

P.C.  
GMS. 672

18, 1966

appeal No. 2 OF 1966

IN THE PRIVY COUNCIL.

On Appeal

From the British Caribbean Court  
of Appeal.

Between

CHINTAMANIE AJIT,  
Appellant (Plaintiff)

&

JOSEPH MOOTOO SAMMY,  
Respondent (Defendant).

RECORD OF PROCEEDINGS.

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THE RECORD.

IN THE PRIVY COUNCIL.

No. 2 of 1966

ON APPEAL FROM THE BRITISH CARIBBEAN COURT OF APPEAL.

Between:-

CHINTAMARIE AJIT, Appellant (Plaintiff)

and

JOSEPH MOOTOO SALLY, Respondent (Defendant)

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IN THE FEDERAL SUPREME COURT  
APPELLATE JURISDICTION.  
NOTICE OF APPEAL.

British Guiana,  
Civil Appeal No. 18 of 1961

Between:

Chintemanie AJIT,

PLAINTIFF-Appellant

and

JOSEPH MOOTOO SAMMY,

Defendant - Respondent.

10 TAKE NOTICE that the plaintiff - appellant being dis-  
satisfied with the whole decision more particularly  
stated in paragraph 2 hereof the Supreme Court of British  
Guiana, holden in the County of Demerara contained in  
the judgement of His Honour the Chief Justice of British  
Guiana, dated the 16th day of February 1961, doth here-  
by appeal to the Federal Supreme Court upon grounds set  
out in paragraph 3 and will at the hearing of the appeal  
seek the relief set out in paragraph 4.

20 And the appellant further states that the names and  
addresses including his own of the persons directly af-  
fected by the appeal are those set out in paragraph 5.

2. The plaintiff - appellant complains that the whole  
of the decision given in the Court below by His  
Honour the Chief Justice is wrong in law.

3. Grounds of appeal:-

30 (1) The plaintiff - appellant entered into an agreement  
with the defendant - respondent purchasing immovable  
property value \$17,000:- (seventeen thousand dollars)  
and paid \$1000:- (one thousand dollars) on account  
leaving a balance of \$16,000:- (sixteen thousand  
dollars) to be paid by the plaintiff - appellant to  
the defendant - respondent upon the passing of a certain  
conveyance by way of transport to and in favour of  
the plaintiff - appellant but there was *no* stated  
time set in the said contract when the plaintiff-  
appellant should accept transport neither and when  
the defendant respondent should cede transport  
therefore on the basis on the equality of right under  
the contract neither party is competent to cancel *and/or* *reclaim*  
or determine the said contract but either party  
40 aggrieved has the right and /or remedy of (a)  
applying to the Court for rectification of the said  
contract to contain limitation there in and (b) sue  
for specific performance of the said contract.  
The learned Chief Justice erred in law when he  
found that the defendant - respondent was entitled  
in law to dishonour the said contract and keep  
the amount of \$1000:- (one thousand dollars) paid  
on account of the said property for his own use  
50 without any counter claim for damages by the  
opposite side.

(2) The defendant - respondent sent a letter to the plaintiff-appellant amending and/or rectifying the original contract by inserting time as essence of the contract and stating the date on which such time would expire but the letter was not entered into by the plaintiff-appellant and there was no provision made and contained in the original contract for the entertainment of any such letter. The learned Chief Justice erred in law when he found that such a letter amended and/or rectified the original contract adding limitation to it.

(3) The defendant - respondent filed an affidavit of defence to the plaintiff - appellant's claim but did not offer any oral evidence in support of his defence in which he stated, inter alia; "that he resold the said property to several other persons in parts and received money from them" but give no figures as to profit, or loss, and not being available for cross-examination he withheld such material evidence which is essential to the motive of his dishonouring the said contract with the plaintiff appellant. The learned Chief Justice erred in law when he failed to apply the practice in evidential law that judgement should go against the party withholding material evidence essential to prove his pleadings.

(4) The plaintiff-appellant having failed to accept transport on a certain date on account of illness paid the Registrar of Deeds to re-advertise the said transport and some days later the defendant - respondent uplifted his transport from the Registrar's office without the knowledge and consent of the plaintiff - appellant and as a result the Registrar of Deeds was not in a position to re-advertise the said transport which was never re-advertised. The learned Chief Justice erred in law when he found that the plaintiff - appellant was not actual<sup>4</sup> in the act of performance of the contract and/or that the defendant-respondent was not bound by such performance by plaintiff-appellant.

(5) There being no evidence that because of necessity and/or for the prevention of irreparable loss or damage the defendant - respondent resorted to time as of the essence of the contract the learned chief Justice erred in not applying the principles of the laws of equity in this case.

4. The plaintiff - appellant therefore seek the following relief from the Federal Supreme Court Appellate Jurisdiction:-

(a) that the decision of the Honourable Chief Justice in the Court below be reversed and the defendant - respondent pay the costs of these proceedings in both Courts.

(1) The Court grant an injunction restraining the defendant-

respondent, his servants and/or agents from passing any lease or title of any nature to Rupert Randolph Black-man or any other persons of the herein described property as contained in the agreement of sale.

- (2) Specific performance of the said contract dated 31st July 1958.
- (3) An Order of this Honourable COURT declaring that the plaintiff's opposition dated 5th December 1959, to the aforementioned conveyance by way of lease is just, legal and well founded.
- (4) Alternatively: damages in the sum of \$9000:- (nine thousand dollars)
- (5) Persons directly affected by the appeal:

Name.	Address.
CHINTAMANIE AJIT	65 Fifth Street Alberttown Georgetown Demerara, Appellant.
Joseph Mootoo SAMMY,	271 Thomas Street Georgetown Demerara. Defendant-Respondent.

Dated this 27th Day of March 1961.

Sgd: Chintamanie Ajit, Appellant.

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

To: JOSEPH MOOTOO SAMMY, of 271 Thomas Street  
Georgetown, in the County of Demerara, and  
Colony of British Guiana.

We Command you, that at 9 O' Clock in the forenoon on Saturday the 19th day of December 1959, 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.

WITNESS: The Honourable Frank Wilfred HOLDER, Knight  
chief Justice of British Guiana, The 10th  
day of December, in the year of our Lord One  
Thousand Nine Hundred and Fifty Nine.

- 40 N.B. If the defendant desires to defend this action he shall, not later than eleven O'Clock in the forenoon of the day (not being a Sunday or public holiday) immediately preceding that fixed for his appearance file an affidavit at the Registry at Georgetown, setting forth his defence and serve a copy of such affidavit forthwith after filing the same on the plaintiff.

STATEMENT OF CLAIM.

1. The defendant instructed the Registrar of Deeds to advertise and the Registrar advertised in the Official Gazette of British Guiana of the 28th, November 1959 numbered 37, therein for the Counties of Demerara and Essequibo, lease for a period of 999 (nine hundred and ninety nine) years by the defendant to and in favour of Rupert Randolph Blackman of 79 Da Silva Street, Newtown Kitty East Coast Demerara, of the following described property, Viz:-

10

"A lease for a term of 999 (nine hundred and ninety nine) years in respect of sub lot "I" part of lot numbered 113, "(one hundred and thirteen) Duke Street, In Kingston District in the City of Georgetown, in the County of Demerara and Colony of British Guiana; the said sub lot "I" having an area of .0496 (decimal nought four nine six) of an acre and being laid down and defined on a plan by Surgeon A. Nehaul, sworn land surveyor dated 18th January 1957, deposited in the Deeds Registry on the 26th day of January 1957, together with the right of access to and use of the water closet and water pipe situated on sub lot "H" a part of the said lot.

20

2. That on the 5th day of December 1959 the plaintiff duly entered in the Deeds Registry of British Guiana, at Georgetown Demerara a Notice and reasons for opposition to the passing of the said lease which is as follows:-

30 TAKE NOTICE that T. Chintamanie Ajit Residing at lot 65 Fifth STREET Alberttown Georgetown, British Guiana with office of business and address of service situated at the said address oppose the passing of a certain conveyance by way of lease for a period of 999 (nine hundred and ninety nine) years as advertised in the Official Gazette of this Colony on saturday 28th November 1959 and numbered 37 therein for the Counties of Demerara and Essequibo and more fully described as follows:-

40

(see page 4 line 50. Omitted here to avoid repetition) between you the said Joseph Mootoo Sammy of lot 271 Thomas Street Georgetown Demerara and Rupert Randolph Blackman, of lot 79 DA Silva Street, Newtown Kitty East Coast Demerara. And further take Notice that the following are the grounds of opposition:-

50 (1) That on the 31st, day of July 1958 you the said Joseph Mootoo Sammy also known as Mootoo Sammy entered into an agreement of sale where by you sold to the opponent Chintamanie Ajit, the following described property, Viz:-

(See Exhibit "E". Omitted to avoid duplication.)

for the sum of \$17,000:- (seventeen thousand dollars) and although the necessary papers and fees has been deposited and paid in full by the Opponent Chintamanie Ajit to the Registrar of Deeds you failed to re-advertise transport of the said property to and in favour of the said Opponent Chintamanie Ajit and cede transport to the said Chintamanie Ajit in compliance with the said agreement of sale entered into and dated 31st, July 1958.

State-  
ment of  
claim

(2) That the intended passing of lease between you the said Joseph Mootoo Sammy and Rupert Randolph Blackman is in respect of part of the said property sold by you the said Joseph Mootoo Sammy as per the said agreement of sale dated 31st, July 1958 to the Opponent Chintamanie Ajit and by reason of the said agreement of sale which stands in full force and virtue it is not competent for you the said Joseph Mootoo Sammy to seek to lease and/or sell a part of the said property which you have already sold to the Opponent as per the said agreement awaiting the necessary conveyance by way of transport from you to the said Chintamanie Ajit which so far you have delayed and/or neglected to complete.

(3) The Opponent therefore claims:-

(a) an Order of the Court restraining you the said Joseph Mootoo Sammy from passing the said lease to and in favour of the said Rupert Randolph Blackman as aforesaid.

(b) specific performance of the contract dated 31st, July 1958.

(c) alternatively: damages in the sum of \$9000:- (nine thousand dollars).

(d) costs of these proceedings.

Sgd: Chintamanie Ajit,  
Opponent (Opposer)

4. A copy of the said Notice and grounds of opposition was served on the defendant.

5. 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.

6. That on the 31st, day of July 1958 the defendant sold the aforementioned property to the plaintiff for \$17,000:- (seventeen thousand dollars) and received on account of the said property the sum of \$1000:- (one thousand dollars) from the plaintiff and duly entered into an agreement of sale and purchase which is as follows:-

(See exhibit "A". Omitted here to avoid duplication.)

7. That the plaintiff complied with the terms of agreement to advertise transport of the said property within the time mentioned but after the necessary affidavits and instructions to advertise and full fees and dues were paid to the Registrar of Deeds by the plaintiff to advertise the said transport to and in favour of the plaintiff, it was discovered by the Registrar of Deeds that the defendant had concealed certain facts regarding acquisition of certain houses on the said property by the defendant and the advertisement of transport to and in favour of the plaintiff was held up for a long period of time by the Registrar of Deeds and this was entirely because of the fault of the defendant who thereafter by affidavit cleared up the question which arose between the Registrar and the defendant and as a result of such detainance which was due to the fault of the defendant the plaintiff did not take up transport from the defendant when the time was ripe for the passing of the said transport due to the business arrangements which the plaintiff had made when doubt arose whether the defendant would be able to give transport to the plaintiff or not but was quite ready to take transport at a later date when the time for passing of the said transport had expired but not beyond revival.

8. That the plaintiff paid the necessary fees to the Registrar of Deeds for the revival of the said matter and to re-advertise transport of the said property as allowed by law but after such payment to the Registrar by the plaintiff for the re-advertisement of the said transport the defendant went to the Registrar's office in the absence of the plaintiff and without notifying the plaintiff requested a clerk of the Deeds Registry to return and he did return to defendant the transport defendant had lodged in company with plaintiff to enable the Registrar to advertise the said transport to and in favour of the plaintiff, and as a result the Registrar of Deeds was in no position able to and did not re-advertise the said transport as paid for and requested by the plaintiff.

9. That the plaintiff was and is willing to accept transport of the said property under the terms and conditions of the said agreement of sale dated 31st, July 1958 between the plaintiff and defendant of which contract time was not of the essence for accepting transport.



10. That it is not competent for the defendant to sell, lease or in any other way dispose or transfer any right, title and interest or in any manner handle the aforesaid property as if it was not sold to plaintiff without honouring the agreement of sale and purchase as aforestated and/or obtaining an Order of the Court relative to the said contract dated 31st, July 1958.

11. The plaintiff therefore claims:-

- 10 (a) an injunction restraining the defendant, his servants and/or agents from passing any lease or title of any nature to the said Rupert Randolph Blackman or any other person of the herein described property as contained in the agreement of sale.
- (b) specific performance of the said contract dated 31st, July 1958 as hereinstated.
- 20 (c) an Order of the Court declaring that the plaintiff's opposition dated 5th, December 1959 to the aforementioned conveyance by way of lease is just, legal and well founded.
- (d) alternatively: damages in the sum of \$9000:- (nine thousand dollars) for breach of agreement.
- (e) costs of these proceedings amounting to \$ (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.

Dated this 10th, day of December 1959.

Sgd: Chintamanie Ajit.  
Plaintiff.

This Writ was issued by Chintamanie Ajit, of lot 65 Fifth Street, Alberttown, Georgetown Demerara, British Guiana, the plaintiff herein.

AFFIDAVIT VERIFYING CLAIM:

I, Chintamanie Ajit of 65 Fifth Street Alberttown, Georgetown Demerara, British Guiana, being duly sworn, make oath and say:-

- 40 1. That I am the plaintiff in the hereinstated matter.
2. That on the 31st, July 1958, I bought from Mootoo Sammy the following described property Viz:-

Affida-  
vit  
verify-  
ing  
claim

(See Exhibit "E". Omitted here to avoid duplication)

under the terms and conditions as set out in an agreement of sale and purchase date 31st, July 1958, and reproduced in the statement of claim.

3. That transport of the said property was advertised to and in favour of me, this deponent, by the defendant but by reason of time it became necessary to re-advertise the said transport of which although I willingly paid the fees to re-advertise the defendant failed, refused and/or neglected to do so notwithstanding the fact that time for taking up transport was not of the essence of the agreement between the plaintiff and defendant and so the plaintiff as denied the legal right of obtaining title by way of transport from the defendant although the plaintiff is able, ready and willing to take up the said transport of the property from the defendant.
- 10
4. That the agreement of sale and purchase as aforesaid stands in full force and virtue there being no Order of the Court or a judge to vary, rectify and/or rescind the said contract dated 31st, July 1958 between the plaintiff and defendant and therefore I seek to enforce the said contract as I know of my own knowledge that the contract was signed by the defendant and myself and is a firm legal document. Alternatively; I claim \$9000:- (nine thousand dollars) damages for breach of agreement.
- 20
5. That I entered a Notice of and reasons for opposition to the passing of a certain conveyance by way of lease to and in favour of Rupert Randolph Blackman of lot 79 Da Silva Street, Newtown, Kitty, East Coast Demerara, by the defendant in respect of the said property on the 5th, December 1959 being entitled to an Order of specific performance of the said contract; alternatively, damages in the sum of \$9000:- (nine thousand dollars) for breach of agreement, this being a matter to the value in excess of \$500:- (five hundred dollars) and for which demand by opposition has been duly made but without effect, therefore I filed a specially Indorsed Writ of Summons on the 10th, December 1959 No. 1961 for the surety and recovery of the amount of damages claimed \$9000:- (nine thousand dollars) and/or specific performance of the aforesaid contract dated 31st, July 1958 and that the said opposition is just, legal and well founded.
- 30
- 40

Sworn to at Georgetown Demerara,  
this 10th, day of December 1959

Before Me,

Sgd: Chintamanie Ajit.  
Deponent - (Plaintiff)

A COMMISSIONER OF OATHS FOR AFFIDAVITS.

AFFIDAVIT OF DEFENCE.

I, Joseph Mootoo Sammy of lot 271 Thomas Street, Georgetown being duly sworn, make oath and say: as follows:-

1. I am the defendant herein.

2. I admit paragraph 1, 2, 3, and 5 of the statement of claim Indorsed on the Writ herein.

10 3. That in accordance with the agreement of sale dated 31st, day of July 1958 the plaintiff agreed to pay all expenses in connection with the conveyance. That my first affidavit which was prepared by the plaintiff was sworn to by me on the 24th, day of September 1958 and I am informed and verily believe that the conveyancing papers were filed with the Registrar of Deeds on the 30th, day of September 1958.

Affi-  
davit  
of  
Def-  
ence

20 4. That after the required period of advertisement had expired I enquired of the plaintiff whether the transport was ready to be passed, whereupon, I was informed that my affidavit which was prepared by the plaintiff did not explain how I acquired three buildings which were originally owned by one De Freitas and which had subsequently been bought by me. On the 4th, day of November 1958 the affidavit was re-sworn to by me explaining the purchase by me of the three buildings originally owned by De Freitas and the transport was accordingly advertised on the 8th, day of November 1958. (5) That when the transport was ready to be passed I attended transport Court on the 24th, day of November, 1958, but the plaintiff did not attend in order to accept transport. When I went to the home of the plaintiff he informed me that he did not have the balance of purchase price to enable him to accept transport. Under the provisions of the said agreement of sale dated 31st, day of July 1958 I had agreed to grant the plaintiff a mortgage on the said property for \$10,000:- and as the plaintiff informed me of his inability to secure the balance of the purchase price I agreed to increase his mortgage to \$12,000:- but despite this increase the plaintiff refused and/or neglected to attend transport Court for the purpose of accepting the said transport despite repeated requests made by me.

40 6. On the 3rd, day of February 1959 my Solicitors Messrs. Cameron & Shepherd wrote the plaintiff on my instructions the following letter:-

(See Exhibit "B". Omitted herein to avoid duplication.)

to which no reply was received.

7. That despite this letter the plaintiff neglected to attend the transport Court on that day or any subsequent days during the month of February 1959, fixed by the Registrar of Deeds for the purpose of passing conveyances. The transport was therefore deemed by the Registrar of Deeds as lapsed on the 23rd, day of February 1959 and on the 27th, day of February 1959, as I was advised by my solicitors that the sale was now cancelled and the deposit forfeited in accordance with their letter I uplifted my transport from the Registrar of Deeds.
8. That the plaintiff has never sought to re-open the transaction nor has he ever requested me to re-advertise the transport to him.
9. That I have since advertised the aforesaid property divided into several sub lots for the purpose of disposing of the said property and as a result I have entered into several agreements of sale between myself and several persons for the sale of the aforesaid property as sub divided. I am advised and verily believe that I have a good defence to this action and such defence goes to the whole of the plaintiff's claim.
10. My address for service and place of business is at the Office of my solicitor Paul Anthonly Crum-Ewing of lot 2, High Street, Georgetown, and the said Paul Anthonly Crum-Ewing and/or Herman William De Freitas and/or Hugh Cecil Benjamin Humphyrs and/or Joseph Edward De Freitas are hereby authorized to act as solicitor on my behalf herein, and to receive all moneys on my behalf and to give receipts therefor.

Sgd: J. Mootoo Sammy.

30 Sworn to at Georgetown Demerara  
this 17th, day of December 1959,  
Before Me,  
Sgd: L.O. Rockliffe.  
Commissioner of Oaths.

NOTES OF EVIDENCE OF TRIAL JUDGE.

10 a.m.

CHINTAMANIE AJIT (Plaintiff)

Vs

JOS' PH MOOTOO SAMMY (Defendant)

No. 1961/59 Demerara

40 Plaintiff in Person.  
Mrs. Ali Khan instructed by P.A. Crum-Ewing for the Defendant.  
Plaintiff apologises to Court for arriving late.

CHINTAMANIE AJIT sworn:-

I am the plaintiff in this matter. On the 31st, July 1958 I entered into an agreement of sale and purchase with the defendant by which agreement I bought his property located at 113, Duke Street, Kingston, Georgetown for the sum of \$17,000:-.

I paid him on account the sum of \$1000:- and agreed to pay the balance of \$16,000:- in the following manner - that the defendant give me a mortgage in the sum of \$10,000:- and I pay him the balance of \$6000:- in current money of British Guiana. The terms of the contract was such that I shall advertise transport not later than the 30th, September 1958 and if I did not do so the \$1000:- paid by me to him shall be forfeited and I shall pay all the expenses relative to the advertising and passing of transport and mortgage in my favour. This is the agreement of sale and purchase Exhibit "A" in evidence. As a result of entering into that agreement of sale and purchase

20 . I complied with its terms by paying all the necessary fees and tendering all documents to the Registrar of Deeds which were duly filed on the 30th, day of September 1958 by me. But I did not see publication of the transport and mortgage in the Official Gazette of the following Saturday. I then made enquiries at the Deeds Registry and I was informed that there were certain buildings in the

30 property which did not belong to the defendant and should have been excluded from the description of the property to be advertised for transport and mortgage. I then contacted defendant either the same day or the next day and I told him what I had been told by the Deeds Registry Officer to whom I had spoken. Defendant told me he had bought the property with the properties in question as lease houses on the land and eventually he had bought out all the houses. He said he had

40 receipts for the purchase of the houses and that he will get the matter straightened out. I waited a week but did not see any publication in the Official Gazette of the transport and mortgage. About 2 or 3 days later the defendant came to me - that is after the Saturday when I expected to see the advertisements in the Gazette. He

50 asked me to make out an affidavit for him stating that he had acquired those houses. I told him that I could not make out such an affidavit. I had made out the affidavits of sale and purchase because he was present and gave me the necessary instructions. I told him that he would have to consult a lawyer about affidavit in relation to the ownership of the houses. He left and for about six weeks I kept looking out for advertisement in the Official Gazette for the transport and mortgage. It would be between 3 and 6 weeks that I did so. I saw no such advertisement. Then I went to defendant - no I did not go to see him; he came into my office and asked my typist to type something for him.

I met him in my office and asked him what about the advertisements. He told me that everything was fixed and had got the necessary affidavit filed and that the advertisements would come out very soon. This was about 5, 6, or 7 weeks after Exhibit "A" was signed. He told me that a lot of people were coming to ask him for a mortgage of certain parts of the property which they said I had agreed to sell to them. He said that he will like me to know that he is not going to do anything until the transport is passed but that any person who came to me about buying any part of the property I must still send the persons to him and let him know how much that person would pay and how much mortgage the person would want and for what part of the property. I continued to send people to defendant to get his approval for the mortgage of the different parts of the property but the people came back to me and told me that they were informed by the defendant not to deposit any money with me because I have not yet purchased the property and had only advanced 1000:--. I then got ill with a non-functioning gall bladder and as a result I suffered from shortness of breath. I took medical treatment. This was in early part of December 1958. In early December 1958 I was informed by my secretary Miss Ali that she had seen the transport and mortgage advertised in the Official Gazette. I told her that if defendant came to the office that she should tell him I was very ill and could not then pass the transport or mortgage but would do so later when I felt better. This may have been before December 1958. Sometime in December 1958 Miss Ali told me that she had told defendant what I had said and that he appeared to be enraged. I live in flat above my office. Defendant came to my office in December 1958 I think. I told him I was very ill and that he must wait on me a little until I got better. I told him that if he wanted the matter to go through how I would authorize my secretary Miss Ali to take transport and the mortgage provided that he could latent the mortgage from \$10,000:- to \$14,000:- because I only had in my possession in the house \$2000:--. I told him that if I was well I would not even take the mortgage but would pay him off in cash. He told me he would go half-way and extend the mortgage to \$12,000:--. I told him I only had \$2000:- and would telephone a friend for a loan of \$2000:- and that if I got it I would authorize Miss Ali to take transport and mortgage on my behalf but that if I did not get the loan of \$2000:- he will have to wait until I was well enough. But I told him that in any event I would take transport and mortgage in six weeks because I was feeling better day by day. My friend refused to give me the loan. Defendant returned to me to find out if I had got the loan. I told him that I did not get the loan and could only give him \$2000:- and that he will have to wait 6 weeks for transport and mortgage to be passed.

He said he will not wait but would go to a lawyer. Two or three days later I received this letter from Cameron & Shepherd, solicitors. Exhibit "B" in evidence (dated 3rd, February 1959). Transport and mortgage had in fact been advertised on 8th November, 1958. I was feeling very ill when I received the letter so I did not reply to it.

Before 9th, February 1959 had arrived possibly on the Friday or Saturday before that date

- 10 defendant came to my office. He asked me whether I had received the letter from Cameron & Shepherd and told me that they had not received a reply to it and he asked me if I was taking transport and mortgage or not. I told defendant that in the way I was ill it is doubtful whether I could attend transport Court or go out to get the money but that but that if I could not find the health to go out to pass transport I would ask him to re-advertise the transport for which
- 20 I would pay. He told me he would not give me the mortgage. I agreed to that. Defendant told me that the persons on whom I was depending to buy the property will not do so as they had gone to him and that if the persons did not give him the mortgage to me to transfer to them they will not buy from me. He decided to re-advertise transport at my expense but without mortgage. I told defendant that if I could feel well enough to go to bank to get the money 2000:- I would take transport on
- 30 the 9th, February 1959. On the 9th, February 1959 I did not feel well enough to attend transport Court, or go to the bank, so I did not attend transport Court. I sent my secretary to pay Registrar of Deeds for re-advertisement of the transport. This was on the 26th, February 1959. She paid 2:- re-advertisement fee. This is the official receipt therefor. In evidence Exhibit "C". On the afternoon on Monday 9th, February 1959 the defendant came to my office and told
- 40 me that he did not see me at transport Court. He became abusive. He told me that if I did not have money I should not buy any property. He told me that he would give me a chance to raise the money and pay him and that I could get the transport again if not he will give me back my money as he does not mean to rob me. I told defendant that I will re-advertise and take transport. On the 26th, February 1959 I paid the re-advertisement fee. I did not see the
- 50 advertisement when I expected to see it so I came to the Registrar's office (Deeds Registry) to inquire about it. I was told by Registry clerk Mr. Chase that defendant had come with Mr. Carrington, clerk at Cameron and Shepherd and asked for delivery back of his transport and that the transport had been delivered back to defendant.

The following day I went to defendant at his home and told him I did not see re-advertisement for which I had paid and that Mr. Chase had told me that he had taken back his transport. He told me that he will not sell the property any more to me as one Deane, a property agent had told him that he could make \$12,000:- on the property if he had sold it out in portions. He told me he will forfeit my money. I told him he could not do so and will have to give me transport. About a month later I met him in Water Street. I asked him about the transport. He asked me if I was ready to take transport now. I said yes - I told him that I would come for him to go to the Registrar. That was on Thursday before advertisement of lease to R.R. Blackman was advertised on Saturday 28th, November 1959 in the Gazette. On 5th, December 1959 I entered opposition to passing of that lease. I later filed my Writ in this action. I ask for relief set out in my prayer in my Statement of Claim.

Cross - examined by Mrs. Ali Khan:-

I am a licensed auctioneer, agent, valuer and stock-broker. I have been a real estate agent from 1939 and an auctioneer, valuer and stock-broker from 1944. I negotiate sales of properties for commission. I have since 1939 prepared many agreements of sale and purchase for my clients. This was the only time I have prepared transport papers. That was because I had agreed to pay all transport expenses. Defendant did not suggest that he take a lawyer to prepare the transport papers. I had defendant's transport before me when the transport papers were prepared by me. Actually my secretary at my direction prepared the transport papers. She read over the affidavit of sale to the defendant and he said it was alright. Exhibit "A" was made but by Mr. R.H. Luckhoo, Barrister-at-Law. It is stated in exhibit "A" that transport is to be advertised during the month of September. It may be true that the affidavits of sale and purchase were sworn on 24th, September 1958. Affidavits had to be corrected on more than one occasion. Affidavits were filed on 30th, September 1958. Transport was advertised on 8th, November 1958 and was ripe for passing on 24th, November 1958. I did not attend transport Court on that day. Defendant came that afternoon to inquire why I did not come to transport Court. I told him I was too ill to come to transport Court and to get the remainder of \$2000:-. He offered to increase the mortgage from \$10,000:- to \$12,000:-.



On two other occasions subsequently the defendant came to my house to find out why I did not complete and I told him on both occasions I was too ill to do so. It is not true that I did not have the money to do so. I had enough money in the bank to complete. I did tell defendant on each occasion that I would try to borrow money from a friend. The reason why I wanted to take a mortgage was because i wanted to re-sell the property in portions in order to make a profit. I was speculating. In paragraph 6 of my Statement of Claim I have stated that I did not take up transport from the defendant when the time was ripe for the passing of the said transport due to other business arrangements which I had made when doubt arose whether defendant would be able to give transport to me or not. The doubt to which I have referred arose as a result of the registrar questioning ownership of houses on the land. The business arrangements to which I have referred at ~~pages 2~~ of my statement of claim were the closing of accounts at the banks. I now say I did not close any of my local bank accounts. I have bank accounts with Royal Bank of Canada, Georgetown, savings account and with Barclay's Banks, Georgetown, also savings account.

10

20

Question by me: Did you at any time during 1958 or 1959 have any account with any bank in any part of the world outside of British Guiana?

30

Answer: I do not wish to answer that question. I am afraid that if I answer that question it may incriminate me.

Evi-  
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I now say that the business arrangements I have referred to in paragraph 6 of the Statement of Claim are the arrangements I had made with other persons to sell to them portions of the property in question. I was depending upon deposits from these persons to pay to defendant the amounts I had agreed to pay him under Exhibit "A" but those persons did not pay me deposits because I could not see them through illness. I was then prevented from taking up transport at the time transport was ripe for passing. I had money in banks. I now say I did not have enough liquid cash at the time to take up transport.

Adjourned to 1 p.m.

Resumed at 1.05 p.m.

GHINTAMANIE AJIT re-sworn:-

Further cross-examined by Mrs. Ali Khan:-

(Witness stated :  
that he desires to qualify an answer given this morning)  
(ing)

When I said this morning that I did not have enough liquid cash, I was then in a position to raise the necessary money from investment I had or properties I owned.

- 10 Cross-examined by Mrs. Ali Khan:- I did not seek to realise any of my investments or sell any of my property to pay the defendant because I was ill. As a result of my illness I had ceased all business temporarily, but I did ask a friend to lend me \$2000:-. He told me that he could not do so then. This is the defendant's transport for the property which I did read before the filing of the transport papers on the 30th, September 1958. Transport  
20 in evidence Exhibit "D" No. 967 of 17th, August 1956, lot No. 113 Duke Street, with all the buildings and erections thereon save and except three buildings belonging to Manoel De Freitas. Today in the witness box is the first time I have observed that except in Exhibit "D". I relied on my secretary Miss Ali whom I considered to be very efficient, and because of the description of the property contained in  
30 Exhibit "A" the agreement of sale of the property I did not scrutinize the description of the property contained in the transport Exhibit "D". Defendant has committed breach of our agreement of sale and purchase because he has uplifted his transport Exhibit "D" from the Deeds Registry thereby preventing the re-advertisement of the transport. I bought the property with vacant possession of the front building. Defendant gave me the  
40 key to that house. I kept the house vacant. I did not go to live there. Defendant did summons in Supreme Court for rent for that house. Those proceedings are still pending. He claims \$60:- per month rent for that house from me. I still have the key to that house but defendant got Order for possession of that house from rent assessor in proceedings brought against me.

Line 23 at mark before first word from end corrected to read:(insert) I overlooked the mention in the description of the property in Exhibit "D". The exception of the 3 buildings stated therein as belonging to Manoel de Freitas.

I did not attend rent assessor's Court because I did not consider myself to be his tenant. I did have some pieces of furniture in that house. I did so with a view of selling the house furnished. After the filing of transport documents I considered myself free to sell the property. I so considered myself free to sell even from time the agreement of sale was signed by me and the defendant.

(Witness states he does not wish to add anything to his evidence.

LEON OSWALD ROCKLIFFE sworn:-

I am acting assistant Conveyancing Officer in the Deeds Registry. I produce at your request the Deeds Registry file containing transport papers relative to lot 113 Duke Street, Kingston - Reference No. 45 of 22nd November, 1958. On 30th, September 1958, instructions to advertise transport for that property subject to a lease of sub lot "A" in favour of Bissoon Lall was filed. Transport to be advertised in favour of Chintamanie Ajit. I also see affidavit of vendor dated 27th September 1958 and certain particulars therein re-sworn on 4th, November 1958. Affidavit of purchaser dated 30th, September 1958. That transport was advertised on 8th, November 1958 in the Official Gazette and became ripe for passing on 22nd, November 1958, and would normally have been passed on 24th, November 1958 or thereafter. I see on file certain queries in handwriting of Mr. Chase, the conveyancing Officer (acting) and a note in handwriting of Mr. D. Rameshwar a clerk in the conveyancing branch. Mr. Chase's note was "What about the 3 buildings belonging to Manoel De Freitas?" I see in handwriting of someone else "they are the property of transporter." Note by Rameshwar "Affidavit of vendor loaned to him on 4.10.58." Note (undated) marked "returned." "Affidavit re-sworn and returned 4.10.58." I see nothing on file to say why advertisement did not take place before 8th, November 1958. The transport was certified on the 22nd, November 1958, by Registrar of Deeds Mr. R.S. Persaud. It would lapse therefore on 22nd, February, 1959. Transport may be re-advertised after lapse on payment of prescribed fee of \$2:-. If re-advertised it would not lapse again until 3 months passes from date of record certificate of certifying Officer. As far as I know transport can be re-advertised time and time again at the application of the parties. I see a note on file of payment of fee of \$2:- on 26th, February 1959 by C. Ajit for re-advertisement. That note is in handwriting of Mr. Chase. I see receipt in Mr. Chase's handwriting and signed by Mootoo Sammy and dated 27th, February, 1959 for transport No. 967 of 17th, August 1936. I see pencilled note in Mr. Chase's handwriting and initialed by him "M.R.C." and dated 27th.2.59. - Title to be laid over." This

note is written on face of title Deed prepared in the Deeds Registry for the passing of transport after original advertisement. It was not within the duty of the clerk delivering the transport to Mootoo Sammy on 27th, February 1959 to inform Mootoo Sammy that a re-advertisement fee has been paid. Some clerks might do so, - others might not. It is not the practice for such information to be given. The receipt is written by Mr. M.R. Chase, conveyancing officer (acting) and signed by Mootoo Sammy. I would from that say that Mr. Chase returned the transport to Mootoo Sammy. Mr. Chase is an experienced Officer of the Deeds Registry. Any person may come to the Deeds Registry and ask for a transport. Where Counsel signs instructions to advertise we would normally ask that lawyer himself or his clerk to give receipt for the document requested. Where transporter himself signs instructions to advertise transport and then requests return of transport he would have to sign for receipt of same if he uplifts it. In the present case the instructions to advertise are signed by Mootoo Sammy as transporter and Chintamanie Ajit as transportee. There is nothing on the file to indicate who paid the transport fees. No inquiry would have to be made as to reason why transporter wants to uplift his transport. But we would have to be satisfied that person representing himself as transporter is the transporter before we return transport to him. If I saw a record on the file that re-advertisement fee was paid by you and transporter came to uplift transport I would most probably have told him that you had paid re-advertisement fee. File in evidence Exhibit "E".

Cross-examined by Mrs. Ali Khan:-

Words "Title to be laid over" do not mean that vendor has agreed to lay title over. They mean that nothing further could be done before title is laid over. There was nothing at all to prevent the transport in this case being passed between 3rd, February 1959, and 22nd, February 1959.

Re-examined:-

The re-advertisement could not be made because of absence of the transport taken up by the vendor Mootoo Sammy. (Mr. Chase is present in Court and Court asks Ajit if he would like to call Mr. Chase as a witness. Ajit states that he does not wish to do so.

CASE FOR PLAINTIFF CLOSED.

Put to election Counsel for the defendant closes defendants' case and submits:-

From the evidence given by the Plaintiff it is quite clear that the plaintiff is the party in default and he has committed breach of the agreement of sale and purchase.

10 Contents time was of the essence by reason of provision that transport was to be advertised during month of September. In any event letter of 3rd, February 1959 made time of the essence of the agreement. Defendant never attended the transport Court on 9th, February 1959 and therefore the agreement had been broken by him. His explanations show that he was never in any financial position to take transport. Even though defendant agreed to increase the mortgage from \$10,000:- to \$12,000:- the plaintiff was in no position to take up transport.

ADJOURNED TO 9 a.m. ON FRIDAY 6th, JANUARY 1961.

Appearances as before:

20 Mrs. Ali Khan further addresses:

The letter of 3rd, February 1959 made of the essence. Letter states that completion must be made by Monday 9th, February 1959. Refers to Cheshire & Fifoot on contracts 5th, Editorn p 454 - The next question is ..... Goss V Nugent (1883) 5 B & Ad. 58. Subsequent arrangements on afternoon of 9th, February 1959 formed a new contract and that contract was not in writing and is therefore unenforceable. No action taken on representation by the defendant to the detriment of the plaintiff. No cause of action can be based on the principle that no party will be allowed to go back on a representation made by him to the other party which is intended to have legal consequences and to be acted upon by the other party and upon which the other party has acted to his detriment. Can only be used in defence. Contents that after breach of contract by plaintiff; defendant was entitled to rescind - Cites Howes V Smith (1884) 27 Ch D. 98.

30

GHINTAMANIE AJIT addresses:-

40 Contract stands until either party brings such a contract to an end or brings proceedings in a Court of law. Agreement by the plaintiff after 3rd, February 1959 and before 9th, February 1959 was such that time was no longer of the essence. The evidence on this point is not disputed. Plaintiff thereafter paid re-advertisement fees on 26th, February 1959. Transport up-lifted by the defendant on the next day 27th, February 1959. Letter of 3rd, February 1959 was of no effect

after the defendant came to plaintiff prior to 9th, February 1959 and told him that he will not insist on transport going through by 9th, February 1959.

DECISION RESERVED

JUDGEMENT:

In this opposition action the plaintiff Ajit claims against the defendant Mootoo Sammy:-

- (i) an Order Restraining the defendant from passing a lease for a term of 999 years to one Blackman in re-  
10 spect of sub lot "I" part of lot numbered 113 Duke Street, Kingston, Georgetown in the County of Demerara;
- (ii) specific performance of a contract of sale and purchase entered into by and between the plaintiff as purchaser and the defendant as vendor on the 31st of July 1958, in respect of lot 113, aforesaid; alternatively nine thousand dollars as damages for breach of contract.
- (iii) an Order declaring the plaintiff's Opposition just, legal and well founded;
- 20 (iv) costs.

In 1936 the defendant became the owner by transport No. 967 of the 17th, of August 1936 of lot 113, Duke Street, with all the buildings and erections thereon save and except three buildings then in the ownership of one Manoel De Freitas. These three buildings were subsequently acquired by the defendant. In 1957 a lease for sub lot "A" part of the property was passed by the defendant to and in favour of one Bissoon Lall. On the 31st, of July 1958 the plaintiff  
30 and the defendant entered into a written agreement of sale and purchase whereby the defendant agreed to sell to the plaintiff and the plaintiff agreed to buy from the defendant lot 113, Duke Street, with all the buildings and erections thereon, save and except one building the property of Bissoon Lall situate on sub lot "A". It is stated in the agreement of sale and purchase that Bissoon Lall holds a lease for a term of 999 years. After describing the parties and the property the agreement  
40 contained the following terms:-

PRICE:

The sum of \$17,000:- (seventeen thousand dollars) of which the sum of one thousand dollars is being paid as a deposit on account of the said purchase price of \$17,000:- (the receipt whereof is hereby acknowledged by the vendor.) The vendor agrees to give the purchas-

or a mortgage for \$10,000:- at seven per cent interest per year payable quarterly - the interest. Capital to be paid in 5 yearly instalments of \$2000:- each. Purchaser to anticipate payment. Transport to be advertised during the month of September and if the purchaser who is paying the full transport expenses fails to have papers filed for advertisement the sum of \$1000:- shall be forfeited.

RATES AND TAXES:

10 All rates and taxes to be paid by the vendor up to the passing of transport.

The plaintiff undertook the preparation of the necessary documents to be filed leading to transport, that is to say, the affidavits of vendor and purchaser and the instructions to the Registrar of Deeds to advertise the transport. He was given the defendant's transport No. 967 of the 17th, of August 1936 to be lodged with the documents in the Deeds Registry. The plaintiff gave instructions to his typist to prepare the necessary  
 20 affidavits and instructions to advertise but omitted to inform her that the description of the property contained in the defendant's transport should not be faithfully followed in the defendant's subsequent affidavits and instructions to the Registrar because of acquisition of De Freitas' three buildings. The defendant swore to his affidavit on the 27th, of September and the plaintiff to his on the 30th, September, 1958. It turned out that the description of the property contained in the affidavits and instructions had later to be corrected  
 30 but even if they had been correctly prepared in the first instance it would not have been possible for the Registrar to check the documents and the advertisement of transport to be made during the month of September as is provided for in the agreement. The failure to observe this term of the agreement was that of the plaintiff. However, after the necessary corrections were made transport was advertised on the 8th, November 1958, and became ripe for passing on the 22nd, Of November, 1958 and would normally have been passed on  
 40 Monday 24th, November 1958. The advertisement of the mortgage agreed to be taken by the plaintiff was made simultaneously with that of the transport. According to the plaintiff he became ill early in December 1958 and in that month he first learned that the advertisement had appeared in the Official Gazette. Actually, the advertisement was made since the 8th, of November 1958. Sometime during December 1958 the defendant went to the plaintiff's office to inquire why the plaintiff did not attend the transport Court (which is held  
 50 every Monday) to take up transport and the mortgage. The plaintiff then informed the defendant that he would authorize his secretary to take up transport and the



mortgage for him provided that the defendant would increase the amount of the mortgage from \$10,000:- to \$14,000:- because he (the plaintiff) only had \$2000:- ready cash at home. The defendant offered to increase the amount of the mortgage by \$2000:- and the plaintiff stated that he would seek a loan of \$2000:- from a friend and that if he got the loan he would authorize his secretary to take up transport and the mortgage for him, but that if he did not obtain the loan the defendant would have to wait until he was well enough. The plaintiff did not succeed in obtaining a loan. The evidence of the plaintiff under cross-examination makes it clear that the plaintiff was financially incapable of taking up the transport and mortgages. Eventually, the defendant's legal advisers sent the following letter to the plaintiff:-

3rd, February 1959.

Dear Sir,

We have been consulted by Mr. Joseph Mootoo Sammy with reference to his agreement of sale with you dated 31st, July 1958 in respect of lot 113, Duke Street, Kingston. We are instructed that although the transport and mortgage were advertised on 8th, November last you have failed to accept and pass same although repeated demands have been made and our client even agreed to increase the amount of the mortgage from \$10,000:- to \$12,000:-. We are therefore instructed to inform you that time is of the essence of the contract and that unless you attend transport Court on Monday next the 9th, Inst. at 2 p.m. and accept transport, pass the mortgage and pay the balance of purchase price viz:- \$4000:- our client will have no alternative but to cancel the sale and forfeit the deposit and furthermore will hold you responsible for any loss or damages that he may incur in this matter.

Yours Faithfully,  
Sgds: CAMERON & SHEPHERD.

By that letter time was made of the essence of the contract. The date fixed for the completion of the agreement by that letter was Monday 9th, February 1959. As all that remained to be done by the plaintiff was to attend transport Court to pass the mortgage and to pay the balance of \$4000:- the time fixed was in the circumstances reasonable. The plaintiff has stated that three or four days before the 9th, February 1959 the defendant went to him and enquired whether he had received the letter sent by his legal advisers, and also enquired whether the

plaintiff was taking up the transport and the mortgage. The plaintiff stated that he told the defendant that because of his illness it was doubtful whether he could attend transport Court or go out to get the balance of the purchase price. The plaintiff has also stated that it was then orally agreed between them that if he (the plaintiff) felt well enough to go to the Bank to get \$2000:- on the 9th, February 1959 he would take up the transport and the mortgage but if he

10 could not do so the transport would be re-advertised (they lapsed three months after becoming ripe for passing) - at the plaintiff's expense and that no mortgage would be given. According to the plaintiff he was not well enough to attend transport Court on the 9th February 1959 and on the afternoon of that day the defendant went to his office and abused him telling him that if he did not have money he should not buy the property. However, says the plaintiff, the defendant told

20 him that he would give him a chance to raise the money and take up transport, if not (the defendant) would refund him his money (the deposit of \$1000:-). On the 26th, February 1959 the plaintiff paid a re-advertisement fee to have the transport re-advertised on the next day the defendant uplifted his transport from the Deeds Registry. There is no evidence as to whether

30 the defendant was aware at the time of uplifting his transport that the plaintiff had paid a re-advertisement fee. There is also no evidence that the plaintiff had altered his position by acting upon any oral representation made by the defendant. The plaintiff went to

40 the defendant who told him that he would not sell the property to the plaintiff but that he had made other arrangements. Eventually, the defendant caused to be advertised to sell in favour of Blackman a lease for a term of 999 years in respect of sub lot "A". On the 5th, of December 1959 the plaintiff entered opposition to the granting of that lease and this action was brought to enforce the **opposition**. It is interesting to note that the reason given at paragraph 6 of the Statement of claim by the plaintiff for his failure to complete

50 the contract was that he had made other business arrangements after the affidavits of vendor and purchaser filed with instructions to advertise transport had been found to be defective in respect of the description of the property sought to be transported. When pressed in evidence to say what these business arrangements were the plaintiff's attempts to explain this statement were most unconvincing. Nowhere in his statement of claim is there any hint that his illness in any way prevented him from taking up transport before the advertisement lapsed. However, the defendant led no evidence but was content to rest his case on the submissions of Counsel that on the evidence the plaintiff's case must fail. It is clear that time was made of the essence of the contract by the letter of the 3rd, of February 1959. Any subsequent oral arrangement between the parties can only

amount to either a variation by parol evidence of a term of a contract required by law to be in writing or to a mere forbearance on the part of the defendant to insist on the performance of the contract on the date fixed for completion. If the former, then parol evidence is inadmissible to vary the original written agreement; if the latter, the plaintiff cannot now claim any right to have the original contract specifically enforced. The defendant has never been in breach of the contract and therefore the plaintiff's claim for damages must also fail. The opposition is declared to be not just, legal nor well-founded. The plaintiff's claim is dismissed with costs to be taxed, certified fit for Counsel's Stay of execution for six weeks granted.

Sgd: J.A. Luckhoo.,  
Chief Justice.

Dated this 16th, day of February 1, 61.

20 Solicitors: P.A. Crum - Ewing for the defendant.

EXHIBIT "A".

J.W.A. 5.1.61.

BRITISH GUIANA, County of Demerara.

AGREEMENT OF SALE AND PURCHASE made and entered into this 31st, day of July 1, 58 at the City of Georgetown, County of Demerara and Colony of British Guiana, by and between Joseph Mootoo Sammy of 271, Thomas Street North Cummingsburg, Georgetown and Chintamanie Ajit of 133, Church and Carmichael Streets, Georgetown, hereinafter referred to as  
30 the Vendor and Purchaser.

**PARTIES:** The Vendor and the Purchaser which term shall include the heirs, executors, administrators and assigns of the parties hereto.

**PROPERTY:** Lot number 113, Duke Street, Kingston District, with all the buildings and erections thereon save and except one building the property of Bissoon Lall situate on sub lot "A" part of lot 113 aforesaid. He has a lease for 999 years.  
40 (property described in transport 967 of 17.8.1936.

**PRICE:** The sum of \$17,000:- (seventeen thousand dollars) of which the sum of (\$1000:-) one thousand dollars is being paid as deposit and on account of the said purchase price



PART 2.

of \$17,000:- (the receipt whereof is hereby acknowledged by the Vendor). The Vendor agrees to give the purchaser a mortgage for \$10,000:- at seven per cent interest per year payable quarterly - the interest. Capital to be paid in 5-yearly instalments of \$2000:- each. Purchaser to anticipate payment. Transport to be advertised during the month of September and if the purchaser who is paying the full transport expenses, fails to have papers filed for advertisement the sum of \$1000:- shall be forfeited.

**RATES AND TAXES:** All rates and taxes to be paid by Vendor up to passing of transport.

In witness whereof the parties have signed these presents the day and year first above written in the presence of the subscribing witnesses.

Sgd: Mootoo Sammy  
Vendor.

Witnesses:

Sgd: Chintamanie Ajit  
Purchaser.

24¢ 1. ?  
20 stamp cancelled 2. ?

EXHIBIT "B"

J.W.R. 5.1.61.

CAMERON & SHEPHERD,  
SOLICITORS

Patent & Trade Mark Agents.

2 High Street,

JOSEPH EDWARD DE FREITAS,

Georgetown Demerara

HERMAN WILLIAM DE FREITAS

British Guiana.

HUGH CECIL BENJAMIN HUMPHRYS

3rd, February, 1959

Notaries Public & Commission

30 for Oaths.

With: HUBERT CHESTER HUMPHRYS, G.C.,  
JAMES WALTER SHAW ELLIOTT.  
JOSEPH ARTHUR KING. Barristers-at-Law.

Registered Post.

Acknowledgment receipt.

Cable Address "NOREMAC" Georgetown, B.G.

EXHIBIT "B"

C. Ajit Esq.,  
133 Church & Carmichael Streets, Georgetown.

Dear Sir,

We have been consulted by Joseph Mootoo Sammy with reference to his agreement of sale with you dated 31st, July 1958 in respect of lot 113, Duke Street Kingston. We are instructed that although the transport and mortgage were advertised on 8th, November last you have failed to accept and pass same although repeated demands have been made and our client even agreed to increase the amount of the mortgage from 10 \$10,000:- to \$12,000:-. We are therefore instructed to inform you that time is of the essence of the contract and that unless you attend transport Court on Monday next the 9th, Instant at 2 p.m. and accept transport, pass the mortgage and pay the balance of purchase price viz: \$4000:- our client will have no alternative but to cancel the sale and forfeit the deposit and furthermore will hold you responsible for any loss or damages that he may incur in this matter.

20

Yours Faithfully,  
Cameron & Shepherd.

EXHIBIT "C"

J.W.R. 5.1.61.

No. 70165

H Duplicate.

BRITISH GUIANA.  
DEEDS REGISTRY DEPARTMENT. 26th, Feb., 1959

Received from Chintamanie Ajit, the sum of Two Dollars being re-advt. Fee \$2.00 in re Tpt by Mootoo Sammy to Chintamanie Ajit.

Head of Receipt.

30

Sgd: ? Small

Financial

Secretary

.....?.....

Initials of Officer drawing Receipt. \$2.00

NOTE.- Except in case of Customs duties, deposits by East Indian Immigrants, sale of stamps, amounts relating to the lands and mines department paid into the the treasury, magistrates fines and when otherwise provided, Government Officers must give 40 receipts from machine numbered receipt books for every sum paid to them.

TREASURY. - No. 32.

EXHIBIT "D"

J.W.R.

5.1.61.

Sch. B. 1936 No. 9529 Sch. B 1936 967.

Fee \$20:- No. 10508 Duty \$20:- TRANSPORT  
15.9.36.

20

## BRITISH GUIANA County of Demerara.

Before Edgar Mortimer Duke Registrar of Deeds of  
British Guiana aforesaid -----

10 Be it known that on this day the 17th day of August in  
the year One Thousand Nine Hundred and Thirty Six  
appeared Manoel Perriera Branco, Junior, of lot 113,  
Duke Street, Kingston, Georgetown Demerara, Clerk, -----

Which appearer declared by these presents to cede, trans-  
port and in full free property to make over to and in  
favour of Mootoo Sammy of lot 81 Lamaha Street, George-  
town Demerara, landed proprietor, his heirs, executors,  
administrators, and assigns -----

20 Lot number 113, (one hundred and thirteen) Duke Street  
in the Kingston District, in the City of Georgetown, in  
the County of Demerara and Colony of British Guiana,  
with all the buildings and erections thereon, save and  
except three buildings belonging to Manoel De Freitas,  
subject to a first mortgage passed on the 5th, Decem-  
ber 1927, No. 294 to the Hand-in-Hand Mutual Guarant-  
tee Fire Insurance Company, Limited. Being of the value  
of Two Thousand Dollars of the current money of British  
Guiana aforesaid, transported on the 16th, February  
30 1925 - No. 191. The appearer acknowledging to be fully  
paid and satisfied for the same. And appeared at the  
same time the said Mootoo Sammy who declared to accept  
of the foregoing transport and to be satisfied there-  
with. In testimony whereof the parties have hereunto set  
their hands and I the said Registrar of Deeds, togeth-  
er with the transport clerk, have countersigned the  
same, the day and year first above written.  
The seal of the Court being affixed hereto. The original  
of which this is a true copy is duly signed.

(L.S.)

Quod Attestor.

L.A.Y. Supreme Court - No. 17 J.B. Sharples

40 Sworn clerk and Notary Public:

EXHIBIT "E"

J.W.R.

5.1.61.

Sch. B 1958

Sch. B. 1958

Sch. B. 1959

No. 21953

No. 21953

No. 4607

Fee \$78.00

Duty \$170.00

Re. Advt. Fee \$2.00

TRANSPORT

45

22.11.58



BRITISH GUIANA  
COUNTRY OF DEMERARA.

Before

Registrar of Deeds of British Guiana aforesaid - -

Be it known that on this day the day of in the year one thousand nine hundred and fifty appeared MOOTOO SAMMY of lot 271 Thomas Street North Cummingsburg, Georgetown Demerara, landed proprietor ----- which a pro-  
 10 prier declared by these pro- prier  
 prier sents to cede, transport and in full and free property to make over and in favour of CHINTAMANIE AJIT of lot 133, Church and Carmichael Streets, Georgetown Demerara, Stock-Broker, his heirs, executors, administrators and assigns - - - Lot number 113, (one hundred and thirteen) Duke Street, in the Kingston District, in the City of Georgetown, in the County of Demerara and Colony of British Guiana, with all the buildings and erections thereon save and except  
 20 one building owned by Bissoon Lall situate on sub lot "A" being part of the said lot as shown and defined on a plan by S. A. Nehaul, sworn land surveyor dated 18th January 1957, and deposited in the Deeds Registry at Georgetown on the 26th January 1957, and subject to a lease for 999 (nine hundred and ninety nine) years of the said sub lot "A" passed in favour of the said Bissoon Lall on the 18th February 1957 No. 48. Being the value of Seventeen Thousand Dollars of the current money of British Guiana aforesaid, transported on the 17th, August 1936  
 30 No. 267.

The appeared acknowledging to be fully paid and satisfied for the same.

BRITISH GUIANA. COUNTY OF DEMERARA. SCH. B. 1958

No. 21953. Fee \$78.00 Duty \$170.00

The Registrar of Deeds is hereby instructed to advertise the following:-

By MOOTOO SAMMY of lot 271 Thomas Street, North Cummingsburg, Georgetown Demerara, landed proprietor:-

40 Transport of lot number 113 (one hundred and thirteen) Duke Street, in the Kingston District, in the City of Georgetown, in the County of Demerara, and Colony of British Guiana, with all the buildings and erections thereon save and except one building owned by Bissoon Lall situate on sub lot "A" being part of the said lot as shown and defined on a plan by S. A. Nehaul, sworn land surveyor, dated 18th, January 1957, and deposited in the Deeds Registry at Georgetown on the 26th, January 1957, and subject to

a lease for 999 (nine hundred and ninety nine) years of the said sub lot "A" passed in favour of the said Bissoon Lall on the 18th, February 1957, No. 48

To and in favour of CHINTAMANIE AJIT, of lot 133, Church and Camichael Streets, Georgetown, Demerara, Stock-Broker.

CONSIDERATION \$17,000:-

Dated this 30th day of September 1958.

10

MOOTTOO SAMMY  
Transporter.

CHINTAMANIE AJIT  
Transportee.

Form No. 2. SUBPOENA DUCES TECUM,  
1959 No. 1961 Demerara.

IN THE SUPREME COURT OF BRITISH GUIANA  
(Civil Jurisdiction)

Between:

Ghintamanie Ajit,

Plaintiff

-and-

20

Joseph Mootoo Sammy,

Defendant.

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.

GREETING.

TO: The Registrar of the Supreme Court,  
Victoria Law Courts, Georgetown.

WE COMMAND YOU to attend at the Victoria Law Courts, Georgetown, at the sitting of the Supreme Court to be held on Thursday the 5th, of January 1961, at the hour of 9 o'clock in the forenoon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff. And also to bring with you and produce at the place and time aforesaid specified documents (to be produced) the file with conveyancing papers filed with the Registrar of Deeds at Georgetown on the 30th, day of september, 1958, by the abovenamed plaintiff and defendant and (2) the transport advertised on the 28th, day of November 1958, between the abovenamed plaintiff and defendant with instructions to re-advertise the said transport which is not stocked with the out of order pile of transports in the office of the Deeds Registry.

WITNESS: The Honourable JOSEPH ALEXANDER LUCKHOO, Chief Justice of British Guiana the 4th, day of January in the year of Our Lord One Thousand Nine Hundred and Sixty One.

The sum of Five Dollars is lodged for your attendance. A TRUE COPY. Jos Ramsammy, First Marshall.

Kenneth W. Narnwell.

Sworn clerk and Notary Public for Registrar.

BRITISH GUIANA County of Demerara.

10 I, MOOTOO SAMMY of lot 271 Thomas Street, North Cummingsburg, Georgetown Demerara, landed proprietor, being duly sworn, make oath and say:-

1. That on the 31st, day of July 1958, I sold to Chintamanie Ajit of lot 133, Church and Carmichael Streets, Georgetown Demerara, Stock-Broker, the property herein described, that is to say:-

Lot number 113, (one hundred and thirteen) Duke Street, in the Kingston District, in the City of Georgetown, in the County of Demerara and Colony  
 20 of British Guiana, with all the buildings and erections thereon save and except one building owned by Bissoon Lall situate on sub lot "A" being part of the aforesaid lot 113, (one hundred and thirteen) Duke Street, in the Kingston  
 30 District, in the City of Georgetown, in the County of Demerara and Colony of British Guiana as shown and defined on a plan by S.A. Nchaul, sworn land surveyor, dated 18th, January 1957 and deposited in the office of lands and mines at  
 40 Georgetown Demerara on the 26th, January 1957 and numbered 2723/13; and subject to a lease for a period of 999 (nine hundred and ninety nine years) of the aforesaid sub lot "A" as shown on the aforesaid plan; a copy of which is deposited in the Registrar's Office at Georgetown Demerara and attached to the said lease to and in favour of the said Bissoon Lall, approved and registered by the Registrar of Deeds on the 18th, February, 1957 and numbered 48 (forty eight) for the Counties of  
 40 Demerara and Essequibo.

And that the full and true consideration passing to me for such sale is the sum of \$17,000:- (seventeen thousand dollars) and I further state that there is not any agreement, condition or undertaking between me and the said Chintamanie Ajit whereby he is to pay or has paid to me or to any other person whatsoever for or in respect of or in connection with the purchase by him of the said property any sum

of money over the sum of \$17,000:- (seventeen thousand and dollars) and the said purchaser Chintamanie Ajit by agreement will pay all charges under the heading of stamp duty or Registrar's fees.

2. And I further state in respect of the said sale that I have not received and that I am not to receive nor has any person received nor is any other person to receive for my use or benefit or at my instance or request any valuable consideration beside the sum of \$17,000:- (seventeen thousand dollars).

3. That I have been twice married and on both occasions after the 20th, day of August 1904, and my first wife is dead.

4. I am one and the same person mentioned and described in transport No. 967 of 1936.

5. This affidavit was drawn by the purchaser and myself without obligation or payment to anyone for such service.

Sworn to at Georgetown Demerara  
this 27th, day of September 1958  
Before Me, Albert J. Parkes, A  
Commissioner of Oaths to Affidavits.

MOOTOO SAMMY  
Deponent.

36 Stamp cancelled.

I, MOOTOO SAMMY, of lot 271 Thomas Street Cummingsburg Georgetown Demerara, being duly re-sworn make Oath and say:-

1. That after I obtained Title I purchase the buildings from Manoel De Freitas and the same are now my property and form part of this conveyance.

MOOTOO SAMMY

Re-sworn by the said MOOTOO SAMMY at  
Georgetown Demerara, this 4th, day of  
November 1958,  
Before Me, Albert J. Parkes. A Commissioner  
Of Oaths.

BRITISH GUIANA, County of Demerara.

I, CHINTAMANIE AJIT, of lot 133 Church and Carmichael Streets, Georgetown Demerara, Stock-Broker, being duly sworn, make Oath and say:-

1. That on the 31st, day of July 1938, I bought from

Mootoo Sammy of lot 271 Thomas Street, North Cummingsburg District, Georgetown Demerara, landed proprietor the property herein described that is to say:-

- Lot number 113 (one hundred and thirteen) Duke Street in the Kingston District, in the City of Georgetown, in the County of Demerara and Colony of British Guiana with all the buildings and erections thereon save and except one building owned by Bissoon Lall situate on sub lot "A" being part of the aforesaid
- 10 lot 113, (one hundred and thirteen) Duke Street in the Kingston District, in the City of Georgetown, in the County of Demerara and Colony of British Guiana as shown and defined on a plan by S. A. Nehaul, sworn land surveyor, dated 18th, January 1957 and deposited in the office of lands and Mines at Georgetown Demerara on the 26th, January 1957 and numbered 2723/13; and subject to a lease for a period of 999 (nine hundred and ninety nine) years of the aforesaid sub lot "A" as shown on
- 20 the aforesaid plan; a copy of which is deposited in the Registrar's Office at Georgetown Demerara, and attached to the said lease to and in favour of the said Bissoon Lall approved and registered by the Registrar of Deeds on the 18th, February 1957, and numbered 48 (forty eight) for the Counties of Demerara and Essequibo. And that the full and true consideration paid or to be paid by me for such property whether to the said
- 30 Mootoo Sammy or to any other person in connection with such sale is the sum of \$17,000:- (seventeen thousand dollars).

2. And I further state that I have not nor has any other person to my knowledge on my account paid nor is there by me or on my behalf to be paid any other valuable consideration for and in respect of or in connection with the alienation to me of the said property, save and except certain stamp duty and Registrar's fees.

40 3. This affidavit was drawn by the vendor and myself with but obligation or payment to anyone for such service.

4. That I was never married.

Sworn to at Georgetown Demerara this 30th, day of September 1958, Before Me,  
Albert J. Parkes, A Commissioner of Oaths to Affidavits.

Chintamanie Ajit  
Deponent  
36¢ Stamp Cancelled

\$50.00

Georgetown Demerara, 30th July 1936

Received from Mr. Mootoo Sammy the sum of Fifty Dollars \$50.00 being on account the purchase of the following to wit: 1 cottage with iron tank, one, one room cottage & one two room cottage all situate in the rear of lot 113, Duke Street, Kingston Georgetown on the land the property of M.P. Branco Jnr. The balance of purchase money \$450.00 four hundred and fifty dollars - to be paid on the date of the passing of the transport of lot 113, Duke Street, Kingston to the purchaser Mr. Mootoo Sammy - The rents of the property to be the purchaser's own as and from the date of payment of the balance of the purchase money \$450.00

10

Manoel De Freitas Per John  
De Freitas

Witnesses: ?

4¢ stamp cancelled

Fraser

M.P. Branco.

Georgetown Demerara, July 30th  
1936.

20 50.00

Received from Mr. Mootoo Sammy the sum of fifty dollars (\$50.00 being on a/c the sum of two thousand dollars (\$2000.00) being the purchase of - Lot 113, Duke Street Kingston Georgetown, with all the buildings and erections thereon - save the three buildings in the rear of the property belonging to Mr. M. De Freitas. Transport expenses to be paid equally between the purchaser and seller. All taxes and rates are to be paid by the seller to the date of the passing of the transport.

30 The purchaser to accept transport of the property subject to the first mortgage thereon in favour of the Hand-in-Hand Fire Ins., Co., Ltd., to the extent of \$700.00 Rents of the property to be vested in the purchaser as from the date of the passing of the transport. The balance of the purchase money to be paid on the passing of the transport.

Witnesses:

? Fraser

M.P. Branco

?

?

24¢ stamp cancelled

40 Sch. B. 1958  
No. 21953  
Fee \$78.00

Sch. B. 1958  
No. 21953  
Duty \$170.00

TRANSPORT 45

22.11.58

BRITISH GUIANA, County of  
Demerara,

Before

Registrar of Deeds of British Guiana aforesaid

Be it known that on this day the            day of  
in the year One Thousand Nine Hundred and Fifty  
appeared MOORJO SAINI, of lot 271 Thomas Street  
North Cummingsburg, Georgetown Demerara, landed  
proprietor which appeared declared by these  
10 present to cede transport and in full and free  
property to make over and in favour of CHINTAMAN  
IE AJIT, of lot 133, Church and Cornichael Streets  
Georgetown Demerara, Stock-Broker, his heirs,  
executors, administrators and assigns - - -  
Lot number 113 (one hundred and thirteen) Duke  
Street, in the Kingston District, in the City of Geor-  
getown in the County of Demerara and Colony of  
British Guiana, with all the buildings and erections  
thereon save and except one building owned by Bissoon,  
20 Mall situate on sub lot "A" being part of the said lot  
as shown and defined on a plan by S.A. Nehaul, sworn  
land surveyor, dated 18th, January 1957, and depo-  
sited in the Deeds Registry at Georgetown on the  
26th, January 1957, and subject to a lease for 999  
(nine hundred and ninety nine) years of the said sub  
lot "A" passed in favour of the said Bissoon Mall  
on the 18th, February 1957 No. 48 - - - - -

Being the value of SEVENTEEN THOUSAND DOLLARS  
of the current money of British Guiana, aforesaid  
30 transported on the 17th, August 1936 No. 967 - - -

The appearer acknowledging to be fully paid and  
satisfied for the same, And appeared at the  
same time who declared to accept of the foregoing  
transport and to be satisfied therewith.

In testimony whereof the parties have hereunto set  
their hands and I, the said Registrar of Deeds, to-  
gether with the transport clerk, have countersigned  
same, the day and year first above written. The  
40 seal of the Court being affixed hereto. The original  
of which this is a true copy is duly signed,

(L.S.)

Quod Attestor.

Sworn Clerk and Notary Public.

I hereby certify that I have examined, checked and  
satisfied myself as to the sufficiency of the title  
of the within named transporter to pass the within  
mentioned transport.

Dated at Georgetown this 22nd, day of November 1958.

R. S. Percaud  
Registrar of Deeds.

Received gross Tpt:  
No. 967 of of 17/8/1936  
this 27th, Feb. 1959.

Meqtoo Sammy (Sgd.)

REASONS FOR JUDGEMENT.

On the hearing of this appeal, the appellant appeared in person and made submissions generally following the grounds of appeal set out in his Notice of appeal. The Court dismissed the appeal with costs to the respondent, who was not called upon. The Court was in agreement with the decision of the learned Chief Justice that time had been made of the essence of the contract by the action of the respondent's legal advisers in sending to the appellant the letter of 3rd, February 1959 and that the time fixed in that letter was in the circumstances reasonable. See Stickney v Keeble 1915 A.C. 386. This Court was also in agreement that the appellant had not established that the respondent was in breach of his agreement at all. It was also considered that the failure to perform the contract according to its terms and within the time stipulated was solely the fault of the appellant. Accordingly, the Court was of opinion that the judgement of the learned Chief Justice that the appellant was not now entitled either to specific performance of the contract or to damages was correct. It followed that his opposition to the passing of transport was not well founded, as was held by the Chief Justice. This Court therefore dismissed this appeal, with costs to the respondent. Dated this 22nd, day of March 1962.

G. V. H. Archer,  
Federal Justice

C. Wylie  
Federal Justice

Donald Jackson  
Federal Justice

UPON READING the notice of motion on behalf of the abovenamed (plaintiff) appellant dated the 27th day of March 1961, and the judgement hereinafter mentioned; AND UPON reading the judge's notes herein; AND upon hearing the (plaintiff) appellant in person; and the court indicating that it does not wish to hear Mr. Ali Khan, Counsel for the (defendant) respondent; It Is Ordered that the judgement of the Honourable the Chief Justice dated the 16th, day of February 1961 be affirmed and this appeal be dismissed with costs to be taxed and paid by the said plaintiff - appellant to the said (defendant) respondent.

BY THE COURT  
... Chung, Deputy Registrar.



**AFFIDAVIT OF DEPRECIATION OF PROPERTY**  
**FILED BY THE PLAINTIFF - APPELLANT.**

I, Chintananie Ajit, of lot 65 Fifth Street, Alberttown, Georgetown Demerara, being duly sworn make Oath and say:-

1. That I am the one and same person referred to as appellant in the matter.

2. That this appeal is in respect of immovable property (houses and lands) and the claim is for specific performance of a contract for the sale and purchase of the said immovable property valued at that time at 17,000:- (seventeen thousand dollars).

3. That at the present time the said immovable property does not value more than \$5000:- (five thousand dollars) because of the respondent's failure to keep same in the same condition as it used to be at the time when the respondent entered into a written contract with the appellant for the sale and purchase of the said immovable property.

4. That the said contract was entered into by the appellant and respondent on the 31st, day of July 1958, and all the buildings are made of wood.

Sgd: Chintananie Ajit  
 Appellant.

Sworn to at Georgetown Demerara  
 this 26th day of February 1962  
 Before Me. L.P. Kerry, A Commissioner of Oaths to Affidavits.

Before:

THE HONOURABLE SIR STANLEY GONES, CHIEF JUSTICE  
 THE HONOURABLE MR. JUSTICE LEWIS.  
 THE HONOURABLE MR. JUSTICE MARNAN.

DATED THE 21st, DAY OF FEBRUARY, 1962.

UPON the Notice of Motion of the abovenamed appellant dated the 14th, day of December 1961 for leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgement of the Court comprising the Honourable Mr. Justice Archer, the Honourable Mr. Justice Wylie and the Honourable Sir Donald Jackson delivered herein on the 28th, day of November 1961:

UPON READING the said Notice of Motion and the affidavit in support thereof sworn to by the said appellant on the 14th, day of December 1961 and filed herein: AND UPON HEARING the appellant in person and Counsel for the respondent, the court doth order; That subject to the performance by the said appellant of the conditions hereinafter mentioned and subject also to the final Order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Her Majesty's Privy Council against the said judgement of their Lordships of the Federal Supreme Court (Appellate Jurisdiction) be and the same is hereby granted to the appellant, AND THIS COURT DOTH FURTHER ORDER; That the appellant do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Deputy Registrar of this court in the sum of \$2,400:- with one or more sureties or deposit into court the said sum of \$2,400:- for the due prosecution of the said appeal and for the payment of such costs as may become payable to the respondent in the event of the appeal <sup>being</sup> and not obtaining an Order granting him final leave to appeal or of the appeal being 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 on such appeal, 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 Her Majesty's Privy 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 appellant do within 4 months from the date of this Order in due course take out all appointments that may be necessary for settling the transcript record in such appeal to enable the Deputy Registrar of this Court to certify that the said transcript record has been settled and that the provisions of this Order on the part of the appellant have been complied with,

50 AND THIS COURT DOTH FURTHER ORDER

That the appellant be at liberty to apply any time within 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 Deputy Registrar of this Court of due compliance and on <sup>his</sup> the part with the conditions of this Order,

AND THIS COURT DOTH FURTHER ORDER

That the costs of the Court below and of this court be stayed pending the hearing and determination of this appeal in the Privy Council.

AND THIS COURT DOTH FURTHER ORDER

that the costs of and incidental to this application be the costs in the cause.  
liberty to the parties to apply as they may be advised.

BY ORDER OF THE COURT

A. Chung.

Deputy Registrar, Federal Supreme Court.

10 UPON the application of the abovenamed appellant  
Cintamanie Ajit, dated the 26th, day of February, 1962  
for final leave to appeal to Her Majesty in Her Maj-  
esty's Privy Council against the judgement of the  
Federal Supreme Court dated the 26th, day of November 1961:

AND UPON READING the said application and the Order  
of the said Court dated the 21st, day of February, 1962  
granting conditional leave to appeal, and the Order of  
this Court dated the 30th, day of November, 1962 granting  
an extension of time and the certificate of the Registrar  
dated the 6th, day of March, 1963 of due compliance with  
the conditions imposed:

20 AND UPON HEARING the petitioner in person and Coun-  
sel for the respondents and being satisfied that the  
terms and conditions imposed by the said Order dated  
21st February, 1962 and 30th, November 1962 have been  
complied with:

THIS COURT DOETH ORDER that final leave be and is  
hereby granted the said petitioner to appeal to Her  
Majesty in Her Majesty's Privy Council.

BY THE COURT

G. A. S. Van Sertima.

DEPUTY REGISTRAR. ( Ag ).

List of Documents Omitted From The Record.

1. Ex Parte application for stay of execution of costs. 3.5.61
2. Affidavit in support of application. 3.5.61
3. Application by way of summons for extension of time to file record of appeal. 18.5.61
4. Affidavit in support of application. 18.5.61
5. Security Bond for due prosecution of appeal to Federal Supreme Court. 25.5.61
6. Order of Court granting stay of execution of costs. 15.8.61
7. Order of Court granting extension of time to file appeal record. 26.5.61

No.	Description Of Document	Erased	Erased.	Date Of Document
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- |    |   |  |  |          |
|----|---|--|--|----------|
| 8. | Affidavit of service of Notice of Motion to appeal to Her Majesty in Her Majesty's Privy Council. |  |  | 21.10.61 |
|----|---|--|--|----------|

9. Motion for leave to appeal to Her Majesty in Council.

~~(2+12)~~

10. Security Bond for due prosecution of appeal to Her Majesty in Her Majesty's Privy Council.