39 pages.

ROYAL COURT
(Samedi Division) 18.

Hearing dates: 3rd, 4th, 5th October;
12th, 13th, 14th, 16th December, 1994.
Judgment reserved: 16th December, 1994.
Judgment delivered: 23rd January, 1995.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Myles and Le Ruez.

Between:	John Robertson	Plaintiff
And:	Gerald Henry Slous	Defendant
	AND	
Between:	Thermal Transfer Services Limited	Plaintiff
And:	John Robertson	Defendant

Advocate D.M.C. Sowden for John Robertson.
Advocate J.D. Melia for Gerald Henry Slous and
Thermal Transfer Services, Ltd.

JUDGMENT

THE LIEUTENANT BAILIFF: The original action brought by the Plaintiff, Mr. J. Robertson, against the Defendant, Mr. G. Slous, relates to the ownership of a Company, Thermal Transfer Services Ltd. By way of a separate claim which is set down to be heard in the same action the Company (TTS) claims that the Plaintiff in the original action is indebted to it in the sum of £5,000.

The *fins* of the original action claimed:

1(a) one half of the profits made by the Company since the date of incorporation, together with a sum equivalent to one half of the value of the assets of the Company such as they were or ought to have been as at 31st January, 1993, assuming the proper management and control of the Company and its assets; plus, as is usual, interests and damages.

In the hearing before us and by agreement between counsel these *fins* were amended to the effect that the Plaintiff asked for a declaration that he is a 50% shareholder or in the alternative that the Defendant holds 50% of the shares in the Company in trust for the Plaintiff, or in the further alternative that the Plaintiff has a half share of the partnership in the business run by the Company, the precise wording reading as under:

> *"declare that the Plaintiff is entitled to a 50% shareholding in the Company or the Defendant holds 50% of the shares in the Company on trust for the Plaintiff and/or the Plaintiff and the Defendant are equal partners in relation to the business of the Company".*

The second claim which is brought by TTS against Mr. Robertson is to the effect that in February and March, 1992, to help with the costs of his honeymoon, the Company loaned £5,000 in two *tranches* to the Plaintiff in the original action on express or implied terms as to repayment and that payment is now due; whilst Mr. Robertson claims that at all material times he and Mr. Slous were partners in the business and that they had agreed that each would withdraw £5,000 from the business being profits from the business.

Mr. Robertson's evidence in chief was simple and straightforward.

Aged 40 he is by trade a plumber. He came to Jersey in 1979. In 1982 or 1983, whilst working for Mr. McAllister at Overdale, he had come into contact with Mr. Slous, the Defendant. Subsequently he had begun to work at night and at weekends for the Defendant. He knew that the Defendant had interests in hotels and businesses.

The Plaintiff's then wife, Mrs. A. Robertson, was working as the Defendant's Secretary, (a statement confirmed by Mrs. Robertson) and the Plaintiff claims that he fell into the habit of joining his wife and the Defendant for a drink at a local hostelry, the New Park Hotel.

In late 1984, the Defendant had asked the Plaintiff whether he would like to go into business with him. He, the Defendant, would provide the initial money to start the business and the Plaintiff would look after the plumbing side.

According to the Plaintiff this meeting took place at the New Park Hotel and it was agreed that it should be a fifty/fifty partnership with no money being taken out by either side for three years while the business was being built up. The Plaintiff and the Defendant had agreed and shaken hands on it. There had, he recalled, been a long discussion about the name of the Company which was to be formed.

The discussion had taken place in the presence of witnesses who included his then wife, Mr. John Howard, Mr. John Cronin and a Mr. Nigel Burrows.

The terms of this discussion were confirmed by the Plaintiff's then or first wife, Mrs. A.P. Robertson. She stated that the Defendant approached the Plaintiff in the New Park Hotel on a Friday evening, probably early in 1984, with an offer of a fifty/fifty partnership in a plumbing Company. She further stated that Mr. Howard was present, as were Mr. Burrows and Mr. H. Smith, for whom the Plaintiff had previously worked, and stated that the Defendant had asked the Plaintiff to pick the name of the Company.

The arrangement was, she said, that G.S. Builders - one of the Defendant's Companies - would pay the wages and that the Plaintiff would be paid a weekly wage until the Company was formed and started to make a profit. The Defendant had told the Plaintiff not to worry as he would sort the paperwork out.

The Plaintiff's account continues that on the following Monday he called on the Defendant at his office in Lewis Street where they again spoke about the Company to be formed. Again the Defendant had said that he would sort out the legal side. They had shaken hands on a fifty/fifty partnership and the Defendant had said *"you know that is legal and binding"*. The Plaintiff had asked him if his name would be on it, to which the answer was that the Defendant would get the lawyers to do it.

On this the Plaintiff had taken it that they were now in a fifty/fifty partnership and had gone straight off to work at the Leighton Hotel, an hotel in which the Defendant had an interest.

There was, he said, an initial delay in the formation of the Company due to problems with the name. The Defendant was to supply the initial money, not least with work in the pipeline, for example, a big contract at "Vermont", another property in which the Defendant had an interest.

He then set to work. He reiterated that he would take out a small wage and would take no money out for at least three years. He had taken no holidays (except for a week paid for by suppliers) was on 24 hour call, worked weekends and late at night and took no time off.

In cross-examination he reiterated his belief that half the Company was his.

It was put to him in cross-examination that he had no capital and that in effect his position was no different to that of any other plumber. With this proposition he flatly disagreed. He was, he said, a good plumber and they are few and far between. It

was, he said, the Defendant who had wanted the partnership, for he had asked him if he could handle the plans for "Vermont".

Put to him that plumbers with a poor financial record such as his are replaceable, he replied that by acting in this way the Defendant was getting his work on the cheap. He would get back 50% of the profit plus it was agreed his Companies would be billed out at a 10% mark up on materials, a considerable reduction on the usual 20% mark up.

In any case, however many plumbers there were, that was the agreement; and on a couple of occasions the Defendant explained that he, the Plaintiff, would have to pay half of any losses.

His first wife, he repeated, knew of the business relationship. This was confirmed by Mrs. A. Robertson whilst Mrs. C. Robertson, his second wife, stated that the Plaintiff had made it clear to her that he was more than just an employee and that this was common knowledge amongst other employees in the Defendant's Hotels.

Mrs. A. Robertson stated that on the Monday morning after the meeting at the New Park Hotel the Plaintiff had indeed come into the Defendant's offices in Lewis Street to meet him, Mr. Howard also being present when they (the Plaintiff and the Defendant) went into further detail, including the point that the Plaintiff would be paid a weekly wage until the Company was formed and started to make a profit and that the Defendant would sort out the paper work; and that they had, once again, shaken hands in the office.

She confirmed also that the work for the Defendant's Companies was costed differently to other work, materials being charged out at 10% and the labour charge at a lower rate. In cross-examination she stated that she knew her then husband had a fifty/fifty share under what she described as a gentleman's agreement.

So far as the operation of the Company was concerned, the Plaintiff claimed to have worked very long hours at a small initial wage which rose slowly through the years. He was, he said, on 24 hour call and charged no extra for overtime.

Both his first wife, from whom he had separated in May, 1986, and his second wife, Mrs. C. Robertson, who first met him in 1987, stated that he did indeed work long hours and that he was on 24 hour call. That the Plaintiff would work round the clock at times and continue the next day was also put to the Court by Mr. D.G. O'Connor who had been a driver at the Holiday Village.

That he worked these hours was challenged in cross-examination. Time sheets for 1991 and 1992 were put to him,

It was not suggested to him in cross-examination that these conversations had not taken place.

Mr. V. Fisher, for whose opinions of, and differences with the Defendant *(v. infra)* stated that he was employed from March, 1989, to March, 1990, as a buyer for the Defendant's Companies. The Defendant introduced the Plaintiff to him as his partner and both he and Mr. Cotillard so referred to him on numerous occasions. His view was that the Defendant was happy with the Plaintiff. In the witnesses' view he was a good partner, a good worker, and an asset to the Company.

Again it was not put to him that such conversations had never taken place.

Mr. N.J. Cousins, a residential home owner and a Centenier of St. Helier told the Court that when he was installations manager at the Gas Company he had frequently met the Plaintiff. At the Gas Company it was always understood to be a partnership between the Defendant and the Plaintiff. Apart from that, following a Board Meeting some 8 or 9 years ago, the Defendant had been talking of the Plaintiff in glowing terms. The Plaintiff had given the Defendant a cut glass decanter as a wedding anniversary present, and the Defendant had said he had offered the Plaintiff his 50% shareholding but that the latter had said they had started as partners and had just as well carry on as partners. The Defendant was so happy that he was talking of investing more money in the Company. In his business dealings he had not considered the Plaintiff to be acting as a Manager. He considered himself to be on better terms with the Defendant than the Plaintiff.

Mr. C. Lewis, an employee of Normans Ltd., confirmed Mr. Cousins' evidence, he having been present at the meeting described by that gentleman. It was put to him that he had only heard of this claim 14 months ago when the Plaintiff had been to see him, which he strongly denied. We have to say that his account of the conversation which he had with the Defendant does not shew the Defendant in a favourable light.

Mr. R. Maddison gave evidence to the effect that some indication had been given to him, he suspected by the Defendant, that the Plaintiff had an interest in the Company. His evidence, though, was so vague relating to the point at issue on account of a lack of knowledge of the situation that it was of little help to the Court.

Mr. B.P. Hegarty, now a driver for the ambulance service but for a number of years the manager of the Trafalgar Hotel at St. Aubin, stated that he knew both parties; that the Plaintiff habitually used his bar and that on occasions - perhaps five or ten - the Defendant had referred to the Plaintiff as his partner. On one occasion when he had attempted to cash a cheque, the

Defendant had said to him, in terms, *"you know Mr. Robertson, my partner, he can vouch for me".*

Mr. M. Meade, a carpenter by trade, was employed by the Defendant as a carpenter at the Holiday Village between February, 1989, and March, 1990. On several occasions the Defendant referred to the Plaintiff as his partner. Asked why the Defendant should make this statement to a carpenter, one of ten or twelve working there, he replied that refurbishing the bar he was in personal contact with the Defendant most of the time and that conversations had become quite personal.

He added that the only other person introduced to him as a partner was Mr. Gordon *(v. infra).*

Finally, on this point, Mr. O'Connor, in addition to his evidence *supra,* told the Court that although he was only a driver, he, too, had overheard the Defendant in the Quarry Bar stating, in a manner which could be overheard, that the Plaintiff was his partner.

A good deal of emphasis was placed before us on the question of the issue, or rather non issue, of the share certificates.

It will be recalled that in his evidence in chief *(supra)* the Plaintiff stated that he had asked the Defendant whether his name would be on the Company to which the Defendant had replied that he would get the lawyers to do it.

Despite this, the Plaintiff stated that he began to ask for his share certificates quite early on but that the Defendant kept making excuses, saying that he was too busy; that he would get it sorted out; that there was no problem; and that the Plaintiff was not to worry about it. When the Plaintiff and his first wife split up, which was in May, 1986, the Plaintiff claims that the Defendant said that it was a good job he had not given them to him, or his wife would have had them (or half of them).

Another occasion on which the Plaintiff claims that he had asked for them was when the Defendant had heart trouble, when he was told not to worry as he (the Defendant) would sort it out with his lawyers or would sort it out in his Will. He accepted these excuses as he had no reason to distrust the Plaintiff.

So far as the 1986 accounts were concerned, which were tendered to the Court during his cross-examination, he agreed that his name was not shewn on the accounts as a shareholder but maintained that the Defendant had told him he was not to worry: his name might not be on it but that "they" were acting for him.

Again, in cross-examination, he was pressed on any enquiry he might have made of Mr. M. Cotillard, who by 1989 had become the

Company Secretary. He claimed to have expressed concern to Mr. Cotillard who told him (the Plaintiff) that the Defendant had said he was a fifty/fifty shareholder and that although he had not yet got the shares, the Defendant would sort it out. He thought that this would have been quite soon after Mr. Cotillard's arrival.

Again, at the time of the *remise* - probably in late 1991 or soon after - he claimed to have raised his claim with whoever came on behalf of the Court to examine the books, but again, on his own account, did not press his claim, which he thought had been ignored. He did this, he claimed, because the Defendant had promised him and had told other people. He agreed, however, that he never saw the Minutes of any Meeting of the Company or the Directors.

In her evidence, Mrs. C. Robertson told the Court that when the parties and their wives were on holiday in France, the Plaintiff was told that he would get his full shares; that it had taken too long; and that now he was settled and happy the Defendant would sort out his shares.

As part of his case, and apart from the references made in passing, as it were, by witnesses as to his character, the Plaintiff called Mr. W.J. Meade. Mr. Meade had been a principal in an Estate Agency with some 48 years' experience. He gave a glowing recommendation both personal and professional of the Plaintiff. Not only did he find him reliable and honest, but he confirmed that on occasion he would turn out in emergency in the middle of the night.

Against that a series of questions were put to the Plaintiff alleging first that he had profited at the expense of the Company by having work done at his house. The Plaintiff stated that the Defendant knew of it and did not disagree.

Second we understood that it was suggested that he had been less than diligent in seeing to the affairs of the Company in 1992 whilst setting up his own business.

Third, he was questioned about various contracts: with a Mr. Coward with regard to a property, "St. Kilda", and with regard to a contract at the Blenheim Hotel.

These issues appear to us to be irrelevant to the point in issue before us which concerns the arrangement when the Company was set up. We saw no reason to doubt the Plaintiff on the evidence before us, but prefer to make no finding on these three points at this stage.

So far as the Defendant was concerned the Plaintiff brought a good deal of evidence before us.

The Plaintiff made it quite clear that he liked and trusted him and indeed, to our mind, whatever the arrangement between them, that was implicit in the way the Company was set up and in the initial working arrangement. In asking for the share certificates he stated that he had no reason to distrust him.

He described his relations (pre 1992) with the Defendant as that he found him friendly; that he trusted him; that he (the Defendant) was always praising him (and introducing him as his fifty/fifty partner); and that apart from any other social contacts the parties were sufficiently friendly in late 1992 to go on holiday together in France in a 22 ft. camper van, the purchase of which *(v. infra)* had caused the Plaintiff some unease. The Defendant's promise clearly carried weight at the time of the *remise*. He seemed to be helpful. When scenes had taken place he had not been too concerned. He believed that the Defendant was telling the truth, and repeated this in re-examination when questioned about the *remise* and the break-up of his first marriage.

Equally, Mrs. A.P. Robertson trusted the Defendant to keep his word with the Plaintiff, a statement which she repeated with emphasis in cross-examination.

Equally, Mrs. C. Robertson, asked in cross-examination whether she would have trusted the Defendant as her partner, replied that she had had no cause not to trust the Defendant. As a Hotel Manageress he had been her employer until, as a result of pressure and problems with him, she had given one month's notice to leave his employment, probably in late 1989. As the Plaintiff's wife, she had always thought the Defendant trustworthy. After she had left his employment, the Plaintiff, the Defendant, and their respective wives, were friends.

However, another and a darker side of the Defendant's character was put to us. Mrs. C. Robertson gave evidence of a deplorable scene which took place in the bar when the Defendant stated that he would close the Company down. On her account she went to work the next day and the Defendant apologised to the Plaintiff.

The Plaintiff also described this incident. It was put to him that he was sacked. He admitted that the Defendant did say that, but added that it was in the context of the Defendant being blind drunk and ranting and raving on. Later he had told the Plaintiff not to worry about what he said when in that state, as *"we'll always be partners"* (and elsewhere the Plaintiff had described the Defendant as placid except when he had the drink in him). According to the Plaintiff the row ended the next day or a day or two after when they passed on the road to the Holiday Village and the Defendant rolled down his window and apologised to the Plaintiff.

That this type of incident appears not to be uncommon was apparent to us from the evidence of Mrs. A. Robertson who told the Court that she had ended her employment with the Defendant's Company in 1988 following the Christmas Party. They had all had quite a lot to drink and the Defendant had sacked her which he had done before. On previous occasions she just used to go into work but on this occasion she took him at his word and did not go back. She was not cross-examined on this aspect of her evidence.

Quite apart from this, other witnesses came forward to claim that they had trusted the Defendant with unfortunate consequences.

We have adverted above to the evidence of Mr. C. Lewis and the manner in which the telephone call put to him was described by him.

Mr. Fisher *(v. supra)* was anything but happy with his dealings with the Defendant.

His terms of employment with the Defendant, or his Companies, were, he claimed, basic salary plus a commission on costs saved. When he requested payment of his commission at the end of the year it was refused. He had worked hard, had made considerable savings and was not pleased: indeed he felt he had been robbed. The sum had been between £12,000 - £15,000. He had not sued: it was his word against that of the Defendant and there was no evidence.

It was not put to him that his account was fictitious, as he was merely asked why he did not sue.

Apart from Mr. Fisher, the Court heard evidence from Mr. I.G.A. Gordon, an electrician by trade, who is the brother-in-law of the Plaintiff, being the brother of the present Mrs. Robertson.

He had come into contact with the Defendant when the Defendant had bought the Holiday Village and in 1987 had approached him (the Defendant) to consider whether he would start up his own Company. The Defendant had agreed and said he would put in the money and that for the first three years the witness would be a one-third shareholder or partner.

He claimed to have been a Director and that he was led to believe that if he got the business in he would receive one-third of the profits.

It was put to him that the Company had not made a profit (and not that he was making an untrue claim) to which he replied that the trading profit in the first year was £2,800.

He agreed he had had certain benefits - a rebate of rent, a holiday in Cyprus and the use of a van to go to Scotland which he

returned in a damaged condition - but stated that he had not pursued his claim but had walked out with a clear conscience. He reckoned he had wasted three years of his time.

Early in 1992, prior to his second marriage, it is common ground that the Plaintiff had received a total of £5,000 from TTS. This is the subject of the counterclaim, and we will return to this in due course.

Following this and just after their marriage in April, 1992, the parties went to look at a house at Les Ruisseaux the purchase of which was being contemplated by the Plaintiff and Mrs. C. Robertson. The Plaintiff had mentioned it to the Defendant and spoke to him of taking £30,000 from the Company (the Defendant to do the same). The Defendant went to look at the house with the Plaintiff and Mrs. C. Robertson, but when the Plaintiff said that he would need to take the books to the Bank the Defendant flatly refused, stating that no one was looking at his books.

This account was largely confirmed by Mrs. C. Robertson, who added that the Defendant could take the deposit from the Company as part of his partnership. It came to nothing as the Plaintiff decided in any event not to proceed on account of parking problems.

Finally, by his account, the Plaintiff became dissatisfied at or towards the end of 1992. He was in the office looking at some paperwork, some of which did not seem to be correct. Mr. Cotillard was reading off figures on a computer and the Plaintiff had seen £3,000 going out to pay for a camper van. He had known of its purchase as the Defendant had said he would have to ask him, the Plaintiff, as he owned half the Company and he (the Defendant) could not buy it in any other way. On being pressed the Defendant said he would pay for it. In passing we may add that it seems clear that it is this camper van which the parties and their wives shared on the holiday which we have mentioned above.

In addition the Plaintiff stated that he had noticed over a three or four year period that accounts due by some of the Defendant's Companies had been written off. When he approached the Defendant he had said it was Mr. Cotillard's mistake. He had raised this point four or five times.

Apart from this *(and v. supra)* he had enquired of Mr. Cotillard why the Company was paying interest to the Bank (at the time when the guarantee had been given) when there should have been a lot of money in the Company. Mr. Cotillard had told him the Defendant's Companies owed a lot of money, which the Plaintiff had queried, as the outside contracts paid and kept the Company going. The Defendant had said the money would be paid and he would get it in from house sales.

After being ignored in the *remise* and upon no action being taken in respect of his complaints, he called to see his present solicitor, Mrs. C. Canavan, on 4th January, 1993.

This was the first time he had consulted a solicitor about his position in the Company, as he had not done so at the time of his divorce in 1989, as he and his then wife split everything down the middle. There had been, he said, no reason to worry about that side.

This account was confirmed, not only by Mrs. C. Robertson, but also by Mrs. A. Robertson who stated that she had sought nothing. She was working on the mainland and had kept the car whilst he had everything in the flat.

However, as we say, on 4th January, 1993, he did call on Mrs. Canavan. Before doing so, he had had a few conversations over the telephone over Christmas, 1992, and the Defendant would tell him the Company had been paid when he knew this was not so. He felt as if he were being twisted round about.

In cross-examination he stated that it was a build-up of several things. By Christmas he was very worried and regarding one account threatened to go to the Fraud squad. By early January, 1993, he said, he could take no more - there were papers missing and promises everywhere. He was, he said, floored.

After seeing his lawyer, he rang Mr. Cotillard to suggest that he would settle for the vans and a little stock and would do his own thing. It was a three-way conversation: he would telephone Mr. Cotillard who would telephone the Defendant and would then relay the message. He stated that the final message was that this would be agreeable and that he was to telephone the next day.

When the Defendant telephoned the next day he was shouting and swearing. He said he would agree to this but his wife had said the Plaintiff was not loyal, so was to get nothing. At the end of the telephone call he calmed down and said *"if I've £1 left you can have 50p of it"*.

It is common ground that at the time when he went to see Mrs. Canavan he was suffering from influenza, bronchitis and nerves and was in a poor state of health. He was described by her as being very upset and for a long time, she thought that he may have been signed off sick. His state of health was confirmed by Mrs. C. Robertson.

Mrs. Canavan's note which was produced to us makes it clear that the Plaintiff thought then that he was entitled to half the Company. Her note also confirms that the Plaintiff was

considering the offer of settlement which he put to the Defendant and which he states was refused. Following this, Mrs. Canavan wrote to enquire the position in the following terms:

"G. Slous, Esq.,
Thermal Transfer Services Limited,
The Office,
White Oaks,
Park Estate,
St. Brelade,
Jersey. *7th January, 1993.*

Dear Mr. Slous,

Re: John Robertson

I have been asked to write to you on behalf of Mr. John Robertson with regard to his withdrawal from the business of Thermal Transfer Services Limited. I understand that Mr. Robertson has already told you that he no longer wishes to have any connection with Thermal Transfer Services Limited and that he wishes to commence business on his own as soon as possible. In order that I may advise him on the correct way to effect his withdrawal I would be obliged if you would provide the following:-

1. *Confirmation that Mr. Robertson is a director of the Company.*

2. *Confirmation that Mr. Robertson is a shareholder of the company and, if so, details of his shareholding.*

3. *Details of the whereabouts of the Company books.*

4. *A copy of the latest accounts of the Company.*

I understand from Mr. Robertson that you have indicated that you wish to sell the Company. Obviously if Mr. Robertson is a shareholder then he will be entitled to express an opinion as to whom and for what price the Company is sold. I would be obliged therefore if you would provide me with the above information as soon as possible.

Yours sincerely,

C.E. Canavan (Mrs)".

Last, we turn to the counterclaim. The Defendant claims that the Company lent to the Plaintiff £3,000 on 18th February, 1992 and £2,000 on 20th March, 1992. These are claimed to be personal

loans on account of the Plaintiff's forthcoming marriage (on 1st April, 1992) and honeymoon; and were, of course, made prior to the inspection of the house at Les Ruisseaux.

The papers before us show no minute authorising the loan, nor any note of hand signed by the Plaintiff.

The Plaintiff readily admitted that he had indeed had small loans from the Company to help him with his difficulties in meeting the demands of the Comptroller of Income Tax which he had repaid out of wages but was adamant that this was not a loan.

His account was that before he got married he wanted some money out to get married. The Defendant had said there was no problem, and then said there was no money, a point on which the Plaintiff disagreed with him as there was money coming in for outside work. It was, he said, part of his share and he agreed that the Defendant should have the same although he owed £7,500 for his house. The Plaintiff had spoken to Mr. Cotillard who agreed that instead of taking £5,000 the Defendant should first repay what he owed. The Plaintiff added that he himself always paid his own accounts.

After Christmas - and as we understand after the association had broken down or was at any rate about to do so - Mr. Cotillard had told him that the Defendant had changed the £5,000 from either Directors' fees or wages (the Plaintiff was not sure which) to a loan.

He was cross-examined on this when it was put to him that it was a loan, a statement which he strongly denied, claiming that it was part of his share of the profits. That the Defendant had asked for the money back was a downright lie. In re-examination he maintained that he had explained that it was money from Company profits and directors fees or wages: or as he put it, money from that but not a loan.

Mrs. C. Robertson always understood it to be part of her husband's Director's drawings from profits and strongly maintained in cross-examination that these monies were not a loan. Her husband, she maintained, would not "ask" money from anybody.

To summarise, therefore, there are a series of allegations put forward by the Plaintiff.

First, following the meetings at the New Park Inn and at the Defendant's offices, an agreement had been reached that the parties would enter into some form of partnership on an equal basis, with the Plaintiff providing the work and the Defendant providing the money.

Second, that a plumbing Company, TTS, was indeed formed in pursuance of that agreement.

Third, that in further pursuance of the agreement and in reliance on it, the Plaintiff worked, for a number of years, very long hours at a comparatively small salary. He had a very high degree of autonomy and when there were important decisions, for example purchase of equipment or the camper van, they discussed these as partners.

Fourth, that although no shares were issued, he signed on occasion as a Director; and was described on the Bank Mandate as "Managing Director". Furthermore, he had difficulty in reading and writing and was totally unsophisticated in business: and he trusted the Defendant, with whom he was on friendly terms.

Fifth, that the Defendant had frequently held him out as being a "partner" in his plumbing business, and this to a variety of witnesses.

Sixth, that despite his lack of sophistication, he had nonetheless begun to ask for his position to be regularised, but had been put off by a variety of excuses; his anxiety increasing as a result of the visit to the house at Les Ruisseaux and his enquiries during 1992.

Seventh, that despite the deplorable scene to which we will refer again when the Plaintiff and the Defendant parted company, they very rapidly made it up again, which would be unlikely in a master and servant relationship.

Eighth, that to lead people on in this way and then to deny any liability towards them was a constant habit of the Defendant who had done this on at least two other occasions.

Ninth, and this concerns the counterclaim in a total of £5,000, this, he claims, were profits from the Company which were part of his entitlement.

The defence put by Mr. Slous was that, quite simply, none of this had ever taken place. He had employed the Defendant as a plumber and he was indeed, as he put it, "just a plumber": a man who was, when he was employed, in debt, needed a job, was never promised anything more, had never been held out as anything else, had in any case little (in the way of funds) to contribute and who had let him down badly when he left. He had no reason to give him any profit other than his wage and did not do so; although, as he had in other cases, he had advanced him money (for his second marriage) which he now wanted back. As for the other allegations (by Mr. Fisher and Mr. Gordon) he denied these as well.

Turning now to his answer to the allegations in detail, Mr. Slous informed the Court that having left school without any qualifications he had worked in the building trade, had built his own house when still young, had become involved with an hotel in which he had taken an interest and then, whilst still in his twenties, had built a well-known large hotel. After that his interests had widened and he had a variety of properties and businesses which had grown to such an extent that by 1990 he had a holding which he estimated at £21 million against which he had outstanding some £7 million in loans. In December, 1989, he had had a triple heart by-pass, and the period of his recuperation had led to problems which led to a *remise de biens*.

He stated that he had had, effectively, only two partners. One was Mr. K. Beaugié who had a 25% interest in Tego, a carpentry firm; and another less satisfactory one in a bicycle business. The business he shared with Mr. Beaugié, of whom he spoke very highly, had been very satisfactory. He had discussed the Tego accounts with Mr. Beaugié, who was also paid a Director's fee. These however were only two of a wide variety of companies.

Had he been looking for a partner, he would have looked for someone with qualifications to live here and who could have matched him £ for £, i.e. who could have put as much into the Company as he did. He had never asked Mr. Beaugié, to whom he had given his shares, but was sure that had he had to do so, he would have done so. His other, less satisfactory partner, had indeed done just that.

He had met the Plaintiff when the latter was working for Mr. McAllister, after the Plaintiff had lost his job there. Mrs. A. Robertson (who was his Secretary) had come to him and asked if he could find work for the Plaintiff as he had no work. The result was that the Plaintiff did what was described as a small job which was satisfactory. His then plumber, although in many ways satisfactory, would not work at weekends and could not take decisions. He was, though, alright for maintenance work.

Furthermore, the Defendant was finding complications in running a plumbing business as part of a building business. *Inter alia,* it was becoming difficult to control the stocks. Further, again, although he could have found a plumber for his venture at "Vermont", where the plumbing work alone cost £40,000, he could not have managed with his existing plumber whom he thought incapable of reading plans.

The Defendant therefore decided to form a company, taking the name from that where the Plaintiff had learnt his trade in Scotland. The Company's basic purpose was for maintenance of his various Hotels and for call-outs and so forth.

No business terms were discussed, though they must have discussed money. The Plaintiff would have known nothing about the incorporation of the Company when it was formed.

As to the meeting at the New Park Inn, which the Plaintiff (and Mrs. A. Robertson) claimed had taken place, Mr. Slous stated that it had, quite simply, never taken place. He himself had habitually used the New Park Inn but the Plaintiff was very rarely there. He would not have discussed business nor even the name of the plumbing business at the Inn. He was amazed at the evidence given by the Plaintiff (and Mrs. A. Robertson): indeed, he did not think he had every had a drink with any of his Secretaries in any public place as he valued his marriage too much. Furthermore, asked if Mr. Cronin and Mr. Burrows were there, he stated that he had never discussed anything with them about TTS: nor any other business with people not involved with them.

Asked to comment on the allegation of the Plaintiff that there was a meeting at the office at which the agreement was ratified by a handshake, Mr. Slous stated that there was never a meeting as alleged by the Plaintiff. Had there been, it would have been in the Boardroom and not in front of other people.

As to the formation of the Company and the selection of the name TTS, he stated that he chose it, resulting from a conversation on a Saturday morning, when he asked the Plaintiff where he learnt his trade. He, the Defendant, had instructed Advocate Labesse who had formed the Company, and had paid his account. The Plaintiff knew nothing about the formation of the Company. He had not discussed that. He again claimed in this regard that the purpose for which the Company was formed was for the maintenance of the Hotels and for hotel call-outs.

As to the business terms, he reiterated that there was no discussion, although he conceded that they must have discussed money.

As to the management and setting up the Company, the equipment consisted initially of a van provided from another of the Defendant's Companies after which further vans were leased. There was a purchase of a threading machine which was put in by him.

The Company could not have started unless the Defendant had begun the building of "Vermont" Nursing Home: indeed all or virtually all the initial work came through the groups, a statement not quite in accord with his statement *supra* when he had stated that his existing plumber "David" could not manage decisions but was alright for the groups maintenance. However he made the further point that, certainly between 1985 and 1989, the bulk of the work had come from his Companies and that he knew of no subsequent variation.

Asked whether he had discussed the Plaintiff's position with him, he replied that the Defendant knew he was the Manager. When he had started, the Plaintiff's main problem was to sort out his tax affairs, as summonses were arriving. He, the Defendant, had had to lend the Plaintiff, over a period of time, quite considerable sums of money to meet these obligations and even to go to the funeral of one of his parents. These advances were repaid out of his wages.

As to the claim that the Plaintiff worked long hours for a low wage, the Defendant replied simply that he was paid a flat wage, which was more than that paid to other plumbers which he got, whether he worked or not.

The original rate was some £200 per week and increased annually. This he justified by producing the Company's tax records, and this we accept.

As to the hours which the Plaintiff claims to have worked, the Defendant made very considerable play with the short hours shewn by the Plaintiff on his 1991 schedule. Had he known how short were the hours which the Plaintiff was then billing out, he would not have been employed by him for five minutes. He had not himself checked the time sheets at that time, and had thought that all was running well.

He made no reference to and produced no figures relating to the hours worked in the earlier years by the Plaintiff.

In his view *(and v. supra)* TTS only had a sufficient volume of work when he (the Defendant) took on a product; otherwise the level of work would drop right down.

So far as the running of the Company was concerned, little help was to be obtained from the minute books, which with one or two exceptions, were of the most formal kind, with, effectively, no management decisions discussed or minutes *(v. infra)*.

As to the Company's accounts these were prepared annually and the Plaintiff neither asked for nor received a copy: nor did he sign the guarantee for £15,000 (which was minuted). This was countersigned by Mrs. A. Robertson, as Company Secretary, and, in the view of the Defendant, it must have been explained to her or she would not have signed it. It was his practice to move money around the Companies as required and without reference to the Plaintiff.

In cross-examination the Defendant was questioned as to his assertion that he thought he had his finger on the pulse as to 75% of the business and that any big decisions were left to him. In particular he was asked why TTS had done work for Randalls. His

reply was confused. Having stated that he did not think that the Plaintiff would have got the work without him (the Defendant), he went on to say that he refused to tolerate Randalls because of their General Manager, and it was also not work that he wanted but that he had not stopped him. Asked if he had wanted TTS to work for Randalls, he did not answer directly but stated that it never bothered him so long as TTS could get the money in.

We formed the clear impression that so long as TTS was available to do the work required on the Defendant's major projects, it was left pretty much to its own devices. Furthermore, when asked who hired and fired plumbers for TTS, the Defendant replied that it was the Plaintiff like any other Manager.

We are clear that the Defendant did not treat the Plaintiff as "just a plumber".

As to the camper van, the purchase of which the Plaintiff claims was discussed, the Defendant maintained that this was not discussed, nor was the question of its acquisition raised by the Plaintiff.

The Defendant, in the course of his evidence, stated quite clearly that he understood, as a Chairman should, the statutory books of the Company.

He was asked about a minute of the Company dated 10th November, 1986, which reads:

"MINUTES OF A MEETING OF THE DIRECTORS OF THERMAL TRANSFER SERVICES LIMITED HELD AT 80 BATH STREET, ST. HELIER, JERSEY, CHANNEL ISLANDS ON 10 NOVEMBER, 1986.

Present: ***G. H. Slous***
J. Howard

CHAIRMAN: *G. H. Slous was appointed Chairman of the meeting.*

MINUTES: *The minutes of the previous meeting of the Directors were read and approved as a true record of the proceedings.*

BANKERS: *IT WAS RESOLVED to appoint Midland Bank plc as Bankers of the Company in accordance with the resolutions set out in the mandate form, a copy of which shall be annexed to and form an integral part of the minutes of this meeting.*

There being no further business to be discussed, the Chairman declared the meeting closed.

G H SLOUS

Chairman".

The Mandate form which was referred to in the minute reads as follows:

"Mandate for companies registered under the Companies Acts (Jersey Limited Companies)

To: ***MIDLAND BANK plc***

1986 November 10th

Insert name of company: ***THERMAL TRANSFER SERVICES LIMITED*** *("the Company")*

Registered office: ***80 Bath Street, St. Helier, Jersey, C.I.***

Address for statements: ***as above***

Complete section A or B and sections C and D as appropriate

A *Authority*

You are requested to act as bankers to the company. Accompanying this authority or set out overleaf are:

1. *Acte of the Royal Court of Jersey ordering the incorporation of the company (for inspection and return).*

2. *Copy of the memorandum and articles of association.*

3. *Certified copy of a resolution of the board of directors (see overleaf).*

4. List of the directors and officials authorised to sign with specimen signature (see overleaf).*

_____

Secretary

B *Variation of authority*

You are requested to continue as bankers to the company but

to act on new instructions/signatures as set out overleaf in sections **C and/or **D***

_____

Secretary

C

We certify that the following resolution of the board of directors of the company was passed at a meeting of the board held on the 1986 October 28th and has been duly recorded in the minute book of the company.

***Resolved** that*

"1. The company authorises Midland Bank plc:

a) to honour all cheques and other orders or instructions authorising payment signed on behalf of the company by any two of Chairman and Director or Chairman and Managing Director or Managing Director and Director ("the signatory") whether any account of the company is in credit or debit;

b) to deliver up any item held by the Bank on behalf of the company in safe custody or for any other purpose against the written receipt or instructions of the signatory; and

c) to accept the signatory as fully empowered to act on behalf of the company in any other transactions with the Bank.

2. The company agrees that any indebtedness or liability incurred to the Bank under this authority shall in the absence of any express written agreement by the Bank to the contrary be due and payable on demand.

3. The secretary shall as and when necessary supply to the Bank list/s of current directors, and, if applicable, other officials authorised to sign with specimen signatures and the Bank may rely upon such lists signed by the secretary."

(Signed) Chairman. (Signed) Secretary.

D

The following are the Directors and officials currently authorised to sign.

GERALD HENRY SLOUS	*CHAIRMAN*	*(Signature)*
JOHN ROBERTSON	*MANAGING DIRECTOR*	*(Signature)*
JOHN HOWARD	*DIRECTOR*	*(Signature)*

Date: 1986 November 10th (Signed) Secretary."

We may perhaps add that the minute of 10th November, 1986, was confirmed as correct at the meeting of 15th June, 1987.

Given the Assertions which the Defendant had made it was hardly surprising that he was questioned as to a document which he had signed which described the Plaintiff as "Managing Director".

In examination in chief, he stated that it was simply a Mandate. He thought that the Plaintiff had always had signing powers: and as to the description he thought it must have been put in by the Secretary (not the Company Secretary) who had signed it. He could not say how it had come to be given: certainly the description of the Plaintiff was incorrect. The only thing he had in his mind was that he was not going to put himself in the position where the Plaintiff and his first wife (Mrs. A. Robertson) could sign cheques on the Company. He could give no valid reason, he said (and, certainly on looking at the Mandate it is difficult to see how Mrs. A. Robertson if she were the Company Secretary, could sign a cheque). Last, he thought it was probably prepared by the Accountants.

In cross-examination he was asked why he had signed an incorrect Mandate, to which he again replied that he did not know, that he only wanted to stop the two Robertsons' signing together, and that this was probably the only mistake he made. He must, he thought, have been very careless. As far as he was concerned the document was incorrect.

In answer to a question from the Court as to why he had said it was probably the only mistake he had made, he replied that he did not know what he had meant: it was a mistake he had made.

In answer to a further question as to whether he was content to put in a document which he had signed which he knew to be wrong, he stated that he was careless.

He was then asked whether the description of the Plaintiff as Managing Director was to persuade him that he really had an interest in the Company to which he replied that in his mind it was not done that way. A load of minutes was given to him: he would have had six, seven or eight and "one just signs".

He was unable to help the Court on why the difference between the Mandate and the minute was not noted to which he replied that the Accountants made them up and that he had never called a board meeting for the Mandate.

He had never seen the originals of the letters the Plaintiff had signed claiming to be a Director. He had heard rumours that the Plaintiff was claiming to be a Director but claimed that this had come to his notice only when he and the Plaintiff had parted company (when it is interesting to note that one of the plumbers who had been employed by the Company had returned his equipment to the Plaintiff, as he thought that he was the boss).

As to the difficulties which the Plaintiff stated that he had in reading and writing, the Defendant knew nothing of them, the Plaintiff having not told him of them. He did, however, confirm that during the holiday in the camper van *(v. infra)* the Plaintiff was carrying considerable sums of money in cash, whilst Mrs. C. Robertson was cashing Eurocheques. In passing it is fair to mention that the Defendant had no very great confidence in the Plaintiff's ability to handle cash: he had, he said, no respect for it.

As we have said *(supra)* the Plaintiff made some play with the friendly terms on which the parties were for a number of years.

We have referred to the accounts of the Plaintiff and the Defendant as to what happened at the New Park Inn.

The Defendant was asked whether the Plaintiff called him "Gerry". His reply was quite definite: the Plaintiff always

called him "Mr. Slous" when people were around, but "Gerry" if they were alone.

There was, in addition, a good deal of evidence concerning the closeness of the relationship between the parties. It will be recalled that the Plaintiff led evidence of an argument at the Holiday Village, which was patched up (and another where Mrs. A. Robertson was involved).

The Defendant's version of the row with the Plaintiff was quite straightforward. He had been working on the Holiday Village, and had finished getting his levels right round the big bar. He went up to lock up his office and came through to the Quarry Bar where he found the Plaintiff who was drunk and very abusive and told him he could not read a level. He, the Defendant, had told him to leave the van - which he was not in any event capable of driving - in the car park and not to come back. As for him offering an apology to the Plaintiff, he thought he had never apologised to him in his life. Two days later the Plaintiff had come back to see him to see if he could have his job back.

In cross-examination, he was adamant that he had not consumed any alcohol that evening. As to a meeting when the two cars passed each other, the Defendant stated that it would have been in the office, as he never discussed this sort of thing on site; and that in any case no one was allowed to take a car down the narrow road to the Holiday Village, so that he had parked his car at the top. He reiterated that the Plaintiff had, naturally, apologised for his behaviour, which he had accepted. He had not apologised himself as he had nothing for which to apologise. This account is considerably at variance with that of the Plaintiff and we will refer to it again, *infra*.

It was also at the Holiday Village, he said, that he had had words with Mrs. A. Robertson which led to her leaving. Although Mrs. A. Robertson was not cross-examined on her statement as to her leaving, and the Defendant was stopped in his examination in chief, it was raised again in cross-examination. The Defendant's version of the event was that, despite his praise for her capabilities he had had to caution her the odd time for not coming in to work on a Monday. On the occasion of the firm's dinner, he saw, after the bar had closed, a crate of drink going up to her room and told the barman to put it back. Mrs. A. Robertson told him he had no right to do this, upon which he told her to come to see him the next morning, but never saw her again.

In cross-examination he asserted that she was very good at her job, and went on to say that she had signing powers. In contradiction to his earlier statement (regarding her rôle as Company Secretary) he went on to say that he expected her to carry out his instructions without asking questions.

We have to say that this conforms more closely to our view of the relationship involved than his previous assertion.

In the Plaintiff's evidence, however, it will be recalled that there were further allegations of familiarity, effectively beyond that which might have been expected between an employer and a man who was "just a plumber".

In particular, despite the claim by the Defendant, when asked what the relationship was with the Plaintiff outside working hours, that there was none, an answer which was qualified by statements that, apart from a birthday meal and a gift of a watch, they had gone on a day trip together to Guernsey and had met and had a meal while on holiday in France; and, despite his statement that he had never got on with Mrs. C. Robertson, it appeared that the two protagonists and their wives had gone on holiday together to France in the camper van.

This had been leased in September, 1991, and in November, 1992, the parties went on a 10 day holiday in France together. Even if Mrs. C. Robertson had become friendly with Mrs. Slous, it seemed to the Court that this was evidence of a certain friendship and closeness, especially in the confined quarters of a 22 ft. 'Mercedes' motor home. It will be recalled that it was on this holiday that the Defendant remarked that the Plaintiff was flush with cash.

In addition to this, there was the payment of £5,000 the subject of the counterclaim. We will return to this, *infra,* but in our view, on the best possible construction for the Defendant, it does not negate the suggestion that the parties were on good, even close, terms: and rather more so than the Defendant's evidence suggested.

This view was, in the opinion of the Court, reinforced by the Defendant's actions at the marriage of the Plaintiff and Mrs. C. Robertson. He stated that he had not gone to the wedding although invited, having nothing in common with Mrs. C. Robertson, although Mrs. Slous, he believed, had gone. In cross-examination he stated that he had not gone to it because he thought it was a shame that they had borrowed (i.e. the £5,000) to get married and had even flown their own Priest down from Scotland.

He was asked whether a reason for his non-attendance was because Mr. Gordon and Mr. Gallichan *(v. infra)* were there to which he answered *"why would that stop me?" Given that the Plaintiff had just received £5,000 and that he and his new wife were fairly shortly to go on holiday with the Defendant and Mrs. Slous, we do not find this answer convincing, especially as, according to Mr. Gallichan, the Defendant drove his Rolls Royce for the wedding.*

The Plaintiff produced a series of witnesses to claim that the Defendant had frequently referred to him, in terms, as his partner. This allegation was flatly denied by the Defendant.

As to the various allegations by the several witnesses called by the Plaintiff, he dismissed these out of hand. As far as Messrs. Cousins and Lewis were concerned, although he remembered the cocktail party, he thought nothing had taken place on that occasion and he denied ever having said anything to Mr. Cousins about the Plaintiff being his partner.

In cross-examination, he repeated that he did not recall any such conversation with Mr. Cousins (nor had there been any Board Meeting as he claimed).

As to Mr. Fisher, to whose evidence we will return infra, again he denied ever having discussed his relationship with the Plaintiff with him. He found his comments very strange as the Plaintiff had not liked him and he was not involved in the building side. In cross-examination he reiterated that he did not accept that he had introduced the Plaintiff to Mr. Fisher as his partner.

As to Mr. Gordon's evidence on this point, he again maintained that he had never said that he was fifty/fifty with Mr. Beaugié and the Plaintiff. He had, he said, no reason to talk about his business to them.

He was equally adamant regarding the statements made by Messrs. Hegarty, O'Connor and Mr. M. Meade (the carpenter).

He did not remember the incident when he had wanted to cash a cheque at "The Trafalgar". He did not ask Mr. Hegarty to cash a cheque for him and had never carried a cheque book in his life.

As for Mr. O'Connor, the conversation described by him never took place nor did he refer to the Plaintiff as his partner to Mr. M. Meade. With reference to the latter, he stated that it was not his habit to socialise with his men: he would have a drink and then go. Further he disagreed flatly with his evidence regarding personal contact.

Although, given the nature of their evidence, to which we will return, *infra*, it is easy to see why Mr. Fisher and Mr. Gordon might have reservations about the Defendant, no reason was suggested nor any motive ascribed to those others who gave evidence on this point as to why they should have done so were it not true.

In his evidence, it will be recalled that the Plaintiff, becoming worried, stated that he had asked the Defendant for his

shares, or at the least for a recognition of his position in the Company.

This, again, was flatly denied by the Defendant. He was asked whether the Plaintiff had asked him for his shares during the holiday in the camper van. He replied that he had not, nor had he done so at any other time. He had certainly not delayed the transfer of the shares at the time of the Plaintiff's divorce from Mrs. A. Robertson having no reason to be concerned about either of them.

He further denied in cross-examination that after he had his problem with his heart he had ever told the Plaintiff that his interest would be protected. So far as he was concerned, the Plaintiff was not his partner.

We turn now to the visit to the house at Les Ruisseaux. His evidence, at least on this point, confirmed the evidence of the Plaintiff and Mrs. C. Robertson. He confirmed that he had indeed gone there in April, 1992, and in a conversation afterwards with Mrs. C. Robertson, had asked her how she would pay for it. She explained, he said, how she would raise some of the money, and for the balance, she said she would be taking the balance sheets of TTS to the Bank, to which he had replied *"No way will you be taking my balance sheets to any Bank"*. He added that at that stage, having just recovered his health, he did not offer any money to the Robertsons.

It did appear to the Court that his reaction was surprising in the extreme. On his evidence, the Plaintiff was "just a plumber", but the request for the balance sheets seems to have raised neither queries nor alarm in him. Indeed far from worrying about a request which, on his evidence, was quite extraordinary, he simply carried on with the association and even, subsequently, went to France on holiday with Mr. and Mrs. Robertson.

A good deal of evidence was led as to the events surrounding the break up of the association. According to the Defendant this came as a complete surprise to him and the Plaintiff shewed no sign of tension or distress over the Christmas period at the end of 1992: a statement which is in stark contrast to the evidence of Mrs. Canavan.

We should add that the discussions and problems faced by the parties at the end of the relationship are not, in our view, in issue before us, this issue being the nature of the association. The problems which then arose, and the settlement sought by the Plaintiff and the actions taken by both parties can, in our view, only be assessed once we have decided the main action. After this they will either fall to be decided in the account to be taken, or will be the subject of a claim for damages by the Defendant if he wishes to pursue that course.

We turn now to the Defendant's response to the allegations made by Mr. Fisher and Mr. Gordon.

So far as the allegations regarding his business relationship with Mr. Gordon are concerned, his evidence was brief in the extreme. He commented briefly on the non-payment of rent. He had not himself asked for the money. As to the vehicle he was very cross indeed. It had been parked outside his house.

In cross-examination he asserted that the agreement with Mr. Gordon was simple. He had told him that if it worked he could buy in. Caledonian, he asserted, had not made money. He agreed that he had taken advantage of Mr. Gordon's statement during his evidence to send him an account for the repair of the vehicle.

So far as Mr. Fisher was concerned, he (in cross-examination) refused to accept his evidence as to commission. He had never discussed it with him nor had he ever received a list from him. As for his departure, he said, he and Mrs. Fisher, who also worked for the Defendant, went on a month's holiday and he never saw them again.

Once again therefore there is a flat contradiction on this allegation.

Finally, we have to consider the payments of £5,000, the subject of the counterclaim. These payments, as we have stated, preceded both the Plaintiff's second marriage and the visit to Les Ruisseaux, and we take them out of chronological order on account of their being the subject of a counterclaim.

In answer to the Plaintiff's assertions *(v. supra)* the Defendant stated that the Plaintiff had asked him for a loan as he wanted to get married. He, the Defendant, thought there were no terms: he had lent the Plaintiff money before and he had repaid it. There was no time restriction. The Plaintiff had never had a share in the Company and it was not by way of a Shareholder's dividend.

In cross-examination, he reiterated that he had not asked for money from profits but for a loan to get married. There was no documentation as he had no cause to doubt that he would repay it. Asked why he had thought the Plaintiff would think it was a loan he thought it would automatically have been taken out of his weekly wage, but he had not checked nor had he given any instruction to the girls who entered the loan. He believed that Mr. Cotillard wrote the cheques and that the Plaintiff and Mr. Cotillard signed them. He thought he had not signed them himself. So far as changing the entries in the books was concerned, he had told Mr. Cotillard that it was not wages but a loan in November, 1992.

In answer to the Court he claimed that he did not generally get a note of hand signed; and when asked why there was no minute answered that he had loaned higher sums without minutes. Mr. Cotillard just asked and he said yes.

We turn now to the witnesses who gave evidence for the Defendant.

Mr. J. Cronin, the General Manager for Britvic in the Island who was called by the Plaintiff but *"retranche"* stated in cross-examination that although he habitually drank at the New Park Inn, in the small snug, where there was a hard core, which included the Defendant but not the Plaintiff, he had never heard any discussion relative to the setting up of a plumbing company; nor any discussion of TTS with the first Mrs. Robertson, nor had he seen hands shaken on this issue. Indeed he had never heard Mr. Slous discuss his business relationship with the Plaintiff, nor did he discuss business in the public house. He knew the Plaintiff but believed him to be the Defendant's plumber. He was not, he said, aware of any contractual relationship, nor, he added, had he ever heard the Defendant ever give the Plaintiff a particular status.

He had, he said, known the Plaintiff for 8-10 years, but had known Mr. Slous for about 20 years. He had been a non-executive alternate Director in three of the Defendant's Hotels, although he had not been called upon to exercise any functions in those capacities.

The first witness called by the Defendant was his former accountant, Mr. M. Cotillard, who had worked for him from about January, 1989, to July, 1993.

His working relationship, he said, with the Defendant was quite good. He had not been involved when TTS was incorporated, and so far as he knew TTS existed as the plumbing department of what was then a large group: he thought that the majority of the work came from the group. The cash ledgers were all in his office and, in due course, the minute books came to him there as well.

So far as the billing went, since 1989 at least, all the billing was at the same rate, regardless of whether the Company for whom the work was done was inside or outside the group.

His understanding of the Plaintiff's position was basically that he was responsible for the sole running of TTS. When he had started he was under the impression that the Plaintiff was a Director and only found out subsequently after the Plaintiff had left that this was not the case from a perusal of the books.

He did add that if TTS had surplus cash then if other Companies in the group needed money, it would be transferred, and,

likewise, transfers would be made into TTS if necessary. Asked about Tego, he thought the operation would be similar, but that it never occurred at Tego. If it had he thought he would have had to go to Mr. Beaugié.

In examination in chief he stated that on several occasions the Plaintiff had spoken to him about the general set up and had told him that the Defendant had agreed he would have shares. On each occasion he had told him that he would have to see the Defendant: he, the witness, was not a party to and knew nothing of the original agreement. In addition to what the Plaintiff told him, he had overheard and been told by others in the organisation that they believed that the Plaintiff was a partner or shareholder but could not honestly say that he would ever recall the Defendant telling him so.

He was heavily pressed on this in cross-examination and a tape was produced of a conversation he had had with the Plaintiff and Mrs. C. Robertson shortly after the parties had parted company.

The witness agreed that the tape (taken secretly and without his knowledge by Mrs. C. Robertson) was the conversation and was his voice, and he further accepted that on the tape he had agreed that the Defendant had told him that the Plaintiff was his partner. He maintained, however, that this statement was wrong. When he had said that he was dealing with a man with a nervous breakdown, and since then he had considered the position, and had changed his mind. He had made a mistake and the evidence that he had given in chief was correct.

He had clearly given a great deal of thought to this point and was quite definite in his view. We accept his evidence on this point.

In relation to the Plaintiff's attitude, he agreed that prior to Christmas, 1992, the Plaintiff had shewn concern about the affairs of TTS. He had been to see him, as a friend, after the split between the parties as he had heard that he was on the edge of a nervous breakdown. The Defendant also shewed great concern. He added that the Plaintiff looked very bad when he went to see him.

He gave evidence also on the payments totalling £5,000, the subject of the counterclaim. These came about, he believed, because the Plaintiff was getting married and he wanted some money. He, the witness, referred him to the Defendant and either the Defendant or the Plaintiff informed him subsequently that the payment was agreed and that he was to make the cheques out which he did and gave them to the Plaintiff. He had no direct knowledge of the agreement which he analysed under wages at the time. After the Plaintiff and the Defendant and their wives had been on

holiday in the November, the Defendant informed him that he had agreed with the Plaintiff that it was a loan so he, the witness, had removed it. He never saw the Defendant touch the books.

In cross-examination he reiterated that he could not be sure which of the Plaintiff or Defendant had authorised the payments. He was not sure why it was put down to wages. It was certainly not usual for sums of that size to be thus entered.

He was asked, in examination in chief, who made the major decisions. He thought he could answer. If major decisions were to be made, i.e. if the Plaintiff wanted equipment, he would ask the Defendant and the Defendant would decide. He had, he said, been present on a couple of occasions. In cross-examination he thought one of these might have been a new boiler and another a plumber's van: otherwise the Plaintiff would take the decisions.

He had, however, been present for a conversation regarding the camper van. He was asked why the Defendant should have discussed this with the Plaintiff and his first reply was that it was because he intended to lease it through TTS (which was not caught in the *remise*) and that it would be repaid from a property sale. Pressed as to why the Defendant should discuss it with the Plaintiff, he stated that he could not answer and that the question should be put to the Defendant. Asked whether the Defendant was speaking to the Plaintiff because he had an interest in the Company, he replied that this was possibly the case.

He had always thought the relationship between the parties very good. The Defendant had always referred to the Plaintiff as 'John'. He had the impression that the parties were very good friends. They went on holidays together and he had thought the relationship would last even though they had disagreements.

In the months prior to the Plaintiff's departure, all had seemed to be working quite well. His view of the Defendant was that although he had reservations about him he was, on the whole, a pretty honest man. As to the Plaintiff he had trusted him, although his confidence had clearly been affected by the taping of the conversation. He had been very worried about the Plaintiff's position in January, 1993, but opined that if the parties could then have met together by themselves the present dispute could very likely have been solved.

The next witness called by the Defendant was Mr. N. Burrow. He used to use the New Park Inn, and stated that, although he knew none of the details, he had heard the Plaintiff talking about the name TTS when there. Although he had previously done work for the Defendant, he had fallen out with him and ceased the relationship: but at the beginning of 1994 he had taken on a new partner who brought work for the Defendant with him.

Despite having signed a proof to that effect, he denied that he had witnessed an agreement at the New Park Inn. He had, he said, been willing to sign the proof. Mrs. C. Robertson had come in at an inconvenient time, but now he was telling the truth. We found his attitude in this to be curious and somewhat unconvincing.

He was, however, able to help the Court on two other points. Despite denying that he knew the business arrangement, he confirmed that the parties worked together and described them as "buddies in the pub", where they addressed each other as "Gerry" and "John".

Mr. G.S. Gallichan who has, with a short intermission due to the Defendant's state of health, worked as a foreman with the Defendant for the last 15 years also gave evidence. The Plaintiff, he said, had been in charge of plumbing which had been all part of the Defendant's business. He was friendly with him (the Plaintiff) and had been best man at his wedding. As to the relationship between the parties, he stated that he never knew and still did not know. On Mr. O'Connor's evidence being put to him, he stated that he did not know where Mr. O'Connor, a driver, had got that from. The Defendant did not discuss his business with him (i.e. the witness).

He was able to throw some light on other incidents which have been in issue before us.

First, he described the argument between the parties at the Holiday Village as having been a joke which turned sour. He confirmed that he had been putting a datum line round the new bar with the Defendant and after they had finished they went into the Quarry Bar where the Plaintiff, who had had a couple of drinks, said to the Defendant words to the effect of *"call yourself a builder, you can't read a level"*. The Defendant had not then had a drink, but by the time the Defendant sacked the Plaintiff, he had had a couple of drinks. He had told the Plaintiff to park his car in the car park and to go, which he did. He subsequently then came back. As to any apology, he thought it would have been for the Plaintiff to apologise to the Defendant. It was possible for two cars to pass on the road to the Holiday Village.

Second, the Plaintiff had discussed his position in the Company with him, though he had never heard the other side, nor had he ever heard anyone else describe the Plaintiff as a partner.

Third, he had advised the Plaintiff to put money in the Bank for his own account, when the Plaintiff had said that he had never had an account. In further explanation, he (the Plaintiff) had never actually then said he was a partner, though he understood that he was not taking money out and was not drawing a lot.

Fourth, on being asked whether he had witnessed an agreement between the Defendant and Mr. Gordon regarding Caledonian Electric, he (rather reluctantly in our view) replied that he might have been in the office but could not remember if he did hear anything and that he did not sign anything. In answer to further questions, he effectively denied all knowledge of any arrangement between the Defendant and Mr. Gordon.

Last, both he and the Plaintiff would address the Defendant as "Gerry".

Mr. D. de Ste. Croix, a Chartered Accountant, was next called and advised the Court that since he had started to work on the Group's books in 1989, TTS had operated as a subsidiary of the holding Company and that funds were moved between the Companies as needed.

Mr. J. Howard, who had come to help the Defendant after retiring as General Manager at the Hotel de France, and was described by the Defendant as his 'right-hand man', described the Defendant not so much as a hard man, but strict; he was rough and ready and made up his mind and kept to it. Although he was a difficult man, he trusted him, although he could be difficult when he had had a drink.

Like Mr. Gallichan, he, too, had been the recipient of generosity - in his case £7,000 - from the Defendant which he had repaid.

So far as TTS was concerned it was very efficiently and well run. The working relationship between the parties was obviously close. They were friends and got on well together. The Plaintiff would address the Defendant as "Gerry" and had no difficulty in approaching him.

He described the New Park Inn as a meeting place for all workmen where he sometimes went. He could not say whether the name of TTS was discussed though it could have been, as business and work were discussed and discussed and discussed. He was under the impression that the parties were some type of partners, although he could not say what. He was under the impression that the Defendant financed the Company and had floated it.

He was, he said, at a meeting between the parties when Mrs. A. Robertson was present but recalled no financial discussions except that it would be operating as a plumbing company.

Although the Defendant never referred to the Plaintiff as his partner - he was not that type of man - he would not have thought, with his remuneration, that the Plaintiff was joining to be just a plumber. He opined that other employees thought that the Plaintiff was a partner of some sort. The impression he had

formed that they were partners arose from his observation that the two were very close together; only they took decisions.

Last, Mrs. A. Slous was called. Generally supportive of her husband, she confirmed that, in her view, the Plaintiff had seemed normal at Christmas, 1992. She did not, she said, know the business relationship between her husband and the Plaintiff: it had never been discussed with her either by the Plaintiff or by Mrs. C. Robertson.

In her final address, counsel for the Defendant put the defence, in essence in this way, that, a self-made man, dealing is a life-time obsession. In 1984, he needed a plumber not a partner. He found and employed the Plaintiff who was out of work and in money trouble with no clientele and no connections. He had no need to offer an inducement: a job was enough. He was given a fair wage and, including the £5,000, borrowed a total of £12,000 from the Defendant (£7,000 of which, it is agreed, has been repaid).

If the Plaintiff had a position to protect he could and should have taken advice. If Mr. Gordon's evidence were true he should have been warned but he did nothing, as he did nothing following the visit to Les Ruisseaux and during the *remise*. He did not mention TTS to his lawyer at the time of his divorce from Mrs. A. Robertson. Following the row at the Holiday Village, the Defendant used words of dismissal. The Plaintiff has, with the active connivance of Mrs. C. Robertson, convinced himself that he deserved something and when he needed more money, simply arranged to depart having first converted his garage.

These are valid points which the Plaintiff must need to surmount if he is to succeed.

It is clear to us that in these circumstances we have to assess very carefully the evidence which has been presented to us: and it is for that reason that we have set out what appear to be the salient points which were put before us.

First, we have to say that we formed a favourable view, from his answers and demeanour before us, of the character of the Plaintiff. We found him to be a simple man, honest and not the type of man who would make a claim of this type unless he firmly believed it was justified.

We were much less satisfied with the evidence of the Defendant. On certain points he was convincing, on others much less so: and in a number of areas his evidence was contradicted by his own witnesses.

1. The New Park Inn was a place where the parties would take refreshment and discuss business (per Mr. Howard). The Plaintiff had been there and had there mentioned the name TTS.

2. That there was a meeting in the office between the Plaintiff, the Defendant and Mrs. A. Robertson, was, to some extent at least, confirmed by Mr. Howard.

3. Whatever the Defendant says there was at times drink taken on a social and familiar basis (v. for example Mr. Gallichan's evidence) as is evidenced not least by the arguments with the Plaintiff and his first wife, Mrs. A. Robertson, at the Holiday Village (& v. Mr. Burrow's evidence).

4. If the Plaintiff were "just a plumber" it seems to us extraordinary that the Defendant should take him back after a scene such as was described at the Holiday Village. We find that the Defendant gave no convincing reason for this part of his evidence.

5. It is equally clear that the parties were on terms of considerable friendship, and rather closer than is accepted now by the Defendant. They addressed each other, in company as well, by their Christian names, went on holiday together in cramped circumstances and, even if intermittently, entertained each other.

6. Again it is clear (v. for example Mr. Cottillard and Mr. Howard) that the Plaintiff claimed, over a considerable period, that he was a partner and that this was not simply a claim which he made when he left.

7. Equally it is clear that the Plaintiff was more than "just a plumber" and that he was effectively in full control, in general, of a Company which did a great deal of business especially early on. That the purchase of, for example, a boiler or a van was discussed seems to us to apply equally to a partnership as to a manager with his proprietor. Furthermore, TTS seems to have done at least one job of which the Defendant disapproved (for Randalls) despite his claim that alone he took all major decisions. Again, on this point Mr. Cotillard was sure that the lease of the camper van was discussed between the parties. If the relationship was as claimed by the Defendant, this struck us as being, to say the least, unusual.

8. Two payments amounting to £5,000 to a man employed as a plumber without any record, formality, or note of hand, seems extraordinarily generous, despite the Defendant's record of a willingness to help people in trouble for example Messrs. Gallichan and Howard, and indeed the Plaintiff himself. Previously he had helped him with his pressing obligations with the Income Tax, and, on the evidence before us, had recouped the advances on a regular basis. There is no documentary evidence at

all for the advances which were made at a time when the Plaintiff, on his evidence, was becoming concerned about the Company's affairs and the money the Defendant was spending on his own property. If it were an advance, then the way in which it was done (v. Mr. Cotillard's evidence) seems to us to have been extraordinary.

9. Mr. Cotillard's evidence as to the Plaintiff's state of mind in January, 1992, strongly supports that of the Plaintiff and Mrs. Canavan.

There were other aspects of the Defendant's evidence, which appeared to us to support the Plaintiff's case.

A. We found that the Defendant's submission that describing the Plaintiff as "Managing Director" on the Bank Mandate as his only mistake is quite inexplicable in terms other than those alleged by the Plaintiff.

B. Despite his protestation that he could have employed other plumbers for "Vermont", he admitted that it was a very big contract, that the plumbing part was important and that his existing plumber could not do the work.

C. Evidence was led that at least one of the other plumbers had returned goods belonging to TTS to the Plaintiff on the apparent ground that he was the "boss".

D. The Defendant's lack of reaction to the request to shew the Company's accounts after the visit to Les Ruisseaux is explicable to us only on the basis that the Plaintiff was more than just a plumber.

E. That Messrs. Gordon and Fisher were associated with or were employed by the Defendant, as they said, is accepted. Mr. Gallichan's evidence as to any arrangement with Mr. Gordon was equivocal. Although, despite his relationship with Mrs. C. Robertson, we believe Mr. Gordon, his evidence by itself would not have carried sufficient weight to support the allegation of a pattern of behaviour by the Defendant. It was, however, supported by the evidence of Mr. Fisher, whom we also found to be truthful, and against whom no reason was alleged which would have caused him to give other than truthful evidence.

In our view there was evidence of a pattern of behaviour which the Defendant employed to his own advantage.

Again, absolutely no reason was suggested as to why any of the Plaintiff's other witnesses, except Mr. Gicquel on whose evidence we do not rely, and to some extent Mrs. C. Robertson, on account of her relationship - should come to Court to give the

evidence they did for any reason other than that of public duty to assist the Court when so required.

Despite the Plaintiff's slowness in dealing with his interests, we are satisfied on the evidence before us, that there was indeed an initial discussion at the New Park Inn and a further conversation at the office sealed by a handshake; that the Plaintiff, who is barely literate and inexperienced in business, took the Defendant at his word and proceeded to manage the business; that although the Defendant kept the accounts to himself, organised the guarantees as he wished and transferred monies around the group as he did, he nonetheless, even if he did not hold out expressly (as the Plaintiff's witnesses claim) the Plaintiff to be his partner, certainly did so by his behaviour viz. by being on terms of friendship with him, discussing for example the camper van by socialising, and by leaving the management of a Company doing considerable business in his hands, and not least the way in which the dispute at the Holiday Village was settled; that the Plaintiff did indeed trust him, and it was only after his association with his present wife that, fuelled by her, his concern became more and more acute, this being caused *inter alia* by the scene at Les Ruisseaux, payment of interest on the guarantees and the treatment of Mr. Gordon; that the Plaintiff did take it up with the Defendant and that the stress caused by the latter's refusal to concede what the Plaintiff had long, and in our view, justifiably, conceived to be the position, did indeed cause him to have a nervous breakdown.

Furthermore, we find that the payment of the £5,000, the subject of the counterclaim, is readily explicable on the evidence provided by the Plaintiff: and not at all by the account proffered by the Defendant.

We find that despite his slowness in appreciating the situation, the Plaintiff has proved his case; that there was an agreement, for which there was sufficient "cause", that the Company was formed and that the parties acted in accordance with that agreement which the Defendant for his own ends now wishes to deny. We should add that had the Plaintiff failed in contract, the Court would have found for him on the basis of a constructive trust.

So far as the counterclaim is concerned we have no hesitation in accepting the evidence of the Plaintiff. We declare, therefore, that the Plaintiff is entitled to a 50% shareholding in TTS from the date on which the Company was formed and we dismiss the counterclaim.

Authorities

4 Halsbury: 9: pp. 80-9; 97-8; 139-40; 148-9; 151-2; 175-9.
: 35: pp. 2-83; 88-99; 102-9.
: 48: pp. 320-3.

Chitty on Contracts (25th Ed'n): pp. 1-15; 60-77.

Underhill & Hayton: Law relating to Trusts and Trustees (14th Ed'n): pp. 325-41.

Hanbury & Maudsley: Modern Equity (12th Ed'n): pp. 69-71; 301-34.