

PC  
6/15/57

14, 1957

No. 22 of 1956.

# In the Privy Council.

## ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL.

UNIVERSITY OF LONDON
25 FEB 1958
INSTITUTE OF ADVANCED LEGAL STUDIES

BETWEEN

CHINTAMANIE AJIT . . . . . *Appellant*

AND

THE DEMERARA STORAGE COMPANY LIMITED *Respondents.*

19882

## Case for the Appellant.

RECORD.

10 1. This is an appeal from the Judgment and Order of the West Indian Court of Appeal, dated the 11th January 1956, dismissing the appeal of one, Chintamanie Ajit (hereinafter called "the Appellant") from the Judgment and Order of the Supreme Court of British Guiana (Phillips, J.), dated the 24th September 1954, dismissing with costs the Appellant's claim against the Demerara Storage Company Limited (hereinafter called "the Respondents").

p. 27.  
p. 20.

20 2. The action giving rise to this Appeal was brought by the Appellant as Plaintiff against the Respondents as Defendants. The Plaintiff's case was that he had negotiated the sale of certain property belonging to the Defendants to Sankar Brothers, Limited. The Defendants denied that they employed the Plaintiff as an agent. The Courts below held that the Plaintiff was not employed as an agent by the Defendants. The sole question for determination on this appeal is whether the special circumstances of the case justify a departure from the practice of the Privy Council regarding concurrent findings of fact.

30 3. The Appellant was at all material times licensed to sell moveable and immoveable property in British Guiana and the Respondents were at all material times a limited liability company incorporated in British Guiana and having a registered office at "lot B," Water Street, Georgetown, Demerara, British Guiana.

pp. 5-6.

## 4. The Appellant instituted

## THE PRESENT SUIT

p. 3. by a specially indorsed Writ of Summons dated the 3rd March 1954, claiming—

p. 8, ll. 10-21. (A) an injunction restraining the Defendants, their servants, and/or agents from passing transport of certain immoveable property as advertised by the Registrar of Deeds to and in favour of Sankar Brothers Limited ;

(B) an Order of the Court declaring that the Plaintiff's opposition, dated the 23rd February 1954, to the aforementioned conveyance by way of transport was just, legal and well founded ; 10

(C) payment of the sum of 6,000 dollars ;

(D) costs amounting to \$55 or such sum as might be allowed on taxation.

p. 4. 5. The Statement of Claim endorsed on the Writ recited that the Defendants had instructed the Registrar of Deeds to advertise and that the Registrar of Deeds had on the 13th and 20th February 1954, advertised certain immoveable properties which were therein described in detail but which for the purposes of this Appeal are sufficiently described as forming parts of Mud lots A and B, Water Street, Demerara, aforesaid (hereinafter called " the property "). 20

p. 6. The Statement of Claim abstracted in full the Plaintiff's grounds of opposition to the said transport dated the 23rd February 1954, and entered in the Deeds Registry of British Guiana at Georgetown. The substance thereof was that he had negotiated the sale of the property to Sankar Brothers Limited and was consequently entitled to 6,000 dollars as agent's commission and that it was not competent for the Respondents to pass transport without first paying him the said sum.

p. 9, l. 12.

p. 7. The Statement of Claim repeated and relied on the grounds of opposition and further stated as follows :— 30

p. 7, ll. 6-54. " 5. The Defendants, a Company incorporated in this Colony under the provisions of the Companies (Consolidation) Ordinance, Chapter 178, whose registered office is situate at lot " B " Water Street, Georgetown, Demarara, British Guiana, represented by one of their Directors named John De Freitas, entered into an agreement verbally with the Plaintiff during the year 1951, and appointed the Plaintiff as an Agent to sell for the said Company the said properties herebefore stated as Opposed.

6. That the terms and conditions of the said agreement was such : that the plaintiff should introduce the said properties to any person or persons, and to offer for sale the said properties to any such person or persons for the sum of \$250,000 (two hundred and fifty thousand dollars) but if the prospective purchaser should counter-offer, then such counter-offer should be submitted to the said John De Freitas, for consideration by his Company, and if the counter-offer was accepted by the Company, then the Company will pay the 40

Plaintiff a commission of 3% (three per cent.) in the dollar on whatever be the amount as accepted by the said Company for the sale and purchase of the said properties, and the said commission was and/or is payable to the Plaintiff as soon as the said Company approves of the sale of the said properties to any prospective purchaser or purchasers and upon payment or deposit of any sum of money whatever, by the prospective purchaser or purchasers which the said Company may accept as advance and/or earnest money binding the parties for due performance of their contract; the prospective purchaser to purchase, and the said Company to sell and cede transport.

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\* \* \* \* \*

8. The Plaintiff introduced the said properties to Amin Sankar and Ahmad Sankar, both being Directors of Sankar Brothers Limited, in the year 1951, and informed the said John De Freitas of the negotiation and further informed the said John De Freitas that Ahmad Sankar, on behalf of Sankar Brothers Limited, was offering the sum of \$200,000 (two hundred thousand dollars) for the said properties, but the said John De Freitas told the Plaintiff to keep on negotiating and see if something more could be got and the Plaintiff kept on negotiating from 1951, throughout 1952, and then November, 1953, the said John De Freitas informed the Plaintiff that the offer of \$200,000 (two hundred thousand dollars) would be accepted and the Plaintiff informed the said Ahmad Sankar of the Company's decision to accept the offer made. As a result of the said negotiation by the Plaintiff's instrumentality a sale of the said properties was effected between the Demarara Storage Company Limited and Sankar Brothers Limited, on the 19th day of November 1953.

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9. The Plaintiff duly performed and/or fulfilled his part of the contract entered into by and between the Plaintiff and the Defendants, during the year 1951, by introducing the said properties to Sankar Brothers Limited, and did everything to cause a sale to be effected."

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6. In the Affidavit of Defence, John De Freitas and Anthony Marques Stanislaus Barcellos, director and secretary of the Respondents respectively, denied that the Respondents were indebted to the Appellant in the sum of \$6,000 or at all. pp. 10-11.

The said John De Freitas therein denied that he had ever employed the Appellant; denied that the Appellant had negotiated between him and Ahmad Sankar, and denied that the Appellant had conveyed any offer of \$200,000 or any other sum from either Amin Sankar or Ahmad Sankar. p. 10, ll. 11-30.

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The said Barcellos therein alleged that there was no record in the books of the Respondents of any employment of the Appellant by it for the sale of the property; that he did not employ the Appellant: and further deposed as follows:— p. 11.

" 11. On or about the 3rd day of November, 1953, one J. A. Charles, a well-known house and estate agent, came to me and said that an undisclosed principal would like to obtain an p. 11, ll. 4-31.

Option to purchase the said properties for \$190,000 : I told him the Company would not accept less than \$200,000. After the matter was discussed with the deponent John De Freitas we all went on the 3rd day of November, 1953, to the office of Messrs. Cameron & Shepherd, and a preliminary Option agreement was drawn up and signed.

“ 12. On the 17th day of November, 1953, a formal Option agreement was drawn up and signed at the said office between the defendant Company and the said J. A. Charles.

“ 13. On the 19th day of November, 1953, I received the 10 following Notice, namely :—

‘ To : Mr. A. M. S. Barcellos, Secretary—the Demerara Storage Co. Ltd. :

Pursuant to clause 2 of the Option agreement dated the 17th day of November, 1953, I HEREBY GIVE YOU NOTICE that I exercise the Option and hand you herewith Banker’s Cheque in favour of the Company for the sum of \$9,000 : I ALSO GIVE YOU NOTICE that my Principal is Sankar Brothers Limited, of lot 9, Water Street, Georgetown,—Intd. J. A. C.— who has signed below in confirmation thereof. 20

Dated the 19th day of November, 1953.

J. A. CHARLES, Agent.

Certified cheque No. F.733335. \$9,000 : I CONFIRM THE ABOVE. pp. Sankar Brothers Limited. Amin Sankar, Gov : Director. Principal.’

together with a cheque for \$9,000.”

7. The action was heard by Phillips, J., on the 23rd and 24th days of September, 1954. Nine witnesses gave evidence for the Appellant and two witnesses gave evidence for the Respondents. The Appellant was unrepresented and the Respondents were represented by leading and 30 junior counsel.

pp. 12-13.

8. The Appellant deposed that in 1951 John De Freitas had agreed on behalf of the Demerara Storage Co. Ltd. to pay him 3% on every dollar that might be obtained for the sale of the property and that he authorised him to ask 300,000 dollars for the property, although he (De Freitas) was willing to sell for \$250,000 : that he (Ajit) introduced the property to Amin Sankar and subsequently through 1952-3 continued negotiations with Ahmad Sankar, who was acting on behalf of Sankar Bros. Ltd. : that he also introduced the property to one James and one Chin who saw De Freitas and inspected the property : that De Freitas told one Insanally 40 that the property was to be divided in lots when he (Ajit) had obtained all the purchasers and that he would then give Insanally the job of dividing

the same : that De Freitas eventually agreed to accept \$200,000 and that Mr. Sankar told him (Ajit) that he was definitely going to buy the same : that the said offer was communicated by him (Ajit) to De Freitas at about the end of October 1953 : that De Freitas told him to accept the said offer and that he effected its sale for the Respondents : that he had written (Ex. 1) claiming commission on the 17th February, 1954 : that he had earlier visited the Respondents' premises to ask for commission but that De Freitas had avoided him : that no one was present when he first spoke to the said De Freitas : that on one occasion Charles Austin was present  
 10 and on another Insanally. Austin had heard De Freitas tell him to sell the property.

The Appellant was not cross-examined as to whether he had attempted to suborn Austin to give evidence in his favour.

*Victor McLean* deposed that he was a licensed house agent : that De Freitas had from the middle of 1952 employed him as an agent and had given him the property to handle for 3% : that De Freitas asked \$300,000 but Ahmad Sankar told him (McLean) that the price was too high and he (Sankar) might consider \$250,000 : that he (McLean) told De Freitas of the offer and De Freitas replied that Sankar was "Ajit's  
 20 man."

*Rustum Insanally* deposed that he was a land surveyor : that in 1953 the Appellant took him to De Freitas at Brodie & Rainer, Water Street : that De Freitas said that the Appellant must sell the place first ; then he would give him (Insanally) the survey. pp. 13-14.

The only evidence under cross-examination is as follows :—

"I can't remember the month. Middle part of last year. I did not get the job to survey."

*Isaac Chin*, merchant, deposed that on a date which he could not remember the Appellant came to sell and asked him if he wanted the property : that he (Chin) said he was not interested in buying but would be interested in renting a part of it : that he went with the witness James to inspect the property but had no talk or discussion with De Freitas. p. 14.  
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This witness was not cross-examined.

*Andrew James* deposed that he was the manager of Auto Supplies Company : that the Appellant took him, Chin and De Freitas to see the property : that De Freitas wanted \$200,000 for it unless he got a better offer : that he, James, did not employ the Appellant who introduced the property to him : that De Freitas never denied that the Appellant was an Agent for the property. p. 14.

9. *Charles Austin* deposed in chief that he was a Carpenter : that in 1953 he was repairing a wharf : that he worked for a long time with De Freitas on the wharf : in October 1953 he saw the Appellant with De Freitas : he, Austin, was 10-14 feet below them but he did not hear them discussing anything. pp. 14-15.  
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Under cross-examination he gave evidence as follows :—

p. 14, l. 57 to  
p. 15, l. 21.

“ Mr. Ajit came to me up to this morning he was at my home and several times and asked me to come to Court to say that Johnnie gave him the place to sell meaning ‘ Mr. De Freitas.’ He said ‘ if you go to Court for me ’ he would give me some money. I said ‘ you better hold the money, Wait first.’ I am working same place with British Army, Eve Leary. The Plaintiff came back to me another occasion 3 weeks ago. Plaintiff said ‘ I am going to summon you. Tell them just what I tell you. I going give you money.’ I went to patch my cycle. He came to see me and said ‘ you going 10 get summons.’ Yesterday he came and begged me and said I was not to let him down. He had about \$60 in his hand. He did not give me. He said he would give me \$200, if I came to Court and say that I heard Mr. De Freitas offered him the place to sell. I am my own contractor. I left Mr. De Freitas employ in 1953—a year ago. I work 11 months now for British Army. I worked for Mr. Nascimento on a house next to hospital in Middle Street. He is Mr. John De Freitas nephew. 3 weeks ago I was then on leave from the British Army. Mr. Ajit was asking me to say what I did not know, and he was offering me \$200 to speak what was 20 false. I told Mr. Ajit that I cannot say that as I could not have heard from where I was below on the scaffold. I have worked 3 weeks ago for Mr. Nascimento before I got the summons from the Plaintiff—long before you came to me about the false evidence I was working for Mr. Nascimento.”

Recalled at the request of the Appellant he gave the following evidence by permission :—

p. 15, l. 43.

“ I did not tell the Police that the Plaintiff was asking me to give false evidence. I told Plaintiff it would be impossible for me to say what he wanted me to say as I was below on the scaffolding 30 and could not hear but Plaintiff insisted that I heard.”

10. It is respectfully submitted that proof of particular acts tending to show bad character in a witness is not permitted either at common law or under the Evidence Ordinance (1894), Chap. 25 and in any event it was not proper to prove the same without cross-examination of the witness whose character was impeached : that these principles apply equally where proof is sought by means of cross-examination of a witness other than the witness whose character is impeached.

It is respectfully submitted further that a statement alleged to be inconsistent with a witness’s evidence cannot be admissible unless and until 40 the statement has been put to the witness in cross-examination.

It is respectfully submitted further that the witness impugned by this cross-examination was the Plaintiff and since cross-examination was not admissible under either of the above grounds, it was not otherwise relevant or admissible at all.

p. 15

11. *Papas Boodoo* deposed that in 1953 the Appellant offered him the property or part of property.

*Dasragh* deposed that he was a watchman : that De Freitas told him that when salesmen came to see the property he (Dasragh) must allow them in : that he admitted the Appellant. p. 15, l. 35.

*Kunjbeharry Persaud* deposed that he was secretary to Ahmad Sankar : that the Appellant made an appointment through him to see Ahmed Sankar about the property and that the Appellant saw Ahmad Sankar. p. 15, l. 49.

12. For the Defence the following documents were put in evidence :— p. 21.

EXHIBIT No. 3.

FOR SALE

10 The Demerara Storage Co. Ltd.

The proprietors of The Demerara Storage Company Limited, offer for sale their entire premises comprising Mud Lots "A & B" Water Street, Cummingsburg, with all the buildings and erections thereon. They may also be prepared to accept offers for parts of the above lots with buildings thereon, particulars of which are available from the undersigned.

JOHN DE FREITAS,

C/o, BRODIE & RAINER, Water Street.

EXHIBIT No. 4.

20

3rd November, 1953.

\$1,000.

p. 21.

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Received from J. A. Charles, on behalf of an undisclosed Principal the sum of \$1,000 (One thousand dollars) for an Option to purchase for the sum of \$200,000 (two hundred thousand dollars), First : All the property of the Company, in Water Street, held under transport No. 1,100 of the 17th September, 1953, the said property being bounded on the North, by the Hope Street depot on the East by Water Street, and the property of Stephen Psaila (Psaila Brothers) on the South by the property of Stephen Psaila (Psaila Brothers), and Holmes Street, and on the West by the Demerara River, subject to the existing monthly tenancies, and secondly : The Crane and building materials now lying on the said property ; the said option to be exercised before midnight on the 3rd day of January, 1954, by the payment of \$9,000 (nine thousand dollars) further on account of the purchase price and the purchase to be on the usual terms and conditions, and to be completed on or before the 1st March, 1954. Option money to belong to the Company if Option not exercised but otherwise to be credited to purchase price, Company to pay J. A. Charles, a

commission of 2% per cent. on the purchase price if Option exercised. These terms to be incorporated in a formal agreement to be signed by the parties but are nevertheless to be binding on the parties.

The Demerara Storage Co. Ltd.

(Sgd.) JOHN DE FREITAS. Director.

(Sgd.) A. M. S. BARBELLOS. Secretary.

Witnesses :

G. E. WELLINGTON.

EDWARD DE FREITAS.

I agree to the above. (Sgd.) J. A. CHARLES.

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There was also put in evidence for the Defence:—

pp. 22-23.

A document (Ex. 5) dated the 17th day of November, 1953, purporting to be sealed by the Defendants and purporting to be signed by A. M. S. Barcellos, secretary, John De Freitas, Director and J. A. Charles and purporting to be witnessed by Edward De Freitas and Gustavus E. Wellington.

p. 24.

The said agreement purported to be an Option to purchase the property granted by the Defendants to the said Charles in the sum of \$200,000 in confirmation of a transaction of the 3rd November, 1953, but it made no mention of commission for J. A. Charles.

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p. 24.

Exhibit 6 the document referred to in the Affidavit of Defence being the purported exercise of the said Option by J. A. Charles and Amin Sankar.

Exhibit 7, a list of directors of Sankar Brothers, Limited disclosed that the names of the directors of the said Company were Amin Sankar, Zohora Sankar and Ahmad Sankar.

13. It is respectfully submitted that the documents arouse suspicion since the 2nd option does not refer to the commission, which (if Charles had been Amin Sankar's agent) ought never to have been accepted, and which in any case ought never to have been promised by the Respondents who could have had no means of knowing, on the 3rd November, 1953, whether the commission had been disclosed to the principal.

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It is respectfully submitted further that according to the affidavit of Defence Barcellos (who was not called) took the major part in the alleged negotiations for the sale of the property through Charles; such sale was expressly relied on by the Respondents; consequently the burden of proving the same was upon them and by their failure to call Charles and Barcellos the Respondents failed to discharge that burden.

14. *Oral Evidence for the Defence* was as follows:—

pp. 16-17.

*John De Freitas* deposed that he was managing director of the Respondents: that he did not employ the Appellant to sell the property: that he had placed an advertisement in the Chronicle newspaper of 26th July, 1953: afterwards the Appellant brought

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10 Chin and James to him : that he went with Chin and James to inspect the property : that James made an offer : that the Appellant never had any conversation with him (De Freitas) about any offer made by Sankar Bros. : that on the 17th November, 1953, he (De Freitas) became aware that Sankar Bros. would be possible purchasers : that on the 3rd November, 1953, he had a talk with the said estate agent, Charles and the said Barcellos : that Charles offered \$200,000, paid \$1,000 and thereafter on the 17th November, 1953, paid \$9,000 pursuant to the said options to purchase dated the 3rd and 17th November, 1953, respectively : that on the 19th November, 1953, the said Charles exercised the option of the 17th November, 1953, and that the property was sold to Sankar Bros. Limited : that he had no conversation with the Sankar Brothers or MacLean about selling the property or with the Appellant about Sankar Brothers : that he did not tell McLean that Sankar was "Ajit's" man.

20 He further deposed that the said Austin told him about the Appellant wanting Austin to give false evidence : that he did not tell the police : that J. A. Charles was not his agent : that he did not remember if the Appellant had rented an office at Brodie & Rainer as auctioneer upstairs : that he had offered the place to Chin and that he and Chin had discussed the matter personally without an agent : that Chin had not been willing to pay the price : that he had not engaged any agents to sell the property—no agents at all : that he saw a land surveyor about dividing the property but could not remember the said Insanally or any land surveyor coming to him about dividing the property : that Insanally had told a lie in the witness box : that Insanally had asked him to sell in parts : that he had told friends he was selling but not agents : 30 that if James had bought he would not have paid the Appellant as he had made no arrangements to pay him any commission : that if the Appellant had sold the property he (De Freitas) would have paid the Appellant a commission : that if James purchase had been effected he (De Freitas) would have paid the Appellant a commission : that he would have given the Appellant something although he had not agreed to pay any commission : that he paid 3% commission to J. A. Charles on the sale of the property : that he could not say whether there was any resolution : that he did not 40 instruct Barcellos to record the sale : that he was authorised by the Defendants to offer the properties for sale : that he had a home in Kingston which was burnt down in Kingston 8 to 10 years ago : that the Appellant may have been agent—he didn't remember.

The witness said that Barcellos was in London.

*Amin Sankar's evidence* was as follows :—

pp. 17-18.

"Governing Director of Sankar Bros. Ltd. I know the Plaintiff—just ordinarily. I have had no transaction with the Plaintiff about selling or buying any property and had no transaction with him about buying the Defendant's property. I bought the property through agent Charles. I never told the Plaintiff to go

and see my brother. I had no discussion with my brother Ahmad Sankar, before buying these properties. I never authorised my brother to buy the premises of Sankar Bros.

*Cross-examined :*

Ahmad Sankar is the Managing Director of Sankar Bros. Ltd. Company—Limited Liability Company. My wife and my children decided to buy the property. No resolution made to buy the property. I notified the other directors but not Mr. Ahmad Sankar. Mr. Barcellos does my books. I know him well. He is Secretary of the Defendant Company. I told no one I wanted to buy the premises. I did not read the advertisement in the papers that this place was advertised for sale. October, 1953, I knew the place was for sale. Charles offered it to me. Charles said Mr. John De Freitas gave him the property to sell. He told me price was \$250,000 : I made offer of \$190,000 : Charles was not my agent. Charles was canvassing me to buy the property. He said he would get 2%. 1951, I did not see you in my store. I don't remember seeing you about a radio. Charles took Option to buy. \$1,000 was paid before a document was tendered to me. I signed these documents entirely depending on Cameron & Shepherd. The 2<sup>nd</sup> document I did not read it. I knew it was about the property. I paid the price. I did not read the agreement of sale. I depended on my Solicitor. My brother and I have bought properties in partnership and consulted each other before. Barcellos did not 'phone me about this sale. My brother and I are in friendly terms. I did not pay Charles any money. Mr. Charles and I were partners in race horses."

p. 18.

p. 19.

p. 19, l. 8.

15. After the Appellant in person had addressed him Mr. Justice Phillips on the 30th day of December, 1954, gave judgment for the Defendants, as follows :—

" The defendant's properties as mentioned in the statement of claim, situate at Georgetown, in the County of Demerara, were sold to Mr. Amin Sankar, Governing Director of Sankar Bros., Ltd., for the sum of \$200,000. The same was advertised for transport by Notice No. 67 in the Official Gazette of the 13th and 20th February, 1954, and the Plaintiff filed this Opposition suit. The Grounds of Opposition were that : The Opponent was entitled and claimed the sum of \$6,000, being 3 per cent. commission due for sale of the above-mentioned properties the said sum being owing and payable as per agreement.

The Plaintiff, a commission agent, alleged that Mr. John De Freitas, Managing Director of the Defendant Company, had agreed to pay his commission if he (Plaintiff) would produce a purchaser able and willing to buy the properties. The Plaintiff alleged that he did so, in fact produced a purchaser one Amin Sankar, Governing Director of Sankar Bros. Mr. De Freitas denied having made any such agreement with the Plaintiff and Mr. Amin Sankar also denied that it was through the instrumentality

10 or agency of the Plaintiff that he had bought the properties. To the contrary, Mr. Sankar said it was through the agency of one J. A. Charles that he acquired the properties and that he had had no dealings whatsoever with the Plaintiff. The evidence disclosed that one J. A. Charles was paid his commission on the sale. To support his case the Plaintiff called a witness, one Charles Austin, who swore that the Plaintiff attempted to suborn him to give false evidence to the effect that he the witness had overheard a conversation between the Plaintiff and Mr. De Freitas, relative to this matter. The witness further stated that he was promised money by the Plaintiff if he would give this false evidence. The Plaintiff in endeavouring to earn some commission on this sale without prior instructions or agreement, took upon himself to attempt to interest persons in the sale (and for those purposes obtained permission to take would-be purchasers to inspect the premises) in the hope of finding a purchaser who peradventure would be suitable to Mr. De Freitas. Mr. De Freitas said that if any of the commission agents (and the Plaintiff was not the only one) who were busying themselves about this sale, uninstructed by 20 him or any of the members of his firm, had nevertheless obtained a suitable purchaser he, Mr. De Freitas, would have even though he had not engaged their services, paid them something in the nature of a commission. Mr. De Freitas said it was not any and everyone who could purchase these properties as it involved a considerable amount of money; he had mentioned it to his friends and advertised the same, but very definitely had not engaged any particular agent to sell the properties. The Plaintiff's unrequested efforts were thwarted when the sale was accomplished by another person who was duly paid a commission for doing so. The Plaintiff's evidence of this alleged contract was unsupported and the witnesses he called carried his case no further. I accepted the evidence given by Mr. De Freitas and Mr. Sankar, and consequently gave judgment for the Defendants."

An Order in accordance with the judgment was entered on the 21st October, 1954. p. 20, l. 15.

16. It is respectfully submitted that the learned trial Judge erred in law in that—

40 (A) he misdirected himself in holding that the Appellant's evidence of contract was unsupported and that the Appellant's witnesses carried his case no further;

(B) he misdirected himself in finding that the Appellant had suborned the witness Austin to give false evidence in the absence of cross-examination of the Appellant in respect of such allegation;

(C) he misdirected himself in that he failed to appreciate that the oral and documentary evidence for the Respondents was inadmissible (in the absence of evidence from the said Barcellos and the said Charles) for the purpose of establishing a sale of the

property through the said Charles, and, further, that he failed to appreciate that the oral evidence of John De Freitas and of Amin Sankar conflicted with each other and with the documentary evidence ;

(D) he misdirected himself as to the issues in the case, and misread the statement of claim in that he treated Amin Sankar as the person alleged to be the purchaser produced by the Appellant, whereas the Appellant's case was that he had only met Amin Sankar once and thereafter had negotiated with Ahmad Sankar, who offered \$200,000 on behalf of Sankar Brothers Limited ; 10

(E) he erred in finding that the property was sold to Amin Sankar contrary to the pleadings and evidence in the case and contrary to the advertisements of transport ;

(F) he failed to attach any importance to the fact that the said Ahmad Sankar, the said Barcellos and the said Charles were not called to support the case for the Respondents ;

(G) he erred in accepting the evidence of the said De Freitas that he had definitely not employed any agent in the face of documentary evidence put forward by the Respondents to show that De Freitas had agreed in writing to pay the said Charles 2 per cent. 20 commission on a sale of the property, and in the face of De Freitas' own evidence that he had paid Charles 3 per cent. commission on the sale of the property ;

(H) he erred in accepting the evidence of the said De Freitas in so far as it contradicted such evidence for the Appellant as was not challenged in cross-examination, namely the evidence of the witnesses Insanally and Chin ; and

(I) he failed to appreciate that it was open to him to find and that he ought to have found that the evidence for the Respondents in itself was sufficient to establish a contract between the Appellant 30 and the Respondents.

p. 25.

17. The Appellant filed Notice of Appeal from the said judgment in the West Indian Court of Appeal, which after argument by the Appellant in person dismissed his Appeal on the 11th day of January, 1956 and by formal Order entered on the 15th day of March, 1956 affirmed the said judgment of Mr. Justice Phillips and ordered the Appellant to pay the Respondents' taxed costs of the said Appeal.

p. 27.

pp. 28-29.

18. Thereafter in an undated document entitled " The contention that led to the Appeal " the Appellant set out his arguments for the grant of Leave to Appeal to Her Majesty in Council. 40

p. 31.

19. On the 25th day of April 1956 the Chief Justice of British Guiana granted to the Appellant Final Leave to Appeal to the Privy Council.

p. 32.

20. On application by the Appellant and by consent, the Chief Justice of British Guiana on the 10th day of May, 1956, ordered and directed that no payments be made by the Respondents' liquidator out of funds coming into his hands, save and except the payment of income tax.

21. The Appellant humbly submits that the Judgment and Order of the West Indian Court of Appeal, dated respectively the 11th January 1956 and 30th March 1956, should be set aside and that this Appeal ought to be allowed with costs throughout, for the following among other

### REASONS

- (1) BECAUSE the special circumstances of this case as respectfully submitted in paragraphs 10, 13 and 16 herein justify a departure from the practice of the Privy Council regarding concurrent findings of fact.
- 10 (2) BECAUSE the Courts below have erred in law in considering evidence which was inadmissible and the reception of which gravely prejudiced the hearing before the Trial Court, thereby resulting in a miscarriage of justice.

S. P. KHAMBATTA.

J. T. WOODHOUSE.

T. L. WILSON & Co.,  
6 Westminster Palace Gardens,  
London, S.W.1.

20 *Solicitors for the Appellant.*

**In the Privy Council.**

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**ON APPEAL**

*from the West Indian Court of Appeal.*

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BETWEEN

**CHINTAMANIE AJIT** . *Appellant*

AND

**THE DEMERARA  
STORAGE COMPANY  
LIMITED** . . . . *Respondents*

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**Case for the Appellant**

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*Solicitors for the Appellant.*