

[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

SERAPHIM BROTHERS

Appellants,

v.

JACQUET FRERES AND VIAILLY *Respondents.*1931.
June 12SERAPHIM
BROTHERS
v.
JACQUET
FRERES.*Practice—Evidence—Affidavit—“ Information and Belief ”— In-
admissibility—Rules of Supreme Court, Order 15, Rules 14 and 15.*

Respondents brought an action for the value of *crêpe* goods sold to appellants and for damages for breach of contract.

Respondents applied for an order for the evidence of Messrs. A., B. and C. to be taken on commission by the British Consul at Lyon in France. The affidavit in support was that of the clerk of respondents' advocate. The material part of this affidavit was as follows :—

- “ 3.—(a) Mr. A. is an Administrator of the Bank of France.
 (b) Mr. B. is a Special Juror, Expert in textile manufacture, attached to the Court of Vosges.
 (c) Mr. C. is a Special Juror in textile manufacture same as Mr. B.

There are no experts in textile manufacture and there are no textile manufacturers at all.”

An order was granted for the examination of witnesses by the British Consul in Lyon. From this order the defendants appealed. Upon an application to withdraw the appeal the following observations were made by the Chief Justice.

STRONGE, C.J. : I desire to make some observations with reference to the affidavit sworn by one Christaki Olympios in the course of these proceedings. The opening words of that affidavit state that the deponent makes oath and says to the best of his knowledge and belief as follows. Then follow the paragraphs containing the matters deposed to but nowhere throughout the affidavit are the sources of the deponent's information or belief stated. I think it incumbent on me to point out that such an affidavit is in direct contravention and defiance of the Rules of Court, Order XV, Rules 14 and 15 which require that the deponent in an affidavit based on information and belief shall set forth explicitly the facts and circumstances forming the ground of his belief and that in cases where such belief is derived from information obtained from another person the name of the informant, and reasonable particulars as to the informant and the time and place and circumstances of the information shall be given. I may point out further with regard to such affidavits that in *Young v. J. L. Young Manufacturing Company* (1) Lord Alverstone, C.J., said : “ In my opinion the so-called evidence on ‘ information and

1931.
June 12.

SERAPHIM
BROTHERS
v.

JACQUET
FRERES.

belief ' ought not to be looked at at all, not only unless the Court can ascertain the source of the information and belief, but also unless the deponent's statement is corroborated by some one who speaks from his own knowledge."

Rigby, L.J., says at p. 755 of the same case: "Now, every affidavit of that kind is utterly irregular, and, in my opinion, the only way to bring about a change in that irregular practice is for the Judge, in every case of this kind, to give a direction that the costs of the affidavit, so far as it relates to mere matters of information or belief, shall be paid by the person responsible for the affidavit. At any rate, speaking for myself, I should be ready to give such a direction in any such case . . . I never pay the slightest attention myself to affidavits of that kind, whether they be used on interlocutory applications or on final ones, because the rule is perfectly general—that, when a deponent makes a statement on his information and belief, he must state the ground of that information and belief."

Vaugham Williams, L.J., in the same case was prepared to go even further and leave the solicitor who had drawn such an affidavit to pay for it personally.

I am very strongly of opinion that violations of Rules 14 and 15 of Order XV should be treated by the Courts of this Colony in the manner suggested by the eminent Judges to whom I have just referred.

I would further point out that the first two paragraphs of the affidavit in question which are in effect that the deponent is an advocate's clerk and has custody of the file of the case and all the correspondence are clearly matters of fact and should be deposed to as such and not as matters of information and belief.
