

IN THE PRIVY COUNCIL

No. 10 of 1970

## O N A P P E A L

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

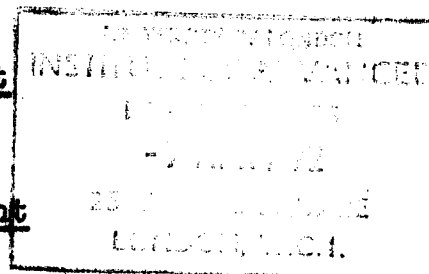
B E T W E E N:

ABDOOL LATIFF

Appellant

AND

TANI PERSAUD

Respondent

## CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal from the judgment and order of the Court of Appeal of the Supreme Court of Judicature of Guyana dated the 14th April 1969 dismissing the Appellant's appeal and affirming the judgment of the Honourable Mr. Justice Vieira dated the 28th June 1968.
- 20 2. The case arises out of an action for money due and owing on a promissory note, alternatively for goods sold and delivered or for moneys paid and advanced to and at the request of the Respondent.
- 30 3. The action was commenced by specially endorsed writ on the 14th September 1967. A Defence was filed in January 1968 together with an affidavit in support. On the 8th June 1968 the matter came before the Honourable Mr. Justice Vieira sitting in the Bail Court of the High Court of the Supreme Court of Judicature of Guyana on the Respondent's application for leave to defend the action under Order 12 of the Rules of the Supreme Court 1955 (GUYANA)
4. On the hearing of that application it was submitted on behalf of the Respondent that the

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writ was defective. Counsel for the Appellant sought leave to make two amendments. The submissions were upheld, leave to amend was refused and the matter was dismissed with costs to the Respondent.

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5. On the 17th June 1968 the trial judge spoke informally to counsel for the Appellant and the Respondent and informed them that he was recalling his Order which at that time had not been entered, was allowing one of the two amendments sought by the Appellant and postponing the matter to the 28th June 1968. Counsel for the Appellant informed the learned judge that he had already settled the Grounds of Appeal which were about to be entered and that he was without instructions to appear at the adjourned hearing.

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6. On the 28th June 1968 the action was called on although it was not listed in the day's hearing list as required by Order 32 rule 10 of the Rules of the Supreme Court 1955 (Guyana) which provides:

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"The Registrar shall, under the direction of the Court, appoint the days on which the actions appearing on the hearing list shall be heard by the Court, and notice of the days so appointed shall be published and exhibited in such manner and in such place as the Court may direct."

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On the 28th June 1968 the Appellant appeared neither in person nor by Counsel and the Action was dismissed for want of prosecution.

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7. On the 28th October 1968 the Court of Appeal heard the Appellant's motion for directions and ordered that the proceedings in the matter which took place in the High Court of the Supreme Court of Judicature before the Honourable Mr. Justice Vieira on the 28th June 1968 might quite properly be included in any record of appeal and granted the Appellant an extension of time in which to appeal against the order made by the Honourable Mr. Justice Vieira dismissing the action and ordered that the costs of the application be costs in cause.

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8. By his Notice of Appeal the Appellant sought the following relief:

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

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

on the grounds that

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

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

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

9. The appeal was heard on the 14th April 1969 and the Court of Appeal made the following adjudication:

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

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

40 AND IT IS FURTHER ORDERED that the notice of appeal on behalf of the above named (Plaintiff)

RECORD

Appellant dated the 17th day of June, 1968 be and is hereby expunged from the record.

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10. On the 8th May 1970 the Chancellor gave his reasons for dismissing the appeal saying, "After reference was made to the history of the matter counsel's lack of faith in his appeal was manifested to the point of conceding that the appeal should be dismissed, which was duly effected". The Honourable Chief Justice concurred on the 6th May 1970 (sic) and the Honourable Mr. Cummings, Justice of Appeal on the 9th May 1970.

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11. Final leave to appeal to Her Majesty in Council was granted on the 1st November 1969.

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12. The Appellant humbly submits that this appeal should be allowed and that the order of the Court of Appeal of the Supreme Court of Judicature of Guyana should be set aside together with the dismissal of the action by the Honourable Mr. Justice Vieira, that there should be a new trial of the action and that he should be granted the costs of this appeal for the following among other

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REASONS

1. BECAUSE although the action was dismissed for want of prosecution on the 28th June 1968 the trial judge well knew that at the date of the dismissal the Appellant was actively pursuing his appeal against the judge's earlier order.

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2. BECAUSE the trial judge wrongly exercised his discretion to dismiss the action under O.12 r.11 of the Rules of the Supreme Court 1955.

3. BECAUSE the trial judge wrongly failed to direct the Registrar to give notice of the hearing on the 28th June 1968.

4. BECAUSE the judgment in default of appearance ought to have been set aside upon such terms as to costs as were just.

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J. P. WADSWORTH.

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CASE FOR THE APPELLANT

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