Neutral Citation Number: [2021] EWHC 1679 (Ch)

Case No: BL-2020-002164

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/06/2021

**Before** :

**MR JUSTICE MORGAN**

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**Between:**

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| **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** | **Claimant** |
| **- and -** | |
| **PERSONS WITH AN IMMEDIATE RIGHT (OR CLAIMING AN IMMEDIATE RIGHT) TO POSSESS THE GOODS CONTAINED IN SAFETY DEPOSIT BOXES HELD BY THE CLAIMANT AT ITS BRANCH AT 5 APPOLD STREET, LONDON EC2A 2DA AND DEPOSITED BY THE PERSONS IDENTIFIED IN THE APPLICATION** | **Defendants** |

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**Tom De Vecchi** (instructed by **Watson, Farley & Williams LLP**) for the **Claimant**
**There was no appearance for the Defendants**

Hearing dates: 11 February and 8 June 2021

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**Covid-19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 21 June 2021.**

## MR JUSTICE MORGAN:

*Introduction*

1. Crédit Agricole Corporate and Investment Bank ("the Bank") is in possession of 115 items (or groups of items), most of which are in safety deposit boxes. For convenience, I will refer to these items as being the contents of safety deposit boxes. The boxes are held at the London Branch of the Bank.

2. With one or two exceptions, the Bank knows the names of the original depositor of the contents of the boxes. Indeed, in the exceptional cases where the name of the depositor is not known, it is possible that the items in question belong to the Bank itself and have simply been placed for safe keeping with the boxes. No one has claimed, or shown any interest in, the boxes for many years. The Bank has made attempts to discover who are the persons who might have a claim to the contents of the boxes and to contact such persons. The Bank has attempted to trace the depositor, or representatives of his estate, or anyone else interested in the goods but has drawn a complete blank and has not traced anyone with whom it can discuss what is to happen to the contents of the boxes.

3. The Bank knows the dates of the deposits in some, but not all of, the cases. In the cases where the Bank has a date for the deposit, the earliest deposit was on 17 April 1900 and the latest deposit was on 9 November 1994. The Bank is able to divide the deposits into three categories. The first category relates to deposits before 1 January 1978, which is a date which is relevant for the purposes of sections 12 and 13 of the Torts (Interference with Goods) Act 1977 ("the 1977 Act"). The second category relates to deposits on or after 1 January 1978. The third category relates to deposits where the date of the deposit is unknown.

4. In some cases, but not all, the contents of the boxes are described but in many cases the description is not particularly revealing. The Bank is not able to trace any documents which might record any terms and conditions which govern the deposit of the contents of the boxes.

5. The Bank takes the view that it is not obliged to keep the contents of the boxes any longer and it does not wish to do so. Ideally, it would like to be able to find out the identity of the owners of the contents of the boxes and require them to take them away. Alternatively, the Bank would like to dispose of the contents of the boxes, if possible by sale.

6. The Bank now wishes to take steps to deal with the contents of the boxes. It is possible that if the Bank were to open the boxes and to examine their contents, it would obtain more information about the items which might possibly enable it to trace their current owners. Further, if the Bank were to find out the nature of the contents of the boxes then it could form a view as to whether the contents were saleable and, based on that information, it could apply to the court for an order for sale of the items (or at least some of them). In addition, an inspection of the contents of the boxes might reveal whether the contents were deposited on or after 1 January 1978.

7. However, the Bank is concerned that if it were to open the boxes and to examine their contents, such action would amount to a technical conversion of the contents of the boxes even though the contents would not be physically damaged in any way. The Bank has therefore applied to the court for an order permitting it to inspect the contents of the boxes. If the Bank were to obtain such an order, then that would eliminate the risk that an owner of an item might later contend that, absent such an order, the Bank had acted unlawfully in opening a box containing that item.

8. The Bank's application raises an issue as to who should be the respondent to it. The same issue will arise in relation to further proceedings which the Bank expects it will have to bring in connection with its wish to sell items which have not been collected by their owners. Is it possible for the Bank to apply for an order for inspection of the contents of the boxes and then in further proceedings, without joining respondents or defendants? Is it possible to join respondents or defendants who are described in some way but without their being named?

9. I will consider the issue as to the joining of respondents or defendants before dealing with the application for an order for inspection of the contents of the boxes. As will be seen, the issues which arise in relation to items deposited on or after 1 January 1978 are different from those which arise in relation to items deposited before that date. I will begin with items deposited on or after 1 January 1978.

*Applications under section 13 of the 1977 Act: the need for a defendant*

10. In relation to items which were deposited on or after 1 January 1978, the Bank can seek to invoke sections 12 and 13 of the 1977 Act. Section 12(9) provides that section 12 does not apply where the goods were bailed before the commencement of the 1977 Act and the relevant date is 1 January 1978. Section 13 applies only where section 12 applies.

11. Section 12 confers a power of sale on a bailee in certain circumstances. In particular, pursuant to section 12(1)(b), section 12 applies to goods in the possession or under the control of a bailee where the bailee could impose an obligation on the bailor to take delivery of the goods, or to give directions as to their delivery, but the bailee is unable to trace or communicate with the bailor. Further, pursuant to section 12(1)(c), section 12 applies to goods in the possession or under the control of the bailee if the bailee could reasonably be expected to be relieved of any duty to safeguard the goods on giving notice to the bailor but is unable to trace or communicate with the bailor. Section 12(3) provides that if the bailee has failed to trace or communicate with the bailor with a view to giving him notice of an intention to sell the goods, after having taken reasonable steps for the purpose, and if the bailee is reasonably satisfied that the bailor owns the goods, then he is entitled as against the bailor to sell the goods. Such a sale gives good title to the purchaser as against the bailor but not against someone other than the bailor who is the true owner: see sections 12(4) and (6).

12. Section 13 gives the court a power to authorise a sale by the bailee. The goods must be goods to which section 12 applies. The bailee must satisfy the court that he is entitled to sell the goods under section 12 or that he would be so entitled if he had given notice as required by schedule 1 to the 1977 Act: section 13(1). The court can also give directions as to what is to happen to the proceeds of sale. A decision of the court under section 13 is conclusive as against the bailor and gives a good title to a

purchaser as against the bailor: see section 13(2); but not as against the bailee: see section 12(4).

13. The 1977 Act does not lay down any procedure for applications under section 13. There are no regulations made under the 1977 Act which do so. Further, there is nothing in the Civil Procedure Rules ("the CPR") which specifically deals with applications under section 13 of the 1977 Act. It is clear that section 13 contemplates that a bailee can apply to the court for the court to authorise a sale of goods, which have been bailed, where the bailee is not able to trace or communicate with the bailee. In a case where the bailee does not know the identity of the bailor or anyone else with a possible claim to the goods, can the bailee bring proceedings under section 13 without joining a defendant? On the assumption that there is nothing in the CPR which answers this question, I conclude that the court does have power to make an order under section 13 on an application to which no defendant has been joined.

14. The conclusion that the court has power to act under section 13 on an application to which there is no defendant is supported by the decision in *In re Robertson's application* [1969] 1 WLR 109. That case concerned section 27 of the Leasehold Reform Act 1967 which deals with a case where a tenant has a right under the 1967 Act to acquire the freehold of a house but is not able to give the requisite statutory notice to his landlord because the landlord cannot be found or his identity cannot be ascertained. In such a case, the tenant can apply to the court under section 27 of the 1967 Act for an order that the freehold of the house may be vested in him. Before making such an order, the court may require the applicant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the landlord. *In re Robertson's application* was the first application made under section 27 of the 1967 Act. The judge stated that the 1967 Act laid down no particular procedure and there were no relevant regulations or rules dealing with such an application. The judge then stated, at page 110, that it had been "left to the court to evolve what is the most suitable procedure for these applications". In that case, the most suitable procedure was an application by an ex parte originating summons.

15. As a footnote to *In re Robertson's application*, I note that CPR r. 56.4 and PD 56 para. 13 deal with applications under the 1967 Act but the only provision made in relation to applications to the High Court under section 27 of the 1967 Act is that they are assigned to the Chancery Division: PD 56 para. 13.6. Section 26(1) and (2) of the Leasehold Reform, Housing and Urban Development Act 1993 are similar provisions to section 27 of the 1967 Act and an application under section 26(1) or (2) of the 1993 Act can be made by a Part 8 claim form which need not be served on any other party: see PD 56 para. 14.3.

16. In the absence of any relevant rule in the CPR, the position in the present case would be the same as in *In re Robertson's application*. The court is given jurisdiction by section 13 of the 1977 Act to make an order authorising a sale. A bailee is entitled to apply to the court for such an order. It must follow that it is for the court to evolve the most suitable procedure to deal with such an application. The court might take the view that an applicant should take further steps to attempt to trace an appropriate respondent but if all such steps have been taken and no possible defendant has been traced, the court can take the view that it is appropriate for the court to consider whether to exercise its power under section 13 of the 1977 Act in proceedings where there is no defendant.

17. I also consider that where a bailee wishes to apply for an order under section 33 of the Senior Courts Act 1981 and CPR r. 25.1(1)(c)(ii) and r. 25.1(1)(i) for an order for the inspection of the goods with a view to later making an application under section 13 of the 1977 Act in relation to those goods, it ought also to be possible in a proper case for the application for an order for inspection to be made without joining a respondent. Further, CPR r. 25.3 permits the court to grant an interim remedy of an order for inspection on an application made without notice.

18. The next question is as to the possible relevance of CPR r.8.2A. That rule is headed: "Issue of claim form without naming defendants". CPR r.8.2A provides:

> "**8.2A— Issue of claim form without naming defendants**
>
> (1) A practice direction may set out the circumstances in which a claim form may be issued under this Part without naming a defendant.
>
> (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.
>
> (3) The application notice for permission–
>
> (a) need not be served on any other person; and
>
> (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
>
> (4) Where the court gives permission it will give directions about the future management of the claim."

19. There are practice directions which do set out the circumstances in which a claim form may be issued under Part 8 without naming a defendant. Examples are PD 56 para. 14.3, PD 64A paras. 1A.2 and 5, PD 64B para. 4.2. However, there is no specific practice direction in relation to applications under section 13 of the 1977 Act. It might have been open to argument that CPR r.8.2A does not itself authorise a claimant to issue a Part 8 claim form without naming a defendant unless that is authorised by a specific practice direction. CPR r.8.2A was referred to by Lord Sumption in his judgment (with which the other members of the Supreme Court agreed) in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471. Lord Sumption said at [9] that "no such practice direction has been made" although he then referred to CPR r.55.3(4) which permits claims against trespassers referred to as "persons unknown". Whilst it is true that no practice direction, having general application, has been made under CPR r.8.2A, there are specific practice directions made under that rule, to some of which I have referred above. However, Lord Sumption went on to say that the courts had themselves made exceptions to the requirement that a defendant be named in a claim form. He did not disapprove the decisions which created such exceptions. He then added, at [12], that the rules neither expressly authorised, nor expressly prohibited, exceptions to the general rule that actions against unnamed parties were permissible only against trespassers. It seems therefore that it is consistent with the decision in *Cameron* to hold that it is open to a claimant to issue a Part 8 claim

without joining a defendant in some cases which are not dealt with by a specific practice direction. It may not matter whether the ability to do so is regarded as being conferred by CPR r.8.2A itself or by a more general rule, such as CPR r.3.1(2)(m).

20. Therefore, in connection with a future application to be made by the Bank pursuant to section 13 of the 1977 for an order of the court authorising a sale of relevant items, I hold that it is open to the Bank in principle to make such an application by a Part 8 claim form to which there is no defendant. I also hold that it is open to the Bank in principle to make the present application for an order for inspection of the contents of the boxes (which might later be the subject of an application under section 13 of the 1977 Act) without joining a respondent.

*An application in relation to goods deposited before 1 January 1978: the need for a defendant*

21. The above discussion deals with an application in relation to items deposited on or after 1 January 1978, where the court has jurisdiction pursuant to section 13 of the 1977 Act to authorise the sale of the items. The position is less straightforward in relation to goods deposited before 1 January 1978, or goods where the date of deposit is unknown so that the Bank cannot show that they come within section 13 of the 1977 Act.

22. Although the Bank cannot apply under section 13 of the 1977 Act in relation to such items, it expects that it will wish to bring proceedings in which it will claim a declaration that it is entitled at common law to sell the goods. It is relevant to refer to the arguments which the Bank will wish to put forward in support of its claim to such a declaration. The Bank will argue as follows:

    i) the bailors have failed to comply with an implied obligation on them to retrieve the goods within a reasonable time and/or to pay for the storage and insurance costs, which failures amounted to a repudiation of the bailment entitling the Bank to regard its custodial obligations as extinguished;

    ii) the Bank, as an agent of necessity, is entitled to sell the goods on behalf of their owners;

    iii) a bailment of indefinite duration expires after a reasonable period of time and has done so in all these cases;

    iv) the bailors have abandoned the goods so that title to them is now in the Bank.

23. Although counsel for the Bank, Mr De Vecchi, has explained these arguments to me, it is not appropriate for me to give any indication of my view as to the strength of those arguments at this stage. They will fall to be dealt with in any subsequent proceedings in which they are raised.

24. If the Bank had an arguable case that the common law conferred on the court a power to authorise a bailee to sell goods which had been bailed but which had not been collected, then it would seem that my earlier decision in relation to an application for such an order pursuant to section 13 of the 1977 Act could be extended to an application to the court for the self-same order pursuant to any such common law

jurisdiction. However, the Bank does not put its case that way in relation to the position at common law. The Bank's case is that the common law conferred on the Bank a power to sell the goods and what the Bank seeks from the court is a declaration that the Bank has a common law power to sell the goods.

25. There is an important difference to my mind between the court granting a declaration and the court exercising a power vested in the court to authorise a sale. If there is no defendant to the proceedings and the court authorises a sale, then the Bank can act on that authority, the sale will be a lawful act by the Bank and the owner of the goods cannot later bring a claim against the Bank based on an allegation that the sale was unlawful. However, if the court were asked to make a declaration that the Bank has a common law power of sale, that declaration would not be binding on anyone in a case where there was no defendant to the proceedings.

26. In *Cwmni Rheoli Pentref Marina Conwy Cyfynedig* [2021] EWHC 1275 (Ch), I was asked to make a declaration as to the meaning of a covenant in a case where the claimant had not joined any defendant. I declined to do so. That was a plain case where there was no difficulty in the claimant joining named defendants of its choosing to the proceedings and seeking declaratory relief against them in the ordinary way. In addition, I held that if the case proceeded with no one being joined as a defendant, then the declaration which I was asked to make would bind no one. There was a separate point about the special jurisdiction under section 84 of the Law of Property Act 1925 which it was not appropriate for the court to exercise. In the present case, Mr De Vecchi accepted that a declaration that the Bank had a common law power of sale would not bind anyone if there were no defendant to the proceedings.

27. Accordingly, in order to obtain a declaration which will be binding on a defendant, there must be a defendant to the proceedings. Will it be possible in this case to have defendants even if they are not named but are described in some other way?

28. In *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633, it was held that it was possible to join a party to proceedings by using appropriate words to describe that party but without using his name, where that name was unknown. There were then many cases which followed that precedent. If the case law had stopped there, the Bank would have had a straightforward argument for joining defendants who were described in an appropriate way but without naming them. However, in *Cameron v Liverpool Victoria Insurance Co Ltd*, the Supreme Court pointed out that there was a limit to how far that case could be extended. At [13], Lord Sumption said:

> "13. In approaching this question, it is necessary to distinguish between two kinds of case in which the defendant cannot be named, to which different considerations apply. The first category comprises anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location, although they cannot be named. The second category comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction is that in the first category the defendant is described in a way that makes it

> possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the claim form, whereas in the second category it is not."

29. Later in his judgment in *Cameron*, Lord Sumption stressed the need to serve proceedings on a defendant before it could be said that the court had jurisdiction over that defendant. At [15], he said:

> "15. An identifiable but anonymous defendant can be served with the claim form or other originating process, if necessary by alternative service under CPR r 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form. Thus, in proceedings against anonymous trespassers under CPR r 55.3(4), service must be effected in accordance with CPR r 55.6 by attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found, and posting them if practical through the letter box. In *Brett Wilson llp v Persons Unknown [2016] 4 WLR 69* alternative service was effected by e-mail to a website which had published defamatory matter, Warby J observing (para 11) that the relevant procedural safeguards must of course be applied. In *Smith v Unknown Defendant Pseudonym "Likeicare" [2016] EWHC 1775 (QB)* Green J made the same observation (para 11) in another case of internet defamation where service was effected in the same way. Where an interim injunction is granted and can be specifically enforced against some property or by notice to third parties who would necessarily be involved in any contempt, the process of enforcing it will sometimes be enough to bring the proceedings to the defendant's attention. In *Bloomsbury Publishing Group [2003] 1 WLR 1633*, for example, the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction. The Court of Appeal has held that where proceedings were brought against unnamed persons and interim relief was granted to restrain specified acts, a person became both a defendant and a person to whom the injunction was addressed by doing one of those acts: *South Cambridgeshire District Council v Gammell [2006] 1 WLR 658*, para 32. In the case of anonymous but identifiable defendants, these procedures for service are now well established, and there is no reason to doubt their juridical basis."

30. Lord Sumption then further considered the power of the court under CPR r. 6.15 to permit service of proceedings by an alternative method. He concluded at [21]:

> "In my opinion, subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant."

31. In *Cameron*, at [25], Lord Sumption considered the power of the court under CPR r.6.16 to dispense with the service of a claim form in exceptional circumstances. He referred to examples of cases where that power was exercised where the defendant was in fact aware of the proceedings. He also referred to a case where the defendant was deliberately evading service. He then said:

> "I would not wish arbitrarily to limit the discretion which CPR r 6.16 confers on the court, but I find it hard to envisage any circumstances in which it could be right to dispense with service of the claim form in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought."

32. *Cameron* was later considered by the Court of Appeal in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 and in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802. The Court of Appeal explained that the categories of case which were relevant for the purpose of determining whether it was possible to join a party, using words of description but without using a name, were not confined to the two categories referred to by Lord Sumption in *Cameron* at [13] but there was also a category of case where the court could grant an interim quia timet injunction against persons, referred to as "Newcomers", who will commit or were highly likely to commit the unlawful civil wrong which was to be the subject of the injunction. In *Canada Goose* at [82], the Court of Appeal gave guidance with included the following:

> "The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown"."

33. In the present case, there is no particular difficulty in selecting words of description for the persons who would be appropriate defendants to the Bank's claim for a declaration. The Bank will wish the declaration it seeks to be binding on persons who might otherwise say that a sale by the Bank would be a conversion of the goods. The persons who might be able to claim in conversion would be persons who have an

immediate right to possession of the items. The Bank would want to extend the class of persons who would be defendants to persons who claim to have an immediate right to possession of the items. It would be possible to say of any identified individual whether they came within the words of description.

34. However, the difficulty comes when one asks whether the Bank can locate the actual individuals who come within the description of the defendants and/or whether the Bank can communicate with those individuals. Prima facie, the Bank will not be able to locate or communicate with the actual individuals who come within the description.

35. I have considered what was said in *Cameron* as to CPR rr. 6.15 and 6.16, dealing with service by an alternative method or dispensing with service. As regards service by an alternative method, I have considered whether it would be appropriate for the proceedings to be served by means of a notice being placed in the room where the safety deposit boxes are stored, where the notice would provide all relevant information as to the existence of the proceedings. Such a notice would mean that if anyone ever showed an interest in the safety deposit boxes then that person would become aware of the existence of the proceedings. However, I doubt if that method of service would satisfy the requirements in *Cameron* that the method of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant, at any rate at any time before the proceedings were finally determined.

36. As regards the possibility that it might be appropriate to dispense with the service of the proceedings under CPR r.6.16, Lord Sumption in *Cameron* found it hard to envisage a case where it would be right to dispense with service of the claim form where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought. The present is a case where there is no reason to believe that the defendants described as explained above would have reason to believe the proceedings had been or were likely to be brought.

37. I note, however, that Lord Sumption gave as a reason for his conclusion in relation to CPR r. 6.16 that any other course would expose the defendant to a default judgment without him having the opportunity to be heard or otherwise to defend his interests.

38. The problem in the present case is far removed from the typical case which would have been considered by Lord Sumption. I say that for a number of reasons:

    i) the claim is for a declaration; the court will not make a declaration unless it is persuaded, on the facts and on the law, that the declaration is appropriate; there will be no question of a judgment being signed by default and as an administrative act; there does not appear to be much room for argument as to the facts and the onus will be on the Bank to put before the court all of the arguments that could be put if a defendant opposed the declaration and had been properly represented;

    ii) the proposed defendants have not shown any interest in the goods for many decades; they have left the Bank with a problem but they have not left any means by which they can be contacted in order to resolve the problem;

    iii) the proposed proceedings are not a common form of adverse proceedings where a defendant can be expected to oppose the relief sought by a claimant;

in the present case, in many ways, the proceedings can be seen to be potentially beneficial to the defendants;

iv) it would be very odd if it were to be regarded as entirely fair and appropriate to deal with an application under section 13 of the 1977 Act, in relation to goods deposited on or after 1 January 1978, in proceedings without a defendant but yet to be procedurally inappropriate to deal with an application for a declaration in relation to goods deposited before 1 January 1978 unless defendants were identified and made aware of the existence of the proceedings.

39. I recognise that there is a difference in the substantive law between goods deposited on or after 1 January 1978 and those deposited before that date. It is not open to the court to change the substantive law in that respect. However, the issue before the court at the present stage is essentially a matter of procedure rather than substantive law. Further, there is little or no practical difference as regards the Bank and the defendants as described above between an order under section 13 of the 1977 Act authorising a sale and a declaration of the court that the Bank has a common law power to sell.

40. So far as one can tell, when section 12(9) of the 1977 Act was drafted, it was in order to prevent the new powers in sections 12 and 13 from having retrospective effect. In 2021, 43 years after the coming into force of these provisions, it seems distinctly odd that the power of the court pursuant to section 13 can be used in relation to goods deposited between 1978 and the present day but cannot be used in relation to goods deposited as long ago as 1900 where there may well be no one who has any interest in such goods.

41. Standing back, I consider that if I refused to permit the Bank to claim a declaration in proceedings brought against defendants as described above on the basis that it was not possible to communicate with those defendants and that such proceedings were not procedurally appropriate, I would give effect to matters of procedure over matters of substance.

42. In view of what was said in *Cameron*, I have naturally hesitated before reaching my conclusion in this case but in the end I have decided that the course of action which is procedurally appropriate in this case is to permit the Bank to bring proceedings against defendants as described above; I will direct that the notice of the proceedings is to be posted in the room where the safety deposit boxes are stored and if anyone contacts the Bank in relation to the boxes, that person is to be served with the proceedings. I need not decide whether an order in those terms should be regarded as an order under CPR r. 6.15 or r. 6.16 but, whichever it is, I consider that it is an appropriate order to make.

43. I also consider that where a bailee wishes to apply for an order under section 33 of the Senior Courts Act 1981 and CPR r. 25.1(1)(c)(ii) and 25.1(1)(i) for an order for the inspection of the goods with a view to later making an application for a declaration as described above in relation to those goods, it ought also to be possible in a proper case for the application for an order for inspection to be made where the respondents are named in the same way as I would permit the defendants to the substantive

proceedings to be named. Further, CPR r. 25.3 permits the court to grant an interim remedy of an order for inspection on an application made without notice.

*Inspection of the contents of the boxes*

44. The court has jurisdiction pursuant to section 33 of the Senior Courts Act 1981 and CPR r.25.1(1)(c)(ii) and r. 25.1(1)(i) to permit inspection of the contents of the boxes. Such an inspection might provide useful information as to the identity of a potential claimant to the items so that that person can be contacted and, in the absence of agreement as to what is to happen, can be made a defendant to future proceedings whether under section 13 of the 1977 Act or for a declaration as to a common law power of sale. Further, such an inspection is likely to provide useful information as to the nature of the items which may well be helpful when the court comes to consider an application for an order for sale under section 13 of the 1977 Act. In addition, an inspection might enable the Bank to show whether the goods were deposited before or after 1 January 1978.

45. I have explained above that the court is able to deal with an application for inspection of the boxes where the application either does not name a respondent (deposits on or after 1 January 1978) or refers to defendants as described above (deposits before 1 January 1978). I referred earlier to the question whether the court should only make orders in such proceedings where the Bank has done everything which it properly can do to trace the persons who would be affected by such orders and to notify them of what is proposed. In *In re Robertson's application*, reference was made to the possibility that the court would require an applicant to take further steps to try to trace a relevant respondent. In the present case, the Bank has raised with the court the possibility of placing advertisements in newspapers with a view to tracing claimants to the contents of the boxes. The Bank takes the view that it should not be required to act in that way. The Bank says that the potential claimants to the contents of the boxes might be anywhere in the world and that it would be unreasonable to require the Bank to place advertisements in newspapers throughout the world. I agree. I have, nonetheless, considered whether it would be reasonable to require advertisements in newspapers in the United Kingdom. The Bank has also submitted that advertisements in newspapers might encourage fraudulent claims to the contents of the boxes. I give comparatively little weight to that last consideration but, on the whole, I conclude that it is not appropriate to require the Bank to advertise in any newspapers. In view of the time which has passed since the items were deposited, the most recent being in 1994, I consider that the prospects of anything worthwhile emerging from a newspaper advertisement are not sufficient to require the Bank to take that step. As regards other attempts by the Bank to trace claimants to the contents of the boxes, on the evidence as to what has already been done in that respect, I do not require the Bank to take any further steps of that kind.

46. Accordingly, I will deal with the present application for an order for inspection of the contents of the boxes even though there is no respondent to the application or the respondents are named as described above.

47. Accordingly, I will make an order for inspection of the boxes in accordance with the order which has been sought. For that purpose, the Bank is to undertake to re-issue the application notice so that it makes it clear that the application is ex parte as regards goods deposited on or after 1 January 1978 and in relation to goods deposited before 1

January 1978, the respondents are as described above (but without the application notice being served on such defendants). The Bank has offered an appropriate undertaking in damages in relation to any person who is adversely affected by the making of this order for inspection and I will accept that undertaking.

48. As regards future proceedings under section 13 of the 1977 Act or for a declaration as to a common law power of sale, the present position is that the Bank has not been able to trace any person whom it would be appropriate to join as a named defendant to those proceedings. If that remains the position when the proceedings are issued, then I determine that it will be open to the Bank to issue those proceedings under CPR Part 8 without joining a defendant (deposits on or after 1 January 1978) or joining defendants as described above (deposits before 1 January 1978). If an inspection of the contents of the boxes provides information as to potential claimants to the items, and the Bank still wishes to brings proceedings under section 13 of the 1977 Act or for a declaration as to a common law power of sale, then the Bank will have to consider whether to join such persons as Defendants to the proceedings.