32

32, 1971

IN THE PRIVY COUNCIL No. 10 of 1970

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

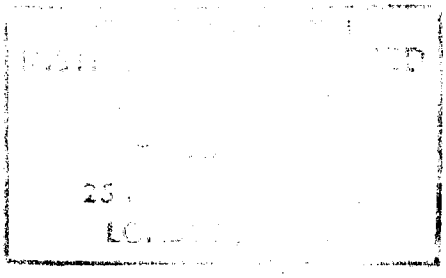
BETWEEN :-

ABDOOL LATIFF — Appellant (Plaintiff)

- and -

TANI PERSAUD — Respondent (Defendant)

RECORD OF PROCEEDINGS



SIMMONS & SIMMONS
14 Dominion Street,
London E.C.2. M 2RJ

Solicitors for the Appellant

IN THE PRIVY COUNCIL No. 10 of 1970

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

BETWEEN :-

ABDOOL LATIFF — Appellant (Plaintiff)

- and -

TANI PERSAUD — Respondent (Defendant)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

IN THE PRIVY COUNCIL No. 10 of 1970

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

BETWEEN :-

ABDOOL LATIFF — Appellant (Plaintiff)

- and -

TANI PERSAUD — Respondent (Defendant)

10

RECORD OF PROCEEDINGS

In the High Court of the Supreme Court of Judicature Guyana

No. 1

Specially Indorsed Writ dated 14th September, 1966.

No. 1

SPECIALLY INDORSED WRIT

1967 No. 2110 DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

ABDOOL LATIFF — Plaintiff

20 Specially Indorsed Writ

and

TANI PERSAUD also called CHUNIE — Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of Guyana and of Her Other Realms and Territories, Head of the Commonwealth.

TO: TANI PERSAUD called Chuni of Melville, Wakenaam in the county of Essequibo

WE COMMAND YOU, that at 9.00 o'clock in
30 the forenoon on Monday the 16th day of October

In the High Court of the Supreme Court of Judicature Guyana

No. 1

Specially Indorsed Writ dated 14th September, 1966 (continued)

1967, you do appear before the High Court of the Supreme Court of Judicature, at the Victoria Law Courts, Georgetown, in an action at the suit of ABDOOL LATIFF and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given against you in your absence.

Witness, the Honourable SIR KENNETH SIEVEWRIGHT STOBY, KNIGHT BACHELOR CHANCELLOR OF GUYANA the 14th day of September, in the year of Our Lord one thousand nine hundred and sixty-six

and the sum of $83.70 (or such sum as may be allowed on taxation) for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service thereof, further proceedings will be stayed.

I. Wilkinson

This Writ was issued by IVOR LAYTON WILKINSON of and whose address for service is at the office of CAMERON & SHEPHERD, 2 High Street, Newtown, Georgetown, Demerara, Solicitor for the said Plaintiff who resides at Goed Success, Wakenaam, Essequibo.

AUTHORITY TO SOLICITOR:

I hereby authorise IVOR LAYTON WILKINSON, HERMAN WILLIAM de FREITAS and JOSEPH EDWARD de FREITAS or any of them to act as my Solicitor in this matter and to receive all moneys on my behalf and to issue receipts therefor.

Dated the day of September, 1967

Abdool Latiff

(Indorsement to be made on writ after Service thereof)

The Writ was served by me at
on the Defendant
on the day of 19....

Indorsed the day of 19....

In the High Court of the Supreme Court of Judicature Guyana

No. 1

Specially Indorsed Writ dated 14th September, 1966. (continued)

STATEMENT OF CLAIM

The Plaintiff's claim is against the defendant for the sum of $1,789.94 being the balance due owing and payable by the defendant to the plaintiff as maker of a promissory note for $2,400: dated the 17th day of February, 1967, at Goed Success, Wakenaam, Essequibo, and payable to the plaintiff or his order on demand for value received, alternatively the balance on an amount due owing and payable by the defendant to the plaintiff for goods sold and delivered and for moneys paid and advanced by the plaintiff to and at the request of the defendant between the 8th day of November 1965 and the 18th day of February 1967, at Good Success, Wakenaam, in the county of Essequibo as per particulars annexed hereto.

TANI PERSAUD

Melville,
Wakenaam.

9.11.65	To amount loaned		$1,500.00
8.12.65	By cash	$100.00	
16.1.66	By cheque	65.81	
21.1.66	By cash	34.19	
25.2.66	By cheque	60.00	
8.4.66	By cash	140.00	400.00
			$1,100.00
8.4.66	To 106 Green Heart Boards at 29¢ each		30.74
20.5.66	By cash	100.00	
2.7.66	By cash	50.00	
7.8.66	By cash	100.00	
13.9.66	By cash	36.00	
20.9.66	By cash	50.00	336.00
		c/forward	$ 794.74

In the High Court of the Supreme Court of Judicature Guyana

No. 1

Specially Indorsed Writ dated 14th September, 1966.(continued)

	b/forward		$ 794.74
1.10.66	To 148 Greenheart boards at 27¢ each		39.96
	To 5 sheets tentest at $3.00 each		15.00
	To 46' mouldings at 44¢ per foot		1.84
	to 49' 1 x 5 laths at 18¢ per foot		3.60
	to 57' 1 x 4 Laths at 20¢ per foot		3.80
			$ 858.94
12.11.66	By cash	$100.00	
28.12.66	By cash	100.00	200.00
			$658.94
1967			
Jan. 1	To 1 cwt. Hubbucks Paint		67.00
10.2.67	By cash		145.00
			$580.94
17.2.67	To amount loaned		1,800.00
	To 3 sacks cement at $3.00 each		9.00
			2,389.94
26.4.67	By cash	$300.00	
20.6.67	By cash	300.00	600.00
			$1,789.94

These are the particulars referred to in the Writ herein.

I. Wilkinson
Solicitor

In the High Court of the Supreme Court of Judicature Guyana

No. 2

Defence January 1968

No. 2

DEFENCE.

1. The defendant denies owing the plaintiff the sum of $1,789.94 (one thousand seven hundred and eighty nine dollars and ninety four cents), or any sum at all as alleged in his claim at the commencement of this action.

2. The defendant denies making any promissory note in favour of the plaintiff for the sum of $2,400.00 or any sum at all as alleged.

3. The defendant denies borrowing any money from the plaintiff on the 17th day of February 1967, as shown in the Particulars of the plaintiff's claim herein.

4. The defendant had fully paid the plaintiff mnney due to him for materials supplied and cash advanced from time to time by him to the defendant.

5. The defendant specifically denies the transaction of the 17th February, 1967, relating to three sacks of cement for the sum of $9.00 (nine dollars). The defendant never took any such cement from the plaintiff.

6. The defendant will contend at the trial that the plaintiff's claim discloses no cause of action in its present form and should be struck out.

7. Save as hereinbefore expressly admitted the defendant denies each and every allegation contained in the plaintiff's claim as if the same were set out verbatim and traversed seriatim.

Ivan G. Zitman

Solicitor to Defendant

This day of January, 1968.

To: The abovenamed plaintiff, and

To: Cameron & Shepherd, his solicitors.

In the High Court of the Supreme Court of Judicature Guyana

No. 3

Reply

dated 26th Jan. 1968.

No. 3

REPLY

R E P L Y

The Plaintiff joins issue with the defendant on his defence.

Dated the 26th day of January, 1968.

I.L. Wilkinson

Solicitor for the Plaintiff

Aisha Ali-Khan,

OF COUNSEL.

No. 4

Notes of Trial Judge on Evidence.

No. 4

NOTES OF TRIAL JUDGE ON EVIDENCE

Saturday
8th June, 1968

Appearances:- Mr. B.S. Rai instructed by Mr. I.G. Zitman for defendant.

Mr. Stafford instructed by Mr. Wilkinson for plaintiff.

Court asks Mr. Stafford whether the note was lost before action and he replied in the affirmative.

Submissions are upheld. Amendments refused. Matter dismissed with costs to the defendant to be taxed certified fit for Counsel. Stay of execution for 6 weeks.

F.V.

8/6/68

Monday 17th June 1968

Both Mr. Rai and Mr. Stafford present. Court informs both Counsel that the Order made by it on 8.6.68 is considered wrong after mature consideration and is hereby recinded since the Order has not been entered as yet.

Court now rules the second amendment applied for can be granted and is hereby allowed - first amendment still refused.

Half costs of action to be taxed up to and including 8th June, 1968 in favour of defendant.

Postponed to Friday 28th June, 1968 at 9. a.m.

F.V.

17/6/68

Friday 28th June, 1968

Mr. Rai informs the Court that since the original order was amended on Monday 17th June, 1968, he has received a Notice of Appeal dated 17.6.68 in which the plaintiff purports to appeal against the Order made on 8.6.68.

Mr. Rai submits that it is in his view that once an Order has not been entered and thereby perfected, a Court or Judge has an inherent right to rescind its own Order in appropriate cases and the Court can do so of its own volition.

Submits that the Notice of Appeal has been irregularly entered since no Order has been entered from which the plaintiff seeks to appeal.

Submits that this is still a pending matter.

Marshal Elvis calls name of plaintiff 3 times. No answer or appearance.

Mr. Stafford had appeared in Chambers and had undertaken to inform his client of the date and day, and Mr. Rai had undertaken to do the same.

In the High Court of the Supreme Court of Judicature Guyana

No. 4

Notes of Trial Judge on Evidence.

(continued)

Mr. Rai states that he saw Mr. Stafford this morning on the verandah of the Court and he informed him that he was not appearing this morning.

(Court informs Mr. Rai that it spoke to Mr. Stafford this morning in Chambers and was informed that he had no instructions from his client about the recall of the Order.)

Action dismissed for want of prosecution. Costs to defendant to be taxed. 10

F.V.

28/6/68

No. 5

Judgment of Vieira, J. 29th November 1968

No. 5

JUDGMENT

BEFORE: VIEIRA, J.

1968: MAY, 15

JUNE, 1, 8, 17

Mrs. A.A. Khan with John Stafford for Appellant.

B.S. Rai for Respondent. 20

REASONS FOR DECISION:

On the 8th June,1968 I dismissed this matter with costs to the Respondent certified fit for Counsel and granted a stay of execution for 6 weeks.

On 15th May and 1st June 1968, arguments were heard in limine concerning two amendments to the Statement of Claim sought by the Appellant to which objection was taken by the Respondent. 30

The matter was put down to Saturday 8th June 1968 on which date I upheld the submissions put forward on behalf of the Respondent and

dismissed the claim with costs to be taxed.

On 17th June 1968 I saw both Mr. Rai and Mr. Stafford in Chambers and intimated to them that, after mature consideration, I was of the opinion that my decision of June 8th 1968 was wrong and that I proposed to recall my order and rescind same. This I did and granted the second amendment sought but again refused the first amendment and awarded half of the costs of the action up to and including 8th June 1968 in favour of the Respondent. The matter was then postponed to Friday 28th June 1968. That very afternoon an appeal was lodged against my order of 8th June 1968.

On the 28th June 1968 I saw Mr. Stafford in Chambers and he indicated that he had not received any instructions from his client concerning the recall of the order.

I also spoke later to Mr. Rai who informed me that he had received a Notice of Appeal dated 17th June, 1968.

On my instructions Marshal Elvis called the name of the Appellant three (3) times but therewas no answer or appearance and I then dismissed the action for want of prosecution and awarded taxed costs to the Respondent.

On 28th October 1968 the Court of Appeal held that the Notice of Appeal dated 17th June, 1968 was invalid and of no effect since I did have the power to recall my order of 8th June 1968. The appellant was granted an extension of four (4) weeks within which to file a Notice of Appeal against my order of dismissal of 28th June 1968 which was done by Appellant's Solicitor on 7th November 1968.

This Appeal, therefore, is against my order of dismissal of June 28th, 1968. As far as I can see the only point in this appeal is whether the Appellant was given proper notice concerning the fixture of June 28th, 1968.

At p. 170 of my Civil Minute Book No. 8 there appears the following paragraph in my own handwriting dated 28th June, 1968 -

In the High Court of the Supreme Court of Judicature Guyana

No. 5

Judgment of Vieira, J. 29th November 1968.

(continued)

"Mr. Stafford had appeared in Chambers and had undertaken to inform his client of today's date and Mr. Rai had undertaken to do the same."

In fairness to all concerned, I cannot now remember whether I wrote those words of my own volition and from my own recollection at the time or whether it was recorded from what Mr. Rai said. As no such words are mentioned at p.14 of the said Minute Book which is dated 17th June 1968, (that being the date on which the matter was postponed to June 28th 1968) and having regard to the juxtaposition of those words at p.170, I am led to the belief that those words were written as a result of what Mr. Rai said.

If Mr. Stafford did in fact promise to tell his client to turn up on June 28th 1968 (and I have no reason to disbelieve Mr. Rai on this) and he did not appear, then I cannot see how it could possible be argued that the Judge failed to notify the Appellant of the new date of fixture, to wit, June 28th 1968.

Unfortunately, after 4 months holiday and a sojourn of 5 weeks presiding over the Essequibo Assizes I cannot honestly and truthfully remember what exactly took place and, in particular whether Mr. Stafford did actually promise to notify his client to be present on June 28th 1968.

It seems to me, on the final analysis, neither here nor there whether this Appeal is dismissed or allowed since, in my humble opinion, the really important factor in this whole matter is that now we have a very clear and authoritiative decision of the Court of Appeal, the judgment of which was delivered by Crane J.A. (ag.) with whom the Acting Chancellor and Persaud, J.A. concurred, concerning the limits, if any, to the Jurisdiction of a Judge of the High Court in Guyana in relation to recalling and varying his own judgment or order after pronouncing same.

F. Vieira
PUISNE JUDGE

Dated this 29th day of November, 1968.
SOLICITORS:
I.L.WILKINSON for Appellant
I.G.ZITMAN for Respondent

No. 6

ORDER ON JUDGMENT

In the High Court of the Supreme Court of Judicature Guyana

No. 6

Order on Judgment 28th June 1968

BEFORE THE HONOURABLE MR. JUSTICE VIEIRA

DATED THE 28th DAY OF JUNE, 1968

ENTERED THE 3rd DAY OF FEBRUARY, 1969

THIS ACTION having come on for hearing on this day AND UPON HEARING Counsel for the defendant there being no appearance of or on behalf of the plaintiff IT IS ORDERED that this action do stand dismissed for want of prosecution and that the defendant do recover against the plaintiff the costs of this action to be taxed.

BY THE COURT

P.N. Killikelly

Sworn Clerk and Notary Public for Registrar.

No. 7

NOTICE OF APPEAL

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 7

Notice of Appeal dated 17th June 1968

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. 40 of 1968

BETWEEN:

ABDOOL LATIFF	(Plaintiff) Appellant
-and-	
TANI PERSAUD	(Defendant) Respondent

TAKE NOTICE that the abovenamed (Plaintiff)

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 7

Notice of Appeal dated 17th June 1968 (continued)

Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of the Supreme Court of Judicature contained in the judgment of Mr. Justice Vieira dated the 8th day of June, 1968 doth hereby appeal to the Court of Appeal of the Supreme Court of Judicature upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the (Plaintiff) Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision which dismissed the action with costs.

3. Grounds of Appeal:

The learned Judge erred in --

(a) holding that the Statement of Claim and the particulars hereto as it stood did not disclose any cause of action in favour of the plaintiff against the defendant;

(b) holding that the Statement of Claim could not be read in conjunction with the particulars attached thereto;

(c) holding that the plaintiff could not maintain an action on the promissory note if lost without specifically pleading its loss;

(d) Alternatively refusing to exercise his discretion to allow the plaintiff to amend the Statement of Claim firstly to allege the loss of the promissory note sued upon and secondly to substitute the word "lent" instead of the words "paid and advanced" in the alternative claim;

(e) dismissing the action without permitting the plaintiff to lead any evidence whatsoever in support of his claim.

4. The relief sought is --

(a) that the judgment be rescinded;

No. 7

Notice of Appeal dated 17th June 1968 (continued)

(b) that it be directed that the plaintiff be at liberty, if found necessary to amend his Statement of Claim on such terms as the Court may think fit;

(c) that it be directed that the action be heard and determined upon its merits;

(d) that the (defendant) respondent do pay the appellant his costs of this appeal.

5. persons directly affected by this appeal.

NAMES	ADDRESSES
(1) Abdool Latiff	Formerly of Good Success, Wakenaam, Essequibo, now of Damburg, Wakenaam, Essequibo.
(2) Tani Persaud	Melville, Wakenaam, Essequibo

Dated the 17th day of June, 1968.

I.L. Wilkinson

Solicitor for the Appellant.

No. 8

Notice of Motion with Affidavit in Support dated 7th August 1968.

No. 8

NOTICE OF MOTION WITH AFFIDAVIT IN SUPPORT

TAKE NOTICE that this Court will be moved on a day and at an hour of which you shall be informed by the Registrar by Mr. Joseph Arthur King of Counsel on the part of the Appellant for an order -

1. Directing whether the Notice of Appeal filed herein and dated the 17th day of June, 1968, is not a proper valid and effective Notice of Appeal against the order made by Mr. Justice Vieira on the 8th day of June, 1968, dismissing the said action with costs, and whether the proceedings recorded in the Court file relating to the said action subsequent

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 8

Notice of Motion with Affidavit in Support dated 7th August 1968 (continued)

to the said order of 8th day of June, 1968, are not a nullity and of no effect and should not be omitted from the said record in this appeal.

2. In the alternative if the proceedings so recorded subsequent to the order of the 8th day of June should properly be included in this appeal, granting an extension of time to appeal therefrom pursuant to Order II Rule 3(4) of the Federal Supreme Court Rules 1959, as adopted by the Guyana Independence (Adaptation and Modification of Laws) (Judicature) Order 1968, or directing that the said further proceedings be included in the Record and be deemed to be a subject of this appeal without the filing of any further Notice of Appeal.

3. Otherwise or in any event giving the appellant directions for the procedure and conduct of the appeal, and that the time for filing the record and Affidavit of Service and for leaving four (4) copies of the record for the use of the Judges and the Registrar of the Court limited by Rule 13(1) of the Federal Supreme Court (Appeals from British Guiana) Rules 1959, as adapted by the Guyana Independence (Adaptation and Modification of Laws) (Judicature) Order 1966, be extended to six weeks from the date of notification of the appellants' Solicitor that the complete copy of proceedings and all the documents to be included in the Record are available;

which said motion will be grounded on the affidavit of John Stafford, Barrister-at-Law, of 2, High Street, Georgetown, filed herewith.

Dated the 7th day of August 1968.

Sgd. I. Wilkinson

Solicitor for the Appellant (Plaintiff)

To the Registrar,
Court of Appeal of the
Supreme Court of Judicature

- and -

To Tani Persaud,
Respondent (Defendant)

-and-

To I.G. Zitman, Esquire,
his solicitor

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 8

Notice of Motion with Affidavit in Support dated 7th August 1968.

(continued)

I, JOHN STAFFORD of 2, High Street, Georgetown, Demerara, being duly sworn make oath and say as follows :-

1. I am a Barrister-at-Law and am attached to the firm of Cameron & Shepherd of Georgetown.

2. In proceedings No. 2110 of 1967 in the High Court of Judicature I held a brief for Mrs. Khan who was Counsel for the plaintiff. Mrs. Khan had conducted the proceedings before Mr. Justice Vieira and had applied for an amendment of the writ whereupon the Court adjourned the matter to Saturday, 1st June, 1968, to hear further arguments on the application. I held the brief for Mrs. Khan on that day and addressed the Court on the application for the amendment. The Court reserved judgment on the application until 8th June, 1968, when I again appeared on Mrs. Khan's behalf and the Court gave judgment refusing the amendments and dismissing the action with costs to the defendant.

3. I duly reported the result of the proceedings to my firm and it was decided to appeal against the dismissal of the action. The appeal now before this Court was filed on the afternoon of the 17th June and duly served upon the Solicitor for the defendant.

4. On the morning of the same day 17th June, I was in Court on another matter and I met Mr. Rai, Counsel for the defendant. Mr. Rai informed me that he had spoken to Mr. Justice Vieira who had said that he was of the opinion that he should have taken evidence in this matter. Mr. Rai asked me to come with him to see Mr. Justice Vieira but I stated he Mr. Rai should see Mr. Nasir, Solicitor of my firm. As we walked along the gallery of the Court building, Mr. Justice Vieira, who was standing in the gallery spoke to

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 8

Notice of Motion with Affidavit in Support dated 7th August 1968.

(continued)

Mr. Rai and myself and invited us to come into his chambers which we did. He informed us that he was clearly wrong in dismissing the action and proposed to recall it. He produced his minute or record book. It appeared to me he was about to grant both of the amendments which had been already refused on the 8th June prior to the action being dismissed. However after discussion with Mr. Rai during the course of which I queried whether the Judge had the power to rescind his order, and mentioned that I had already settled the Grounds of Appeal, the Judge stated he would allow only one amendment and award the defendant half his taxed costs. He then adjourned the matter to 28th June. I had settled the said Grounds of Appeal several days before the said 17th June 1968, on which date I had no instructions in connection with the said action or the said appeal.

5. It appears from the record on the file that on 28th June the action was dismissed for want of prosecution. I did not appear as I had on 20th June and again on the 28th June informed Mr. Justice Vieira in his chambers that an appeal was pending and that I had no instructions to appear.

6. That I attended on Mr. H. Maraj, Assistant Registrar, on the day of July 1968 in connection with the settling of the record in this appeal; the list of documents to be included in the record was settled by Mr. Maraj but I verily believe that all the documents so to be included are not yet available.

7. Counsel has advised that the purported rescission or recall of the dismissal order of the 8th June 1968 is invalid and of no effect.

8. The above facts are within my own knowledge save where otherwise appears.

(sgd) J.V.Battenburg Stafford

Sworn to at Georgetown)
Demerara this 7th day)
of August, 1968)

Before me,

B. Nauth (sgd)
Commissioner for Oaths

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 9

Affidavit in Reply dated 20th September 1968.

No. 9

AFFIDAVIT IN REPLY

I, IVOR LAYTON WILKINSON, of 2 High Street Newtown, Georgetown being duly sworn make oath and say as follows :-

1. I am a Solicitor attached to the firm of Cameron & Shepherd and have conduct of the above proceedings on behalf of the appellant.

2. I beg leave to refer to a Notice of Motion dated 7th August, 1968, filed herein on the 7th day of August, 1968, and to an affidavit sworn by John Stafford, Barrister-at-Law, of the same date also filed on 7th August, 1968.

3. The said Motion was one asking this Honourable Court for directions in the matter of the above appeal and in the circumstances outlined in the affidavit of the said John Stafford.

4. I am informed by Counsel, Mr. J.A.King and verily believe that the said Motion came before the Court on the 19th day of September, 1968, and after hearing arguments of Counsel for the appellant and respondent the Court reserved judgment on the motion but gave the appellant liberty to file an affidavit in support of the alternative relief sought in paragraph 2 of the said Motion.

5. Counsel for the appellant advised that the Order made by Mr. Justice Vieira on the 28th day of June, 1968, was a nullity and of no effect, and it was for this reason that no appeal was filed against the said Order, but the application for enlargement of time asked for in paragraph 2 of the Motion was in the alternative and in the event of this Court holding that the said Order was valid and of effect.

6. Counsel has advised that the appellant has good grounds for appeal inter alia;

(1) That the learned Judge, having dismissed the said action on the 8th day of June, 1968, the said order of dismissal was final by virtue of Order II Rule 3(1) of the Federal Supreme Court (Appeals from British

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 9

Affidavit in Reply dated 20th September 1968.

(continued)

Guiana) Rules 1959 (these said rules being applicable to cases in this Court) which provides that the time for appeal shall date from the date of judgment delivered or order made, and the learned judge was after that date functus officio.

(2) That the learned judge had no jurisdiction to rescind or withdraw his order of dismissal of the 8th June, 1968.

(3) That an appeal to this Honourable Court having been filed on the 17th day of June, 1968, the matter was then within the jurisdiction of this Court and the learned trial Judge had no jurisdiction on 28th June, 1968.

7. The appellant is respectfully requesting that an order be made under Order II Rule 3(4) of the Federal Supreme Court Rules 1959 as adapted by the Guyana Independence (Adaptation and Modification of Laws) Judicature Order 1966 enlarging the time for an appeal against the order made on 28th June, 1968.

Sworn to at Georgetown Demerara this 20th day of September, 1968.

Sgd. I.L.Wilkinson

Before me,

Sgd. S. Ali

Commissioner for Oaths.

In the Court of Appeal of the Supreme Court of Judicature Guyana

No. 10

Judgment of the Court of Appeal dated 28th October 1968. (on Motion)

No. 10

JUDGMENT OF COURT OF APPEAL ON MOTION

BEFORE:

The Hon.E.V. Luckhoo - Chancellor (ag.)

The Hon.G.L.B.Persaud- Justice of Appeal

The Hon.V.E.Crane - Justice of Appeal (ag.)

1968: September 19.

October 28.

J. A. King for appellant

B.S. Rai for respondent.

JUDGMENT

CRANE, J.A. (ag.)

A point of principle of much importance arises on this motion. It may be stated in this way: What are the limits to the jurisdiction of a Judge of the High Court in relation to the power which he undoubtedly has of recalling and varying his own judgment or order after he has once pronounced it?

On the 8th June, 1968, a Judge of the High Court made an order dismissing the plaintiff's action with costs to be taxed certified fit for Counsel. The dismissal, according to the affidavit of John Stafford, Barrister-at-Law, in support of the motion, was not in consequence of a hearing on the merits, but flowed from the refusal by the Judge to grant two amendments sought by plaintiff to the writ which he thought disclosed no cause of action. An appeal was accordingly filed on the afternoon of June 17, 1968, against the order of the Judge who had been so informed by Mr. Stafford on the morning of that day in Chambers, where Mr. Rai, Counsel for the defendant, was also present at the Judge's invitation. There, the Judge expressed the view that he had erred in his decision of June 8, since he considered that he ought to have taken evidence in the matter. He then proposed to

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.10

Judgment of the Court of Appeal dated 28th October 1968 (on Motion) (continued)

both Counsel that he should recall his decision of that date. Thiscourse was questioned by Mr. Stafford who doubted whether the Judge had that power, particularly as he, Counsel had already settled his grounds of appeal. Thereupon, the Judge, after intimating that he now proposed to grant only one of the two amendments formerly sought to the writ and to award the defendant one-half of his taxed costs of the amendment, adjourned the matter to June 28.

On June 28 both Counsel met again in Chambers. There, Mr. Stafford informed the Judge that he had no instructions to appear and reminded him that an appeal was now pending against his decision of June 8. The Judge then again dismissed the action, on this occasion stating his reason that he had done so - "for want of prosecution with costs to the defendant to be taxed." The position then is that from that time there were two orders of dismissal for which two different reasons were assigned in relation to one and the same action - one on the 8th and the other on the 28th of June, 1968. There was, however, only one notice of appeal, viz: that of June 17, 1968, consequent on the dismissal of the action on June 8.

It is this curious situation which has given rise to this motion which seeks, firstly, an order directing whether or not the notice of appeal of the 17th June, 1968, against the Judge's order of dismissal on June 8 is valid and effective when the plaintiff's action was dismissed with costs; secondly, whether or not the proceedings of the 28th June, 1968, in Chambers, which followed those of the 8th June are a nullity and ineffective, and ought not to be struck from the record of appeal.

An alternative order is sought in the event of the proceedings in Chambers of June 28, 1968 being held to be properly included in the record of appeal; it is that an extension of time be granted to appeal therefrom in that event with consequential orders as to the laying over of the usual four copies of the record, and that this Court directs that such further proceedings be included in the record of appeal without the necessity to file and serve a further notice.

There is no doubt that the Court of Appeal has this power to give directions incidental to an appeal so long as these do not involve the decision of it; and also the power to make interim orders to prevent prejudice to the claims of the parties pending the appeal. It seems clear that in the light of the uncontroverted facts revealed in the affidavit of Counsel and the further affidavit of solicitor for the appellant that this motion is properly brought. /See the Annual Practice, 1961, Order 58, r. 13(4) subr. 1 at page 1698/.

Counsel for the plaintiff/appellant, in support of his arguments, claims that he has been put in a quandary. He does not know, he says, whether, now that he has come to settle the record of appeal, there ought to be inserted the first or second order of the trial Judge or both, i.e. the order of June 8 or June 28, or from which order he ought to appeal, and it is in these circumstances that he had approached this Court. Counsel contends that what has taken place is that the learned Judge has arrogated to himself appellate functions when he recalled and varied his decision of June 8 and adjudicated afresh, and respectfully submitted that the Judge was without his jurisdiction when he so acted. This is clearly so, Counsel argues, in the light of the provisions of the Federal Supreme Court (Appeals) Ordinance, 1958, Ordinance No. 19/1958, sec. 9(7), Part II, Civil Appeals, which read:

> "9(7) The jurisdiction to hear appeals vested in the Federal Supreme Court under the provisions of this Part of this Ordinance shall be to the exclusion of the jurisdiction of any other Court.
>
> "Provided that a Judge of the Supreme Court may hear and determine such applications incidental to the appeal and not involving the decision thereof as may be prescribed by rules of court; but an order made on any such application may be discharged or varied by the Federal Supreme Court."

Counsel's citation of Sec. 9(7) above is in support of his contention that the Judge has

In the Court of Appeal of the Supreme Court of Judicature Guyana

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Judgment of the Court of Appeal dated 28th October 1968 (on Motion)

(continued)

exercised appellate functions in the matter; but when the position in England is looked at as a guide, we see from the Judicature Act of 1873 (see Secs. 16, 17, 18 and 19), which re-organised and established for the better administration of Justice in England, the system of procedure and the hierarchy of authority in the Courts, that the jurisdiction hitherto exercised by the Judges, particularly of the old Court of Chancery, to re-hear his own or another judge's order has been transferred by that Act to the Court of Appeal. Sections 16 and 19 of the Act of 1873 provide as follows :

> "16. The High Court of Justice shall be a superior court of record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by," (among other courts) "the High Court of Chancery as a common law court as well as a Court of Equity....."
>
> .. ..
>
> "19. The said Court of Appeal shall have jurisdiction and power to hear and determine Appeals from any judgment or order, save as hereinafter mentioned of Her Majesty's High Court of Justice, or of any of the Judges or Judge thereof...."

But this Act notwithstanding, it is from the body of case law which has developed since the passing of that Act to the present day in explanation of it that we must look for assistance; and from all the authorities without a single exception since then, there is discerned the principle that it is quite open to a Judge of the High Court to review and reconsider his decision right up to the point when the order has been drawn up, perfected and entered, and this is so even beyond that point, as we shall see, in certain clearly defined circumstances. Every Court has an inherent jurisdiction to vary, modify or extend its own orders if, in its view, the purposes of justice require that it should do so. It certainly can do so if there is some clerical

mistake, or some error in its judgment or order arising from an accidental slip of the Judge or omission under the slip rule. (See Order 26 r. ii). Lord Penzance, in explaining the nature of this jurisdiction, which is not appellate, and that it extends beyond any order of Court, in his speech in Lawrie v. Lees, (1881) 7 A.C. 19, at pp.34-35 spoke as follows:

> "I cannot doubt, that under the original powers of the Court, quite independent of any order that is made under the Judicature Act, every Court has the power to vary its own orders which are drawn up mechanically in the registry or in the office of the Court - to vary them in such a way as to carry out its own meaning and, where language has been used which is doubtful, to make it plain. I think that power is inherent in every court."

The position, it is submitted, is no different in Guyana; for the original jurisdiction which is conferred on our Judges by sec. 26 of the Supreme Court Ordinance, Cap. 7, includes - "all proceedings in an action subsequent to the hearing or trial and down to and including the final judgment or order, except any proceedings on appeal, shall so far as it is practicable and convenient, be had and taken before the Judge before whom the trial and hearing took place." But the decided cases on the subject must be looked at to see how these original powers were interpreted, quite apart from what was enacted in the Federal Supreme Court (Appeals) Ordinance, sec. 9(7) (above), and the Judicature Act, 1873. This is what I believe Lord Penzance meant; for while the purpose and intendment of both statutes was to confer appellate jurisdiction on their respective Courts of Appeal over the judgments and orders of their High Courts of Justice, neither of them denuded the latter of their inherent powers in their original jurisdiction. Section 26 of Cap. 7 provides as follows :

> "26. (i) Subject to any statutory provision, every action and proceedings and all business arising therefrom shall, so far as is practicable and convenient, be heard,

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.10

Judgment of the Court of Appeal dated 28th October 1968 (on Motion)

(continued)

determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial and down to and including the final judgment or order, except any proceedings on appeal, shall, so far as it is practicable and convenient, be had and taken before the judge before whom the trial or hearing took place.

(2) For the purpose of these proceedings a single judge shall be vested with and may exercise the whole of the original jurisdiction of the Court.

(3) A single judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the Court."

There was, however, cited before us, evidently to emphasize the contrary, the decision of In re Risca Coal & Iron Co. ex parte Hookey, (1862) 4 De G.F. & J. 456, on which much reliance is placed in support of the contention that the above principle does not hold good in Guyana. This is so, it is urged, because were a Judge free to recall, alter or vary his decision after pronouncement, it would militate against the principle of the finality of judgments and orders, and would operate to render nugatory, uncertain and ineffective the entire appellate procedure as directed by Order II r.3 of the Federal Supreme Court (Appeals) from Guyana Rules, 1959, Rule 3(1) (2), so far as material, provides as follows:

"3(1) Subject to the provisions of this rule, no appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order made against which the appeal is brought....

"(2) An appeal shall be deemed to have been brought when the notice of appeal has been filed with the Deputy Registrar."

Counsel's argument is to the effect that since the above rule says that "no appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order

made....", it means that in Guyana a Judge must necessarily be functus officio from the date he pronounces judgment or makes his order, because time for appealing runs from that date, and were he considered free to alter or vary such decision by making another pronouncement subsequently, there would be uncertainty as to the date when time for appealing takes effect.

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Judgment of the Court of Appeal dated 28th October 1968 (on Motion) (continued)

It is further argued that the result would be the same as that envisaged by Lord Chancellor Westbury in the Risca Coal Co. case (above), when he was considering the policy of certain provisions of an appeal statute concerned with computing the time allowed for appealing. In his decision the Lord Chancellor was contrasting two clearly defined situations, and was confronted with the problem: Should time for appealing run from the pronouncement of the decision, or from the ministerial act of the making of the order by a Court official, i.e. the time when it is drawn up and entered by that official? He was asked to construe the word "made" as equivalent to "orally pronounced" in appeal provisions, the intent in the wording of which is evidently not opposed to ours above, and after referred to the "inconvenient uncertainty" and confusion which would result from a disjunctive construction of those words, rightly held, it is respectfully submitted, that the time at which an order is "made" is when the order was pronounced and not when it is in fact drawn up, because the ideal situation is for an order to be made "immediately upon pronouncement", although this is not always practicable.

In commenting on the above decision, it may be of some moment to observe, in the first place, that the Risca Coal Co. decision was made before the Judicature Act referred to above; and, in the second place, that it is not concerned with a situation such as we are here confronted with, viz., the competency of a Judge to recall and vary his own decision; so that whatever may be its value by way of analogy to the instant case, it is no authority for the proposition that a Judge is not competent to recall, alter, vary or review his decision between the time when he actually pronounces it and when the Court official has actually entered the order. I think that Counsel has merely cited

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Judgment of the Court of Appeal dated 28th October 1968 (on Motion) (continued)

the case with a view to emphasizing one of the uncertainties which he anticipates will follow from judicial recall, namely, uncertainty in the application of appellate procedure, and it is for this reason it is cited against the view he contends ought not to be allowed.

We must, however, look to the decisions following the Judicature Acts to see how the Courts have approached this difficult and delicate matter of judicial recall and review of decisions and orders which, it will be readily conceded, cannot be justified save in the interests of justice. This is the principle to be deduced from a consideration of all the reported cases on the subject since that time.

Judicial recall of decisions is first observed after the Judicature Act in Re Australian Direct Steam Navigation Co., (1876) 3 Ch. D. 661 . In this case, which is also called Miller's case, Jessell, M.R., re-opened a case after giving an oral judgment, considered other material to which his attention had not been directed before, and gave judgment afresh afterwards. Three years later in his judgment in Re St. Nazaire Co. (1879) 12 Ch. D.88, at page 91, he explained his action thus:

> "In Miller's case no order had been drawn up. A Judge can always re-consider his decision until the order has been drawn up".

A review of all the important authorities of the last century since Miller's case will show that Jessel, M.R.'s view has been consistently followed. See In re Roberts, (1887) W.N. 231; also In re Suffield & Watts ex parte Brown, (1888) per Fry, L.J., at page 697; and at the turn of the present century Warrington, J., in Re Thomas, (1911) 2 Ch. 389, at pp. 395-6. continuing in the same vein said:

> "What is it that renders an order finally effective so that there is no longer any possibility of going back from it? It seems to me that it is the passing and entering of the order. It is the everyday practice that, until an order is passed and entered, the matter

can be brought before the Judge, and if a mistake has been made it can be put right."

And at p. 396:

"I think that is the correct way of dealing with the matter for the reason that, until the order is finally passed and entered, it leaves open an opportunity of reviewing and re-considering what has been done."

Again in Millensted v. Grosvenor House (Park Lane) Ltd. (1937) 1 All E.R. 736, where a Judge had orally pronounced an award of £50 damages and costs on the High Court scale in a personal injuries action, and it was then disclosed that £20 had been paid into Court, judgment was then given for £50 and County Court costs. On a further application made next day for costs on the High Court scale, the Judge re-considering the matter, said he thought his award of the previous day excessive and ordered judgment to be entered for £35 and costs on the County Court scale, The plaintiff appealed on the ground that once the Judge had been informed money had been paid into Court, he had no jurisdiction to hear the matter further. The Court of Appeal, however, held, firstly, that once the knowledge that the payment in could not reasonably cause any miscarriage of justice, the Judge could have exercised his discretion and proceeded with the case, and, secondly, that a Judge is always at liberty to alter his oral judgment at any time before it is formally drawn up and entered.

Then came the case of Re Harrison's Settlement, (1955) 1 All E.R. 185, which has served greatly to throw further light on the matter in recent times. In this case an application was made to the Chancery Division of the High Court for approval of a scheme varying the trusts of a settlement on behalf of infants and unborn and unascertained persons. Following a decision of the Court of Appeal in a similar case, Mr. Justice Roxburgh in chambers made an order approving the scheme. Before the order was perfected, the House of Lords reversed the decision of the Court of Appeal and held that the Court had no jurisdiction to make an

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order sanctioning variations in trusts in such cases. Roxburgh, J., thereupon recalled his order, adjourned the case into Court for further argument, and there dismissed the summons. The Court of Appeal held that he was entitled to recall an order made on his own initiative, whether the order was originally made in Chambers or in open Court, and notwithstanding any consequential inequality in relation to other similar orders already perfected, it was right that he should recall his order in the circumstances of the case.

The decision in Re Harrisons' Settlement corrected three erroneous impressions which formerly held sway; the first, for which Counsel in support of this motion strives, contending, as we have seen, to be supported by the wording of r. 3 (1) (2) of Order II above. is, that in general an order is made once and for all, at least in Guyana, at the time when it is orally pronounced and is incapable of being discharged or varied otherwise than on appeal. To this contention, however, the reply of Roxburgh, J., at first instance in Re Harrison's Settlement, with which I respectfully agree, seems unanswerable. "This power to recall an unperfected order," says the learned Judge, "is not appellate in its nature but exists because the jurisdiction which the parties have invoked is still continuing." /See (1954) 2 All E.R. 457/.

The second impression is in the alternative to the first: that assuming a Judge does have the power to discharge or vary an order between oral pronouncement and entry, he ought to do so only on an application of one or other of the parties but not of his own volition. No distinction, however, is to be drawn between the cases where a Judge varies or discharges on his own initiative because he has discovered some vitiating factor through his own industry or even by chance subsequently, and the case where an application is made to vary or discharge by one or other of the parties. This is so because whether discovery is by the Judge or by any of the parties, what is sought after is right and justice.

The third impression is a variant and by way of exception to the first. It is: that the power of recalling, varying and/or discharging

an order pronounced orally at any time before it is perfected by entry, ought to be limited to cases of manifest omission comparable to those in which an order can be corrected after entry under O. 26 r. 11, Rules of the Supreme Court, 1955 (G).

The whole exercise is considered to be in the interests of justice, and it is thought, and quite rightly too, that unless there is a locus poenitentine, or opportunity afforded the Judge for correcting errors and re-considering the case in the light of other material not brought before him, justice cannot always be done. A Judge can therefore recall suo motu when the justice of the case requires him so to act. For example, in Re Harrison's Settlement, there being no opposition to the approval of the schemes varying the trusts of the two settlements, nobody was therefore interested in having the Judge recall his order in the light of the subsequent decision of the House of Lords in Chapman v. Chapman (1954) 1 All E.R. 798, which was clearly to the effect that he was without jurisdiction to vary the trusts as he had done, therefore, the result would have been truly astonishing if it were held that Roxburgh, J., had no power to recall his order, for injustice would have been done to infants, unborn persons, and persons who were not parties to the proceedings would have been affected as that decision shows.

A Judge's power to "review and reconsider", as seen from the decision of the Court of Appeal in Re Harrison's Settlement, is therefore considerably wide; it is as wide as the interests of justice demand, but so long as he acts within jurisdiction, his recall cannot be disturbed, and "anyone who acts on it beforehand must take such risk as there is that it will not be drawn in the form in which it was heard to be pronounced"; for although it dates from the date of its pronouncement, in theory it is not perfected until it is drawn up, passed and entered. This would appear to be astounding to the reader; but that being the position, the question arises as to what course ought a litigant to take so as to bind the Judge to his original pronouncement. To ensure this end, he may adopt either one of two courses, depending upon how urgent is his desire to obtain a final

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Judgment of the Court of Appeal dated 28th October 1968 (on Motion) (continued)

judgment or order. If he is "the party having the conduct of the suit or the carriage of the order", rule 2(1)-(4) of Order 35 of the Rules of the Supreme Court, 1955 (G), empower him to draw up and lodge a draft copy of the judgment or order with the Registrar within 14 days from the date when it was pronounced or made. Alternatively, if he is desirous of appealing, his obvious course is to give a proper notice of appeal as early as possible after the decision is pronounced.

Such a course would immediately bring to an end the Judge's power of recall by terminating his jurisdiction and invoking that of the Court of Appeal, a superior Court of record, even though the Judge's order may not have been perfected, drawn up, passed and entered. It is in this instance that the joint effect of Order II, r. 3(2) of the Federal Supreme Court Rules, 1959, and section 9 (7) of Ordinance No. 19/1958 becomes apparent. The jurisdiction of the Guyana Court of Appeal will then be attracted by notice of appeal duly filed and then the provisions of Part II of that Ordinance relating to Civil Appeals will become operative and "shall be to the exclusion of the jurisdiction of any other Court", but unless that course is taken or the order is perfected, drawn up and entered, a Judge will always be free to change his decision, not arbitrarily or capriciously, of course, but where the justice of the case warrants it; and it is to be expected after the parties have been heard.

There is only one reported decision in the local reports dealing with this question. It is the decision of the Full Court in Re Hanoman, Hanoman v. Ali, (1965) 8 W.I.R. 103, which reversed the decision of a single Judge of the former Supreme Court who held that he had the power to vary his own order by substitution. In that case a summons had been taken out by the Registrar seeking clarification of the order of Court which had been already drawn up and entered. I was the Judge in that case, and the Full Court held that I was wrong to have so done. The recent decision of Re Harrison's Settlement (above), however, was not cited to the Full Court which seemed to think, contrary

to Harrison's case, that it was not possible to vary a previous judgment by substitution, and that power to amend was limited to the slip rule; but that notwithstanding, I think they came to the right conclusion because the order which had been varied had already been drawn up and entered. The only means by which an order already so passed and entered can be properly set aside is, (i) under the slip rule (see O. 26 r.11 of the Rules of the Supreme Court, 1955 (G): or (ii) if the judgement as drawn up does not correctly state what was actually decided and intended to be decided. /See Ainsworth v. Wilding, (1896) Vol.1 L.R. Ch. D. 673, 678/. When, therefore, it was decided subsequently to alter the appellant's liability from a representative to a personal capacity, the Full Court quite rightly maintained that this could not be done.

In the light of the foregoing, I would hold that the notice of appeal of June 17, 1968, against the Judge's order of June 8, is invalid and ineffective and that if the appellant wishes to appeal in this matter he must do so in respect of the order of June 28, 1968.

Before concluding, I consider it impelling to say from the circumstances revealed in this case, that though the learned Judge did have the right to rescind and vary his previous order, he ought to have been very slow to do so after Counsel's verbal intimation that an appeal was contemplated and that grounds in respect thereof had already been settled. Unless justice demanded the rescission of his previous order (on this aspect I refrain from comment, not being fully informed), he ought to have stayed his hand.

I would, therefore, issue the following directions on the alternative limb of the order sought: (a) that the proceedings in Chambers of June 28, 1968; may quite properly be included in any record of Appeal; (b) that the appellant be and is hereby granted an extension of time of four weeks from date within which to file notice of appeal against the order of June 28, 1968.

Costs of this application to be costs

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.10

Judgment of the Court of Appeal dated 28th October 1968 (on Motion) (continued)

in the cause.

Dated this 28th day of October, 1968.

V.E. CRANE,

Justice of Appeal (ag.)

I concur EDWARD V. LUCKHOO,

Chancellor (ag.)

I concur G.L.B. PERSAUD,

Justice of Appeal.

No.11

Order on Judgment dated 28th October 1968

NO. 11

ORDER ON JUDGMENT

BEFORE THE HONOURABLE MR. E.V. LUCKHOO, CHANCELLOR (ACTING)

THE HONOURABLE MR. G.L.B. PERSAUD, JUSTICE OF APPEAL

THE HONOURABLE MR. V.E. CRANE, JUSTICE OF APPEAL (ACTING)

DATED THE 28TH DAY OF OCTOBER, 1968

ENTERED THE 7TH DAY OF NOVEMBER, 1968

UPON the application of the (plaintiff) appellant by motion dated the 7th day of August, 1968 for directions in the matter of the above appeal.

AND UPON READING the said application and the affidavit of solicitor for the (plaintiff) appellant dated the 20th day of September, 1968 in support thereof

AND UPON HEARING Mr. J.A. King of counsel for the (plaintiff) appellant and Mr. B.S. Rai of counsel for the (defendant) respondent

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.11

Order on Judgment dated 28th October 1968

(continued)

THIS COURT hereby directs that the proceedings in the abovementioned matter which took place in the High Court of the Supreme Court of Judicature before the Honourable Mr. Justice Vieira on the 28th day of June, 1968 may quite properly be included in any record of appeal.

AND IT IS ORDERED that the (plaintiff) appellant be and is hereby granted an extension of time within four (4) weeks from the date hereof within which to file a notice of appeal to this Court against the said order of the Honourable Mr. Justice Vieira dated the 28th day of June, 1968

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

BY THE COURT

Sgd. H. Maraj

SWORN CLERK AND NOTARY PUBLIC
for Registrar.

No.12

Notice of Appeal dated 7th November 1968

NO. 12

NOTICE OF APPEAL

TAKE NOTICE that the (Plaintiff) Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of the Supreme Court of Judicature contained in the judgment of Mr. Justice Vieira dated the 28th day of June 1968 doth hereby appeal to the Court of Appeal of the Supreme Court of Judicature upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the (Plaintiff) Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.12

Notice of Appeal dated 7th November 1968

(continued)

2. The dismissal of the (Plaintiff's) Appellant's action for want of prosecution.

3. GROUNDS OF APPEAL

(a) That a Notice of Appeal to this Honourable Court from the Judge's order of dismissal of the 8th day of June 1968 having been filed on the 17th day of June 1968, the learned Judge having rescinded his said order, ought not to have proceeded with the trial of the action pending the determination of the question raised in the said Notice of Appeal.

(b) The learned Judge failed to exercise judicially his discretion under Order 32 Rule 11 and Order 33 Rule 4.

(c) The learned Judge, having dismissed the said action on the 8th day of June 1968, and having rescinded the said order of dismissal and refixed the action for trial on the 28th day of June 1968, failed to notify the (Plaintiff) Appellant of such rescission or of such new fixture.

4. The relief sought from the Court of Appeal of the Supreme Court of Guyana is:-

(a) That the judgment of the Honourable Mr. Justice Vieira be set aside and that there be a new trial of the action.

(b) That the costs herein and below be paid by the (Defendant) Respondent.

5. Persons directly affected by this appeal -

Names	Addresses
(1) Abdool Latiff	Formerly of Good Success, Wakenaam, Essequibo, now of Damburg, Wakenaam, Essequibo.
(2) Tani Persaud	Melville, Wakenaam, Essequibo.

Dated the 7th day of November, 1968.

Sgd. I.L. Wilkinson.

Solicitor for the Appellant (Plaintiff)

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.13

Judgment of the Court of Appeal dated 14th April 1969

NO. 13

JUDGMENT OF THE COURT OF APPEAL

BEFORE:

The Hon. E.V. Luckhoo - Chancellor
The Hon. H.B.S. Bollers - Chief Justice
The Hon. P.A. Cummings - Justice of Appeal

1969: April 14.

G.M. Farnum, S.C., for appellant
B.S. Rai for respondent.

10 JUDGMENT

CHANCELLOR:

When this appeal came on for hearing, the attention of Counsel for the appellent was attracted to what had transpired before in proceedings connected with the Appeal. Counsel then gave the clear impression that he did not wish to proceed with the appeal, and in answer to a question by Cummings, J.A., as to whether he was conceding that the appeal should be dismissed, 20 said that that was so. In consequence the appeal was dismissed with costs agreed at $240, and the judgment of the trial judge was affirmed. This matter had the following history:

Abdool Latiff, the plaintiff (appellant) had filed a specially indorsed writ against the defendant (respondent) in the High Court. At the hearing the plaintiff sought two amendments to his writ which were resisted by the defendant. Arguments were heard and the trial Judge on the 30 8th day of June, 1968, upheld the objections of the defendant and dismissed the claim with costs to be taxed.

However, on the 17th June, 1968, the Judge, having re-considered his order of dismissal, decided that he should vary his judgment. At this time no order of Court embodying his judgment had been drawn up and entered. In the presence of both counsel for the plaintiff and defendant, he granted one of the amendments 40 originally sought, with half costs consequential thereon to the defendant, and the matter was

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.13

Judgment of the Court of Appeal dated 14th April 1969

(continued)

fixed for hearing on the 28th day of June, 1968. But later on the said day, i.e., the 17th June, 1968 (after the Judge had varied his judgment), the plaintiff filed a notice of appeal against the dismissal of his action on the 8th June, although the dismissal had been recalled, as aforesaid, and a date fixed for hearing.

Having launched his appeal, the legal adviser of the plaintiff no longer seemed to be interested in the fixture of the matter for the 28th June, 1968, on the view that the Judge could not properly in law recall his judgment before it was entered, and so whatever had transpired afterwards would be a nullity. The trial Judge was therefore forced to record a dismissal for want of prosecution on the 28th June. The Court, having considered a motion for directions in respect of his notice of appeal dated the 17th June, 1968, held in a written judgment that the trial Judge was not in error when he varied his judgment, and that the notice of appeal against the Judge's order of the 8th June, 1968, was therefore invalid and ineffective.

This appeal arose from the decision of 28th June, 1968, which dismissed the plaintiff's claim for want of prosecution. After reference was made to the history of the matter, counsel's lack of faith in his appeal was manifested to the point of conceding that the appeal should be dismissed, which was duly effected.

(Sgd.) EDWARD V. LUCKHOO

Chancellor.

Dated this 8th day of May, 1970.

I agree.

(Sgd.) H.B.S. BOLLERS
Chief Justice.
6/5/70.

I concur. (Sgd) PERCIVAL A. CUMMINGS
9. 5. 70.

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.14

Order on Judgment dated 14th April 1969

NO. 14

ORDER ON JUDGMENT

BEFORE:

THE HONOURABLE MR. E.V. LUCKHOO,
CHANCELLOR
THE HONOURABLE MR. H.B.S. BOLLERS,
CHIEF JUSTICE and
THE HONOURABLE MR. P.A. CUMMINGS,
JUSTICE OF APPEAL

DATED THE 14TH DAY OF APRIL, 1969

ENTERED THE 16TH DAY OF APRIL, 1969

UPON READING the notice of appeal on behalf of the abovenamed (plaintiff) appellant dated the 7th day of November, 1968 and the record of appeal filed herein on the 5th day of February, 1969;

AND UPON HEARING Mr. G.M. Farnum, Queen's Counsel, of counsel for the (plaintiff) appellant, Mr. B.S. Rai, of Counsel for the (defendant) respondent replying only on the question of costs;

IT IS ORDERED that the judgment of the Honourable Mr. Justice Vieira dated the 28th day of June, 1968 be affirmed and this appeal dismissed;

AND IT IS BY CONSENT FURTHER ORDERED that the (plaintiff) appellant do pay to the (defendant) respondent his costs of this appeal and of the motion decided by this Court on the 28th day of October, 1968 fixed in the sum of $240: (two hundred and forty dollars);

AND IT IS FURTHER ORDERED that the notice of appeal on behalf of the abovenamed (plaintiff) appellant dated the 17th day of June, 1968 be and is hereby expunged from the record.

BY THE COURT
(Sgd.) H. Maraj
SWORN CLERK & NOTARY PUBLIC
for REGISTRAR

In the Court of Appeal of the Supreme Court of Judicature Guyana

No.15

Order Granting Final Leave to Appeal to Her Majesty in Council dated 1st November 1969

NO. 15

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

BEFORE THE HONOURABLE MR. V.E. CRANE, JUSTICE OF APPEAL (IN CHAMBERS)

DATED THE 1ST DAY OF NOVEMBER, 1969

ENTERED THE 4TH DAY OF NOVEMBER, 1969

UPON the petition of the abovenamed Abdool Latiff dated the 26th day of September, 1969 for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 14th day of April, 1969 and for an order that execution and all proceedings to enforce the aforesaid judgment be stayed until after the appeal herein to Her Majesty's Privy Council shall have been finally determined:

AND UPON READING the said petition and the Order of the Court in this matter dated the 10th day of May, 1969:

AND UPON HEARING Mr. John Stafford of Counsel for the appellant (plaintiff) the respondent (defendant) being in default of appearance and being satisfied that the terms and conditions imposed by the said order dated the 10th day of May, 1969 have been complied with:

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said appellant (plaintiff) to appeal to Her Majesty in Her Majesty's Privy Council and that a stay of execution of aforesaid judgment and costs be and is hereby granted until the final determination of that appeal.

BY THE COURT

(Sgd) H. MARAJ

SWORN CLERK & NOTARY PUBLIC
for REGISTRAR

IN THE PRIVY COUNCIL No. 10 of 1970

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

BETWEEN :-

ABDOOL LATIFF — Appellant (Plaintiff)

- and -

TANI PERSAUD — Respondent (Defendant)

RECORD OF PROCEEDINGS

SIMMONS & SIMMONS
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London E.C.2. M 2RJ

Solicitors for the Appellant