

A Critical Analysis of the Court of Appeal Judgment in *Bebb v Law Society* [1913] EWHC 1

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The Court of Appeal in Chancery ('Court of Appeal') on 10th December 1913 issued their judgement for the case *Bebb v Law Society* ('*Bebb*').¹ This well-renowned landmark case was one of many 'persons' cases. It concerned whether or not permission should be granted for women to be admitted as solicitors of the Supreme Court. The 7-pages long judgement has often been criticised and used as an example to highlight the prejudice and inequality that women of the early 20th century faced when trying to join the male-dominated legal profession.

This case commentary aims to critically evaluate, examine and analyse the Court of Appeal judgement in *Bebb*. In order to do so, various facets comprising the logic behind the judgement, the use of rhetoric and narrative skills in the judgement, the effect of having judges different from those of this case and the context of *Bebb* will be explored. The case commentary will assert and signify that *Bebb* reflected society's attitudes to women during that time.

Case Summary

Miss Gwyneth Marjorie Bebb, the figurehead of the movement for women to enter the legal profession, along with three other women Karin Costelloe, Maud Ingram and Lucy Frances (Nancy) Nettlefold, applied to the Law Society (respondent) to take the preliminary examinations in December 1912.² These four women were 'carefully' chosen to apply to the Law Society to bring a test case before the courts (as agreed by the Law Society) after other branches of the legal profession (the Law Society and Parliament) resisted admitting

¹[1914] 1 Ch. 286. Due to the nature of the report, paragraph numbers are absent in the judgement. Hence, page numbers will be used to reference the part that is being addressed.

²Dr Judith Bourne, 'Gwyneth Bebb: the past explaining the present' (The Law Society Gazette, 29 April 2019) <<https://www.lawgazette.co.uk/gwyneth-bebb-the-past-explaining-the-present/5070047.article>> Accessed 2 May 2021.

women.³ The women aimed to receive articles of clerkship and then be admitted as solicitors. However, the Law Society notified them that if they chose to appear for the examination, they would be denied admission as solicitors due to them being 'women'. The women decided to challenge the Law Society and eventually appealed to the Court of Appeal. The reason behind why Miss Bebb was chosen as the plaintiff is unknown. It is open to a wide range of speculations – ranging from being the most qualified candidate to her last name being the first one alphabetically.⁴ According to s. 2 of the Solicitors Act 1843, *"No person shall act as an Attorney or Solicitor [...] unless such Person shall after the passing of this Act be admitted and enrolled and otherwise duly qualified as an Attorney or Solicitor, pursuant to the Directions and Regulations of this Act"*⁵. The appellant asserted that the word 'persons' could be interpreted to include women in the absence of any 'repugnant'.⁶ She sought a declaration that she could be included in 'person'. The Law Society expostulated the appellant's claim and contended that their decision to not admit women complied with the law and as a result, no cause of action had to be provided for the appellant's claim.⁷ The central legal issue was regarding statutory interpretation - Whether or not s. 48 of the Solicitors Act 1843 paved the way for women to be encompassed within the word 'persons' of s. 2 of the same Act. The Court of Appeal gave a unanimous decision. They agreed with the respondent and consequently dismissed the appeal.⁸

The logic behind the judgement

Courts are responsible for serving justice and maintaining equality; It is appalling to see courts being reluctant to implement anti-discriminatory regulations.⁹ Such was the case with *Bebb*. The logic behind the Court of Appeal decision has often been criticised. Lord Cozens-Hardy MR gave the

³Rosemary Auchmuty, 'Whatever happened to Miss Bebb? *Bebb v The Law Society and women's legal history*' (2011) 31 *Legal Studies* 199–212.

⁴ *ibid* 213.

⁵Solicitors Act 1843 s 2.

⁶*ibid* s 48.

⁷*Bebb* (n1) 286.

⁸*ibid* 299.

⁹ Alexandrine Guyard-Nedelec, 'Discrimination Against Women Lawyers in England and Wales: An Overview' (2007) 17 *Gender Forum* <http://genderforum.org/wp-content/uploads/2017/05/200717_WorkingOutGender.pdf> accessed 5 May 2021.

leading judgement. He stated that women were under a '*common law disability*', which prohibited them from becoming solicitors and nothing in the Solicitors Act 1843 which indicates the destruction or removal of this existing disability.¹⁰ He referred to three different factors that suggested the existence of a disability. This consisted of the 300-year-old reference of the Mirror of Justice by Lord Edward Coke - wherein it was expressed '*that women cannot be attorneys*'¹¹- '*Fems ne poient estre attorneys*'¹². Astonishingly, his Lordship decided to determine a case of such high importance by citing a 300-year-old passage, despite claiming that the Mirror cannot be considered as a '*work of the highest possible authority*'¹³. A lot can change within the span of three centuries. By simply referring to a tricentennial text, Lord Cozens-Hardy MR depicted his traditional beliefs and unwillingness to bring in a change in the legal profession. This opinion was voiced by the feminist press when they mentioned that despite being educated in modern schools under modern requirements, they are being judged about sex disability as '*expressed by a judge [Coke] who has been in his grave for three centuries*'.¹⁴

Lord Cozens-Hardy MR further explains that the foundation of the common law of the country lies on the '*long uniform and uninterrupted usage*' of only men being able to become solicitors.¹⁵ Consequently, as women previously neither applied to become attorneys of law nor were they admitted as attorneys of law, the court could not permit the admission of women as solicitors.¹⁶ For this reason, the disability still existed among women, preventing them from becoming solicitors. This indeed signifies the inflexibility of the legal system in the early 20th century. Swinfen Eady LJ in concurred with the above judgement. He rejected the appellant's argument based on '*the inveterate practice of the centuries*'.¹⁷ Therefore, he stated that since there were no cases of a woman ever taking the role of a solicitor, women cannot become solicitors in

¹⁰*Bebb*(n1) 294.

¹¹*Ibid* 293.

¹²*Ibid* 296.

¹³*Ibid* 293.

¹⁴Auchmuty, 'Whatever happened to Miss Bebb?'(n3) 216.

¹⁵*Bebb*(n1) 294.

¹⁶*Ibid*.

¹⁷*Bebb*(n1) 297.

accordance with the law. Furthermore, Phillimore LJ agreed with the ‘inveterate’ theory. He mentioned that statutes had to be understood and interpreted according to the common law and not with their literal meaning.¹⁸ According to him, the legislators did not intend for women to be admitted as solicitors in public office.¹⁹ Thereby rejecting the literal meaning interpretation of the Act and deciding the case on the basis of its statutory interpretation. This hindered s. 48 of the Solicitors Act 1843 from being applied to women in order to declare them as ‘person’. However, this makes it challenging to comprehend the reason behind the creation of s. 48 of the Act. It makes one question why s. 48 section of the ‘Solicitors’ Act referred to ‘females’ when women could never become solicitors, to begin with.

The judges claimed that due to the lack of precedent (regarding women in such roles), a change in the usual practice of law could only be initiated by the Parliament and not by the court.²⁰ It is pretty ironic that the test case, as previously mentioned, was initiated by the Parliament. The Parliament relied on the Court to make the amendments in the legal profession. At the same time, the Court deferred reformations and declared that it could be done only through modifications in legislation. This signifies that both the branches of the legal profession were reluctant and lacked interest in introducing a change and moving away from the traditional practice of not allowing women to join the profession.²¹

The rhetoric and use of narrative skills in the judgement

The Court of Appeal judgement suggests that Lord Cozens-Hardy MR wisely used rhetoric and narrative structures to persuade others that his decision was not influenced by the pre-conception that women were incapable of being lawyers due to their personality and inabilities. This is evident when he acknowledged Miss Bebb’s capability and intellectual ability²². His Lordship used short phrases to make it very clear that he viewed Miss Bebb as a

¹⁸Ibid.

¹⁹Ibid 299.

²⁰Ibid 294.

²¹Auchmuty, ‘Whatever happened to Miss Bebb?’(n3) 216.

²²*Bebb* (n1) 294.

competent young woman who had the potential to surpass her peers. He never mentioned that he thought less of her on account of her sex. This tactic incorporated by the Master of the Rolls in the leading judgement makes the judgement seem like it was free from prejudice towards women. The fact that he chose to praise Miss Bebb at the end indicates that he tried to reinforce the idea that he held no prejudice against Miss Bebb.

In contrast, the other two judges. Swinfen Eady LJ and Phillimore LJ did not mention anything about the appellant in decisions.²³ It can be inferred that despite Miss Bebb being very well educated and having high potential characteristics, the Lord Justices looked down upon her. They did not deem it necessary to mention her in their respective decisions. Likewise, towards the end of his decision, Phillimore LJ '*incidentally mentions*' that if women were admitted as solicitors, they would not be able to enter a binding contract after marriage and, as a result, would be unable to do so for their clients.²⁴ This highlights that the Lord Justice was steadfast and very much against the notion of permitting women to qualify as practising professional lawyers despite him claiming that statutory interpretation was the sole reason for his decision.

During the Edwardian era, courts started applying the omission technique according to which '*irrelevant or superfluous facts*' were omitted from judgements.²⁵ This approach was used in *Bebb* as well. The way the court decides is very much dependent on the facts of the case. However, when courts take the scientific route, i.e. when the judge decides to merely apply the relevant 'rules', it very likely for some facts to be left unrevealed.²⁶ Miss Bebb worked in the public sector as the Investigating Officer for the Board of Trade.²⁷ This crucial fact is not mentioned anywhere among the facts of the case. One of the key arguments restricting women was that since women were not allowed to undertake roles in the public office, they could not be admitted to the legal

²³Rosemary Auchmuty, 'Recovering lost lives: researching women in legal history' (2015) 42 *Journal of Law and Society* 34, 36.

²⁴*Bebb* (n1) 299.

²⁵Auchmuty, 'Recovering Lost lives' (n21) 38.

²⁶ *ibid.*

²⁷Auchmuty, 'Recovering Lost Lives' (n21) 39.

profession. The defendant asserted that lawyers were employees of the public sector.²⁸ However, her profession as an Investigating Officer in the public office demanded similar responsibilities to that of a qualified solicitor.²⁹ Omitting this paradoxical key point is quite preposterous. This would have certainly helped bolster the argument that if being a solicitor was a public function, then Miss Bebb was capable and qualified to become a solicitor, as she was already working in the public sector. The judges chose to leave out this fact from the judgement.

The application of this narrative is used for two reasons. The first one is to avoid feeling empathy so that the judge faces no difficulty when it comes to giving hostile judgements.³⁰ While the second reason for the usage of the tactic is to prevent any doubts about the judgement being just that could have formed due to the gap between the rule applied and the omitted fact.³¹ By implementing the omission technique, the judges showed that since they were not in favour of admitting women, they decided to simply take off a vital fact that would have raised more questions regarding the Court of Appeal judgement.

In different parts of the judgement, the judges have mentioned that the Parliament will have to decide whether or not to admit women.³² They explained that this is because courts do not have the power to do so as they have to follow the common law of the country (inveterate usage), whereas an amendment in the legislation would open the profession to women as well.³³ The repeated use of this idea within the narrative of the judgement makes it appear as if the Court of Appeal was powerless and so was forced to reject the appeal. On the contrary, the court could certainly have opened the doors for women to become solicitors by giving importance to the appellant's interpretation of s. 48 of the Solicitors Act 1843. Nevertheless, they decided not to do so by choosing the

²⁸ *Bebb* (n1) 291.

²⁹ *ibid.*

³⁰ Auchmuty, 'Recovering Lost Lives' (n21) 38.

³¹ *Ibid.*

³² *Bebb* (n1) 294; 297.

³³ *Ibid* 299.

lack of doctrine of precedent and their statutory interpretation of the Act over reform in the legal profession.

The effect of having a different judge

It is very likely that if the case were heard before a different judge at a different time, then the verdict delivered would have been different.³⁴ Lord Denning was one of the most influential judges of the 20th century. He actively reformed the law, especially for women and delivered judgements that were different from the usual traditional judgements. This was evident in *Williams & Glyn's Bank v Boland* used a different approach from the High Court Judge.³⁵ He was known for having a unique judgement writing style. Unlike most other judges, Lord Denning gave great importance to context and background. He began his judgement by understanding the parties and their acts with regard to the context.³⁶ This indeed invoked sympathy for the party that was being wronged and also portrayed the difference between the legal principle that had to be applied and the circumstances that the people faced.³⁷ Had the judges of *Bebb* adopted a similar approach, they would have got a better understanding of Miss Bebb's situation and the campaign rather than just adhering to the traditional method of simply applying the relevant principles.

It can be contended that if *Bebb* was heard before a female judge today, a different result could have been expected. 'Males' operated as the monopoly sex within the judiciary in the Edwardian society.³⁸ This is evident in *Bebb* as it was heard before three white men. They could have had discriminatory views about women, although they never explicitly stated it in their judgement.³⁹ Today, a feminist judge would be able to relate to her own experiences, which would undoubtedly impact her judgment. This would have been very beneficial to Miss Bebb as her case involved one explicit gender angle – women. By providing valid legal reasoning, the female judge could change the fate of *Bebb*.

³⁴Auchmuty, 'Recovering Lost Lives' (n21) 39.

³⁵ [1979] CH 312.

³⁶Auchmuty, 'Recovering Lost Lives' (n21) 39.

³⁷ *ibid.*

³⁸ *Guyard-Nedelec* (n7).

³⁹Auchmuty, 'Recovering Lost Lives' (n21) 37.

Based on this, there is a high tendency that a feminist judge would have either dissented or would have agreed and provided legal reasoning different from that of the three white male judges of *Bebb*.⁴⁰

The context of *Bebb v Law Society*

While the judgement of *Bebb* comes as a shock to many today, this was not the case in the early 1900s. The case was not an outlier. This is because society had a misogynist attitude towards women. Despite the judgement being hugely disappointing, it was scarcely unpredictable. The case was one of many cases wherein women fought for their rights and equality. Thirty years before *Bebb*, Bertha Cave was rejected from being admitted in the legal profession - The House of Lords unanimously dismissed her appeal due to the absence of precedent (just like the *Bebb*).⁴¹ This indeed signifies the stagnant progression of the law when it came to opening the profession for women. *Bebb* was a part of the first wave of the feminist movement, which included the suffrage movement. Women were kept away from the legal profession for the same reason as the national suffrage – lack of precedent. This clearly emphasises the role of women in the 20th century and the fight that they had to put across. Despite the case failing, the judgement received a lot of backlash from the media; they began questioning if men were ‘*afraid of woman’s brains*’⁴², marking a shift in the societal views about women.

Bebb can be used to compare and understand the position of women around the world when trying to enter the legal profession. The discussion regarding the admission of women in the legal career began in France around the same time as it did in England. However, women were admitted as lawyers in France 20 years before England.⁴³ This because of the Chauvin case, which made the

⁴⁰ Rosemary Hunter, ‘The Feminists Judgements Project’ (UKSC Blog, 17 January 2010) <<http://ukscblog.com/the-feminist-judgments-project/#:~:text=The%20Feminist%20Judgments%20Project%20is,significant%20cases%20in%20English%20law>> accessed 07 May 2021.

⁴¹ Ericka Rackley and Rosemary Auchmuty (eds), *Women’s Legal Landmarks: Celebrating the history of women and law in the UK and Ireland*. (Bloomsbury Publishing 2018) <<https://www.perlego.com/book/859168>> 26.

⁴² Auchmuty, ‘Whatever happened to Miss Bebb?’ (n3) 217.

⁴³ Christine Alice Corcos, ‘Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession’ (1998) 775 Denv. U. L. Rev. 307, 327.

new government want to amend the legislation for women.⁴⁴ Moreover, in Canada, *Edwards v Attorney General of Canada*⁴⁵ marked the conclusion of the ‘persons’ cases after women were recognised as ‘persons’ under the British North America Act 1867.⁴⁶ Similarly, women in South Africa could not be admitted as lawyers.⁴⁷ *Incorporated Law Society v Wookey*⁴⁸ reformed the law, and it was declared that ‘person’ included women as well. These examples clearly illustrate the reluctance that different parts of the world when it came to allowing female lawyers. Contrastingly, New Zealand was the only member of the Commonwealth that never disapproved women of becoming lawyers. The first female attorney was Ellen Melville in 1909.⁴⁹

Conclusion

To summarise, *Bebb* helps understand the progression of the role of women in England over the past centuries. While the case failed, it did have a significant role in the feminist campaign, which advocated for women’s rights and paved the way for women to qualify as lawyers in less than a decade. This resulted in major amendments in the legislation. The judges demonstrated some prejudice towards women through their traditional reasonings and use of rhetoric and narrative features. Nevertheless, *Bebb* being heard before the Court of Appeal shows the beginning of the change in women’s position.⁵⁰

⁴⁴ *ibid* 326.

⁴⁵ [1930] AC 124, [1929] UKPC 86.

⁴⁶ *Rackley and Auchmuty* (n39) 36.

⁴⁷ *Corcos* (n41) 326.

⁴⁸ 1912 AD 623.

⁴⁹ *Corcos* (n41) 326.

⁵⁰ *Auchmuty*, ‘Recovering Lost Lives’ (n21) 37.

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