

British Guiana

14, 1957

22

1956

IN THE PRIVY COUNCIL

No. 8 of 1954.

On Appeal

From the West Indian Court of Appeal.

BETWEEN

Chintamanie Ajit,

Appellant (Plaintiff),

And,

The Demerara Storage Company, Limited.

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, Demerara, British Guiana

Respondents (Defendants)

Record of Proceedings.

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THE RECORD.

No. 8 of 1954.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE WEST INDIAN COURT OF APPEAL.

Between:—

CHINTAMANIE AJIT,
Appellant (Plaintiff)

And

THE DEMERARA STORAGE COMPANY, LIMITED.,
Respondents (Defendants)

RECORD OF PROCEEDINGS.

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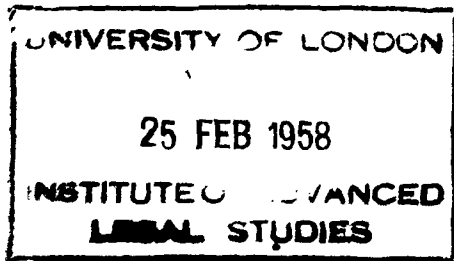
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1954.—No. 232. DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA.
Civil Jurisdiction.

Between:

CHINTAMANIE AJIT,

Plaintiff.

— and —

Specially
Indorsed
Writ.

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THE DEMERARA STORAGE COMPANY, LIMITED; 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, Demerara, British Guiana.

Defendants.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

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To:— THE DEMERARA STORAGE COMPANY, LIMITED;
of lot "B" Water Street, Georgetown, in the county of Demerara.

WE COMMAND YOU, that at 9.30 o'clock, in the forenoon on Monday the 15th day of March, 1954, you do appear before the Supreme Court of British Guiana, at the Victoria Law Courts, Georgetown, in an action at the Suit of Chintamanie Ajit, and take notice that in default of your so doing the Plaintiff may proceed therein, and judgement may be given against you in your absence.

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Witness: The Honourable EDWARD PETER STUBBS BELL, Knight Chief Justice of British Guiana, the 3rd day of March, in the year of Our Lord, one thousand nine hundred and fifty-four.

N.B. If the defendants desire to show cause against an application by the Plaintiff at the time fixed for appearance for final judgement they shall not later than noon of the day (not being a Sunday or Public Holiday) immediately preceding that fixed for their appearance, file an affidavit at the Registry at Georgetown setting forth their defence and serve a copy of such affidavit, forthwith after filing the same, on the Plaintiff.

STATEMENT OF CLAIM.

1. The Defendants instructed the Registrar of Deeds to advertise and the Registrar advertised in the Official Gazette of British Guiana of the 13th, and 20th, days of February, 1954, for the first and second times respectively and numbered 67, therein for the Counties of Demerara and Essequibo, transport by the Defendants to and in favour of Sankar Brothers, Limited; a company incorporated in this Colony under the provisions of the Companies (Consolidation) Ordinance Chapter 178, whose registered office is situate at lot 9, Water Street, Georgetown, Demerara, British Guiana, of the following described immovable properties to Wit:—*Firstly* part of Water or Mud lot “B” situate in Pitman and Ashley’s Square, Cummingsburg District, in the City of Georgetown, in the County of Demerara, bounded on the North by the Hope Street depot, now vested in the Mayor and Town Council of Georgetown, on the East by Water Street, on the South by land transported to James Spooner, on the 10th January, 1840, No. 13, now owned by the Demerara Wharf and Storage Company Limited, and being the parcels of land herein secondly and thirdly described, and on the West by the Demerara River, with all the buildings and erections thereon, now shown and defined as sixthly on a plan by J. T. Seymour, Sworn Land Surveyor, dated 16th August 1917, and deposited in the office of the Registrar on the 16th August, 1917.

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Secondly, part of the North middle part of Mud lot “B” situate in Pitman and Ashley’s Square, Cummingsburg District, in the City of Georgetown, in the County of Demerara, the said part being 6735 square feet, Rhymland measure in area and laid down and defined on a diagram by the Sworn Land Surveyor, Joseph Hadfield, dated 6th December, 1839, and deposited in the office of the Registrar of the Counties of Demerara and Essequibo, on the 1st December 1854, together with a passage, 8 Rhymland feet in width, by 46 Rhymland feet in depth, part of the said portion of mud lot “B” mentioned and described in transport dated 10th January, 1840, No. 13, with the buildings and erections thereon, now shown and defined as fifthly on a plan by J. T. Seymour, Sworn Land Surveyor, dated 16th August, 1917, and deposited in the office of the Registrar on the 16th August, 1917.

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Thirdly, part of the North middle part of Mud lot “B” situate in Pitman and Ashley’s Square, Cummingsburg District, in the City of Georgetown, County of Demerara, the said part being 22 Rhymland feet in width, and bounded on the West by low water mark, and laid down and defined on a plan by J. Hadfield, Sworn Land Surveyor, dated 13th May, 1841, annexed to transport in favour of James Spooner, dated 14th June, 1841, No. 175, with all the buildings and erections thereon,

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Fourthly, part of North part of mud lot “B”, in Ward No. 3, (South Cummingsburg) District in the City of Georgetown, in the County of Demerara, referred to in the Town Books as South middle part Mud lot “B”, the said South middle part being 59 Rhymland feet, or 60.7 English feet in facade, and laid down and defined on a plan or diagram by W. Haley, Sworn Land Surveyor, dated 27th July, 1865, and deposited in the Registrar’s Office of the Counties of Demerara and Essequibo, on the 31st August, 1865, the said South middle part being shown coloured red on a compiled plan by W. H. McTurk, Sworn Land Surveyor, dated 8th December, 1915, and deposited in the Registrar’s office on the 8th December, 1915, with all the buildings and erections thereon, now shown and defined as fourthly, on a plan by J. T. Seymour, Sworn Land Surveyor, dated 16th August, 1917, and deposited in the office of the Registrar on the 16th August, 1917.

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10 *Fifthly*, South part Mud lot "B", Water Street, in Ward No. 3 (South Cummingsburg) District, in the City of Georgetown, in the County of Demerara, the said South part Mud lot "B" being 39½ Rhymland feet, or 40.6 English feet in facade, and laid down and defined on a plan by W. Haley, Sworn Land Surveyor, dated 27th July, 1865, and deposited in the Registrar's office on the 29th July, 1865, and the South part being shown on a compiled plan by W. A. Roberts, Sworn Land Surveyor, dated 22nd March, 1916, and deposited in the Registrar's office on the 18th August, 1916, with all the buildings and erections thereon, now shown and defined as thirdly on a plan by J. T. Seymour, Sworn Land Surveyor, dated 16th August, 1917, and deposited in the office of the Registrar on the 16th August, 1917.

20 *Sixthly*, North part of Mud lot "A", Water Street, in Ward No. 3, (South Cummingsburg) District, in the City of Georgetown, in the County of Demerara, with all the buildings, erections, and further appurtenances thereon and thereto belonging, the said North part mud lot "A", having a facade of 46½ Rhymland feet, or 48 English feet, being shown and defined as secondly on a plan made by J. T. Seymour, Sworn Land Surveyor, on the 16th August, 1917, and deposited in the Registrar's office on the 16th August 1917.

30 *Seventhly*, all that piece or parcel of land known in the Town Books as the West part of the South part of Mud Lot "A", Water and Holmes Streets, in Ward No. 3, South Cummingsburg District, in the City of Georgetown, in the County of Demerara, the said piece or parcel of land comprising (1) the South part of Mud lot "A", as shown and defined as firstly, on a plan by J. T. Seymour, Sworn Land Surveyor, dated 16th August, 1917, and deposited in the Registrar's Office, on the 16th August, 1917, and on a plan by H. O. Durham, Sworn Land Surveyor, dated 29th May, 1920, and deposited in the Deeds Registry on the 13th July, 1920, with all the buildings and erections thereon save and except the portion coloured green on the said plan, by J. T. Seymour, with the buildings and erections thereon, and save and except the portion coloured pink on the said plan by H. O. Durham, dated 29th May, 1920, transported to Psaila Brothers, on the 26th August, 1946, number 1268, (2) all that piece or parcel of land having an area of 400 square feet, and being coloured green on a plan of the part of the South part of Mud lot "A", South Cummingsburg, made by H. Ormonde Durham, Sworn Land Surveyor, on the 29th May, 1920, and deposited in the Deeds Registry on the 13th July, 1920, the said piece or parcel of land being part of that part of the South part of Mud lot "A", coloured green on a plan of Mud lots "A" and "B", Water Street, South Cummingsburg, made by J. T. Seymour, Sworn Land Surveyor, on the 16th August, 1917, and deposited in the Registrar's office on the 16th August, 1917, with all the buildings and erections thereon,

40 2. On the 23rd day of February, 1954, the Plaintiff duly entered in the Deeds Registry of British Guiana, at Georgetown, Demerara, a notice of and reasons for opposition to the passing of transport of the said properties. (As follows. Heading excluded.)

50 TAKE NOTICE, THAT I, CHINTAMANIE AJIT, residing at lots 15 and 16, Croal Street, Newtown, Georgetown, Demerara, with office of business situate at 15 and 16, Croal Street, Newtown, Georgetown, Demerara, oppose the passing of a certain conveyance by way of transport advertised in the Official Gazette of this Colony of dates 13th and 20th February, 1954, for the first and second times respectively, and numbered 67, therein, for the Counties of Demerara and Essequibo, between you the said "The Demerara Storage Company Limited, a company incorporated in this Colony under the provisions of the Com-

panies (Consolidation) Ordinance, Chapter 178, whose registered office is situate at lot "B" Water Street, Georgetown, Demerara, British Guiana, and Sankar Brothers Limited, a company incorporated in this Colony under the provisions of the Companies (Consolidation) Ordinance, Chapter 178, whose registered office is situate at lot 9, Water Street, Georgetown, Demerara, British Guiana.

AND THAT THE FOLLOWING ARE THE GROUNDS OF OPPOSITION.

1. The Opponent is licensed to sell movable and immovable property for commission in this Colony. **10**
2. That during the year 1951, John De Freitas, a Director of The Demerara Storage Company Limited, acting on behalf of the said Company, employed the Opponent to sell for the said Company the following properties, Namely: (The properties aforesated in pages 4 and 5) for the sum of \$250,000:- (Two Hundred and Fifty Thousand Dollars) or nearest, or any offer which the said John De Freitas, may accept on behalf of the said Company and it was also agreed at the same time and place that the said Company will pay the Opponent a commission of 3% (three per cent) in the dollar on whatever amount the Company may obtain for the said properties, and that the said commission is payable before the passing of transport to the purchaser. **20**
3. That the Opponent introduced the said properties to Amin Sankar, a Director of Sankar Brothers Limited, of lot 9, Water Street, Georgetown, Demerara, British Guiana, and the said Amin Sankar suggested that the Opponent discuss the matter with Ahmad Sankar, his brother who was also a Director of Sankar Brothers Limited, of lot 9, Water Street, Georgetown, and the Opponent obeyed the order of the said Amin Sankar and discussed the properties as aforementioned with the said Ahmad Sankar, who decided to purchase same if the price was reduced to \$200,000:— (two hundred thousand dollars). The offer was conveyed to the said John De Freitas, who acting on behalf of his Company refused to accept the said offer of \$200,000:— **30**
4. The Opponent continued to negotiate between the said John De Freitas who was acting on behalf of his Company, The Demerara Storage Company, Limited, and Ahmad Sankar, who was acting on behalf of his Company, Sankar Brothers Limited, all through the years 1951, 1952, and then finally in 1953, the said John De Freitas on behalf of his Company accepted the offer of \$200,000:— (two hundred thousand dollars) as a result of the negotiation by the Opponent, and the said firm of Sankar Brothers Limited, purchased the said properties as above-described, from The Demerara Storage Company Limited, for the sum of \$200,000:— (two hundred thousand dollars) on the 19th day of November, 1953, all done through the influence and instrumentality of the Opponent. **40**
5. The Opponent is entitled to, and claims the sum of \$6,000:— (six thousand dollars) being commission due for the sale of the above-mentioned properties; the said commission being owing, and payable as per agreement upon closing of the deal between the two Companies, as the agent had nothing more to do.
6. That it is not competent for the proponents to seek to pass transport as aforesated without first paying the Opponent the sum of \$6,000:— (six thousand dollars) as claimed hereabove. **50**

(Sgd.) CHINTAMANIE AJIT,
Opposer (Opponent).

Dated this 23rd day of February, 1954.

3. A copy of the said Notice and Grounds of Opposition was served on the Defendants.

4. The Plaintiff repeats and relies on each and every of the several allegations and statements made and contained in the said Notice and Grounds of Opposition.

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, Demerara, British Guiana, represented by one of their Directors named
10 John DeFreitas, 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
20 by the Company, then the Company will pay the 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
30 Company to sell and cede transport.

7. The Plaintiff verily believes that the said John De Freitas was authorized by the said Company to enter into the abovestated agreement on the said Company's behalf, and such belief has been proved to be correct without doubt from the records.

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 DeFreitas that Ahmad Sankar, on behalf of Sankar Brothers Limited, was offering the sum of
40 \$200,000:—(two hundred thousand dollars) for the said properties, but the said John DeFreitas 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 DeFreitas 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
50 The Demerara Storage Company Limited and Sankar Brothers Limited, on the 19th day of November 1953.

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.

10. The Plaintiff is licensed to sell movable and immovable property in the Colony of British Guiana for commission.

11. Though the defendants have sold the said properties to the said Sankar Brothers Limited, for the sum of \$200,000:—(two hundred thousand dollars) they have failed and/or refuses to pay the Plaintiff the sum of \$6,000:—(six thousand dollars) notwithstanding demand by the Plaintiff of the defendants for the said sum.

12. The defendants are indebted to the Plaintiff in the sum of \$6,000:—(six thousand dollars).

13. The amount claimed in this action exceeds the sum of \$500:—(five hundred dollars).

14. The Plaintiff therefore claims:—

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(a) an injunction restraining the defendants, their servants, and/or agents from passing transport of the said property as advertised as aforesaid, to and in favour of the said Sankar Brothers Limited.

(b) an Order of the Court declaring that the Plaintiff's Opposition dated 23rd day of February, 1954, to the aforementioned conveyance by way of transport is just, legal and well founded.

(c) Payment of the said sum of \$6,000:—(six thousand dollars).

(d) the costs of these proceedings amounting to \$55:—(or such sum as may be allowed on taxation) for costs. If the amount claimed is paid to the Plaintiff or his agent within four days from the service hereof further proceedings will be stayed.

20

(Sgd.) CHINTAMANIE AJIT. Plaintiff.

This Writ was issued by Chintamanie Ajit, of and whose address of service is at his office lots 15 and 16, Croal Street, Newtown, Georgetown, Demerara, British Guiana.

Affidavit
verifying
claim.

I, CHINTAMANIE AJIT, male East Indian, residing at lots 15 & 16, Croal Street, Georgetown, Demerara, British Guiana, property agent, being duly sworn, make Oath and Say as Follows:—

1. That I am the Plaintiff in the above matter.

2. That I am licensed to sell movable and immovable property in this Colony for Commission.

30

3. That I was employed by the Demerara Storage Company Limited, the defendants in this action to sell their properties as fully described in a Notice of and Reasons for Opposition entered in the Deeds Registry of British Guiana, on the 23rd day of February, 1954, and which said Opposition was followed by specially Indorsed Writ, filed in the Supreme Court Registry of British Guiana, entered on the 3rd day of March, 1954, and numbered 232, therein for the County of Demerara of the said year for commission at the rate of 3% (three per cent) in the dollar.

40

4. That I introduced and negotiated the sale of the said properties belonging to the said Company to Sankar Brothers Limited, of lot 9, Water Street, Georgetown Demerara, British Guiana, as more fully described and narrated in the statement of claim filed with the above-mentioned specially Indorsed Writ for the sum of \$200,000:—(two hundred thousand dollars).

5. That I am entitled to, and know of my own knowledge that the defendants are justly, truly and lawfully indebted to me in the sum of \$6,000:—(six thousand dollars) owing and payable by the defendants to Plaintiff being commission due for having performed and/or fulfilled my part of the contract entered into by and between the Plaintiff and defendants during the year 1951.

6. That demand of payment having been made of the defendants but without avail as more fully set out in the aforesaid statement of claim of the said specially Indorsed Writ.

10 7. That the amount of \$6,000:—(Six thousand dollars) is due, owing and payable, and in my belief there is no defence to this action.

8. That I entered a Notice of and Reasons for Opposition to the passing of the said transport of the said properties belonging to the said Company in the Deeds Registry of British Guiana, at Georgetown in the County of Demerara, on the 23rd day of February, 1954, which was followed by specially Indorsed Writ, No. 232, dated the 3rd day of March, 1954, for the surety and recovery of the said amount claimed \$6,000:— (six thousand dollars) and that the said Opposition is just, legal and well founded.

20 (Sgd.) CHINTAMANIE AJIT

Before Me, at Georgetown, Demerara, this 13th day of March, 1954.

Stamp 36c.
Cancelled.

(Sgd.) J. E. Too-Chung.
Commissioner of Oaths to Affidavits.

AFFIDAVIT OF DEFENCE.

WE, JOHN de FREITAS, of lot E, Brickdam, Georgetown, and ANTHONY MARQUES STANISLAUS BARCELLOS, of lot 10, Fort Street, Kingston, Georgetown, being duly Sworn, make Oath and say as follows:—

1. We are respectively a Director and the Secretary of the above-named defendant Company, and we are duly authorized by the defendant Company to make this affidavit on its behalf and the facts to which each of us respectively deposes are within his own knowledge.
2. We have read the Grounds of Opposition filed by the Plaintiff herein. **10**
3. We deny that the defendant Company is indebted to the plaintiff in the sum of \$6,000:— as alleged in the statement of claim or in any sum whatsoever. AND I, the said John DeFreitas, for myself say as follows:—
4. I did not during the year 1951, or at any other time acting on behalf of the defendant Company or on behalf of anyone else, employ the Plaintiff to sell the properties referred to in the Opposition herein.
5. The Plaintiff did not at any time convey to me this deponent any offer of \$200,000:— or any other sum from either Amin Sankar or Ahmad Sankar, for the said properties and there was never any question of my refusing any such offer. **20**
6. It is not true that the Plaintiff negotiated between me and Ahmad Sankar, all through the years 1951, 1952, and that finally in 1953, I accepted the offer of \$200,000:—; that the offer was the result of the Plaintiff's negotiation and that the purchase of the said properties by Sankar Brothers Limited, on the 19th day of November, 1953, was all done through the influence and instrumentality of the Plaintiff.
7. On the 26th day of July, 1953, the defendant Company inserted the following advertisement in the Guiana Graphic and Daily Chronicle newspapers, Namely:— **30**

"FOR SALE"

THE DEMERARA STORAGE CO., LTD., The proprietors of THE DEMERARA STORAGE CO., LTD., 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 offer for parts of the above lots with buildings thereon, particulars of which are available from the undersigned. John DeFreitas. c/o Brodie & Rainer Ltd., Water Street.

And sometime after the Plaintiff came to me and said that he had obtained a purchaser, one Mr. James, for the said properties. I went with Mr. James and showed him the properties but nothing came of it. This is the only conversation that I can recollect having with the Plaintiff in relation to the said properties. **40**
8. I have been informed by Mr. Amin Sankar, the Governing Director of Sankar Brothers Limited, and verily believe that he never saw the Plaintiff and that the Plaintiff had nothing whatsoever to do with the purchase by him or his Company of the said properties.
- AND I, the said ANTHONY MARQUES STANISLAUS BARCELLOS, for myself say:— **50**
9. There is no record in the books of the defendant Company of any employment of the Plaintiff by it for the sale of the said properties.

10. I did not on behalf of the defendant Company nor did any other person on behalf of the defendant Company to my knowledge, employ the Plaintiff to sell the said properties.

10 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 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 following Notice, Namely:—

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

20 “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.

Dated the 19th day of November, 1953.

J. A. Charles. Agent.

30 Certified cheque No. F 733335. \$9,000:—. I CONFIRM THE ABOVE. p.p. Sankar Brothers Limited. Amin Sankar, Gov: Director. Principal.” together with a cheque for \$9,000:—. And we both say:—

14. Neither of us had anything whatsoever to do with the Plaintiff in connection with the aforesaid Option and sale, and his name was never even mentioned.

15. We verily believe that the defendant Company has a good defence on the merits to the whole of the Plaintiff’s claim in this action, and we respectfully request leave to defend the same and that the same be tried speedily and summarily.

40 16. The address for service of the defendant Company is at the Office of its Solicitor, Hugh Cecil Benjamin Humphrys, of Messrs. Cameron & Shepherd lot 2, High Street, Newtown, Georgetown, and we, on behalf of the defendant Company hereby authorize him and/or his partners Joseph Edward DeFreitas, and/or Herman William De Freitas, to act as its Solicitor herein.

Sworn to at Georgetown this 11th day of March, 1954.

BEFORE ME,

A. Vanier.

Commissioner for Oaths to Affidavits.

50

(Sgd.)

John De Freitas.

A. M. S. Barcellos.

23.9.54

CHINTAMANIE AJIT,

-v-

THE DEMERARA STORAGE CO., LTD.

The Plaintiff appears in person.

Mr. Humphrys with J. A. King for defendants.

CHINTAMANIE AJIT sworn states:—

Judge's
notes of
evidence.

Plaintiff. 15 & 16, Croal Street. I claim from the defendants \$6,000:— for commission for sale of lands mentioned in the statement of claim. This arrangement was made in 1951, with Mr. John De Freitas, chairman of the defendant Company at Water Street, Georgetown. My commission was to be 3% on every dollar that might be obtained for the sale of properties mentioned in the opposition. It was agreed that if I should obtain a customer he would sell at a price of \$250,000:—, but I must ask for \$300,000:—, because it was usual that people reduce the prices in making offers. I went to Amin Sankar at Water Street and I introduced the properties to Mr. Sankar. I went to see Mr. Ahmad Sankar his brother. He offered \$200,000:— for the properties on behalf of the Company, Sankar Bros., Ltd. I went to Mr. John DeFreitas and told him that Messrs. Sankar Bros., Ltd., would pay \$200,000:—, He refused the offer. I kept on negotiating during 1952 & 1953, with Sankar Bros., and Mr. John De Freitas. October 1953, I went to Mr. John DeFreitas; in September or October and asked him if he would not sell the property in parts. He agreed. He told me to get a Land Surveyor. I took a Land Surveyor to him —Mr. Insanally. We went to Mr. DeFreitas at his store. Mr. De Freitas told Mr. Insanally that he wanted the properties to be divided in different parts but he wanted to know what the Surveyor would charge. But he would not be dividing until I had obtained all the purchasers and then he would give him (Insanally) the job to divide Mr. Insanally gave him a quotation. I returned to Mr. Sankar at Camp Street. I told him Mr. DeFreitas intended to divide the property so he had better make up his mind and buy. He said he would not pay more than \$200,000:—. I went to Mr. DeFreitas and told him he would not get any more than that. Mr. DeFreitas told me to accept the \$200,000:— from Mr. Sankar. I told Mr. Sankar that it was accepted. Mr. Sankar said he would try to get a mortgage and when he got a mortgage he would buy it. I told Mr. DeFreitas, Mr. Sankar wanted a mortgage. He said he wanted cash, no mortgage. I then went to Mr. Andrew James in Lombard and Hadfield Streets, and introduced the properties to him. He took me to Mr. Isaac Chin. I introduced the properties to Mr. Chin. Chin and James went to Mr. DeFreitas, and then to the property in James' car. Property inspected. They said they would let me know what they decide to do. I returned to James and Chin, and they said they had not decided yet and still considering; that is the next day. I again in latter part of October 1953, saw Mr. DeFreitas at the wharf and asked him to sell to Sankar Bros, and take the mortgage. He still refused. He said he was fed up with the property go and sell it out. The workmen were present. The next night I went to Mr. Sankar. I told him that James was a likely purchaser. He said he was definitely going to buy the property. That he was going to arrange for his own mortgage and he would phone me the next morning. The next day I went to Mr. John DeFreitas again and told him that Mr. Sankar had decided to purchase the property and that he was getting his own mortgage. He said he would see Mr. Barcellos the secretary of the defendant Company and get everything ready for when Mr. Sankar comes. The next day I telephoned Mr. Sankar's Office. I spoke to the Secretary. In

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November 1953, Messrs. Sankar Brothers Ltd., bought the property. I went to Mr. John DeFreitas to ask for my commission. He had not paid me. I wrote a letter of demand. This is the original. Ex 1. I have not received my commission \$6,000:— I opposed the transport and now bring this suit. I have no document in writing. The agreement was verbal. I am a property agent licensed to sell movable and immovable property in the Colony.

Cross—Examined.

It is not true that I at no time had any connection with Mr. Ahmad Sankar. I am not calling Mr. Ahmad Sankar. This is a copy of letter in reply to exhibit 1. Marked Ex, 2. I spoke to Mr. Ahmad Sankar several times and Mr. Amin Sankar once. Mr. Amin Sankar is a Director of Sankar Bros., Ltd. Mr. DeFreitas did employ me to sell the property. It is not true that the only person I contacted was Mr. James and I was employed as an agent. I did not see the advertisement of 26.7.53, in Chronicle but I knew of it. It was advertised. I did tell Mr. De Freitas that Mr. Ahmad Sankar was offering to buy the property at \$200,000:—. Mr. DeFreitas did tell me to tell Ahmad Sankar he would accept. I effected the sale for the defendants. No letters in writing of any sort from the defendant Company in regard to this matter. I did not go to the Sankar Bros., and tell them that I told Mr. DeFreitas that it was through my instrumentality that they had bought the properties. I went to see Mr. DeFreitas but he would not speak to me. He would go away to the back of the premises. After the sale I can't tell the exact date I went to Mr. DeFreitas. The next day I went after I heard of sale. I wrote the letter on 17th February. I received reply on the 23rd. The property was sold in November 1953. I am not calling any of the Sankars. No one present when I first spoke to Mr. DeFreitas. In October 1953, Charles Austin was present when I spoke to Mr. DeFreitas. On one occasion also Mr. Insanally. Austin heard Mr. DeFreitas tell me to sell the property.

VICTOR McLEAN sworn states:—
Licensed house agent of 53, Bent Street, Georgetown. In 1951, middle or latter part I went to Mr. John DeFreitas at his office at Water Street. I asked him about the sale of the property, Water Street. He told me he wanted \$300,000:— for it but I would have to get the particulars myself. I got the particulars in half hour. I went back to Mr. DeFreitas. He complimented me for getting the particulars so quickly. I went to Mr. Sankar and told him about the property. Mr. Ahmad Sankar said the price was too high; he might consider \$250,000:—. I went back to Mr. DeFreitas and told him of the offer. DeFreitas said Sankar is Ajit's man. I did not worry with it again till September or October 1953. For Principal in Trinidad I again went back to Mr. John DeFreitas, and told him someone in Trinidad was interested through an Official of the P.W.D. The 2 P.W.D. agents and I and Mr. John DeFreitas went and inspected the property. One of the P.W.D. agents went to Trinidad before I had heard anything about it. I heard it was sold.

Cross-Examined:—

In 1953, DeFreitas wanted the same \$300,000:—. Mr. DeFreitas employed me as agent. He gave me the property to handle for 3%. I saw Mr. Ahmad Sankar at his home about 2 or 3, times. Sankar said if they would accept \$250,000:— he would consider it. I saw the advertisement of 26.7.53, in the Chronicle newspaper. It is not untrue that Mr. DeFreitas mentioned Ajit's name.

Re-examined:—

Mr. DeFreitas never withdrew my authority to sell. In 1953, I was still acting as his agent, to sell this property.

RUSTUM INSANALLY sworn states:—

Sworn Land Surveyor of lot 5, North Road, Bourda, Georgetown. During sometime last year Mr. Ajit, Plaintiff, took me around to Mr.

John DeFreitas at Brodie & Rainer, Water Street. Mr. John DeFreitas said that he Ajit must sell the place first then he would give me the survey.

Cross-examined:—

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

Re-examined:—

There are several buildings there and could be sold in parts.

ISAAC CHIN sworn states:—

Merchant of 33, James Street, Georgetown. Mr. Ajit came to sell, can't remember date, at Hadfield Street, and asked me if I wanted to buy the defendant's property and I said I was not interested in buying but I would be interested in renting a part of it. Mr. James and I went to inspect the premises. Early part of the year. I presume Mr. James must have some idea of buying. I had no talk or discussion with Mr. John DeFreitas.

Not Cross-examined by Mr. Humphrys.

ANDREW JAMES sworn states:—

Manager of Auto Supplies Company, of 30, Hadfield Street, Georgetown. Plaintiff Ajit came to me one day and took myself and Mr. Isaac Chin with Mr. John DeFreitas and we went to see the buildings of the defendant where the rice marketing board was. Mr. De Freitas wanted \$200,000:—, for the place. Mr. DeFreitas was unable to give us any information to decide. He told us confidentially he was hoping that the Mayor and Town Council would buy it and at a higher price than \$200,000:—, and that he was expecting decision in about a month and if they did not buy then he would be willing to sell for \$200,000:—. Plaintiff introduced the properties to me. I did not engage the Plaintiff nor did I agree to pay any commission. Mr. DeFreitas never denied that Plaintiff was agent to sell the property

Cross-examined:—

I can't remember what month but it was last year. I did not see it advertised. I did not offer \$200,000:—, we were willing to pay \$200,000:—. I never went back and never told Mr. DeFreitas anything. I did offer Mr. DeFreitas \$200,000:— for the property but Mr. DeFreitas said he was unable to say as he had an offer in mind from the Town Council. I heard it was sold for less than what we offered. Mr. DeFreitas rang me and told me the figures mentioned in the papers were wrong and not to believe it. I was offering on behalf of myself and Mr. Chin.

By the Court:—

I would have had to discuss the matter with Mr. Chin if Mr. De Freitas had consented to sell. I myself would have bought alone at that figure but Mr. Chin and I were buying as partners.

By Permission:—

Mr. Chin was present when I made that offer.

CHARLES AUSTIN sworn states:—

Carpenter of 130, Carmichael Street, Georgetown. I was repairing the wharf in 1953. I worked with Mr. DeFreitas for a long time on the wharf. In October 1953, there was an accident when lumber fell and nearly injured a man. Mr. DeFreitas was there. I saw the Plaintiff standing about 4 feet from Mr. De Freitas. I was below about 10—14 feet, on a scaffold 2 feet from the mud. I did not hear Mr. DeFreitas and the Plaintiff discussing anything. Mr. DeFreitas and I had some argument about the plank falling.

Cross-examined by Mr. Humphrys:—

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 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 that 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 DeFreitas 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 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.

PAPAS BOODOO sworn states:—

Provision merchant of Windsor Forest, West Coast, Demerara. Sometime last year Plaintiff came to me and asked me if I am interested in buying The Demerara Wharf and Storage building. I told Ajit I would buy one of the buildings. He took me there one afternoon and showed me the building. He told me Mr. John DeFreitas wanted \$40,000:—, for one building. I offered \$20,000:— provided it was surveyed. He said Mr. DeFreitas would not be able to do that. He offered the whole property for \$250,000:—, but he could get him to sell at \$200,000:—, I told him I was not interested. I never saw Mr. De Freitas myself.

Cross-examined:

Can't remember what time last year.

DASRAGH sworn states:—

Watchman of Rice Marketing Board, of Alexander Village. First Street. I don't know anything about this matter. I think I have seen Plaintiff carry people at the wharf. Mr. DeFreitas told me that when salesmen came to see the property I must allow them in. I allowed in Mr. Ajit. I don't recall any incident when lumber fell and nearly injured workmen.

Not cross-examined.

CHARLES AUSTIN recalled at request of Plaintiff:

By Permission:

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 and could not hear but Plaintiff insisted that I heard.

KUNJBEHARRY PERSAUD sworn states:—

Secretary to Mr. Ahmad Sankar, 222 Camp Street, of 45 Vreed-en-Hoop, West Coast Demerara. I know that Mr. Ajit, Plaintiff, came to me stating that he had the premises of The Demerara Wharf & Storage Company for sale and he would like to see Mr. Ahmad Sankar in connection with same. I made an appointment for him and he did see Mr. Sankar. I was not present at the meeting it was sometime during last year early part. When he completed his interview with Mr. Sankar and he was about to leave Mr. Ajit had a conversation with me. Mr. Ajit returned a few times afterwards but I do not know what transpired. A few weeks after I met Plaintiff at Elias dry goods store. He again had a conversation with me.

Not cross-examined.

CASE.

DEFENCE:

JOHN DeFREITAS sworn states:—

Managing Director of defendant Company. The transport of premises herein was opposed by Plaintiff. In 1951, I did not employ Plaintiff to sell the property the transport of which he has opposed. I did not employ him to sell anything not at all. I never arranged to pay him 3%. Plaintiff never informed me that he engaged a purchaser for the property. The Plaintiff brought one James and wanted me to show him the property. I placed an advertisement in the Chronicle of 26.7.53. EX. 3. It was after this that the Plaintiff brought James to me. I went to the premises with Mr. James and Mr. Chin. No offer was made by either of them for the property. I asked James to let me know what he wanted to do. He made no offer he merely inspected the place. I made no firm offer to James. I told James that Mr. Sebastiani had 'phoned me asking if I wanted to sell the Storage Company and I told him yes. He is a Councillor and said that the matter was being put to the meeting of the Town Council about purchasing it. I told James so. I never had any conversation with Plaintiff about any offer made by Sankar Bros. 17.11.53. I became aware that Sankar Bros. would be possible purchasers. I now look at this document in name of J. A. Charles, Option to purchase, by undisclosed principal—3. 11.54. At that time I did not know who that Principal was. EX. 4, On 17.11.53 my Company entered into this formal agreement with J. A. Charles. EX 5. On 19.11.53. Mr. Charles exercised that Option of agreement to purchase. EX 6. The sale went through and the property was sold to Sankar Bros. Ltd., for \$200,000:— Transport was duly advertised and opposed by the plaintiff. I did not know that Sankar Bros wished to buy until this Option of agreement was executed. I had no talk with either of the Sankar Bros. I had no talk with plaintiff Ajit about Sankar or Sankar Bros. buying the property. I don't know anything about some people from Trinidad wanting to buy. It would not have mattered to me who bought. I would have sold to the first person who offered the price. I never spoke to Victor McLean, about selling the property in question. It is not true that I told this man Victor McLean that Sankar was Ajit's man.

Cross-examined:

Mr. Austin told me about the false evidence you wanted him to give. I did not tell the Police. I told him not to worry with it. I never thought of setting up Austin to get a trap for you. 17th, November was the time I knew Sankar was interested. On 3.11.53, I had a talk with Charles and Barcellos. Charles offered \$200,000:—. On the 3rd, Charles paid \$1,000:—, and on the 17th, he paid \$9,000:—. I am not the Secretary of the Company. I have a property where Mr. Nascimento lives. I can't remember if you sold a property for me in Thomas Street for \$11,000:—. I sold a place at back of Metropole and can't remember if the Plaintiff was the agent. I never asked you to sell the defendants' property. I did not offer to the Saguenay Terminals Steamship Company. If Mr. James had bought I would not have paid you as I made no arrangements to pay you any commission. If you sold the place I would pay you a commission. I know Mrs. P. A. B. Gonsalves. She is related to me—my stepmother. I bought a property from her to build the Metropole Theatre. I can't recall telling the plaintiff that you got a good price for the sale of property to Sankar Bros., of my stepmother's place at Metropole Theatre. I never spoke to Mr. Ahmad Sankar nor Amin Sankar, his brother about the sale of the property. J. A. Charles was not my agent. I suppose so. I did not attempt to defraud you of your commission by engaging

- Mr. Charles. You did not speak to me at the time when the lumber fell and nearly hit someone. You were there but I did not give you a drop in my car. In 1944, I don't remember if you rented an office at Brodie and Rainer as auctioneer upstairs. Mr. Barcellos is secretary of the Company. Mr. Willoughby is the Chairman. I am a Director. A clerk rents the premises. Barcellos never told me anything about the sale until the 17th December, 1953. I am the owner of the place. Mr. Barcellos is now in London. The place was leaking. I did offer the place to Chin—the whole place. If he asked me personally, he did not want to pay the price. No agent—Chin and I discussed the matter personally. Rahaman was not paying rent. That was a different matter. I took proceedings against him to prevent him using the place, after the rice marketing board left the premises. Probably at that time I may have wanted to sell. I have not engaged any agent to sell the place after the advertisement in the papers. No agents at all. It's a big place not everybody can buy it. I would be willing to pay commission to anyone I agreed to pay and who sold. I have a contract with the Rice Marketing Board. I can't say when the contract expired. If it was in 1952, I can't say. I was not trying to sell the place subject to the Rice Marketing Board contract. I could not get it rented. I tried to sell it—maybe 1952. I don't know Choo-Kong. I did not try to sell the place in lots or portions if I could sell 5 portions at one time and if I could get all 5 purchasers at one time. I would have had to survey them. I did see a land surveyor about dividing up the premises. I can't remember seeing Mr. Rustum Insanally or any land surveyor at all come to me about dividing the property. Mr. Insanally told a lie in the witness box. He asked me to sell in parts. I told my friends I was selling—not agents. People came and asked for one part or 2 parts and I said only 5 parts, at least or I would not sell. I would have paid you a commission if James' purchase was effected. I would have given you something even though I had not agreed to pay any commission. I paid 3% commission to Mr. J. A. Charles on this sale. I did not discuss any commission with anyone. I have heard of Scroder. I can't remember giving him the said properties to sell. I did not instruct Barcellos about this sale to record it. I can't say if there was any resolution.

24.9.54 CHINTAMANIE AJIT -V- THE DEMERARA STORAGE CO., LTD.

JOHN De FREITAS sworn states:

Further cross-examined

- 40 I was authorized by defendants to offer the properties for sale. I had a home which was burnt down in Kingston about 8 to 10 years ago. You may have been agent, I don't remember. I swore to affidavit of defence jointly with Mr. Barcellos in this case.

AMIN SANKAR sworn states:

- 50 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 authorized 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 2nd 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.

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DEFENDANT'S CASE.

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Mr. Humphrys does not address.

Mr. Ajit addresses.

Judgement for the defendants with costs to be taxed. Defendant to uplift the money lodged in Court. Application by Plaintiff for stay of execution for six weeks. Stay of execution—Stayed for 3 weeks.

BEFORE PHILLIPS, J.

1954. September 23rd & 24th.

H. C. Humphrys, Q.C. for defendants.

Chintamanie Ajit in person.

REASONS FOR DECISION:—

10 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% 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 DeFreitas, managing Director of the Defendant Company had agreed to pay this 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 20 one Amin Sankar, Governing Director of Sankar Bros. Mr. DeFreitas denied having made any such agreement with the plaintiff and Mr. Amin Sankar, also denied that it was through the instrumentality 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 30 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. DeFreitas, 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. DeFreitas. Mr. De Freitas said that if any 40 of the commission agents (and the plaintiff was not the only one) who were busying themselves about this sale, uninstructed by 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 50 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. DeFritas and Mr. Sankar, and consequently gave judgement for the defendants.

Solicitor:

~~H. C. B. Humphrys for the defendants.~~

Sgd: R. R. PHILLIPS,
Puisne Judge. 30.12.54.

A TRUE COPY. Akai, Assistant Sworn Clerk. 30.12.54.

ORDER OF COURT.

BEFORE THE HONOURABLE MR. JUSTICE BOLAND,
 MONDAY THE 15TH DAY OF MARCH, 1954.
 ENTERED THE 20TH DAY OF APRIL, 1954.

Formal
 Judgement.

UPON hearing the plaintiff and counsel for defendants, and Upon reading the affidavit of defence filed herein: IT IS ORDERED, that the defendants be at liberty to defend this action and that the same be tried without further pleadings, and that the cost of this application be costs in the cause.

By The Court.

H. Bacchus. Sworn Clerk and Notary Public. For Registrar.

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ORDER OF COURT.

BEFORE THE HONOURABLE MR. JUSTICE PHILLIPS,
 FRIDAY THE 24TH DAY OF SEPTEMBER, 1954. ENTERED
 THE 21st DAY OF OCTOBER, 1954.

This action coming on for hearing on the 23rd day of September, 1954, and on this day before the Honourable Mr. Justice Phillips, in the presence of the plaintiff and Counsel for the defendants, and the Judge having ordered that the plaintiff's claim be dismissed. IT IS ADJUDGED, that the plaintiff recover nothing against the defendants, and that the defendants do recover from the plaintiff their costs of action to be taxed fit for Counsel. And it is ordered that a stay of execution for three weeks from the date hereof be granted to the plaintiff and it is further ordered that the defendants do uplift from the Registry of Court the amount deposited by them to abide the claim and costs of the plaintiff herein

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BY THE COURT.

A. SINGH for Registrar.

EXHIBIT No. 1.

CONSOLIDATED AGENCIES,
 Head Office: 23-24, Lombard Street,
 Werk-en-Rust, Georgetown, Demerara.
 British Guiana.

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17th February, 1954.

Dear Sirs,

Letter of
 demand.

I am surprised at your action in attempting to pass transport in favour of Sankar Brothers Limited, of lot 9, Water Street, Georgetown, without first paying me the commission due which is \$6,000:—

You are aware that the property to which I refer located in Water Street, as advertised in the *Official Gazette* of the 15th February, 1954, and numbered 67, therein, was given to me for sale by the Chairman of the Company Mr. John DeFreitas, and I negotiated the sale which was signed on, on the 19th November, 1953, in favour of the said Sankar Brothers Limited.

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I have now no alternative but to demand of you immediate payment of the sum of \$6,000:— as per terms of agreement as duly entered into by your Company and me. Unless this amount is paid within 7 days from date hereof I will take legal proceedings for the recovery of the amount claimed as per agreement made before.

Should you desire to give me an accepted Order of payment signed by Sankar Brothers Limited, I am willing to accept same and collect the money on the passing of transport.

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All for your guidance and information.

I have the honour to be,

Sirs,

Yours Very Truly

(Sgd.) CHINTAMANIE AJIT.

Property Agent.

(EXHIBIT No. 2.)

23rd February, 1954.

Chintamanie Ajit, Esquire,
23—24, Lombard Street, Werk-en-Rust,
Georgetown, Demerara, British Guiana.

Sir,

10 Your letter of the 17th inst., addressed to The Demerara Storage Co., Ltd., has been handed to us for attention. Our clients are amazed at your claim. In the first place Mr. John DeFreitas, a Director of the Company categorically denies that he or the Company ever gave you the property to sell, the only conversation he has had with you about this property is on the occasion when you informed him that you had obtained a purchaser, one James—for the property after it had been advertised for sale. Secondly, Mr. Amin Sankar, the Governing Director of Sankar Brothers Limited, has informed us that he never saw you and that you had nothing whatsoever to do with the purchase by him or his Company of the property.

Reply to letter of demand.

In the circumstances, any legal proceedings you may institute will be defended.

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J.E.F./C.B.

Yours Faithfully,

(EXHIBIT NO. 3.)

FOR SALE.

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 under-

Advertisement of properties for sale.

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John DeFreitas,
C/o Brodie & Rainer. Water Street.

(EXHIBIT NO. 4.)

3rd November, 1953.

\$1,000:—

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.

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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.

Agreement of sale by option.

The Demerara Storage Co., Ltd.,
(Sgd.) John De Freitas. Director.

Witnesses: (Sgd.) A. M. S. Barbellos. Secretary.

G. E. Wellington.

Edward De Freitas.

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

(EXHIBIT NO. 5.)

2nd option
agreement.

This agreement is made on the 17th day of November, 1953 between the Demerara Storage Company Limited, of lot "B" Water Street, Georgetown, Demerara (hereinafter called the Company) of the one part, and James Alexander Charles, of lot 1, Croal Street, Georgetown, (hereinafter called the agent) which term shall include his Principal, Nominee, or Assignee, of the other part.

Whereas:—

(1) On the 3rd day of November, 1953, in consideration of the sum of \$1,000:— (one thousand dollars) paid by the agent to the Company, the Company granted the Option herein contained to the agent: and

10

(2) It was agreed that a formal agreement being this agreement should be drawn up and signed by the Company and the Agent:

Now it is hereby agreed as follows:—

1. Pursuant to the said agreement the Company hereby acknowledges that the agent has been granted the Option to purchase and acquire from the Company the property, assets and effects more particularly mentioned and described in the schedule hereto, at the price of \$200,000:— (two hundred thousand dollars).

20

2. The Option may be exercised by the agent at any time before midnight on the 3rd day of January, 1954, sending by registered letter to the Company at the said lot "B", Water Street, Georgetown, or giving to a Director or the Secretary of the Company, Notice in writing that the Agent exercises the Option together with a banker's cheque for the sum of \$9,000:— (nine thousand dollars).

3. Time is the essence of clause 2, hereof.

4. If the Option is not exercised by the time herein provided the said sum of \$1,000:—shall belong to the Company.

5. If the Option is exercised as abovementioned the agent shall thereupon become the purchaser for the sum of \$200,000:— (two hundred thousand dollars) of the said property, assets and effects free from all encumbrances but subject to all existing monthly tenancies, upon the following terms.

30

Namely:—

1. The said sum of \$1,000: and \$9,000:— shall be accepted as the deposit and on account of the said purchase price.

2. The balance of the purchase price shall be paid on the passing of transport of the immovable property.

3. The Company and the Agent shall advertise as soon possible transport of the said immovable property and transport shall be passed and accepted on or before the 1st day of March, 1954.

40

4. On the passing of transport the Company shall deliver possession of the said property, assets and effects to the Agent and current rents shall be apportioned between the Company and the Agent.

5. All arrears of rates and taxes and funded debts (if any) shall be paid by the Company, but current rates and taxes shall be apportioned between the Company and the Agent in the usual way as at the date of transport.

6. As from the date of sale the said property, assets and effects, shall be at the risk of the agent but the company shall hold and keep in force for the benefit of the Agent all existing policies of insurance until the passing of transport when the Company if requested by the Agent shall assign the said policies to the agent on payment of the unexpired portion of the current premiums and 50% (fifty per cent.) of any premiums previously paid since the last distribution of cash profits: and

7. The costs and expenses of and incidental to the agreement and transport which shall be attended to by Messrs. Cameron & Shepherd, shall be borne and paid by the Company and the Agent in equal shares. **10**

8. Provided always that nothing in clause 5, hereof contained shall cause a contract for sale and purchase to exist between the parties hereto before the Option is exercised or to give to any tenant or other person any right which he would have had if this agreement had been a contract for sale and not a mere Option to purchase.

9. In the event of any dispute arising the matter shall be referred to arbitration and unless the parties shall agree upon a single arbitrator it shall be referred to the arbitration of two persons or their Umpire, and the arbitration Ordinance Chapter 24, shall apply. **20**
In Witness Whereof the Company have caused their common seal to be affixed and the agent has hereunto set his hand the day and year first above written.

Seal Affixed. SEAL.

Seal Affixed.

A. M. S. Barcellos. Secretary.

The common seal of The Demerara Storage Co., Ltd., hereto affixed in the presence of:

(Sgd.) John De Freitas. Director. **30**

Sgd.) A. M. S. Barcellos Secretary. J. A. Charles.

Witnesses:

(Sgd.) Edward De Freitas.

(Sgd.) Gustavus E. Wellington.

SCHEDULE.

First all those pieces or parcels of land held under transport number 1,100, of the 17th September, 1942, bounded on the North by the Hope Street Depot, on the East by Water Street, and the property of Stephen Psaila, (Psaila Bros.). On the South by the property of Stephen Psaila (Psaila Bros.) and Holmes Street and on the West by the Demerara River, and described in the said transport as follows:— (As described in statement of claim before mentioned).

(EXHIBIT NO. 6.)

Notice exercising option. To: A. M. S. Barcellos, Secretary. The Demerara Storage Co., Ltd. **10**

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 Bros. Ltd., of lot 9, Water Street, Georgetown who has signed below in confirmation thereof. Dated the 19th day of November, 1953.

J. A. Charles. Agent

certified cheque No. 733335. \$9,000:—I confirm the above. p.p. Sankar Bros. Ltd.

Amin Sankar. Governing Director. **20**

Received the sum of nine thousand dollars in exercise of the Option and agreement accordingly the Option this 17th November, 1953. Barcellos.

(EXHIBIT NO. 7.)

Names and addresses of Directors of Sankar Brothers, Limited. Names and addresses of the persons who are the Directors of Sankar Brothers, Limited, on the 22nd day of June, 1953.

| Names. | Addresses. | |
|----------------|-------------------------------|-----------|
| Sankar, Amin | 45, Main Street, Georgetown. | |
| Sankar, Zohora | 45, Main, Street, Georgetown. | |
| Sankar, Ahmad | 222, Camp Street, Georgetown. | 30 |

A true copy of the original which was included in the annual list of members and summary of Sankar Brothers Limited, made up to the 22nd day of June, 1953, and filed in the office of the Registrar of Joint Stock Companies, on the 4th day of March, 1954.

SEAL.

G. H. McKenzie, Assistant Sworn Clerk.

9th September, 1954.

W.I.C.A. No. 8 of 1954.

IN THE WEST INDIAN COURT OF APPEAL.

NOTICE OF APPEAL MOTION.

10 TAKE NOTICE, that this Court will be moved at the expiration of 28 days after this appeal has been set down for hearing on a day and at an hour of which you shall be informed by the Registrar, by Chintamanie Ajit, appellant (plaintiff) that the whole of the judgement and/or decision given in the matter of the special indorsed Writ, No. 232, of 1954, (Demerara) by the Honourable Mr. Roland Ricketts Phillips, Puisne Judge of British Guiana, on the 24th day of September, 1954, and entered on the 21st day of October, 1954, may be varied reversed and/or modified.

AND THAT it may be Ordered and declared, that:—

- (a) the claim of the Appellant (plaintiff) in special indorsed Writ No. 232, dated the 3rd day of March, 1954, (Demerara) may be allowed and that judgement be entered in favour of the Appellant (Plaintiff).
- 20 (b) the Opposition to transport dated and entered on the 23rd day of February, 1954, of the properties therein mentioned to be just, legal and well founded.
- (c) the Respondent (Defendants) be condemned to pay the costs of this suit, in this Court and the Court below, to be taxed accordingly.
- (d) the Appellant (plaintiff) be given such further or other relief as may be just.

AND FURTHER TAKE NOTICE, that the following are the grounds of appeal:—

1. The learned trial judge was wrong in law, and misdirected himself because:
- 30 (a) the oral evidence in Court led by the defence does not agree in material parts with the affidavit of defence filed by the defendant on the 11th day of March, 1954.
- (b) the said affidavit of defence although contradictory and/or conflicting in paragraphs 4, 7, 8, 11, 12 and 13, produces admissible evidence of admission by the defendants that a contract was entered into and /or so implied between the plaintiff and defendants for the sale of the said properties, by the declaration of the defendant's representative John De Freitas; as forming parts of the Res Gesta.
- 40 (c) the oral evidence of the defendant's representative, John De Freitas, under cross-examination that the plaintiff "may have been agent". I don't remember", is an admission by the defence of the plaintiff's claim of agency.
- (d) the defence having produced documentary evidence by tendering 2 option agreements to the Court must be accepted in preference to oral evidence led by the defence.
- (e) the plaintiff's evidence supported by Kunjbeharry Persaud, Secretary of Ahmad Sankar, a Director of Sankar Brothers Limited, is conclusive proof that by the plaintiff's negotiation and instrumentality a sale of the said properties was effected in favour of Sankar Brothers Limited, in the absence of rebuttal evidence.

2. The learned trial Judge erred in not giving due consideration to point of facts:—

(a) the plaintiff a licensed property agent having introduced the said properties mentioned in the opposition to transport and in this Suit, to several prospective purchasers for the purpose of effecting a sale of the said properties with the knowledge and consent of the Company through their representative John DeFreitas, makes it clear that the plaintiff was acting on behalf of the defendants as agent and as such it is impossible to conclude that there was no contract between the plaintiff and defendants, unless there was evidence that the plaintiff was employed by the various prospective purchasers as a buying agent. **10**

(b) the evidence led by the defence that they employed no agent nor agents, does not reconcile favourably with the evidence that they paid a commission of 3% to J. A. Charles although the said J. A. Charles, was not their agent, but represented Sankar Brothers Limited, his Principals.

(c) there was no necessity for the making of two Option agreements but it is clear that the defendants were setting up a defence in advance to defraud the plaintiff of his commission. **20**

(d) the withholding of the evidence of Ahmad Sankar, Director of Sankar Brothers Limited, although the said Ahmad Sankar was summoned by the defendants and attended Court on all days of trial are facts in issue.

3. The learned trial Judge did not give due weight and consideration to the evidence led by and on behalf of the Appellant. (Plaintiff).

4. There was not sufficient legal evidence to support the findings of the learned trial Judge.

5. The decision was unreasonable and could not be supported having regard to the facts and circumstances of the case. **30**

6. The judgement was wrong as it was based on a wrong principle or such that a judge viewing the evidence reasonably could not properly have so decided.

7. The Judgement was wrong.

(Sgd.) Chintamanie Ajit.
Appellant (Plaintiff).

Before PEREZ, JACKSON and HOLDER, C.J.J.

1956: January 11.

Appellant in person. **40**

H. C. Humphrys, Q.C., with J. A. King, for respondent.

NOTE OF JUDGEMENT.

This is an appeal from the judgement of Phillips J. The plaintiff claimed that he was employed by the defendant Company to sell certain properties and that he would be paid commission at the rate of 3% and that he introduced one Amin Sankar, and that Sankar Brothers Limited bought the properties for \$200,000:—, and therefore he was entitled to a commission of \$6000:—.

10 The plaintiff gave evidence in support of his claim and called witnesses, one of them being one Austin who gave evidence that the plaintiff attempted to suborn him to give false evidence.

Mr. DeFreitas, Managing Director of the defendant Company, gave evidence that he did not engage the plaintiff and Amin Sankar, the Governing Director of the purchasing Company, gave evidence that he had no transaction or dealings with the plaintiff. Ahmad Sankar, the managing Director, was not called by either side.

The Judge after hearing all the evidence came to a conclusion adverse to the Appellant.

20 We are satisfied that there was abundant evidence to justify that finding and indeed it would have been strange if, in view of the facts given in evidence, he came to any other conclusion.

The appeal is dismissed with costs here and in the Court below certified for two Counsel.

The appellant applied for a stay of execution which was refused.

(Sgd.) J. M. Perez; C.J., Trinidad & Tobago.

(Sgd.) Donald E. Jackson; C.J., Windward Islands and Leeward Islands.

(Sgd.) F. W. Holder; C.J., of British Guiana.

FORMAL ORDER.

W.I.C.A. No. 8 of 1954.

30 BEFORE PEREZ, JACKSON and HOLDER, C.J.J.
WEDNESDAY THE 11th DAY OF JANUARY, 1956,
ENTERED THE 13th DAY OF MARCH, 1956.

UPON MOTION by way of appeal this day made unto this Court by the Appellant in person from the judgement dated the 24th day of September, 1954, and the respondents not being called upon AND UPON reading the said judgement this Court Doth Order that the said judgement be affirmed and that the Appellant do pay to the Respondents the costs occasioned by this appeal, such costs to be taxed.

Fit for two Counsel.

40

BY THE COURT.
R. S. PERSAUD.
Registrar.

THE CONTENTION THAT LED TO THE APPEAL.

The Plaintiff submitted:

1. That Charles Austin, a witness called by the Plaintiff and proved hostile was bribed by the Defendants to prejudice the mind of the Judge, because it is impossible for the said Charles Austin to have informed John DeFreitas that the Plaintiff was offering him bribe, and neither of them set a trap or reported the matter to the Police, and nextly it is incredible that the Plaintiff would have called him to give false evidence when he did not receive a bribe to do so and told the plaintiff at all times up to the morning before the case was called that it is impossible for him to give any false evidence. The evidence of Charles Austin should not have been admitted, and the Judge should not have allowed his mind to operate on such evidence as could be seen in the reasons for decision. 10

2. That John DeFreitas said, inter alia: "The plaintiff came to me and said that he had obtained a purchaser", and the fact that he did not question by what authority did the plaintiff seek a purchaser, but instead he went with the plaintiff and the prospective purchaser proves that there was some prior arrangement of agency between the Plaintiff and Defendant Company. 20

3. That the Court's finding that the Plaintiff was endeavouring to find a purchaser of the said properties with the Will, knowledge and consent of the defendants, constitutes the finding that there was an implied contract.

4. That it is an impossibility for J. A. Charles to have canvassed Amin Sankar in October 1953, to purchase the said properties, when the said J. A. Charles knew nothing about the property until 3rd November, 1953, and at that time he was sent by Sankar Brothers Limited to offer \$190,000:— for the said properties, with further instructions to close the deal for \$200,000:— if needs be, and he did close for \$200,000:— without having the cause to call again on his Principals for ratification. J. A. Charles was not called to give evidence. 30

5. That the Judge was wrong when he found that the properties were sold to Amin Sankar, instead of Sankar Brothers Limited, because there is no such evidence.

6. That John DeFreitas would have had to pay the Plaintiff 3%, and Sankar Brothers Limited get nothing. But since under the law J. A. Charles would have had to refund any such commission to his Principals: Two option agreements were made to enable Sankar Brothers, Limited to collect 2%, and John DeFreitas retain 1%. The last option agreement was signed on 17th November, 1953, yet payment was made on the 19th November, 1953, and no further document was signed. 40

7. That the evidence of all the witnesses formed parts of the Res Gesta, but even if the Plaintiff's evidence was not believed by the Judge, the evidence for the defence if accepted is naturally faced with three questions of law:—

1. Whether there is any evidence stating that J. A. Charles was employed as an agent of the defendant Company for the sale of the said property for commission. Taking into account that documentary evidence proves that he was a buying agent and not selling agent.
2. Whether the evidence of the defendant Company through their legal representative John DeFreitas, amounts to an admission of a contract which existed between the Plaintiff and the defendant Company for the sale of the said properties for commission either expressed or so implied.
3. Whether in the absence of denial, the withholding of the available evidence of Ahmad Sankar does not amount to an admission by the defendants that the Plaintiff did negotiate with the said Ahmad Sankar for the sale of the said properties to Sankar Brothers Limited and caused the sale to be effected.

The trial Judge and the West Indian Court of Appeal decided in the negative. The Plaintiff relies on these points of law and now appeals to Her Majesty in Her Majesty's Privy Council, for final determination of these points, and any other point or points of law as the Appellant may be entitled to further raise in argument, or as Her Majesty's Privy Council may deem fit to apply.

THE CHIEF JUSTICE OF BRITISH GUIANA (IN CHAMBERS).
TUESDAY THE 7th DAY OF FEBRUARY, 1956.
ENTERED THE 18th DAY OF FEBRUARY, 1956.

UPON the petition of Chintamanie Ajit, preferred unto this Court on the 1st day of February, 1956. AND UPON READING the said petition and the affidavit of the petitioner AND UPON HEARING the petitioner in person and the Solicitor for the respondent IT IS ORDERED that an appeal herein to Her Majesty in Her Majesty's Privy Council be admitted on condition, firstly, that the petitioner Chintamanie Ajit, do give security to the satisfaction of the Registrar **10** in the sum of two hundred and fifty pounds sterling, within three months from the date hereof for the due prosecution of the appeal and for the payment of any costs that may be awarded to the respondent in any appeal that may be made by the petitioner to Her Majesty in Her Majesty's Privy Council; Secondly: that the petitioner do within one month from the date hereof make an appointment with the Registrar for the settlement of the record and give notice of the date of such appointment to the said respondent herein; and Thirdly: that the petitioner do within three months from the date hereof complete the preparation of printed copies of the record. **20**

Liberty to apply.

(Sgd) R. S. PERSAUD.

Registrar

No. 94140 F

Deeds Registry Department,
 10th February, 1956.

Received from C. Ajit, Esq., the sum of One Thousand Two Hundred Dollars being amount deposited \$1200:—, by way of security for costs of respondents of and incidental to hearing of cause before the Privy Council in re Chintamanie Ajit Vs The Demerara Storage Co. Ltd., pursuant to Order of Court admitting appeal No. 8 of 1954, in the W.I.C.A. **30**

Head of Receipt.

G. E. MEERABUX,

\$1200:—

J.J.J.

Financial Secretary.

initials of Officer drawing Receipt.

IN THE WEST INDIAN COURT OF APPEAL,
ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA.

Between:

CHINTAMANIE AJIT, Appellant (Plaintiff)

—and—

10 THE DEMERARA STORAGE COMPANY, LIMITED; 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, Demerara, British Guiana.

Respondents (Defendant)

(No. 232, of 1954. Demerara.)

BEFORE THE CHIEF JUSTICE OF BRITISH GUIANA (in Chambers)

THURSDAY THE 12th day of April, 1956.

ENTERED THE 25th DAY OF APRIL—1956.

20 UPON the petition of Chintamanie Ajit, preferred unto this Court on the 9th day of April, 1956, AND UPON READING the said petition and the affidavit of the said petitioner sworn to on the 9th day of April, 1956, AND UPON HEARING the petitioner in person and counsel for the respondents, IT IS ORDERED that an appeal herein to Her Majesty in Her Majesty's Privy Council be finally admitted.

LIBERTY TO ALL PARTIES TO APPLY.

BY THE COURT.

H. B. S. BOLLERS.

Registrar. (acting).

DOCUMENTS NOT INCLUDED IN RECORD.

- 30**
1. Request for Hearing.
 2. Notice to produce.
- DOCUMENTS OBJECTED TO BY RESPONDENTS' SOLICITOR BUT INCLUDED BY THE APPELLANT AS MATERIAL.

1. The argument that led to the appeal and questions of law arising therefrom

40 Note: The Appellant requests that the subpoena to Mr. Ahamd Sankar, a witness for the defence be included in the Appeal record. Solicitor for the Respondents does not object, but I am of opinion that the subpoena to a witness does not form part of the proceedings before the Court at first instance and accordingly I have not permitted subpoena to be included in the record of Appeal.

Dated the 25th day of November 1954.

H. C. B. HUMPHREYS,
Solicitor for Respondents.

A SINGH,
Deputy Registrar.

IN THE WEST INDIAN COURT OF APPEAL.

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

*Between :—*CHINTAMANIE AJIT, *Appellant. (Plaintiff).*

—and—

THE DEMERARA STORAGE COMPANY, LIMITED,
 a company incorporated in this colony under the
 provisions of the Companies (Consolidation) Ordin-
 ance Chapter 178, whose registered office is situate at
 lot "B" Water Street Georgetown Demerara, British
 Guiana.

10*Respondents (Defendants)*

BEFORE THE CHIEF JUSTICE (IN CHAMBERS)

TUESDAY THE 10TH DAY OF APRIL 1956.ENTERED THE 10TH DAY OF MAY 1956.

UPON the application of the above-named Appellant (Plaintiff)
 AND UPON READING the affidavit of the said Appellant (Plaintiff)
 in support thereof, AND UPON HEARING the Applicant in person,
 and Counsel for the Respondents; *IT IS ORDERED AND DIRECTED*
(BY CONSENT) that no payments be made by Mr. Mr. A. M. S.
 Barcellos, out of the funds coming into his hands as liquidator of the
 Respondent Company except by Order of this Court, save and except
 the payment of income tax by the Respondent Company with respect
 to the year of assessment 1956, until the hearing and final determina-
 tion of the Appeal by the Appellant, (Plaintiff) to Her Majesty in
 Her Majesty's Privy Council *AND IT IS FURTHER ORDERED THAT*
 the costs of this application be costs in the cause.

20

LIBERTY TO APPLY.

BY THE COURT.

30

H. B. S. BOLLERS,
 Registrar. (Acting).