

Closing Submissions

My Lord, if I may I propose to keep these closing submissions relatively brief by adopting what I said in my skeleton argument and in opening and by simply highlighting the key points in the argument and the evidence.

The starting point must be a consideration of the everyday factual position where a business, the principal, employs an agent to handle its stock and collect payments for it, and retains the agent to prepare figures showing what transactions have been performed, for what price, and what the outstanding balance is between the parties.

The agent is paid to conduct this business and prepare the financial information, and as in this case, he may even be remunerated on the basis of the amount of business shown as transacted.

It is plainly important for the business to be confident in the figures and in part that is why the agent is contractually obliged to prepare them accurately, since that then requires the agent to allege his own breach of contract in order even begin to suggest that his own figures are wrong.

The agent is also paid to keep stock and cash safe and secure. He is entrusted with that cash and stock on the basis that he will, to use the same word, account for it. That means that it is for the agent to produce the cash and stock, or what now represents the cash and stock, when required. If the agent does not produce the stock

and cash stated to be due on the account, it does not require the principal to explain why the stock and cash are not present, that is a matter entirely for the agent. Indeed the agent is unable to avoid liability to account for that stock and cash by offering any explanation to the principal other than that he has already accounted to the principal for that stock and cash.

Seen in this light, the issue in this trial can be clearly identified as being whether or not the accounts can be shown by Mr Castleton to be incorrect, and the reason for any discrepancy and indeed whether the Post Office evidence shows any discrepancy up to week 51 is irrelevant.

The Post Office sues on the basis of the Cash Account (Final) for week 51 and the entries made by Mr C or his agents that give rise to the trial balance on the Tuesday of week 52, 23rd March 2004.

Now here Mr C prepared figures and signed off on them up to week 51 as being correct.

His own pleadings and evidence go even further – he accepts that the figures in each cash account from week 51 going back to the start of the problems in week 42 are accurate and that the recorded figures correspond to the underlying physical documents.

Indeed he accepts, as indeed does Mrs Train, that he and she checked the figures in the Final Balance and the Cash Account Final over and over against against the

physical records and could discover no discrepancy. The physical systems of checks that are required by the Post Office are designed to ensure that such actual discrepancies are identified and confirmed by reference to actual trading so as to ensure that accurate figures reconciled to the underlying physical documentation are recorded.

Further Mr C also candidly accepted that if the figures confirmed against the underlying physical documents and recorded by him in the Final Balances and the Cash Accounts were added up the totals would be exactly the same as recorded.

Given that Mr C accepts that the mathematical calculations were correct, the end result would also therefore be exactly the same, whether taken from the signed Cash Accounts as they now appear, or indeed in the event that a new account were now taken on the basis of the underlying physical documents evidencing the transactions.

That the figures were accurate is further confirmed by the uncontradicted evidence of Gillian Hoyland, Kenneth Crawley, Wendy Smith, Paul Williamson and Michael Johnson, all of whom give evidence explaining the physical checks and the production of error notices and then go on to that there were no outstanding error notices that were not accounted for.

It is also worth recalling that Mrs Train, who was plainly extremely supportive of Mr Castleton, gave evidence was that she had checked the figures over and over and could not find a discrepancy. Given her desire to help, had there been a discrepancy to find, then she, with all her experience, could have been expected to find it. In the

event, despite this motivation, she was completely open in accepting, like Mr Castleton, that the figures reflected the underlying physical records.

After week 51 Mr Castleton continued to trade until day 6 of week 52 and to make further entries in the accounts. These entries, and the total deficiency, were audited and verified, as proved by the evidence of Helen Rose identifying the deficiency on the completion of her audit. YL will recall that Mrs Rose's evidence was not challenged on the quantum of the deficiency or that she had established it properly.

In answer, although he confirms the accuracy of the accounts produced by him and accepts the accuracy of Helen Rose's figures, Mr Castleton says that he owes nothing and that the recorded deficiency was the result of unspecified computer problems. However this is wholly inconsistent with his admitted position and also fails to address the test that he must satisfy in order to set aside his own accounts.

Shaw v Picton Tab 1, p1232

Camillo Tab 2, Lord Shaw at 145 & 146

Mr C cannot point to a single incorrect entry in the cash accounts that PO relies upon and he has accepted that if the process of preparing the same accounts manually was undertaken then the figures would be exactly the same.

Instead Mr C points to what he says are anomalies in secondary documentation upon which PO places no reliance and which do not go to make up the primary accounts.

In relation to those anomalies, if and in so far as they exist, then for the reasons and on the basis already outlined they are immaterial.

However, let us look at the alleged discrepancy in the week 49 figures.

Here Mr Castleton is comparing chalk against cheese. The figure in exhibit 3 is the sum of the figures for cheques remmed out, recorded by Mr Castleton as having been remmed out, checked by him against the rem out slips and confirmed by the absence of error notices as correct, and Mr Castleton accepts that it is accurate, and indeed this was confirmed by Mr Jones' evidence.

The figure in bundle 10 for cheque receipts is the figure calculated by Horizon as the total amount of consideration recorded as having been received by cheque on transactions where the operator has touched the screen for method of payment on the cheque button: it does not make its way into the Final Balance or the Cash Account, nor is there any evidence that it formed any part of any balance or that the figure was checked or gave rise to any consequences.

As YL has heard, the trial balances were there for the assistance of the spm not for accountancy purposes. The Final Balance was the account that the spm created on the basis of the physical stock and cash and the physical evidence of the transactions for the week. With respect the sales report is a red herring.

Similarly YL has heard evidence from Mrs Morgan about the suspense account and the fact that the discrepancy table simply reflects the figures in the body of the Final Balance whose accuracy, both as against the physical record and as a matter of mathematical calculation Mr Castleton has confirmed as correct.

That they are entirely immaterial is borne out by the conceded accuracy of the final figures each week, the absence of error notices, and the evidence of the final audit.

Now Mr C also points at Horizon itself and makes a generalised allegation that it was not working. However the Court has heard evidence from Andrew Wise and Andrew Dunks proving the call logs that show that no specific problems were identified by Mr Castleton nor were any problems identified when following up the calls. Similarly Anne Chambers gave evidence that she had looked at the Marine Drive system from the Fujitsu end and has not identified any problem likely to give rise to any still unidentified discrepancy.

There is further corroboration for the proposition that it was something to do with the way the branch was run whilst Mr Castleton was in charge that permitted the losses to occur is gained from the fact that neither Ruth Simpson, nor Greg Booth nor Mrs Day experienced similar problems or discrepancies.

Set against these declared discrepancies Mr Castleton was suspended and then dismissed by Mrs Oglesby. Again, her evidence was that she tried to find something that could explain Mr Castleton's losses but again she was unable to identify anything despite the fact that, as she said, she was supportive of his position and wanted to try

to see if there was anything that would reveal a reason. However, at the end of the day she could not, and he was dismissed.