance of chambers business

As a postscript to the First Report, the Selbourne Papers contain a Memorandum from Colin Blackburn one of the leading High Court judges of those times. In the context of the referees’ role it is significant.

He states:

The new mode of pleading proposed will create a great deal of new and important business to be transacted at Chambers in settling issues or otherwise. Much of the success of the new Scheme must depend on how this is worked and it cannot therefore I think be properly delegated to Masters. I do not see how it can be satisfactorily disposed of unless these judges regularly attend at Chambers. It certainly would require more than one judge at Chambers……

Required for sittings in banc 9 judges
For nisi prius in London and Middlesex 6 judges
For Chambers 3 Judges

18 judges

The conclusion I draw is that the present number of 18 judges should not be diminished.

Colin Blackburn
31 March 1873

Whilst referees are not expressly mentioned by Mr Justice Blackburn the important issue here is that the new business would require a judge in chambers not a master in chambers to settle issues. This idea juxtaposes Newbolt’s later conception of “discussions in chambers” to resolve issues in some matters. Just what Mr Justice Blackburn had in mind is unclear but most probably not what Newbolt invented. However the idea may well have been to deal with quite a number of issues that might otherwise have wasted time at trial.

---

155 84.M.S. 1865. f.259 Personal and Political Correspondence of Lord Selbourne. 26 June 1872-17 May 1873. Lambeth Palace Library. Memorandum as to the number of judges required for the business now transacted in the Common Law Courts and the new business proposed to be created by the Bill. (Judicature Act 1873)

156 Prior to the Superior Courts (Officers) Act 1837 the masters’ work in chambers was carried out by the judges.
2.8. Legacy of the Commission

Despite Lord Selbourne’s visionary objectives, and the careful deliberations of the Judicature Commissioners, there were subsequent problems. The intended results were not achieved in several respects.

Writing anonymously to The Times on the 10 August 1892\(^{157}\) Lord Bowen regretted the drift of commercial work to arbitrators because it was quick and cheap, but not necessarily right in law. This had been one of the criticisms of the Commissioners and what they sought to avoid by creating the referee’s office. Lord Bowen mentioned two fundamental considerations to men of business:

The first is-money. “How much is it likely at most to cost?
The second is-time. “How soon at the latest is the thing likely to be over?”

He then wrote:

The one supreme attraction which draws merchants and traders into the circle of such grotesque justice is that it is prompt, it is cheap, that there are (or were until Lord Bramwell spoilt the innocent pleasures of all arbitration rooms by his recent Act of Parliament) no Appeal Courts, no House of Lords in the background, “no fresh fields and pastures new” of litigation, stretching in interminable prospect.

Lord Bowen’s reservation was concern about “grotesque justice” practised by commercial arbitrators. The Commission’s invention of the referee was intended to avoid that problem by the appointment of experienced Queen’s Counsel exercising High Court judge powers. His other concern was the delay and cost of proceedings which Newbolt’s “Scheme” was designed to reduce.

However, apart from the criticism of Lord Bowen, we note from this literature review in this chapter:

1. a recognition that the provision of separate remedies in separate courts created unnecessary cost and delay, as well as duplicity and contradiction, in judgment at the expense of the litigant;
2. a further recognition that the pre-1876 court organisation and machinery of justice could not cope with the influx of work on the 1866 scale where 133,160 writs were issued;
3. that the experience of Chancery practice, and the Common Law Procedure Act 1854 suggested a possible solution to the backlog of cases;
4. that the disillusionment of commercial men with arbitration in the 1860s influenced the Commission in their invention of the referee’s function and subordinate office.

\(^{157}\) The Times. Wednesday, August 10 1892 p.13.
5. that by the 1890s commercial men were disillusioned with the 1870 model;
6. that the referees would dispose of cases more efficiently than a jury;
7. that the referees could relieve the High Court judiciary of technically complex factual cases requiring a detailed enquiry or local investigation;
8. that the Commissioners encouraged a more efficient process regarding cost and delay, as well as suggesting new instruments of micro management, such as “statements of issues” and Preliminary Issues.

It may be argued that without the macro-reforms of the Commission (1867-69) embodied in the Judicature Acts 1873-75, Newbolt’s “Scheme” might never have been invented. At micro, or referee level, it was undoubtedly the flexible powers conferred on the referee that facilitated Newbolt’s experiments in caseflow management and enabled a more activist approach.

2.9 The growth in referral business

We may argue that micro-caseflow management was an inevitable development because of the rearrangement of business in the High Court and the unique jurisdiction that devolved on the referees as a result. Such jurisdiction as described below gradually evolved.

By reference to Table T.2.3 below we find that in 1880 referee caseload increased by 52 per cent on 1879 figures, and that the 1890 caseload was more than four times the 1878 caseload demonstrating a strong growth in business.

In 1880 most of the referrals were of values between £200 and £100 but by 1897 the Returns indicate that the referees had three cases of a value exceeding £5,000: the administration of an estate, a building case, and a sale of goods case. Such growth in business in the late nineteenth century may be illustrated by the following table:

---

158 The number of defended cases increased from 44 in 1879 to 76 in 1880, a 72% increase.
159 Return of Judicial Statistics 1880.
In the absence of contemporaneous judicial records\textsuperscript{162} the nature of the cases referred may be described by reference to categories of reported cases and archival material. From this analysis a disparate jurisdiction becomes apparent.

**Property cases**

Here the reports confirm that matters adjudicated comprised: boundary disputes,\textsuperscript{163} enquiry into damages for breach of a lessor’s covenant to supply a specified quantity of water per day,\textsuperscript{164} an enquiry as to quantum of damages for interference with ancient lights,\textsuperscript{165} action for damages for breach of covenant to repair,\textsuperscript{166} enquiry into assessment of damages for value and quantity of minerals taken from farm and compensation as way leave for use of roads and passages,\textsuperscript{167} assessment of damages for failure to carry out tenant’s repairs under repairing covenant,\textsuperscript{168} assessment of balance due following a decree for successive redemption of mortgages,\textsuperscript{169} action by landlord against tenant and by tenant against sub-tenant in respect of dilapidations,\textsuperscript{170} direction for an account of minerals taken from property,\textsuperscript{171} action for damages for breach of covenant to deliver up premises in repair,\textsuperscript{172} action for account on a mortgage,\textsuperscript{173} matters of account in disputes

\textsuperscript{161} See Appendix p. 18 for example of case types Return of Judicial Statistics of England and Wales 1880
\textsuperscript{162} No records exist of court files prior to 1944 in the National Archives save file J141/326 Official Referees: Directions by the Senior Master which is referred to subsequently.
\textsuperscript{163} Lascelles \textit{v} Butt 2 Ch Div. 588
\textsuperscript{164} Turnock \textit{v} Sartoris 43 Ch Div. 150 1889.
\textsuperscript{165} Presland \textit{v} Bingham 41 Ch Div 268
\textsuperscript{166} Proudfoot \textit{v} Hart 25 QBD 42.
\textsuperscript{167} Phillips \textit{v} Homfray 24 Ch. D. 439.
\textsuperscript{168} Tucker \textit{v} Linger 21 Ch Div. 18.
\textsuperscript{169} Union Bank of London \textit{v} Ingram 20 Ch Div 463 (1882)
\textsuperscript{170} Hornby \textit{v} Cardwell; Hanbury (Third Party) 8 QBD 329
\textsuperscript{171} Jenkins \textit{v} Bushby [1891] 1 Ch. 484.
\textsuperscript{172} Joyner \textit{v} Weeks [1891] 2 Q.B. 31
\textsuperscript{173} \textit{In re Piers} [1898] 1 Q.B. 628
between spouses as to property rights, damages for breach of repairing obligation regarding assignment of reversion expectant on determination of tenancy, damages for illegal distress, partitioning of joint family property, claims for damage to leasehold property, a claim for damages by mill owners for loss of riparian rights taking water from a river for the purpose of driving condensing low pressure steam-engines.

Commercial cases
Referrals also comprised commercial cases consisting of: actions for accounts on money-lending transactions, assessment of damages for breach of agreement to purchase machinery on the expiry of a Lease, assessment of damages for value of goods sold by enemy alien during war, inquiry into damage for cost of repair of taxis, action for an account on money-lending transactions, trial determining whether goods of merchantable quality, enquiry into quality of hops from Pacific Coast, questions as to damages for breach of commercial agreement for Anglo-American trading partners, value of goods not returned under bailment, assessment of damages for conversion of goods disposed of through fraud, and an assessment of damages for delay in supply of plant for laundering and dying works.

---

174 In re Married Women's Property Act 1882. In re Questions Between W.A. Humphrey and H.A. Humphrey [1917] 2 KB 72 per Scrutton L.J. at p.74. Question as to whether Ridley J., a former referee could delegate matters under Section 17 to the referee where it was not a matter of account and neither party would consent to that course. Cozens-Hardy M.R. considered that Ridley J. had exceeded his powers in so referring the whole matter to a referee.

175 Cole v Kelly [1920] 2 KB 107

176 Davies v Property and Reversionary Investments Corporation [1929] 2 KB 223

177 Anantapadmanabhaswami v Official Receiver of Secunderabad [1933] AC 396 whilst not an English case but a Madras High Court case, it confirms that the Official Referee was also a judicial office in British India at the time. They had similar jurisdiction.

178 Elder v Auerbach [1950] KB 373

179 Ormerod and Others v The Todmorden Joint-Stock Mill Company (Limited) [1882] 8 QBD 664

180 Burrard v Calisher [1878] 19 Ch.

181 Marsh v James 40 Ch Div 563.

182 Jebara v Ottoman Bank [1927] 2 KB 254 Appellant claimed sterling payment for goods under Article 84 Treaty of Lausanne and Treaty of Peace (Turkey) Act 1924 for goods sold by Ottoman Bank in Beirut during war at the exchange rate before the war and not at fluctuating piastres (Ottoman currency) rates.

183 Albemarle Supply Company Limited v Hind and Company [1928] 1 KB 307

184 Burrard v Calisher 19 Ch Div. 644.

185 Jackson v Rotax Motor and Cycle Company [1910] 2 KB 937

186 Biddell Brothers v E Clemens Horst Company [1911] 1 KB 934

187 Rose and Frank Co v J.R. Crompton and Bros [1923] 2 KB 271 In this action order was made by the Master that the action be transferred to the Commercial List and that all questions of damages that became material would be transferred to an Official Referee.

188 Rosenthal v Alderton and Sons [1946] KB 375 appeal from H.H. Trapnell K.C.


190 Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 529
Ecclesiastical cases

Amongst cases referred there is reference to an action for an account to recover arrears of pension under the Incumbents Resignation Act 1871.¹⁹¹

Business Law

Some evidence is found of references of a business nature such as a partnership action determining distribution of partnership property on dissolution,¹⁹² an action for breach of agreement transferring stock of a railway company and transfer of engineering sub-contract for the construction of a railway line,¹⁹³ and an assessment of damages due to company agent for breach of agreement by company.¹⁹⁴

Chancery matters

These included an action on an account in relation to administration of an estate,¹⁹⁵ action by executors to recover monies paid by testator to defendant and assessment of monies due to executors,¹⁹⁶ a direction to take an account of monies due to beneficiary from trustee of Ceylonese estate¹⁹⁷ and an action by an art dealer against an Estate in respect of 24 pictures.¹⁹⁸

Tort actions

These included an assessment of costs due to a plaintiff in respect of a defendant’s unlawful action in maintaining an action through a common informer,¹⁹⁹ an assessment of damages in respect of embezzlement and conversion of sawdust.²⁰⁰

Construction and Engineering

The referees gradually assumed specialist jurisdiction over what High Court judges loosely termed “bricks and mortar” cases.²⁰¹ This work encompassed: a declaration as

¹⁹¹ Gathercole v Smith 7 QBD 626
¹⁹² Potter v Jackson 13 Ch Div 845.
¹⁹³ Miller v Pilling 9 QBD 736.
¹⁹⁵ Lady de la Pole v Dick 29 Ch Div. 351.
¹⁹⁶ Baroness Wenlock v River Dee Company 19 QBD 158.
¹⁹⁷ Rochefoucauld v Boustead [1897] 1 Ch 213
¹⁹⁸ Rowcliffe v Leigh [1876] 4 Ch Div. 661 One of the first cases to be referred where the Vice Chancellor of the Chancery Division ordered the case to be tried before an Official Referee as distinguished from the related action of Leigh v Brooks [1876] 5 Ch Div 592 regarding the sale by the defendant to her testator of 130 pictures for prices amounting in the whole to £50,000 with an allegation of fraud. Because of the fraud question the matter was referred to a High Court judge to deal with in open court.
¹⁹⁹ Bradlaugh v Newdegate 11 QBD1 where Coleridge L.C.J. ordered the, defendant, an M.P., to pay the plaintiff’s costs arising through MPs maintenance and champerty of informer’s action against Mr Bradlaugh who refused to take the oath in Parliament.
²⁰⁰ Rice v Reed [1900] 1 QB 54
²⁰¹ Anecdotal evidence given to the author by a T.C.C judge.
to conclusiveness of surveyor’s certificate,\textsuperscript{202} action for moneys due under building contract and counter claim for defective building works,\textsuperscript{203} assessment of damages in respect of contractor obstructing highway with temporary electric tramway,\textsuperscript{204} reference determining delay in delivering possession of site for building works,\textsuperscript{205} time in which to complete building works after Practical Completion.\textsuperscript{206}

**Employment**

This included a reference for the ascertainment of a fair wage.\textsuperscript{207}

**Marine**

There are references enquiring into circumstances causing delay in the unloading of a vessel in port,\textsuperscript{208} and an assessment of damages for repairs to a schooner in collision with barge.\textsuperscript{209}

**Patents**

Patent matters referred related to an enquiry into damages for infringement of a patent,\textsuperscript{210} assessment of damages for infringement of patent,\textsuperscript{211} a determination of the novelty of patented specification concerning interlocking apparatus for railway points and signals,\textsuperscript{212} and the determination of costs as a result of Crown infringement of patented inventions.\textsuperscript{213}

This diverse workload is further illustrated in the Appendices which contain schedules describing the types of case referred and in certain cases the element of the "Scheme."\textsuperscript{214} In 1947, Eastham sent\textsuperscript{215} a Memorandum\textsuperscript{216} to Lord Jowitt, then Lord Chancellor, confirming that the referees also dealt with claims for: forfeiture, breaches of repairing covenants, injury reversion, injunctions, fraud and conspiracy, damage by

---

\textsuperscript{202} Richards \textit{v} May 10 QBD 400.

\textsuperscript{203} Lowe \textit{v} Holme and Anor. 10 QBD 286.

\textsuperscript{204} \textit{T Tilling Limited v Dick Kerr & Co Ltd} [1905] 1 KB 562

\textsuperscript{205} Porter \textit{v} Tottenham Urban Council [1915] 1 KB 778

\textsuperscript{206} Joshua Henshaw and Son \textit{v} Rochdale Corp [1944] KB 382

\textsuperscript{207} Hulland \textit{v} William Sanders & Son [1945] KB 78 where Humphreys J. held plaintiff entitled to recover under Art 5, para 1 Conditions of Employment and National Arbitration Order 1940 such amount to be ascertained by an Official Referee.

\textsuperscript{208} Kay \textit{v} Field & Co 10 QBD 241.

\textsuperscript{209} Rockett \textit{v} Clippingdale [1891] 2 QB 31

\textsuperscript{210} \textit{American Braided Wire Company v Thompson}. 44 Ch Div. 275. Mr. Justice Kekewich, at the trial of the action, held that the Plaintiffs' patent was invalid; but his judgment was reversed by the Court of Appeal, who directed an inquiry as to what damages had been sustained by the Plaintiffs by reason of the infringement of the patent by the Defendants, and this decision was affirmed by the House of Lords. The inquiry as to damages was by consent referred to an Official Referee.

\textsuperscript{211} Cropper \textit{v} Smith 26 Ch Div. 700.

\textsuperscript{212} Saxby \textit{v} The Gloucester Wagon Company 7 QBD 305


\textsuperscript{214} See Appendix: Judges Notebook Analysis pp. 6-128


\textsuperscript{216} LCO 4/152 [HPIM 0791] Memorandum from Official Referees to Lord Chancellor
enemy air-raids\textsuperscript{217}, subsidence of coal mines\textsuperscript{218}, pollution of rivers and fishing rights, costs of plant and machinery, public works, defective machinery,\textsuperscript{219} and conflicts of evidence between architects and surveyors\textsuperscript{220}.

We may infer from this that whether the referees were dealing with questions of riparian rights or fixing an exchange rate of Ottoman currency the pressure of a diverse and increasing caseload necessitated the pioneering of new judicial techniques.

2.10. Conclusions at macro-level-general

The first research question is why the office of referee was invented and what caused and facilitated caseflow management. Those reasons have been given at 2.4 and 2.5.

The office was created against a background of fundamental procedural reform and codification and unification of the procedural and administrative system. The Judicature Commissioners attempted to provide for the more speedy economical and satisfactory despatch of the judicial business transacted by the courts. In that they realigned the jurisdiction of the courts and made provision for equitable remedies in the courts of Common Law and abolished the Courts of Common Pleas and Exchequer, replacing Exchequer Chamber with the Court of Appeal they succeeded in streamlining the system. Whilst \textit{The Times} was correct in its Leader\textsuperscript{221} in saying:

\begin{quote}
The report of the Judicature Commission, to which we recently drew the attention of readers, will, we are confident, mark the beginning of a new period of legal history. The influence which it is destined to exercise is not to be measured by the force with which the inconveniences of the present system are portrayed, nor even by the specific recommendations which it contains. It is the sanction of the high official authority which it possesses that constitutes this document a powerful lever of reform.
\end{quote}

Undoubtedly the “high authority” provided “a powerful lever of reform,” which included the creation of the referee. But an anonymous former member of the Judicature Commission, reputed to be Lord Bowen, wrote:\textsuperscript{222}

\begin{quote}
Recent legislation has, without doubt, effected many most important and valuable improvements; but the system, as administered, amounts to a denial of justice to all prudent persons as respecting claims for a moderate amount, and in all cases causes expense, uncertainty and delay most disappointing to at least one
\end{quote}

\textbf{MEMBER OF THE JUDICATURE COMMISSION}

London, August 10.1880.

\textsuperscript{217} LCO 4/152 [HPIM 0801] Letter Senior Official Referee Charles Pitman to Senior Master V Ball (KBD) 9 December 1943 confirms numerous war damage claims referred to Official Referees.

\textsuperscript{218} LCO 4/152 [HPIM 0796] This case involved 130 pages of pleadings.

\textsuperscript{219} LCO 4/152 [HPIM 0796-0799]


\textsuperscript{221} \textit{The Times}. 22 April 1869 p.8. Issue 26418;col F

\textsuperscript{222} \textit{The Times} 16 August 1880 p. 11 Issue 29961; col G
Thus such a high powered judicial forum had generally failed to solve the delay and expense problem. It was their failure like that of many other procedural committees that became the catalyst for Newbolt’s procedural innovations.

2.11. Conclusions at macro-level-specific

We may answer the first research question and may draw the following conclusions from the above literature review:

1. The overall objective in the words of the Judicature Commission was:

   The duty of the country to provide tribunals adapted to the trial of all classes of cases, and capable of adjusting the rights of litigant parties in the manner most suitable to the nature of the questions to be tried.\(^ {223} \)

2. That the office of referee was created to avoid the problems posed in certain cases of referrals under the Common Law Procedure Act 1854 as explained by the Lord Chancellor and the Solicitor General in 1873.

3. The referee was a type of arbitrator with the added advantage of being a court officer under the supervisory jurisdiction of a High Court judge. It was thought that this would prevent the abuse of delay through adjourned hearings and that the referees would sit continuously from day to day until the cases were completed;

4. The referee was the invention of the Judicature Commission 1867-69.

   According to Holdsworth the Judicature Commissioners avoided the problem of referrals to arbitrators under the Common Law Procedure Act 1854 by recommending compulsory referrals. This precluded the “scandal” of that statute.

5. This Judicature Commission regarded the jury trial as inappropriate in technically complex and scientific cases, or where the court considered referral to a referee more appropriate.

6. What caused and facilitated a form of caseflow management was the dramatic increase in actions in the 1860s, and in the Attorney General’s words, a system founded in the Middle Ages, that “was incapable of being adapted to the requirements of modern times.”\(^ {224} \)

An administration of justice that harboured an acute backlog of cases in the High Court and the “scandal” of non-compulsory references, not only led to the creation of the Supreme Court in 1873, but also eventually to referee caseflow management.

\(^ {223} \) n.4. p.13
\(^ {224} \) H.C. Deb. Vol CCVI. col. 641
7. Enquiry and report by a referee were compulsory under Section 56Judicature Act 1873.

8. Under Section 57 the parties might consent to a referral or otherwise the referral was compulsory where the case was of a scientific or technical nature; these provisions avoided the "scandal" of the earlier Act which led to arbitration.

9. The procedural improvement introduced by Lord Selbourne in the Judicature Bill 1873 was the transfer of cases from one court to another. This had particular utility in the case of the referees because without this process the new system would have run into difficulty with heavy complex cases before High Court judges clogging the lists.

10. A variety of cases were referred to the referees requiring investigation and understanding of highly complex scientific and technical matters. In the main they were actions in contract and tort.

2.12. Conclusions at micro-level

We may also conclude that:

1. The Judicature Commission recommended a court system with three modes of trial capable "of adjusting the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried." 225

2. The adjustment of the parties' rights is a key factor here in that the Judicature Commission intended that they be adjusted "in the manner most suitable to the nature of the questions to be tried." That "most suitable" manner implies that the traditional judicial approach may not have been appropriate in all cases where subordinate judicial officers were working on heavy factual cases. The words imply a more flexible approach and if that hypothesis is right then some of the argument of traditionalists, that judges must not be involved in settlement, might be subject to question.226 Certainly, the way Newbolt interpreted his role as a referee questions the idea of a detached judge unconcerned with settlement. It is submitted that a passive as opposed to an activist approach appears counter to the central objective of the

---

225 Order 36 Rule 2 RSC 1875 provided for five modes of trial by: one or more judges; a judge with assessors; a judge and jury; an official or special referee with assessors and a referee alone.

226 This is principally the argument advanced in support of the view that judges must not intervene to encourage settlement. See for example: O.Fiss. "Against Settlement." (1994) 93 Yale Law Journal 1073
Commission to procure "the more speedy economical and satisfactory despatch of the judicial business transacted by the courts." 227

3. Supporting that wider interpretation of the referees’ role is the provision the Judicature Commission made in respect of referees visiting the scene or the site. This was a considerable departure from the judge in the courtroom. It is significant that this element of micro-caseflow management was invented by the Commission itself and put to excellent effect by Newbolt, Eastham and their colleagues. Many cases were settled after such visits.

4. Also significant was the linkage between referees as judges and experts and assessors. Again as a result of this Newbolt devised better ways of using experts in a case managed role.

5. Pleadings were the subject of heavy criticism by the Commissioners and they recommended "a statement of issues for trial." This, if necessary, would be settled by the judge. In many referee cases on preliminary issues there are instances of such matters arising as preliminary questions in keeping with the recommendations of the Commissioners.

6. What the Commissioners sought to achieve at macro-level, Newbolt subsequently sought to achieve at micro-level.

What we therefore find in the Commission’s First Report is the framework for the evolution of a form of subordinate judicial activism or micro-caseflow management.

227 n.4. p.13.
CHAPTER 3

RUDIMENTARY PROTOTYPES IN CASEFLOW MANAGEMENT TECHNIQUES (1919-49)

3.1 A beginning

This Chapter explores the contemporaneous documentary evidence relating to the invention of rudimentary caseflow management techniques as practised by Sir Francis Newbolt in the 1920s and subsequently. Here we focus on: Newbolt’s “Scheme” and the reasons for it; an assessment of its impact, and the extent to which it promoted earlier settlement and saved costs.

This chapter supports the theory that rudimentary case management existed in the 1920s, and was a significant factor in the resolution of cases in this court. This is accomplished by way of a literature review and qualitative analysis of archival materials retained at the National Archive and Newbolt’s publications.

3.1.1 Sir Francis Newbolt

Like Lord Selbourne, Newbolt came from a religious background being the second son of the Vicar of St Marys in Bilstone, born 21 November 1863. He was educated at Clifton, and later at Balliol College Oxford where he read Natural Science (Chemistry) obtaining honours in 1887. He read law with Sir Thomas Wilkes Chitty, his brother-in-law and a leading authority on Common Law procedure. He was called to the Bar by the Inner Temple in 1890 and joined the Western Circuit. He remained in Wilkes Chitty’s Chambers for 10 years but did not enjoy an extensive practice. He took Silk in 1914. While at the Bar he continued his interest in science and gave over 1,000 experimental science lectures in board schools. He became Recorder of Doncaster in 1916, and a Chancellor of the Diocese of Exeter and Bradford and Chairman of the Devon Quarter Session. He became a referee after Sir Henry Verey’s resignation in 1920. He was President of the Norwegian Club from 1920 to 1926 and an honorary member of the Land Agents Society. He was also an accomplished etcher and the author of a number of books in law, art and literature.228

---

228 *The Times* 9 December 1940 p.7; Issue 48794: col. E.
3.1.2 Lord Birkenhead

The Lord Chancellor who appointed Newbolt was, F.E. Smith, Lord Birkenhead. He is a key figure in this study because it was he in government with whom Newbolt first corresponded about his “Scheme.” Birkenhead was an energetic Lord Chancellor and scholar of Wadham College, Oxford. He is said to have been a model of “sober correctness” who never pretended knowledge which he did not have. Birkenhead supported the reform of civil procedure and land law. He attempted to reform the outdated circuit system undertaking some preliminary work on the Supreme Court of Judicature (Consolidation) Act 1925. He improved the tenure of county court judges paving the way for the County Courts Act of 1924. His research assistant was Sir Roland Burrows who later wrote the article about the work of the referees in the Law Quarterly Review in 1940.

At this time the referees involved apart from Newbolt, were Sir Edward Pollock QC and George Scott, and later Sir William Hansell – the last said to be very capable.

3.1.3 Sir Edward Pollock

Sir Edward was one of 24 children of Lord Chief Baron Pollock born 1 February 1841. In 1863 he became a member of the Royal College of Surgeons and subsequently a Fellow. He was called to the Bar by Inner Temple in 1872. He enjoyed a varied commercial practice and was responsible for the 8th Edition of Russell on Arbitration and Award published in 1900. He was a member of a Committee of Experts appointed by the Foreign and Colonial Office in 1910 to review the work of international commercial arbitration and to ensure that British commerce enjoyed the same privileges as foreign commerce in respect of enforcement of awards abroad. The Times said that Pollock made an excellent referee and was remarkably quick in seizing on all the essential facts and figures of a case. His geniality made it a pleasure to appear before him. He was also a member of the Royal Institution and the Anglo Finnish Society.

230 n.229 above p.383
231 n.15.
232 In post 1927-31.
233 The Times Obituary 16 April 1930; p.16 Issue 45489;col C.
234 The Times. 6 June 1910.p.10.Issue:39291.col.D
235 The Times. 15 December 1923.p.11.Issue:43525.col.B
3.1.4 Sir Tom Eastham

Eastham succeeded Newbolt in November 1936 as the Senior Official Referee. He was educated at Manchester Grammar School and Owens College Manchester. He studied at St Bartholomew’s Hospital and took his degree in medicine at Manchester University. He was called to the Bar in 1904 practising at the Common Law Bar and on the Northern Circuit and built up a substantial London practice. He took Silk in 1922. From 1924 to 1936 he was Recorder of Oldham. He was a Deputy Chairman of Surrey Quarter Sessions from 1940 to 1954 and Chairman from 1943 to 1955 with the petty sessions at Dorking. He became Senior Official Referee in 1944 and whilst still in office in 1948 was appointed Commissioner of Assize on the Wales and Chester Circuit. The Times noted in his obituary\(^{236}\) that it was rare for judicial officers to be able to improve materially the position of themselves or their colleagues.

3.1.5 Sir William Hansell

He was educated at Charterhouse and Christchurch Oxford and took honours in the Classical Schools graduating in 1880. He was called to the Bar by Inner Temple and devilled for Roland Vaughn Williams the future Lord Justice. He assisted Vaughn Williams with the text book *Williams on Bankruptcy*. Hansell was the virtual author of its later editions. He became the leading authority on this branch of the law and took up a standing appointment as Counsel to the Board of Trade in bankruptcy matters. Hansell was a high churchman. He did some ecclesiastical work and had a good general practice. In 1917 he became Recorder for Maidstone. He took Silk in 1927 at the age of 71. A few weeks later on the retirement of Sir Edward Pollock (age 86) Lord Cave appointed Hansell to fill Pollock’s vacancy. Hansell was in post until 1931 and a year later was appointed as a Commissioner of Assize for the North Eastern Circuit. In 1933 he was elected Treasurer of the Inner Temple. He died in 1937.\(^{237}\) It may be significant that in Lord Sankey’s time\(^{238}\) Bosanquet sent a Memorandum compiled by Pitman\(^{239}\) and himself (both appointed as referees by Sankey). That stated:\(^{240}\)

\[\ldots\] For many years the work of the Official Referees’ Courts was of comparatively small importance, but following upon the appointment of Mr (afterwards Sir) Edward Pollock in 1897, and later during the tenure of office of Sir William Hansell, the work of these Courts has steadily developed and increased in amount and importance.

\(^{236}\) The Times. 12 April 1967.p.12.Issue:56913.col.g
\(^{237}\) The Times. 20 April 1937.p.22.Issue:47663.col.D
\(^{238}\) 1929-35.
\(^{239}\) Official Referee 1933-1945.
\(^{240}\) LCO 4/152. (HPIM 0646-HPIM 0649)
3.1.6 George Scott K.C.

George Scott served as a referee from 1920 to 1933 and is noted as being the inventor of the Scott Schedule.241 This schedule was adapted from the surveying practice of dilapidations schedules and utilised for cases of defective work giving descriptive details of the works, the cost of remedy and description of the repair required.

For all of these referees, salary and numbers242 remained a grievance as they saw these elements as dissuading more successful barristers from applying for such posts.243

Having considered the personalities involved we turn to consider my theory and its application to their work.

3.2 Definition of theory

The thesis examines whether micro-caseflow management in this court and informal resolution in the referee's chambers facilitated the more efficient and effective work of the Court. The theory is demonstrated by examples of judicial activism and sometimes by a passive approach undertaken by Newbolt's successors. The theory is tested in subsequent chapters, concluding that Newbolt's "Scheme" was effective by means of a combination of formal and informal court processes in resolving certain types of complex technical dispute earlier saving time and cost to the litigant.

3.3 Micro-caseflow management

The early evidence of micro-caseflow management discussed here may be defined as the consensual exercise of subordinate judicial power outside the traditional scope of judicial powers practised by the referees to attain expedition and economy in litigation. Upon analysis of the archival materials seven elements of this rudimentary form of micro-caseflow management were identified:

1. Special procedures in chambers enabling informal referee resolution and early settlement;
2. Referee intervention at various stages of the process to effect settlement;
3. The use and invention of the single joint expert/court expert;

---

241 n.20 p.70.
242 Lord Cairns and the Heads of Divisions had considered that they would need at least four referees but the Treasury would not agree. LCO 4/152 [HPIM 0450]
243 Referees salaries were then £1,500 and had not been increased since 1873. The number of cases referred had quadrupled after the First World War. When Lord Cairns wrote to the Treasury on 12 November 1875 to request the Treasury to suggest referees might be paid more than £1,500 the proposal was rejected by the Treasury. [HPIM 0445]
4. The use of a “proportionate” approach to costs so that the costs of the case should bear some reasonable relationship to the value of the item in dispute;
5. The invention of special forms of submission such as a Referee’s or Scott Schedule which replaced pleadings;
6. The formulation of preliminary issues or questions for the court;
7. Flexibility as to the place of hearing at more economic locations and attendances on site.

These elements of rudimentary caseflow management and referee alternative resolution are examined in more detail subsequently to explain how and why all this came about in the 1920s in this court pre-dating notions of case management and proportionality as well as ADR by more than half a century. 244

3.4 Events leading to the invention of case management and judicial settlement

We recall from chapter 2 that the architects of the 1873 judicature reforms declared their intention to replace commercial arbitration with a court managed referee system. We also suggested that the referral of cases from Queens Bench and Chancery Divisions to referees was a form of macro-caseflow management, realised through Section 3 of the Common Law Procedure Act 1854. The referees, in particular, Newbolt played a pivotal role in this judicial revolution.

The philosophy underlying Newbolt’s “Scheme” was clearly set out in his seminal article and his concluding remarks in the Law Quarterly Review: 245

A true function of the Court, it is submitted, is especially in the commercial cases under consideration, not to conciliate or exhort the parties, as is sometimes suggested much less to hurry them, or to deprive them of a perfect freedom of action, but to use the available machinery of litigation to enable them to settle their disputes according to law without grievous waste and unnecessary delay and anxiety: and in particular to show them how this, if desired, may be accomplished. The only so called concessions which the parties can be said to make are made not only voluntarily, but in their own direct pecuniary interest. This has little, or nothing, to do with the common place saying of ordinary life that a man loses nothing in the long run by forbearance, fair dealing or generosity.

But the essence of this early evolution of case management lay in the function of the referee, his multi-function role being derived from: that of a master to whom matters were referred under the Common Law Procedure Act 1854; a judge of the High Court in

244 ADR did not really establish itself as an alternative to litigation until after 1976, regarded by some as a turning point in legal history. That was the year of the Pound Conference at St Paul, Minnesota on: Perspectives on Justice in the Future and Chief Justice Warren Burger’s pejorative as to whether there was not a better way.
245 n.2 p. 427.
terms of powers subsequently conferred after 1876; an arbitrator in terms of the referees’ early use of directions after issue of the writ, and finally a juryman’s role where he would deal with trials of fact as “a jury”. It may be argued that the utility of Section 3 Arbitration Act 1889 enabling parties to appoint a referee as an arbitrator by agreement was decisive in terms of using consent as a means to extend the referees official formal power. By consent of the parties the Rules of the Supreme Court could be waived and by party agreement the referee could sit in chambers and informally resolve the case. This revolution is clearly demonstrated in Newbolt’s correspondence with Lord Birkenhead, in particular, his reference to “friendly business discussions” and in his article, where he refers to “an informal discussion in Chambers.” This was an extraordinary process for these times and quite unconventional because judges never entered the arena, believing that if they did so they would be perceived to prejudice their impartial and independent position. It was a high risk strategy for Newbolt which caused Birkenhead some concern.

For present purposes it is only necessary to record what the development was and why it occurred in the context of the contemporaneous literature. In many respects the referee was a multi-functionary who bridged the void between a traditional Anglo-Saxon judicial culture based on the adversarial process, and the laissez faire business approach of the commercial man. The point was that adjudicating cases in a traditional manner was just not cost effective with the type of issues before the court and the voluminous evidence that referees had to analyse. What Newbolt worried about was the time spent on the case in proportion to its overall commercial value.

In the twentieth century the referees’ role became more clearly defined. Their status was slightly increased by the acquisition of the non-jury list, and the abolition of rights of appeal on matters of fact. The referee’s multi-function role was self evident from

---

246 Eastham’s notebooks for the period 1940-49 reveal numerous illustrations of case management features especially in the period 1944-48. Cases included matters of account, disputes as to matrimonial property, war damage claims, dilapidations cases, building and engineering cases and questions of costs. The entries also reveal that this judge frequently sat outside London and was requested on some occasions to exercise power ‘as a jury’.

247 To effect such appointment the arbitration agreement had to be lodged with the nominated referee’s clerk and then entered in his list unless it was given a special appointment for hearing. The Award was published on payment of a court fee. Sched. I, Section V, Supreme Court Fees Order 1924.

248 Letter: Newbolt to Lord Birkenhead’s Secretary Sir Claude Schuster. 15 February 1922. LCO 4/152 [HPIM 0592]

249 n.2 p. 438
Sections 88 and 89 Judicature Act 1925. A considerable increase in referrals occurred in the 1880s and 1890s.

The abolition of the right of appeal from referees to the Divisional Court also added to their status as a court of first instance. Opportunity was afforded for case management at an early stage of the proceedings because referees had developed the practice of giving directions on an early summons for directions taken out after the issue of the writ and before close of pleadings. Crucial to this development in the early 1920s was the acquisition of the non-jury list from the Queen’s Bench Division which radically increased referee workload by 65 per cent in the years 1919 to 1922.

3.5 Explanation of theory

It is argued in this thesis that following its invention in the 1920s case management and referee settlement positively affected the outcome of referrals. It is argued that were it not for Newbolt’s approach and that of his colleagues there would have been much delay in the trial of cases and higher cost. If it is the case that Newbolt practised case management the question has to be asked whether that accounts for the apparent effect on caseflow in the period 1919-36. If it survived Newbolt’s era, does it have any marked effect in the period 1947-70 for which periods judicial statistics are available? If we consider the 18 years (inclusive) of the Newbolt period, the average percentile of disposals and settlements from 1919 to 1936 was 28 per cent of the referrals. If we take a similar period after the war 1947-64 the average settlement and disposal rate before trial is 19 per cent of the referrals. What these results tend to suggest is that the Newbolt era was a more activist time in terms of settlement and the post war period less activist.

The further detailed study and analysis in Chapter 5 of these periods, and the Minute Book analyses 1959-62 and 1965-67, confirm that there was a marked difference as a result of these measures in the respective periods.

---

250 Section 88 provided that where any case was to be tried with a jury the court could refer the matter to an Official or Special Referee for enquiry and report. Any question arising in any cause or matter other than a criminal proceeding by the Crown and further the report of an Official or Special Referee could be adopted wholly or partly by the court or judge and if accepted could be enforced as a judgment or order to the same effect. Section 89 Supreme Court Judicature Act 1925 applied where any cause or matter other than criminal proceedings could be tried by a referee, officer of the court, special referee or arbitrator if the cause or matter required any prolonged examination of documents or any scientific or local investigation.

251 See: Table T.2.3.

252 n.51
3.6. Against the theory

Whilst there is clear direct contemporaneous evidence from the Lord Chancellors files at the National Archive and from judicial statistics as to the existence of this phenomenon and the effects of it there is no corroborative evidence in the most likely place – the Rules of the Supreme Court themselves. The Annual Practice of 1930 at page 640-641 headed Notes on the practice before the Official Referees states:

Once an order for reference to an Official Referee has been made the Solicitor’s clerk shall enter the case with the Official Referees Clerk with the Writ and the Order for reference from the Queen’s Bench Division or the Chancery Division. Directions will be given by the Official Referee and all interlocutory proceedings given by him in his Chambers including the issuing of Summonses, drawing up and dealing with orders and filing of documents. Summonses and applications will be heard by the Referee at 10.30am each day. Appeals against Interlocutory Orders will be referred to a Judge in Chambers.

Whilst there is no reference to any form of rudimentary caseflow management the note confirms that the referee was master of all interlocutory proceedings. That being the case the referee would have had every opportunity, in theory and in practice, for bringing some order to the case and encouraging a time and cost-saving timetable as well as a process tailor-made for the particular case. In the absence of any express reference to the case management theory discussed in this chapter reliance is placed upon the contemporaneous reports made by Newbolt and Eastham to Sir Claude Schuster K.C., the Lord Chancellor’s Permanent Secretary, and Eastham’s surviving notebooks.

3.7 Exposition of the basis for a theory: Newbolt’s first report to the Lord Chancellor

The best evidence of this process is a report that Newbolt made to Lord Birkenhead in July 1920. Newbolt’s letter enclosing it, and the report itself, formed the basis of what Newbolt later described as his “Scheme.” Here we find some answers to our research questions raised in paragraph 1.6 (b) and (c).

253 Author’s italics.
254 Author’s italics.
255 Sir Claude Schuster K.C. was appointed by Lord Haldane because of Lord Haldane’s other urgent duties. Lord Haldane contemplated that Schuster would be the right man to set up a Ministry of Justice. Schuster played a pivotal role regarding micro-caseflow management aspects. Schuster was the conduit through which the Lord Chancellor communicated with the Law Society, The Bar Council and the Bench as well as both Houses of Parliament. Schuster had a particular interest in what Newbolt was doing because of Schuster’s involvement with a more efficient County Court procedure.
256 J114/1-8
Newbolt’s covering letter to Schuster dated 5th July 1920 enclosing a report to the Lord Chancellor stated:

Dear Claude,

Here is the Report. It is cut down to its extreme limits to make itself read. I have shown it to no one.
I cannot, of course, say that any of the defects [in the system] are due to individuals, but I feel some surprise that my very simple expedients have not occurred to anyone before.
Today after I signed the report I had a case where the parties gladly agreed to have commission accounts examined by an independent accountant, this saving more than half of the time of trial.
Do please try and do something to improve our status more definite and dignified.

Yours,

F. Newbolt.257

This is not a polite letter asking for a judicial upgrade. This is a referee telling the Lord Chancellor of England that he has a problem with traditional procedures and the way to overcome it involves case management measures. There is something revolutionary here. An expert is not an advocate. He had no right of audience. There was no provision in the Rules of the Supreme Court for a court expert. This did not come about until 1934258 when Order 37A was amended. Newbolt invented the court expert and this is the evidence of it. He did it to expedite the process and save money: saving half the trial costs clearly demonstrated its success. Despite this Birkenhead’s eventual reply in February 1922,259 referred to subsequently, cautioned about pressure from the Bench in settlement, but one can also infer Birkenhead’s concern for what he called: “the waste of public time.”

257 LCO 4/152. [HPIM 0559-0560 ]
258 RSC (No.2) 1934.
259 Letter: Schuster to Newbolt. 21 February 1922. LCO 4/152 [HPIM 0594]
Newbolt's full report is as follows:

Confidential
5th July 1920

Offical Referee's Court
No. 195
Royal Courts of Justice

I was appointed an Official Referee in April 1920 and had long been aware that there were serious defects in the business connected with this office. I am now informed that a brief report on the matter would be acceptable.

The defects fall under 3 heads:

1. Those which are noticeable in all litigation in the courts;
2. Those which are due to the personality of the Referees, and their want of status procedure and position; and
3. Those which are due to the present practice in this Court.

The result of all these combined is that the volume of the business is not what it should be, and a vast number of disputes go to private arbitration instead of any to the Courts.

The reasons given generally for preferring a lay arbitration are that (1) it is a much cheaper tribunal; and (2) much more expeditious; (3) a lay arbitrator is chosen who belongs to the particular trade in which the dispute arises, or is an experienced solicitor or chartered accountant; and there is practically no appeal.

Here I say incidentally suggest that it is an anomaly that the appeal from a referee may go as of right to the Court of Appeal, and the House of Lords, but it must first pass through the Divisional Court. It seems difficult in these days to justify this extra proceeding in appealing against the decision of one who has all the powers of a High Court judge.

From the legal and logical point of view, indeed from almost any point of view, a lay arbitration is open to the gravest objections. Whenever a motion to set aside an award is made gross irregularities, often amounting to a denial of justice, are disclosed. These are well known, and indeed not enlarged upon, but the fact remains that the attraction of a cheap and speedy decision is so great that more important matters are overlooked. The natural desire to have a judge who understands trade customs will be dealt with later.

The first question then is how the present procedure can be cheapened and accelerated.

There is much room for improvement. I am informed that the list left to me by my predecessor will occupy my Court for a year, and some of the cases
which I have already dealt have been over a year-one or two over a year and a half-on the way to trial.

During the last few days 3 cases have been referred to me after reaching trial before a judge, and in many cases the order or agreement to refer comes too late.

Solicitors are slow to take the initiative, and though it is not possible to generalise on many points it may be confidently stated that a strong tradition has grown up in the profession that a "good reference," when once the order is made, is a windfall for counsel and solicitors; it is long, lucrative and leisurely affair with great inducements to keep it alive, without fear of judicial censure.

The result of this tradition is that heavy and unmerited loss falls on almost every litigant, whether successful or not.

Connected with this great grievance is one of a more subtle nature. Many genuine disputes properly referred owing to the details of the claim, and involving in the aggregate £100 cannot be satisfactorily tried in the High Court at all on the present system.

The cost per hour is out of all proportion to the value of the items. It is a negation of business methods to spend even half an hour on an item valued at £2 or £3 and in a great many cases it is evident from an early period that the costs will probably fall upon the defendant and this has a great tendency to lengthen the case and penalise him. This is hardly explained to him.\(^2\)

While upon this question of expense I should point out that a great deal of unnecessary time has been taken up in the past owing to the traditional attitude of the referee which can only be explained by his want of some more definite status. He has endeavoured to make up for his want of authority by a policy of conciliation and non-interference, especially when leaders of the Bar have appeared before him, and this attitude always tends to lengthen a case very considerably. I recollect one, which although it might well have been tried in about 10 days actually took 22 days, and the referee listened without comment to the speeches of counsel which occupied no less than 22 hours. The costs amounted to £5,000 and owing to an incomplete judgement the trial proved abortive.

Lastly it is clear that a referee is not a member of a trade; he for instance cannot be so expert at accounts as an accountant, or so familiar with building as a builder; and so he has to listen to contradictory evidence on many questions which would create no difficulty if he were a member of the particular trade or business. By comparison to a lay arbitrator this adds to expense.

As to these points I can best put my 2 first suggestions for improvement in the form of examples:

\(^2\) Written in Newbolt's handwriting, the rest of the letter being typed. Author’s italics for emphasis.
(1). In an action on a mortgage the defendant desired to take an account over 12 years. Accountants were to be called on both sides and the case was expected to last 2 or 3 days. On a summons before trial I suggested that only one accountant should be employed an independent man nominated by agreement or by me. This was accepted. I named an accountant and he was engaged for one day. Upon his report the defendant capitulated. No briefs were delivered.

The same accountant is now by consent in another case, investigating the accounts of sales of goods amounting to £12,000 the amount in dispute being only a small balance less, I should think, than the costs of a 2 day trial. There will be an immense saving of expense here.

(2). In an action for damages for bad workmanship in decorating a theatre it was intended to call expert witnesses on both sides. On a summons, I suggested that one independent expert should examine and report, and this was accepted and his report was received. It will very greatly reduce the time of the trial and the extra expense of witnesses and increase the probability of a satisfactory decision.

There is no compulsion, and counsel and solicitors seem well aware of the advantage of the parties of the introduction of these changes, which are made possible by the fact that, at any rate, after the order of reference, all the summonses come before the judge who is to try the case. He can always, if he likes, get seisin of the case, and save much of the expense incurred by leaving the solicitors to carry it on in the usual way.

There remains the fundamental difficulty of status and to improve this, and so obtain the best candidates for this responsible position, clothed as it is with all the powers of a High Court Judge I venture to suggest (1) that the Referee should take precedence of County Court judges (2) that all appeals from their decisions should go direct to the Court of Appeal leave being required to appeal from a decision on a summons;(3) that the recognised form of address to a Referee should be "My Lord" a title of respect allowed to a Commissioner of Assize and even to a junior barrister when he sits as a recorder or deputy recorder of a city like Bradford (4) that the salary and allowances should be increased and their pensions be at least on the same scale as those of County Court judges.

These suggestions hardly seem to require much argument but I may illustrate them by the following examples:

Some little time ago, in order to help an old friend who was ill I sat for 3 days as a Deputy County Court Judge and in my last case, in which no solicitor or counsel appeared I gave judgment for £5. In my first case here I gave judgment £17,700.

Counsel of the first rank sometimes appear on references and it is essential to the proper speedy and economical conduct of the judicial business,
whether heavy or light, that the referees should occupy a position which enables them not only to possess but to exercise all the powers of a judge in the most effective manner. Otherwise the old tradition will revive. I have endeavoured to compress my observations into the smallest possible compass, but in connection with this part of my report I cannot help wondering what a judge of the King’s Bench Division would say if after adjourning a part heard case for the convenience of the plaintiff’s leading and junior counsel, he found that neither of them appeared at the time arranged owing to engagements which they considered more important. In a Referee’s Court such an incident carries no penalty, except for the plaintiff.

F. Newbolt.263

This report is important because in it Newbolt identifies the deficiencies in the referral process. This is critical to the concept of micro-caseflow management or the “Scheme” described here which has at its core the expeditious and economic resolution of disputes by conventional and unconventional means. It is also a key factor in the theory being the first real and direct evidence of a rudimentary form of caseflow management in this court. Here Newbolt identifies some problems and gives some examples of how he has case managed them.

First, personality of the referee is important particularly where the referee is of an equal professional standing to those appearing before him. Difficulty arose where the leaders of the Bar appeared before a referee whom the leaders considered had lesser standing. Referees continued to complain about their status for decades because of this. Whilst it is argued subsequently that subordination had advantage in terms of informality, it could be detrimental where a referee might have difficulty in encouraging a leader to settle.

Second, Newbolt warns about “cheap and speedy” arbitration and the dangers of injustice through irregular awards, but at the same time advocates cheapening the court procedure and recommending what are in effect elements of case management: expediting referrals from masters to referees; and use of independent experts. Significantly he identifies lawyers as a problem and suggests that a “good reference” militates against efficiency. In the same vein he attacks disproportionate cases where the legal costs are out of all proportion to value of the claim.264 Newbolt clearly understood

263 LCO 4/152 [HPIM 0560-0567]
264 Newbolt reported a case to the Lord Chancellor where the Plaintiff’s costs exceeded the damages awarded. He gave the example of a case of five eggcups at three pence each and two pie dishes at one
and demonstrated his overriding commitment to cost effective case management which today is perceived as one of the key features of judicial case management.

Third, he perceived that there was a perceived disadvantage of appeals to the Divisional Court in 1930 they took time and they added further cost to the appellate procedure. The figures given in the returns gave an average of 7 per cent of cases were appealed. But, not all referees agreed with Newbolt. For example, Hansell did not agree with the abolition of all appeals. From Newbolt's point of view it would have made things far more efficient and given the referees more credibility and status.

The passing of the Administration of Justice Act 1932 must be considered a triumph in terms of case management and recognition of the referees' role. The reason for this success was due to Lord Sankey, the Lord Chancellor, who wrote a memorandum to the Cabinet in September 1932 regarding a number of legal reforms "which experience has shown to be desirable."

Lord Sankey advised the cabinet:

.....This reform has been duly considered by the Council of Judges of the Supreme Court, and its achievement calls for legislation since it is not within the competence of the Supreme Court Rule Committee.

It would appear that Hansell and Bosanquet approached the question of appeals differently from Newbolt. Bosanquet wrote to Lord Sankey in November 1932 saying:

OFFICIAL REFEREE'S COURT
No. 691
Royal Courts of Justice
November 2nd 1932.

My Dear Paterson,

I have been reading with interest the clause in the Bill which the Lord Chancellor is introducing dealing with appeals from Official Referees. I should

265 LCO 4/152 [HPIM 0581]
266 see Appendix. Table of Appeals. Between 1928-31 there were 31 appeals which occupied the Divisional Court for 51 days, each appeal taking an average of 8 hours. 5 were further appealed to the Court of Appeal taking another 4 days in court. LCO 4/152 [HPIM 0524-0543]
267 LCO4/152 [HPIM 0581-0582]
268 LCO 2/1710. [HPIM 0535] Lord Chancellor to Cabinet.
269 LCO 2/1710 above.
270 Senior Official Referee 1927-1931.
much like to have an opportunity of putting my views—which incidentally were those of Hansell him (sic). Which of his Secretaries is concerned with this hand of the business? The view which we both hold is that while we entirely agree that the appeal should go straight to the Court of Appeal, we think that having regard to the complexity of the matters which come before us the procedure by Special Case would be cumbersome, and in many cases quite unworkable. Of course Hansel's view is deserving of much more respect than mine. I know that it is in conflict with Newbolts—but then the latter would like to abolish appeals from Official Referees altogether—and has stated to me that in his view the proposed method would in effect do so!

Yours ever

S.R.C. Bosanquet.

However Newbolt seems to have won the day by sending a Memorandum to Lord Sankey:  

Administration of Justice Act, 1932

MEMORANDUM

What further Rules of Court are necessary.

In my opinion it would be to the advantage of suitors, and for necessary alterations in the Rules of Court to be made this term. If this is not generally acceptable, I suggest that the order should be made direct Jan. 1st, 1933, as the day, and the alterations, which seem slight and not controversial could be considered and settled in a brief period, this term.

The points requiring consideration are-

(1) Cases sent to the Referee for enquiry and report, under Section 88 of the principal Act;  
(2) Interlocutory appeals on questions of law;  
(3) Trial of any question or issue of fact under Section 89 of the principal Act, which implies that the action remains in the jurisdiction of the Judge making the order of reference.

As to (1) the practice in this respect has become almost obsolete. I cannot remember having had such a case in 13 years, and I am informed by the Rota

272 LCO 2/1734 Appeals from referees: question of altering rules consequent on the Administration of Justice Act, 1932 (s.1); Rules of the Supreme Court (No.4, 1932; Appeals from Official Referee’s Order, 1932 [HPIM 0839] Memorandum from Sir Francis Newbolt QC to Lord Chancellor, November 1932.

273 LCO 2/1734 [HPIM 0839-0840] Newbolt had certainly not had any such case in 15 years and were to all intents defunct.
Clerk that only one such case has come into the office, certainly during the last 3 or 4 years.

Such a report when adopted, wholly or partially, becomes a judgement automatically and the appeal, if any, is an appeal against the decision of the Judge.

(2) Almost every interlocutory order is discretionary, and without appeal, but in a rare case a point of law might be decided. But I have formed the opinion which is shared by all those whom I have consulted that the Act forbids interlocutory appeals to the Court of Appeal or otherwise.

(3) Trials by Official Referees merely of issues of fact, except the estimation of damages are now unknown. Apart from damages, it is the invariable practice of the Judges to refer the whole cause or matter.

....

(Sgd) Francis Newbolt
Senior Official Referee
19.11.32.274

Newbolt’s comment that High Court judges had adopted the practice of sending the *whole cause or matter* to a referee is significant. It goes beyond what Lord Selbourne said in the House of Lords in February 1873 that referrals would be confined to matters of fact and account.

One of the advantages of not having a jury was that the judge could order a short adjournment for the parties to consider settlement. The parties frequently requested trials on liability only without any reference to damages.275

Newbolt noted that the draft new rules recognised the referees’ position by extending Rule 19A of the *Rules of the Supreme Court*.276 This gave a right to appeal a decision of a referee on a point of law to the Court of Appeal, instead of to the Divisional Court of King’s Bench.

On the 13 December 1932 Albert Napier277 sent the Lord Chief Justice, Lord Hanworth278 an advance copy of the new procedure. Hanworth endorsed the letter:

Yes. I have gone through them and agree

---

274 LCO 2/1734 HPIM [0839-0841] Memorandum Newbolt to Lord Chancellor
277 Napier was assistant secretary in the Lord Chancellor’s office and Deputy Clerk of the Crown in Chancery from 1919 to 1944 when he became Permanent Secretary to the Lord Chancellor and Clerk of the Crown in Chancery. He has been described as a “brake not an accelerator”.
Appeals direct to the Court of Appeal was perhaps the high water mark of Newbolt’s efforts to raise the standing of the referees.

The July 1920 report was the catalyst for Newbolt’s “Scheme” and whether officially supported or not it became the foundation for practice in the referees’ court. The November 1932 Memorandum and Newbolt’s views as to appeals gave the court a greater standing. Lord Sankey’s action brought the referees’ court into line with the other Queen’s Bench courts so that their judgments were not capable of review by High Court Queen’s Bench judges. The significance of the measure meant in effect that the judgment of the referee became a judgment of the High Court.

Newbolt’s “Scheme” was the prototype of case management and informal referee resolution and provides the basis for the exposition of the theory that case management and informal referee resolution created a more efficient court. We further examine this “Scheme” by a literature review and qualitative analysis of contemporaneous archival material and Newbolt’s publications. From this review the following analysis of the principal features of rudimentary caseflow management emerge.

3.8 Discussion and analysis of elements of rudimentary caseflow management

3.8.1. Early procedural evaluation and rudimentary informal referee resolution

Newbolt’s article in the Law Quarterly Review described various case-types: including building and dilapidations cases, matters of taking account, local examination of building, machinery and farms and other subject matters. His central critique was aimed at cost inefficiency and delay. Newbolt wrote that defendants incurred unnecessarily burdensome costs in preliminary proceedings which were not “always deserved.” This loss deterred parties from litigation.

As Newbolt said:

The interlocutory proceedings before reference may be so extravagant and dilatory as to defeat justice.

---

279 LCO 2/1734 [HPIM 0846]
280 LCO 2/1710. [HPIM 0532 ] Note on the Administration of Justice Bill by Lord Chancellor’s Assistant Secretary Napier.
281 n.2 p. 434.
282 n.2 p. 435
Newbolt significantly developed a practice at First Summons for Directions stage of not only giving directions for the further conduct of the case, but also made it his practice to discuss the merits, issues and value of the claim with the solicitors who appeared before him. In the course of this he took the opportunity of considering how time and cost could be saved. In Newbolt’s words he had ‘friendly business discussions’ during the interlocutory process with those appearing before him. It was this business-like approach and his rapport with solicitors that facilitated his “Scheme.”

Thus he could confidently report in his last letter to Birkenhead as Lord Chancellor.283

13th Feb 1922

My dear Lord Chancellor,

I have from time to time sent in reports of the work in my Court, beyond the official returns, showing how I am able to prevent delay, simplify procedure and reduce expense. Now at the suggestion of two of the judges, I wish to draw attention specially to a case in which I delivered judgment yesterday as it is a striking example of what I am fighting against.

The judgment is in writing, and if you so desire, I will send you a copy.

A dispute arose between a builder and a building owner and a writ was issued in October 1920: the case only came before me for trial.

The interlocutory proceedings during the previous 16 months was open to the most severe criticism and when I reserved judgment after a three day trial I ascertained by courtesy of the solicitors that the plaintiff’s total costs were estimated at £497, including about £125 for counsel’s fees and the defendant’s costs at about £400. Total about £900. The plaintiff recovered £122, ordered by previous payment set off to £27.

I gave judgment for £27.

If the case had come before me on the delivery of the Statement of Claim indorsed on the writ it could have been disposed of in a few weeks at small cost.

On a hint from one of the judges, I only desire to add that in my scheme for cheapening and expediting litigation nothing is done without consent. It is by friendly business discussions over the table that the simplification is offered.

283 LCO 4/152 [HPIM 0593]
In no case has any decision of mine in Chambers been overruled and the only appeal against a decision of the court was emphatically dismissed today by the Divisional Court.

I respectfully suggest that after 2 years trial this is a satisfactory answer to any enquiry.

Yours truly,

Francis Newbolt

The Rt Hon.
The Lord Chancellor

This letter is significant first, because it confirms Newbolt's "Scheme" in particular his "friendly business discussions in Chambers" undertaken with the support of the parties. Second, because the decisions he reached as a result and his practice was never appealed or overruled. It is quite revolutionary in its disclosure, as is the fact that another judge has suggested that Newbolt disclose his "friendly business discussions". Birkenhead clearly felt some unease about this because of the judge's function. The last reply from Birkenhead's Permanent Secretary to Newbolt is therefore invaluable in this debate:

21 February 1922

Dear Frank,

The Lord Chancellor asks me to reply to your letter of the 13th February.

He is very glad to read it. He had always anticipated from his long acquaintance with you that you would dispense justice with expedition and equity and that in so doing you would have special regard to the interests and the pockets of the litigant.

There is only one point upon which he has felt some uneasiness. He has now sat as a judge himself for three years and his experience during that time has confirmed the opinions which he formed at the bar as to the judicial conduct of litigation. It is no doubt desirable that the advantages to be obtained by settling instead of fighting should be present to the mind of the lay client and of his professional advisers. But the Chancellor himself has seen so much of the dangers which arise from any undue pressure towards a settlement exerted from the Bench that he himself is most careful ever to avoid such action. There are cases which are better fought out and there are clients who desire to fight even

284 LCO 4/152 [HPIM 0594-0595]
more than they desire to win. And there are others who, though their principal object is victory, are better content with defeat than an inglorious peace. So strongly does the Chancellor hold these views that he always deems it desirable to impress them upon all who administer justice, but he thinks that they are specially to be borne in mind by anyone who, like yourself, is eager for justice and justly impatient of the waste of public time.

Yours sincerely,

(Sgd). Claude Schuster

Sir Francis Newbolt K.C.

Birkenhead’s unease about settlement discussions goes to the heart of a dilemma here: on the one hand, the referees wanted to be like High Court judges which Newbolt felt they were “all but in name.” On the other hand, Newbolt wanted to dispense justice informally because this was the only way he could expedite his list. Newbolt’s approach might be reconciled to the Commissioners objective of a process being “capable of adjusting the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried.”

Whilst Birkenhead’s letter of reply was ambiguous in that Birkenhead thought that Newbolt should have special regard to “the interests and the pockets of the litigants,” he also felt some “uneasiness” in that there were dangers in judges “exerting any undue pressure towards a settlement.” On the other hand, he was alive to “the waste of public time.” Birkenhead could not sanction the “Scheme” because of his unease in the light of his own experience in sitting as a judge and anxiety over “undue pressure” from the bench. On the other hand, Birkenhead and Schuster undoubtedly recognised Newbolt’s initiative and to an extent whilst the letter is cautious it is also complimentary and encouraging. It is fortunate that Newbolt’s early experimentation in this field coincided with Birkenhead’s tenure and that Birkenhead did not discourage Newbolt’s reports, his experimentation, or the “Scheme.”

What is significant is that in the absence of any other contemporaneous evidence of fact this may be considered as the first instance of alternative dispute resolution in England in a court setting. Newbolt was not deterred and there is no evidence to suggest he altered his practice, because some time after July 1921 he wrote again to Birkenhead intimating support from the profession.²⁸⁵

---
²⁸⁵ LCO 4/152 [HPIM 0582] The letter is undated, but appears on the file after July 1921 correspondence.
I have devised means of enabling the parties to have their disputes decided cheaply and rapidly and my efforts in this direction have been widely approved by the profession....

This suggests that there existed a concurrent consensual dispute process possibly more like early neutral evaluation or mediation than arbitration. However Newbolt did not find it easy to use this expedient in other types of cases such as disputes over dilapidations and damage to property items.\textsuperscript{286}

A further extract from Newbolt’s article\textsuperscript{287} gives a good example of the benefit of Newbolt’s approach here:

The Defendant who often has good reason to complain of some overcharge, of defective work, swears a vague affidavit, and obtains leave to defend as to part, or all, of the claim. But he may have, in fact, no case. ........... If a few days after an order on the summons before the Master the parties met before the Referee and discussed the position such a miscarriage of justice as appears in the cases described would be impossible. The main source of avoidable waste of money is the occupation of time in Court which a little thought and discussion in Chambers would save, and does save. In matters of account, in kindred cases, much money has been thrown away in the past by discussing in open court matters of pure arithmetic, or the contents of business books which turn out not to be in dispute, or not material to the issue, or fatal to one parties contention. Many other examples might be given. In one case evidence was taken before and also at the trial on both sides to prove the market price of goods at a foreign port. \textit{If a preliminary discussion had taken place}\textsuperscript{288} none of this evidence would have been gone into as it was not relevant to any issue on the pleadings. Another instance will strikingly illustrate the point. A mortgagor claimed an account of matters extending over many years: the case was expected to last for a fortnight. \textit{After an informal discussion in Chambers}\textsuperscript{289} the parties agreed that an independent accountant should examine the books before trial, as a witness for both sides, and report on the points in difference: so that the issue between the parties should be defined and tried. He reported that having explained the figures to both the Plaintiff and the Defendant there were no points in difference and there was nothing to try. \textit{This is not arbitration or conciliation or concession, but an intelligent use of a Court of justice by business men}.\textsuperscript{290} They spent perhaps £50 or less in arriving at a result which would in the ordinary course have cost ten times that sum, and would have worried them for a year.

\begin{footnotesize}
\textsuperscript{286} Newbolt. Further report to Lord Chancellor, June 1921.  
\textsuperscript{287} n.2 pp. 438-439  
\textsuperscript{288} Author’s italics.  
\textsuperscript{289} Author’s italics.  
\textsuperscript{290} Author’s italics for emphasis.  
\end{footnotesize}
What is crucial here are Newbolt’s explicit references to “preliminary discussion”, “informal discussion in Chambers”, and “use of a Court of justice by business men”. The fact that this article was published a year or so after his correspondence with the Lord Chancellor reveals his commitment to an alternative resolution process and exhibits a certain confidence in case management.

As proof that this “Scheme” worked Newbolt’s article included the following figures for the recovery of damages in the immediate post first war period which appear in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Amount Recovered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>100</td>
<td>£76,536</td>
</tr>
<tr>
<td>1921</td>
<td>150</td>
<td>£81,482</td>
</tr>
<tr>
<td>1922</td>
<td>171</td>
<td>£171,079</td>
</tr>
</tbody>
</table>

Source: Expedition and Economy in Litigation

According to Newbolt less than a quarter percent of the cases were subject to any appeal. What is interesting about his figures is that there appears a 100 per cent increase in recovery at the time Newbolt confirms that the “Scheme” was in operation. Newbolt sent a copy of this article to Lord Haldane, Lord Cave, Lord Justice Akin, and Sir Wilkes Chitty.

Lord Haldane was more appreciative than Lord Cave as Schuster on behalf of Haldane wrote:

9th May 1924.

Dear Frank,

The Lord Chancellor has asked me to thank you for your letter of the 2nd May and for the copy of the Law Quarterly Review which accompanied it. He has read your article with much interest and has considerable sympathy with many of the suggestions you make.

He will be very glad to discuss any proposals which may be made with the Solicitor General in due course.

Yours sincerely

(sgd) Claude Schuster

Sir Francis Newbolt, K.C.

---

291 n.2 p. 439
292 LCO 4/152 [HPIM 0619] Newbolt to Napier to undated.
293 Newbolt’s book: *Out of Court* was dedicated “by his friend the author” to Lord Justice Akin in 1925.
294 Newbolt’s former Head of Chambers.
Had Lord Haldane's party remained in government longer then Newbolt might have received more support.

However, following Newbolt's retirement in 1936 this informal process was continued as a matter of referee practice by his successors. This is demonstrated by a number of matrimonial property disputes which were referred to the referees after the war.\textsuperscript{295} One such example was \textit{Johnson v Johnson}.\textsuperscript{296} Here the costs were grossly disproportionate. Damages were assessed for the plaintiff at £1 on the claim and for the defendant at £6 10 shillings on the counterclaim with costs on the County Court Scale. On an adjourned application the plaintiff was ordered to pay the defendant all the defendant's costs of £100. These terms were agreed between counsel at an adjourned hearing before the referee in chambers to avoid further cost.

3.8.2. Judicial intervention promoting expedition and economy

The crux of interlocutory management practised by referees in the 1920s as advocated by Newbolt centred on the referee having control of that process. It is argued here that Newbolt's "Scheme" resulted in more expeditious trials, if not earlier settlement, which promoted his "Scheme" of a continuous judicially managed process whether that was under the \textit{Rules of the Supreme Court} or \textit{ad hoc} or informally managed consensual process. We illustrate such judicial interventionism by reference to the use of quantum experts by Newbolt's successor Eastham in Chapter 4.

3.8.3. Experts

(a) Use of single joint expert/court expert

Presaging the civil justice reforms of the 1990s by more than 70 years Newbolt pioneered the use of court experts. He saved time and costs by the proper and necessary employment of experts. In his report of 5 July 1920\textsuperscript{297} Newbolt tells Lord Birkenhead about his experiments with expert evidence citing the accountancy expert example. What is interesting here is that Newbolt was experimenting, not only with a case management process at least 14 years before the \textit{Rules of the Supreme Court} were

\textsuperscript{295} These are included in the notebooks J.114/1-8 and refer to assessment of value of matrimonial property, and disputes over ownership. Evidence from the second comparative period 1947-1070 is contained in Chapter 4

\textsuperscript{296} J114/1 21 October 1946. [HPIM 1746]

\textsuperscript{297} LCO 4/152 [HPIM 0565] p.5.
augmented by Order 37A, but he was directly intervening in the action in order to reduce cost and delay and procure by these means a quicker solution and settlement. This is therefore a good example of judicial management and "interventionism."

There is no evidence that Newbolt's practice encouraged the parties to incur further costs of instructing their own party experts. The court expert was the only expert engaged.

The important point here is that the initiative came from the judge, not the parties; the judge taking control away from the lawyers to actively caseflow manage the proceedings more economically.

On the same theme, just over 10 years later, Newbolt wrote to the editor of The Times about methods of saving expense:

...Since the war there has naturally been a great stream of cases brought by landlords against tenants about dilapidations, and by builders, contractors, and decorators, and others against building-owners about the price of work done, and in all these cases at least the parties are very anxious to avoid unnecessary expense, and eagerly fall in with the idea that only one expert witness should be employed. He is not an assessor or arbitrator, but a witness. The saving of money, especially to defendants, is surprising.

The plan has a double advantage, as the independent expert gives both parties a copy of his proof long before the expensive preparation for the trial, and from its perusal they can predict the result of a hearing in Court, apart from questions of law, so accurately that in many cases no formal trial takes place at all. ......If only one witness is employed he is single minded, and paid to be truthful and helpful, and not combative. He is chosen by the parties, by some professional institution, or by the Court, and can naturally be cross-examined by both sides, though this has very rarely happened. The same procedure can be pursued in many other cases, particularly those involving accounts, inspection of books, vouchers, &c. A report by one independent accountant of the contents of these, before any proceedings are taken beyond the writ, saves a startling percentage of the costs of the action.

There are many other ways of saving expense, which, when offered, are eagerly agreed to by litigants, but as they are not compulsory or according to old routine they are not so often suggested as they might be. Space does not permit me to

---

298 Under Rules of the Supreme Court (No: 2) 1934 Order 37A each party had the right to call an expert or experts with leave with regard to the "issue for the expert". This enabled the Court in non-jury actions to appoint an independent Court expert to "enquire and report upon any question of fact or opinion not involving questions of law or construction",

299 The Times. 4 September 1930. p.11. Issue 45609. col. F.
suggest how the apparent difficulty about fixing trials can be met, or how the suggested second summons for directions before the Judge would be most beneficial, or how arbitration, with all its convenience and finality can be obtained in the Law Courts for the ordinary Court fees.

Yours truly,
FRANCIS NEWBOLT

Not only does this letter advocate the utility of the single joint expert but it has wider implications for Newbolt's "Scheme" and an activist approach. It may well be that because of Newbolt's practice in this sphere the rules were changed in 1934 to empower the court to appoint such experts. The other important procedural innovation and case management function we would recognise today is the use of that "second summons for directions." This translates today to a pre-trial hearing or further case management conference. It is also further evidence of a tighter continuous judicial control: another facet of modern caseflow management.

In Expedition and Economy in Litigation Newbolt advocated the use of experts to deal with particular matters which could save time in the interlocutory process:

What the commercially minded Defendant, willing to pay his debts, wishes to do is to show why and in what respects he objects to paying the whole of the claim, and this he does by giving particulars of the items which he says are not chargeable, or are overcharged. Every case must be treated on its special circumstances and not upon any rule which is not a Rule of Court, but there are some large classes of cases with common features: the greatest saving has been effected by the introduction of the independent expert witness and the attendant reduction of interlocutory proceedings which are rendered unnecessary, and of the expensive hours of trial in Court.

(b) Expert determination and investigators of fact

Newbolt's "Scheme" appears to have encompassed a number of experiments with experts as investigators. One example he reported to Birkenhead in November 1921 was in the form of a letter from a member of the Bar Mr S. A. Merlin. Mr Merlin told Newbolt that his initiative in the case had been:

One of the most practical means of reform of our jurisprudence as shown for years, as I know how costly were these actions in the past.

300 Author's italics for emphasis.
301 RSC (No. 2), 1934. applied to non-jury cases in which any question for an expert witness was involved. Maughan, L.J. regretted such witness had not been appointed in Fishenden v Higgs and Hill Ltd. (1935), 153 LT 128 CA Apart from this statutory power, the court could appoint an expert at Common Law under its inherent power Kennard v Ashby (1894) 10 TLR. 213; Henson v Ashby [1896] 2 Ch. 1. p. 26; Coles v Home and Colonial Stores Ltd [1904] AC 179, p. 192 and Badische v Lewisham (1883) 24 Ch Div. 156.
302 n.2 p.427.
In the case, Newbolt ordered the surveyor/expert to view the premises. The expert took his instructions from Newbolt not from the parties. The Plaintiff claimed £349 damages. £300 was paid into Court, but the Surveyor opined that the claim was worth £185. This produced an expeditious settlement, saving costs without the need for a trial.\textsuperscript{303} This innovation was groundbreaking because Newbolt himself selected and instructed the expert.

In \textit{Expedition and Economy in Litigation}\textsuperscript{304} Newbolt gives two further examples of the use of experts which are contradictory.

Number 13 - Writ issued March 1921, action eventually referred. An accountant nominated in 1922 to make a report and in January 1923 after a two day trial Plaintiff recovered about £140. 22 months from issue of Writ to trial. Costs exceeded £400, accountants were not independent and their appointment was made before the case was referred.

Number 14 Dilapidations case - Defendant put in a substantial defence and paid £300 into Court less than half the amount of the claim. After several days hearing the Plaintiff accepted the Defendant's offer of £500 including costs. The Plaintiff’s costs were taxed at £577. The assistance of an independent witness was refused, had it been accepted in all probability it would have saved the Defendant a sum not much less than his whole legal liability under the covenant.

Example 13 suggests that such partisan experts did not reduce delay or costs whereas, in example 14, the court appointed expert may have facilitated considerable savings. The important point here is how they may be managed by the judge, not the parties. Newbolt seemed very aware of this. Whilst the lawyers undoubtedly helped facilitate some settlements, in others “enjoying a good reference” was another matter. In those cases caseflow management was a means of making the process cost effective.

\textbf{(c) Experts and settlement}

Newbolt’s objective, as explained in his article, was focussed on questions of damages and costs:

\begin{quote}
that in a \textit{discussion in chambers}\textsuperscript{305} on date and mode of trial both parties agree that one expert engaged and paid by both sides is preferable, and for the following secondary reason, even more than for the most obvious one. The great error in the ordinary honest Defendant’s course is that he fails to pay enough into Court. So in all cases immediately under consideration the Defendant must pay in something; the punishment is terrific if he does not, as he is entirely at the mercy of the Plaintiff, and in general has to pay most, or all of the costs of both sides in any event.
\end{quote}

\textsuperscript{303} LCO 4/152. [HPIM 0586-0587]
\textsuperscript{304} n.2.
\textsuperscript{305} Author’s italics.
The dilemma was how the defendant was to estimate the measure of payment in. To pay in too little was useless. He had to act on the advice of his expert. According to Newbolt, such experts calculated the figures upon rash assumptions assuming their evidence would be accepted on every single point. Newbolt gave warning about this:

When he comes into Court he hears the Plaintiff's experts swear to a claim not only larger, but in some cases twice, three times, five times or even ten times as large. A recent decision was for six times the Defendant's figure, although it only amounted to one quarter of the Plaintiff's figure. In another the estimate of a reliable expert was 10% of that of his opponent.

Understanding expert evidence was one of the key problems for referees who might have had little knowledge of the technical issues before them, hence Newbolt's attention to the proper use of experts in his court:

An independent witness surveys the subject matter unbiased and estimates that the amount due before any of the great expense of the trial is incurred, with any necessary reservations, where questions of law may arise, and gives proof to both sides, and receives half his fee from each, both halves being made costs in the cause. He may be cross examined by both parties if either calls him at the trial, which he attends only if required: and both parties retain the right to call any amount of evidence to contradict him, a right which in practice, however, is not often exercised. The advantage to both parties can easily be perceived, but to the Defendant it cannot be over-estimated. He knows in time what to pay into Court, and in general is able to agree the facts with the Plaintiff, and to narrow the issue to something which occupies the Court for perhaps one fifth of what used to be considered the normal time. The layman who has had this properly explained to him, and prefers the old method, and what is called a fight to a finish regardless of costs, can hardly be said to exist.\footnote{s.2 p.437}

We have already seen the utility of judicial intervention in the appointment of court experts, but in this context what is particularly interesting here is the linkage in Newbolt's analysis of the expert's role and settlement. Newbolt saw the expert as playing a leading role in estimating or calculating the damages facilitating early settlement. The expert was in court to assist the court, not to advocate the parties' case. More importantly Newbolt refers to saving "perhaps one fifth of what used to be considered the normal time." This supports the hypothesis as to efficiency in that possibly 80 per cent of the time could be saved in court and also addresses research questions at paragraph 1.6 (d) and (e).

3.9 Application of proportionality on costs

In his critique *Expedition and Economy in Litigation*\footnote{s.2 p.427} Newbolt criticised the waste of time and money in the traditional adversarial procedural system. Whilst not directly advocating his scheme of a concurrent consensual referee resolution process, he...
acknowledged the fundamental principle that allowed "every citizen to make or resist a claim in the courts with perfect freedom." He then considered the citizen's complaint:

No one complains that his case is impatiently tried, or decided against him by a dishonest, biased or incompetent tribunal: and yet every litigant complains.

Reading the article it is clear that his experience as a referee led him to these views. He focused upon delay and expense as being the subject of very wide complaints. As he wrote:

They overlap to a certain extent, as delay causes expense and actual loss of money in more ways than one: unnecessary proceedings not only cause expense, but also delay. In all discussions between those who desire to see a serious grievance mitigated or removed a difficulty always arises because the actual relevant facts are not ascertained or agreed. I shall therefore try to avoid this, by first inviting perusal of the briefest précis of a small number of recent cases, referring to them afterwards only by their numbers. The points to bear in mind are (a) time from writ to judgement; (b) amount of expenses of litigation in comparison with money obtained or in dispute; (c) payment into Court; (d) the assumed desire of one or both litigants for a fight to the finish regardless of expense; (e) the urgent necessity especially at the present time for encouraging litigation and not starving it, or diverting it towards the quicksands of arbitration.308

From the same article Newbolt gives illustrations of disproportionate costs and some practical examples "so extravagant and dilatory as to defeat justice."309

The first was that of a builder who issued proceedings by writ in October 1920 against the building owner for the balance of account. After interlocutory proceedings lasting 16 months the case was referred and judgment was given for the plaintiff in the sum of £27. The trial lasted three days and the plaintiff's costs including £125 for counsel amounted to £490. The defendant's costs were approximately £410. The Defence was dated nine months after the Statement of Claim. £900 was spent pursuing a £27 claim. The costs were 33 times the amount of claim.310

His second illustration was a claim for damages for dilapidations worth £100. £10 was paid into court. It took almost three years to come to trial. The referee gave time to settle and negotiate without result. Judgment was given for the plaintiff for £16. Costs were awarded on the County Court Scale.

Another illustration (Number 9) concerned a schedule of dilapidations and a claim for damages for £162. Proceedings were issued in January 1922. The defendant refused consent to a referral and wanted the High Court to decide on a matter of title. He lost

308 n.2 p.427
309 n.2 p.435
310 Interestingly in 2005 the Court of Appeal dealt with a similar situation in the Burchell case where legal costs were 37 times the damages awarded.
that preliminary issue in January 1923 and a reference for an assessment of damages was taken in April 1923. At trial, in June 1923, the value of items was reduced from £95 to £81. The plaintiff's taxed costs were £129; the defendant paid that and the costs of the reference. Newbolt commented that the liability of £81 was increased to about five times that amount by the contest which lasted for 18 months; without the help of an independent expert witness the defendant's losses would have been much greater.

To be a success Newbolt's "Scheme" required continual management of the process by the judge and avoidance of such examples as this. His publications and reports suggest that Newbolt would have enquired not only into merits, but also into costs in proportion to the value of the case.

In Eastham's report to Lord Jowitt on 28 January 1947\textsuperscript{311} and in an appendix to that he cited the case of an ex-London Sheriff who sued his architect and his quantity surveyors for negligence claiming £35,000 in respect of an extension and alteration of his country house. The trial lasted 22 days. Four King's Counsel were instructed with one brief marked at 350 guineas. The referee gave judgment for the plaintiff in the sum of £4,214 with costs. The taxed costs in this case were over £3,500.

Eastham's notebooks have numerous entries dealing with costs. Eastham was innovative in this area; his orders being more in keeping with the second millennium than the mid-twentieth century. In \textit{Harris v Mac Rex Foods Limited},\textsuperscript{312} for example, a claim for defective works to a boiler, judgment was given for the plaintiff who was not fully paid and an order was made against the defendant for payment out. Both solicitors agreed that the judge could make a "fractional order" on costs on a four-fifths basis.\textsuperscript{313}

In \textit{Plant Machinery v HP Thomas Limited} an order was made for payment of monies out of £200 to plaintiff's solicitors without further authority and the trial was adjourned until May 1947. Each party was ordered to pay half the court fees of the application for adjournment.\textsuperscript{314}

In \textit{Zenith Skin Trading Co Ltd v Frankel}\textsuperscript{315} there is a good example of a modern costs order such as more lately seen under \textit{Civil Procedure Rules}. Here the plaintiff's costs of


\textsuperscript{312} J114/2 p. 92 [HPIM 1787-1789]

\textsuperscript{313} Considering the year 1948 this is a very modern type of costs award where costs are not awarded as to each party's case but one order is made taking into account the other side's result. This saved time and cost in taxing two bills one for the claim and another for the counter claim.

\textsuperscript{314} J. 114/2 [HPIM 1790]

\textsuperscript{315} J.114/4 [CIMG 0049] further described below in paragraph 4.3.4.
the first day of trial were borne 70 per cent by the defendant, and 30 per cent by the plaintiff. The defendant paid all subsequent costs to the plaintiff.

It seems the referees were ahead of their times because there is further evidence of a more modern type of costs order, for example, an entry on 31 January 1949 for the adjourned hearing of *Jayes Limited v Home Foods Limited*. The Order entered provided that the defendants be granted two-thirds of the costs of the hearing. What is demonstrated here is the referee’s modern approach to costs, what we call today “proportionality,” and its application as a basis for the award of costs.

### 3.10 Invention of special pleadings

In *Expedition and Economy in Litigation* Newbolt criticised formal pleadings considering that a mere formal denial by way of defence was totally unnecessary and burdensome. It was merely a “dilatory step in the proceedings”.

In his eleventh example concerning a claim for dilapidations the parties nominated a surveyor as a joint expert. There were no pleadings, no summonses or formal appointment “disappeared from the list.” Newbolt referred to this case as a “striking example of a new method of economy.” Newbolt had dispensed with pleadings and ordered Statements of Case being a summary of the claim with the relevant documentary evidence. In other cases he often found that the defendants demanded particulars which had already been received before the action, but were not given to the solicitor. He also found that defendants often put in defences alleging work not done, excessive charges and bad workmanship, without adequate or any particulars. Newbolt considered that these defendants acted unthinkingly without regard to the fact that they would have to pay for these further proceedings. Newbolt was critical of those who spent time “making costs” and went to trial “rashly” as opposed to those who employed experts properly. Such persons were excluded so far as he was able.

### 3.11 Preliminary issues and questions for the court

In his article Newbolt considered the advantages of the new Order 30 RSC regarding the summons for directions procedure. He opposed this for referees because

---

316 J114/6 pp 67-105. [FR 072-074]
317 n.2 p.430 and pp. 435-436.
318 n.2 p..427.
319 n.2 pp.435-437.
320 n.2 p.437.
of the advantage of dealing with directions early. He saw the Summons for Directions as arbitrators saw preliminary meetings: a business meeting to discuss the agenda for resolving the dispute. There was no point in leaving issues to be defined too late if it could be avoided, as he wrote:

Without venturing upon any general criticism of legal procedure, it may safely be said that there is no greater check on wasteful expenditure than the arrangement by which the Trial Judge takes his own summonses, especially if he makes notes of them upon the file. The mere discussions across a table which costs nothing in comparison with the costs per minute in Court, discloses what issue it is exactly that the parties wish to try, and eliminates the very source of the litigants grievances. Where the case is referred too late the mischief is already half done, but in time this will remedy itself, and all cases which must eventually be referred will be referred on the issue of the Writ, or at any rate on the hearing of a summons under Order 14.

Again the focus here is upon informal discussions at the summons hearings and what they could achieve. This would be lost by adherence to Order 30. Newbolt reiterates his views contained in his letter dated 15 February 1932 to Lord Sankey. He confirms his informal resolution practice and indicates how important it is to caseflow manage the process so that issues between the parties are identified early to save court time and party costs. The former procedure had been to issue a Summons for Directions before pleadings were exchanged. The new Order 30 (ignored by the referees in practice) provided that such summons could only be issued after service of the Reply.

3.12. Geographic and more economic location for the parties

One of the novelties of the Judicature Acts was that the referee was empowered to sit at a convenient location. It was not unusual for referees to sit elsewhere. In fact in 1925 Newbolt sat in Manchester.

The following correspondence confirms that Newbolt also sat in Lancaster. The endorsement by Lord Cave rejected Newbolt’s request for a meeting.

321 RSC 1883 as amended by RSC (No.1), 1933. Under the 1883 rules the taking out of the summons for directions was optional; under the 1933 amendment it had to be taken out within 7 days of close of pleadings.
322 Author’s italics for emphasis.
323 n.2 pp.437-438
324 LCO 4/152 [HPIM 0592] Sankey was appointed Lord Chancellor from the High Court Bench.
325 RSC amendments to RSC 1875 (May and August 1897, and July 1902 )

98
Dear Lord Chancellor,

Augustine Sherman is reported as having stated at Assizes that there ought to be an Official Referee for Lancashire as many cases arise there suitable for such a Court as witnesses cannot conveniently travel to London. This is so misleading that, if allowed, I should be glad to explain the position to you privately, and invoke your assistance.

I should be able to explain to you, and cannot do so in a letter, why cases are “specially referred”, so as to avoid the Rota.

Why References mistakenly go first to Assizes with enormous loss to the litigants is easily explained: but to begin at the beginning, Lancashire witnesses need not come to London to attend the Court of an Official Referee. Except, very rarely, by consent, they never do so, as the Referees travel to Liverpool and Manchester when necessary. I have myself been to the latter even to take the evidence of a witness going abroad. ....

Eastham records that he sat at the Town Halls in Leeds and Henley. He also sat in the Magistrates Court at Tunbridge Wells. Another example in the post war decade is a note by John Trapnell K.C. in Agnew v Maycock who notes that proceedings took place in the Town Hall in Leeds. Also in Plaehet v Stormond Engineering Corporation Limited Sir Derek Walker Smith agreed with the referee that there would be no formal disposition, and that evidence could be taken at the plaintiff’s premises.

---

327 LCO 4/152 [HPIM 0614 gamma enhanced version] Lord Cave’s handwritten note endorsed on letter.
328 J.114/1. Entry for 12 November 1944
330 J114/8 pp. 9-10 [HPIM 1818]
331 Official Referee 1943-1949. Formerly appointed Judge Advocate of the Fleet while holding his post at the Bar. He was also Recorder of Plymouth. The Times. 21 July 1933.p.16. Issue:46502.col.D. He was also a Commissioner of Assizes appointed on the Midlands Circuit in July 1948. The Times. 10 July 1948.p.3. Issue: 51120.col.C.
332 J114/6 p.15 [FR 0070] This was for an account of partnership debts.
333 J114/8 at p. 205. Here the parties managed to arrive at a settlement. This was produced in the form of an order of settlement. Evidence taken 18 January 1949.
In Eastham’s report to Lord Jowitt\textsuperscript{334} he describes an action by the plaintiff, the owner of land in Durham who claimed damages from the defendant, a colliery company for subsidence caused to the plaintiff’s land by mining operations. Liability and damages were tried by the referee at Newcastle for the convenience of the parties. Such sittings at the convenience of the parties must be considered a time and cost saving exercise.

3.13 Conclusions

By way of a literature review and qualitative analysis we have examined a rudimentary concept of caseflow management and an innovative interlocutory process. We have established the basis for my theory that case management (including a form of ADR) was invented in England by the referees long before the Pound Conference in the United States or the civil justice reforms of 1996. The theory that this process made referees more efficient remains to be tested in later chapters. Here we may conclude:

First, the earliest evidence of caseflow management in the court was Newbolt’s Report in July 1920. I find that he and his colleagues continued to utilise his “Scheme” before the war.

Second, that Newbolt created a process of expert determination more than half a century before the benefit of such expedient was perceived by the legal profession.

Third, that Newbolt invented the idea of a court expert.

Fourth, that Newbolt pioneered effective cost saving devices such as identification of preliminary issues; early case directions; referral to an agreed expert and use of experts to examine other experts, as well as dispensation of formalities such as formal pleadings in certain cases. This answers to some extent research questions (c) - (e)

Fifth, he advocated the proportionate use of time and related the value of the claim to the costs of the case.

Sixth, the referees’ case managed through an early summons for directions process and pre-trial summons taking the opportunity to encourage settlement.

Finally they acted flexibly like their predecessors in sitting at locations convenient to the parties and visiting the site.

\textsuperscript{334} n.311 above.
In summary Newbolt and his colleagues demonstrated a rudimentary form of caseflow management which included an informal settlement process through what he termed “an intelligent use of a court of justice by businessmen.”

Such findings answer the research question at paragraph 1.6 (b) and strengthen the case for my theory that their case management process made the referees more effective and efficient. It incidentally challenges the view that the courts have only recently entertained an interest in what Professor Sander called “alternative primary processes” or enthusiasm for settlement.

335 n.2 p. 438-439.
CHAPTER 4
FROM RUDIMENTARY PROTOTYPES TO AN EARLY MODEL FORM OF
MICRO-CASEFLOW MANAGEMENT

4.1 In search of Newbolt’s “Scheme”
In chapter 2 we answered our first research question (a) as to why the office of referee
was invented, and in chapter 3 we answered the second question (b) and partially
answered (c) (d) and (e).337 Having identified the “Scheme” we now trace its survival as
well as its impact in the context of Newbolt’s successors. This we do by way of a
further literature review and qualitative analysis of the referees’ notebooks and Minute
Book records.

4.2 The Eastham Memorandum
Before embarking on that analysis it is important for us to establish whether there is any
similar evidence such as the Newbolt report of July 1920 to Lord Birkenhead.
Newbolt’s successor as Senior Official Referee was Eastham. His correspondence with
Napier, Lord Jowitt’s Permanent Secretary,338 throws some light on the importance of
the referee’s role at the time:339

> The work done by the Official Referees is only comparable with that done by
> High Court Judges when trying long non-jury actions and it is more difficult,
> important and requires more legal experience (all these Official Referees are
> King’s Counsel of at least 10 years standing) than the work of County Court
> Judges, Stipendiary Magistrates, Masters of the High Court and Registrars in
> Bankruptcy.

In July 1954, after his retirement from the Bench, Eastham sent the Lord Chancellor a
significant memorandum.340 His covering letter to the Lord Chancellor’s Private
Secretary,341 Hume Boggis Rolfe stated:

Westcott House
Westcott
Nr Dorking

13th July 1954

Dear Boggis Rolfe

Thanks to Napier and you I have at last got my increased pension in my
pocket. Now I have nothing to do, I spend a lot of time thinking, with the result I

337 See: paragraph 1.6. above.
338 Lord Chancellor. 1945-51.
340 LCO 2/5976 [HPIM0936]
341 Appointed 1 March 1949.
have drafted and had typed a memo which embodies many of the answers to the questions you asked me when I called to thank you for what you and the Lord Chancellor’s Department had done for the Official Referees’ pensions. This memo is the outcome of much thought and I should like you to show it to Coldstream.342 He was on the Evershed Committee and questioned me when I gave evidence. I would like to have discussed it with him, and answered any questions he wished to raise.343

Eastham’s letter confirms the employment difficulties the referees had with regard to pensions regardless of which Eastham was keen to relate his particular experience advocating reform.

Memorandum344

After spending 15 years almost exclusively trying long non-jury actions I am convinced that the serious delay in trying long non-jury actions could be substantially diminished.

My suggestion is to include in the next Bill dealing with legal reforms, the few reforms affecting the Official Referees and the trial of long non-jury actions, reforms that were unanimously recommended by the Evershed Committee. They are set out on two pages 39 to 40 of their Second Interim Report and ought to be read as part of this note.345

a. Widen the discretionary power to refer long non-jury actions to the Official Referees as recommended on page 44 (3(b)). The Evershed Committee said this could be done ‘with advantage to litigants’.

At the same time include recommendations 30 and 40 on pages 44 and 45.

[paragraphs 2-6 concerned pension and status issues]

7. Appeals on Fact (see Transcript of my speech on retirement).

Most of these reforms were included in a Bill drafted about two years ago and approved by the Lord Chancellor’s Department.

342 He was a legal assistant in the Lord Chancellor’s office from 1939-1940 and for the next 10 years Deputy Clerk to the Crown in Chancery and Assistant Permanent Secretary to the Lord Chancellor.
343 LCO. 2/5976. [HPIM 0936]
345 n.38
If these reforms were adopted, Masters and High Court Judges would be able to refer many more long non-jury actions for trial to Assistant Judges, (Official Referees) and there are many such actions in the long non-jury list that are suitable before trial before Assistant Judges, especially actions in contract.

It cannot be said that the trials before Official Referees do not give satisfaction to the litigants and the legal profession, as trials before Official Referees during the past ten years have increased more than three-fold.

The Assistant Judges would be able to give early dates for trials. The Official Referees often try cases within a few weeks after the order of reference. Cases in the long non-jury list have to wait months for trial.

If these suggested reforms are adopted, they would substantially diminish the present delay of trying long non-jury actions.

It would probably mean that more Assistant Judges would have to be appointed, but if so, specially suitable men could be selected from practicing members of the Bar, preferably Silks who had considerable experience in conducting long non-jury actions who are accustomed to separate trappings from essentials. Such men would probably try long non-jury actions much quicker than many High Court Judges whose practice at the Bar had been more of a general character.

In support of these views I should like to add the short speech of the Attorney General and my short reply on the occasion of my last day in court prior to my retirement. I understand the Lord Chancellor’s office have a transcript.

If any further information is required I should be able to supply it.

T. Eastham.

12th July 1954.
There are several interesting indicators in this Memorandum\textsuperscript{349} that support my hypothesis. First, a hint of caseflow management techniques in so far as non-jury list trial times could be reduced. Second, whilst Eastham acknowledges an increase in workload, a threefold increase in the previous decade; he invites more long non-jury cases, especially actions in contract for reference. This could not have happened if the court was inefficient. This supports the hypothesis suggesting the court was efficient. Third, and this is most telling, he says that referee cases are often tried “within a few weeks after the order of reference.” It also supports the hypothesis in terms of an efficient disposal of business. This is further evidence of the survival of Newbolt’s “Scheme” and micro-caseflow management. It is important to recall what Newbolt wrote in his seminal article:\textsuperscript{350}

The result of three years experience is the feeling that a trial ought to take place in normal cases within a few weeks of the writ, at a fraction of the old cost, and that quite a considerable number of the normal cases do not require a trial at any length at all.

Newbolt’s vision thus became a reality. It was not just what he practised, as other evidence has shown, but the practice that was continued, as we shall see, by Eastham and others.

Under the Rules of the Supreme Court 1883 there was no facility for micro-caseflow management as described here and if the traditional procedure was followed in the reference it was unlikely that a trial would take place within a matter of weeks.

Eastham suggested that more suitable candidates be appointed, preferably those with experience of conducting long non-jury cases. His reference to “trimmings from essentials” is another sign of a more interventionist and activist type of judge getting to the point quickly without wasting time and dealing with the key issues in the case. This more efficient use of court time must be regarded as the underpinning of micro-caseflow management in this context. His Memorandum indicates that referees like Eastham were only too well aware of the frustration suffered by litigants faced with judges who did not understand the technical side of the case or apply a correct legal analysis. These qualities of competence are essential equipment for the effective use of caseflow management in this context. Eastham also hints here at a more activist role. He suggests that High Court judges in the 1950s were not so efficient because they did not have specialist experience at the Bar in long non-jury actions. He also notes two aspects of caseflow management. First, the fact that cases could be tried within weeks of

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{349} LCO 4/417. [HPIM 0938]
\item \textsuperscript{350} n.2 p.439
\end{itemize}
\end{footnotesize}
referral supports caseflow management at the interlocutory stage. Second, he infers a manifestation of case management in the trial where the judge is more active because of his knowledge and experience with long non-jury cases.

At this time despite Evershed there was some unease about delay. Some months later on 17 November 1954 a report appeared in a column of the Times concerning long non-jury cases. The fact that this was cut out from the newspaper and placed in the Lord Chancellor’s file indicates concern in relation to what Eastham was writing at this time.

The Times reported:

The Long Non-Jury list of actions in the Queen’s Bench Division, published yesterday, shows that, in the majority of cases in this list, there is a period of at least 10 months between the date of setting down for trial and the hearing. A case is not set down for trial before the pleadings are closed and other interlocutory matters dealt with.

The list contains 466 cases. Of these 351 were set down between February 1 and April 6, 1954, are headed: “The undermentioned actions will not be taken before Monday November 22.” Of the remaining 113, which it may be assumed the Court will shortly be able to try, 50 were entered in January 1954, three on February 1 or 2, 1954, 12 in December, 1953, and 16 earlier. A case also appears in the list entered on March 22 of this year and another (apparently to be tried with an action entered in January) on July 30, 1954. The earliest case was entered on January 22, 1953.

The delay in fixing a trial date in ordinary Queen’s Bench actions was avoided by the referees’ practice. At first directions hearing the referees would fix the trial date. This avoided the problems described by The Times.

Before considering further examples of the Newbolt “Scheme” in the post-war era there were two other facets of referee activity that should be noted where the referee acted as “a jury” and as “an arbitrator.”

4.2.1 Acting as a jury

In Harris v Rex Foods a reference was made on 5 April 1946 for the assessment of damages and in that case the referee acted as a jury. In the following year there were two other cases where the referee acted in that capacity: Zenith Skin Trading Company v Frankel a partnership dispute where the referee acted as a jury in fixing the price and ES Moss Ltd v J Gremel, a claim for the cost of building work done where the

---

351 n.32.
352 LCO 2/5976 [HPIM0939]
353 LCO 2/5976 [HPIM0939]
354 J.114/3 [CIMG 0034]
355 J.114/4 [CIMG 0049]
356 Eastham noted: “I don’t believe the defendant’s explanations about the sales he alleges. The only real issue is the price to be fixed on 63 furs.”
357 J.114/2 [HPIM1798]
referee awarded £250 as judgment for Plaintiffs and costs to be taxed. In Beswarwick v Woodbridge and in Frederick Baden Powell v John Southern Eastham assessed damages and the making good of building defects “as a jury.”

4.2.2. Acting as arbitrator

Another example of the referees extended case management powers was in acting as an arbitrator. An early example was S.J.C. Duqueim v Atlas Assurance Company Limited, a matter heard in November 1946, concerning the extent of fire damage to furniture and allegations as to concealment of material facts.

4.3. Further discussion and analysis of rudimentary caseflow management: methodology applied to judicial records (1946-70)

The following examples of an embryonic form of micro-caseflow management are extracted by way of example from the referees’ notebooks covering a period of 24 years. This analysis focuses on the six constituent elements of the theory described in Chapter 3. It examines the earliest and best evidence of caseflow management from the judges’ own contemporaneous notes taken in court. This examination presents a continuum of Newbolt’s “Scheme” and evaluates contributions made by Sir Tom Eastham K.C., Percy Lamb QC, Sir Walker Kelly-Carter QC, Sir Norman Richards QC, and Sir William Stabb QC Here we trace the evolution of micro-caseflow management into the 1960s. We consider the type of cases that were dealt with by the referees between 1947 and 1970 with particular emphasis on those cases where such techniques accelerated the disposal and despatch of business. The analysis that follows is the result of a review of all Eastham’s Notebooks at the National Archive in the J.114 series. A review was undertaken of files J.114/1-J.114/55 which were reviewed, photographed and analysed for evidence of caseflow management practices. Whilst these notebooks were properly catalogued they were not always legible or in general chronological order. A number were out of sequence and incomplete. A fully comprehensive picture is not possible because the Notebooks do not represent a full picture. We may understand this better by reference to Tables T.6.5 and T.6.6 in

---

358 J114/28. p. 92 [SH 101389]
359 J114/17 [SH 101132]
360 J.114/3 [CIMG 0037-0039]
361 1936-54.
362 1959-69
363 1954-71.
364 1963-78
365 1969-85.
Chapter 6 which compares the judicial records with the statistical records. No minuted records were found for any period before 1959 so that it is very difficult to assess the time spent on a case save by reference to the days’ sat in the Judicial Statistics.

Whilst a number of notebooks are quoted here it was not practically possible to review every notebook. Half of the surviving notebooks were reviewed and photographed and analysed for relevant material.

Having considered the earlier evidence of Newbolt’s “Scheme” and Eastham’s significant memorandum to Lord Jowitt we now analyse by way of a literature review and qualitative analysis the evidence of a continuation of Newbolt’s “Scheme.”

4.3.1 Early procedural evaluation and rudimentary informal referee resolution

There are an infrequent number of instances in the referees’ notebooks where the referee intervened to encourage settlement. It seems that the guarded advice of Birkenhead was heeded to the extent that such encouragement was limited. The parties were given opportunity for discussion outside the court, facilitated by a short adjournment. At other times the referee discussed a more effective means of shortening the proceedings in court at the first directions hearing. Whilst the evidence in this chapter points to party discussions outside the courtroom there are some instances where there appears to be a fine line between purely procedural debate in chambers and a wider ranging discussion which encourages settlement. These examples are selected because the judge’s intervention undoubtedly accelerated resolution.

On 17 December 1946, Eastham heard the case of the Duke of Bedford v Augusta Marie Fallie. His notes indicate that this was settled by consent after an adjournment. Whilst there is no cogent evidence of overt judicial intervention, the adjournment provided an opportunity for settlement as well as an incentive to save the costs of the hearing. Eastham’s note reads:

1946
December
17th
Tuesday
1st Day
By Consent
Trial adjourned to the 24th March.
The costs of today to be costs

---


108
in the cause.
Plf to pay Court fees.

T.E. Action settled
On a summons
14/3/1947 Order as asked

T.E.

The case was adjourned to the 24 March 1947 and the action was settled earlier by order on the 14 March 1947. Eastham did not insist on pressing ahead with the trial on the 17 December 1946 but gave the parties time to resolve the matter. He ordered the defendant to pay the Duke £250 immediately resolving one part of the case that induced earlier settlement. In this case Eastham's considered that giving more time to the parties to reach an amicable agreement would result in a cost saving. The costs of the adjournment would be less than the costs of a full trial fixed for 24 March 1947.

Whether induced by proximity of trial or judicial encouragement to settle: time and costs were saved.

Another such instance was *William George Mellie v Mrs A Mellie (Married Woman)* heard on the 16th February 1947, a claim for damage to property. As a result the case settled on the 6th April 1948.

In *Hon. Mrs Courtney Cecil (Fem Sol) v D Ewell (Spinster)* the parties requested the judge to view the premises Eastham's notebook records:

109
Plf is entitled to £263.10.0
There is in court £295.15.0

By consent:
Judgement of (sic) the Defendant on the claim without costs.
Judgment for the Plaintiff on the counterclaim without costs.
Plaintiff to have liberty to withdraw the money in Court namely £295.15s.
out of court after Plaintiff has paid Court fees.

(The Judge's notebook was signed by Counsel E Emmett and by Mr Price).

In *Cruttenden v Philips* 369 Eastham seems to have been more interventionist. He noted three issues for trial:

1. specific agreement for works for £400;
2. value of the work;
3. bad work.

He heard the builder’s evidence and then valued the works at £75 without hearing further evidence 370

In *S Kaplin & Son (Upholsterers) Limited v Parkins* heard on the 1st May 1959 371 Carter ordered:

...(2) That the dilapidations specified in the schedule of this action (as agreed and varied with the consent of the two surveyors and initialled by them) are made good and the work therein specified done by the first day of October 1959 to the satisfaction of two surveyors are to be nominated by the Plaintiff's and the other by the Defendant or in the event of their disagreeing to the satisfaction of the Official Referee.

This is a remarkable order because the referee is placing himself almost in the position of a technical assessor accepting the work in accordance with a specification tested to his "satisfaction." This is very much an interventionist stance and can be contrasted with the next example of a passive approach.

In *Barrow Brothers (Builders Lancaster) Limited v Haworth* tried at the Lancaster District Registry 372 on the 3 December 1962. The case commenced at 10.30 and the plaintiff's counsel asked for an adjournment of 5 minutes. The referee then entered judgment as follows:

Judgment for the Plaintiff.
£2375 and costs fixed at £350.
No execution for judgment on loss before 1st June 1963.

370 J.114/35 [HPIM 2760 and 2761] is the index which has only one reference to the case at p.146. There was no further reference in the book.
371 J. 116/1 [CIMG 0160]
372 J.116/1 p. 296 [CIMG 0200]
By Consent pay to the Plaintiffs' solicitors £250 as security to Plaintiffs’ solicitors without further authority.

Whilst there is no evidence of referee intervention here, the referee readily granted a short adjournment. This resulted in a quick settlement saving the costs of the trial.

A similar passive approach was followed in many building cases such as Webbs Asphalt Roofing & Flooring Co Ltd v Roper & BRM Shopfronts (A Firm) heard on the 14 March 1966 before Walker Carter Q.C. Webbs paid £315 to B.R.M. B.R.M’s work was worthless. An adjournment on the first day of the trial was followed by a further adjournment on the second day until the parties confirmed they had settled with no order save as to costs. The court was engaged in that exercise for 10 minutes.

A similar stance was followed in Leighton v Tait & Alr a defects case heard by Carter on the 31 October 1966. The judge’s notebook records that by agreement £1,850 was paid out of court following an adjournment of the trial.

There are two instances of Newbolt’s informal “discussions in chambers” recorded in the notebooks after the war: WJ Barrs Limited v Thomas Foulkes and Clifton Shipways Co Limited v Charles Lane considered at paragraph 4.5.1 below.

After the war it appears that such discussions were more formal in open court. It is difficult to generalise, but it does appear that on occasion Carter adopted a more activist approach to Eastham’s more cautious passive approach.

### 4.3.2 Judicial intervention promoting economy and expedition

**Eastham**

On the 27 November 1944 Eastham’s notes record that he was asked to assess damages in Great Western Railway Company v Port Talbot Dry Docks a marine salvage case. He gave judgment for £42,567 for the Plaintiffs. Eastham encouraged the parties’ experts to agree quantum which they did saving further time and cost during the trial.

---

377 J.116/3 [CIMG. 0106]
379 J.116/3. Entry 15th March 1966 second day of trial. [CIMG. 0107]
380 J.116/3 p.189 [SH101091]
381 J.114/49 p. 121 [SH101957]
382 J.116/3 [CIMG. 0102]
383 J116/1 [CIMG 0176]
384 There are a number of examples in the Notebooks and the Minute Books suggesting referee intervention. From an analysis of the Minute Books for 1959-62 and 1965-67 in Tables 15 and 16 of the Appendix we note that the average time taken to achieve settlement in the course of the trial where judgement was not given was 2 hours 16 minutes in 1959-62, and 1 hour and 25 minutes in 1965-67.
385 J114/1
The first of a long series of building cases recorded in the judges' notebooks was *Westheath Contractors v Borough of Grantham*.\(^{383}\) This was a typical building case regarding 169 building units comprising 63 separate dwellings. In an action to recover damages for defective work the referee took into account the value of the work that had not been done and reduced the claim accordingly. He then ordered the parties to agree quantum saving further time and costs.

*Allied Ltd v Peerless Representative (London) Ltd*,\(^{384}\) a claim by shipping agents for commission was tried on the 6 March 1947. The matter settled after the judge had questioned counsel on the value of the disputed items.

A small claim for car repair damages, *London and Canterbury Motors (A Firm) v B L Koppen*\(^{385}\) was heard on the 10 March 1947 and was settled on terms that:

- By consent
- Judgement for the Plaintiffs for £85
- Costs agreed at £31.10s.
- Leave to proceed on terms set out in the order on consent.

Settlement was effected immediately subject to the defendants paying £16.10s. to the plaintiff within 7 days.

In Eastham's Report to Lord Jowitt in 1947\(^{386}\) he refers to a referral from the Court of Appeal to a referee for determination of damages relating to removable fixtures at a greyhound racing track. The parties were represented by King's Counsel and after a four-day hearing and some observations by the referee indicating the way he was thinking the action was settled for £95,000.

A key component of case management was encouragement to agree the facts, issues, law or indeed the whole case to save time and cost. What referees were trying to do was to get parties to work together as in arbitration by agreeing between them as many issues as possible. Whilst the evidence here is sketchy there are sufficient observations in the referees' notebooks to support this element of the theory.

Eastham's entry for 11 December 1947\(^{387}\) noting *Rowlett v Champion* suggests a structured settlement discussed with Eastham and sanctioned by a Consent Order whereby the defendant paid the plaintiff's costs of £542. The plaintiff paid for work done on the basis of the original quotation. There is reference in the judge's notes to the use of experts to enquire and report back to the court.

---

\(^{383}\) J 114/2 3 March 1945 [FR 0031-0037]
\(^{384}\) J.114/3 [HPIM1193]
\(^{385}\) J.114/3 [HPIM1195]
\(^{386}\) n.311
\(^{387}\) J 114/1 [HPIM 1766].
There is further evidence of referee initiative in *Modern Telephone Company v Pickering*388 where the defendant's counsel submitted that he was unable to resist judgment. Eastham directed the plaintiff's expert accountant, Mr Delworth, to confirm that a sum was properly due. There was no cross examination and his view was accepted.

We have already noted that *Cecil v Ewell*389 was a building dispute involving a claim for damages for defective work. This was expedited by the judge's site visit before the trial commenced. It followed a prior meeting of surveyors to agree quantum. By consent the referee ordered judgement for the plaintiff. Both counsel in the case asked for a view of the premises prior to proceedings.390 The judge noted simply: "I viewed the premises". Very rarely, if ever, would a High Court judge visit the site. In these complex cases such activity saved much time and cost, and in this case dispensed with a trial altogether.

On the 17 May 1949 Eastham gave judgment391 in *Commercial Union v Collective Investments Limited* with damages to be assessed. On 24 May 1949392 Eastham noted his appointment of a court expert, Mr J. A. Furr, who was called that day to give evidence. Eastham directed Furr to visit the premises and report back to him. Mr Furr's fees were to be paid jointly by the parties.

A more important entry is that dated 24 October 1949 noting the case of *H Wheeler (Romford) Limited v T C Chilingsworth*.393 Here the parties agreed terms according to a schedule appended to an order staying proceedings. The parties accepted that each party would nominate a surveyor to inspect. The parties agreed to abide by any agreement between surveyors. In default of that the parties agreed to:

> abide by the decision of a surveyor appointed by the Official Referee and to carry out any decision of his and bear any expense of the appointment in equal proportions.

This example demonstrates a concurrent consensual disputes process initiated by a referee long before the late twentieth century debate on alternative dispute resolution. This may well be the first example of expert determination in England encouraged by the referees; it undoubtedly saved the litigants' time and costs.

388 J114/2 p.168 [HPM 1795] 7 May 1947
389 J114/1 p. 252
390 J 114/1 p. 169
391 J114/6 p.176 [FR 0080]
392 J114/6 p.181 [FR 0080]
393 J 114/6 p192 [FR 0085] 28 June 1949
Another aspect of this form of case management was the flexibility of the referee visiting the site and subject-matter of the action. This was particularly important in building cases in order to understand the facts.

Eastham’s notes for 11 January 1950 refer to *Hiauco Limited v Tauford & Co Limited* where the plaintiffs presented a claim for £218 14s.5d. for rabbit skins. Substantial schedules of evidence were submitted to Eastham. There was no issue as to 98 of the 104 skins. As to the remaining six the issue of damages was simply a matter of six times three shillings cost amounting to eighteen shillings. After discussions with the judge the parties agreed that the claim and counterclaim be withdrawn with no order as to costs. The judge noted after a reference to pleadings being read:

By consent claim and counterclaim withdrawn.
No order as to costs.

T. Eastham.

Here we have an example of judicial activism promoting settlement and effective case management saving costs and time in what otherwise would have been a protracted forensic exercise.

On the 19 April 1951 Eastham heard a claim for dilapidations in the matter of *Frederick Baden Powell Weil v John Southern.* The works included an American bar and clubhouse, a main drive turning circle and tennis courts; £1,230 was the cost of putting the tennis costs in order. The expert thought £60 would be sufficient, other items would be £50. Eastham directed that in view of the discrepancy between the figures he would inspect the premises with the parties.

He noted:

I viewed the premises in the presence of Counsel and the parties.
Counsel agreed that no further evidence was necessary.

This clearly expedited the hearing and accelerated judgment.

The judge’s note is self explanatory:

Friday 20th April (2nd day)

I viewed the premises in the presence of counsel and the parties.
Counsel agreed that no further evidence was necessary.

Dilapidations
Item 2 I admit courts not in a good condition
Submits £400 limit.

---

394 J.114/14 [CIMG 0079-0080]
395 J.114/17 pp. 189 and 199 [SH 101134]
Item 3 counsel dispute £55/17/7
Item 4 Agreed at £15
Item 5 agreed at £880
Item 6 must assess as jury
Item 7 £852/4/5 is the agreed figure.

After my view I assess the injury to the reversion at £1400
55.17.7
15.0.0
880.0.0
40.0.0
852.9.5
£3,243.0.0

judgement for £3243/0/0
grant relief from forfeiture on condition defendant pays £3,243/0/0.

T Eastham

It is interesting to note that Eastham would assess item 6 “as a jury” not as a judge.

Eastham ordered as follows:

Grant relief from forfeiture on condition defendant pays £3,243 on following instalments;
£1,243 in 14 days from today; £1,000 in one month thereafter and £1,000 six weeks later.

There are a number of cases where the referee may have promoted settlement either because the trial was imminent, or because he gave the parties time to consider the benefits of going ahead that day, or adjourning. Such cases include Hayland v Springet & Son\textsuperscript{397} where on the 9 November 1951 Eastham gave a Consent Order immediately for £200 to be paid to the Plaintiff.

On 24 January 1952 James Conlon T/a J Conlon & Sons v Lloyds (Builders) Limited\textsuperscript{398} was heard. Mr James Comyn,\textsuperscript{399} represented the Plaintiff in this case. Eastham’s noted:

Parties came to terms
Defendant’s to pay Plaintiff’s £600 within 7 days from today in full and final settlement of claim and costs.

\textsuperscript{396} The total award should have been £3,229.7.0.  
\textsuperscript{397} J.114/21 [CIMG 0062]  
\textsuperscript{398} J. 114/21 [CIMG 0063]  
\textsuperscript{399} Comyn later became President of the Family Division.
Leave to sign judgment for the said claim in default of payment in 7 days from today signed Tom Eastham.

Whilst there is no direct evidence of intervention here, the parties settled immediately. This presumes that the judge may have permitted a short adjournment before the start of the case to encourage that. If that assumption is right then it is further evidence of a more passive role by the judge in promoting settlement.

Eastham’s next day entry\(^{400}\) records the first day of trial *Van Nuffelen v Leicester*. It appears that the parties settled at the door of the court as the judge’s note states:

> By consent
> Judgment to be entered for the Plaintiff for £2,250 to include all costs.
> Stay of execution on terms endorsed on Counsel’s briefs and signed by them.
> Liberty to either party to apply.

Tom Eastham.\(^{401}\)

In *Wilson v Crac*\(^{402}\) a claim heard on the 7 July 1952 for the non-payment of invoices. Counsel came to an agreement after the defence submissions.

*Irvin & Sons v Blake* was a claim under the War Damage Act 1946 for £315.12s.1d worth of building work heard on the 14 July 1952.\(^{403}\) Judgment was given for £285.12s as experts agreed that some work done was outside the parameters of the Act and consequently £71 was excluded from the claim. Eastham ordered:

> Stay of execution for 21 days from today.
> If notice of appeal given and entered within that time stay to continue.
> It is agreed Official Referee should state facts and law and his view of the law in writing in the event of an appeal.

On 7 October 1953 Eastham heard *Burtain Ltd v J A Tyler & Sons Ltd*.\(^{404}\) Here liability was admitted. The counterclaim was the only issue. The defendant had sub-contracted plastering works to the plaintiff. The defendant claimed £680 for bad work. Eastham noted:

> At request of Defendant’s Counsel and withdrawal of any objections on the part of the Plaintiff’s Counsel I decided to view the premises to see the condition of the ceiling and the lighting of the show room and the general appearance of the show room.

Following this visit the referee noted:

> Loss of use should be limited to the making good of plaintiff’s defective work and the necessary work to make good. Removal of filling necessary because in place when defects discussed.

\(^{400}\) Friday, 25 January 1952.
\(^{401}\) J.114/21 [CIMG 0067]
\(^{402}\) J.114/20 [HPIM1776]
\(^{403}\) J.114/24 [CIMG0546]
\(^{404}\) J.114/24 [CIMG 0571]
This facilitated immediate settlement.

An entry in Eastham’s notebook for the 17 December 1953 in *Kefford v Brownleader* gives a similar indication where the parties counsel immediately agreed the settlement order with the judge as follows:

Action settled by Consent in terms signed by the parties and read out in court.

T. Eastham. 405

The 23 November 1953 was the first day of trial of *Bedford Theatre (London) Limited v Brisford Entertainments Limited*. This was an action in detinue for £52,000. There were 185 items in the claim, 64 of which the parties had been able to agree. 406 There were 121 items remaining in dispute for the judge to determine. There was a Scott Schedule, but this had not been completed by the defendants. There were five firms of solicitors involved in the litigation. By the second day of the trial, Eastham and the parties made considerable progress in one of the most complex cases noted up to that time. The judge’s note reads:

1953
Tuesday
24th Nov.
(2nd day)
On defendant’s submission judgment for the plaintiffs for £400 with costs to be taxed following agreement.

T. Eastham.

Considering the amount of work required and the potential length of the trial, this earlier resolution clearly saved time and cost.

**Walker Carter**

Eastham retired on the 21st February 1954 and was replaced by Sir Walker Kelly-Carter QC who was educated at Repton and Sydney Sussex College Cambridge. Carter served as Chairman of the East Midlands Agricultural Land Tribunal from 1948 until 1954 and was also Chairman of the Lincoln Quarter Sessions. 407 He was subsequently appointed Chairman of the Criminal Injuries Compensation Board in 1964 and retired as Senior Official referee in 1971. It was said of Carter: 408

405 J.114/21 p. 258 [CIMG 0077]
406 J.114/21 [CIMG 0075-0076]
407 The Times April 10 1985 p.12 Issue 62108 col.G
408 The Times April 20 1985 p.10 Issue 62117 col.G
He was not a great lawyer but he was a good Judge and an even better Chairman of a Tribunal since he had an instinctive feeling for the justice of a case and this was plain to all who appeared before him.

Carter’s natural sense of justice and judicial ability can be discerned in the following examples.

On the 7 May 1959 in *Martin French v Kingswood Hill Ltd* 409 Carter gave leave to appeal his judgment on preliminary issues and adjourned the trial on the counterclaim subject to a proviso:

> In order to save costs I propose to make the following Order. It is ordered that the further hearing of this action be adjourned to Monday the 1st day of June 1959 and that if within fourteen days the plaintiff serves Notice of Appeal against this Order and enter and prosecute the same with diligence then the hearing be further adjourned to a date to be fixed upon the application of the parties after the determination of the said appeal. I give leave to appeal against this Order.

All questions of costs reserved to the further hearing of this action.

This may be regarded as caseflow management insofar as costs were undoubtedly saved by the allowing the appeal, avoiding wasted costs on the hearing of the counterclaim.

There is some evidence of intervention in the case of *Clifton Shipways Co Limited v Charles Lane* 410 and entries on the 2 March 1960. On the second day the Court resumed at 10.30 when there was some discussion about the counterclaim and a claim for set off. This was settled on acceptance of £16 being paid into court. The case was further adjourned at 12.50 resuming at 2pm and at the resumption there was an application to amend with the costs being reserved. The next day the court convened at 10.42, for 55 minutes until 11.37. There was then further discussion in court about settlement. The judge’s note reads as follows:

> Adjourned to consider how to proceed and when to return for further argument and evidence. Terms of settlement. Defendant agreeing to judgment for £400 and costs to be taxed if not agreed. Payment out to the plaintiff’s solicitors of £200 in court. 411

This suggests that Carter adjourned the case so that counsel and he could consider how best to proceed. It seems to be an instance of an early form of Case Management Conference which accelerated a settlement. This might be an instance where “discussions in chambers” recurred.

---

409 J.116/1 [HPIM1964]
410 J.116/1 p.104. [CIMG 0176]
411 J.116/1 p.105 [CIMG 0177]
This may be contrasted with the entry on the 15 March 1960 in *James Kinross v R H Tarrant*. Here Carter has undoubtedly saved some costs in giving a partial judgement permitting the parties to resolve matters without further appearances in court. At the end of the hearing Carter gave judgment as noted by the clerk in the Minute Book:

> H.H. sums up and gives Judgment as to Part II of the Schedule allowing at the rate of 3. 1/2d. per bale instead of 1d. per bale. Allow set off for Defendant for £200.

Remainder of action adjourned to Monday 28 March 1960 at 12 noon unless parties settle and produce letters and then order will incorporate terms of settlement.

The Minute Book goes on to record:

Monday 28th
March 1960
3rd Day
from 12.5 to 12.10

Terms of settlement: Def to pay £341-13-3 and £46 16s. 1d. increased bailing charges. Total £388. 9s. 4d. with no order as to costs. Judgment for the plaintiff for £388. 9s. 4d. on the claim and on the counterclaim. Payment out of £70 to the plaintiff.

Here the method is interesting in so far as the adjournment device is again used to give the parties time to settle matters without the necessity of prolonging the trial. This is another example of passive micro-caseflow management where there was no order as to costs each side bearing its own.

Another example of a stay or adjournment promoting settlement is noted in the same Minute Book on Thursday 18 May 1961. The clerk noted as follows:

> Adjournment to consider settlement.

2.25. Adjourned to first day next term to allow parties to deal with terms of settlement.

Action settled: No order required see letter 24th May 1961.

On 11 October 1961, *Sergeious Papa Michael v A K Koritsas* engaged the Court between 10.30a.m. and 10.35a.m. Carter noted:

Settled: Judgment for the plaintiff against all defendants for £1,600 and costs of claim and on the c/claim with costs.

Stay of execution providing the Defs pay £65 per month. The first payment to be on the 1 NOV 61 and thereafter on 1st of each month.

---

412 J.116/1 [CIMG 0178]
413 J.116/1 [CIMG 0179]
414 J.116/1 [CIMG 0179]
415 J.116/1 p. 187 note cont’d from pp171 and 143 of Minute Book [CIMG 0187]
416 J.116/1. p. 207. [CIMG 0190]
Site visits

In Townsends Builders Ltd v France\textsuperscript{417} Carter visited the site of 45 Wardour Street on the 26 June 1962 to examine the state of an alleged undulating floor. There is no record of any experts being present and the judge upon viewing its state noted:

- Floor a practical preparation.
- No need to take up floor
- Judgt for Plff £674 10. on claim
- On c/c £370
- £250 paid out
- Plff to have ½ costs.

This is an excellent example of judicial intervention procuring an economic and an expeditious result and also a possible example of judicial evaluation.

\textit{W J Barrs Limited v Thomas Foulkes}\textsuperscript{418} is another example of the utility of such inspections and "discussions in chambers." The judge asked both counsel to discuss serious matters of the expert evidence. The meeting lasted an hour and three minutes. Carter was clearly concerned and wanted to view the property. After a 45 minute site visit on 11 November 1965, the parties agreed to Carter ordering that the counterclaim be dismissed and the plaintiff receive a payment out of £120. Carter's intervention in asking counsel and experts to agree figures and visiting the site brought about a swift resolution of the case.\textsuperscript{419}

Directions to solicitors

Carter's interest in settlement is significant. We find in the court file of \textit{Alloy & Fireboard Co Ltd v F. Superstein},\textsuperscript{420} another building case, a letter on the court file from Carter's clerk to the parties' solicitors dated 25 March 1966.\textsuperscript{421} It stated as follows:

This action is due to come on for trial on 22 April 1966.

It is the duty of all parties to furnish to me, without delay, all available information relating to any settlement or likelihood of settlement or affecting the estimated length of trial\textsuperscript{422} being one day.

\textsuperscript{417} J.114/41. p.180. [CIMG 0638]
\textsuperscript{418} J.116/3. [CIMG. 0102]
\textsuperscript{419} J.116/3. [CIMG. 0103] and J.114/44. p. 249 Dec 2006 [CIMG 0705]
\textsuperscript{420} J.115/6. [HPIM 2705]
\textsuperscript{421} J.115/6. [HPIM 2716]
\textsuperscript{422} Author's italics.
Please therefore inform me immediately whether you have any information as to the likelihood of a settlement and your advised estimate of the length of trial if any.423

The Plaintiff's Solicitors are required to deliver to me on or before 13 April 1966 one complete set of pleadings including all particulars given and also a copy of any schedule ordered. They are further requested to ascertain from the Defendant's Solicitors whether the latter have any objection to any agreed bundle of correspondence or other undisputed documents being delivered at the same time.

If both parties so agree, but not otherwise, such correspondence and documents should be delivered as soon as possible in order that the Official Referee may consider them before trial. This will in most cases result in the saving of time of the hearing and consequential reduction in costs.

Clerk to His Honour Walker Carter QC

This standard letter to solicitors demonstrates that Newbolt's "Scheme" survived. It also confirms the referees' interest in settlement and in saving time at trial, if not by encouraging settlement, then certainly by the judge familiarising himself with the pleadings and issues in the case.425

On 7 November 1966 Carter heard *Bickley v Dawson*.426 The judge permitted a short adjournment for ten minutes which facilitated settlement after which judgment was given for £400 and the counterclaim dismissed. This is another example of passive caseflow management saving time and cost at trial.

A final example is provided by Judges Stabb and Richards.

**Sir William Stabb and Sir Norman Richards**

Sir Norman Richards was educated at Charterhouse and Trinity College Cambridge. He was called to the Bar in 1928 and was Deputy Chairman of the Middlesex Quarter Sessions from 1962 to 1965. He became President of the Council of Circuit Judges in 1973. He became a referee in 1963 and the Senior Official Referee in 1971 in succession to Sir Walker Kelly-Carter QC427 Lord Salmon wrote of him:428

423 Author's italics.
424 Author's italics.
425 About this time judges taking cases in the Commercial List also started giving directions and encouraging the parties to consider settlement. (Authors informal discussion with Sir Anthony Evans June 2008)
427 *The Times* Dec 31, 1977; p. 14 Issue 60199; col.G.
428 *The Times* Jan 17, 1978; p. 17 Issue 60212; col.E.
Norman had a genius for recognising what really mattered and never overlooked what did. He also had a pronounced distaste for the modern tendency of wasting much time and money in probing the irrelevant.

Sir William Stabb was appointed as a referee in 1969 after a distinguished career at the Bar. His practice included criminal and medical negligence cases, and Privy Council appeals. He was a Treasury junior at the celebrated Vassall spy Inquiry in 1963. His leading cases as a referee included *Sutcliffe v Thackarah* regarding quasi-judicial immunity and *Pirelli v Oscar Faber and Partners* regarding limitation. He was appointed Senior Official Referee in 1978 in succession to Richards.

A final example of referee intervention is *Bogen v Honneyball & Rossal Estates Limited* tried before Stabb. The writ was issued on 9 May 1967 for £1,521 as unpaid fees for professional services rendered by the plaintiff as a chartered engineer. Honneyball was an architect and Rossal Estates Limited were property developers. It was alleged that in June 1966 Honneyball instructed Alec Bogen to design and provide calculations for the foundations and load bearing brickwork for 14 flats. Master Jacob referred the action to Stabb on 1 March 1973. Stabb made a series of orders and on 26 March 1973 he gave further directions for particulars and expert reports. There was a further adjournment to 7 May 1973. On the 15 June 1973 Richards ordered Rossal to serve Further and Better Particulars of the Defence and Counterclaim and fixed the trial date for 28 November 1973. He ordered that experts’ reports be exchanged by 31 July 1973. Following that order the action settled.

This case lasted 6 years. There was an almost eight month delay between the transfer order and the giving of directions. The catalyst for settlement was Richards’ order for particulars, exchange of experts’ reports and fixing the trial date.

The above examples give tantalising glimpses of an early form of caseflow management illustrating an activist, and at times a passive approach, to caseflow management. Each approach supports the hypothesis as to the existence of such process and its effectiveness in procuring earlier resolution. Of particular interest is Carter’s clerk’s standard letter to solicitors about settlement: clear evidence of a judicial interest in saving time and cost in court.

---

429 *The Times* Jan 30, 1963; p. 6 Issue 55612; col.A.
430 [1974] AC 727
431 J.115/49,[HPIM 2749]
432 J.115/49 [HPIM 2752]
433 J.115/49 [HPIM 2758]
434 J.115/49 Letter dated 19 July 1973.[HPIM 2759]
4.3.3. Experts.

(a) Use of single joint expert/court expert

On the 28 June 1948 Eastham heard the case of Benoir Hamburges v Winifred Stort. This was a claim for damages for dilapidations and breach of repairing covenant to deliver up premises in “good tenantable repair and condition” at the end of the tenancy of the premises at 36a Holland Park Ave, Kensington. The claim arose out of the War Damage Act 1946 and was challenged on the basis that it was excessive with respect to costs of cleaning, redecorating and re-pointing. An expert gave evidence that damage was somewhere in the region of £50. Eastham noted:

I accept in the main Mr Davis’ evidence.
I assess the injury to the reversion at £95.

In Albert Colegate v D Raymark (Married Woman) another war damage repair claim there is reference in the judge’s notes to the court expert’s views being read and his visit to the premises to inspect and report on the state of disrepair. The judges note for 24 May 1949 reads:


And subsequently:

Court expert called for cross-examination
John Austen Farr
Appointed by the Court as Court Expert
I visited premises in March 1949

In R. Corben & Son Ltd v Forte(Olympics) heard on the 15 January 1962 Carter in giving judgment noted:

Letter of 15th February does not constitute a contract refer to Court expert to report fair price in all the circumstances of the case. Necessary to ascertain what is a reasonable price for the work done, Cannot be costs plus contract. Court should fix reasonable price that a reasonable builder would charge in the circumstances. Unless parties agree to it.... Suggest O(der) 37a which deals with Court Expert- a Quantity Surveyor to be told by plaintiffs of difficulty in doing Works-he should then report to the Court. He should hear evidence-and then either accept report (or) if not accepted to be called for cross-examination. Contract to do work for reasonable price.

Adjourned generally to apply for further step to be taken.

Stand over costs and declaration on the issue.

---

435 J.114/5 [HPIM 1232]
436 J.114/6 [PRO II (FR) 082]
Here Carter decided that the letter did not constitute the terms of the building contract and that neither party was bound by it. Reading the judge’s notes, it would appear that the referee was not satisfied with the builder’s prices and that having decided the issue he then considered the alternative plea of quantum meruit or reasonable price for the works carried out. Again the expert is used as a quantifier of damages.

*Leon v Beales* 438 was referred to the Court from the Swindon District Registry. Carter’s note records at 10.30-10.40 on the second day of the trial, 8 February 1962: 439

> Parties having come to terms of settlement and the Plaintiff by his Counsel undertaking to carry out the remedial work set out in the counterclaim under the supervision and to the reasonable satisfaction of an independent surveyor to be appointed by the Plaintiff and Defendant’s surveyors. The Plaintiff to be responsible for such independent surveyor’s fees.

> It is ordered that the hearing of the action be adjourned generally with liberty to restore.

This is not only an extension of Newbolt’s use of experts, but possibly an example of encouraging settlement440 by the use of experts at a more practical level. It contrasts with the earlier experiments conducted by Eastham, in *H Wheeler (Romford) Limited v T.C. Chilingsworth*441 and his use of a third surveyor as in Party Wall Act proceedings. The device used here is simply a matter of agreement between the parties endorsed by the court providing assurance to the employer that the builder will carry out the remedial works properly.

In *Nathan Bernard v Britz Brothers Limited and Britz Brothers Limited and Nathan Bernard and Ruth Bernard* 442 the Minute Book records that at 10.30a.m. on 10 May 1962 following an adjournment counsel attended Carter in his chambers to consider the appointment of a court expert. It is possible to cross-reference this case to the judge’s notebook.443 The entry for Tuesday 8 May 1962 (2nd day) says:

> Counsel attended His Honour in His Room to consent to terms of reference and appointment of Two Court Experts. Adjourned on Summons until 11th May

The Minute Book states that in the course of the afternoon the parties agreed terms of reference for an expert. The next day (11 May 1962) Counsel was handed a copy memorandum prepared by the referee amending the terms of reference. There was an adjourned hearing on the 14 June 1962, and two further hearings in July when there was

438 J.116/1. p.245. 7 February 1962.[CIMG 0192]
439 J.116/1. [ CIMG 0193]
440 J.116/1 [CIMG 0194]
441 J.114/6 p.192 FRO 85. 28 June 1949
442 J.116/1 [CIMG 195]
443 J.114/34 [SH 101366-67]
further discussion on the draft memorandum and further amendments were made by the Court and Counsel. At a hearing on 18 July a consent order was made in the following terms:\(^{444}\)

Plaintiff bound by the first Court Expert’s report.
Report cannot be criticized.
Mr Anthony being perfectly fair to the parties.
Perfectly logical and proper Report.
Second court expert misunderstood function. Performed two tasks one of which was no longer an issue when case was settled. Spent a lot of time dealing with the matter unnecessarily. If that was all he did he should have sent it back\(^445\).

............

[The first expert] Has applied his mind to question and answered it.
Separates wheat from chaff etc. Did not affect answer.
Satisfied that proper course.
Judgment for Defendants on Claim
Counterclaim for £177.19.6.
Right to say about entirety of agreements that they can’t get out of it because right answer is not produced.
Judgment in way indicated.
Special Allowance for the defendant’s solicitors on 29 July 1963.
Can’t see reason why costs should not follow the event.
Order Court experts to be paid by the plaintiff within 14 days undertaking as to pay shall have effect.
General costs to follow the event.
First expert to reimburse £525 to defendant’s solicitors\(^446\).
Stay to first day of new term ....

There were a number of adjourned hearings. The final hearing (third day) was held on the 11 March 1964 when Carter noted:

1. Second Court expert has misunderstood his instructions-has made a finding as to whether the
2. Court has the right to admit further evidence
3. He has applied his mind to the wrong circumstances

What is significant here is the difficulty and possible complexity of the case and the nine hearings and discussions that took place in chambers. Orders for court experts were a rarity in those days and experts did not have much experience in so acting which may account for the misunderstanding in this case. Here is an example of referee intervention and an example of active micro-caseflow management proving that Newbolt’s approach survived and was extended by Carter as well as by Eastham.

(b) Expert determination and investigators of fact
The earliest example of quantum experts agreeing “figures as figures”\(^447\) and continuing Newbolt’s “Scheme” was the wartime case of Westheath Contractors v Borough of

\(^{444}\) J.116/1. [CIMG0196]
^{445}\) J.116/1. [CIMG0197] judge’s note not very legible.
^{446}\) J.116/1. [CIMG 0198]
Grantham heard on the 3 March 1945. This was a heavy case involving 169 building units comprising 63 dwellings. The claim according to the referee was for:

- Remediying various defects
- Alternatively a claim for repayment of £12,600 paid under a mistake of fact.

On Wednesday 7 March the referee noted:

Agreements
- Item 2 £272.8.1.
- Item 5 £128.6.4.
- Item 6 Sundry work agreed
  £11.875 agreed as a figure.

In the expert’s opinion the building work was a disgrace to the building trade.

Eastham noted:

If part of the work not performed the defendants are entitled to a deduction in respect of that.
Reduce the price by the value of the work which has not been done.
Costs: allow defendants all costs except £70 of costs of the claim.

Judgment for the defendants on the claim with costs to be taxed less £70 and judgment for the defendants on the counterclaim for £3,119.6s.10p with costs to be taxed.

Charlton Decoration Co Ltd v Robert Murray was a reference transferred from the Master on the 27 October 1950 for a payment of compensatory damages by the War Damage Commission to the plaintiff for £180. The court relied upon the inspection and report of Mr Venn.

The judge ordered:

...the solicitors for the defendant undertaking to instruct the War Damage Commission to pay to the Plaintiffs direct such further sums, if any, as Mr Venn may certify to be due to the Plaintiffs and the solicitors for the Plaintiffs undertaking that the plaintiffs will carry out all instructions of Mr Venn in connection with the carrying out of the Contract.

On 31 October 1955 Eastham heard what was to become one of the leading cases on damages: Phillips v Ward. This concerned building defects in terms of damage to the property by the infestation by death-watch beetle. The surveying expert had stated that the premises were in first class condition. But Eastham noted:

5 purlins. 3 valley members fractured
34 members no longer safe

---

448 Expression commonly used by quantity surveyors and claims consultants to agree that in the event of liability being decided a fixed agreed amount will be payable in respect of the value and measurement of work or materials on site.
449 J.114/2 [IM A0032]
449 J.114/2 [IM A0038]
450 J.114/16 [HPIM2158]
451 J.114/35 [HPIM2763]
80-100 tiles have come off.
Disinfestation of timbers generally. £740 treatment
£600 opening up

35 timbers below formula.

Lord Hailsham QC appeared for the defendant who said “you shouldn’t blame the surveyor if an Elizabethan house gives trouble.” But the question was whether the particular valuer and surveyor had been negligent in advising that the property to be purchased was in first class condition when a competent surveyor might have advised otherwise. Counsel for the plaintiff confirmed that both parties required the judge to see the site. The site visit contributed in resolving what was a 9 day trial and where there was a clear conflict on quantum. The repair could be affected by patching but consideration then had to be given to its effect on value. Before giving judgement, which he did not record, the referee noted:

- Schedule P.11 shows a general infection over the whole house
- Measure of damages
- Plaintiff should not be required to sell.
- Nunn’s evidence:-
- General damages for loss of (sic) inconvenience.
- Moss v Christchurch D.C. 1925 2 Q.B.
- Lake v Bushy 149 2 All E.

No examples similar to Commercial Union v Collective Investments Limited and H. Wheeler (Romford) Limited v T.C. Chillingworth have been found in the records researched for this chapter, save the case of Hogg v Barnard heard on 21 November 1955 by Percy Lamb QC The case concerned a fraud perpetrated in the sale of a timber consignment of coffin boards. Lamb was assisted by Mr Simmonds, a consulting engineer, as an assessor. Simmonds had 35 years experience. Lamb gave judgment on 12 January 1956.

His notes stated:

Judgment contains a miscellany of figures not a note of the judgment.

The judgment refers to the subject matter: round timber, round and standby timber, various sales of stock, valuations of vehicles and timber in yard and other miscellaneous items which the judge could not examine. His final note reads:

- Vehicles Bedford £1094 negligently handled
- Vauxhall 450 532.

---

452 J.114/6 [FRO 080.] 17 May 1949
454 J.114/35. p. 33 [HPIM 2766]
455 J.114/35. p. 84 [HPIM 2767]
456 J.114/35 [HPIM 2769]
Miscellaneous items

No time to examine them all.

The note of judgment is incoherent and must have been delivered *viva voce* in court following deliberations between the referee and the assessor. This is not expert determination but an instance of expert assisted referee determination. Here experts are being used to evaluate damages so expediting judgement.

(c) Experts and settlement

*Praills Motors Ltd v Hills Bros and Mussell* heard by Eastham sitting at Hereford Crown Court on the 3 March 1953 concerned the purchase of an Austin car with a truck body and a 20 horse power engine. Apart from the convenience of the sitting of the court in Hereford the other case management factor was the use of the experts. After stating:

> I find as fact that defendants have priced the special contract
> That plaintiffs agreed to do repairs to the engine for £75

Eastham noted:

> At the request of both Counsel I adjourned to allow them to consult their experts
> and for the experts to try to agree figures on the basis of my above finding.

What is more significant is the note which he made on page 8 of his notebook it read:

> Counsel and the experts had agreed this cost of the materials for the repairs other than the engine repairs-they were trying to agree the labour charge for such repairs.
> Adjourned to March 4/3/53
> T.E.
> Mieklay Wednesday 4th March
> Chasis material and labour was to be £78/6/6
> The electrical material labour
> We agreed the electrical with materials and labour at £35/8/6
> Balance of the pts bill agreed at £63.
> The only question left is costs.
> £35 paid into court.

T Eastham.

On 7 June 1961 Carter’s first Minute Book records that the hearing of *John Fletcher Suter v W Pikta* occupied the court for 5 hours and 10 minutes. That day plans, drawings, photographs and invoices were examined. Mr Denger an expert witness was called after the plaintiff had given evidence. He was examined for 20 minutes and cross-

---

458 J.114/28 p.1. [SH 101372]
459 J.116/1 [CIMG 0188]
examined for 1 hour and 40 minutes after which the case was settled on the following terms:

By Consent. Judgment for the Defendant on the claim and counterclaim for £30 to be paid at the rate of £1 per month with the first payment on 7 July 1961 and each subsequent payment on the 7th of each subsequent month. 460

The notes show that it was the intervention of the expert’s evidence that was the catalyst in bringing about settlement.

4.3.4 Application of proportionality on costs

The notebooks of Eastham contain a number of costs orders that may be seen in the context of a caseflow management device which would not be out of place today. These costs orders generally followed the event, but sometimes the referee exercised his discretion to make proportionate orders as follows:

In *London and Canterbury Motors (A Firm) v B L Koppen* 461 a case involving car repairs the case settled immediately in Court on terms of Judgement for the plaintiffs for £85 with

- costs agreed at £31.10s. with leave to proceed on terms set out in the order on consent. Subject to Defendants paying to the Plaintiff sum of £16.10s. within 7 days of the date of the order and the balance of £100 being paid by Defendant to Plaintiffs in four equal weekly instalments in the sum of £25 commencing on 9 March 1947

A better example is the following form of order found in the note of *Zenith Skin Trading Co Lts v Frankel* heard on the 20 November 1947 in Eastham’s second notebook, it states: 462

I dismiss the claim without costs. I order that the costs of the Plaintiff on the counterclaim be taxed and each party should pay its own costs up to the date of the first hearing and that the Plaintiff’s costs of the first day’s hearing should be borne 70% by the Defendant and 30% by the Plaintiff and that all subsequent costs be paid by the Defendant to the Plaintiff.

This seems a fair and proportionate order having regard to the circumstances as the referee found them having more in common with today’s orders than the 1940s.

In *Benoir Hamburges v Winifred Stort* Eastham made the following order on 28 June 1948: 463

Judgment for the Plaintiff for £95 with costs to be taxed on Scale C of the County Court Scales with all necessary costs to be paid to the expert witness Mr

---

460 J.116/1. p. 186.[CIMG 0188]
461 J.114/3 [HPIM1195]
462 J.114/4 pp. 117-121[CIMG 0049]
463 J.114/5 [HPIM1232]
Davis. The taxing master to have full discretion in increasing any items in the County Court scale that can be increased by a C.C. judge or Registrar. Money in court (£50) to be paid out to the plaintiff's solicitors without further authority in part satisfaction of the judgement.

In the War Damage Act claim of *Albert Colegate v D Raymark (Married Woman)* for £153 Eastham made the following order:

Judgment for Defendant on Counterclaim for £21 with costs to be taxed. Said sums and costs to be set off against each other.
Court experts fees were fixed by Judge at 8 Guineas to be paid by Plaintiff and Defendant to pay to Plaintiff 4 Guineas.
Money in Court £100 to be paid out to Plaintiff's Solicitors without further authority, in part satisfaction of judgment. Leave to proceed under Civil Emergency Powers Act 1943 to enforce Judgment after taxation of costs.

On the 30 January 1949 Eastham heard *Jays (Engineers) Ltd v Housegoods Limited* a case concerning the delivery of 101 gross frames delivered by Plaintiffs to Defendants in January 1946. He gave judgment for the defendant for £380.4s.4d with costs to be taxed. He ordered:

For hearing on 07/05 Defendants to have 2/3 taxed costs of that day. Costs of first trial on 16/17 April 47 be paid as follows:
Defendant to pay Plaintiff's taxed costs of claim and Plaintiff's to pay Defendants taxed costs of their counterclaim.
Money in Court £149.7s.11d to be paid to Defendant's Solicitors without further authority.

In *H Wheeler (Romford) Ltd v F C Chillingworth* Eastham made an order on the 28 June 1949 which was much ahead of its time. The costs order was novel in so far as he ordered the parties to bear the expenses of the appointment of experts in equal proportions. Each side was to bear their own costs.

On 11 January 1951 Eastham tried *Palmers Hebburn Company Limited v The Grimsby Steam Fishing Vessel Mutual Insurance and Protecting Co Ltd and Shire Trawlers Ltd.* This case concerned the cost of repair to a trawler engine which had been converted from coal to oil burning. Eastham ordered a payment out of £18,000 by the marine insurers to be paid out of funds of £15,051 in court and £2,949 out of a joint account. Costs were awarded against the defendants. Eastham took into account an earlier offer of settlement for £9,750.

---

464 J.114/6 [PROII FR082]
465 J.114/6 [PROII FR074] paragraph 3.8.2. above.
466 J.114/6 [PROII FR085] paragraph 4.3.2. above
467 J.114/16 p. 96 [HPIM2172]
On 9 November 1951, the last day of the trial of *Hayland v Springet & Son* Eastham ordered:

**BY CONSENT:**
Claim settled on terms that the Defendants pay to the Plaintiff's Solicitors the sum of £200 in full and final settlement of the claim and costs.
Payment to be made within 7 days.
In default of payment the Plaintiff to be at liberty to enter final judgment for the said sum of £200 without further order.
That the counterclaim be dismissed.

In *Dawes v Papadimitiou* heard on the 24 November 1952 judgment was given for the plaintiff for £250 on the claim and on the counterclaim, but no order was made on costs.

A more sophisticated order was issued by Eastham in *Burtain Ltd v J A Tyler & Sons Ltd* on the 7 October 1953 where liability being admitted only the counterclaim was in issue. Here he ordered:

- Plaintiffs to pay the costs of the claim and counterclaim up to 29 September 1953 and all costs subsequent after that date except the sum of £30 to be paid by Defendants to Plaintiffs.

In *Ridley & Ors v Kopisitzer* heard on the 4th June 1958 the referee conducted an accounts enquiry and awarded the plaintiffs the sum of £400, and ordered the defendant to pay £180 towards their costs.

On the 11 March 1960 in *J.H. Plant Ltd v Smithson* following the plaintiff's address the referee ordered:

- H.H. gives judgement for £399.15.3 and 9/10 of whole costs.
- £200 paid into Court be paid out to Plaintiff's solicitors.
- 9/10 are costs of claim and counterclaim to avoid giving defendant a separate judgement for costs on the counterclaim.

This form of order demonstrates a more precise approach to apportioning costs.

Another proportionate costs order is that exhibited in *Adkins v Joseph Cade & Co Ltd* tried by Carter in 1958 where he ordered:

- Order for payment of £350 to Pfs solicitors without further authority.
- Order for Defdt pay to the Pfs costs of claim and counterclaim up to 17th January 1958. Such costs to be taxed or agreed.
- Order Pfs pay Defts costs of claim and counterclaim from 17th January 1958. Set off one set of costs against or execution for balance only.
- No costs of amendment.

---

468 J.114/21 [CIMG 0061]
469 J.114/21 [CIMG 0062]
470 J.114/24 [CIMG0563]
471 J.114/24 [CIMG0571]
472 J.114/35 [HPIM2794]
473 J.116/1 [HPIM 2015 ]
474 J.114/34 p.87. [SH 10330]
Apart from these early examples of proportionate costs orders there is an example noted in Minute Book J116/2 which is possibly unique, certainly no equivalent in what has been researched. In *Shopfitting Centre Ltd v Revuelta* a case heard on the 20 December 1962 Carter made a novel form of order whereby the defendant upon early payment would obtain a discount of the judgment sum. The order read:

By consent judgment for the plaintiff for £1,650 on claim, counterclaim dismissed. No order as to costs. Execution stayed until 1/2/63 and if within that period defendant pays to plaintiff £1,400 such sum if accepted in full satisfaction of the judgement
If £1,400 paid before 1/2/63 any further execution stayed.

On 17 December 1965 in *Eaton Berry Ltd v King & Anor* the court ordered by consent the sum of £429.12.5. and awarded the plaintiff 50 per cent of its costs.

In *Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties)* the hearing lasted 45 days and the plaintiff was given an award of £25,454 in damages. Whilst costs were awarded to the plaintiff Carter ordered that the plaintiff receive no costs for the waste of time in pointless discovery.

These examples demonstrate a more equitable and reasoned approach to awards of costs in line with modern judicial thinking apportioning costs according to the merits of the case giving a more just result.

4.3.5. Invention of special pleadings

The technical and complex nature of the referees’ work meant that pleadings became voluminous and unmanageable in the hearing. We remember that to counter this George Scott devised the form of “Scott Schedule” in the 1920s, but as we see here other forms of schedule were also utilised as a more efficient means of presentation in court.

In *Cecil v Ewell*, previously referred to, the Judge took view of premises on 30 June 1948 and this was followed on the 24 May 1948 by an important meeting of surveyors for the parties they agreed a schedule. The schedule stood as the pleading in respect of the defects.

---

475 J.116/2 p.6 [SH 101775]
476 J.116/2 p.5 [SH 101775]
477 J.116/3 p.65 [SH101045] and J.114/47 p.69 [SH101983]
478 J.116/3 p.193 [SH101093]
479 paragraph 1.8 above
480 paragraphs 4.3.1 and 4.3.2 above
In *H Wheeler (Romford) Ltd v F C Chillingworth*, cited above, Eastham made an order whereby the parties agreed to abide by any agreement reached between surveyors to carry out remedial work. In default of such agreement the parties agreed to abide by the decision of a surveyor appointed by the referee.\(^{481}\)

After various interlocutory applications before the master *F Goff & Sons Limited v Bently Golf and Country Club Limited* was referred to Stabb who on 6 February 1974 ordered: \(^{482}\)

1. That the Defendants prepare and serve upon the Plaintiffs Solicitors within 28 days a schedule of the defective work pleaded in the Defence and Counterclaim;
2. That the Plaintiffs complete such schedule within 28 days thereafter;
3. That the Plaintiffs and the Defendants do respectively within 14 days thereafter serve upon each other a list stating what documents are or have been in their possession, custody or power relating to any of the matters in question in this action;
4. That there be inspection thereof upon 2 days notice;
5. That experts reports be exchanged by the 1 October 1974;
6. That the trial of this action be fixed for 26 November 1974 the estimated duration of the trial being 2-3 days.
7. That the parties be at liberty to restore the summons.
8. That the costs of the application be costs in the cause.

Dated 6th day of February 1974\(^{483}\).

Following this standard first order on directions the case was settled on 7 May 1974. Stabb made a consent order that "the record be withdrawn terms of settlement having been agreed between the parties."\(^{484}\) It would seem otiose for the master not to have dealt with a straightforward summary application on a certificate as this. These directions demonstrate; first, the effectiveness of setting the trial date at the first directions hearing, and second, the use of schedules as summaries of evidence which largely replaced pleadings at trial in defects cases. This case also demonstrates that by the 1970s the "Scheme" had evolved into a more modern approach to caseflow management.

\(^{481}\) J.114/6 [HPIM1779] considered at paragraphs 3.8.2 and 4.3.4 above.

\(^{482}\) J.115/56 [CIMG 0127, 0130 and 0139]

\(^{483}\) J.115/56 [CIMG 0143]

\(^{484}\) J.115/56 [CIMG 0144]
4.3.6 Preliminary issues and questions for the court

There appears to be something of a contrast between the immediate post-war cases and the 1950s cases. This is probably because it was a period of reconstruction and revival after the austerity of the Second World War. Eastham’s notebooks indicate that this device is used for questions of contractual performance obligation and not for matters of non-payment.

Most of these cases took place before the publication of the Final Report of the Supreme Court Committee on Practice and Procedure in 1953. Eastham had correspondence with that committee and made various recommendations as previously considered. The first evidence of use of preliminary issues by this court was George Osborne Limited v E C Goddard male before Eastham. Issues were agreed on the 28 February 1950 as being:

1. What was the contract was between the parties, in particular, what were the repairs the Plaintiffs undertook to do?
2. What is a reasonable price for the repairs actually carried out?
3. Were the repairs reasonably well executed; if not, what damages?
4. Were the Plaintiffs guilty of delay in executing the repairs and if so what damage.

On the 20 July 1950 Eastham heard an interlocutory application in W H Armfield Ltd v John England Perfumers Ltd for amendment of pleadings. Eastham refused the application to amend and decided to deal with preliminary issues as to:

1. Whether there was an agreement to submit to arbitration and if there was an agreement to arbitration was there a valid arbitration bearing in mind the Defendants were never heard by the arbitrator?
2. Whether there was an award by an arbitrator or not and whether the arbitrator had authority to act as arbitrator.

In that case there was no meeting of the parties. The “arbitrator” said he was asked to value the work which was allegedly submitted to arbitration. No award was made. The referee noted the “arbitrator’s” evidence:

In my investigation I came to the conclusion that the defendants owe to the plaintiffs £658/18/1.
I was employed by the defendants.
The defendants have paid my fees for services rendered.

Eastham held:
I find as fact that there was no submission to arbitration by the parties

---

485 J.114/14 [CIMG 0085]
486 J.114/14 [CIMG 0086]
487 J.114/19 [CIMG 0456]
I further find there never was a hearing or an arbitration.
I further find that there was no award made.
Costs reserved to trial

Judgment was given for the plaintiffs on the preliminary issue in the sum of £658.18s.1p and an order made for the plaintiffs to take all the money out of Court. Eastham’s robust intervention undoubtedly saved the costs and delay in amending proceedings and dealt with the matter that day.

On the 22 November 1950 Eastham tried preliminary issues in *Jack Hyman Sockel v Issacc Francis and Salmon Matthew Francis.*\(^{488}\) It appears from the judge’s note that the issues had been agreed by the parties and not as a result of earlier directions. Those issues were:

- What was the contract in May 1948 about the area outside the garage?
- What was the contract in June 1948 in respect of the garage floor?
- Was an estimate and specification from Ware & Stephenson to provide the basis of the work to be done by the plaintiff?
- Did the plaintiff do the work in accordance with the instructions or directions of the defendants?

The builder’s work in question concerned a contract for laying 6 inches of concrete and consolidated hardcore and a proper non-dust surface. Roskill submitted that because all of these terms were broken and the workmanship was inferior, a 50 per cent deduction would be appropriate. Platts Mills for the plaintiff builder said that the standard of workmanship satisfied a cheap job. Eastham did not agree entirely with the builder awarding the building owner £45.3s.3p on his counterclaim with costs to be taxed.\(^{489}\)

- If wrong damages for not taking up floor £75.

A further example of such reference was the matter of *Dorey & Son v Foster* heard on the 4\(^{th}\) December 1950.\(^{490}\) This concerned a licence to carry out work and failure to inform the Licensing Officer as to commencement of the works breaching Rule 8 Defence General Regulations 1939.

In *J C Robertson & Sons (a firm) v House* the plaintiffs, a firm of builders, contracted to underpin a semi-detached house for a price of £91 according to an agreed plan and specification.\(^{491}\) The parties agreed preliminary questions noted by the referee as:

- Has underpinning been done substantially in accordance with the terms of the specification?
- What were the terms of contract?

---

\(^{488}\) J.114/15 [CIMG 0466]
\(^{489}\) J.114/15 [CIMG.0476]
\(^{490}\) J.114/14 [CIMG 0091]
\(^{491}\) J.114/21 [CIMG 0074]
This approach demonstrates a more efficient approach to building cases with preliminary issues being agreed by counsel before commencement of the case.

In Pepper & Co Ltd v Harry Green Ltd Eastham tried a preliminary issue as to whether goods were in accordance with the contract. After the plaintiff's counsel had opened his case the referee noted:

Were goods in accordance with contract?

This dispute concerned the quality of 57,000 printed colour soap cartons. The cartons as delivered did not correspond with the sample previously inspected by the defendant, who refused to accept part of the delivery. 5,000 to 10,000 cartons were inspected on delivery. The printer's consultant found that the cartons were of varying shades of green. In evidence he said:

I don't think any lady buying soap would notice it.

When cross-examined:
I have not had experience of this particular brand in recent years.
I have had no experience in carton printing.
I have had no practical experience.

Following evidence there must have been some discussion in court of eight issues two of which were withdrawn by the plaintiff's counsel as Eastham noted:

<table>
<thead>
<tr>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What was the contract between the parties? (agreed)</td>
</tr>
<tr>
<td>2. If the contract was a sale by sample was the bulk in accordance with</td>
</tr>
<tr>
<td>the sample. (agreed)</td>
</tr>
<tr>
<td>3. Was the 16th April 1950 delivery merchantable in</td>
</tr>
<tr>
<td>a. colour and</td>
</tr>
<tr>
<td>b. printing (agreed)</td>
</tr>
<tr>
<td>4. Did the 16th April 1950 delivery comprise merchantable and</td>
</tr>
<tr>
<td>unmerchantable cartons (agreed)</td>
</tr>
<tr>
<td>5. If the 16th April 1950 delivery was in accordance with contract what</td>
</tr>
<tr>
<td>damages have plaintiffs suffered?</td>
</tr>
<tr>
<td>Agreed main issues 2 and 3 as opened by plaintiff's counsel-abandoned.</td>
</tr>
<tr>
<td>6. Was there ever a final binding contract as to the Mary Drake cartons?</td>
</tr>
<tr>
<td>7. If so, was it repudiated or if so by whom or was it cancelled by the</td>
</tr>
<tr>
<td>parties.</td>
</tr>
<tr>
<td>8. If the plaintiffs repudiated what damages have the defendants suffered? £355</td>
</tr>
<tr>
<td>All agreed.</td>
</tr>
</tbody>
</table>

Illustrating case management in the course of trial at its best Eastham then narrowed the case further by getting counsel to agree that there were two essential questions as he again noted:

Difference between parties: was there a sale by sample as to colour?
Not disputed there are different shades of green.

---

He then noted:

No evidence of any damage at all.
Plaintiffs did say they were of no value.

This case demonstrates the utility of the preliminary issue device in narrowing the matters in dispute and getting to the core of the case in the course of trial without untoward delay in dealing with the whole history of the dispute.

*Davidson Engineers v Stephens & Brotherton Ltd* was heard on the 19 July 1951 and involved conversion of goods. 493

Here Eastham was asked to answer two primary and two subsidiary questions:

1. Was it conversion?
2. If it was conversion what is the proper date for assessment of damages?

If reduced to a claim for breach of contract

1. Was there a market in which the plaintiffs could have bought the goods the defendants could have sold the goods (sic) [The note should have read: Was there a market in which the defendants could have sold the goods]
(Submit there was market)
2. If no market- entitled to damages (special) sellers knew what plaintiffs were going to do with goods. (1949) 2 KB 528 p.539. 494

The action concerned the sale of two million yards of wire (weighing 250 tons) encased in polydeanolchloride (sic) (PVC) where the buyers were breaking down the cable and selling the plastic and the wire as separate items.

Eastham was asked two further subsidiary questions:

1. What would be fetched for PVC strippings?
2. What would it fetch if sold in the ordinary market?

He noted:

Limited to date of breach for damages
For the wire there was a market

Repudiation acceptance of repudiation by defendants.
On plaintiff's figures I have to deduct £150 for Commission Transport agreed.

There is no doubt that by analysing the legal issues in this way the trial time was curtailed and expense saved.

*Knibbs v Goodhale Engineers Ltd* 496 was heard on the 8 July 1952. This was a building contract matter involving the following preliminary questions:

1. Was it an entire contract?
   If so what is fair and reasonable for work done?
2. If entire contract what is fair and reasonable charge for the admitted extras ordered by the defendants?

493 J.114/19 [HPIM 1141]
494 *Victoria Laundry v Newman* 12 April 1949.
495 Polyvinylchloride is the chemical name of PVC.
496 J.114/19 [HPIM 1177]
3. Is the Plaintiff was entitled to £30?
4. If entire contract and contract broken, what damages?
5. Was water pipe installed on defendant's express orders?

Eastham gave the plaintiff judgment for £107 with costs to be taxed.

In Wilson v Eastern Counties Farmers Cooperative Association Ltd a farmer (Plaintiff) wanted dual purpose potatoes and was told that Ulster Ensign Potatoes were such potatoes. He obtained the seeds. He selected these potatoes because they had been described as suitable for their requirements. The case was tried before Eastham on the 17 March 1953. An expert gave evidence as to a high incidence of blight and infection in the seeds.

Eastham heard preliminary issues as to the fitness for purpose of goods under section 14(2) of the Sale of Goods Act 1893. The judge noted the following issues:

1. Were potatoes fit for the sold purpose?
2. Were potatoes infected by blight at time of delivery?
3. If not were they so satisfactory;
4. If not were they blighted as to be unsuitable for the purpose for which the potatoes were required.
5. Was the damage due to Plaintiff's action or conduct as alleged?

In P.C.S. Ltd v Lewer heard in early February 1954 Eastham noted Preliminary Issues as follows: 498

1st Issue- What is the contract.
Pltfs say NH/PC/1....... Plus a brief specification
Defs say: no price fixed
So reasonable remuneration for work done.

Butler v Vaughan heard on the 30th July 1957 was a matter of an account tried on preliminary issues. Edmund Davies QC submitted that there were three questions for the judge to decide: 499

1. Was there any agreement as to remuneration?
2. What is fair remuneration?
3. What services were provided?

Another example is found in Carter’s Minute Book on the first day of the trial of Middleton v Blackwell at the Cheltenham County Court in Gloucester. Graeme

497 J.114/28 [SH 101376]
498 J.114/31. [SH 101190]
499 J.114/35 [HPIM 2780]
Hamilton opened the case for the defence submitting that the questions for the judge were:

1. whether drain was in a first class condition
2. whether the Plaintiff's agent was acting with authority and
3. whether the agent made a representation that was fraudulent or amounted to a collateral warranty.

At the end of the plaintiff's case Carter immediately decided the first issue as to whether the representation "I guarantee drain in first class condition" was not made by the agent. There was an inherent unlikelihood in his view that the agent would say any such thing. To suggest this was "the power of wishful thinking" and of "people convincing themselves that they received assurance they never did."

Whilst counsel appear to crystallise the issues here regrettably the judge's note lacks coherent reasoning; his note jumps to a conclusion after the opening but this maybe because in court he had insufficient time to note it before immediately summing up.

In McConnell v Grant heard on the 23 October 1957 the preliminary issues concerned a claim for remuneration as the deputy referee noted:

1. Was there any agreement as to remuneration?
2. Was it fair remuneration?
3. What services were included?

George v Russell Bros (Paddington) Ltd provides further evidence of this device in the form of an order of the deputy referee who tried preliminary issues as ordered to the effect:

that issues of fact as to amount of Plaintiff's loss and expense in completing the house himself and the amount of the sum claimed by the Defendant under the contract or on a quantum merit basis be tried after the other issues in this action.

This indicates that these issues were defined after a hearing in court and that they were formulated after debate between counsel and discussion with the judge. It is also the first reference noted to "loss and expense," the quantity surveyor's nomenclature for damages.

On 23 July 1951 Eastham heard T J Kendel & Co v ATA Scientific Progress Ltd. There were a number of issues in this case which was basically a claim for £168.5s.1p on an alleged costs plus type contract and work on the roof. The preliminary issues were:

501 J.116/3 [CIMG. 0097]
502 J.114/35 [HPIM 2780]
503 J.114/35 [HPIM 2800]
504 J.114/16 [HPIM 2186]
1. Was it costs plus contract or was it lump sum contract?
2. If costs plus was the work properly carried out?
3. If so, how much?

By agreement of the parties the referee’s jurisdiction was extended to include a further issue as to the existence and substance of an oral contract.

The referee noted:
By consent I try the issue what was the oral contract?

A number of cases involving determinations of preliminary issues are noted in the Official Referee’s Court Minute Book No.4, the time record of Carter’s court in the 1959-62 period include: Martin French v Kingswood Hill Ltd 505 concerning preliminary issues as to whether a payment into Court constituted discontinuance of action, and whether a cause of action survived discontinuance; Engineering Co Ltd v Parkwood Carlington Engineering Ltd 506 heard on the 26 November 1961 as to whether a fixed price was agreed; A.T. Chown & Co Ltd v Peter Davis Investments Limited 507 heard on the 5 July 1962; Edward Vernon Andrews v (Greens (Wholesale China) heard on the 11 July 1960 which concerned matters of account; Lenton v City of Coventry 508 a building claim heard on the 1 November 1960; and Shearing v Wisehill Field Company Ltd 509 another Building case heard on a preliminary issue on 5th July 1962.

In Extol Engineering Ltd v The British Process Mounting Co (a firm) and Andrews Houseware Manufacturers Ltd 510 heard on the 29 March 1965, the issues considered involved the manufacture of engineering parts not conforming to prototype. Preliminary Issues stated were: what was contract? Did items correspond with sample? Were they fit for purpose? Are they entitled to refuse to take delivery of balance?

Another example of this device was Frederick William Young v Charles William Connery 511 which Carter heard on the 25 March 1965. This building case concerned typical building contract issues as to: what was the contract and what was a reasonable price for extra works.512

---

505 J.116/1 [HPIM 1964] and J.114/34 [SH 101355 ]
506 J.116/1 [HPIM 2072]
507 J.116/1 [HPIM 2116]
508 J.116/1 [HPIM 2030]
509 J.116/1 [HPIM 2113]
510 J.116/2 [SH101784] and see J.114/45 [CIMG 0736]
511 J.116/3 [SH101015]
512 J.114/47 [SH101975]
This was followed on the 8 February 1966 by *United Dominions Trust (Commercial) Ltd v Thomas Gravell & Prized Steele Garage Ltd* a commercial matter as to whether a legal instrument was a contract of guarantee or one of indemnity.\(^{513}\)

Further example of the device are to be found in: *K. Cross (Doncaster) Ltd v County Council of York (East Riding)*\(^{514}\) heard on the 10 October 1966 as to Architect’s duties and provisional sums for the works described in the contract; *Olga Hilditch (Widow) v Charles E.H. Durham and A E L Durham(Married Woman)*\(^{515}\) heard on the 24 February 1967 as to the extent of a landlord’s obligation to repair; and *Swallow Prams Limited v United Air Coil Limited* \(^{516}\) heard on the 11 May 1967 on an issue of waiver.

A final example of the utility of preliminary issues as a tool of micro-caseflow management is the leading case of *Gloucestershire County Council v Henry William Richardson (Trading as W.J. Richardson & Son) and Ocean Accident and Guarantee Corporation Limited.* \(^{517}\) Richards was the referee. The writ was issued on 14 December 1962 but the action was not referred to the referee until 19 March 1964, a lapse of 15 months. This was an action for damages for incomplete works. The contractor’s defence alleged numerous failures by the architect to give proper instructions for the works which resulted in the contractor’s solicitors giving the plaintiff notice of termination in October 1961.\(^{518}\) By its counterclaim the contractor pleaded that the architect ought to have extended time in order to enable the contractor to complete works following any variations.\(^{519}\) In this case there is clear evidence of case management with preliminary issues being identified in the referee’s judgment as:

(a) Whether the First Defendant wrongfully and in breach of Clause 16 of the General Conditions of Contract abandoned the works and thereafter wrongly failed to carry out and complete the works as alleged in paragraph 6 of the Statement of Claim and

(b) By reason of the matters alleged in paragraphs 3, 4 and 5 of the Amended Defence and Counterclaim the First Defendant was entitled to determine and by Solicitors letter dated 8 November 1961 to the Plaintiffs did determine his employment as contractor under the said contract as alleged in paragraph 6 of the Amended Defence and Counterclaim.

\(^{513}\) J.116/3 p.99 [SH101055]

\(^{514}\) J.116/3 p.172 [SH101085]

\(^{515}\) J. 116/4p.19 [SH101810]

\(^{516}\) J. 116/4 p.35 [SH101818]

\(^{517}\) J.115/28 [HPIM 2733]

\(^{518}\) J.115/28 [HPIM 2737]

\(^{519}\) J.115/28 [HPIM 2738]
Richards ordered:

Judgment for the Plaintiffs against the Defendant Henry William Richardson on the issues with costs thereon limited to the sum of £50.

And it is further Ordered that the costs of the Defendant Henry William Richardson be taxed in accordance with the provisions of the Third Schedule of the Legal Aid and Advice Act 1949.

DATED the 28th day of July 1966.

N.R. 520

Whilst this case took 6 years to resolve, three years of which was taken to resolve costs issues we could hardly suggest that this was cost/time effective. On the other hand, the costs awarded served as a punitive warning to other litigants.

Apart from this case, numerous examples have been given of preliminary issues. In some cases they were adopted by agreement of the parties, in others after discussion with the referee, or emerged in the course of trial. In most case they appear to have defined the key issues and differences between the parties. Very often determination of such questions resolved the case or a substantial part leaving minor matters to be agreed between the parties saving time and costs in court.

Some cases provide examples of an activist approach such as Pepper & Co Ltd v Harry Green Ltd 521 where Eastham gradually narrowed the issues, most of the cases represent a more passive approach to the device epitomised by Jack Hyman Sockel v Issacc Francis Salmon Matthew Francis 522 and George Osborne Limited v E C Goddard (Male). 523

We find both from this research and from the quantitative analysis this practice was the most popular caseflow management device. 524

4.3.7 Geographic and economic location for the parties

After the war we find a number of examples of referees sitting at provincial locations. Such sittings saved the parties the time and expense of coming to London. They also facilitated inspection of the site by the referee.

In Praills Motors Ltd v Hiles Bros & Mussele heard on the 3 March 1953 Eastham sat at the Crown Court in Hereford. In Wilson v Eastern Counties Farmers Cooperative Association Ltd 525 the court was convened at Ipswich. Others included: Hogg v

520 J.115/28[HPIM2742]
521 J.114/19 [HPIM 1125]
522 J.114/15 [CIMG 0466]
523 J.114/14 [CIMG 0086]
524 See Table T.5.35.
525 Cited above at paragraph 4.3.6
Barnard heard on Monday 21 November 1955 Percy Lamb QC at Warwick; the trial of Middleton v Blackwell at the Cheltenham County Court in Gloucester, the leading case of Moresq Cleaners Limited v Hicks which was heard by Carter sitting at Truro Town Hall on Tuesday 5 July 1966, the case of Harper and Preston Limited v Marshall Castings Limited which was heard in Birmingham on the 22 February 1961; Barrow Brothers (Builders Lancaster) Limited v Haworth heard at the Lancaster District Registry on the 3 December 1962, and United Dominions Trust (Commercial) Ltd v Thomas Gravell & Prized Steele Garage Ltd heard by Carter at the Crown Court, Guildhall, Swansea on the 8 February 1966.

4.4 Other aspects of rudimentary caseflow management

After the war a number of rule changes were made following the recommendations of the Evershed Report.

4.4.1 Early directions hearings

Order 36 Rule 47 AB provided that a party could apply to the court for directions from the referee within 14 days of the case being referred to the referee. This effectively expedited the directions and gave the referee an early opportunity of finding out what the case was about and giving directions as to appropriate to the issues. The Annual Practice for 1955 contained Notes on Practice for Referees confirming the position:

Applications for directions must be made within 14 days of entry (see r. 47AB).
Interlocutory proceedings are conducted by the referee in his Chambers, including issuing of summonses, the drawing up and sealing of orders and the filing of documents. Summonses and applications are heard at 10.30 a.m.
....The trial is conducted as before a High Court Judge without a jury.

Here the rules confirm the dual jurisdiction of the referee conducting interlocutory hearings in chambers like a master and trials like a High Court judge. This is

526 J.114/35. p. 33 [HPIM 2766 ]
527 J.116/3 [CIMG. 0096]
528 J.116/3 [CIMG. 0110]
529 J.116/1. [CIMG184]
530 J.116/1 p. 296.[CIMG200]
531 J.116/3 p.99 [SH101055]
532 n. 22.
533 Added by RSC (Summons for Directions etc) 1954. Cited in Annual Practice 1955 p.624.
535 The Rules of the Supreme Court 1873 contained two rules: 34 (Proceedings before an Official Referee) and 35 (Effect of the Decision of the Referee). In 1875 the rules were expanded to five rules (29A-34). In the Annual Practice 1955 there were thirteen rules: Order 36 rr. 45-58 with Notes on the Practice pp. 623-633; and following changes implementing Evershed under Section 15 Administration of Justice Act 1956 the number was reduced to eight (Order 36 rr.1-8.)
significant because it meant that the case could be managed more quickly without undue delay between the referral and the directions hearing.

It was at the first directions hearing that Newbolt had actively encouraged settlement, as he wrote:\footnote{536}

\ldots there is no greater check on wasteful expenditure than the arrangement by which the trial judge takes his own summonses, especially if he makes notes of them upon the file. \ldots The mere discussions across a table, which costs nothing in comparison with the cost per minute in Court, discloses what issue it is that the parties wish to try, and eliminates the very source of the litigants grievances.

\subsection*{4.4.2 Inter-referee transfers}

Another expedient that facilitated caseflow management was R.S.C (No.3) 1949 which provided that any referee could transfer any business from himself to another referee with that other’s consent. If the case was transferred to a named referee then all parties to the litigation would have to consent to the reference. This change was brought about by the earlier recommendations of the Evershed Committee. Prior to that amendment, Order 36 Rule 46 of the \textit{Rules of the Supreme Court 1883} had simply provided that referrals were to a referee in rotation. This meant that if a particular referee had a lengthy case he might accumulate a backlog without his list being reallocated. This amendment should have reduced the backlog as referees would have been able to reallocate their cases.

The immediate coincidence of this macro-tool was an increase in the number of cases tried. Taking the years 1949-54 we find the trend increasing by 73 per cent from 225 trials to 307 trials with the number peaking at 350 trials in 1952.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|c|}
\hline
\hline
Trials & 225 & 289 & 293 & 350 & 316 & 307 \\
\hline
\end{tabular}
\caption{Numbers of trials 1949-54}
\label{tab:trials}
\end{table}

\begin{flushright}
Source: Civil Judicial Statistics 1949-54
\end{flushright}

\subsection*{4.4.3 Enquiry and report}

Following the Evershed Report, the referee provisions of the Supreme Court of Judicature Act 1873, Arbitration Act 1889 and Sections 86-97 Supreme Court of Judicature Act 1925 were replaced and Order 36 \textit{Rules of the Supreme Court} was redrafted in accordance with Section 15 Administration of Justice Act 1956. In respect of cases of a highly technical nature the latter was intended to provide according to the \textit{Second Interim Report of the Committee on Supreme Court Practice and Procedure},\footnote{537}
detailed recommendations for rewriting the procedural code for referees. It did not implement what Eastham and Newbolt had advocated although the objective of the
Interim Report of the Committee on Supreme Court Practice and Procedure was:

...to consider what reforms should now be introduced for the purposes of reducing the cost of litigation and securing greater efficiency and expedition in the despatch of business.

Newbolt would have supported this objective but would have been disappointed at the marginal measure of reform because Rules of the Supreme Court (No.1) 1957 retained the enquiry and report jurisdiction contrary to the earlier suggestions in Burrows’ article and contrary to suggestions made by the referees that Section 88 Judicature Act 1925 should no longer apply. The referees submitted that the process was expensive but the Evershed Committee saw advantage to litigants in retaining it. The Committee supported the referees’ suggestion of widening the discretionary power to refer cases to a referee under Section 89 of that Act. The Committee’s report was published in March 1951 and whether fortuitously or not referrals increased to 724 cases in that year. This figure was not surpassed until 1970 with 901 referrals. Referrals for 1950-52 were: 1950: 677; 1951: 724; 1952: 730. The figures however declined thereafter to 633 referrals in 1953 and fell sharply again in 1957 to 449. This is further illustrated in Chart C.6.1.

Whilst the referees may not have wanted the inquiry cases such investigations did save High Court judge time although to have referees enquiring into questions of damages for loss of use of an ice-cream vending machine may seem trifling for an officer of the Supreme Court vested with High Court judge power. Evershed considered that the advantage to the litigant outweighed the cost anxiety of the referees in such cases so that there is evidence of a continuum of the subordinate judicial role of the referee acting as a jury in making assessments of damages as in cases such as Frederick Baden Powell Weil v John Southern and Beswarwick v Woodbridge 12 May 1953.

---

538 Terms of reference (1)
539 RSC1957 Ord.36A, r.1, and r.2.
541 n.238
543 J.114/17 p. 190 [SH 101134]
544 J.114/28 p. 92 [SH 101389]
4.4.4. Necessity for caseflow management

At macro-level the view after the war was that the referees fulfilled a useful subordinate function and that there was no reason to change their status or form a specialist Division of the High Court for them. There was therefore little change at macro-level, save a wider discretion for High Court judges to refer matters. At micro-level the inter referee transfer system should have reduced the increasing individual workload. In my research of Eastham’s notebooks for the earlier post-war period 1944-49 I found a variety of cases including war damage claims, smaller commercial cases and matters for enquiry and report which would not be matters tried by a High Court judge. It was not a perfect system and the inexperience of some referees concerned Eastham and Lord Simonds, the Lord Chancellor. This led to a meeting at the Lord Chancellor’s office on the 15 January 1952 when Eastham met Sir Albert Napier, the Permanent Secretary, to discuss difficulties over the backlog of cases that had built up with Hubert Hull and John Caswell. A Note on the Lord Chancellor’s file states:

Note
He handed me a letter to Napier enclosing a report on the current lists before the Official Referees. The list for Court No. 4-Caswell, K.C.- is substantially in arrears. Eastham said that this was due mainly to the fact that the appointments of Hull and Casswell had succeeded each other rather quickly and that neither of them had gained sufficient experience during their tenure of office to dispose of the lists expeditiously. He [Eastham] was anxious for me to write him a letter, on behalf of the Lord Chancellor, acknowledging receipt of the lists and drawing attention to the desirability of reducing the arrears in Court No. 4. We discussed the terms of the letter, and I wrote to him today accordingly.

15th January 1952 G.P.C.

Eastham suggested that his period of office be extended and continue as the “captain of the team” in the light of his colleagues’ inexperience stressing that the public interest could be best served in this way. It seems that Hull and Cresswell were unfamiliar with the mechanics of the “Scheme” and had not mastered a more efficient means of disposing of their lists. This Note tends to suggest that without micro case-management they could not complete their lists so quickly and that its usage was of assistance.

545 1950-51 (xvi) Cmd. 8176 p.39 para 105
546 Sir Herbert Hull Official Referee 1949-1950 succeeded by J.D. Caswell 1951-1959
548 Sir George Coldstream,K.C. Assistant Secretary
549 Attendance upon Eastham, note by George Coldstream. In the meeting salary scales were discussed and Claude Schuster’s support for the referee’s increase was endorsed on the note. This discussion was based on the article by Roland Burrows. Cited in n.15 at pp 504-513.
4.4.5. Preliminary assessment of the “Scheme”

Having analysed the instances of rudimentary caseflow management in the pre and post-war eras it is useful for us to make a preliminary survey of the court’s overall effectiveness before and after the war. This survey covers the Pollock court between 1920 and 1927 as illustrated in Tables T.4.2-T.4.50 and the Newbolt court 1928-36 illustrated in table T.4.4. What is significant in the context of the hypothesis is the marked effect the “Scheme” may have had between 1921 and 1929. Comparing Tables T.4.3 and T.4.4 we find an increase of 22 per cent in the rate of disposals to referrals in those years from 19 per cent in 1921 to 41 per cent in 1929 and 1931.

Table T.4.2. Total referrals and trials

<table>
<thead>
<tr>
<th>Year</th>
<th>1919</th>
<th>1920</th>
<th>1921</th>
<th>1922</th>
<th>1923</th>
<th>1924</th>
<th>1925</th>
<th>1926</th>
<th>1927</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total references</td>
<td>210</td>
<td>393</td>
<td>649</td>
<td>593</td>
<td>470</td>
<td>376</td>
<td>389</td>
<td>400</td>
<td>389</td>
</tr>
<tr>
<td>Tried</td>
<td>86</td>
<td>159</td>
<td>296</td>
<td>291</td>
<td>184</td>
<td>181</td>
<td>168</td>
<td>157</td>
<td>155</td>
</tr>
<tr>
<td>Percentage tried</td>
<td>41%</td>
<td>40%</td>
<td>46%</td>
<td>49%</td>
<td>39%</td>
<td>48%</td>
<td>43%</td>
<td>39%</td>
<td>40%</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-27

Table T.4.3. Total cases withdrawn and disposed of and percentages of same

<table>
<thead>
<tr>
<th>Year</th>
<th>1919</th>
<th>1920</th>
<th>1921</th>
<th>1922</th>
<th>1923</th>
<th>1924</th>
<th>1925</th>
<th>1926</th>
<th>1927</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawn or otherwise disposed</td>
<td>44</td>
<td>91</td>
<td>127</td>
<td>118</td>
<td>144</td>
<td>76</td>
<td>105</td>
<td>136</td>
<td>115</td>
</tr>
<tr>
<td>21%</td>
<td>23%</td>
<td>19%</td>
<td>20%</td>
<td>31%</td>
<td>20%</td>
<td>27%</td>
<td>34%</td>
<td>30%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-27

We also observe that before the war it would appear that Pollock’s court was more efficient in terms of resolving matters at trial.

---

550 Percentage values throughout the text have been rounded up from decimal to whole integers. These figures rounded up from figures in the Civil Judicial Statistics Analysis: Official Referees: 1919-70.

147
During Newbolt's time as Senior Official Referee, 1928-36, the corresponding figures were:

<table>
<thead>
<tr>
<th>Year</th>
<th>1928</th>
<th>1929</th>
<th>1930</th>
<th>1931</th>
<th>1932</th>
<th>1933</th>
<th>1934</th>
<th>1935</th>
<th>1936</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tried</td>
<td>130</td>
<td>121</td>
<td>105</td>
<td>109</td>
<td>96</td>
<td>102</td>
<td>134</td>
<td>139</td>
<td>179</td>
</tr>
<tr>
<td>Withdrawn or otherwise disposed</td>
<td>118</td>
<td>148</td>
<td>133</td>
<td>140</td>
<td>107</td>
<td>102</td>
<td>75</td>
<td>86</td>
<td>70</td>
</tr>
<tr>
<td>Percentage of referrals tried</td>
<td>39%</td>
<td>33%</td>
<td>31%</td>
<td>32%</td>
<td>31%</td>
<td>32%</td>
<td>40%</td>
<td>40%</td>
<td>48%</td>
</tr>
<tr>
<td>Percentage of referrals withdrawn or otherwise disposed</td>
<td>36%</td>
<td>41%</td>
<td>40%</td>
<td>41%</td>
<td>35%</td>
<td>32%</td>
<td>22%</td>
<td>24%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1928-36

Newbolt's court appears more resourceful in encouraging parties to resolve matters before trial thus saving the time and costs of a court hearing. Such a difference in approach may be the dividing line between an activist and a passive approach to case management.

In this study the fundamental question is whether the "Scheme" was efficient. This is tested in chapter 5 in more depth. Here we take an average percentage of disposals and trials:

<table>
<thead>
<tr>
<th>Management stage</th>
<th>1919-27-Pollock</th>
<th>1928-36-Newbolt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolved before trial</td>
<td>25%</td>
<td>32%</td>
</tr>
<tr>
<td>Resolved at trial</td>
<td>43%</td>
<td>36%</td>
</tr>
</tbody>
</table>

Source: Tables T.4.2.-T.4.4

Having considered Newbolt’s era we can give a preliminary indication of the effectiveness of these approaches over the whole research period 1919-38 and 1947-70 by an analysis of Judicial Statistics.

We can see from a comparison of the tables below T.4.6 and T.4.7 that generally the period before the war was slightly more efficient in disposing of cases before and at trial whether by earlier settlement or by transfer to another court.

The figures given below in T 4.6 are taken from Civil Judicial Statistics and those in T 4.7 are average percentages for the two periods.
Table T.4.6 Referrals, disposals and trials

<table>
<thead>
<tr>
<th></th>
<th>1919-38</th>
<th>1947-70</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals</td>
<td>7,683</td>
<td>13,932</td>
<td>21,615</td>
</tr>
<tr>
<td>Cases disposed before trial</td>
<td>2,053</td>
<td>4,010</td>
<td>6,063</td>
</tr>
<tr>
<td>Trials</td>
<td>3,202</td>
<td>4,360</td>
<td>7,562</td>
</tr>
<tr>
<td>Total Percentage of trials and disposals to referrals</td>
<td>68%</td>
<td>60%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-37 and 1947-70

Table T.4.7 Apportionments of referrals, disposals and trials

<table>
<thead>
<tr>
<th></th>
<th>1919-38</th>
<th>1947-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of disposals to referrals</td>
<td>27%</td>
<td>24%</td>
</tr>
<tr>
<td>Of trials to referrals</td>
<td>41%</td>
<td>32%</td>
</tr>
</tbody>
</table>


Here it has been possible to analyse the Judicial Statistics in order to assess the court's overall effectiveness.551 After the war the number of referrals rose considerably to an average of 581 per year, as opposed to 384 per year before the war.552 Taking the years 1947-70 the increase in the percentage of new business and rates of settlement in proportion to cases sent for trial is discernable. Comparing the percentage of cases tried, disposed of, or transferred, to the number of referrals in the period 1947-70 we can see the effectiveness of the referees’ skills in disposing of their lists. This equates to:

Table T.4.8 Percentage of cases disposed of and tried to referrals

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>48%</td>
<td>65%</td>
<td>50%</td>
<td>62%</td>
<td>67%</td>
<td>71%</td>
<td>67%</td>
<td>66%</td>
<td>67%</td>
<td>69%</td>
<td>63%</td>
<td>58%</td>
<td>59%</td>
<td>64%</td>
<td>62%</td>
<td>61%</td>
<td>63%</td>
<td>56%</td>
<td>56%</td>
<td>58%</td>
<td>59%</td>
<td>57%</td>
<td>45%</td>
</tr>
</tbody>
</table>

Average percentile 60%


551 These preliminary findings do not analyse the effect of backlog. This is analysed at paragraph 5.4.2.
552 See: Table T.5.9.
More specifically in relation to the hypothesis advanced as to the existence of an early form of micro-caseflow management in the 1920s, and its survival and evolution in the period 1950-70, the following conclusions may be drawn:

4.5 Conclusions as to literature review and qualitative analysis

4.5.1. As to early procedural evaluation

Some evidence of a continuum of Newbolt’s “discussions in chambers” has been found as well as recognition that settlement discussions might be more expedient and economic than a trial. Comparing chapters 3 and 4 Newbolt’s “Scheme” approach seems more activist than Eastham’s form of caseflow management. Eastham granted adjournments or stayed proceedings enabling the parties to settle outside the courtroom rather than lead any discussions in chambers. On the other hand, Carter in Clifton Shipways Co Limited v Charles Lane\(^{553}\) and W J Barrs Limited v Thomas Foulkes\(^{554}\) seems to have adopted the “discussions in chambers” activist approach of Newbolt. We have found evidence here of an activist and a passive judicial approach in the case studies.

Whether they applied an active or a passive form of micro-caseflow management both Eastham and Carter demonstrated a continuation and recognition of Newbolt’s “Scheme,” the latter being more adventurous and interventionist than the former. Both approaches accommodate the value of Newbolt’s “Scheme” and the warnings of Lord Birkenhead as to pressure from the bench. Post-war we have seen referees acting as arbitrators with the consent of the parties and acting as a jury in assessing matters of fact.

4.5.2. As to judicial intervention promoting economy and expedition.

Again there is little evidence here of an interventionist approach save for Clifton Shipways Co Limited v Charles Lane where there is some evidence that settlement was discussed in court.\(^{555}\) It is not clear from the judge’s note whether or not he took part in the discussion unlike W J Barrs Limited v Thomas Foulkes where the judge was in control of the expert evidence.\(^{556}\) In other cases there is evidence of a passive approach which permits the parties to resolve the matter outside court by the granting of adjournments either on the day of trial or adjourning the summons to a later date. An

---

\(^{553}\) J.116/1 p.104. [CIMG 0176]
\(^{554}\) J116/3 [CIMG. 0102]
\(^{555}\) J.116/1 p.104. [CIMG 0176]
\(^{556}\) J116/3 [CIMG. 0102]
example of this more cautious approach was the Duke of Bedford's case. The referee did not insist on pressing ahead with the trial expending time and money, but gave time for the parties to resolve the matter. This passive form of micro-caseflow management was not all about speed. In procedural terms more time can give the parties' lawyers a better chance to prepare their respective cases properly. It may also avoid or shorten the hearing and the consequential costs by resulting in constructive negotiations.

Allason & Others v Frankpile Ltd raises the question as to whether a site visit in complex technical cases is necessary and whether it would accelerate settlement. These examples suggest that such visits accelerated resolution.

4.5.3. As to experts

(a) Use of single joint expert/court expert

Referees continued to utilise experts in various ways: to agree figures of quantum; to assess the extent of damage and repair; to visit the site and report back to the court. Leon v Beales illustrates the utility of the single joint expert in terms of cost and time in resolving the extent of necessary remedial works. Nathan Bernard v Britz Brothers Limited, however, illustrates the difficulties that are often not appreciated where experts may be right in certain matters but not in all. The most significant point is the fact that in this case the referee was instrumental in settling the expert's terms of reference through a chambers discussion.

(b) Expert determination

The nearest example here is not one of expert determination, but of an assessor who appears from the judge's note to have provided calculations for the court. There is no repetition of the experiment of the earlier period. Their use in various guises whether as party-experts; court appointed experts or in the singular case of Mr Venn charged by the referee to determine what works were to be carried out under his (court's) supervision. See: Charlton Decoration Co Ltd v Robert Murray. This was remarkable because it in effect amounted to court supervision of the works and is the only instance found of such a unique order. Whilst there is little doubt that experts facilitated settlement their assessments on quantum were not always followed by the referee, for example in Benoир Hamburges v Winifred Stort.

557 J. 114/3 [CIMG 0045]
558 J.114/41 p.263 [Dec 2006 Series; CIMG 0656]
559 J.114/16 [HPIM2158]. Paragraph 4.3.3 (b) above.
560 J.114/5 [HPIM1232]. Paragraph 4.3.4 above.
Apart from (a) above no evidence has been discovered save for that noted in the Suter case. 561

4.5.4. As to proportionality of costs orders

We have already noted the referees’ modern approach to costs. Whilst in some of the early 1940s cases the tendency was to award the costs of the defence to the defendant and costs of the claim to the plaintiff, in the late 1940s and early 1950s there was a leaning towards what we now call: “proportionality.” After the war Eastham was making costs orders that would not be out of place in practice today. Such orders seem in advance of their time: costs were set off between the parties as in Albert Colegate v D Raymark (Married Woman), 562 costs were made payable in stage payments London and Canterbury Motors (A Firm) v B L Koppen; 563 costs were ordered to be paid on the County court scale as in Benoir Hamburg v Winifred Stort. 564 In Burtain Ltd v J A Tyler & Sons Ltd 565 the costs were ordered to be paid by the plaintiff up to a certain date and thereafter by the defendant. In H Wheeler (Romford) Ltd v F C Chillingworth Eastham made an innovative costs order in that he directed the parties to bear the expenses of the appointment of experts in equal proportions. Each side also bore their own costs. 566

4.5.5 As to special pleadings

The referees utilised schedules of various types following their invention by Scott in the 1920s. Whilst there were no particular innovations in terms of pleading the utilisation of the surveyor-experts schedule in Hon. Mrs Courtney Cecil Fem Sol v D Ewell (Spinster) 567 was a variation of the Scott Schedule. By the 1970s such orders had evolved into a standard direction for the production of a schedule summarising the issues and evidence in the case.

4.5.6 As to preliminary issues

Preliminary issues readily identified the matters in dispute. This device enabled the parties to focus on the key questions of law and fact that would determine the case. It

561 J.116/1 [CIMG 0188]
562 J.114/6 [PRO II (FR) 082]]
563 J.114/3 [HPIM1195]
564 J.114/5 [HPIM1232]
565 J.114/24 [CIMG 0571]
566 J.114/6 [PROII FR 085] 28 June 1949. Paragraphs: 3.8.2, 4.3.4 and 4.3.5. above.
567 J.114/4 [HPIM1779]
was the most popular element of the "Scheme." They were usually drafted by counsel. In some cases it appears that the question is crystallised in the course of the proceedings following an exchange with the referee. The referees notebooks confirm that this device was used by those counsel who later achieved judicial stature, for example, Lords Scarman and Roskill.

We found many instances of this device saving time and expense, but also an exception in the leading case of *Gloucestershire County Council v Henry William Richardson (Trading as W.J. Richardson & Son) and Ocean Accident and Guarantee Corporation Limited.* That case went on for a number of years so that it is difficult to argue that preliminary issues of themselves expedite a case.

4.5.7 As to geographic location

A number of cases were tried at more convenient locations which would have saved the parties the expense of travelling to London. Numerous examples are given here which pre-date the Courts Act 1970 after which referees, as Circuit Judges, were appointed to sit in provincial centres.

4.6 Summary

From the above literature review and qualitative analysis we find that Newbolt’s "Scheme" survived the war and that the approach to micro-caseflow management varied as between cases, and as between the approach adopted by the individual referee. Preliminary issues became a key time-cost saving device but they did not always curtail the overall length of the interlocutory proceedings.

However, we may conclude from Table T. 4.6 that pre-war trials and disposals represent 68 per cent of the referrals, compared to 60 per cent after the war. This suggests that the earlier period was the more efficient. This is subject to much closer scrutiny in chapter 5.

We may further conclude that there must have been an advantage to the litigant, as Evershed put it, in having complex factual cases determined by a referee especially matters of enquiry and report and assessment of damages. This undoubtedly saved High Court judge time.

We may also surmise at this stage that it may have been difficult for the referees to be efficient in both trial and interlocutory work at the same time. We see, for example,

---

568 Table T.5.35 below.
569 J.115/28 [HPIM 2733]
Pollock's court slightly (7 per cent) more effective at trial work than Newbolt's, and Newbolt's court slightly (again 7 per cent) more effective in disposing of cases before trial than Pollocks. (Table T.5.4)

These are very slim margins, but the telling effect is the 22 per cent increase in disposals from 19 per cent in 1921 to 41 per cent in 1931 and 1933. This suggests something extraordinary is happening and it is submitted here that this was due to the operation of Newbolt's "Scheme."

We also found in the literature review that the "Scheme" was sustained after the war by an increasing and more complex workload. This further answers research questions (c), (d) and (e). This leaves us to consider question (e) which we subject to quantitative analysis and further qualitative analysis in the next chapter. In chapter 5 we see how effective such measures were, and how despite this process, the backlog of cases was never cleared although reduced.

The most significant finding here is that cases were brought to trial from the short non-jury list "within a few weeks after the order of reference."
CHAPTER 5
EFFICIENCY AND ECONOMY IN REFEREE CASEFLOW MANAGEMENT

5.1 Impact of Newbolt’s “Scheme”
The methodology of Chapters 3 and 4 was based on a literature review and qualitative analysis of contemporaneous documentary evidence. There we answered questions as to the “Scheme” and its impact and how it facilitated expedition and economy. Both chapters demonstrated the existence of rudimentary caseflow management practised in varying degrees by the referees over the course of five decades.
This chapter presents a quantitative analysis in four sections; Part A describes the caseflow in the court; Part B analyses the expenditure of time; Part C presents direct evidence and analysis of micro-caseflow management and Part D presents the conclusions of this quantitative analysis.
The research question (f) is answered here by assessing the impact of such procedures by qualitative and quantitative analysis of Judicial Statistics and original court records, comparing the same as appropriate, and mathematically and statistically measuring the impact of such techniques.\(^{570}\) Whilst such an analysis cannot be definitive it can give a range of probabilities and indications as to the likelihood of its existence and effect. This involves, in the absence of evidence to the contrary, the assumption that it was a rudimentary form of caseflow management that made the difference in certain cases. All the figures used in these analyses come from annual Civil Judicial Statistics (Table XII).\(^{571}\)
The time analysis has been confined to the years 1959-62 and 1965-67 comprising the earliest surviving records. The earlier period relies on the published works of Sir Francis Newbolt, the Lord Chancellor’s Office files and upon Judicial Statistics. We conclude with analyses of the actual use of micro caseflow management and its usage before and after the war. This indicates that the utility of micro caseflow management was more efficient than the traditional judicial (non-interventionist) approach especially before the war. On the other hand, it also argues for a contrary hypothesis based on findings and analyses of the backlog of referrals, the low turnover of cases by Walker Carter QC and time spent on trials after the war. The basis of such alternative hypothesis is predicated on the notion that a disproportionate increase in backlog adversely affected the pending

\(^{570}\) Research question (f) p. 24
\(^{571}\) n.51 and Backlog Analysis Spreadsheet 1919-70
caseload so as to diminish the benefit of effective caseflow management.\textsuperscript{572}

The fundamental criterion in this analysis is the time taken to resolve the dispute either before or at trial: this is the presumed indicator of efficiency in this thesis.

5.2. Quantitative analysis

This quantitative study presents:

1. An analysis of the personnel and matters referred and resolved by settlement, trial, or otherwise.

2. The application of simple formulae and hypothesis testing mostly by way of average percentage analysis of the Newbolt “Scheme” and its evolution.

3. A comparison and close study from \textit{Judicial Statistics} of the pre and post-war periods, as well as two sub-periods 1959-62 and 1963-65, further testing the existence and possible effect of rudimentary micro-caseflow management. Most importantly a comparison is made of the case managed and non-case managed cases to detect time differentials.

4. An identification of the following micro-caseflow management elements:
   
   4.1. Early Procedural Evaluation,
   4.2. Judicial Intervention,
   4.3. Single Joint Experts,
   4.4. Expert Determination,
   4.5. Experts and Settlement,
   4.6. Proportionate Costs Orders,
   4.7. Special Pleadings,
   4.8. Preliminary Issues,
   4.9. Sitting at a convenient locale.

Their utility is analysed in terms of time and compared to other cases where there is no evidence of these elements of case management having been used. Only by quantitative analysis and comparative study is it possible to make some attempt to measure the likely effects of caseflow management in this court. In this context caseflow management becomes a normative test of efficiency.

As a final exercise it is possible to calculate the time spent on caseflow management

\textsuperscript{572} A Rand study on \textit{Statistical Overview of Civil Litigation in the Federal Courts} (Dugworth and Pace, 1990) postulated that if delay became a more serious problem over time, disproportionate increases in the pending caseload could be expected in respect of civil suits in the Federal District Courts 1971-86.
elements from the Minute Books 1959-62 and 1965-67. Using those calculations it is possible to measure a hypothetical application of the Newbolt "Scheme" and its evolution as micro-caseflow management after the war.

It is also possible to calculate the time expended in the conventional traditional English judicial manner and the time expended in cases utilising caseflow management techniques. This final analysis tends to support the hypothesis that rudimentary caseflow management facilitated complex cases in terms of economy and expedition as Newbolt had suggested. A summary of findings is found at Table T.5.35 and T.5.38. This is probably the most critical analysis which tests the effectiveness of Newbolt’s Scheme and the hypothesis advanced in this thesis.

These analyses conclude that trial times could be reduced by up to 50 per cent, and supports to an extent Newbolt’s opinion that trial times could be reduced by 80 per cent. Here we also conclude that a quarter of cases were caseflow managed and that on average up to a quarter of cases were disposed of before trial. The coincidence of the latter findings suggests a link that is corroborated to an extent by the earlier findings in chapters 3 and 4 and in this chapter. Such conclusions may be drawn in the context of other factors beyond the court’s control including the experience of counsel and solicitors appearing in the case and the attitude of their clients. This quantitative analysis focuses simply on statistical evidence and calculations, not on those other factors.

573 n.2 p.437 Newbolt considered trial times could be reduced to a fifth of the normal time through use of a court expert.
PART A CASEFLOW

5.3 Data Collection 1: Judicial Statistics 1919-70

The statistical data compiled in the Appendix Spreadsheet is extracted from Judicial Statistics for this court between 1919-38 and 1947-70.\(^{574}\) It gives the numbers of referrals to the referees each year, the cases that were tried, and those that were otherwise disposed of by settlement, strike out or discontinuance. It gives the number of days spent on referee business. It also contains calculations based on formulae for testing the court's efficiency for the purpose of this study.

5.3.1 Testing the hypothesis

In the pre-war era 1919-38 there were 7,683 referrals, whereas in the post-war era 1947-70 there were 13,392 referrals, a 74 per cent increase on the earlier period.\(^{575}\)

In the pre-war era the average rate of cases withdrawn, settled, tried and otherwise disposed of was 68 per cent, and in the post war period 60 per cent.\(^{576}\) Whilst these figures are very close the latter period is the more efficient taking into account a practical trebling of overall caseload from 385 in 1947 to 901 in 1970.

In order to determine the efficiency of this court we can consider the number of cases referred, and the average allocation of cases to each referee tabulated in Table T. 5.1. to obtain a benchmark average. We can also measure the average number of disposals before trial which may be essential to establishing that Newbolt's "Scheme" made the court more efficient.

Here we see:

1. a higher number of disposals before the war than the period 1947-59 following the war, but a doubling of settlements in the decade from 1960 to 1970.
2. a pre-war caseload (1919-38) that was the precise equivalent to the post-war caseload (1947-59) at 7,683 referrals.
3. that the referees in the earlier period disposed of 2,053 cases or 27 per cent of their workload before trial, whereas the referees between 1947 and 1959 disposed of 1,619 cases or 21 per cent.

\(^{574}\) n.51
\(^{575}\) All percentages are rounded up e.g. 60.5\%=61\%.
\(^{576}\) This is represented here by Formula A=

\[
\text{Cases tried (B13) + Cases withdrawn or otherwise disposed of (B14) + Cases transferred (B15) \times 100} \\
\text{Total references for trial (B5)}
\]
4. that in the earlier period there was an average establishment of 3 referees and in the latter 4 referees.

Generally, we may conclude that the referees in the first period were a little more efficient than in the second period which may be due to a number of causes.

Table T.5.1. Referral workload and average efficiency

<table>
<thead>
<tr>
<th>Year</th>
<th>Average No. of Referees</th>
<th>No. of cases</th>
<th>Average number of referrals per year</th>
<th>Numbers of disposals/settlements before trial</th>
<th>Average number of disposals per referee</th>
<th>Average number of referrals per referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-1931</td>
<td>3</td>
<td>5,244</td>
<td>437</td>
<td>1,495</td>
<td>42</td>
<td>146</td>
</tr>
<tr>
<td>1932-1938</td>
<td>2</td>
<td>2,439</td>
<td>348</td>
<td>558</td>
<td>40</td>
<td>174</td>
</tr>
<tr>
<td>1947-1959</td>
<td>4</td>
<td>7,683</td>
<td>591</td>
<td>1,619</td>
<td>31</td>
<td>148</td>
</tr>
<tr>
<td>1960-1970</td>
<td>3</td>
<td>6,249</td>
<td>568</td>
<td>2,086</td>
<td>63</td>
<td>189</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-70

Having made these observations we can now consider a further analysis looking at the time spent by the referees on their caseloads. The sitting times are taken from the Civil Judicial Statistics from 1922 and after as none were available for the years 1919-21.

Table T.5.2. Trial workload and time spent

<table>
<thead>
<tr>
<th>Year</th>
<th>Establishment</th>
<th>Trials</th>
<th>Average no of trials per year per referee</th>
<th>Sittings/days spent</th>
<th>Time spent per case</th>
<th>Average number of days sat per referee per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922-31</td>
<td>3</td>
<td>1,601</td>
<td>53</td>
<td>4,076</td>
<td>9 hrs.</td>
<td>136</td>
</tr>
<tr>
<td>1932-38</td>
<td>2</td>
<td>1,060</td>
<td>76</td>
<td>3,087</td>
<td>10 hrs.</td>
<td>221</td>
</tr>
<tr>
<td>1947-59</td>
<td>4</td>
<td>3,223</td>
<td>62</td>
<td>6,897</td>
<td>7½ hrs.</td>
<td>133</td>
</tr>
<tr>
<td>1960-70</td>
<td>3</td>
<td>1,137</td>
<td>34</td>
<td>4,280</td>
<td>13 hrs.</td>
<td>130</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-70

Note: Time spent per day is calculated from a 3½ hour notional average time.

From Table T. 5.2 it may be seen that:

577 Excluding 1938-46 for which no statistics are available.
578 Calculated as 3½ hours notional time (Minute Book average) multiplied by day’s sat divided by number of trials multiplied by 100.
1. The more efficient trial times were attained in the Eastham and Carter in the 1947-59 period when there were 4 referees in post, the highest number in the pre and post war periods. Their average trial time was 7½ hours. This was followed by the 1922-31 period where the average trial time was 9 hours;

2. The longest average trial time was in the 1960-70 period (13 hours);

3. The highest average number of trial days sat was in 1932-38 when the referees sat on average for 221 days per year;

4. The cases tried in 1932-38 were 66 per cent of the annual number of cases tried in the previous period so that efficiency in that respect was much reduced by reduction in judges available;

5. The number of trial days in 1932-38 is more than double the number of trials in that period;

6. The number of trial days in 1960-70 is almost quadruple the number of trials in that period. This suggests more complex trials. A possible reason for the increasing time spent on trials in the 1932-38 and 1960-70 eras may have been the increasing complexity of these cases;

7. In the pre-war period the referees sat for longer periods than post-war judges;

8. Between 1932 and 1938 only two referees were in post. They came under more pressure to complete trial work. Arguably, because of this pressure, less time may have been devoted to interlocutory work affecting disposal and settlement figures.

9. When Lord Cairns quantified his proposals to the Treasury in 1875 he stated that 4 referees would each work 200 days per year. Over the course of this research period, before and after the war, the highest number of sitting days recorded for 4 referees was in 1952 when they sat for 645 days.\(^{579}\)

5.3.2. Trial averages

Having considered the relative efficiency of the court before and after the war we can then consider the average trial time per case, and the average number of trials per judge in Table T.5.3.
Table T 5.3 Average trial times and trials per referee

<table>
<thead>
<tr>
<th>Period</th>
<th>Average trial time</th>
<th>Average number of trials per judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the war</td>
<td>8 1/2 hrs.</td>
<td>129</td>
</tr>
<tr>
<td>After the war</td>
<td>10 1/4 hrs.</td>
<td>96</td>
</tr>
</tbody>
</table>

*Source: Tables T5.1 and 2 above*

This preliminary analysis suggests a slowdown in the numbers of trials and the time taken which might be due to increasing complexity. This corroborates earlier preliminary findings at Table T.1.7. There we found that the percentage of trials to referrals decreased by 9 per cent on the pre-war figures.\(^{580}\) Table T.5.3 supports the hypothesis in respect of efficiency in Newbolt’s time. It has already been proved in Chapter 3 that Newbolt was using caseflow management techniques at the material time and it is suggested that it was those techniques that contributed to this efficiency.

### 5.3.3 Testing the anti-hypothesis

Having considered this statistical analysis we can next consider the inefficiency of referees in terms of annual backlog. Again, this is extracted from *Judicial Statistics* for the same periods as above by reference to the number of referees in post. What is shown displays a common trend demonstrating that the Newbolt era appears the more efficient period as it does throughout the analyses that follow. It is important here to define “backlog” in this context as those cases which in a given year have not been adjudicated or otherwise resolved. Thus, cases pending at the end of a particular year are included in Table T. 5.4 below for that year and not the next year.

The backlog figure at the beginning of the year is not included.\(^{581}\)

Table T. 5.4 Backlog calculations

<table>
<thead>
<tr>
<th>Year</th>
<th>Numbers. of referees in post</th>
<th>Backlog of referrals</th>
<th>Average backlog of cases per referee</th>
<th>Average backlog as a percentage of referrals per referee (^{582})</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-1931</td>
<td>3</td>
<td>1,608</td>
<td>45</td>
<td>31%</td>
</tr>
<tr>
<td>1932-1938</td>
<td>2</td>
<td>819</td>
<td>59</td>
<td>34%</td>
</tr>
<tr>
<td>1947</td>
<td>3</td>
<td>202</td>
<td>67</td>
<td>52%</td>
</tr>
<tr>
<td>1948-1956</td>
<td>4</td>
<td>2,013</td>
<td>56</td>
<td>34%</td>
</tr>
<tr>
<td>1957-1970</td>
<td>3</td>
<td>3,274</td>
<td>78</td>
<td>43%</td>
</tr>
</tbody>
</table>

*Source: Civil Judicial Statistics 1919-70*

\(^{580}\) See Table T.1.7 p.33 above.

\(^{581}\) This backlog at the beginning of the year is however the subject of further analysis in Chapter 6 paragraph 6.2.4.

\(^{582}\) Taken by reference to number of average cases referred to average number of delayed (backlog of cases) i.e: 45/146× 100=30.8%
What we find interesting here is that in the pre-war era the backlog is approximately a third of annual referrals with less manpower resource than in the post war period. We can find the average percentage of backlog to referrals by the formula:

\[ \text{Spreadsheet; Line 16 } V + 16 \text{ BB (backlog) / } 5 V + 5 \text{ BB (referrals)} = \]

- Pre-war: \[\frac{2,427}{7,683} = 32\%\]
- Post-war: \[\frac{5,489}{13,932} = 39\%\]

5.3.4. Key to caseflow management: early resolution

The further formulae analyses convey the same impression. Whilst this may be due to the competence of the judge and the lawyers instructed, the above tables indicate that management is the key and the key to management is early settlement or resolution. Parties could settle because they realised they had the wrong judge for their case (negative incentive) or the judge encouraged them to settle (positive incentive). If the hypothesis is right that micro-caseflow management improved efficiency, and that is the indication we have from Chapters 3 and 4, then we may ask why it is that in the period 1960-70 the backlog increased from 159 cases in 1960, to 446 in 1970, when by reputation one of the most efficient referees, Sir Norman Richards QC, was in post.

The earlier explanation that it was due to increasingly complex trials may well provide an answer, as might also the invention of the photocopier and voluminous disclosure notorious in building cases. It may simply be explicable by the fact that Richards faced an alarming increase in referrals at that time; an increase from 440 cases in 1960 to 901 in 1970 representing an increased workload of 128 per cent on the 1960 figures, or an increase of 134 per cent based on average caseload in Newbolt’s time of 385 cases per year.

5.4. Statistical conclusions and formulaic analysis 1919-38 and 1947-67

The object of this examination is to attempt an assessment of the efficiency of the court by the application of formulae and further statistical and quantitative analysis. We have already noted a varied subordinate jurisdiction principally composed of the non-jury list

---

583 n.238
584 The author received anecdotal evidence that when Richards was a referee he would hear counsel and intervene considerably to get to the issue. He would sometimes adjourn and ask the parties to consider settlement or agree issues. Sometimes he put a limit to the time he would sit to encourage the parties. (Meeting London C.I.Arb 29th March 2007)

162
cases transferred from the Queen’s Bench Division after the First World War. These included complex and technical matters of account and report, building and dilapidations cases and some commercial matters.

This assessment is made by reference to the numbers of referrals, trials, settlements and backlog. This is followed by a more detailed analysis of the annual statistics illustrated by line charts plotting fluctuations and trends from which it is possible to make certain conclusions and assumptions as to the impact or otherwise of this rudimentary form of micro caseflow management.

This is followed by a concluding comparative analysis and some preliminary conclusions based on an examination of Judicial Statistics.

5.4.1 Testing efficiency by averages- “For hypothesis”

Efficiency is defined as production with minimum waste or effort. In terms of the referees it may be considered as the disposal of business with the minimum of time and cost without compromising the quality and justice of the decision. For the purposes of justice and quality of decision we must regard that as a constant factor. For our purposes of measurement here, the variable is time, and for this purpose time is the benchmark of judicial efficiency.

Chapters 3 and 4 have proved the existence of rudimentary caseflow management and described various manifestations of it as well as attempting a preliminary assessment. The data collection in the Appendix also demonstrates the comparative time taken in various types of case where caseflow management is used and cases where it is not used. Such savings are demonstrated in Table T.5.38 below.

The primary purpose of the following examinations is to test the hypothesis and ascertain rates of caseflow management as defined by numbers of referrals, and the proportion of trials, settlements and disposals as well as backlog. The given hypothesis is that the invention and evolution of micro caseflow management and interlocutory consensual process made referees more effective and efficient judges for their particular work.

It has already been argued that Newbolt’s “Scheme” was evidence of that phenomenon. Here we test that argument by further quantitative analysis. The basis of that argument is that rudimentary micro caseflow management such as Newbolt and his successors and colleagues practised saved time and costs. It also permitted them to do more work.

586 Concise Oxford English Dictionary.
Thus, his successors could offer their services as Commissioners in the 1950s. We can therefore further illustrate the hypothesis by demonstrating the quicker disposal of cases by earlier settlement or resolution, and by seeing that more cases could be dealt with by a lesser establishment. The hypothesis can therefore be proved from such examination. Where the time is saved it follows that there is likely to be a consequential cost saving. The corollary of the hypothesis contends that where caseflow management was not used cases took more time and were not conducted so efficiently. We later analyse this in Table T.5.38. In that context the hypothesis may also be proved where the average time taken for non-managed cases exceeds that of case managed cases.

For present purposes we may test the hypothesis as follows:

**Test 1**

If the hypothesis were correct then we should be able to demonstrate that the referees were more efficient when they used such techniques. We can test this by investigating whether the numbers of trials, and disposals were above average and whether at the same time the backlog was reduced in a given period. This would be evidence that the “Scheme” had an impact.

1. **Disposals before trial**

   If our hypothesis is right then we would expect a higher than average number of cases to be settled before trial. We can test this proposition by calculating the average number of disposals in the given periods (pre-war and post-war) and hypothesise that where the numbers exceed the average that may be indicative of a more efficient approach.

   Taking the number of disposals\(^587\) from Line 14 of the Spreadsheet\(^588\) we can calculate the average disposal rate as:

<table>
<thead>
<tr>
<th>Pre-war:</th>
<th>Post-war</th>
</tr>
</thead>
<tbody>
<tr>
<td>2048</td>
<td>3335</td>
</tr>
<tr>
<td>20</td>
<td>24</td>
</tr>
</tbody>
</table>

   Looking at the number of disposals in the pre-war period 1919-38 we find that the rate of disposals were higher than average (102) in the years 1921-23 and 1925-33. We know from chapter 3 that Newbolt practised his “Scheme” at that time.

---

\(^{587}\) This excludes transfers. Transfers are included in the figures tested in Table T.5.7 subsequently.

\(^{588}\) n. 51
If we then look at the number of disposals in the post-war period 1947-70 we find that the rate of disposals were higher than average (139) in the year 1950 and in the years 1963-70. Richards had a reputation as an “activist” and he was probably responsible for this higher rate. We may therefore suggest that these higher than average disposals rates were an indication of a more efficient process and some evidence of effectiveness of the “Scheme.”

ii. Trials
Again, if our hypothesis is right then we would expect a higher than average number of cases to be tried when caseflow management was used. We can also test this proposition by calculating the average number of trials in the given periods (pre-war and post-war) and hypothesise that where the numbers exceed the average that may be indicative of a more efficient approach. Taking the number of trials from Line 13 of the Judicial Statistics Spreadsheet we find can calculate the average disposal rate as:

<table>
<thead>
<tr>
<th>Pre-war:</th>
<th>Post-war</th>
</tr>
</thead>
<tbody>
<tr>
<td>3202 = 160</td>
<td>4360 = 182</td>
</tr>
<tr>
<td>20</td>
<td>24</td>
</tr>
</tbody>
</table>

Looking at the number of disposals in the pre-war period 1919-38 we find that the rate of trials were higher than average (160) in the years 1921-25 and 1936-38. We know from chapter 3 that Newbolt practised his “Scheme” until his retirement in 1936.

If we then look at the number of trials in the post-war period 1947-70 we find that the rate of trials were higher than average (182) in the years 1949-57. We know from chapter 4 that Eastham also practised a form of caseflow management.

We may therefore suggest that these higher than average trial rates were a further indication of a more efficient process in Newbolt’s time and for a time after the war.

iii. Backlog
Again, if our hypothesis is right then we would expect a lower than average backlog of cases when caseflow management was used. We can also test this proposition by calculating the average backlog in the given periods (pre-war and
post-war) and hypothesise that where the backlog is lower than average that may also be indicative of a more efficient approach.

Taking the backlog from Line 16 of the Judicial Statistics Spreadsheet we find can calculate the average disposal rate as:

<table>
<thead>
<tr>
<th>Pre-war:</th>
<th>Post-war</th>
</tr>
</thead>
<tbody>
<tr>
<td>2427 = 121</td>
<td>5489 = 229</td>
</tr>
<tr>
<td>20</td>
<td>24</td>
</tr>
</tbody>
</table>

Looking at the backlog in the pre-war period 1919-38 we find that the backlog was below average (121) in the years 1919, 1924-33 and 1937-39. This supports the first calculation (i) regarding Newbolt’s time for the mid pre-war period.

If we then look at the backlog in the post-war period 1947-70 we find that it was below average backlog (229) in the years 1947-48, 1950, and 1952-64. The figure for 1950 supports the finding at (i) above and partly (ii) and (iii).

The evidence here supports the Newbolt era as the more efficient in terms of a form of caseflow management.

Our general conclusion here is that whilst there is some evidence of the impact of what Newbolt described the evidence post-war is more incongruent.

Test 2

(a) Referrals and trials

We can compare the numbers of referrals (which includes the backlog of cases at the end of the previous year) trials, settlements and disposals over the whole research period by reference to Tables T. 5.5-5.8:

<table>
<thead>
<tr>
<th>Period</th>
<th>Referrals</th>
<th>Average number of referrals per year</th>
<th>Average number of referrals per referee per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-38</td>
<td>7,683</td>
<td>384</td>
<td>128</td>
</tr>
<tr>
<td>1947-70</td>
<td>13,937</td>
<td>581</td>
<td>194</td>
</tr>
<tr>
<td>1959-62</td>
<td>1,753</td>
<td>439</td>
<td>146</td>
</tr>
<tr>
<td>1965-67</td>
<td>1,780</td>
<td>593</td>
<td>198</td>
</tr>
</tbody>
</table>

*Source: Judicial Statistics 1919-38 and 1947-70*
Table T.5.6 Trials

<table>
<thead>
<tr>
<th>Period</th>
<th>Trials</th>
<th>Average number of trials per year</th>
<th>Average number of trials per referee per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-38</td>
<td>3,202</td>
<td>160</td>
<td>53</td>
</tr>
<tr>
<td>1947-70</td>
<td>4,360</td>
<td>182</td>
<td>61</td>
</tr>
<tr>
<td>1959-62</td>
<td>621</td>
<td>155</td>
<td>52</td>
</tr>
<tr>
<td>1965-67</td>
<td>258</td>
<td>86</td>
<td>29</td>
</tr>
</tbody>
</table>

*Source: Civil Judicial Statistics 1919-38 and 1947-70*

If we compare the number of referrals with trials, settlements, and disposals we can ascertain the percentage of cases so resolved by:

1. Taking the period 1919-38, given 7,683 referrals (of which 3,202 cases were tried) we obtain a figure of 42%. [Tables T.5.5. and T.5.6.]
2. If we take the period 1947-70 we find 13,932 referrals of which 4,360 cases were tried or 31%. [Tables T.5.5. and T.5.6.]

We are not comparing like with like as occurs at Table T.5.11. But, if we compare the average number of trials dealt with by each referee per year we find that before the war each referee dealt with 53 trials a year, and after the war 61. This equates to a 15 per cent rise in judicial efficiency. In terms therefore of trial rates the referees in the period 1947-70 were more efficient.

(b) Disposals before trial

In terms of early procedural evaluation, informal resolution or referee intervention promoting and accelerating resolution and settlement of the action we can see from Table T.5.7 that before the war the average disposal rating was 34 cases per year per referee. Before the war the average settlement rate was 27 per cent⁵⁸⁹ and after the war 1947-70 it was 24 per cent. In the period of Newbolt’s term in office 1920-36 the rate of settlement was 29 per cent; ⁵⁹⁰ 2 per cent in excess of the average per-war rate and 5 per cent in excess of the post-war rate. In the context of Newbolt’s “Scheme” chapter 3 proved the hypothesis as to the “Scheme’s” existence and this analysis suggests that it made referees more effective and efficient.

⁵⁸⁹ n.51 Line 39 Percentage of cases settled or disposed of. Also see Table T.1.7.
⁵⁹⁰ n.51 Line 39 for years 1920-36 only.
### Table T.5.7 Settlements, disposals and transfers

<table>
<thead>
<tr>
<th>Period</th>
<th>Settlements, disposals and transfers</th>
<th>Average number of settlements, disposals and transfers per year</th>
<th>Average number of settlements, disposals and transfers per referee per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-38</td>
<td>2,053</td>
<td>103</td>
<td>34</td>
</tr>
<tr>
<td>1947-70</td>
<td>4,010</td>
<td>167</td>
<td>56</td>
</tr>
<tr>
<td>1959-62</td>
<td>354</td>
<td>118</td>
<td>39</td>
</tr>
<tr>
<td>1965-67</td>
<td>490</td>
<td>163</td>
<td>54</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-38 and 1947-70

5.4.2 “Against hypothesis”.

On the other hand, we may argue that whilst Newbolt’s disposal ratings may have been higher than average over both periods, after the war on average more cases settled before trial. Overall if we take the figures in Table T.5.7 we could say that after the war the referees were 39 per cent more effective in terms of settlements and disposals before trial.\(^{591}\)

### Table T.5.8 Backlog

<table>
<thead>
<tr>
<th>Period</th>
<th>Backlog</th>
<th>Average number of backlog cases per year</th>
<th>Average number of backlog cases per referee per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-38</td>
<td>2,427</td>
<td>121</td>
<td>40</td>
</tr>
<tr>
<td>1947-70</td>
<td>5489</td>
<td>229</td>
<td>76</td>
</tr>
<tr>
<td>1959-62</td>
<td>674</td>
<td>168</td>
<td>56</td>
</tr>
<tr>
<td>1965-67</td>
<td>756</td>
<td>253</td>
<td>84</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-38 and 1947-70

If we then consider the backlog of cases the earlier period (1919-38) would appear the more efficient according the Table T.5.8. If we consider the increase in backlog as demonstrated by the Spreadsheet\(^{592}\) we see a 276 per cent rise in backlog between 1919 and 1921 from 82 to 226 cases. What is significant is that the backlog fell from 184 in 1922, to 94 in 1931, a 51 per cent drop. This would support the hypothesis since we know that Newbolt practised caseflow management as identified in chapter 3 at that time. After 1932 the backlog rose from 105 cases to 128 cases in 1934. This was the peak of the backlog in the pre-war period because the backlog then fell to 109 cases in 1938.

\(^{591}\) 56 disposals post war – 34 disposals pre-war = 22. 22 as a percentage of 56 = 39%.

\(^{592}\) n.238 Line 16: Pending at the end of the year
In Table T.5.8 we see that the pre-war average backlog per referee was 40 cases. After
the war the average rose to 76 cases, a 90 per cent rise in the average backlog.\footnote{Backlog percentage rise calculated as: 76-40= 36 cases more after the war. Taking that as a percentage of the pre-war figure 36/40 = 90%}

If we then compare the rise in referral averages: 1919-38 (128) to 1947-70 (194) an
average increase of 66 referrals each year per judge gives an average percentage rise in
referrals of 52 per cent,\footnote{Referral percentage calculated as 128 cases per referee per year before the war and 194 per referee after the war gives an increase of 66 cases per referee per year. 66 as a percentage of 128 (pre-war figure) gives us 66/128=52%.} We can therefore compare a 52 per cent rise in referrals to a
90 per cent rise in backlog.

A further analysis of Judicial Statistics to assess the effectiveness of this court is
presented in Table T.5.9 taking backlog into account:

<table>
<thead>
<tr>
<th>Period</th>
<th>No. of years</th>
<th>Referrals</th>
<th>Average referrals per year</th>
<th>Trials, Disposals</th>
<th>Average Disposals per year</th>
<th>Backlog</th>
<th>Average backlog per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-38</td>
<td>20</td>
<td>7,683</td>
<td>384</td>
<td>5,255</td>
<td>263</td>
<td>2,427</td>
<td>121</td>
</tr>
<tr>
<td>1947-70</td>
<td>24</td>
<td>13,932</td>
<td>581</td>
<td>8,370</td>
<td>349</td>
<td>5,489</td>
<td>229</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-37 and 1947-70

What this table shows is an 81 per cent increase in referrals after the war from 7,683 to
13,932. It also shows a 59 per cent increase in the rate of the disposal of cases in that
period from 5,255 to 8,370. Whilst the latter figure would support a theory of efficient
micro caseflow management, the increase in case backlog after the war from 2,427 to
5,489 amounting to an increase of 126 per cent would militate against such theory. It
also demonstrates that inter-referee transfers were not as efficient as might have been
expected.\footnote{Made possible by RSC(No.3) 1949. See also: paragraph 4.4.2 above.}

We can next consider the backlog of cases at the commencement of the pre and post­
war phases and compare that figure to the backlog of cases at the end of the period.
Similarly, we can take the number of referrals at the commencement of the pre and post­
war phases comparing them to the number of referrals at the end of the period as in
Table T 5.10:
This table shows how much the work of the court increased and demonstrates an increasing build up of the backlog and delay in the court after the war. It suggests an increasing backlog problem after the war. Chart C. 5.1 demonstrates how important it is to take account of the backlog. What it clearly illustrates is that in Newbolt’s time with a rudimentary form of caseflow management the backlog was kept below the 200 mark save for 1921 (when the court received an influx of 507 cases from the Queen’s Bench Division). After the war it was mostly above that level and latterly, albeit the settlement rate was rising, this did not affect the inimitable rise of backlog. This rise does not appear to have been caused by lack of judges but may be due to increasing number of referrals and complexity of matters.596

Chart C 5.1 Caseflow management analysis

---

596 The interlocutory summons statistics are excluded as they are unavailable for the pre-war period.
597 n. 51 Lines 4 and 16
5.4.3 Testing comparative periods

In the research period 1919-70 there are two distinct periods before and after the war which we can examine where three referees were in post: 1920-27 and 1957-64. These have been chosen because we know Newbolt used caseflow management techniques in this period and there is some evidence in Chapter 4 as to usage by his successors in the second period. A comparative analysis of the referrals, trials, disposals, and backlog is represented in Table T. 5.11 below.

<table>
<thead>
<tr>
<th>Period (8 year period)</th>
<th>Total Referrals</th>
<th>Average referrals per year</th>
<th>Total Trials, disposals and transfers</th>
<th>Average disposals per year</th>
<th>Total backlog</th>
<th>Average backlog</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920-27</td>
<td>3,659</td>
<td>457</td>
<td>2,503</td>
<td>313</td>
<td>1,155</td>
<td>144</td>
</tr>
<tr>
<td>1957-64</td>
<td>3,576</td>
<td>447</td>
<td>2,172</td>
<td>271</td>
<td>1,404</td>
<td>176</td>
</tr>
</tbody>
</table>

*Source: Civil Judicial Statistics 1920-27 and 1957-64*

(a) Disposal before trial efficiency

If we take the period before the war, we can calculate the average percentage of disposals to cases referred as:

\[ \frac{313}{457} \times 100 = 68\% \]  

(average disposals divided by average referrals per year).

After the war, the calculations is:

\[ \frac{271}{447} \times 100 = 61\% . \]

Here again, we see the first period as the more effective, and 7 per cent more efficient. Since we know that it was in the first period, 1920-27, that Newbolt practised a form of caseflow management it can be argued that this demonstrates that the “Scheme” had some effect. However, 7 per cent is a slight margin.

(b) Backlog efficiency

As a further comparative test we can take the average backlog before the war as a percentage of average referrals, and compare them to the same average percentages after the war. Here we take two periods where there were three referees in post in each period, thus:

- **1920-27:** \[ \frac{144}{457} \times 100 = 32\% \] average percentage backlog
- **1957-64:** \[ \frac{176}{447} \times 100 = 39\% \] average percentage backlog
Again, there is a 7 per cent margin demonstrating that the first period was slightly more efficient on average and also supports the hypothesis in favour of Newbolt's "Scheme."

5.4.4 Application of formulaic analysis plotting trends and influences of Newbolt "Scheme"

The hypothesis may also be tested by the application of comparative formulae. All the tests applied using formulae are based on *Civil Judicial Statistics* which have been extracted from Table XII of the relevant year's statistics and entered on the Spreadsheet appended. In the first test, illustrated in Chart C.5.2 below, we compare the percentage of cases settled to those referred. In the next test we compare the number of cases tried, disposed of by settlement or transfer to the total number of referrals (Formula A). This gives actual percentage referee efficiency in terms of disposal of the total workload each year. To assess the number of cases that were tried we then compare the number of trials to all matters referred (Formula B). Finally we consider the number of cases tried to the number of referrals (Formula C). The very important distinction to bear in mind between Formulae B and C is that Formula B does not include pending cases from the previous year, i.e. backlog. Here we are considering the efficiency in terms of trials and earlier resolution. Thus, the existence of the Newbolt "Scheme" can be tested in terms of judicial efficiency by analysing the *Civil Judicial Statistics* and by the application of these formulae comparing the cases referred with the cases tried and disposed of in the years 1919-38 and 1947-70. These periods are chosen because they represent the inception and evolution of micro-caseflow management notwithstanding the absence of official records for the intervening years between 1939 and 1947 caused by hostilities in World War II. It is also chosen for the striking increase in referrals: from 7,683 between 1919 and 1938, to 13,932 in the years 1947 and 1970, an increase of 6,249 cases, or 81 per cent in the referees' list.

5.4.4.1 Analysis of disposal and settlement rates

Comparing the numbers of cases withdrawn, or otherwise disposed of, to the number of referrals it is possible to calculate the percentage of such cases. This is represented by the following chart derived from an analysis of *Judicial Statistics* in the 51 year period between 1919 and 1970.

---

598 n.51 Cases disposed and withdrawn. Line 14.
599 n.51
600 Not including backlog: cases pending and brought into the list in previous year or years.
Commentary

(a) Pre-war period

Chart C.5.2. shows a 21 per cent increase in the percentage of cases settled in the years between 1921 and 1931 from 20 per cent to 41 per cent. Between 1922 and 1923 we see an increase of 11 per cent in the number of settlements, or a 65 per cent increase in the rate of settlement. A significant factor here is the presence of two inventive referees; Scott and Newbolt who were undoubtedly assisted in achieving this record during the crucial period 1923 to 1933 by Pollock, and subsequently Hansell. It illustrates considerable fluctuations in settlement rates. These tend to support the hypothesis that micro-caseflow management increased efficiency between 1919 and 1930. Thereafter, although the efficiency rating slumped after 1932 it remained below the 20 per cent line in Chart C 5.2 until 1958.

“For hypothesis”

If the hypothesis is correct that micro-caseflow management made the referees more efficient then we would expect to find settlement rates in the order of 27 per cent or more. What we find in Chart C.5.2 is a rise in the proportion of cases settled or

---

601 Senior Official Referee 1920-27 replaced Sir Henry Verey, K.C.
602 27% is the average settlement rate in the period 1919-38. See also n.51. Line 39.
otherwise disposed of before trial from 21 per cent in 1919 to 41 per cent in 1929 and 1931. This represents a 20 per cent increase in efficiency in earlier resolution.

After Newbolt's appointment in 1920, the Chart shows a 3 per cent rise in the rate of settlements although it declines to 20 per cent in the following two years. The graph then rises steeply in the next year, 1923, by 11 per cent which coincides with the year of publication of Newbolt's seminal article: *Expedition and Economy in Litigation*. There is therefore a probability that this rate was due to the "Scheme" he was operating. 1924 sees a dip in the rate to 20 per cent. A significant climb follows that from a base of 27 per cent in 1925 to a high of 41 per cent in 1931. After 1931 there is a sharp reduction in the proportion of settlements and disposals. We see that this is further reduced to a figure of 13 per cent in 1937, and slightly recovers just before the war at 17 per cent. During this time there were only two referees in post in this declining period: Newbolt and Scott, the latter being replaced by Pittman in 1934.

The average rate of settlement in the years 1919-38 was 27 per cent, whilst the average number of annual referrals was 348. Newbolt and his colleagues succeeded in reducing a backlog of 226 cases in 1921 to 83 cases in 1928 after which it began to rise to 126 in 1936.

"Against hypothesis."

After 1931 there was a period of decline. This is illustrated on the line chart C 5.2. by a high point of 41 per cent in 1931. There is then a period of decline to a low point of 19 per cent when Newbolt retired in 1936. If he was still practising micro-caseflow management then one has to ask, why? The answer may be found in the fact that when Sir Edward Pollock retired he was 86 years old. Lord Cave appointed George Hansell to replace him in 1927. Hansell was 71 years old. He retired at the age of 75 in 1931. Following that Scott retired in 1933. In that year the rate of settlement dropped from 32 per cent down to 22 per cent in 1934. Although it slightly recovered in 1935 at 24 per cent, it declined further to 19 per cent in 1936. It then fell to a low point of 13 per cent in 1937, recovering slightly at 17 per cent in 1939. These lower rates in 1937-38 may be explicable by the managerial inexperience of Eastham and Pitman, Eastham having been appointed in 1937. The latter period therefore presents a difficulty because there appears to be a rise in the number of trials, and a corresponding rise in the backlog with

603 Representing a 2% rise in settlement/disposal rates each year.
604 n.2.p. 427
605 By reputation he was a judge of "ability and character," *The Times*, April 20th, 1937: pg.21;Issue 47663; col D
a fall in the number of disposals before trial. If micro-caseflow management was effective then we would expect the disposals to be increasing and the backlog to be falling. That is not the case here. In fact we find the reverse as illustrated below in Table T.5.12:

<table>
<thead>
<tr>
<th></th>
<th>1932</th>
<th>1933</th>
<th>1934</th>
<th>1935</th>
<th>1936</th>
<th>1937</th>
<th>1938</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trials</td>
<td>96</td>
<td>102</td>
<td>134</td>
<td>139</td>
<td>179</td>
<td>208</td>
<td>202</td>
</tr>
<tr>
<td>Disposals</td>
<td>107</td>
<td>102</td>
<td>75</td>
<td>86</td>
<td>70</td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td>Backlog</td>
<td>105</td>
<td>112</td>
<td>128</td>
<td>127</td>
<td>126</td>
<td>112</td>
<td>109</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1932-38

Given the figures in the Chart C 5.2 the average percentile for settlements between 1919 and 1932 is 30 per cent. Between 1933 and 1937 it is 21 per cent. The margin of difference cannot be ignored, and if micro-caseflow management did make a difference in the first pre-war period it is difficult to argue that it had a similar effect in the latter pre-war period. Thus, the trends indicated from Judicial Statistics and contained in the Chart C 5.2 support the hypothesis up to 1933. Post-1933 the trend, as illustrated in Chart C 5.2, does not support the hypothesis in respect of efficiency.

(b) Post-war period

Looking at Chart C 5.2 after the war we find that in 1947 the disposal rate was much lower at 12 per cent. The figures then fluctuate between 19 per cent in 1948, and 14 per cent in 1958. After that, disposal rates rise to 20 per cent in 1959. They do not rise above that rate until 1962 when the rate rises to 22 per cent. In 1963 it rises to 41 per cent; equivalent to the rates in 1929-31. This apex coincides with the appointment of Richards who by reputation was an exponent of the Newbolt philosophy of effective management. During his tenure of office, the rate of settlement did not fall below 32 per cent of referrals and averaged 36 per cent. This compares very favourably with a 27 per cent average rate of settlement achieved during Newbolt’s era. The average settlement rate for the post war period was 24 per cent, as compared to 27 per cent in the pre-war period. In that context the Newbolt era was arguably more efficient. On this narrower analysis, the Richard’s era was more efficient in terms of settlement than Newbolt’s time. Taking a wider view, accounting for backlog we find that whereas in Newbolt’s time the referees halved the backlog, in Richards’s time it almost trebled. An argument in support of the overall effectiveness of micro caseflow management in the post-war period is more difficult to sustain.
5.4.4.2 **Formula A Test** Disposal test

We can carry out further tests of the hypothesis over the whole research period adopting other formulae.

**Key**

Formula A is defined as:

\[
\text{Formula A} = \frac{(B13 + B14 + B15) \times 100}{B5}.
\]

Thus,

\[
A = \frac{(B13 + B14 + B15) \times 100}{B5}.
\]

Applying this formula to our *Judicial Statistics* Spreadsheet, a graphical illustration of this formula is represented by Chart C.5.3:

**Chart C.5.3**

![Graph of Formula A]

*Source: Civil Judicial Statistics 1919-38 and 1947-70*

**Commentary**

Chart C.5.3 indicates a high turnover of cases referred especially before the war. These figures for dealing with workload mostly range in the 60-70 per cent bar-line with eight entries ranging above the 70 per cent bar-line; seven of those entries appear in the pre-war period and only one after the war in 1952. Thus, at first glance it may be considered that the referees in Newbolt’s era were the more efficient.

---

606 n.51 Line 13.
607 n.51 Line 13
This chart compares the overall activities of the court: trial, settlement or disposal, transfer and withdrawal to the number of referrals which includes the backlog of cases to be tried that may have been held in the list from previous years. The average percentile before the war using Formula A is 68 per cent and after the war it is 60 per cent. The formula thus favours the pre-war era as the more efficient. The critical factors here are the numbers of cases referred and the manpower resource as earlier demonstrated by Tables T.5.1 and T.5.2 and by the Spreadsheet analysis. Interestingly, during Newbolt’s time the number of referrals in 1936 represented a 56 per cent increase in the volume of referrals since 1919. In Eastham’s time, 1937-54, there was a 57 per cent increase in referrals.

5.4.4.3 Formula B Test

Formula B is a slightly different comparison measuring the proportion of cases tried to cases brought in:

\[ \frac{B_{13}}{B_7 + B_8 + B_9 + B_{10} + B_{11} + B_{12}} \times 100 \]

**Key**

Here Line B13 represents the number of cases tried. This figure is divided by B7, the number of cases brought in during a given year; plus B9, cases referred by a Master; plus B10, cases referred by way of appeal from an arbitrator’s award; plus B11, cases transferred to the referees list, and B12, cases that have re-entered the referee list following a prior setting aside of judgment. Applying 100 as the multiplier gives us the percentile.

The graphical illustration of Formula B is represented by:

**Chart C 5.4 Percentage of cases tried to cases brought in**

Source: Civil Judicial Statistics 1919-38 and 1947-70

---

608 n.51. Line 37. Note cases “brought in” do not include cases pending at the end of the year i.e. backlog of cases.
The application of this formula demonstrates efficiency excluding the backlog factor. Here we see an initial rise in productivity from 53 per cent in 1919 to 79 per cent in 1922. Leaving aside 1923 which saw a fall to 64 per cent, we see a stepped fall from 77 per cent in 1924 to 43 per cent in 1929. We then see an increasing rise in trial efficiency from 1929 to 1937 (the year after the retirement of Newbolt) to 85 per cent. From this we may conclude, that despite the falls in 1924 and 1929 (the latter possibly influenced by the catastrophic financial crisis of 1929) the overall 60 per cent average was an efficient figure, certainly better than the post war period. In that period we see a low rating of 54 per cent in 1947, but a strong influx in 1948 coinciding with a 62 per cent increase in referrals in that year as compared to the previous year.609 There are fluctuations between 1949 and 1959 of 5 per cent. 610 From 1959 there is a sharp decline to 25 per cent in 1960 and further down to 16 per cent in 1969. The percentile recovered only by 1 per cent in 1970.

Applying this formula (by adding all percentages in Line 37 of the spreadsheet divided by the number of years) the average efficiency percentile attained before the war is **60 per cent** and after the war it is **51 per cent**. If we compare that result with the Formula A result: 68 per cent before, and 60 per cent after the war. The formulae indicate an 8 per cent to 9 per cent drop in the efficiency rating. Both formulae therefore favour the pre-war era as the more efficient. This is further supported by the average settlement rate of 27 per cent in the pre-war period as opposed to 24 per cent in the post war period. The difference here is slight, but in average terms we are considering a quarter of cases referred that are disposed before trial. This equates to the extent of caseflow management measured in Table T.5.39 on a hypothetical basis.

In this period we see a high rise in the backlog of cases from 163 in 1963, to 446 in 1970. Whilst caseload increased by 204 per cent in the 1963-70 period the backlog increased by 274 per cent in the same period. What this suggests is that even with three experienced and skilled judges the court could not cope with the increasing workload. This suggests that even with a degree of micro-caseflow management (as has been suggested in chapters 3 and 4) such procedures were not wholly effective. It would appear that the referees increasing caseload was exacerbated by a backlog which was increasing at a higher rate than referrals.611

---

609 385 cases were referred in 1947, and 617 in 1948. See: n. 560 Line 5 AD, AE.
610 Percentage for 1949 was 48%, and for 1959 53%.
611 This may eventually have led in the mid 1980s to a situation where cases were quadruple booked.
5.4.4.4 Formula C Test

The final test by formula is Formula C. This is represented by:

\[ C = \frac{\text{Number of cases tried (B 13)}}{\text{Total references for trial (B 5)} \times 100} \]

This formula gives an average of 41 per cent of cases tried to cases referred in the pre-war period and an average of 32 per cent for the post-war period. \(^{612}\) Since the total referrals for trial also includes the backlog figure, the overall conclusion supports the earlier contention under Formula B, that after the war the referees found it increasingly difficult to cope. This was despite a use of micro-caseflow management.

Upon examination the graph shows a marked decline in trials from a high of 50 per cent of referrals in 1953, in the days of Eastham, Caswell, Leach and Cloutman, to a low of 9 per cent in 1969, at the time of Stabb, Richards and Carter.

This is represented by the graphical illustration:

![Chart C 5.5. Percentage of cases tried to cases referred](source: Judicial Statistics 1919-38 and 1947-70)

We have determined that the period before the war was more efficient in terms of settlement. \(^{613}\) We have also concluded from the application of Formulae A and B that the pre-war period 1919-32 was an efficient period. If we now apply Formula C we find that the pre-war period had an average 41 per cent efficiency rating, and the post war

---

\(^{612}\) n.51 Line 38.

\(^{613}\) See pp: 181, 183-187, and also below at 193 and 194.
period an average 32 per cent rating. We also find that between 1948 and 1957 trial rates were in the 40/50 per cent range, but fell down to 10 per cent in 1970.  

5.4.4.5 Conclusions based on formulae

By applying **Formula A** we found that the average percentage of efficiency was higher before the war at 68 per cent as opposed to 60 per cent after the war. Higher efficiency coincided with the time when the “Scheme” was used.

In the application of **Formula B** (cases tried to cases brought in excluding the backlog) we find relatively high efficiency rates for certain years with the highest attained in 1937 when only two referees were in post. Tables T. 5.13 and T. 5.14 put the highest figures in perspective:

<table>
<thead>
<tr>
<th>Year</th>
<th>1922</th>
<th>1924</th>
<th>1936</th>
<th>1937</th>
<th>1938</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentile</td>
<td>79%</td>
<td>77%</td>
<td>72%</td>
<td>88%</td>
<td>76%</td>
</tr>
</tbody>
</table>

*Source: Judicial Statistics 1919-38 and 1947-70*

<table>
<thead>
<tr>
<th>Year</th>
<th>1948</th>
<th>1952</th>
<th>1953</th>
<th>1956</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentile</td>
<td>84%</td>
<td>76%</td>
<td>75%</td>
<td>77%</td>
</tr>
</tbody>
</table>

*Source: Civil Judicial Statistics 1919-38 and 1947-70*

Both tables demonstrate high ratings for particular years, but the average percentage from the spreadsheet gives us an average 60 per cent in the pre-war period, and 51 per cent, after the war, the difference being a factor of 9 per cent. If we compare that result with the Formula A results: 68 per cent before, and 60 per cent after the war, the formulae indicate a 9 per cent (Formula B) to 8 per cent (Formula A) drop in the efficiency rating. Both formulae therefore favour the pre-war era as slightly more efficient. This is further supported by the average settlement rate of 27 per cent in the pre-war period, as opposed to 24 per cent in the post war period. Such distinctions are relatively minor. What this suggests is that even with three experienced and skilled judges the court found it difficult to cope with the increasing workload.

This suggests that even with a degree of micro-caseflow management (as has been suggested in Chapters 3 and 4) such procedures were not as effective as might be

---

614 n.51 Line 38. Average percentages at 38W and 38 BC.
615 n.51 Line 37 W and BC
616 Paragraph 5.4.3.3
617 Paragraph 5.4.3.2.
expected. It would appear that the referees increasing caseload was exacerbated by a backlog which was increasing at a higher rate than referrals.\textsuperscript{618}

In the application of \textbf{Formula C} the overall conclusion supports the earlier contention under Formula B, that after the war the referees found it increasingly difficult to cope, despite a use of micro-caseflow management. When we apply this formula we conclude an average efficiency percentage of 41 per cent of cases tried to cases referred in the pre-war period, and an average of 32 per cent for the post-war period. On this showing also the former period appears the more efficient.

### 5.4.4.6 Summary of findings from formulae applied to years 1919-70

<table>
<thead>
<tr>
<th>Formulae</th>
<th>Pre-war</th>
<th>Post-war</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formula A\textsuperscript{619}</td>
<td>68%</td>
<td>60%</td>
<td>8%</td>
</tr>
<tr>
<td>Formula B\textsuperscript{620}</td>
<td>60%</td>
<td>51%</td>
<td>9%</td>
</tr>
<tr>
<td>Formula C\textsuperscript{621}</td>
<td>41%</td>
<td>32%</td>
<td>9%</td>
</tr>
<tr>
<td>Settlement rate\textsuperscript{622}</td>
<td>27%</td>
<td>24%</td>
<td>3%</td>
</tr>
</tbody>
</table>

\textit{Source: Charts C 5.2 -C 5.5}

Table T.5.15 summarises the findings from the application of the various formulae and from these findings we may conclude:

1. That the pre-war era was marginally more efficient than the post-war era for the disposal of cases whether by trial settlement or otherwise. This may be significant since Formula A is measured against referrals which includes, not only cases brought into the list in the given year, but cases held over (backlog) from the previous year or years.

2. That in taking out the backlog figures and applying Formula B we can see a similar marginal difference as with Formula A. This would suggest a continuation of the "Scheme" as supported by the conclusions in chapters 3 and 4.

3. Looking at Formula C we note again that it is Newbolt's time that appears marginally more efficient.

\textsuperscript{618} This may have led in the mid-1980s to an impossible situation where cases were quadruple booked.

\textsuperscript{619} \textbf{Formula A} = Cases tried (B 13) + Cases withdrawn or otherwise disposed of (B14) + Cases transferred (B 15) x 100 / Total references for trial (B5)

\textsuperscript{620} \textbf{Formula B} = B13/ (B7+B8+B9+B10+B11+B12) x 100.

\textsuperscript{621} \textbf{Formula C} = Number of cases tried (B 13) / Total references for trial (B 5) x 100

\textsuperscript{622} Cases withdrawn, transferred or otherwise disposed of/referrals x 100.
4. When we consider the settlement disposal rate, particularly in the context of what Newbolt describes as his “discussions in chambers,” we find an increase of 21 per cent between 1919 and 1929.\textsuperscript{624} Since we have established that Newbolt was operating his “Scheme” at this time we may consider the hypothesis proved in that respect for that time. It is difficult to demonstrate any effect in the latter Newbolt period (1932-36) when there appears to be a 9 per cent drop in settlement rates.\textsuperscript{625}

5. The margin of difference in average settlement rates between the pre-and post war periods is not significant. We can say that they are about the same with some high settlement rates, e.g. 1963.

Having looked at the average disposal rates for the court we can also consider the particular efficiency of the leading referees of this period below in paragraph 5.4.5.

5.4.5 Comparative average analysis of (a) Newbolt period 1920-36, (b) Eastham period 1936-54, and (c) Carter period 1954-70.

<table>
<thead>
<tr>
<th>Referee</th>
<th>Formula A</th>
<th>Formula B</th>
<th>Formula C</th>
<th>Settlement Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newbolt</td>
<td>68%</td>
<td>58%</td>
<td>40%</td>
<td>29%</td>
</tr>
<tr>
<td>Eastham</td>
<td>64%</td>
<td>69%</td>
<td>45%</td>
<td>13%</td>
</tr>
<tr>
<td>Carter</td>
<td>60%</td>
<td>45%</td>
<td>28%</td>
<td>27%</td>
</tr>
</tbody>
</table>

*Source: Civil Judicial Statistics 1919-38 and 1947-70 and Charts C 5.2-C 5.5*

Table T.5.16 gives us the average percentile of each formula and settlement rate deduced from *Judicial Statistics* and the line charts C.5.2-C.5.5 suggest:

a. That in applying Formula A (Chart C 5.3) the average rate for the disposal of cases by trial in proportion to those settled or disposed of, was marginally greater in Newbolt’s time than in Eastham’s tenure. Eastham’s record was also marginally greater than Carters.. This may not be very significant, but demonstrates that Newbolt’s court was relatively efficient both in trials and in earlier resolution, and

b. That in terms of the settlement rate it is arguable that Newbolt’s “friendly discussions in chambers” may have made some difference. Certainly, we see a significant variation between Newbolt’s settlement rate which is

\textsuperscript{623} Paragraph 5.4.3.1.
\textsuperscript{624} And also in 1931.
\textsuperscript{625} This is clearly demonstrated in Table T 5.12 and Chart C. 5.2.
more than double Eastham’s rate. This tends to support my view that Newbolt was more activist than Eastham.

c. The Eastham court had the highest average rate of trials applying the Formula B test, but was not so efficient when taking into account the backlog which is included in Formula C.

d. Application of Formula C also suggests that Eastham’s court tried more cases than his predecessors or his successors and may have been more effective and efficient in this respect.

This analysis tends to support the hypothesis to the extent that Newbolt’s court was the more efficient court in the period 1921-31 but that the overall efficiency difference with the post-war court is marginal, save with regard to increasing backlog after the war. We may conclude for the early period in Newbolt’s time that this efficiency was probably due to the rudimentary caseflow management techniques he practised and advocated.626

---

626 n.2 p 427
PART B EXPENDITURE OF TIME

5.5 Statistical Analysis of Time Expended

Having tested caseflow efficiency by the formulae we now turn to consider the time expended on referee work and to what extent, if any, this may have been affected by the "Scheme" or its development in later years. By reference to the Spreadsheet\textsuperscript{627} the number of days spent on cases in certain years may be compared to the numbers of cases completed, transferred or withdrawn. Whilst this picture is not perfect it gives some indication as to the effectiveness of referees over the course of time. Micro caseflow management is a possible reason for referees in the post-war period being able to work as Commissioners of Assize, although, as has been suggested, they were unable to cope with the increase in referrals and their backlog.

5.5.1 Average trial time

In an attempt to ascertain relative levels of time-efficiency in the pre and post-war periods we can compare Tables T 5.17 and T.5.18 below.\textsuperscript{628} From the comparison we see that there is a marginal difference of 15 days more spent by referees after the war than before. The average trial-time difference is miniscule. In exact terms the measurement is 2.2 trial days before the war and 2.6 trial days after.\textsuperscript{629} If we take 3 hours 20 minutes per day as a notional trial day then the calculation would be 7 hours and 20 minutes (before the war) as compared to 8 hours and 40 minutes (after the war) per trial per referee.\textsuperscript{630}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
Period & No. of days sat & Total average no. of days sat & Average no. of days sat per referee \\
\hline
1922-38 & 7,163 & 421 & 140 \\
1947-70 & 11,177 & 466 & 155 \\
\hline
\end{tabular}
\caption{Table T 5.17 Average days sat per referee}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
Period & No. of days sat & No. of trials & Average no. of days sat per trial \\
\hline
1922-38 & 7,163 & 2,661 & 2 days 3 hrs. 30 mins. \\
1947-70 & 11,177 & 4,360 & 2 days 2 hrs. 48 mins. \\
\hline
\end{tabular}
\caption{Table T 5.18 Average time per trial}
\end{table}

\begin{footnotesize}
\textsuperscript{627} Judicial Statistics published for years 1919-21 did not include referees days sat.
\textsuperscript{628} See above: Table T.5.38 and paragraph 5.9.2.1 (Pre-war) and Table 5.38 and paragraph 5.9.2.2 (Post-war)
\textsuperscript{629} 3 hours and 20 minutes is calculated from the average minuted time at paragraph 5.6.2.
\end{footnotesize}

184
From such average assessment we may conclude:

1. That average trial times were practically the same for both periods;
2. That the referees may have adopted similar approaches to trials;
3. That the referees spent an average of 10% more time on trials after the war than before it [T.5.17].
PART C MICRO CASEFLOW TIME MANAGEMENT

5.6 Data collection: Minute Book/judge’s notebook analysis post-war. [1959-62]

Having analysed data from Civil Judicial Statistics 1919-47 and 1947-70 we now turn to examine other data from the original court sources. The Minute Books were records maintained by the referees’ clerks being a summary of matters occurring during the course of the trial. They constitute the primary source of this data collection and quantitative analysis in relation to a hypothetical efficiency rating which we later apply to Judicial Statistics. This is based on the three earliest surviving referee Minute Books, and related notebooks at the National Archives. Whilst the analysis covers the closing phase of the post-war period, the data of the subsequent years is illustrative of traces of some aspects of rudimentary caseflow management. It is also the only available contemporary evidence that could assist the analysis in the absence of earlier Minute Books. The selection of Minute Books was prescribed by the evidence available. No earlier evidence was available and thus those surviving for the earliest time were subject to my examination and analysis.

Appendix C.5 contains data analysis from the relevant Minute Book entries in data collection schedules which contain:

1. Name of case
2. Date of hearing
3. Type of Case and evidence, if any, of rudimentary caseflow management device
4. Time occupied by the Court

The following analysis is of the time spent by the court in hearing cases referred by the Master or the High Court judge. The analysis distinguishes building from other types of case. The analysis demonstrates that and demonstrating that case type does not affect time spent. What is a factor is the quantity and complexity of the evidence the court must evaluate.

5.6.1 Data analysis: Minute Books Nos. 4 and 5-Sir Walker Carter QC

In the period 1959-62, a total of 621 cases were referred to the three referees in post.633

This may be tabulated as follows according to year:

---

631 Minute Books J.116 Series.
632 See also: analysis of Minute Books 1959-62 and 1965-67 are found in Appendix C.5.
633 n. 51 Line 20A-20BA
Table T 5.19 Referrals 1959-62

<table>
<thead>
<tr>
<th>Year</th>
<th>1959</th>
<th>1960</th>
<th>1961</th>
<th>1962</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>158</td>
<td>154</td>
<td>165</td>
<td>144</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1959-62

This means that the average number of cases per referee was 207 cases in that period. This meant a *per capita* average allocation of 51 cases per year. This figure is in excess of the actual figures recorded in Minute Books J 116/1 and J 116/2 reviewed here for the purpose of this statistical analysis. This analysis indicates an average of 25 cases per year for Carter. It is difficult to reconcile this figure with the cases entered in the surviving Minute Books. What we are given is merely an impression of a particular referee's effectiveness. Importantly we see how long it took him to deal with certain types of reference. In this latter context such analysis is of value.

5.6.2 Time expended (*Judicial Statistics*)

(a) Notional time

If we take referee-days spent in 1959-62 we obtain an average of 368 days for 3 referees. The average therefore for one referee would be 92 days per year. In calculating a notional time we adopt the average time per case by adding all the time taken for each trial in the Minute Books for 1959-62 and dividing that amount by the number of trials to get a notional time per trial per referee.

**Calculation of notional time**

Given: Walker Carter's Minute Books Nos. 4 and 5. 103 cases from April 1959 to Dec. 1962

Time spent in total = 1,023 hrs. 57 mins.

Average time = \( \frac{1,023 \text{ hrs. } 57 \text{ mins}}{103} = 9 \text{ hrs. } 57 \text{ mins} \)

According to the Minute Books Walker Carter sat for 303 days dealing with 103 cases. Each case therefore took \( \frac{303}{103} = 2.9 \) days, say 3 days per case.

Therefore, the average notional time per day allotted to each case = \( \frac{9 \text{ hrs. } 57 \text{ mins}}{3} = 3 \text{ hrs } 19 \text{ minutes} \)

which we have rounded up to **3 hours 20 minutes**.

Applying this notional average trial time of 3 hours 20 minutes over the 4 year period, 1959-62, in Table T 5.20 we calculate an average notional time per case in Table T 5.21.

---

634 Lord Cairns originally estimated that each referee would sit for 200 days per year from 10 a.m. until 4 p.m., a 5 hour day. LCO 1/173 [HPIM 0457]
Table T 5.20 Expenditure of time

<table>
<thead>
<tr>
<th>Year</th>
<th>1959</th>
<th>1960</th>
<th>1961</th>
<th>1962</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trials</td>
<td>158</td>
<td>154</td>
<td>165</td>
<td>144</td>
</tr>
<tr>
<td>Days spent</td>
<td>382</td>
<td>392</td>
<td>354</td>
<td>346</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1959-62

Table T 5.21 Notional time

<table>
<thead>
<tr>
<th>Year</th>
<th>Average notional time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>8hrs 4mins</td>
</tr>
<tr>
<td>1960</td>
<td>8hrs 29mins</td>
</tr>
<tr>
<td>1961</td>
<td>7hrs 12mins</td>
</tr>
<tr>
<td>1962</td>
<td>8hrs</td>
</tr>
</tbody>
</table>


This gives us a notional annual-average trial time of seven hours 54 minutes.

(b) Actual time

These nominal times might be compared to the time actually taken by Carter as recorded in the relevant Minute Books for those years. That time was recorded from these records as in Table T 5.22:

Table T 5.22 Carter’s Time recorded 1959-62

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases tried by Carter</th>
<th>Time Carter spent on all cases in period</th>
<th>Average Time Carter spent per case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>28 cases</td>
<td>218hrs. 57mins</td>
<td>7hrs. 48mins</td>
</tr>
<tr>
<td>1960</td>
<td>27 cases</td>
<td>338hrs. 40mins</td>
<td>12hrs. 33mins</td>
</tr>
<tr>
<td>1961</td>
<td>28 cases</td>
<td>369hrs. 45mins</td>
<td>13hrs. 12mins</td>
</tr>
<tr>
<td>1962</td>
<td>20 cases</td>
<td>96hrs. 29mins</td>
<td>4hrs. 49mins</td>
</tr>
</tbody>
</table>


This analysis includes times lesser and greater than Carter’s average time per case of nine hours 57 minutes calculated at 5.6.2 (a). It seems that in the first year he dealt with his cases in quicker time, but in the succeeding two years he spent more time. In the last year he appears to have disposed of his cases in less than half the average time. Measured against the Civil Judicial Statistics tables it would appear that Carter dealt with a smaller percentage of trials than his colleagues. His percentage of the total referee caseload in this four-year period accounted for in the surviving Minute Books amounts to:

635 See: compilation of all time recorded in Carter’s Minute Books Nos. 4 and 5. Appendix. Chapter 5.
Table T 5.23 Carter's share of caseload

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>share</td>
<td>18%</td>
<td>18%</td>
<td>17%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Source: J.116/1 and 2, Carter: Minute Book Nos. 4 (1959-62) and 5 (1962-65)

5.6.3 Time expended (Minute Books)

Closer analysis is possible to determine how proportionate the referee's use of time was. However, if we consider the time recorded by Carter in his Minute Books (Nos. 4 and 5) taking them as a contemporaneous record of the work of one referee, we find that he heard 103 cases in the period 30th April 1959 to 30th December 1962 as a referee. The rest of his time was spent as a Commissioner. Altogether he spent 1,023 hours and 57 minutes in hearings in this period. The average time he spent on a case was 6 hours and 41 minutes. Measured in referee Sitting Days as recorded in the Minute Books, he spent 303 days in dealing with referee business in this period. According to Civil Judicial Statistics, all three referees spent a total number of 1,474 sitting days in the period 1959-62. Carter spent 21 per cent of that time. In that same period he dealt with 103 cases or 17 per cent of the caseload. This approximates to one-fifth of the referees' total sitting time and one-sixth of the caseload.

This is demonstrated in the following table T 5.24.

Table T 5.24 Carter's sittings 1959-62

<table>
<thead>
<tr>
<th>Year</th>
<th>1959</th>
<th>1960</th>
<th>1961</th>
<th>1962</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days sat by Referees</td>
<td>382</td>
<td>392</td>
<td>354</td>
<td>346</td>
<td>1474</td>
</tr>
<tr>
<td>Source: Judicial Statistics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days sat by Carter</td>
<td>68</td>
<td>76</td>
<td>103</td>
<td>40</td>
<td>287</td>
</tr>
<tr>
<td>Source: Minute Books</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source: Minute Books and notebooks</td>
<td>80</td>
<td>76</td>
<td>103</td>
<td>44</td>
<td>303</td>
</tr>
<tr>
<td>Percentage of referees' sittings sat by Carter</td>
<td>18%</td>
<td>18%</td>
<td>28%</td>
<td>10%</td>
<td>(19% of all referees' time)</td>
</tr>
<tr>
<td>Source: Minute Books</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source: Minute Books and notebooks</td>
<td>21%</td>
<td>19%</td>
<td>29%</td>
<td>13%</td>
<td>(21% of all referees' time)</td>
</tr>
<tr>
<td>Cases</td>
<td>28</td>
<td>27</td>
<td>28</td>
<td>20</td>
<td>103</td>
</tr>
</tbody>
</table>


---

636 LCO 2/6077 Memorandum Sir George Coldstream to Lord Chancellor 14th March 1965 [HPIM 0837]
5.6.4 Caseflow time-management analysis 1959-62

Having considered the influx of cases, and the time expended it is possible as a further analysis to attempt some measurement of the efficiency of micro caseflow management taken from the Tables 3 to 8 in the Appendix of recorded and minuted cases. In this it is possible to analyse cases according to type and identify caseflow management elements as defined in Chapter 3 as follows: 638

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Number of cases</th>
<th>Proportion of time (days) Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>74</td>
<td>215</td>
</tr>
<tr>
<td>Dilapidations</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>Commercial</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>13+4*</td>
<td>53+4*</td>
</tr>
</tbody>
</table>


*Notebook cases where time can be ascertained.

Commentary

This simple analysis confirms that building cases constituted the major part of Carter’s workload in these years. It indicates that it was not building cases but this category of “other cases” such as matters of account and enquiry and report that took the greater proportion of average minuted time. By dividing days spent by the numbers of cases it appears that other cases took just slightly over four days to hear. Building cases three days. Landlord and Tenant, or dilapidations cases, took over two days. Commercial cases took slightly over a day. An initial view might be that it was not necessarily building cases that were the time problem in this court, but technically complex cases which were the root of the referees’ original jurisdiction. A more precise time-related analysis is possible by looking at the actual time-related figures. We can take this from an analysis of the recorded time in the Minute Books which is calculated as follows:

638 Appendix pp: 23-40
Table T 5.26 Case type time-related analysis 1959-62

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Number of cases</th>
<th>Hours actually spent in court hearing</th>
<th>Average minuted time spent in each court hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>74</td>
<td>699 hrs. 54mins.</td>
<td>9hrs. 28mins.</td>
</tr>
<tr>
<td>Dilapidations</td>
<td>7</td>
<td>52 hrs 31mins.</td>
<td>7hrs. 30mins</td>
</tr>
<tr>
<td>Commercial</td>
<td>5</td>
<td>18 hrs.</td>
<td>3hrs. 36mins</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>138 hrs. 16mins.</td>
<td>10hrs. 38mins</td>
</tr>
<tr>
<td>Total:</td>
<td>99</td>
<td>908 hrs. 41mins.</td>
<td>9hrs. 12 mins</td>
</tr>
</tbody>
</table>

Sources: J.116/1 and 2, Carter: Minute Book Nos.4 (1959-62) and 5 (1962-65); Notebook (1959-63); J.114/41 Notebook (1959-63) and J.114/44 Notebook (1962-65)

Observations

In Table T 5.26 we measure the average time per building case. This is measured by taking the hours spent and dividing them by the number of cases. This amounts to 567.48 minutes per case or 9 hours and 28 minutes. This is a higher average time than the average based on a notional 3½ hour day. It is lower than the average time calculated earlier under Civil Judicial Statistics where the lowest time recorded was in 1961 at 9 hours 39 minutes. It is higher, however, than the time recorded as an average for cases in 1959 and 1962, but lower than the average case time in 1960 and 1961 by more than a 3 hour margin in each of those years.

If we take a 9 hour 28 minute average for building cases, there were 26 out of the 74 building cases in the period 1959-1962 that occupied the court for more than the average time. This amounts to 35 per cent of cases where the average time was exceeded.

Having considered the time taken in these cases it is next appropriate to consider the effect of micro caseflow management in more detail. The Minute Books have been examined and evidence of this has been found in the cases which are referred to in Table T.5.40 at the end of this chapter.

5.6.5 Micro caseflow management elements

Table T.5.40 shows that elements of rudimentary caseflow management are present in only 17 per cent of the total number of cases recorded in the Minute Books for the period 1959-62. This confirms, albeit slight, the survival of the Newbolt “Scheme” and judicial respect for more modern and enlightened techniques for saving time and cost.

We see that the average time spent employing caseflow management is 5 hours and 51 minutes indicating a significant saving in time and cost. This figure does not include time spent on cases concerning costs and location because these elements of the
“Scheme” are irrelevant for this purpose since they are not time saving devices *per se.* The most effective technique appears to be a rudimentary form of early procedural evaluation cutting average time down to 3 hours and 30 minutes. This is followed by the employment of single joint experts and closely followed by judicial intervention as the more efficient tools. The 17 cases found to contain elements of micro caseflow management represent 17 per cent of the 103 cases analysed. On that basis possibly up to a fifth of such cases were case managed at this time.

**Methodology**

The above analysis has been facilitated by my examination of the original court records for 1959-62 at the National Archive. These are contained in the Minute Book Series J.116/1640 (which contained Minute Books Nos. 1-3 from April 1959 to December 1962). These are the earliest records of actual time spent by the referees. Having examined these records and photographed them for reference purposes I then tried to trace records following that in the J.116/2 serial. The archivist advised me that these had been lost to the archive. The next available record was J.116/3 which contained the Minute Books for March 1965 to October 1967. I traced Minute Book Nos. 5, 6 and 7. After many further searches and enquiries J.116/4 was discovered and an analysis made of the period January to December 1967. The records were not in regular order. They overlapped between years and did not follow the entries in the judge’s notebooks. Many entries were illegible and required computer aided enhancement. There was no evidence that they had been cross-referenced to the notebooks or that anyone had checked them for the purposes of completing the Return of Annual Judicial Statistics each year. They cannot therefore be regarded as conclusive, but are relied upon as the best evidence of time recorded. In view of the availability of these records I therefore undertook an analysis of those remaining records.

**5.7 Data analysis 2: Minute Books 1965-67**

Here I adopt the same methodology as for the first data analysis. In the period 1965-67 according to *Civil Judicial Statistics* 1,780 cases were referred to the court.

---

639 Table T.5.40.
640 J.116/1 Minute Book No. 4 (1959-62)
642 Appendix Chapter 5. Tables 10 and 11
643 At para 5.6.1.
644 n. 51
This may be tabulated as follows according to year:

<table>
<thead>
<tr>
<th>Table T 5.27 Referrals 1965-67</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
</tr>
<tr>
<td>546</td>
</tr>
</tbody>
</table>

Sources: Civil Judicial Statistics 1965-67

On average each referee was allocated an average of 593 cases in that period almost three times as many as allocated in the 1959-62 research period. In this period 1965-67 each referee on a per capita basis would have had an average allocation of 198 cases per year. This figure is far beyond the actual figures recorded from Carter’s Minute Book for Court ‘C’ in J.116/3. However, another Minute Book J.116/2 covers part of the relevant period being January to March 1965 as well as another Minute Book J.116/4 which overlaps with J.116/3 for the whole of the year 1967. These are considered at paragraph 5.7.2.

5.7.1 Time expended (Judicial Statistics) 1965-67

If we take the number of sittings days spent in 1965-67 in London and elsewhere we obtain a figure of 1,219 days sat for the three referees then in post. The average number of days sat for each referee is 135 days per year. Utilising Table T. 5.28 below we can calculate the average time expended for each trial:

<table>
<thead>
<tr>
<th>Table T 5.28 Expenditure of time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year:</td>
</tr>
<tr>
<td>1965</td>
</tr>
<tr>
<td>Trials: 79</td>
</tr>
<tr>
<td>Days spent: 363</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1965-1968

If we then apply our notional average trial time of three hours twenty minutes to Table T.5.28 we obtain:

1965 \( \frac{363(200 \text{ mins.})}{79} = 15 \text{ hrs. 18 mins.} \)

1966 \( \frac{405(200 \text{ mins.})}{78} = 17 \text{ hrs. 18 mins.} \)

1967 \( \frac{451(200 \text{ mins.})}{101} = 14 \text{ hrs. 54 mins.} \)

If we then take the average trial time of the above three year period we obtain an average annual notional trial time of fifteen hours and fifty minutes. This is double the notional average time calculated at paragraph 5.6.2 (a) for the earlier period 1959-62.
5.7.2 Time expended (Minute Books) 1965-67

Having calculated the average times spent on trials in this period we can now compare the official statistics with an average time calculated from the surviving contemporary records at the National Archive. The following comparative table is distilled from Series J.116/2 (January to March 1965) and J.116/3 (March 1965 to October 1967) which latter partly overlaps with J.116/4 (January to December 1967).

We measure this in Table T.5.29 as:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
<th>Time spent on all cases</th>
<th>Average Time per case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>18</td>
<td>79hrs. 59mins</td>
<td>4hrs.26mins</td>
</tr>
<tr>
<td>1966</td>
<td>21</td>
<td>219hrs. 37mins</td>
<td>10hrs 27mins</td>
</tr>
<tr>
<td>1967</td>
<td>16</td>
<td>310hrs. 32mins</td>
<td>19hrs. 24mins</td>
</tr>
</tbody>
</table>

Sources: J.116/2 Carter: Minute Book No. 5 (January-March 1965); J.116/3. Minute Book No.6 Court “C” (March 1965-October 1967); Minute Book No. 7 Court “C”(January-October 1967); J.116/4 Minute Book (January- December 1967)

If we now compare Carter’s recorded times in the Minute Books with the Judicial Statistic analysis above we find that the time spent by Carter in sitting days in court amounted to: 5 per cent of total referee time (Days Spent) in 1965; 12 per cent of total referee time in 1966, and 15 per cent of total referee time in 1967.

Whilst this is highly efficient in terms of expenditure of time, it is inefficient in terms of numbers of cases completed (turnover) measured as:

<table>
<thead>
<tr>
<th>Year</th>
<th>1965</th>
<th>1966</th>
<th>1967</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>23%</td>
<td>27%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Sources: Minute Books of Carter and Judicial Statistics 1965-67

We may consider this to be inadequate when the backlog of cases in this court is rising from 242 cases in 1965 to 260 cases in 1967, a 7 per cent rise.

The backlog as we note from the Spreadsheet 645 almost doubled in the 5 years following to 1970 to a backlog in that year of 446 cases.

---

645 n. 51 Line 16.
Day sittings analysis: Sir Walker Carter QC  1965-67

Table T 5.31 represents an analysis of Carter’s time extracted from his Minute Books and Notebooks 1965-67. The figures indicate a low level of time spent and may well account for the accumulating backlog problem identified above.

<table>
<thead>
<tr>
<th>Year</th>
<th>1965</th>
<th>1966</th>
<th>1967</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days sat by Referees</td>
<td>363</td>
<td>405</td>
<td>451</td>
<td>1219</td>
</tr>
</tbody>
</table>
| Days sat by Carter
Source: Minute Books | 31  | 58  | 80  | 169  |
| Source: Minute Books and notebooks | 31 | 59 | 85 | 175 |
| Percentage of referees’ sittings sat by Carter
Source: Minute Books | 9% | 14% | 18% | 14% |
| Source: Minute Books and notebooks | 9% | 15% | 19% | 14% |

Sources: J.116/2 Carter: Minute Books: No. 5 (January-March 1965); J.116/3 Minute Book No.6 Court “C” (March 1965-October 1967); No. 7 Court “C” (January-October 1967); J.116/4 (January-December 1967); Notebooks: J.114/47 (1965-66); J.114/49 (1963-66); J.114/5 (1967); J.114/52 (1967-68)

5.7.3 Caseflow Time Management Analysis 1965-67

Table T 5.32 Case type/time spent Minute Books and notebooks

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Number of cases</th>
<th>Proportion of time (days) Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>33</td>
<td>130 134*</td>
</tr>
<tr>
<td>Dilapidations</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Commercial</td>
<td>7*</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>19 20</td>
</tr>
</tbody>
</table>

Sources: J.116/2: Minute Books: No. 5 (January-March 1965); J.116/3 Minute Book No.6 Court “C” (March 1965-October 1967); No. 7 Court “C” (January-October 1967); J.116/4 (January-December 1967); Notebooks: J.114/47 (1965-66); J.114/49 (1963-66); J.114/50 (1966-1968); J.114/51 (1967); J.114/52 (1967-68)

Table T. 5.32 is an analysis of case-types in 1965-67 identified in Carter’s Minute Book C and Cloutman’s Notebook. Again we consider whether it is possible to conclude that building cases took an inordinate amount of time. The nature of such cases and their factual complexity undoubtedly had an effect on the longevity of the trial. Here we have two sets of entries for each class of case. The second set of figures is taken from the notebooks so that two results are given in each classification.

546 J.116/3.
547 The figures marked with an asterisk are adjusted from further information contained in the judges’ notebooks.
Building cases

If we take three hours twenty minutes as our denominator the notional average trial time may be expressed as:

130 days spent x 200 minutes = 33 cases = 13 hours 6 minutes, or
134 days spent x 200 minutes = 35 cases = 12 hours 48 minutes.

Other cases

If we then take the same denominator in other cases the average time may be expressed as:

37 days spent x 200 minutes = 23 cases = 5 hours 24 minutes, or
38 days spent x 200 minutes = 27 cases = 4 hours 42 minutes

In order to make a comparison we may simply compare the mean averages of both classifications as 12 hours 67 minutes for building cases and 5 hours and 3 minutes for others.

We may conclude that on average building cases took nearly 8 hours longer than other matters.

<table>
<thead>
<tr>
<th>Case type</th>
<th>No. of cases</th>
<th>Days spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>33</td>
<td>130</td>
</tr>
<tr>
<td></td>
<td>35</td>
<td>134</td>
</tr>
<tr>
<td>Other</td>
<td>22</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>38</td>
</tr>
</tbody>
</table>

Sources: J.116/2 Carter: Minute Books: No. 5 (January-March 1965); J.116/3 Minute Book No.6 Court "C" (March 1965-October 1967); No. 7 Court "C" (January-October 1967); J.116/4 (January-December 1967); Notebooks: J.114/47 (1965-66); J.114/49 (1963-66); J.114/50; (1966-1968); J.114/51 (1967); J.114/52 (1967-68)

As with the earlier period we can also examine the actual time periods from the Minute Books to assess the effects if any of rudimentary caseflow management. These appear below in Tables T.5.40 and T.5.41.

The time spent according to the Minute Books in relation to the type of case is as follows:

648 7 hours 54 minutes.
Table T 5.34 Case type /time related analysis 1965-67

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Hours actually spent in court hearing</th>
<th>Average minuted time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>491 hrs. 41 mins.</td>
<td>14 hrs. 53 mins</td>
</tr>
<tr>
<td>Dilapidations</td>
<td>13 hrs. 27 mins.</td>
<td>2 hrs. 41 mins.</td>
</tr>
<tr>
<td>Commercial</td>
<td>28 hrs. 35 mins.</td>
<td>4 hrs. 5 mins</td>
</tr>
<tr>
<td>Other</td>
<td>65 hrs. 10 mins.</td>
<td>5 hrs. 55 mins.</td>
</tr>
<tr>
<td>Total:</td>
<td>598 hrs. 53 mins.</td>
<td>10 hrs. 40 mins.</td>
</tr>
</tbody>
</table>

Sources: J.116/2 Carter Minute Books: No. 5 (January-March 1965); J.116/3 Minute Book No.6 Court "C" (March 1965-October 1967); No. 7 Court "C"(January-October 1967); J 116/4 (January-December 1967).

Observations

We have found above that the average time for building cases took 8 hours longer than other cases. Our calculations from Table T 5.32 confirm this. We notice that in this table there is a wide divergence between the time expended on building cases and other cases. This varies by as much as 12 hours 12 minutes in comparison with dilapidations references.

Having measured the recorded time spent it is possible to examine the impact of rudimentary caseflow management techniques measured in recorded time. As before a number of relevant cases have been identified from the Minute Books and are included at Table T. 5.41.

5.7.4. Micro caseflow management elements 1965-67

From Table T.5.38 we may conclude that a quarter of the number of cases in the Minute Books for the period 1965-67 disclose evidence of rudimentary caseflow management. For this purpose the other elements, such as proportionate costs orders and convenient locale, are included. It provides further evidence that the Newbolt "Scheme" survived and had an impact in terms of the average time spent. Here the calculation for average time excluding those matters which are not critical to time i.e. elements 6 and 9 (costs and locality) is 3 hours 45 minutes which is shorter than the earlier 1959-62 period by 26 minutes. In court time terms this is insignificant so that both periods were practically equally effective when caseflow management was used.

As with the earlier analysis this illustrates the value of Early Procedural Evaluation. The average time recorded is less than the earlier 1959-62 period which may indicate a

---

649 See Table 5.41
650 Row 4 cols 7 and 8.11 out of 43 cases identified.
slightly more experienced approach, although this case analysis represents a fifth of the overall referee caseload for the period.

Preliminary issues are the most used of the case management devices with a total of 7 examples but not as efficient as Early Procedural Evaluation. Judicial Intervention is more efficient here than in the earlier period: 2 hours 43 minutes here compared with 4 hours 49 minutes in the period 1959-62.

No evidence of the use of single joint experts is found here, although expert evidence was given in many cases. It also suggests a more passive traditional approach. Whilst this is disappointing, the analyses demonstrate that the "Scheme" survived.

On the other hand, juxtaposing the trends plotted earlier (Charts C 5.2 to C.5.5) it would appear that there were indications of increasing efficiency in this court in the 1960s as settlements became more frequent, albeit trials were of longer duration, and turnover as well as backlog became a major problem. 651

Taking the average times for caseflow management devices in both periods 1959-62 and 1965-67, the average time spent on a case in the two periods is 3 hours 58 minutes. From our review of the Minute Books in both periods we have found that building cases took an average of 9 hours 28 minutes in 1959-62, and in 1965-67, 13 hours 36 minutes. On that basis, caseflow management properly applied (averaging 3 hours 58 minutes per case) could cut trial times in half or by two-thirds. 652 If that is correct then this finding supports the hypothesis in respect of the analysis of these two periods.

651 The apex was reached in 1963 with a settlement rate of 41.4%.
652 It is worth recalling Newbolt’s view that trials could complete in a fifth of the normal time where experts were used properly.
PART D CONCLUSIONS AS TO QUANTITATIVE ANALYSIS

5.8. Summary and general conclusions.

In summary we have concluded that: there is evidence of the effectiveness of the "Scheme" both before and after the war, and that the "Scheme" continued as a rudimentary form of caseflow management after the war.

From the analyses in this chapter we may conclude as follows:

1. Judicial Statistics

The Spreadsheet\textsuperscript{653} analysis contains the statistics used in this chapter apart from those obtained from the Minute and notebooks of the court. This analysis concludes that in the pre-war period 1919-38 each referee dealt with an average of 129 trials per year, and in the post-war period 1961-70 each judge dealt with an average of 96 trials per year.\textsuperscript{654} It has been possible to apply my own formulae to examine these statistics for trends that might indicate a use of Newbolt's "Scheme." It is submitted that the formulae applied provide evidence of some interesting patterns indicating that his "Scheme" continued after the war with varying degrees of success.

2. Formulaic analysis

The applications of my formulae suggest that referees in the earlier period were more efficient in terms of trials and disposals. They coped slightly better with the backlog than after the war. They resolved cases earlier in Newbolt's time, but came under increasing pressure when there were only two referees in post after 1932.

3. Analysis of Time Recording

From this analysis we found that the average trial times were practically identical before and after the war and that the referees may have adopted similar approaches to caseflow management. Table T 5.17 demonstrated that the referees spent an average of 10 per cent more time on trials after the war than before it. When we compared the average number of days sat in Table T 5.17 we found that there was a marginal difference of 15 days more time spent by referees after the war than before.

\textsuperscript{653} n. 51 . Lines: AF 16 and AH 16.

\textsuperscript{654} Table T.5.3.
4. Conclusions of Graphical Analysis
The graphical analyses in Charts C. 5.1 to C 5.5 generally support the earlier conclusions of the time and formulaic analysis from Judicial Statistics.

5. Data collection post-war period 1959-62
This quantitative analysis compares calculations from the Judicial Statistics with those derived from the earlier Minute Books. It concludes that the referee caseload was unevenly dispersed so that although Carter appears a very efficient judge the fact is he did not have as many referrals as his colleagues. He recorded only 19 per cent of all the referees' trial time on his cases and dealt with only 16 per cent of all referee cases in this period.

6. Data collection post-war period 1965-67
This further quantitative analysis also compares calculations from the Judicial Statistics with those derived from the Minute Books. Once again Carter appears to be very efficient in terms of case turnover. His trial completion time averages much less than the general average obtained from the Civil Judicial Statistics for each referee. If we consider the time he spent in relation to his colleagues it amounts to only 14 per cent of their time (days sat in this period). In terms of the referees' caseload Carter dealt with 21 per cent of the overall number of cases referred. If he was so efficient then one would have expected his case allocation to be proportionately much higher than a fifth.655

7. Case type Minute Book Analysis
Here we concluded that building cases made up the greater part of referrals. They were not necessarily the cases involving the greatest expenditure of time. It would appear that the other cases, i.e. those not classified as building cases, namely, Landlord and Tenant (dilapidations) cases, or commercial cases absorbed the highest proportion of time. There are several exceptional building cases where the time recorded is higher than the average case time. We may also conclude for the effectiveness of Early Procedural Evaluation over other micro-caseflow

655 Part of the problem in measuring such efficiency is that some cases last much longer than others, especially complex technical factual cases. In this period Carter heard Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties) J.116/3 p.193 [Oct 2006 Series: SH101093]. This case lasted for 45 days.
management processes. Whilst experts make a significant contribution in the 1959-62 period they do not feature in the 1965-67 period. Judicial intervention does not appear to be as effective as might be expected. The instances are rare, but then they are very difficult to ascertain from the judges’ notes. Preliminary Issues are a more popular tool of case management. Sometimes they appear to be formulated by counsel but at others by the referee in the course of the hearing after discussion with counsel.

5.9 Direct best evidence of micro-caseflow management

In completing our quantitative analysis of this court we may consider the cumulative evidence of the “Scheme” and its continuance. This is accomplished by the following table, T.5.35, which contains the incidences of rudimentary micro-caseflow management elements before and after the war discovered in this research.

Table T.5.35 Usage of micro caseflow management tools

<table>
<thead>
<tr>
<th>Caseflow Management Tool</th>
<th>Usage found in 1919-38*</th>
<th>Usage found in 1947-60</th>
<th>Total usage found 1919-38 and 1947-60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early Procedural Evaluation</td>
<td>2</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Judicial Intervention</td>
<td>3</td>
<td>26</td>
<td>29</td>
</tr>
</tbody>
</table>

Newbolt confirms in correspondence to the Lord Chancellor that he had been engaged in this type of work (his “Scheme”) for 2 years. See; letter to Lord Birkenhead 13 February 1922. LCO 4/152 [HPIM 0593] There is further reference in n. 2 p. 438.


Newbolt’s letter to the Lord Chancellor 3 July 1920 confirms three occurrences. LCO 4/152 [HPIM 561-567]

Proportionate Costs Orders 3  \[665\]  0  \[266\]  3  \[368\]

Special Pleadings 0  \[687\]  3  \[687\]  3  \[368\]

Preliminary Issues 0  \[687\]  3  \[689\]  30  \[689\]

---


Three examples are given in n. 2. and at paragraph 3.10.


Newbolt confirms one instance in his letter dated November 1921 LCO 4/152 [HPIM 0586-0587]


Praills Motors Ltd v Hills Bros and Mussell J114/28. p.1.[SH 101372]; and John Fletcher Suter v W Pikta J116/1. [CIMG 0188]

Three examples are given in n. 2. and at paragraph 3.10.


Whilst Newbolt dispensed with pleadings in chapter 1 there is no other evidence in chapter 3. It is likely that he ordered special forms of schedules of damages.

Hon. Mrs Courtney Cecil (Fem Sol) v D Ewell (spinster) J.114/6 [HPIM1779]; H Wheeler (Romford) Ltd v F C Chillingworth. J114/6 [HPIM1779]; F Goff & Sons Limited v Bently Golf and Country Club Limited J115/56 [CIMG 0127-130].

George Osborne Limited v E C Goddard male. J.114/14. [CIMG 0086]; W H Armfield Ltd v John England Perfumers Ltd J114/19 [CIMG 0456]; Jack Hyman Socket v Issacc Francis Salmon Matthew Francis. J.114/15 [CIMG 0466]; Dorey & Son v Foster J114/14 [CIMG 0091];
Observations

Table T.5.35 is compiled from the evidence of micro-caseflow management that I have examined in the National Archive. The pre-war period is derived from the sources in chapter 3 particularly the Lord Chancellor’s Office files, analysis gleaned from Judicial Statistics and Newbolt’s seminal article. But it does not represent Newbolt’s claim that the employment of a court expert (single joint expert) “narrow(s) the issue to something which occupies the court for perhaps one-fifth of what used to


Newbolt confirms at least one instance when he travelled to Manchester to take evidence of a witness going abroad. Letter: Newbolt to Lord Chancellor 12 March 1925, LCO 4/152 [HPIM 0614].


n.2 and LCO 4/152. [HPIM 0568]
be considered trial time.” In other words, an 80 per cent reduction of the actual time spent. Economy and Expedition in Litigation also demonstrates that in certain cases Newbolt was able to exclude the need for any formal pleadings. This is also not represented here so that what we have is a very modest representation of what Newbolt may have practised. What we do have is the evidence of the Judicial Statistics and our analyses which point to an effective “Scheme.”

It is improbable therefore that only 12 cases represent the extent of this experiment in caseflow management in Newbolt’s time. From his account it is likely that he used these devices extensively in complex factual cases.

We have already concluded that Newbolt devised and practised a form of micro caseflow management. Whilst there is conflicting evidence as to the effect of the practice both before and after the war, we have found some evidence of the “Scheme” in 124 cases. We cannot now know how extensive this practice was in the court. The difficulty with the evidence is that it is not comprehensive so that we cannot be certain that all cases were recorded, or catalogued, or that those recorded represented all the cases tried. This is because the records at the National Archive are not comprehensive and do not include all the judges notes. Only samples were retained over the years. Although all the notebooks appear in numerical order they do not always tally with the Minute Books. Subject to that caveat the archival samples taken from Carter’s records appear relatively complete so that we can make our quantitative analysis of Carter’s use of micro-caseflow management from his notebook and Minute Book records for 1959-62 and 1965-67 as follows:

<table>
<thead>
<tr>
<th>Nat. Arch Ref.</th>
<th>Year</th>
<th>No. of cases</th>
<th>No. of caseflow management cases</th>
<th>Percentile</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>J.116/1, J.114/41</td>
<td>1959-62</td>
<td>103</td>
<td>18</td>
<td>17%</td>
<td></td>
</tr>
<tr>
<td>J.116/2,3,4; J.114/51,52.</td>
<td>1965-67</td>
<td>62</td>
<td>17</td>
<td>27%</td>
<td></td>
</tr>
<tr>
<td>Totals:</td>
<td></td>
<td>165</td>
<td>35</td>
<td>21%</td>
<td>22%</td>
</tr>
</tbody>
</table>

5.9.1 Proportionate usage of rudimentary micro caseflow management (1959-62 and 1965-67)

Having collated all the available relevant data from the available Minute Books and notebooks of the period it is now possible to assemble the quantitative data in Table T.5.37. This represents the proportionate usage of micro caseflow management devices identified in these periods. The calculations confirm the extent of this usage as follows:

Table T.5.37 Proportionate usage of caseflow management tools

<table>
<thead>
<tr>
<th>Case management tool</th>
<th>Usage in 1959-62</th>
<th>Usage as a percentage of the 103 cases extracted from Minute Books and notebooks 1959-62</th>
<th>Usage in 1965-67</th>
<th>Usage as a percentage of the 62 cases extracted from the Minute Books and notebooks 1965-67</th>
<th>Total usage in both sub periods</th>
<th>Total percentage of the 165 cases of usage in both sub periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early procedural evaluation</td>
<td>2</td>
<td>2%</td>
<td>2</td>
<td>4%</td>
<td>4</td>
<td>3%</td>
</tr>
<tr>
<td>Judicial intervention</td>
<td>5</td>
<td>5%</td>
<td>2</td>
<td>4%</td>
<td>7</td>
<td>4%</td>
</tr>
<tr>
<td>Single joint expert</td>
<td>2</td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1%</td>
</tr>
<tr>
<td>Exert determination</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Experts and settlement</td>
<td>1</td>
<td>1%</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Proportionate costs orders</td>
<td>1</td>
<td>1%</td>
<td>3</td>
<td>5%</td>
<td>4</td>
<td>2%</td>
</tr>
<tr>
<td>Special pleadings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Preliminary issues</td>
<td>7</td>
<td>7%</td>
<td>7</td>
<td>13%</td>
<td>14</td>
<td>8%</td>
</tr>
<tr>
<td>Convenient locale</td>
<td>1</td>
<td>1%</td>
<td>3</td>
<td>5%</td>
<td>4</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>19%</td>
<td>17</td>
<td>31%</td>
<td>36</td>
<td>22%</td>
</tr>
</tbody>
</table>

Sources: Carter: J.116/1 Minute Book No. 4 (1959-62); J.114/41; Notebook (1959-1963); J.116/2 Minute Books: No. 3 (January-March 1965); J.116/3 Minute Book No.6 Court "C" (March 1965-October 1967); No. 7 Court "C" (January-October 1967); J.116/4 (January-December 1967). J.114/51; Notebook. (1967); J.114/52; Notebook (1967-68)

5.9.2. The utility of micro caseflow management

The above table, T 5.37, demonstrates a limited, but extant use of micro-caseflow management in the periods examined, 1959-62, and 1965-67. If we applied the 22 percent total usage to the cases brought in before the war (1919-38) we would find that of the 4,338 cases, 954 cases were caseflow managed.\(^677\) If we then apply the percentile to the 8,704 cases brought in after the war (1947-70), this would give us 1,480 cases case managed. This analysis demonstrates the possible extent of the “Scheme” and its effect.

\(^676\) Figures in this table have been rounded up as with previous tables to nearest percentage.
\(^677\) n. 51 Lines: (7-11)B to (7-11)U and (7-11)AD to (7-11)BA.
Having drawn this conclusion we then move on to consider the time that may have been saved by caseflow management and the adoption of Newbolt's "Scheme" methods. This is demonstrated in Table T.5.38.

Table T.5.38 Average time per case

<table>
<thead>
<tr>
<th>1919-1938</th>
<th>1947-1970</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average time taken per case</strong></td>
<td><strong>Average time taken per case</strong></td>
</tr>
<tr>
<td><strong>Average time taken per case using caseflow management</strong></td>
<td><strong>Average time taken per case using caseflow management</strong></td>
</tr>
<tr>
<td><strong>1959-62</strong></td>
<td><strong>1965-67</strong></td>
</tr>
<tr>
<td><strong>Average time taken per case</strong></td>
<td><strong>Average time taken per case using caseflow management</strong></td>
</tr>
<tr>
<td>Calculated from Judicial Statistics</td>
<td>Calculated from Judicial Statistics</td>
</tr>
<tr>
<td>2½ days</td>
<td>No record</td>
</tr>
<tr>
<td>[Taking an average referee day at 3 hours 20 minutes]</td>
<td>But Newbolt says use of court expert reduced time by 80% (679)</td>
</tr>
<tr>
<td>7 hrs 30 mins (678)</td>
<td>8 hrs 40 mins (680)</td>
</tr>
<tr>
<td>12 cases identified in Table T.5.32.</td>
<td>66 cases recorded in Notebooks examined</td>
</tr>
<tr>
<td>83 cases in Minute Books 4 &amp; 5 and J.114/41</td>
<td>17 cases (683) identified in Minute Books 4 &amp; 5</td>
</tr>
<tr>
<td>43 cases identified in Minute Books 4 &amp; 5</td>
<td>11 cases (686) in J.116/2, 3, 4.</td>
</tr>
<tr>
<td><strong>Sources:</strong> Minute Books and Judges Notebooks as listed in the Appendix.</td>
<td></td>
</tr>
</tbody>
</table>

5.9.2.1 Before the war (1919-38)

Table T. 5.38 has been compiled by calculating the total time spent by referees in London and elsewhere in dealing with their caseload. In all they spent 7,163 days on 2,661 trials or a notional average time of 7 hours 30 minutes. (2.2 days per trial).

No time records are available from those days and the time here is calculated using the notional time per case calculated at paragraph 5.6.2(a) of 3 hours 20 minutes.

5.9.2.2 After the war (1947-70)

For the period 1947-1970 the average time per case is calculated from the Spreadsheet \(687\) which states there were 4,360 trials over a period of 11,177 days.

---

678 Paragraph 5.5.1 applying paragraph 5.6.2(a), and paragraph 5.9.2.1.
679 n.2
680 Paragraph 5.5.1 above.
681 Paragraph 5.6.2 (a) Notional annual average time.
682 See: Table T 5.40 below.
683 Paragraph 5.7.1. Notional annual average time
684 See: Table 5.41 below.
685 20 cases identified but 17 relevant for this purpose. [Table T.40]
686 14 cases identified but 11 relevant. [Table T.41]
Applying the same notional time as in 5.9.2.1 this gives us a notional average time of **8 hours 40 minutes** per case (2.6 days per trial).\(^{688}\)

This period has two sub-divisions 1959-62 and 1965-67.

### 5.9.2.3 Case and non-case managed (1959-62)

**Case Managed**

In the former sub-division Carter spent 87 hours and 3 minutes on 20 cases in which caseflow management techniques were used. The 17 applicable examples taken from Table T 5.40 give an average time on such cases as **4 hours and 11 minutes**. This is 44 per cent of the average time (9 hours 57 minutes) taken per case without caseflow management being used.\(^{689}\) This represents a saving of 56 per cent of the trial time using such process.

**Non-Case Managed**

We have already calculated the notional average time for Carter at paragraph 5.6.2 (a) above at 9 hours 57 minutes. Such an average is more than double the case managed time such result supports the hypothesis.

### 5.9.2.4 Case and non-case managed (1965-67)

**Case Managed**

In this period the Minute Books show that Carter spent 52 hours and 30 minutes in dealing with 14 cases where there is evidence of caseflow management techniques. The applicable examples in Table T 5.41 give an average time of **3 hours and 45 minutes** in dealing with such cases in such way. This is almost a quarter of the time spent (16 hours 2 minutes) on non-case managed cases.

**Non-Case Managed Cases**

We have already calculated Walker Carter’s average time for non-case managed cases at 16 hours 2 minutes.\(^{690}\)

### 5.9.3 Possible extent of case-managed cases

If the hypothesis is correct and the levels of case management are as described in Table T.5.37 then it is now possible to apply the percentage of case managed cases across the board to assess a likely general application of the process. Taking the average

---

\(^{687}\) n.51.

\(^{688}\) For paragraphs 5.9.2.1 and 5.9.2.2, see also paragraphs 5.5.1, 5.6.2, and Table T.5.38.

\(^{689}\) Table 5.38 Col. 5.

\(^{690}\) See: paragraph 5.6.2(a) above.
percentages for 1959-62 and 1965-67 and applying this to the Judicial Statistics figures in Appendix C.5 Spreadsheet we calculate the:

- Percentage for 1959-1962=19%
- Percentage for 1965-1967=31%
- Average percentage applied=25%

If this average percentile were applied to the whole research period 1919-70:

<table>
<thead>
<tr>
<th>Period</th>
<th>Referrals</th>
<th>Hypothetical Average percentile</th>
<th>Hypothetical Number of cases case managed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-1938</td>
<td>7,683</td>
<td>25%</td>
<td>1,921</td>
</tr>
<tr>
<td>1947-1970</td>
<td>13,932</td>
<td>25%</td>
<td>3,483</td>
</tr>
<tr>
<td>1919-1970</td>
<td>21,615</td>
<td>25%</td>
<td>5,404</td>
</tr>
</tbody>
</table>

*Source: Judicial Statistics 1919-70 and Table T. 5.37*

If this hypothesis were right then a quarter of all the referee’s cases would have had some element of caseflow management process. This became increasingly important, if not imperative, in the post-war period when referrals doubled and later quadrupled.

5.10 Specific conclusions on quantitative analysis:

In this chapter we have answered the sixth research question (f) with an assessment and quantification of the impact of the “Scheme” in order to determine whether caseflow management made the referees more efficient. According to Newbolt his “Scheme” in relation to experts could save 80 per cent of time in court.

From the above quantitative analyses we may conclude:

1. From paragraph 5.7.4 that properly applied micro caseflow management could cut trial times by a half to two-thirds (Newbolt said he achieved an 80 per cent reduction)
2. From Table T.5.39 that possibly a quarter of all referrals had some form of caseflow management;
3. From paragraph 5.3.1 that whilst the disposal rates doubled in the period 1960-70, the backlog increased by 43 per cent in the period 1957-70 (Table T 5.4) whilst referrals more than doubled between 1960 and 1970 from 425 cases to 901 cases\(^691\)
4. From Table T.5.2 that the highest average number of days sat per referee was in 1932-38 (221 days);

\(^691\) n.238 Line 5AQ to 5BA
5. That the more efficient trial times were in the Eastham period 1947-59 when the average trial time was seven and a half hours;

6. That the average disposal rate (settlements, withdrawals and transfers) was 27 per cent per annum of referrals before the war and 24 per cent of referrals after the war. The difference is marginal;\textsuperscript{692}

7. That between 1919 and 1931 the backlog decreased by 51 per cent (See: paragraph 5.4.2.). In the same period disposals rose by 20 per cent from 21 per cent to 41 per cent of cases referred. (See: Chart 5.2) This strongly supports the hypothesis that caseflow management made the referees more efficient because it is proved that this happened at a time when we know Newbolt was practising his “Scheme.” The period following that however gives a contrary indication (See: Charts C.5.2. and paragraph 5.4.4.1);

8. That Formula A supports the hypothesis in respect of Newbolt’s time as the more efficient. See: Chart C.5.3- 68 per cent as against 60 per cent after the war;

9. That Formula B (which excludes backlog) also supports the hypothesis in respect of Newbolt’s time as the more efficient (See: paragraph 5.4.4.3);

10. That in the post-war period 1963-70 backlog was increasing at a faster rate than referrals.\textsuperscript{693}

11. That in average notional terms trial times doubled as between 1959-62 and 1963-65\textsuperscript{694}

12. That Formula C also supports the hypothesis in respect of the Newbolt era as more efficient in terms of trials to referrals at 41 per cent compared to trial rates after the war at 32 per cent;

13. Generally, that all the formulae and disposal rates support the hypothesis in respect of Newbolt’s time. We may consider this with some reservation as to the period after 1932 which was not so efficient in terms of disposals before trial;

14. Caseflow management elements were identified in 124 cases in the Lord Chancellors files and judges notebooks (Table T 5.35). 35 out of 165 cases were similarly identified in the Minute Books and notebooks in the periods 1959-62 and 1965-67 (Table T.5.36);

\textsuperscript{692} Paragraph 5.4.1(b) and n. 51 Line 39.
\textsuperscript{693} Paragraph 5.4.3.3
\textsuperscript{694} Paragraphs: 5.6.2(a) and 5.7.1.
15. That the proportionate usage of caseflow management in the periods 1959-62 and 1965-67 was 22 per cent (Tables T. 5.36 and T.5.37);

16. From Table T. 5.38, that caseflow management saved on average up to 5 hours 46 minutes in the period 1959-62, and saved on average up to 12 hours 17 minutes in the later period 1965-67;

17. That by calculating the average percentage for those periods 1959-62 and 1965-67, and applying the percentages across the pre and post-war periods we may hypothesise that up to a quarter of all referee cases were caseflow managed in some way. If that hypothesis is right then possibly as many as 5,404 cases may have utilised the "Scheme" in one aspect or another.(See paragraph 5.9.3 and Table T. 5.39)

18. The average analyses in Table T. 6.7 in chapter 6 will suggest that the post-war period was the more efficient in trials, but Table T 5.11 contrasting two eight year periods, one before, and one after, the war gives a contrary indication.

19. That referees achieved 88 per cent trial efficiency rates in 1937 and 84 per cent in 1948. (Application of Formula B at Paragraph 5.4.4.5)

20. Finally, there can be little doubt that the referees relieved the High Court judges of an otherwise burdensome workload realising one of the key objectives of the Judicature Commission.
<table>
<thead>
<tr>
<th>Type of case</th>
<th>Proportion of time on referee days spent basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case management devices</td>
<td></td>
</tr>
<tr>
<td>1. Early procedural evaluation</td>
<td>Number of instances: 2</td>
</tr>
<tr>
<td></td>
<td>Actual time expended on case as recorded in the Minute Books Nos. 4 and 5</td>
</tr>
<tr>
<td></td>
<td>S Kaplin &amp; Son (Upholsterers) Limited v Parkins 1 May 1959&lt;sup&gt;695&lt;/sup&gt; 6hrs. 56min.</td>
</tr>
<tr>
<td></td>
<td>Barrow Brothers (Builders Lancaster) Limited v Haworth 3 Dec. 1962&lt;sup&gt;96&lt;/sup&gt; 15mins.</td>
</tr>
<tr>
<td></td>
<td><strong>Average time: 3hrs 36 mins</strong></td>
</tr>
<tr>
<td>2. Judicial intervention</td>
<td>Number of instances: 5</td>
</tr>
<tr>
<td></td>
<td>Actual time expended on case as recorded in the Minute Books Nos. 4 and 5</td>
</tr>
<tr>
<td></td>
<td>Martin French v Kingswood Hill Ltd&lt;sup&gt;697&lt;/sup&gt; 7 May 1959, 5hrs. 45mins.</td>
</tr>
<tr>
<td></td>
<td>Clifton Shipways Co Limited v Charles Lane 2 March 1960, 5hrs. 25mins.</td>
</tr>
<tr>
<td></td>
<td>James Kinross v R H Tarrant&lt;sup&gt;699&lt;/sup&gt; 15 March 1960, 8hrs.</td>
</tr>
<tr>
<td></td>
<td>Serious Papa Michael v A K Koritsas&lt;sup&gt;700&lt;/sup&gt; 11 October 1961, 5mins.</td>
</tr>
<tr>
<td></td>
<td>Townsends Builders Ltd v France&lt;sup&gt;701&lt;/sup&gt; visited the site and gave judgment on the 26 June 1962. [Case excluded because no time recorded]</td>
</tr>
<tr>
<td></td>
<td><strong>Average time: 4hrs. 49mins</strong></td>
</tr>
<tr>
<td>3. Single joint experts</td>
<td>Number of instances: 2</td>
</tr>
<tr>
<td></td>
<td>Actual time expended on case as recorded in the Minute Books Nos. 4 and 5</td>
</tr>
<tr>
<td></td>
<td>Leon v Beales&lt;sup&gt;702&lt;/sup&gt; 8 Feb. 1962, 4hrs 21mins.</td>
</tr>
<tr>
<td></td>
<td>Nathan Bernard v Britz Brothers Limited and Britz Brothers Limited and Nathan Bernard and Ruth Bernard&lt;sup&gt;703&lt;/sup&gt; 8 May 1962, 5hrs 7mins</td>
</tr>
<tr>
<td></td>
<td><strong>Average time: 4hrs 44mins</strong></td>
</tr>
</tbody>
</table>

<sup>695</sup> J.116/1 Minute Book No.4 Official Referees’ Court 1959-1962 [Oct 2006 series: HPIM 1963] also: [CIMG 0160; and SH 101353]

<sup>696</sup> J.116/1 Official Referee’s Minute Book. No. 4 p. 296. CIMG200

<sup>697</sup> J.116/1 Official Referee’s Court Minute Book No 4 [Oct. 2006 series HPIM1964]

<sup>698</sup> J.116/1 p.104. CIMG 0176.

<sup>699</sup> J.116/1. CIMG 0178.

<sup>700</sup> J.116/1. p. 207. CIMG 0190.

<sup>701</sup> J.114/41. p.180. [Dec. 2006 Series CIMG 0638]

<sup>702</sup> J.116/1. p. 245 7th February 1962.CIMG 192

<sup>703</sup> J.116/1. CIMG 195. Included only in Chapter 4 not Chapter 5 as most of proceedings outside two latter sub-division research periods.
<table>
<thead>
<tr>
<th>4. Expert determination</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Experts and settlement</td>
<td>1</td>
</tr>
<tr>
<td>John Fletcher Suter v W Pikta</td>
<td>7 June 1961</td>
</tr>
<tr>
<td>5hrs 13mins.</td>
<td></td>
</tr>
<tr>
<td>6. Proportional costs orders</td>
<td>1</td>
</tr>
<tr>
<td>Shopfitting Centre Ltd v Revuelta</td>
<td>20 Dec. 1962</td>
</tr>
<tr>
<td>1hr. 23mins.</td>
<td></td>
</tr>
<tr>
<td>Average time for costs cases = 1 hr 23 mins*</td>
<td></td>
</tr>
<tr>
<td>7. Special pleadings</td>
<td>0</td>
</tr>
<tr>
<td>[^Not relevant to cumulative calculation]</td>
<td></td>
</tr>
<tr>
<td>8. Preliminary issues and questions</td>
<td>7</td>
</tr>
<tr>
<td>Martin French v Kingswood Hill Ltd</td>
<td>6 May 1959</td>
</tr>
<tr>
<td>5hrs 45mins</td>
<td></td>
</tr>
<tr>
<td>George v Russell Bros (Paddington) Limited</td>
<td>1 Feb. 1960</td>
</tr>
<tr>
<td>17hrs 44mins</td>
<td></td>
</tr>
<tr>
<td>A.T. Chown &amp; Co Ltd v Peter Davis Investments Limited</td>
<td>1hr 14mins</td>
</tr>
<tr>
<td>Edward Vernon Andrews v Greens (Wholesale China) Ltd</td>
<td>11 July 1960</td>
</tr>
<tr>
<td>13hrs 5 mins</td>
<td></td>
</tr>
<tr>
<td>Lenton v City of Coventry</td>
<td>1st Nov. 1960</td>
</tr>
<tr>
<td>5hrs 45mins</td>
<td></td>
</tr>
<tr>
<td>Parkwood Engineering Co Ltd v Carlington Engineering Ltd</td>
<td>6hrs 35mins</td>
</tr>
<tr>
<td>Sheering v Wisehill Field Company Ltd</td>
<td>27 June 1962</td>
</tr>
<tr>
<td>7hrs. 56mins</td>
<td></td>
</tr>
<tr>
<td>Average time: 5hrs 48mins</td>
<td></td>
</tr>
<tr>
<td>9. Convenient locale</td>
<td>2</td>
</tr>
</tbody>
</table>

---

[^]: Not relevant to cumulative calculation
|--------|----------------------------------------------------------------------------------------------------------------------------------|

<table>
<thead>
<tr>
<th>Total</th>
<th>20 cases 17 net</th>
<th>Average time: 4 hours 11 minutes</th>
</tr>
</thead>
</table>

19hrs 3mins

*Barrow Brothers (Builders Lancaster) Limited v Haworth.* Lancaster District Registry.
3 December 1962

*[Not relevant to cumulative calculation]*
<table>
<thead>
<tr>
<th>Type of case</th>
<th>Proportion of time (days) spent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case management devices</strong></td>
<td><strong>Number of instances</strong></td>
</tr>
</tbody>
</table>
| 1. Early procedural evaluation | 2 | *Webbs Asphalt Roofing & Flooring Co Ltd v Roper & BRM Shopfronts (A Firm)*<sup>715</sup> 14 March 1966. 4 hrs 10 mins  
*Leighton v Tait & Alt*<sup>716</sup> 31 October 1966. 2 hrs 35 mins  
**Average time for EPE cases: 3 hrs 22 mins** |
| 2. Judicial intervention | 2 | *W J Barrs Limited v Thomas Foulkes*<sup>717</sup> 10 November 1965. 5 hrs 10 mins  
*Bickley v Dawson*<sup>718</sup> 7 November 1966. 15 mins  
**Average time for JI case: 2 hrs 43 mins** |
| 3. Single joint experts | 0 | No instances in this research period |
| 4. Expert determination | 0 | |
| 5. Experts and settlement | 0 | |
| 6. Proportional costs orders | 2 | * Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties)*<sup>719</sup> 20 October 1967. 174 hrs 20 mins  
*Eaton Berry Ltd v King & Anor*<sup>720</sup> 17 December 1965. 10 mins  
**Average time for P.C. cases: (inapplicable)** |
| 7. Special pleadings | 0 | |
| 8. Preliminary issues and questions | 7 | *Middleton v Blackwell*<sup>721</sup> 16 June 1965. 4 hrs  
*Extol Engineering Ltd v The British Process Mounting Co (a firm) and Andrews Houseware Manufacturers Ltd*<sup>722</sup> 10 hrs 45 mins |

<sup>715</sup> J.116/3 [CIMG. 0106] and J114/48 p.1. [Dec 2006 Series CIMG 0592]  
<sup>716</sup> J.116/3 p.189 [Oct 2006 Series: SH101091]  
<sup>717</sup> J.116/3 [CIMG. 0102]  
<sup>718</sup> J.116/3 p.191 [Oct 2006 Series: SH101092]  
<sup>720</sup> J.116/3 p.65 [Oct 2006 Series: SH101045]  
<sup>721</sup> J.116/3 [CIMG. 0096]  
<table>
<thead>
<tr>
<th>Case Description</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frederick William Young v Charles William Connerly</td>
<td>7 hrs 35 mins</td>
</tr>
<tr>
<td>United Dominions Trust (Commercial) Ltd v Thomas Gravell &amp; Prized Steele Garage Ltd</td>
<td>4 hrs 15 mins</td>
</tr>
<tr>
<td>K. Cross (Doncaster) Ltd v County Council of (East Riding)</td>
<td>9 hrs 20 mins</td>
</tr>
<tr>
<td>Olga Hilditch (Widow) v Charles E.H. Durham and L Durham (Married Woman)</td>
<td>10 mins</td>
</tr>
<tr>
<td>Swallow Prams Limited v United Air Coil Limited</td>
<td>3 hrs 55 mins</td>
</tr>
<tr>
<td>Average time for prelim cases:</td>
<td>6 hrs 9 mins</td>
</tr>
</tbody>
</table>

**9. Convenient locale**

<table>
<thead>
<tr>
<th>Location</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moresq Cleaners Limited v Hicks</td>
<td>10 hrs 12 mins</td>
</tr>
<tr>
<td>in Truro.</td>
<td></td>
</tr>
</tbody>
</table>

Average time: inapplicable

**Total case management time in the research period:**

<table>
<thead>
<tr>
<th>Count</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Average time: 3 hrs 45 mins</td>
</tr>
</tbody>
</table>

Sources: Data Collection: *Minute Book/Judges’ Notebook* [1965-67]; Cases Not Recorded in Minute Books [1965-67]

---

723 J.116/3 [Oct 2006 Series: SH101015]
726 J.116/4 p.19 [Dec 2006 Series; SH101810]
727 J.116/4 p.35 [Dec 2006 Series; SH101818]
728 J.116/3 [CIMG. 0110]
CHAPTER 6
THE IMPLEMENTATION OF MICRO-CASEFLOW MANAGEMENT

6.1 Synthesis of macro and micro-caseflow management
Having attempted to quantify the effectiveness of the court we now turn to consider two further questions. First, if the hypothesis that micro-caseflow management made a difference, as Newbolt intended, is to be explained, it is necessary to examine the relationship between the macro-objectives of the Judicature Commission and the micro-mechanics of the Newbolt “Scheme.” The latter has already been explored to some extent in Chapters 3, 4 and 5, but an examination of the objectives of those Commissioners and Newbolt is illuminating to set the hypothesis in context. We therefore consider what those objectives were, and what Newbolt had in common with the Commissioners, particularly, Lords Hatherly, Cairns and Selbourne? This essentially entails a comparison of macro-management objectives by the superior judiciary, and micro-management aims of the referees.

Second, it is useful to consider the nature of the referees’ subordinate jurisdiction which permitted the referees to act more informally at times.

6.1.1 Macro-caseflow management level
A macro-analysis is important here because it puts in context the subordinate role of the referee. Such subservience enabled the referee by more informal means to resolve cases. It is arguable that had Newbolt and his colleagues had a higher status Newbolt might never have attempted his experiments in chambers.

In this context it is very important to be reminded of the origin of this species which was best summarised by Brett, J. in Cruikshank v The Floating Swimming Baths Company supported by the reasoned judgments of Coleridge, C.J. and Lindley, J. In that case Brett said that since the Judicature Act, the decision of an arbitrator was open to revision by the Court upon the arbitrator making a report so that the Court could inquire into any alleged miscarriage by the arbitrator. He explained that there were two forms of process. The former practice at Common Law was that a common-law Court, by consent of the parties, had power to refer the case to a master or an arbitrator by

\[\text{\footnotesize{The particular contributions of the principal architects of the office the three Lord Chancellors: Selbourne, Hatherly and Cairns were considered in Chapter 2}}\]

\[\text{\footnotesize{(1876) 1. C.P. 260 at 263.}}\]
consent or by order. Such a reference could only be for a final decision. There was no power to refer a case for inquiry and report.

In the Chancery courts the practice was to refer a question (which might be of all the questions in a cause) to the chief clerk or other officer, for report. The Court, upon the report of the referee considered his findings, and thereupon pronounced a decree.

Change came about when the Judicature Act and new procedural rules were enacted with the object of making the procedure uniform across the Divisions. It was unnecessary for this purpose to take away the power of ordering a cause to be referred for decision at Common Law, but according to Brett, J. it appears that a power was required to refer questions or causes for a report by the referee if the court were to decide the case.

Brett went onto explain this in the context of the Common Law Procedure Act and the Judicature Act read together. He explained that:

> There are two kinds of reference. One is a reference to the cause for decision, it does not follow that no part of the Judicature Act or Rules applies to such a reference....

The reference is one under the Common Law Procedure Act and Judicature Act taken together, and the rules of the latter as to pleading, evidence, summoning witnesses etc will be applicable to such a reference, but if the reference is for decision, I think the old law applies; and the decision of the arbitrator is final, unless a defect appears on the face of the award. The other kind of reference which the common law Divisions are empowered by the Act to make is a reference of one or more question or questions in the cause or all the questions in the cause, or, if you please so to call it, of the cause itself, for report by the arbitrator. With respect to this class of reference, my present impression is that the Court may review the report and the findings of the arbitrator, either in respect of law or fact....

In this case Brett, J. was of the view that the reference was for a decision and consequently the court could not review it. Coleridge, C.J. agreed with that course as did Lindley, J. who put the point more concisely:

> If the reference is for report, the report may be reviewed; if it is for decision, the decision is final, just as before the Act.

This extract is critical to our understanding of the referees’ role. The reference to the arbitrator and the Chancery master indicate that the new office of referee was not to be a reincarnation of the County Court judge, or a new type of High Court judge. He was, as suggested, a hybrid judicial officer with flexible functions to resolve particularly complex cases. It may be said that the motives and aspirations of Cairns and Selbourne were conditioned by the pressures on a judiciary working in an antiquated procedural

---

731 (1876) I. C.P. 260 at 263.
732 Judicature Act 1873.
environment in a medieval setting. They were giving limited effect to utilitarian principles of maximisation of resources and efficiency in: amalgamating the separate legal and equitable jurisdictions; uniting the many divided courts and jurisdictions in one Supreme Court of Justice; and providing cheapness, simplicity and uniformity of procedure. That utilitarian objective is the common link here between Newbolt and the Judicature Commissioners. What led Newbolt to invent his “Scheme” was the expenditure of time and cost, and the necessity for expedition and economy. Newbolt’s objective therefore was the same as that of the Lord Chancellor who in introducing the Judicature Bill into Parliament declared that:

public officers to be entitled “Official Referees” should be attached to the court to deal with cases of this kind, and to whom such cases should be sent at once without the useless expensive form of a jury trial.

The Commissioners sought to avoid the unpopularity of arbitration as well as civil jury trials. It was said in those times that arbitrators regulated their own fees and that:

The result is great and unnecessary delay, and vast increase of expense to suitors.

Again, one can compare that with Newbolt and his remarkable report to the Lord Chancellor in July 1920 where he states:

From the legal and logical point of view, indeed from almost any point of view, a lay arbitration is open to the gravest objections. Whenever a motion to set aside an award is made gross irregularities, often amounting to a denial of justice, are disclosed. These are well known, and indeed not enlarged upon, but the fact remains that the attraction of a cheap and speedy decision is so great that more important matters are overlooked.

Quite apart from cost, Newbolt must also have been aware that the referee’s office was intended to be flexible by referees hearing matters of account, and enquiry and report. These met the objective of the Judicature Commission. They provided a system of tribunals adapted to the trial of all classes of cases and being “capable of adjusting the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried.” It is interesting to consider precisely what the Commissioners meant by that. One view is that the court could adjust the procedural rights of the parties. Newbolt pioneered this, but subject to the parties’ consent. This may have been adopted from the

---

733 The Great Hall at the Palace of Westminster was the home of the courts before the Law Courts were opened in the Strand.
734 H.C. Deb. Vol. CCV col. 346 13th February 1873
735 n.4. p.13.
736 LCO 4/152 [HPIM 561 ]
practice of arbitrators to extend and adjust the referees' procedural powers which have been described.

Contrast the Commission's objective with Newbolt’s imperative:

The first question then is how the present procedure can be cheapened and accelerated.737

And later when Newbolt wrote:

I only desire to add that in my scheme for cheapening and expediting litigation nothing is done without consent. This by friendly business discussions over the table simplification is effected. 738

I have devised means of enabling the parties to have their disputes decided cheaply and rapidly and my efforts in this direction have been widely approved by the profession.... 739

Newbolt and his colleagues were struggling with a Victorian system of a bygone era with a strict adherence to a culture of stare decisis and a policy of "formalism" where judges at first instance were discouraged from any radical tendencies. Surprisingly there were common objectives the only difference being that the Judicature Commission was operating at macro-level to Newbolt's micro level of management.

Having considered Newbolt's era in chapter 3 and part of the post-war era in chapter 4, it is useful to consider in more depth the type of subordinate jurisdiction which was said by Burrows to have been phased out. Although Evershed considered it an important part of the referee's jurisdiction. The following case analyses have been extracted from the referees notebooks of those times 1947-60.

6.1.2. Subordinate jurisdiction as a facet of macro-caseflow management

Mr Burrows' contention in his seminal article in the Law Quarterly Review740 that the referees were no longer mere assessors of damages and they did not take accounts, but were occupied in ".... trying a large number of non-jury actions and doing the work as a High Court judge" is not sustained. A few examples from the referees' notebooks and records will suffice to demonstrate that this was not quite accurate.

On the 11 April 1960 Cloutman sent a long Memorandum to Sir George Coldstream, the Lord Chancellor's Permanent Secretary. In it he referred to the Second Interim Report of the Committee on Supreme Court Practice and Procedure presented to Parliament in March 1954.741 He argued that ever since Dunkirk Colliery v Lever,742

737 LCO 4/152 [HPIM 561]
738 Author's italics.
740 n.15.
where the referee was required to give reasons for his decision the role of the referee had become more difficult.\textsuperscript{743} He wrote:

Today, an Official Referee is required to try involved cases in contract which are unsuitable for the non-jury list because of the voluminous particulars and schedules involved. He deals with those cases throughout their interlocutory stages. The cases are long, the trials say take one or two months or longer and the judgments will deal with both fact and law, with the same particularity as the cases have received from their inception. Because of the nature of these cases, a severe restriction upon the right of appeal is accepted without question, although the sums involved are often exceedingly large. (RSC Order 36a Rules 1 ?4 and 6).

Accordingly for this class of work this Jurisdiction of the Official Referee is precisely that of a Judge (Order 36a. r.7), and to suggest today that he should not give his reasons is inconceivable.\textsuperscript{744}

Taking Burrows’ point Cloutman wrote:

The truth is that for half a century or more he has not been a referee at all, but a judge of the heaviest cases in contract.

Cloutman says that the referee at this time and for half a century had been in effect “a judge of the heaviest cases in contract.” This can be tested against research in this era. Taking Cloutman’s term of office, 1948-63, the evidence of the judges’ notebooks does not always support this view. In the early post-war research period the cases could not be described as “the heaviest” and cannot be equated with the heavier cases referred to referees in the later part of the 20\textsuperscript{th} century save for a few exceptional referrals such as \textit{Westheath Contractors v Borough of Grantham} heard in March 1945 concerning 169 building units comprising 63 dwellings.\textsuperscript{745}

\textbf{6.1.3 Aspects of subordinate jurisdiction}

The trend towards much more complex cases in the construction field really starts after 1963 when the R.I.B.A. published its new form of contract containing clauses which the House of Lords in \textit{Bickerton v Northwest Metropolitan Hospital Board} \textsuperscript{746} condemned (per Lord Reid) in saying:

\begin{quote}
......the latest edition of the contract, the position reflects no credit on the RIBA...... I return to my earlier criticism of the form of contract and emphasise that it seems lamentable that such a form used to govern so many and such important activities throughout the country, should be so deviously drafted with what in parts can only be a calculated lack of forthright clarity.
\end{quote}

In the same case, Dankwerts L.J., said

\textsuperscript{742} 1878 9 Ch D 25 Bramwell, J., judgment.
\textsuperscript{743} 2/7739 [HPIM 0813] \textit{The Official Referees. Memorandum.}
\textsuperscript{744} LCO 2/7739 [HPIM 0814]
\textsuperscript{745} J.114/3 \textit{T. Eastham K.C Official Referee’s Notebook 1946-1948} [IMA 0032]
\textsuperscript{746} \textit{Bickerton v Northwest Metropolitan Hospital Board.} [1970] 1 W.L.R. 607; 1 ALL E.R. 977 at pp.979, 989
It was a new form: ....Unfortunately for this Court, it has produced problems which have given this Court as well as other Courts in the past, difficulties of interpretation which defied the experienced intelligence of the Counsel concerned with these matters and even more the efforts of the Courts concerned, to give a reasonable and clear meaning to the terms of the contract.

This study has shown little evidence of highly complex building cases and difficult matters of interpretation in the referee notebooks: only in the case files after 1960 is this evident. Mr Burrows' contention in his seminal article in the Law Quarterly Review that the referees were no longer mere assessors of damages and they did not take accounts, but were occupied in “.... trying a large number of non-jury actions and doing the work as a High Court judge” is not entirely sustained as we find below.

(a) Matters of Enquiry and Report

Re: a Lease of St Martins Theatre London WC2 and re Landlord and Tenant Act 1954 Bright Enterprise Ltd v Right Honourable Lord Willoughby de Burke was a matter for enquiry and report with R E Megarry QC appearing on behalf of the applicants which heard evidence from expert surveyors and engineers as to the state of the theatre and compliance with L.C.C. entertainments regulations. Other cases included: British Electric Traction Co Ltd v Thomas Edwin Langton and Luxury Land Cruises Limited heard on Monday 7 December 1959, John Megaw appearing for the Plaintiff, and Titler v Brown & Another a matter referred from the Chancery Division on 26 March 1956 for enquiry and report as to a dispute over livestock.

(b) Actions on an Account

G Swindon & Co Ltd v William Franklin Stirling Car Hire Services Limited, Launderette (High Road) Limited, Launderette (Boreham Wood) Limited, was an action on the account heard on the 19 November 1959 Lewis Hawser and Mr Trapnell appeared for the parties, both later became referees. Another example was Mory & Co Limited v Regan Brothers (Haulage) Limited involving three issues: a matter of accounting, a counterclaim for negligence and the detention by the plaintiff of a trailer. Butler v Vaughan was a matter of account determined on preliminary issues. Newbold

747 n.15 p. 509.
748 J.116/1 [CIMG 0163]
749 J.116/1 [CIMG 0169]
750 J.114/35 [CIMG 0089]
751 J.116/1 [CIMG 0168]
752 J.116/3 [CIMG 0098]
753 J.114/35 [HPIM 2780].

221
v George Davies (Haulage) Limited\textsuperscript{754} is further evidence that the referees were still dealing with matters of account in the mid-1960s and at local venues. Here Carter sat at the Nottingham County Court. There is also further illustration of this inferior jurisdiction in the court file of Alexander Angell Limited v F C Pilbeam (Male)\textsuperscript{755} a claim for £1,672 3s 5d in respect of the sale to the defendants of diverse quantities of pullets which suffered from coccidiosis caused by various parasitic protozoa.\textsuperscript{756} On the 11 June 1968 the court served notice on the parties stating:

\begin{quote}
any likelihood of a settlement or re-estimation of the length of trial should be communicated immediately.
\end{quote}

It was signed by the clerk to Percy Lamb QC\textsuperscript{757} The case illustrates two features. First, this is not a traditional construction case but a contractual dispute over livestock. Second, as soon as the case is effectively transferred the referee case manages the matter.

(c) Offences under the Defence (General Regulations) 1939 or the War Damage Act 1946

The referees undertook a considerable amount of work generated by wartime legislation whether under the Defence (General Regulations) 1939, or the War Damage Act 1946. During and after the war the court had residual jurisdiction in cases under the Defence (General Regulations) 1939 for building works requiring licenses.\textsuperscript{758} Few of these cases are reported in the Law Reports but there are three cases that appear to fit the above descriptions.

The first of these Woolfe v Wexler is a typical case where the building works were illegal under the Defence (General) Regulations 1939, Regulation 56a.\textsuperscript{759} In that case the builder was entitled to the cost of labour and materials because the works were not illegal as the person paying for the work was not the recipient of the licence. In Audley Land Company Ltd v Kendall the referee required a court expert to deal with questions arising from a Scott Schedule. In excess of the referee’s instructions the expert volunteered further opinion which the referee excluded.\textsuperscript{760} Another example is Strongman v Sincock heard on 12 July 1955 where an architect acquired two licences

\begin{footnotesize}
\textsuperscript{754} 1.116/3 [CIMG 0108].
\textsuperscript{755} 1.115/28 [CIMG 0117].
\textsuperscript{756} Especially of the genus affecting the intestines; it is mainly a disease affecting the animal’s muscles.
\textsuperscript{757} 1.115/28 [CIMG 0124].
\textsuperscript{758} 1.114/14 [CIMG 0091 and CIMG 0092] 8 May 1950
\textsuperscript{759} Court of Appeal, 21 February 1951 [1951] 2 KB154
\textsuperscript{760} [1955]1.W.L.R. 639
\end{footnotesize}
for building work.\textsuperscript{761} The licences were held to be illegal and consequently the builder sued the architect on the architect's implied warranty to pay for the work. This type of work appears to have formed a significant and important part of the referees' jurisdiction in the late 1940s, and in the 1950s.

(d) Assessment of Damages

*Sydney Smith Black Mobile Coaches Limited* \textit{v} \textit{J F Anderson (Male)} provides an early example of an assessment of damages claim for the negligent repair of a Rover car. Here the referee awarded damages because the engine had been re-bored up to the recommended limit and a new cylinder block should have been obtained.\textsuperscript{762} In *Jays (Engineers) Ltd* \textit{v} \textit{Hobb Good Limited}, heard on the 31st January 1949, the referee had to assess damages for 101 defective frames pursuant to a referral for assessment from the Court of Appeal. Finally, *M & L Transport (a firm)* \textit{v} \textit{Horricks}\textsuperscript{763} was an action started in 1957. The trial was held on 11 January 1960 to assess damages. This case proves that such referrals continued up to the 1960s.

There are other references in Eastham's first notebook which also confirm the subordinate role of this court but do not fit the above categories. They include retail trade cases such as *Superclothing Company Limited* \textit{v} \textit{John Betty},\textsuperscript{764} concerning badly made suits sold at discount. Another case *D N L Stepgamy Limited* \textit{v} \textit{Millicent (Birmingham) Limited}\textsuperscript{765} involved the sale of inferior quality dresses and entitlement to repudiate the contract of sale. Another was *La Planche v Newman*. This was a claim for commission on the sale of motor car. It concerned the failure to deliver 500 vehicles on order since May 1948 still not delivered in March 1952.\textsuperscript{766}

These cases were neither complex nor did they pose difficult questions of interpretation.

6.1.4 Conclusions as to subordinate jurisdiction

What we establish here is that despite Burrows and Cloutman suggesting that the referees' jurisdiction was something greater than a referral jurisdiction the referees retained a subordinate jurisdiction as the Judicature Commissioners had intended. The Evershed Report appears to have affirmed that position.\textsuperscript{767} What was different was the

\textsuperscript{761} [1955]2 Q B 525
\textsuperscript{762} J 114/4 [CIMG 0058] 2 March 1948.
\textsuperscript{763} J 116/1 [CIMG0170]
\textsuperscript{764} J 114/1
\textsuperscript{765} J 114/14 p.247. 8 May 1950 [CIMG 0089]
\textsuperscript{766} J 114/21 p. 184 [CIMG0068-0070]
\textsuperscript{767} n.38 at p.40 paragraph 109.

223
nature of the referrals which became increasingly more complex on the construction side and the wide variety of subject matter. This may be demonstrated further by the following analysis on caseflow management.

6.2. Evaluating contradictory trends and results of the two periods
Having recognised the particular status and place of the court in the legal system, and taken note of the advantage of a subordinate judiciary in terms of Newbolt’s informal “Scheme,” it is possible to take an overview of the effectiveness of the “Scheme” its survival. This is illustrated In Chart C.6.1, the Overall Comparison chart, below.\textsuperscript{768} We can then better understand the success of the Judicature Commissioners’ invention in terms of the backlog this work might otherwise have produced in the Chancery and Queen’s Bench Divisions.

\textbf{Chart C.6.1 Overall comparison}

\begin{center}
\includegraphics[width=\textwidth]{chart.png}
\end{center}

\textit{Source: Civil Judicial Statistics Analysis: Official Referees: 1919-70}

\textsuperscript{768} n. 51 Line 39.
Referee Case Management 1919-70

(a) Pre-war period

Chart C.6.1 indicates a corresponding upward trend in workflow to the court in the early part of the pre-war period 1919-22. Referrals and trials increased threefold: referrals from 210 in 1919, to 649 in 1921, and trials from 86 in 1919 to 291 in 1921. To meet such a challenge, Newbolt and his colleagues had little choice other than to experiment with more effective means.

Here we find that trials and settlements follow a relatively similar pattern in the early years up to 1932, but then trial rates appear to increase and settlement rates diminish. In fact, 1932 appears to be the year when the flow rates matched and then diverged. By contrast we also see that there were 96 trials in 1932, and 202 in 1938, an increase of 210 per cent. In 1932, 107 cases were resolved before trial compared with 63 in 1938, a reduction of almost a half. This corroborates our earlier findings using Formulae in Chapter 5 and supports the hypothesis in favour of the efficiency of Newbolt's "Scheme" in terms of earlier settlement.

(b) Post-war period

Chart C 6.1 indicates that the pre-war trend is reversed after the war in terms of numbers of cases disposed before trial, and the number of cases tried. In the pre-war period from 1932 the chart demonstrates that whilst the number of disposals before trial (settlements) declined trials increased. The reverse phenomenon is partially true of the post-war period. From the time of Richards' appointment in 1962, trial rates decreased whilst settlements and disposals increased indicating a more efficient court than in Newbolt's time. Such an impression is not supported because the backlog rates increased considerably as we shall see after 1963.

We further note from Chart C.6.1 an initial steep rise in referrals, trials and settlements; this is followed by a short period of decline in 1952-61, and in turn followed by a further increase in business to a high point in 1952. There is then a sharp decline in referrals between 1952 and 1953, a slight rise to 1955, followed by a two year decline to 1957. There is a further increase in business for the next two years to 1959, but thereafter a slump to 1962, followed by a sharp rise in referrals which continues to 1970.

\[59\%\]

See: Chart C.6.3
(c) Comparative Analysis

Having considered this it is appropriate to consider the two periods comparing them at their most effective. For this purpose, here we select years 1919 and 1923 and 1962 and 1970 because they represent the most efficient phase of each period.

<table>
<thead>
<tr>
<th>Table T. 6.1 Newbolt/Richards Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>Referrals</td>
</tr>
<tr>
<td>Settlement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1962</th>
<th>1970</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals</td>
<td>407</td>
<td>902</td>
</tr>
<tr>
<td>Settlement</td>
<td>90</td>
<td>329</td>
</tr>
</tbody>
</table>


If we take the years 1919 and 1923, referrals increased from 210 in 1919 to 470 in 1923, an increase of 224 per cent. In the same period settlements increased from 44 in 1919 to 144 in 1923, an increase of 327 per cent. By contrast, if we then take the years 1962 and 1970, referrals increased from 407 cases in 1962 to 902 cases in 1970, an increase of 222 per cent. In that same period, settlements increased from 90 to 329, an increase of 366 per cent.

We find here a very close comparison between Richards, Percy Lamb and Carter who just beat the court of Pollock Newbolt and Scott. It is contended here that the reason for this high level of settlement and efficiency was due to Newbolt’s and Richards' respective approaches to micro-caseflow management. We subsequently consider the effect of the backlog which may alter our view on efficiency in these periods.

6.2.1. Significance of the “Scheme”

Whilst the Commissioners were anxious to reduce the list by referring complex technical matters to referees, Newbolt wanted to augment the process in his use of experts as described in his reports to the Lord Chancellor. The dilemma in 1873 and 1876 had been to reduce the backlog in the lists and relieve overworked judges because in those two years there was an increase of 53 per cent in Chancery from 301 cases to

771 Lord Salmon in his tribute to Norman Richards said: “Norman had a genius for recognising what really mattered and never overlooked what did. He also had a pronounced distaste for the modern tendency of wasting much time and money in probing the irrelevant.” The Times 17 January 1978 p.17 Issue 60212; col. E.

772 Paragraph 6.2.4 and Charts C. 6.2 and C. 6.3
making an average annual increase of 27 per cent. The comparison with the critical years of this research highlights the point very simply, the common denominator being lack of manpower. Just as the senior judiciary were required to invent a subordinate judicial post to alleviate the pressure on the High Court list at a macro-case management level, so the referees in the early 1920s were required to innovate at the micro-case management level. The pressure on the High Court non-jury list can be demonstrated by the tripling of cases referred to the referees in the years 1919-21:

Table T. 6.2 Referral influx 1919-21

<table>
<thead>
<tr>
<th>Year</th>
<th>1919</th>
<th>1920</th>
<th>1921</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of referrals</td>
<td>210</td>
<td>393</td>
<td>649</td>
</tr>
</tbody>
</table>

Source: Civil Judicial Statistics 1919-21

6.2.2 Effectiveness of the “Scheme”

Whilst it has not been possible to find any contemporary diaries, or notebooks from Newbolt’s time, quantitative analysis in Chapter 5 and here has been possible by reason of Civil Judicial Statistics. A fundamental question in this thesis is, whether the invention and evolution of a rudimentary caseflow management and consensual interlocutory process made referees more efficient. That has been determined to an extent in Chapters 3, 4, and 5, and has been further considered above in Chart C.6.1. The formulae analysis in Chapter 5 showed us that the Newbolt era was slightly more efficient in terms of disposals and trials. Newbolt’s court also appears to have a higher percentile average applying Formula A; a higher percentage of cases tried to cases brought in applying Formula B in the difficult period 1932-38 when the court was understaffed (the converse of what is described below in relation to settlement rate) and a higher overall percentage of cases tried to cases referred applying Formula C.

Taking the period 1928-31 as the best period of settlement in the Newbolt era the rates of settlement are:

Table T. 6.3 Rates of disposal before trial 1928-31

<table>
<thead>
<tr>
<th>Year</th>
<th>1928</th>
<th>1929</th>
<th>1930</th>
<th>1931</th>
</tr>
</thead>
<tbody>
<tr>
<td>36%</td>
<td>41%</td>
<td>40%</td>
<td>41%</td>
<td></td>
</tr>
</tbody>
</table>


Whilst the average rate of disposals to referrals in Newbolt’s 17 years in office was 33 per cent, that average rate was exceeded in the 4-year period in Table T.6.3 to 40 per cent.
Table T.6.4 Rates of disposal before trial 1963-66

<table>
<thead>
<tr>
<th>Year</th>
<th>1963</th>
<th>1964</th>
<th>1965</th>
<th>1966</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate</td>
<td>41%</td>
<td>32%</td>
<td>37%</td>
<td>37%</td>
</tr>
</tbody>
</table>


Table T.6.4 demonstrates that such an efficient rate was not matched until the early 1960s, 1963 being the best year in terms of a 41 per cent rate of disposal before trial. The average rate of settlement in that period was 37 per cent.

It may be concluded here that if Newbolt was the inventor of rudimentary micro-caseflow management then Richards was its promoter who ensured its survival.

6.2.3 General conclusions

Newbolt’s attainments must be considered in the light of a fairly sharp decline in disposal rates in the years following 1931. The rate of settlement in the years 1932-38 averaged a rate of 23 per cent, as against the 27 per cent average for the period 1919-38. In this case it is likely that the court could not cope with the influx of cases with only two referees in post.

Hansell retired from the court in 1931 which left Newbolt and Scott. Scott retired in 1933 and was replaced by Pittman.

Pittman and Newbolt were in post until 1936 when Newbolt retired. Eastham replaced Newbolt that year.

Thus, in the period 1932-38 the referees were one judge short of their quota of 3 judges. This may account for the decline in settlements.

However, Newbolt’s achievements when compared to his immediate successors were still greater. Although there were 4 referees in post in the period 1947-62 they did not equal Newbolt’s record for the disposal of cases before trial. In this post-war period, 1947-62, the average settlement rate was 16 per cent. Whilst this seems less proficient, account must be taken of the increased workload following the war. Between 1932 and 1936, the less efficient part of Newbolt’s tenure, 2,439 cases were referred to the court, an annual average of 348 cases per year. Between 1947 and 1962, 8,955 cases were referred, an annual average of 560 cases per year. This represents an increase of 38 per cent in terms of annual caseload compared to the earlier period. This increase after the war meant that each judge was responsible for an average of 140 cases in the Eastham-Carter period.
By contrast in the Newbolt period, each judge had been responsible for an average of 174 cases so that the pressures on Newbolt and his colleagues were greater in terms of numbers. There is some direct contemporaneous evidence in the notebooks and pleadings files reviewed in Chapter 4 that cases were becoming more complex in that second phase and this may account for the variation in this analysis. Perhaps Newbolt's legacy was written in the *Final Report of the Supreme Court Committee on Practice and Procedure* which embodied much of the experience of Newbolt and Eastham and extended the Judicature Act 1873 definition as to the court's jurisdiction by reference to "the interests of expedition, economy or convenience or otherwise." 773

6.2.4 Analysis of backlog

We may recall that in chapter 5 we considered the effect of the backlog on this rudimentary form of micro-caseflow management. We concluded at paragraph 5.3.3 that the referees in Newbolt's time were able to keep the backlog under control to the extent of a third of their average annual caseload. After the war the backlog became more difficult to reduce and between 1948 and 1970 stood at about two-fifths of the average annual caseload. 774 In paragraph 5.4.2 we noted that before the war each referee had an average backlog of 40 cases, and after the war each had a backlog of 76 cases on average-a 90 per cent rise. In Table T.5.11 we noted an average backlog of 144 cases per referee before the war compared with a post-war average of 176 cases per referee. Finally at paragraph 5.4.3 (b) we found an average backlog rate of 32 per cent before the war and 39 per cent after.

(a) Backlog at the beginning and end of the year

The basis of our quantitative analysis of the backlog in chapter 5 was the backlog of cases pending at the end of the year. This was taken because those were the cases that were not heard in that year. *Civil Judicial Statistics* provide the number of cases pending at the beginning and the end of the year. Consequently, we may compare this data at the beginning and end of each year. This may indicate the efficiency of the court in dealing with the backlog. It is also interesting for us to note trends in the application of the formulae in chapter 5 to see whether the earlier trends correspond with these findings.

773 n.22. Paragraphs 107,108.

774 See: Table T 5.4.
Taking therefore the Spreadsheet\textsuperscript{775} we can extract the data to produce Chart C.6.2 backlog analysis below:

Chart C.6.2

Source: Civil Judicial Statistics Analysis: Official Referees: 1919-70

Chart C.6.2 illustrates that from 1919 to 1922 the referees had difficulty coping with the heavy inflow of cases from the Queen’s Bench non-jury list. But between 1923 and 1937 they managed to keep the backlog below 150 cases. After the war there is a similar situation but in the early 1960s the backlog at the end of the year continuously rises.

\textsuperscript{775} n. 51 Lines: 6B-6U and 6 AD - 6 BA, and 16B-16U and 16AD-16BB.
(b) Closer analysis of the backlog
A better understanding may be obtained from Chart C 6.3 which gives a closer look at the backlog figures.

Chart C.6.3.

Here the line graph above the x axis denotes an increase in the backlog and the line below a reduction. We can see that in the early years when Newbolt reported to the Lord Chancellor about his caseflow techniques the graph line appears below the x axis. By reference to the Backlog Analysis Spreadsheet\textsuperscript{776} we can see reductions of 42 cases in 1923 and 1924, 23 in 1924; 3 in 1925, 9 in 1926; 36 in 1928 and 1 in 1935. The reduction in 1922-23, 1924 and 1928 may have some bearing on Newbolt’s exercise of caseflow processes but it is difficult otherwise to find a very marked effect.

\textsuperscript{776} n.51 and Backlog Analysis 1919-70 (Appendix)
After the war the earlier formulae results appear to be supported with the exception of three reductions in the backlog in 1952 of 61 cases; in 1956 of 51 cases; and in 1960 of 40 cases.

(c) Observations

The problem with the theory of micro-caseflow management is that whilst it appears to have reduced trial times and increased disposal rates before trial it did not prevent an increasing backlog. This backlog in the early to late 1960s was higher than the number of referrals and to that extent made the court inefficient. The obvious reason was the enormous increase in referrals especially between 1960 and 1970 and the fact that there were just 3 referees in post. The other reasons lie in the types of case being referred and the increasing complexity of building cases after 1963 when the Joint Contracts Tribunal published its new version of the RIBA building contract.\(^7\) The form itself demonstrates the increasing complexity of such cases. The question, however, can only be approached from an analysis of the type of case that entered the list in the context of the statistical analyses advanced in chapter 5 and whether it is possible to achieve some understanding of what was causing the backlog and why caseflow management could not, of itself, deal with the problem.

To understand what may have been increasing the backlog or causing it, analysis of case type is essential. The case types have been analysed in respect of the two latter post war research periods 1959-62 and 1965-1967. The period, 1947-1959, has also been examined in chapter 4 to consider why cases were taking longer despite some evidence of the usage of micro-caseflow management.

One of the difficulties is that the numbers of officeholders fluctuated in the pre and post-war eras. The referees were recruited from the ranks of leading counsel some without previous experience of the referees’ court. Most were not scientific men or mathematicians, and found the job tedious. Others were not employed full-time but were deputies, especially in the post-war period.

Manpower was difficult because of Treasury limitations so that the minimum of four was not realised until after the war. In that time, Hansell replaced Pollock in 1927, and was not replaced when he retired. Newbolt was replaced by Eastham in 1937. Between 1932 and 1942 there were only 2 referees in post. In the post-war era there were 3 referees in post from 1942-47. From 1948-56 there were 4 referees in post, but only 3

\(^{7}\) Royal Institute of British Architects.

In chapters 3 and 4 we noted from the analysis and study of Eastham's cases a gradual increase in jurisdiction, both in terms of quantity of cases and complexity. We noted the particular complexity of construction cases which after the war comprised mostly cases of dilapidations and War Damage Act claims. Within a few years however such cases were becoming more time consuming with the use of Standard Form Contracts and builders complex pricing and valuation aspects involving quantity surveyors who became specialists in construction claims work. The referees also engaged in other technically complex work such as salvage claims. Whist the cases tended to become more complex, for decades the referee still remained a court of referral and dealt with other technical matters although a large number were of low value. Chapter 4's qualitative analysis and literature review of the judicial records demonstrates the complexity of some cases on the one hand, and the relatively low value on the other. This is supported also by the evidence contained in the Data Collection. Despite such cases being of lesser value, the increasing number of referrals and their variety would appear to be the main cause of the build up of backlog in the 1960s.

6.3 Referee micro-caseflow management overview

Here we examine factors which challenged the viability of caseflow management.

6.3.1 The backlog problem

Having calculated the average backlog of cases for each referee in Table T.5.4, and having calculated the average backlog percentage from the formula at paragraph 5.3.3, we may conclude that an average pre and post-war backlog percentage is:

\[
32\% + 39\% = 71\%
\]

We can therefore take this as an overall percentage of backlog to referrals in the whole research period or an average backlog of 52 cases per referee per year. In the period 1944–60 Judicial Statistics illustrate a fluctuating backlog. This has been further illustrated in Chart C 6.3 above. Chart C 6.1 being an overall comparison of cases

---


779 n. 778 Appendix Data Collection.
brought in, tried and disposed of, illustrating a backlog between 1947 and 1960, varying from 200 cases in 1947 (i.e. 80 per cent of the 248 cases referred) to 159 cases in 1960 (i.e. 65 per cent of 241 referrals made). This indicates an overall improvement in the backlog by 15 per cent on the basis that the backlog in 1947 was 80 per cent of the referrals and in 1960, 65 per cent of the referrals.

6.3.2. Possible effect of micro caseflow management

The question is what was causing this improvement? Was it due to micro caseflow management technique or some other factors? The highest years of backlog in this period were 1949 with 267 cases, and 1951 with 272 cases. These figures correspond with the two highest recorded rates of referrals. In 1949, there were 468 referrals, and in 1950, 501 referrals.

The rates of referral do not come within this range again until 1970 when there were 525 referrals against a backlog in that year of 446 cases. The difficulty here of managing the case flow appears to be one of quantity and not complexity. A study of J114/5 and 6 in the period 1947–49, for example, indicates an influx of War Damage Act claims and it appears that it was this influx that boosted the number of referrals and contributed to this backlog. What is also interesting apart from the Judicial Statistics returns is simply to consider the number of notebooks that the cases generated in the years 1944-54, the time of Eastham’s stewardship.

Table T 6.5 Number of referees’ notebooks

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of notebooks</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>8</td>
<td>13</td>
<td>10</td>
<td>9</td>
<td>6</td>
<td>11</td>
<td>8</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Judges' Notebooks J.114/1 to 34

If we take it that there were 77 notebooks in this decade, and roughly 7 books per year, then in any one year where there was an excess of 7 notebooks we might regard it as an exceptional year. We can therefore single out the years 1947–50 and 1952-53. This may indicate either that there were an increasing number of cases in those years, or otherwise, the cases were of increased complexity in terms of the judge having to hear more technical evidence.

We can also see by reference to table T.6.6 below that the number of cases covered by such entries increased enormously between 1947 and 1950. What we may also note is

---

780 n. 51 Lines:16AF and 16AH.
781 Notebooks J. 114/5 and J. 114/6, T. Eastham K.C. (1947-49)
that the surviving notebooks cannot possibly represent the full quota of cases referred to
in Table T 6.5 and many records must be missing as suggested earlier in Chapter 4.

Table T 6.6 Referees’ caseload and value of cases

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals</td>
<td>248</td>
<td>309</td>
<td>468</td>
<td>501</td>
<td>458</td>
<td>422</td>
<td>450</td>
<td>438</td>
<td>317</td>
<td>280</td>
<td>276</td>
<td>257</td>
<td>241</td>
<td></td>
</tr>
<tr>
<td>Backlog</td>
<td>202</td>
<td>218</td>
<td>269</td>
<td>223</td>
<td>272</td>
<td>211</td>
<td>208</td>
<td>225</td>
<td>220</td>
<td>169</td>
<td>167</td>
<td>186</td>
<td>199</td>
<td>159</td>
</tr>
<tr>
<td>Average value*</td>
<td>286</td>
<td>553</td>
<td>380</td>
<td>389</td>
<td>308</td>
<td>315</td>
<td>-</td>
<td>-</td>
<td>461</td>
<td>297</td>
<td>534</td>
<td>-</td>
<td>416</td>
<td></td>
</tr>
<tr>
<td>Effective disposals</td>
<td>183</td>
<td>399</td>
<td>418</td>
<td>454</td>
<td>452</td>
<td>519</td>
<td>425</td>
<td>432</td>
<td>443</td>
<td>368</td>
<td>282</td>
<td>257</td>
<td>281</td>
<td>281</td>
</tr>
</tbody>
</table>

*this value has been calculated from the values of judgments given by the referees as recorded
in the notebooks sampled as stated in the Appendix C.6

Between 1949 and 1955 there were four referees in post. This establishment disposed
of more than 400 cases a year, and reduced the backlog from 269 cases in 1949, to 220
in 1954. Their disposal rate was maintained until 1955 and then declined, as did
referrals, for a while. The number of referrals in this period doubled from 248 in 1947
to 501 in 1951, and then roughly halved by 1960.

6.3.3. Nature of referrals and probable cause of delay

Most of the cases after the war were dilapidations claims, War Damage Act claims,
damage to property (both personal and real), marine claims for trawlers and dredgers,
general builders claims for non payment of invoices, variations, extras, matrimonial
property claims, nuisance, car repairs, partnership disputes, claims for damages for
clothing, skins and hides, sale of builders materials and conversion of property as well
as some negligence actions. Some negligence actions were permitted in this Court until
1954. There had been controversy on this point in the case of Osenton v Johnston
where the House of Lords decided against the referees doing professional negligence work.783
Parliament conferred a right of appeal so the referees could undertake such work.

We found in chapter 4 a number of examples of micro caseflow management techniques
being applied in building cases, especially in cases where preliminary issues were
raised. In chapter 5 we found that building cases were the more numerous (Table T.
5.25, 5.26, 5.33 and 5.34). After the war such building claims were mostly claims by
builders for extra work and War Damage Act claims in the nature of assessments of

---

782 n.51
783 [1942] A C 130. Such appeals were permitted on a question of fact relevant to a charge of fraud or
breach of professional duty. See: Section 18(1) Supreme Court Act 1981 and under RSC Order 58 r. 4
(1) (b)
damages. There were also a number of instances of matters of account and enquiry and report as has been noted at paragraph 6.1.2 and 6.1.3. A number of complex account matters were dealt with and some of these undoubtedly contributed to delay and backlog e.g. Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties.) Our statistical analyses and the referees’ notebooks indicate that the most probable cause of delay was the increasing complexity of cases and an increasing number of claims and referrals of a building nature. Such delay caused a build up of cases in the list causing an increasing backlog especially after 1963.

In summary the notebooks show that in 1947 cases for works carried out, breaches of specification, and claims for defects of various types were heard. In 1948, there is evidence of valuation of building work and damages for dilapidations cases. In 1949, further evidence of defective building works, non payment of invoices and claims in respect of builders materials. In 1950, there is evidence of claims regarding breaches of building regulations by builders and the beginnings of more complex cases involving what contractors termed “loss and/or expense,” i.e.: damages for breaches of the employers obligations to the builder mainly in respect of additional works, extra labour and other charges. Most of these cases in this period were of a value under £500.

Taking the period 1951-56 we find a number of claims for valuation of builders’ works in 1951, followed in 1952 by claims for defective work and bad design as well as more complex civil engineering cases. By 1955, we find claims for negligence against surveyors, followed in 1956 by actions for breaches of planning regulations, non-payment of invoices and claims for extra costs of builders’ works. So from the early 1950s there are the beginnings of more difficult building claims, and indications that the claims were of increasing value involving more complex quantification of damages. For instance, one such case in 1952 refers to 121 items of work. We also see the emergence of expert witnesses being called more frequently with rare appearances of single joint experts or matters referred to a surveyor. We find the referees frequently dealing with matters by way of preliminary issue. There is some evidence of encouragement for settlement as well as orders for experts to agree “figures as figures.” In one case, in 1959, the experts were required to meet together and agree figures. This became common practice in the 1980s. There is increasing technical

785 In particular those of Sir Tom Eastham K.C.
786 Practice where the quantity surveyors on both sides agree that in the event of liability being decided the quantum figure will be that as they have agreed.
complexity on the building side with regard to the employment of quantity surveyors, the valuation of variations and the quantification of “loss and expense.” There is evidence of claims in respect of the date of practical completion, claims for liquidated damages and delay, extensions of time, certification, and valuation of variations and interpretation of contract clauses. As between 1957 and 1960 there is further evidence of claims for additional builders work, valuation of work, completion date, time defects and quantum merit claims. In short, we see a gradual increase in the complexity of building claims which increasingly required more time and expertise. Thus, to an extent the referees’ court gradually evolved into a construction court.

Having considered the backlog problem and its probable causes, and before synthesising the data and concluding we now consider the limitations imposed upon this research by the extent of the contemporaneous material that survives.

6.4 Research limitations

As explained earlier at paragraph 1.9. Civil Judicial Statistic’s Table XII\textsuperscript{787} for the years 1919-38 and 1947-70 may not contain all the cases of this court.\textsuperscript{788} Neither can we be sure that the notebooks reviewed in Chapters 3 and 4 and those summarised in the Appendix are complete for the reasons given in paragraph 6.3.2.\textsuperscript{789} We must also have regard to the lack of Minute Books and Judge’s Notebooks in the pre-war period. Thus, the analysis of the critical period 1923-33 can only be assessed in Chapter 5 using limited sources. Whilst this gives us an indication, the research is restricted by a lack of contemporaneous judges’ notes or minutes recording the time taken in early case management “experiments.” This is compensated to an extent by the direct evidence of Newbolt’s correspondence with, and reports to, the Lord Chancellor, as well as his publications. The two research periods are interrupted by the Second World War with no Judicial Statistics between 1939 and 1946.\textsuperscript{790} I was able to trace Eastham’s Notebook covering the period 1944-46.\textsuperscript{791}

\textsuperscript{787} Return for the Official Referees’ Court.
\textsuperscript{788} In an interview with the author The Head of the T.C.C stated that he had checked Judicial Statistics recently and found discrepancy with recent returns from the court.
\textsuperscript{789} See Appendix for: Data Analysis of Minute Books Nos. 4 & 5; Cases Not Recorded in Minute Books [1959-62]; Data Collection: Minute Book/Judges’ Notebook Analysis at end of Second Period(Second Sub-Division)as an efficiency demonstration[1965-67]; Cases Not Recorded in Minute Books [1965-67].
\textsuperscript{790} See: Appendix. Letter to author from Mr Vollmer, House of Lords Library.
\textsuperscript{791} J.114/1.
6.5 Referee workload

From the average calculations in Chapter 5 we can argue that there is a probability that the referees’ efficiency was affected by the measures they adopted to resolve cases earlier without the need for trial. We may also suggest that trials were expedited by the various means used by Newbolt and others whether by hint to counsel, by adjournment or by the definition of preliminary questions and issues. We know that Newbolt considered he could reduce 80 per cent of the trial time by his use of a single joint expert, and we also know that his “discussions in chambers” were effective. This may have affected the figures in Table T.6.7 below which is compiled from the analysis at paragraph 6.2:

<table>
<thead>
<tr>
<th>Table T.6.7 Summary of average annual caseload and disposals per referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals</td>
</tr>
<tr>
<td>Trials</td>
</tr>
<tr>
<td>Resolved before trial</td>
</tr>
<tr>
<td>Referrals</td>
</tr>
<tr>
<td>Trials</td>
</tr>
<tr>
<td>Resolved before trial</td>
</tr>
<tr>
<td>Trials</td>
</tr>
<tr>
<td>Resolved before trial</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics 1919-38 and 1947-70

This table gives us an overview of the research periods. It is a general picture from which we can compare the workload of the court on an average *per capita* basis. What we find is that the differences are marginal before and after the war save that in the two sub-periods after the war there appears to be marked differences in the number of cases tried and those settled. We may conclude that there was a greater emphasis upon trials in 1959-62, and upon disposal before trial in 1965-67.

6.6. Conclusions

Our aim in this chapter has been to present a synthesis of Newbolt’s “Scheme” and rudimentary micro-caseflow management with the objectives of the Judicature Commission. We have also considered the subordinate character of the court and its referral jurisdiction as well as further discussing the backlog problem and its effect on micro caseflow management.

*At macro-case management level we may conclude:*

6.6.1. That there was a linkage of objectives, insofar as the Commission established a subordinate judicial officer, who could act more informally to suit the exigencies
of the case, and the needs and convenience of the parties, when the case demanded.

6.6.2. That the Commission achieved their objective of reducing pressure on the superior court judiciary by the referral process in much the same way as the old Chancery practice of referrals to a master reduced pressure on the Court of Chancery.

6.6.3. That expensive jury trials were avoided by referrals of such case to referees in the nineteenth century and of the non-jury list cases in the 1920s.

6.6.4. That by referral of these cases, the High Court list was relieved of cases that might otherwise have caused considerable delay to other litigants.

6.6.5. That there was an advantage to litigants in the referral of matters of account recognised by the Evershed Committee which formed a significant part of the referees' work. The referees submitted that the process was expensive but the Committee saw advantage to litigants in retaining it. The research shows that there were occasional referrals of such cases.

At micro-caseflow management level we may conclude:

6.6.6. Chart 6.1 measures the numbers of cases brought in against trials and disposals. This shows how disposals trebled until the early 1960s. The Chart findings support the hypothesis in the earlier period up to 1932 when the disposal rate decreased. An overall trend appears to be that as disposals before trial increase so does the backlog, but where this happens there is an increase in referrals.

6.6.7 We find efficient disposal rates both in Newbolt's time and Richards's time. In both periods compared in Table T.6.1 there is a doubling of referrals. Table T.6.1 also confirms, for the years analysed, a tripling of disposals before trial in Newbolt's time and an almost quadrupling of disposals in Richards's time. We see a disposal rate of 40 per cent in Newbolt's time and 37 per cent in Richards's time. The difference is insignificant when we consider the numbers of cases the court dealt with in those comparative times. Since we know that both Richards and Newbolt were activists and encouraged settlement, we may conclude that such results are due to the use of micro caseflow management techniques as described in chapters 3 and 4. If that is right then the hypothesis is supported by these results, albeit limited.

---

792 n.32 p.40 paragraph 109.
793 Paragraph 6.2 (c)
6.6.8 From the further analyses of backlog we find that the referees, on the whole, managed to keep the backlog at a certain limit with varying degrees of success as illustrated in Chart C.6.2 and Chart C 6.3. There was a time from 1963 when the backlog seemed to spiral, and it is clear the referees could not keep it at previous levels.

6.6.9. The jurisdiction after the war became more diverse and complex\(^794\) as also observed in chapters 2, 3, 4, and as noted in the appendix data collection.\(^795\)

6.6.10. The backlog proportionately decreased after the war from a high of 80 per cent of referrals in 1947 to 65 per cent of referrals in 1960.\(^796\)

6.6.11. Judicial Statistics are the best evidence we have, apart from contemporaneous materials, of the workflow of this court. We can hypothesise and draw reasonable conclusions on the balance of probability as to the usage of a form of micro caseflow management in these times.\(^797\)

6.6.12. The average analyses in Table T. 6.7 suggest marginal differences between the pre and post-war periods. This is previously confirmed by the formulaic analyses in chapter 5, but taking into account the rise in backlog and increasing referrals such differences also noted at Table T.5.11 are not surprising.

6.6.13. The dramatic rise in backlog between 1963 and 1970 has been attributed to the increasing number of referrals from 441 in 1963 to 901 in 1970, a 48 per cent rise.\(^798\) It has also been attributed at paragraph 6.3.3 to the increasing complexity of cases especially in the building field. This is despite the caseflow management of Richards and the fact that between 1963 and 1970 Richards and his successors nearly doubled the rate of annual disposals from 183 in 1963 to 329 in 1970.\(^799\)

\(^{794}\) Paragraph 6.2.4(c).
\(^{795}\) See Appendix for: Data Analysis of Minute Books Nos. 4 & 5; Cases Not Recorded in Minute Books [1959-62]; Data Collection: Minute Book/Judges’ Notebook Analysis as an efficiency demonstration [1963-67]: Cases Not Recorded in Minute Books [1965-67].
\(^{796}\) See: Paragraph 6.3.1.
\(^{797}\) See: Paragraphs 6.3.3 and 6.4.
\(^{798}\) n.51 Line 5 AT-BA
\(^{799}\) n.51 Line 14 AT-BA

240
CHAPTER 7
EXPEDITION AND ECONOMY IN CASEFLOW MANAGEMENT

This chapter synthesises the conclusions as to the evolution of the “Scheme” described in earlier chapters and addresses the research questions which we asked in chapter 1.

7.1 Research questions

The research questions posed in chapter 1 were:

(g) why the office of referee was invented and what caused and facilitated case-flow management?

(h) what was Newbolt’s “Scheme,” and what were the reasons for his application of this rudimentary form of case management?

(i) what was the impact of such “Scheme” according to the literature review of the archival materials that survive and what conclusions can be drawn?

(j) to what extent did Newbolt’s “Scheme” promote expedition and economy in the court’s work?

(k) to what extent, if at all, did the referees promote settlement and save costs?

(l) what was the impact of this “Scheme” as ascertained by qualitative and quantitative analysis of Judicial Statistics and the original court records?

Taking each of these in turn:

(a) why the office of referee was invented and what caused and facilitated caseflow management.

We can answer this question in the context of chapter 2. Our conclusion is that to an extent referees adopted the old Chancery practice of reference to a master or chief clerk, or to an arbitrator under the Common Law Procedure Act 1854. It was also a substitute for a lay jury. It was invented to overcome the deficiency in the Common Law Procedure Act 1854 of non-compulsory referral, and needless expense of referral back to the court to correct erroneous awards of commercial arbitrators. What caused and facilitated a rudimentary form of caseflow management were the outmoded trial system, the divergent remedies in different courts of separate jurisdiction, and the backlog of cases, some of which involved complex factual matters of a scientific or technical nature. What facilitated it was the subordinate nature of the referee’s office permitting Newbolt to adopt a more flexible and informal process in some areas.
(b) what was Newbolt's "Scheme," and what were the reasons for his application of this rudimentary form of case management?

We ascertained in Chapter 3 that Newbolt's "Scheme" could be identified from his account in *Expedition and Economy in Litigation* and from his reports to the Lord Chancellor. The elements were identified more specifically as:

(a) Special procedures in chambers enabling informal referee resolution and early settlement;
(b) Judicial intervention at various stages of the process to effect settlement;
(c) The use and invention of the single joint expert/court expert;
(d) The use of a proportionate approach to costs so that the costs of the case should have some reasonable relationship to the value of the item in dispute;
(e) The invention of special forms of submission such as a Referees' Schedule;
(f) The formulation of preliminary issues or questions for the court;
(g) Flexibility as to the place of hearing at more economic locations and attendances on site.

The primary reason why Newbolt exercised such innovative powers, usually with the consent of both parties, was principally to achieve expedition and economy in litigation. That was his objective and that is what he confirmed to Lord Birkenhead, and what is described in his article in the *Law Quarterly Review*. As is suggested in Chapter 6 there is symmetry between Newbolt and the Judicature Commissioners objectives. Apart from the identified seven elements of caseflow management Newbolt was concerned that the case be brought in as soon as possible. The earlier the case was considered for directions by the referee the better. It was also his view that the trial judge should take his own summonses for directions as was the referees' practice. It was that unique practice that gave Newbolt his chance to exploit his scheme of efficiency and economy. It was at the first directions hearing in chambers where "mere discussions across a table which costs nothing in comparison with the costs per minute in court" were held. These would have been held shortly after the referral and used by him to understand the issues and promote either an effective process or encourage settlement. How far the latter went is not certain but the quantitative analyses in Chapter 5 indicate some marginal effect. Newbolt also suggested that a second summons be taken before

---

n.2 p. 427
n.2 pp. 427-435.
242
trial, a practice followed by his successor Eastham. By these means the court exerted more control over the process.

Newbolt’s use of experts was of particular advantage to litigants resulting in cost and time savings. Newbolt wrote that this saved litigants four-fifths of the time normally spent on such matters.\textsuperscript{804} In Chapter 5 we measured the effect of Newbolt’s “Scheme” in particular at paragraphs 5.4 and 5.9.2.\textsuperscript{805}

The apparent reason for the “Scheme” was the state of the referees’ lists when Newbolt became a referee. Coinciding with Newbolt’s appointment was the acquisition of the non-jury list which trebled references in the three years 1919-21. He refers to this in his July 1920 Report to Lord Birkenhead. He reported that this list “will occupy my Court for a year.” Two cases in that list took eighteen months to reach trial. It is clear that what troubled him is probably what also troubled Lord Bowen in writing anonymously to \textit{The Times} in 1892: “how much is it likely to cost and how soon at the latest is the thing likely to be over?”\textsuperscript{806} Newbolt’s ingenuity was to link cost and time and to utilise the subordination of his office for the benefit of the parties. He did this by means of an alternative process: informal discussions in chambers. He considered settlement to be at the heart of the judicial process in a number of cases. This is what distinguishes him from other referees and judges of those times.

We consider (c) as to the “Scheme’s” impact subsequently.

\textbf{(d) to what extent did Newbolt’s “Scheme” promote expedition and economy in the court’s work?}\textsuperscript{807}

The extent to which Newbolt’s “Scheme” promoted economy and expedition in litigation has already been noted in chapter 3 and its evolution traced and quantified to a degree in chapters 4, 5, and 6.

What emerges is the view that the referees in many cases succeeded in trying cases “within a few weeks after the order of reference.”\textsuperscript{808} That would mean an efficient completion rate for those times and harmonisation with the objectives of Newbolt’s “Scheme.” Eastham made that comment in his memorandum to the Lord Chancellor on 13 July 1954. In that year 302 cases or 46 per cent of the 657 referrals were tried: there

\begin{itemize}
  \item \textsuperscript{804} n.2 p. 427.
  \item \textsuperscript{805} See also Table T.5.38.
  \item \textsuperscript{806} \textit{The Times.} August 10 1892. p.13
  \item \textsuperscript{807} (c) is considered below at paragraph 7.4.
  \item \textsuperscript{808} LCO 2/5976. [HPIM 0936]
\end{itemize}
was a backlog of 225 cases, with 130 others being disposed by settlement or otherwise. The percentage of disposals (otherwise than by trial) that year was down at 15 per cent below the post-war average percentage of 24 per cent.\textsuperscript{809}

We concluded in chapter 5 (Table T. 5.38) that there was a considerable average time saving in those cases where there was evidence of micro-caseflow management. Newbolt attested to the fact that his use of experts could cut trial times by up to 80 per cent. We found that in the two periods 1959-62 and 1965-67 the time saving on average varied between 3 hours 45 minutes and 12 hours 5 minutes.\textsuperscript{810} If the average trial day lasted 3 hours 20 minutes this represents a considerable time/cost saving for the litigants.

Whilst the quantitative analysis supports the efficiency ratings in the earlier period and supports the hypothesis that caseflow management was a factor in achieving this result, the increasing backlog indicates the contrary taking into account the trend of a backlog rise from 163 cases in 1963 to 446 cases in 1970.

According to \textit{Judicial Statistics} presented in Table T. 5.9, the average referrals in the pre-war period were 384 per year with an average backlog of 121 cases per year or 35 per cent of the annual average number of referrals. After the war there were 581 referrals on average per year with an average backlog of 229 cases, or 39 per cent of the average number of annual referrals. This is not surprising and may be accounted for in overall 55 per cent increase in referrals from 7,683 in the 1919-38 period to 13,932 referrals accruing in the post war period 1947-70.

One significant conclusion in chapter 5 is that 9 per cent of all Carter's referrals had some element of micro-caseflow management. Although building cases made up a proportion of the referees work such cases although factually complex did not take up as much time as other cases in the 1959-62 period, but in the 1965-67 period after more complex R.I.B.A forms had been introduced the average time spent on building cases increased on average 10 to 13 hours beyond the time spent on other types of case. If we take into account Tables T.5.40 and T.5.41 these give us some indication that such matters were more expeditiously resolved by caseflow management methods. In Table T. 5.40, 17 instances are documented, and in Table. T 5.41, 14 are documented.

\textsuperscript{809} n. 51.

\textsuperscript{810} Paragraphs: 5.6.2 and 5.7.1..
Apart from these analyses the *Final Report of the Committee on Supreme Court Practice and Procedure*\(^{811}\) acknowledged the "more expeditious form of trial before an Official Referee." Whilst the comment was made in the context of a possible right of appeal on matters of fact the acknowledgement of their reputation is sustained.

\((e)\) To what extent, if at all, did the referees promote settlement and save costs?

The extent to which settlement was promoted is perhaps the most controversial issue in this study. Whilst Lord Birkenhead, did not consider this matter to be the function of the trial judge, Newbolt thought it was his duty to compromise the case so far as the parties allowed him to do so. He did not appear to have any reservation about that. It was easier for him, a subordinate judge, to effect settlement by business-like discussions in chambers than it was for a High Court judge. This could be facilitated by the referees who could adopt a more informal and flexible approach at directions hearings. High Court judges did not have that opportunity, but even if they had such opportunity such conduct would not have been acceptable for fear of undue judicial influence as Birkenhead warned.

Support however for Newbolt's "Scheme" may be inferred from page 13 of the *First Report of the Commissioners*\(^{812}\) where the Commissioners were charged with establishing tribunals that were: "capable of adjusting the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried." The referees carried out the mandate of their tribunal by adjusting the procedural norms to suit the parties and the case, dealing with the matter in a more business like fashion. The referees were the substitute for expensive arbitral references which often entailed further references back to the High Court. They were also a substitute for juries that had difficulty with complex factual cases of a scientific and technical nature. Thus, referees avoided the useless expense of such ineffective processes. There is evidence in chapters 3 and 4 as to the adoption of experts' opinion, and to referrals to experts for determination of certain technical questions. To an extent the referees adopted some practices of surveyors such as the Scott Schedule. In the arbitral context it was the relative informality of the interlocutory process that contributed to the referees' success in micro caseflow management. More particularly it was the seven elements of micro caseflow management identified in chapter 3 that may have given referees the advantage over arbitrators because the referee could issue orders as a High Court judge

\(^{811}\) n.22.

\(^{812}\) n. 5.
particularly in relation to matters of discovery and production of documents. Under the same rule the referee had power to enter judgment. The adjustment of “the rights of the litigant parties in the manner most suitable to the nature of the questions to be tried” encompassed not just the way the judge conducted the trial, but the interlocutory process that some referees undertook to achieve earlier settlement.

In Newbolt’s case this was at the core of his judicial philosophy which he expressed in *Expedition and Economy in Litigation*:

> to use the available machinery of litigation to enable them to settle their disputes according to law without grievous waste and unnecessary delay and anxiety: and in particular to show them how this, if desired, may be accomplished.

It is debatable whether that philosophy was acceptable then or even now as the proper role of a judge in a court of law. Newbolt had that debate with Birkenhead. The latter was clearly of the view:

1. that settlement was of obvious importance to the lay client;
2. there were “dangers” in the judge doing this;
3. clients sometimes desired to have a fight and were sometimes more content with defeat rather than an “inglorious peace.”

That view was probably the view of the senior judiciary of those days. That view does not take into account the financial disparity that often existed between parties to a building dispute which entailed disproportionate legal and expert expense. It does not take account of the financially weaker party being unable to pay either the damages or costs at the end of the case through the war of attrition that such litigation often became. We may consider the examples of cases such as: *Louis Obermenter v Rodwell London & Provincial Properties Ltd* where the trial lasted 19 days; and *Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties)* where the trial lasted 45 days. Pecuniary inequality can lead to procedural disparity, and complexity can lead to protracted proceedings and lengthy trial. In those circumstances, and in consideration of other court users, especially where in Newbolt’s time the list trebled in three years, Newbolt considered intervention appropriate. Whilst a judge may

---

813 RSC (1883) Ord. 36, r.50.
814 n.2 p. 427
have to do justice to each case on the particular facts and merits, he has to dispense justice to all cases in his list. In this latter context Birkenhead’s approach would appear passé.

It has been found in this study that some referees promoted settlement by means of Newbolt’s “Scheme” as described in chapters 3, 4 and 6. Chapter 3 gives twenty examples of judicial intervention encouraging settlement. Newbolt’s letter to The Times dated 4 September 1930[^818] not only confirms his views about the utility of the single joint expert, but also suggests numerous ways in which he could otherwise encourage settlement. Such methodology is further described in his article: *Expedition and Economy in Litigation*[^819] and in his reports to the Lord Chancellor. Chapters 3 and 4 contain a number of examples and references to judicial intervention. There are 29 instances identified in Table T. 5.35. Such illustrations must be taken as a mere indication of what may have been happening on a wider scale in Newbolt’s time.

At paragraph 4.3.2 we noted a number of cases recorded in the notebooks which settled at the commencement of the case, the terms of which were embodied in the referee’s order.

In other areas the referees differed in their interventions. For example, Walker Carter in *Cowley Concrete Limited v Alderton Construction Co Limited*[^820] issued a number of interlocutory orders. The case lasted for four years starting in 1962. Whilst there was some degree of case management it seems it was at the behest of the parties not the judge. On the other hand, Carter’s notes for *W J Barrs Limited v Thomas Foulkes*[^821] records a clear instance of effective judicial intervention regarding expert evidence. Carter was not satisfied and ordered a site visit as a result of which the counterclaim was dismissed. As is stated in chapter 4 his actions brought about a swift resolution of the case.[^822] *Clifton Shipways Co Limited v Charles Lane*[^823] and Carter’s notes dated 2 and 3 March 1960 indicate judicial participation in the final terms of settlement in chambers. Another example of effective caseflow management is *Bogen v Honneyball & Rossal Estates Limited*.[^824] Whilst that case is not a good example of expedition—it took 6 years to resolve—a significant intervention was made by Norman Richards QC

[^818]: *The Times* 4th September 1930 p.11 Issue 45609 col. F.
[^819]: n.2 p 427
[^820]: J.115/1 [HPIM 2685].
[^821]: J.116/3 p.49 [CIMG. 0102]
[^822]: J.116/3 p.49 [CIMG. 0103]
[^823]: J.116/1 p.104[CIMG 0176]
[^824]: J.115/49 [HPIM 2749] and see paragraph 4.3.2
when he directed further and better particulars, the exchange of experts reports, and set a trial date. This was the catalyst for settlement.

Chapter 4, like chapter 3, also supports the hypothesis regarding the effectiveness of rudimentary micro caseflow management. In chapters 5 and 6 we attempted to measure and describe the anti-hypothesis: those cases where there was no effective case management and those which were marginally affected by these processes depending on case type, and the party's adoption of the judge's suggestions. We also measured the backlog and its effect. We found that generally speaking the increased rate of settlement did not lower the backlog. An effective summation is provided in Table T.7.1 and the percentage rates of disposals and settlements.

Taking the research periods before and after the war we can measure the comparative disposal rates as:

<table>
<thead>
<tr>
<th>Year</th>
<th>Referrals</th>
<th>Disposals</th>
<th>Percentage disposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919-31</td>
<td>5,244</td>
<td>1,495</td>
<td>29%</td>
</tr>
<tr>
<td>1932-38</td>
<td>2,439</td>
<td>538</td>
<td>23%</td>
</tr>
<tr>
<td>1948-56</td>
<td>5,923</td>
<td>1,253</td>
<td>21%</td>
</tr>
<tr>
<td>1957-70</td>
<td>7,624</td>
<td>2,707</td>
<td>36%</td>
</tr>
</tbody>
</table>

Sources: Civil Judicial Statistics 1919-38 and 1947-70 and Table T.5.1.

From this analysis we see that from approximately a fifth to a third of cases were being disposed before trial. The mean average is just over 27 per cent which roughly equates with our conclusions at paragraphs 5.9.3 and 5.10 as to 25 per cent. If the hypothesis is right then these figures indicate that as many as a quarter of the cases may have been caseflow managed. Such conclusions appear to confirm a link between the more efficient disposal of business and micro-caseflow management. More so perhaps when we consider that the average rate of disposals to referrals before trial before the war was 27 per cent and after the war 24 per cent, the mean average being 25.5 per cent which equates to the proportion of cases caseflow managed.

At paragraph 5.3.4 the general conclusion we came to from the quantitative study in chapter 5 was that the key to effective micro caseflow management is early settlement or resolution. The average rate of the disposal of cases before trial, and the numbers of cases disposed of, was discussed in paragraph 5.4.1 (b) and in Table T.5.7 from which we concluded an average disposal of 27 per cent of cases before the war, and 24 per cent...
cent after the war. Whilst this is not significant, the average in Newbolt’s time which we calculated as an average disposal of 29 per cent of cases before trial\textsuperscript{826} may be regarded as very slightly above the average and just slightly the more effective.

Tables 15 and 16 in the Appendix to chapter 5 contain more examples of cases settled in court and the time occupied by the court. 

*Martin French v Kingswood Hill Ltd*\textsuperscript{827} is a case in point where there is clear indication of judicial encouragement for settlement. Another example of prompting settlement is found in Chapter 6 and the reference to *Alexander Angell Limited v F C Pilbeam (Male)*\textsuperscript{828} where Percy Lamb’s clerk issued the standard settlement enquiry to the parties. A further example was noted in the *Clifton Shipways Co Limited v Charles Lane.*\textsuperscript{829}

As to overall comparative efficiency of Newbolt and Richard’s times Charts C 5.1 and 2 confirm that referrals in the Newbolt era more than doubled between 1919 and 1923, and disposals before trial more than trebled in the same period. This corresponds to an almost identical doubling increase in referrals between 1962 and 1970 with a similar trebling of disposals.

More importantly the analyses of the *Judicial Statistics* in Charts C.5.2 - C.5.5 indicate support for the proposition that the referees were involved with judicial settlement. The substantial increase in disposal rates is demonstrated by Chart C. 5.2, from 20 per cent in 1921, to 41 per cent in 1931. This is significant. It is arguable that this extraordinary doubling of such rates is due to a more activist role.\textsuperscript{830} On the other hand, this is followed by a decline in disposal rates from 41 per cent in 1931, to 13 per cent in 1937 amounting to a 27 per cent decline which in those years indicates a more passive role. It may also be indicative of a higher focus on reducing the backlog of trials and a lack of manpower as there were only two referees in post in the latter period.

So far as the latter research questions posed in chapter 1 are concerned:

(f) what was the impact of this “Scheme” as ascertained by qualitative and quantitative analysis of *Judicial Statistics* and the original court records?

(c) what was the impact of such “Scheme” according to a literature review of the archival materials that survive and what conclusions can be drawn?

\textsuperscript{826} n. 51 Line 39 for years 1920-36 only
\textsuperscript{827} J116/1 [Oct 2006 Series; HPIM 1964] and J114/34 SH 101355
\textsuperscript{828} J.115/28 [CIMG 0117]
\textsuperscript{829} J116/1 p.104. [CIMG 0176 .]
\textsuperscript{830} n. 51 Line 39C to 39N.
These have been answered in detail in Chapters 3-6 but are further considered here in this chapter in a synthesis of the study and the conclusions and recommendations that are suggested.

7.2 Discussion of a hypothesis of efficiency and economy

The hypothesis that the invention and evolution of a rudimentary caseflow management and consensual interlocutory process made referees more effective has been subjected to qualitative and quantitative examination. Our final discussion therefore centres on the implications of Newbolt’s “Scheme” and on the supposition that this is more suitably addressed by Newbolt’s idea of “informal discussions in chambers.” This appears to be the major discovery of this study and unknown generally before now. The other extraordinary discovery is the instances of judicial intervention whether to facilitate settlement or to expedite proceedings. Judges did not overtly intervene to settle or expedite matters, but they often gave “indications” as to the merits of submissions which could certainly dissuade litigants from pursuing the case. Apart from Birkenhead’s warnings to Newbolt Professor Fiss of Yale has argued that settlement is a negation of the judicial process. In the case of the referees “efficiency and technique” was a necessity. The underlying argument in this study is that referees like Newbolt had no real option other than to develop more efficient ways of dealing with long and complex cases. Contrary to Professor Fiss’s philosophy Newbolt’s way was not a means of undermining what Fiss calls the “value of the law.” Newbolt used the law to provide an early answer and result that most probably would not have been very different from his judgment at the end of a trial. It is equally arguable that if Newbolt did not expedite some cases he and his colleagues could not have completed the job required. In this case it was very much a matter of practicality and doing justice to the merits of each case. Procedurally some cases could be dealt with by preliminary issues, some by expert decision, some by a site visit, and some by “informal discussions in chambers,” and in many other cases, only by a full trial. To that extent Fiss’s traditionalist view does not accord with the evidence of the referees’ practice without which justice could not be done to the parties. If the

---

referees had followed the traditional view that judges could not intervene or encourage settlement the delays and backlog would have been unacceptably greater.

To do justice to all the parties is the objective of caseflow management and at micro-level it means having regard to the rights of others to be heard within a reasonable time. The referees also had a contractual obligation to the Lord Chancellor to complete their lists and to some extent to the Treasury, to ensure that court resources were not wasted. They were also directly accountable to the Lord Chief Justice, their Head of Division. In that context they had an obligation to those whose cases they were to hear. Efficiency in this context was a necessity for justice to be done.

An essential element of micro-caseflow management is the allotment of sufficient time for the case. This must be considered from both a qualitative and quantitative standpoint. In the numerous cases discussed in chapters 3 and 4 there is a wide divergence in the subject matter. In chapter 5 we noted a considerable variance between the times allocated for certain cases. Some cases required more time than others for reasons of complexity, for example, *Ancor Colour Print Laboratories Ltd v J Burley & Sons Ltd and F & D Hewitt Limited (third parties)*[^33] which occupied the referee for 45 days. Others such as Bickley *v Dawson*[^34] required only 10 minutes. It is obvious that more complex and important cases require more judicial time and case management requires that the appropriate allocation be made. This entails allocating a fair and reasonable time to the case according to its judicial requirements having regard to its nature, complexity, importance, value of the claim, and resources of the parties. All this was encompassed in Newbolt’s approach. His interventionist style did not apparently compromise the referee’s neutrality or the principle of judicial independence; because where he intervened he appeared to be successful in resolving the matter. It cannot be right that every party has an automatic right to trial. Parties have a legal right to issue proceedings. If the case is not otherwise settled, the parties have a right, subject to the rules, to pursue the case to trial. However, in the context of restricted resources, such as were available to the courts in the 1860s and 1920s, the judiciary had to consider how justice could be apportioned economically and fairly to those who chose to litigate. In those circumstances the referees were compelled to manage cases more effectively: it was a matter of necessity.

[^34]: See: Appendix Table 10 p.52 J116/3 p.191 [Oct 2006 Series: SH101092]
7.3 Support for hypothesis of efficiency and economy

The interlocutory innovations invented by the referees for the more efficient conduct of business were recognised by the Evershed Committee on Supreme Court Practice and Procedure.\(^{835}\) This Committee which was appointed on 22 April 1947 produced four reports.\(^{836}\) Its primary purpose was to consider what forms of practice and procedure should be introduced “for the purpose of reducing the cost of litigation and securing greater efficiency and expedition in the despatch of business.”

One of the recommendations of the First Report\(^{837}\) was to make it possible to transfer cases between referees. It has already been noted that this caused some concern to the Lord Chancellor’s Permanent Secretary, Sir George Coldstream in 1954.\(^{838}\) Historically this was a link with arbitration which was finally severed by operation of the rota.\(^{839}\)

More importantly, Evershed’s Final Report\(^{840}\) adds credence to the hypothesis as to the efficiency of Newbolt’s “Scheme”.

In that report\(^{841}\) Evershed recommended that “increased use should be made of the power under Order 37A RSC to appoint a Court Expert.” This was Newbolt’s innovation in the 1920s and an integral part of micro-caseflow management.

Second, Evershed recommended that where a plaintiff gave appropriate notice after the entry of an appearance by the defendant the plaintiff could apply to the master for a dispensation of pleadings.\(^{842}\) In *Expedition and Economy in Litigation* \(^{843}\) it will be recalled from chapter 3 that Newbolt referred to a case of dilapidations where he dispensed with pleadings.

Third, Evershed said it was important that any further summons for directions should if practicable be heard by the same master.\(^{844}\) This followed the referee practice of referees taking their own summons for directions, and interestingly Newbolt’s earlier suggestion that a second summons before trial was beneficial.\(^{845}\) As Newbolt also wrote:
there is no greater check on wasteful expenditure than the arrangement by which the Trial Judge takes his own summonses.\footnote{846}

Fourth, Evershed heralded a “new approach” to litigation spearheaded by the robust summons for directions which would “limit the issues to be tried and the expenses of proof.” Again this coincides with the Newbolt philosophy of saving expense in the context of his article in \textit{Law Quarterly Review}:\footnote{847}

\begin{quote}
the mere discussions across a table which costs nothing in comparison with the costs per minute in Court\footnote{848}, discloses what issue it is exactly that the parties wish to try, and eliminates the very source of the litigants grievances.
\end{quote}

Fifth, Evershed aimed to make the Summons for Directions “a more effective instrument for reducing costs.”\footnote{849} Again in that article Newbolt had underlined the importance of the cost saving utility of such summonses and hearings in chambers as opposed to the "costs per minute in court.”

Sixth, at paragraph (73) of the Report, Evershed recommended that it was desirable in every case that pleadings should be available to the judge before he came to court.\footnote{850}

This is certainly a practice that was adopted by the referees as is evident from the case of \textit{Alloy & Fireboard Co Ltd v F. Superstein}.\footnote{851}

\section*{7.4 The advantage of a subordinate judicial official}

Having established further support for the hypothesis as to the more effective referee processes it remains, before drawing final conclusions, to consider the advantage, if any, of the subordinate judicial role. In this case it is submitted that the same strict judicial role that Fiss articulates might not apply to a subordinate judge especially where, as in this case, the judge has an important interlocutory function. The essence of this argument is Newbolt’s view that “the mere discussions across a table....costs nothing in comparison with the costs per minute in Court.” This study sustains the argument for the use of expedient and economic measures by referees in the 20th century, and to some extent confirms the success of such measures especially where the case settles before trial as a result of interlocutory intervention. It is arguable that in such cases a judicial officer has a duty in the best interests of justice to do so. Such a subordinate official has a greater flexibility when acting in a more informal chambers setting with the powers of a High Court judge. In acting with the consent of the parties he is in a

\footnotesize
\begin{itemize}
\item \footnote{846}{n.2 pp. 435-437.}
\item \footnote{847}{n.2 pp.435-437.}
\item \footnote{848}{Author’s italics.}
\item \footnote{849}{n.22. para.(244) p.81}
\item \footnote{850}{n.22. p. 326}
\item \footnote{851}{See: Chapter 4: Directions to Solicitors para. 4.3.1. J115/6 [HPIM 2716]}
\end{itemize}

\textbf{253}
stronger position to facilitate settlement. In many cases the parties are not in an equal bargaining position and such intervention is a useful neutral instrument to assuage fears of the more influential party. In the case of the referee he is in a stronger position to resist any such domination, more so than an arbitrator because he exercises all the powers of a High Court judge and sits daily in court. Thus, Newbolt may have been able to hold the balance in such chamber’s discussions whereas other non-judicial neutrals might not. By procedural innovation he was able to control the excesses of an adversarial process where settlement might otherwise have had a lower priority.852

7.5 The procedural judge

Thus, in the procedural context it may be said that the referee or procedural judge might enjoy a unique advantage over higher ranking judges. One of the central findings of this study is that judicial officers, exercising the “powers” of an English High Court judge, engaged in settlement discussions as long ago as the 1920s. This, so far as is known, is unprecedented.853 This remarkable fact suggests that the role of a subordinate judge may be considered more flexibly in the context of judicial hierarchical structures and his or her place in the legal system. Although referees were abolished by the Courts Act 1970 and they became circuit judges, and whilst there are now two grades of TCC judge, HCJ and CCJ, there is advantage to be considered in the maintenance of the subordinate grade, not to denigrate the office, but to facilitate the work of the court in the public interest where a more informal and flexible approach by a lesser judge might produce earlier resolution using some of the ideas of Newbolt. This subordinate judicial role has the advantage of combining the two key rudiments of dispute resolution in one forum: that of settlement and procedural management, in other words that radical notion that a judge can undertake a settlement role as well as a procedural one.

7.6 Synthesis from study

7.6.1. This synthesis considers the overall conclusions for and against the central hypothesis as to the invention of an expeditious and economic form of rudimentary micro-caseflow management in the 1920s, and its manifestations in an interventionist, and latterly a non-interventionist, judicial settlement process.

852 Lord Woolf’s Interim Report. Chapter 3 stated that “questions of expense, delay, compromise and fairness may have only a low priority. The consequence is that expense is often excessive, disproportionate and unpredictable; and delay is frequently unreasonable.”
853 The author is not aware of any such.
7.6.2. In the first chapter we considered the referee in the context of the discovery of a
form of micro caseflow management in the 1920s. We also discussed the scope and
methodology of the research, defining research questions and constructing a hypothesis
that caseflow management and interlocutory process made the referees more effective.
It also discussed the general history of the referee and his position in the judicial
hierarchy. A preliminary analysis was conducted here to assess the general effectiveness
of the referee. What we found in Table T.4.7 is consistent with subsequent formulaic
findings summarised in Table T. 5.15. The mean average of the formulaic
percentages presented in Table T. 5.15 amounts to 49 per cent before the war and 42 per
cent after it.In paragraph 5.4.1(b) and from the Spreadsheet we ascertained that the
overall average percentage of disposals to referrals was 27 per cent before the war, as
opposed to 24 per cent after it. We also found that the percentage of trials to referrals
was 41 per cent before the war and 32 per cent after it.

7.6.3 In the second chapter we concluded that the Supreme Court of Judicature had
three essential macro-caseflow management forms in civil cases: trial by a single judge;
trial by jury and trial by a referee. All these modes of trial were to be “capable of
adjusting the rights of the litigant parties in the manner most suitable to the nature of the
questions to be tried.” In terms of that objective it is submitted that such objective was
achieved by the referees, and it is that aim that facilitated their practice. This found
expression in informal directions meetings in chambers; the more effective use of expert
witnesses and experts, whether as investigators or determiners of fact or opinion, and
the invention of procedural directions and special pleadings to shorten court hearings
and crystallise issues. One of the important practices to emerge out of the Judicature
Commissioners’ objective was the referees’ practice of an early summons for directions,
and the fixing of the date for trial within weeks of the reference. In the second chapter
we considered the relationship between certain referees and Lord Chancellors and other
senior officials. Under Section 83 of the Judicature Act 1873, the Lord Chancellor was
responsible for their appointment, qualifications and their tenure in office with the
concurrence of the Heads of Divisions subject to Treasury sanction. To that extent the
Treasury played a very important part in the development of the court. Permanent
Secretaries played a key role in the relationship and were kept well informed of

854 See paragraph 5.4.4.6
855 n. 51 Line 39
developments. There were no complaints about the quality of work, but the court was under-resourced in terms of manpower and accommodation intermittently. Status and salary were perceived as a problem in not attracting the right recruits. All these somewhat negative factors would have increased pressure to expedite the list.

7.6.4. This scenario provided the backdrop against which caseflow management evolved in the referees’ court. The reasons are set out in Newbolt’s contemporaneous reports and articles as well as in Eastham’s reports and memoranda and are further demonstrated from the various extracts from the judges’ notebooks after the war. Seven elements of micro-caseflow management are identified in chapters 3. Whilst chapter 3 does not identify particular case management directions such as fixing the date for trial, Newbolt hints at its effectiveness and that of a second interlocutory summons before trial. The foundation of this study rests upon those seven rudiments: early procedural evaluation by the referee in chambers; the efficient use of experts; directions resulting in proportionate costs and proportionate costs orders; special pleadings tailor made for the case; and the more convenient sitting of the court. The hypothesis contends that the application of one or more of these practices facilitated caseflow management in certain cases.

7.6.5. Chapter 4 continues the qualitative analysis and literary review of the judges Minute Books and Notebooks assessing the evolution of Newbolt’s "Scheme" against a background of increasing litigation. When Eastham was appointed in 1937 there were 372 referrals that year. When he retired in 1954 (the year Walker Carter took office) the court had 657 referrals. By 1970 it had 901 referrals. It was against this background that Eastham triumphed in his caseflow management by confirming in a memorandum to the Lord Chancellor that despite a threefold increase in workload in the previous decade referee cases were often tried within a few weeks of the order of reference. In contrast to Newbolt it would appear that Eastham achieved success by ordering a visit to the building site and seeing the progress of work for himself. In several instances this resulted in settlement being agreed afterwards in court. He also appears to have granted adjournments giving the parties’ time to reconsider their position before embarking on the trial. This reactive approach contrasts with Newbolt’s active approach to caseflow management. It must be considered that just as some caseflow management mechanisms resulted in quicker resolution they were not suitable in all cases. In the majority of cases

\(^{856}\) n.51 Line 5AK-BA
\(^{857}\) LCO 4/417. [HPIM 0938].
considered in chapters 3, 4, and 5 hypothetically some measure of caseflow
management was used in almost a quarter of all cases between 1919 and 1970. Although there is some evidence of relative success with these procedural tools in chapter 5 we also concluded:

That Newbolt reduced the backlog by up to 51 per cent in the period 1919-
31 (see paragraph 5.4.2)
That in 1937 the referees were 88 per cent efficient in terms of trials to
referrals and 84 per cent efficient in 1948 in that respect (see paragraph
5.4.4.5)
That trial times could be halved (see paragraph 5.7.4) or in Newbolt’s cases
reduced by as much as 80 per cent. (Table T.5.34)
That in Newbolt’s time the backlog was halved, and in Richard’s time it
trebled: see paragraph 5.4.4.1(b).

7.6.6. Experts were a particular tool of referee case managers like Newbolt. In the
twentieth century expert evidence was admitted by direction of the court or by
agreement between the parties. Newbolt went further with groundbreaking use of
experts inventing a role for the court expert on the way. He found that the expert
could be instrumental in settlement in terms of estimating quantum, or deciding the
issue referred for opinion, or decision. Newbolt was also aware that experts could also
be a wasteful expense if they were not managed. Where experts were used by him to
determine facts or resolve issues it would appear that Newbolt briefed the expert with
the consent of the parties. The expert answered his questions thus saving time and costs.
Other processes used by the referees included special pleadings and schedules to reduce
trial times and narrow issues.

7.6.7. Whilst there is evidence of chambers discussions resulting in settlement in
Newbolt’s time there is little contemporaneous evidence subsequently though Clifton
Shipways Co Limited v Charles Lane, W.J. Barrs v Thomas Foulkes, and Nathan
Bernard v Britz Brothers Limited and Britz Brothers Limited and Nathan Bernard and
Ruth Bernard are all examples of similar chambers proceedings.

7.6.8. Statistical evidence has been analysed and assessed in Chapter 5 in relation to the
effectiveness of Newbolt’s “Scheme” and its effectiveness has been assessed both there

---

858 Chapter 5. Concluding remarks para. 5.9.3 and Table T.5.39.
859 As epitomised by the letter from Counsel, Mr S. A Merlin. LCO 4/152. [HPIM 0586-0587]
860 J116/1 p.104. [CIMG 0176 .]
861 J116/3 p.49 [CIMG, 0102.]
862 J.116/1 [CIMG 195]
and above. What this demonstrates is an early remarkable attempt by the referees to save time and expense through extra-judicial measures almost like an arbitrator acting with the consent of the parties and in the interests of justice in the wider sense. The saving was in resolving the case before trial so that the enormity of those costs was saved. The underlying mechanism here is the settlement role of the judge. Without Newbolt's initiative it is doubtful that anything like this would have occurred in that way in the otherwise reputedly strict adversarial regime of the 1920s.

7.7. For hypothesis
In conclusion we can demonstrate an effective and efficient court supporting the hypothesis to the extent that:

7.7.1 At paragraph 5.4.3. and in Table T. 5.11 we noted that in 1919-38 the percentage of trials and disposals to referrals was 68 per cent and in 1947-70 it was 61 per cent. Both results were achieved during a time when we concluded that a form of caseflow management was used in 25 per cent of cases (paragraph 5.9.3 and Table T. 5.39).

7.7.2 At paragraph 5.4.1 (b) we concluded for the pre-war period that 27 per cent of referrals were disposed of before trial and 24 per cent after the war. Thus, a mean average of 25 per cent of cases was disposed of before trial, at a time when we hypothesise that a form of caseflow management was used in 25 per cent of such cases.

7.7.3 Perhaps the clearest demonstration of the "Scheme's" effectiveness is demonstrated in Chart C. 5.2 and the doubling in the rate of disposals to referrals from 20 per cent in 1921 to 41 per cent in 1931.

7.7.4 From Tables T. 5.5 -T.5.7 and from paragraph 5.4.1 (a) we concluded that the court was 42 per cent effective in terms of trials /referrals before the war, and 31 per cent after.

7.7.5 The average analyses in Table T. 6.7 suggested that the post-war period was slightly more efficient in terms of trials. When we compared this with Table T.5.11 contrasting two eight year periods, one before and one after the war, the comparison demonstrated that referrals were slightly less efficient after the war in disposals and trials and that there was a higher backlog. The margin of difference again is slight at seven per cent (68 per cent: 61 per cent in terms of disposals and trials and 32 per cent: 39 per cent in terms of backlog).
7.7.6 We note from the spreadsheet\textsuperscript{865} a sharp decline in the number of trials from 144 in 1962 to 91 in 1970. This figure remains below the 100 mark until 1967. This coincides with a steep rise in settlement/disposal rates from 90 in 1962 to 329 in 1970.

7.7.7 We concluded from the application of the various formulae demonstrated in Charts C.5.2-C.5.5:

(a) Formulae A and B demonstrated that the average percentage of efficiency before the war was higher than after the war. Table T.5.15.

(b) The disposal/settlement rate was marginally better before than after the war.

(c) That before the war backlog of cases was lower.

(d) Newbolt's "Scheme" had a marked effect on disposals between 1919 and 1932.

(d) The Eastham court appeared the more efficient in trials.

7.7.8 Table 5.38 represents the critical average time analysis between managed and non-engaged cases. In respect of the cases where it has been possible to identify caseflow management elements, time spent has been radically reduced. Newbolt wrote that issues could be so narrowed:

\begin{quote}
\text{to something which occupies the Court for perhaps one fifth of what used to be considered the normal time.} \textsuperscript{866}
\end{quote}

This meant an 80 per cent time saving.

After the war further examination of the two research periods 1959-62 and 1965-67 show that time reductions of more than 50 per cent and practically 80 per cent were possible.\textsuperscript{867}

7.7.9 Caseflow management properly applied could cut trial times in half or by two-thirds of the time.\textsuperscript{868}

7.7.10 If the central hypothesis is correct then according to the average percentile applied at paragraph 5.9.3 and Table T.5.39 then as many as 5,404 or 25 per cent of all referrals may have been caseflow managed. Alternatively the suggestion of the analysis at Table T.5.37 and paragraph 5.9.2 suggests a lower average application of 22 per cent. The latter is purely based on the Minute Book and Notebook analysis. Both analyses argue for the existence of caseflow management and its degree of efficiency.

\textsuperscript{865} n. 51 Line 14 AS to BA
\textsuperscript{866} n. 2 p 427
\textsuperscript{867} Table T.5.38 comparing columns 5 to 8.
\textsuperscript{868} See: paragraph 5.7.4.
7.7.11 Finally what we also discern from paragraph 4.3.5 is that the “Scheme” gradually evolved into a more modern concept of caseflow management. Generally we have also found that Newbolt seems to have been selective in using the “Scheme” in particular cases in an early form of what has become known as “differential case management” in the United States.\(^{869}\)

7.8. Against hypothesis

7.8.1. Judicial Statistics confirm that in the period 1957-70, the number of disposals ranged from 66 to 329, higher than in other periods examined; the backlog of cases increased from 167 in 1957 to 446 in 1970. Referrals increased from 449 in 1957 to 901 in 1970. Whilst referrals more than doubled, the backlog almost tripled. Failure to deal with backlog is not a sign of effective caseflow management.\(^{870}\)

7.6.2. More cases were tried than were summarily disposed of between 1919 and 1938: there were 3,202 trials, and 2,048 cases otherwise disposed of. Between 1947 and 1970 there were 4,360 trials compared to 3,335 cases that were otherwise settled or disposed of.

7.6.3. That despite the existence of caseflow management the backlog of cases increased after the war. However, there were only 3 referees in post from 1957 to 1970 when the average annual intake was 586 referrals as compared to the earlier period from 1919 to 1938 when the average annual intake was 437 cases per year.\(^{871}\) It appears that diminution in manpower in the periods 1932-38, and 1956-70, was a critical factor. This was despite evidence of rudimentary caseflow management activity. The backlog rose from 82 cases in 1919 to 109 cases in 1938 and from 202 cases in 1947 to 446 by 1970.\(^{872}\)

7.6.4 In Tables T 5.40 and T 5.41 we found 34 examples of caseflow management out of a total of 346 case entries examined in Carter’s Minute Books. This suggests that roughly 10 per cent of his cases may have had some caseflow management.

7.6.5. In Table T.5.8 in terms of backlog we found that each referee had an average backlog of 40 cases before the war and 76 after the war. In both periods we see an increase in backlog and a lack of manpower. Despite this in the first period backlog was


\(^{870}\) See Charts C 6.2. and C.6.3.

\(^{871}\) n. 51

\(^{872}\) See: Table 5.10.
kept below 130 cases per year with only two judges in post. In the second period the increasing backlog occurs at a time of when the rate of disposal is above 32 per cent.\footnote{51 Lines: 5 (referrals) and 16 (backlog) and Line 39 (disposal percentages.)}
CHAPTER 8
IN PURSUIT OF JUSTICE
In any justice system the role of procedure is far greater than generally accepted.\(^{874}\)

8.1 Key findings from research
From this study we conclude that there have been gaps in our knowledge of procedural practice undiscovered for many decades. Judge Fay teasingly described the referees’ practice as:\(^{875}\)

\[\ldots\text{the judges operate what might be termed a limited dossier system: in advance of interlocutory proceedings they expect to be provided with the relevant papers and to familiarise themselves with the issues; in consequence they not infrequently themselves make suggestions with a view to rendering the trial more manageable or shorter or less expensive.}\]

But he did not enlighten us as to the “suggestions” being a significant part of the “Scheme” nor did he describe the “Scheme.” Essentially we discovered that there was more to the referees’ function here that was conducive to earlier settlement. The referee was a facilitator and by entrepreneurial means described as the “Scheme” created the atmosphere for settlement.

Thus, we deduced that:

- The referee saved High Court judge time and jury trials.
- The referee acted as a facilitator in encouraging settlement earlier in some cases.
- Such interlocutory management had a positive effect in terms of efficiency and economy in technically complex factual cases so that in quantitative terms up to a quarter of all cases may have utilised the “Scheme” [7.3.3].
- This produced a possible time saving of 50 per cent to 80 per cent of time at trial [7.5.8].
- The “Scheme” produced a marked effect on caseflow as considered in Chapters 3 to 6 especially where a more “activist” approach was adopted.

Having discovered that Newbolt was ahead of his time we conclude by considering how this study contributes to our knowledge of dispute resolution in the context of the competing cultures of a traditional adversarial system and modern informal alternatives. More importantly we should consider how this discovery may affect our thinking about what a court is, or should be, and what a judge is, or should be.

---


\(^{875}\) n.20 p. 7 paragraph 1-06.
8.2 Of Woolf and Newbolt: contrasting case management concepts

What Newbolt created was essentially a new role for the referee at interlocutory stage utilising the traditional role of a master as a judge. In essence the “Scheme” induced a more facilitative atmosphere: a display of “soft power” in informal chambers discussions as opposed to “hard power” in a formal court room setting. The atmosphere Newbolt created in his “discussions” was the catalyst for settlement. His active caseflow management coincides with the objective described in CPR 1.4(2) (f) of

(f) helping the parties to settle the whole or part of the case

It also coincides with Lord Woolf’s policy, described in his Interim Report:

...to develop measures which will encourage reasonable and early settlement of proceedings.

Newbolt was directly involved in chambers discussions, as he put it: “the mere discussion across a table.” Newbolt thought there was no more effective way of dealing with cases than for the judge to deal with his own summonses. This corresponds with the Woolfian concept of the “procedural judge.”

The “Scheme” also mirrors the Woolfian concept of promoting settlement whereby Lord Woolf stated:

11. Case management will facilitate and encourage earlier settlement through earlier identification and determination of issues and tighter timetables.

Newbolt’s concept of expedition and economy are also reflected in the CPR with references to proportionality and cases being conducted “expeditiously and fairly.”

Newbolt was also far before his time in moving away from an antagonistic approach to litigation which in his Interim Report Lord Woolf likened to “a battlefield where no
rules apply.” This was also Newbolt’s perception. Whilst a tiny minority of cases will be fought to the bitter end, as Lord Birkenhead observed in his response to Newbolt in his letter dated 21 February 1922, Newbolt defused such adversarialism by his “Scheme.” This was achieved by the informal atmosphere of chambers hearings, for example, by counsel remaining seated. This was more business-like and more conducive to settlement.

In his Final Report Lord Woolf described his approach to case management:

Chapter 1 Introduction

....

4.

....Case management includes identifying the issues in the case; summarily disposing of some issues and deciding in which order other issues are to be resolved; fixing timetables for the parties to take particular steps in the case; and limiting disclosure and expert evidence.

He described case management as:

6....

The aim of case management conferences in multi-track cases is that fewer cases should need to come to a final trial, by encouraging the parties to settle their dispute or to resolve it outside the court system altogether, and that for those cases which do require resolution by the court the issues should be identified at an early stage so that as many of them as possible can be agreed or decided before the trial. The pre-trial review should then take further steps to ensure that the trial will be shorter and less expensive. Case management hearings will replace, rather than add to the present interlocutory hearings. They should be seen as using time in order to save more time.

This description certainly finds empathy with Newbolt’s “Scheme” as do the conclusions at paragraph 16 of Lord Woolfs Interim Report:

(b) Encouraging and assisting the parties to settle cases or at least to agree on particular issues;
(c) Encouraging the use of ADR;
(d) Identifying at an early stage the key issues which need full trial;
(e) Summarily disposing of weak cases and hopeless issues;
(f) Achieving transparency and control of costs....

Whilst neither of Lord Woolf’s reports, nor the rules go as far as Newbolt’s “Scheme” in relation to “discussions in chambers” the rules, as we have noted, provide for:

helping the parties to settle the whole or part of the case.887

This has not been interpreted by the editors of Civil Procedure as enabling the judge to discuss settlement with the parties in chambers, but rather that the judge may refer the

---

885 In the case of the Mayor’s and City of London Court 140 cases out of 5,777 were tried in 2006, approximately 2% of the claims issued. Roberts, S. Report for the Mayor’s and City of London Court Mediation Steering Committee. (London: London School of Economics, 2007)
886 n.14.
887 CPR 1.4(2)(f)
matter to ADR. It also encourages the parties to exchange settlement offers or dispose of the case summarily. The beauty of the Newbolt approach was that, in some cases, the referee himself was actively engaged in the settlement. This approach is in line with that taken by the District Judges in their caseflow management practices.  

8.3 The “Scheme” and ADR concepts.

Having compared the concept of Newbolt’s “Scheme” with the Woolfian concept of caseflow management we now take a closer look at ADR critiques in the context of Newbolt’s “Scheme.” According to Auerbach the mediation movement had its origins in Cleveland, Ohio in 1913, seven years before Newbolt’s experiments in caseflow management. That movement originated outside the legal system and gradually evolved in other urban centres in the United States. It is perhaps better described by the ‘father’ of ADR, Professor Frank Sander as “an alternative primary process” being:

“...particularly appropriate in situations involving disputing individuals who are engaged in a long-term relationship. The process ought to consist of a meditational phase, and then, if necessary an adjudicative one.

Newbolt’s “Scheme” followed that pattern in respect of his early chambers discussions. If the parties agreed, Newbolt facilitated settlement; if not, he gave directions up to trial. In his article Frank Sander describes a dispute resolution centre housing different types of dispute resolver encompassing features of Newbolt’s “Scheme.” Such a development has not taken place in England but private dispute organisations have been established to promote ADR which include CEDR, Resolex, and the Chartered Institute of Arbitrators. To an extent the courts have utilised ADR with pilot schemes in mediation being run in the Central London County Court, The Mayor’s and City of London Court and in the Technology and Construction Court. In 1996 judges in the Central London County Court established a mediation scheme. The scheme was monitored and became the subject of a report by Professor Genn. Whilst practitioners were impressed by the commercial acumen of the mediators they had reservations as to their legal knowledge and procedural direction. Perhaps this echoes the concerns of the Judicature Commissioners regarding commercial arbitrators in the 1860s which we noted earlier in Chapter 2. Genn also had some concern about “arm twisting” because in some cases

889 As observed whilst practising in several County Courts.
891 n. 336
mediators used undue pressure on the parties. Judges do not need to use such pressure and have no commercial incentive as do commercial mediators. Newbolt did not appear to bully or cajole, but gave an honest assessment of the likely outcome of the case in the course of his discussions. Ten years later, in 2006, The Mayor’s and City of London Court initiated a similar Scheme which was the subject of Professor Roberts’ report above cited. He noted the commitment of the District Judges at the court and the lead they took in designing and operating an effective scheme. Roberts and Palmer\textsuperscript{893} detect a shifting culture change away from the traditional trial and judgement concept to “the primary task of sponsoring and managing negotiations.” This maybe what Newbolt envisaged by his approach to “discussions in chambers.” They also sense we are still on a voyage of discovery in understanding these evolving processes and their relationship \textit{inter se}. Their thinking is supported by the interest of the TCC judges today who follow, possibly unwittingly, in the tradition of Newbolt.

The key to reconciling these philosophies is to be found in Newbolt’s letter to Lord Birkenhead\textsuperscript{895} dated 13 February 1922 where he extolled his confidence in “friendly business discussions over the table.” This had two fundamental qualities: direct discussion as to settlement, and second, the weight of independent judicial authority. Newbolt’s discussions might be interpreted by what Fiss called “the anticipation of the outcome of trial.”

Again, according to Roberts and Palmer\textsuperscript{896} the courts have now “embraced ADR in their novel enthusiasm for sponsoring settlement.” Newbolt perceived this a long time ago motivated by the economics of litigation, yet according to most commentators, such as Galanter, it was the United States judiciary who took the lead in this field in terms of judges acting as mediators,\textsuperscript{897} which may include a settlement role as, for example, in the Delaware Court of Chancery.\textsuperscript{898} This role extends to the Middlesex (Cambridge) Superior Court near Boston, Massachusetts,\textsuperscript{899} a novel multi-door courthouse facility with a variety of dispute resolution processes available.

\textsuperscript{893} n.885 para. 40.1.
\textsuperscript{895} n.287. [HPIM 0593]
\textsuperscript{896} n.894. p.77
In his article Galanter states:

Most American judges participate to some extent in the settlement of some of the cases before them. Indeed, this has become a respectable, even esteemed, feature of judicial work.

He goes on to describe the conversion of American judges to this approach describing early experiments of Mr. Justice Edgar J. Lauer of the Municipal Court of New York in the mid-1920s, just after Newbolt commenced his “Scheme.” When we examine Lauer’s approach which was described by Lauer in an article in 1928 it is similar to Newbolt’s:

...to call counsel to the bench before me and interrogate them respecting the nature of the case and the prospect of adjusting differences. I have secured many settlements without the exercise of any pressure on the parties to reach settlement.

These complimentary developments on both sides of the Atlantic may have been entirely coincidental for there is no evidence that Lauer had heard of Newbolt’s “Scheme.”

Gallanter gives further evidence from Ryan and Wickham who quote a presiding judge in Madison who wrote:

the primary purpose I seek to obtain out of such [pre-trial] conferences is to effect settlement without trial...I offer suggestions, intimate to the attorneys and clients the possibility and extent of liability, suggest the range of what I believe to be a fair settlement and then also attempt to persuade the parties and their attorneys to accept a settlement within that range. Of course I can only do this when I am fully conversant of the facts.

He also quotes a senior federal judge who said:

The absolute result of a trial is not as high a quality of justice as the freely negotiated, give a little, take a little settlement.

Galanter also quotes further American judicial authority and wrote:

In the words of one thoughtful federal district judge, settlement ‘produces results which are probably as close to the ideal of justice as we are capable of producing.’

If settlements are good, it is also good that the judge actually participates in bringing them about. He should do this not only by his management of the court but also by acting as mediator.

In this sense it seems that the Newbolt approach is recognised as part of the judicial process in the United States, save that Newbolt did not perceive his role as that of a mediator. When he used an accountant expert he noted that this was not the role of an:

[References cited in the text]
...arbitrator or conciliator or concession, but an intelligent use of a court of justice by business men.

What Newbolt did was to facilitate settlement. This did not displace the adjudication landscape with a negotiation process as appears to have been the case in the United States.\(^6\) The extraordinary discovery in this study is that Newbolt's "Scheme" encompasses both the philosophy of the 'access to justice' and ADR movements. We may consider the first as encompassing what Roberts and Palmer\(^7\) describe as:

...the contemporary expression of primordial concerns about the costs, delays and general inaccessibility of adjudication, and called for quicker, cheaper, more readily available judgement with procedural informality as its hallmark.

Newbolt's "Scheme" satisfied these concerns because of Newbolt's anxiety about costs, delay and the productive results from his informal discussions. Another remarkable facet of Newbolt's "Scheme" was its creativity. In that context, his "Scheme" anticipated Derek Bok's prediction that:\(^8\)

Over the next generation, I predict, society's greatest opportunities will lie in tapping human inclinations toward collaboration and compromise rather than stirring our proclivities for competition and rivalry. If lawyers are not leaders in marshalling cooperative and design mechanisms that allow it to flourish, they will not be at the centre of the most creative social experiments of our time.

8.4 Reconciling critiques

Having contrasted these competing philosophies we consider the critiques of ADR that require consideration in the context of this study. Nader and Abel suggest that ADR is a way of institutionalising settlement.\(^9\) But ADR is essentially an alternative the parties can agree; they are free to use this alternative to the court but they are not prevented from using the court. Abel\(^10\) says that the State neutralises:

conflict by responding to grievances in ways that inhibit that transformation into a series of challenges to the domination of State and capital.

Such inhibitions have not been noted in this study and it would appear from cases such as Bickerton\(^11\) that our highest court is not averse from challenging institutions in the

---


\(^{906}\) n.894 p.45.

\(^{907}\) D. Bok, 'A Flawed System of Law and Practice Training' (1983) 33 Journal of Legal Education 570, pp 582-583


\(^{910}\) Paragraph 6.1.3 above.

268
public interest. Abel also says that ADR is anti-normative. Fiss goes further saying that:

In truth, however settlement is also a function of the resources available to each party to finance the litigation, and these resources are frequently distributed unequally.

That being the case Newbolt's "Scheme" would appear to offer the better way because the judge will be able to direct a process more tailored to the financial resources of the parties.

Abel's deeper concern that the parties will be bullied by the State into accepting an unjust compromise may have some justification. Abel argues that ADR is an extension of State authority. But here that argument is met by the incorporation of the "Scheme" within the court process and whilst the referee was a state official he acted in the wider public interest as a public servant. The "Scheme" avoids the critique of Nader who argued that the "deficiencies of litigation have been falsely portrayed" and her critique noted by Roberts and Palmer that:

It began to look very much as if ADR were a pacification scheme, an attempt on the part of powerful interests in law and in economics to stem litigation by the masses, disguised by the rhetoric of an imaginary litigation explosion.

But we have already noted that both the Judicature Commissioners and Newbolt years later were concerned with something that was by no means an "imaginary litigation explosion"; it was real. The same was true of the necessity for Lord Woolf's enquiry, particularly in relation to the referees, where cases in the 1980s were quadruple booked.

We can also meet Abel's concern that "informal institutions deprive grievants of substantive rights" and antinomative processes that "urge the parties to compromise." But, compromise is often an ingredient of judgment. The court may accept only particular submissions and evidence. Cases are seldom black or white: there are innumerable shades of grey on narrow issues of law and fact. Parties may argue they have rights, when no right truly exists or they may be unable to discharge the burden of proof required. Often the remedy (usually monetary compensation) may not satisfy the parties, but then there is a limit to what the state can do. In the triadic structure of the

---

912 n. 910 pp. 297-298.
914 n. 910 pp.270-271, and 275.
917 n. 910 pp. 297-298.
court and the two sides sometimes it is the judge who must invent the formula which will resolve the dispute.

8.5 A new model judge

Having considered some of the critiques of ADR we can finally turn to the critical question underlying this study. This was identified in Roberts’ essay: ‘Alternative Dispute Resolution and Civil Justice: An Unresolved Relationship’ 918 in which he asked that fundamental question whether we should see ADR “as part of the process of adjudication, radically transferring it, even making us re-examine our basic understandings of what a ‘court’ is?” We may surmise that Newbolt would have responded to Roberts’ question enthusiastically and have redefined the judge’s role to encompass that of a facilitator. This empathises with Dean Roscoe Pound’s notion about.919

...a judge who represents both parties and the law, and a procedure which will permit him to do so effectively.

What appears to be inextricably linked in this study is the symmetry of judicial management and settlement. Newbolt’s “discussions in chambers” would not have been possible in any other court because no judge at that time had conduct of the interlocutory process. What happened was that Newbolt was able to narrow issues to the point that in some cases they settled: caseflow management led to settlement.

In suggesting this we must take careful note of Birkenhead’s warning to Newbolt, and Roberts’ concern that “clarity is lost once the courts begin to involve themselves in the sponsorship of settlement.” 920 This challenge has to be met if the courts are to continue to enjoy public respect and if certainty of the law is to prevail for the key questions of our times are first, that discerned by Roberts and Palmer as to what a court is, but also in this context what a court should be or in more practical terms how the judge’s role can be modernised to keep pace with social change. Those are the critical issues of civil justice that emerge from this study. What may be required are displays of “soft power” or the facilitative process suggested by the “Scheme” which to use Martin Shapiro’s words is not: “an antithesis to judging but rather a component part in judging.”921

918 (1993)56. MLR 452
921 M. Shapiro, Courts: A Comparative and Political Analysis (The University of Chicago Press. 1981)
Newbolt's "discussions in chambers" reminds us of Shapiro's discussion of the prototype of courts where the parties and the judge:

Speak on until arriving at some verbal formulation of the law synthesised from their various versions

It is not suggested that the judge engineers settlement but rather that the parties realise that the outcome at trial is unlikely to be different. Often that is the advice the parties have received from counsel and are persuaded, but in some cases it may take a judge. This is not usurping the lawyer's role, nor is it undermining judicial independence in cases where the outcome is clear and inevitable. Provided the judge has sufficient information before him and the parties probable outcomes converge with the reduction of uncertainty, judicial intervention would appear to be justified.

Whether the judiciary can change their culture is another matter and is a challenge identified by Professor Zuckerman of Oxford who recently wrote:

....unless all levels of the judiciary can be persuaded to embrace the overriding objective that incorporates the requirements of proportionality and expedition, as well as of the need to do justice on the merits, the entire CPR system may become a colossal wreck.

Zuckerman's point is in harmony with Newbolt's objectives outlined in his seminal article.

It is sobering to recall Professor Zander's reservations concerning the civil justice reforms in his thought provoking paper: Why Woolf's Reforms Should be Rejected. His essential concern was that Lord Woolf's 'Interim Report' was not properly structured in terms of an "historical perspective, a rounded in-depth analysis of the problems, a weighing of options and a conclusion." Lord Woolf said that he and his team had carried out "what is suggested to have been the most extensive and thorough examination which has ever taken place into the civil justice system." One of Professor Zander's major criticisms was on the subject which forms the basis of this thesis; the efficiency of case management. He considered that it would only operate

---

922 n.921 above p. 13.
925 n. 920 pp. 80-95.
926 n. 920 p. 79.
927 n. 874 p.331
928 n 920. p. 90
in “a small proportion of cases.” This study suggests that the “Scheme” operated in up to a third of all referee cases. But importantly Professor Zander also recognised the need to get a grip on cases that were “dragging.” Zander’s concern was perhaps met by Lord Woolf’s understanding of what case management would achieve:

It is the court providing a forum in which lawyers and the judge can work out the most satisfactory way a case can be dealt with and the judge then supervising the progress to trial in accordance with that programme. What the judge will prevent is parties not fulfilling their responsibilities, acting unfairly to a weaker party or acting unreasonably.

A relatively recent Rand study by Dr James S. Kakalik: *Just, Speedy and Inexpensive? An Evaluation of Judicial Case Management under the Civil Justice Reform Act* concluded:

Four case management procedures showed consistent statistically significant effects on time to disposition: (1) early judicial management; (2) setting the trial schedule early; (3) reducing time to discovery cut off; and (4) having litigants at or available on the telephone for settlement conferences.

Kakalik’s conclusions support the findings of this study in terms of early judicial management and settlement discussions. We may also find other features of process in the United States in further harmony with the “Scheme” for example; the Settlement Master described by Silberman. The Settlement Master, like a referee, was empowered to enquire and report, as well as facilitate settlement. Unlike referees Settlement Masters are not judicial officers but practitioners. Silberman suggests that the role of the Settlement Master in the *Agent Orange* case was successful because he acted with judicial powers and knew the views of the judge.

**8.6 Ariadne’s thread**

Having answered the research questions this study goes some way to unravelling Ariadne’s thread in terms of the essential question posed by Professor Roberts. What we discovered was that even a rudimentary system of caseflow management was effective particularly where the judge was more interventionist.

From an historical perspective this central finding supports, the former Head of the TCC, Mr Justice Jackson, who stated that case management “is the principal service which the TCC provides to court users,” and that one of the twin objectives of the TCC

---

92 n.874 p.339
93 49 Alabama Law Review 17 (1997-98)
judges was: “facilitating settlement where this is possible.” 935 In that report Jackson, J.
referred to research currently being undertaken at King’s College London to identify the
types of cases in which mediation most commonly leads to settlement and the stage in
the action at which mediation is most effective.936 This is a good starting point. What
this study suggests however is a more radical role for a new model judge where the
judge is more active in settlement discussions without being a mediator or conciliator.
Newbolt acted at his discretion with party consent to achieve what today we would call
the overriding objective.

The model of Newbolt’s “Scheme” has wider implications for the judiciary in certain
cases. Being informal and ad hoc may have a benefit so that the parties do not feel that
such “discussions in chambers” are mandatory or that they are pressurised unduly. Any
untoward “arm twisting” would be an abuse of the judicial office.937 The Genn study
reveals that in 18 per cent of cases the parties enter into mediation because the judge
advised them to do so.938 Genn also noted “a significant tendency for more judicial
encouragement from 25 per cent of the cases compared to 11 per cent in 1998.”939 This
is a healthy sign in harmony with Newbolt’s philosophy. The fundamental question
posed by Roberts as to what a court is may be answered to some extent by the Newbolt
“Scheme.” This not only involves a change of culture but a radical reappraisal of the
judge’s role. There is some evidence from the Vice Chancellor of the Delaware Court of
Chancery that Newbolt’s interpretation of his function remains valid.940 In his essay
Vice Chancellor Strine writes:

...the active involvement of a judge in the process of helping parties to business
disputes resolve their conflicts consensually (particularly ones that arose from
incomplete contracting in the first instance) seems likely to be of economic value
and to have social utility. By providing parties with the opportunity to shape their
own solutions to litigable controversies with the input of an experienced business
judge, this mechanism should result in more efficient outcomes at less risk and
expense than awaiting an up-or-down judgment on the merits.

936 n. 935 paragraph (6) p.21, and see also Hudson-Tyreman, Aaron. ‘Encouraged, Pushed or Forced-The
Order of the day?’ 2008 Construction Law Journal 79
937 Concern has clearly been expressed in Professor Genn’s recent study: Twisting Arms: Court Referral
938 H. Genn, Twisting Arms: Court Referral and Court Linked Mediation under Judicial Pressure.
940 L.E. Strine, Jr, ""Mediation-Only’ Filings in the Delaware Court of Chancery: Can New value be

273
We may be moving in this direction. But there is something else of importance here, a factor Newbolt recognised as did the Judicature Commissioners: user requirements. Lord Woolf also recognised society's demands of the judiciary:941

\[ \ldots \text{just as the common law has evolved to meet the changing requirements of society, so should the role of the common law judge. It is of critical importance to society that the judicial role evolves in this way.} \]

In this study we have seen how the referees' office evolved and importantly why and how Newbolt was pro-active in procuring settlement at an early stage. This again fits the archetype suggested by Lord Woolf:942

Where litigation in the courts is unavoidable, then the judges need to be proactive in promoting settlement, the control of costs and the expeditious resolution of the dispute.

This also harmonises with the concepts espoused by Roberts and Palmer.943 In this sense as Galanter944 says: "we have moved from dyadic to mediated bargaining" but also what Professor Resnick identified945 as a shift from the traditional judicial model to a managerial style where the court assumes more control of the process overall. In that respect Newbolt went further because he moved settlement from the periphery to the centre stage of the process. More importantly he used management as a tool of settlement and was quick to appreciate that caseflow management could shift the focus of proceedings from trial to settlement. This is the central lesson we derive from this study so we may therefore suggest what a court could be recognising this shift:

- The judge's role in relation to encouraging settlement must be considered in the context of his caseflow management powers. Whilst recognising a culture shift towards more judicial control of the proceedings there must be more awareness of the need to facilitate settlement through party participation in chambers-like discussions. The lesson of the "Scheme" suggests that a triadic configuration and the interaction of the judge and the parties present an effective means. Settlement must be the underlying objective.

- The quantitative analysis in chapter 5 supports the activist theory of caseflow management as being the more efficient. Our findings in both chapters 3 and 4 demonstrate the utility of that theory in terms of early judicial evaluation in chambers discussions, encouragement of settlement, the relevant use of court

941 n. 874 p.193
942 n.874 p.195
943 n.894. p.362
944 n.897 p.262
and other experts and proportionate costs orders. To that extent there is strong argument in favour of judges taking an activist approach. The "cultural change" of recent years must continue to encourage such activist role in order to avoid the danger foreseen by Professor Zuckerman. 946

- A fundamental tenet of the "Scheme" was that the judge was the case manager as well as trial judge. This gave Newbolt, Eastham, Carter and Richards especial advantage in expediting cases.
- That "arm twisting" and "churning" of cases by private mediators may be avoided by judges following the example of Newbolt's "Scheme." The American examples appear to support this view.
- This study demonstrates the success of the Judicature Commissioners invention and it maybe that a subordinate judiciary still has a very important role in an earlier more informal process with greater opportunity at its disposal to resolve cases earlier.
- A mix of judges at different levels may be advantageous giving subordinate judges greater opportunity to encourage settlement at interlocutory stage.
- Costs for particular activities should be capped in proportion to their importance in the case with special attention to the lower value cases. 947
- In less complex cases suitably experienced and specialist solicitors should be encouraged to deal with cases without counsel with the primary objective of settlement.
- Considering Eastham's success in dealing with the trial of a case in "a matter of weeks" after referral, and because referees have traditionally also acted in arbitration matters with permission, there is no impediment in principle to their successors being appointed as adjudicators, or the court being made an appointing body in its own right under the Housing (Grants and Construction) Act 1996. Enabling legislation would be required to amend the statute. This power would meet the procedural concerns of an important sector of the economy, the construction industry.

---

946 The omens in that respect are disheartening as Professor Zuckerman has noted in his article: 'A Colossal Wreck-the BCCI-Three Rivers Litigation.' See: n. 924 above.

947 Professor Genn concluded in her appraisal of costs that: "The lower the claim value, the higher the percentage of the claim value that cost represents." Appendix III paragraph 19 p.355. see: n.14 above.
This study has described the referee's transition from a nineteenth century judicial officer to a modern facilitator of settlement. In many ways this study supports what Eisenberg said:948

"...the principal area of modern legalised dispute settlement intimately intermixes elements of mediation and dichotomous solution, consent and judicial imposition."

What is suggested here is merely an extension of those principles outlined by the Judicature Commissioners 141 years ago. Recent reforms may not yet have changed the culture of the legal profession, or from what Professor Zuckerman suggests, of the judiciary. But it appears that the TCC judiciary do follow unwittingly the innovative tradition of Newbolt. If Lord Woolf's objectives and the aspirations of Newbolt are to be achieved in line with what Lord Devlin suggested 949 further encouragement along such lines may be required. The price of justice should not be a bar to the quality of justice: the problem that has defied reformers for almost two centuries is how to achieve both ideals.950 Like unravelling Ariadne's thread this may involve a new model judge with an enhanced sensitivity towards settlement. The recent Robert's Report on The Mayor's and City of London Court suggests that the District judges may have already unravelled that thread.951

8.7 Sailing on the Arbella

Juxtaposing this study with current thinking it may be that we can harmonise the competing philosophies of alternative reconciliation and adversarial resolution. In that debate the role of the referee and Newbolt's "Scheme" may provide a key. In a sense this study reconciles the competing philosophies of ADR and CPR philosophy in terms of the "Scheme" and raises questions as to the judge's modern role. The judge can no longer sit passively in complex technical cases and let them run on *ad nauseam*. At the same time *proportionality* demands that cases are resolved sooner rather than later. There is overriding merit in many complex cases in the court seizing the initiative and intervening to encourage settlement. That is really the essence of what may be deduced from this thesis reconciling the opposing philosophies. We have yet to

---


949 In 1970 he questioned whether "it is right to cling to a system that offers perfection for the few and nothing at all for the many?"


951 n.885.

276
decide where ADR stands in relation to civil justice. We have yet to decide the judges’
twenty first century role, and we have yet to decide upon a multi-door court facility.
Whilst we may advocate the enhancement of judicial powers and intervention for the
best of reasons we must ensure that justice is done without inhibiting the parties’ rights
to a fair trial.

Newbolt’s “Scheme” was a step towards a new frontier of civil justice. We must
therefore continue our journey toward that new frontier, just like all those who sailed on
the Arbella all those years ago, to find that “city upon a hill.” We too must sail on as
pilgrims in search of that model of justice.

Michael P Reynolds
LSE July 2008
CASEFLOW MANAGEMENT: A RUDIMENTARY REFEREE PROCESS, 1919-70

BIBLIOGRAPHY AND APPENDICES

Michael Paul Reynolds
Bibliography

Parliamentary Papers and Reports
First Report of the Judicature Commissioners [Session 10th December 1868-11 August 1869] (No. 41340) Vol. XXV 25 March 1869
Interim Report of the Committee on Supreme Court Practice and Procedure. Cmnd.7764 (1949)
Second Interim Report of the Committee on Supreme Court Practice. Cmnd. 8176 (1951)
Final Report of the Committee on Supreme Court Practice and Procedure. Cmnd. 8878 (1953)
Roberts, S. Report for the Mayor's and City of London Court Mediation Steering Committee. (London: London School of Economics, 2007)

Civil Judicial Statistics
For 1919: 1921 [Cmnd. 1424,1362] xli.411
[Statistics for 1920 and 1921 were published as non-Parliamentary Papers]
for 1921:1923 Cmnd. No. 2001 Vol. xxiv;
for 1922, 1923 [Cmnd. 2001] Vol. xxvi. 1;
for 1923, 1924-25 Cmnd. No. 2277 Vol. xxviii;
for 1924: 1924-25 Cmnd. No. 2494 Vol. xxviii ;
for 1925: 1926 Cmnd. No. 2717 Vol. xxix;
for 1926:1927 Cmnd. No. 2971 Vol. xxv427;
for 1927: 1928 Cmnd. No. 3174 Vol. xxv227.;
for 1928:1929 Cmnd. No. 3426 Vol. xxx;
for 1930: 1930-31 Cmnd. No. 3962 Vol.xxxii;
for 1932: 1933-34 Cmnd. No. 4450 Vol. xxvi;
for 1933: 1933-34 Cmnd. No.4710 Vol. xxvi ;
for 1934: 1934-35 Cmnd. No.4997 Vol. xxi;
for 1936: 1936-37 Cmnd. No.5560 Vol.xxx;
for 1937:1937-38 Cmnd. No.5859 Vol. xxvii;
for 1938: Cmnd. No.6135;
for 1951: 1951-52 Cmnd. No.8567 Vol. xxiv 547.;
for 1953: 1953-54 Cmnd. No.9284;
for 1960: 1960-61 Cmnd. No. 1745 Vol. 27;
for 1964: 1964-65 Cmnd. No.2666 Vol.28;

House of Commons Debates
H.C. Deb vol CCIV (3rd Series) cols 331 and 346 13 February 1873
H.C. Deb vol CCVI (3rd Series) cols 641 and 667 9 June 1873
H.C. Deb vol CCVI (3rd Series) cols 1587-8 and 1590 30 June 1873

National Archive Materials

(A) Judges' Notebooks (J 114)
J 1114/1. T. Eastham K.C. (1944-48)
J 1114/2. T. Eastham K.C. (1945-46)
J 1114/5. T. Eastham K.C. (1947-49)
J 1114/6. T. Eastham K.C. (1947-49)
J 1114/7. T. Eastham K.C. (1947-49)
J 1114/11. T. Eastham K.C. (1950)
J 1114/12. T. Eastham K.C. (1950-51)
J 1114/24. T. Eastham Q.C. (1953-55)

(B) Minute Books, J.116 Series
J.116/1
Sir Walker Kelly-Carter Q.C. Minute Book No. 4 (1959-62)
J116/2
Sir Walker Kelly-Carter Q.C. Minute Book No. 5 [1962-1965]
Sir Walker Kelly-Carter Q.C. Minute Book No. 5 [January-March 1965]
J.116/3
Sir Walker Kelly-Carter Q.C. Minute Book No.6 Court “C”
[March 1965-October 1967]
Sir Walker Kelly-Carter Q.C. Minute Book No. 7 Court “C”
[January 1967-October 1967]

(C) Case Files: Supreme Court of Judicature: Official Referees and Successors
J.115/1: Cowley Concrete Ltd v Alderton Construction Co.Ltd. (1962. Unreported)
J.115/10: Gloucestershire County Council v Henry William Richardson and the Ocean
Accident and Guarantee Corporation Ltd (1966)
J.115/28: Alexander and Angell Ltd v F.C. Pilbean (1968 Unreported)
Unreported)

(D) Lord Chancellors Office Files
LCO 1/73 Official Referees and their office, appointment, salaries and duties. 1875-87
LCO 2/1710 Administration of Justice Bill 1932: question of appeals from Official
Referees; Draft Bills, general correspondence, memoranda, etc. (1930-32)
LCO 2/1734 Appeals from Referees: question of altering Rules consequent on the
Administration of Justice Act 1932 s.1; Rules of the Supreme Court (No.4),1932;
Appeals from Official Referee’s Order,1932.(1932-33)
LCO 2/5976 Official Referee’s: Note by Sir Tom Eastham on Recommendations of the
Second Interim and Final Reports of the Evershed Committee. (1953-56)
LCO 2/6077 Administration of Justice Act ,1956, s.15 ; Jurisdiction of Official Referee s,
Masters etc, appeals form Official Referee s and Masters
LCO 2/7739 Official Referees’ Title: suggestions for alteration. (1951-60)
Suggestions for improving the work status and salaries. (1920-45)
L.C.O. 4/153. Judicial Officers: King’s Bench, Taxing and Lunacy Masters, Registrars,
Probate, Admiralty, Bankruptcy and Companies (Winding-up) and Official Referees.
(1937-48)
LCO 4/154 Judicial Officers: Permanent Secretary Lord Chancellor, King’s Bench,
Chancery, Taxing and Lunacy Masters, Official Referees, Official Solicitor and Assistant
Official Solicitor, Lunacy Visitors, Senior Medical Commissioners, Senior Legal Commissioners, Probate Registrars, Assistant Judge Advocate General, Vice Judge Advocate, Clerks of Assize. General

LCO 4/417 Official Referees: Appointment of Deputies and Question of Temporary Assistance

LCO 1/73. Official Referees and their offices, appointment, salaries and duties. (1875-87)

HO 45/17674. Honours: Other Matters: Conferring of title “His Honour” on Official Referees of the Supreme Court of Judicature and of place and precedence next after Knights Bachelor (1937-38)

PRO 69/269 Supreme Court of Judicature: Official Referees’ Court

Private Collection, Lambeth Palace

Papers of Roundel Palmer, Lord Selbourne
89. MS 1866. ff.75-78 Papers of Lord Selbourne.
84. MS 1865. f.259 Personal and Political Correspondence of Lord Selbourne.
26th June 1872-17 May 1873. f.259 Papers of Lord Selbourne

Books
Preston T., The Supreme Court of Judicature Act 1873. (London: William Amer, 1873)
Smith R., Achieving Civil Justice: Appropriate Dispute Resolution for the 1990s (London: Legal Action Group, 1996)
Reference Books

Journals
Cranston R., (2007) ‘Complex Litigation; The Commercial Court *Civil Justice Quarterly* 190
Galanter M., (1986) ‘The Emergence of the Judge as a Mediator in Civil Cases’ 69 *Judicature* 5
Newspapers

*The Times* 22 April 1869  p.8. Issue 26418; col. F
*The Times* 4 December 1872  p.9. Issue 27551; col. C
*The Times* 24 July 1877  p.11. Issue:29002; col. F
*The Times* 16 August 1880  p.11 Issue 29961; col. G
*The Times* 10 August 1892  p.13. Issue 33713
*The Times* 20 February 1954  p.3; Issues 52861; col. E
*The Times* 15 September 1945  p.2. Issue:50248; col. D
*The Times* 14 July 1953  p.2. Issue:52673; col. D
*The Times* 23 March 1956  p.6. Issue:53487; col. C
*The Times* 30 January 1963  p. 6 Issue 55612; col. A
*The Times* 31 December 1977; p. 14 Issue 60199; col. G.
*The Times* 17 January 1978 p.17 Issue 60212; col. E.
*The Times* 10 April 1985 p.12 Issue 62108; col. G
*The Times* 20 April 1985 p.10 Issue 62117; col. G
Dear Mr Reynolds,

I have been following up your request for information on civil judicial statistics for 1939 to 1949. The readily available indices of command and parliamentary papers do not contain any entries for civil judicial statistics for the years in question: the publication of government statistics as command papers has varied, but the indices should have picked up the publication of judicial statistics regardless of format. The Department for Constitutional Affairs has been asked for similar figures in the past, and have been informed by the Social Sciences and Official Publications section of the British Library that nothing would seem to have been published between 1939 and 1949. According to the British Library, it was not uncommon for the publication of government statistics to be suspended during the War years, starting around 1938 and resuming somewhat belatedly after the War was over. The first edition of statistics published after the War often contained a summary of the figures for the intervening years: in this case, the Civil Judicial Statistics for 1949 (Cmd 8186), contained comparative figures for the years 1938 to 1949 for appellate court proceedings and for courts of first instance, but not for any other area. The British Library could not say whether or not any other figures were collected during the period. However, some other figures may have been collected, as there are references to civil judicial statistics for certain years between 1939 and 1949 on the catalogue of the National Archives (http://www.nationalarchives.gov.uk/catalogue/default.asp). You may therefore like to contact the National Archives to view their holdings.

I hope this information is of use to you.

Yours sincerely,

Patrick M. Vollmer
Senior Library Clerk
Research Services
House of Lords
London, SW1A 0PW
APPENDICES
CONTENTS

Chronologies 14
Referee management chronology 14
Outline and general chronology 16
Sample Return of Judicial Statistics 1880 19

Additional tables
Table 1 Official Referees in post 20
Table 2 Trials in the post war period 21

Data Collection: Official Referees’ Notebooks and Minute Book records
Table 3: Walker Carter QC Sittings: Minute Books 4 and 5 22
Table 4: Walker Carter QC’s Notebook [1959-1963] 22
Table 5: Walker Carter QC Minute Book No. 4 [1959-1962] 23
Table 6: Walker Carter QC Minute Book No. 5 [1962-1965] 37
Table 7: Walker Carter QC notebook [1959-1963] 38
Table 8: Walker Carter QC notebook [1962-1965] 39
Table 9: Walker Carter QC Minute Book No. 5 [January-March 1965] 40
Table 10: Walker Carter QC Minute Book Court “C” [March 1965-October 1967] 42
Table 11: Walker Carter QC Minute Book No. 7 Court “C” [January 1967-October 1967] 50
Table 13: Walker Carter QC Notebook [1967] 53
Table 14: Sir Bret Cloutman QC Notebook [1966-1968] 53
Table 15: Settlement in the course of the trial (1959-1962) 54
Table 16: Settlement in the course of the trial (1965-1967) 57

Judges’ Notebooks J.114 Series Analysis
Judges’ Notebooks J.114/3-4 and 21 (1946-48) 60
Judges Notebook No. 55 (May 1950 – December 1951) 62
Judges Notebook No. 57 (May 1950 – July 1951) 65
Judges Notebook No. 58 (April 1951 – June 1952) 72
Judges Notebook No. 60 (January 1951 – March 1952) 78
Judges Notebook No. 64 (March 1952-October 1953) 89
Judges Notebook No. 70 (February 1954 –January 1957) 95
Judges Notebook No. 75 (January 1955 – November 1960) 107
Judges Notebooks J.114/2 (March - October 1945) 113
Judges Notebooks J.114/1 (November 1944 - October 1946) 114
Judges Notebook No. 71 (March 1954 – November 1964) 115

**Statistical data spreadsheets** 126

2. Backlog analysis 1919-70
# REFEREE CASE MANAGEMENT CHRONOLOGY

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1867-1873</td>
<td>Judicature Commissioners consider referral powers under the Common Law Procedure Act 1854 and the problem of non-compulsory referral to an arbitrator. Further consideration given to Chancery referrals to Chief Clerk and difficulties with lay jury in understanding more technically complex cases. Judicature Commissioners recommended compulsory referral in certain cases. Subordinate judicial functions and powers; limited trial function.</td>
</tr>
<tr>
<td>1883</td>
<td>RCS Order 36 Rule 50 - Power to order discovery and production of documents</td>
</tr>
<tr>
<td>1889</td>
<td>Powers to make orders as to costs both at interlocutory stage and judgment</td>
</tr>
<tr>
<td>1889</td>
<td>Beginnings of Senior Official Referees management powers. Senior referee required to make return of cases to the Lord Chancellor through the Lord Chief Justice.</td>
</tr>
<tr>
<td>11 January 1889</td>
<td>RSC 1883 Order 47A (December 1888) transfer between Referees</td>
</tr>
<tr>
<td>1890s</td>
<td>Referees had their own Courts and Chambers. Chambers were in Portugal Street behind the RCJ</td>
</tr>
<tr>
<td>1893</td>
<td>Power to order an inspection of property (<em>McAlpine v Calder</em> 1893 1QB 545).</td>
</tr>
<tr>
<td>1920</td>
<td>Newbolt commences series of experiments with expert witnesses and initiates new directions to expedite process. Newbolt expresses private concern to Lord Chancellor over <em>proportionality</em> of cases in terms of cost/value.</td>
</tr>
<tr>
<td>1921</td>
<td>First record of use of expert determination by Newbolt.</td>
</tr>
<tr>
<td>1922</td>
<td>First record of <em>friendly business discussions</em> in Chambers</td>
</tr>
<tr>
<td>1922</td>
<td>Use of directions hearings as caseflow management conferences after issue of Writ and pre-trial meetings (second summons for directions) to narrow issues and encourage settlement</td>
</tr>
<tr>
<td>1923</td>
<td>Newbolt describes how he appointed single joint expert in a case (1923) 34 LQR427 and (1926) 42 LQR 52</td>
</tr>
<tr>
<td>1954</td>
<td>Referrals being tired in a “matter of weeks.” (Eastham’s memorandum)</td>
</tr>
<tr>
<td>Year</td>
<td>Case Management Powers</td>
</tr>
<tr>
<td>------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1968</td>
<td>Summons for Directions was issued when case was transferred and entered in the rota. Allocated to an Official Referee. Short Summons lasted 15 minutes, longer Summons was over 15 minutes. Taken out within 14 days of transfer to Official Referee. General directions given by O.R. Practice Directions 1968 1WLR425 and 1WLR1425 - if parties could not state their requirements there could be penalties in costs. Official Referee would give directions. If expert evidence was adduced parties should produce reports and plans for agreement of the other side or if there was no agreement then deliver a statement as to what was not agreed. Practice Direction of Sir Walter Carter 8 July 1968 Notice given to solicitors 7 days before trial to advise court if likelihood of settlement. The standard orders on directions given by Official Referees encompassed: Further discovery verified by Affidavit; Security for costs; Appointment of a Court expert under Order 40;(rarely used) Inspection and preservation of property; Order for Interrogatories.</td>
</tr>
</tbody>
</table>

Note: 1920-1923 is the key creative period for the referees from which the research questions emerge.
**OUTLINE AND GENERAL CHRONOLOGY**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1854</td>
<td>Section 3 Common Law Procedure Act 1854 judge could refer matter of account to an arbitrator or officer of the Court called a “Referee”. Award or certificate of such referee enforceable as a finding of a jury.</td>
</tr>
<tr>
<td>1873</td>
<td>Judicature Act (Third Bill presented by Lord Selbourne) Referee judgement could be set aside like the verdict of a jury. Rules of the Supreme Court drafted Mr Anderson appointed by Lord Selbourne.</td>
</tr>
<tr>
<td>1876</td>
<td>Three other referees appointed Judgments subject to review on findings of facts - <em>Cruickshank v Floating Swimming and Baths</em>.</td>
</tr>
<tr>
<td>1877</td>
<td>Hearing conducted in referee's private room in Portugal Street see: <em>Leigh v Brooks</em> 1877. More evidence of use after 1892.</td>
</tr>
<tr>
<td>1883</td>
<td>Subordinate judicial powers confirmed as to: Evidence at trial; Incorporation of referee report by High Court judge.</td>
</tr>
<tr>
<td>1887</td>
<td>Result of referee enquiry report having status of jury verdict. see <em>Baronness Wenlock v River De</em> 1887</td>
</tr>
<tr>
<td>1889</td>
<td>Powers as to costs. Establishment reduced from four Referees to three.</td>
</tr>
<tr>
<td>1894</td>
<td>Section 1 (5) Supreme Court Judicature Act 1894 provided that an appeal from a judgment of a Referee was to a Divisional Court. Order for Judgment by a Referee could be set aside by a Divisional Court see <em>Clark v Sonnenschein</em> 25 QBD 226 compare with <em>Administration of Justice Act 1932</em> which provided for a direct right of appeal to the Court of Appeal itself on matter of law. Counsel remained seated during hearings before the Referee. See Sir Ronald Burrell’s article in the 1940 Edition 56LQR509.</td>
</tr>
<tr>
<td>1900</td>
<td>Referees moved from Portugal Street to the West Wing of the Law Courts which became known as the Official Referees Corridor.</td>
</tr>
<tr>
<td>Year</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1921</td>
<td>Post-War peak of 507 cases that year following acquisition of non-jury list.</td>
</tr>
<tr>
<td>1925</td>
<td>Sections 88 and 89 Supreme Court Act 1925.</td>
</tr>
<tr>
<td>1932</td>
<td>Administration of Justice Act appeals not by way of case stated to the Divisional Court but to the Court of Appeal therefore argument that Referees became fully fledged Judges.</td>
</tr>
<tr>
<td>1938</td>
<td>Style of “His Honour” bestowed.</td>
</tr>
<tr>
<td>1940</td>
<td>Sir Ronald Burrows article in LQR “Large number of non jury actions and same work as High Court Judges”.</td>
</tr>
<tr>
<td>1942</td>
<td>House of Lords decided against the Referees doing professional negligence work. See <em>Ossenton v Johnston</em> (1942) but Parliament after Evershed Report gave a right of appeal against Official Referee judgements in fact and law.</td>
</tr>
<tr>
<td>1948</td>
<td>Establishment increased from 3 to 4.</td>
</tr>
<tr>
<td>1951</td>
<td>Referrals: 465 cases.</td>
</tr>
<tr>
<td>1953</td>
<td>Evershed Report acknowledged referee’s position and suggested wider jurisdiction.</td>
</tr>
<tr>
<td>1956</td>
<td>Administration of Justice Act following Evershed reports. Question of status. Under Section 9 Official Referees to be appointed by the Crown. Required to take a judicial oath. Duration no longer determined by the Lord Chancellor by retiring at 72 years of age. Section 15 Administration of Justice Act 1956 Right of Parties to choose Referee (Specials) abolished. Numbers of Referees were reduced from 4 to 3.</td>
</tr>
<tr>
<td>1965</td>
<td>Referees moved from the Royal Courts of Justice West Wing to Victory House in Kingsway.</td>
</tr>
<tr>
<td>1969</td>
<td>Return to RCJ in three Courts in the West Wing.</td>
</tr>
<tr>
<td>1970</td>
<td>901 referrals. Beeching Report recommended that they be appointed Circuit Judges and sit as Deputy High Court Judges.</td>
</tr>
<tr>
<td>1975</td>
<td>Two new Courts constructed on the third floor, West Wing of the Royal Courts of Justice. They had three Courts on the third floor and two Courts on the second floor.</td>
</tr>
<tr>
<td>Year</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>1982</td>
<td>Originating jurisdiction. Litigants could start action in this Court therefore it became a specialist Court but not on a real par with the commercial Court as described by Edgar Fay.</td>
</tr>
<tr>
<td>1983</td>
<td>Number of ORs increased back from 3 to 4 again.</td>
</tr>
<tr>
<td>1984</td>
<td>Delays in ORs out of control. See Donaldson’s remarks in <em>NRHS v Derek Crouch</em> [1984] QB644 at 674.</td>
</tr>
<tr>
<td>1985</td>
<td>Over 1,000 cases.</td>
</tr>
<tr>
<td>1988</td>
<td>ORs moved to St Dunstans House, Fetter Lane</td>
</tr>
</tbody>
</table>
Return of Judicial Statistics 1880

Returns of the proceedings before the Official Referees appointed under Section 83 of the Judicature Act 1873, made by the Referees, for the year ending the 31st October 1880, show the nature and result of the References heard or otherwise disposed of in the same period; the numbers are also given for 1878—9:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of References appointed for hearing, including Remnants -</td>
<td>139</td>
<td>91</td>
</tr>
<tr>
<td>Defended -</td>
<td>76</td>
<td>44</td>
</tr>
<tr>
<td>Undefended -</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Number of References part heard -</td>
<td>34</td>
<td>28</td>
</tr>
<tr>
<td>Withdrawn -</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>Standing over by order of Court</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Number of Remnants -</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>139</td>
<td>91</td>
</tr>
</tbody>
</table>

Nature of the References heard and disposed of.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>On Promissory Notes, Bills of Exchange, &amp;c.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>On bonds -</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>For goods sold and delivered -</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>For work and labour done -</td>
<td>21</td>
<td>10</td>
</tr>
<tr>
<td>For money lent, paid, advanced, &amp;c. -</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>For compensation for injuries to property from negligence</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>For breach of contract, &amp;c. -</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>For recovery of land (Ejectments)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For breach of covenant -</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>For trespass relative to land, houses, &amp;e. -</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Interpleader Issues -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issue from Court of Equity -</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>For recovery of rent -</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other suits</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>77</td>
<td>45</td>
</tr>
<tr>
<td>Official Referrees in 1919-1970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sir Francis Newbolt</td>
<td>1920-1936</td>
<td></td>
</tr>
<tr>
<td>George Scott</td>
<td>1920-1933</td>
<td></td>
</tr>
<tr>
<td>Sir William Hansell</td>
<td>1927-1931</td>
<td></td>
</tr>
<tr>
<td>Sir Roland Bosanquet</td>
<td>1931-1954</td>
<td></td>
</tr>
<tr>
<td>Charles Pitman</td>
<td>1933-1945</td>
<td></td>
</tr>
<tr>
<td>Sir Tom Eastham</td>
<td>1936-1954</td>
<td></td>
</tr>
<tr>
<td>John Trapnell</td>
<td>1943-1949</td>
<td></td>
</tr>
<tr>
<td>Herbert Samuels</td>
<td>1945-1947</td>
<td></td>
</tr>
<tr>
<td>Sir Brett Cloutman</td>
<td>1948-1963</td>
<td></td>
</tr>
<tr>
<td>Sir Lionel Leach</td>
<td>1948-1956</td>
<td></td>
</tr>
<tr>
<td>Sir Hubert Hull</td>
<td>1949-1950</td>
<td></td>
</tr>
<tr>
<td>John Caswell</td>
<td>1951-1959</td>
<td></td>
</tr>
<tr>
<td>Sir Walker Kelly Carter</td>
<td>1954-1971</td>
<td></td>
</tr>
<tr>
<td>Percy Lamb</td>
<td>1959-1969</td>
<td></td>
</tr>
<tr>
<td>Sir Norman Richards</td>
<td>1963-1978</td>
<td></td>
</tr>
<tr>
<td>Sir William Stabb</td>
<td>1969-1983</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 2

Trials in the post war period

<table>
<thead>
<tr>
<th>Year</th>
<th>Referees in post</th>
<th>Trials in that year</th>
<th>Average number of trials per referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>3</td>
<td>133</td>
<td>44</td>
</tr>
<tr>
<td>1948</td>
<td>5</td>
<td>258</td>
<td>51</td>
</tr>
<tr>
<td>1949</td>
<td>5</td>
<td>225</td>
<td>45</td>
</tr>
<tr>
<td>1950</td>
<td>5</td>
<td>289</td>
<td>58</td>
</tr>
<tr>
<td>1951</td>
<td>5</td>
<td>293</td>
<td>59</td>
</tr>
<tr>
<td>1952</td>
<td>5</td>
<td>350</td>
<td>70</td>
</tr>
<tr>
<td>1953</td>
<td>5</td>
<td>316</td>
<td>63</td>
</tr>
<tr>
<td>1954</td>
<td>4</td>
<td>307</td>
<td>76</td>
</tr>
<tr>
<td>1955</td>
<td>4</td>
<td>302</td>
<td>75</td>
</tr>
<tr>
<td>1956</td>
<td>4</td>
<td>243</td>
<td>61</td>
</tr>
<tr>
<td>1957</td>
<td>3</td>
<td>182</td>
<td>61</td>
</tr>
<tr>
<td>1958</td>
<td>3</td>
<td>167</td>
<td>56</td>
</tr>
<tr>
<td>1959</td>
<td>3</td>
<td>158</td>
<td>53</td>
</tr>
<tr>
<td>1960</td>
<td>3</td>
<td>154</td>
<td>51</td>
</tr>
</tbody>
</table>
DATA COLLECTION (CHAPTER 5 APPENDIX)

Data Collection: *Minute Book/Judges' Notebook Analysis* [1959-62]

Data Analysis of Minute Books Nos. 4 & 5

Cases Not Recorded in Minute Books [1959-62]

Data Collection: *Minute Book/Judges' Notebook Analysis* [1965-67]

Cases Not Recorded in Minute Books [1965-67]

### TABLE 3

**Sir Walker Kelly-Carter Sittings: Minute Books 4 and 5**

<table>
<thead>
<tr>
<th>Year</th>
<th>1959</th>
<th>1960</th>
<th>1961</th>
<th>1962</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days sat According to Minute Books</td>
<td>68</td>
<td>76</td>
<td>103</td>
<td>40</td>
</tr>
<tr>
<td>Days sat According to Minute Books and Notebooks</td>
<td>80</td>
<td>76</td>
<td>103</td>
<td>44</td>
</tr>
</tbody>
</table>

### TABLE 4

**Sir Walker Carter's Notebook [1959-1963]**

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type</th>
<th>Time Occupied by referee</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Pugh v Brisford Entertainment Ltd &amp; Anor</em> ¹</td>
<td>12&lt;sup&gt;th&lt;/sup&gt; January 1959</td>
<td>Dispute as to agricultural holding and breach of tenancy agreement</td>
<td>Dys 1-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 8 days</td>
</tr>
<tr>
<td><em>Sims and Russell Ltd v Russell &amp; Others</em> ²</td>
<td>26&lt;sup&gt;th&lt;/sup&gt; April 1959</td>
<td>Architects fees dispute.</td>
<td>Dys: 1-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 4 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| S Kaplin & Son (Upholsterers) Limited v Parkins | 30 April 1959 | Building defects and diminution in value          | Dy 1 4hrs. 33mins.  
Dy 2 2hrs. 23mins.  
Total: 6hrs. 56mins. |
| Martin French v Kingswood Hill Ltd            | 6 May 1959  | Preliminary issues: claim for professional fees and question of equitable set off | Dy 1: 4hrs.  
Dy 2: 1hr. 25mins.  
Dy 3: 20mins.  
Total: 5hrs. 45mins. |
| Dowlas Contractors Ltd v Barnes                | 12 May 1959 | Claim for moneys due under various invoices and extra work | Dy 1 5hrs. 55mins.  
Dy 2: 1hr 35mins.  
Total: 7hrs. 30mins. |
| Been Twownes v University College of Wales Aberystwyth | 27 May 1959 | Claim for compensation after de-requisitioning under Section 2(1)(b) Compensation (Defence) Act 1959 and Section 18 Landlord and Tenant Act 1927. | Dy 1: 1hr 45mins.  
Total: 1hr 45mins. |
| Burton Mayhew & Co v Pierson                 | 28 May 1959 | Damages for breach of contract                   | Dy 1 + 2: 6hrs. 3mins.  
Dy 3: 10mins.  
Total: 6hrs. 10mins. |
| Midlands Electricity Board v Holder          | 3 June 1959 | Building contract claim                           | Dy 1 2hrs. 10mins.  
Total: 2hrs. 10mins. |

---

3 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 [CIMG 0160jpg and SH 101353-4jpg]
5 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 1967jpg]
6 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 1968jpg]
7 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 1969jpg]
8 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 1970jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| Re: a Lease of St Martins Theatre London WC2 and re Landlord and Tenant Act 19549 | 8 June 1969 | Enquiry and Report; inquiry into the extent of defective electrical items in the theatre and consequent diminution in value attributable to state of disrepair. | Dy 1: 4hrs. 25mins.  
Dy 2: 4hrs. 27mins.  
Dy 3: 4hrs. 30mins.  
Dy 4: 4hrs. 10mins.  
Dy 5: 6hrs.  
Dy 6: 2hrs. 25mins.  
**Total: 25hrs. 57mins.** |
| Motor Bodies (Stratford Limited) v Poplar Furniture Manufacturing Company Limited10 | 16 June 1959 | Claim for damages to repair a vehicle.                                                           | Dy 1: 3hrs. 53mins.  
Dy 2: 2hrs. 15mins.  
**Total: 6hrs. 8mins.** |
| Sheridan and Hurley v Corlentin11            | 18 June 1959 | Building claim                                                                                   | Dy 1: 5 mins.  
**Total: 5 mins.** |
| Crimples v Britton12                        | 22 June 1959 | Building claim; defects and breach of Building Regulations                                        | Dy 1: 2hrs. 5mins.  
Dy 2: 4hrs.  
**Total: 6hrs. 5mins.** |
| Rye Care Ltd v Mercantile Refrigeration Ltd 13 | 24 June 1959 | Building Claim. Case used Scott Schedule device.                                                  | Dy 1: 4hrs. 10mins.  
Dy 2: 4hrs. 45mins.  
Dy 3: 4hrs. 30mins.  
**Total: 13hrs. 25mins.** |
| Lloyd Jones v Gilbert14                      | 30 June 1959 | Building Claim                                                                                   | Dy 1: 3hrs. 40mins.  
**Total: 3hrs. 40mins.** |
| Anglo Overseas Transport Co Ltd v S.A.Sampson Ltd15 | 6 July 1959 | Commercial dispute as to payment for two export and one import order. Settlement agreed in sum of £1818.13.3 in respect of claim for £4,368.13.3. | Dy 1: 1hr.  
**Total: 1hour** |

---

13 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.34 [Oct 2006 Series; HPIM 1979.jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bole v Doyle (Consolidated)</strong></td>
<td>16</td>
<td>for £629 and £569 respectively plus interest at 5%</td>
<td>Total: 4 hrs.</td>
</tr>
</tbody>
</table>
| **Wiseman v Gildes**         | 15 July 1959    | Dilapidations and loss of rent | Dy 1: 4hrs. 47 mins.  
Dy 2: 30mins.  
**Total: 5hrs.** |
| **Cousin Brothers (Machine Tool Specialists)Ltd v Gladwell Rowe Ltd** | 16 July 1959 | Defective machinery | Dy 1: 4hrs. 18 mins.  
Dy 2: 4hrs. 35 mins.  
Dy 3: 4hrs. 15 mins.  
**Total: 13hrs.**  
58mins. |
| **Bilton & Son v Mason**     | Part heard      | Building Claim          | B/Fwd: 14hrs. 55 mins.  
Dy 4: 3hrs. 33 mins.  
**Total: 18 hrs.**  
28mins. |
| **Kersey v Haller**          | 23 July 1959    | Building claim          | Dy 1: 6hrs. 45 mins.  
**Total: 6hrs.**  
45 mins. |
| **Homes v Thomas**           | 30 July 1959    | Money Claim             | Dy 1: 2 hrs. 15 mins.  
**Total: 2hrs.**  
15 mins. |
| **Horton & Anor. v AC**      | 2 October 1959  | Building claim          | Dy 1: 4hrs. 15 mins.  
View: 4 hrs.  
Dy 2: 4hrs. 20 mins.  
Dy 3: 3hrs. 40 mins.  
Dy 4: 3hrs. 58 mins.  
Dy 5: 4hrs. 32 mins.  
Dy 6: 3hrs. 50 mins.  
Dy 7: 5hrs. 51 mins.  
Dy 8: 1hr. 50 mins.  
**Total: 36hrs.**  
26 mins. |
| **Arnold Meyrick Limited v P E Thomas** | 26 October 1959 | Building claim          | Dy 1: 3 mins.  
**Total: 3 mins.** |

16 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.43-44 [Oct 2006 Series; HPIM 1984jpg]  
17 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.45 [Oct 2006 Series; HPIM 1985jpg]  
18 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.48 [Oct 2006 Series; HPIM 1986jpg]  
22 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.65 [CIMG 0166]  
24 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 63 [ CIMG 0164]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
Total: 4 mins. |
| Dewston v Rowson Dunbar & Cladesdale Ltd | 2 November 1959 | Building claim | Dy 1: 4hrs 8 mins.  
Dy 2: 1hr. 30 mins.  
Dy 3: 4hrs. 29 mins.  
Dy 4: 4hrs. 41 mins.  
Dy 5: 1hr. 22 mins.  
Dy 6: 2 mins.  
Total: 16 hrs 12 mins. |
| Sheridan Hurley v Corentun | 9 November 1959 | Building Claim | Dy 1: 4hrs 30 mins.  
Dy 2: 2hrs 53 mins.  
Total: 7 hrs 23 mins. |
| G Swinden & Co Ltd v William Franklin Sterling Car Hire Services Ltd. Launderette (High Road) Limited. Launderette (Borehamwood) Limited | 19 November 1959 | Action on an account | Dy 1: 3hrs. 16 mins.  
Dy 2: 4hrs. 26 mins.  
Dy 3: 2hrs. 16 mins.  
Total: 9 hrs 58 mins |
| R.C. Clarke v Gallery Estate Ltd | 25 November 1959 | Building Claim: Final A/c dispute | Dy 1: 3hrs. 16 mins  
Dy 2: 2hrs. 10 mins.  
Total: 5 hrs. 26 mins. |
| H. G. Dunford & Bros v E Sutton | 1st December 1959 | Building claim | Dy 1: 2 hrs 25 mins.  
Total: 2 hrs 25 mins |
| British Electric Traction Co Ltd v Thomas Edwin Langton and Luxury Land Cruises Ltd | 7 December 1959 | Holiday Claim, enquiry and report | Dy 1: 4 hrs. 21 mins.  
Dy 2: 4 hrs. 20 mins.  
Dy 3: 4 hrs. 27 mins.  
Dy 4: 4 hrs. 43 mins. |

25 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 65 [CIMG 0165]  
27 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 73 [Oct 2006 Series; HPIM 1999jpg]  
28 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 79 [Oct 2006 Series; HPIM 2002jpg]  
29 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 82 [Oct 2006 Series; HPIM 2003jpg]  
31 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 87 [Oct 2006 Series; HPIM 2006jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| **ML Transport (a firm) v Horrocks**<sup>32</sup> | 11 January 1960 | Assessment of Damages | Dy 5 4hrs. 30mins.  
Dy 6 3hrs. 39 mins.  
Dy 7 3hrs. 10mins  
Total: 29hrs 10mins |
| **James Atkinson and Veronica Atkinson v Steer**<sup>33</sup> | 20 January 1960 | Action on an account | Dy 1: 50mins.  
Total: 50mins. |
| **George v Russell Bros (Paddington) Limited**<sup>34</sup> | 1 February 1960 | Building case – preliminary issues – building owner acted unreasonably in not employing builder to finish house | Dy 1 4hrs. 20mins.  
Dy 2 2hrs. 50mins.  
Dy 3 4hrs. 13mins.  
Dy 4 3hrs. 31mins.  
Dy 5 2hrs. 50mins.  
Total: 17hrs. 44mins. |
| **HG Thomas v Nichol**<sup>35</sup> | 10 February 1960 | Building claim | Dy 1 10mins.  
Total: 10mins. |
| **Alpenite Limited v Conn & Anor**<sup>36</sup> | 15 February 1960 | Building claim | Dy 1 4hrs. 28mins.  
Dy 2 4hrs. 28mins.  
Dy 3 4hrs. 25mins.  
Dy 4 4hrs. 33mins.  
Dy 5 4hrs.  
Dy 6 5mins.  
Total: 21hrs. 59mins. |
| **Charles Amos Gander v D Hooper & Anor**<sup>37</sup> | 29 February 1960 | Building claim | Dy 1 40mins.  
Total: 40 mins. |
| **Clifton Slipways Co Ltd v Charles Lane**<sup>38</sup> | 2 March 1960 | Building claim | Dy 1 4hrs. 30mins.  
Dy 2 55mins.  
Total: 5hrs. 25mins. |
| **JH Plant Ltd v Smithson**<sup>39</sup> | 9 March 1960 | Building claim | Dy 1 4hrs. 20mins.  
Dy 2 4hrs. 19mins.  
Dy 3 3hrs. 15mins. |

<sup>32</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.93 [Oct 2006 Series; HPIM 2009jpg]

<sup>33</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.94 [Oct 2006 Series; HPIM 2009jpg]

<sup>34</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 2010jpg]

<sup>35</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.98 [Oct 2006 Series; HPIM 2011jpg]

<sup>36</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.99 [Oct 2006 Series; HPIM 2012jpg]

<sup>37</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.103 [Oct 2006 Series; HPIM 2014jpg]

<sup>38</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.104 [Oct 2006 Series; HPIM 2014jpg]

<sup>39</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.105 [Oct 2006 Series; HPIM 2015jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Kinross v R H Tarrant</td>
<td>15 March 1960</td>
<td>Building case</td>
<td>Dy 1 hrs. 30 mins.        &lt;br&gt; Dy 2 hrs. 25 mins.        &lt;br&gt; Dy 3 hrs. 5 mins.        &lt;br&gt; Total: 8 hrs.</td>
</tr>
<tr>
<td>E K Youell &amp; Son Ltd v Frederick Ingram</td>
<td>22 March 1960</td>
<td>Building case</td>
<td>Dy 1 hrs. 35 mins.        &lt;br&gt; Dy 2 hrs. 45 mins.        &lt;br&gt; Total: 7 hrs. 20 mins.</td>
</tr>
<tr>
<td>T Projects Limited v William Reader</td>
<td>29 March 1960</td>
<td>Building case</td>
<td>Dy 1 5 mins.                  &lt;br&gt; Total: 5 mins.</td>
</tr>
<tr>
<td>Douglas Neare &amp; Lartner v M Howard</td>
<td>27 April 1960</td>
<td>Building claim</td>
<td>Dy 1 hrs. 21 mins.        &lt;br&gt; Dy 2 hrs. 26 mins.        &lt;br&gt; Dy 3 hrs. 50 mins.        &lt;br&gt; Total: 10 hrs. 37 mins.</td>
</tr>
<tr>
<td>Livio Mascherpa v Direck Limited</td>
<td>4 May 1960</td>
<td>Dilapidations case</td>
<td>Dy 1 27 mins.                &lt;br&gt; Total: 27 mins.</td>
</tr>
<tr>
<td>Sergios Papa Michael v H Sarva &amp; G Sarva</td>
<td>12 May 1960</td>
<td>Building claim, production in bill of quantities did not disentitle the Defendant to allege bad workmanship</td>
<td>Dy 1 hrs. 3 mins.             &lt;br&gt; Dy 2 hrs. 20 mins.             &lt;br&gt; Dy 3 hrs. 46 mins.             &lt;br&gt; Total: 12 hrs. 9 mins.</td>
</tr>
<tr>
<td>Trench Excavations Ltd v Paparall Construction Company Limited</td>
<td>30 May 1960</td>
<td>Building claim</td>
<td>Dy 1 hrs. 10 mins.        &lt;br&gt; Dy 2 hrs. 22 mins.        &lt;br&gt; Dy 3 hrs. 33 mins.        &lt;br&gt; Dy 4 hrs. 27 mins.        &lt;br&gt; Dy 5 hrs. 1 hr.        &lt;br&gt; Total: 19 hrs. 42 mins.</td>
</tr>
<tr>
<td>Brewis P.G. v H R Atkinson &amp; Co</td>
<td>21 June 1960</td>
<td>Building claim – measurement of variations</td>
<td>Dy 1 hrs. 13 mins.                  &lt;br&gt; Dy 2 hrs. 2 mins.                  &lt;br&gt; Total: 5 hrs. 15 mins.</td>
</tr>
<tr>
<td>The Beechwood Estates Company v Mrs L Hanbury Aggs</td>
<td>27 June 1960</td>
<td>Landlord and tenant claim, breach of repairing covenant</td>
<td>Dy 1 hrs. 20 mins.        &lt;br&gt; Total: 5 hrs. 20 mins.</td>
</tr>
</tbody>
</table>

Sources:
40 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.107 [Oct 2006 Series; HPIM 2016jpg]
41 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.100 [Oct 2006 Series; HPIM 2017jpg]
42 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.112 [Oct 2006 Series; HPIM 2018jpg]
43 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.113 [Oct 2006 Series; HPIM 2019jpg]
44 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.116 [Oct 2006 Series; HPIM 2020jpg]
45 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.116 [Oct 2006 Series; HPIM 2020jpg]
46 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.120 [Oct 2006 Series; HPIM 2022jpg]
47 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.122 [Oct 2006 Series; HPIM 2023jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leslie Arthur Brooks v Ann Cooper</td>
<td>4th July 1960</td>
<td>Building claim</td>
<td>Dy 1: 4hrs. 5mins. Total: 4hrs. 5mins.</td>
</tr>
<tr>
<td>Lenton v City of Coventry</td>
<td>1st November 1960</td>
<td>Building Claim: Preliminary Issues Adjourned to 21st Feb 1961 but not heard then so must have been settled after this hearing.</td>
<td>Dy 1: 4hrs. 15mins. Dy 2: 1hr. 30mins. Total: 5hrs. 45mins.</td>
</tr>
</tbody>
</table>

48 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.124 [Oct 2006 Series; HPIM 2024jpg]
49 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.125 [Oct 2006 Series; HPIM 2025jpg]
50 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.126 [Oct 2006 Series; HPIM 2025jpg]
51 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.130 [Oct 2006 Series; HPIM 2027jpg]
52 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.131 [Oct 2006 Series; HPIM 2028jpg]
53 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.136 [Oct 2006 Series; HPIM 2030jpg]
54 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.137 [Oct 2006 Series; HPIM 2031jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| Youngsigns Limited v SSB Limited 55           | 14th November 1960 | Building Claim | Dy 1: 4hrs. 7mins.  
Dy 2: 3hrs. 22mins.  
Dy 3: 4hrs. 37mins.  
Dy 4: 4hrs. 5 mins.  
Dy 5: 4hrs. 36mins.  
**Total: 20hrs. 59mins.** |
| Charles Churchill & Co Ltd v Lemark Limited 66 | 23 November 1960 | Building claim | Dy 1: 5hrs. 30mins.  
Dy 2: 35mins.  
Dy 3: 4hrs. 49mins.  
Dy 4: 4hrs. 44mins.  
Dy 5: 4hrs. 27mins.  
Dy 6: 4hrs. 29mins.  
Dy 7: 4hrs. 22mins.  
Dy 8: 5hrs. 23mins.  
Dy 9: 4hrs. 35mins.  
Dy 10: 4hrs. 20mins.  
Dy 11: 4hrs. 4mins.  
Dy 12: 4hrs. 18mins.  
**Total: 51hrs. 36mins.** |
**Total: 12mins.** |
| Timothy Mitchell v Patrick Dempsey 58         | 15 December 1960 | Building claim | Dy 1: 4hrs.  
Dy 2: 3hrs. 40mins.  
Dy 3: 55mins.  
**Total: 8hrs. 35mins.** |
| Pugh v Brisford Entertainment Limited & Anor 59 | 11 January 1961 | Matter of an account  |
Tillages valuations for agricultural land.  |

55 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.138 [CIMG 0182.jpg]
56 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.142 [Oct 2006 Series; HPIM 2033.jpg]
57 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.144 [Oct 2006 Series; HPIM 2034.jpg]
58 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.145 [Oct 2006 Series; HPIM 2035.jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>J Murphy &amp; Sons Limited v Aberfren Cable &amp; Construction Co Limited&lt;sup&gt;60&lt;/sup&gt;</td>
<td>13 February 1961</td>
<td>Building claim – excavation works</td>
<td>Dy 1 4hrs. 32mins. &lt;br&gt; Dy 2 4hrs. 25mins. &lt;br&gt; Dy 3 4hrs. 18mins. &lt;br&gt; Dy 4 3hrs. 42mins. &lt;br&gt; Dy 5 1hr. 15mins. &lt;br&gt; <strong>Total: 34hrs. 27mins.</strong></td>
</tr>
<tr>
<td>Harper &amp; Preston Limited v Marshall Coatings Limited&lt;sup&gt;61&lt;/sup&gt; (Official Referee sitting in Birmingham)</td>
<td>22 February 1961</td>
<td>Building case</td>
<td>Dy 1 6hrs. 30mins. &lt;br&gt; Dy 2 5hrs. 28mins. &lt;br&gt; Dy 3 6hrs. 55mins. &lt;br&gt; Dy 4 1hr. 10mins. &lt;br&gt; <strong>Total: 18hrs. 12mins.</strong></td>
</tr>
<tr>
<td>Arthur Finbar v Robert Edward Fox&lt;sup&gt;62&lt;/sup&gt;</td>
<td>27 February 1961</td>
<td>Building claim</td>
<td>Dy 1 4hrs. 35mins. &lt;br&gt; Dy 2 1hr. 45mins. &lt;br&gt; <strong>Total: 6hrs. 30mins.</strong></td>
</tr>
<tr>
<td>Mills Inter Commercial Limited and Anor v The Dudley Iron &amp; Steel Company (1950)&lt;sup&gt;63&lt;/sup&gt;</td>
<td></td>
<td>Matter of account</td>
<td>Dy 1 4hrs. 25mins. &lt;br&gt; Dy 2 4hrs. 22mins. &lt;br&gt; Dy 3 4hrs. 42mins. &lt;br&gt; Dy 4 3hrs. 40mins. &lt;br&gt; Dy 5 3hrs. 45mins. &lt;br&gt; Dy 6 5mins. &lt;br&gt; <strong>Total: 19hrs. 59mins.</strong></td>
</tr>
<tr>
<td>Ivor Brackwell v Sutherland (Tenulite) Products Limited&lt;sup&gt;64&lt;/sup&gt; (Sitting at Loughborough)</td>
<td>13 March 1961</td>
<td>Building claim</td>
<td>Dy 1 5mins. &lt;br&gt; <strong>Total: 5 mins.</strong></td>
</tr>
<tr>
<td>Sydney Bell v S.R. Hardy&lt;sup&gt;65&lt;/sup&gt;</td>
<td>22 March 1961</td>
<td>Building claim</td>
<td>Dy 1 5hrs. 15mins. &lt;br&gt; Dy 2 4hrs. 25mins. &lt;br&gt; Dy 3 45mins. &lt;br&gt; <strong>Total: 10hrs. 25mins.</strong></td>
</tr>
<tr>
<td>James Glanville &amp; Sons Ltd v H G Winteridge &amp; Co Ltd&lt;sup&gt;66&lt;/sup&gt;</td>
<td>29 March 1961</td>
<td>Building case</td>
<td>Dy 1 2hrs. 16mins. &lt;br&gt; Dy 2 4hrs. 27mins. &lt;br&gt; Dy 3 4hrs. 57mins. &lt;br&gt; Dy 4 4hrs. 15mins.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Fletcher Suiter v W Pikta 69</td>
<td>7 June 1961</td>
<td>Building claim</td>
<td>Dy 1 hrs. 13mins.  Total: 5hrs. 13mins.</td>
</tr>
<tr>
<td>Bernard Lamb v George H Edwar s 70</td>
<td>12 June 1961</td>
<td>Building case</td>
<td>Dy 1 hrs. 32mins.  Total: 4hrs. 32mins.</td>
</tr>
<tr>
<td>Thomas Bullock v D Rose 71</td>
<td>14 June 1961</td>
<td>Building claim</td>
<td>Dy 1 hrs. 5mins.  Total: 3hrs. 5mins.</td>
</tr>
<tr>
<td>Ian Frederick Dimbleby v Thomas Scott &amp; IF D</td>
<td>20 June 1961</td>
<td>Building claim</td>
<td>Dy 1 hrs. 40mins.  Dy 2 hrs. 25mins.  Total: 8hrs. 5mins.</td>
</tr>
<tr>
<td>Dimbleby v D Galley 72</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>George Alfred Collie v W E Archer 73</td>
<td>26 June 1961</td>
<td>Building claim</td>
<td>Dy 1 hrs. 4hrs.  Dy 2 hrs. 3hrs. 20mins.  Site Visit view: 1 hr.  Dy 4 hrs. 40mins.  Total: 13hrs.</td>
</tr>
<tr>
<td>Phelps Beddard Ltd v Patrick E Lung 74</td>
<td>29 June 1961</td>
<td>Dispute over schedule of decoration and repairs</td>
<td>Dy 1 hrs. 45mins.  Dy 2 hrs. 13mins.  Dy 3 hrs. 50mins.  Dy 4 hrs. 35mins.  Total: 14hrs. 23mins.</td>
</tr>
<tr>
<td>Biu Estates Limited v Henry Bingham Towner 75</td>
<td>17 July 1961</td>
<td>Building claim – value of work; delay; defective</td>
<td>Dy 1 hrs. 35mins.  Dy 2 hrs. 30mins.</td>
</tr>
</tbody>
</table>

67 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.176 [Oct 2006 Series; HPIM 2052jpg]
68 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.182 [Oct 2006 Series; HPIM 2055jpg]
69 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.185 [Oct 2006 Series; HPIM 2057jpg]
70 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.187 [Oct 2006 Series; HPIM 2058jpg]
71 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.188 [Oct 2006 Series; HPIM 2058jpg]
72 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.189 [Oct 2006 Series; HPIM 2059jpg]
73 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.192 [Oct 2006 Series; HPIM 2060jpg]
74 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.195 [Oct 2006 Series; HPIM 2062jpg]
75 Nat.Arch 1116/1 Official Referee’s Court Minute Book No 4 p.198 [Oct 2006 Series; HPIM 2063jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sergios Pafar Michael v A K Koritsas</td>
<td>11 October 1961</td>
<td>Building claim</td>
<td></td>
</tr>
<tr>
<td>Caidwen Ann Taylor v Mary Alicia Clement</td>
<td>7 November 1961</td>
<td>Landlord and Tenant possession case</td>
<td>Dy 1 5hrs. 27mins. Dy 2 10mins. Total: 5hrs. 37mins.</td>
</tr>
<tr>
<td>Chalk v Vena Brothers (Cornwall) Ltd Limited</td>
<td>22 November 1961</td>
<td>Other. Judgement by consent</td>
<td>Dy 1 3hrs. 42mins. Dy 2 3mins</td>
</tr>
</tbody>
</table>

77 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.207 [Oct 2006 Series; HPIM 2068]jpg
78 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.208 [Oct 2006 Series; HPIM 2069]jpg
81 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.219 [Oct 2006 Series; HPIM 2074]jpg
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIU Estates Ltd v Towner</td>
<td>27 November 1961</td>
<td>Building case</td>
<td>Dy 13 hrs. 20mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Judgment given Day 17 12th January 1962</td>
<td>Dy 15 hrs. 25mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 16 50mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 13hrs. 33mins.</td>
</tr>
<tr>
<td>Berroy v Acton</td>
<td>6 December 1961</td>
<td>Building claim</td>
<td>Dy 1 4hrs. 29mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 2 3hrs. 52mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 3 4hrs. 35mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 4 4hrs. 23mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 5 4mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 6 4hrs. 20mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 7 4hrs. 25mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 8 4hrs. 30mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 9 4hrs. 3mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 10 3hrs. 41mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 38hrs. 20mins.</td>
</tr>
<tr>
<td>Benroy v Acton</td>
<td>20 December 1961</td>
<td>Hearing of adjourned action.</td>
<td>Dy 11 4hrs. 10mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 12 1hr. 35mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 13 1hr. 14mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 6hrs. 57mins.</td>
</tr>
<tr>
<td>R Butcher &amp; Son v Fay</td>
<td>8 December 1961</td>
<td>Building claim</td>
<td>Dy 1 8mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 8 mins.</td>
</tr>
<tr>
<td>Wheatleys (Newhaven)</td>
<td>19 December 1961</td>
<td>Application for cross examination of witnesses</td>
<td>Dy 1 5mins.</td>
</tr>
<tr>
<td>Limited v Smith</td>
<td></td>
<td></td>
<td>Total: 5mins.</td>
</tr>
<tr>
<td>R Corben &amp; Son Ltd v Forte</td>
<td>15 January 1962</td>
<td>Building case</td>
<td>Dy 1 4hrs. 11mins.</td>
</tr>
<tr>
<td>(Olympics)</td>
<td></td>
<td>Appt of Court Expert</td>
<td>Dy 2: 4hrs 20mins</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 8hrs. 31mins.</td>
</tr>
<tr>
<td>S L Dando Ltd v Margaret</td>
<td>31 January 1962</td>
<td>Building dispute, matter of rights and title</td>
<td>Dy 1 15mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to boundary and sale of gantry</td>
<td>Total: 15mins.</td>
</tr>
<tr>
<td>Leon v Beales</td>
<td>7 February 1962</td>
<td>Building claim</td>
<td>Dy 1 4hrs. 16mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Parties agreed appt of</td>
<td>Dy 2 5mins.</td>
</tr>
</tbody>
</table>

82 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.220 [Oct 2006 Series; HPIM 2074jpg]
83 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.225 [Oct 2006 Series; HPIM 2077jpg]
84 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.236 [Oct 2006 Series; HPIM 2082jpg]
85 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.232 [Oct 2006 Series; HPIM 2080jpg]
86 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.233 [Oct 2006 Series; HPIM 2081jpg]
87 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.239 [Oct 2006 Series; HPIM 2087jpg]
89 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.245 [Oct 2006 Series; HPIM 2090jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| Radford v Wright Stephens Lloyd   | 19 February 1962 | Building claim                                                              | Dy 1 3hrs. 58mins.  
Dy 2 4hrs. 6mins.  
Dy 3 4hrs. 18mins.  
Dy 4 4hrs. 28mins.  
Dy 5 4hrs. 15mins  
Dy 6: 31mins  
**Total:** 21hrs. 36mins. |
| Berger Jensen Nicholson Ltd v Ministry of Works91 | 5 March 1962 | Landlord and Tenant – dilapidations dispute  
View of property  
Failure to repair and maintain  
Judgment for Plf for £10,000 with costs. | Dy 1 4hrs. 5mins.  
Dy 2 4hrs. 6mins.  
Dy 3 5hrs. 15mins.  
Dy 4 4hrs. 7mins.  
Dy 5 4hrs. 49mins.  
Dy 6 2hrs. 17mins  
Dy 7 30mins  
**Total:** 25hrs. 9mins. |
| R E Beale Ltd v Harding & Anor 92 | 19 March 1962 | Building claim                                                              | Dy 1 5mins.  
**Total:** 5mins. |
| A Merchant & Co Ltd v Gordon S Merchant93 | 2 March 1962 | Building claim                                                              | Dy 1 hrs. 5mins.  
Dy 2 1hr. 5mins.  
**Total:** 5hrs. 8mins. |
Dy 2 4hrs.  
**Total:** 8hrs. 8mins. |
| LV Purchasing & Co Ltd v Jacob Bros (a Firm)95 | 4 April 1962 | Building claim in respect of deflection of Terrazzo flooring “as to what it ought to have been and what it is”  | Dy 1 2hrs. 9mins.  
**Total:** 2hrs. 9mins |
**Total:** 3hrs. 34mins. |

---

90 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.247 [Oct 2006 Series; HPIM 2091.jpg]
92 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.259 [Oct 2006 Series; HPIM 2097.jpg]
93 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.260 [Oct 2006 Series; HPIM 2097.jpg]
94 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.263 [Oct 2006 Series; HPIM 2099.jpg]
95 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.266 [Oct 2006 Series; HPIM 2100.jpg]
96 Nat. Arch J116/1 Official Referee’s Court Minute Book No 4 p.275 [Oct 2006 Series; HPIM 2109.jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>

---

97 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.278 [Oct 2006 Series; HPIM 2110.jpg]
98 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.279 [Oct 2006 Series; HPIM 2111.jpg]
99 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.283 [Oct 2006 Series; HPIM 2113.jpg]
100 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.290 [Oct 2006 Series; HPIM 2116.jpg]
102 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.294 [Oct 2006 Series; HPIM 2119.jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>

**TABLE 6**


<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Retaining Service Ltd v T.G. Powell &amp; Sons Ltd</td>
<td>17th December 1962</td>
<td>Action withdrawn on defendants paying £414 to plfs. No Order as to costs</td>
<td>Dy 1 10mins. Total: 10mins.</td>
</tr>
<tr>
<td>Waddell &amp; Others v Mauroux</td>
<td>18 December 1962</td>
<td>Action on Bank Guarantee</td>
<td>Dy 1: 4hrs 33mins Dy 2: 10mins Total: 4hrs 43mins</td>
</tr>
<tr>
<td>The Shopfitting Centre Ltd (The Proprietors of the Shopfitting Centre) v Revueltia</td>
<td>20th December 1962</td>
<td>Building Claim</td>
<td>Dy 1: 1hr 28mins Total: 1hr 28mins.</td>
</tr>
</tbody>
</table>

---

103 Nat.Arch J116/1 Official Referee's Court Minute Book No 4 p.296 [Oct 2006 Series; HPIM 2120jpg]
104 Nat.Arch J116/2 17th December 1962 to 31st March 1965
105 Nat.Arch J116/2 Official Referee's Court 11 Minute Book No. 5 p.1 [Dec 2006 Series;SH101773jpg]
106 Nat.Arch J116/2 Official Referee's Court 11 Minute Book No.5 p5 [Dec 2006 Series; SH101773-4jpg]
107 Nat.Arch J116/2 Official Referee's Court 11 Minute Book No. 5 p.5 [Dec 2006 Series;SH101775jpg]
**TABLE 7**

Cases not recorded in Minute Book Analysis J.114/41 Official Referee’s Notebook Sir Walker Kelly-Carter Q.C. (1959-63)

There are three cases from 27th July 1962 to 30th December 1962 not noted in Minute Book Nos.4 or 5. These are:

**Schedule C5.6D.**

<table>
<thead>
<tr>
<th>Name of Parties</th>
<th>Date</th>
<th>Nature of Claim</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>George Harry Darvell and Jesse Wright Darvell trading as G Darvell &amp; Sons (a firm) v Jane Clift (Married Woman)</td>
<td>27th July 1962</td>
<td>Debt action pronouncement of judgment</td>
<td>Dy 1: 10mins est.</td>
</tr>
<tr>
<td>Wellbeck Construction Co Ltd v Tower Construction Co Ltd</td>
<td>5th November 1962</td>
<td>Building Claim: Fixed price RIBA contract: dispute as to price on omission of certain works.</td>
<td>Dy 1 not recorded Dy 2 10mins est.</td>
</tr>
<tr>
<td>Barron Bros (Builders Lancaster) Ltd v Haworth</td>
<td>13th December 1962</td>
<td>Building Claim: Entry of judgment</td>
<td>Dy 1</td>
</tr>
</tbody>
</table>

---


TABLE 8


| A. Merchant & Co Ltd v Merchant | 22nd March 1962 | Commercial Claim regarding Manufacturers Agreement | Dy 1 |

---

# TABLE 9


<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acrow (Engineers)Ltd v Frank Berry &amp; Son Ltd 116</td>
<td>24th March 1965</td>
<td>Engineering claim</td>
<td>Dy 1: 5 mins. Total 5mins.</td>
</tr>
<tr>
<td>Extol Engineering Ltd v. The British Process Mounting Co ( a firm) and</td>
<td>29th March 1965</td>
<td>Manufacture of engineering parts not conforming to prototype. Preliminary</td>
<td>Dy 1: 4hrs 30mins Dy 2: 4hrs 35mins Dy 3: 1hr 45mins Total: 10hrs. 45mins.</td>
</tr>
</tbody>
</table>

112 NatArch J116/2 17th December 1962 to 31st March 1965
113 Nat.ArCh J116/2 Official Referee’s Court 11 Minute Book No. 5 p265 [Dec 2006 Series;SH101776jpg]
114 Nat.ArCh J116/2 Official Referee’s Court 11 Minute Book No. 5 p.269 [Dec 2006 Series;SH101777jpg]
115 Nat.ArCh J116/2 Official Referee’s Court 11 Minute Book No. 5 p.277 [Dec 2006 Series;SH101781jpg]
116 Nat.ArCh J116/2 Official Referee’s Court 11 Minute Book No. 5 p.281 [Dec 2006 Series;SH101783jpg]
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>

\(^\text{117}\) Nat.Arch J116/2 Official Referee's Court 11 Minute Book No. 5 p.283. [Dec 2006 Series;SH101784jpg]
TABLE 10
Sir Walker Carter Q.C. Minute Book for Official Referees' Court “C” Room 305, Victory House, Kingsway, London WC1
From: 25th March 1965 to 20th October 1967

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frederick William Young v Charles William Connery</td>
<td>25th March 1965</td>
<td>Building case – trial of preliminary issues What was the contract What was a reasonable price for extra works J.114/47 Sir Bret Cloutman for Sir Walker Carter. Notebook p.3 [Dec 2006 Series: SH101975]</td>
<td>Dy 1 4hrs. 30mins. Dy 2 3hrs. 5mins. Total: 7hrs. 35mins.</td>
</tr>
<tr>
<td>Mory &amp; Co Ltd v Regan Bros (Haulage) Limited</td>
<td>4 October 1965</td>
<td>Matter of account, negligence and detinue.</td>
<td>Dy 1 1hr. 45mins. Dy 2 2hrs. 45mins.</td>
</tr>
</tbody>
</table>

---


42
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>

---

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>United Domin.ions Trust (Commercial) Ltd v</em></td>
<td>8 February 1966</td>
<td>Commercial case: Preliminary issues: as to</td>
<td>Dy 1 4hrs. 15mins. Total: 4hrs. 15mins.</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas Gravell &amp; Prized Steele Garage Ltd137</td>
<td>3 7</td>
<td>whether instrument was a guarantee or an indemnity or an option. [J114/45 p. 233 Dec 2006 CIMG 0738]</td>
<td></td>
</tr>
<tr>
<td>Sitting at Crown Court, Guildhall, Swansea</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louis Obermenter v Rodwell London &amp;</td>
<td>17 May 1966</td>
<td>Architect's fees claim for remuneration based on</td>
<td>Dy 1 4hrs. 20mins. Dy 2 4hrs. 20mins. Dy 3 3hrs. 50mins.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
| Provincial Properties Ltd^{44}                 |         | quantum meruit and RIBA scale fee. Where fee falls between stages 1 and 2 or between 2 and 3 the Plaintiff argued he was entitled to claim the lower stage plus quantum meruit for work after that stage. [J114/48 p.55 Dec. 2006 Series CIMG 0597 to CIMG 0606] | Dy 4. 4hrs. 30mins.  
Dy 5 3hrs. 55mins.  
Dy 6 4hrs. 20mins.  
Dy 7 4hrs. 25mins.  
Dy 8 3hrs. 50mins.  
Dy 9 3hrs. 45mins.  
Dy 10 4hrs. 50mins.  
Dy 11 4hrs. 15mins.  
Dy 12 4hrs. 15mins.  
Dy 13 4hrs. 30mins.  
Dy 14 4hrs.  
Dy 15 4hrs. 30mins.  
Dy 16 1hr. 30mins.  
Dy 17 1hr. 15mins.  
Dy 18 4hrs. 20mins.  
Dy 19 2hrs. 40mins.  
Total: 75hrs. 20mins. |
Dy 2 10mins.  
Total: 4hrs. 30mins. |
Dy 2 5hrs. 10mins.  
Total: 10hrs. 12mins. |
Dy 2 2hrs. 55mins.  
Total: 7hrs. 20mins. |

^{44} Nat.Arch J116/3 Official Referee's Court "C" Minute Book p.139  
^{45} Nat.Arch J116/3 Official Referee's Court "C" Minute Book p.161  
^{146} Nat.Arch J116/3 Official Referee's Court "C" Minute Book p.163  
^{147} Nat.Arch J116/3 Official Referee's Court "C" Minute Book p.167
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>
Total: 25mins.                                    |
|                                               |              |                                                  |                                               |
Dy 2 4hrs.  
Dy 3 35mins.  
Total: 9hrs. 20mins.                                    |
|                                               |              |                                                  |                                               |
| Wright Bros (Wolverhampton) Ltd v E.A.Barlow & Sons (Transport) Ltd | 17th October 1966 | Building claim – rectification of contract | Dy 1 4hrs. 25mins.  
Dy 2 4hrs. 30mins.  
Dy 3 3hrs. 40mins.  
Dy 4 15mins.  
Total: 12hrs. 50mins.                                    |
|                                               |              |                                                  |                                               |
| Bailey v Purver                               | 24 October 1966 | Building claim                                   | Dy 1 4hrs. 45mins.  
Dy 2 4hrs. 40mins.  
Dy 3 3hrs. 45mins.  
Dy 4 2hrs. 17mins.  
Dy 5 55mins.  
Total: 19hrs. 22mins.                                    |
|                                               |              |                                                  |                                               |
| Leighton v Tait & Ait                         | 31 October 1966 | Building claim: defects to roof and rising damp. Judgt £1,850 to Pltf. | Dy 1 2hrs. 35mins.  
Total: 2hrs. 35mins.                                    |
|                                               |              |                                                  |                                               |
| Bickley v Dawson                              | 7 November 1966 | Building claim – settled by discussion with Counsel | Dy 1 10mins.  
Total: 10mins.                                    |

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Date</th>
<th>Type of Case</th>
<th>Time occupied by the Referee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 41 5hrs.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 42 4hrs. 15mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 43 4hrs. 25mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 44 3hrs. 10mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dy 45 20mins.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: 174hrs. 20mins</td>
</tr>
</tbody>
</table>
### TABLE 11
Sir Walker Carter Q.C. Official Referees’ Court, Court ‘C’ Minute Book No. 7
From: 11\(^{th}\) January 1967-27\(^{th}\) October 1967.\(^{155}\)

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Date of Hearing</th>
<th>Description</th>
<th>Duration</th>
</tr>
</thead>
</table>
| **Universal Metal Furrine v George Willment Ltd**  | 11\(^{th}\) January 1967 | Building claim-settlement  
Agreed. Judg. for Plf £1350  
plus costs. C/c dismissed  
with costs. J.114/53 Sir Walker  
Carter's Notebook p.1  
[Dec 2006 Series: SH102031] | Dy 1 5mins.  
Total: 5 mins |
| **Ray Wayland & Co Ltd v Taylor**                 | 19\(^{th}\) January 1967 | Building claim defective  
Work and breach of building regs.  
J.114/53 Sir Walker  
Carter’s Notebook p.3  
[Dec 2006 Series: SH102032] | Dy 1 5hrs. 10mins.  
Dy 2 3hrs. 45mins.  
Total: 8hrs. 55mins |
| **Antcliffe v Alfred Bannister (Trawlers) Ltd and Barrett v Taylor Steam Fishing Co Ltd** | 24\(^{th}\) January 1967 | Personal injury to member of trawler crew  
caused by lack instruction/experience  
of crew member  
J.114/53 Sir Walker Carter’s Notebook p.17  
[Dec 2006 Series: SH102034] | Dy 1 4hrs. 35mins.  
Dy 2 4hrs. 30mins.  
Total: 9hrs. 5mins |
| **Antcliffe v Alfred Bannister (Trawlers) Ltd**    | [heard separately ]    | Forfeiture of tenancy  
Site visit after which claim  
amended and case settled.  
J.114/53 Sir Walker Carter's Notebook p.75  
[Dec 2006 Series: SH102041] | Dy 1 2hrs. 10mins.  
Total: 2hrs. 10mins |
| **Brownland Estates Ltd v Taylor**                | 31\(^{st}\) January 1967 | Preliminary Issue: extent of landlord’s liability to repair. Payment out ordered of £300 to Plf.  
J.114/53 Sir Walker Carter’s Notebook p.81  
Total: 10mins |
Total: 10mins |

---

\(^{155}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 [Dec 2006 Series;SH101791-SH 101931]  
\(^{156}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.1 [Dec 2006 Series;SH101803]  
\(^{157}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.3 [Dec 2006 Series;SH101804]  
\(^{158}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.7 [Dec 2006 Series;SH101806]  
\(^{159}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.17 [Dec 2006 Series;SH101809]  
\(^{160}\) Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.19 [Dec 2006 Series;SH101810]
<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helland v St Andrews Steam Fishing Co Ltd</td>
<td>4th October 1967</td>
<td>Skipper failed to take reasonable care: tackle wire long; dangerous operated in Force 5 wind and very conditions. Damages award: £5,500</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Date</td>
<td>Details</td>
<td>Time</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------</td>
<td>---------------------</td>
</tr>
</tbody>
</table>
| *Hill and Smith v Flemin Brothers Ltd*<sup>168</sup>       | 9<sup>th</sup> October 1967 | Engineering claim: cost of galvanising steel Structure                 | Dy 1 3hrs. 30mins.  
                                         |                     |                                                                        | Total: 6hrs. 20mins |
| *Parsons v Derryman*<sup>169</sup>                         | 16<sup>th</sup> October 1967 | Building Claim                                                        | Dy 1 4hrs. 15mins.  
                                         |                     |                                                                        | Dy 2 4hrs. 30mins.  
                                         |                     |                                                                        | Dy 3 3hrs. 40mins.  
                                         |                     |                                                                        | Total: 12hrs. 25mins|
| *Holmes v Motor Vehicle Collection Ltd*<sup>170</sup>      | 27<sup>th</sup> October 1967 | Debt due                                                              | Dy 1 2hrs.         
                                         |                     |                                                                        | Total: 2hrs.        |

<sup>168</sup> Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.61 [Dec 2006 Series;SH101828]
<sup>169</sup> Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.65 [Dec 2006 Series;SH101830]
<sup>170</sup> Nat Arch J 116/4 Sir Walker Carter Official Referees’ Court Minute Book No. 7 p.81 [Dec 2006 Series;SH101834]
### TABLE 12

Cases not recorded in Minute Book analysis.
J114/52 Sir Walker Kelly-Carter’s Notebook (1967-68)

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Parsons v Derryman</em></td>
<td>17th October</td>
<td>Building claim</td>
<td>Dy 20. Time not entered</td>
</tr>
<tr>
<td><em>Holmes v Motor Vehicle Collection Ltd</em></td>
<td>27th October</td>
<td>Haulage company dispute and accounts</td>
<td>Dy 1. Time not entered.</td>
</tr>
</tbody>
</table>

### TABLE 13

J 114/51 Sir Walker Carter’s Notebook 1967

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>C.W. Ingham &amp; Son Limited v Mark Perks Limited</em></td>
<td>6th February</td>
<td>Defective boiler claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dys 1-3 time not entered</td>
</tr>
</tbody>
</table>

### TABLE 14

J 114/50 Sir Bret Cloutman’s Notebook 1966-68

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Vincent Murphy &amp; Co Ltd v South Eastern Joinery Works (1950) Ltd</em></td>
<td>26th July 1966</td>
<td>Claim as to price of building materials</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dy 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Time not recorded</td>
</tr>
</tbody>
</table>

---

171 *Nat Arch J 114/52 Sir Walker Carter’s Notebook* p.91 [Dec 2006 Series; CIMG 0757]
172 *Nat Arch J 114/52 Sir Walker Carter's Notebook* p.101 [Dec 2006 Series; CIMG 0758]
174 *Nat Arch J 114/52 Sir Bret Cloutman's Notebook* p.1 [Dec 2006 Series; SH. 102018]
**TABLE 15**
Walker Carter Period (1959-62) Settlement in the course of the trial

<table>
<thead>
<tr>
<th>Title of Action</th>
<th>Time taken in court to reach settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Martin French v Kingswood Hill Ltd</em>&lt;sup&gt;175&lt;/sup&gt;</td>
<td>5hrs. 45mins</td>
</tr>
<tr>
<td>Judicial encouragement for settlement</td>
<td></td>
</tr>
<tr>
<td>6&lt;sup&gt;th&lt;/sup&gt; May 1959</td>
<td></td>
</tr>
<tr>
<td><em>Midlands Electricity Board v Holder</em>&lt;sup&gt;176&lt;/sup&gt;</td>
<td>2hrs. 10mins</td>
</tr>
<tr>
<td>After hearing 2 witnesses settlement achieved. 3&lt;sup&gt;rd&lt;/sup&gt; June 1959</td>
<td></td>
</tr>
<tr>
<td><em>Arnold Meyrick Limited v P E Thomas</em>&lt;sup&gt;177&lt;/sup&gt;</td>
<td>3 mins.</td>
</tr>
<tr>
<td>26 October 1959</td>
<td></td>
</tr>
<tr>
<td>28&lt;sup&gt;th&lt;/sup&gt; October 1959</td>
<td></td>
</tr>
<tr>
<td><em>H. G. Dunford &amp; Bros v E Sutton</em>&lt;sup&gt;179&lt;/sup&gt;</td>
<td>2hrs. 35mins</td>
</tr>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt; December 1959</td>
<td></td>
</tr>
<tr>
<td><em>M L Transport (a firm) v Horrocks</em>&lt;sup&gt;180&lt;/sup&gt;</td>
<td>50mins</td>
</tr>
<tr>
<td>Judgment by consent. 11&lt;sup&gt;th&lt;/sup&gt; January 1960</td>
<td></td>
</tr>
<tr>
<td><em>James Atkinson and Veronica Atkinson Alandale and Celia Dale v Steer</em>&lt;sup&gt;181&lt;/sup&gt;</td>
<td>4hrs. 25mins.</td>
</tr>
<tr>
<td>Action withdrawn on basis defendant undertook not to execute judgment in another High Court action. 20&lt;sup&gt;th&lt;/sup&gt; January 1960</td>
<td></td>
</tr>
<tr>
<td><em>HG Thomas v Nichol</em>&lt;sup&gt;182&lt;/sup&gt;</td>
<td>10 mins</td>
</tr>
<tr>
<td>10&lt;sup&gt;th&lt;/sup&gt; Feb. 1960</td>
<td></td>
</tr>
</tbody>
</table>

<sup>175</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 [Oct 2006 Series; HPIM 1964jpg] and J114/34 Official Referee’s Notebook; Sir Walker Carter, Q.C. SH 101355jpg

<sup>176</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.96 [Oct 2006 Series; HPIM 1970jpg]

<sup>177</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 63 [ CIMG 0164]

<sup>178</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p. 65 [ CIMG 0165]

<sup>179</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.85 [Oct 2006 Series; HPIM 2005jpg]

<sup>180</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.93 [Oct 2006 Series; HPIM 2009jpg]

<sup>181</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.94 [Oct 2006 Series; HPIM 2009jpg]

<sup>182</sup> Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.98 [Oct 2006 Series; HPIM 2011jpg]
<table>
<thead>
<tr>
<th>Case Details</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charles Amos Gander v D Hooper &amp; Anor</td>
<td>40 mins.</td>
</tr>
<tr>
<td>29 February 1960.</td>
<td></td>
</tr>
<tr>
<td>James Kinross v R H Tarrant</td>
<td>8hrs.</td>
</tr>
<tr>
<td>15 March 1960 Action compromised on terms after Referee adjourned case for 10 days to enable parties to consider position.</td>
<td></td>
</tr>
<tr>
<td>T Projects Limited v William Reader</td>
<td>5mins.</td>
</tr>
<tr>
<td>29 March 1960</td>
<td></td>
</tr>
<tr>
<td>Livio Mascherpa v Direck Limited</td>
<td>27 mins.</td>
</tr>
<tr>
<td>4 May 1960</td>
<td></td>
</tr>
<tr>
<td>John Fletcher Suter v W Pikta</td>
<td>5hrs. 13mins.</td>
</tr>
<tr>
<td>7 June 1961</td>
<td></td>
</tr>
<tr>
<td>R Corben &amp; Son Ltd v Forte (Olympics)</td>
<td>8hrs. 31mins.</td>
</tr>
<tr>
<td>15 January 1962.</td>
<td></td>
</tr>
<tr>
<td>Use of expert to resolve what was a reasonable price for building works.</td>
<td></td>
</tr>
<tr>
<td>S L Dando Ltd v Margaret</td>
<td>15 mins</td>
</tr>
<tr>
<td>31 January 1962.</td>
<td></td>
</tr>
<tr>
<td>R E Beale Ltd v Harding &amp; Anor</td>
<td>5 mins.</td>
</tr>
<tr>
<td>19th March 1962.</td>
<td></td>
</tr>
</tbody>
</table>

---

183 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.103 [Oct 2006 Series; HPIM 2014jpg]
185 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.112 [Oct 2006 Series; HPIM 2018jpg]
187 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.185 [Oct 2006 Series; HPIM 2057jpg]
188 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.239 [Oct 2006 Series; HPIM 2087jpg]
190 Nat.Arch J116/1 Official Referee’s Court Minute Book No 4 p.259 [Oct 2006 Series; HPIM 2097jpg]
A. T. Chown & Co Ltd v Peter Davis Investments Limited 191
5 July 1962

Barrow Brothers (Builders Lancaster) Limited v Haworth [Lancaster District Registry] 192
8 December 1962

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. T. Chown &amp; Co Ltd v Peter Davis Investments Limited</td>
<td>1hr. 10mins.</td>
</tr>
<tr>
<td>Barrow Brothers (Builders Lancaster) Limited v Haworth [Lancaster District Registry]</td>
<td>15mins.</td>
</tr>
</tbody>
</table>

Average time = 2,443 mins/18 cases = 2hrs. 16mins in getting to settlement before judgement.
### TABLE 16
Walker Carter Period (1965-67) Settlement in the course of the trial:

<table>
<thead>
<tr>
<th>Title of Action</th>
<th>Time taken in court to reach settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.C.Janes Limited and Longhurst Bros, Beale Ltd and Foster Yates Thom Ltd (Third Party) and W. Neil &amp; Co Ltd (Fourth Party).&lt;sup&gt;193&lt;/sup&gt; 12&lt;sup&gt;th&lt;/sup&gt; January 1965.</td>
<td>10mins.</td>
</tr>
<tr>
<td>Acrow (Engineers)Ltd v Frank Berry &amp; Son Ltd&lt;sup&gt;194&lt;/sup&gt;, 24&lt;sup&gt;th&lt;/sup&gt; March 1965 Settlement agreed on stay of proceedings. Judgement for £1,100 for Plf with costs. Stay of execution 30 days.</td>
<td>5 mins.</td>
</tr>
<tr>
<td>Redamor Property Co Limited v Morrison Rose &amp; Partners (A Firm) and Courtney-Fairbairn Ltd&lt;sup&gt;195&lt;/sup&gt; 13 December 1965 Settlement agreed on stay of proceedings. Judgement for £400 for Plf with costs to be taxed</td>
<td>4hrs. 52mins.</td>
</tr>
<tr>
<td>Eaton Berry Ltd v King &amp; Anor&lt;sup&gt;196&lt;/sup&gt; 17 December 1965 Settlement agreed consent to judgment for £429.12.5 and 50% of plaintiffs costs to be taxed if not agreed. £305 in court to be paid out to plaintiffs</td>
<td>10 mins.</td>
</tr>
<tr>
<td>Horsley &amp; Anor v G E Wallis &amp; Sons Ltd (1) C E Eglinton (2) WER Randall &amp; Son (A Firm) (3)&lt;sup&gt;197&lt;/sup&gt; 12 January 1966 All proceedings stayed payment out to plaintiff's solicitors of £3,125 with Plfs costs to be taxed.</td>
<td>2 hrs.50mins.</td>
</tr>
<tr>
<td>Webbs Asphalt Roofing &amp; Flooring Co Ltd v Roper &amp; BRM ShopFronts (A Firm)&lt;sup&gt;198&lt;/sup&gt; 14 March 1966 Settlement after first day’s hearing. No Order save stay on terms Legal Aid Taxation for 2&lt;sup&gt;nd&lt;/sup&gt; and 3&lt;sup&gt;rd&lt;/sup&gt; parties.</td>
<td>4hrs 10mins</td>
</tr>
<tr>
<td>Holden v Johnson and Mills v Johnson by way of counterclaim&lt;sup&gt;199&lt;/sup&gt;</td>
<td>5 mins.</td>
</tr>
</tbody>
</table>

<sup>193</sup> Nat.Arch J116/2 Official Referee's Court 11 Minute Book No. 5 p265 [Dec 2006 Series;SH101776jpg]
<sup>194</sup> Nat.Arch J116/2 Official Referee's Court 11 Minute Book No. 5 p.281 [Dec 2006 Series;SH101783jpg]
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
</table>
| 4th April 1966      | Settlement announced to court at 11 a.m.
Judgement for Holden for £311 and for Mills £195.
Stay of Execution 14 days |
| 7th November 1966   | Bickley v Dawson 100
Building claim - settled by discussions between Counsel. Case adjourned for 10 minutes and parties agreed Judgment for Plaintiff for £400 |
| 11th January 1967   | Universal Metal Furrine v George Willment Ltd 201
Terms of settlement
Agreed at 10.50 a.m., Judg for Plf £1350 plus costs. C/c dismissed with costs |
| 31st January 1967   | Brownland Estates Ltd v Taylor 202
Forfeiture of tenancy Site visit after which claim amended and case settled after defendant gave evidence. Surrender tenancy
£235. 15 paid out as to £61.5 to Plaintiff and £174.10 to the Defendant. Defendant to pay Plaintiff's costs to be taxed |
| 24th February 1967  | Olga Hilditch (Widow) v Charles E.H. Durham and A E L Durham (Married Woman) 203
Preliminary Issue: extent of landlord's Liability to repair. Payment out ordered of £300 to Plf. |
| 20th April 1967     | Eaves v Bayswater Country Properties Ltd and Langdon 204
Building claim. Parties came to terms after 2 hours of hearing Plaintiff's opening and evidence |

Average time taken to settlement before judgement = 1,017 mins / 12 cases = 1 hr. 25 mins.

---

204 Nat Arch J 116/4 Sir Walker Carter Official Referees' Court Minute Book No. 7 p.31 [Dec 2006 Series: SH101816]
JUDGES’ NOTEBOOK ANALYSIS
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of case</th>
<th>Type</th>
<th>Caseload management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J.114/3</td>
<td>CIMG 0034</td>
<td>5/4/46</td>
<td>Harris v Rex Foods</td>
<td>Assessment of Damages</td>
<td>acted as jury</td>
</tr>
<tr>
<td></td>
<td>CIMG 0036</td>
<td>27/5/46</td>
<td>Norton Griffiths Plant Hire Limited</td>
<td>Breach of warranty/damages</td>
<td></td>
</tr>
<tr>
<td>J.114/3</td>
<td>CIMG 0037 CIMG 0039</td>
<td>11/11/46</td>
<td>S.J.C. Duqueim v Atlas Assurance Company Limited</td>
<td>Fire damage to furniture; concealment of material facts</td>
<td>Acted as arbitrator</td>
</tr>
<tr>
<td>J.114/3</td>
<td>CIMG 0041</td>
<td>9/12/46</td>
<td>W.J Gray &amp; Sons v Royal Mail Lines Limited</td>
<td>Repairs to tug following collision</td>
<td>Use of experts in assessing damage</td>
</tr>
<tr>
<td>J.114/4</td>
<td>CIMG 0046</td>
<td>18/11/46</td>
<td>Fox v John Sherwood &amp; Partners Ltd</td>
<td>Application for leave to amend particulars205</td>
<td></td>
</tr>
<tr>
<td>J.114/4</td>
<td>CIMG 0049</td>
<td>20/11/47</td>
<td>Zenith Skin Trading Company v Frankel</td>
<td>Partnership dispute</td>
<td>Referee acted as a jury in fixing the price206</td>
</tr>
<tr>
<td></td>
<td>CIMG 0056</td>
<td>1/6/48</td>
<td>Sydney Smith Black Coaches Limited v J.F. Anderson</td>
<td>Car repairs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CIMG 0060</td>
<td>3/11/48</td>
<td>Leonidas (Builders) Ltd v M. Saks</td>
<td>War Damage Act repairs to house</td>
<td></td>
</tr>
<tr>
<td>J.114/21</td>
<td>CIMG 0062</td>
<td>9/11/50</td>
<td>Hayland v Springet &amp; Son</td>
<td>Settlement agreed</td>
<td>Facilitating settlement</td>
</tr>
<tr>
<td></td>
<td>CIMG 0063</td>
<td>24/1/52</td>
<td>James Conlon Trading v Lloyds Builders Ltd</td>
<td>Settlement agreed</td>
<td>Facilitating settlement</td>
</tr>
<tr>
<td></td>
<td>CIMG 0067</td>
<td>25/1/52</td>
<td>Van Nuffelen v Leicester</td>
<td>Stay of execution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CIMG 0068</td>
<td>20/2/52</td>
<td>Richards v Bartle</td>
<td>Dispute over amount of commission payable on the sale of cows</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CIMG 0070</td>
<td>20/3/52</td>
<td>La Planche v Newman</td>
<td>Order by consent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CIMG 0071</td>
<td>24/3/52</td>
<td>Super Clothing Co Ltd v John Betty</td>
<td>Damages awarded for badly made suits</td>
<td></td>
</tr>
</tbody>
</table>

205 Eastham noted:...where there was conflict of evidence I believed the plaintiff. He was a more reliable witness than Justice for the Defendants. Nat. Arch J.114/4 p.90 [CIMG 0048]

206 Eastham noted: "I don't believe the defendant's explanations about the sales he alleges. The only real issue is the price to be fixed on 63 furs."
<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13/5/52</td>
<td>J.C. Robertson &amp; Son v House</td>
<td>Whether underpinning carried out in accordance with design</td>
</tr>
<tr>
<td>23/11/52</td>
<td>Bedford Theatre London Limited v Brisford Entertainments Ltd</td>
<td>121 items of defective work disputed Judgement for £400²⁰⁷</td>
</tr>
<tr>
<td>17/12/53</td>
<td>Kefford v Brownleader</td>
<td>Settlement by consent order</td>
</tr>
</tbody>
</table>

²⁰⁷ The “Scott Schedule” as it is commonly called was referred to here as “Scott’s” schedule.
JUDGE'S NOTEBOOK NO 55
Sir T. Eastham K.C.

File No. J114/15 – CIMG0447

May 1950 – December 1951

INDEX OF CASES

Eden v Berryman & Co page 1
W H Armfield Ltd v John England page 70
Dodsworth v Ross & Ross Tate & Co Ltd page 91
Bevins v Stratton Securities Limited page 107
Geometric Designs Limited v Shearmow Engineering Co Ltd page 151
Sockel v Freeman & Ors page 179
Phillips & Co v Southern page 255
Hartell v Services Car Hire page 256
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J114/15</td>
<td>CIMG0448</td>
<td>01/05/50</td>
<td>Eden v Berryman &amp; Co</td>
<td>Claim for damages for £109.19s.6p paid out of monies in Court. Costs reserved.</td>
<td></td>
</tr>
<tr>
<td>J114/15</td>
<td>CIMG0449</td>
<td>22/06/50</td>
<td>W H Armfield Ltd v John England Perfumers Ltd</td>
<td>Application for amendment to pleadings, Judge refused to amend and decided to deal with preliminary issues namely questions as to whether there was an award by an arbitrator or not and whether arbitrator had authority to act as arbitrator.</td>
<td>Whether there was an agreement to submit to arbitration and if there was an agreement to arbitration was there a valid arbitration bearing in mind the Defendants were never heard by the arbitrator? No meeting of the parties. Arbitrator says he was asked to value the work which had not been carried out, judge found there was no submission to arbitration, no award was made. Judgement for Plaintiffs on preliminary issue in the sum of £658.18s.1p Plaintiffs entitled to take all the money out of Court. Defendants undertaking to pay £300 and costs into Court within 7 days.</td>
</tr>
<tr>
<td>J114/15</td>
<td>CIMG0466</td>
<td>22/11/50</td>
<td>Jack Hyman Sockel v Issace Francis Salmon Matthew Francis</td>
<td>Dispute as to fixed lump sum prior to building contract</td>
<td>Preliminary issues what was the contract in May 1948 about the area outside the garage? What was the contract in June</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>08/12/50</td>
<td>Phillips v Southern</td>
<td>Claim for damages. Judgment by consent as agreed between parties in correspondence. For Plaintiff in sum of £195.3s with costs of £105.</td>
<td>1948 in respect of the garage floor? Judgment for Plaintiff for £202.10s with costs to be taxed. Judgment for Defendant on counterclaim for £45.3s.3p costs to be taxed. If Judge says he was wrong then costs for not taking up floor were £75.</td>
</tr>
<tr>
<td>J114/15</td>
<td>CIMG0477</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Date</th>
<th>Case</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>22/05/50</td>
<td>Maurice v Hulton Press ltd</td>
<td>1</td>
</tr>
<tr>
<td>05/07/50</td>
<td>Fine v Saunders</td>
<td>64</td>
</tr>
<tr>
<td>12/07/50</td>
<td>Russell Bros (Builders) Ltd v Baker &amp; Son</td>
<td>66</td>
</tr>
<tr>
<td>27/10/50</td>
<td>Charlton Decoration Co Ltd v Murray</td>
<td>67</td>
</tr>
<tr>
<td>02/11/50</td>
<td>Bullen v Imperial Tobacco Co Ltd</td>
<td>69</td>
</tr>
<tr>
<td>08/12/50</td>
<td>Bright Graham Murray &amp; Co v Burns</td>
<td>82</td>
</tr>
<tr>
<td>11/01/51</td>
<td>Palmers Hebburn Co Ltd v Grimsby &amp; Son Fishing Co Ltd</td>
<td>95</td>
</tr>
<tr>
<td>22/02/51</td>
<td>Falcon Concrete Ltd v D</td>
<td>105</td>
</tr>
<tr>
<td>01/06/51</td>
<td>Peterson D Limited</td>
<td>172</td>
</tr>
<tr>
<td>22/07/51</td>
<td>T J Kendall &amp; Co Ltd v ATA Scientific Ltd</td>
<td>173</td>
</tr>
<tr>
<td>02/10/51</td>
<td>Universal Shop Fitting Co (London) Ltd v Creamery Fair (London) Ltd</td>
<td></td>
</tr>
<tr>
<td>5/10/51</td>
<td>Cranham Antiques Ltd v Sydney Hilman</td>
<td></td>
</tr>
<tr>
<td>17/10/51</td>
<td>Wilson v Miller</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2125</td>
<td>18/05/50</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2125</td>
<td>22/05/50</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2149</td>
<td>24/05/50</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------</td>
</tr>
<tr>
<td>J144/16</td>
<td>HPIM2156</td>
<td>05/07/50</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2157</td>
<td></td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2158</td>
<td>27/10/50</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>J14/16</td>
<td>HPIM2161</td>
<td>02/11/50</td>
</tr>
<tr>
<td>J14/16</td>
<td>HPIM2167</td>
<td>08/12/50</td>
</tr>
<tr>
<td>J14/16</td>
<td>HPIM2172</td>
<td>11/01/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2179</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2185</td>
<td>01/06/51</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2186</td>
<td>23/07/51</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2188</td>
<td>02/10/51</td>
</tr>
<tr>
<td>J114/16</td>
<td>HPIM2192</td>
<td>05/10/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>17/10/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101125</td>
<td>05/04/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101127</td>
<td>09/04/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101129</td>
<td>11/04/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101131</td>
<td>12/04/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>J114/17 p.165</td>
<td>SH101132</td>
<td>19/04/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101136</td>
<td>23/04/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101138</td>
<td>24/04/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101141</td>
<td>25/04/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101144</td>
<td>30/04/51</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101149</td>
<td>03/05/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101151</td>
<td>08/05/51</td>
</tr>
<tr>
<td>J114/17</td>
<td>SH101151</td>
<td>24/05/51</td>
</tr>
</tbody>
</table>

Official Referee
Tom Eastham
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J114/17</td>
<td>SH101154</td>
<td>18/06/52</td>
<td>H &amp; J Wilson Ltd v William Hewitt Farmer</td>
<td>Costs of doing repairs was injury to the reversion. He assessed Plaintiffs injury to reversion as £125 excluding all damage by dampness. No damages for trespass. NB claim for negligence not satisfied that onus on Defendant as burden of proof has been discharged Judge not satisfied that damage claimed had actually resulted from alleged negligence. Judge dismissed counterclaim and gave judgment for Plaintiffs for £125 on claim Judgment for Plaintiffs on counterclaim costs to be dealt with subsequently by Official Referee.</td>
<td>dealt with case as a jury.</td>
</tr>
</tbody>
</table>

Argument as to costs. Question of emergency certificate for Legal Aid and unless time was extended Counsel conceded that he could resist an application for ordinary costs taxation. Added to judgment that Defendant pay Plaintiffs costs of claim and counterclaim to be taxed such costs to include attendance by Counsel before Judge on taxation.
### JUDGE'S NOTEPAGE BOOK NO 60

File No. J114/20 Sir Tom Eastham QC (1951 – 53)

<table>
<thead>
<tr>
<th>Date</th>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>29/01/51</td>
<td>Palmers Hebburn &amp; Co Ltd v Stanhope Steamship</td>
<td>1</td>
</tr>
<tr>
<td>10/07/51</td>
<td>Parrin &amp; Co Ltd v Harry Green Ltd</td>
<td>2</td>
</tr>
<tr>
<td>16/07/51</td>
<td>Cook v Withick</td>
<td>45</td>
</tr>
<tr>
<td>19/07/51</td>
<td>Davidson Engineers v Stephens &amp; Brotherton Ltd</td>
<td>57</td>
</tr>
<tr>
<td>07/11/51</td>
<td>H Corry &amp; Son Ltd v Taube</td>
<td>92</td>
</tr>
<tr>
<td>19/11/51</td>
<td>Harris v Reynolds</td>
<td>105</td>
</tr>
<tr>
<td>29/11/51</td>
<td>Clark v Merton</td>
<td>138</td>
</tr>
<tr>
<td>04/12/51</td>
<td>Looby v Bullock</td>
<td>149</td>
</tr>
<tr>
<td>28/01/52</td>
<td>M B (Construction) Ltd v Nobel</td>
<td>177</td>
</tr>
<tr>
<td>29/01/52</td>
<td>Sutton v Ring Publications Ltd</td>
<td>197</td>
</tr>
<tr>
<td>30/01/52</td>
<td>Lancaster v James Carter &amp; Partners Ltd</td>
<td>198</td>
</tr>
<tr>
<td>31/01/52</td>
<td>Robertson v Watkins &amp; Anor</td>
<td>199</td>
</tr>
<tr>
<td>03/07/52</td>
<td>Adams &amp; Anor v Selborne</td>
<td>241</td>
</tr>
<tr>
<td>07/07/52</td>
<td>Wilson v Gae</td>
<td>250</td>
</tr>
<tr>
<td>08/07/52</td>
<td>Knibbs v Goodhale Engineers Ltd</td>
<td>251</td>
</tr>
<tr>
<td>10/10/52</td>
<td>Sattentwaite v Potter</td>
<td>270</td>
</tr>
<tr>
<td>13/10/52</td>
<td>Simon v Gilbbons</td>
<td>279</td>
</tr>
</tbody>
</table>

and Files; J114/2-6 Sir T. Eastham K.C (1945-49)
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J114/14</td>
<td>CIMG0079.jpg</td>
<td>11/01/50</td>
<td>Hianco v Taufords &amp; Co Ltd</td>
<td>Question as to the value of rabbit skins. By consent the claim and counterclaim were withdrawn and there was no order as to costs</td>
<td></td>
</tr>
<tr>
<td>J114.14</td>
<td>CIMG0081</td>
<td>23/01/50</td>
<td>Woodcock Marshall &amp; Co Ltd v J I Trussom (Widow)</td>
<td>Re 2 Auriol Road Contract to comply with local bylaws works to be to the satisfaction of the architect - ...Plaintiffs with costs to be taxed</td>
<td></td>
</tr>
<tr>
<td>J114/14</td>
<td>CIMG0085</td>
<td>13/02/50</td>
<td>Ronald McGregor &amp; Son Ltd v Harold Andrews Grindley Ltd</td>
<td>Preliminary issues as to what was the contract between the parties in particular what were the repairs the Plaintiffs undertook to do? What is a reasonable price for the repairs actually carried out; were the repairs reasonably well executed, if not what damages? Were Plaintiffs guilty of delay in executing repairs and if so what damage?</td>
<td>Preliminary issues</td>
</tr>
<tr>
<td>J114/14</td>
<td>CIMG0087</td>
<td>08/05/50</td>
<td>Callow &amp; Wright Ltd v Morganstern</td>
<td>Claim for loss and expense on building works £73.15.7</td>
<td></td>
</tr>
<tr>
<td>J114/14</td>
<td>CIMG0090</td>
<td>13/06/50</td>
<td>D &amp; L Stephany Ltd v Millicent (Birmingham) Ltd</td>
<td>Dispute as to manufacture of dresses not being fit for the purpose</td>
<td></td>
</tr>
<tr>
<td>J114/14</td>
<td>CIMG0091</td>
<td>04/12/50</td>
<td>Dorey &amp; Son v Foster</td>
<td>Issue as to licence being in place for lawfulness of works; breach of condition to inform Licensing Officer as to commencement of the works started in December 1948; breach of Rule 8 of Defence General Regulations 1939; Licence revoked; electrical work not within the scope of the licence; going on scope of works within the licence £584.0.4; rest</td>
<td>Preliminary issues tried by Referee at preliminary hearing.</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>---------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>? Notebook 60</td>
<td>HPIM1125.jpg</td>
<td>10/07/51</td>
<td>Pepper &amp; Co Ltd v Harry Green Ltd</td>
<td>Dispute over colour prints and cartons required for the same. Were goods in accordance with the contract conditions? [Judges Note: Judgment for the Plaintiff on the claim £149.19s.6p with costs to be taxed. “I disallow all costs incurred by the Plaintiff’s Solicitors in obtaining evidence of an independent surveyor and his attendance in Court”.]</td>
<td>Preliminary issues considered by Referee halfway through case: what was contract between parties? If contract was sale by sample was bulk in equants with sample? Was the 16 April 1950 delivery merchantable in terms of colour and packaging, delivery complies merchantable cartons?</td>
</tr>
<tr>
<td>Notebook 60?</td>
<td>HPIM1141.jpg</td>
<td>19/07/51</td>
<td>Davidson Engineers v Stephens &amp; Brotherton Ltd</td>
<td>Question of conversion. If it was conversion what is the proper date for assessment of damages? Was there a market for the goods, if there was no market establish then did sellers know what the Plaintiffs were going to do with the goods. Concerned the sale of 2million yards of wire encased in polydeanolchloride. Judge considered specific goods, ascertain goods, passing of property Section 18 Rule 1 Sale of Goods Act 1883 and Factors Act 1889.</td>
<td></td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1151.jpg</td>
<td>19/12/51</td>
<td>Harris v Reynolds</td>
<td>Sale of second hand car and repairs to car and cycles.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HPIM1156</td>
<td>29/12/51</td>
<td>Clarke v Martens</td>
<td>Claim for damages for breach of covenant for want of repair; injury to the reversion and cost of repairs.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>---------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1159</td>
<td>04/12/51</td>
<td>Looby v Bullock</td>
<td>Dispute as to valuation of building contract works.</td>
<td></td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1160</td>
<td>26/01/52</td>
<td>HWB (Construction) Ltd v Noble</td>
<td>Claim for damages for breach of contract and building defects.</td>
<td></td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1161</td>
<td>29/01/52</td>
<td>Sutton v Prime Publications</td>
<td>Claim withdrawn, order by consent, counterclaim withdrawn no order as to costs.</td>
<td></td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1163</td>
<td>31/01/52</td>
<td>Roberts v Watkins &amp; Sons</td>
<td>Application to amend Defence, no objection by Plaintiffs, amendments allowed. More damage claim.</td>
<td></td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1176</td>
<td>07/07/52</td>
<td>Wilson v Crac</td>
<td>Non payment of invoice</td>
<td>Parties settling case on Defendant's submission. Judgment for Plaintiff for £216; Judgment for Plaintiff on the Counterclaim without costs. Payment immediately of £175 with balance payable on 1 August 1952.</td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1177</td>
<td>08/07/52</td>
<td>Knibbs v Goodhale Engineers Ltd</td>
<td>Building contract</td>
<td>Preliminary questions: was it a contract by conduct? Whether the Plaintiff was entitled to £30? Was the water pipe installed on the Defendant’s express orders? List of variations (14)</td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1179</td>
<td>10/10/52</td>
<td>E.Sattenthwaite Ltd v Potter</td>
<td>Trial of the preliminary issue</td>
<td>Question of construction</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>---------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Notebook 60</td>
<td>HPIM1183/1185</td>
<td>13/10/52</td>
<td>Simon v Gibbons</td>
<td>Damage to goods: conversion goods: application for leave to proceed to enforce the Judgment to be made in Chambers. Liberty to settle parties to apply</td>
<td></td>
</tr>
<tr>
<td>J.114/2</td>
<td>HPIM 1185</td>
<td>27/3/45</td>
<td>The Great Western Railway Company v Port Talbot Dry Dock Company Limited</td>
<td>Repairs to dredger – insured under a value policy for £30,000 old boat of 32 years of age. Life of the dredger was 25 years. Whole operation done by the Ocean Salvage Company with sanction of the admiralty.</td>
<td></td>
</tr>
<tr>
<td>J.114/3</td>
<td>HPIM1193</td>
<td>11/11/46</td>
<td>Johnson v Johnson</td>
<td>Debt claim – judgment for £100 and agreed costs. Leave to proceed but suspended so long as Defendant pays £10 on 20 Jan 1947 and £10 on 20th each subsequent month.</td>
<td></td>
</tr>
<tr>
<td>J.114/3</td>
<td>HPIM1193</td>
<td>06/03/47</td>
<td>Allied Ltd v Peerless Representative (London) Ltd</td>
<td>Claim for £200.7sh.1p claim by shipping agents. Claim for commission. Disputed items valued at £24.8.2p</td>
<td>Consent Order made and action settled on terms – intervention of the Judge to procure settlement</td>
</tr>
<tr>
<td>J.114/3</td>
<td>HPIM1195</td>
<td>10/03/47</td>
<td>London and Canterbury Motors (A Firm) v B L Koppen</td>
<td>Car repairs – damages</td>
<td>Case settled on terms that Judgement for the Plaintiffs for £85 costs agreed at £31.10sh. leave to proceed on terms set out in the order on consent. (settlement effected immediately in Court subject to Defendants paying to the Plaintiff sum of £16.10sh within 7 days of the date of the order</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>---------</td>
<td>--------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>and the balance of £100 being paid by Defendant to Plaintiffs in four equal weekly instalments in the sum of £25 commencing on 9 March 1947.</td>
</tr>
<tr>
<td>J114/3</td>
<td>HPIM1197</td>
<td>1947</td>
<td>Jays &amp; Co (Engineers) Ltd v Housegoods Limited</td>
<td>Delivery of 9,000 frames in 1944 and 1945 to the Plaintiffs; problems over production and quality of specification; frames were not right for cigarette machines to be fitted – number of causes preventing machines working properly</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HPIM1202 HPIM1203</td>
<td>12/11/47</td>
<td>VW Mann &amp; Son v Masterman</td>
<td>Claim for £116.19.9 disputed Building works claim for additional work; abandonment of site and termination of contract. House had been damaged by enemy action during war leading to repair works. Judgment for the Plaintiff with costs ordering the return of 6 rolls of wallpaper; 7 rolls of wallpaper and 25 yards of border paper! Judgment for the Plaintiff in the sum of £116.19sh.9 with costs to be taxed. Order for money in Court to be paid out £55.2p. Judge noted that if this matter was appealed he would write a note to the Court of Appeal</td>
<td></td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1208</td>
<td>12/12/47</td>
<td>Rowlett Engineering Co Ltd v C.R.VT.C. Ltd (trading as Champion Electric Corporation)</td>
<td>Claim for £542.7sh.6p in respect of boiling ring cases (2000 in number) at 4.6p each Defendants to pay Plaintiffs against delivery at Plaintiff's</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1210</td>
<td>06/02/48</td>
<td>Buckley James Unwin &amp; Peggy Unwin v John Benjamin Ruage</td>
<td>Claim in respect of engines not working and other matters value £931.15sh.9p.</td>
<td>judgment given for £931.19s.8p with costs</td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1212</td>
<td>06/02/48</td>
<td>Hunter v Hunter</td>
<td>Matrimonial dispute over items of property over 164 items in dispute. Items from Maples and Pitmans in dispute; property bought at Biarritz; some goods sold by the husband others taken by the Germans</td>
<td>Judge gave judgment £300 with costs to be taxed in favour of the Plaintiff wife.</td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1217</td>
<td>16/02/47</td>
<td>William George Mellie v Mrs A Mellie (married woman)</td>
<td>Claim for damages for items of property. Value of £393.16sh.8p.</td>
<td>Case settled subsequent to an adjournment 06/04/48</td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1219</td>
<td>03/05/48</td>
<td>William Jolley v Morris Moss</td>
<td>Damage to articles at leased premises. Built 1936 for a cost of £1,200. Claim for dilapidations. Damage for disrepair. Damage and misuse of property; claim for replacement value; furniture damages; grandfather clock smashed up; piano had 12 hammers broken etc.</td>
<td>Judgment for Plaintiffs £250 with costs to be taxed. Money in Court £80 to be paid out to Plaintiff in part satisfaction. Plaintiff given leave to proceed to enforce judgment suspended for 14 days.</td>
</tr>
<tr>
<td>J114/6</td>
<td>HPIM1223</td>
<td>10/05/48</td>
<td>Grince Bros v CG King &amp; Sons Ltd</td>
<td>Defendants in liquidation. Defendant not appearing. Proceeding stayed with liberty to apply.</td>
<td>11/05/48 Defendant still not appearing. No evidence of any application to strike out etc.</td>
</tr>
<tr>
<td>J114/4/5</td>
<td>HPIM1224</td>
<td>28/05/48</td>
<td>James Pritchard v Enid Bellanger (Married woman)</td>
<td>Matrimonial property dispute; 24 items of personality in dispute;</td>
<td></td>
</tr>
<tr>
<td>J114/4/5</td>
<td>HPIM1227</td>
<td>07/06/48</td>
<td>J Brennan (Willesden) Limited v A Fondana</td>
<td>Claim for value of building works claim for £882.5sh damage claim. Claim for maintenance work</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>caused by dilapidations some of the work was war damage. One third was war damage.</td>
<td></td>
</tr>
<tr>
<td>J114/4 &amp; 5</td>
<td>HPIM1229</td>
<td>11/06/48</td>
<td>Benefaire Wall Finishes Ltd v Frederick D Sales</td>
<td>Claim for £108 re No 10 Russell Gardens agreed price for work £460. Patching up operation lump sum contract for £460.</td>
<td></td>
</tr>
<tr>
<td>J114/5</td>
<td>HPIM1232</td>
<td>28/06/48</td>
<td>Benoир Hamburges v Winifred Stort</td>
<td>Claim for damages for dilapidations 36a Holland Park Ave, Kensington. War damage, excessive claim; price is too high; cleaning, redecorating and re-pointing required in controlled premises. Expert gave evidence that damage was somewhere in the region of £50. Referee assessed injury to the reversion at £95 gave Judgment for the Plaintiff for £95 with costs to be taxed on Scale C of the County Court Scale.</td>
<td>Referee gave County Court Judge discretion in increasing any items in the County Court Scale that could be increased by the County Court Judge or a Registrar.</td>
</tr>
<tr>
<td>J114/4/5</td>
<td>HPIM1779</td>
<td>30/06/48</td>
<td>Hon. Mrs Courtney Cecil (Fem Sol) v D Ewell (spinster)</td>
<td>Nuisance action defective rainwater pipe.</td>
<td>Judge took view of premises on 30 June 1948.</td>
</tr>
</tbody>
</table>

24 May 1948 important meeting by surveyors for the parties they agreed a schedule. Agreed that dry rot was caused by defective rain water down pipe. Liability £446. Judge held that judgment given to Defendant on the claim without costs. Judgment for Plaintiff on the counterclaim without costs. Plaintiff to have
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J114/2</td>
<td>HPIM1790</td>
<td>04/46</td>
<td>Plant Machinery &amp; Accessories Ltd v H P Thomas Ltd</td>
<td>Claim for damages for defective boiler. Trial was adjourned and order for money in Court £200 to be paid out to Plaintiff's Solicitors. Each party to pay half the Court fees for the day.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1790</td>
<td>20/05/46</td>
<td>Carl Halle v I Lewis</td>
<td>Claim for £201.15s.6p alleged war damage repairs claim. Judgment for Plaintiff for £102.6sh with costs to be taxed. Leave to proceed to enforce judgement under the Emergency Powers Act 1943.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1793</td>
<td>11/11/46</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1795</td>
<td>05/47</td>
<td>Benjamin Thomas v Fire Brigade Union</td>
<td>Claim for damages for £125 with costs agreed at £25.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1795</td>
<td>07/05/47</td>
<td>Modern Telephone Co Ltd v J.G.P (eligible)</td>
<td>Breach of contract. Sum due under the contract £232.12s.6p. Judgment given for that sum plus costs to be taxed. Claim admitted.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1796</td>
<td>13/5/47</td>
<td>E S Moss Ltd v J Gremel</td>
<td>Claim for work done £140.4s.8p</td>
<td>Judge dealt with case as a jury. Judgment for Plaintiffs of £250 and costs to be taxed.</td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1798</td>
<td>?1947</td>
<td>Reginald Richard Trowbrough v Douglas Roberts t/a Douglas Roberts</td>
<td>...merchants – only issue of whether there was a condition of the agreement saying that the Plaintiff should return to Defendant’s service after the war</td>
<td>Judgment for Plaintiff of £263.2s.4p. Judgment also for the Plaintiff on the counterclaim with costs to be taxed.</td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1800</td>
<td>16/12/47</td>
<td>H Bacon &amp; Son Ltd v Jeffrey Mellor</td>
<td>Claim for £183.3s.1p. claim for work done under the War Damage Act. Judgement for Plaintiff for £183.3s.11p with costs to be taxed. Judgment for the Plaintiff also on the counterclaim with costs to be taxed.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1804</td>
<td>12/04/48</td>
<td>Lewis v Barber</td>
<td>Dispute over materials supplied.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1805</td>
<td>12/47</td>
<td>Stephen John Clegg t/a Universal Precision v Park Street Engineering Works</td>
<td>Materials supplied not in accordance with specification under the contract.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1807</td>
<td>20/11/47</td>
<td>Zenith Skin Trading Co Ltd v Frankel</td>
<td>Price of furs and whether they were</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/2</td>
<td>HPIM1808</td>
<td>29/01/48</td>
<td>HT Jay &amp; Sons v South Eastern Joinery Works Limited</td>
<td>Action on an account as to costs of material</td>
<td>Case withdrawn agree sum of £135 plus taxed costs to be included within that sum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>06/48</td>
<td>Carmino Paobillo v Teresa Gilsan</td>
<td>Partnership dispute and agreement to pay clear profits. Settlement Order that the Plaintiff undertook to take all necessary steps to execute all necessary documents to transfer into the Defendant’s name the deposit account the Abbey National Building Society. Claim to be withdraw. Counterclaim withdraw. Plaintiff relinquishes all claims to monies in said deposit account and had to pay Plaintiff £100 in full and final settlement. Parties to pay their own costs.</td>
<td></td>
</tr>
</tbody>
</table>
**JUDGES NOTENOTEBOOK NO 64**

File No. J114/23 (1952 – 53) Sir Tom Eastham QC

<table>
<thead>
<tr>
<th>Date</th>
<th>Case Name</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>19/03/52</td>
<td>Knippmen v Attorney General</td>
<td>1</td>
</tr>
<tr>
<td>26/03/52</td>
<td>Freund v Wells</td>
<td>17</td>
</tr>
<tr>
<td>27/03/52</td>
<td>Brown v Goodfellow</td>
<td>37</td>
</tr>
<tr>
<td>31/03/52</td>
<td>Laindon v Elliott</td>
<td>39</td>
</tr>
<tr>
<td>01/04/52</td>
<td>Bowbean v Alberton</td>
<td>52</td>
</tr>
<tr>
<td>19/05/52</td>
<td>Rowcliffe v Green</td>
<td>53</td>
</tr>
<tr>
<td>24/06/52</td>
<td>Ward v Grisewood &amp; Fox</td>
<td>96</td>
</tr>
<tr>
<td>14/07/52</td>
<td>Irving v Blake</td>
<td>108</td>
</tr>
<tr>
<td>21/07/52</td>
<td>Southdown Casings Co v Osbourne</td>
<td>127</td>
</tr>
<tr>
<td>07/11/52</td>
<td>S A Dibbs Ltd v Needleman</td>
<td>169</td>
</tr>
<tr>
<td>24/11/52</td>
<td>Dawes v Papadimitiou</td>
<td>204</td>
</tr>
<tr>
<td>25/11/52</td>
<td>E Dawson (Lamp Factors) Ltd v Enfield Electrics</td>
<td>207</td>
</tr>
<tr>
<td>01/12/52</td>
<td>F G Minter Ltd v Greene &amp; Ors</td>
<td>206</td>
</tr>
<tr>
<td>13/01/53</td>
<td>Rothkins v Evely</td>
<td>238</td>
</tr>
<tr>
<td>10/02/53</td>
<td>Manly &amp; Manly v Grindlay</td>
<td>256</td>
</tr>
<tr>
<td>30/06/53</td>
<td>Morton Owen &amp; Co v Gainsborough (Arts and</td>
<td>264</td>
</tr>
<tr>
<td></td>
<td>Educational Materials) Industries Limited</td>
<td></td>
</tr>
<tr>
<td>02/10/53</td>
<td>Cassidy v Lawrinson</td>
<td>265</td>
</tr>
<tr>
<td>07/10/53</td>
<td>Burcon Ltd v J A Tyler &amp; Sons Ltd</td>
<td>267</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG525/ CIMG0526</td>
<td>20/03/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0534</td>
<td>25/03/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0535</td>
<td>27/03/52</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0537</td>
<td>31/03/52</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0540</td>
<td>01/04/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0542</td>
<td>17/06/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0543</td>
<td>24/06/52</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0546</td>
<td>14/07/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0550</td>
<td>21/07/52</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0559</td>
<td>07/11/52</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0561</td>
<td>10/11/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0563</td>
<td>24/11/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0564</td>
<td>25/11/52</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0565</td>
<td>04/12/52</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0568</td>
<td>03/10/53</td>
</tr>
<tr>
<td>J114/24</td>
<td>CIMG0571</td>
<td>07/10/53</td>
</tr>
</tbody>
</table>
**JUDGES NOTEBOOK NO 70**  
Sir Tom Eastham QC 1954 – 1957

**File No. J114/31**

<table>
<thead>
<tr>
<th>Date</th>
<th>Case</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1954</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>01/02/54</td>
<td>Stern v Phelps &amp; Son</td>
<td>1</td>
</tr>
<tr>
<td>11/02/54</td>
<td>Stannard v Gray</td>
<td>7</td>
</tr>
<tr>
<td>15/02/54</td>
<td>PCS Ltd v Lever</td>
<td>31</td>
</tr>
<tr>
<td>03/04/54</td>
<td>Dowding &amp; Mills Ltd v Dohn Ltd</td>
<td>76</td>
</tr>
<tr>
<td>23/03/54</td>
<td>Davey &amp; Armitage Ltd v Wallasea Bay Yaught &amp; Son Ltd</td>
<td>77</td>
</tr>
<tr>
<td>08/04/54</td>
<td>Stern v Topen</td>
<td>87</td>
</tr>
<tr>
<td>20/05/54</td>
<td>Biddle Builders Ltd v Rosenfeld</td>
<td>88</td>
</tr>
<tr>
<td>31/05/54</td>
<td>Bartlett v LT Executive</td>
<td>89</td>
</tr>
<tr>
<td>03/06/54</td>
<td>Myers v Wainwright</td>
<td>96</td>
</tr>
<tr>
<td>15/06/54</td>
<td>Houghton v Bone Bros</td>
<td>100</td>
</tr>
<tr>
<td>05/07/54</td>
<td>Richmond Shipways v Wyhorn</td>
<td>104</td>
</tr>
<tr>
<td>04/10/54</td>
<td>Waia &amp; Peterson Ltd v Bourne</td>
<td>124</td>
</tr>
<tr>
<td>06/10/54</td>
<td>WA Bennett Ltd v Stephen Hastings Ltd</td>
<td>130</td>
</tr>
<tr>
<td>07/10/54</td>
<td>Gracey v Nedlam Ltd</td>
<td>133</td>
</tr>
<tr>
<td>04/10/54</td>
<td>Knight v J F Hill &amp; Son (Camberwell) Ltd</td>
<td>134</td>
</tr>
<tr>
<td>10/11/54</td>
<td>Devonshire v Reginald</td>
<td>135</td>
</tr>
<tr>
<td>01/12/54</td>
<td>Cripps v Lee Green Motors</td>
<td>152</td>
</tr>
<tr>
<td><strong>1955</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13/01/55</td>
<td>Aygee Properties Ltd v Kendall</td>
<td>161</td>
</tr>
<tr>
<td>21/02/55</td>
<td>Paj Kunic v Machaurin</td>
<td>162</td>
</tr>
<tr>
<td>24/02/55</td>
<td>J Kemp Ltd v Vaughan</td>
<td>173</td>
</tr>
<tr>
<td>01/03/55</td>
<td>Lynch v E C Hills &amp; Son</td>
<td>185</td>
</tr>
<tr>
<td>04/03/55</td>
<td>Frank W Martell &amp; Co Ltd v Landon Furnishings</td>
<td>190</td>
</tr>
<tr>
<td>07/03/55</td>
<td>William Logan &amp; Sons Ltd v G Lit Ltd</td>
<td>191</td>
</tr>
<tr>
<td>14/03/55</td>
<td>Nagales v Menitides</td>
<td>199</td>
</tr>
<tr>
<td>16/03/55</td>
<td>CBH Construction Ltd v Mills</td>
<td>203</td>
</tr>
<tr>
<td>22/03/55</td>
<td>Benton v Wright</td>
<td>209</td>
</tr>
<tr>
<td>24/03/55</td>
<td>Cooke &amp; Ors v London Plywood &amp; Timber Co Ltd</td>
<td>214-227</td>
</tr>
<tr>
<td>02/05/55</td>
<td>Daniel v Kingsland Die Casting</td>
<td>228</td>
</tr>
<tr>
<td>04/05/55</td>
<td>Botchell v Collins</td>
<td>229 – 233</td>
</tr>
<tr>
<td>17/05/55</td>
<td>Antson v Chapple</td>
<td>235</td>
</tr>
<tr>
<td>04/07/55</td>
<td>Hidden Timber v London Secretarial Services</td>
<td>238</td>
</tr>
<tr>
<td>12/07/55</td>
<td>HG Island Ltd v HD Brierly Ltd</td>
<td>239</td>
</tr>
<tr>
<td><strong>1956</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28/06/56</td>
<td>Green v G Nickerson &amp; Son Ltd</td>
<td>250</td>
</tr>
<tr>
<td>10/07/56</td>
<td>Rankin &amp; Downtown Ltd v Walker</td>
<td>256</td>
</tr>
<tr>
<td>11/07/56</td>
<td>Church Commissioners v Brentwood</td>
<td>257</td>
</tr>
<tr>
<td>13/07/56</td>
<td>Hewitt v North Suburban Estates Ltd</td>
<td>258</td>
</tr>
<tr>
<td>25/07/56</td>
<td>Aerial Cabinet Ltd v Belton Built Furniture Ltd</td>
<td>264</td>
</tr>
<tr>
<td><strong>1957</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21/01/57</td>
<td>Totten v Lemmon</td>
<td>269</td>
</tr>
</tbody>
</table>

### Archive Reference | Digital Record Reference | Date | Name of Case | Type/Nature | Case flow management element
---|---|---|---|---|---
J114/31 | SH101178 | 01/02/54 | Stern v A Phillips & Son (A firm) | Negligence and delay. Claim for £1,271.7s.0d plus damages. Judgment for Plaintiffs on claim for £1061.15s.9d and on counterclaim with costs to be taxed failing agreement. Payment of money out of court £300. |

J114/31 | SH101180 | 11/02/54 | Stannard v Gray | Claim for £980.6s.5d. Defendant employed by theatre manager was a well known comedienne. His earnings varied. He wanted to convert his business into a Notebookmakers business. Defendant refused on several occasions to pay Plaintiff his money owed despite various reminders. Judge gave judgment for Plaintiff for £980.6s.5d. Considerable amount of oral evidence given by both parties in this case, two demands for payment, promises to pay etc. |

J114/31 | SH101190 | 15/02/54 | PCS Ltd v Lewer | Prime cost building contract with Ministry of Health in form NH/PC/1. Here we see complex cases calculating the final account less defects remuneration and prime costs. Judge held acceptance of contract by conduct. Judgment for the Plaintiff £550 on claim with costs to be taxed. Judgement for Plaintiff on counterclaim Preliminary issues: what is the contract NH/PC/1 or quantum merit claim. Was the work done badly as alleged? If so how much is the Plaintiff entitled to recover? Are the Defendants bound by the Architect's final certificate? |
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>02/03/54</td>
<td>Dowding &amp; Mills Ltd v Dohen Ltd</td>
<td>Defendants submitted to Judgment for £670 with costs to be taxed order for payment out of £600 in Court in part satisfaction of the Judgment without further authority.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101199</td>
<td>23/03/54</td>
<td>Davey &amp; Armitage Ltd v Wallasea Bay Yacht Station Limited</td>
<td>Action on counterclaim only. This concerned flooding in February 1953 construction of four roads. Action for damage for trespass causing damage, damage caused to grass around bungalows by tractor and trailer as workmen were building four roads what they had done was damaged grass verges and some land in which the public had access to and play cricket. That land also in possession of the Yacht Club. Evidence of damage not extensive. Damage to grass in front of bungalows, not much authority. Trespass continued for five days. Damages awarded £50.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101200</td>
<td>08/04/54</td>
<td>Stern v Topen</td>
<td>Case settled on terms endorsed on Counsel's brief.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101205</td>
<td>20/05/54</td>
<td>Biddle Bros Builders Ltd v Rosenfeld</td>
<td>Building claim preliminary issues to be decided.</td>
<td>Was the work done? Whose agent was Blanchfield? Are the prices reasonable? Has payment been made?</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101206</td>
<td>31/05/54</td>
<td>Bartlett v London Transport Executive</td>
<td>Plaintiff owned breakfast bar in Bishopsgate, this breakfast bar was damaged by bus</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>-----------</td>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101209</td>
<td>03/06/54</td>
<td>Myers v Wainwright</td>
<td>accident. Front of shop damaged, claim for damages for damaged property. Some work carried out by lessee laying shop floor, repairs to doors, temporary loss of business and loss of profits. Plaintiff said he had former solicitors but they did not act for him and he did not call accountant because he had attended former Solicitors offices. Building was bomb damaged, expert evidence given as to accounts by Defendants, disclosed in 1951 a 15% rise in prices Judgment for Plaintiff in sum of £734.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH10211</td>
<td>15/06/54</td>
<td>Houghton &amp; Anor v Bare &amp; Ors</td>
<td>Landlord and tenant - Schedule of Dilapidations, issue as to what is the cost of repair and whether that is the same as the damages to the reversion. Expert evidence called with regard to decorative items. Argument as to whether work was necessary and prices fair and reasonable. Referee required to assess damages, he assessing damages in sum of £322 action adjourned for consideration by parties for date to be fixed.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101213</td>
<td>05/07/54</td>
<td>Richmond Alexways Ltd v Wyborn</td>
<td>Claim in respect of damages regarding manufacture of boat, cabin cruiser. Issues over ventilating system, engine and 16&quot;</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>--------</td>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101223</td>
<td>04/10/54</td>
<td>Ward &amp; Patterson Ltd v</td>
<td><strong>Claim for defective works. Repairs plumbing and decorations, bad workmanship, damage to woodwork and furniture, defective plumbing, quantity surveyors evidence as to repairs and alterations and quantification, standard of workmanship not good. Referee does not give judgment, its not Tom Eastham, looks like damages given at £91.10s.</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Trainim</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101226</td>
<td>06/10/54</td>
<td>WA Bennett Ltd v</td>
<td><strong>Dispute over the weight of goods, carriage of goods, interpretation of bill of lading. Goods handled to carriers weight on weighbridge. Judgment for Plaintiff for £212.16s with costs up to 20 August 1954. Judgment for Defendant for £77.8s.8d with costs.</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Stephen Hastings Ltd</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101228</td>
<td>07/10/54</td>
<td>Garey v Nedlam</td>
<td><strong>Claim by builder on schedule of dilapidations, claim for non payment of costs of works £1,231.5 no judgment noted.</strong></td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101228</td>
<td>14/10/54</td>
<td>Knight v J F Hill &amp; Sons (Camberwell) Ltd</td>
<td><strong>Action stayed on terms evidenced on Counsel’s brief liberty to apply.</strong></td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>--------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101229</td>
<td>1/11/54</td>
<td>Devonshire &amp; Anor v Raznick &amp; Anor and Raznick &amp; Co Ltd v Devonshire &amp; Anor</td>
<td>Building works carried out on Public House. Cost £1,500 problem of completing works by Easter, job took three weeks with three workmen. Working until 9pm sometimes. Dispute over delay. Job could be done in 6-8 weeks. Payment delayed was to give them partial possession by Whitsun. Builder said if he was not paid he would withdraw labour, employer said he was not going to pay builder. £500 worth of work done, suggestion for £500 to be paid to trustee. Expert evidence given. Delay caused by nominated sub contractor. Kelly Carter gave judgment on claim for £175 with 4/5 of costs. Counterclaim dismissed with costs as was action by company dismissed with costs.</td>
<td>Walker Kelly Carter took over from Tom Eastham on 2 March 1954. His notes are far more detailed and his term of office seems to coincide with a more complex number of references, dealing with delay, loss and expense and problems of repudiation of contract contracts.</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101237</td>
<td>01/12/54</td>
<td>Cripps v Lee Green Motors</td>
<td>Kelly Carter giving immediate case management directions. This represents exceedingly efficient case management at commencement of a trial. Evidence given as to measured work for £1,395. Client did not want to pay more than £1,000. Defendant left site March 1954. Prices in original bill of quantities according to expert would not be fair method of pricing variations on this job. Evidence of bad workmanship. KC gave judgment for Plaintiff of £45 and £125 plus £35 to cover Claimant’s costs.</td>
<td>KC giving immediate directions, issue as to fair price to be dealt with next day; issue relating to estoppel on agreement made by surveyor be tried that day; that time sheets and invoices be disclosed to Defendant’s solicitors forthwith by 2pm that day; that all questions of further germane and costs be reserved; that Defendants be at liberty to</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>----------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101242</td>
<td>13/01/55</td>
<td>Aygee Properties Ltd v Kendall &amp; Anor</td>
<td>Defendant agreed to pay £2,000, Judge ordered payment out of £1,500 to Plaintiffs all proceedings stayed and Tomlin Order</td>
<td>First use of Tomlin Order</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101242</td>
<td>21/02/55</td>
<td>Prajkunic v Maclennon</td>
<td>Matrimonial dispute, wife came from Varna in April 1939, dispute over silver and china bought at Harrods. Very sad. Son lived with mother, .....just after war, had his own property in house but died. Plaintiff interrogated in detail as to her possessions, two days in Court. Third day on Defendant’s case Judge gave Judgment on third day. 23 Feb 1955 but not recorded.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101247</td>
<td>24/02/55</td>
<td>J Jenkins Ltd v Vaughan</td>
<td>Numerous defects with property, house demolished. Post-war building material not as good as pre-war building material. Non compliance with specification of re-built property. Concrete contained aggregate that was too large. Concrete had to be broken up and re-laid. Kitchen floor “fell to pieces” Threat of dampness and dry rot, green timber. No sufficient ventilation. Case adjourned on third day, terms agreed and endorsed on Counsel’s brief.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101253</td>
<td>10/03/55</td>
<td>Finch v EC Miles &amp; Son</td>
<td>Row of cottages built about 1300 (14th Century) Plaintiff paid</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>----------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101254</td>
<td>07/03/55</td>
<td>William Logan &amp; Sons Ltd v Onlit Limited</td>
<td>Claim for value of building work, lack of consideration, errors in bills of quantities, builder priced the job on basis of bill of quantities; using new type of specialist construction method for floors but had no detailed drawings available on which to price works. Builder found omissions and errors on bills of quantity and if they had completed the contract with circle construction they said they would have gone bankrupt. Builder was asked if he would continue to do the work even if it was outside the bill of quantities but builder said they could not continue unless paid for work. Builder threatened to walk off job if he was not paid extra payment; “If work confined to items in bills of quantity formwork would have collapsed”. (very strong indications now in these cases of far more complex building cases of the type that prevailed up to the mid 1980s, heavy complex claims that took more than 3 days hearing.</td>
<td>Issues whether duty in negligence; whether there was a contract.</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101258</td>
<td>14/03/55</td>
<td>Nageles v Menikides</td>
<td>Building conversion of premises into hairdressing saloon. Problems over Marley tiles being fitted and ventaxia fans. Dispute over movement of</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101260</td>
<td>16/03/55</td>
<td>CBH Constructions Ltd v Mills</td>
<td>Works carried out without supervision of architect. Specification valued at £2,643. Contractor says that work still continuing, Defendant rejects that. Judge said he would deal with matter as preliminary issue on repudiation. Dispute over various items client very demanding and authoritarian ordered extras difficulty of contractor was they had exceeded provision costs items and accordingly they wanted assurance from building owner that he would pay the extra sums involved. Contractor withdrew his men from site after plumber had connected the water services. Building owner threatened to “fight” builder if they did not round off cornices free of charge. Building owner terminated contract. No note of judgment but Judge has marked note Notebook as £100 which he may have awarded to Claimant.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101263</td>
<td>22/03/55</td>
<td>Benton v Wright</td>
<td>Defendant was an accountant who worked for Benton Claimant. Claimant had been involved in two divorce cases and Wright accountant acted for Benton in dealing with matrimonial tax matters. Accountants charges 10 ½ guineas for 7 hour day. One day.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101265</td>
<td>24/03/55</td>
<td>Cooper &amp; Ors v London Plywood Timber Co Ltd</td>
<td>Claim for timber evidence: &quot;do I get it at my price.&quot; &quot;Clear out&quot;. &quot;I will put your floor outside the gate&quot;. Police sent for (Judges note) Judgment for Plaintiff on claim for £300 counterclaim dismissed. Payment out of £300 in Court to Plaintiff’s Solicitors £50 in Court to Defendant’s Solicitors.</td>
<td>Agreed that Judge would try the question repudiation first. Preliminary issues: agreement oral. No agreement at all. Claimant quantum merit. Severance of materials.</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101271</td>
<td>02/05/55</td>
<td>Daniel v Kingsland Die Casking Co Ltd</td>
<td>Defendant to pay Plaintiffs with costs up to date of Defence and Plaintiff to pay costs of defence after delivery of defence.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101272</td>
<td>04/05/55</td>
<td>Botibol v Collins</td>
<td>Claim for want of repair under lease granted in 1947. Premises were very dilapidated and attempt was made to convert into fish and chip shop. Judge assessed damages at £530.12s Judge dismissed counterclaim and ordered Defendant to pay cost of action and counterclaim. Stay of</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>--------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101274</td>
<td>17/05/55</td>
<td>Anton v Chappie</td>
<td>Building claim.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101275</td>
<td>04/07/55</td>
<td>Head Thurlow Ltd v London Secretarial Service</td>
<td>Kelly Carter gives judgment immediate for Plaintiff of £175 plus £63 agreed costs.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101276</td>
<td>12/07/55</td>
<td>H G Poland Ltd v H O. Brierly Ltd</td>
<td>Managing Director of Plaintiff was old established firm of brokers, question of payment of commission.</td>
<td>Preliminary issues: did agreement agree term Plaintiff should be remunerated by keeping 60% of brokerage for themselves? Were Plaintiffs under liability to account to Defendants; Was money account settled or cleared?</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101281</td>
<td>28/06/56</td>
<td>Green v G Nickerson &amp; Son Ltd</td>
<td>Claim in respect of goods delivered. Second day Judge noted 1.30pm case settled.</td>
<td>Preliminary issues; dispute as to terms of verbal agreement, breach of agreement; quantity no longer disputed.</td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101283</td>
<td>02/07/56</td>
<td>WA Phillips Anderson &amp; Co Ltd v Instone &amp; Anor (Vanoss – for Plaintiff) Dispute over boat. Question as to marine engine. Exhaust pipe too low, issue over engine following day however claim and counterclaim were withdrawn. Result was that £1,250 was paid out to Plaintiffs and £2,220 was paid out to Defendants.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101284</td>
<td>04/07/56</td>
<td>Rankin &amp; Downton (Footway) Ltd v Walker</td>
<td>Problem over drains, decorations to back room and maids bedroom, claim work £1,900 parties came to terms, no order.</td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101285</td>
<td>11/07/56</td>
<td>Church Commissioners for England v Boutwood</td>
<td>By consent damages assessed at £3192.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Asbestos sheeting was not considered permanent roofing material. Judge delivered a reasoned judgment, gave judgment for Defendants with costs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/31</td>
<td>SH101291</td>
<td>21/01/57</td>
<td>Totten v Lemmon</td>
<td>Building claim. Complaints about workmanship variations but no proof of variations some lack of evidence reported by Judge, judgment given for Plaintiff £344.17s.3d with ¾ of her costs, order Plaintiffs costs to be taxed for purposes of Legal Aid Act 1949.</td>
<td></td>
</tr>
</tbody>
</table>
### INDEX OF CASES

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phillips v Ward</td>
<td>1</td>
</tr>
<tr>
<td>Hogg v Barnard</td>
<td>33</td>
</tr>
<tr>
<td>Burles (London) Ltd v Aygee Properties Ltd</td>
<td>93</td>
</tr>
<tr>
<td>Sharkey v Spencer</td>
<td>94</td>
</tr>
<tr>
<td>Titler v Bathurst Brown &amp; Anor</td>
<td>100</td>
</tr>
<tr>
<td>Nason v Symons</td>
<td>105</td>
</tr>
<tr>
<td>William Mills &amp; Son Ltd v Wybrow</td>
<td></td>
</tr>
<tr>
<td>A Stokes &amp; Co Ltd v Hill</td>
<td>119</td>
</tr>
<tr>
<td>Butler v Vaughan</td>
<td>123</td>
</tr>
<tr>
<td>McConnell v Grant</td>
<td>133</td>
</tr>
<tr>
<td>Beanders Limited v Van Der Elst</td>
<td>138</td>
</tr>
<tr>
<td>Crittenden (A firm) v Phillips</td>
<td>146</td>
</tr>
<tr>
<td>Secretarial Service v Swefex Flooring Co Ltd</td>
<td>152</td>
</tr>
<tr>
<td>Dove Brothers Limited v Scott</td>
<td>154</td>
</tr>
<tr>
<td>Wareham v Evans</td>
<td>159</td>
</tr>
<tr>
<td>Portman Glass Co Ltd v Sayson &amp; Anor</td>
<td>164</td>
</tr>
<tr>
<td>Hopgood v Herbert Richardson &amp; Sons Ltd</td>
<td>165</td>
</tr>
<tr>
<td>Hill v Debenham Tewson &amp; Chinnocks</td>
<td>175</td>
</tr>
<tr>
<td>Ridley &amp; Ors v Kopsisitzes</td>
<td>197</td>
</tr>
<tr>
<td>Cohen v J J Butler Ltd</td>
<td>199</td>
</tr>
<tr>
<td>Goodman Jones &amp; Co v Cornwell</td>
<td>206</td>
</tr>
<tr>
<td>Raefel &amp; Brown Ltd v Stokes of Cambridge Limited</td>
<td>207</td>
</tr>
<tr>
<td>Peters Automatic Mechanics v R.A. Equipment Limited</td>
<td>211</td>
</tr>
<tr>
<td>Brailsford Ltd v Lee (at Nottingham)</td>
<td>212</td>
</tr>
<tr>
<td>Beechwood Estates Co v Hanbury-Aggs</td>
<td>249</td>
</tr>
<tr>
<td>Mahoney v Kent</td>
<td></td>
</tr>
<tr>
<td>George v Russell Brothers</td>
<td></td>
</tr>
<tr>
<td>Heating &amp; General v I Richardson</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2763</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2766</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2769</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2770</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2771</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2773</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2775</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2777</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2779</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2780</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2782</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2784</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2785</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM278?</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2788</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2789</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2790</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2794</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2795</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM??</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2797</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2798</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2798</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2800</td>
</tr>
</tbody>
</table>

This is the first clear evidence of a trial on preliminary issue noted by the Official Referees [indicates that this time the
<table>
<thead>
<tr>
<th>Archive Reference</th>
<th>Digital Record Reference</th>
<th>Date</th>
<th>Name of Case</th>
<th>Type/Nature</th>
<th>Case flow management element</th>
</tr>
</thead>
<tbody>
<tr>
<td>J114/35</td>
<td>HPIM2801</td>
<td>06/60</td>
<td>Beechwood Estates Co v Hambury-Aggs</td>
<td>Claim for building repairs, cost of work £600.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>device was coming into more common usage coinciding with more complex building cases being referred albeit domestic ones]</td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2802</td>
<td>07/11/60</td>
<td>Charles Mahoney v J W Kent</td>
<td>Claim by builder in respect of variation works carried out qualifications to work required by District Surveyor namely the rear brickwork and concrete foundations.</td>
<td></td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2803</td>
<td>14/11/60</td>
<td>George v Russell Bros</td>
<td>Claim regarding cost of panels estimate £30 less than it was: .... claim £547.10s.3p OR gave judgment for Plaintiffs for £243.3s with costs up to 11 Oct 1960</td>
<td></td>
</tr>
<tr>
<td>J114/35</td>
<td>HPIM2803</td>
<td>4/11/60</td>
<td>Youngsigns Ltd v S S V Limited</td>
<td>Building claim. Prices charged were fair and reasonable Judge satisfied work was carried out, no appearance by Defendants, Judgment for Plaintiff £405 with costs against defendant.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>-------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/2</td>
<td>IMA0032</td>
<td>03/03/45</td>
<td>Westheath Contractors v Borough of Grantham</td>
<td>Claim concerning 169 building units comprising 63 dwellings</td>
<td>Referee directed parties to agree figures of quantum. Judgment given for Defendants on the claim with costs to be taxed less £70 and judgment for the Defendants on the counterclaim for £3,119.6s.10p with costs to be taxed.</td>
</tr>
<tr>
<td>J114/2</td>
<td>IMA0038</td>
<td>09/07/47</td>
<td>Henrietta De Leeman v Shirley Soloman Moss</td>
<td>Marriage settlement dispute, claim over personal property and opposing rights of the parties. Judgment given for Plaintiff for £150 payable to Plaintiff’s Solicitors by instalments of £2 on first of each month beginning on 1 August 1947.</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>IMA0043</td>
<td>07/45</td>
<td>HSA Productions Ltd v AA Shenburn</td>
<td>Claim for £253.18s.8p judgment for £250 with costs to be taxed</td>
<td></td>
</tr>
<tr>
<td>J114/2</td>
<td>IMA0044</td>
<td>16/10/45</td>
<td>Reginald Alfred Boswell v P Pechelsky</td>
<td>Claim for £1,800 under two agreements. Defective machine. Judgment for Defendant on claim judgment for Plaintiff on counterclaim ordered Defendants to pay £100 in respect of costs.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>--------</td>
<td>--------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>J114/1 T</td>
<td>HPIM1735</td>
<td>11/11/44</td>
<td>Lewis (Wollens) Ltd v Judd Bros (a firm)</td>
<td>Claim for delivery of goods. Judgment given for Plaintiff of £220.12s.11p with costs to be taxed. Application for leave to proceed to enforce Judgment to be made in Chambers.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Civil Court Town Hall Leeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J114/1</td>
<td></td>
<td>27/11/44</td>
<td>Great Western Railway Co v Port Talbot Dry Docks Co Ltd</td>
<td>Claim with respect to damage to dredger Don Frederico. Don Frederico sank in dock at time Battle of Atlantic was at its height. Vessel capsized on its starboard side. Could not salvage the ship. Plaintiffs employed Ocean Salvage Company. They did the work paid £2,596.3s. Took 4 months to clear the entrance to the dry dock. ...Southborough's charges were excessive - presumably for lifting the dredger. Difference between the parties Defendants said £4,846.14s.9p, Plaintiff said £8,969.14s.9p. Judge held £42,567 in judgment with costs to be taxed. Judgment for Plaintiff on County Court scale with costs to be taxed.</td>
<td></td>
</tr>
<tr>
<td>J114/1 (p51)</td>
<td>HPIM1742</td>
<td>21/10/46</td>
<td>Johnson v Johnson</td>
<td>Matrimonial dispute. Husband earning 7Guineas a week as a builder. Judge awarded £100 balance of agreed costs. Leave to proceed but suspended so long as Defendant pays £10 on 20 January 1947 and £10 on 20th of each subsequent month.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Case Name</td>
<td>Page</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25/03/54</td>
<td>W &amp; F Doughty Ltd v Earl</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25/06/54</td>
<td>Nixon v Harris &amp; Partners</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15/11/54</td>
<td>A C Boyes &amp; Sons Ltd v Temple</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17/11/54</td>
<td>Towgood v Rawlingson &amp; Webber</td>
<td>15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24/11/54</td>
<td>Bristol Steam Oven Works Ltd v Reffell (Patterson Third Party)</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23/01/56</td>
<td>Doling v Doling</td>
<td>38</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28/03/57</td>
<td>E C Dawes v Trusson</td>
<td>43</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>06/05/57</td>
<td>Sun Papermill Co Limited v All Purpose Building Co Ltd Third Party - Brock Roofing Contractors Ltd</td>
<td>54</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08/05/57</td>
<td>Horsonden Trust Ltd v Lambert &amp; Squires</td>
<td>55</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16/05/57</td>
<td>Eastern Distributors Ltd v Jackson</td>
<td>57</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16/05/57</td>
<td>Harcourt Investment &amp; Finance Ltd v Jackson</td>
<td>59</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/10/57</td>
<td>Kirra Silks Ltd v Rares</td>
<td>61</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28/10/57</td>
<td>Bowmaker Ltd v Wareham Boreclay Co</td>
<td>62</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>05/11/57</td>
<td>Brown v Moore</td>
<td>63</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21/01/58</td>
<td>H Fairweather &amp; Co Ltd v Appointed Props Ltd</td>
<td>68</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27/01/58</td>
<td>Newman &amp; Watson Ltd v Robson</td>
<td>69</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>03/02/58</td>
<td>Adkins v Joseph Kaid &amp; Co Ltd</td>
<td>81</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>05/02/58</td>
<td>Hobbs Wilson Ltd v Zwiran</td>
<td>88</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20/02/58</td>
<td>Baillie &amp; Anor v Lewis &amp; Anor and Baillie &amp; Anor v J Pointing &amp; Son Ltd (consolidated action)</td>
<td>105</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24/02/58</td>
<td>Gardener &amp; Anor v Northam</td>
<td>108</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26/02/58</td>
<td>M A Stern (Shopfitters Ltd) v Birnie</td>
<td>110</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11/03/58</td>
<td>Harry Phipps Ltd v Kirmin Ltd</td>
<td>124</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16/02/59</td>
<td>Corporation of the City of London v Nadine</td>
<td>144</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>03/03/59</td>
<td>Signal &amp; Duncan Ltd v Ellison</td>
<td>150</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>09/03/59</td>
<td>V French Ltd v Spurrell</td>
<td>158</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11/03/58</td>
<td>Church Commissioners v Hopkins Property Co Ltd</td>
<td>161</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18/03/59</td>
<td>Chippins-Smith v Tuck &amp; Anor</td>
<td>162</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20/04/59</td>
<td>S Kaplin &amp; Son Ltd v Parkins</td>
<td>164</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>06/05/59</td>
<td>French v Kingwood Hill Ltd</td>
<td>167</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>05/03/62</td>
<td>Berger Janson &amp; Nicholson Ltd v Ministry of Works</td>
<td>172</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>04/04/62</td>
<td>L V Purchasing Co Ltd v Jacob Bros</td>
<td>199</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>07/05/62</td>
<td>Bernard v Britz Bros Ltd</td>
<td>209</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17/12/62</td>
<td>United Retaining Services Ltd v J G Powell &amp; Son Ltd</td>
<td>231</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18/12/62</td>
<td>Waddell v Mainrows</td>
<td>232</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20/12/62</td>
<td>Shopfitting Centre Ltd v Revette</td>
<td>236</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/01/63</td>
<td>C H Bailey Ltd v Cebuille Ltd</td>
<td>239</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19/11/64</td>
<td>Hancon Finance Co Ltd v Currin Spagel</td>
<td>261</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23/11/64</td>
<td>Saunders v Fainer</td>
<td>263</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>---------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101296</td>
<td>25/03/54</td>
<td>W &amp; F Doughty Ltd v Earl</td>
<td>Action immediately settled, settlement order issued by Referee.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101296</td>
<td>25/06/54</td>
<td>Jackson v Harris &amp; Partners Ltd</td>
<td>Building works undertaken by way of foundations to bay. Cracking in bay. Cracks increased slowly then rapidly. Repairs undertaken but cement and sand friable. Cracks appeared in precisely same place as before. Expert found very poor concrete. Mix of concrete seems to be at fault. Property might still have subsided but not so much because of the bad mix concrete. Contrary evidence given that concrete was adequate for load and same damage would have happened even if it had been first class concrete. Expert evidence given that reinforced raft was holding up the bay preventing it from cracking. Judge awarded £116.5s.3d on claim. (These cases are now becoming more complex, matters of engineering design, quality of concrete, more highly specialist expert evidence admitted).</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101301</td>
<td>17/11/54</td>
<td>Towgood v Rawlinson &amp; Webber</td>
<td>Builder worked for Defendants on 10 or 20 houses at time. Payment of monies owed to builder, builder stopped work, some of work was war damage work. Question</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>---------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101306</td>
<td>24/11/54</td>
<td>Bristol Steam Oven Works Ltd v Ruffell &amp; Patterson as third party</td>
<td>Oven used by baker in Maidenhead. The working life of the oven should be 20 years. Coke oven converted to gas firing. Owner paid Jones for work, Pattersons mend did job. First it took baker 45 mins to bake two baps then took more than 60 mins. Crack appeared in brickwork, effessence in oven. Baker suffered fall in sales. Sales of bread fell 10% between December 49 and June 50, steam coming out of oven. Problem was brick structure and combustion chamber and air supply. Florescence was described as expert as most serious he had ever met. Fourth day Judge gave judgment for £305.5s.10d judgment on Counterclaim for £200. There was no payment in, no letter making any offer. Third party proceedings adjourned. Judgment for Plaintiff £305.5s.10d, list of documents ordered. Inspection. Composite bundle ordered. Three days hearing payment into Court Plaintiffs awarded 58ths of costs.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101313</td>
<td>25/01/56</td>
<td>Russell &amp; Ors v Shaw</td>
<td>Landlord and Tenant – dilapidations claim. No Judgment noted.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101315</td>
<td>28/03/57</td>
<td>E C Dawes &amp; Co Ltd v Trusson</td>
<td>Building contract. Dispute with builder over 4 steps instead of 1 step, his wife could not ....from the house. Question as to rights of way and building of ramp; position of garage. Lump sum contract issue of repudiation arising. Judgment for £350, £150 on counterclaim.</td>
<td>Preliminary issues did Defendant tell Plaintiffs to build a runway without steps from kitchen door? Was there an implied term?</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101317</td>
<td>06/05/57</td>
<td>Sun Papermill Co Ltd v All Purpose Building Co Ltd Third party Brock Roofing Contractors Ltd</td>
<td>Judgment by consent for Plaintiff for £120 Judgment for Defendant against third party for £70; order for payment out of £190.18s.11d to Plaintiffs Solicitors without further authority.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101318</td>
<td>08/05/57</td>
<td>Horsmond Trust Ltd v Lambert &amp; Symes (a firm)</td>
<td>Plaintiff asked Defendant to give Plaintiff valuation on property at Court Lodge: Defendant valued house at £5,500, Plaintiff bought house for £6,300 or £6,200 but floor of lounge curled out, surveyor had only noticed small area of woodworm. No agreement on fees. Plaintiff said that if he had known of dry rot he would have sought advice and never bought house. Expert gave evidence as to widespread infestation in ceiling joists and rafter and in plaster laths. This was perfectly visible. Beetle infestation in mantelpiece in dining room. Five other areas of infestation noticed. Central heating defective. Judgment</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>--------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101320</td>
<td>16/05/57</td>
<td>Eastern Distributors Ltd v Jackson</td>
<td>£500. Referee gave directions for leave to amend, gave Judgment for Plaintiff for £670 costs and application for time to pay under Order 42 Rule 19; adjourned hearing of action Harcourt v Jackson. Ordered Affidavit in support to be delivered in 14 days. (These cases certainly getting more complex both technically and procedurally. Judges certainly hearing more detailed evidence)</td>
<td>Application adjourned on terms; Plaintiff to have leave to amend Statement of Claim within 7 days by claiming rectification of recourse agreement; Plaintiff agreeing not to enforce their judgment against Defendant until judgment given in separate action. Two columns to be added to Scott Schedule as to amounts received. Plaintiff to give particulars on amounts received direct from insurers up to date of reissue of the writ. Possible ......reserved trial not before first day of action.</td>
</tr>
<tr>
<td></td>
<td>SH101321</td>
<td>14/10/57</td>
<td>Kirra Silks Ltd v Rares</td>
<td>Judgment by consent for the Plaintiff for £625 £350 in Court to be paid out in part satisfaction. Stay of execution provided £150 paid by 14 November and £125 paid by 14 December.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SH101321</td>
<td>28/10/57</td>
<td>Bowmakers (Plant) Ltd v Wareham Ball Cleaning Company</td>
<td>Judgment for £1,650 with costs to be taxed or agreed. Counterclaim dismissed with costs. £1,600 paid out to Plaintiffs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SH101322</td>
<td>05/11/57</td>
<td>Brown (T/a Brown-Long) v Moore Spinter</td>
<td>Building contract. Bill of Quantities. Question</td>
<td>Preliminary issue of fact and</td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>--------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>pursuant to Order dated 18 July 1957</td>
<td></td>
<td></td>
<td></td>
<td>over instructions. Issue over certificate. First reference is noted to Keating and Hudson. Case references to Sharp v San Paolo Railway and the Moorcock. Issue of estoppel arising. Judgement for Defendant under issue. (For the first time both Keating and Hudson are referred to in a case, cases are clearly becoming more complex now dealing with issues of law and not just simply issues of fact: Note: it is really about this time the Referees become more like High Court Judges than simply Referees. Burrows Article 1940 was somewhat premature – see findings Chapter 7.</td>
<td>law raised in paragraphs 4, 11, 12, 13, 14 of Reply and Defence to Counterclaim be tried before all other issues in this action.</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101324</td>
<td></td>
<td>H Fairweather &amp; Co Ltd v Pointed Properties Ltd and David Lee</td>
<td>Issues of bad workmanship and delay. Judgment for £275 order for payment out of money in Court paid to Plaintiff’s solicitors without further order. Amount of costs to be taxed. Judgment for ... on claim without costs.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101325</td>
<td>27/01/58</td>
<td>Newman &amp; Watson v Robson</td>
<td>Gardener Defendant began installation of plumbing works in house, pipe work did not follow what was agreed. Pipes froze up because of location. Other building defects. Judgment given but no note in Judge’s notebook (trial lasted 4 days).</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>--------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>for £656. Final bill was £789.13s.11d. Fixed price contract plus extras. Scheme was changed four times. Order for payment out for £350 to Plaintiff's Solicitors without further authority. Order for Defendant to pay to Plaintiff's costs of claim and counterclaim up to 17.1.58, order for Plaintiff to pay Defendant’s costs of claim and counterclaim from 17/1/58 set up of one set of costs against the other execution for balance only. No costs of the amendment.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101330</td>
<td>05/02/58</td>
<td>M Hobbs Wilson Ltd v Zwvin</td>
<td>Defective central heating system. Trouble with flue. Chimney fell off boiler. Boiler was badly installed. Did not exceed 150 degrees flow temperature. Plaintiffs repudiated contract by putting in too small a boiler. Suggested that Defendant should not have taken expert advice until Writ issued! No judgment noted.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101335</td>
<td>20/02/58</td>
<td>Baillie &amp; Anor v Lewis &amp; Anor and Baillie &amp; Anor v J Pointing &amp; Son Ltd Consolidated actions</td>
<td>Sale of freehold property, issues of income tax, Baillie owe £1,700 by company. Alterations made by property. Issue over income tax on loan. Judge held Defendants to pay Plaintiffs £900 each party pay their own costs, companies action stay of all proceedings.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101336</td>
<td>26/02/58</td>
<td>M A Stern (Shop fitters ltd) V Birnie</td>
<td>Building contract works. Claim for omissions, extras delay and bad workmanship. Fire risk from boiler, lack of ventilation, no site visit.</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101342</td>
<td>11/03/58</td>
<td>Harry Phipps Ltd v Karnis Ltd</td>
<td>Question as to whether there was market value, evidence that there was no market if no market value therefore cost price. Question of diced carrots and packaging per Ralph Gibson in case “the modern practice is to have a label so designed that no matter how you stock it the housewife will be able to recognise the style of goods contained within it”. Judge went also to consider packaging of prunes and apricots, goods not overpriced. Judge gave judgment for Plaintiffs for £580.16s costs up to and including the hearing on 11 March 1959. No costs thereafter.</td>
<td>Preliminary issue “the issue concerning the actual value of the stock in trade be tried after all other issues in the action”. Order 20/12/57 W K Carter QC</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101347</td>
<td>16/2/59</td>
<td>The Mayor and Commentary and Citizens of London v Ndiwe</td>
<td>Rundown defective premises extremely poor condition. Statutory notices served in April 1957, claim for damages and ....profits but no judgment.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101348</td>
<td>03/03/59</td>
<td>Syme &amp; Duncan Ltd v Ellison</td>
<td>Claim for £80 odd work not done and damages for delay. Estimate given in November 1954, work started in November 1955, work finished in August 1956.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101350</td>
<td>09/03/59</td>
<td>V French Ltd v Spurrell</td>
<td>Claim for £1,668.9s.9d. building works questions of reasonable price, extra works, delay further claim under War Damage Act, compensation issues. Judgment for £1,450, £700 in Court in part satisfaction, stay of execution to 1/7/59.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101352</td>
<td>11/3/59</td>
<td>Church Commissioners</td>
<td>Removal of stay</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>--------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>for England v Hoskins Property Co Ltd</td>
<td>forthwith, damages assessed at £1,000, Defendants to pay costs of action.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101352</td>
<td>18/03/59</td>
<td>Chipps Smith v Tuck &amp; Frank N Bateman</td>
<td>Work carried out to house, issue as to extras, surveyor instructing the same. Fair and reasonable price. Judgment for Plaintiff against Defendant £550 with costs judgment for Defendant Frank &amp; Bateman Ltd v Plaintiff First Defendant to pay Second Defendant's costs of action.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S K Kaplin &amp; Son Ltd (Upholsterers) Ltd v Parkins</td>
<td>Damage to property, injury to reversion, building over 100 years old, trial adjourned generally with liberty to restore. Plaintiff's costs of the action to be taxed and paid within 14 days after taxation.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SH101355</td>
<td>06/05/59</td>
<td>A Martin French v Kingswood Hill Ltd</td>
<td>Trial of preliminary issue, claim for fees in sum of £1,320.12s.8d. Issues of set off argued, Defendant had choice whether or not to rely on his set off and could elect. Question as to what accord and satisfaction meant in this context of whether payment into Court constituted discontinuance of action, whether cause of action survived discontinuance, issue of estoppel. Representation was that Defendants were offering this sum in compromise of entire proceedings? Express selection by Defendants not to rely on equitable set off before judicature acts (trial 3 days).</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101357</td>
<td>05/03/62</td>
<td>Berger Jensen &amp; Nicholson Ltd v Ministry of Works</td>
<td>Claim in respect of building works, decorative repair works. Palmers gave expert evidence as to reasonableness of prices. Cleaning of several properties, references to Berkeley Sq House and Buckingham Palace. Kew Museum. Painting works and decorating generally.</td>
<td>Judge had view of premises 7/3/62</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101363</td>
<td>04/04/62</td>
<td>LV Purchasing Co Ltd v Jacob Bros</td>
<td>Question of defective work. Terrazo floor. Installation of boulent pipes was trouble. Raising on terrazo floor indicating that proper skill and care had not been used according to experts; raising could be caused by old cement, too much water, too quick drying, damages awarded on basis between difference of value of floor as ought to have been and as it was. It was not called questions as to would he replace floor? Some award appears to have been £99 but appears to have been no Judge's note.</td>
<td></td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101366</td>
<td>07/05/62</td>
<td>Nathan Bernard &amp; Brit Bros Ltd and Brit Bros Ltd and Nathan Bernard and Ruth Bernard by counterclaim</td>
<td>Second Court Expert had misunderstood his instructions. No Judgment noted.</td>
<td>8/5/62 second day of trial - note: &quot;Counsel attended His Honour is his room to consent terms of reference and appointment of Court experts. Adjourned on summons until 11 May 62. First experts report July 63.</td>
</tr>
<tr>
<td>J114/34</td>
<td>SH101368</td>
<td>19/11/64</td>
<td>Harcon Finance Co Ltd &amp; Armin Spiegel Ltd</td>
<td>Breach of contract. Judgment for Plaintiffs £2,349.4s.2d with</td>
<td></td>
</tr>
<tr>
<td>Archive Reference</td>
<td>Digital Record Reference</td>
<td>Date</td>
<td>Name of Case</td>
<td>Type/Nature</td>
<td>Case flow management element</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>costs, costs reserved.</td>
<td></td>
</tr>
</tbody>
</table>
STATISTICAL DATA SPREADSHEETS
APPENDIX CHAPTER 5 JUDICIAL STATISTICS
OFFICIAL REFEREES 1919-1938 AND 1947-1970

<table>
<thead>
<tr>
<th>Year</th>
<th>1919</th>
<th>1920</th>
<th>1921</th>
<th>1922</th>
<th>1923</th>
<th>1924</th>
<th>1925</th>
<th>1926</th>
<th>1927</th>
<th>1928</th>
<th>1929</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>392</td>
<td>649</td>
<td>593</td>
<td>470</td>
<td>376</td>
<td>389</td>
<td>400</td>
<td>389</td>
<td>331</td>
<td>365</td>
<td>83</td>
</tr>
<tr>
<td>Sought in the year</td>
<td>152</td>
<td>311</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Referred by Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Referred by Master</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arbitration Act 1950</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By transfer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retransferred</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-entered on judgment being set-aside</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of summonses and Interlocutory Applications heard during the year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of days spent on Official Referee business London</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of days spent on Official Referee business Outside London</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number of days spent on Official Referee business</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases referred to referees in post</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free in post 1919-1931</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free in post 1932-38</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free in post 1947-48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free in post 1957-1970</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases referred to referees in post</td>
<td>210</td>
<td>393</td>
<td>649</td>
<td>593</td>
<td>470</td>
<td>376</td>
<td>389</td>
<td>400</td>
<td>389</td>
<td>331</td>
<td>365</td>
</tr>
<tr>
<td>Referred by Judge</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Referred by Master</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arbitration Act 1950</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By transfer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retransferred</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-entered on judgment being set-aside</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of summonses and Interlocutory Applications heard during the year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of days spent on Official Referee business London</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of days spent on Official Referee business Outside London</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number of days spent on Official Referee business</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Percentage of cases referred to referees in post**

- **Formula A**: 61.9% 63.6% 65.2% 69.0% 69.8% 68.4% 70.2% 73.3% 69.4% 74.9% 73.7%
- **Formula B**: 53.1% 51.1% 58.4% 64.9% 77.4% 62.2% 55.3% 60.3% 61.3% 42.9% 33.2%
- **Formula C**: 51.0% 40.5% 45.6% 49.1% 39.1% 48.1% 43.2% 39.3% 39.8% 39.3% 33.2%

**Time analysis of cases referred**

- **1919**: 159 296 291 184 181 168 157 155 130 121 96
- **1920**: 142 228 184 142 119 116 107 119 83 96 86
- **1921**: 86 91 127 118 144 76 105 136 115 118 148
- **1922**: 44 56 86 41 26 40 26 25 28 26
- **1923**: 311 245 208 230 258 257 184 256
- **1924**: 393 649 593 470 376 389 400 389
- **1925**: 331 365
- **1926**: 162
- **1927**: 311
- **1928**: 507
- **1929**: 311

**Turnaround Rates References/trials and disposals**

- **1919**: 210 393 649 593 470 376 389 400 389 331 365
- **1920**: 86 159 296 291 184 181 168 157 155 130 121
- **1921**: 44 91 127 118 144 76 105 136 115 118 148
- **1922**: 44 56 86 41 26 40 26 25 28 26
- **1923**: 311 245 208 230 258 257 184 256
- **1924**: 393 649 593 470 376 389 400 389
- **1925**: 331 365
- **1926**: 162
- **1927**: 311
- **1928**: 507
- **1929**: 311

**Backlog analysis**

- **1919**: 210 393 649 593 470 376 389 400 389 331 365
- **1920**: 86 159 296 291 184 181 168 157 155 130 121
- **1921**: 44 91 127 118 144 76 105 136 115 118 148
- **1922**: 44 56 86 41 26 40 26 25 28 26
- **1923**: 311 245 208 230 258 257 184 256
- **1924**: 393 649 593 470 376 389 400 389
- **1925**: 331 365
- **1926**: 162
- **1927**: 311
- **1928**: 507
- **1929**: 311
### QUANTITATIVE ANALYSIS

#### 1929 - 1937

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases</th>
<th>Total Settled/Disposal</th>
<th>Backlog of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1929</td>
<td>365</td>
<td>105</td>
<td>96</td>
</tr>
<tr>
<td>1930</td>
<td>336</td>
<td>105</td>
<td>96</td>
</tr>
<tr>
<td>1931</td>
<td>343</td>
<td>105</td>
<td>96</td>
</tr>
<tr>
<td>1932</td>
<td>308</td>
<td>105</td>
<td>96</td>
</tr>
<tr>
<td>1933</td>
<td>316</td>
<td>105</td>
<td>96</td>
</tr>
<tr>
<td>1934</td>
<td>337</td>
<td>134</td>
<td>134</td>
</tr>
<tr>
<td>1935</td>
<td>352</td>
<td>139</td>
<td>139</td>
</tr>
<tr>
<td>1936</td>
<td>377</td>
<td>109</td>
<td>109</td>
</tr>
<tr>
<td>1937</td>
<td>372</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 1938 - 1945

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases</th>
<th>Total Settled/Disposal</th>
<th>Backlog of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1938</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1939</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1940</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1941</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1942</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1943</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1944</td>
<td>377</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1945</td>
<td>377</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Totals

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Cases</td>
<td>365</td>
<td>336</td>
<td>343</td>
<td>308</td>
<td>316</td>
<td>337</td>
<td>352</td>
<td>377</td>
<td>372</td>
<td>377</td>
<td>377</td>
<td>377</td>
<td>377</td>
<td>377</td>
<td>377</td>
<td>377</td>
<td>377</td>
</tr>
<tr>
<td>Total Settled/Disposal</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
</tr>
<tr>
<td>Backlog of Cases</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>96</td>
</tr>
<tr>
<td>Year</td>
<td>Number of Cases</td>
<td>Number of Cases Re-entered</td>
<td>Number of Cases Set-Aside</td>
<td>Number of Cases Re-entered</td>
<td>Number of Cases Set-Aside</td>
<td>Number of Cases Re-entered</td>
<td>Number of Cases Set-Aside</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------------</td>
<td>-----------------------------</td>
<td>---------------------------</td>
<td>-----------------------------</td>
<td>---------------------------</td>
<td>-----------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1920</td>
<td>311</td>
<td>162</td>
<td>128</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1921</td>
<td>507</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1922</td>
<td>794</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1923</td>
<td>522</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1924</td>
<td>468</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1925</td>
<td>540</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1926</td>
<td>566</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1927</td>
<td>564</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1928</td>
<td>424</td>
<td>162</td>
<td>142</td>
<td>210</td>
<td>649</td>
<td>409</td>
<td>257</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Effective disposal of cases: case management

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of Disposal</th>
<th>Percentage of Disposal Nearest 2 decimal places</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>64%</td>
<td>60.95</td>
</tr>
<tr>
<td>1921</td>
<td>64%</td>
<td>65.18</td>
</tr>
<tr>
<td>1922</td>
<td>64%</td>
<td>66.97</td>
</tr>
<tr>
<td>1923</td>
<td>64%</td>
<td>69.79</td>
</tr>
<tr>
<td>1924</td>
<td>64%</td>
<td>68.35</td>
</tr>
<tr>
<td>1925</td>
<td>64%</td>
<td>70.18</td>
</tr>
<tr>
<td>1926</td>
<td>64%</td>
<td>73.25</td>
</tr>
<tr>
<td>1927</td>
<td>64%</td>
<td>69.41</td>
</tr>
<tr>
<td>1928</td>
<td>64%</td>
<td>74.92</td>
</tr>
<tr>
<td></td>
<td>1929</td>
<td>1930</td>
</tr>
<tr>
<td>----------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Totals</td>
<td>365</td>
<td>336</td>
</tr>
<tr>
<td>96</td>
<td>98</td>
<td>94</td>
</tr>
<tr>
<td>269</td>
<td>238</td>
<td>249</td>
</tr>
<tr>
<td>74</td>
<td>71</td>
<td>73</td>
</tr>
<tr>
<td>73.70</td>
<td>70.83</td>
<td>72.59</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>1938</th>
<th>1939</th>
<th>1940</th>
<th>1941</th>
<th>1942</th>
<th>1943</th>
<th>1944</th>
<th>1945</th>
</tr>
</thead>
<tbody>
<tr>
<td>Totals</td>
<td>377</td>
<td>7682</td>
<td>109</td>
<td>2427</td>
<td>268</td>
<td>5256</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>71</td>
<td>68</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>71.09</td>
<td>68.41</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Cases</td>
<td>385</td>
<td>617</td>
<td>685</td>
<td>677</td>
<td>724</td>
<td>730</td>
<td>633</td>
<td>657</td>
</tr>
<tr>
<td></td>
<td>199</td>
<td>202</td>
<td>207</td>
<td>216</td>
<td>223</td>
<td>272</td>
<td>211</td>
<td>207</td>
</tr>
<tr>
<td></td>
<td>192</td>
<td>22</td>
<td>30</td>
<td>25</td>
<td>31</td>
<td>22</td>
<td>19</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>192</td>
<td>218</td>
<td>261</td>
<td>420</td>
<td>413</td>
<td>434</td>
<td>395</td>
<td>362</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>24</td>
<td>17</td>
<td>18</td>
<td>36</td>
<td>38</td>
<td>21</td>
<td>24</td>
</tr>
</tbody>
</table>

Total cases: 385
<table>
<thead>
<tr>
<th>Year</th>
<th>Nature of Process</th>
<th>Total references for trial</th>
<th>Pending at commencement of year</th>
<th>Brought in during the year</th>
<th>Referred by Judge</th>
<th>Referred by Master</th>
<th>Arbitration Act 1950</th>
<th>By transfer</th>
<th>Re-entered on judgment being set-aside</th>
<th>Tried</th>
<th>Withdrawn or otherwise disposed of</th>
<th>Transferred</th>
<th>Pending at the end of the year</th>
<th>Number of summonses and Interlocutory Applications heard during the year</th>
<th>Number of days spent on Official Referee business London</th>
<th>Number of days spent on Official Referee business Outside London</th>
<th>Total number of days spent on Official Referee business</th>
<th>Average %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>407</td>
<td>441</td>
<td>488</td>
<td>546</td>
<td>597</td>
<td>637</td>
<td>685</td>
<td>682</td>
<td>901</td>
<td>1392</td>
<td>136</td>
<td>50°85</td>
<td>30°85</td>
<td>43°6</td>
<td>50°33</td>
<td>57°55</td>
<td>60°1</td>
<td>60°1</td>
</tr>
<tr>
<td>1963</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Total cases

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>407</td>
<td>441</td>
<td>488</td>
<td>546</td>
<td>597</td>
<td>637</td>
<td>685</td>
<td>682</td>
<td>901</td>
<td>1392</td>
<td>136</td>
<td>50°85</td>
<td>30°85</td>
<td>43°6</td>
<td>50°33</td>
<td>57°55</td>
<td>60°1</td>
<td>60°1</td>
<td>60°1</td>
<td>60°1</td>
</tr>
<tr>
<td>1963</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>385</td>
<td>617</td>
<td>685</td>
<td>677</td>
<td>724</td>
<td>750</td>
<td>633</td>
<td>657</td>
<td>663</td>
<td>537</td>
<td>449</td>
<td>443</td>
<td>483</td>
<td>440</td>
<td>425</td>
<td>40</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>0</td>
<td>183</td>
<td>339</td>
<td>418</td>
<td>454</td>
<td>452</td>
<td>518</td>
<td>425</td>
<td>432</td>
<td>443</td>
<td>368</td>
<td>282</td>
<td>257</td>
<td>284</td>
<td>281</td>
<td>296</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>48</td>
<td>65</td>
<td>61</td>
<td>61</td>
<td>67</td>
<td>62</td>
<td>71</td>
<td>67</td>
<td>66</td>
<td>67</td>
<td>69</td>
<td>63</td>
<td>58</td>
<td>59</td>
<td>64</td>
<td>63</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>47.53</td>
<td>64.67</td>
<td>61.02</td>
<td>67.06</td>
<td>62.43</td>
<td>71.10</td>
<td>67.14</td>
<td>65.75</td>
<td>66.82</td>
<td>68.53</td>
<td>62.81</td>
<td>58.01</td>
<td>58.80</td>
<td>63.86</td>
<td>62.59</td>
<td>61.4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The table likely contains data regarding a specific subject, but without further context, it's challenging to provide a precise interpretation.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>407</td>
<td>441</td>
<td>488</td>
<td>546</td>
<td>597</td>
<td>637</td>
<td>668</td>
<td>682</td>
<td>901</td>
</tr>
<tr>
<td>Value</td>
<td>157</td>
<td>163</td>
<td>214</td>
<td>242</td>
<td>254</td>
<td>260</td>
<td>292</td>
<td>376</td>
<td>446</td>
</tr>
<tr>
<td>Value</td>
<td>250</td>
<td>279</td>
<td>274</td>
<td>304</td>
<td>343</td>
<td>377</td>
<td>393</td>
<td>306</td>
<td>455</td>
</tr>
<tr>
<td>Value</td>
<td>61.43</td>
<td>63.04</td>
<td>56.15</td>
<td>55.68</td>
<td>57.45</td>
<td>59.18</td>
<td>57.37</td>
<td>44.87</td>
<td>50.50</td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td></td>
<td>109</td>
<td>202</td>
<td>207</td>
<td>219</td>
<td>223</td>
<td>223</td>
<td>272</td>
<td>211</td>
<td>207</td>
</tr>
<tr>
<td></td>
<td>202</td>
<td>218</td>
<td>267</td>
<td>223</td>
<td>272</td>
<td>211</td>
<td>208</td>
<td>225</td>
<td>220</td>
</tr>
<tr>
<td>Years</td>
<td>Backlog</td>
<td>Mean average</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>---------</td>
<td>--------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1957</td>
<td>169</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>167</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>186</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1960</td>
<td>199</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1961</td>
<td>159</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>159</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>157</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>163</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>214</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>242</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>254</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>260</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>292</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>376</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Mean average: 120
<table>
<thead>
<tr>
<th>Year</th>
<th>1919</th>
<th>1920</th>
<th>1921</th>
<th>1922</th>
<th>1923</th>
<th>1924</th>
<th>1925</th>
<th>1926</th>
<th>1927</th>
<th>1928</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line 1</td>
<td>48</td>
<td>82</td>
<td>142</td>
<td>226</td>
<td>184</td>
<td>142</td>
<td>119</td>
<td>116</td>
<td>107</td>
<td>119</td>
</tr>
<tr>
<td>Line 2</td>
<td>82</td>
<td>142</td>
<td>226</td>
<td>184</td>
<td>142</td>
<td>119</td>
<td>116</td>
<td>107</td>
<td>119</td>
<td>83</td>
</tr>
<tr>
<td>Line 3</td>
<td>34</td>
<td>60</td>
<td>84</td>
<td>-42</td>
<td>-42</td>
<td>-23</td>
<td>-3</td>
<td>-9</td>
<td>12</td>
<td>-36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>1929</th>
<th>1930</th>
<th>1931</th>
<th>1932</th>
<th>1933</th>
<th>1934</th>
<th>1935</th>
<th>1936</th>
<th>1937</th>
<th>1938</th>
<th>1939</th>
<th>1940</th>
<th>1941</th>
<th>1942</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>83</td>
<td>95</td>
<td>98</td>
<td>94</td>
<td>105</td>
<td>112</td>
<td>128</td>
<td>127</td>
<td>126</td>
<td>112</td>
<td>112</td>
<td>109</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>96</td>
<td>98</td>
<td>94</td>
<td>105</td>
<td>112</td>
<td>128</td>
<td>127</td>
<td>126</td>
<td>112</td>
<td>109</td>
<td></td>
<td></td>
<td>-14</td>
<td>-3</td>
</tr>
</tbody>
</table>