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CASES

DETERMINED IN THE

SUPREME COURT OF BRITISH GUIANA.

RODRIGUES *v.* GRIFFITH.

[No. 12 OF 1928.]

1929. JANUARY 12. BEFORE SAVARY, J.

Master and Servant—Negligence—General Servant—Servant ad hoc of another—Test of liability—Control or right of control.

(*a*) A person might be the general servant of A, and yet at the same time be the servant of B. in relation to a particular matter.

(*b*) In such cases an important element in determining the relationship is the Question who had the control of or the right to control the servant in the conduct of the particular matter at the time of the accident.

(*c*) Where A. is being driven by B.'s chauffeur in B.'s car and A. gives no directions or orders to the chauffeur as to how to drive but merely as to where to drive and where there is in fact no necessity for the chauffeur to be under A.'s control, such chauffeur does not in the circumstances become the servant of A. in the particular matter in which he happens to be so engaged.

The facts are fully set out in the judgment.

P. M. Benson, for the plaintiff.

J. A. Luckhoo, K.C., for the defendant.

SAVARY, J: The plaintiff's action against the defendant is to recover damages for injuries sustained through the negligence of a man who is said to have been, at the time of the accident, a servant of the defendant.

The facts are as follows:—On the evening of 7th November, 1927, the plaintiff was the owner of Ford car No. 1437 plying for hire and the defendant was owner of Buick car No. 1703, a car registered to carry eight persons which plied for hire and was also used by defendant personally.

The plaintiff drove his own car and the defendant employed a man called Hollingsworth to do so. Hollingsworth was paid 25 per cent., of the amount paid for the hire of the car, which account was settled weekly, and received $3 to $4 a week for driving defendant about. Hollingsworth drove no other car during this period. The defendant frequently took friends with him in the car and on the day in question had taken four friends to the races at Buxton. On their return the friends stayed at defendant's premises until later on the same evening when Mr. Gunning, one of the friends, borrowed the bar from the defendant to go to a dance at Coomacka Park with the game party, save the defendant; it was whilst on the way there that the accident happened. At a place called Mon Repos plaintiff

was proceeding along the public road in his car with four passengers from Golden Grove to Georgetown, and defendant's car with Gunning and the others and driven by Hollingsworth was proceeding in the opposite direction. Chevrolet car No. 2394 was at a standstill on the north side of the road, which would be defendant's left or proper side. The two cars were proceeding at a fair speed, defendant's car being driven faster than plaintiff's. The two cars at the material time were about equi-distant from the stationary car. The plaintiff's car was not proceeding in a zigzagging fashion nor with flickering lights. The driver of defendant's car tried to squeeze through between the stationary car and the plaintiff's with the result that they collided. Plaintiff's car overturned and fell into a trench on the south of the road and lay on its hood with the four wheels in the air. The damage to the left wheel and left fender of plaintiff's car was probably caused by the overturning of the car. The overturned car was lying in the trench more or less opposite to the stationary car. It is not easy to determine the exact point of contact of two cars in an accident that takes place at night but the plaintiff's account is the more reasonable one and I accept the view that it was the front part of the plaintiff's car that was struck as there was no sign of injury on the right rear fender as would appear probable if the accident had happened in the way suggested by defendant's witnesses when the relative sizes of the two cars are compared, and bearing in mind what defendant said—that his fenders were heavy ones, *i.e.,* strong and solid. Defendant's car is fitted with four wheel brakes and it is possible that immediately before the impact his car was brought practically to a standstill when the driver realised that he could not pass without colliding with the plaintiff's car, but this was done too late and the car was certainly not in the position suggested, *i.e.,* behind the stationary car. This is borne out by the fact that defendant's car was driven ahead of the stationary car immediately after the accident and before even Gunning got out showing that it was in a position of danger relative to other cars proceeding on that road. It had been drawn up behind the stationary car as alleged, there would have been no reason to drive it forward of the stationary car.

The road at the point of the accident is 12 feet wide from grass edge to grass edge, and the grass slopes on each side, from three to five feet, down to a trench.

I was impressed by the evidence of Claudius Johnson, a witness for plaintiff, who appeared to give a fair version of his observations that night.

A witness for the defence, Thompson, for the first time in his evidence in this Court introduced a suggestion that plaintiff's car skidded after being struck and I am unable to accept it. The suggestion was made in order to explain how, if plaintiff's car struck defendant's which was nearer the north side of the road, it, plaintiff's car, could have fallen into the trench on the south side of the road.

If the version of the witnesses for the defence is true then the plaintiff appeared guilty of reckless driving and yet no report to the police was made against him that night or any time. But the plaintiff that same night made a report to the police against the driver

of defendant's car. Neither the driver of defendant's car nor Gunning made any attempt that night or at any time to ascertain whether plaintiff's car was damaged, and no examination of defendant's car by Gunning was made that night before starting off, and he admits that he heard of damage to defendant's car only after the police had examined the car at Brickdam Station. Whether defendant's car was damaged that night is very doubtful. It was alleged that the right rear fender had a small dent on the outside, that there was a dent on the body of the car and a dent at the bottom of the right rear fender, and that this latter was turned in towards the tyre. I only have to mention that whichever version of the accident I accept, it does seem almost impossible for this last injury to have been caused by this accident.

In order to succeed in this action plaintiff must establish (1) that Hollingsworth was the servant of defendant at the time of the accident; (2) that this negligence caused the accident; (3) that the plaintiff was not guilty of contributory negligence and (4) that he has suffered damage as a result of the accident.

On the facts I find that the driver Hollingsworth was the general servant of defendant, but that does not dispose of the point of liability, as the defendant sets up that at the time of the accident the driver was the particular servant of Gunning in relation to the driving of defendant's car. The case of *Rourke* v. *White Moss Colliery Co.* 2 C.P.D. 205, settled the law that a person might be the general servant of A. and yet at the same time be the servant of B. in relation to a particular matter. This principle has been upheld in a number of subsequent decisions, *Donovan* v. *Laing, &c, Syndicate,* (1893). 1 Q.B. 629; *Jones* v. *Scullard* (1898) 2 Q.B. 565: *Perkins v. Stead,* 23 T.L.R. 433; *Societé Maritime Francaise* v. *Shanghai Dock and Engineering Co. Ltd.,* 90 L.J. P.C. 85; *Bain* v. *Central Vermont Railroad & Ors.* (1921). 2 A.C. 412; and *Bull & Co.* v. *West African Shipping Agency, &c,* (1927) A.C. 686.

All these cases show that the important element in determining the relationship is the question, who had the control or the right to control the servant in the conduct of the particular matter at the time of the accident, and it merely suffices to point out that in the majority of them, from the necessities of each case itself, the servant was under the control and orders of the person to whom he was lent or hired for the particular matter. This determining factor had been settled as long ago as 1840 in *Quarman* v. *Burnett,* 6 M, and W. 499 and was the basis of the decision in *Samson* v *Aitchison* (1912), A.C 844 and *Parker* v. *Miller,* 42 T.L.R. 488.

Applying those principles in this case, can it be said on a consideration of all the facts and circumstances that Gunning had the right not only to tell the driver where to drive but also how to drive. Some of the circumstances are that defendant was the owner of the car and the driver was his general servant. Gunning states "I got his, *i.e.,* defendant's chauffeur, I sent to call him, chauffeur was to drive me to Coomacka racecourse." Defendant's driver had previously driven Gunning and on some occasions had been given a tip or gratuity by him and some other occasions nothing at all. On this occasion no arrangement was made by Gunning to pay for the driver's services but he was given a gratuity of six shillings at the end of the

drive. Gunning supplied gasoline for the journey, but told defendant that he would do so. He in fact gave no directions or orders to the driver as to how to drive but merely as to where to drive and there was in fact no necessity for the driver to be under his control in the former sense. Defendant paid the driver's fine in respect of his conviction arising out of the accident. I am satisfied that Hollingsworth, the driver, at the time of the accident was the servant of defendant and that defendant had not abandoned his right to control him.

From my findings previously set out I am also of opinion that the driver was guilty of negligence that caused the accident

There remains to be considered the question of contributory negligence. The defence alleged that plaintiff should have stopped when he saw defendant's servant persisting in coming on as there was no room for three cars on that part of the road. I do not think that plaintiff ought to have assumed that defendant, who had not the right of way would have persisted and thereby put him in a position of danger.

On the evidence I am not satisfied that when the plaintiff did realise the danger, stopping or slowing down would have averted the accident. This onus is on the defendant and he has not discharged it. It is not always easy for a person to decide what is best done in a sudden emergency and allowances have to be made in favour of the person who has to come to a sudden decision. See *Admiralty Commissioners* v. *Owners of s.s. Volute* (1922). 1 A.C. 129.

There is no question that the plaintiff's car was damaged and that he lost some earnings through this accident. I assess the damages at $175, $150 for repairs and $25 for loss of earnings.

There will be judgment for plaintiff for $175 and costs.

Solicitor for the plaintiff, *A. McLean Ogle.*

Solicitor for the defendant, *L. Ramotar.*

MOSES *v.* STOREY, *et al.*

MOSES *v.* STOREY, *et al.*

[No. 493 OF 1927.]

1929. APRIL 30. BEFORE GILCHRIST, J.

Appeal—Security for costs ordered—Last day falling on Sunday—Computation of time—Order XLV, rule (1) 4 of the Rules of Court, 1900—West Indian Court of Appeal Rules, 1920, Rule 6—Rules of the Supreme Court (Appeals), 1924—Delegated jurisdiction—Judge of local Courts empowered to order security for costs—Implied power in Judge to extend time for furnishing security.

On the 27th March, 1929, the plaintiff who had appealed from an order in a probate suit was ordered to furnish security for costs of her appeal within eighteen days from the date of the said order. Such time expired on Sunday, the 14th April. On the twelfth day of April, 1929, an application was filed by the plaintiff for leave to prosecute her appeal before the West Indian Court of Appeal *in forma pauperis.*

On the 15th day of April, 1929, on the *ex parte* application of the plaintiff it was ordered that the time fixed by the order of the 27th March, 1929, within which the plaintiff should furnish security for costs of appeal be extended until the hearing and determination of the application proper.

On the application coming on for hearing, counsel for the respondents contended as follows:—

(*a.*) That it could not be urged that as the 14th of April, 1929, was a Sunday the time was extended to the 15th April, 1929, for the reason that the provisions of Order XLV., of the Rules of the Supreme Court 1900, did not apply.

(*b.*) That even assuming that Order XLV, did apply it afforded no help to the plaintiff because Rule 1 (4) of the said Order only applied when the act directed to be done had actually been done on the following day although the time had expired on the previous day.

(*c.*) That the exercise of the powers conferred by Rule 6 of the West Indian Court of Appeal Rules, 1920, in so far as this colony was concerned was governed by the rules of the Supreme Court (Appeals), 1924.

(*d.*) That the powers delegated by Rule 6 of the West Indian Court of Appeal Rules, 1920 were very limited, that the rule permitted time being extended as to appealing but that after an order was made by a Judge directing security for costs of appeal to be given, the Judge was *functus officio* and had no power to grant an extension of the time within which the appellant should furnish such security.

Held: (*a.*) That having regard to the provisions of Rule 25 of the West Indian Court of Appeal Rules, 1920 and to Rule 31 of the Rules of the Supreme Court (Appeals), 1924, Order XLV., of the Rules of the Supreme Court, 1900 as regards computation of time did apply, and that accordingly the plaintiff had up to the last official moment of the 15th April, 1929, to furnish security for costs as ordered by the order of the 27th March, 1929.

(*b.*) That the order of the 15th April, 1929, had the effect not only of preventing the appeal from expiring but also of superseding the order of the 27th March, 1929, and kept alive the question of the time within which security for costs was to be furnished.

(*c.*) That the powers of fixing security for costs of appeal delegated by the West Indian Court of Appeal Rules to a single Judge of a Colony carry with them the power to extend the time within which such security should be furnished.

(*d.*) That although it is true that after the expiration of the time limited by an order for security for costs the appeal is at an end, yet if before such expiration there has been such a change of circumstances as an application to be heard *in forma pauperis,* it would be unjust for the Court to allow the order to operate according to its terms.

S. L. Van B. Stafford and *D. E.Jackson,* for the applicant.

P. N. Browne, K.C., and *C. R. Browne,* for the respondents.

GILCHRIST, J.: Application by and on behalf of the plaintiff for an order staying the execution of my Order of the 27th March, 1929, and extending the time during which the plaintiff should furnish security for costs of her appeal to the West Indian Court of Appeal fixed in the said Order at eighteen days from the date of the said Order, until the hearing and determination by the West Indian

Court of Appeal of an application made to the said Court by the plaintiff and filed on the 12th April, 1929, for leave for the plaintiff (appellant) to prosecute her appeal *in forma pauperis.*

1. The grounds and reasons of the application are set out in the said application and in the affidavit of the plaintiff in support thereof.

2. The Order of the 27th March, 1929, referred to above was obtained on the application of Rhoda Louisa Knights and Nathaniel Knights, two of the defendants in the action, hereinafter referred to as the defendants.

3. On the 15th April, 1929, on the *ex parte* application of the plaintiff I ordered that the time fixed by the Order of the 27th March, 1929, within which the plaintiff should furnish security for costs of appeal be extended until the hearing and determination of the application proper and that the plaintiff be at liberty to serve notice of the said application returnable for Friday, the 19th April, 1929, at the hour of 9 o'clock in the forenoon.

4. Mr. Stafford, counsel for the plaintiff, in answer to the Court stated that notice of the application was served not only on the solicitor for the defendants Rhoda Louisa Knights and Nathaniel Knights on whose application the Order of the 27th March, 1929, was obtained but also on the solicitor for the other defendants who appeared at the trial, namely, Thomas Augustus Storey, Laura Beatrice Parker, Clara Augusta Gaddum and Louisa Leonora Moses.

5. At the hearing of the application Mr. Browne, K.C., appeared for the defendants, Thomas Augustus Storey, Laura Beatrice Parker, Clara Augusta Gaddum, and Louisa Leonora Moses. He appeared (Mr. C. R. Browne with him) for Rhoda Louisa Knights and Nathaniel Knights.

Mr. Stafford (Mr. Jackson with him) appeared for the plaintiff.

6. Mr. Browne objected to the hearing of the application on the ground that by the order of the 27th March, 1929, the eighteen days therein mentioned expired on the 14th April, 1929, that the Order on which the present application is founded was obtained on the 15th April, 1929, and that at this date the appeal by the plaintiff was dead.

7. In support of his objection Mr. Browne submitted that it could not be urged that as the 14th April, 1929, was a Sunday the time was extended to the 15th April, 1929, that the provisions of Order XLV., of the Rules of the Supreme Court, 1900, did not apply, that even assuming that Order XLV., did apply it afforded no help to the plaintiff: that Rule 1 (4) of the said Order only applies when the act directed to be done has been done on the following day although the time limited has expired on the day before, which in this case was a Sunday: that the plaintiff has not done the act required to be done, that is, the furnishing of security for costs, but instead has made an *ex parte* application for extension of time, and that such an application should have been made earlier and should not have been made *ex parte.*

8. Mr. Browne further referred to the West Indian Court of Appeal Rules, 1920, Rule 6, and submitted that the exercise of the powers therein referred to, in so far as this colony is concerned, is governed

by the Rules of the Supreme Court (Appeals), 1924: that the powers delegated to a judge of a colony by Rule 6 of the West Indian Court of Appeal Rules, 1920, are very limited: that the Rule permits time being extended as to appealing but that after an Order is made by a Judge directing security to be given the Judge is *functus officio* and has no power to grant an extension of time within which a party should furnish security for costs.

9. Mr. Stafford in reply to the objection pointed out that the West Indian Court of Appeal Rules, 1920, made no provision as to computation of time. He referred to Rule 25 and submitted that in 1920, when the West Indian Court of Appeal Rules came into force, the practice and procedure in respect of appeals were governed by Order XLIII., of the Rules of the Supreme Court, 1900. He pointed out that this Order XLIII., was annulled and its place taken by Rules of Supreme Court (Appeals), 1924, and submitted that the last mentioned Rules were properly Order XLIII., of the Rules of the Supreme Court, 1900, that this was clear by virtue of the provisions of Rule 31 (2) of the Appeal Rules, 1924, and that therefore by implication, the provisions of Order XLV., of the Rules of the Supreme Court, 1900, as regards computation of time governed applications of the present nature.

10. Mr. Stafford further submitted that the arguments as to the limited operation of Order XLV., Rules 1 (4) of the Rules of the Supreme Court, 1900, were logically unsound. He referred to the Order of the 27th March, 1929, which ordered that if security was not given within eighteen days, the appeal by the plaintiff would stand dismissed and submitted that as the eighteenth day fell on a Sunday Order XLV, Rule 1 (4) operated so as to permit the giving of security on the next day, the 15th April, and of necessity also operated to prevent the appeal standing dismissed until the official moment of the 15th April, and that an order having on the said 15th April been obtained on the *ex parte* application of the plaintiff extending the time for giving security until the hearing and determination of the application proper, the said application was made in time and kept alive the proceedings and prevented the appeal from expiring. He referred to *Whistler* v. *Hancock* (1878) 3 Q.B.D. 83, and *King* v. *Davenport* (1879) 4 Q.B.D. 402. He also referred to *Manks* v. *Whitely* (1913) 1 Ch. 581, as establishing that an application for an extension of time can be made to a single Judge when a matter is before the Court of Appeal.

11. Counsel further submitted that under Rule 6 of the West Indian Court of Appeal Rules, 1920, there is full power in a Judge to grant an extension of time as to giving of security for costs apart from Order XLV., Rule 4 of the Rules of the Supreme Court, 1900, and that such power is an incident of the delegated jurisdiction referred to in the rule.

12. Mr. Browne in reply submitted—

(*a.*) that any order made dealing with the subject matter of the application on the *ex parte* application prior to notice being served on the party to be affected is a nullity;

(*b.*) that only Part I. of the Appeal Rules, 1924, applies to the West Indian Court of Appeal;

(*c.*) that there is nothing in the West Indian Court of Appeal

Rules, 1920, or the Appeal Rules, 1924, or in Order XLIII. of Rules of the Supreme Court, 1900, which governs the practice and procedure with respect to appeals previous to the West Indian Court of Appeal Rules, 1920, with respect to extension of time; and

(*d.*) that applications in respect of security of costs of appeal in West Indian Court of Appeal are not within the Rules of the Supreme Court, 1900, and therefore Order XLV., Rule 4 has no application.

13. Mr. Browne further submitted that the cases of *Whistler* v. *Hancock* and *King* v. *Davenport* are in his favour. He referred to *Script Phonography Co., Ltd.,* v. *Grigg,* (1890) 59 L.J. Ch. 406; *Carter* v. *Stubbs,* 6 Q.B.D., 116, per Lord Selbourne and *Wille* v. *St. John,* 102 L.T.R. 617.

14. I do not follow Mr. Browne's submissions as set out in (a) of paragraph 12 above. No authority was given for such a proposition, I know of none. On the contrary, the Court frequently grants on *ex parte* applications injunctions or stay of proceedings for a limited time and until the hearing and determination of the applications after service on the parties to be affected.

15. It is admitted (1) that the plaintiff applied to the Supreme Court to be allowed to proceed with her appeal to the West Indian Court of Appeal as a poor person; (2) that on the 11th April, 1929, the Court held it had no jurisdiction to entertain the application; (3) that plaintiff then filed an application to the West Indian Court of Appeal to be admitted as a poor person and to be allowed to proceed with her appeal; (4) that on the 12th April the plaintiff filed an *ex parte* application praying that the Order of the Court of the 27th March, 1929, ordering her to furnish security for costs of appeal be stayed and the time for giving such security be extended until the hearing and determination of her application to the West Indian Court of Appeal to be admitted to proceed with her appeal as a pauper; and (5) that on the 15th April on the said *ex parte* application of the plaintiff I granted an extension of time within which security should be furnished until the hearing and determination of the application and ordered service on the parties affected returnable for the 19th April, 1929.

16. The questions to be determined are whether the application now under consideration has been made in time, in other words, whether Order XLV., Rule 1 (4) of the Rules of the Supreme Court, 1900, applies, there being nothing in the West Indian Court of Appeal Rules, 1920, or in the Appeal Rules, 1924, dealing with the computation of time, and whether there was power to make the order of the 15th April, 1929.

17. I agree with Mr. Stafford's submission and hold, having regard to the provisions of Rule 25 of the West Indian Court of Appeal Rules, 1920, and to Rule 31 of the Rules of the Supreme Court (Appeals), 1924, that Order XLV., of the Rules of the Supreme Court of 1900, as regards computation of time applies. It follows that the plaintiff had up to the last official moment of the 15th April, 1929, to furnish security for costs as ordered by the order of the 27th of March, 1929.

18. I do not agree with Mr. Browne's interpretation of Order XLV.,

Rule 1 (4). The furnishing of security for cost is an incident of, and part and parcel of the practice and procedure governing appeals. Before the time expired for doing the act, that is, the giving of security for costs the plaintiff obtained the order of the 15th of April. This order in my opinion not only had the effect of preventing the appeal from expiring, but superseded my Order of the 27th March, 1929, as to the time within which security for costs of appeal should be given, and kept alive the question of time within which such security should be furnished. Can there be any doubt that in respect of the practice and procedure governing appeals previous to the coming into force of the West Indian Court of Appeal Rules, 1920, Order XLV, applied and that the Court had power to enlarge not only the time for appealing but also the time within which security for costs should be given? I do not think so.

19. In *Wille* v. *St. John* (1910) 1 Ch. 701 Cozens Hardy, M.R., in the course of his judgment said: "If the ten or fourteen days named in the order (*i.e.*, order for security for costs) have elapsed before any step is taken by the appellant the appeal is dismissed and the matter is ended. If, however, before the expiration of the ten or fourteen days the appellant obtains a pauper's order a change of circumstances has arisen, and the Court is bound not to allow the rights of the pauper to be defeated by reason of the form of order for security. It is inherent in every such order that circumstances may arise which would render it unjust for the Court to allow the order to operate according to its terms."

20. In the present matter, circumstances have arisen which render it unjust that I should allow the order of the 27th March, 1929, to operate according to its terms. Further, the plaintiff (appellant) moved for and obtained the order of the 15th April, 1929, before the time fixed by the order of the 27th of March, 1929, had expired.

21. I hold, therefore, that I had the power to make the order of the 15th April, 1929, and have power to extend the time within which security for costs should be furnished until the hearing and determination of the plaintiff's application to be admitted a poor person.

22. The cases of *Whistler* v. *Hancock, King* v. *Davenport, The Script Phonography Co., Ltd.* v. *Grigg* and *Carter* v. *Stubbs* are all distinguishable from the present matter.

23. I do not think it can be disputed that the West Indian Court of Appeal has power to extend the time within which security for costs of appeal is to be given.

24. Rule 6 of the West Indian Court of Appeal Rules, 1920, reads in part: "Subject as aforesaid such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the court or judge of the colony in which the appeal arose."

Under this rule delegated jurisdiction is conferred on a judge of the colony in which the appeal arose to deal with the question of security for costs of appeal.

25. Now, if the West Indian Court of Appeal can grant an extension of time in respect of the giving of security for costs, I am of the opinion that a judge of the colony in which the appeal arose has

under the delegated jurisdiction conferred upon him by Rule 6, like powers. It appears clear to me that the object and intention of the rule is to prevent the West Indian Court of Appeal being choked with small applications. This view is confirmed by reference to Rule 18 which reads: "Whenever under the rules an application may be made either to the Supreme Court or to the Court, it shall be made in the first instance to the Supreme Court or to a judge thereof."

26. The plaintiff, in my opinion, is entitled to the order asked for. I order accordingly. The question of costs in respect to this application is reserved for determination by the West Indian Court of Appeal.

Solicitor for the appellant, *A. McLean Ogle.*

Solicitor for the respondents, *A. V. Crane and F. Dias.*

KHOURI *v.* KHAN.

[No. 405 OF 1927.]

1929. MAY 4. BEFORE SAVARY, J.

Costs—*Rules of Court, 1920, Rule 16 B (1)—33⅓ per cent., increase—Whether increase applicable to counsel's fee—True nature of counsel's fee—Principles to be observed by taxing officer—When Court will interfere with assessment of taxing officer.*

(*a.*) The increase of 33⅓% provided for by Rule 16 B (1) of the Rules of the Supreme Court, 1920 (Percentage of Costs) does not apply to Counsel's fees.

(*b.*) Counsel's fees are in the nature of disbursements by the solicitor in the cause.

(*c.*) The Court will not interfere with the decision of a taxing officer in a question of amount unless the taxing officer is shown to have gone wholly wrong or unless a gross mistake has been made.

(*d.*) In fixing the amount of fees payable to counsel, the taxing officer should have regard to the nature of the application or action, the time necessary to prepare the hearing, the time occupied in the hearing and the number of witnesses examined.

(*e*) The Court will interfere with the decision of a taxing officer where there is a want of proportion between the case and its nature, etc., and the fees allowed.

Application by the defendant for a review of taxation of costs—The cause of action was for the recovery of $610 due on a promissory note. The defences were (1) not indebted; (2) that there was a collateral verbal agreement not to enforce the promissory note; (3) breach of the said agreement; (4) that the promissory note was a fraudulent preference; and (5) that by reason of the infancy of the principal debtor the promissory note was unenforceable.

The taxing master fixed the fee for appearance of counsel and for refreshers at $300 but did not allocate any part of the fee for such appearance or refreshers.

Held: (1) That the fee fixed was excessive.

(2) That it is the better practice that such fees should be separately inserted in the Bill of costs so that the taxing officer might apply his mind to them individually.

G. J. DeFreitas, K.C. for the applicant.

L. Ramotar, for the respondent.

SAVARY, J.: This is an application to review a taxation on two points: (a) that the amount allowed for appearance of counsel in Court is excessive, (2) that the increase of 33⅓% on fees does not apply to counsel's fees. I will deal with the second point first. By Rule 16 (B) (1) of the Rules of the Supreme Court (percentage of costs) added in 1920, solicitors were permitted to increase the total

of a bill of costs by adding 33⅓ per cent., to certain fees set, out in the Order as distinct from payments. This is a copy of a similar English rule.

Counsel's fees have always been regarded as disbursements or payments by the solicitor in the cause, and in my opinion should be included under the heading "Disbursements" in a bill of costs and not under the heading "Fees" as was done in this case. See A.P. [1929), page 1437, and Cordery on Solicitors, 2nd edition, p. 278. Reference to models of bills of costs in Johnson's Bills of Costs will support this view. This is an old work and unfortunately there is no edition of Summerhay and Toogood's Bills of Costs or Banner and Porter's Bills of Costs in this colony for me to refer to. I was informed by the taxing officer that there was no book on bills of costs in the Registry. In my opinion the percentage of 33⅓ added to fees does not apply to counsel's fees, and must be disallowed.

The second ground of objection relates to the amount allowed to counsel. It is well settled law that the Court will not interfere with the decision of a taxing officer in a question of amount unless the taxing officer is shown to have gone wholly wrong or unless a gross mistake has been made. In *Brown* v. *Sewell,* L.R. 16 CD. 517, and in the estates of Ogilvie, *Ogilvie* v. *Massey,* L.R. (1910), p. 243, and in *Smith* v. *Buller,* L.R. 19 Eq. 473, Malins, V.C., stated that the Court would interfere where the charge was of a very exorbitant nature. Appendix I., Part I., of the Rules of the Supreme Court provides that in fixing the amount of the fees payable to counsel the taxing officer shall have regard to the nature of the application or action, the time necessary to prepare for the hearing, the time occupied in the hearing and the number of witnesses examined.

In respect of matters where the amount claimed exceeds $250 the same Appendix provides a scale of counsel's fees and the parts relevant to this application are as follows:

"For appearance on hearing of an action—from $25 upwards."

"Refreshers per day—$15 to $30."

It will be seen from this in the case of refreshers there is a maximum fee provided, but that in the case of what is really a fee on brief merely a minimum fee is fixed. In the action the plaintiff sought to recover the sum of $610 for principal and interest due on a promissory note. The defences were (1) Not indebted; (2) that there was a collateral verbal agreement not to enforce the pro-note; which was given by way of security until the happening of a certain event; (3) breach of the said agreement; (4) that the pro-note was a fraudulent preference; (5) that by reason of the infancy of the principal debtor the pro-note was unenforceable. Defences of this nature are not unusual in this class of case and do not present any real difficulties, such as would involve an undue amount of research work.

The fee inserted in the bill presented for taxation for the appearance of counsel and for refreshers was an inclusive fee of $600. On taxation this was reduced to $300 and I was informed that the taxing officer did not allocate any part of the fee for appearance and for the refreshers. In fact I was told that the question of refreshers was not mentioned although the fee of $600 was clearly intended to include refreshers. It is the better practice that these fees should

be separately inserted so that the taxing officer can apply his mind to them separately.

From the above observations it is clear that the principle on which bills of costs are prepared is not correctly understood and I am led to the conclusion that the taxing officer did not direct his mind properly to the question of fixing the amount. There is a want of proportion between the case and its nature, &c, and the fees allowed and I regret that he has gone wholly wrong.

The main reason for the Court not interfering with the discretion of the taxing officer is given by Jessel, M.R., in *Brown* v *Sewell,* ante, at p. 520. He says: "Taxing masters are, as a rule, solicitors of great experience, and better qualified to decide on the amount of fees to be allowed than the Judges themselves."

In view of my previous observations that statement could hardly be applied here. Finally I desire to refer to two statements of Malins, V.C., in *Smith* v. *Bullet;* L.R. 19 Eq. 473 for the guidance of the Taxing Officers. At page 475 he says: "It is of great importance to litigants who are unsuccessful that they should not be oppressed by having to pay an excessive amount of costs" and at p. 478, "I do not proceed on the ground that the fees paid was excessive, I think it was reasonable in itself, but that as between party and party it was more than ought to be thrown upon the unsuccessful litigant."

For these reasons I feel that it is my duty to vary the amount allowed by the taxing officer. I allow $60 for the appearance of counsel and three days refreshers at $25 a day. Cost of this review to be paid by the defendants in the action and to be set off against costs of action.

Costs of review fixed at $20.

Solicitor for the applicant, *E. De Freitas.*

Solicitor for the respondent, *L. Ramotar.*

BRUMELL *v.* THE DEM., ELECTRIC COM., LTD.

BRUMELL *v.* THE DEM., ELECTRIC COM., LTD.

[No. 215 OF 1929.]

1929. OCTOBER 29; NOVEMBER 8.

BEFORE SIR ANTHONY DE FREITAS, C.J.

Tramway—Operation of tram service—No Statutory licence—Nuisance—Liability for nuisance *independent of negligence—Tramway Company maintaining dangerous tram-rail—Whether exempt from liability because defective condition of rail caused by third person.*

(*a*.) Liberty to lay or maintain tramways on a highway can be derived only from a statute. Any tramway on a highway is unlawful, because it restricts the common law right of every person to pass freely, safely and conveniently along any part of the highway, unless such restriction can be justified as the exercise of statutory authority to do what was done.

(*b*.) Where there is no statutory authority to run and maintain a tramway service it is immaterial—and evidence to that effect is inadmissible—to prove that the tramway was operated for the convenience of the general public.

(*c*.) In an action for nuisance, negligence or no negligence on the part of the defendant is an immaterial element. In the case of a nuisance liability is absolute. Under the common law it is an unlawful act, independent of negligence, to keep any tram-rail or other obstruction on a highway, but if there is an applicable statue it may afford justification.

(*d*.) Assuming an excavation by a third party to be the cause of a nuisance consisting of a dangerous projecting tramrail a company is not thereby necessarily freed from liability for maintaining and using in a highway such tramrail and obstruction which is a common nuisance.

The facts appear in the judgment.

S.J. Van Sertima, for the plaintiff.

H. C. Humphrys, for the defendant company.

DE FREITAS, C.J.: Mr. S. J. Van Sertima and Mr. H. G. Humphrys were respectively counsel for the plaintiff and the defendant company at the trial of this action for a nuisance, for the recovery of damages in respect of bodily injury sustained by the plaintiff on the defendants' tramline. The plaintiff was the next witness after Dr. A. E. Delgado, M.B., Ch.B. (Edin.) and Mr. J. D. Grierson, M.B., Ch.B., F.R.C.S. (Edin.) and F.R.C.S. (Eng.) had given evidence as to the nature of the injury and their treatment. During his cross-examination of the plaintiff, Mr. Humphrys informed the Court that the defendants were willing to submit to judgment for the plaintiff for £200 damages and £65 costs. Mr. Van Sertima agreed to accept such a judgment. Accordingly I order that judgment, by consent, be entered for the plaintiff against the defendant Company for £200 damages and £65 costs.

2. Though the stage had not been reached for hearing evidence or argument for the Company, and though the plaintiff had not concluded the presentation of his case, it was clear that the Company was without any valid defence in law. It would appear from the Company's submission to judgment for the plaintiff that they also correctly regarded their defence as invalid.

3. Credible testimony at the trial was in substance as follows. At about 7.30 in the night of 7th September, 1928, the plaintiff was carefully riding his bicycle northwards along Camp Street, a highway in Georgetown, when the front wheel of his bicycle came into contact with a curved loop-rail on the defendants' tramline. The whole of the loop-rail on its southern side, where the contact occurred, was about 3 or 4 inches above the level of the part of the street touching it. On its northern side the loop-rail was also considerably above the level of the part of the street touching it. This contact with the projecting rail caused the plaintiff to fall from his bicycle, whereby he sustained bodily injury. About three feet to the south of the loop-rail the street's surface was on a level with the top of the rail, and from that point the street sloped downwards and northwards to the south side of the rail, where it was three or four inches below the top of the rail. It was this hole and projecting rail which caused the accident. Next morning the plaintiff spoke to the Company's chief clerk about his fall, and a short time afterwards he saw the Company's workmen repairing the hole at the place where he fell. Sewer excavations for pipes were being made near the place of the accident for a week or more before it occurred, and within close view from the tramcars as they pass; and the Company's employees frequently inspect and brush and oil the tramrails.

4. Credible oral and documentary evidence also showed that when the plaintiff had partially recovered from the injury he had an interview with the Manager of the Company, in consequence of which he wrote to the Manager saying: "I beg to forward you herewith, *as arranged*, accounts rendered from the doctors and nurse and for medicines, amounting to $158.31 and would ask your early consideration of same." He was then willing to accept just his out-of-pocket expenses, which the Manager had orally agreed to pay. Unfortunately, the Manager's mind was changed; for he wrote on the 27th November, 1928, in reply: "On investigation we find that the condition of the roadway at the point where your accident occurred was brought about by the work of the Georgetown Improvement Schemes, and that the Company cannot be held responsible for your accident. We regret therefore that we cannot entertain your claim for damages, and beg to return herewith your accounts for medical services and drugs."

5. The Manager found that the "Company cannot be held responsible" by a Court. That was an ill-advised pronouncement. Here bad law began to cause bad business. And the Manager used the legal practitioners' phrase, "claim for damages." The Company could certainly be held responsible for the nuisance of the projecting rail, notwithstanding the allegation (or fact) that it was brought about by others. The plaintiff did not claim "damages"; from another non-lawyer like himself (he is an auctioneer) he asked only for the sum of £33 in re-imbursement of his actual expenses, including £8 6s. 8d. paid for a surgical operation by Mr. Grierson. That clearly appeared from the accounts and receipts returned by the Manager to him, which show that the "medical services" were rendered and vouched for by Dr. Delgado, an eminent and reputable

physician and by Mr. Grierson, an eminent and reputable surgeon, and by a reputable nurse selected by Dr. Delgado; and such vouching showed that a genuine injury had been treated—as was again shown by the evidence of those gentlemen under close cross-examination. Both these distinguished professional men are held in high esteem by the people of this colony; nevertheless Mr. Humphrys, behind the shield of his privilege as an advocate, thought fit during his cross-examination of the plaintiff to interject the following offensive observation: "The doctors told us what they are *supposed* to have seen." Fortunately, neither of those estimable gentlemen can possible be affected by anything Mr. Humphrys may say. There can be no possibly doubt that the plaintiff suffered real injury by his fall on the defendants' tramline and that he was honestly and properly treated by those two gentlemen.

Credible evidence also shows that the plaintiff next caused a solicitor to write to the Company demanding damages. On 8th June, 1929, Mr. Humphrys, as the Company's solicitor, wrote a reply merely referring the solictor, Mr. Sharples, "to our client's letter of the 27th November last to your client." The law in the Manager's letter was thus confirmed by the Company's solicitor; whereupon the plaintiff began this action.

6. It is well known to competent solicitors in English countries that claims against tramway companies in respect of bodily injury that has really been sustained are frequently and wisely settled in one of several ways, such as: (1) by the Company paying direct to the claimant a moderate sum without any expenditure for costs on either side as might have been done for £33 in this case ; or (2 by the Company paying to the claimant's solicitor, before a writ is issued, a reasonable sum for damages, and the small amount of costs then incurred by the claimant; and, if the Company have consulted a solicitor, by paying the small amount of costs he had earned at that stage; or (3) when the writ is served, by the Company paying into Court a reasonable sum in satisfaction of the claim— with an admission of liability, and paying the moderate amount of costs up to that date. If the plaintiff accepts that, the matter is ended. If he does not, the only issue then to be tried is the sufficiency or otherwise of the amount paid in for damages; and the costs of the lawyers on both sides in the trial of such an issue would be taxed at a sum much less than the taxed costs of a trial when liability is also contested, as in this case.

It is sometimes unwisely said that a Company "must fight" every claim, so as to discourage more claims and frivolous claims. If an impartial and reasonable mind deems a claim to be frivolous, it will be contested. Such frivolity as there may be will cause the failure of the claim in Court, and it is the frivolity that will deter others; not the contest before the trial Judge, for the costs of which on the claimant's side his relatives and friends will find the money. Experience has shown that it is better policy and less expensive to settle honest claims by one of the foregoing methods. In every "fight" the Company probably pay more in costs to their own lawyers than they would pay for a final settlement of an honest claim without a trial; and in many of such "fights" they may have to pay

the heavy costs of both sides in a long trial, in addition to damages. Of course, an honest man would never advise a "fight" against a valid claim merely to deter a claimant who cannot afford to fight it out to the conclusion of an ultimate appeal. It may be that during some such reckless "fight" matters will be brought to light that may cause a despondent person, hesitating to make a claim, to abandon his groundless fear that a Company will necessarily succeed in Court because they can afford to pay for the most expensive legal advice, and cause him to adopt the new position of an optimistic plaintiff who thinks he sees that the Company have no legal defence whatever. And so, more claims may possibly be encouraged by "fighting," than by yielding to requests for re-imbursement of actual expense incurred in respect to veritable injuries.

7. It is clear that the defendant Company's projecting tramrail was a dangerous obstruction to the public lawfully using the highway, and a common nuisance; and that the plaintiff was lawfully using the highway at the time of the accident; and that he has a cause of action.

8. It was surprising to find that the Company, in their defence signed by Mr. Humphrys, contested the allegation in the Statement of Claim that their tramways in Georgetown were operated by them under the authority of a statutory licence, and explicitly stated that they were not acting under any statutory authority whatever in maintaining such tramways; but they have not stated on what authority they acted. It must therefore be inferred that they claim a Common Law right. There can be no such right. Whatever motive may have led them to disavow any statutory authority the result of the disavowal is that they can have no right to maintain tramways on a highway and that in doing so they are acting unlawfully and are trespassers. Liberty to lay or maintain tramways on a highway at all, can be derived only from a statute. Any tramway on a highway is unlawful, because it restricts the Common Law right of every person to pass freely, safely and conveniently along any part of the highway, unless such restriction can be justified as the exercise of statutory authority to do what was done. Any person maintaining an unauthorised tramway on a highway may be tried on an indictment for a nuisance, and it is not necessary on such an indictment to show *mens rea.* An eminent English jurist in his well known treatise on Torts (to which young students and competent legal practitioners frequently refer) summarises the law on the point as follows: "In order to sustain an indictment for nuisance it is enough to show that the exercise of a common right of the King's subjects has been sensibly interfered with. It is no answer to say that the state of things causing the obstruction is in some other way a public convenience. Thus, it is an indictable nuisance at Common Law to lay down a tramway in a public street to the obstruction of the ordinary traffic . . . The public are entitled to have the whole width of a public road kept free for passing and repassing, and an obstruction is not the less a nuisance because it is on a part of the highway not commonly used, or otherwise leaves room enough for the ordinary amount of traffic . . . A private action can be maintained in respect of a public nuisance by a

person who suffers thereby some particular loss or damage beyond what is suffered by him in common with all other persons affected by the nuisance." The present plaintiff is therefore entitled to bring this action for a nuisance to recover damages for the bodily injury he has suffered and the expense he has incurred; which injury and expense have been very clearly proved.

9. After a conviction before *Erle, C.J.,* on an indictment for a. nuisance in laying a tramway upon a public highway in the parish of Lambeth, it was held by *Crompton, Blackburn* and *Mellor,* JJ., that it was correctly found that the tramway without statutory authority was an obstruction and a nuisance. The Court also held that evidence was inadmissible to show that the tramway was operated for the convenience of the general public. Such obstructions may be imposed upon the public by the Legislature, when it empowers a company to maintain tramways. In that case *Blackburn, J.,* said: "If it should really be beneficial to the public, I think that still the matter would be a nuisance as it exists at present. I do not think that a new mode of interfering with the traffic upon a highway is a matter which can be left to the jury in a balance of testimony. The constitution of the country provides a regularly constituted Court for such matters, that is, a Committee of the Houses of Parliament, who will consider whether or no, upon the balance of the whole testimony, the introduction of a new mode of traffic and interfering with the old Common Law right of the public will be beneficial, and they may allow it to be done, subject to such terms and restrictions as they shall think fit." The tramway in that case was laid down under a contract entered into by one of the defendants with the Vestry of Lambeth in pursuance of resolutions purporting to be in exercise of the Vestry's power as the Road Authority under the Metropolitan Local Management Act. In a modern case the London County Council, who operated tramways under statutory authority, employed contractors to reconstruct their tramways for electric traction. The contractors laid down raised rails in a thoroughfare for the temporary continuance of tramway traffic during the reconstruction. The plaintiffs were proprietors of omnibuses plying for hire. They sued the contractors for damages in respect of the extra strain put upon their vehicles by having to cross the raised rails. The defence was that what was done was in execution of the statutory powers of the Council to maintain tramways. *Warrington,* J., found as a fact that the raised rails were an unlawful obstruction of the highway and that they caused damage to the plaintiffs' vehicles; and *he found that the defendants were not negligent.* He held that the acts of the defendants were a cause of action to the plaintiffs unless they were authorised by statute and he held that they were not authorised under the statutory powers of the Council. So has the plaintiff in the present case a cause of action in respect of the Company's raised rail, when Mr. Humphrys has put them in the position of having disclaimed any statutory authority whatever.

10. In the 7th paragraph of the defence signed by Mr. Humphrys, the Company deny that there was a nuisance. Nuisance or no nuisance is a question of fact. It is obvious that the projecting rail was a common or public nuisance. It is further pleaded, in the

same paragraph, that if there was a nuisance it was "in no way due to negligence on the part of the defendants." This plea is without merit, for the law is well known to be that negligence is immaterial in nuisance. In the case of a nuisance liability is absolute. The fact that the projecting rail caused injury to the plaintiff is the gist of the action. And in the case of things not lawfully on the highway, liability can be escaped only by removing them. Under the Common Law it is an unlawful act, independent of negligence, to keep any tramrail or other obstruction on a highway; but if there is an applicable statute, it may afford justification, Mr. Humphrys has, however, disavowed any statutory authority whatever.

11. In the 6th paragraph of the defence there is a plea by Mr. Humphrys that sewer excavations by other persons caused the depression of the street and the consequent projection of the rail. Having regard to the convenience of tramway traffic in streets, even though it hinders to some extent the public's right of free passage, Acts of Parliament have authorised such traffic. Our Legislature has authorised a licence for such traffic in Georgetown; and in doing so, it has provided, *inter alia* that tramrails shall be maintained by licensees on a level with the surface of the street and that the public shall not be deprived of the right to use any part of the road. Such a provision was expedient, notwithstanding a licensee's Common Law obligation not to create a nuisance in a highway. It would be expected that in the natural course of things the earthen streets would become depressed where they lie beside tramrails, because rain would wear away the surface of the street and scour against the rails; sunshine and wheel traffic would pulverise it and the resulting dust would be blown away by the wind or by the suction of the air created by the swift passage of the electric tram-cars; and the heavy rails would retain their fixed positions and keep in place the earth upon which they rest, and they would become dangerously high above the street after the surface of the street had been worn down from time to time by such natural causes. In effect, that the heavy fixed rails would cause the parts of an earthen street next to them to become depressed, instead of the surface of the street becoming uniformly lowered by the other causes, as it would become if the heavy rails were not there. Such natural causes are more likely to produce a lowering of a street's surface (and a projection of a tramrail) than sewer excavations made and filled in the usual way. Credible evidence has been given in this case that before any sewer excavation was made in Georgetown projecting tramrails, maintained by the defendants, were commonly seen in streets and roads; and that since excavations have been made in some highways, projecting tramrails continue to be open in other highways where no excavation has been made. It is not a convincing theory that a sewer excavation was the cause of a curve-shaped (or straight) depression, with absolute precision just up to the curve (or straight side) of a tramrail and on both sides of the rail, and no further; leaving the rail at its original level, projecting. An excavation may cause a weakening of support beneath the overlying earth of the street, but that weakening would be nearly uniform

within its ambit and it would extend to the supporting earth under the rail and the rail would consequently sag and become depressed instead of elevated. The weight of heavy rails at rest and of the traffic of heavy tramcars always running over the same rails would require greater underlying support than the rest of the street not bearing that extra burden and pressure. However that may be, the stage had not been reached for the Company to establish by acceptable evidence that an excavation caused the hole at the south side of the projecting rail where the accident occurred; but the plaintiff's evidence shows that there were depressions of the street next to all the rails and that the least depression was next to and on the west of the westermost main rail, which was on the east of the excavations and close to them, while the deepest depression was next to and on the east of the eastermost rail, the fourth of the four rails counted from the west.

12. Assuming that an excavation made by a third person was the sole cause of the nuisance, the Company is not thereby freed from liability for maintaining and using in a highway a dangerous projecting tramrail and an obstruction which is a common nuisance. In an English case, a company under statutory authority carried a railway on the level across a highway in the usual way. A colliery company excavated their coal, with the result that a uniform subsidence of land occurred and lowered the level of the highway, of the railway and of the surrounding land. From time to time, as their line of rails subsided, the company placed ballast under their rails so as to maintain the original level of the line, with the ultimate result that in place of a level crossing there was a railway embankment obstructing the use of the track of the highway (which was a lane). *R. S. Wright,* J., said that the railway company were compellable to abate the nuisance and that they were liable to indictment for a nuisance. So that, when a statutory railway company maintained their line at its original level, they were said to be obstructing the highway and maintaining a nuisance though there was a proved subsidence caused by other persons, while Mr. Humphrys pleads that the present defendants (avowedly acting without any statutory authority) are free from liability for maintaining their tramrail at its original level to the obstruction and injury of the public, on the ground of a supposition that an excavation by a third person might have caused the subsidence of the street by the side of the rail, but not under the rail.

13. In a case where a tramway company unsuccessfully contended that they were not liable for injury resulting from their use of defective rails, because another company was responsible for the defective condition of the rails, *Lord Esher, M.R.,* referred to the argument that the liability to repair the defective tramway rested on the other company, who were responsible for the defect, and he said that may be so as between the defendants and the other company, but the question in the case was between the defendants and the public. In that case the jury had found that the defendants did not know of the defective condition of the rails.

14. The defendant Company were wise, at last in submitting to judgment for the plaintiff; they were thereby saved from paying

heavier costs to the plaintiff and heavier costs to their own lawyers, but I doubt if it saved them from heavier damages. Their defence, on the face of it, lacked merit in law. With the exception of £33 that might have settled the matter without the intervention of solicitors, every penny of expense incurred by the Company in connection with this accident has been entirely wasted by their determination to come into Court on an assumed position which they could have had no reasonable hope of sustaining.

15. I desire to warn all who may be concerned that nothing in this case can be taken to affect the right of any person hereafter to prove, if he can, that the defendant Company have operated or are operating their tramway by virtue of a statutory licence.

Solicitor for the plaintiff, *R. G. Sharples.*

Solicitor for the defendant Company, *E. de Freitas.*

STEPHENS *v.* ADAMS.

[No. 315 OF 1929.]

1929. NOVEMBER 16. BEFORE GILCHRIST, J.

Costs—Specially indorsed writ—Promissory notes—Larger sum claimed than due on notes—Attempt to mislead Court—Exercise of Court's discretion to deprive successful litigant of costs.

This was an action brought by way of specially indorsed writ in which the plaintiff claimed the turn of $152.36 alleged to be due on certain promissory notes. A very ordinary perusal of the notes would have disclosed that only $122.36 was due.

The Court, being of opinion that there had been an attempt by plaintiff's attorney to mislead the Court deprived the plaintiff of the posts of the action.

L. Ramotar, for the plaintiff.

The defendant did not appear.

GILCHRIST, J.: In this action the plaintiff claims from the defendant on a specially indorsed writ, the sum of $152.36 on four promissory notes dated the 9th December, 1927, the 24th December, 1927, the 7th January, 1928, and the 25th February, 1928.

On the matter coming before the Court this day, Mr. Ramotar, solicitor for the plaintiff, stated that he had gone into the matter and that by inadvertence the sum of $152.36 was claimed instead of $122.36. He asked for judgment for this amount ($122.36), there being no appearance by or on behalf of the defendant.

It might here be pointed out that this matter first came before Savary, J., in the Bail Court on the 2nd of November, 1929, and he held that service of the writ had not been properly established and ordered that it be reserved. He also observed from the promissory notes, which were then produced, that it appeared that $152.36 was not due but only $122.26. This is admitted by the solicitor for the plaintiff.

It is perfectly clear to me that a very ordinary perusal or examination of the four promissory notes in question establishes beyond any doubt that only $122.36 is due on the said notes.

On the 25th of October 1929, an affidavit sworn to by Beatrice Stephens, the plaintiff's attorney, verifying the plaintiff's claim was filed. It is therein stated that to her own knowledge the sum of $152.36 was owing by the defendant to the plaintiff and in her belief “there is no defence to the action.”

The record of the proceedings, in my opinion, leads me to the conclusion that this is a bold attempt to mislead the Court. In the circumstances I give judgment for the plaintiff for the sum of $122.36 without costs.

GONSALVES *v.* LANDRY AND ANR.

[No.168 OF 1928.]

1929. NOVEMBER 12, 13, 14; DECEMBER 10. BEFORE SAVARY, J.

Sale of land—Description of property ambiguous—Purchaser accepting transport without protest—Discovery after transport that Vendor had title for only part of property—Vendor's disturbance of Purchaser's possession of that portion of property to which Vendor had no title—Claim for relief—Whether maintainable—No fraud alleged.

Where a contract of sale of land is carried into effect by a deed of conveyance, or in this colony by a transport, after the purchaser has accepted the conveyance or transport and paid the purchaser money no action can be maintained either at law or in equity for damages or compensation on account of errors as to the quantity or quality of the subject matter of the Sale unless such error amounts to a breach of some contract or warranty contained in the conveyance or transport or unless some fraud or deceit has been practised upon the purchaser or unless there is a contract for compensation referable to such error or misdescription. The relevant facts of the case are set out in the judgment.

S. J. Van Sertima, for the plaintiff.

L. Hopkinson, for the first-named defendant.

P. N. Browne, K.C., for the other defendant.

SAVARY, J.: By an order, dated the 2nd November, 1927, in a matter between Rampersaud, the second defendant in this action, and Landry, the first defendant, it was adjudged that Rampersaud recover against Landry the sum of $764.73 and it was among other things ordered that, on payment of that sum by Landry, Rampersaud do transport lot 44, Kitty Village to Landry or his nominee. The effect of that judgment was to establish that Rampersaud was the person in whom the legal title to the property was vested and that Landry had a beneficial interest in it. Sometime before the 24th November, 1927, as Landry could not raise the money necessary to pay off Rampersaud in order to get the property transported to himself, he instructed an agent to get sale for the property, so that it might be transported to his nominee. No doubt Landry hoped thereby to raise sufficient funds to pay off Rampersaud and to have a balance coming to him. Plaintiff verbally agreed with the agent to buy lot 44, Kitty, for $1,075 and the contract was evidenced by a document in writing dated the 24th November, 1927, containing all the particu-

lars necessary to comply with the provisions of section 3, sub-section 4 (e) of the Civil Law of British Guiana Ordinance, 1916. This document is in form a receipt for $100 and the property purchased is therein described as "lot 44, Kitty, with all the buildings and erections thereon as described in transport No. 628 dated 1st June, 1918." Transport No. 628 was the one giving title to the defendant Rampersaud.

On the 9th December plaintiff agreed to pay defendant Landry the sum of $50 as it was discovered that $1,075 was only sufficient to pay the judgment and costs of the action and the transport. Subsequently, on the 22nd December plaintiff paid a further sum of $10 on account of the purchase price.

In accordance with the practice obtaining in this colony defendant Rampersaud's solicitor gave the usual instructions in writing to the Registrar to advertise transport from his client to plaintiff of lot 44, Kitty, which letter of instructions was accompanied by an affidavit, sworn to by the plaintiff, setting out that he had bought the property described in the said affidavit as "lot number 44, Prince Edward Town in the Kitty and Alexanderville Village District, in the county of Demerara and colony of British Guiana, with all the buildings and erections thereon as shown on a diagram or chart of the said Village District by H. Rainsford, Sworn Land Surveyor, dated 30th April, 1842, and deposited in the Office of the Registrar at Georgetown on the 26th July, 1847, which said lot number 44 is described in transport No. 628 dated the 1st June, 1918, as three-quarter lot number 44, also known as lot number 44, section C, Kitty and Alexanderville Country District. . . . ." Some difficulty was raised by the Registrar about the description of the property and after some investigations transport was duly advertised by the Registrar "of the eastern three-quarter lot number 44, Kitty" by the defendant Rampersaud to the plaintiff.

On the 13th February, 1928, transport was duly passed by defendant Rampersaud and accepted by plaintiff's attorney of the property as advertised. No objection was raised by the plaintiff or his attorney about the description of the property in the advertisement or in the transport. It may be mentioned that plaintiff left the colony before transport was passed but after the difficulty had been raised by the Registrar, and he alleges that he made no enquiries from the Registrar as to the nature of the difficulty, and he gave no instructions to his attorney about this.

Plaintiff then took possession of the whole of lot 44 including the western ¼ which had not been transported to him, and in April, 1928, commenced to erect a fence around the whole lot whereupon defendant Landry by notice in writing informed him that he had not purchased the western ¼ of lot 44 which was the property of Landry, who proceeded to break down such portion of the fence as was around the western ¼ of the lot. Plaintiff then- commenced this action against the defendants. At the trial plaintiff's claim for relief was amended whereby plaintiff claimed (a) a declaration that he had purchased the whole of lot 44 and that he was entitled to possession of the western ¼ of lot 44; (b) an injunction against defendant Landry; (c) $80 damages against defendant Landry for destruction of the fence, and in the alternative, (d) the sum of

$500 damages against both defendants for failure to transport the whole of lot 44.

No charge of fraud is made against the defendants or either of them nor are damages claimed for any fraudulent misrepresentation. I am satisfied that the agent did offer the whole of lot 44 to the plaintiff and described it as a corner lot and that he was authorised by Landry to do so and that plaintiff thought he was buying the whole of the lot including the western quarter. I am also inclined to take the view that Landry then thought he had a right to dispose of the whole. When it was that Landry discovered that he had no title that could be accepted by the Registrar is not clear. It must be borne in mind that the material description of the property was that contained in transport No. 628, which was the document on which Rampersaud's title depended and that the document of the 24th November, 1927, which alone evidences the contract refers for a description of the property to transport No. 628, the last document of title.

The plaintiff admits that he never looked at this transport a perusal of which would have brought to his attention the fact that the property transported to defendant Rampersaud was therein described as "¾ lot number 44, also known as lot 44, section C, Kitty," so that plaintiff would or ought to have realised that he had bought only the ¾ lot. The plaintiff further admits that he made no enquiries nor did he raise any question as to the description of the property when swearing to his affidavit, or at any other time.

In this case the executory agreement was carried into effect by the execution or passing of the transport, a transaction just as solemn, to my mind, as the execution of a deed.

Under these circumstances is the plaintiff entitled to any relief? The plaintiff himself in his affidavit filed with the Registrar gives the material description as "¾ lot number 44, also known as lot number 44, section C, Kitty." He obviously had the means of ascertaining exactly what he had purchased and enquiries in the matter would have settled that it was the eastern ¾ of lot number 44. He raised no objection after the property had been so described in the advertisement of the transport of the property by the Registrar and he accepted transport of the property so described. It seems to me that the doctrine '*caveat emptor*' applies to a purchaser in the position of the plaintiff. In *Brownlie* v. *Campbell* 5 A.C. at p. 937, Lord Selborne, L.C., states: "I assume them to be errors unconnected with fraud in the particulars, and when the conveyance takes place it is not, as far as I know, in either country the principle of equity that relief should afterwards be given against that conveyance unless there be a case of fraud or a case of misrepresentation amounting to fraud, by which the purchaser may have been deceived."

The claim of the plaintiff is substantially one for compensation for error or misdescription discovered after the carrying into effect of the contract by the passing of transport.

An examination of the authorities satisfies me that the plaintiff in the circumstances of this case cannot succeed in his claim for relief, there being no charge of fraud, no vendor's covenants and no clause for compensation in the agreement for sale. In Dart's

Vendors and Purchasers, ch. 14, s. 5, the rule is thus laid down: "With some few special exceptions a purchaser, after the conveyance is executed by all necessary parties, has no remedy at law or in equity in respect of defects either in the title to or quantity or quality of the estate which are not covered by the vendor's covenants." The exceptions are subsequently stated to be cases of fraud or where there is a total absence of the subject matter of the intended contract. This statement of the law was quoted with approval by Watkin Williams, J., in *Joliffe* v. *Baker* 11 Q.B.D., 255 and concurred in by A. L. Smith and Cave, JJ. In that case the vendor during the negotiations for sale made a representation to the purchaser *bona fide* that the land was three acres, when in truth it contained a less quantity, which error was subsequently discovered. It was held that after completion compensation could not be recovered in the absence of fraud.

Clayton v. *Leech*, 41 C.D., 103, was an action for rectification of a lease and compensation on the ground of a defect in title discovered after the execution of the lease. The Court of Appeal, upholding the decision of Kekewich, J., who dismissed the action, dismissed the appeal on the ground that as the compensation was claimed in respect of a defect of title which might have been discovered before the lease was executed and as there was no contract as to compensation, the plaintiff in the action was not entitled to succeed.

These principles were approved of in *Debenham* v. *Sawbidge*, 1901, 2 Ch. 98, and *Saunders* v. *Cockrill*, 1902, 87 L.T., 30, and I can find nothing in the judgment of the Privy Council in *Rutherford* v. *Acton Adams* (1915) A.C., 866, quoted by plaintiff's counsel at variance with them.

The case of *Palmer* v. *Johnson*, 13 Q.B.D. 356, can be distinguished as there was in that case an express clause in the conditions for sale giving a right to compensation.

Consideration of the authorities leads me to the conclusion that the principle can be stated as follows: where a contract of sale is carried into effect by a deed of conveyance or, in this colony, by a transport, after the purchaser has accepted the conveyance or transport and paid the purchase money no action can be maintained either at law or in equity for damages or compensation on account of errors as to the quantity or quality of the subject matter of the gale unless such error amounts to a breach of some contract or warranty contained in the conveyance or transport or unless some fraud or deceit has been practised upon the purchaser, or unless there is a contract for compensation referable to such error or misdescription. None of these exceptions exist in the case before me. None of these authorities was cited to me by counsel for the defendants who referred on this point to cases dealing with executory contracts.

In the circumstances the plaintiff is not entitled to any of the relief he claims and his action is dismissed with costs as against

defendant Rampersaud. No order as to costs in favour of defendant Landry.

Solicitor for the plaintiff, *A. V. Crane.*

Solicitor for the first-named defendant, *H. Fraser.*

Solicitor for the second-named defendant, *W. Dinally.*

[An appeal to the West Indian Court of Appeal has been lodged in this case].

WEST INDIAN COURT OF APPEAL

REPORTS OF DECISIONS

OF

THE COURT

SITTING IN

TRINIDAD.

[1927.]

JUDGES OF THE COURT:

SIR PHILIP J. MACDONELL, Kt., President (Chief Justice of Trinidad).

J. STANLEY RAE (Chief Justice of Grenada).

SIR ANTHONY DEFREITAS, KT. (Chief Justice of British Guiana).

ARMOOGUM
v.
TRINIDAD LEASEHOLDS, LIMITED.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD.

1927. JUNE 10.

BEFORE SIR PHILIP J. MACDONNELL, KT., C.J., PRESIDENT, SIR ANTHONY DEFREITAS, KT., C.J., AND J. STANLEY RAE, C.J.

Employers' Liability—Death of Workman—Fall from derrick—Negligence—Compensation for Injuries Ordinance, Cap. 42—Boring Regulations of 2nd November, 1923—Regulation 14—Failure to provide life line—Defective notice of appeal.

A workman employed by the defendant company, while engaged at night in taking down a broken crown block from the top of the derrick, fell from the top of the derrick and was killed. There were no life lines provided on the derrick as required by Regulation 14 of the Borings Regulations, 1923.

In an action by the father of the deceased workman against the defendant company for damages in respect of the death.

Held, (affirming, Savary, Ag. J.). To make the defendant employer liable, it is not sufficient merely to prove the breach of a statutory obligation, it must be further shown that the accident complained of was a consequence of or was caused by the breach of the statutory duty, and as the absence of the life lines was not causally connected with the accident occasioning the death, the action must fail.

Appeal dismissed.

When a respondent finds a notice of appeal insufficient he should notify the appellant with reasonable promptitude, so as to give him an opportunity of withdrawing or amending same and not wait to take his objection at the sitting of the Court.

THIS is an appeal from the judgment of Savary, Ag. J., dismissing claim by plaintiff for £2,000 gainst the defendant company in respect of the death of his son who at the time of his death was in the employ of the defendant company as a rigman and who was killed on 28th April, 1924, as the result of a fall from the top of a derrick while engaged on duties occasioned by his employment with the defendant company.

The appellant (plaintiff below) stated in the notice of appeal filed by him on 13th December, 1926, under rule 4 of the Rules of this Court, that "he appealed against the whole of the judgment" below, on the grounds "that the judgment of the learned judge was erroneous in law." To this notice the respondent company (defendants below) objected by notice of 1st June, 1927, that "the notice did not clearly or at all state the grounds of appeal," and asked for the appeal to be dismissed accordingly.

Argument was raised on this preliminary point, and counsel for appellant was invited to specify the errors in law contained in the judgment below and to state if he intended to raise any points *dehors* that judgment, and he answered by specifying two rulings therein which he considered erroneous, and by disclaiming any intention to go beyond its ambit. Under these circumstances

Regulation 14 reads:—"Every derrick shall be provided with a hemp life line or "life lines securely fixed to the derrick in any place where workmen are working in the "derrick and to the ground at least 30 feet from the base of the derrick to afford means "of escape from the top of the derrick."

we declined to entertain the preliminary objection and allowed the appeal to proceed. The two rulings stated to be erroneous, viz.: as to the scope of Rule 14 of the Borings Regulations of the 2nd November, 1923, (*Royal Gazette* of 8th November, 1923, p. 767), and as to the deceased having voluntarily taken upon himself the risk of accident, arose quite definitely in the judgment below, consequently a notice of appeal going to the whole of the judgment and assigning error in law as contained in it, does give respondents some notice of the case they have to meet. Moreover these two rulings assigned for error are almost, if not quite, the only portions of the judgment below which can be termed decisions on points of law. Therefore, again, the respondents could not be left in much doubt as to the case to be raised on appeal.

At the same time, we do not consider this notice of appeal a model. It was fortunate for the appellants that from the judgment below two reasons on points of law could easily be selected as the ratio of that judgment. The next appellant who frames his notice this way, may not be so fortunate, and it should be clearly understood that appellants should, in their own interest state definitely and perspicuously the grounds on which they rely. On the other hand when respondents consider the notice of appeal served on them to be insufficient, they should not wait five months before stating their objection but should do so with reasonable promptitude, so as to give appellants the chance either of withdrawing the appeal *in toto* or of amending. To object, as here, at the eleventh hour, and after the sitting of the Court has been arranged, is convenient neither to the respondents nor to the Court.

On the appeal itself the argument for the appellant is briefly this. Section 25 (1) of Chapter 142 reads as follows:

> "It shall be lawful for the Governor in Executive Council to make regu-
> "lations for the general regulation and safe working of mines, borings,
> "and quarries, including the conditions and limitations under which ex-
> "plosive intended to be used for torpedoing, shooting, or blasting any
> "well or boring may be transported and stored and the manner in which
> "such torpedoing, shooting, or blasting may be carried out."

The Regulations of 1923, were made under the powers so given, and No 14 of these lays down that every derrick shall be provided with a life-line, *&c.* The duty on the respondents, the defendant company, to provide this life-line is, we are told, an absolute one. But by their plea respondents admit that the derrick their property from which appellant's son lost his life by falling, was unprovided with such life-line. Then the respondents having broken an absolute statutory duty, are responsible in law for the death of the appellant's son. Had he lived they would have been liable to damages to him. As he has die d, they are liable to compensate appellant who was dependent upon him pecuniarily.

Now to us it seems that there is an obvious logical flaw in this argument. To make respondents liable for breach of this statutory obligation, it must be shewn that the accident complained

of was a consequence of or was caused by the breach of statutory obligation assigned. You cannot base your action on breach of statutory duty not shewn to be connected as cause with the accident as effect or say, "here was a breach of a statutory obligation, here also was an accident then the liability for the accident of the person disobeying that obligation is proved without more," you must go further and shew nexus of cause and effect between the obligation broken and the accident that has occurred. Common-sense seems to suggest this, and the cases cited to us are authority to that effect. In *Baddeley* v. *Granville*, 19 Q.B.D. 423, the failure to supply the night watchman required by statute, necessitated that the lowering of the deceased down the shaft where he met his death, should be done by an inexperienced boy; negligence to provide the suitable servant required by law was a factor directly tending to the accident that occurred. In *Davies* v. *Thomas Owen & Co* (1919), 2 KB., p. 39, there was an absolute statutory obligation to fence certain machinery but it was by that machinery that plaintiff's hand was damaged.

Now the learned judge below concluded on the evidence that the provision of a life-line as required by Regulation 14 could not have prevented the accident, and that the failure to supply the same was not the cause of the accident or a contributing factor thereto. We see no reason whatever to differ from this finding of fact, which is entirely substantiated by a perusal of the evidence in general, and of that of the witness Burnett (on which the learned Judge below placed much reliance) in particular. We accept then the conclusion of fact that absence of this lifeline and breach of the statutory obligation to provide same, were not causally connected with the accident occasioning the death of appellant's son.

If we understood counsel for the appellant correctly, he also contended that the statute enabling the Borings Regulations, 1923, to be made, was passed to ensure the safety of workmen or mines and that it imposed on the respondent company a larger duty than that to be found in those regulations. To accede to such an argument would be for this Court to make law, not to administer law that has been made. Section 25 of the statute enables regulations to be made which when promulgated in accordance therewith take effect as if in that statute. The extent of obligation imposed by that statute is measured by the regulations made in accordance therewith. It is the duty of the Court to interpret and apply those regulations but not to expand them or add others which the Legislature has not seen fit to provide. This, we would add, is the only statutory obligation contended for by appellant's counsel, and he expressly disclaims basing his case upon any Common Law obligation.

For the foregoing reasons we are of opinion that this appeal must be dismissed with costs.

HIGGINS
v.
CARTER AND OTHERS.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD.

1927. JUNE 10.

BEFORE SIR PHILIP J. MACDONNELL, KT., C.J., PRESIDENT, SIR ANTHONY DEFREITAS, KT., C.J., AND J. STANLEY RAE, C.J.

Friendly Society—Fiduciary position—Sale by Trustees to Treasurer—Dissolution of Society—Action after dissolution to set aside Sale—Laches—Cap. 286, S. 74, Subsections (3) (5) (7).

Where an award has been made by the Registrar of Friendly Societies for dissolution of a Society, an action by a member to set aside conveyance of property of the Society by the Trustees must be commenced within three months of the dissolution of the Society.

This is an appeal from a decision given in favour of the plaintiff below, now respondent.

The plaintiff-respondent was a member of a Lodge of the Knights of Pythias Friendly Society. This lodge possessed at San Fernando a certain piece of land with a wooden tenement house built thereon. In September, 1924, this lodge was in financial difficulties and at a meeting held apparently for the purpose it was decided to dissolve the lodge. It was found as a fact at the trial below that the resolution of the members to dissolve the lodge was silent as to the disposal of the land and of the house thereon, the property of the lodge; the matter had been discussed, but the question of what to do with this property was held over for a subsequent meeting, which, in fact, was never held. This finding of fact was not, as we understand, seriously, disputed, and we accept it without question. In the following month, viz.: October, 1924, the trustees of the lodge, Carter and Knights, two of the defendants in this action, sold the said property for the sum of $400 to Gordon, the treasurer of the lodge, who is the third of the three defendants in this action. All these three parties, the two defendant Trustees and the defendant treasurer had been present at the meeting of the lodge the month before at which it had been decided to dissolve the lodge, but at which the question of disposal of the property had been left over for a further meeting.

At the time of this sale the property was subject to a mortgage of $150, principal and unpaid interest $50, total, $200. The legal estate was in the mortgagee, consequently what the defendants Carter and Knights sold to the defendant Gordon was the equity of redemption merely. It is admitted that the mortgage still subsists and that what the defendant Gordon actually paid to the defendants as trustees for the lodge was the gum of $200 cash he becoming mortgagor in possession of the property in place of the lodge. It is stated that the property had been for

sometime past carried in the books of the lodge at being the value of $480 Gordon, therefore had got a property valued at this amount for $400, and a good deal of evidence was taken at the trial to the effect that each of these sums, the $400 for which Gordon got it, and the $480.00 at which it stood in the books of the lodge, was an undervalue, and that the property was worth between $650 and $1,000.

It would appear that the plaintiff Huggins, now respondent, grumbled a great deal and ever protested verbally to some or all of the persons concerned, the two defendant trustees and the defendant Gordon, against the sale but he did nothing beyond this; and the dissolution proceeded. It was assumed in argument that this dissolution was made under instrument of dissolution, but reference to the *Royal Gazette* shews that it was made under award of the Registrar. A notice dated 15th January 1925, was inserted in the *Royal Gazette* of 22nd January, 1925, and for the twelve consecutive issues following, to the effect that, by award of the Registrar, the lodge was dissolved, this award and *Gazette* notice took effect under section 74, sub-section (7) of which says that "unless within three months of the date on which that advertisement (sc : of dissolution) appears, a member or person interested in or having any claim on the funds of the Society or branch commences proceedings to set aside the dissolution of the Society or branch consequent upon such award, and the dissolution is set aside accordingly, the Society or branch shall be legally dissolved from the date of the advertisement." No copy of the Registrar's award, referred to in the advertisement in the *Royal Gazette*, was put in. The three months required by the sub-section expired on the 22nd April, 1925 and the lodge thereupon became legally dissolved as from 22nd January that year. On the 23rd November, 1925, *i.e.* seven months after the last of these advertisements of dissolution had appeared in the *Royal Gazette*, the plaintiff took out the writ in this action.

It is in evidence that defendant Gordon did not pay to the lodge the $200 for the equity of redemption, that the other defendants handed these and other sums available to the Registrar and that the Registrar has distributed their shares thereof to those members of the lodge willing to receive them. It is also in evidence that plaintiff refused to receive his share, thereafter commencing this action, in November, 1925, as has been stated.

The action came on for trial at San Fernando in March, 1926, when the trial judge held that from the parties to the sale and the price realised the sale, sc: of land and tenement house thereon, was improper, and must therefore be set aside. It is from this order setting aside the sale that appeal is now brought.

It is common ground that the society was dissolved on the 22nd January, 1925. Section 74 (7) of the statute, quoted above, gives a period of three months within which a member interested in or having any claim on the funds of the society or branch must commence proceedings to set aside the dissolution. The award of the Registrar (sub-section (3)) "shall direct in what manner the assets of the society shall be divided or appropriated," and there is evidence that the Registrar has done this, sub-section (5) of section 74 enacts

that every award under the section, whether for dissolution or distribution of funds shall be final and conclusive on the society or branch in respect of which the award is made and on all members of the society or branch," and there is evidence that this was an award that was both for dissolution and distribution of funds. Here the plaintiff allowed the three months given him by sub-section (7) to elapse without commencing proceedings to set aside the dissolution, and without taking any steps whatever and only commenced this action some seven months after the time allowed him by statute had expired.

True that his action is not in form one to set aside the dissolution but it assumes that the dissolution and the consequences flowing therefrom, in particular the distribution of the assets of the Society, have never taken place. There was a sale he sought to impeach, and funds, the proceeds of that sale, intact and undisturbed, still in the hands of persons, either the defendants Carter and Knights or the Registrar holding them in trust for him and the other members of the lodge. But he does nothing and allows the funds to be distributed and the dissolution to be effected. Then by the section this action is no longer to our thinking competent to the plaintiff. It would however be competent, although out of time, if the plaintiff could shew fraud, that is, if he could shew that the sale sought to be set aside was a fraudulent transaction. It is conceded, however, that the Court below did not find fraud; it contented itself with finding that the sale, having regard to the parties and to the price (being an undervalue), was improper, and this finding falls short of fraud. The plaintiff, then, rests his case on the equity which forbids a man in a fiduciary position (which it was conceded was the position of Gordon the purchaser) from buying property from those to whom he stands in such position. But the equity which will set aside sale or other transaction affected with this taint, must be asserted within a reasonable time which time has, we think, to be measured by the period, three months, prescribed by Section 74 (7) of the statute; and for these reasons, if this action, though not so framed, is in essence an action to rescind the dissolution of this lodge, then it is out of time *extra vires* the words of the section. If this action is independent of the question of rescinding the dissolution of the lodge, still its success will involve rescinding the acts accompanying that dissolution—*e.g.*, distribution of assets, which acts plaintiff has allowed to proceed—and this fact is strong evidence of acquiescence in the sale on the part of the plaintiff. In actual fact the plaintiff had a longer time within which to assert his rights, and raise his equity to set aside this sale. The property was sold in October, 1924, he knew of the sale at latest in November, 1924, the advertisement of dissolution was not published till 22nd January, 1925, and he had the statutory three months after that in which to come forward and impeach the sale. He did not do so, and we are bound to find that his equity to set aside the sale is barred by his acquiescence and laches.

A number of other points were raised on this appeal, questions as to parties, as to the right of plaintiff to sue at all, even if it were held that he had not acquiesced in the sale, as to the destination of the property, if it were held that the sale was to be set aside, and as

to the rights of the Crown to *bona vacantia.* We abstain from expressing opinion on these points since it seems to us that the appeal can be determined on the ground that plaintiff by his conduct acquiesced in the sale.

For this reason we are of opinion that this appeal must be allowed and the judgment of the Court below set aside. Respondent being a pauper, no order as to costs either in this Court or in the Court below. Judgment to be entered for the defendants.

Note:—Cap. 286 s. 74 s.s. (3) (5) & (7) are as follows:—

S.S. (3): If upon the investigation it appears that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured to be given by the society or branch, the Registrar may, if he considers it expedient so to do, award that the society or branch be dissolved, and its affairs wound up, and shall direct in what manner the assets of the society or branch shall be divided or appropriated; Provided always, that the Registrar may suspend his award for such period as he may deem necessary to enable the society or branch to make such alterations and adjustment of contributions and benefits as will in his judgment prevent the necessity of the award of dissolution being made.

S.S. (5): Every award under this section, whether for dissolution or distribution of funds, shall be final and conclusive on the society or branch in respect of which the award is made, and on all members of the society or branch, and on all other persons having any claim on the funds of the society or branch, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Ordinance.

S.S. (7): Notice of every award for dissolution shall, within twenty-one days after the award has been made, be published by the Registrar in the *Royal Gazette;* and unless, within three months from the date on which that advertisement appears, a member or person interested in or having any claim on the funds of the society or branch commences proceedings to bet aside the dissolution of the society or branch consequent upon such award, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of the advertisement, and the requisite consents to the application to the Registrar shall be considered to have been duly obtained without proof of the signatures thereto.

KHOURI *v.* KHAN.

KHOURI *v.* KHAN.

[No. 405 OF 1927.]

1929. JANUARY 19. BEFORE GILCHRIST, J.

Infant—Debt for non-necessaries—Promissory note given by another as security for debt—Whether note valid—Infants Ordinance, 1916—Lack of consideration—Sale of debt—Debt found to have been legally unenforceable—Failure of consideration.

The defendant's son, an infant, bought certain goods, not necessaries, from the plaintiff who ultimately obtained judgment by consent against the infant. Prior to the said judgment the defendant made a promissory note in favour of the plaintiff for the amount alleged to be owing by the infant.

The plaintiff contended that the defendant purchased the plaintiff's right to sue for the said debt, while for the defendant it was urged that the said note was given as security for the debt.

Held,—(*a*) That by virtue of the Infants Ordinance, 1916 the infant's alleged contract was unenforceable.

(*b*) That consequently the note given as security therefor was void of consideration.

(*c*) Semble, even if it were assumed that the defendant purchased the plaintiff's right to recover the said debt, yet, as the Official Receiver as Assignee of the infant's estate in insolvency had rejected the plaintiff's claim therefor, the consideration for the alleged purchase wholly failed, and the plaintiff's action was not maintainable.

The facts appear more fully in the judgment.

G.J. de Freitas, K.C., for the plaintiff.

J. A. Luckhoo, K.C., for the defendant.

GILCHRIST, J.: In this action the plaintiff claims from the defendant the sum of $610.02, principal and interest on a promissory note dated the 13th June, 1927, made by the defendant in favour of the plaintiff and payable on demand.

2. The grounds of defence are—

(*a*.) that the note was given as security in respect of a debt due by defendant's son, M. H. Khan, to the plaintiff for goods other than necessaries and that on the dates when the said debt was contracted by the said M. H. Khan he was an infant, and in the circumstances the said debt was irrecoverable and that the promissory note given in respect thereof was void and unenforceable.

(*b*.) that consideration for the note on which the plaintiff sues is void in law, therefore there was no consideration.

(*c*.) In the alternative if there was consideration for the said note the consideration wholly failed.

3. The facts are that on the 27th May, 1927, at the instance of the plaintiff a writ was issued against M. H. Khan for recovery of the sum of $490.30 being the balance of the price of goods sold and delivered by the plaintiff to the defendant (Action 162 of 1927).

4. The said M. H. Khan filed a consent to judgment.

5. On the 24th June, 1927, the plaintiff obtained judgment against the said M.H. Khan.

6. Previous to the plaintiff obtaining judgment, that is on the 13th of June, 1927, the defendant (R.A. Khan) having heard something telephoned the plaintiff, He then went to the plaintiff's business place where he and the plaintiff had a conversation.

7. It is not disputed that at the time the said M. H. Khan contracted the debt with the plaintiff he was an infant.

8. It is settled law that evidence can be given in respect of a promissory note, to show that there was no consideration, or a total failure of consideration, or that it was not to be operative until the happening of a certain contingency, or until the happening of certain events.

9. I see no necessity to set out what took place at the plaintiffs business place on the 13th June, 1927. The question for determination is, whether the contention of the plaintiff that the defendant gave him the note in payment of the debt of his son M. H. Khan, or whether the contention of the defendant that the note was given as security, is to be accepted.

10. The testimony of the defendant is strongly supported by the letter of the plaintiff to the defendant dated the 11th July, 1927, (Exhibit R. A. K. 4) and the conduct of the plaintiff subsequent to the 18th June, 1927.

11. I hold, therefore, that the promissory note sued on was given as security for a debt contracted by the defendant's son, M. H. Khan, when he was an infant.

12. The Infants Ordinance, 1916 (No. 19) declares that the debts of an infant, other than for necessaries, shall be absolutely void.

13. Counsel for the plaintiff admits that if the evidence that the defendant only guaranteed the debt of M. H. Khan is accepted, he the defendant would not be liable.

14. Suretyship and guarantee are correlative terms.

15. I uphold the first ground of the defence and hold that the defendant is not liable on the promissory note sued on.

16. With respect to the second ground of defence:—The Infants' Ordinance, 1916, by its terms enacts that a debt contracted by an infant shall not in any case form a valid consideration on which an action can be brought. (See *ex parte Kibble, In re Onslow* (1875. 10 Ch. 373); *Smith* v. *King.* (1892. 2 Q.B.D. 543).

17. The promissory note given by the defendant to the plaintiff in respect of the debt of his son, contracted when he was an infant, was for that which did not legally exist. In other words there was no existing debt enforceable in law for which the note was given. It follows there was no consideration for the said note. On this ground also the defendant is entitled to judgment.

18. With respect to the third ground of defence:—Assuming that on the pleadings and evidence there is consideration shown for the note and that the plaintiff's story that the note was given in payment of the purchase by the defendant of his son's debt to the plaintiff, is true and that the plaintiff in proceeding to recover the judgment which was obtained by him subsequently to the giving of the note was acting as agent and trustee for and on behalf of the defendant and was ready and willing to assign the said debt and judgment thereon, the evidence clearly establishes that on the defendant's son, the said M. H. Khan, being then adjudged insolvent the Official Receiver as assignee of the estate of the said insolvent rejected the claim made by the plaintiff in respect of the said judgment, on the ground that the judgment was in respect of a trading debt contracted by the said insolvent when he was an infant.

In such circumstances I am of opinion that the consideration for the note sued on wholly failed and the defendant is not liable.

Judgment for the defendant with costs. I certify for one counsel only.

Solicitor for the plaintiff, *E. de Freitas.*

Solicitor for the defendant, *L. Ramotar.*

INCE *v.* INCE, *et al.*

[No. 37 OF 1928.]

1929. MARCH 8. BEFORE SAVARY, J.

Husband and wife—Divorce—Confession of respondent—Whether evidence against co-respondent—Damages—Principles upon which assessed—Guilty wife abandoned by husband—Further misconduct by wife—Whether last co-respondent ought to pay damages.

A confession by a wife, respondent, to her husband cannot be taken as proof against the co-respondent.

Gabriel v. *Eliatamby* (1926) A.C. 133 followed.

The principles upon which damages are assessed in matrimonial causes may be summarised thus:—

(*a*) Only compensatory damages can be given.

(*b*) Exemplary or punitive damages are not permissible.

(*c*) Assessment of damages is not a necessary corollary to a finding that adultery has been committed by a wife.

The criteria of damages are: —

(*a*) The actual value of the wife to the husband, and

(*b*) Proper compensation to the husband for the injury to his feelings, the blow to his marital honour, and the serious hurt to his matrimonial and family life.

The Court accordingly refused to assess damages against a co-respondent whose misconduct with the respondent (wife) took place at a time when the petitioner had completely abandoned the respondent because of her previous misconduct.

E. F. Fredericks & L. Hopkinson for the petitioner.

S. J. Van Sertima for the respondent and the co-respondent Smith.

SAVARY, J.: The petitioner sues for a dissolution of his marriage with the respondent on the ground of her adultery and claims damages against the two co-respondents, Peterson and Smith. The respondent by her answer admits the adultery and sets up various pleas which were abandoned at the trial. Peterson has not entered an appearance and Smith admits the adultery in his answer.

The petitioner and one witness were called in support of the petition and neither the respondent nor Smith gave evidence and no witnesses were called on their behalf.

As against Peterson the only evidence of adultery is a confession by letter of the respondent to her husband and it is clear on the authorities that such a confession cannot be taken as proof of adultery against Peterson. See *Robinson* v. *Robinson and another.* 1 S. and T. 362 and *Gabriel* v. *Eliatamby* (1926) A.C. 133. The petition is therefore dismissed against Peterson.

It is not disputed that the petitioner is entitled to a decree for dissolution of his marriage but Mr. Van Sertima contends on behalf of Smith that no damages should be awarded against him on the grounds—

(1) That the actual value of the wife to her husband at the time of her adultery with Smith was nil.

(2) That Smith was not the person who seduced her away from her husband.

In support of these contentions *Butterworth v. Butterworth and another* (1920) p. 126 and *Boyd* v. *Boyd and another,* 1 S. & T. 562 were quoted. *Butterworth* v. *Butterworth* dealt with two important principles in reference to damages in matrimonial cases, viz., the nature of damages and the basis of assessment. As to the nature of damages, it is laid down—

(1) That compensatory damages only can be given

(2) That exemplary or punitive damages are not permissible, as it is not the function of the Court to punish adultery as such, or to penalise mere sexual immorality as such.

(3) That the Court is not bound to assess any damages against a co-respondent upon proof of adultery.

The basis of assessing damages is—

(1) The actual value of the wife to the husband at the time of the adultery.

(2) Proper compensation to the husband for the injury to his feelings, the blow to his marital honour and the serious hurt to his matrimonial and family life.

The fact that the co-respondent, Smith, is not the seducer is a material fact to be taken into consideration. See *Boyd v. Boyd and another,* 1 S. &. T. 562 and *Keyse* v. *Keyse,* 1 L.R. 11 P.D. 101.

The evidence on this petition is that the petitioner deliberately ceased and not without reason to support the respondent after he discovered her adultery with Peterson, and that it was some time after that she commenced her illicit relations with Smith, and lived with him which state of things continues to the present day. Petitioner states that he had no further regard for his wife after her adultery with Peterson and admitted that he had informed her by letter that if he found her in a republican country he would put an end to her. In other words he no longer regarded her as a wife in fact from that time. There is no evidence that he would have taken her back after her illicit union with Peterson, on the contrary the conduct and attitude of petitioner for which he had good reason, show that he had abandoned her at the time of her adultery with Smith.

It seems to me that on the evidence I can come to no other conclusion than that the respondent had ceased to be of any value to petitioner at the time of her adultery with Smith and that there was no injury to his feelings from that relationship as he had in fact none towards her. As Sir James Hannen, P., said in *Keyse* v. *Keyse* referred to above, in his charge to the jury, "What can any "husband expect who has separated from his wife, who he knows has no "means? What will follow? Why, that in the ordinary course of things she may "yield to the temptation of securing support from some other man. Therefore, "take those matters

"(including the fact that the co-respondent had not seduced the wife away from "her husband) all into your consideration in determining whether or not the "petitioner is entitled to damages, and, if so, to what amount."

In my opinion this is not a case where I should award damages against the co-respondent Smith.

The Order of the Court will be:

(1) Usual decree nisi granted.

(2) Petition dismissed as against co-respondent Peterson.

(3) Co-respondent Smith to pay the costs of the petitioner (as he knew that she was a married woman).

(4) No order as to costs of the respondent.

Solicitor for the petitioner, *S. W. Ogle.*

Solicitor for the respondent and the co-respondent Smith, *E. D. Clarke.*

WIETING & RICHTER *v.* D'ANDRADE.

[No. 329 OF 1928.]

1929. APRIL 26. BEFORE SAVARY, J.

Guarantee—Husband's debt—Guarantee given by wife—Independent advice—Whether always necessary—Undue pressure or influence alleged—What does not constitute such pressure or influence.

(*a*) The relation of husband and wife does not come within the equitable principle laid down in Huguenin v. Baseley, 14 Ves. 273, in other words, in the case of a transaction by way of gift between them, it will not be presumed that undue influence was exerted on the wife and the transaction if otherwise proper will be supported even in the absence of independent advice.

(*b.*) Where a person executing a document in favour of another is illiterate the Court will not give effect to it unless satisfied that the person understood its meaning and effect and the burden of so proving is on the person supporting the document.

(*c.*) In order to establish the plea of undue influence, facts must be proved to show that the influence was such as to deprive the person executing the document of free agency so as to amount to an extortion *in invitum* of the agreement or transaction sought to be set aside, and mere threats by a creditor evidencing a firm intention to take civil proceedings for the recovery of the debt do not constitute such pressure even though they might cause mental agitation on the part of the intending guarantor or surety.

(*d.*) The mere fact that a wife is often influenced in coming to the assistance of her husband because of his being urgently in need of money does not *per se* constitute undue influence.

The relevant facts are set out in the judgment.

H. C. Humphrys, for the plaintiffs.

S. J. Van Sertima, for the defendant.

Savary, J.: The plaintiffs, a firm carrying on business in Water Street, are seeking to recover $2,096.46 from the defendant under a guarantee, dated the 18th January, 1928, given to the plaintiffs by her.

Several defences were raised on the pleadings but at the trial two only were relied on:—

(1) that the defendant was illiterate and did not understand the nature and effect of the document, *i.e.,* the guarantee.

(2) that even if she did understand it, she was not a free agent through mental distress, poverty, lack of education inequality of position of the parties, and absence of independent advice, in other words, that she was unduly influenced by these circumstances to sign the document.

The defendant's husband, who had three provision shops in Georgetown, had been dealing with the plaintiffs for some time before this guarantee was given, and for about two years before this transaction the defendant had been in the habit of purchasing goods from the plaintiffs on her husband's behalf and making payments in respect of his account with the firm.

In January, 1928, on account of the state of the husband's account the wife was called on to give a guarantee and she did so. It is this guarantee that is the subject of the action, whether defendant called at plaintiff's store on the 17th or 18th January is immaterial especially as a comparison of the two versions of this interview, at which defendant was asked for the guarantee, given by Edghill, manager of the wholesale department of the plaintiff's firm, and by defendant, respectively, shows no material differences (reads evidence). The only real difference is that Edghill says that defendant made reference to her dead father's estate and defendant denies this entirely. It is a fact that she was a beneficiary under her father's will. Defendant has been described by the plaintiff's witnesses as a keen business woman in the buying of goods, and it is important that, in her account of the conversation with Edghill at this interview, she makes reference to the guarantee in that part of the context where you would expect it from a person who was familiar with the meaning of the word.

There was plenty of scope for Edghill and the Wongs to manufacture evidence in support of plaintiff's case, but I am satisfied that they were witnesses of truth and ought to be relied on. Now, what was this document? Surely it could be properly explained in a few words, *i.e.*, the defendant was making herself, *i.e.*, her property, responsible for her husband's account with the plaintiffs to the extent of $4,000. I have no hesitation in coming to the conclusion that Edghill explained the nature of the document to her and that she understood quite well its purport and effect. Defendant's subsequent conduct also confirms me in this view. She said to Wong, Jnr., immediately after its execution, "tell Mr. Edghill not to be afraid as the money will be all right and to "Wong, Snr., later on, Mr. Edghill is pressing for the account when I have al- "ready made myself responsible for it." In addition she never told her brothers about this transaction until the following May although they were her co-beneficiaries, and one of them an executor of the will, and she has been unable to give any explanation of the meaning of the words following, which she states Edghill used to her. "Your mother is old and if you lose the share left by "your father, your mother would leave nothing to you." It is impossible to accept defendant's version of what took place at the execution of the document. I am led to the conclusion that she is not altogether free from guile if the explanation which her brother said she gave to him of the document is accepted. She not only understands the

English language but gave her evidence in a way that suggested she was able to appreciate the meaning of words.

It was admitted that the relation of husband and wife does not come within the equity laid down in *Huguenin* v. *Baseley,* 14 Ves. 273, in other words, in the case of a transaction by way of gift between them, it will not be presumed that undue influence was exerted on the wife, and the transaction will be supported in the absence of independent advice, *Howes* v. *Bishop* (1909) 2 K.B. 390. But I was referred to *Price* v. *Price,* 1 DeG. M. & G. 808, as an authority for the proposition that where the person executing the document is illiterate the Court will not give effect to it unless satisfied that the person understood its meaning and effect, and that the burden of so proving was on the person supporting the document. In the view which I have taken the application of the principle referred to above to its full extent will not assist the defendant. With regard to the second ground of defence, previously referred to, the only circumstances that can be said to exist in this case are (a) poverty, (b) lack of education and (c) absence of independent advice, as I can find no evidence that the defendant was in a state of mental distress when the transaction was entered into, or that there was inequality in the position of the parties to the extent of influencing the free will of the defendant. The defendant was no doubt anxious about the state of her husband's health and his indebtedness, but I can find no evidence of mental distress. In addition the authorities submitted do not, in my opinion, support the proposition that, where circumstances such as those set out above exist the person entering into the transaction and executing the document cannot be deemed a free agent. I now proceed to examine the authorities. In *Shears v. Jones,* 128 L.T. 218, undue influence was pleaded and the case turned on that question of fact. The ground of decision in *Baker* v. *Monk,* 4 De G. J. & S.388 was inadequacy of consideration and inequality of position of the parties and the case is dealt with in the notes to *Chesterfield* v. *Janssen,* L. W. & T., 273 under the heading "Unconscionable Bargains" where the learned author at p. 274 sums up the result of the case as follows:— "In short wherever a purchase is made at a considerable "undervalue from a person who is poor, or ignorant, or weak, and the vendor has "no independent advice, the transaction may be set aside."

Mackin v. *Hibernian Bank* (1905) 1 Ir. 296, referred to at p. 687 of the third edition of Hart on Banking, appears to be another case where the ground of the decision was undue influence it is dealt with under the paragraph, "Undue influence."

In the Bank of *Ireland* v. *M'Manamy* (1918) 2 Ir. 161, referred to in Mew's Digest 1916, 250, the defence of *non est factum* succeeded on the ground that the Court was satisfied that, when the defendants signed a document purporting to be a guarantee, they honestly believed that it was a document of a wholly different nature, the mistake not being due to negligence on their part.

Mr. Van Sertima, counsel for defendant, next referred to Halsbury's Laws of England, Vol. 13, p. 19, where it is stated that equity will grant relief where there are such circumstances of pressure as to prevent the party being a free agent. An examination of

the cases referred to in support of that statement is necessary in order to see what are the circumstances of pressure that will affect the conscience of a Court of Equity, and whether any principles capable of practical application can be deduced from them.

In *A. G.* v. *Sothon* (1705) 2 Vern. 497, Equity refused to give effect to a bond executed under compulsion but allowed the parties to pursue their remedy at law, and *Ellis* v. *Barker* (1871) 7 Ch. App., 104 was a case of breach of trust, and pressure brought to bear on a *cestui que* trust by a trustee.

The next case referred to is *Williams* v. *Bayley,* L.R., L.H.L., 200, where the House of Lords affirmed a decree made by Vice-Chancellor Stuart declaring invalid a letter of charge given by a father to a Bank who held notes forged by his son. One of the grounds of the decision of the House was that the father was acting under the notion that the agreement to give security to the bank for the amount represented by the forged notes would relieve his son from the consequences of his criminal act (which in those days meant transportation for life) and that the fears of the father were stimulated and operated on to an extent to deprive him of free agency, and to extort an agreement from him for the benefit of the bankers. A careful perusal of the different judgments seems, to my mind, to establish that, the ordinary commercial pressure exerted by a creditor to obtain security for his debt, by a threat of civil legal proceedings, is not such undue pressure as to afford a ground of relief. Lord Cranworth, L.C., at p. 212 says: "Many grounds on which a Court of Equity has acted in such "cases do not apply in this case. The parties were not standing in any fiduciary "relation to one another, and if this had been a legal transaction I do not know "that we should have thought that there was any pressure that would have war-"ranted the decree made by the Vice-Chancellor. But here was a pressure of "this nature. We have the means of prosecuting and so transporting your son." This view of the law is also supported by the case of *Barnes* v. *Richards and another,* 50 W.R. 363. A consideration of the authorities lead me to the conclusion that Lord Chelmsford in *Williams v. Bayley* at p. 216 has correctly set forth the limits of this principle and that I am not justified in extending them. He states: "It appears to me, therefore, that this case comes within the princi-"ples on which a Court of Equity proceeds in setting aside an agreement where "there is inequality between the parties, and one of them takes unfair advan-"tage of the situation of the other, and uses undue influence to force an agree-"ment from him."

Some of the circumstances said to exist in this case were referred to in the judgments of the Court of Appeal in *Howes* v. *Bishop* but no weight was given to them. For instance, Lord Alverston, C.J., at p. 397 quoting with approval from *Bishopp's Trustee* v. *Frank* states: "If you look at her (the wife's) evi-"dence she says that the only influence was the ordinary influence that a hus-"band has on a wife. Unless you try to make out that, whenever a wife wishes "to help her husband with regard to borrowing money, the creditor is to as-"sume undue influence, you cannot maintain such a proposition, if you say she "was influenced by the fact that her husband wanted money, I agree she was, "but that is not undue influence."

And at p. 401 Lord Justice Farwell quoting from *Nedby* v. *Nedby* proceeds: "The only other circumstances upon which I am asked to set aside this deed is "that Williams, one of the witnesses attesting Mrs. Nedby's execution of the "deed, has deposed that she was agitated and distressed and signed it in a re-"luctant manner. It is impossible to act upon this evidence as a ground for set-"ting aside the deed."

Applying the various principles referred to above I must come to the conclusion that defendant was a free agent in the transaction and that no unfair advantage of her situation was taken by the plaintiffs, and that they used no undue influence to force this document from her.

It seems to me that business could not go on if an ordinary commercial transaction was liable to be upset by considerations of the nature that have been urged in this case and which go beyond any acted upon in the authorities that I have been referred to.

Prudence may dictate that, in the case of such a transaction with an illiterate wife it is advisable to have the document explained by a person competent to do so and whose evidence would be accepted without question by the Court. There will be judgment for the plaintiffs for the amount claimed with costs.

On counsel for the defendant giving an undertaking that no part of her share under her father's will would be paid to defendant during the period, a stay of execution is granted for two weeks.

REPORTS OF DECISIONS

IN

THE SUPREME COURT

OF

BRITISH GUIANA

DURING THE YEAR

1929

AND IN

The West Indian Court of Appeal

SITTING IN

TRINIDAD.

[1927.]

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JUDGES

OF THE

SUPREME COURT OF BRITISH GUIANA

DURING 1929.

SIR ANTHONY DE FREITAS, KT.	Chief Justice.
WILLIAM JAMES GILCHRIST	Puisne Judge.
JOHN LEWIS HENRY WILLIAM SAVARY	Puisne Judge.

TABLE OF ABBREVIATIONS.

(ADDITIONAL TO THE USUAL REFERENCES TO ENGLISH REPORTS).

A.J.	…….	Appellate Jurisdiction, British Guiana.
Buch.	…….	Buchanan's Reports, Cape Colony.
E. D. C	…….	South African Law Reports, Eastern Districts, Local Division.
L.J.	…….	Limited Jurisdiction, British Guiana.
V. L. R	…….	Victoria Law Reports, Australia.

WEST INDIAN COURT OF APPEAL.

As, at present, no reports of decisions in the West Indian Court of Appeal are published separately, the decisions in that Court are included in the British Guiana Law Reports.

METHOD OF CITATION.

The Reports will be cited as 1929 L.R.B.G.

ERRATA.

Page	*Line*	*For*	*Read*
30	19 from top	Purchaser's	Vendor's
30	19 from top	Vendor's	Purchaser's

ADDENDA.

Page	*Line*	*After*	*Read*
30	20 from top	whether maintainable	No fraud alleged.

TABLE OF CASES REPORTED.

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