Judgment 1, 1970

1

IN THE PRIVY COUNCIL

No. 3 of 1968

ON APPEAL

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

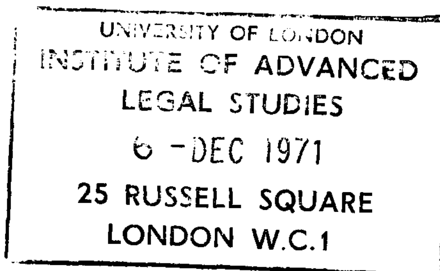
BETWEEN:

ENMORE ESTATES LIMITED (Respondents) — Appellant

- and -

RAMKHELLAWAN DARSAN (Applicant) — Respondent

# RECORD OF PROCEEDINGS



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LEGAL STUDIES
6 -DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1


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

Solicitors for the Appellant

GARBER, VOWLES & CO.,
37, Bedford Square,
London, W.C.1.

Solicitors for the Respondent

UNIVERSITY OF LONDON
INSTITUTE OF A[illegible]
LEGAL STUDIES
[illegible] -DEC 1971
25 RUSSELL SQUARE
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FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

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BETWEEN:

ENMORE ESTATES LIMITED
(Respondents)  Appellant

- and -

RAMKHELLAWAN DARSAN  Respondent
(Applicant)

---

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL | No. 3 of 1968

ON APPEAL

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

---

BETWEEN:

ENMORE ESTATES LIMITED
(Respondent) **Appellant**

- and -

10 RAMKHELLAWAN DARSAN
(Applicant) **Respondent**

---

RECORD OF PROCEEDINGS

---

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 1
Application for Workmen's Compensation filed in the Magistrate's Court, 20th June, 1964.

## No. 1

## APPLICATION FOR WORKMEN'S COMPENSATION

BRITISH GUIANA

In the Magistrate's Court of the Georgetown Judicial District to be held at Georgetown
20 within the said District
(Civil Jurisdiction)

Between:

RAMKHELLAWAN DARSAN, of Lot 401, Enterprise, East Coast Demerara **Applicant**

- and -

ENMORE ESTATES LIMITED, a company incorporated in this colony under
30 the Companies Ordinance Chapter 328 whose registered office is situate at 22 Church Street, Georgetown, Demerara **Respondents**

The applicant is a workman who sustained personal injury by accident arising out of and in the course of his employment whilst employed by the

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 1
Application for Workmen's Compensation filed in the Magistrate's Court, 20th June, 1964.
(Contd.)

Respondents whose registered office or principal place of business is at 22 Church Street, Georgetown, Demerara, within the Georgetown Judicial District.

PARTICULARS

| | | |
|---|---|---|
| 1. | The place of business and nature of business. | Plantation Non Pariel, East Coast Demerara. |
| 2. | Nature of employment of workman at time of accident and whether employed under opposite party or under a contract. | Cane Cutter. |
| 3. | Date and place of accident nature of work on which workman was then engaged and nature of accident and cause of injury. | 18th December, 1963 at Pln. Non Pariel, slipped, fell and jerked his back. |
| 4. | Nature of injury. | Injury to back. |
| 5. | Particulars of incapacity for work whether total or partial and estimated duration of incapacity. | 70% permanent disability. |
| 6. | Monthly wages during the 12 months previous to the injury if the applicant has been so long employed under the employer by whom he was immediately employed or if not during any less period he has been employed. | $115.02 per month. |
| 7. | Monthly amount which the applicant is earning or able to earn in some suitable employment or business after accident. | Nil. |

10
20
30
40

| | | | |
|---|---|---|---|
| 8. | Payment allowance or benefits received from employer during the period of incapacity. | - | In the Magistrate's Court of the Georgetown Judicial District British Guiana |
| 9. | Amount claimed as compensation. | $6,048.00 plus medical and travelling expenses. | |
| 10. | Date of service of statutory notice of accident on employer and whether given before workman voluntarily left employment in which he was injured. | Employers knew of accident. | No. 1 Application for Workmen's compensation filed in the Magistrate's Court, 20th June, 1964. (Contd.) |
| 11. | If notice not served reason for omission to serve same. | Employers knew of accident. | |
| 12. | Date of claim for compensation. | 18th December, 1963. | |

Georgetown, Demerara.

Dated this 20th day of June, 1964.

D.C. Jagan.

Counsel for Applicant.

This application is made and entered by Mr. DEREK C. JAGAN, Barrister-at-Law, whose address for service and place of business is at his Chambers, lot 217 South Street, Lacytown, Georgetown, Demerara.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 2
Answer by Respondents, 28th July, 1964.

## No. 2

## ANSWER BY RESPONDENTS

TAKE NOTICE that the Respondents intend to oppose the application for compensation in respect of personal injuries alleged to have been caused by accident arising out of and in the course of his employment on the following grounds: 10

1. That the applicant was examined by Dr. H. Beadnell M.R.C.S., L.R.C.P., and Mr. N.P. Stracey, Senior Surgeon who found evidence of an old injury to the back.

2. The applicant's incapacity was not caused by the alleged accident but by a pre-existing diseased condition.

3. The Respondents have paid the applicant compensation for the period 19th December, 1963 to the 28th May, 1964, amounting to $405.00 20

4. The amount of compensation claimed is not due and the Respondents are not liable to pay any further sum in respect of compensation.

5. The monthly wages of the applicant as calculated in accordance with the Workmen's Compensation Ordinance amount to $95.03.

AND FURTHER TAKE NOTICE that the names and addresses of the Respondents and their solicitor are -

Of the Respondents 30

ENMORE ESTATES LIMITED
22, Church Street,
Georgetown.

Of their Solicitor

HERMAN WILLIAM deFREITAS,
2, High Street,
Newtown,
Georgetown.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 2
Answer by Respondents, 28th July, 1964.
(Contd.)

Dated the 28th day of July, 1964.

H.W. deFreitas.

Solicitor for the Respondents.

To the Clerk of Court,
Georgetown Judicial District,
10 Georgetown.

and

To the abovenamed applicant

and

To D.C. Jagan Esq.,
Barrister-at-Law,
217 South Street,
20 Lacytown,
Georgetown.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964.

No. 3

NOTES OF EVIDENCE OF MAGISTRATE

FOR APPLICANT : MR. JAGAN

FOR RESPONDENTS: MRS. KHAN

HULBERT HUGH sworn states:- I am a registered Medical Practitioner practising in this Colony for the past twenty-three (23) years. I have been an F.R.C.S. in England for the past twenty-five (25) years. I have experience in Industrial cases. On 10th June, 1964 I examined the applicant. He gave a history of having fallen on 18th December, 1963 while fetching a bundle of cane on his head. He said that since then he has had pain in the middle of his back despite treatment. Physical examination showed that there was severe restriction of movements of his middle spine. I sent him for an X-ray on the said day. The X-ray showed a partly healed compression fractures of the bodies of the 11th and 12th Thoracic Dorsal Vertebrae. This could have been the result of hyper flexion of the spine. This could have been caused by the accident described. I assessed applicant at 70% permanent disability as I considered that he would be unfit to follow his usual occupation as a cane cutter.

Cross-examined by Mrs. Khan. Applicant did not tell me that he had not injured his back prior to 18th December, 1963. In my opinion the X-ray did not show that it was a back injury dating back to say 18 months before his accident. I am not aware of there being an X-ray taken immediately after the accident.

Re-examined by Mr. Jagan:- I say that the injury was not eighteen (18) months prior to the date of the accident because from the X-ray photograph healing of the 12th thoracic vertebra is incomplete and there is still unabsorbed callus at the site of the fracture.

HERBERT BEADNELL sworn states:- I am a Registered Medical Practitioner practising in this Colony for the past twelve (12) years. I have experience in Industrial matters. On 20th December 1963 I examined

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964.
(Contd.)

applicant. He said that he had fallen down and jerked his back on 18th December 1963. I found substantially nothing except that applicant complained of pain when bending his back. It was in the lumbar-sacral region, that is the lower part of his spine. I sent him to be X-rayed in the Georgetown Hospital. I saw the X-ray between the 20th December 1963 and the 6th January 1964 on which date I next saw applicant. The X-ray showed
10 an old fracture of the body of the 12th thoracic vertebra that is to say a little above the level of one's belt. There were small out growths of bone around the vertebral margins which would have taken a minimum of one year following the injury to develop. On 6th January, 1964 I referred applicant to Mr. Stracey of the Georgetown Hospital for an opinion. I did not see applicant again until the 11th April 1964. On this day I saw him and he said that he had a slight back pain when
20 his bowels were moved and that he had some diarrhoea. On 18th April 1964 I again saw him and he complained of pain in his lower back and that he still had diarrhoea. On that date he was admitted to the Lusignan Hospital for treatment of the Diarrhoea rather than the back ache. I again saw him on 9th May 1964 when he complained of mid limb or backache. I found that the movements of his spine were perfectly normal. I saw him for the last time on the 26th May, 1964 when he was
30 still complaining of pain in the upper lumbar region. I felt there was no good reason for his pain and I discharged him and suggested that he should be examined by a referee. On 26th May, 1964 I felt that applicant would have recovered from his injury of the 18th December, 1963. On the 26th May, 1964 I issued a Medical Certificate on Form 16 as required by Section 33 of the Workmen's Compensation Regulations. At first he complained of pain in the lumbar sacral region
40 which is the bottom part of the lumbar spine. On the last occasion he complained of pain in the upper lumbar region. In my opinion I would say that the pain he complained of latterly is of mental origin rather than physical and follows on his recent knowledge of an old fracture of his back. When I say that the applicant had such recent knowledge I do not know this as a fact. I merely assumed that he had learnt of this. I do not consider that the applicant suffered any

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964.
(Contd.)

permanent disability as a result of the accident of the 18th December, 1963. When I discharged applicant on 26th May 1964 I was of the opinion that applicant was fit to perform his normal duties as a cane cutter.

I recommended that applicant should be examined by a medical referee because the applicant had complained of feeling pain and because I did not agree with a certificate submitted by Mr. Stracey, the Surgeon at the Georgetown Hospital to me concerning the injury to the applicant. 10

Cross-examined by Mr. Jagan:- On reading Mr. Stracey's certificate I formed the impression that Mr. Stracey had implied that the fracture to the 12th dorsal vertebra of the applicant had resulted from his injury of December 18th, 1963. This is the said Form 16 which I gave the applicant (Tendered and marked Exhibit 'A'). In Exhibit 'A' 20 I stated that applicant was not fit for normal duties or light work. This was on 26th May, 1964. I also stated in Exhibit 'A' that applicant's period of disability would be for several months. I do not think that applicant's injury on 18th December 1963 would have aggravated the old injury of the 12th dorsal vertebra which applicant had prior to 18th December 1963. At whatever time applicant sustained the injury to his 12th dorsal vertebra he would have suffered pain then but not 30 necessarily severe pain. Once the injury to the 12th dorsal vertebra had healed then applicant would not necessarily suffer pain or any disability. I did say in Exhibit 'A' the injuries or condition described above were aggravated or otherwise influenced by any pre-existent disease, deformity or malformation.

Re-examined:- When I stated in Exhibit 'A' under "Prognosis", "Several months" I was referring to the likely duration of the applicant's subjective 40 complaints in regard to pain which as I said before was due to his mental attitude.

Adjourned to 29.9.64.

Notes of Evidence of Magistrate dated 29th September, 1964.

Continued: 29.9.64.

NEIL PATRICK ST CLAIR STRACEY sworn states:- I am a Registered Medical Practitioner and am the Senior

Surgeon at the Georgetown Hospital. I have experience in Industrial injuries. On 23rd January, 1964 I first saw the applicant. He complained of a pain in the back following an injury when he fell and jerked his back on 18th December, 1963. He also complained of pains when having a bowel motion. On clinical examination he had some tenderness over the middle region of the spine. All spinal movements were full and free except for
10 extension of the spine which was slightly limited. X-ray examination of his spine showed evidence of an old compression fracture of the 12th thoracic vertebra and a diagnosis was made accordingly. I started him on treatment and when next I saw him on 5th March 1964 he was very much improved but still had some pain. Treatment was therefore continued throughout the months of March and April 1964 and when I next saw him on 14th May 1964 he had no improvement with treatment. I advised
20 certain exercises and requested the patient to return in three (3) weeks time but there is no record that he ever returned. At the site of the said fractured vertebra there was evidence of osteophytic outgrowths of bone. From the X-ray and the said outgrowths I would say that the said compression fracture outdated his date of injury (18th December, 1963) say by about six (6) months or more.

Cross-examined by Mr. Jagan:- Assuming that
30 applicant did suffer from the said fracture I would expect him to have suffered pain at the time of such fracture and subsequently also while fetching and cutting cane. The injury of the 18th December 1963 could have aggravated the pre-existing condition of the particular fracture referred to. My treatment had not been completed when applicant stopped visiting me. Doctor Beadnell referred applicant to me in the first instance.

40 Re-examination:- declined.

With permission of Court by Mrs. Khan:- I saw applicant on 14th May, 1964 and subsequently I wrote Doctor Beadnell on the said date. After such examination I formed the opinion that the said old compression fracture had been healed.

Cross-examination by Mr. Jagan:- declined.

Adjourned to 8.10.64.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 15th October, 1964.
(Contd.)

Continued: 15.10.64.

RAMKHELLAWAN DARSAN sworn states:- I am the applicant herein. I was employed as a cane cutter by the Respondents whose registered address is situated at 22 Church Street, Georgetown in the Georgetown Judicial District. On 18th December, 1963 while so employed at Plantation Non Pareil, East Coast, Demerara and whilst fetching a bundle of cane I slipped and fell and jerked my back. I felt pain and reported the matter to the driver. He sent me that day to the Dispenser at Non Pareil and I went there then. He gave me some medicine. On 20th December, 1963 I saw Doctor Beadnell and he sent me to the Georgetown Hospital for an X-ray. I later took the X-ray to Doctor Beadnell and he looked at it and sent me to Mr. Stracey at the Georgetown Hospital. Mr. Stracey treated me from 23rd January, 1964 to 14th May, 1964. Mr. Stracey told me to return on 4th June, 1964 but I did not go because on 27th May, 1964 I received this document from Mr. Christiani the Personnel Manager and he told me to see him next day (Tendered and marked Exhibit 'B'). I saw one Patrick Narine of the Personnel Department and he told me that I would cease to get compensation as from then and that there was no work for me as I had a fractured back. He also told me not to go to Mr. Stracey for further treatment. For this reason I did not go to Mr. Stracey. I ceased to get compensation as from 28th May 1964. I received from 19th December 1963 to 28th May 1964 compensation amounting to Four Hundred and Five Dollars ($405.00) in all. My average monthly wages are One hundred and fifteen dollars and two cents ($115.02). During the said period I should have received Four hundred and sixty nine dollars and eighty cents ($469.80) and so I was short paid by sixty-four dollars and eighty cents ($64.80). Before this accident I never had any injury to my back. I never suffered from my back. I still feel pain in my back.

Cross-examined by Mrs. Khan: Patrick Narine did tell me as I said that I would be paid no more compensation. I asked Patrick Narine to let me see Mr. Christiani but he told me that Mr. Christiani was not there and I looked for myself but did not see Mr. Christiani. Patrick Narine

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 15th October, 1964.
(Contd.)

gave me a Form 16 - a Medical Certificate and a notice determining my compensation. Exhibit 'A' is the Form 16 I got. I am quite certain that I went to the Personnel Office on 28th May 1964. I signed as having received Exhibit 'A' and put the date under my signature. I see Exhibit 'A'. The signature and the date on Exhibit 'A' are in my handwriting. I wrote them. The date on Exhibit 'A' is 6th June, 1964. I know Mr. Christiani's signature and Patrick Narine's signature. Their signatures were already on Exhibit 'A' when I signed Exhibit 'A'. I am speaking the truth. I told Mr. Narine that I had to go back to Mr. Stracey on 4th June, 1964. I told Mr. Narine this on the 28th May, 1964. It is not true that I never told Mr. Narine this. I did tell him I went to Doctor Hugh some time in June 1964. I went to Doctor Hugh because I know he is a Surgeon specialist. I know that Mr. Stracey is a Surgeon-Specialist. I thought it best to change my doctor. Doctor Hugh told me that I had a fracture of my back. He did not tell me it was an old fracture. I never told Doctor Hugh that I had fallen down some months prior to this injury in question.

Re-examined by Mr. Jagan:- I did sign Exhibit 'A' on 6th June, 1964. This is the very date when I received Exhibit 'A'. I did not receive Exhibit 'A' on 28th May, 1964. I received it on 6th June, 1964. On 28th May, 1964 I received another document from Patrick Narine. This is the document I received from Patrick Narine on 28th May, 1964. (Tendered and no objection by Mrs. Khan and marked Exhibit 'C').

Case for applicant: Application by Mrs. Khan for adjournment to summon Patrick Narine in view of applicant's evidence.

Adjourned to 29.10.64.

Continued: 29.10.64.

Notes of Evidence of Magistrate dated 29th October, 1964.

PATRICK NARINE sworn states:- Up to August, 1964 I was employed by the Respondents as Workmen's Compensation Clerk. I have been so employed for over four (4) years. I know the applicant. On 27th May, 1964 applicant came to me where I worked with Respondents at Plantation Enmore. On that

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 29th October, 1964.
(Contd.)

date I told him that his compensation which he was then receiving would cease and I gave him Exhibit 'C' (a form terminating his compensation) as from 28th May, 1964. On the 6th June, 1964 I told applicant that he would be getting no more work with the Respondents. I did not tell him this on 27th May, 1964. I told applicant on 6th June 1964 that he was not to return to Mr. Stracey, Surgeon at the Georgetown Hospital for treatment. When I gave him Exhibit 'A' (this was on 6th June 1964). I told him that if he disputed the medical certificate from Doctor Beadnell he would have to produce a Medical Certificate from his own doctor. Applicant did not tell me when I saw him on 27th May 1964 that he had to go back to Mr. Stracey. I did not know that he had to go back to Mr. Stracey.

Cross-examined by Mr. Jagan:- It may have been the 28th and not the 27th May when I saw applicant. I am certain that it was on the 6th June and not 28th May 1964 that I told applicant not to see Mr. Stracey. As far as I know it is the practice that as soon as Exhibit 'C' is given to the workman medical treatment ceases.

Re-examination:- declined.

Case for Respondents:

Mrs. Khan's address:- Applicant has claimed six thousand and forty eight dollars ($6,048.00) compensation and medical and travelling expenses. Doctor Hugh's applicant suffered 70% Permanent Disability after only one (1) examination that is on 10th June, 1964. Mr. Stracey who examined applicant on several occasions the first being on 23rd January, 1964 - Mr. Stracey said all spinal movements were full and free except for extension of spine where there was slight limitations. Mr. Stracey said fracture completely healed. Dr. Hugh said - partly healed. Mr. Stracey's evidence supports Doctor Beadnell. Doctor Hugh's evidence ought not to be relied on. Mr. Stracey stated that as the applicant did not return to him after 14th May, 1964 he was not in a position to make an assessment. Under Section 48(1) of the Workmen's Compensation Regulations the Court can refer the matter to Mr. Stracey or to a Medical Referee. This Court ought to refer the applicant to a Medical

Referee as it would be unsafe to rely on the evidence of Dr. Hugh alone.

Mr. Jagan's address:- Doctor Hugh's evidence ought to be relied on. It is not the quantity of examinations but the quality of examination. From the evidence of Patrick Narine from the Respondents applicant was told not to return to Mr. Stracey. It was not applicant's fault that Mr. Stracey could not give assessment. The Respondents if they had so desired could themselves have requested a Medical Referee for assessment. The applicant ought to succeed as it was due to the accident in question that he is permanently disabled.

Adjourned for decision:

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964.
(Contd.)

Exhibit 'A' Form 16 dated 26th May, 1964.

EXHIBIT 'A' - FORM 16

Exhibit 'A'

R.M.M.

-M-

10.9.64.

10

FORM 16

Regulation 33

Workmen's Compensation (Consolidation) Ordinance, 1952

CERTIFICATE OF A MEDICAL PRACTITIONER

Name ..... Ramkhellawan Darsan .....
Age ..... 33 ..... Race ..... Indian .....
Sex ..... Male .....
Residence ..... Enterprise EC .....
Where employed ..... Non Pareil Estate .....
Nature of Employment ..... Cane cutting .....
Nature of accident ..... Fell and jerked his back
Date of accident ..... 18th December 1963 .....
Date of Medical Examination ..... 26th May 1964

20

RESULTS OF MEDICAL EXAMINATION

(a) Subject complaints by patient ..... Pain on back about 2nd lumbar vertebral level .....

30

(b) Objective physical findings ..... Clinically Nil ..... Radiologically old crush fracture body of 12th thoracic vertebra .....

(c) Diagnosis ..... Strained back. Old fracture 12th thoracic vertebra .....

In my opinion:

The findings of my examination are not consistent with the nature of the accident as described.

The injuries or conditions described above were aggravated or otherwise influenced by any

40

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964.
(Contd.)
Exhibit 'A' Form 16 dated 26th May, 1964.
(Contd.)

pre-existent disease, deformity or malformation.

Secondary complications are not present.

Such complications are not the result

PROGNOSIS:

Can the Claimant perform his normal duties?
10 No.

Is he permanently disabled? No.

If so, state percentage? -

Is he temporarily disabled? Yes.

If so, estimate period of disability? Several months.

20 Can he perform light work? No.

REMARKS -

In my opinion this patient suffered a strain of his back as a result of the injury he claims to have had. It is my opinion the effects of this strain must now have ceased: There is no objective sign now of a strain. In my opinion the pain he is now complaining of is referable to an old fracture of the 12th thoracic vertebra. This fracture must have occurred a considerable time prior to the date
30 of the injury now complained of, as osteophytes at the site, shown in the X-ray taken shortly after the recent injury, could not have developed in less than several months, at the least. As the surgeon specialist now treating the patient has certified that his recent injury caused this fracture.

(Sgd.) H. Beadnell

M.R.C.S. L.R.C.P.

Date 26th May, 1964.

I recommend his being examined by a medical
40 referee.

Place ..... Enmore .....

B.G. L-T29,889.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 10th September, 1964. (Contd.)
Exhibit 'A' Form 16 dated 26th May, 1964. (Contd.)

WORKMEN'S COMPENSATION

I, R. Darsan hereby acknowledge receipt of the original of this certificate Form 16 Form 'D', and I understand, that I have ten (10) days in which to produce to the Estate authorities a counter medical certificate Form 16 should I not agree with the findings of the Estate Medical Officer.

Signed R. Darsan          Witness ?

Date 6.6.64.          Witness ?

10

CERTIFIED - A TRUE COPY

(Sgd.) L. Naurayan

Clerk of the Court
Georgetown Judicial District.

20

## EXHIBIT 'B' - LETTER TO APPLICANT

Exhibit 'B'

R.M.M.

-M-

15.10.64.

10

Personnel Dept. EHP

27.5.64.

R. Darsan

# 1935 NP 8

20 Dear Sir,

You are hereby required to call at this dept. tomorrow morning.

Please do not fail.

Yours faithfully,

Robert Christiani.

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 29th October, 1964.
(Contd.)

Exhibit 'C'
Notice given under Workmen's Compensation Ordinance dated 28th May, 1964.

EXHIBIT 'C'

NOTICE GIVEN UNDER WORKMEN'S COMPENSATION ORDINANCE

Exhibit 'C'

R.M.M.

-M-

15.10.64.

10

WORKMEN'S COMPENSATION - I

Name: ..... R. Darsan .....

No. ..... 1935 .....

Address: ..... Enterprise .....

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Sir/

Notice is hereby given to you in accordance with Section 12 of the Workmen's Compensation Ordinance, Chapter 111, and the Workmen's Compensation (Amendment) Ordinance No. 11 of 1960, that, in accordance with the medical report received as from the 28.5.64..... compensation payments in respect of an injury sustained by you on 18.12.63. during and in the course of your employment shall cease
decrease from $ ..... per day to $ ..... per day, as you have refused to work in a suitable employment, to wit ..... which was available at the time of such refusal.

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Yours faithfully,

Robert Christiani.

Employer.

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WORKMEN'S COMPENSATION

I, R. Darsan hereby acknowledge receipt of the original of this certificate Form 'D', and I

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 3
Notes of Evidence of Magistrate dated 29th October, 1964.
(Contd.)

Exhibit 'C'
Notice given under Workmen's Compensation Ordinance dated 28th May, 1964.
(Contd.)

understand that I have ten (10) days in which to produce to the Estate authorities a counter medical certificate Form 18 should I not agree with the findings of the Estate Medical Officer.

| | | | |
|---|---|---|---|
| Signed: | R. Darsan | Witness | ? |
| Date: | 28.5.64. | Witness | ? |

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In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 4
Decision of Magistrate dated 31st May, 1965.

No. 4

DECISION OF MAGISTRATE

DECISION

Dismissed.

C.F. - $25.00.

R.M. Morris.

Magistrate.

Georgetown Judicial District.

31.5.65.

10

In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 5
Memorandum of Reasons for Decision dated 26th June, 1965.

No. 5

MEMORANDUM OF REASONS FOR DECISION

In this case the applicant claimed compensation for an injury to his back on 18th December, 1963 arising out of and in the course of his employment with the Respondents.

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2. Medical testimony was conflicting.

Mr. Hugh who gave evidence for the applicant said inter alia:-

(a) That there was severe restriction of the middle spine.

(b) X-ray showed partly healed compression fractures of bodies of 11th and 12th thoracic dorsal vertebrae.

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(c) That he assessed applicant at 70% Permanent Disability.

(d) That the X-ray did not show that it was a back injury dating back to say eighteen (18) months before accident in question.

3. On the other hand, Doctor Beadnell who gave evidence for the Respondents said inter alia:-

(a) That X-ray showed

(i) an old Fracture of the body of the twelfth (12th) Thoracic Vertebra.

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(ii) small outgrowths of bone around vertebral margins which would have taken a minimum of one (1) year following the injury to develop.

(b) That after finally seeing applicant on 26th May, 1964 it was his opinion that there was no good reason for his pain and discharged him and suggested that applicant should be examined by a Medical Referee.

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In the Magistrate's Court of the Georgetown Judicial District British Guiana

No. 5
Memorandum of Reasons for Decision dated 26th June, 1965.
(Contd.)

4. Mr. Stracey, Senior Surgeon at Georgetown Hospital also gave evidence and said inter alia:-

(a) X -ray revealed evidence of an OLD COMPRESSION FRACTURE of 12th Thoracic Vertabra.

(b) At site of fracture there was evidence of "OSTEOPHYTIC" outgrowths of bone.

(c) From the X-ray and the said outgrowths the said compression fracture ante-dated the injury say by six (6) months or more.

5. It is true that Mr. Stracey under cross-examination by Mr. Jagan said that the injury in question could have aggravated the pre-existing condition.

6. From a review of the following authorities:-

(1) DEMERARA CO. LTD. -v- BURNETT - The West Indian Reports vol. 1 part 3 at p. 547 - 552.

(2) JAGNARINE -v- BOOKERS SUGAR ESTATES LTD. (1956) L.R.B.G. 136.

(3) McFARLANE -v- HUTTON BROS. (STEVEDORES LTD.) 96 L.J.K.B. 357

the rule did not seem to be, that any degree of aggravation be it ever so minute, was sufficient to warrant a conclusion in favour of the injured person. Rather it seemed to be that the aggravation must be material.

7. From the evidence of Mr. Stracey I did not form the impression that the aggravation was material.

8. The applicant also gave evidence.

9. On a review of the evidence as a whole I accepted and relied on the evidence of Mr. Stracey

and Doctor Beadnell and found as a fact that the applicant was not suffering from any Permanent Disability, the result of the injury in question.

In the result I dismissed the claim.

R.M. Morris.

Magistrate,

Georgetown Judicial District.

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26.6.65.

In the Full Court of the Supreme Court of British Guiana

No. 6
Grounds of Appeal,
28th January, 1966.

No. 6

GROUNDS OF APPEAL

IN THE FULL COURT OF THE SUPREME COURT OF BRITISH GUIANA

ON APPEAL FROM THE MAGISTRATE'S COURT FOR THE GEORGETOWN JUDICIAL DISTRICT
(Civil Jurisdiction) C.J. No. 2935/64

Between:

RAMKHELLAWAN DARSAN, of lot 401 Enterprise, East Coast Demerara
Applicant

- and -

ENMORE ESTATES LIMITED, a company incorporated in this colony under the Companies Ordinance Chapter 328 whose registered office is situate at 22 Church Street, Georgetown, Demerara
Respondents

GROUNDS OF APPEAL

TAKE NOTICE that the following are the grounds of Appeal herein notice whereof was dated the 2nd June 1965 and served on the same day.

1. The decision was erroneous in point of law in that:-

(a) The learned Magistrate erred in holding that the Appellant was not entitled to be compensated under the Workmen's Compensation Ordinance although his pre-existing condition was aggravated by the accident.

(b) The learned Magistrate erred in holding that the Appellant can only be compensated if the aggravation to his pre-existing condition was material.

(c) There was no evidence upon which the learned Magistrate could hold that the

aggravation to the Appellant's pre-existing condition was not material.

(d) The learned Magistrate erred in finding that the Appellant was not entitled to be compensated under the provisions of the said Ordinance.

(e) There was no evidence by Mr. Stracey upon which the learned Magistrate properly could hold that the Appellant was suffering from no disability.

2. The decision was one which the Magistrate reviewing the evidence reasonably could not have properly made.

Dated this 28th January, 1966.

D.C. Jagan

Counsel for Appellant

(Applicant)

To:- His Worship,
Mr. R. Morris,
Georgetown Judicial District

- and -

To:- The above-named Respondents.

RECEIVED this 28th day of January, 1966, at 1.35 p.m.

B. Dyal,

Appeal's Clerk.

Georgetown Magistrate's Office.

In the Full Court of the Supreme Court of British Guiana

No. 7
Judgment of the Full Court, 15th April, 1966.

No. 7

JUDGMENT OF THE FULL COURT

BEFORE BOLLERS AND VAN SERTIMA, JJ.

1966: March 11, 12.

D. Jagan for appellant. 10

J.A. King for respondents.

JUDGMENT

This is an appeal against the decision of a Magistrate of the Georgetown Judicial District who dismissed an application made by the appellant (the workman) for an award of compensation under the provisions of the Workmen's Compensation Ordinance, Cap. 111, in respect of an injury to his back sustained on the 18th of December, 1963 while 20 fetching a bundle of cane on his head, in an accident which arose out of and in the course of his employment by the respondents (the employers) as a cane cutter.

The appellant received compensation from the respondents of periodic payments amounting to the sum of $405 (four hundred and five dollars) on the basis of an average monthly wage of $115.02 (one hundred and fifteen dollars and two cents), covering the period 19th December, 1963, to 28th May, 1964, 30 thus showing that the respondents admitted that the injury was caused by accident arising out of and in the course of his employment.

The evidence which was led in the Magistrate's Court disclosed that the appellant on the 18th day of December, 1963, while fetching a bundle of cane, slipped and fell and jerked his back. He felt pain and reported the matter to the driver of the gang. On the 20th December, 1963, he was examined by Dr. Beadnell, the employers' Medical Officer, who 40 ordered an X-ray of the back and, having considered it, sent the patient to Mr. Neil Stracey, Senior Surgeon of the Georgetown Hospital.

Dr. Beadnell stated that the X-ray photograph showed an old fracture of the body of the twelfth

thoracic vertebra, and there were small growths of bones around the vertebral margin which would have taken a minimum of one year following the injury to develop. Dr. Beadnell saw the patient again on the 6th January, 11th April and 9th May, 1964, when the appellant complained of backache and diarrhoea. The doctor however found that the movements of the spine were normal and there was no good reason for pain and discharged him on the 26th May, 1964, when he considered that the appellant would have recovered from his injury of the 18th December, 1963, and he was fit for work. He however suggested that the appellant should be examined by a referee.

On that date Dr. Beadnell issued a medical certificate on Form 16, as required by Regulation 33 of the Workmen's Compensation Regulations made under Section 46 of the Workmen's Compensation (Consolidation) Ordinance, 1952, in which he stated that the patient complained of pain in the back about the second lumbar vertebral level and that radiology had revealed an old crush fracture of the twelfth thoracic vertebra. His diagnosis was, that the patient was suffering from a strained back of the old fracture. In his opinion the findings of the examination were not consistent with the nature of the accident as described, and the injuries or conditions prescribed were aggravated or influenced by the pre-existing disease.

In his evidence Dr. Beadnell was of the opinion that the pain of which the appellant complained was of mental origin rather than physical, and followed upon his recent knowledge of the old fracture of the back. He was therefore of the opinion that the appellant had not suffered any permanent disability as a result of the accident of the 18th December, 1963, and was fit to perform his normal duties on the 26th May, 1964. This, however, was in contradiction of his opinion in his certificate of that date in which he had stated that the appellant could not then perform his normal duties and that he was in fact temporarily disabled. In his certificate Dr. Beadnell went so far as to state in answer to specific questions that the appellant was temporarily disabled and would be so for several months and could not perform light work.

Under the heading "REMARKS" in the certificate, the doctor gave his opinion that the patient had

In the Full Court of the Supreme Court of British Guiana

No. 7
Judgment of the Full Court.
15th April, 1966.
(Contd.)

suffered a strain of his back as a result of the injury he claimed to have had, but the effects of the strain had then ceased.

Immediately after that the doctor in the certificate stated that the pain that the patient was now complaining of was referable to the old fracture of the twelfth thoracic vertebra, which fracture would have occurred a considerable time prior to the injury then complained of. 10

In view of the inconsistencies existing between the information given in the medical certificate and his evidence, Dr. Beadnell's evidence could hardly be considered satisfactory.

Mr. Stracey first saw the appellant on the 23rd January, 1964, and on clinical examination found some tenderness over the middle region of the spine. All spinal movements were full and free except for the extension of the spine which was 20 slightly limited. Mr. Stracey was also of the opinion that the X-ray examination revealed an old compression fracture of the twelfth thoracic vertebra. He treated the patient and next saw him on the 5th March, 1964, when he was very much improved but still had pain. Treatment was continued throughout the months of March and April 1964, and when he next saw the patient on the 14th May, 1964, the appellant had not improved by treatment. 30

The appellant never returned to Mr. Stracey because he was prevented from so doing by the respondents' employee and agent, the Personnel Officer, who delivered to him a notice in accordance with Section 12 of the Ordinance, that by virtue of the medical report compensation payments would cease on the 28th May, 1964. Mr. Stracey therefore had no opportunity of making an assessment whether the appellant had suffered a permanent partial disability or a temporary disability. Mr. 40 Stracey was however of the opinion that the injury of the 18th December, 1963, could have aggravated the pre-existing condition of the fracture referred to.

It is clear that on the evidence the sole issue that arose at the hearing was whether or not

the appellant was entitled to compensation on the basis of having sustained a permanent partial disability, and indeed it must be observed that in his application for compensation the appellant had alleged a 70% permanent disability. And the respondents, in their answer, pleaded that the amount of compensation claimed was not due and that they were not liable to pay any further sums in respect of compensation.

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On this evidence the Magistrate stated in his memorandum of reasons that he did not form the impression that the aggravation was material, and found as a fact that the applicant was not suffering from any permanent disability the result of the injury in question. From a review of the authorities of Jagnarine v. Bookers Sugar Estates Ltd., (1956) L.R.B.G. 136, Demerara Co. Ltd. v. Burnett 1 W.I.R. 547 - 552, it appeared to him that the rule

20 did not seem to be that any degree of aggravation, be it ever so minute, was sufficient to warrant a conclusion in favour of the injured person. He felt that the aggravation must be material. He thenproceeded to dismiss the claim.

Counsel for the appellant has raised two points in this appeal which may be conveniently summarised as follows:

(1) The Magistrate erred in thinking that on the authorities the aggravation of the pre-existing

30 condition by the injury had to be material, and in any case there was no evidence either way, that is, that the aggravation was material or not material. Under the proviso to section 3(1) of the Workman's Compensation Ordinance, Cap. 111, as enacted in paragraph (c), it was on the respondents (the employers) to show on a balance of probabilities that the aggravation was not material, if indeed materiality was a question to be considered at all.

(2) On the evidence if this Court were to

40 hold that the appellant was not entitled to succeed to compensation on the basis of permanent partial incapacity, then he should be paid periodic payments from the date of the accident for a temporary disability in accordance with section 8(1)(d) of the Ordinance until the incapacity was proved by the employers to have ceased.

In the Full Court of the Supreme Court of British Guiana

No. 7
Judgment of the Full Court, 15th April, 1966.
(Contd.)

The main contention of Counsel for the respondents, on the other hand, was that the circumstances of this case fell squarely within the proviso as contained in Section 3(1)(c) of the Ordinance and that the employers could escape liability if it were proved that the injury did not aggravate the pre-existing condition in a material degree. He also submitted that it was too late a stage for this Court to grant an amendment to the claim which would have the effect of raising an entirely new issue which was never considered in the Court below and that was, whether the appellant was entitled to compensation or not on the basis of a temporary incapacity.

It is convenient for us to deal, firstly, with the second point, and to observe that the authority relied on by Counsel for the appellant, that is, Hughes v. Reed & Co., (1938), 31 Buw. Compensation Cases 11, for the submission that this Court in the circumstances should remit the case to the Magistrate to assess, fix and order compensation on the basis of temporary incapacity or to adjudicate thereon, does not support this contention. In that case the workman in his application had pleaded that he was totally incapacitated, and the employers in their answer alleged that he had not been since a certain date wholly or partially incapacitated. It was held by the Court of Appeal that in those circumstances the whole issue of the workman's incapacity was before the Court and the medical evidence was addressed to the whole problem, and there could properly be remit to the County Court Judge.

In the instant case the respondents denied the allegation of permanent partial incapacity and merely went on to state that they were not liable to pay any further sum in respect of compensation. They did not state categorically that they were not liable to pay compensation on the basis of temporary incapacity, either total or partial. The question then of the appellant's temporary incapacity was never an issue in the Court below, and the whole of the medical evidence was addressed to the problem of whether the appellant had sustained an injury giving rise to a permanent partial disability or not. That issue was the sole point considered in the Court below and we are of the same view as

expressed by Luckhoo, C.J., and Chung, J., in this Court in the case of Buddy Appana v. Berbice Estates Limited, No. 1368 of 1965 at page 8, that as the claim filed was in respect of permanent partial disability and the medical evidence and arguments adduced before the Magistrate proceeded on that basis, the appellant chose to stand or fall by his claim, and it is now too late a stage for him properly to ask this Court to adjudicate on an alternative claim or to refer the matter back to the Magistrate to put his claim on a different basis which was never canvassed in the Court below.

In any event, the English authorities would not be particularly helpful on this point as in England compensation in the form of periodic payments is awarded in respect of a permanent or temporary incapacity, thus eliminating the question of prejudice where one situation or the other is not canvassed in the Court below. In this Colony compensation in the form of a lump sum is awarded in the case of permanent incapacity and periodic payments are awarded in the case of temporary incapacity. Thus an employer would be severely prejudiced if the whole case proceeded on the basis of one or the other, and an amendment could be obtained at a very late stage of an appeal enabling a workman-appellant to obtain an adjudication on the issue which was not raised in the Court below.

To return to the first point urged by Counsel for the appellant, we should consider, firstly, the local case of Jagnarine v. Bookers Sugar Estates Ltd., (1956) L.R.B.G. 136, where a workman, prior to the date of an accident, was suffering from hernia of which he stated he was not aware. On that date he suffered an injury arising out of and in the course of his employment which aggravated his pre-existing condition. It was contended on behalf of his employers that the workman by reason of his pre-existing condition was not entitled to payment of compensation under the provisions of the Ordinance in respect of the injury sustained. The Full Court, however, held that the workman was entitled under the Ordinance to an award of compensation for the disability he suffered from the injury, although that injury

was by way of aggravation of a pre-existing condition.

Nowhere in the judgment of the Full Court is the question of materiality discussed, that is to say, that before the workman would be entitled to an award of compensation it must be proved either by him that the injury aggravated the pre-existing condition in a material degree, or that the negative must be proved by the employers that if indeed the injury aggravated the pre-existing condition that it was not a material aggravation. The Full Court addressed its mind to the short point whether a workman who suffered from a pre-existing condition (whether or not he is aware of such condition) and who suffers an injury arising out of and in the course of his employment which aggravates that condition, is precluded by such a pre-existing condition from being awarded compensation in accordance with the provisions of the Workmen's Compensation Ordinance, 1934, and came to the conclusion that he was so entitled.

The Full Court, in arriving at that conclusion followed the English case of Clover Clayton & Co. v. Hughes, (1910) A.C. 242, where the workman, who was suffering from an advanced aneurism of the aorta, was doing work in the ordinary way by tightening a nut with a spanner. While doing so, the aneurism ruptured, resulting in death. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The arbitrator found that the strain upon the man in tightening the nut was not more than ordinary in such work, but that it was sufficient to bring about the rupture of the aneurism, having regard to the man's condition at the time, and he found as a fact that the rupture was so brought about and awarded compensation. This decision was upheld both by the Court of Appeal and the House of Lords.

Lord Macnaghten, in the House of Lords, expressed the view that the fact that the man's condition predisposed him to such an accident was immaterial. The work, though ordinary work, was too heavy for him, and he had sustained an accident in the popular sense of the term.

Counsel for the respondents has urged that this decision of the Full Court was given "per incuriam" as it does not appear that the proviso as enacted in section 3(1)(c) of the Ordinance was ever discussed in the decision. With this contention we cannot agree as it is implicit in the question to which the Court addressed its mind, already stated, involved a consideration of the proviso. The meaning of "per incuriam" has been
10 described by Lord Evershed, M.R. in Morelle Ltd. v. Wakeling, (1955) 2 Q.B. 379, as "ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned; so that ..... some part of the decision or some step in the reasoning on which it is based is found, on that account to be demonstrably wrong", and we could not presume to say that this important provision in the Ordinance was overlooked when the claim arose directly out of the particular
20 section 3(1) of the Ordinance.

In any event, the learned Judges of the Federal Supreme Court, by whose decisions we are bound, in Demerara Company Ltd. v. Burnett 3 W.I.R. 547 considered that Jagnarine's case was rightly decided. It is important to emphasise that in Jagnarine's case as well as in the instant case there was an accident in the sense of an untoward event or mishap in that the appellant's unrebutted evidence is that he slipped and fell and jerked his
30 back. In Demerara Company v. Burnett, a workman, who was engaged in tilling his employer's land with an agricultural fork was found lying on the ground with the fork nearby and a substantial portion of the soil freshly tilled. He died in hospital the next morning. Medical evidence established that death was due to the bursting of a blood vessel in the brain.

The workman had been suffering from arterio-sclerosis and strenuous effort, such as forking the
40 land, could have caused bursting of the blood vessel in a person suffering from this disease. Both the Magistrate and the Full Court held that the dependant of the deceased workman was entitled to succeed in a claim for compensation, but the Federal Supreme Court allowed the appeal and reversed this decision taking the view that in the circumstances as there was no untoward event or

In the Full Court of the Supreme Court of British Guiana

No. 7
Judgment of the Full Court, 15th April, 1966.
(Contd.)

mishap the employer could escape liability under the proviso to section 3(1), as contained in paragraph (c). The section reads as follows:

"3. (1) A — If in any employment a workman suffers personal injury by accident arising out of and in the course of such employment his employer shall be liable to pay compensation in accordance with the provision of this Ordinance". 10

xxx xxx xxx

B — "Provided further that the employer shall not be so liable (under this Ordinance) for such compensation should

xxx xxx xxx

C — it be proved that the accident would not have occurred, or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman". 20

Hallinan, C.J., in considering the proviso to section 3(1) as contained in paragraph (c) was of the opinion that on the English authorities of McFarlane v. Hutton Bros. (Stevedores) Ltd., 96 L.J.K.B. 357 and Clover, Clayton & Co. Ltd. v. Hughes 1910 A.C. 242, the employers would have been liable, but as our Ordinance contained this provision, not found in the English Act, they were not so liable. In his analysis of Clover's case Hallinan, C.J., took the view that it was not an exaggeration to say that the House of Lords, in order to assist injured workmen and their dependents had stretched the meaning of the word "accident" somewhat beyond its ordinary meaning, and pointed out that the decision had resulted in this curious position that if a man suffering from a serious aneurism ruptured the aneurism going upstairs in his own house, no one would say that his death was due to an accident - it was the aneurism that killed him, but if he is an employee tightening a nut with a spanner and the aneurism 30 40

burst, his death would be for the purposes of the Workmen's Compensation Act (U.K.) an accident.

The learned Judge went on to elaborate that paragraph (c) of the proviso was a clear departure from the English statute and that the Legislature when they enacted the proviso must have had in mind the dissenting judgments of two of the Law Lords in Clover's case when it provided expressly that if the mishap would not have happened had the workman not had the diseased condition, then the employer is not liable. There then appears this passage at page 551 of the report on his judgment which might not have been fully appreciated by the learned Magistrate in the instant case:

> "I have no doubt that para. (c) provides an employer with a defence against liability which was not open to him under the corresponding English legislation. What is this defence? We must, I think, accept the House of Lords' interpretation that any exertion while working for an employer which contributes in a material degree (to use Lord Hanworth's phrase in McFarlane's case) to an injury suffered by a workman in an 'accident arising out of and in the course of employment.' In these circumstances the mishap and the injury are the same event. It is convenient to refer to this interpretation as 'accident in its extended meaning.' Where then an accident in its extended meaning has occurred proviso (c) enables the employer to escape liability if he proves that a pre-existing diseased condition has also contributed in a material degree towards the injury suffered by the workman. The burden of proving this is on the employer."

It is clear from the wording of that passage that the learned Judge was dealing with the case where there is an accident in its extended meaning, that is, where there is no untoward event or mishap but mere undue exertion having regard to the workman's pre-existing condition as in Clover's case. As we understand it, in England in that situation the workman or his dependant would be entitled to succeed in a claim for compensation as there would be an accident in the popular sense of the word as

In the Full Court of the Supreme Court of British Guiana

No. 7
Judgment of the Full Court, 15th April, 1966.
(Contd.)

stated by Lord McNaghten in Clover's case, and there would be no provision in the Act similar to paragraph (c) of Section 3(1) as obtains in this Colony. In this Colony, however, where there is an accident in its extended meaning, the employer would be able to escape liability if he is able to prove that a pre-existing diseased condition had also contributed in a material degree towards the injury suffered by the workman.

Where, however, there is an external mishap or untoward event unrelated to the pre-existing condition as in Jagnarine's case, or indeed in the instant case, and the mishap aggravates the pre-existing condition, the learned Judge was of the opinion that the employer could not escape liability as he was of the opinion that paragraph (c) would not apply. Lewis, J., was, in his Judgment, clearly of the view that where it is proved at the time of the accident that the workman was suffering from a diseased condition of the body and there was no evidence of any unusual exertion or of any untoward event such as a slip, or wrench, or sudden jerk, but the injury occurred, or the incapacity or death was caused merely as a result of the effect which the performance of his ordinary work in the ordinary way had upon the diseased condition, then compensation was not payable. This learned Judge did not think that the proviso applied where the mishap is set in motion by exertion of a degree unusual in the workman's employment, for such exertion is similar in character to an untoward event.

We are therefore of the view that in the instant case an untoward event or mishap occurred when the appellant slipped and fell and jerked his back and sustained an injury which had the effect of aggravating the pre-existing condition of the fracture of the back in the region of the twelfth thoracic vertebra and caused a permanent partial incapacity or disability. He was therefore entitled to succeed in a claim for compensation under the Workmen's Compensation Ordinance, Cap. 111, for the aforesaid incapacity and the learned Magistrate was wrong in taking the view that the injury must aggravate the pre-existing condition in a material degree for the appellant to be successful. The question of materiality only

arises when an accident in its extended meaning is being considered. In any event the evidence did not disclose that the aggravation was not material.

This appeal must therefore be allowed and the judgment and order of the Magistrate set aside. In accordance with section 8(1)(c)(ii) of the Ordinance, judgment is entered in favour of the appellant in the sum of $3,864.67, being calculated on the following basis: the average monthly wages of $115.02 x 48, making a total of $5,520.96 under section 8(1)(b)(i) of the Ordinance, and of which sum the appellant is entitled to 70% for the permanent partial incapacity sustained by him, that is $3,864.67. The appellant will have his costs of appeal fixed at $31.48 and his Counsel's fee fixed at $75.00 and other costs in the Court below at $5.00.

(Sgd.) H.B.S. Bollers

Puisne Judge

(Sgd.) G.A.S. Van Sertima

Puisne Judge

Dated this 15th day of April, 1966.

In the Full Court of the Supreme Court of British Guiana

No. 8
Order on Judgment of the Full Court entered 11th May, 1966.

No. 8

ORDER ON JUDGMENT OF THE FULL COURT

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS,
Puisne Judge, and

THE HONOURABLE MR. JUSTICE VAN SERTIMA

FRIDAY THE 15th DAY OF APRIL, 1966

ENTERED THE 11th DAY OF MAY, 1966

UPON reading the grounds of appeal dated the 28th day of January 1966 from the decision of a Magistrate of the Georgetown Judicial District dated the 31st day of May, 1965 AND UPON HEARING Mr. D.C. Jagan, of Counsel for the appellant and Mr. J.A. King, of Counsel for the respondents IT IS ORDERED that this appeal be allowed with costs to the appellant fixed in the sum of $31.48 (thirty one dollars and forty eight cents) AND THAT the Judgment of the Magistrate be set aside AND IT IS FURTHER ORDERED that judgment be entered for the appellant in the sum of $3,864.67 (three thousand, eight hundred and sixty-four dollars and sixty-seven cents) with counsel fee fixed in the sum of $75.00 (seventy-five dollars) together with costs in the Court below fixed in the sum of $5.00 (five dollars) AND IT IS FURTHER ORDERED that the respondents be at liberty to appeal herein to the British Caribbean Court and that execution herein be stayed for three (3) weeks from the date hereof.

BY THE COURT.

John W. Romao.

Sworn Clerk & Notary Public
for Registrar.

No. 9

NOTICE OF APPEAL TO THE BRITISH CARIBBEAN COURT OF APPEAL

In the British Caribbean Court of Appeal

No. 9
Notice of Appeal to the British Caribbean Court of Appeal, 25th April, 1966.

IN THE BRITISH CARIBBEAN COURT OF APPEAL
APPELLATE JURISDICTION

NOTICE OF APPEAL

10

BRITISH GUIANA

CIVIL APPEAL No. 24 of 1966

BETWEEN:

ENMORE ESTATES LIMITED
(Respondents) Appellants

- and -

RAMKELLAWAN DARSAN
(Applicant) Respondent

20

TAKE NOTICE that the (Respondents) Appellants being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the Full Court of the Supreme Court of British Guiana (hereinafter called "the Full Court") contained in the judgment of the Full Court dated the 15th day of April, 1966 doth hereby appeal to the British Caribbean Court of Appeal upon grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

30

AND the Appellants further state that the names and addresses including their own of the persons directly affected by the Appeal are those set out in paragraph 5.

2. The decision complained of is the allowing by the Full Court of the Respondent's appeal from the Magistrate's judgment and the award by the Full Court to the Respondent of compensation of $3,864.67 with costs in the Full Court and in the Magistrate's Court.

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3. Grounds of Appeal

In the British Caribbean Court of Appeal

No. 9
Notice of Appeal to the British Caribbean Court of Appeal, 25th April, 1966.
(Contd.)

(1) The Full Court erred in law in holding that the Respondent was entitled to succeed in a claim for compensation because he sustained an injury which aggravated a pre-existing fracture of the back as by doing so they failed to give proper effect to the provisions of paragraph (c) of the second proviso to sub-section (1) of Section 3 of the Workmen's Compensation Ordinance, Chapter 111 (hereinafter referred to as paragraph (c)). 10

(2) The Full Court erred in law in failing to find that paragraph (c) afforded the Appellants a defence to the Respondent's claim.

(3) Alternatively the Full Court erred in holding that the Magistrate was wrong in taking the view that the injury must 20 aggravate the pre-existing condition in a material degree for the Respondent to be successful.

(4) The Full Court erred in holding that the question of materiality only arises when an accident in its extended sense is being considered.

(5) The Full Court erred in holding that the evidence did not disclose that the aggravation was not material. 30

(6) Alternatively the Full Court failed to find that the aggravation even if material, was of a temporary nature and did not affect the question of permanent incapacity.

(7) On the correct interpretation of paragraph (c) and in the events which have happened the Appellants are entitled to judgment in their favour.

4. The relief sought from the British Caribbean 40 Court of Appeal is that the Full Court's decision be reversed and that the Respondent's claim be dismissed and that the Appellants do have their costs here and below.

In the British Caribbean Court of Appeal

No. 9
Notice of Appeal to the British Caribbean Court of Appeal, 25th April, 1966.
(Contd.)

5. Persons directly affected by the Appeal.

| Names | Addresses |
|---|---|
| Enmore Estates Limited | 22 Church Street, Georgetown. |
| Ramkellawan Darsan | Lot 401 Enterprise East Coast, Demerara. |

10

Dated the 25th day of April, 1966.

D.P. Bernard.

Solicitor for the Appellants.

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

No. 10
Judgment of the Court of Appeal, 31st October, 1966.

No. 10

JUDGMENT OF THE COURT OF APPEAL

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

Civil Appeal No. 24 of 1966

10

BETWEEN:

ENMORE ESTATES LIMITED
Appellants (Respondents)

- and -

RAMKELLAWAN DARSAN
Respondent (Applicant)

BEFORE:

Mr. Justice Luckhoo, Justice of Appeal
Mr. Justice Persaud, Justice of Appeal (acting)
Mr. Justice Cummings, Justice of Appeal (Acting)

20

13th, 20th September, 31st October, 1966.

J.A. King for Appellants.

D. Jagan for Respondent.

JUDGMENT

PERSAUD, J.A.:

While employed by the appellants fetching sugar cane, the respondent slipped and fell. He felt pain in his back, as a result of which he was X-rayed. The X-ray photographs showed an old fracture of the twelfth thoracic vertebra with small growth of bones around the vertebral margin which would have taken at least one year after the injury to develop. Upon an application for workmen's compensation the magistrate, having heard the medical testimony, and having considered Demerara Co. Ltd. v. Burnett (1959) 1 W.I.R. 547, Jagnarine v. Bookers Sugar Estates Ltd.

30

(1956) L.R.B.G. 136, and McFarlane v. Hutton Bros. 20 B.W.C.C. 222, said -

> " ..... the rule did not seem to be, that any degree of aggravation be it ever so minute, was sufficient to warrant a conclusion in favour of the injured person. Rather it seemed to be that the aggravation must be material. From the evidence of Mr. Stracey I did not form the impression that the aggravation was material"

and he dismissed the application.

The Full Court of Appeal reversed the decision of the magistrate, holding that the question of materiality only arises when an accident in its extended meaning is being considered, and awarded the respondent compensation based on a 70% permanent partial incapacity. During the course of their judgment, the Full Court said -

> "We are therefore of the view that in the instant case an untoward event or mishap occurred when the appellant (respondent) slipped and fell and jerked his back and sustained an injury which had the effect of aggravating the pre-existing condition of the fracture of the back ..... and caused a permanent partial incapacity or disability ..... the learned magistrate was wrong in taking the view that the injury must aggravate the pre-existing condition in a material degree for the appellant (respondent) to be successful."

In this Court, counsel for the appellants has taken two points. For purposes of his argument, he accepts that the respondent had a fractured thoracic vertebra and that the fall might have aggravated that injury, but submits -

(i) that the finding of the magistrate ought to be restored because in the absence of a material aggravation, the respondent is not entitled to compensation; and

(ii) in any event, proviso (c) of s. 3(1) of the Workmen's Compensation Ordinance

(Chap. 111) protects the employer if the real cause of incapacity is the pre-existing disease.

In developing his first argument, counsel for the appellants sought to distinguish between an accident in its restricted meaning and an accident in its extended meaning, and urged that in either case, where there has been a pre-existing disease, the workman must show an aggravation by the accident of a material degree before he could succeed. Counsel for the respondent contends for the rule that materiality only arises in the case of an accident in its extended meaning.

In Fenton v. Thorley (1903) A.C. 443, Lord Macnaghten defined an accident to mean "an unlooked for mishap or an untoward event which is not expected or designed", and this definition has been taken as conclusive in later cases. It seems to me that this definition covers both categories of accidents canvassed for in this appeal. I would have thought that the question of materiality was relevant in either case, as the question to be determined in workmen's compensation matters is not whether there was an accident in its restricted or its extended meaning, but whether there was an accident within the meaning of Lord Macnaghten's definition, and whether as a result, the workman has been disabled.

It is also quite clear that in this appeal we must consider the situation of an accident in its restricted sense, that is to say, an external event occurring during the course of employment.

McFarlane v. Hutton Bros. (Stevedores) Ltd. 20 B.W.C.C. 222, concerned an accident in its extended meaning in that the applicant who was a stevedore and who had been suffering from coronary disease of the heart which sooner or later would have caused his death, died soon after he took ill at work. It was held that death resulted from a strain incurred in the ordinary exercise of the man's work, and this amounted to an accident within the meaning of the Workmen's Compensation Act, and to establish an accident it was not necessary to find a sudden or special strain. In the course of his judgment, Lord Hanworth, M.R. said (at p. 228 ibid.) -

"Did the man die from the disease alone, or did the work which he was doing help in a material degree in the sense that it brought on the mishap which it may be would not have happened if he had not the diseased condition but owing to the diseased condition and the work that he was doing it was set in motion?"

It seems to me that the same standard can well be applied to cases of accidents in the restricted meaning as in the matter we are now called upon to determine. That this is so, is clear from the dictum of Lord Loreburn, L.C. in Clover, Clayton & Co. v. Hughes 26, T.L.R. 359, even though that case also concerned an accident in its extended meaning. At p. 360, Lord Loreburn said -

"In each case the arbitrator ought to consider whether, in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that, whatever the man had been doing, it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone, or from the disease and employment taken together, looking at it broadly. Looking at it broadly, I say, and free from overnice conjectures, was it the disease that did it or did the work he was doing help in any material degree?"

In that case the facts which are by now quite familiar to all who have had to investigate this point, are that a workman while engaged in tightening a nut with a spanner, strained himself thereby rupturing an aneurism of the aorta which caused his death. A post-mortem examination showed the aneurism was in such an advanced condition that it might have burst even while the man was asleep, and that very slight exertion or strain would have been sufficient to bring about a rupture. It was held that the workman's death was occasioned by an accident arising out of his employment.

And in Oates v. Earl Fitzwilliam's Collieries Co. (1939) 2 All E.R. 498 (another case concerning an accident in its extended meaning) the Court of Appeal held that a physiological injury or change occurring in the course of a man's employment by

reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment, and this is so even though the injury or change be occasioned partly, or mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence.

I will now consider the case of Jagnarine v. Bookers Sugar Estates Ltd. (1956) L.R.B.G., but will postpone dealing with Demerara Co. Ltd. v. Burnett (1959) 1 W.I.R. 547, as the latter case is more relevant to counsel for the appellants' second submission.

Jagnarine's case (supra) involved an accident in its restricted meaning, in that an untoward event occurred, that is, the workman's foot slipped while performing his duties, as a result of which, a pre-existing hernia was aggravated. The Full Court of Appeal, applying Jones v. Rexham & Acton Collieries Ltd. (1917) 10 B.W.C.C. 607, and Clover, Clayton & Co. v. Hughes (supra) held that the workman was entitled to workmen's compensation for the disability he suffered from the injury he had received although that injury was by way of aggravation of a pre-existing condition.

Having regard to the authorities referred to, I am of the opinion that once there is evidence that the employment in itself (in the case of an accident in its extended meaning), or that an untoward event occurring in the course of employment (in the case of an accident in its restricted meaning) aggravated a pre-existing diseased condition in a material degree, the workman would be entitled to workmen's compensation.

When regard is had to the evidence in this matter, the correct conclusion would be that there was an accident in its restricted meaning in the course of the workman's employment which aggravated a pre-existing diseased condition in a material degree, and therefore the respondent would be entitled to compensation. I do not hold the view that materiality is irrelevant. In my view, all that materiality connotes in matters of this

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

No. 10
Judgment of the Court of Appeal, 31st October, 1966.
(Contd.)

nature is that the worsened condition in respect of which a claim is made must have been the direct result of the accident.

I will now give attention to the appellants' second submission, which is, it will be recalled, that proviso (c) of s. 3(1) of the Workmen's Compensation Ordinance (Cap. 111) protects the employer where the real cause of incapacity is the
10 pre-existing disease.

Section 3 of Chapter 111 provides for the employers' liability in the event of an accident arising out of and in the course of the workman's employment. Then follow two provisos, the second of which reads thus -

> "Provided further that the employer shall not be liable (under this Ordinance) for such compensation should
>
> .....
>
20 (c) it be proved that the accident would not have occurred, or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman."

It is agreed upon on all sides that there was no corresponding English legislation, so that one can derive no assistance from the English cases on this point.

In the local case of Demerara Co. v. Burnett
30 (1958) L.R.B.G. 227, the Full Court of Appeal was required to interpret proviso (c) above. The Court expressed the opinion that the effect of the proviso is that the employer is not liable to pay compensation if the accident or the resulting death or incapacity was due solely to disease. On appeal the Federal Supreme Court did not share this view /see Demerara Co. Ltd. v. Burnett (1959) 1 W.I.R. 547, per Hallinan, C.J. at p. 550/. In that case a workman, who had been engaged in tilling his
40 employer's land with an agricultural fork, was found lying on the ground nearby and a substantial portion of the soil freshly tilled. He died in hospital the next day. The medical evidence established that

death was due to the bursting of a blood vessel in the brain, and that the workman had been suffering from arteriosclerosis, and strenuous effort such as forking the land, could have caused a bursting of the blood vessel in a person suffering from this disease. In considering the meaning to be placed on proviso (c) of s. 3(1) of Chapter111, Hallinan, C.J. said /at p. 551 ibid/ -

> "I have no doubt that para. (c) provides an employer with a defence against liability which was not open to him under the corresponding English legislation. What is this defence? We must, I think, accept the House of Lords' interpretation that any exertion while working for an employer which contributes in a material degree (to use Lord Hanworth's phrase in McFarlane's Case) to an injury suffered by a workman is an 'accident arising out of and in the course of employment'. In these circumstances the mishap and the injury are the same event. It is convenient to refer to this interpretation as 'accident in its extended meaning'. Where then an accident in its extended meaning has occurred proviso (c) enables the employer to escape liability if he proves that a pre-existing diseased condition has also contributed in a material degree towards the injury suffered by the workman
>
> ..... .....
>
> I am not prepared to say that those are the only circumstances in which para. (c) may provide a defence but I do not think that an employer can rely on this paragraph to escape liability in a case where the accident is an external mishap or untoward event unrelated to the pre-existing condition as in the case of Jagnarine v. Bookers Sugar Estates Ltd. ....."

Lewis, J. also restricts the application of para. (c) to an accident in its extended meaning, for he says /at p. 552 ibid/ -

> "In my view, where it is proved that at the time of the accident the workman was suffering

> from a diseased condition of the body, and there is no evidence of any unusual exertion, or of any untoward event such as a slip, or wrench, or sudden jerk, but the injury occurred or the incapacity or death was caused merely as a result of the effect which the performance of his ordinary work in the ordinary way had upon the diseased condition, then compensation is not payable. I do not think that the proviso applies where the mishap is set in motion by exertion of a degree unusual in the workman's employment, for in my opinion such exertion is similar in character to an untoward event."

Thus it will be seen, that both judges restrict the operation of para. (c) to an accident in its extended meaning, (with which interpretation Marnan, J. expressed agreement), but while Hallinan, C.J. declined to put a meaning to the latter part of the paragraph which deals with incapacity or death on the ground that the words are so ungrammatical as to be meaningless, Lewis, J., sought to interpret the words, and in my view, gave them the only meaning they are capable of in the context used. I say so with the greatest of respect to the opinion held by the other two judges of the Court.

Mr. King for the respondent has nevertheless urged upon us the view that para. (c) should not be made to apply to an accident in its extended meaning only. I rest content with the unanimous opinion expressed by the Federal Court of Appeal. The proviso can have no application nor can it be relied upon, on the facts of this case such as they are.

I do not find any merit in the submissions made for the appellants and therefore would dismiss this appeal, affirm the decision of the Full Court, and order the payment by the appellants of the respondent's costs of this appeal.

(Sgd.) G.L.B. Persaud

G.L.B. Persaud

Justice of Appeal (Acting.)

I agree.

(Sgd.) Edward V. Luckhoo

E.V. Luckhoo

Justice of Appeal.

I agree. I have nothing to add. 10

(Sgd.) Percival A. Cummings

P.A. Cummings

Justice of Appeal (Acting).

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

No. 11
Formal Judgment of the Court of Appeal, 31st October, 1966.

## No. 11

## FORMAL JUDGMENT OF THE COURT OF APPEAL

BEFORE:

THE HONOURABLE MR. JUSTICE LUCKHOO, JUSTICE OF APPEAL

10

THE HONOURABLE MR. JUSTICE PERSAUD, JUSTICE OF APPEAL (ACTING) and

THE HONOURABLE MR. JUSTICE CUMMINGS, JUSTICE OF APPEAL (ACTING)

DATED THE 31st DAY OF OCTOBER, 1966

ENTERED THE 5th DAY OF NOVEMBER, 1966

UPON READING the Notice of Appeal dated the 25th day of April, 1966 on behalf of the (Respondents) Appellants and the Record of Appeal filed herein on the 28th day of June, 1966

20

AND UPON HEARING Mr. J.A. King of Counsel for the (Respondents) Appellants and Mr. D. Jagan of Counsel for the (Applicant) Respondent

AND MATURE DELIBERATION thereupon had

IT IS ORDERED that the judgment of the Full Court of the Supreme Court of British Guiana now the Full Court of the High Court of the Supreme Court of Judicature dated the 15th day of April, 1966 in favour of the (Applicant) Respondent be affirmed and this appeal dismissed with costs to be taxed and paid by the said (Respondents) Appellants to the (Applicant) Respondent.

30

BY THE COURT

JOHN W. ROMAO.

SWORN CLERK & NOTARY PUBLIC

FOR REGISTRAR.

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

No. 12
Order granting Conditional leave to appeal to Her Majesty in Council, 17th December, 1966.

No. 12

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

BEFORE THE HONOURABLE MR. H.B.S. BOLLERS, CHIEF JUSTICE (IN CHAMBERS)

DATED THE 17th DAY OF DECEMBER, 1966

ENTERED THE 15th DAY OF FEBRUARY, 1967

UPON the petition of the abovenamed petitioners (appellants) dated the 16th day of November, 1966 for leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal of the Supreme Court of Judicature delivered herein on the 31st day of October, 1966 AND UPON READING the said petition and the affidavit in support thereof sworn to by Mr. Herman William de Freitas, Solicitor for the said petitioners on the 15th day of November, 1966 and filed herein.

AND UPON HEARING Mr. J.A. King of Counsel for the petitioners (appellants) and Mr. D.C. Jagan of Counsel for the respondent (respondent).

THE COURT DOTH ORDER that subject to the performance by the said petitioners (appellants) of the conditions hereinafter mentioned and subject to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the petitioners (appellants).

AND THIS COURT DOTH FURTHER ORDER that the petitioners (appellants) do within six (6) weeks from the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the sum of £300 with one or more surety or sureties or deposit into Court the said sum of £300 for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the petitioners (appellants) in the event of the petitioners (appellants) not obtaining an order granting them final leave or of the appeal being

No. 12
Order granting Conditional leave to appeal to Her Majesty in Council, 17th December, 1966. (Contd.)

dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent (respondent) on such appeal as the case may be.

AND THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution.

AND THIS COURT DOTH FURTHER ORDER that the petitioners (appellants) do within four (4) months from the date of this order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of the Court to certify that the said record has been settled and that the provisions of the order on the part of the petitioners (appellants) have been complied with.

AND THIS COURT DOTH FURTHER ORDER that the petitioners (appellants) be at liberty to apply within five (5) months from the date of this order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of this Court of due compliance on their part with the conditions of this order.

AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to this application be the costs in the cause.

LIBERTY TO APPLY.

BY THE COURT

H. MARAJ

SWORN CLERK & NOTARY PUBLIC

for REGISTRAR (AG.)

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

No. 13
Order granting final leave to appeal to Her Majesty in Council, 11th July, 1967.

No. 13

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

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

10

TUESDAY THE 11th DAY OF JULY, 1967

ENTERED THE 19th DAY OF JULY, 1967

UPON the petition of the abovenamed Enmore Estates Limited dated the 17th day of April, 1967 preferred unto this Court on the 29th day of April, 1967 for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 31st day of October, 1966:

20

AND UPON READING the said petition and the Order of the Court dated the 17th day of December, 1966:

AND UPON HEARING counsel for the petitioners and for the respondent and being satisfied that the terms and conditions imposed by the said Order dated the 17th day of December, 1966 have been complied with:

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said petitioners to appeal to Her Majesty in Her Majesty's Privy Council and that the respondent do pay to the petitioners their costs of this petition fixed in the sum of $200: (two hundred dollars).

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BY THE COURT

H. MARAJ

SWORN CLERK & NOTARY PUBLIC

for REGISTRAR

No. 14

Order affirming Order granting Final Leave to Appeal to Her Majesty in Council, 24th November, 1967.

No. 14

ORDER AFFIRMING ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

10 BEFORE THE HONOURABLE SIR KENNETH STOBY, CHANCELLOR,

THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF APPEAL

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

DATED THE 24th DAY OF NOVEMBER, 1967

ENTERED THE 30th DAY OF NOVEMBER, 1967

20 UPON READING the Notice of Motion on behalf of the Applicant (Respondent) dated the 3rd day of August, 1967 for a review of the order granting final leave to appeal herein to Her Majesty in Her Majesty's Privy Council, and the affidavit of solicitor for the Applicant (Respondent) in support thereof dated the 3rd day of August, 1967

AND UPON HEARING Dr. F.H.W. Ramasahoye of Counsel for the Applicant (Respondent) and Mr. G.M. Farnum Q.C. of Counsel for the Respondents
30 (Appellants)

AND UPON MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED that the order of the Honourable Mr. Justice E.V. Luckhoo, Acting Chancellor dated the 11th day of July, 1967 granting final leave to the Respondents (Appellants) to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 31st day of October, 1966 be affirmed and that the costs of this application do abide the outcome of this
40 appeal to Her Majesty's Privy Council.

BY THE COURT

H. MARAJ

SWORN CLERK AND NOTARY PUBLIC
FOR REGISTRAR

IN THE PRIVY COUNCIL — No. 3 of 1968

ON APPEAL

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

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BETWEEN:

ENMORE ESTATES LIMITED
(Respondents) — Appellant

- and -

RAMKHELLAWAN DARSAN
(Applicant) — Respondent

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# RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

GARBER, VOWLES & CO.,
37, Bedford Square,
London, W.C.1.

Solicitors for the Respondent

F. S. Moore Ltd., 33-34 Chancery Lane, London, W.C.2