

~~C.N.O. 2.1.~~

Windward & Seeward 13

(Sunderland) [U.1]

Judgment 24, 1959

~~C.V.10~~

IN THE PRIVY COUNCIL

No. 21 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N :-

ISAAC NEWTON SHILLINGFORD AS BUSINESS TRUSTEE OF

A.C.SHILLINGFORD & CO.

(Plaintiff) Appellant

- and -

FRANKLYN A. BARON AND OCTAVIA MARIA BARON

TRADING AS A.A.BARON & CO.

(Defendants) Respondents

---

RECORD OF PROCEEDINGS

SIMPSON PALMER & WINDER,  
1, Southwark Street,  
London Bridge, S.E.1.  
Appellant's Solicitors.

WALTER BURGIS & CO.,  
7/9, St. James's Street,  
London, S.W.1.  
Respondents Solicitors.

IN THE PRIVY COUNCIL

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B E T W E E N :-

ISAAC NEWTON SHILLINGFORD AS BUSINESS TRUSTEE OF  
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- and -

FRANKLYN A. BARON AND OCTAVIA MARIA BARON  
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RECORD OF PROCEEDINGS

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ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N :-

ISAAC NEWTON SHILLINGFORD AS BUSINESS TRUSTEE OF  
A.C.SHILLINGFORD & CO. (Plaintiff) Appellant

- and -

FRANKLYN A. BARON AND OCTAVIA MARIA BARON  
TRADING AS A.A.BARON & CO. (Defendants) Respondents

10

RECORD OF PROCEEDINGS

No. 1.

INDORSEMENT OF CLAIM

The Plaintiff's Claim is for \$3929.67 being balance due and owing by the Defendants to the Plaintiff for Sugar Syrup manufactured by the Plaintiff for the Defendants in accordance with a contract entered into between the Plaintiff and the Defendants on the 4th day of July, 1952.

And costs of this Suit.

Dated the 20th day of April, 1953.

(sgd) Clifton A.H.Dupigny

Solicitor for Plaintiff.

In the  
Supreme Court  
of the  
Windward and  
Leeward  
Islands

No.1  
Indorsement  
of Claim

20th April  
1953

20

Appearance entered for the Defendants Franklyn A. Baron and Octavia Maria Baron trading as A. A. Baron & Co., by Francis Otho Coleridge Harris of Chambers, Old Street, Roseau in the Colony of Dominica, on the 24th day of April, 1953.



In the  
Supreme Court of  
the Windward and  
Leeward Islands

No.2

STATEMENT OF CLAIM

No.2  
Statement of  
Claim

2nd May 1953

Delivered the 2nd day of May, 1953, by Clifton Alexander Herriott Dupigny of Chambers in the Town of Roseau in the Colony of Dominica Solicitor for the Plaintiff.

1. The Plaintiff is a Merchant and lives and carries on business in the town of Roseau.

2. The Defendants are Merchants and live in the Town of Roseau and Portsmouth respectively and carry on business in both towns. 10

3. On the 4th day of July, 1952, the Defendants entered into a contract with the Plaintiff for the manufacture of Sugar Syrup by the Plaintiff for the Defendants.

4. The said Sugar Syrup val. \$5075.77 was duly manufactured in accordance with the terms of the said contract by the Plaintiff and delivered to the Defendants.

5. On the 30th day of July, 1952, the Plaintiff paid \$44.40 for Trackage of Sugar for the manufacture of the said Sugar Syrup. 20

6. On the 8th day of August, 1949, the Defendants gave the Plaintiff an I.O.U. for Bay Oil short delivered and there are 22½lbs. Bay Oil value \$34.17 still due to the Plaintiff on the I.O.U.

7. On the 5th day of January, 1952, the Plaintiff delivered a Tarpaulin to the Defendants which in spite of repeated requests for same has not been returned to the Plaintiff. 30

8. On the 30th day of July, 1952, and 5th day of January, 1953, respectively, the Defendants delivered 35 Bags of Sugar val. \$796.25 and 352½lbs. Bay Oil val. \$528.37 to the Plaintiff. There is a balance of \$3929.67 due and owing by the Defendants to the Plaintiff.

The Plaintiff claims the sum of \$3929.67 and

costs of this suit.

Dated the 2nd day of May, 1953.

(sgd) Clifton A.H. Dupigny

Solicitor for the Plaintiff.

In the  
Supreme Court  
of the Wind-  
ward and  
Leeward Islands

No.2

Statement of  
Claim

2nd May 1953  
continued

No. 3.

PARTICULARS

No.3

Particulars of  
Claim

2nd May 1953

1952			
July 30	To cost of preparing 250 casks Orange flavoured Sugar Syrup	\$5,075.77	
10	Truckage Sugar	44.40	
	By 35 Bags Sugar at \$22.75		\$796.25
1953			
Jan. 5	By 352 $\frac{1}{4}$ lbs. Bay Oil at \$1.50		528.37
	To 22 $\frac{3}{4}$ lbs. Bay Oil still due us on I O U 8/8/49 at \$1.50	34.12	
20	To one Tarpaulin	100.00	
	By Balance carried down		<u>3929.67</u>
		<u>\$5254.29</u>	<u>5254.29</u>
	To Balance due	\$3,929.67	

No. 4

DEFENCE

Defence and Counterclaim delivered the 19th day

No.4

Defence

19th May 1953

In the  
Supreme Court of  
the Windward and  
Leeward Islands

No.4

Defence

19th May 1953  
continued

of May, 1953, by F.O.C.Harris Solicitor for the Defendants.

1. The Defendants admit paragraph 1 of the Plaintiff's Statement of Claim, but says that the Plaintiff also carry on the trade of manufacturers and exporters of Juices, Syrups, Oils and other similar products.

2. The Defendants admit paragraphs 2,5,6 and 7 of the Plaintiff's Statement of Claim, and admit having delivered to the Plaintiff 352½lbs. Bay Oil valued at \$528.37 on the 5th day of June 1953, as alleged in paragraph 8 of the Plaintiff's Statement of Claim.

10

3. The Defendants admit paragraph 3 of the Plaintiff's Statement of Claim and say that the said contract was in the form of a written offer dated the 4th day of July, 1952, to the Defendants from the Plaintiff signed by the Plaintiff through their agent Edward Patrick Shillingford and accepted and signed by the Defendant Franklyn A. Baron.

20

4. The Defendants deny that the value of the Sugar Syrup was \$5,075.77 as alleged in paragraph 4 of the Plaintiff's Statement of Claim and deny that the said Sugar Syrup was manufactured in accordance with the said contract alleged in paragraph 4 of the Plaintiff's Statement of Claim

5. The said sugar syrup was so negligently and improperly manufactured that the value thereof was reduced by \$13,037.08 and the Defendants thereby suffered damage.

30

6. (a) The Defendants in the month of July, 1952, delivered 600 bags of sugar to the Plaintiffs for use in the manufacture of the said sugar syrup.

(b) After the manufacture of 300 casks of the said sugar syrup there was a balance of 90 bags of sugar remaining unused and the Plaintiffs re-delivered to the Defendants 55 of the said bags of sugar and used 35 of the said bags of sugar for their own purposes.

40

(c) Save as aforesaid the Defendants never delivered to the Plaintiffs any bags of sugar on the 30th day of July, 1952, as alleged in paragraph 8 of the Plaintiff's Statement of Claim or at any other time.

## No.5

COUNTERCLAIM

Supreme Court  
of the Windward  
and Leeward  
Islands

---

No.5

Counterclaim

19th May 1953

7. The Defendants repeat paragraph 3 of their Defence.

8. Between the 4th day of July, 1952, and the 19th day of July, 1952, the Plaintiffs manufactured and delivered to the Defendants on board the s.s. Planter in the port of Roseau, in the Colony of Dominica 50 Casks of the said sugar syrup value at \$4,310.52.

10 9. Between the 4th day of July, 1952, and the 28th day of July, 1952, the Plaintiffs manufactured and delivered to the Defendants on board the s.s. Crispin in the port of Roseau, in the Colony of Dominica, 250 casks of the said sugar syrup valued at \$21,715.80.

20 10. The Plaintiffs at all material times were fully aware that the sugar syrup to be manufactured under the said contract was intended for export to the United Kingdom for the purpose of human consumption.

11. The Plaintiffs at all material times were fully aware that the Defendants had contracted to sell all the said sugar syrup to a consignee in the United Kingdom at \$2.04 per gallon c.i.f. London and that at this price the value of the said 300 casks of sugar syrup was \$26,026.32.

30 12. The said sugar syrup was manufactured by the Plaintiffs so negligently and improperly and under such unhygienic conditions that the value of the said sugar syrup was considerably reduced and the Defendants were forced to accept \$10,381.80 in full payment for the 300 casks of the said sugar syrup, that is to say a sum of \$15,644.50 less than the price the said consignee in the United Kingdom had contracted to pay the Defendants.

13. The Defendants thereby suffered damage as follows :-

40 Paid for sugar used in the manufacture i.e. 510 bags at \$22.77 per bag \$11,612.70

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

—————  
No.5

Counterclaim

19th May 1953  
continued

Paid to Plaintiffs for manufac- ture of 50 casks of the said sugar syrup on 23rd July, 1952.	1,012.03	
Paid for freight for 300 casks of sugar syrup from Dominica to United Kingdom	3,224.36	
Loss of profit expected on con- tract with consignee in United Kingdom (Particulars below)	<u>4,001.46</u>	
	Ø 19,850.55	10
Received from consignees for consignment	<u>10,381.80</u>	
	<u>Ø 9,468.75</u>	

PARTICULARS OF PROFIT EXPECTED ON  
CONTRACT WITH CONSIGNEE IN UNITED  
KINGDOM.

Expenses of Manufacture and  
Delivery.

Cost of sugar for manufacture 510 bags at Ø22.77 per bag	11,612.70	20
Cost of manufacture of 50 casks shipped per s.s.Planter (includ- ing cost of essences packages etc. in accordance with said contract of July, 1952)	1,012.03	
Cost of manufacture of 250 casks shipped per s.s.Crispin (includ- ing cost of essence packages etc. in accordance with said contract of July, 1952)	5,075.77	30
Freight for 50 casks per s.s. Planter	536.00	
Freight for 250 casks per s.s. Crispin	2,688.36	
Miscellaneous expenses (Insurance etc. Bank Charges)	<u>1,100.00</u>	
	<u>Ø 22,024.86</u>	

Price of 50 casks per s.s. Planter to be paid under contract with United Kingdom consignee	\$ 4,310.52
Price of 250 casks per s.s. Crispin contracted to be paid under contract with United Kingdom consignee	21,715.80
Total price expected	26,026.32
Expenses of Manufacture and delivery	<u>22,024.86</u>
Profit expected	<u>\$ 4,001.46</u>

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

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No. 5

Counterclaim

19th May 1953  
continued

10 14. The Defendants repeat sub-paragraph (b) of paragraph 6 of their Defence and say that the Plaintiffs have for their own purposes used the said 35 bags of sugar not redelivered to the Defendants and that the value of the said 35 bags of sugar is \$838.15.

20 15. After the Plaintiffs used the said 510 bags of sugar for the manufacture of the said sugar syrup the Plaintiffs used the said 510 empty sugar bags valued \$306.00 for their own purposes and have failed to deliver the said sugar bags to the Defendant on demand.

16. The Defendants sold and delivered to the Plaintiffs 352 $\frac{1}{2}$  lbs. Bay Oil valued at \$528.37 on the 5th day of January, 1953 as stated in paragraph 8 of the Plaintiff's Statement of Claim.

The Defendants claim \$11,007.15 as follows :-

Damages (as per paragraph 13 above) \$9,468.75

35 Bags of Sugar (as per paragraph 14). 838.15

30 Empty Sugar Bags (as per paragraph 15). 306.00

Bay Oil (as per paragraph 16 above) 528.37

\$11,141.27

Set off: Bay Oil I O U \$34.12

Tarpaulin 100.00

134.12

\$11,007.15

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

And costs of this suit.

Delivered the 19th day of May, 1953.

(sgd) F.O.C.Harris

Solicitor for Defendants.

No.5

Counterclaim  
19th May 1953  
continued

No.6

Reply and  
Defence to  
Counterclaim  
20th June 1953

No. 6

REPLY AND DEFENCE TO COUNTERCLAIM

REPLY AND DEFENCE TO COUNTERCLAIM delivered the 20th day of June, 1953, by Clifton Alexander Herriot Dupigny of Chambers, in the Town of Roseau in the Colony of Dominica Solicitor for Plaintiffs.

10

REPLY

1. The Plaintiff admits that the Value of the sugar syrup was not \$5075.77 as alleged and states that this figure represents the cost of preparing 250 casks Orange flavoured sugar syrup.

2. The Plaintiff admits that the 35 bags of sugar were not redelivered to the Defendant but credit has been given to the Defendant for same. Save as aforesaid the Plaintiff joins issue with the Defendant on their Defence.

20

DEFENCE TO COUNTERCLAIM

1. The Plaintiff admits paragraphs 7,8,9,10 and 11 of the Defendants' Counterclaim.

2. The Plaintiff denies that the sugar syrup was manufactured negligently and improperly and under unhygienic conditions and states that if the Defendants were forced to accept a lower figure it was not due to the above alleged cause or to any fault of the Plaintiff.

30

3. The Plaintiff admits that 35 bags of sugar were not re-delivered to the Defendants but credit has been given to the Defendants for same

and denies that the value is \$838.15.

4. The Plaintiff admits that the empty sugar bags were not delivered to the Defendants and now gives him credit of \$183.60 for same and denies that the value is \$306.00.

Dated the 20th day of June, 1953.

(sgd) Clifton A.H. Dupigny

Solicitor for Plaintiff.

In the Supreme Court of the Windward and Leeward Islands.

No.6

Reply and Defence to Counterclaim  
20th June 1953

No.7

MEMORANDUM OF ENTRY OF TRIAL

MEMORANDUM OF ENTRY OF TRIAL delivered the 20th day of June, 1953, by Clifton Alexander Herriot Dupigny of Chambers, in the Town of Roseau in the Colony of Dominica Solicitor for Plaintiff.

Enter this action for trial by a Judge of the Supreme Court of the Windward Islands and Leeward Islands on Monday the 6th day of July, 1953.

Dated the 20th day of June, 1953.

(sgd) Clifton A.H. Dupigny

Solicitor for Plaintiff.

No.7

Memorandum of Entry of Trial

20th June 1953.

No.8

NOTICE OF TRIAL

NOTICE OF TRIAL delivered the 20th day of June, 1953, by Clifton Alexander Herriot Dupigny of Chambers, in the Town of Roseau in the Colony of Dominica Solicitor for Plaintiff.

Take Notice that I have this day set down this action for trial by a Judge of the Supreme Court sitting in the Dominica Circuit of the Supreme

No.8

Notice of Trial

20th June 1953

10

20



In the Court of the Windward Islands and Leeward Islands  
Supreme Court in the Colony of Dominica on Monday the 6th day  
of the Windward of July, 1953.  
and Leeward  
Islands

Dated the 20th day of June, 1953.

No.8  
Notice of Trial  
20th June 1953  
continued

(sgd) Clifton A.H. Dupigny  
Solicitor for Plaintiff.

No.9  
Order for  
Amendment of  
Counterclaim  
4th August 1953

ORDER FOR AMENDMENT OF COUNTERCLAIM

Order made the 4th day of August, 1953, for the  
amendment of the Defendants' Counterclaim, by the  
deletion therefrom of paragraph 12 thereof and by  
the substitution therefor of the following:

10

"12(a) The said sugar syrup was not manufactured  
in accordance with the terms of the contract, and  
the said sugar syrup and the packages provided  
by the Plaintiff were of bad quality and not fit  
for the purpose for which they were intended.

"(b) The said sugar was manufactured and pack-  
ed by the Plaintiff so negligently and improper-  
ly and under such un-hygienic conditions that  
the quantity of the said sugar syrup was consid-  
erably reduced by leakage and the value thereof  
further diminished by fermentation and the Defen-  
dants were forced to accept \$10,381.80 in full  
payment for the 300 casks of the said sugar syrup,  
that is to say a sum of \$15,644.50 less than the  
price the said consignee in the United Kingdom  
had contracted to pay the Defendants."

20

No.10  
Order for  
Commission  
28th November  
1953

No.10  
ORDER FOR COMMISSION

ORDER made the 23th day of November, 1953, for  
the issue of a Commission to take the evidence in  
this matter in England.

30

No.11

SUPPLEMENTAL ORDER FOR COMMISSION

Supplemental Order made the 7th day of December, 1953, for the issue of a Commission to take evidence in this matter in England.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

No.11  
Supplemental  
Order for  
Commission

7th December  
1953.

No.12

COMMISSION

Commission issued the 9th day of January, 1954, to take evidence in this matter in England.

No.12  
Commission  
9th January  
1954

10 TRANSCRIPT OF SHORTHAND-NOTES OF THE EVIDENCE of MR. S.J.BILSON, MR.V.T.WALKLEY, MR.W.H.LAMBERT, MR. R.W. WATRIDGE and DR. R.H.MORGAN (Witnesses called on behalf of the Defendants), given before Sir Shirley Worthington-Evans Bart. COMMISSIONER, at No. 4 Paper Buildings, Temple, London, E.C.4. on Wednesday 28th April, 1954.

COUNSEL FOR THE PLAINTIFF; Mr.E.F.MONIER-WILLIAMS.  
Instructed by Messrs.SIMPSON, PALMER & WINDER

20 COUNSEL FOR THE DEFENDANTS: Mr. R. O. C. STABLE  
Instructed by Messrs. E. F. TURNER & SONS.

Transcript of the shorthand-notes of Arthur Lorkin (of James Towell & Sons, 12, New Court, Lincoln's Inn, London, W.C.2.): Official Shorthand-Writer, Admiralty and Prize Courts, Royal Courts of Justice, London.

DEFENDANTS EVIDENCE ON COMMISSION

No.13

SYDNEY JAMES BILLSON

Mr. SYDNEY JAMES BILLSON, sworn

EXAMINED by MR. STABLE

Defendants  
Evidence on  
Commission

No.13  
Mr.S.J.Billson  
Wednesday, 28th  
April 1954.  
Examination.

30

Q. Is your Name Sydney James Billson? A. Yes.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

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Defendants  
Evidence on  
Commission

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No.13

Mr.S.J.Billson  
Wednesday,28th  
April 1954.

Examination  
continued.

- Q. How are you employed? A. I am the Secretary of Messrs. Burnell Hardy, Ltd.
- Q. Where are their registered offices? A. Nos. 36/7, Piazza Chambers, Covent Garden, London, W.C.2.
- Q. Apart from your secretarial duties, have you considerable knowledge of the essential oils and fruit juice trades? A. Yes.
- Q. Did Messrs. Burnell Hardy Ltd. enter into contracts with Messrs. A.A. Baron & Co. for the supply to them of some orange flavoured sugar syrup? A. Yes. 10
- Q. When was that? A. That was in May, 1952.
- Q. What were the contracts for - how much syrup? A. A contract was placed on the 15th April, 1952, for 20,000 imperial gallons - and on the 1st May there was a further contract placed for 5,000 imperial gallons.
- Q. How was the syrup to be conveyed to you?. A. In new casks; packing was to be supplied free in barrels each containing 40 to 45 imperial gallons, and the barrels were to be strong, clean, paraffin-wax lined and well coopered to prevent leakage. 20
- Q. When was shipment to be made to you. A. In respect of the first contract in April, 1952, in one, two or three lots as quickly as possible. That was the 20,000 gallons. Under the second contract shipment was to be in one lot during May, 1952. 30
- Q. Did you receive the whole of the 20,000 gallons? A. No.
- Q. How much did you receive? A. The first shipment was of 50 casks - 2,113 gallons - and the second shipment was of 250 casks - 10,645 gallons.
- Q. What was the price of the first shipment, the 50 casks? A. 8s.6d. per imperial gallon, net weight c.i.f. London.
- Q. What did that come to in pounds, shillings and pence? A. £398.0.6. 40

- Q. What about the second consignment? What did that come to in pounds, shillings and pence  
A. £4,524. 2. 6.
- Q. I think that makes a total of £5,422. 3. 0. for the 300 casks. A. That is right.
- Q. At the rate of exchange of \$4.779 - \$4.824 to the £, what is that in Dollars. A. So far as we were concerned dollars never came into the question, our transaction was in sterling; but the equivalent worked out on that rate of exchange, was \$26,026.32.
- Q. Did the 300 casks which you received come to you direct from the manufacturer or from the party with whom you contracted? A. So far as we were concerned, from the party with whom we contracted.
- Q. What had you arranged to do with the syrup when you got it? Had you entered into any-sub-sales in respect of it? A. Yes, it was definitely sold.
- Q. To whom was it sold? A. The first 50 casks were sold to MacLennan Beverage Co. of Belfast.
- Q. To whom were the remaining 250 casks sold? A. 200 were sold to Cantrell & Cochrane Ltd. of Sunbury-on-Thames and 50 were sold to Compounds & Essences, Ltd., of Southampton.
- Q. When the two shipments arrived did you have anything done to the casks? A. Yes.
- Q. What did you have done to them? A. We gave instructions to our forwarding agents, Messrs. Weber, Smith & Hoare (Overseas) Ltd. who were to act for us in connection with the clearance and delivery, regarding the casks, and when the first consignment arrived at the dock we were notified by them they were in very bad condition, and we immediately told our forwarding agents to do the best they could as regards re-cooperage, and so on. But with regard to the first 50 casks it was practically an impossibility for them to do very much in that way. They were going to the wharf where we normally have our goods stored, the Metropolitan Wharf.

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MR. MONIER-WILLIAMS: Are these matters about which you can speak of your own personal knowledge? A. Yes. Why I mention that 50 casks, which were at the dock, is because I want to make that consignment more or less distinct from the 250 casks which were to go to the Metropolitan Wharf.

MR. STABLE: Take the 50 casks which were ultimately destined to go to MacLennan Beverage Co. Belfast. What did you have done to those casks? A. They were re-coopered, or partly re-coopered. 10

Q. By whom? A. By the dock authorities.

Q. Who are the dock authorities? A. The West India Dock authorities.

Q. Why did you have them re-coopered, or partly re-coopered? A. Because of the advice that we got from our forwarding agents. Messrs. Weber, Smith & Hoare, that the consignment was in very bad condition and leaking. 20

Q. What did you have done with the 250 casks on arrival? A. We had them re-coopered.

Q. By whom were they re-coopered? A. Messrs. Weber, Smith & Hoare.

Q. Who were Messrs.David Mc Clausland (1949) Ltd. of Belfast? A. They were the forwarding Agents at Belfast and were more or less acting for the consignees, MacLennan Beverage Co.

Q. Were there any leakages from the casks on their arrival in this country? A. Yes, definitely. 30

MR. MONIER-WILLIAMS: I hesitate to interrupt again, but you say that there was leakage from the casks on their arrival in this country. Did you actually see the casks when they arrived in this country or are you telling us what you have been told? A. Well, so far as we were concerned, we had to attend to the clearance and delivery of the casks to the respective consignees. 40

MR. STABLE: Did you get details from Messrs. David McCausland Ltd. of Belfast, of the leakages from the first consignment of 50 casks? A. Yes

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MR. STABLE: I think I am right in saying that it has been agreed between the parties that this document shall go in as evidence of the leakages, rather than call a representative from Messrs. David McCausland Ltd.

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THE COMMISSIONER : Is that so, Mr. Monier-Williams?

10 MR. MONIER-WILLIAMS: I do not know, but I do not object to it going in

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THE COMMISSIONER: Very well (Exhibit "D.1.").

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MR. STABLE: You have told us that the other casks, the 250 casks, were recovered by Messrs. Weber, Smith & Hoare. A. Yes.

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Q. Did you receive from them details of short weight and leakages? A. Yes, the official landing accounts gave those particulars.

20 Q. Do you produce those documents? A. Yes (Exhibit "D.2.")

Q. You may not know the answer to this question, and if you do not know what the answer to it is, please say so.

Looking at the Weber, Smith & Hoare documents, it is quite clear, is it not, that they cover every single cask in the 250 casks consignment. A. Yes.

30 Q. If you look at the David McCausland document you will see that there are 42 casks dealt with, whereas the whole of that consignment was 50 casks. Do you know why that is? A. Yes. On account of its condition on arrival in London we had considerable difficulty in getting the shipping company to accept the consignment for shipment to Dublin because of the leaking condition of the casks; and I think that there were one or two casks which were lost - and on arrival of the consignment in Dublin again I think one or two casks got lost - they were either lost or completely empty.

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- Q. I think we had better deal with each of your customers separately. Did the Maclennan Beverage Co. make any complaint about this syrup to your Company? A. Yes.
- Q. Did they accept the shipment? A. No.
- Q. What happened to the shipment which went to Belfast? A. It was sent back to us and we had to refund them the full value of what we had charged for the goods.
- Q. I think one cask accidentally got knocked in- 10  
to the river? A. Yes.
- Q. Was that cask, or the contents of that cask condemned? A. Yes, by the medical officer.
- Q. As a result of it being condemned by the medical officer did the insurance company make any allowance in respect of it? A. They would not admit liability, but they made a grant.
- Q. What was the grant?. A. It was £10 odd.
- Q. And that was ultimately brought into account? 20  
A. Yes.
- Q. That whole consignment was returned with the exception of that one cask?. A. Yes.
- Q. Now let us deal with Compounds & Essences Ltd., of Southampton.
- They had 50 casks, did they not? A. Yes.
- Q. How many casks did they return to you? A.38
- Q. That means they kept 12 casks. A. They used six and destroyed six.
- Q. And they returned 38 to you?. A. Yes. 30
- Q. Did you account to them in respect of those 38 casks? A. Yes.
- Q. And you had to refund them something? A.Yes.
- Q. Now let us deal with Cantrell & Cochrane. They were to receive 200 casks, were they not? A. Yes.

- Q. How many did they keep. A. 29.
- Q. And that means they returned 171? A. Yes.
- Q. Did you arrange for a small sample of this syrup to be taken out of the casks from the Cantrell & Cochrane consignment and have it sent to an independent chemist? A. Yes.
- Q. To whom did you have that sample sent? A. Dr. Harold Morgan.
- 10 Q. And is it within your knowledge that certain other chemists examined this syrup? A. Yes.
- Q. I shall be calling them, or some of them, to tell us what they found. Did Mr. Lambert, Messrs. Perfect, Lambert & Co., and Mr. Watridge, the Borough Analyst at Southampton, examine this syrup? A. Yes.
- Q. And do you know that Mr. Walkley, the Chief Chemist of Messrs. Cantrell & Cochrane, also examined this syrup? A. Yes.
- 20 Q. As a result of advice received from those gentlemen did you decide whether or not this syrup was fit for use in the soft drinks trade? A. Yes.
- Q. Which way did you decide?. A. That it definitely was not; it could not be used.
- Q. I think you have considerable experience of this syrup. A. Yes.
- Q. It is used mainly in the soft drinks trades?  
A. It is definitely used in the soft drinks and beverage trade and I think it is also used to a certain extent in the bakery and confectionery trade.
- 30 Q. It is used in the food and soft drinks trades?  
A. Yes.
- Q. As a result of the advice you received from these various people, did you realise that you had to do something to minimise the damage?  
A. Yes.
- Q. Were you advised by Dr. Morgan as to the best method of treating this syrup?. A. Yes, we were.
- Q. Did you follow Dr. Morgan's advice? A. Yes, to

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a certain extent, but actually I think we more or less decided prior to that what to do about it; I think what we did really originated from the report of Messrs.Perfect, Lambert & Co.

- Q. I think the casks that were returned to you totalled 258. A. Yes.
- Q. Did you have the contents of those 258 casks treated in any way? A. Yes.
- Q. By whom were they treated?. A.The West Ferry Wharfage Co. Ltd. 10
- Q. Was the treatment of the contents of those casks an expensive business? A. Yes.
- Q. Are you satisfied that what you had done to this syrup was the proper way to deal with it. A. Yes.
- Q. Had you not had this syrup treated in the way that you had been advised by the West Ferry Wharfage Co. Ltd., what value would there have been in it?. A. Nil 20
- Q. It would have been a complete write off? A.Yes, a complete loss.
- Q. So far as your experience goes, was the process which you had this syrup subjected to the best process that you could have had it subjected to? A. To the best of my knowledge, yes.
- Q. So far as your experience goes, was it, although expensive, worth while? A. Yes.
- Q. Do you produce the account of the West Ferry Wharfage Co.Ltd. showing the amount that you had to pay to them? A. Yes (Exhibit "D 3") 30
- Q. That exhibit consists of two documents, one showing the amount of £1,092. 4. 4. Did your Company pay that amount to the West Ferry Wharfage Co. Ltd.? A. Yes.
- Q. The other shows an amount of £16. Did your Company pay to the West Ferry Wharfage Co.Ltd? A. Yes.

- Q. All the items on those accounts deal either with collecting or delivering casks to your customers or with having the processing business carried out, do they not? A. Yes.
- Q. Are the items in respect of collecting and delivering in connection with having the processing done? A. Yes.
- Q. So that the two amounts, which added together come to £1,108.4.4. were expended in and about the re-processing of the syrup? A. Yes.
- Q. Are you satisfied that you were charged a fair and reasonable price by the West Ferry Wharfage Co. Ltd.? A. Yes.
- Q. Did you bring their charges into the account of your Company with A.A. Baron & Co.? A. Yes.
- Q. Do you now produce copies of the Statement of Account with Messrs. A.A. Baron & Co.? A. Yes (Exhibit "D 4")
- Q. Does that account show the balance standing in A.A. Baron & Co's favour as at the 11th September, 1952? A. Yes.
- Q. Does that represent part of the purchase price which was unpaid by you at that time? A. Yes.
- Q. The first item there is "By balance in your favour, £2,711. 1. 6. A. Yes.
- Q. The next item is: "Refund of insurance premium, £313.12.10." A. Yes.
- Q. How did that arise? A. The goods were insured by us on behalf of the shipper, and it was understood that we paid the premium and debited them with cost of the premium. When the condition of the respective consignments came to be seen we endeavoured to see whether it was possible to arrange what we could with the insurance people; eventually they repudiated all liability, and then, after considerable efforts, they arranged to refund the actual premiums.
- Q. Having previously debited Messrs. A.A. Baron &

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- Co. with the premiums here you are refunding them. A. Yes.
- Q. Does Exhibit "D.4" show the shortage on arrival in London? A. Yes.
- Q. I do not quite understand the figure of 25,509 lbs. A. That figure is the actual shortage on arrival, compared with the shippers' invoiced quantity. That is the actual difference between the landing account and the shippers' invoice. 10
- Q. I am still rather in the dark about that figure. I should have expected it to be "tons" and not "lbs". Does that figure represent the average per cask, or what? A. No, it is not a question of it being the average per cask. The landing account covers the total consignment cask by cask. Each cask was weighed and the final result showed this difference. It is easier for calculating purposes to work in lbs. instead of tons. 20
- Q. I think I understand it now. That figure is 25,509 - not 25.509. A. Yes.
- Q. Then the next item is: "Shortage in transit to customers including in transit to treatment depot, from treatment depot and redelivery to customers, 4,188 lbs". A. Yes.
- Q. Then you bring in the amount paid to the West Ferry Wharfage Co. Ltd. by your Company covering treatment cost and charges and loss in treatment. A. Yes. 30
- Q. Is it inevitable when you treat this syrup which has fermented that you will have substantial loss? A. Yes, you cannot avoid it.
- Q. So that if you do treat a large quantity of it you expect to get a substantial loss? A. Yes, definitely.
- Q. And in this case did you lose in the treatment, 2,516 lbs? A. Yes.
- Q. From your knowledge of this processing is that a reasonable amount having regard to the quantity of syrup that was treated? A. Yes. 40

- Q. Then you bring into the account the six casks which had to be destroyed at Southampton by customers. A. Yes.
- Q. That makes a total shortage of 35,066 lbs. of syrup. A. Yes.
- Q. Is that 2,664 gallons? A. Yes.
- Q. Is the value of that £1,132. 4. 0.? A. Yes
- Q. Did you suffer certain loss in duty and charges arising out of the loss on the two shipments of £171. 16. 6.? A. Yes.
- 10 Q. Did you have to pay a fee to Dr. Morgan for his services? A. Yes.
- Q. Did you also have to pay your customer in Belfast in respect of the analyst's fees which he incurred? A. Yes.
- Q. And the same with regard to your customer at Southampton? A. Yes.
- Q. Did you also have to reimburse your customer at Southampton with regard to the six casks which had to be destroyed? A. Yes.
- 20 Q. I think there will be evidence that he used six casks, after having had to boil the syrup. A. Yes
- Q. Did you have to pay him in respect of the necessary and inevitable loss arising out of that re-processing which he did himself? A. Yes.
- Q. And was that brought into account? A. Yes.
- Q. Did you have to insure the syrup whilst it was in store and in transit to the treatment depot? A. Yes.
- 30 Q. Were all those items to which I have referred paid by your Company? A. Yes.
- Q. I see that on the credit side there is the £10 grant by the Insurance Company entered. A. That is so.
- Q. Have you given to A.A. Baron & Co. all the credit that they are entitled to? A. Yes, we have given them all the credit that they are entitled

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- to in accordance with the contract.
- Q. And where you show in this account that you have paid to third parties sums of money, are they accurately set out in the account?  
A. Yes.
- Q. And does it show that as a total you had to pay out £2,513.11.3.? A. Yes.
- Q. So that instead of paying the balance of £2,711.1.6. plus the insurance refund and the grant from the insurance company to Messrs.A. A. Baron & Co. did you pay them that sum less £2,513.11. 3. A. Yes. 10
- Q. Just explain, if you will, the third page of this account - Exhibit "D.4." Is the first figure what you paid to Messrs. A.A. Baron & Co. on the 31st March, 1953? A. Yes.
- Q. What is the item of £2. 2. 5? A. That was in respect of some goods sent by us to A.A. Baron & Co.
- Q. That figure has nothing to do with the transaction with which we are dealing? A. No. 20
- Q. So that what you actually paid Baron's in respect of the balance owed by you was £521. 3. 1.? A. £521. 3. 1. less £50; we paid them £471. 3. 1.
- Q. Why did you pay them £521.3.1. less £50?. A. That was done in accordance with the agreement made with Barons. That agreement was that that amount was to be classified as a contribution towards extra expenses incurred in dealing with the consignments. 30
- Q. The actual figure was £521.3.1. but they took £50 less? A. Yes.
- Q. Do you also produce details from the West Ferry Wharfage Co. Ltd. showing the weights received by them of this syrup and the processing losses on the syrup - three sheets of paper. A. Yes. (Exhibit "D.5.")
- Q. With regard to the casks; I appreciate that the contract you had with A.A. Baron & Co. stipulated for new wax-lined casks. A. That is so. 40

- Q. I think syrup is often transported in old casks  
A. Yes.
- Q. Is it, in your opinion, necessary that whatever casks are used they should be wax-lined? A.Yes, definitely.
- Q. Is that to prevent infection? A. Yes.
- Q. As a result of infection does fermentation take place? A, Yes.
- Q. Did you yourself see these casks? A. No.

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CROSS-EXAMINED BY MR. MONIER-WILLIAMS

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Cross-Examination

- Q. First of all I want to ask you about the last document which my friend put in. Exhibit "D.5" which is headed: "Summary of weights received and processing losses on flavoured syrup". That is the heading of page 1 of that Exhibit. Look also at page 2, which is headed: "Account Messrs.Burnell Hardy Ltd. S.S.Crispin" T O 52/101 Received Inwards for reconditioning on flavoured syrup. "Look also at page 3, which is headed: "Account Messrs.Burnell Hardy Ltd. S.S. Crispin T. O. 52/101. Reconditioned - Outwards on flavoured syrup." Now, first of all with regard to the first of those pages. I make the total there 513 casks. Is that right?  
A. Yes.

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- Q. Now look at the second page. Is the total there 223? A. No. 258

30

- Q. Can you explain those figures? A. With regard to the comparison between the 258 and 213?

- Q. Yes. A. 258 casks were received for treatment, and 213 casks was the net result after treatment.

- Q. And those were sent out after reconditioning.  
A. Yes.

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Q. I think there were ~~two~~ shipments - 50 casks by the S.S. "Planter" and 250 casks by the S.S. "Crispin" A. Yes.

Q. Let me deal with the 258 casks first. Can you say from which ship those casks came? A. That is the combined total of both shipments.

Q. You said that you had as customers the MacLennan Beverage Co. in Belfast, Cantrell & Cochrane Ltd. Sunbury-on-Thames, and Compounds & Essences, Ltd., Southampton. A. Yes.

10

Q. I see on page 2 of Exhibit "D 5" "40 casks ex Pitt & Norrish". Who are they? A. They were customers of Cantrell & Cochrane, who transferred 40 casks to Pitt & Norrish ex their 200 casks.

Q. Was the contract which you entered into with A.A. Baron & Co. an oral contract? A. Yes.

Q. Were you, on your side, the agent for your company and did you speak to the representative of A.A. Baron & Co. about it? A. What do you mean?

20

Q. You said that the contract was an oral contract. A. I did not understand the question. It was done by correspondence.

Q. Then it was not an oral contract? A. No

Q. It was done by correspondence between your Company and Barons? A. Yes.

Q. Is it set out in the correspondence with Barons .... A. Excuse me, but I do not quite follow you. I thought you asked me whether this contract was a normal contract.

30

Q. No you misheard me. I asked you whether this contract was an oral contract. A. The contracts were definitely not oral contracts.

Q. They were contracts in writing? A. Yes contracts on official contract forms.

Q. Have you a copy of the contract before you? A. Yes.

- Q. Does that state that the barrels should be new, strong, clean and wax-lined? A. Yes.
- Q. Did your Company contract with the branch of A. A. Baron & Co. in Southampton or Portsmouth, or wherever they are in this country? A. No, in Dominica.
- Q. They carry on business in Dominica and also in this country, do they not? A. I do not know about that.
- 10 Q. It is stated in the Pleadings: "The Defendants are merchants and live in the Town of Roseau and Portsmouth respectively and carry on business in both towns". A. That Portsmouth is the Portsmouth in the British West Indies.
- Q. I did not realise that. Then the business was done with A.A. Baron & Co. abroad? A. Yes.
- Q. This contract was, I think, a c.i.f. contract? A. Yes.
- 20 Q. Have you a record of when the goods were put ashore in this country. A. Yes.
- Q. Do you know when that was? A. Yes, the 19th August. That is in the landing account. That was the 250 casks. So far as the 50 casks are concerned, we had no landing account from the dock authorities.
- Q. You do not know when the 50 casks were landed? A. No, not at the moment. But I could find that out for you.
- 30 Q. I think they were shipped before the 250 casks. A. Yes; they were shipped on the 21st July.
- Q. What documents of title have you to the 250 casks and the 50 casks? A. What do you mean.
- Q. Did you receive C.I.F. contract documents of title? A. Yes, but not insurance certificates, because it was arranged eventually on account of difficulties the shippers (Barons) were experiencing on the question of insurance to insure here.
- 40 Q. And that was a variation from the contract? A. Yes.

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- Q. You did the insurance here? A. Yes.
- Q. When did you receive the documents of title?  
A. Do you want the actual date?
- Q. Yes, if you have got it. A. I see that the  
50 casks arrived on the 6th August on the  
"Planter".
- Q. When did you receive the documents of title?  
A. I do not appear to have the actual date  
here. These documents were at the time very  
much in delay. In the first place the ship-  
pers (Barons) sent incorrect documents. The  
goods were liable to preference and they sent  
the wrong certificates of origin at first, and  
it was quite a time before we actually received  
the correct documents through Barclays Bank 10
- Q. Under a c.i.f. contract your possession of the  
documents would enable you to tranship them.  
A. Yes.
- Q. I want to know when you received the documents  
giving you title to the goods. A. I can get  
those dates from Barclays Bank. I do not have  
them here. 20
- Q. Can you remember when you received the docu-  
ments which were unsatisfactory?. A. No. I  
shall have to look them up.
- Q. Very well, I will leave that for the time be-  
ing. When did you first come to the conclu-  
sion that something was wrong with the syrup?  
Was a complaint made about it? A. Yes. On  
arrival of both consignments we were notified  
by our forwarding agents, Messrs. Weber, Smith  
& Hoare, Ltd. who were clearing the goods,  
that the consignments were in a very bad con-  
dition outwardly and were leaking very con-  
siderably. 30
- Q. Was that about the 19th August? A. Yes.
- Q. Was that the "Crispin" shipment? A. Yes.
- Q. Had you any complaint about the goods shipped  
on the "Planter"? A. Yes.
- Q. You had had a previous complaint from your 40

agents regarding the 50 casks? A. Yes.

Q. I think you said that you caused a sample to be taken from Cantrell & Cochrane's consignment  
A. Yes.

Q. You yourself, I take it, did not supervise that?  
A. No. I asked Cantrell & Cochrane to send a sample direct to Dr. Morgan.

Q. Directly you had a complaint, presumably concerning the goods shipped on the "Planter", did you get into touch with Messrs. A. A. Baron & Co? A. Yes.

Q. Did you mention then that it was the barrels which were giving you cause for concern? A. Yes.

Q. That, I suppose, was the matter which first brought to your attention the state of the barrels?  
A. Yes; when we were notified of the condition of the consignments, naturally we were rather doubtful as to whether the barrels were new barrels, and, with regard to the "Crispin" consignment, we sent down to the wharf our Managing Director. I think he went there at the request of Perfect, Lambert & Co. to see the condition of the consignment.

Q. That was what gave you cause for alarm first of all? A. Yes.

Q. Not the quality of the syrup? A. That is so.

Q. That awaited the result of the analysis? A. Yes.

Q. In your experience, is it usual to supply new casks for shipment of this syrup? A. In most cases, yes.

Q. In which cases is it not? A. I am speaking so far as we are concerned. We had imported syrup before from the British West Indies - a considerable number of years ago - and the question of heavy leakage arose then; and from that time onwards it has always been a stipulation by us for new casks, in order to avoid leakage.

Q. Had you done any business before of this nature with Messrs. A.A. Baron & Co.? A. No, this was our first transaction with them.

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Q. Had you done any business of this nature with other merchants in the same part of the world?  
A. For syrup.

Q. Yes. A. Yes, we had done business for syrup with other merchants in the British West Indies.

Q. And you always stipulated for new barrels?  
A. Yes.

Q. You mentioned something about wax-lined barrels. I am afraid that my knowledge of this sort of thing is not very great. That refers to the interior of the barrels, I suppose?  
A. Yes.

10

Q. I suppose it would be possible to use old barrels providing the waxing inside was sufficient? A. Yes, and provided it was properly applied.

Q. Were those barrels the normal size for shipment of syrup? A. Yes.

Q. Each holding 40 to 50 imperial gallons? A. Yes.

20

Q. You referred to the refund of the insurance premium. That premium was paid by you originally, I take it? A. Yes.

Q. That is how that refund came about? A. Yes.

Q. What difficulties arose over the insurance? A. When we heard of the condition of both consignments we naturally advised the insurance people right away and they went into every particular point.

30

Q. I think you are misunderstanding me. I am talking about the insurance under C.I.F. contract - a contract which is normally insured by the Vendor. What difficulties arose in the West Indies in regard to the matter? A. That I do not know, but I should imagine that the trouble was the fermentation of the syrup.

Q. I understand that you say you were contracting direct with Messrs. A.A. Baron & Co? A. Yes.

Q. Were you informed by Messrs. A.A. Baron & Co. that they were unable to insure in the West Indies? A. Yes, definitely, and we were instructed to insure here.

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Q. Did you not think that that was rather strange? A. Not necessarily. But we were doubtful about it, of course. I do not think it is unusual.

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Q. Do your customers usually on a C.I.F. contract when you are the purchaser ask you to insure?

10

A. In the majority of cases the insurance is left to us in order to safeguard their interests. They are only interested to the extent of buying C.I.F.

No.14

Mr. S.J. Billson

Q. I mean when you are a purchaser from abroad and you buy c.i.f. normally the insurance is effected by the vendor, is it not? A. Yes.

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Q. When you received notification from Messrs. A. A. Baron & Co. that they were unable to insure did that put you on your guard at once? A. Well, we were dubious about it, naturally.

20

Cross-  
Examination  
continued

Q. It was long before you had accepted the documents that you heard that they were unable to insure? A. Yes, definitely.

Q. Did not you ask them why they were unable to insure out there? A. No. I don't think so. We were asked to attend to the insurance.

Q. You did not think it was because there were no facilities for insurance out there, did you? A. I did know to a certain extent that there are definitely facilities out there for such an insurance because we had had transactions with other British West Indian shippers in the past.

30

Q. Try to take your mind back to the time that you heard Messrs. A.A. Baron & Co. could not insure. Did it not pass through your mind that the insurance company might have rejected the goods as a bad risk? A. No. I don't think so - because the correspondence which led up to these contracts was dealt with by my Managing Director.

40

Q. You were not dealing with that matter personally? A. No.

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No.14

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Cross-  
Examination  
continued.

- Q. If you were dealing direct with a customer in a place like the West Indies and you were asked out of the blue to insure the goods, would you not think it rather strange, on a c.i.f. contract? A. Personally I think so.
- Q. And as a man of business dealing with perishable goods you would think perhaps that the goods had been rejected by the insurers as a bad risk? A. Yes
- Q. And you, as a man of business, would make further enquiries before you accepted any documents? A. Yes. 10
- Q. Have you had experience of things going wrong with shipments of syrup before, due to fermentation and that sort of thing? A. Not on this scale. The shipments we have had in the past from the British West Indies involved leakage, but very little fermentation.
- Q. The one really follows the other, does it not? A. Yes. 20
- Q. I suppose later on you got in touch with Messrs. A.A. Baron & Co. and gave them the analysis reports? A. Yes.
- Q. Have you got the dates when you got into touch with Messrs. A.A. Baron & Co. firstly concerning the state of the barrels and secondly concerning the fermentation? A. No I have not got those dates now. I shall have to look up those dates. There was considerable correspondence in regard to the matter. 30
- Q. Now will you please turn to the Statement of Account, to which reference has been made. The bulk of it is made up of treatment given by the West Ferry Wharfage Co. is it not? A. Yes
- Q. And that is stated to be loss on voyage? A. Yes.
- Q. The sum mentioned there is £1,108.4.4. being the cost of treatment. A. Yes.
- Q. The 35,000lbs. odd is the loss on voyage? A. That is the combined loss on the voyage and in treatment. 40

THE COMMISSIONER: Are you saying that this document (Exhibit D 4") shows that? A. Yes.

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MR. MONIER-WILLIAMS: You paid over £1,000 for treatment to the West Ferry Wharfage Co.? A. Yes.

Q. Would you say that that treatment was satisfactory? A. Yes.

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Q. Why was it that you dropped so much on the resale if it was given this apparently satisfactory treatment? A. What do you mean?

10

No.14

Q. Forgetting for the moment the amount which was lost on the voyage and in the treatment of the syrup, the value of the casks was \$26,000 and you were forced to accept a sum of \$15,000. A. Our transaction was in sterling.

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Q. What was the total loss on this transaction? A. So far as my firm is concerned?

Cross- Examination continued.

Q. Yes. A. The arrangement was 5 per cent commission, and these consignments were definitely treated, and the shippers, Messrs.A.A. Baron & Co., paid all charges in connection therewith. We definitely cleared the whole shipments with just our 5 per cent commission; we were not out of pocket at all.

20

Q. After the treatment you could sell what remained for the same price as you could sell the stuff had it required no treatment? A. Quite. That is correct.

Q. And your commission was 5 per cent? A.Yes.

30

Q. Have you any personal knowledge of the treatment? A. No, not so far as the treatment is concerned.

MR. MONIER-WILLIAMS: That Sir, is all I want to ask Mr.Billson except for the dates of the c. i.f. documents.

THE COMMISSIONER: Can you get those during the adjournment Mr. Billson? A. Well, it means going right through the correspondence. I take it that what you really want is the date the document reached us.

40

MR. MONIER-WILLIAMS: Yes, the dates when the documents of title were in your possession. A. I can let you have those dates later on.

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No.15

RE-EXAMINED BY MR. STABLE

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No.15

Mr.S.J.Billson

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Re-Examination

Q. You said that you have had experience of buying syrup from the British West Indies in the past. A. Yes.

Q. And in the past you have experienced trouble from leakage? A. Yes.

Q. Have you experienced trouble from leakage in the past where new barrels have been used? A. No - only very minor trouble.

10

Q. Was it as a result of leakage from old barrels that you stipulated for new ones on this occasion? A. Yes.

(The witness withdrew)

Later in the Day Mr. Billson was recalled and gave the following evidence:

THE COMMISSIONER: You were going to give us some dates, Mr.Billson. A. Yes. "The "Planter" arrived on the 6th August, 1952, and the "Crispin" arrived on the 18th August, 1952. The incorrect documents received in the first place through Barclays Bank were received on the 13th August, 1952, and the final documents were received on the 3rd September, 1952.

20

MR. STABLE: That is so far as the "Planter" is concerned? A. Yes. So far as the "Crispin" is concerned, the incorrect documents were received on the 4th September, 1952 and the final documents were received on the 9th September, 1952

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No.16  
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Further Cross-  
Examination.

No.16

FURTHER CROSS EXAMINED BY MR. MONIER-WILLIAMS

Q. In what way were the incorrect documents incorrect? A. The Certificate of origin to do with the sugar was incorrect. On the first page of that document they made out a certificate of origin which was supposed to be 65

per cent sugar, and the weight they gave on that document never tallied up properly, and so we had to insist on a fresh certificate.

Q. Which delivery did your firm accept as good delivery under the contract? A. None.

Q. But eventually you got the documents to your satisfaction? A. Yes, When we heard of the condition of the syrup we sent a protest to Messrs. A.A. Baron & Co. That was on the 2nd September, 1952. The reason why that protest was sent was because Messrs. A.A. Baron & Co. were insisting that we took up the documents for the full amount of the shipments.

Q. Are you saying that you never accepted any documents? A. We accepted them under protest through Barclays Bank, explaining to them the condition of the respective consignments.

Q. And you accepted under protest when the certificate of origin had been corrected? A. Yes.

Q. But not when the certificate of origin was wrong? A. We had discussions with the Bank in regard to the matter and they cabled out to the West Indies to ensure that they issued the correct certificates.

Q. There was no acceptance on the 13th August? A. No.

Q. Nor on the 4th September. A. No.

Q. Such acceptance as there was on the 3rd September in respect of the "Planter" consignment and on the 9th September in respect of the "Crispin" consignment? A. That is correct. There is one point I should like to mention with regard to the 50 casks ex the "Planter". I believe you referred to a landing account for 40 casks.

Q. I do not think I did. A. I thought you did.

MR. STABLE: I think you are referring to Exhibit "D 4". I am referring to the 40 casks which were landed at Belfast. We instructed that 50 casks should be delivered. 40 casks were shipped from London and 9 were short-shipped, and they followed by another steamer.

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Further Cross-  
Examination  
continued

No.17

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Further  
Re-Examination

MR. MONIER-WILLIAMS: When did your company raise the question of insurance with Barons or when did Barons raise it with you? When was it first noted? Can you give me that date? A. No, am afraid I cannot.

Q. Can you remember about when it was? A. It was more or less very soon after contracts were placed, because we were insisting on shipment more or less immediately.

No.17

10

FURTHER RE-EXAMINED BY MR. STABLE

Q. Let me try to clear up the matter of the 50 casks which went to Belfast. One of those casks was knocked into the river and was condemned by the medical officer. A. Yes.

Q. That left 49 casks. A. Yes.

Q. Did those 49 casks all go to Belfast? A. Yes.

Q. Did they go there in two shipments? A. Yes.

Q. One of 40 casks and one of 9 casks? A. Yes.

Q. And were all those 49 casks in due course re- 20  
jected by your customers and sent back to you?  
A. Yes.

Q. And you had to reimburse them in respect there-  
of? A. Yes.

(The Witness withdrew)

I hereby certify that the typescript contained on this and the preceding 21 pages to be a true and accurate transcript of the shorthand notes of my evidence given before Sir Shirley Worthington-Evans, Bart., Commissioner on Wednesday 28th April 1954. 30

(sgd) Sydney J. Billson

Dated this 6th day of May, 1954.

No.18

VICTOR TREVOR WALKLEY

MR.VICTOR TREVOR WALKLEY, sworn

EXAMINED BY MR.STABLE.

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No.18

Mr.V.T.Walkley

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Examination

- 10 Q. Is your name Victor Trevor Walkley?. A. Yes.
- Q. How are you employed? A. I am the Chief Chem-  
ist of the Cantrell Cochrane group.
- Q. Are they mineral-water manufacturers? A. Yes
- 10 Q. Have you held that appointment for the past  
four years? A. Yes.
- Q. Are you a Member of the Society of Analytical  
Chemistry and a Professional Member of the In-  
stitute of Food Technologists of the United  
States of America? A. Yes.
- Q. Have you made a special study of fermentation?  
A. I have.
- Q. I think you have published a number of papers  
on the subject? A. Yes.
- 20 Q. How many papers have you published on the sub-  
ject of fermentation spoilage? A. Ten.
- Q. Do those publications deal with fermentative  
spoilage by micro-organisms and yeast fermenta-  
tion relative to fruit juices and processing?  
A. Yes.
- Q. I think your Company entered into a contract  
with Messrs. Burnell Hardy, Ltd. for the pur-  
chase of 200 casks of orange flavoured sugar  
syrup. A. Yes.
- 30 Q. Were those 200 casks delivered to your Company's  
works at Sunbury-on-Thames? A. Yes.
- Q. Was that at the end of August or the beginning  
of September, 1952? A. Yes: we received some  
of them towards the end of August and some of  
them early in September, 1952.
- Q. Did both lots that you received make up the 200  
casks? A. Yes.

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Examination  
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- Q. As Chief Chemist of your Company do you carry out tests on syrup which arrives at your works? A. Yes; on the arrival of raw material such as syrup we carry out a thorough examination, make fermentation tests and give the material a general analysis.
- Q. Did you carry out tests on the contents of some of the casks in question in this case? A. Yes.
- Q. On how many of the casks did you carry out tests? A. The contents of 73 casks were carefully examined, for fermentation in particular. 10
- Q. Did you carry out a general examination of the contents of the remaining casks? A. I carried out a survey of the contents of the remaining casks.
- Q. Taking the 73 casks, how did they react to the fermentation tests? A. Of those 73 casks, 16 showed evidence of fermentation in 6 to 14 days, and 57 showed evidence of fermentation within a period of 6 days. The tests were made as laid down by the Committee of the Soft Drinks Industry. 20
- Q. Did you find any foreign matter in the syrup? A. Yes; in the syrup there was a large number of extraneous particles, such as bees, small fragments of straw and chips of wood. I found those things in every cask that I examined. 30
- Q. Do you know whether the bees were British bees or bees from somewhere other than this country? A. No, I could not say whether or not they were British bees. But they were not like the bees I have seen here.
- Q. They were unfamiliar bees to your eyes? A. That is so.
- Q. Did you find bees in every cask that you looked at? A. Yes.
- Q. And did you find bits of straw and wood in every cask that you looked at? A. Yes, in every cask that I opened I did. 40

- Q. What was the sort of smell of the stuff? A. It was obviously in a fairly advanced state of fermentation; it had pronounced beer-like smell.
- Q. And it ought not to have had a beer-like smell? A. No.
- 10 Q. Generally speaking, would you describe the condition of the stuff as clean or otherwise? A. Otherwise, The contents of the casks were quite unfit for the purpose for which we required it.
- 20 Q. With regard to the remaining cask of which you carried out a general survey. What did you do as regards those casks? Why did you not go on and examine the contents of every cask? Why did you stop at 73? A. I examined the contents of 73 casks out of a consignment of 200 casks. That was, in my opinion, quite sufficient to examine to get an indication of the state of the consignment. The remaining casks showed leakage and when the bungs were lifted there was evidence of a certain amount of gas pressure in the casks, which indicated that fermentation had taken place or was taking place.
- Q. Was there any sign of frothing? A. Yes, there was.
- Q. By taking the bungs out of the casks, were you able to smell the contents? A. Yes and there was a pronounced smell of fermentation.
- 30 Q. Did you see any marked difference between the 73 casks that you examined minutely and the remainder of the casks? A. No, I would say that they were identical.
- Q. Was your company particularly anxious to have this consignment when it arrived? A. Yes; we were very short of raw material at that time.
- Q. And were you particularly anxious not to have to send the stuff back? A. Yes.
- 40 Q. What did you do as a result of that? A. It was obvious that action with regard to it would have to be taken rapidly to prevent further spoilage and I had a number of casks treated

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continued

and the syrup re-conditioned.

- Q. How many casks were treated and the syrup re-conditioned? A. 29.
- Q. Was the treatment successful? A. Yes, the treatment was successful, but it was obviously far too expensive for us to treat the whole consignment, and, as a matter of fact, with the plant at our disposal it was quite impossible.
- Q. As a result, what did you do with the balance? A. The balance (171 casks) were returned to Burnell Hardy Ltd., after Mr. Lambert had inspected them. 10
- Q. The 29 casks that you examined was the maximum that your plant could manage? A. Yes.
- Q. Did you charge Messrs. Burnell Hardy Ltd., in respect of those 29 casks that you examined? A. No, not to the best of my knowledge.
- Q. It is for the people in the British West Indies to prove what this contract is, but assuming that the contract which Messrs. Baron and Messrs. Shillingford entered into is in accordance with this document. (Exhibit "D 6") This says: "Preservative parts per million SO<sub>2</sub> Is that right? A. Yes. 20
- Q. "At 1" and then there is a sign with which I am not familiar. What does that mean? A. I think that means "1 cent per gallon of syrup supplied".
- Q. Did you carry out tests with regard to the quantity of SO<sub>2</sub>? A. Yes. 30
- Q. Is SO<sub>2</sub> a recognised method of preventing fermentation? A. Yes, it is used for that purpose, particularly in the citrus juice industry.
- Q. Did you carry out tests on 9 casks? A. Yes.
- Q. Can you tell me how much sulphur dioxide, or SO<sub>2</sub>, there was per million? A. Yes. The casks varied considerably. The figures for the 9 casks examined in parts of a million 40

were 52 parts SO<sub>2</sub>, 57 parts SO<sub>2</sub>, 80 parts SO<sub>2</sub>, 260 parts SO<sub>2</sub>, 280 parts SO<sub>2</sub>, 320 parts SO<sub>2</sub>, 361 parts SO<sub>2</sub>, 362 parts SO<sub>2</sub> and 385 parts SO<sub>2</sub>.

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Q. Are the tests you carry out to find out the parts per million SO<sub>2</sub> in a given consignment accurate? A. Yes; they are established tests.

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10 Q. You can establish them right down to the nearest part, and if there is a margin of error how small is it? A. I should say that on this test the margin of error would not exceed, plus or minus, 5 parts per million.

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Q. With regard to the casks which had 385 parts to a million of SO<sub>2</sub> that is still a long way below 500 parts per million, is it not. A. Yes.

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Q. Is the quantity of SO<sub>2</sub> an important factor in preventing fermentation? A. Yes definitely.

Examination  
continued

20 Q. Is 500 parts per million a proper quantity of SO<sub>2</sub> to have in this sort of juice? A. I should say that previous to this we had received consignments of this liquid from other sources, and SO<sub>2</sub> there was 500 parts to a million, and that was satisfactory.

Q. As a result of your tests, was this syrup, in your opinion, satisfactory, for the manufacture of soft drinks? A. No; it would have been impossible to use it in that condition.

30 Q. Does your Company require syrup of this kind for any other purposes than the manufacture of soft drinks? A. No; that is the only purpose for which we use it.

Q. In your opinion, was this syrup fit for human consumption? A. Well, it contained nothing which would have actually caused illness.

Q. It was not poisonous? A. No; but I would not call it suitable for human consumption.

Q. I think you have drawn an analogy between this syrup and milk. A. Yes. If milk turns sour, although it is not poisonous, it is not usually used for human consumption

40 Q. If this syrup was used for human consumption

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continued

whether in a cask or in a bottle of orangeade, would it have been palatable? A. No. We carried out some experimental tests as to that, using a small quantity of the syrup, and there was definitely a pronounced flavour of beer or fermentation.

- Q. What was the state of the casks themselves?  
A. Externally the casks showed signs of leaking; in one or two cases the syrup, obviously under pressure, was being forced through the bungs at the top of the casks when the casks were turned slightly on one side. 10
- Q. Once you have fermentation inside a cask is there much more pressure created? A. Yes generally speaking there is.
- Q. Were the casks new? A. No, I think not; they were not new casks.
- Q. Were they lined with wax? A. I had a look inside two of the casks and I could not decide whether they had been waxed and the waxing had worn off or whether there was wax still in the casks. I was unable to form a precise opinion as to whether they had been waxed or not, and I was unable to see whether wax was there or not. 20
- Q. In your opinion, did the condition of the casks which you saw have any bearing on the condition of the syrup in them? A. Not necessarily. The condition of the syrup in the casks would depend as much on the syrup itself as it would on the casks. 30
- Q. If you had put syrup with the amount of bees, straw and wood that you found in this syrup into new casks, in your opinion would it have fermented? A. Yes, I think under those conditions it would have fermented.
- Q. If you had put carefully manufactured syrup, free from foreign bodies and containing the stipulated amount of preservative, into casks similar in quantity to the casks that this syrup was put into, would you have expected fermentation? A. If the casks had been sterilised beforehand, I should say no. 40

Did you form any opinion as to the manner in which this syrup had been manufactured? A. The impression I gained from my examination of the syrup was that at some stage in its processing there had obviously been a certain amount of negligence.

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10 Q. In what respect? A. Well, one would not expect to find extraneous particles in the syrup normally; this syrup is normally a clear liquid but in this case it contained a lot of extraneous material, bees, dirt, and so on.

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Q. You mention dirt. A. Yes - small particles of straw and wood chips.

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Q. The Defendants' customer, Burnell Hardy Ltd. brought in Dr. Morgan. Is he known to you by reputation? A. Yes. Dr. Morgan is the Consulting Chemist to the Soft Drinks Trade Association.

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Examination continued

20 Q. And is he a gentleman well able to express an opinion in regard to this syrup? A. Yes definitely.

Q. In the chemical world has he an extremely high reputation? A. Yes, he has.

(Adjourned from 1 p.m. to 1.45 p.m.)

No.19

No.19

CROSS EXAMINED BY MR. MONIER-WILLIAMS

Mr.V.T.Walkley

30 Q. When you carried out your test on the 73 casks did you empty the contents from the casks? A. No; we opened some of the casks, but we did not empty the contents of them all.

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Cross-Examination

Q. I understand you examined 73 casks for fermentation and carried out a survey of the contents of the remaining casks. A. Yes.

Q. I suppose you extracted some of the liquid from the 73 casks? A. Yes.

Q. How would you describe the test which you applied to the 73 casks? A. The fermentation test?



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- Q. Yes. A. It consisted briefly of sterilising the outside of the cask, the area surrounding the bung, removing the bung, taking septic precautions there, removing a portion of the contents after the cask had been agitated and placing it in a tube --
- Q. Just pause there for a moment. You say you agitated the cask? A. Yes.
- Q. The casks I suppose had been lying down for some time in one position before you made your test? A. No; the test was actually made within a very short time of delivery. The casks would have been agitated at the dock or depot on loading up and rolled on to the lorry, and on delivery at our end they would have been rolled off the lorry. 10
- Q. How did you extract the liquid from the casks? A. By means of a sterile sampling tube.
- Q. How large is the opening at the bottom of the sampling tube - the opening through which the liquid had to go? A. For the fermentation test it would have an aperture of about one millimetre. 20
- Q. Are you able to say from your examination of the syrup taken from the casks in that way that it contained particles of straw, wood and bees? A. No. That particular test is to determine the presence or otherwise of fermentative organisms. When I examined the casks for the presence of extraneous particles I examined them through the top in which there is a 2" bung. I looked through the top with a light. 30
- Q. With regard to the 73 casks, you extracted a quantity of the syrup and decided that there was fermentation? A. Yes.
- Q. And then you looked inside the casks with a light? A. Yes.
- Q. Do you say that on looking inside the casks with a light you could see that there were bees there? A. Yes. And I would add that larger samples were taken from the casks which I utilised to estimate the sugar content of the casks 40

- Q. When you looked inside the casks approximately how long did your examination of each cask take? A. The examination of the casks occupied a period of something like two days altogether.
- Q. Now will you describe in a little more detail what you say you saw inside the casks. You say you saw bees inside the casks. A. Yes.
- 10 Q. Do you mean you saw particles of bees? A. No, the complete insects. Of course, in addition to the complete insects there may have been particles of bees floating about.
- Q. Were the other objects you saw very small? A. No, not very small. Some of the pieces of wood and straw - (that is a loose description because I did not identify them positively) - measured a quarter of an inch in length.
- Q. Were those particles floating? A. Yes.
- Q. And they were about a quarter of an inch in length? A. Some of them were, yes.
- 20 Q. The fact that there were particles of wood and straw in the casks would not of itself cause fermentation, would it? A. Actually the reply to that question is twofold. It is a well-known fact that honey occasionally ferments and fermented yeast is carried into honey by bees.
- Q. A very minute quantity surely? A. Yes, but bees do definitely carry on their bodies yeast organisms, which are present in all fruit. Therefore, the direct access of bees to a liquid of this nature would - at any rate it is highly probable - cause fermentation.
- 30 Q. You are not saying that you found more than one or two bees in each barrel, are you? A. Three casks had floating on the surface of the syrup in them 10 or 20 bees.
- Q. Was the fermentation in those casks worse than it was in the casks in which you found possibly one bee, or not at all? A. It is difficult to say whether one cask was worse than another with regard to fermentation; They were all very bad.
- 40 Q. Under normal conditions how long would it take

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Examination  
continued

for fermentation to set in after the casks had been filled, given ideal conditions? A. Ideal conditions for fermentation?

- Q. No, ideal conditions for the trade. A. I would say from my experience that four months should be quite satisfactory, and even longer periods, up to 12 months, in other circumstances.
- Q. I think you said that you could not decide whether there was wax in the barrels or not. A. That is so. 10
- Q. Surely you could see that if you put a light inside. A. We examined the insides of some of the casks, but I cannot say whether they were waxed or not. I have seen casks in which the waxing was very thick - so thick that you could scrape it off.
- Q. You could have tried scraping the insides of the casks in this case, could you not?. A. Yes, and I did that, but I was not able to form a definite conclusion in regard to the matter. 20
- Q. When you examined the liquid for the particles which you say were floating in it, did you put anything into the liquid so that you could look into the centre of the barrel or did you just look at what was on top of the barrel? A. On the top of the liquid particles were obvious. But we took samples with a large sampling tube and the syrup obtained in that way was very cloudy and it contained much smaller particles. 30
- Q. I think you suggested that there was a deficiency of sulphur dioxide and you mentioned parts per million, going from 52 to 385. A. Yes.
- Q. It increased from 52 to 385? A. Yes.
- Q. Did you consider it worth while to test others to see whether they approximated to 500? A.No The circumstances at the time was such that the syrup itself was obviously fermenting and was obviously of no use to us - and the tests 40

I made were, in my opinion, quite sufficient for our immediate requirements.

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Q. Would you say that the figure of 385 might be satisfactory? A. It is always difficult to state an arbitrary standard. You can deviate either side.

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Q. 500 would leave you a very good margin?. A. I could not say definitely what the margin would be.

No.19

10 Q. Have you any documents which give details of the tests you carried out? A. Yes; I have my papers here somewhere

Mr.V.T.Walkley

Q. Can you say whether the fermentation in the casks which contained 52 parts per million was any greater than in the casks which contained 320, 361, 362, or 385 parts? A. No, but the fermentation was evident in the casks.

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Cross-  
Examination  
continued

20 Q. So you would be able to put the fermentation down to the absence of any specific amount of SO<sub>2</sub>? A. I would put it conversely and say that the insufficiency of SO<sub>2</sub> was a contributory factor to fermentation, I say that actually as a result of our own experience with similar products. If you drop the SO<sub>2</sub> below a reasonable figure the ultimate result is definitely fermentation.

30 Q. Did not you want to try and find out what was the cause of this fermentation? A. I should have liked to have done, but having regard to the amount of work we had on hand at that particular time that I could not carry out as full an investigation as I might have done.

Q. You did not consider testing the "52" barrel against the "385" barrel, if you understand what I mean? A. No I made no specific investigation of that sort.

40 Q. Would you say that the type of barrel had something to do with the fermentation? A. No, I would not presuppose that. One must take into consideration external factors to the container.

Q. According to evidence which has been given today, there was considerable leakage during the voyage. A. Yes.

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No.19

Mr.V.T.Walkley

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Cross-  
Examination  
continued

- Q. Do you know anything about the treatment which is given to cure the condition in which this substance was found? A. I think the West Ferry Wharfage Co. carried out the processing of the large bulk of it. Our own process entailed bringing the syrup down with water and treatment with charcoal at high temperatures and very high filtration afterwards.
- Q. Rather a large sum has been mentioned as paid to the West Ferry Wharfage Co. for treatment - a sum of approximately £1,000 in respect of 258 casks. Is not that rather a large sum? A. I could not express an opinion about that. 10
- Q. You did your 29, or whatever the number was, for nothing. A. Yes. Actually at the time we were requiring this commodity fairly urgently. We had had dealings with Burnell Hardy Ltd. for a period of some years, and our opinion was that it was jolly bad luck, and we did the best we could in the circumstances. 20
- Q. Can you say whether or not this process is an expensive process in itself? A. We found it rather expensive. I cannot give you the actual figures for our own treatment, but it was quite a lengthy process.
- Q. Lengthy - but once you have got the apparatus there it is not so very expensive, is it? A. I could not express an opinion on that.
- Q. Do you know how long it took your Company to do it? A. From memory two or three days. 30
- Q. Will you describe what happens when this treatment is given? A. The syrup itself is very viscous and thick; it is something like treacle. You break it down to a less viscous consistency - half and half water. Then you add activated carbon, mix it in well and raise the temperature to boiling point. Then it is boiled for a period of time, allowed to cool and given three filtrations to get the carbon particles out. After that it is ready for use. I would point out that the difference between the syrup that we produced and the syrup that the West Ferry Wharfage Co. produced was that theirs was of the same density, or approximately the same density, 40

as originally supplied, whereas ours was broken down.

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Q. That surely is not an expensive process. A. Well, it took some considerable time and a considerable amount of labour.

Q. Now I want to go back a bit. I think you said that this stuff was very viscous. A. Yes.

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Q. Something like treacle? A. Yes, but it was not quite so viscous as treacle.

\_\_\_\_\_  
No.19

10 Q. But it was something like treacle? A. Yes.

Mr.V.T.Walkley

Q. You would not see particles floating on the top of that substance would you? A. Yes. In fact substances which would sink in water would not sink in that stuff.

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Q. You are not suggesting, are you, that the bees crawled into the stuff in transit? A. No.

Cross-  
Examination  
continued

Q. Your suggestion, I gather, is that the bees got into it before it was put into the barrels? A. I have no evidence to suggest that.

20 Q. I thought that that was your suggestion. If the particles got into it after the stuff was put into the barrels, one could understand them floating on the top, but if the particles got into it before the stuff was put into the barrels, and it was a substance akin to treacle, it would be held in the body of the liquid, would it not? A. If you took a bee and pushed it down into the syrup it comes back to the top. This syrup is not sufficiently viscous to hold a particle of something such as a bee, down.

30

Q. If you put a bee in the middle of a jar of treacle it would not rise to the top, would it? A. This stuff is not quite so viscous as treacle. Its specific gravity is about 1.35. I have forgotten what the specific gravity of treacle is.

Q. Are you suggesting that this substance, although akin to treacle, permits bits of straw and wood, and so on, to float on the top? A. Yes.

40 Q. I must suggest that you are mistaken about that.

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Mr.V.T.Walkley

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Cross-  
Examination  
continued.

A. Perhaps I gave a poor simile when I mentioned treacle.

Q. I thought you agreed that it was akin to treacle.  
A. Yes, treacle being a sugary composition.

Q. Did you find anything sinking to the bottom of this syrup? A. Yes, particles of a high specific gravity would sink to the bottom.

Q. If you say that this stuff is akin to treacle, I suggest that you are mistaken. A. It is not exactly akin to treacle.

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No.20

RE-EXAMINED BY MR.STABLE

No.20

Mr.V.T.Walkley

Wednesday, 28th  
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Re-Examination

Q. With regard to the waxing of the casks: I gather that sometimes the wax inside the casks is very thick? A. Yes.

Q. And does some of it sometimes fall into the contents of the casks? A. Yes. They would be Italian casks.

Q. And these casks were not like those casks? A. No.

20

Q. And you could not make up your mind whether these casks had a thin layer of wax inside them or no wax inside them at all. A. That is so, Of course, I am not an expert on the waxing of casks, and I cannot say whether a cask is waxed or not unless the wax is obviously there.

Q. Is this right, that if these casks were in fact waxed they were treated with a very thin coating of wax? A. Yes.

Q. Was the expense a contributing factor to your decision to cease treating this syrup over and above the 20 casks that you did treat? A. Yes. It would have cost a very considerable amount if we had processed the lot.

30

- Q. In regard to some casks I think you took the tops right off and in three casks you saw from 10 to 20 bees? A. Yes, 10 to 20 at least.
- Q. What proportion would the three casks represent of the casks of which you took the lids right off? A. I have no record now of the number of casks we opened. I mentioned three, but it was more than that. There were at least 29 casks that we processed and in all of them the characteristics were the same.
- 10 Q. What quantity of bees did you see in the 29 casks? A. Quite a large number - at least 10 bees in every cask.
- Q. You say that you saw bits of wood and straw floating on the top of the liquid. A. Yes.
- Q. And there would be some substances which would sink into it? A. Yes.
- Q. Did you see any foreign matter in these casks, or any of them which had sunk? Was there any deposit on the bottoms of the casks, or did you not notice that? A. I know that the syrup itself when it was poured out was very dirty and contained small black specks - but I made no particular point of noticing that.
- 20 Q. When the 29 casks were emptied the syrup in them was found to be dirty? A. Yes.
- Q. Was that dirt the result of foreign matter other than the foreign matter which floated? A. Yes; there seemed to be about three types of foreign substances present - bees and smaller thing, which might have been anything. They looked like bits of dirt.
- 30 Q. Did you carry out any tests which enabled you to form an opinion as to the sugar which had been used in the first place? A. No.

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No.20

Mr.V.T.Walkley

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Re-Examination continued.

(The Witness Withdrew)

I hereby certify that the typescript contained on this and the preceding 14 pages to be a true and accurate transcript of the shorthand-notes of my evidence, given before Sir Shirley Worthington-Evans, Bart., Commissioner, on Wednesday, 28th April, 1954.

(sgd.) V. T. WALKLEY

Dated this 6th day of May, 1954.

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In the  
Supreme Court  
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No.21

WALTER HENRY LAMBERT

MR. WALTER HENRY LAMBERT, sworn

EXAMINED BY MR. STABLE

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Evidence on  
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No.21

Mr. W.H. Lambert

Wednesday, 28th  
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Examination.

- Q. Is your name Walter Henry Lambert? A. Yes.
- Q. Are you a principal in the firm of Perfect, Lambert & Co? A. Yes.
- Q. Are they insurance surveyors carrying on business at Nos. 52/53 Crutched Friars, London, E.C.3.? A. Yes. 10
- Q. Did you personally examine some of the casks discharged from the s.s. "Crispin" - casks of orange flavoured syrup which had been delivered to Messrs. Burnell Hardy, Ltd.? A. They were delivered to Messrs. Cantrell & Cochrane.
- Q. You saw them after they had been delivered to Messrs. Cantrell & Cochrane? A. Yes.
- Q. Did you know that they had come from Messrs. Burnell Hardy Ltd.? A. Yes.
- Q. Did you know that they had in turn come from Messrs. A.A. Baron & Co. in the British West Indies? A. No. 20
- Q. What tests did you make? A. We made no tests.
- Q. Did you observe the tests that were made by Mr. Walkley, Messrs. Cantrell & Cochrane's Chief Chemist? A. Yes.
- Q. Do you confirm his finding that the contents of 59 casks fermented within 6 days? A. No. I cannot confirm that. To confirm that I would have had to carry out tests myself, and I am not a chemist. 30
- Q. Did you observe the casks on which he had carried out tests? A. Yes.
- Q. What did you observe? A. The syrup was

obviously out of condition; it was dirty; there were large numbers of bees, dirt, wood and straw in it, and it was generally in a disgraceful condition.

Q. Were you yourself able to tell the origin of the bees? Were they English bees? A. No, they were not English bees.

Q. Did you see any of the casks which had had the tops removed? A. Yes, I picked them out myself and I had the tops removed as I wanted.

Q. What did you find? A. I found anything up to 100 or 150 bees in some of them, pieces of wood 2" long, pieces of straw of various lengths and innumerable particles of dirt and other foreign matter which I could not identify by looking at it.

Q. Did you see any English bees amongst the bees that you saw? A. None at all.

Q. What do you say of the smell? A. The smell of syrup?

Q. Yes. A. It was obviously fermenting and it smelt beery and sour.

Q. Did you examine the casks? A. Yes.

Q. Were they new ones? A. No, they were definitely second-hand, rebuilt casks.

Q. Could you tell whether they had been wax-lined or not? A. I say they had not been wax-lined.

Q. Did you form any opinion of the conditions under which the syrup must have been manufactured? A. I say it must have been manufactured under the most unhygienic conditions possible.

Q. Do you think that in this instance the use of secondhand casks had any bearing on the condition of the syrup? A. No.

Q. Why not? A. The syrup was so bad in itself that it did not matter what it was packed in; whatever it was packed in it would have fermented just the same.

Q. Was there leakage from the casks? A. Yes.

Q. What do you consider the leakage from the casks was due to? A. Bad construction.

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No.21

Mr.W.H.Lambert

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Examination  
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No.22

Mr.W.H.Lambert

Wednesday,28th  
April 1954

Cross-  
Examination

CROSS-EXAMINED BY MR.MONIER-WILLIAMS

- Q. Have you any scientific qualifications, Mr. Lambert? A. No. Not in the chemistry line.
- Q. You say that the syrup was so bad that it would have fermented just the same irrespective of whether the casks were good or bad? A. Yes.
- Q. Do you consider that you are sufficiently qualified to say that? A. Most definitely. 10
- Q. Why do you say that? A. Well, I have seen many thousands of tons of syrup come into this country.
- Q. You know nothing about the composition of syrup, do you? A. Oh yes, I do, most definitely.
- Q. Can you say on looking at some syrup in a barrel that it is so bad that it would ferment? A. Yes: with foreign matter that was in this syrup it could not help fermenting. 20
- Q. Did you examine these casks of syrup with Mr. Walkley? A. I believe he was present part of the time that I was there.
- Q. You knew that he had made some previous tests, did you not? A. No, not until after I had seen the casks.
- Q. Who was pointing out the various barrels to you and showing you around? A. I think it was the Manager of the Works. 30
- Q. You say that you saw 100 to 150 bees in some of the barrels. A. Yes.
- Q. Were they floating on the top of the liquid? A. Yes.
- Q. Do you know that the highest number of bees that Mr. Walkley said he saw in a cask was 10 to 20? A. I think that that is an understatement.

Q. Yours could not possibly be an over-statement, could it? A. No.

Q. I do not quite understand what connection you had with these casks. What connection had you with them? A. We act for underwriters and we inspect every parcel of syrup which comes into the country on which there is a claim.

Q. And upon your advice the underwriters in this case would take certain action. Is that right? A. Yes.

Q. Did you cause some of these barrels to be opened? A. Yes, I selected the barrels I wanted to see opened and had the heads taken off them.

Q. Can you account for the discrepancy between your evidence and the evidence of Mr. Walkley, who examined the syrup in the casks for I think two days? A. What discrepancy?

Q. The discrepancy with regard to the number of bees in the casks. A. Perhaps I was more lucky, or unlucky, than he was. He saw them through the bungs and I saw them with the heads of the casks off.

Q. I think he said that he saw 10 to 20 bees in a cask. A. I think he said saw 10 or 20, or more.

Q. He never suggested that there were as many as 100 to 150 in a cask, did he? A. No.

Q. And in some cases he only saw three in a cask. A. That was when he was looking through the bunghole - and you know how big the bunghole of a barrel is.

Q. He also gave a different account of the particles he saw in the casks; He said that they were up to a quarter of an inch in size, whereas you said that some of them were 2" long. A. Yes - splinters of wood and pieces of straw.

Q. I do not want to question your good faith, Mr. Lambert, but is not your evidence rather coloured by the advice that you gave to the underwriters? A. Why should it be.

Q. I am suggesting it might be, because your

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No.22

Mr.W.H.Lambert

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Cross-  
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continued.

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No.22

Mr.W.H.Lambert

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Cross-  
Examination  
continued.

- evidence is so different from that of Mr. Walkley. A. It is not very much different.
- Q. It is in degree, is it not? A. Yes, in degree it is. 10
- Q. How long were you examining these casks? A. Two or three hours.
- Q. When did you examine them? A. About the 1st October, 1952.
- Q. Just describe, if you will, the bees that you saw in the casks. You said that they were not English bees. Will you give us some description of them? A. They had far too long bodies for English bees and their colour was different to the colour of English bees. 10
- Q. What was their colour? A. A very light yellow: their bodies were more like the bodies of wasps that you see here.
- Q. Did you try scraping the sides of the casks to see if they had been wax-lined? A. I did.
- Q. What did you scrape them with? A. A penknife. 20
- Q. Mr.Walkley was unable to give any definite opinion upon that matter. A. I think he said he was not an expert on casks, but I am.
- Q. I suggest that you are far too dogmatic in giving your evidence. A. I am sorry.
- Q. What advice did you give to the underwriters as a result of your examination of these casks? A. I did not give them any advice at all. I just told them exactly what I found and on what I told them they made their decision. 30
- Q. Have you ever seen any of this syrup manufactured? A. In foreign countries.
- Q. Yes. A. No.
- Q. Do you know anything about the treatment of the syrup if it does begin to ferment? A. In this country?
- Q. Yes. A. Yes.
- Q. You know something about that, do you? A. Yes: I have had many tons of fermented juice reconditioned. 40
- Q. Does quite a lot of juice which comes to this country ferment? A. Yes.
- Q. That is something which had happened very often? A. It has happened quite a lot.

No.23

RE-EXAMINED BY MR. STABLE

Q. Do you know anything about the cost of this re-conditioning process? Would you know, for instance, whether to recondition without breaking down 258 casks of this Syrup at a cost of £1,100 was a reasonable figure or not? A. I cannot answer that question as you put it.

10 Q. Look at Exhibit "D.5". It appears from that document that a little over 53 tons from 258 casks was received, does it not? A. Yes.

Q. Not taking into account the loss in weight by the actual processing, would £1,100 be a reasonable figure for 53 tons? A. That is just over £20 a ton, and I should say that that was a very reasonable figure.

20 Q. How much per ton can you expect to be made to pay for it? A. £20 per ton I think is a very reasonable figure, and had I had it done I should not have objected to the price charged.

(The witness withdrew)

I hereby certify that the typescript contained on this and the preceding 5 pages to be a true and accurate transcript of the shorthand notes of my evidence, given before Sir Shirley Worthington-Evans, Bart., Commissioner on Wednesday, 28th April, 1954.

(sgd) W. H. Lambert

Dated this 7th day of May, 1954.

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No.24

ROY WARREN WATRIDGE

MR. ROY WARREN WATRIDGE, sworn

EXAMINED BY MR. STABLE

Q. Is your name Roy Warren Watridge? A. Yes.

Q. What are your qualifications? A. B.Sc. and F.R.I.C.

Q. What appointment do you hold? A. I am Borough Analyst for Southampton and the City of Winchester.

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No.23

Mr. W.H. Lambert

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Re-Examination

No.24

Mr. R.W. Watridge

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Examination

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No.24

Mr.R.W.Watridge

Wednesday, 28th  
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Examination  
continued

- Q. Were you called in by Messrs. Compounds and Essences, Ltd. to see some casks of orange flavoured syrup which had been received by them from Messrs. Burnell Hardy, Ltd? A.Yes.
- Q. What was the purpose of your inspection? A. To confirm the opinion of their chemist.
- Q. Did you inspect a number of the casks? A.Yes. 30.
- Q. What was happening to the contents of them? A. 25 of them were under pressure and were fermenting so badly that they were obviously unfit for the use for which they were intended; the other five samples were taken by their chemist and I took them back to the laboratory, and there was no doubt that they were undergoing incipient fermentation - and again they were not suitable for use in the soft drinks industry. 10
- Q. Did you take samples of the contents of the 25 casks which you have described as being under pressure? A. No. 20
- Q. I am not criticizing but why did you not do that? A. There was no doubt about their unfitness for soft fruit drinks manufacture.
- Q. Their unfitness for that purpose was obvious, was it? A. Yes.
- Q. And it was only the five, the unfitness of which for soft fruit drinks manufacture was less obvious, of which you took samples back to the laboratory and examined more closely? A. Yes. 30
- Q. Did you look in any of the barrels with a light in order to see if there was any foreign matter in them? A. No.
- Q. Why did you not do that? A. It would have made no difference at all had I done so.
- Q. You wanted to find out whether they were fit for the soft drinks industry? A. Yes.
- Q. And with regard to 25 of the casks you found that their contents were unfit for the manufacture of soft drinks? A. Yes; on opening them many of the casks had froth on them, although they had been opened before; they were still under pressure when they were opened again, which showed that they were actively fermenting. 40
- Q. When you say "Opened" do you mean taking the bungs out? A. Yes.

No.25

CROSS EXAMINED BY MR. MONIER-WILLIAMS

- Q. You saw no bees in the casks when you made your inspection of them, did you? A. No; but I did not look for them.
- Q. There were no bees in the casks so far as you could see? A. No.
- 10 Q. What sort of inspection did you make of the casks? Did you take the bungs out? A. They were taken out for me.
- Q. And you looked inside the casks? A. Yes; and I put my nose over the bungs, and the fact that there was pressure in them convinced me that the syrup in them was useless for the purpose for which it was wanted. 25 casks were treated in that way. Out of the other five casks samples were taken with a glass tube and the samples were sent back to the laboratory.
- 20 Q. Did you take, or did somebody under your orders take samples from the other five casks? A. Yes, the yardmen did.
- Q. Did you see those samples? A. Yes, and they were of a very bad colour.
- Q. Do you know how the samples were taken out of the barrels? A, Yes, with a glass tube.
- Q. How much syrup was taken out of each barrel? A. Six ozs. The glass tube was put to the bottom of the barrel and lifted up like that (Illustrating)
- 30 Q. What was the diameter of the tube? A.  $\frac{3}{8}$ " to  $\frac{1}{2}$ "
- Q. You did not look inside the barrels with a light? A. No.

No.26

RE-EXAMINED BY MR. STABLE

- 40 Q. Assume that there had been some bees in the barrels, would you, when you put your nose over the bungs, have spotted them? A. I should say that it would be very unlikely unless they were floating in the little circle of light.

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No.25

Mr.R.W.Watridge

Wednesday, 28th  
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Examination

No.26  
Mr.R.W.Watridge

Wedne. day, 28th  
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Re-Examination



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No.26

Mr.R.W.Watridge

Wednesday, 28th  
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Re-Examination  
continued

Q. When the yardmen took samples from the remaining five barrels, if there had been any would you have seen bees floating on the top, or would that have been very likely? A. I would not have seen them unless there were any in the bottles of syrup which came out of the casks.

Q. You put a fairly long glass tube down into the body of the barrels? A. Yes.

Q. So that unless you, as it were, encompassed a bee with that minute aperture when you put the tube down into the barrel it would be highly unlikely that you would see it? A. Yes; the probability is that it would be pushed out of the way by the rod. 10

Q. Would you expect to catch a bee when taking 6 ozs. of this liquid by the method you have described out of any given barrel? A. I should say it would be very unlikely.

(The Witness Withdrew)

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I hereby certify that the typescript contained on this and the preceding 2 pages to be a true and accurate transcript of the shorthand-notes of my evidence, given before Sir Shirley Worthington-Evans, Bart., Commissioner, on Wednesday, 28th April, 1954.

(sgd) R. Watridge.

Dated this 7th day of May, 1954.

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No.27

No.27

Dr.R.H.Morgan

DR. RICHARD HAROLD MORGAN

Wednesday, 28th  
April 1954

DR. RICHARD HAROLD MORGAN, sworn

Examination

EXAMINED BY MR. STABLE.

30

Q. Is your name Richard Harold Morgan? A. Yes.

Q. Where do you live? A. I live at No.45, Dollis Avenue, Finchley, London N.3.

- Q. I think you have your own laboratory - Croft House Laboratory? A. Yes, and I also practice at No.49 Wigmore Street, London.
- Q. Are you a Consultant Chemist by profession? A. Yes.
- Q. What professional qualifications have you? A. M.Sc., F.R.I.C. and I am a Member of numerous other professional organisations.
- 10 Q. Are you the Consulting Chemist to the Soft Drinks Industry? A. Yes, and I am also the author of standard text-books on soft drinks.
- Q. Did you receive from Messrs.Cantrell and Coch-rane a 26 oz. bottle of orange flavoured syrup? A. I received from Messrs. Burnell Hardy,Ltd., a notification that Messrs.Cantrell & Cochrane were sending me a 26 oz. bottle orange flavour-ed syrup, and in due course I received it.
- Q. Did you analyse those 26 ozs. of syrup extreme-ly closely? A. I did.
- 20 Q. What was the appearance of the syrup? A. The appearance of it was bad.
- Q. In what respect was it bad? A. The syrup was dirty, it contained pieces of wood and straw, it was olive coloured and it contained two what I regarded as wasps, which were floating in the syrup.
- Q. Did you form any opinion as to the origin of those things which you regarded as wasps? A.No; I had no idea how they got there.
- 30 Q. Were they British? A. I do not know. I did not think it necessary to determine their orig-in. Probably they were British Empire wasps.
- Q. What do you say about the colour of the syrup? A. It was olive coloured - a bad colour.
- Q. What colour ought it to have been? A.It ought to have been almost water white - slightly opaque.
- Q. The syrup was opaque? A. Yes, slightly opaque.

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No.27

Dr.R.H.Morgan

Wednesday,28th  
April 1954

Examination  
continued.

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- Q. What do you mean by "Slightly opaque"? A. Well, you could not see clearly through it; water, of course, you could see through.
- Q. Should it have been clear or opaque?. A. It should have had a slight cast in it.
- Q. When you say it was slightly opaque are you referring to the normal slight "cast" in it or do you mean it was cloudier than that" A. It was slightly more cloudy than normal.
- Q. Did it smell? A. It smelt beery and of being in a fermented condition. 10
- Q. And what about its taste? A. It tasted beery.
- Q. What was its specific gravity? A. 1.3208.
- Q. 1.3208 at 20 centigrade? A. Yes.
- Q. Did you analyse it to find its sucrose and invert sugar and other contents? A. Yes. I did.
- Q. I have a copy of your report in front of me, and, speaking quite honestly, it does not mean a lot to me; it is much too learned for me. You have there: "Per cent, weight/weight" and "Per cent, weight/volume", and underneath that there are two columns of figures. Can you explain the "Per cent, weight/weight" and the "Per cent weight/volume"? A. Weight/weight means that if you take 100 lbs. of the syrup the ingredients mentioned here are present in those amounts by weight; whereas in the other test it is merely a calculation and you base your proportions on volume. 20 30
- Q. Now will you tell us what the make-up of this syrup was? A. It obviously contained 57.2 per cent of sucrose (sugar) 6.75 per cent of invert sugar, 0.085 per cent of citric acid, and 0.11 per cent of ash. There was also a trace of flavouring material, which has not been estimated.
- Q. And was the rest made up of soluble solids? A. Yes. the soluble solids figure indicates the amount of ingredients which are soluble and relate to sucrose (sugar), the invert sugar and the citric acid. 40

- Q. Making the other calculation, how much sugar have you got? A. In one gallon you have 7.56 lbs. of sugar.
- Q. And how much invert sugar? A. .890 lbs.
- Q. And how much acidity as citric acid? A. 0.11.
- Q. And how much ash? A. 0.15.
- Q. Can you tell us what is meant by "invert sugar"? A. Cane sugar is made up of two components, one of which is called dextrose and the other of which is called laevulose, and the effect of acid tends to cause those two parts to separate, and the resulting mixture, now made up of dextrose and laevulose, is what is called "invert sugar".
- Q. Did you test the amount of SO<sub>2</sub> (sulphur dioxide) in parts per million by weight? A. Yes.
- Q. What was the result? A. 367 parts per million.
- Q. How accurate are you able to get that calculation? A. To within 4 or 5 parts of a million.
- Q. So it could not have been more than 371 parts per million even if there was a slight error? A. No.
- Q. Is SO<sub>2</sub> a recognised preservative? A. Yes.
- Q. In dealing with this sort of syrup, would 500 parts per million be a reasonable quantity of preservative to require? A. Yes, provided that the syrup has been made under hygienic conditions.
- Q. I do not know the answer to this question, but might 367 parts per million be a reasonable amount of preservative in this sort of substance? A. It could be a reasonable amount if the syrup was sterile initially. I would like to add that the limit of preservative for squashes in this country is 350 parts per million.
- Q. Is that the maximum limit? A. Yes, I just mention that point to show that if the syrup had been made under sterile conditions this amount of sulphur dioxide would probably have been sufficient to maintain it for some considerable time.

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- Q. Did you discover the metal content of the syrup? A. Yes, I analysed the metal content of the syrup in order to be quite sure that there was no excess of poisonous metals in it, as I was not aware of the type of container in which the syrup had arrived. Sometimes it arrives in metal drums.
- Q. Did you discover the amount of metal in the syrup in parts of a million? A. Yes.
- Q. How much iron was there in it? A. 14 parts to a million. 10
- Q. Copper? A. 3.8 parts to a million.
- Q. Lead? A. 4.1 parts to a million.
- Q. And did you find a negligible trace of arsenic in it? A. Yes.
- Q. To find out the reaction for alcohol did you carry out a test? A. Yes, I carried out a Iodoform reaction test for alcohol, which was positive, thus indicating that fermentation had occurred. 20
- Q. Did you test for whether there was in it any gums, starch, dextrin or alginate? A. Yes.
- Q. Were they detectable? A. No.
- Q. I have no idea what the answer to this question is, but ought there to have been any of those things in this syrup? A. There should not have been.
- Q. And there was not? A. No.
- Q. Did you make a microbiological examination? A. Yes, and the result of that examination was that the syrup was very full of yeasts - a further indication of fermentation. 30
- Q. Were you able to discover what yeasts there were in it? A. The yeasts were too numerous to count.
- Q. I think that in the substance which you tested you found no poisonous organisms. A. That is so. The bacteria in it were short, mobile rod-forms.

- Q. What, in your opinion was the cause of the fermentation? A. The presence of yeast cells.
- Q. Why were the yeast cells present? A. Because the syrup must have become infected at some stage.
- Q. Would the amount of sulphur, dioxide present have been sufficient to deal with the infection? A. No.
- 10 Q. What conclusion did you draw from the presence of foreign matter which you found in the syrup? A. That the syrup must have been exposed to some unhygienic conditions at some stage.
- Q. Could you form an opinion as to at what stage that must have occurred? Can you express an opinion as to the conditions under which the syrup had been manufactured? A, It is very difficult to say when the contamination occurred, but it was probably during manufacture. I cannot envisage a cask being so dirty as to introduce the degree of contamination which I found in these samples.
- 20 Q. I understand that you did not see any of the casks? A. That is so.
- Q. Could you form any opinion as to the quality of the sugar that was used in the manufacture of this syrup? A. Yes, I think the sugar must have been of quite good quality.
- Q. How did you arrive at that conclusion? A. From the ash content.
- 30 Q. Had bad quality sugar been used would you have expected more or less contamination? A. Considerably more.
- Q. The amount of ash that you did find was what? A. 0.11%.
- Q. Is that quite a low ash content? A. Yes.
- Q. And that indicates that high grade sugar was used? A. It indicates that good quality sugar was used.
- Q. Do you agree with what Mr. Walkley said - you

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continued

heard his evidence - about this syrup being unfit for human consumption - not in the sense that it was poisonous but would have been unpalatable? A. Yes; it was unfit for the manufacturing process for which it was required.

Q. And if it had been used in the manufacture of soft drinks or food it would have been unpalatable? A. Yes - and the local medical authority would have complained because of the presence of foreign matter in it. 10

Q. Did you advise Messrs. Burnell Hardy, Ltd., as to the treatment that this syrup should receive? A. Yes, I suggested that carbon treatment would considerably improve the syrup.

Q. If 258 casks of this syrup were treated in the way you advised, would you consider the amount of £1,100 reasonable? A. I am not acquainted with the actual details of the cost of that treatment, but I think that that could be regarded as a reasonable amount. 20

MR. MONIER-WILLIAMS: No questions.

(The Witness Withdrew)

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I hereby certify that the typescript contained on this and the preceding 5 pages to be true and accurate transcript of the short-hand - notes of my evidence, given before Sir Shirley Worthington-Evans, Bart., Commissioner, on Wednesday, 28th April, 1954.

(sgd) R. Harold Morgan.

30

Dated this 7th day of May, 1954.

(sgd) S. Worthington Evans.

EDWARD PATRICK SHILLINGFORD

Monday, 9th August, 1954

IN THE SUPREME COURT OF THE WINDWARD ISLANDS  
and LEEWARD ISLANDS.

(DOMINICA CIRCUIT)

No. 24/1953.

ISAAC NEWTON SHILLINGFORD as business Trustee of  
A.A.SHILLINGFORD & CO. Plaintiffs

vs

FRANKLIN A. BARON & OCTAVIA MARIA BARON Trading  
as A.A.BARON & CO., Defendants

Claim in Contract \$3929.67

Counterclaim by Defendants \$11007.15

MR.C.A.M.DUPIGNY and MR.BEAUSOLEIL for Plaintiffs

Mr.F.O.C.HARRIS and MISS CHARLES for Defendants

Mr. Dupigny opens :

Writ issue 20.4.53

Endorsement of Claim read

20 Counterclaim etc. read

EDWARD PATRICK SHILLINGFORD: s/s Roseau. Together with Isaac Newton Shillingford I am responsible for general management of Company and from time to time I deputise for I.N.Shillingford. In addition to general business the firm specialises in manufacture of essential oils and juices. This operation is carried on at our New Town Factory.

30 Know Defendant Mr. Baron. Late in May and early in June, 1952 Defendant came to my firm and spoke to me in reference to some flavoured juice he wanted us to prepare for him

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He wanted this juice immediately. I informed him we were unable to prepare it at the time. Besides this he discussed some insurance business. He asked whether we would undertake the insurance on what he contemplated manufacturing. This insurance was on behalf of Baron and it was to cover all risks from Dominica to London. I told him we would not be able to undertake this insurance for him, because we had already approached our principals with a view to insuring a consignment which we were preparing ourselves. That our principals had claimed the risks too great. I showed him relevant cable and correspondence on the matter. I now produce and put in evidence :

10

3 cables dated 16.5.52, 17.5.52, 26.5.52.

2 letters dated 7.5.52 and 19.5.52 all marked Ex. E.P.S.1.

We accordingly declined the insurance. During this interview I suggested to him to cable his people asking them to insure at their end and that he should deduct cost from Invoice value.

20

Following on this I had a further interview towards end of June or early July, when I told him we were unable to make the syrup in July and requested him to write us officially. This was not done in spite of several requests by me. I eventually spoke to him one morning telling him I would draw up a short agreement with reference to prices he agreed to. This was done and he signed it and I signed on behalf of my Company.

30

Copy of Agreement dated 4.7.52 put in evidence Ex. E.P.S.2.

This Agreement was relative to prices agreed on and was only on one aspect of a general agreement.

In exhibit E.P.S.2. there is a reference to packages. These packages referred to are once used American whisky casks, which we import from the U.S.A.

These casks come out in shoo form, staves, shooks and Heads which we assemble when they come out.

40

Baron appreciated that this was type of package for which he was contracting at time of Agreement.

On 4.7.52 when I spoke to Mr. Baron we discussed price. Previous to this conversation we submitted samples which were prepared to Plaintiffs' specifications. Sometime after submitting these samples Baron said that they were satisfactory and told us to go ahead with manufacture.

10 It was arranged that Mr. Baron or his Agent Bellot were to come to factory after each batch was prepared so that he could check the sugar content. He supplied us with an instrument called a "Twaddle" and he kept one for his use. Our instructions were to mix approximately 8.7 lbs sugar to each gallon of mixture melt it down and it was to test not lower than 63 twaddle and not higher than 65 twaddle. We were to add  $\frac{1}{8}$  of an ounce of orange essence per gallon of syrup and we were to preserve with SO<sub>2</sub> 500 parts per million. These were his instructions to us.

20

Re the securing of the casks, they were to be thoroughly sterilised and waxed lined.

First Consignment of 50 casks were prepared for shipment by S/S Planter. After this shipment was prepared at our request be inspected and it was shipped.

30 I sent him a bill for this shipment which he paid. Following on the shipment of the first consignment on 21/7/52 I saw Baron. He told me he had received a cable from his people saying that his Certificates of Origin were not in order. That they were mailing him the correct English forms so that he could complete and return by Air Mail. He further told me that consignees had not accepted his Draft consequently Bank had debited him back with Invoice value.

40 Baron discussed with me the payment of the second consignment. He asked us to hold on a while until he got all papers filed and we agreed. I referred Baron at this stage to a provision of the written agreement viz: A Bankers guarantee notwithstanding the fact that Baron had not provided a Bankers guarantee, as provided by Contract my firm agreed to hold on for payment until such time as Defendants' papers were in order.

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The second consignment was made and shipped after inspection by Defendant. I would notify him personally each time a batch was ready. This second consignment was shipped by the S.S.Crispin on 31/7/52 (10 days after first shipment). This second consignment was 250 casks.

Following on this second consignment I saw Defendant later in August. He told me on that occasion that he had heard from his people by cable to effect that shipment had arrived in leaky condition and that several casks were fermenting, and that Insurance Company were not prepared to be liable as packages used were over used and not new in accordance with his Contract with his Consignees. He told me that it was only then for the first time that his Contract called for new casks. He admitted making a faux pas.

10

The next communication with Defendant was the receipt of a letter dated 17.11.52. I produce and put in letter - Ex. E.P.S.3 in which Defendant said stuff was bad and would not meet his obligations. Following on this Suit has been brought.

20

According to terms of Agreement Defendant was to supply Sugar. The sugar supplied by Defendant was not all utilised, some was left over. Baron took back some of the sugar and the last 35 bags we gave him credit for.

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Edward Patrick  
Shillingford

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Cross-  
Examination

No.29

CROSS-EXAMINATION

CROSS-EXAMINED BY MR.HARRIS

My firm is well qualified to manufacture sugar syrup of the type called for under the contract. We have some experience and our employer at factory, Mr. Wilfred Shillingford has the necessary experience.

30

Our coopers have experience in and are qualified to construct our casks. We knew purpose for which syrup was intended by Defendant. I did not know the purpose for which it was to be used.

40

All I knew was that it was for export.

My firm has exported sugar syrup to U.K. I have no idea for what purpose the consignments were required. I presume it was for purpose of extracting the sugar on account of the shortage of sugar at the time in U.K. I did not know what they wanted to use it for, all I know is that there was a shortage of sugar in U.K. and this was a method used for getting sugar into U.K.

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10 I was aware that having regard to the purpose for which it was intended that fermentation would render it unfit. I was also aware that the admixture of SO<sub>2</sub> was for preserving the shipment from fermentation. 500 parts of SO<sub>2</sub> per million is the usual dose for preventing fermentation.

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If a manufacturer used less than this stipulated amount of SO<sub>2</sub> in his manufacture I would regard it as negligence on his part.

Cross-  
Examination  
continued

20 I am also aware that impurities such as dirt, bits of wood and straw, bees would be dangerous because it would be likely to cause fermentation.

If this consignment of syrup a couple of weeks after arrival in U.K. were found to contain the impurities referred to, I would say that they could have got in in transit, or on wharf at port of discharge, or in warehouse where stored at port of discharge prior to delivery.

30 These impurities could have been caused by damage to casks in transit, causing leakage. Casks are packed in ships hold in several tiers and weight could damage once used casks. Bungs could be blown out by the weight.

40 Re introduction of impurities by natural means I would say wood could be from portions broken off staves of casks. The straw could be from flagging which is used in the coopering. Hatches of boats are dirty and dirt could have come from dirt on hatch or on wharf. Bees could have got in in U.K. If fermentation has set in bungs would be blown and casks would have to be recoopered. Bees could have got in in U.K. and through bungs which had been blown out and recoopered. In recoopering it is not always necessary to remove bungs. Recoopering does not normally involve replacing bungs. It involves tightening of staves and metal bands around casks.

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In recovering of casks these casks are once used American casks according to the information I received from my principals. In such casks leakage is apt to occur. I knew this before we prepared consignments and this knowledge strengthened our sense of obligation in recovering and construction of casks.

In reference to figures of insurance which I have produced in evidence Ex. T.P.S.1. I admitted that normal leakage would be between  $3\frac{1}{2}$  and 8%. I would expect the examples of leakages taken by my company to be good examples and typical examples. 10

If the casks we used leaked 20-25% I would not admit that there was anything wrong with the casks.

The stowage of cargo and heavy seas could have caused damage. One or more casks could have crumpled and caused the damage. Heavy shifting of cargo stowed in other islands could have caused damage. 20

The dunnage used on board we feel causes worms which might have been eaten casks on board

Excessive heat in hatch generated by sugar stored in those hatches could cause sugar to expand and strain cask.

These probable reasons do not in the normal course of things happen.

To my knowledge the S/S Planter and S/S Crispin were careful in accepting the cargo. They were very careful indeed. 30

Baron or Bellot were to come and check the sugar content and the quality of mixture after each batch of syrup was manufactured.

It was obvious that if these impurities were present when Baron checked them he would have seen them. In so far as agreement with Baron to check syrup went it was only with respect to sugar content.

In Contract a clause to effect insurance to be arranged by Defendant was inserted. 40

By this I meant I was not undertaking to insure for him. Our Company had declined. It was his business to insure. I advised him what to do and he had to protect himself.

In normal course of things insurance on syrup of this kind would stipulate that syrup would have to be in good condition.

No.30

RE-EXAMINED

It was sometime in August Defendant first complained re consignment. At time he complained in July he said his consignees had not accepted the Bank Draft because of wrong certificate of origin.

10

Sometime in August Defendant told me his Company had said shipment arrived leaky, i.e. in August they arrived leaking. Shipments had arrived at destination when Defendant told me they had not been accepted.

The protracted acceptance of the goods by Consignees was not likely to improve the quality of syrup. It would tend to deteriorate.

Don't know method of examination of Syrup at Docks in England. I imagine samples would have had to be drawn ex bung.

20

Having regard to conditions in which consignment arrived, the delay at dock and further cooperation on docks, would in my opinion help to agitate fermentation.

Having regard to these conditions with further delay I would expect further deterioration.

No.31

WILFRED THEODORE SHILLINGFORD

WILFRED THEODORE SHILLINGFORD S/S: Assistant Manager, New Town Factory which specialises in processing and manufacturing of essential produce and oils. I acted as Manager from December 1951 to October 1952.

30

In May 1952 I was summoned to Mr.I.N.Shillingford's house where he was indisposed. There I met Defendant Baron. We discussed flavoured syrup Defendant wanted I.N. Shillingford to make some for him. The specifications subject to which this syrup was to be made was mentioned by Defendant. I.N.Shillingford took notes at time.

40

It was agreed that syrup should be put up in once used American whisky casks. These casks arrive in shock form. Bundles of staves are numbered. The Heads which are packed in casks have a number which corresponds to the number on staves.

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Re-Examination

No.31

Wilfred Theodore Shillingford

Monday, 9th August 1954.

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We assemble the casks. These casks are also used for lime juice.

Baron mentioned that SO<sub>2</sub> was to be used as a preservative and it was to be used in quantities of 500 parts per million. Familiar with this preservative it is also used in Lime Juice.

Baron mentioned that sugar content should range between 63-65 twaddle. I was supplied with instruments for taking measurement by Baron. Essence of Orange flavour was to be  $\frac{1}{2}$  oz per gallon. 10

The consignments of syrup were manufactured at my factory according to these specifications.

We had to make an immediate sample on these specifications which I passed on to Head Office A.C. Shillingford & Co. Later a few weeks later at request of Baron we again made another sample which we sent to Head Office.

Sometime after the manufacture of syrup was started, there was a discussion at I.N. Shillingford's house with reference to inspection. Baron had to inspect after each batch was made and if satisfactory it was put in casks and shipped. Baron inspected each and every batch. 20

I do not recollect the first time sweetened juices were first made in Dominica. Our factory began making it in 1950.

Besides my firm Bath Estate was also engaged in manufacture of sweetened juices and flavoured syrup.

In 1950, 1951 we manufactured for ourselves. In 1952 we manufactured first for ourselves then for Caribbee Products Ltd. and then for Defendant 30

During period when my factory was engaged in making syrup I had occasion to visit Bath Estate factory, which was also engaged in the manufacture of these sweetened juices. On the occasions of these visits I was able to compare their methods with ours the two methods were about the same.

My firm has been engaged in manufacturing of Lime Juices for a considerable time and my firm has factories in Grenada and Trinidad. 40

My firm was under contract in 1948 to supply Bath Estate with Lime Juices. This contract involved the manufacture by us of Lime Juice, the putting of juice into casks and the shipping of the casks under their Trade Mark.

In Trinidad we carried out the same operations for Bath Estate. Neither L. Rose & Co. nor Bath Estate operate in Trinidad. In case of Grenada they shipped to Dominica.

10 With reference to Trinidad I went there to lay out the process of this manufacture, and this contract continued from 1948-1953.

As far as my connection with L. Rose & Co. there were no complaints. I also manufactured for Caribbee Products Ltd. sweetened syrups.

Lunch 12.30 p.m.

Resume 2.04 p.m.

20 The first thing done with reference to stave is they were examined to see if there were any broken staves. These were replaced. The Heads of the casks were dealt with similarly. Then cask assembled and cleaned out filled with water to check against leakage, then sterilised with live steam then waxed. In order to secure heads of casks flagging is used. I produce and put in evidence a piece of flagging used Ex. W.T.S.I.

30 The wax lining is done as follows: wax boiled to boiling point, poured into casks and cask turned about until the wax has gone right round. The object of this waxing process is to seal pores of wood against leakage.

40 The Manufactured article i.e. syrup, first a certain quantity of water is put in vats, then sugar poured in and steam applied to melt sugar. Then tested with twaddle, and brought to required test. Then strained and put into casks. At this stage liquid would be warm, and then put into cask by means of a tap from vat and a hose into the cask through a strainer and funnel. When cask filled it was preserved with SO<sub>2</sub> and then bound. I was responsible for supervision of all these processes. It was not possible at any of the stages enumerated for dirt or bees to enter.

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I produce in evidence the mesh used for straining Ex. W.T.S.2.

Mr. I.N. Shillingford inspected the factory all the time during this process of manufacture. During the period of manufacture there was never any break. This implied that as soon as juice made tested and settled we ran it into casks.

The casks were then rolled out of factory, rolled on to trucks taken to Bay Front rolled on jetty to Lighters and on to ship, where they were stowed. The casks left factory in good condition.

Don't know much of method of stowing, all I know they are stowed one on top of each other. Conditions in ships hold very hot. Conceivable the heat would have effect on the casks e.g. shrinkage of staves which could cause leakage.

If a shipment arrived in U.K. leaking and it was left on docks I would expect it to deteriorate for syrup tends to go bad on coming into contact with air. In the particular condition if those casks were recovered I would say it was possible for foreign elements to enter if the casks were leaking sufficiently.

10

20

No.32

Wilfred Theodore  
Shillingford

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Cross-  
Examination

No.32

CROSS-EXAMINED BY MR. HARRIS

At Factory during manufacturing process it is true that some bees hang around. I should say there were a good few bees around. Bees go after the syrup. When I say there is no opportunity of getting into syrup, I meant that because of the hot syrup the bees naturally kept away. Syrup was put into casks warm, but when it was in vat it was hot. At some stage syrup is hot in vats then when cooled it is put in casks. After syrup has become relatively cool bees could not get in because vats were covered. We were careful and took precautions against bees getting in the syrup. If we were not careful one would expect to find bees in the syrup. When syrup was strained the strainer is covered. In this strainer some impurities would be found due to sugar. No bees would be

30

40

found. There is no stage in my process when impurities could get in. We were careful to see that no foreign matter got in. For dirt to get in one would have to be very negligent. If one is not careful to wash cask during building dirt could get into cask. Apart from fact that there are some extraordinary circumstances that casks could leak during a voyage I would not consider it was unusual for 13% of juice to leak from a cask.

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10 In as much as I do not know conditions to which cask would be subjected after leaving here I am unable to say whether 13% leakage from a cask is normal or abnormal.

No.32

Wilfred Theodore  
Shillingford

A considerable amount of skill and knowledge is not necessary for coopering casks. I consider it necessary to exercise caution and care in supervising the building of the casks. The cooper whom we employ has more specialized knowledge in that trade than I have.

Monday, 9th  
August 1954

Cross-  
Examination  
continued.

20 I knew Bath Estate brought down a cooper from Canada to improve local skill in coopering. I still adhere to view that my cooper has more skill and not considerably more skill than I have in coopering.

I would say that a once used whisky cask if properly constructed would be quite satisfactory for carrying the juice.

30 We used a method in manufacturing our juice which was very much like Bath Estate.

The differences between Bath and ourselves was that we made juice in greater bulk.

We prepared in a vat at one time a larger quantity than they prepared. We used a little more heat than they did, i.e. a higher temperature than they did. We used about 160 fahrenheit and Bath did not go higher than 120 fahrenheit. They used same method i.e. steam heating

40 We put in and tested for sugar in our vat but SO2 was introduced in the casks.

Mr. Baron came to test after the various batches were made. When he did not come in person he sent his agent Mr. Bellot. I was present when he came. He came about 3-4 times.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

---

Plaintiffs  
Evidence

---

No.32

Wilfred Theodore  
Shillingford

Monday, 9th  
August 1954

Cross-  
Examination  
continued

It is not true that Defendant only came to factory twice, once before the manufacturing process began and once during manufacturing Edward Shillingford was not assisting with this manufacture, he was however assisting at the factory.

When Defendant came there we used to talk but can't remember anything outstanding about any particular visit.

This manufacturing process would take about 5½ hours per batch of 32 casks and we worked two batches per day. The second batch of 200 casks took approximately 4 days. 10

Whatever tests Baron made I made my own independently. When Baron came he dealt with syrup in the vat.

We never left our casks of juice to cool with the bungs open. When the juice was cooling and settling they were opened to put the sugar then closed. The vats were closed with white pine wooden covers of 7ft. in diameter. 20

When we lead our juice from vats to casks we used strainer. This strainer was then held above a white pine funnel into which strainer fits and funnel put into casks. We have funnels similar to those we used then, in use at factory now.

While syrup was cooling bees could have got into vat if lid was off or carelessly fitted but we always took precautions to fit on lids properly. 30

When pouring juice into casks bees could not get under the strainer. We could tell exactly how full a cask was by knocking it. We did not have to lift funnel off to see. Someone was ready with a bung as soon as cask was full.

We did our best to be as careful and as efficient as possible.

After arrival in U.K. if I was told that preservative was less than we were supposed to put in I would not be surprised for in case of 40

leaks the preservative which evaporates very quickly would be first thing to go.

SO2 is used in crystal form. I have no expert knowledge as to the use of SO2. My judgment of evaporation of SO2 is based on my experience with Lime Juice. I have no idea of extent to which this evaporation would operate.

10 If casks were leaking sufficiently it would be possible for foreign matters to get into casks. By this I don't mean bacteria, but small particles of solid matter.

---

No.33

RE-EXAMINED

Stem of funnel fitted into the bung it was same size as bung.

20 Heat could cause a warping of staves. This heat could also shrink or twist the head of the cask. In a condition such as this affecting head of cask I would say it is possible that some of flagging could fall in from head. The flagging if broken would look like bits of wood.

If a consignment of syrup arrived in U.K. in a leaking condition and that consignment left on docks for 2 weeks I would expect the quantity to decrease.

---

No.34

ISAAC NEWTON SHILLINGFORD

30 ISAAC NEWTON SHILLINGFORD S/S Business Trustee of A.C. Shillingford & Co. In 1952 I entered into a contract with Defendant for manufacture of sugar syrup. This was manufactured for him.

Two shipments were prepared - one of 50 casks per S/S Planter, and one of 250 casks per S/S Crispin.

In the Supreme Court of the Windward and Leeward Islands

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Plaintiffs  
Evidence

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No.32  
Wilfred Theodore  
Shillingford

Monday, 9th  
August 1954

Cross-  
Examination  
continued

No.33  
Wilfred Theodore  
Shillingford

Monday, 9th  
August 1954

Re-Examination

No.34

Isaac Newton  
Shillingford

Monday, 9th  
August 1954

Examination

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

---

Plaintiffs  
Evidence

---

No. 34  
Isaac Newton  
Shillingford

Monday, 9th  
August 1954

Examination  
continued.

There was an agreement as to casks to be used i.e. once used whisky casks. It was agreed that Baron would visit the factory from time to time during processing.

Defendant made no complaint as to sanitary condition of factory or the presence of bees or sanitary condition of casks.

First shipment was on 21.7.52 second shipment same month.

I received part of sale price, can't say off-hand how much.

10

First heard complaints from Defendant when we began asking for our money. It was to have been a cash transaction. First he claimed the wrong shipping documents held up delivery at other end. These were certificates of Origin.

There was never at any time any talk with reference to casks. We shipped in containers we agreed on. I understand that his agreement with his consignees was for new casks.

20

We advised him to insure before we did the business. He made an inquiry of us and we consulted our principals as the matter was tricky our principals declined to insure. Don't know if he in fact insured.

Bees could not have got into syrup at our factory having regard to conditions under which we manufactured it.

We melted the sugar which he supplied, if there was dirt or bits of wood in the syrup I would say it must have come from the sugar.

30

Our casks came out decharred, they are assembled cleaned washed properly and waxed.

Sugar was cream sugar from Barbados and was fairly clean.

I manufactured sugar syrup of this kind before immediately after and since.

Question: Did you get any complaints.

Mr. Harris objects to question on ground of ruling in Holcombe vs. Hewson 1810 2 Camp 391. Phipson P. 151.

Mr. Dupigny: The Defendants claim the factory was insanitary. Question asked with a view to establishing factory sanitary. Court allows question.

Mr. Shillingford continues :-

I received no complaints. I have not been paid up to now for the syrup. I now claim the amount.

10

In the Supreme Court of the Windward and Leeward Islands

Plaintiffs Evidence

No.34

Isaac Newton Shillingford

Monday, 9th August 1954

Examination continued

No.35

CROSS-EXAMINED

In the normal course of business I would not necessarily expect the casks shipped by Defendant to his consignee to be re-directed to other business concerns.

In my business when I ship my sugar to U.K. I sell to one broker who may sell to other business houses and in the normal course of business the consignee would have these goods forwarded to other sub-purchasers.

20

In normal course of business any defects would not necessarily be observed by the sub-purchaser. I would expect the prime purchaser to discover any inherent defect in goods.

It would be normal for a broker to send goods on to sub-purchasers direct from dock but it would be abnormal to do so without checking on the quality of the article.

30

I would expect him to carry out a detailed test of the consignment.

As to what is the normal business practice in U.K. I do not know.

I did not know at time of the contract was entered it was definitely for the soft drink industry. I however had an idea it was for that purpose.

No.35  
Isaac Newton Shillingford

Monday, 9th August 1954

Cross-Examination

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

RE-EXAMINED

Plaintiffs  
Evidence

Were I the consignee in U.K. and I had know-  
ledge that casks were leaky and fermentation had  
set in I would not go ahead and distribute with-  
out carrying out a detailed check. The claim of  
insurance would necessitate the establishing of a  
check.

No.36

Isaac Newton  
Shillingford

Adjourned 3.45 p.m.

Monday, 9th  
August 1954

Re-Examination

No.37

Victor Alleyne  
Archer

No.37

VICTOR ALLEYNE ARCHER

10

Tuesday, 10th  
August 1954

TUESDAY 10TH AUGUST, 1954

Examination

Appearances as before:

VICTOR ALLEYNE ARCHER S/S: I am Headmaster  
Roseau Grammar School and I live at Roseau. I am  
a Bachelor of Science, Agric. No. Gill University  
Master of Science - University Toronto, Fellow  
Royal Institute of Chemistry of Canada, F.R.I.C.  
(Canada), Fellow of Royal Institute of Chemistry  
of Great Britain F.R.I.C. (Great Britain).

20

Before coming here I worked with Agricultur-  
al Department Barbados with Dr. John Saint now  
Sir John Saint. I am familiar with Syrup. The  
great risk with syrup is its capacity for fermen-  
tation. I am familiar with Sulphur Dioxide SO2.  
It is used as a preservative in references to  
Juices. The characteristic of this preservative  
is that it loses its effect in case of leakage.  
In event of leakage in container this preserva-  
tive which is very volatile would escape. No fer-  
mentation would take place if preservative pre-  
sent. Fermentation begins after preservative  
has escaped.

30

From a scientific point of view incipient

Fermentation involves a reaction involving a production of acthol and an evolution involving carbon dioxide. This term would have reference to time factor in that it would refer to the very early stages of fermentation.

The process of fermentation involves releases of gasses under pressure.

10 If the stopper on a container in which fermentation has begun has been moved, it could be replaced right away. The effect of heat on fermentation is that the optimum temperature would increase it, but if heat increased, effect would be to destroy the micro organism caused in the process of fermentation.

The purpose of waxing containers is to prevent air from getting into containers. This process does not involve a heavy coating, a thin coat would have same effect.

20 Would you say it is possible from scientific point of view to analyse syrup which has undergone fermentation after a considerable delay and considerable handling. Fermentation generally is the result of certain factors, which we know.

No.38

CROSS-EXAMINED BY MR. HARRIS

30 If there were preservatives in syrup in proper proportions the syrup would not ferment i.e. preservative must be commensurate with amount of sugar having regard to other factors and all things being normal.

Amount of preservative used insquashes in U.K. controlled by Food and Drugs Act.

If it is 350 parts per million it would not be so unreasonable to me. This is with regard to Sulphur Dioxide.

If I found syrup with this amount of preservative which had fermented I would conclude that some extraordinary sort of contamination had taken place

In the Supreme Court of the Windward and Leeward Islands

Plaintiffs Evidence

No.37

Victor Alleyne Archer

Tuesday, 10th August 1954

Examination continued

No.38

Victor Alleyne Archer

Tuesday, 10th August 1954

Cross-Examination



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

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Plaintiffs  
Evidence

---

No.38

Victor Alleyne  
Archer

Tuesday, 10th  
August 1954

Cross-  
Examination  
continued

In leakage SO2 being volatile would tend to escape. If therefore two months after syrup put into casks there was still 360 parts of preservative I would say that there could not have been considerable leakage from such cask.

In normal sea transit casks with syrup of the kind, it is reasonable to expect a small amount of leakage. That amount of leakage could have effect on SO2. As long as leakage takes place SO2 would escape.

10

If in normal ocean transit conditions are normal I cannot say what effect on SO2 would be. It would depend on what those conditions are.

There are other preservatives which could be used in syrup of the sort. Fact that businessmen with experience use SO2 does not necessarily suggest that it would not escape on leakage. I assume that when SO2 is put in cask it would be well sealed. SO2 is used because it is very effective.

20

I am not prepared to say that in normal course of things i.e. in normal leakage that it would evaporate. Presence of thin coat of wax if used should be detectable. As long as it is there it should be detected with the naked eye.

No.39

Victor Alleyne  
Archer

Tuesday, 10th  
August 1954

Re-  
Examination

No.39

RE-EXAMINED

This wax is applied hot and in liquid form and the idea is to fill crevices and to keep out air. The pores of cask would absorb liquid wax.

30

If wax was properly applied in spite of absorption through pores, some should be there and should be visible in scraping with a knife.

If a part of cask when scraped did not show wax I would say waxing was not done properly.

Amount of preservative would vary with the proportion rather than the container. It is a standard proportion used and does not depend on quantity.

If cask is not properly waxed it would be a factor conducive to fermentation and that fermentation would take some time for organism to work.

40

No.40

WILLIAM FLANDERS HARRISON

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

WILLIAM FLANDERS HARRISON (to Mr. Dupigny)  
S/S: Agent of Harrison Line Steamers. I have  
had a good deal to do with shipping syrup. Had  
instructions from my principals with reference to  
shipping of syrup from time to time.

Plaintiffs  
Evidence

Prior to May, 1952, I had no instructions.  
In May 1952 I had complaints of shipments.

No.40

10 In May, 1952, a shipment of syrup went on  
S/S Herdsman when I noticed casks were leaking on  
jetty before shipment, and that syrup was blowing  
out. As a result we refused shipment of 250 casks.

William Flanders  
Harrison

Tuesday, 10th  
August 1954

Subsequently to this I received instructions  
from my principals. The instructions I received  
from Shipping Company was to refuse all packages  
of syrup which showed signs of leakage or fermen-  
tation. Subsequent to this there were two ship-  
ments by Defendant in July (1) per S/S Planter (2)  
per S/S Crispin.

Examination

I inspected these casks prior to shipment on  
the docks and they appeared to be in order. They  
showed no sign of leakage or fermentation so we  
accepted the cargo.

No.41

CROSS-EXAMINED BY MR. HARRIS

No.41

William Flanders  
Harrison

Tuesday, 10th  
August 1954

30 My Principals asked us to examine to see if  
casks showed signs of leakage or fermentation. It  
would have been unreasonable of principals to ex-  
pect me to do more than that. I examined casks  
and if they looked on surface to be sufficiently  
strong I accepted cargo.

Cross-  
Examination

Cooperage and construction of a cask involves  
the skill of a cooper but it is not difficult for  
a practised eye to see whether the cask is strong  
or not.

40 Ships Planter and Crispin were aware of the  
problem of leakage. Ships' personnel and myself  
had been forewarned. All care was taken by ships'  
personnel with regard to stowage.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

RE-EXAMINED BY MR. DUPIGNY

Plaintiffs  
Evidence

Casks stowed on ship in tiers. Casks spread.  
It is usual to ship in that way. It is usual to  
find leakage at destination from second hand  
casks. This liklihood is less when new casks  
used.

No.42

William Flanders  
Harrison

Tuesday, 10th  
August, 1954

Re-Examination

CASE FOR PLAINTIFF

Defendants  
Evidence

No.43

FRANKLIN ANDREW BARON

10

No.43

Franklin Andrew  
Baron

Tuesday, 10th  
August 1954.

Examination

FRANKLIN ANDREW BARON S/S: Managing Partner of  
A.A. Baron & Co. I entered into certain contracts  
with reference to citrus flavoured syrups. One  
with U.K. and one locally.

The U.K. agreement was with Messrs. Burnell  
Hardy Ltd.

We were to ship a quantity of citrus flav-  
oured syrup at 8/6 per gallon. C.I.F. I produce  
Cable Contract from Messrs. Burnell & Hardy  
dated 13.6.52. Ex. F.A.B.1.

20

I produce cable dated 3.4.52. from Burnell  
& Hardy for 20,000 gallons @ 8/6 C.I.F. Ex.  
F.A.B.2.

I consulted with Mr. I.N. Shillingford with  
reference to the manufacturing of the syrup and  
I entered into a contract with him.

Ex. E.P.S.2. is the Contract.

My firm accepted offers made by Burnell Hardy.  
We fulfilled part of 1 lot - 50 casks

1 lot - 250 casks after which  
we stopped ship-  
ments.

Having shipped these two shipments I received  
a complaint about leakage, which I informed Pat  
Shillingford of.

10 Subsequently, I received a report with refer-  
ence to fermentation this was shortly after and  
again I informed Pat Shillingford and consulted my  
legal advisor.

After consultation with my legal advisor, I  
cabled to Hardy for a detailed report from an in-  
dependent chemist and in consequence I received  
report of a Mr. Morgan.

I produce this report Ex. F.A.B.3.

I also got further reports from Watteridge, a  
chemist, Perfect Lambert, Insurance Assessors.

20 MR. DUPIGNY states that these reports are copies.  
Watteridge and Lambert both gave evidence on Com-  
mission and the proper thing would be to depend on  
their evidence and their reports should have been  
put in then as evidence.

In circumstances, Mr. Harris withdraws copies  
of report.

Copies of these reports not admitted in evi-  
dence.

30 Subsequent to these reports I wrote Shilling-  
ford with reference to condition of shipment.  
Ex. E.P.S.3. is letter which I wrote, Shillingford.

This was not first time I communicated with  
them. I had been communicating with them verbally  
before that.

On advice of my Solicitors I made effort to  
reduce loss. I did this by contacting Burnell &  
Hardy who reprocessed the syrup.

40 Eventually I received accounts from Burnell &  
Hardy as to cost of processing and what was recov-  
ered as a result of such processing. I produce  
final account in respect of transaction with Bur-  
nell Hardy - Ex. F.A.B.4.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

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Defendants  
Evidence

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No.43

Franklin Andrew  
Baron

Tuesday, 10th  
August 1954

Examination  
continued

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

---

Defendants  
Evidence

---

No.43

Franklin Andrew  
Baron

Tuesday, 10th  
August 1954

Examination  
continued

We secured independent chemists report and on advice of my Solicitor decided to wait on the Commission to be able to decide against whom we should take proceedings. Evidence on Commission came after proceedings had started, but if I was satisfied that Burnell & Hardy were liable I intended to withdraw charge against A.C. Shillingford & Co. as their reports were substantiated by evidence. I continued my suit against A.C. Shillingford & Co.

10

I have received final accounts and final payment from Burnell & Hardy. With reference to Patrick Shillingford's evidence whereby he said I was to go to factory to examine stuff. On a trip to factory when a test of the syrup content was made in my presence I discovered that percentage sugar was lower than that on which we had agreed on. Wilfred Shillingford was not there and Edward Shillingford who had made test promised to tell Wilfred about it.

20

I saw Pat Shillingford at my shop day after when I mentioned what I had found to him. He told me if I tested syrup from time to time to test sugar content and he suggested I should do so. There was no agreement, it was casual like. This discussion was during the production of the first lot. I had and still have several twaddles. I intended at one time to make manufactured syrup myself at my Canefield factory. I did not persue my original intention as I felt I did not have sufficient knowledge of the manufacture of such syrup. I therefore decided to ask Shillingford to do it.

30

Mr. Newton Shillingford told me his twaddle had got broken and I let him have one of mine. During the manufacture of syrup I went to factory twice, once to Wilfred Shillingford re sugar and once when I met Edward Shillingford. The second visit was a couple days before first shipment had left. When I got to factory Edward Shillingford I assumed was in charge as Wilfred was not there. I observed a number of bees about the place on the occasion of second visit. First visit was to arrange sugar so they could commence manufacture of syrup. This visit was before the manufacture had begun. On that occasion I did not go to portion of factory where manufacture took place

40

No.44

CROSS-EXAMINED BY MR.DUPIGNY.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

---

Defendants  
Evidence

---

No.44

Franklin Andrew  
BaronTuesday, 10th  
August 1954Cross-  
Examination

10 I entered into contract with A.C.Shillingford & Co. The cables I put in evidence with reference to contract is not all the document, with reference to contract. The contract was recorded in letter form. I have not been able to lay my hands on this letter. I read the contract thoroughly and I understood it. I overlooked the question of new casks in contract.

The stipulation was the syrup should be shipped in new casks. I did not enter into contract with A.C. Shillingford & Co. for new casks but for once used packages. As A.C. Shillingford's shipped in once used casks I thought I would follow the custom here irrespective of the stipulation re new casks.

20 Burnell Hardy called my attention to the fact that they contracted for new casks and I shipped in second hand casks. I requested them to insure for me. They have not informed what they insured for but I assume they effected insurance on the strength of new casks. I have not seen policy. I think they insured for new casks. Have not been told that Insurance Company finally refused payment because I did not ship in new casks. This fact was one of other reasons which they used for not paying insurance. Can't remember when they first wrote complaining of the shipment. Looking  
30 at letter dated 6.10.52 from Burnell & Hardy I say this letter was fairly early in the correspondence between Hardy and I over the syrup. Attached to this letter are reports from Insurance Brokers and Insurance Assessors. Letter of 6.10.52 from Burnell & Hardy to Defendant put in marked Ex.F.A.B.5. Had I shipped in new casks the Insurance would still have resisted my claim as syrup was not in good condition.

40 Casks were waxed lined Mr. Shillingford assured the casks were wax lined. My insurance claim was solely turned down on account of the containers. Insurance was not paid because the goods were not up to sample.

First papers sent on with first shipment were

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

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Defendants  
Evidence

---

No.44

Franklin Andrew  
Baron

Tuesday, 10th  
August 1954

Cross-  
Examination  
continued

not in order because the Customs authorities had changed their forms in the interim. We had to comply by forwarding new documents. Unable to say how long a time was taken up by this delay. May have been a fortnight or three weeks. During this time delivery could have been made. The goods were delivered in fact before receipt of amended documents.

In case of Planter shipment I deny that goods arrived 6.8.52 and that there was no delivery until 3.9.52. In reference to shipment S/S Crispin I don't know that goods arrived on 18.8.52 and delivery was made on 9.9.52. I believe delivery was made in reasonable time. During period 6.8.52 and 3.9.52 goods were on way to Ireland.

10

After this contract with A.C.Shillingford & Co. I only visited factory twice. Not true that I went more often. I placed the manufacture of goods in hands of A.C. Shillingford & Co.who had to deliver on ship. There was a suggestion that I went there from time to time to test sugar.Not knowing anything of the articles I passed on the contract to A.C. Shillingford & Co.

20

I did not know syrup had to be flavoured with bees. When samples were submitted to me I saw no bees in sample but I saw bees around the factory. I looked at syrup which was in the container (a small cup 2" in diameter) used for testing. I observed syrup for sample being drawn from vats. Vats were covered. Bees could get in anywhere. If covers not fitted they could get in. Syrup was left in vat for cooling. In short I saw no bees in the sample. Did not look into vats. I saw vats covered. Did not strike me to enquire whether precautions were adequate. I saw no wood or dirt in sample of syrup. While there they happened to test syrup so I stayed and watched. The sample was not in a glass container, so I could not tell if it had dirt.

30

Had factory at Canefield making candied peel. At New Town factory there was no wire mesh for keeping out bees or flies, as I had in my factory at Canefield. In my factory the building is insect proof. Whereas the factory at New Town was not. Syrup is not spread out to dry, while candied peel is.

40

There was no dispute over sugar content. I protested about sugar content. I waited on reports before I decided on the question of an action against Burnell & Hardy. Burnell & Hardy wrote me explaining the position and I told them to process the syrup with a view to mitigating damages.

There was delay in air mail deliveries at time, that was why they complained about my not replying to their letters.

In the Supreme Court of the Windward and Leeward Islands

Defendants Evidence

No.44

Franklin Andrew Baron

Tuesday, 10th August 1954

Cross-Examination continued

10

No.45

No.45

JOSEPH REID

Joseph Reid

JOSEPH REID S/S: Employee of Bath Estate as Assistant Yard Overseer. I live at Roseau. I work in connection with citrus flavoured syrup and am overseer in reference to this part of work. Bath Estate has been manufacturing citrus sugar for a long time.

10th August 1954.

Examination

20

At Bath Estate method we use is first, we run out clear juice from vats to tayches. We pour sugar into tayche, we stir it until tested and proved good. In dissolving sugar into syrup we use a guage for testing. We stir up sugar with a wooden pallet. We use no heat. Have been working at Bath Estate for about 10 years. We have never used heat. During 1951/52 if anyone came to factory and said that we used heat in the manufacture of this citrus flavoured syrup that would not be correct.

30

In preparing this syrup we have to guard against bees which are likely to get into syrup. If we were careless at Bath Estate in not taking necessary precautions one or two bees might drop



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Defendants  
Evidence

No.45

Joseph Reid

10th August  
1954

Examination  
continued

in. We take a great deal of precaution against bees. When filling casks we use a very fine strainer. After taking all precautions we still get bees in strainer.

Know about waxing casks. If a waxed cask was open a normal person would be able to see the wax, and if inside of cask was scraped wax would come away. Wax on inside of cask can easily be seen. We have a head cooper who inspects cooperage work which is done by young boys. We take a lot of care about our coopering. Last year we had a Canadian Cooper who instructed us how to build casks. At beginning of this year we had one from England.

10

Lunch 12.25 p.m.

Resume 2.05 p.m.

No.46

Joseph Reid

Tuesday, 10th  
August 1954.

Cross-  
Examination

No.46

CROSS-EXAMINED BY MR.DUPIGNY

As Assistant Yard Overseer I have to see that the syrup is properly prepared. I inspected the place and see the place is clean and weigh sugar. Mr.Lewis superintends the mixtures and sees to that part. We make at Bath Estate sweetened Lime Juice, Lime Syrup and Orange Syrup. All these syrups are prepared the same way. Sweetened Lime Juice is not prepared same as Lime Syrup. Sweetened Lime Juice is lime juice which is sweetened. Lime Syrup and sweetened Lime Juice are both prepared cold. Have been doing this for about 5 years. Bath Estate have been preparing sweetened lime juice and sweetened lime syrup for years. Sweetened Lime Juice which is sweetened lime juice syrup requires no heat.

20

30

In August 1952 Bath Estate have stopped preparing Lime Syrup. Testing of lime syrup is done by Mr.Banto. Mr.Lewis gave him a gauge. I have nothing to do with the testing. Mr.Banto is available. I see that everything is clean. I weigh sugar and see to waxing casks. I never tested syrup. Unable to say whether syrup made at Bath Estate is same as syrup made at Shillingford's factory. Know nothing of the density of Shillingford's factory.

40

Know difference between sweetened Lime Juice and Lime Syrup. Sweetened Lime Juice tastes like a beverage. Lime Syrup tastes sour like.

No.47

RE-EXAMINED

Sweetened Lime Juice is sour. The syrup is sweet. Know of no produced at Bath Estate over the last couple years where we used heat.

Mr. Harris applies to have evidence taken on Commission in evidence.

Mr. Dupigny consents.

Evidence on Commission in U.K. in evidence.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Defendants  
Evidence

No.47

Joseph Reid

Tuesday, 10th  
August 1954

Re-Examination

10

CASE FOR DEFENCE

By leave of Court on application of Mr.Dupigny  
Witness Franklin A. Baron recalled

No.48

FRANKLIN A. BARON

FRANKLIN A. BARON recalled: To Mr. Dupigny,  
continues:

The Insurance refused to pay because syrup was not in the condition which it should have been in. I do not take this to mean that if the syrup was prepared by a cold process it would have been alright. The Consignees are not complaining of process they complain of condition.

20

No.48

Franklin A.  
Baron

Tuesday, 10th  
August 1954

Recalled

No.49

ADDRESS BY COUNSEL

MR.HARRIS addresses: Defence is (i) a defence to a claim by Plaintiff for a contractual price by Plaintiff.

(ii) a counter-claim vs. Plaintiff for having failed to manufacture syrup in and with contract whereby Defendant suffered damage.

30

Since two heads under same ground will proceed on Counterclaim.

No.49

Address by  
Counsel for  
Defendants

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In the  
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Will proceed in terms of Contract.

Contend - Manufacture faulty.

Packages not in keeping with contract.

No.49

Address by  
Counsel for  
Defendants  
continued

10th August  
1954

(1) Syrup adulterated by dirt straw wood bees etc.  
calculated to produce fermentation.

(2) Inadequate amount of SO2 in syrup.

(3) Packages were not wax lined and therefore  
calculated to cause both leakage and fermentation.

(4) Packages badly constructed.

Refers to evidence on Commission:

10

Refers to Phipson on Evidence 8th Edition  
p.490 Evidence on Commission

Objects to Evidence on Commission should be  
taken before examination. Vide Hals.Vol.13 p.780.

Court will presume examiners have discharged  
duties correctly.

Refers to Phipson p.467.

Party should put to each witness: so much of  
his case Brown vs. Dunn.

Accept that evidence on Commission establishes  
that two shipments of syrup arrived in U.K. That  
Burnell Hardy had sub-contracted to sub-purchasers.  
That sub-purchasers on examination found syrup in  
bad condition. Biggest batch of 250 casks sold to  
Cantrell and Cockrane arrived on 18.8.52 and exam-  
ined on arrival by a Mr.Walkley.

20

Re Examination by various parties.

Refer to p 24 last reply of Mr.Walkley Can-  
trell and Cockrane batch ex. S/S Crispin. See  
p.31. Test was made towards end August or early  
September.

30

P.25 Walkley's findings.

73 casks examined carefully.

Balance examined generally.

Lambert's evidence p.39 of Evidence on Commission with reference to bees of a foreign character to those in U.K.

Vide Evidence of Dr. Morgan p.47

Duty of Court to make inference on facts.

Invite Court to conclude from evidence heard stage at which these foreign matter got into syrup.

Vide p.49 Commission Evidence.

367 parts per million

10 Archer's evidence this morning supports theory Reference to Phipson ps 97/98

Presumption of continuity

Vide Grant vs. Australian Knitting Mills 1936 A.C. p.85 p.94

Defendant's case stronger because it is founded on contract while in the case of Grant vs. Australian Mills charge founded on negligence.

20 We have undoubted fact that on arrival in England these impurities, were in casks - probable cause at source.

PATRICK SHILLINGFORD said wood from broken staves, straw from flagging bees from U.K. through blown out bung holes.

In view of Chemists report in England Patrick Shillingford's explanation cannot be sustained.

Evidence of Harrison - Casks appeared strong.

Pat Shillingford's evidence on basis that casks weak and likely to break under pressure.

Explanation of bees getting in outside tenuous.

30 Explanation of Lambert p.40 - Leakages due bad construction of cask.

Wax lining - Plaintiffs say they did wax line the casks. Evidence of Lambert p.40 is they were not waxed lined.

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At p.42 he says he scraped with knife.

Walkley at p.33 does not know about wax lining.

Invites Court to say casks not wax lined.

Preservative SO2.

Vide Walkley's evidence on p.24 examination within  
2 weeks of arrival in U.K.

Archer states when there was leakage that SO2  
would escape.

Archer supports Morgan's theory to effect if fer-  
mentation took place with that amount of SO2 in  
casks then fermentation through a degree of fer-  
mentation is result of large degree of contamina-  
tion.

10

If Plaintiff's theory is that with leakage SO2  
disappears then casks with large lot of SO2 there  
could be little or no leakage.

Submit that theory by Patrick and Wilfred Shilling-  
ford would mean casks were not fit for purpose for  
which they intended

Submits Plaintiffs were under contractual and an  
absolute obligation to produce casks were were fit  
for purpose. Whether we treat matter as a con-  
tract or as sale of goods, in both cases Plaintiffs  
must be taken to have warranted for purpose for  
which it was intended.

20

Myers vs. Brent 1934 1 K.B. p.46. In view of the  
shipment that A.C. Shillingford & Co. had shipped  
goods in similar nature in second hand casks with  
no complaints suggest that something abnormal must  
have happened. Plaintiffs under absolute warranty  
to use casks which are fit there must be something  
to account for these casks being bad.

30

Plaintiffs under an absolute warranty should bring  
before Court something more than speculation be-  
fore they are relieved of their big degree of obli-  
gation under this Contract. If a Plaintiff was  
allowed to escape liability merely because of a  
series of speculations it would be impossible to  
succeed in bringing liability home.

40

On evidence of Plaintiffs themselves that because such a thing never happened to them is only evidence as to system of their plant. Not admissible as to whether those casks were well constructed or not. Most it can do is to throw a heavy burden on them to explain why casks got bad, and why they would be relieved from liability under their warranty.

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No.49

Re Counterclaim

10 From conduct of Plaintiffs charge I can answer some points. Submit question of Insurance relevant to charge. Hals. Vol. 10 p.115 p.144.

Address by  
Counsel for  
Defendants  
continued

Question of damages in contract.

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Bradburn vs. G. W. Railway.

Yeates vs. White.

Even if Defendants recovered insurance they could still sue Plaintiffs in respect of bad manufacture.

Ref: Hals. Vol.18 p.376.

RIGHTS OF SUBROGATION

20 Clynam vs. Davies 1929 2 K.B. p.249. Insurance irrelevant only introduces prejudice. Vide / 6/10/52) letter. Did Plaintiff supply article he contracted to supply. Admitted Defendant had contracted to use new casks in his contract with Burnell Hardy. On facts Bilsen at p.12 of Evidence on Commission admits old casks can be used. Question of new casks concern Plaintiff and Burnell Hardy but no concern of Defendant. It would be different if the cause of the damage was the use of  
30 old casks, but is it clear from Lambert's evidence at p.40.

At p.29 Walkley says syrup contaminated with wood and straw etc. Even if put in good casks the syrup would still have fermented.

Bail Bros. vs. Hobson.

1933 149 Law Times p.283.

Carburetter charge. Talbot J.

Submits principle of contributory does not apply in contract.

Adjourned 4.05 p.m.

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Wednesday 11th August, 1954.

9.30 a.m. Appearances as before.

Mr. Harris continues his address :-

No.49

Address by  
Counsel for  
Defendants  
continued  
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Question of burden of proof between issues between parties N.B. Warranty on part of Plaintiff that packages shall be fit for transporting syrup to U.K. Evidence is that packages did not carry article efficiently to U.K. They proved in fact not to be fit for the specific purpose therefore prima facie charge for Defendant that packages not fit and warranty broken. Possible that packages rendered unfit by an intervening event. Such circumstances would have to be of an unforeseeable nature.

10

Packages should have been fit to survive foreseeable circumstances like rough weather. Defendants do not stop at prima facie charge but bring evidence before you to wit :- Evidence of Lambert, Leakage due to bad construction of cask. Lambert not cross-examined on this. Our submission is that it is for the Plaintiffs to bring evidence before Court to satisfy Court that there was some circumstance intervening between Dominica and U.K. which would account for those casks, having failed to carry efficiently, syrup to U.K.

20

Plaintiffs only answer to this charge is to enumerate certain possible circumstances which may account for condition of arrival of casks in England. No effort to show that these circumstances happened or probably happened. His principal hypothesis that condition ex. bad stowage of cargo is expressly refuted by Harrison's evidence. Harrison's evidence shows that any cause based on careless or bad stowage of cargo or any cause which may have arisen out of default by Ship or Ships' personnel would be improbable.

30

Theory.

Worms ex hold of ship would have eaten holes into casks. Refuted by Harrison's evidence. No theory advanced by Plaintiff to say why package arrived in had condition. Having regard to Defendant's prima facie charge Plaintiff have failed to report our charge as is their duty.

40

## Wax Theory.

Invite Court to accept Lambert's evidence coupled with Archer and conclude waxing not properly done. P.37 of Walkley's evidence with reference to wax. Treat Walkley as an ordinary layman as to waxing of packages.

Asks Court to say cask not waxed or badly waxed therefore an obvious blunder of Plaintiff.

Syrup itself.

- 10 Same principle of warranty applies. Evidence by witnesses in U.K. that impurities did not come in at some intermediate stage.

Lambert Walkley and Morgan all give evidence as to their experience from this Court can draw inference. They were not cross-examined on these points. Plaintiffs allowed charge to proceed on this assumption.

Casks in 2 groups :-

1 group with low S.

- 20 1 group with low SO<sub>2</sub>. content.

Archer's said caused by leakage.

Corollary: In these circumstances with high content very little leakage could have occurred.

Consider Morgan's evidence with reference to his finding of SO<sub>2</sub> in casks he examined.

Morgan's conclusion that at an early stage syrup was defective.

Reasonable inference that impurities entered at point of manufacturing

- 30 Plaintiff's evidence as to the system at factory not sufficient to rebut Defendant's charge that manufacture was faulty. Plaintiff has not shown as they should that there was a sustained high standard of production without any relaxation.

N.B. Wilfred Shillingford made a mistake as to his knowledge of the Bath Estate system. Obviously the making of such a mistake pre-supposes he

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is not as careful a person as one would expect of supervisor of the process under review.

It is the duty of Plaintiff to satisfy how these circumstances could have happened having regard to their statement of great care taken. General burden of proof is on Plaintiff. Circumstances causing trouble not only possible but probable.

Damages.

Admission in Pleading that Plaintiff knew purpose for which syrup needed.

10

Knowledge of sub contract and price of sub contract.

Vide pp 1 of Defence to Counterclaim.

Reference to shipment with Burnell & Hardy.

Vide Biggin vs Permanite 2 A.E.R. 1951 p 191 M.B. p 194.

On question of damages an authority of Biggins charging measure or damages should be on basis of authority in that charge.

Asks Court to find for Defendants.

20

No. 50

No. 50

Address by  
Counsel for  
Plaintiffs

ADDRESS BY COUNSEL FOR PLAINTIFFS

MR. DUPIGNY

11th August  
1954

Contract between Baron and Shillingford for supply of certain syrup In contract certain specifications given. Plaintiff manufacture syrup in keeping with specifications. Syrup manufactured under **hygienic conditions**. In accordance with contract Plaintiff contracted to supply in second hand packages, and to deliver on ship. This Plaintiff did.

30

Contract and Warranty ended with delivery on ship, to extent that if anything went wrong on ship example bad storage etc., it would be for account of Defendants. Plaintiff responsible if

there was a defect in quantity of syrup itself. If anything went wrong with syrup not due to faulty manufacture but to extraneous circumstances.

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Address by  
Counsel for  
Plaintiffs  
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10 Witnesses proved hygienic conditions at factory were in order. Defendant admitted this too. Evidence that packages used were once used whisky casks that they were cleaned sterilised and waxed before syrup put in. Plaintiff have given evidence that syrup supplied in accordance with contract. Defendants not able to contradict this.

With reference to SO2 it was put in every package. Defendants admit a certain quantity found in each package although there was difference in quantities found. Defendants entered into contract with Burnell Hardy. Mr. Billson representative of Burnell Hardy states the contract between his firm and Defendants was in writing. Defendant when asked to produce same has not, but he has produced certain cables.

20 Defendant admitted syrup was to be shipped in new casks. Submit that had Baron shipped in new casks the loss would not have arisen. Mr. Harrison said his Company having had previous trouble with reference to syrup he was instructed to inspect packages. He inspected them and they were sound.

30 Syrup left Dominica went to London. At Docks the packages were reported in bad condition on arrival. Packages were then coopered. Burnell Hardy immediately distributed syrup. Only after sub contractors complained that Hardy investigated and this was after a long period.

40 Bees in Dominica and bees in U.K. Syrup coopered by Dock Authorities. Were the packages opened or not. No evidence as to whether they were opened but strong possibility they were opened for purpose of cooperage. Submit that when packages were coopered bees could possibly have got in. Evidence of bad handling in U.K. Evidence of 1 package sent to Belfast, 1 package accidentally fell in river. One of two packages arrived at Belfast empty. Had packages been properly coopered and shipped to Belfast under normal conditions this deterioration would not have happened. Only after Belfast complaints were Chemists called in.

Shipment S/S Planter around 6/8/52.

Shipment S/S Crispin around 18/8/52.

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Address by  
Counsel for  
Plaintiffs  
- continued  
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Walkley did not examine syrup on arrival. He examined at end of August. Lambert examined on 1/10/52. Submit not examined on arrival. During all this delay syrup under control of Defendant. Plaintiff had no control. Submit no control until arrival of documents which were delayed. What happened to syrup was due to delay and bad handling. Ask Court to say bees entered in U.K.

Evidence of Billsen Secretary of Burnell Hardy Consignees - an interested. 10

Dr. Morgan did not see the packages. He was sent a sample; all we saw that sample ex. packages. No evidence as to how sample taken. It was taken by some member of Cochrane group, a sub purchaser and not taken in presence of an independent party and as a consignee Dr. Morgans evidence valueless. Further his examination made on 6/11/52.

Evidence of Wateridge. He saw syrup but he saw no bees only Independent Chemist.

Evidence of Lambert. As to finding 100 to 120 bees in each cask. 20

Walkley saw 10 - 20 in each cask examined. What could be reason for this big difference. Was it a question of difference in syrup.

Casks. Whole trouble stems from casks. Inherent quality of second hand casks to give trouble as whenever anything as heavy as syrup shipped in them and it is for that very inherent quality that caused Burnell Hardy to request shipment in new casks. Though casks shipped in good condition weight caused leakage. Leakage due to quality of casks. 30

Ask Court to conclude packages began leaking on ship. Arrived leaking. Documents not in order.

Goods only accepted on 9/9/52 although they arrived on 6/8/52 and 18/8/52 due to cooperage and package open bees and dirt could have got into them, pieces of flagging could have got into them. Finally submit that our contract ended with Shipment of Stuff. For Baron to prove that goods shipped not good, that leakage and fermentation not due to type of package, and that there was proper handling of cargo on other sides. Burden on Defendant to prove these things. Burden could 40

not be on Plaintiff to prove that syrup was good on arrival in London because it was out of Plaintiff's control. Ample evidence to show syrup went bad on account of (1) bad casks (2) bad handling.

In the Supreme Court of the Windward and Leeward Islands

1 Chemist referred to incipient fermentation.

1 Chemist referred to fermentation being 6 - 14 days. This proved fermentation began in U.K. Defendant responsible solely for this.

No.50

Address by Counsel for Plaintiffs - continued  
11th August 1954

10 Inherent view of these second hand packages well known to Defendant. Vide Ex.E.P.S.1.

Ask for Judgment in favour of Plaintiff both on Claim and Counterclaim.

No.51

No.51

REPLY BY COUNSEL FOR DEFENDANTS

Reply by Counsel for Defendants

MR. HARRIS replies :-

11th August 1954

With reference to acceptance of goods vide p.22. There is commercial custom whereby control of goods are handed to Consignees even before documents are accepted.

20 Direct evidence that goods were delivered to Cantrell and Cochrane towards end of August and early September.

Evidence that cooperage on arrival suggests that delivery was made immediately.

Walkley's evidence - examined on arrival means arrival at factory. His batch 18/8/52 ex Crispin.

Asks to interpret the word re Coopering from evidence of Pat Shillingford to mean only tightening of the packages.

30 Re value of Dr. Morgan's evidence why was not suggestion made to Walkley who took sample.

Re old casks being inherently defective Plaintiff gave evidence to their successful use of this type of container.

11.20 a.m. Judgment Reserved.

(sgd) K. L. GORDON P.J.

11th August, 1954.

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No.52

J U D G M E N T


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No.52  
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This is an action and cross action brought respectively by the Plaintiffs against the Defendants and vice versa. The parties are two business houses carrying on their respective businesses in the town of Roseau, Dominica.

It is the Plaintiff's case that under a contract which was partially reduced to writing they agreed as manufacturers of essential oils and syrups to manufacture for the Defendants at their request a quantity of sugar syrup in accordance with certain specifications. By agreement between the parties once used whisky casks which the Plaintiffs had in stock were to be used for the shipment to the United Kingdom of the syrup which was to be delivered f.o.b. It was to the knowledge of all concerned that the syrup was to be supplied to a sub-contractor of the Defendants in the United Kingdom and that it was to be used for human consumption. The sugar syrup was duly delivered in two instalments, viz. 50 casks to the S/S Planter for shipment to the United Kingdom on the 21st July, 1952, and 250 casks to the S/S Crispin for shipment to the United Kingdom on the 21st July, 1952.

10

20

When the Defendants failed to settle for the second lot of manufactured sugar syrup the Plaintiff brought this action on an account for \$3,744.07.

The Defendants deny liability and in turn have counterclaimed against the Plaintiffs for \$11,007,15 for damages by way of loss of profits sustained by them consequent on the shipments of sugar syrup being rejected by purchasers in London on the ground that it was not up to the standard for which it was specifically required.

30

In their counterclaim the Defendants contend that the Plaintiffs manufactured the sugar syrup so improperly, so negligently, and under such unhygienic conditions that they suffered the loss as stated in their claim.

40

The Plaintiffs contend by way of defence to

the counterclaim that they manufactured the syrup in their factory under hygienic conditions, and in accordance with recognised methods of the trade with which they were quite familiar; that they delivered the syrup in the packages agreed on, in a sound and marketable condition. They deny any negligence attributed to them.

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continued

10 In addition to the witnesses who appeared in person before the Court, there was evidence taken on Commission in the United Kingdom consequent on a Court Order which forms part of the record of these proceedings.

It is common ground that the shipments of sugar syrup arrived in London on the 6th August and the 18th August respectively; that both shipments arrived in very bad condition in that there was considerable leakage resulting in the re-coopering on the docks, of most if not all, of the casks, some time after they were landed.

20 That owing to a mistake in the shipping documents forwarded by the Defendants to the sub-contractors Messrs. Burnell & Hardy, they could not deal with the shipments until 3rd September and 9th September respectively when the corrected shipping documents were handed over to them by the Bank.

That the leakage from the two shipments was in fact considerable.

30 That sometime at the end of August or early September when a Chemist Mr. Walkley examined 73 casks out of a shipment of 200 casks sent to his Company Messrs. Cantrell-Cochrane at Sunbury-on-Thames by Messrs. Burnell Hardy Ltd., he found the syrup in each of the 73 casks examined, to contain "a large number of extraneous particles such as bees, small fragments of straw and chips of wood."

16 Casks showed evidence of fermentation in 6 - 14 days and 57 showed evidence of fermentation within a period of 6 days.

40 That as a result of this and other chemical analyses made of the sugar syrup, it was found to be unsuitable for the purpose for which it was required, viz:- for use in the soft drink trade for human consumption.

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continued

It is significant at this point to note that while details of the sub-contract between the Defendants and Messrs. Burnell & Hardy are not fully before the Court the Defendants undertook to ship the sugar syrup in new casks and that they knew it was required for use in the soft drink trade for human consumption. The Defendants however contracted with the Plaintiffs for shipment of the syrup in once used whisky casks, and it was in such casks that the shipments were in fact made. 10

Having regard to their contract, and the condition of the sugar syrup when analysed the Defendants were obviously in no position to avoid their obligations under their contract with Messrs. Burnell & Hardy and as a consequence were forced to stand such losses as accrued therefrom. They however contend that the fundamental cause of these losses stemmed from the fact that the Plaintiffs were negligent in the manufacture of the sugar syrup and that the syrup supplied was inherently bad; that in supplying syrup of such quality the Plaintiffs failed 20

(a) to discharge that warranty of fitness which was incumbent on them under their contract, and

(b) to discharge the warranty that the packages used were fit for transporting the syrup to the United Kingdom.

Evidence has been led by the Plaintiffs that they manufactured the syrup in keeping with the practice of the trade such as they knew it and in keeping with the methods they had previously used. Details were given of the different stages of production with such precautions as are normally followed by them. Evidence was given that the syrup was strained, that under the conditions which existed in their factory, bees could not have got into the syrup; that the sugar content was not only in keeping with their agreement but that it complied with a specific reading on an instrument known in the trade as a "Twaddle" with which they were supplied by the Defendants. They further stated that Defendants satisfied themselves personally when each vat of syrup was boiled. They testified that the casks to the use of which the Defendants had agreed were properly 30 40

coopered, and waxed and that the preservative SO2 was introduced into each cask in accordance with their agreement. Flanders Harrison the shipping agent gave evidence that the casks were in good and sound condition immediately before shipment.

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10 The Plaintiffs referred to a material known as "flagging" a piece of which was put in evidence. It appears to be some sort of straw. This material they stated is the recognised material for keeping the heads of casks in position. This flagging is no doubt responsible for some of the straw which was subsequently found in the syrup and which will be adverted to at a later stage.

The Plaintiffs admit in their pleadings that they knew the sugar syrup was needed for human consumption but in their evidence deny any knowledge of the specific purpose for which it was required.

20 It is the Defendants' case that the Plaintiffs knew the purpose for which the syrup was required, viz:- for use in the soft drink trade. The Court can find nothing in the evidence to support this contention of the Defendants. It is the Defendants' case that they placed the order with Plaintiffs because they relied on their skill and experience in such manufacture. Mr. Baron denies that he agreed to visit or in fact that he did visit the factory when each vat of syrup was ready, to satisfy himself as to the Twaddle readings. He denied having given the Plaintiffs the twaddle but stated  
30 that at their request he loaned them one of the many "twaddles" which he had in his possession and used in the course of his varied businesses. He related having paid only two visits to the factory after the Contract was concluded and that on one of those occasions he discovered that the sugar content of one vat was not up to requirements and he was able to bring this fact to the attention of someone and to have the error remedied. He further  
40 stated that on the occasion of his second visit he noticed bees around the factory which was not insect proofed. From his evidence he apparently took no further interest in this very valuable shipment, obviously replying to the full on the knowledge, skill and experience of the Plaintiffs.

On the question of visits to the factory by the Defendants during the period the syrup was manufactured the Court believed the evidence of the



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Plaintiffs' witness Wilfred Shillingford when he said the Defendants or their agent Mr. Bellot visited the factory and tested the syrup after the various batches of syrup were made. In short the Court is satisfied that the Defendants evinced far more interest in the syrup during and after processing and before shipment than Mr. Baron would lead us from his evidence to believe.

Sometime after the arrival of the shipments in London the leaky condition of the casks necessitated extensive reworking which was undertaken by the West India Docks Authority. There has been no evidence before the Court as to any details of this very important operation, e.g.

10

what was done,

where the casks were stood during operation,

the duration of the operation,

the effectiveness of the operation,

No evidence has been led as to the absence or presence of bees then. Syrup leaking from some 300 casks on a London Dock in Summer time is suggestive of conditions conducive to the attracting of bees etc.

20

It is the Defendants case that the bees which were found in the syrup got into the syrup in Dominica. This view is supported by the rather casual observations by the chemists that the bees found in the syrup did not resemble English bees.

In the absence of any direct evidence by a person or persons qualified to express an opinion on the type and the origin of the bees which were found in the syrup the Court cannot place any reliance on the casual observations of these chemists, but inclines to the view that it was equally possible for bees to have entered the syrup in England or in Dominica.

30

Having regard to the positive evidence of the Plaintiffs as to the system of their manufacturing process as against the evidence of the Defendants on this point the Court is unable to regard the Defendants as having discharged the onus of proof placed on them when they allege or suggest that

40

the bees found in the syrup in England had got into it fully 4 weeks earlier in Dominica.

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10 While there is a very strong presumption that the pieces of straw found in the syrup when examined were from the flagging used for steadying the heads of the casks, there is nothing in the evidence which would justify the Court arriving at the arbitrary conclusion that the presence of straw in the syrup per se is indicative of unhygienic or careless manufacture. The Court is unable to say to what extent the extensive re-coopering on the docks contributed or did not contribute to the presence of particles of straw and wood in the syrup.

20 There can be no doubt that implied in the Plaintiffs' contract was an absolute warranty of fitness for the purpose for which the syrup was required, viz :- for human consumption, and it is the duty of this Court to examine closely from all the surrounding circumstances of this case whether in the light of all the subsequent intervening events which occurred after shipment of the syrup they can be relieved of their implied warranty of fitness of the syrup.

In so far as the warranty of fitness of the casks for the transportation of the syrup goes, the Court is satisfied that this warranty was fulfilled since the leakage from casks of the kind used was not abnormal. The Court is further satisfied that they were properly coopered and waxed.

30 (a) Having regard to the many intervening incidents which took place between the shipment of the syrup in apparently good condition and the time when the syrup was found to be unfit, viz :-

- (i) delay at London Docks,
- (ii) extensive re-coopering,
- (iii) extra handling involved in shipping to different points,

40 (b) the fact that the Defendants have failed to prove by any direct evidence that the Plaintiffs were in any way negligent in the manufacture of the syrup but rely for this proof on a series of conjectures and suppositions:

(c) the fact that the Court is unable to say

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with any certainty when those extraneous agents which brought about fermentation did enter the syrup;

(d) the fact that the leaky conditions increased the likelihood of the preservative escaping and rendering the syrup more susceptible to fermentation.

(e) the time when the chemists said that fermentation began:

The Court is forced to the conclusion that the many circumstances which intervened are sufficient to relieve the Plaintiffs of that absolute warranty of fitness which fell on them. 10

The Court is not satisfied that the Defendants have proved any negligence on the part of the Plaintiffs. Indeed it is satisfied that the Plaintiffs manufactured the sugar syrup to the best of their skill and ability and in keeping with their contract; that when the shipment was made the packages were sound and the contents equally so. 20

The Court is unable, having regard to all the circumstances before it, to say with any certainty at what stage the shipment went bad, nor is it able to attribute the deterioration of the syrup to any particular cause.

In these circumstances and for the reasons set out above Judgment must be entered for Plaintiffs with Costs on the Claim and for the Plaintiffs on the Counterclaim.

(Sgd.) K.L.Gordon 30  
Puisne Judge.

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Entered

JUDGMENT ENTERED

31st January  
1955

Dated and entered the 31st day of January, 1955.

This action having on the 9th, 10th and 11th days of August, 1954, been tried before the Honourable Mr. Justice Gordon without a Jury in the Town of Roseau in the Dominica Circuit and the said

Mr. Justice Gordon on the 1st day of December, 1954 having ordered that Judgment be entered for the Plaintiff for \$3927.67 on the Claim and also for the Plaintiff on the Counterclaim.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

It is this day adjudged that the Plaintiff recover from the Defendants \$3927.67 and Costs on both the Claim and Counterclaim to be taxed.

\_\_\_\_\_  
No.53

By the Court

Judgment  
Entered

(Sgd.) A. B. Marie

31st January  
1955

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Ag. Registrar.

The above Costs have been taxed and allowed at \$ as appears by the taxing master's Certificate, dated this day of 1955.

(L.S.)

No.54

NOTICE OF APPEAL

In the West  
Indian Court  
of Appeal

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD ISLANDS AND LEEWARD ISLANDS.

\_\_\_\_\_  
No.54

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DOMINICA CIRCUIT.

Notice of  
Appeal

1953.

S.

No.24

1st February  
1955.

BETWEEN

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C.SHILLINGFORD & CO.,  
Plaintiff

and

FRANKLYN A. BARON and OCTAVIA MARIA BARON  
Trading as A.A.BARON & CO.,  
Defendants.

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NOTICE OF APPEAL

TAKE NOTICE that the West India Court of Appeal

In the West  
Indian Court  
of Appeal

No.54

Notice of  
Appeal

1st February  
1955.  
continued

will be moved at the first sitting thereof in the Colony after the expiration of 28 days from the service upon you of this notice or so soon thereafter as Counsel can be heard, by Counsel for above-named Defendants for an order that the Judgment herein of the Honourable Mr. Justice K. L. Gordon given on the trial of the above-mentioned action on the 1st day of December, 1954, whereby it was adjudged that the Plaintiff recover from the Defendants \$3,927.67 and costs of action to be taxed may be reversed and that judgment may be entered for the Defendants on the Plaintiff's claim with costs of defence and on the Defendants' Counterclaim for \$11,007.15 with costs of action.

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And for an order that the costs of this appeal be paid by the Plaintiff to the Defendants and for such further or other order as to the Court of Appeal shall seem just.

AND FURTHER TAKE NOTICE that the grounds of this application are :-

1. The learned trial judge was wrong in law and/or misdirected himself in imposing too high a standard of proof on the Defendants-Appellants.

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2. The learned trial judge was wrong in law and/or misdirected himself in that he failed to draw the proper inferences from the fact that the casks of syrup upon being opened were found to contain foreign matter such as would cause the said syrup to become fermented.

3. The learned trial judge failed to appreciate and/or was wrong in law in failing to give effect to :-

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(a) the uncontradicted (and in many respects admitted) testimony of the witnesses for the Defendants-Appellants whose evidence was taken on commission in England; and

(b) the proper inferences to be drawn from the evidence aforesaid

4. The learned trial judge failed to appreciate or give proper effect to or draw the proper inferences from the evidence upon the following among other matters, that is to say :-

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(a) that each and every cask of syrup examined by the Witnesses in England contained the same kind of foreign matter, to wit bees, bits of straw, bits of wood, etc. ;

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of Appeal

(b) that the delay encountered at the London Docks did not (as it could not), 'ipso facto' result in any of the casks blowing their bungs out or otherwise becoming in such a condition as to admit any of the foreign matter aforesaid;

No.54

Notice of  
Appeal

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(c) that the extra handling involved in shipping the said casks to different points from the London Docks did not (as it could not), 'ipso facto', result in any of the casks blowing their bungs out or otherwise becoming in such a condition as to admit any of the foreign matter aforesaid;

1st February  
1955.  
continued

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(d) that in a large proportion of the casks whose contents were analysed to determine the amount of preservative retained therein, the amount of such preservative found to be so retained was such as to negate the escape of the said preservative being the cause of the syrup becoming fermented.

5. The learned trial judge failed to give due consideration to and/or to draw the proper inferences from the evidence as to whether or not the Plaintiff-Respondent had waxlined (either sufficiently or properly or at all) the casks in which they shipped the syrup.

6. The judgment of the learned trial judge is unsatisfactory in that :-

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(a) the evidence disclosed that there was no or no reasonable opportunity between the date of the shipment of the said casks from Dominica and the time of their examination in England by the Witnesses for the Defendants-Appellants for any foreign matter (and particularly the same kind of foreign matter) to gain entry into and thereby to contaminate and cause fermentation of the syrup contained in every single cask of the said syrup;

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(b) the evidence was undisputed and/or indisputable that the Plaintiff-Respondent had not wax-lined the said casks either sufficiently or properly or at all.

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7. The decision of the learned trial judge is unreasonable and/or against the weight of the evidence and accordingly should be set aside.

No.54

Dated 1st day of February, 1955.

Notice of  
Appeal

F.O.C. Harris

1st February  
1955.  
continued

Solicitor for the above-named  
Defendants.

To: The above-named Plaintiff  
and C.A.H. Dupigny, Esq.  
his Solicitor.

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No.55

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J U D G M E N T

25th October  
1957

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS.  
DOMINICA CIRCUIT.

1953

B.

No. 24

BETWEEN

FRANKLYN A. BARON and OCTAVIA MARIA BARON  
Trading as A.A.BARON & CO.,  
Defendants-Appellants.

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and

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C.SHILLINGFORD & CO.  
Plaintiff-Respondent.

Before: Mathieu-Perez, Chief Justice of Trinidad  
& Tobago

Comes, Chief Justice of Barbados

Stoby, Acting Chief Justice of British  
Guiana

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N.E. Charles for Appellants

C.A.H. Dupigny for Respondent.

The 15th, 16th and 25th October, 1957

J U D G M E N T

The Appellants and the Respondents are

respectively merchants carrying on business in the town of Roseau, Dominica, in the British West Indies.

In the West  
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The first-named Appellant, Franklyn A. Baron, who is the managing partner of the firm of A. A. Baron & Co. and who acted throughout on its behalf, is hereinafter referred to as "the Appellant".

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continued

10 In July 1952 the Appellant firm entered into a contract with the Respondent to manufacture 50 casks of sugar syrup for shipment to England in mid-July, and 250 casks for shipment to the same destination by the end of that month. The sugar to be used in the manufacture of the syrup was to be supplied by the Appellant and the manufactured product was to be shipped in once-used American whisky casks which were to be thoroughly sterilised and wax lined, and was to contain as a preservative 500 parts per million of sulphur dioxide (SO<sub>2</sub>) Previous to the making of the contract the parties had discussed the matter, and the Respondent had prepared samples according to specifications given. The contract however was not according to sample and nothing turned on this either in the Court below or on Appeal. It was well known to the Respondent that the syrup was for export to England and was to be used thereafter for human consumption.

30 The first shipment was per the S.S. "Planter" on the 21st July, 1952, and the Appellant, on request for payment, stated that he had heard from his agents that the certificates of origin were not in order and that his draft had not been accepted; the second shipment was per the S.S. "Crispin" on the 31st July, 1952. After this the Respondent saw the Appellant who told him that the shipments had arrived in leaky condition and that the syrup in several casks were in a state of fermentation.

40 The S.S. "Planter" arrived on the 6th August, 1952, and the shipping documents were delivered on the 13th these, however, were found to be incorrect and it was not until the 3rd September that the correct documents were received. The S.S. "Crispin" arrived on the 18th August, and again the first documents received on the 4th September were incorrect; it was not until the 9th September that the correct documents were received. The delay in the receipt of these documents, however, did not preclude access to the casks by the Appellant's agents.

50 The Appellant had contracted to sell these casks of syrup to Messrs. Burnell Hardy Ltd. who in turn had contracted to sell them to other parties



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continued

in the United Kingdom and Ireland. On the arrival of the syrup Burnell Hardy Ltd., were notified by their forwarding agents, "Messrs. Weber, Smith and Hoare" (Overseas) Ltd., that the first consignment was found to be in a very bad condition and leaking, and this necessitated re-coopering of the casks. The second consignment arrived in a similar condition and the casks also required re-coopering. The leakage on both shipments was so considerable that of the first shipment of 50 casks only 42 were accepted by the shipping company for transport to a purchaser in Ireland who did not accept them and returned them to Burnell Hardy Ltd. of the second shipment, 50 casks were sent to Messrs. Compound and Essences Ltd., of Southampton, and 200 to Messrs. Cantrell and Cochrane. The former kept 12 casks of which they used 6, destroyed 6 and returned 38, of the 200 sent to the latter, 29 were accepted and 171 returned.

10

Before rejection the shipments had been examined by Mr. Lambert, of Messrs. Perfect Lambert & Co., Mr. Watridge, the Borough Analyst of Southampton and the City of Winchester, and Mr. Walkley, the Chief Chemist of Cantrell and Cochrane, and a sample of the syrup was sent to an independent chemist, Mr. Morgan. The evidence of those persons was taken on commission in England.

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Between the latter part of August and early September, 1952, Mr. Walkley examined the casks which had been delivered to Cantrell and Cochrane. The contents of 73 casks were examined by him for fermentation in particular and he made a general survey of the remaining casks. Of the 73, 16 showed evidence of fermentation in six to fourteen days, and 57 showed evidence of fermentation within a period of six days. The tests made were as laid down by the Committees of The Soft Drinks Industry. In addition, he stated "in the syrup there was a large number of extraneous particles such as bees, small fragments of straw and pieces of wood, and I found these things in every cask that I examined". He said further "the contents of the casks were quite unfit for the purpose for which we required it" and "the impression I gained from my examination of the syrup was that at some stage in its processing there had obviously been a certain amount of negligence". When asked why he did not examine more than 73 casks he stated that, in his opinion, that number was quite sufficient to get an indication of the state of the

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consignment that the remaining casks showed leakage and that, when the bungs were lifted, there was evidence of a certain amount of gas pressure in the casks, which indicated that fermentation had taken place or was taking place.

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continued.

10 Mr. Lambert is a Principal of the firm of Messrs. Perfect, Lambert & Co. Insurance Surveyors. He observed the tests performed by Mr. Walkley and described the syrup as being obviously out of condition dirty, containing large numbers of bees, dirt, wood and straw and generally in a disgraceful condition. He came to the conclusion that the syrup must have been manufactured under the most unhygienic conditions possible. Mr. Lambert is not a chemist, but he has had considerable experience in dealing with shipments of this nature. He says he has seen many thousand of tons of syrup coming to England, and that on mere inspection he would be able to speak about the condition of syrup.

20 He came to the conclusion that the foreign matter in this syrup was of such a nature that the syrup could not help but ferment, and that the syrup was so bad in itself that it did not matter what it was packed in and that whatever the container it would have fermented. He also concluded that the casks were not wax-lined and that the leakage was due to bad construction of the casks.

30 Mr. Watridge was called in by Messrs. Compounds and Essences Ltd. He inspected 30 casks delivered to that company and found that 25 of them were under pressure and were fermenting so badly that they were obviously unfit for the use for which they were intended. He took to his laboratory, samples of the other 5 which had been taken by other chemists and was satisfied that they were undergoing incipient fermentation and were not suitable for use in the soft drinks industry.

40 Mr. Morgan the independent chemist to whom a sample was sent is a consultant chemist by profession and is consulting chemist to the Soft Drinks Industry. He received a 26 oz. sample of the syrup from Cantrell and Cochrane and analysed it to use his words "extremely closely" and he found its appearance bad, dirty and containing pieces of wood and straw. He also described it as being olive coloured and with what he considered to be two wasps floating in it; It also smelt and tasted

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continued

beery. He said that SO<sub>2</sub> is a recognised preservative and that 500 parts per million would be a reasonable quantity of preservative for this sort of syrup, provided that it had been manufactured under hygienic conditions. He added that the maximum limit of preservative in England for squashes is 350 parts per million. In the sample submitted to him, he found the SO<sub>2</sub> to be 367 parts per million. It was his opinion that, if this syrup had been manufactured under sterile conditions, this amount of sulphur dioxide would probably have been sufficient to maintain it for some considerable time. He found the sample very full of yeasts. Yeasts too numerous to count, and was of the opinion that the fermentation was caused by the presence of yeast cells.

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The Appellant was informed of the findings hereinabove referred to, and on the 17th November, 1952, wrote to the Respondent as follows :-

17th November, 1952.

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"Messrs. A.C. Shillingford & Co.,  
Roseau.

Sirs,

I wish to bring to your attention a very grave loss which has arisen in respect of the consignment of orange flavoured syrup manufactured in July and August and packed by you under contract with me dated 4th July, 1952, for shipment.

I have received reports from my consignees that there was considerable loss through leakage resulting from the poor quality of the casks, and that the whole consignment arrived in a badly fermented condition. The precise extent of the loss from fermentation is not yet known as my consignees are endeavouring to minimise losses by treating the fermented syrup and we have not yet been informed of the results of this treatment.

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The condition of the consignment has been investigated and reported upon by independent experts. You may have access to the reports in my possession, and my consignees in England will do everything to facilitate inspection of the consignment by your agents and will furnish any samples

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you may require for test and analysis. However the crux of the reports is that the syrup arrived in "filthy condition" with "dead wasps, bees, particles of wood, straw, dirt etc." floating in it, that the consignment was "prepared under very unhygienic conditions" and "exposed to contamination after manufacture", and that in these circumstances "fermentation" was inevitable".

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continued.

10 You will appreciate that you are liable for the losses sustained and I should be glad if you would discuss with me an amicable settlement of the matter at your earliest convenience. If you wish to make your own investigations as to the condition of the consignment, I should be glad if you acted immediately. I shall be ready to make all the necessary arrangements with my consignees for this purpose.

Yours faithfully,

A.A.BARON & CO.  
Per (Sgd) F.S.Baron".

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No reply was received to the letter but about five months later the Respondent sued the Appellant for \$3929.67, being the balance due and owing under the contract. The Appellant, in denying liability, alleged that the syrup was so negligently and improperly manufactured that its value was reduced, and counterclaimed for the loss occasioned thereby, alleging that

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"(a) the said sugar syrup was not manufactured in accordance with the terms of the contract, and the said sugar syrup and the packages provided by the Plaintiff were bad quality and not fit for the purpose for which they were intended.

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(b) the said sugar was manufactured and packed by the Plaintiff so negligently and improperly and under such unhygienic conditions that the quantity of the said sugar syrup was considerably reduced by leakage and the value thereof further diminished by fermentation and the Defendants were forced to accept \$10,381.80 in full payment for the 300 casks of the

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continued

said sugar syrup, that is to say a sum of \$15,644,50 less than the price the said consignees in the United Kingdom had contracted to the Defendants".

The action came on for trial here on the 9th August, 1954. Evidence was led by both parties and the evidence taken on commission on behalf of the Appellant was put in. That evidence was of the nature indicated above.

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On the 1st December, 1954, Judgment was given for the Respondent on the claim and counter-claim. Against this Judgment the Appellant has appealed; the grounds of appeal are seven in number and may be summarised thus :-

(1) the learned trial judge was wrong in law and/or misdirected himself in imposing too high a standard of proof on the Appellants:

(2) the learned trial Judge failed to appreciate and/or was wrong in law in failing to give effect to :-

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(a) the uncontradicted (and in many respects admitted) testimony of the witnesses for the Appellants whose evidence was taken on commission in England, and

(b) the proper inferences to be drawn from the evidence.

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(3) the learned trial Judge failed to appreciate or give proper effect to or draw the proper inferences from the evidence as a whole.

It was contended on behalf of the Appellant that there was a breach of warranty in that the syrup was manufactured under unhygienic conditions, that the casks in which the syrup was shipped were not or not properly waxed, that proper or sufficient precautions were not taken to prevent extraneous matter getting into the casks, and that the casks

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were not so assembled as to prevent undue leakage, all of which resulted in fermentation. It was urged on behalf of the Respondent that all necessary and reasonable precautions were taken in the manufacture of the syrup, the preparation and filling of the casks. Although not pleaded it was adduced in evidence that the Appellant inspected the syrup in the vats, but the evidence is clear that such inspection was merely with regard to the sugar content of the syrup.

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It was further contended on behalf of the Respondent that the condition of the syrup when examined in England was due to factors that arose either in transit or on or after arrival in England, and in any event due to circumstances beyond his control.

The questions that fell for decision by the trial judge were twofold :

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(a) was there a warranty of fitness that the once-used casks when assembled and treated would be fit for transportation of the syrup to England;

and

(b) was there a warranty that the syrup was and would be suitable for human consumption on arrival in England.

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As to (a) the Judge was satisfied that the warranty had been fulfilled as he did not consider the leakage from the casks was abnormal and further was satisfied that they had been properly coopered and waxed.

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It is manifest from the evidence, and is so found by the trial judge, that the casks on arrival in England were in a very bad condition and showing signs of considerable leakage. Although leakage in the type of cask used was to be expected, and although knowledge of that fact according to Mr.E.P. Shillingford strengthened his obligation in regard to the assembly of the casks, yet the amount of leakage that in fact occurred was far beyond normal expectation. The casks were once-used whisky casks which were imported in shooK form and the component parts which were assembled locally. Before being assembled the staves and heads are examined for breakages and, if they are found, they are replaced.

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The casks when assembled are cleaned out, filled with water to check against leakage, sterilised with live steam and then waxed. The wax lining is done as follows :- the wax is brought to boiling point and poured into the cask which is then revolved to ensure that the whole interior surface is basted, the object being to seal the pores of the wood against leakage, after filling, the heads of the casks are secured by what is known as "flagging".

10

There is also the evidence of Mr.W.T.Shillingford who is responsible for supervision of the processes of the coopering and waxing but an examination of his evidence leaves one in doubt whether he was speaking of the system usually employed at the factory or whether he was speaking of what was done in regard to these two particular consignments.

The evidence of Mr. Joseph Reid who is employed at Bath Estate, and has had at least ten years experience of the manufacture of syrup is "If a waxed cask was open a normal person would be able to see the wax and, if inside of cask was scraped, wax would come away. The wax on the inside of cask can easily be seen".

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Mr. Lambert, who as stated above said that he had considerable experience of dealing with casks, concluded, after scraping the interiors of some of them with a pen-knife that they had not been wax-lined. On the other hand, Mr. Walkley, who made a superficial examination of only two of the casks, was unable to form a precise opinion on the point.

30

We are unable to agree with the finding of the Judge that the casks were properly coopered. His findings was based on the view he took that the leakage was not abnormal but the evidence in this respect clearly proved that the leakage amounted to 25,509 lbs. a considerable quantity of the two shipments. In view of our finding about leakage it is not essential for us to come to a conclusion whether the casks were waxed or, if waxed, properly so; but, if it be necessary, we are satisfied that they were not properly waxed. In this connection it is pertinent to observe that the Judge, in coming to his conclusions on this aspect of the case, appears to have over-

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looked, or to have failed to give due weight to, some of the evidence taken on commission in England; Evidence which in the main is uncontradicted and, in some respects, unchallenged.

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continued.

10 In regard to the second question (b) above, we agree with the Judge's finding (and indeed it was conceded on appeal) that there was a warranty of fitness that the syrup would be suitable for human consumption but, as we hold the view that this warranty continued until the arrival of the syrup in England and for a reasonable time thereafter, we proceed to examine the evidence upon which he came to his conclusion that the Respondent had been relieved of his liability owing to many intervening circumstances and other factors which he set out as follows :-

20 "(a) Having regard to the many intervening incidents which took place between the shipment of the syrup in apparently good condition and the time when the syrup was found to be unfit, viz :

(1) delay at London Docks;

(ii) extensive recooling;

(iii) extra handling involved in shipping to different points;

30 (b) The fact that the Defendants have failed to prove by any direct evidence that the Plaintiffs were in any way negligent in the manufacture of the syrup but rely for this proof on a series of conjectures and suppositions:

(c) The fact that the Court is unable to say with any certainty when these extraneous agents which brought about fermentation did enter the syrup:

40 (d) The fact that the leaky conditions increased the likelihood of the preservative scraping and rendering the syrup more susceptible to fermentation:



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continued

(e) The time when the chemists said  
that fermentation began;

the Court is forced to the con-  
clusion that the many circum-  
stances which intervened are  
sufficient to relieve the  
Plaintiffs of that absolute  
warranty of fitness which  
fell on them .....

The Court is unable, having re-  
gard to all the circumstances  
before it to say with any cer-  
tainty at what stage the ship-  
ment went bad, nor is it able  
to attribute the deterioration  
of the syrup to any particular  
cause".

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On this part of the case the evidence taken  
on commission in England must be considered. There  
is no evidence of any untoward event happening to  
the shipment in transit. A representative of the  
shipping company who was called on behalf of the  
Respondent said that the casks were shipped in  
tiers and all care was taken by the ships person-  
nel in regard to cargo of this nature.

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There is evidence that on arrival the casks  
were found to be in a very bad condition and were  
leaking very considerably. The inference to be  
drawn from this supports the finding we have al-  
ready come to that the casks were improperly  
coopered. The only evidence as to the condition  
of the syrup after arrival in England is that  
evidence of the witnesses taken on commission,  
which, as stated above, is in some respects un-  
contradicted and, in the case of Mr. Morgan, not  
questioned.

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A scrutiny of this and the remainder of the  
evidence leads up to the conclusion that the  
syrup was manufactured under unhygienic condi-  
tions which rendered it unfit for the purposes  
intended. The evidence clearly shows the presence  
of extraneous matter - bees, dirt, wood and straw-  
matter which could not but cause deterioration in  
the quality of the syrup. That deterioration was  
clearly due to fermentation caused by the pre-  
sence of those harmful ingredients augmented by

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the escape of varying quantities of the preservative, leaving in some casks a quantity as low as 52 parts per million. Of that we think there can be no question.

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continued

10 Mr.Morgan maintained that 367 parts per million of SO2 would be a reasonable amount of preservative if the syrup was sterile initially; Mr. Walkley stated that under normal conditions it would take 4-12 months for fermentation to set in after the casks had been filled. We consider that the combined effect of this evidence is that syrup containing 367 parts per million of preservative should certainly not deteriorate within the period of two months which at most was the period of time that elapsed from the date of the first shipment on 21st July, 1952 to the date of the last examination, yet the fact is that this syrup was found to be in a state of fermentation.

20 There is no evidence to support the Respondent's theory that the extraneous matter got into the syrup while in England either while being re-coopered or otherwise and before examination. Re-coopering did not involve the opening of the casks. It is therefore difficult if not impossible to see how extraneous matter entered the casks while in England. Confronted with this dilemma, Counsel for the Respondent invited the Court to assume that extraneous matter gained entrance as fermentation had forced some of the bungs out of the  
30 casks. This theory presupposes that fermentation had started before or on arrival in England and in any event before re-coopering, a theory which supports the Appellants' contention. Furthermore, as distinct from mere theory Mr. W.T. Shillingford in cross-examination stated that during the manufacturing process bees hung around and care had to be exercised to prevent them getting into the syrup.

40 We are of opinion that the Judge's approach to the case was not the correct one in that among other matters he seems to have considered it obligatory on the Appellants to satisfy him by direct evidence that the Respondent was negligent in the manufacture of the syrup, and that it was necessary for him to come to conclusions with some certainty. Being a civil case he should have concerned himself with probabilities rather than certainties, and especially so, as the fact is there was some evidence on the one hand and conjecture only on the other.

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continued

While fully conscious of the advantage enjoyed by the Judge in hearing the witnesses who gave evidence here, he did not have the opportunity of seeing or hearing the witnesses who gave evidence on commission, evidence of a vital nature to which, for reasons we have already mentioned, he did not give due consideration.

We do not agree with the submission of Counsel that once the syrup was put on board the ship in Dominica the obligation of the Respondent ended. This was a normal shipment in the ordinary course of business by merchants carrying on an export business in merchandise of this nature. We have already stated that in our opinion the warranty as to fitness of the syrup and of the casks continued until the time of their arrival in England and for a reasonable time thereafter. We are fortified in this view by the authority of the case BEER vs. WALKER (1877) 46 L.J.N.S. 677. That being so, and it being clear to us that the syrup was not fit for the purposes intended on its arrival or shortly thereafter, and there being no evidence that anything extraneous entered after its arrival the Appellant is entitled to succeed on his Counterclaim.

Counsel for the Respondent submitted that whatever view this court took in regard to the Counterclaim, the Appellants were bound to pay for the syrup as they had accepted and dealt with it. With this we agree.

The order of the Court below is varied as follows; there will be judgment for the Respondent for the sum of \$3929.67 on the claim with costs in the Court below, and there will be judgment for the Appellant on the Counterclaim for the sum of \$11,007.15 with costs in the Court below. The Appellant will have the costs of this appeal. The doctrine of set off to apply to the amounts awarded on the Claim and Counterclaim.

(Sgd.) J.L. MATHIEU-PEREZ  
Chief Justice Trinidad & Tobago.

(Sgd.) S.E. GOMES  
Chief Justice Barbados.

(Sgd.) KENNETH S. STOBY  
Acting Chief Justice of British Guiana

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No.56

JUDGMENT ENTERED

Friday the 25th day of October, 1957

In the West  
Indian Court  
of Appeal

\_\_\_\_\_  
No.56

Judgment  
Entered

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1957.

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS

COLONY OF DOMINICA,

BETWEEN

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C.SHILLINGFORD & CO.

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Plaintiff-Respondent

and

FRANKLYN A. BARON and OCTAVIA MARIA BARON  
Trading as A.A.BARON & CO.

Defendant-Appellant

This Appeal coming on for hearing the 15th day  
of October, 1957,

UPON READING the Judge's notes and the Judg-  
ment herein

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AND UPON HEARING Counsel for the Appellant  
and Counsel for the Respondent;

IT IS ORDERED that the said Judgment and order  
herein dated the 11th day of August, 1954, be var-  
ied and that Judgment be entered in favour of the  
Respondent for the sum of \$3929.67 on his claim and  
costs in the Court below and that Judgment be  
entered in favour of the Appellant on his Counter-  
claim for the sum of \$11,007.15 and costs of the  
Counterclaim in the Court below.

30

AND IT IS FURTHER ORDERED that the Appellant  
do have the costs of this Appeal and that the doc-  
trine of set off do apply to the amounts awarded  
on the Claim and Counterclaim.

BY THE COURT

(Sgd) T.A.BOYD

Registrar.

In the West  
Indian Court  
of Appeal

No.57

NOTICE OF MOTION FOR LEAVE TO APPEAL

IN THE WEST INDIAN COURT OF APPEAL

No.57

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS  
DOMINICA CIRCUIT.

Notice of  
Motion for  
Leave to  
Appeal.

1953

B.

No.24.

13th November  
1957.

BETWEEN

FRANKLYN A.BARON and OCTAVIA MARIA BARON  
Trading as A. A. BARON & CO.,  
Defendants-Appellants

10

and

ISAAC NEWTON SHILLINGFORD) as Business  
Trustee of A.C.SHILLINGFORD & CO.  
Plaintiff-Respondent

TAKE NOTICE that the West Indian Court of  
Appeal will be moved by Counsel for the above-  
named Plaintiff-Respondent on Friday the 15th day  
of November, 1957 at 10 o'clock in the forenoon or  
so soon thereafter as Counsel can be heard at the  
Court House, Roseau, Dominica, before the Honourable  
Keith Gordon, Acting Chief Justice of the Wind-  
ward Islands and Leeward Islands, one of the  
Judges thereof for an Order giving the Appellants  
leave to appeal to Her Majesty in Council from the  
Judgment of the Court dated the 25th day of Octo-  
ber, 1957, varying the Judgment of the Supreme  
Court of the Windward Islands and Leeward Islands  
(Dominica Circuit) dated the 31st day of January,  
1955.

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Dated the 13th day of November, 1957.

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(Sgd) CLIFTON A.H.DUPIGNY

Solicitor for the Plaintiff-Respondent.

To: Miss M.Eugenia Charles  
Solicitor for the Defendants-Appellants.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

In the West  
Indian Court  
of Appeal

No.58

IN THE WEST INDIAN COURT OF APPEAL  
ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS.  
DOMINICA CIRCUIT.

Affidavit in  
Support of  
Application  
for leave to  
Appeal to  
Her Majesty  
in Council.

1953

B.

No.24

10

BETWEEN

FRANKLYN A.BARON and OCTAVIA MARIA BARON  
Trading as A.A.BARON & CO.,  
Defendants-Appellants

13th November,  
1957

and

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C.SHILLINGFORD & CO.,  
Plaintiff-Respondent.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

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I, CLIFTON ALEXANDER HERRIOT DUPIGNY, of the Town  
of Roseau, in the Colony of Dominica, Barrister-at-  
Law and Solicitor make Oath and say as follows:-

1. I am a Solicitor of the Supreme Court of the  
Windward Islands and Leeward Islands, Dominica Cir-  
cuit, and I am Solicitor for the Plaintiff-  
Respondent.

30

2. On the 25th day of October, 1957, the West  
Indian Court of Appeal varied a Judgment of the  
Supreme Court of the Windward Islands and Leeward  
Islands (Dominica Circuit) dated the 31st day of  
January, 1955.

3. The Plaintiff-Respondent being dissatisfied  
with the said Judgment has instructed me to obtain  
leave for him to appeal to Her Majesty-in-Council.

4. The Plaintiff-Respondent has a right of appeal.

5. On the 13th day of November, 1957, I filed at  
the Registry of the West Indian Court of Appeal at  
Dominica a Notice of Motion for leave to Appeal.

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Sworn at the Court House,  
Roseau, Dominica, this (Sgd) Clifton A.H.Dupigny  
13th day of November 1957.

Before me:

(Sgd)

A. B. Marie

Ag. Registrar.

In the West  
Indian Court  
of Appeal

AFFIDAVIT IN PROOF OF SERVICE  
OF NOTICE OF MOTION

No.59

IN THE WEST INDIAN COURT OF APPEAL

Affidavit in  
Proof of  
Service of  
Notice of  
Motion.

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS  
DOMINICA CIRCUIT.

1953

B.

No.24

15th November,  
1957

BETWEEN

FRANKLYN A. BARON and OCTAVIA MARIA BARON  
Trading as A.A. BARON & CO.  
Defendants-Appellants

2.

and

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C. SHILLINGFORD & CO.  
Plaintiff-Respondent.

AFFIDAVIT IN PROOF OF SERVICE OF NOTICE  
OF MOTION FOR LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL AND AFFIDAVIT IN SUPPORT

I, CILMA DUPIGNY of the Town of Roseau, in the  
Parish of St. George, in the Colony of Dominica,  
Solicitor's Clerk, make oath and say as follows:-

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1. I did on Wednesday the 13th day of November,  
1957, personally serve Miss M. Eugenia Charles,  
Solicitor for Franklyn A. Baron and Octavia Maria  
Baron trading as A.A. Baron & Co., Defendants-  
Appellants with a true copy of the Notice of  
Motion for Leave to Appeal to Her Majesty in Coun-  
cil and Affidavit in Support dated and sworn re-  
spectively on the 13th day of November, 1957.

30

Sworn at the Court  
House, Roseau, this  
15th day of November, (Sgd) Cilma A.M. Dupigny  
1957.

Before me :-

(Sgd) JOSEPH V. JEAN PIERRE

Ag. First Clerk

in absence of Registrar.

No.60

ORDER GRANTING FINAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL

In the West  
Indian Court  
of Appeal

IN THE WEST INDIAN COURT OF APPEAL

No.60

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD  
ISLANDS AND LEEWARD ISLANDS  
DOMINICA CIRCUIT.

Order Granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council.

1955

B.

No.24

25th January,  
1958.

BETWEEN

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FRANKLYN A.BARON and OCTAVIA MARIA BARON  
Trading as A.A.BARON & CO.,  
Defendants-Appellants

and

ISAAC NEWTON SHILLINGFORD as Business  
Trustee of A.C.SHILLINGFORD & CO.  
Plaintiff-Respondent.

The 25th day of January, 1958.

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Upon Hearing Mr. Clifton Alexander Herriot  
Dupigny of Counsel for the Applicant and Miss M.  
Eugenia Charles of Counsel for the Respondent IT  
IS ORDERED that special leave under Order 52 rule  
5 for the hearing of the Motion be given to the  
Applicant and

IT IS FURTHER ORDERED that leave to appeal to  
Her Majesty in Council from the Judgment of the  
West Indian Court of Appeal dated the 25th day of  
October, 1957, varying the Judgment of the Supreme  
Court of the Windward Islands and Leeward Islands  
(Dominica Circuit) dated the 31st day of January,  
1955, be granted;

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AND IT IS FURTHER ORDERED that the Applicant  
shall give security in the sum of Five hundred  
pounds by either entering into a Bond in favour of  
the Respondent for the payment of the said sum of  
Five hundred pounds with Howell Donald Shilling-  
ford as Surety or by payment of the said sum of  
Five hundred pounds into Court for the due prosecu-  
tion of the Appeal, and the payment of all costs as



In the West  
Indian Court  
of Appeal

No.60

Order Granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council.

25th January,  
1958.  
continued

may become payable to the Respondent in the event of the Appellant not obtaining an Order finally admitting the Appeal, or of the Appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent costs of the Appeal and that the said Bond be entered into or payment made into Court not later than the 25th day of February, 1958.

AND IT IS FURTHER ORDERED that the Applicant shall take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England within six months from the date hereof.

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AND IT IS FURTHER ORDERED that the Costs of the Motion be Costs in the cause.

BY THE COURT

(Sgd) A.B.Marie

ACTING REGISTRAR.

No.61

Bond

22nd February,  
1958.

No.61

B O N D

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KNOW ALL MEN by these presents that We Isaac Newton Shillingford as Business Trustee of A.C. Shillingford & Co. and Howell Donald Shillingford of the Town of Roseau in the Parish of St. George, in the Colony of Dominica and Estalie Estate in the Parish of St. Joseph in the Colony of Dominica Merchant and Planter respectively are Jointly and Severally held and firmly bound to Franklyn A. Baron and Octavia Maria Baron trading as A.A. Baron & Co. of the Town of Roseau in the Parish of St. George, in the Colony of Dominica in the sum of Five hundred pounds to be paid to the said Franklyn A. Baron and Octavia Maria Baron trading as A.A. Baron & Co. their executors, administrators or assigns for which payment to be well and faithfully made we bind ourselves and each of us, one and each of our executors and administrators, firmly by these presents, sealed with our seals.

30

Dated this 22nd day of February, 1958.

WHEREAS by an Order of the West Indian Court

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of Appeal dated the 25th day of January, 1958, on the Application by the Plaintiff-Respondent for leave to Appeal to Her Majesty in Council in an Appeal No. 1955 B. No.24 wherein Franklyn A. Baron and Octavia Maria Baron trading as A.A. Baron & Co. are the Defendants-Appellants and Isaac Newton Shillingford as Business Trustee of A.C. Shillingford & Co. is Plaintiff-Respondent it was ordered that the Applicant shall give security in the sum of Five hundred pounds by either entering into a Bond in favour of the Respondent for the payment of the said sum of Five hundred pounds with Howell Donald Shillingford as Surety or by payment of the said sum of Five hundred pounds into Court for the due prosecution of the Appeal and the payment of all costs as may become payable to the Respondent in the event of the Appellant not obtaining an Order finally admitting the Appeal or of the Appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent Costs of the Appeal and that the said Bond be entered into or payment made into Court not later than the 25th day of February, 1958; And Whereas the said Isaac Newton Shillingford as Business Trustee of A.C. Shillingford & Co. and Howell Donald Shillingford have agreed to enter into the above written obligation, subject to the condition hereinafter contained.

Now the condition of the above written obligation is such that if Isaac Newton Shillingford as Business Trustee of A.C. Shillingford & Co. and Howell Donald Shillingford or either of them or either of their executors or administrators do and shall well and truly pay or cause to be paid to the Respondent all such costs as Her Majesty-in-Council shall think fit to award to the said Respondent in the said Appeal then the above written obligation is to be void or else to remain in full force and virtue.

Signed Sealed and Delivered (Sgd) I.N. Shillingford  
by the said Isaac Newton Shillingford as Business Trustee of A.C. Shillingford & Co. and Howell Donald Shillingford in the presence of:- (Sgd) H.D. Shillingford

And acknowledged before me:-

(Sgd) Vanya Dupigny.

(Sgd) A.B. Marie  
Deputy Registrar

In the absence of  
Registrar.

In the West  
Indian Court  
of Appeal

No. 61

Bond

22nd February,  
1958.

continued

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In the  
Supreme Court  
of the Windward  
and Leeward  
Islands.

EXHIBIT D.1

SUMMARY OF BARRELS OF ORANGE SYRUP

D 1

Exhibit D.1

David McCausland  
(1949) Ltd.

DAVID McCAUSLAND (1949) LIMITED  
Belfast.

Summary of  
Barrels of  
Orange Syrup.  
5th September,  
1952.

5th September, 1952.

SUMMARY OF BARRELS OF ORANGE SYRUP WEIGHED BY  
US THIS DAY :-

BARREL MARKINGS		To-day		BARREL MARKINGS		To-day	
Nett	Tare	Weight		Nett	Tare	Weight.	
569	556	89	621 lbs.	640	550	90	468 lbs.
572	574	98	633 "	645	554	91	595 "
604	526	78	446 "	645	553	90	620 "
616	533	83	399 "	645	555	90	616 "
617	532	85	554 "	646	560	86	516 "
617	535	82	525 "	650	558	92	586 "
622	530	92	513 "	651	563	88	626 "
626	530	96	579 "	651	536	95	525 "
627	538	89	594 "	652	560	92	632 "
628	543	85	513 "	654	566	88	602 "
630	540	90	563 "	656	566	90	458 "
630	542	88	593 "	657	567	90	609 "
632	545	87	354 "	659	560	99	578 "
635	345	91	181 "	660	569	91	630 "
635	547	88	534 "	660	564	96	590 "
635	543	90	619 "	661	562	99	553 "
637	552	85	593 "	670	575	95	613 "
638	541	91	559 "	674	585	89	634 "
638	473	85	285 "	683	590	93	642 "
639	549	90	609 "	686	591	95	591 "

TOTAL WEIGHT TO--DAY: 9 tons 16 cwt 3 qrs 15 lbs.

EXHIBIT D.2

LANDING ACCOUNT

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

D 2

(Sgd) S.W.E.

Exhibit D.2

WEBER SMITH & HOARE (OVERSEAS) LTD.

WEBER SMITH & HOARE  
Metropolitan Wharf,  
Wapping, London, E.1.

Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account  
4th September,  
1952.

Date 4th September, 1952.                      Rotn    52/1086.

LANDING ACCOUNT

Of            Orange Flavoured Syrup

Ex Ship            Crispin                      Dominica

And

Entered by Weber Smith & Hoare (Overseas) Ltd.

19th August, 1952.

Rent Commences            19th August, 1952.

NO INSURANCE RISKS COVERED BY US UNLESS SPECIFI-  
CALLY INSTRUCTED

Marks	Goods
C & C Orange Flavoured Syrup. Product of Dominica, B.W.I.	250 casks.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

D 2 (contd)

(Sgd) S.W.E.

Exhibit D 2  
Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account  
4th September,  
1952.  
continued

Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.			Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.		
Old Nos.					Old Nos.				
276	1	4	2	0	51	5	0	23	
290	2	5	3	18	127	2	4	3	17
306	3	4	1	5	171	3	5	1	26
69	4	4	2	20	153	4	5	0	13
226	5	5	0	2	184	5	5	1	3
238	6	3	2	8	66	6	4	2	12
272	7	4	3	21	197	7	5	2	14
78	8	4	1	16	227	3	4	1	24
296	9	4	0	15	265	9	4	3	17
293	10	2	1	15	62	60	4	0	17
	10	43	3	8		10	49	2	26
117	11	5	0	5	30	146	2	9	
284	2	2	0	.1	30	131	2	18	
202	3	5	2	2					20
194	4	3	2	9	60	278	0	27	
67	5	5	0	16					
151	6	3	0	14	61	4	3	10	
271	7	4	2	1	2	5	1	6	
57	8	5	1	1	132	3	5	2	15
277	9	4	3	12	217	4	4	3	14
224	20	3	0	9	212	5	5	0	22
	10	42	0	14	143	6	4	2	2
63	21	5	2	17	236	7	4	3	4
273	2	3	0	27	145	8	4	2	10
269	3	3	3	6	249	9	5	2	0
74	4	4	3	21	193	70	5	1	17
189	5	4	2	9		10	50	2	16
88	6	5	2	6	132	71	5	2	16
275	7	4	2	21	300	2	5	1	0
166	8	5	0	22	162	3	5	3	16
240	9	4	1	21	53	4	5	2	14
262	30	3	2	14	292	5	5	1	12
	10	45	2	24	207	6	3	3	0
	30	131	2	18	137	7	5	0	19
251	31	3	1	18	86	8	5	0	7
229	2	5	0	19	187	9	5	0	0
						80	5	3	5

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In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit D 2

Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account  
4th September,  
1952.  
continued

	Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.			Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.		
	Old Nos.					Old Nos.				
	160	3	4	3	21		10	54	1	23
	243	4	5	1	26					
	266	5	5	2	1	203	81	5	0	5
	178	6	4	0	2	215	2	4	3	20
10	252	7	5	0	4	70	3	5	2	2
	190	8	4	1	23	209	4	2	2	27
	168	9	5	1	0	58	5	5	0	7
	108	40	5	2	21	141	6	5	1	1
		10	48	3	23	97	7	5	1	4
	109	41	5	0	23	102	8	4	2	18
	55	2	5	0	13	121	9	4	3	10
	216	3	5	0	2	56	90	5	1	0
	245	4	4	3	10		10	48	2	10
20	105	5	2	2	22		30	153	2	21
	155	6	5	1	19		60	278	0	27
	279	7	4	0	4					
	215	8	5	2	18		90	431	3	20
	232	9	4	3	7					
	96	50	5	0	10					
		10	47	3	16					
	256	91	5	0	27	241	141	4	0	18
	177	2	5	1	22	167	2	4	3	7
	295	3	5	1	9	231	3	3	3	0
	237	4	4	2	14	218	4	5	2	18
30	213	5	5	0	8	91	5	5	2	3
	263	6	5	1	1	61	6	5	1	21
	154	7	3	0	4	228	7	5	2	22
	76	8	5	2	18	130	8	5	0	11
	196	9	4	3	2	182	9	5	1	21
	77	100	5	0	20		150	5	1	25
		10	49	2	13		10	51	0	6
	115	101	5	0	25		30	157	2	14
	219	2	4	0	2		120	575	2	6
	52	3	4	0	27					
40	278	4	4	0	16		150	733	0	20
	103	5	5	2	4					
	173	6	5	1	21	84	151	3	1	5

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit D 2

Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account  
4th, September,  
1952.  
continued

Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.			Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.		
	Old Nos.					Old Nos.			
192	7	4	0	1	206	2	5	1	16
191	8	5	1	10	258	3	5	0	4
156	9	4	3	22	140	4	5	0	24
119	110	5	2	26	288	5	5	2	8
	10	48	2	14	139	6	5	2	6
					157	7	5	1	21
170	111	4	2	14	285	8	5	1	24
81	2	5	2	0	193	9	5	1	8
286	3	4	3	10	181	160	5	0	16
267	4	5	0	11		10	51	1	20
114	5	4	2	22					
133	6	5	1	26	73	161	5	1	23
289	7	1	2	26	133	2	5	0	15
164	8	4	0	25	165	3	5	2	19
254	9	4	3	22	101	4	5	0	4
115	120	4	0	27	128	5	5	1	24
	10	45	1	15	155	6	5	1	11
	30	143	2	14	120	7	5	2	0
	90	431	3	20	174	8	5	1	2
	120	575	2	6	223	9	4	1	27
					188	170	5	1	14
268	121	3	1	2		10	52	2	27
248	2	5	0	23					
176	3	5	2	6	297	171	4	3	25
239	4	5	0	21	221	2	5	2	6
220	5	5	1	9	298	3	5	1	10
282	6	5	1	11	149	4	5	3	9
65	7	5	2	4	107	5	5	1	4
68	8	5	1	21	71	6	5	1	13
259	9	5	1	19	235	7	4	2	5
260	130	5	1	18	82	8	5	2	22
	10	51	2	22	159	9	5	3	0
					182	180	4	3	4

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In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit 2

Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account

4th September  
1952.  
continued

Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.			Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.		
	Old Nos.				Old Nos.				
	124	5	1	1		10	53	0	14
	99	5	2	22					
	104	5	2	10		30	157	1	5
	185	5	2	4		150	733	0	20
10	79	5	2	2					
	111	5	2	5		180	890	1	25
	270	5	0	22					
	83	5	1	26					
	92	5	1	14					
	282	5	2	20					
		54	3	14					
	73	5	3	6	132	221	4	3	22
	242	5	2	8	175	2	5	3	7
	64	5	1	10	179	3	5	2	13
20	244	5	2	6	89	4	5	3	8
	85	5	2	27	72	5	5	0	11
	118	5	1	24	264	6	5	3	24
	52	5	2	0	214	7	5	1	19
	161	4	3	18	110	8	5	0	4
	253	6	0	8	146	9	5	2	20
	158	5	2	10	257	230	5	1	18
		55	2	5		10	54	3	6
	136	5	2	12	125	231	5	1	14
	287	4	3	10	123	2	5	2	10
30	225	5	2	0	148	3	5	2	14
	186	5	2	4	230	4	5	2	12
	94	5	2	10	54	5	5	1	10
	87	5	0	14	247	6	5	2	4
	211	5	1	18	126	7	5	3	9
	100	4	1	3	291	8	3	0	9
	246	5	2	9	169	9	1	2	12



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit D 2

Weber Smith  
& Hoare  
(Overseas) Ltd.  
Landing Account  
4th September,  
1952.  
continued

Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.			Mark	Pile Lot Nos.	Gross Weight cwt.qrs.lbs.		
Old Nos.					Old Nos.				
199	200	5	1	14	283	240	2	0	17
	10	52	3	10		10	45	2	27
						30	156	3	0
	201	2	0	25		210	1049	0	23
281	2	5	0	6		240	1205	3	23
201	3	5	2	24					
210	4	5	2	24	80	241	5	2	16
60	5	5	1	17	112	2	5	2	6
233	6	5	0	8	172	3	3	2	0
271	7	4	2	9	234	4	5	3	0
142	8	5	2	13	198	5	5	2	0
93	9	5	1	20	200	6	5	2	0
138	210	5	2	7	204	7	5	0	20
	10	50	1	11	95	8	5	1	1
	30	158	2	26	129	9	5	1	2
	180	890	1	25	294	250	3	0	6
	210	1049	0	23		10	50	0	23
						240	1205	3	23
	211	6	0	3		250	1256	0	18
141	2	5	2	8			194	3	18
205	3	5	2	24			1061	1	0
147	4	5	1	21					
208	5	5	2	0					
98	6	5	2	14					
35	7	5	2	16					
113	8	5	2	14					
131	9	5	2	17					
261	220	5	1	8					
	10	56	0	23					

10

20

30

Specification Tare  
Nett

All old casks slack  
and many leaking.  
All required more  
or less driving.  
Many ullaged.  
Very dirty condition.

EXHIBIT D 3

A C C O U N T

D 3

(sgd) S.Worthington Evans

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

THE WEST FERRY WHARFAGE CO., LTD.

WHARFINGERS, WAREHOUSE KEEPERS, SHIPPING AND  
FORWARDING

24, Lime Street, London E.C.3.  
Messrs. Burnell Hardy Ltd.,  
36, Piazza Chambers,  
London, W.C.2.

Exhibit D 3

The West Ferry  
Wharfage Co. Ltd.  
Account

22nd December,  
1952

10

ACCOUNT C 2727

22nd December, 1952.

Rotn.	TO/52/101	Marks	No.	Goods
S.S. Crispin			258	(Two hundred and fifty eight casks Citrus Flavoured Syrup).

	Tons	Cwt.	Qrs.	Lbs.	Rate	£.	s.	d.
--	------	------	------	------	------	----	----	----

20	To collection 131 casks ex Messrs. Cantrell & Cochrane Ltd. Sunbury-on-Thames	32	6	1	18 18/6pt.	29.	17.	11.
	To collecting 40 casks ex Pitt & Norrish, Clapton E.	9	6	2	26 15/-pt.	7.	0.	1.
	To collecting 48 casks ex Belfast as	11	15	3	- 106/6pt.	16.	5.	4.
30	To collecting 38 casks ex Southamp- ton as	10	-	-	- 32/6pt.	16.	5.	-.
	To processing fer- mented syrup as per our quotation dated 29.10.52.	53	-	-	- 354/6pt.	939.	8.	6.
	To delivery to Sun- bury 179 casks T49-19-1-5 as	50	-	-	- 18/6pt.	46.	5.	0.
40	To delivery to Southampton 34 casks T9-7-2-17 as	10	-	-	- 32/6pt.	16.	5.	-.
	Less credit 10 empty casks @ 7/6 ea.) 35 " " @ 12/6 ea.)					£1,117.16.10.		
						25.12.6.		
						£1,092.4.4.		

E. & O.E. For conditions see back  
Please address all remittances  
to 24, Lime Street.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

D 3 (Contd.) (Sgd.) S. Worthington Evans.

THE WEST FERRY WHARFAGE CO.LTD.

Exhibit D 3

WHARFINGERS, WAREHOUSE KEEPERS, SHIPPING AND  
FORWARDING

The West Ferry  
Wharfage Co.Ltd.

24, Lime Street, London, E.C.3.

Messrs.Burnell Hardy Ltd.

Account

36/7, Piazza Chambers,

22nd December,  
1952.

Covent Garden, W.C.2.

continued

ACCOUNT C 3275

18th March, 1953.

10

---

Rotn.	T	53/2831	Marks	No	Goods
			C & C	34	(Thirty-four) Casks
			London		Orange Flavoured
					Syrup)
S.S.Hand Carriage					

---

	Tons	Cwt.	Qrs.	Lbs.	Rate	£.	s.	d.
To collecting ex Southampton and delivery to Sunbury-on-Thames					40/-	16.	-.	-.

---

£16. - . - . 20

---

EXHIBIT D 4STATEMENT OF ACCOUNT

D 4

(sgd) S.W.E.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

STATEMENT OF ACCOUNT

In A/c with

Burnell Hardy Ltd.  
36/37 Piazza Chambers,  
Covent Garden,  
London, W.C.2.

Exhibit D 4

Burnell Hardy  
Ltd.

To:-

Messrs.A.A.Baron & Co.  
Roseau, Dominica, British West  
Indies.

Statement of  
Account.

31st March 1953

Terms Date 31st March,1953.

Order No. Orange Flavoured Syrup Shipments  
invoices 21.7.52 and 28.7.52 ex  
as "Planter" and as "Crispin"

Sept.11, By Balance in your favour £2,711. 1. 6.  
1952.

Jan.26, Refund of Insurance premium 313.12.10.  
1953. £3,024.14. 4.

20

To Shortage on ar-  
rival in London 25,509 lbs.  
Shortage in  
transit to cus-  
tomers including  
in transit to  
treatment depot,  
from treatment  
depot and re-  
delivery to cus-  
tomers 4,188 lbs.

30

Amount paid to  
The West Ferry  
Wharfage Co.Ltd.  
covering treat-  
ment cost and  
charges £1,108. 4. 4.

Loss in treatment 2,516 lbs.  
32,213 lbs.

40

6 casks which  
had to be des-  
troyed at  
customers at  
Southampton 2,516 lbs.  
35,066 lbs.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

-----  
Exhibit D 4

Burnell Hardy  
Ltd.

Statement of  
Account

31st March 1953.  
continued.

	35,066 lbs - 2664 glns. @ 8/6d per gln	£1,132. 4. 0.	
	To loss in Duty & Charges re the loss on the two shipments	171.16. 6.	
	Analyst fees - R. Harold Morgan	5. 5. 0.	
	" " Customers at Belfast.	18.15. 0.	
	" " Customer at Southampton	20. 0. 0.	10
	Expenses incurred by Customer at Southampton re 6 casks destroyed	2. 8. 0.	
	Leakage & Wastage in 6 casks boiled and used ... 42 glns.	17.17. 6.	
Not incl Fermen- tation	{ Insurance whilst in store, transit to treatment depot, whilst in the process of treatment, and re-delivery By Grant made to us by the Zurich General Accident & Liability Insurance Co.Ltd., re 1 Cask No.47 ex the S.S. "Planter", which met with an accident and was knocked into the river by a motor lorry at West India Dock, London, the cask was event- ually condemned by the Bacteriological Officer and destroyed	37. 0.11.	20
		10. 0. 0.	30
		<hr/>	
		£2,513.11. 3.	
		£3,034.14. 4.	
Less		<u>2,513.11. 3.</u>	
By balance in your favour		<u>521. 3. 1.</u>	

D 4 (Contd.)

(sgd) S.W.E.

31st March, 1953

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

---

Messrs. A.A. Baron & Co.,  
Roseau, Dominica, B.W.I.

Exhibit D 4

Burnell Hardy  
Ltd.Statement of  
Account.

In A/c with :- Burnell Hardy Ltd.,  
36/37, Piazza Chambers,  
Covent Garden,  
London, W.C.2.

31st March 1953  
continued.

Terms .....

10 1953

March 31.	By Bought a/c Balance	£521.	3.	1.
Mar. 31.	To Sold a/c Balance		2.	2. 5.
			<hr/>	
	By final balance	£519.	0.	8.
			<hr/>	

---

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

EXHIBIT D 5SUMMARY OF WEIGHTS

D.5.

(sgd) S.W.E.

Exhibit D 5

S.S.CRISPIN Rot: T.O. 52/101.

West Ferry  
Wharfage Co.Ltd.  
Summary of  
Weights

Summary of weights received and processing  
losses on Flavoured Syrup

258 casks -		213 casks -	
Weight on receipt as per	T	Weight after processing as per:	T
Account attached	53 4 2 23	Weight account	51 6 3 2
Losses incurred in transference to tankers and barrel washing and sterilising	4 2 23	Transfer-ence losses from tankers to barrels and turn of scales during weighing	4 18
Net weight syrup treated	<u>53 - - -</u>	Net weight delivered	<u>51 2 2 12</u>
Sugar Equivalent	<u>T34 8 1 6</u>	Sugar Equivalent	<u>T34 3 0 18</u>

Note:- The Brix reading of the incoming goods varied cask to cask from 64.4 to 65.2 with an average of 65° whilst that of the outgoing treated syrup average 66.9° Brix. The re-conditioning of these parcels has been calculated on a sugar content basis and the apparent weight and volume losses are due to concentration of the syrup with resultant evaporation of water.

FOR THE WEST FERRY WHARFAGE CO.LTD.

(sgd)

Directors.

A/c MESSRS. BURNELL HARDY LTD. S.S. CRISPIN . . . .  
T.O. 52/101.

In the  
 Supreme Court  
 of the Windward  
 and Leeward  
 Islands

Received Inwards for Re-conditioning on Flavoured  
 Syrup

		T				T				T				Exhibit D 5
		Gross				Tare				Nett				
	40 casks ex Sunbury	9	12	1	26	1	11	0	17	8	1	1	9	West Ferry Wharfage Co.Ltd.
	40 casks ex Sunbury	10	0	2	26	1	11	1	0	8	9	1	26	Summary of Weights continued.
10	51 casks ex Sunbury	12	13	0	22	1	19	3	13	10	13	1	9	
	1 cask ex London Docks		5	2	8			3	1		4	3	7	
	40 casks ex Pitt & Norrish	9	6	2	26	1	10	3	12	7	15	3	14	
	48 casks ex Belfast	11	12	2	25	1	18	2	20	9	14	0	5	
20	38 casks ex Southampton	9	15	1	22	1	9	2	13	8	5	3	9	
						Total				<u>53 4 2 23</u>				

Reconditioned - Outwards on Flavoured Syrup

	33 casks to Sunbury	9	6	0	10	1	4	3	11	8	1	0	27	
	50 casks to Sunbury	13	15	3	25	1	17	2	1	11	18	1	24	
	50 casks to Sunbury	13	19	2	0	1	19	2	5	11	19	3	23	
30	34 casks to Sunbury	9	9	1	22	1	6	1	19	8	3	0	3	
	34 casks to C & E Compounds	9	7	2	17	1	6	1	22	8	1	0	23	
	12 casks to Sunbury	3	8	1	4		9	2	8	<u>2</u>	<u>18</u>	<u>2</u>	<u>24</u>	
						Total				<u>51 2 2 12</u>				

FOR THE WEST FERRY WHARFAGE CO.LTD.

(sgd)

Directors.



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

EXHIBIT D 6

LETTER: SHILLINGFORD TO BARON

D 6

(sgd) S. WORTHINGTON EVANS

Exhibit D 6

Letter: A.C.  
Shillingford &  
Co. to A.A.  
Baron & Co.

A. C. SHILLINGFORD & CO.

Roseau, Dominica

4th July, 1952.

4th July 1952.

Messrs.A.A.Baron & Co.,  
Roseau.

Dear Sir, - We confirm our conversation of this  
morning and agree to manufacture the following  
for your account :-

10

50 casks Sugar Syrup for shipment SS "PLANTER"  
mid July

250 Casks Sugar Syrup for shipment end July  
and if possible

500 Casks Sugar Syrup for shipment mid August

Manufacturing Cost at 14c gl F.O.B.Steamer

Commission 2c gl

(sgd) E.P.S. Essence Orange 2½c gl of Syrup supplied

Preservative 500 ppm SO2 at 1c per gl. of Syrup  
supplied.

20

Packages \$12.00 each

Sugar to be supplied by you

Insurance to be arranged by you

Freight to be arranged by you

Payment Banker guarantee

Yours truly

A.C. SHILLINGFORD & CO.

(sgd) E. Patrick Shillingford

I.N.Shillingford.

30

Business Trustee

(sgd) A.A.Baron

ACCEPTED

EXHIBIT E.P.S.1.

LETTER - MARINE INSURANCE CO.LTD. to  
SHILLINGFORD

E.P.S.1.

THE MARINE INSURANCE COMPANY LIMITED

London & Lancashire House,  
159, Leadenhall Street,  
London, E.C.3.

7th May, 1952.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit E.P.S.1.

Letter - Marine  
Insurance Co.  
Ltd. to A.C.  
Shillingford  
& Co.

7th May 1952.

10 Messrs.A.C.Shillingford & Co.  
DOMINICA.

Dear Sirs,

I have received your cable of the 3rd inst.  
reading as follows :-

TELEGRAPH RATE ON FLAVOURED SUGAR SYRUP  
PACKED WHISKEY CASKS INCLUDING LEAKAGE  
DOMINICA/LONDON.

20 I note that this syrup will be packed in Whiskey  
casks and from enquiries made in London these are  
very unsatisfactory containers. It would seem  
that the sugar syrup is very heavy and consequent-  
ly it causes a severe strain to the sides of the  
casks and heavy leakage results. Some insurances  
were placed in London with a Deductible Francise  
of 3% and even so claims ranging from 2½% to 5½%  
had to be paid. In these circumstances I prefer  
to decline the insurance and I cabled to you yes-  
terday as follows :-

30 YOUR CABLE THIRD SUGAR SYRUP EXPERIENCE  
HERE VERY UNSATISFACTORY PREFER DECLINE.

Yours faithfully,

(sgd) R. W. West.

Assistant Manager.

RWW/ND.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

E.P.S.1.

THE MARINE INSURANCE COMPANY LIMITED

London & Lancashire House,  
159, Leadenhall Street,  
London, E.C.3.

19th May, 1952.

Exhibit E.P.S.1.  
continued  
Letter - Marine  
Insurance Co.  
Ltd. to A.C.  
Shillingford  
& Co.

Messrs.A.C.Shillingford & Co.  
Dominica.

19th May 1952

Dear Sirs,

I have received your cable of the 16th inst.  
reading as follows :-

10

LLOYDS QUOTING APPROXIMATELY FIVE PER CENT  
FOR INSURANCE COVERAGE INCLUDING FULL LEAK-  
AGE ON FLAVOURED SYRUP TO U.K. CAN YOU  
ACCEPT SAME BASIS CABLE REPLY URGENT.

I think that it is probable that your cable  
was despatched before you had received my letter  
of the 7th inst. in which I confirm my cable of  
the 6th requesting you to decline this business.  
In that letter I stated that even with a Deducti-  
ble Franchise of 3% some recent insurances placed  
in London have incurred claims of 2½% to 5½%. It  
is quite evident that on this basis there is no  
prospect of any profit at a rate of 5%. I there-  
fore had no alternative but to repeat my earlier  
request that you should decline.

20

I cabled to you on the 17th inst., as  
follows :-

YOUR CABLE SIXTEENTH FLAVOURED SYRUP CANNOT  
ACCEPT ON LLOYDS BASIS STOP CONSIDER RATES  
INADEQUATE.

30

Yours faithfully,

(sgd) R. W. West

Assistant Manager.

RWW/ND.

149.

Exhibit E.P.S.1.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

CABLE AND WIRELESS (WEST INDIES) LIMITED

BAR                    CJB                    713AM                    17th May, 1952.

RD192/BR129/OLH18                    LONDON                    17   17   1135  
SHILLINGFORD                    DOMINICA  
YOUR CABLE SIXTEENTH FLAVOURED SYRUP CANNOT ACCEPT  
ON LLOYDS BASIS STOP CONSIDER RATE INADEQUATE  
DARBY

Exhibit E.P.S.1.  
continued  
Cables between  
Marine Insurance Co.  
Ltd. and A.C.  
Shillingford  
& Co.

17th to 26th May  
1952

16/5/52

10

TO CAMINIUS  
LONDON  
LLOYDS QUOTING APPROXIMATELY FIVEPERCENT FOR  
INSURANCE COVERAGE INCLUDING FULL LEAKAGE ON  
FLAVOURED SYRUP TO UK CAN YOU ACCEPT SAME BASIS  
CABLE REPLY URGENT  
SHILLINGFORD

A.C.SHILLINGFORD & CO.

PER

BAR                    CJB                    1256PM                    26th May, 1952.

20

RD44/BR43                    LONDON                    14   6   1708  
SHILLINGFORD                    DOMINICA  
YOUR CABLE THIRD SUGAR SYRUP EXPERIENCE HERE VERY  
UNSATISFACTORY PREFER DECLINE  
DARBY

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

EXHIBIT E.P.S.2.

LETTER: SHILLINGFORD TO BARON

4th July, 1952.

Exhibit E.P.S.2.

Letter. A.C.  
Shillingford &  
Co. To A.A.  
Baron & Co.

Messrs. A.A. Baron & Co.  
Roseau.

4th July, 1952.

Dear Sirs,

We confirm our conversation of this morning  
and agree to manufacture the following for your  
account :-

50 Casks Sugar Syrup for shipment SS "Planter" 10  
Mid July

250 Casks Sugar Syrup for shipment end July  
and if possible

500 casks Sugar Syrup for shipment mid August

Manufacturing Cost at 14 c gl. F.O.B. Steamer  
Commission 2c.gl.

Essence - Orange at 2½c. per gl. of Syrup Ship  
supplied

Preservative - 500 pps SO2 at 1c per gl. of Syrup 20  
supplied

Packages \$12.00 each

Sugar to be supplied by you

Insurance to be arranged by you

Freight to be arranged by you

Payment Bankers Guarantee

YOURS TRULY

A.C.SHILLINGFORD & CO.

(sgd) E.Patrick Shillingford

for I.N.Shillingford

Business Trustee 30

(sgd) A.A. Baron & Co.

ACCEPTED.

EXHIBIT E.P.S.3.

LETTER: BARON TO SHILLINGFORD

A.A.BARON & CO.

Importers - Exporters

ROSEAU - DOMINICA

BRITISH WEST INDIES.

17th November, 1952.

Messrs.A.C.Shillingford & Co.  
Roseau.

10   Sirs,

I wish to bring to your attention a very grave loss which has arisen in respect of the consignments of orange flavoured syrup manufactured in July and August and packed by you under contract with me dated 4th July, 1952 for shipment.

20   I have received reports from my consignees that there was considerable loss through leakage resulting from the poor quality of the casks, and that the whole consignment arrived in a badly fermented condition. The precise extent of the loss from fermentation is not yet known as my consignees are endeavouring to minimise losses by treating the fermented syrup and we have not yet been informed of the results of this treatment.

30   The condition of the consignment has been investigated and reported upon by independent experts. You may have access to the reports in my possession, and my consignees in England will do everything to facilitate inspection of the consignment by your agents and will furnish any samples you may require for test and analysis. However the crux of the reports is that the syrup arrived in "filthy condition", with "dead wasps, bees, particles of wood, straw, dirt etc." float in it, that the consignment was "prepared under very unhygienic conditions" and exposed to contamination after manufacture" and that in these circumstances "fermentation was inevitable".

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit E.P.S.3.

Letter: A.A.  
Baron & Co. To  
A.C.Shillingford  
& Co.

17th November,  
1952.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit E.P.S.3.

Letter: A.A.  
Baron & Co. To  
A.C.Shilling-  
ford & Co.

17th November,  
1952.  
continued

You will appreciate that you are liable for the losses sustained and I should be glad if you would discuss with me an amicable settlement of the matter at your earliest convenience. If you wish to make your own investigations as to the condition of the consignment, I should be glad if you acted immediately. I shall be ready to make all the necessary arrangements with my consignees for this purpose.

Yours faithfully,

A.A.BARON & CO.

PER (Sgd) F.A.BARON

FAB/DJ.

10

Exhibit F.A.B.1.

Cable and Wire-  
less (West  
Indies) Ltd.

Telegram  
13th June 1952

EXHIBIT F.A.B.1.

TELEGRAM

CABLE AND WIRELESS (WEST INDIES) LIMITED  
BAR CJB 311 PM 13th June, 1952.

RD160/BR125/LGX74 LONDON 86 13 1616

LT ANORABA DONINICA

CABLE ACCEPTANCE IMMEDIATELY 5000 GALLONS FLAVOUR-  
ED SYRUP AS SAMPLE YOUR LETTER TWENTIETH MAY  
ESSENCE ONE EIGHTH OUNCE 65 PER CENT SUGAR 35%  
WATER 500 PARTS PER MILLION SULPHUR DIOXIDE SHIP-  
MENT TWO LOTS ONE MONTH INTERVAL FIRST SHIPMENT  
JULY 102 PENCE PER GALLON INCLUDING OUR COMMISSION  
CIF LIVERPOOL INSURANCE AS OURS SEVENTH FEBRUARY  
WE WILL ESTABLISH LETTER CREDIT 80 PER CENT  
DIRECTLY KNOW SHIPMENT DATE STOP YOUR SAMPLE  
TWENTIETH MAY CONSIDERED SATISFACTORY 65 PER CENT  
SUGAR STOP ORDER 61 VERY URGENT CABLE DATE BEING  
SHIPPED IN LIVERPOOL

20

30

SYNODIST

EXHIBIT F.A.B.2.TELEGRAM

BAR CJF 402PM 8th April, 1952.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

RD46/TBR78/LGX2C4 LONDON 47 8 1806  
LT ANORABA DOMINICA  
YOUR CABLE THIRD CABLE ACCEPTANCE IMMEDIATELY  
TWENTY THOUSAND GALLONS 8/6 CIF LONDON INCLUDING  
OUR COMMISSION PAYMENT CASH AGAINST DOCUMENTS  
INSURANCE AS OURS SEVENTH FEBRUARY STOP HOPE CABLE  
10 OUR FURTHER QUANTITIES THURSDAY STOP YOUR LETTER  
TWENTYEIGHTH NOT RECEIVED CABLE REPLY OUR CABLE  
THIRD.

Exhibit F.A.B.2.  
Telegram  
8th April, 1952.

SYNODISTEXHIBIT F.A.B.3.R E P O R T

Croft House Laboratory,  
45, Dollis Avenue,  
Finchley,  
London, N.3.

Exhibit F.A.B.3.  
R. Harold Morgan.  
Report  
13th October  
1952.

20 13th October, 1952.

REPORT

To: Messrs. Burnell Hardy Ltd., 36/7, Piazza Cham-  
bers, Covent Garden, London, W.C.2.

On: 26oz Bottle of Orange Flavoured Syrup ex  
Messrs. Cantrell & Cochrane.

I have examined the above mentioned sample  
and have obtained the following results :-

30 Appearance The sample was in a filthy condition  
Two wasps were floating in the bottle  
and particles of wood, straw, dirt,  
etc.  
The syrup was cloudy and olive colour-  
ed.



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Odour Alcoholic. Suggestive of "Ginger Beer"  
Taste Fermented. Non-acidic, sweet.  
Specific gravity @ 20°C 1.3208

Exhibit F.A.B.3.

R. Harold Morgan

Report

13th October  
1952

continued

	%	%	
	Weight/Weight	Weight/Volume	
Sucrose (Sugar)	57.2	75.6	
Invert Sugar	6.75	8.90	
Acidity as citric acid	0.085	0.11	
Ash (mineral matter)	0.11	0.15	
Soluble solids by re- fractometer	65.5	86.5	10

Parts per million

by weight

Sulphur dioxide	367		
Metals:-			
Iron	14		
Copper	3.8		
Lead	4.1		
Arsenic	Negligible trace.		
Iodoform reaction for alcohol	Positive		20
Gums, starch, dextrin, alginate, etc.	Not detected.		

Microbiological Examination

Plate Count	<u>Per Millilitre</u>	
Yeasts	Too numerous to count.	
Moulds	Nil	
Bacteria	12	
B. Coli organisms in		
0.1ml	Absent	30
0.1ml	Absent	

The Bacteria were short, motile, rod-forms

Observations :

The cause of fermentation is exposure to heavy infection. The amount of sulphur dioxide present, although normally adequate, cannot deal with continuous infection under exposed conditions. The presence of so much foreign matter such as wasps, etc., suggest that the syrup has been exposed to outside contamination after manufacture.

The metallic contamination is not abnormal, and the low ash indicates the use of a high grade sugar in the preparation of the syrup.

Apart from its unsightliness and fermented condition, there is no evidence that the syrup would be injurious to consumers.

A carbon treatment will considerably improve this product.

(sgd) R. Harold Morgan, M.Sc. F.R.I.C.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit F.A.B.3.  
Report  
13th October,  
1952  
continued

10

EXHIBIT F.A.B.4.

STATEMENT OF ACCOUNT

Exhibit F.A.B.4.

Burnell Hardy  
Ltd.

Statement of  
Account

31st March 1953.

In A/C with:

Burnell Hardy Ltd.,  
36/37, Piazza Chambers,  
Covent Garden,  
London, W.C.2.

To :- Messrs.A.A.Baron & Co.,  
Roseau Dominica,  
British West Indes.

20

Date 31st March,1953.

Order No.                      Terms

Orange Flavoured Syrup shipments invoices 21/7/52  
and 28/7/52 ex SS "Planter" and SS "Crispin"

Sept.11 1952.	By balance in your favour	£2,711. 1. 6.
Jan.26 1953	Refund of Insurance premium	313.12. 10.
		<hr/>
		£3,024.14. 4.

In the Supreme Court of the Windward and Leeward Islands	To Shortage on arrival in London	25.509lbs.	
----- Exhibit F.A.B.4.  Burnell Hardy Ltd.  Statement of Account.  31st March 1953 continued	Shortage in transit to customers including in transit to treat- ment depot from treat- ment depot and re- delivery to customers	4.138lbs.	10
	Amount paid to The West Ferry Wharf- age Co.Ltd. covering treatment cost and charges	£1,108. 4. 4.	20
	Loss in treatment	<u>2.516lbs.</u> 32.213lbs.	
	6 casks which had to be destroyed at customers at Southamp- ton	<u>2.853lbs</u> 35.066lbs.	30
	35.066 lbs. = 2664 glns @ 8/6 per gln	£1,132. 4. 0.	
	To loss in Duty & Charge re the loss on the two shipments	171.16. 6.	
	Analyst fees - R.Harold " " Morgan	5. 5. 0.	40
	" " Customer at Belfast	18.15. 0.	
	" " Customer at Southam- ton	20. 0. 0.	

Expenses incurred  
by Customer at  
Southampton re 6  
casks destroyed 2. 8. 0.

Leakage & Wastage  
in 6 casks boiled  
and used .. 42 glns 17.17. 6.

10 not (Insurance whilst in  
incl. (store, transit to  
fer- (treatment depot,  
menta- (whilst in the pro-  
tion. (cess of treatment  
(and re-delivery 37. 0.11.

20 By Grant made to  
us by the Zurich  
General Accident  
& Liability  
Insurance Co.Ltd.  
re 1 Cask No.47  
ex. the ss  
"Planter", which  
met with an  
accident and was  
knocked into the  
river by a Motor  
Lorry at West  
India Dock, London,  
the cask was  
30 eventually con-  
demned by the  
Bacteriological  
Officer and  
destroyed. £10. 0. 0.

£2,513.11. 3. £3,034.14. 4.

Less 2,513.11. 3.

By Balance in your favour £ 521. 3. 1

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit F.A.B.4.  
Burnell Hardy  
Ltd.

Statement of  
Account

31st March 1953  
continued.

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

EXHIBIT F.A.B.5.

LETTER - BURNELL HARDY to BARON & CO.

Exhibit F.A.B.5.

Letter - Burnell  
Hardy Ltd. to  
A.A. Baron & Co.

6th October 1952

BURNELL HARDY LTD.

36/7 Piazza Chambers,  
Covent Garden,  
London, W.C.2.

6th Oct. 1952.

Messrs. A.A. Baron & Co.,  
Roseau, Dominica, B.W.I.

Dear Sirs,

10

We confirm our cable of this morning reading :-

"Crispin syrup 270 casks fermented insurance underwriters not paying claim owing syrup not shipped in new casks in accordance with contract stop no decision yet Planter syrup stop we hold you responsible all losses and expenses stop cable disposal and settlement instructions immediately".

(We regret it was an error to state 270 casks, this should have read 220 casks out of a total of 250 shipped on SS "Crispin").

20

You will realise from the cable that the Underwriters have advised us they are definitely not interested in this claim and we enclose copy of extract from letter to us from our insurance brokers, together with copies of the insurance assessor's report.

We trust you have already cabled us instructions, and we shall naturally do our best to achieve a good settlement, but we do feel that there will be considerable losses and expenses involved. We shall of course hold you responsible for these losses and expenses, and shall be glad to hear from you, as soon as possible, with your agreement to indemnify us against these.

30

Yours faithfully,

BURNELL HARDY LTD.  
(sgd) R.W. Stansfield.  
Director.

40

EXHIBIT F.A.B.5.

EXTRACT FROM MESSRS.PERFECT LAMBERT &  
CO'S REPORT

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Dated 1st October,1952.

To H.G.Poland Ltd.,  
48, Fenchurch St.,  
London, E.C.3.

Exhibit F.A.B.5.  
Enclosure with  
Letter - Burnell  
Hardy Ltd. to  
A.A.Baron & Co.

Re "CRISPIN" 250 casks orange flavoured  
Syrup.

6th October 1952  
continued.

A/C Messrs. Burnell Hardy Ltd.

10

"We had casks opened by removing the head, finding that the juice was fermenting in the casks showing a skin of froth on the top: the odour was very bad - having a "beery" smell. Lying on the top of the syrup were a number of dead bees - not of British origin. Samples showed that numerous particles of dust-foreign matter were floating in the syrup.

20

The casks were certainly not new and those we opened were not wax lined.

The consignment in our opinion has been prepared under very unhygienic conditions and in the circumstances fermentation was almost bound to occur. It may well be that incipient fermentation was present when the syrup was put into cask. Bees could have carried infection into the syrup and the wood of the casks, with which the liquid was in direct contact, could also have been a source of infection.

30

In the present condition the remaining contents of the casks on hand are quite useless to the Consignees.

The SO2 content varied from practically nil to 400 parts per million".

---

Extracts taken from letter from H.G.Poland  
Ltd. Insurance Brokers. Re Damage to Orange  
Flavoured Syrup in casks ex ss "Crispin"

"We would inform you that Underwriters have now received and considered a further report

In the  
Supreme Court  
of the Windward  
and Leeward  
Islands

Exhibit F.A.B.5.  
Enclosure with  
Letter - Burnell  
Hardy Ltd. to  
A.A. Baron & Co.

6th October 1952  
continued.

from Messrs. Perfect Lambert & Co., on the above  
casualty.

We regret to inform you that in view of the  
clear and admitted breaches of warranties, Under-  
writers have decided that they must reject this  
claim. Their actual remarks are that "in view of  
break of warranty, Underwriters appear not be in-  
terested, suggest Perfect Lambert do nothing  
further".

You will appreciate that the basis for their  
decision is the fact that the goods that they in-  
tended to insure i.e. orange flavoured syrup in  
good condition and in new wax lined casks, was  
not in fact shipped. We believe that this is  
agreed by all concerned. Accordingly, we consid-  
er our Insurance Policies have never attached to  
a risk.

In accordance with Underwriter's instruc-  
tions, we are informing Messrs. Perfect Lambert  
that they do not require any further investiga-  
tions to be made.

For your information we attach extracts from  
Messrs. Perfect Lambert's report.

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EXHIBIT F.A.B.5.

Our Ref. C 12777 WHL/AEF.

Your Ref: PRP/AS M.2417

52-53 Crutched Friars,  
London, E.C.3.

1st October 1953.

Messrs. H.G. Poland Limited,  
48 Fenchurch St.  
London, E.C.3.

Dear Sirs,

"CRISPIN"

250 casks Orange Flavoured Syrup  
A/C Messrs. Burnell Hardy Ltd.

We have now had an opportunity of examining  
the remaining portion of the 200 casks at the  
factory of Messrs. Cantrell & Cochrane Ltd.,  
Sunbury-on-Thames.

10

20

30

We were informed that as the Syrup was very urgently required, 29 casks had been used and it was only on receipt of numerous complaints that the condition of the consignment was questioned. Tests were then made and 59 casks fermented within six days. The balance was so obviously out of condition that tests were suspended.

In the Supreme Court of the Windward and Leeward Islands.

10 We had casks opened by removing the head, finding that the juice was fermenting in the casks showing a skin of froth, on the top; the odour was very bad - having a "beery" smell. Lying on the top of the syrup were a number of dead bees - not of British origin. Samples showed that numerous particles of dust/foreign matter were floating in the syrup.

Exhibit F.A.B.5.  
Enclosure with Letter - Burnell Hardy Ltd. to A.A. Baron & Co.

6th October 1952  
continued.

The casks were certainly not new and those opened were not wax-lined.

20 The consignment in our opinion has been prepared under very unhygienic conditions and in the circumstances fermentation was almost bound to occur. It may well be that incipient fermentation was present when the syrup was put into cask. Bees could have carried infection into the syrup and the wood of the casks, with which the liquid was in direct contact. could also have been a source of infection.

In the present condition the remaining contents of the casks on hand are quite useless to the Consignees.

30 The SO<sub>2</sub> content varied from practically nil to 400 parts per million.

50 casks delivered to Messrs. C & E (Compounds & Essences) Ltd. Southampton.

40 This portion of the consignment was found to be fermenting on arrival. Samples were submitted to the Public Analyst who confirmed fermentation. Other samples are now being tested. Twenty - samples - untested - were forwarded to us for examination and testing. These we have examined and as a result we do not consider that the expense of Analysis is necessary. The syrup is dirty and the corks came out of the sample bottles with a very distinct "pop" indicating internal gas pressure.



In the  
Supreme Court  
of the Windward  
and Leeward  
Islands.

There appears little doubt that the whole of  
the 250 casks are in similar condition.

In view of the terms of the policy we shall  
be glad to have Underwriters' instructions before  
proceeding further with the matter.

Exhibit F.A.B.5  
Enclosure with  
Letter - Burnell  
Hardy Ltd. to  
A.A. Baron & Co.

We are, dear Sirs,

Yours faithfully,

PERFECT LAMBERT & CO.

6th October 1952  
continued

We hereby certify the above to be a true copy of  
the original.

10

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EXHIBIT F.A.B.5.

R.W. Watridge B.Sc.F.R.I.C.

Analyst Laboratory,

Civic Centre,

Southampton.

7th October, 1952.

Messrs. Compounds & Essences Ltd.,  
77 Millbrook Road,  
Southampton.

Dear Sirs,

20

I have examined the consignment of thirty  
barrels of citrus flavoured syrup.

The contents of many of the barrels are act-  
ively fermenting and the others are in a state of  
incipient fermentation.

The consignment in my opinion is unfit to be  
used in the manufacture of Soft Fruit Drinks.

Yours faithfully,

(sgd)

Borough Analyst.

30

IN THE PRIVY COUNCIL

No. 21 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N :-

ISAAC NEWTON SHILLINGFORD AS BUSINESS TRUSTEE OF  
A.C.SHILLINGFORD & CO. (Plaintiff) Appellant

- and -

FRANKLYN A. BARON AND OCTAVIA MARIA BARON  
TRADING AS A.A.BARON & CO. (Defendants) Respondents

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RECORD OF PROCEEDINGS

SIMPSON PALMER & WINDER,  
1, Southwark Street,  
London Bridge, S.E.1.  
Appellant's Solicitors.

WALTER BURGIS & CO.,  
7/9, St. James's Street,  
London, S.W.1.  
Respondents Solicitors.