

Judgment 16 of 1972.

16

IN THE PRIVY COUNCIL

No. 11 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 :

BOOKERS STORES LIMITED

Appellant
(Defendant)

- and -

MUSTAPHA ALLY

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

VOLUME I

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

SIMMONS & SIMMONS,
14 Dominion Street,
London, EC2M 2RJ.

Solicitors for the Appellant

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RECORD OF PROCEEDINGS

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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 :

BOOKERS STORES LIMITED	<u>Appellant</u> (Defendant)
- and -	
MUSTAPHA ALLY	<u>Respondent</u> (Plaintiff)

RECORD OF PROCEEDINGS

10

No. 1

WRIT OF SUMMONS

In the Supreme
Court of
British Guiana

1963

No. 1965

DEMERARA

No. 1

IN THE SUPREME COURT OF BRITISH GUIANA
(CIVIL JURISDICTION)

Writ of Summons

29th October
1963

BETWEEN:-

MUSTAPHA ALLY, male East Indian, Plaintiff,
- and -

20

BOOKERS STORES LIMITED, a company incorporated
in this colony under the Companies Ordinance,
Chapter 328, whose registered Office is at
lots 49/53 Water Street Georgetown, Demerara.
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,

In the Supreme
Court of
British Guiana

To:- BOOKERS STORES LTD.,
of 49/53 Water Street,
Georgetown, Demerara.

No. 1

Writ of Summons

29th October
1963
(continued)

WE COMMAND YOU that within 10 (ten) days after the service hereof on you inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of MUSTAPHA ALLY, male East Indian, the abovenamed plaintiff; AND TAKE NOTICE that in default of your so doing, the plaintiff will proceed therein and judgment may be given against you in your absence.

10

WITNESS, The Honourable Mr. Justice WILLIAM ADRIAN DATE Acting Chief Justice of British Guiana the 29th day of October, in the year of Our Lord one thousand nine hundred and sixty-three.

N.B. The defendant herein may appear hereto by entering an appearance either personally or by Solicitor at the Registry at Georgetown.

INDORSEMENT OF CLAIM

20

The plaintiff's claim is against the defendant (Company) for:-

1. The sum of \$500,000.00 (five hundred thousand dollars) damages for breach of warranty and/or condition and/or for fraud and/or for misrepresentation on the sale by the defendant (Company) to the plaintiff of one "Grantex Model "30/60E" and one "Grantex Electrical Paddy Dryer Model "08" " on the 26th day of March, 1962 and on the 30th day of May, 1962, respectively in the city of Georgetown, in the county of Demerara and colony of British Guiana.

30

2. Such further or other relief as the Court may deem just.

3. Costs.

L.L. DOOBAY

Solicitor to Plaintiff.

Dated at Georgetown, Demerara.
The 29th day of October, 1963.

This writ was issued by Mr. Loknauth Lalman Doobay, Solicitor, of and whose address for service and place of business is at his Office at lots 15-16 Croal Street Georgetown Demerara Solicitor to the plaintiff who resides at Albion, Corentyne, Berbice.

In the Supreme Court of British Guiana

No. 1

Writ of Summons

29th October 1963 (continued)

L.L. DOOBAY
Solicitor to Plaintiff.

AUTHORITY TO SOLICITOR

10 I, MUSTAPHA ALLY, the abovenamed plaintiff do hereby authorise Mr. Loknauth Lalman Doobay Solicitor, to act as my Solicitor in this matter and to do all acts and things necessary herein for and on my behalf.

MUSTAPHA ALLY
Plaintiff.

Dated at Georgetown, Demerara.
The 29th day of October, 1963.

No. 2

No. 2

20 STATEMENT OF CLAIM

Statement of Claim

1963 No. 1965 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA
(CIVIL JURISDICTION)

12th March 1964

BETWEEN:-

MUSTAPHA ALLY, male East Indian, Plaintiff,
and

30 BOOKERS STORES LIMITED, a company incorporated in this colony under the Companies Ordinance, Chapter 328, whose registered office is at lots 49/53 Water Street, Georgetown, Demerara.
Defendants.

In the Supreme
Court of
British Guiana

No. 2

Statement of
Claim

12th March
1964
(continued)

STATEMENT OF CLAIM

1. The plaintiff is a Rice Miller and the defendants a limited liability company, are traders, merchants and dealers in machinery including rice milling equipment and machinery.

2. By a contract of hire purchase dated the 26th day of March, 1962, the plaintiff at first hired and then purchased from the defendants and the defendants sold to the plaintiff the following goods and chattels, to wit:-

10

"One Grantex Model "30/60" E, detached Rice Mill C/W Electric Motors and 1 Grantex Electrical Paddy Dryer, Model "08"."

which said goods were purchased by the plaintiff and supplied by the defendants for the sole purpose of being used by the plaintiff as a mill for the milling of rice with the paddy dryer to dry paddy, that is to say, to extract moisture prior to feeding the said mill for processing the paddy into rice, and it was an implied term of the said contract that the goods should be reasonably fit for such purpose.

20

3. The plaintiff expressly and/or by implication made it known to the defendants the purpose for which the said goods were required, and the plaintiff relied on the defendant's skill and judgment and representations that the goods were reasonably fit for the purpose for which they were bought.

4. The defendants, by their servants and/or agents Messrs. Esselmont, Blair and Chung orally warranted that the mill would be capable of milling more than 5000 lbs of paddy per hour and that the dryer would be capable of drying more than 4 tons of white rice paddy (or more than 2 (two) tons of parboiled paddy) per hour.

30

5. The defendants specifically represented by the literature issued by the manufacturers that the mill to be purchased by the plaintiff which was a triple cone mill with one polisher had a capacity of 4300 to 5600 lbs per hour of paddy for a belt driven mill and represented that the plaintiff's mill being electrically driven would have a greater capacity than a belt driven mill.

40

6. The defendants specifically represented by the literature issued by the manufacturers that the dryer to be purchased by the plaintiff had a capacity of 4 (four) tons per hour at a temperature of 150°F and other capacities.

In the Supreme
Court of
British Guiana

No. 2

7. The said term that the goods should be reasonably fit for the purposes for which they were purchased was implied from the abovementioned representations as well as under the circumstances following: It was in the course of the defendants' business as merchants, dealers and traders in the city of Georgetown, in the county of Demerara and colony of British Guiana to sell and supply goods of the description aforesaid and they advertised the sale of such goods in the press and by distribution of literature pertaining thereto, and the purpose for which the said goods were required was before and at the time of the said sale made known by the plaintiff to the defendants so as to show as was the fact that the plaintiff relied on the defendants' skill and judgment.

Statement of
Claim

12th March
1964
(continued)

8. The defendants, by an implied term of the said contract warranted the mill to process approximately 5000 lbs and above good quality grain paddy per hour, and the paddy dryer to dry 4 (four) tons and above of paddy per hour for white rice and about 2 (two) tons of paddy per hour for parboiled rice.

9. The goods were not reasonably fit for the said purpose inasmuch as a series of tests by the plaintiff and the defendants revealed that the actual capacity of both the mill and dryer was far below the capacity as set out in paragraphs (4), (5) and (6) above; and further the mill produced an excessive percentage of broken grains of rice.

Particulars:

(a) The defendants by their servants and/or agents conducted 8 (eight) milling and drying operations on the said mill and dryer, on three occasions in the month of December, 1962, one in February, 1963, 3 (three) in March, 1963 and one in July, 1963.

In the Supreme
Court of
British Guiana

T E S T S

No. 2

Statement of
Claim

12th March
1964
(continued)

Bags of Paddy	Whole grains	Broken grains	Hrs. to dry	Hrs. to mill	
<u>1962</u>					
December 80	84	2	no record	no record	
" 217	80 $\frac{3}{4}$	43 $\frac{3}{4}$	20	21	
<u>1963</u>					
January 100	29	19	40	8	
February 420	122	60	40	36	
February 186	51	36	18	14	10
March 145	26	26	11	9	
July 100	28	10	7 $\frac{1}{2}$	4.5	
Total 1078	340 $\frac{3}{4}$	196 $\frac{3}{4}$	136 $\frac{1}{4}$	92.5	

(b) The plaintiff conducted 2 (two) milling and drying operations on the mill and dryer and the following resulted:-

Bags of Paddy	Whole grains	Broken grains	
<u>1962</u>			
December 180	60	25	
<u>1963</u>			
January 225	73	27	20

10. Under the aforesaid warranty as to the capacity of the paddy dryer and the mill 100 (one hundred) bags of paddy of 150 lbs bags should have taken 1 $\frac{1}{2}$ hours approximately to dry and the said 100 (one hundred) bags paddy when let from the dryer to the mill should have taken 3 (three) hours to process into rice.

11. Under all normal circumstances (100 (one hundred) bags of 150 lbs of paddy even of bad grain when dried and milled should produce about 2 to 3 bags broken rice and 47 to 50 bags whole grain and should result in net profit of 50 cents on each bag to the plaintiff. 30

12. The plaintiff at all times had storage space and was at all times ready to receive 1,000,000 bags of paddy per crop had the mill and dryer functioned normally.

In the Supreme
Court of
British Guiana

No. 2

13. By reason of the breach of warranty aforesaid in the result the plaintiff has suffered damage, has lost custom in addition to the engine consuming excessive oil in the operation of the mill and dryer. The mill and the dryer are wholly uneconomical to operate and the plaintiff has had to discontinue the operation of the dryer since July, 1963. The plaintiff consequence has sustained the following damage.

Statement of
Claim

12th March
1964
(continued)

10

PARTICULARS OF DAMAGE

Compensation paid for damage aforesaid on tests by defendants' agents on the following:-

1.	(a)	80 bags of paddy.	₹	600.00
	(b)	217 bags of paddy.		532.00
	(c)	100 bags of paddy.		400.00
20	(d)	420 bags of paddy.		2,457.00
	(e)	186 bags of paddy.		350.00
	(f)	145 bags of paddy.		325.00

Compensation paid for damage aforesaid on tests by plaintiff.

	(g)	180 bags of paddy.		290.00
	(h)	225 bags of paddy.		350.00
	(i)	151 bags of paddy.		800.00
	2.	Loss of fuel:- 30,000 gallons at 39½ cents per gallon.		11,710.00
30	3.	Cost of dryer.		30,249.95
				<u>48,063.95</u>
	4.	Cost of mill.		62,673.20
	5.	Foundation works and installation of electrical appliances for mill and dryer and dry bin		20,000.00
	6.	Excess labour employed		5,000.00
	7.	Value of generator		20,000.00
	8.	Housing generating set and installation of same.		5,000.00

In the Supreme
Court of
British Guiana

No. 2

Statement of
Claim

12th March
1964
(continued)

9.	Cost of erection of concrete drying floor.	20,000.00
10.	Loss of custom and general damages.	319,262.85
	Total.	<u>Ø500,000.00</u>

WHEREFORE THE PLAINTIFF CLAIMS FROM THE
DEFENDANTS:

(a) The sum of Ø500,000.00 (five hundred
thousand dollars) damages for breach of warranty
aforesaid. 10

(b) Such further or other relief as the
Court may deem just.

(c) Costs.

L.L. DOOBAY
SOLICITOR TO PLAINTIFF.

C.C. LLOYD LUCKHOO
OF COUNSEL.

B.O. ADAMS
OF COUNSEL.

S.D.S. HARDYAL
OF COUNSEL. 20

Dated at Georgetown, Demerara,
The 12th day of March, 1964.

To:- The abovenamed defendants,

- and -

To:- Messrs. Cameron & Shepherd,
their Solicitor.

No. 3

AMENDED DEFENCE

In the Supreme
Court of
British Guiana

1963

No. 1965

DEMERARA

No. 3

IN THE SUPREME COURT OF BRITISH GUIANA

Amended Defence

CIVIL JURISDICTION

25th February
1965

BETWEEN:

MUSTAPHA ALLY, male East Indian,	Plaintiff.
and	
BOOKERS STORES LIMITED,	Defendant.

10 AMENDED DEFENCE

1. Save that the allegation in paragraph 2 thereof with reference to an alleged implied term of the contract is denied, paragraphs 1 and 2 of the Statement of Claim are admitted.

20 2. Paragraphs 3, 4 and 5 of the Statement of Claim are denied. No representation was made by the defendants, or by any servant or agent of the defendants with respect to the capacity of the mill as stated in paragraphs 4 and 5 or at all by way of warranty or otherwise. The plaintiff entered into the hire-purchase agreement referred to in paragraph 2 of the Statement of Claim, and it was an express term of the said agreement that the defendants did not supply the said mill subject to any condition as to quality, description, suitability, fitness or otherwise.

3. Paragraph 6 of the Statement of Claim is not admitted.

30 4. Save that it is admitted that the defendants in the course of their business have from time to time advertised and sold "Grantex" paddy dryers and rice mills, paragraph 7 of the Statement of Claim is denied.

5. Paragraph 8 of the Statement of Claim is denied.

6. Save that it is admitted that Messrs. N.D.Ottman

In the Supreme
Court of
British Guiana

No. 3

Amended Defence

25th February
1965
(continued)

and M.A. Chung visited the Plaintiff's rice mill on the 24th October, 1963 paragraph 9 of the Statement of Claim is denied.

7. The defendant will contend that the plaintiff failed to exercise due care and skill in the operation of the mill and that any failure of the mill to operate efficiently (which is denied) was due to the plaintiff's lack of competence to operate the said mill.

8. Save as hereinbefore expressly admitted the defendants deny each and every allegation in the Statement of Claim as if set out verbatim and traversed seriatim.

10

Dated the 15th day of January, 1965.

G.M. FARNUM

OF COUNSEL.

H.W. de FREITAS

SOLICITOR.

Dated the 25th day of February, 1965.

G.M. FARNUM

OF COUNSEL.

20

D.P. BERNARD.

SOLICITOR.

NOTES OF TRIAL JUDGE

In the Supreme
Court of
British Guiana

Notes of Evidence

25th February 1965

No. 4

No. 1965/1965

Notes of Trial
Judge

MUSTAPHA ALLY

Plaintiff

25th February
1965

-and-

BOOKERS STORES LIMITED

Defendants

Mr. C.L. Luckhoo, with Mr. B.O. Adams & E.W. Adams
instructed by Mr. Doobay for plaintiff.

10 Mr. Farnum with Mr. King instructed by Mr. H.W. de
Freitas for defendants.

Application by defendants to file amended defence -
in respect to para. 1 of defence.

20 Mr. Luckhoo states that the first intention he had
about this amendment was in a letter dated 21st
January 1965. He would not object but asks that
he be at liberty to file a reply if necessary
during the hearing - as he does not want to
impede the hearing and work of the court. (Mr.
Farnum agrees.)

Leave granted to file amended defence with liberty
to plaintiff to reply if necessary - during hearing.

Adjourned.

In the Supreme
Court of
British Guiana

No. 5

EVIDENCE OF MAHADEO BHAGWANDIN

Plaintiff's
Evidence

25.2.65.

Mr. C.L. Luckhoo Q.C. opens case:-

No. 5

Mr. Luckhoo asks that plaintiff be put out of court while the first witness an expert gives evidence: This is done.

Mahadeo
Bhagwandin

MAHADEO BHAGWANDIN sworn:-

Examination

25th February
1965

I live at lot 2 (Bel Air) Belvedere Court, E.C. Demerara. I am 47 years old. 10

I am employed at J.P. Santos and Company Ltd., Water Street. Part of my work is constructing rice mills, and assembling rice mills. I have been doing this for the last 8 or 9 years for the firm of J.P. Santos & Co. Ltd., who are general importers, merchants and dealers in agricultural machinery in this colony. Prior to my experience with J.P. Santos and Company Ltd., I worked with the Government Mahaicony Abary Rice Development Scheme where there is a large Rice Mill from 1941 to 1950 as a mechanic. I worked on the construction of that mill as a general mechanic. I also assisted in the construction and erection of the Anna Regina Rice mill which is the second largest in the colony. The largest is the Mahaicony Abary Mills. Prior to 1941 - I had experiečne in Rice Mills. My father owned a rice mill from 1919. I began to work in my father's mill around 1934 when I was about 15 years old. 20

During 1963 I went to Germany (West) where I did a course of study in respect to Multi Stage Rice Mills. The course lasted for 6 weeks at F.H. Schule manufacturers of Multi Stage Mills. 30

In 1964 I went to Africa - Central and West Africa for about 6 to 7 weeks studying assembling parboiling plants and Dryers for rice. A parboiling plant is part of a Rice Mill. I assembled that equipment for the Governments of Sierra Leone and Nigeria. I was in charge of the assembling of that equipment. 40

In Nigeria, the plant was tried out with success: I completed one of 3 plants in Sierra Leone and had left the 2 incomplete because my time was up to leave. The mill I completed and tried out in Sierra Leone was as follows:- The mill was that manufactured by "Grantex" by Lewis C. Grant Ltd. Scotland: The Dryer was manufactured by Schule. The mill was an existing mill but I had to erect and assemble the parboiling plant and the Dryer which were both operated in conjunction with the "Grantex" Mill. The principle of Multi Stage Mills whether Grantex, Schule or Olnia is the same. I am familiar with the operation of Grantex Mills - and Dryer. I have assembled and operated an electric dryer locally. "Schule".

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40

I have been subpoenaed to appear as a witness here. After I was subpoenaed I went to Albion, Corentyne to inspect and test the plaintiff's Grantex mill and (Grantex) dryer which are both installed at Corentyne. I went there on Saturday 20 February 1965 and left on the 21st after carrying out tests. The plaintiff was present when I inspected and tested on those days: other persons were also there.

(Mr. Luckhoo at this stage asks court to deem witness an expert. (Mr. Farnum offers no objection). Witness deemed an expert.)

I found the physical condition of the mill in question very good. The mechanical condition also to be very good. The Dryer was the same. No part of the mechanism needed replacement. In my opinion, the mill was one of the best kept I have seen in this country - if not the best. I carried out certain tests and made notes at the time in writing (I ask to refresh my memory from those notes - No objection by Mr. Farnum.)

On the 20th of February 1965 a quantity of paddy (30 bags) were weighed in my presence and the weight recorded on a slip. The weight was 4,888 lbs. This was weighed in my presence and noted on this machine slip at the same time. This is the slip. Tendered (no objection), Admitted and Marked Exhibit "A".

The quality of the paddy was good for milling. The bags were average size bags. I tested the moisture on Sunday morning 21st February 1965 at

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

Mahadeo
Bhagwandin

Examination
(continued)

25th February
1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

Mahadeo
Bhagwandin

Examination
(continued)

25th February
1965

about 8 a.m. The test revealed a moisture of 16.50%. The paddy was then put through the dryer. (It was raw paddy for white rice). I started to dry at 9.05 a.m. (nine-five a.m.). The drying operation was completed at 11.40 a.m. The dryer operation took two hours and forty minutes (2 hours 40 minutes) that is approximately 1700 lbs. per hour. This drying operation was the maximum speed. We could not have dried the paddy faster. The paddy was dried at 140 degrees fahrenheit. I have always used between 90 to 110 degrees fahrenheit for drying raw paddy here. I tried this out and also from 110 to 120 degrees and found that the dryer was not building up any heat inside to start the drying process. If I had left the drying temperature at 101 to 120 it would have taken more than 4 or 5 hours to dry. This is a pamphlet on the use and special features of the dryer. (Grantex) - Tendered (no objection) - and marked Exhibit "B".

10

20

The operation is as follows:-

The paddy is fed into a fender hopper (about a foot from ground level). It is released from the fender hopper through a funnel into the elevator which is an enclosed vertical structure. In the elevator is a belt with which are attached steel cups (going round and round). The steel cups pick up the paddy and discharge it into the dryer. When the paddy gets into the dryer it fills the dryer then the burner is lit and the drying process is started. We then rotated the paddy by opening the bottom of the dryer. The paddy then comes down into a second elevator which carries it back up and discharges it into the dryer. It finds its way down again to the bottom of the dryer. This process goes on and on and one keeps testing the moisture. When the paddy meets the moisture content required the furnace is cut off and cool air is put into cool the paddy off. After the paddy is cooled it is discharged into bins. It is then ready for milling.

30

40

Adjourned to 1.15 p.m. 25.2.65.

Resumed at 1.20 p.m. 25.2.65.

Examination in chief by Mr. Luckhoo cont'd:

The proceedings were as follows:-

I started feeding the paddy into the dryer at 9.05 a.m. I had lighted the dryer furnace at 9.00 a.m. The fuel used was gas oil which provided the heat for the dryer. I then put in the paddy as I said feeding the paddy to the dryer at 9.05 a.m. The feeding was completed at 10.15 a.m. 30 bags were fed. When the feeding began at 9.05 a.m. the elevator choked and it took about 5 minutes to correct it. There was no further choking. The drying process was completed at 11.40 a.m. I then checked at the moisture content and found it to be 14%. When the paddy was put into the dryer it was 16.50%. When it was taken out it was 14%. After cooling off the paddy was in a fit state to be milled. I accept that the drying capacity (rate) was about 1700 lbs. per hour. To dry at this rate 8500 lbs. would take about 5 hours. See Exhibit "B": On page 5 of Exhibit "B" is described a size 08 dryer. The dryer I saw was this type. The numbers compared with a size 08 - as described on Exhibit "B".

I could not have got any increase on the test - I have given you the maximum. The dryer did not and could not give a greater capacity because of the constant rotation of the paddy in the elevator. Besides the question of capacity this system of rotation is not the right method for drying - because the paddy is thrown back to be mixed with paddy not so dry and this process results in some grains being dryer than others. There is variation in the drying.

In the Schule mill and dryer - the whole dryer is filled up from top to bottom and hot air is forced through the paddy resulting in equal heat distribution. There is no rotating system. The (Grantex) plaintiff's dryer is also a blow tube type but it blows at the top from the bottom the Schule dryer blows at the side. Plaintiff's dryer is an open top dryer but was covered with local galvanized sheets at the top with a small funnel put in to exhaust the hot air from the dryer. In my opinion this may have a lot to do with retarding the drying process.

I have seen in Sierra Leone similar dryer (grantex) but without the local galvanized contraption. The results were better than this. I believe that this contraption has retarded the uniform drying process. There is a paddy vibrator in the mill - I

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

Mahadeo
Bhagwandin

Examination
(continued)

25th February
1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

Mahadeo
Bhagwandin

Examination
(continued)

25th February
1965

saw this there it is called a "shaker-conveyor", I saw this on the ground not assembled. The "shaker-conveyor" was mainly for parboiled paddy - to feed the hopper. This was not in use. I believe if the raw paddy was fed into this "shaker-conveyor" the result would have been more uniform. The "shaker-conveyor" removes dust by the shaking.

The excess water from steam paddy is also removed by the shaking. The dryers I have seen in Sierra Leone have a paddy cleaner before it enters the dryer. The reasons for this is that the paddy may be cleaned of the cut straw and this helps a lot in the process of drying. The paddy I fed into the hopper (30 bags) was clean paddy - reasonably clean.

After the paddy was dried I left it for cooling. (cold air was blown). On the said day I milled the paddy (30 bags). The plaintiff's mill I saw is the type "S:20/4" described in this pamphlet. I now say mainly similar to this type "S:20/4" described in this pamphlet. Tendered (by consent) - Admitted and Marked Exhibit "C". The plaintiff's is electrically driven while the type "S:20/4" is belt driven. On Exhibit "C" I see a model S/20/1 No. 44 described. The framework shown on Exhibit "C" on model S/20/1 is made of steel. In the plaintiff's mill at Albion there is framework but all of wood. This wooden framework makes quite a lot of difference in my opinion because the whole plant is vibrating. There should not have been this vibrating. If the steel framework was used, I would not have expected this vibration. By this vibration I believe that the capacity has been lessened by 20% to 25% because the cups were throwing the paddy on the side and choking the elevator also tested of the paddy going through along the length of the cleaner it goes towards the side. The cleaner itself by the vibration sends the paddy towards the side. The paddy cleaner itself is supposed to vibrate in measured use vibration to send the paddy along the cleaner. The vibration retards the speed of travelling of the paddy. The vibration does not affect the sheller as this has an iron frame and does not vibrate. The husk separator is also on the wooden frame and this is adversely affected by the vibration also. The separator is also affected by the vibration. This separator is supported to vibrate itself. The husk separator has its own vibrator and the additional vibrator affects it.

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After the rice is milled it passes through a rice separator which grades it. This has its own vibrator. External vibration would affect it. The Trier cylinder which separates the $\frac{3}{4}$ grains from the half affected by the vibration. The wooden frame affects these parts. The system of milling is as follows: The paddy is fed into the mill through a hopper from this an elevator takes it up in cups on the belt and feeds it to the paddy cleaner. This separates the stems and other foreign matter after it is cleaned this way the paddy is fed into a "sheller" which shells the husks from the paddy. Then this is taken up into a husks separator and this separates husks from paddy. It then comes down on the husks aspirator which blows away the shell and leaving about 80% of shelled grain and about 20% unshelled which escaped in the process. The whole 100% comes down into the paddy separator and this separates the 80% then goes into the first cone where it is polished, then into a third cone to be cleaned and finally into the 4th polishing cone for completing the process of polishing. It then goes into the rice separator where it is graded into full grain $\frac{3}{4}$ grain and half grains. This 80% is filled into bags automatically.

The 20% which was not shelled goes into a return sheller. This is a rubber sheller which deals with shorter grains. This shells the 20% which passes into the polishing cone in the same process as the 80%. This process I have above described is for white rice and not parboiled. It is a continuous process from one stage to another. If there is a slowing down at any stage the subsequent stages would be delayed.

I began to mill the 30 bags at 12.12 p.m. The operation was completed at 3.55 p.m. - 3 hours and 43 minutes. This was the best time it could have been done. I could not have done it faster. There was no stoppage of operation but during the operation there was a choking of the elevator and sheller which was corrected.

I think the choking on the first elevator was the result of the excess vibration of the elevator which had not iron strappings to hold them together. The elevator should have had iron strappings to prevent this. This can be seen on S:20/4 on Exhibit "C" as indicated by the red line. When the

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sheller was fully fed the motor would go down and this caused it to choke.

On the sheller between 5 to 10 minutes were lost by 2 to 3 interruptions (choking) and about 3 to 4 minutes by the choking of the elevator (twice). Besides these 2 interruptions there were no others because I reduced the feed (by less pressure). At the end of the operation - 9 bags and 95 lbs of whole grain rice, 5 bags of mixed broken rice and 11 lbs. of chips 514 lbs. of bran and 286 lbs. of germ (finer chips). The bran is from the polishing of the rice. A bag of rice is 180 lbs. Roughly $9\frac{1}{2}$ bags of rice and $5\frac{1}{2}$ bags of broken rice. This return from 30 bags of paddy is normal for white rice - as to quantity. The normal return as to quality should have been $13\frac{1}{2}$ whole and full grain and $1\frac{1}{2}$ bags broken.

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In whole grain rice there is an allowance of 18 to 20% of broken to be included. The average percent is 17% broken. In my test there was about 3 times broken and this is an abnormally large percent of broken rice. This rice after shell did not show much sign of breakage but in the process of polishing the breaking must have taken place.

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At this stage adjourned to tomorrow at 9. a.m.
25/2/65

Resumed:- 26/2/65 9 a.m.

MAHADEO BHAGWANDIN sworn (evidence in chief cont'd)

On the same day 21st February, 1965 I milled another lot of rice - 25 bags of parboiled rice. This milling involves before milling the rice, the soaking of the paddy. One method is soaking the paddy in cold water for a period of 30 to 36 hours after which the paddy is put to be steamed after this it is put on concrete (spread out) to be dried then it is milled.

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In the other method the paddy is soaked in hot water for a period of 12 to 18 hours depending on the temperature of the water - it is then spread out on concrete to be dried as in the first method. Both methods are recognised methods. From the dried paddy one cannot say if the first or second method was used. The parboiled paddy was fairly

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good paddy in a fit state to be milled. I weighed the 25 bags of parboiled paddy on the Saturday 20th February, 1965. It was 3661 lbs. I began to mill the 25 bags of paddy at 9.45 a.m. on 21st February. The milling was completed at 12.10 p.m. - a period of 2 hours 25 minutes. There was slight choking and clogging of the cones 2 or 3 times for a total loss of 10 minutes.

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10 The 25 bags of paddy produced 13 bags and
92 lbs. of rice which 13 bags were whole grain
and 92 lbs broken (a bag has 120 lbs.) 92 lbs is
about half a bag. So there was a half a bag
broken grains out of 13½ - equal to 1 in 27 less
than 4%. By normal milling standards the percent-
age of broken grains was not abnormal - white rice
usually and normally gives a higher percentage of
breakage than parboiled rice. The average breakage
for white rice from the same mill should be 6%
(and parboiled 4%) - I said yesterday that the
20 white rice I milled in this mill produced an
excessive quantity of broken grains. I believe
that the large quantity of broken grains I found in
the 30 bags white rice I milled was due to the
uneven drying - which I described earlier. Some of
the grains were too hard and some too soft - that is
over dried and not well dried. Dryers are used for
grains other than rice. I have brought the samples
of the paddy I used in my tests. These were sealed
by me with scotch tape. (Mr. Luckhoo asks that they
30 be now opened). (Samples opened).

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These are 6 paddy samples at 6 different stages
of the processing of white rice. I sealed them in
6 plastic bags. The first sample is the paddy before
drying which I have so labelled - tendered Exhibit
"D1". The second sample is the paddy after drying -
tendered Exhibit "D2". The third sample is the
paddy from the bin on the way to the sheller -
tendered Exhibit "D3". The 4th sample is the paddy
coming out of the sheller. Tendered Exhibit "D4"
40 (shelled and unshelled). The fifth sample is from
the return sheller (going into the return sheller)
- tendered Exhibit "D5". (shell and unshelled).
The sixth sample I took from the compartment
separator - tendered Exhibit "D6".

I took also 6 other samples during the process
as follows:- This 7th sample is the paddy from No.1
cone (polishing) - tendered Exhibit "D7". The 8th

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sample is that coming out from the No. 2 cone. Tendered Exhibit "D8". The 9th sample is that coming out of the No. 3 (polishing) cone. Tendered Exhibit "D9". One can see the whole grains from the broken grains in Exhibit "D9".

The 10th sample is from the 4th cone (coming out) - Tendered Exhibit "D10". The 11th sample is from the rotary grader - Tendered Exhibit "D11". The 12th sample is from the cylinder grader - Tendered Exhibit "D12".

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In addition I took 2 special samples to show half grain and quarter grain rice from the cylinder grader. This is the half grain sample. Tendered Exhibit "D13" and this is the quarter grain sample. Tendered Exhibit "D14". All the 14 samples above tendered deal with the processing of white rice.

I have taken 11 samples at different stages of the milling of the parboiled paddy. No. 1 sample is the paddy before milling. Tendered Exhibit "E1". No. 2 sample is parboiled paddy after shelling (containing shelled and unshelled). Tendered Exhibit "E2". No. 3 sample is rice taken from the huller (after passing through huller). Tendered Exhibit "E3". No. 4 sample is rice after passing through the No. 1 cone. Tendered Exhibit "E4". No. 5 sample is after passing through the No. 2 cone. Tendered Exhibit "E5". No. 6 sample is after passing through No. 3 cone. Tendered Exhibit "E6". No. 7 sample is after passing through the No. 4 cone (polisher). Tendered Exhibit "E7".

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The No. 8 sample was taken from the grading cylinder. Tendered Exhibit "E8". The No. 9 sample is from the rotary cylinder. Tendered Exhibit "E9". No. 10 sample is half grain rice taken from the rotary cylinder. Tendered Exhibit "E10".

The 11th sample is quarter grain rice (chips) taken from the grading cylinder. Tendered Exhibit "E11".

After milling the parboiled and white rice, I left all at the said mill. I do have experience in the processing of paddy (that is drying and milling). Whenever I assemble a mill I have to instruct the operator as to drying and milling.

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This mill in question has 2 hullers and I used both in the processing of the parboiled rice. The grains passed through both hullers before going to the polishing cones. The huller mills the 20% unshelled paddy and cleans the bran from the 80% shelled paddy.

Bran is the outer skin of the rice which is oily. The huller is necessary to boost the milling speed by scraping off the bran.

10 When paddy is steamed the fat from the rice tends to set on the outer surface and so the huller helps. The huller is not used for the processing of white rice paddy and I did not use it. I used it for the parboiled paddy, (both hullers).

I used all normal practices in processing the 30 or 25 bags of paddy. When I left the mill that afternoon 21st 2.65. I left it in a fit condition in which other similar tests could be made.

20 The wooden frame is by far cheaper than a steel frame. On Exhibit "C" is shown a 'Channel iron' frame. This makes the frame very firm and eliminates vibration. I saw no Channel iron on the frame. The wooden frame I saw was at some places twisted and out of line. I observed this from visual inspection. Some of the posts or columns were twisted and some of the beams sagged from the weight and vibration. If this condition of the frame work remain it would get worse and the machinery would start to break. I saw plugged auger holes on the wooden posts. It is my opinion that a wooden structure cannot prevent the vibrations but an iron structure being precision built and bolted would eliminate the vibration. 30 The iron structure has ties but not the wooden structures. The tie rods are made of angle iron in the iron structure.

40 I have seen mills on steel structures. I have also seen on the Corentyne a similar mill (Grantex mill 2 ton) on a wooden structure. I have not been able to test it. All of the mills I have constructed have been assembled on steel frame work and no vibrations result. I have never assembled a multi stage mill on a wooden frame work.

The plaintiff's mill is on a concrete foundation which is adequate. I saw the electrical installations

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of the plaintiff's mill. They appear perfect but I am not an expert in that field.

All Multi Stage Mills are of 2 types (1) belt driven (2) power driven. The electrical mills are better to operate for smoothness and capacity. The efficiency should be about 10 to 15% more than a belt driven mill. In the course of my testing the air was clean except when I saw drying dust come from the paddy. This was excessive dust from the dryer. It was not normal. I am quite prepared to carry out any additional tests if required.

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Cross-examined

By Mr. Farnum:-

It is right that my opinion is that the troubles of the mill were caused by the excessive vibrations which were solely due to an unsuitable frame.

I do not know that Grantex rice mills are of 2 types - the detached type and the self contained type. I am unable to say if the plaintiff's mill is the one or the other. On the cover of the pamphlet Exhibit "C" is stated "Self Contained". I am not hearing now for the first time about a "detached rice mill". I have seen literature describing this some time ago. I would not be able to say what is the difference between a detached type and self contained type. I have never seen a detached type. It would not surprise me to be told that it is a detached type as I don't know the difference. I only know of the "Self Contained". I do not know that the detached type comes down without the steel frame work and the self-contained types come down with steel frame work.

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During my test I only carried out operational adjustment to the sheller to accord with the age of the grain. I had no special reason for using 30 bags of paddy when I was testing the dryer. I started the dryer at between 90 and 110 degrees and stepped it up to 110 to 120. I did feel that that was the best temperature to use with plaintiff's dryer. I do know that manufacturers issue

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instructions as to the use of their dryers and machinery. I agree that to operate a dryer efficiently to the instructions should be followed strictly. The usual practice in drying is to fill the dryer first and then light it. In this case the dryer was lighted first and the paddy put in after. This was done so because the makeup of the dryer was such that, that had to be done. I had no instruction sheets. I saw a leaflet which indicated that the dryer must be lighted first. If you say that the manufacturers directions are that the dryer must be lighted first it would not surprise me because the top of the dryer I saw was sealed off with a funnel.

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Adjourned to 1.05 p.m. today

26.2.65

Resumed: 1.15 p.m.

Cross-examination by Mr. Farnum cont'd:-

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The plaintiff's dryer is the first "Grantex" dryer I myself operated but I have seen "Grantex" dryer operated in Sierra Leone. I don't know that this dryer (plaintiff's) has to be completely filled before it could be operated properly. I know that other make of dryers had to be completely filled but I had seen similar dryers (like plaintiff's) work not completely filled. I did ask the plaintiff himself for the instructions sheet to operate the dryer, but the plaintiff told me that none was given to him.

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I would not say that if one has not got the appropriate instructions to operate a particular type of mill or dryer it would be difficult. I say so because the principles are the same. There are variations but very slight. One can't waste hot air in the operation once paddy is there.

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I do not know that the "Grantex" dryer consisted of 3 compartments. I see a blue print here but I can't say whether this blue print represents that Grantex dryer I operated at the plaintiff's mill. I now say this blue print appears to represent the plaintiff's dryer. Tendered Exhibit "F". This blue print shows the discharge but not the loading elevator. The hot

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air enter the third compartment as is shown on Exhibit "F's" front elevation. From my observations of the plaintiff's dryer I think that the capacity is about 2½ tons of paddy when full. I would be surprised to know that the plaintiff's dryer capacity is 4 tons (or about 60 bags). A bag of paddy is 140 lbs.

When I loaded the dryer with the 30 bags of paddy all the compartments could have had paddy, but I would not know how much paddy in each. In this dryer, I saw no mechanical worm to push the paddy from the compartment to the other.

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It is true that the hot air enters from one side. If the first compartment in which the hot air enters is empty of paddy then the air would certainly be wasted there. If the compartment was partly filled then some of the hot air would be wasted and this would slow down the drying process. The 3 compartments are filled by the elevator but I can't say if all 3 are filled at one time because the top was sealed and I can't see inside so I can't say if a mechanical worm was inside. I saw no motor or driver outside. I have never reduced such equipment to pieces. I do not know if the compartments are loaded one after the other or simultaneously.

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In the Schule dryer all 3 compartments are loaded simultaneously.

Q.:- I am putting to you that you do not know anything about the plaintiff's dryer.

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A.:- "You may say so."

I don't know what you mean by "Batch" drying and "continuous" drying.

I do know that you can dry in batches of 10 bags. That is what I understand by "batch" drying. I understand by continuous drying that the whole lot is put in at one time and not by parts.

I would say that the process I used to dry the paddy was the "batch" way. I would not say that the process of continuous drying gives better results. I have tried this - it is continuous feeding all the time. The result is the same as

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the "batch" drying. If there are similar batches it would slow down the operation.

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If in the "Grantex" dryer the compartments are filled one after the other I would not be in a position to say whether all 3 compartments had paddy or whether 2 compartments only had paddy. I agree that paddy cut with combine contains more foreign matter than paddy cut by hand. I agree that where rice is dirty the perforated dryer can become clogged. But this would not reduce the air. I now say if it is wholly blocked it will slow down the drying process. If it is just partially blocked it will reduce it a little. I have never seen the Grantex operational booklet. This booklet is an operational booklet. Tendered Exhibit "G". I have now read the instructions and it states at page 11 that the dryer must be completely filled before commencing operations. It states also that raw rice for milling (paddy) should be dried at temperatures from 125 to 150 fahrenheit (page 11). I do regard the conditions set out above for the operation to be important and to be observed because these are the instructions of the manufacturers and must be carried out. If the instructions are disregarded it can slow down the capacity or increase it. The instructions to fill the dryer completely if disregarded would slow down the process. It would take longer. I will not say that by not filling the dryer will result in uneven distributing of heat and broken grains.

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By the Court:-

It is true that I never carried out a test according to the instructions set out in page 11 so I can't say what the result would have been. I did light the furnace before putting in the paddy but I will not say that that resulted in broken grains although I did not try that out.

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The choking of the elevator during my test I believe was caused by the paddy being unevenly fed. I would not say it was due to bad adjustment, but may be because of partly unclean paddy or the first feeding until adjusted. I have only seen 2 Grantex mills in this colony viz. - the plaintiff's and another. I do not know that there are 11 "Grantex" mills in this colony. It is not customary for paddy which has just been dried to be equalised (to be left)

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where there is a cooler and this - plaintiff's dryer has a cooler - so it may not be done. I was trying to reach 12% to 13% moisture before milling. One can mill at 12% 13% or 14% moisture. The dryer the paddy the quicker the milling. If I mill at 14% moisture I will get the same result but a little slower - at 15% moisture it would be slower but same result. The more moisture there is the greater the breaking up of the rice but not clogging in white rice but the milling speed would slow down. 10

I began milling the white rice at 12.12 p.m. At 12.10 I had completed my milling of the parboiled rice. I did say there was a clogging of the cones when I was milling the parboiled rice. I do not accept the suggestion that before I commence to mill white rice immediately after parboiled rice I should have taken out and cleaned the elevator cones. The principles of the rotation, sheller and cones are the same. It is not necessary for the parts to be cleaned as stated. I do not accept that the parboiled rice while being milled will leave a gummy deposit on the screen. 20

In my opinion the bran is the cause of the clogging. This is experienced in all mills. I did express the opinion that a mill as plaintiff's ought not to have a wooden frame. I would maintain my opinion against that of the manufacturers.

The plaintiff's mill is the first of that size I have operated. I operated with other people on "Grantex" mill in Africa, Sierra Leone. There I had to teach them how to mill brown rice on a Grantex mill. These mills had steel frame. They were self contained mills as described in the pamphlet Exhibit "C". 30

While I was operating the plaintiff's mill the sheller slowed down. The sheller has no fins - now say that under the 2 discs there is only a casting and no paddles except 2 things viz: 2 angle brackets or sheller brackets attached to the discs. I have dismantled a Grantex sheller and worked on it and cast it (8.00 m.m.) at Anna Regina, Essequibo. They have a large "Grantex" mill. Before I had started milling I had checked the elevator beltings and all the other beltings. During the milling the plaintiff's operator was present - I asked him what he did and he told me and showed me what he did that 40

is how he operated. I did not disagree with anything he told me, but I asked him in order to see how he operated it. I took no instructions from him. I did my own adjustments. I would say that the plaintiff's operator was operating both the mill and dryer correctly. The operator did tell me that he used to put the paddy in first and then light - but I thought my way would give better results. He told me that his way was not working. I had asked him how he operated the mill and what adjustments he made. I did so because he was running the mill.

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The Anna Regina mill has a wooden floor but only part wooden frame. The other parts are iron or steel.

Adjourned to Monday 1st March at 9.30 a.m.

2.3.65

MAHADEO BHAGWANDIN sworn:-

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At this stage Mr. C.L. Luckhoo makes application for Mr. Farnum to suspend his further cross-examination as witness had carried out further tests during week end last and would like to lead that evidence before Mr. Farnum concludes his further cross-examination. Mr. Farnum agrees to this procedure. Application granted.

WITNESS states on oath as follows:-

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After the adjournment last week I travelled to Albion (at instructions of counsel) to carry out further tests. I got to Albion on 27th February 1965 at 7.30 a.m.

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I used a quantity of paddy for this new test. I cleaned the paddy first by winnowing the paddy that is getting the extraneous matter out like the straws etc. This was done satisfactorily by hand. I used a fairly good quality paddy. The paddy was about the same quality I used at the previous tests. I weighed the paddy and got the machine slip which recorded 7,490 lbs. of paddy (equal to 54 lbs. at 140 lbs. per bag net weight) (slip shown to defence and court). I used 47 actual bags of paddy but this weighed 7490 (some of the bags had more than 140 lbs). I actually used 7490 lbs of paddy. At

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10.45 a.m. I began feeding the dryer through the elevator at full speed. I completed filling the dryer at 12.20 p.m. in a continuing operation - there was no clogging. At 12.20 p.m. the dryer was filled right up to the top with 7490 lbs of paddy. I lighted the dryer at 1.40 p.m. Before lighting the dryer I took moisture content of the paddy - it was 15% moisture content. The furnace was lighted at 1.40 p.m. and heated it up until 2 p.m. The heat range rose to 140 degrees fahrenheit. 10

At 2.00 p.m. I started to rotate the paddy until 3.30 p.m. continuously. At 3.30 p.m. the moisture content was 13% and in a fit state to be milled. I then put out the furnace and began to cool off the paddy in the dryer and to discharge it into the bin. This process was completed at 5.20 p.m. I allowed the paddy to remain in the bin from 5.20 p.m. to 7.55 a.m. the following morning to equalise the moisture.

On Sunday 28th February 1965 at 7.55 a.m. I started to mill the paddy and this went on until 11.30 a.m. continuously at the normal milling speed. There was no clogging or break down. 20

The milling produced 12 bags and 95 lbs. of whole grain rice, 9 bags and 62 lbs. broken rice, 1 bag and 99 lbs. of chips (quarter grain) and 728 lbs of bran. Total weight 4,944 lbs. I have preserved samples in relation to this test.

This is the sample of the paddy before drying - Tendered Exhibit "H1". This is paddy after drying - Tendered Exhibit "H2". This is paddy from the sheller - Tendered Exhibit "H3". This is from compartment separator (shelled rice) - Tendered Exhibit "H4". This is rice from No. 1 cone - Tendered Exhibit "H5". This is rice from the No.2 cone - Tendered Exhibit "H6". This is rice from No. 3 cone - Tendered Exhibit "H7". This is rice from the No. 4 cone (leather polisher) - Tendered Exhibit "H.8". 30

The mill was in good condition during and after the test. I did not carry out on this occasion any parboiled paddy tests. The milling process in this test was the same as the first test but the drying process was different. In my opinion the first method I used on the 21st 40

February, 1965 was more beneficial than the second test (from results).

In the first test I was putting in paddy and passing heat at the same time. This resulted in more uniform drying.

I found in the second test, I had to hold the whole dryer and then lighted it after the filling was completed. The heat had to stay in for 20 minutes before rotation started. The heat is put in the centre of the dryer and that passes through the paddy on both sides of the dryer. One chamber is perforated and the other is solid or sealed. In this process the hot air is passing through the perforated chamber while no air is passing through the sealed chamber.

In my opinion for 15 minutes at least this resulted in ununiform drying - unequal drying - this caused more breakage in the milling process. The second test I found more breakage - that is a higher percentage of breakage. I got in this second test 11 bags rice (including chips) and only 12½ whole. That is 45% broken. The first test was slightly faster.

I checked the drying equipment (as a result of Mr. Farnum's question) and found it to be a four compartment dryer.

This blue print shown to me shows a 3 compartment.

I found four compartments on each side making a total of 8 compartments on each side making a total of 8 compartments. (I saw an open scroll at the top). When I opened the door and checked I saw 2 compartments being filled at the same time from the elevator when this was filled the scroll moved towards the 3rd and 4th compartment and this completed the filling. (This scroll is what was earlier described by Mr. Farnum as a worm). The dryer is so made that when the elevator is filling 2 compartments the other 2 are filled at the same time and then the scroll moves into operation.

The scroll is about 18" below the top of the dryer, just above the compartment separation. The number of the dryer is S.O. 4633. The mill is S.O. 4615. I left the milled rice at the mill as I had done before.

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By Mr. Farnum cross-examined:-

I saw 8 compartments in all. I proceeded to fill the dryer until it was filled - weighing as the paddy was thrown in. The procedure I used in this second test is not the procedure I used in a Schule dryer. I never used this proceeding before - I used this procedure from the instructions - I saw in Exhibit "C" - at page 11 as stated in the instructions, I followed them.

I don't accept that the dryer would have reached 140 degrees in 7 minutes. In this second test I followed the instructions on page 11 of Exhibit "C". I did not rotate until after 20 minutes. It is true that if I had commenced rotating from the time the heat was put on there would have been more even heating. If I had attempted to get 140 degrees in 7 minutes I would have burnt the paddy. I saw no "baffle" in front of the fan. I did look. The temperature is recorded before the actual heat is in the dryer. I had not the book of instructions with me but I read it on Friday in court and remembered it. The dryer has a thermometer at the side of the dryer. I saw the worm after I took off the top. You did say that the worm fill the compartments (last week). I did say last week that I would not have been able to say if the last compartment was filled - that was because the dryer was not filled to the capacity. In my second test it was paddy came out from the overflow pipe.

I don't accept that the drying time includes the time taken to fill the dryer. I don't accept that drying time commenced when the paddy reached drying temperature - it commenced from the time the feeding started. When I was filling the hopper it was a continuous process. The hopper was never empty in the course of feeding.

You did ask me about "Batch" drying - I would say that the method I used (in the first test) was "Batch" drying. My second test was a continuous procedure because no new paddy was put in during the drying process. All was put in at one time and then the drying process started. The paddy was unevenly dried in this dryer. When the paddy is coming into the dryer and the drying is taking place and it goes out to the bottom - that is continuous drying.

10

20

30

40

The continuous method cannot be used in this dryer (the plaintiff's dryer). In my first test - was feeding in without discharging. The second too because this dryer does not admit this form of drying. You can't because the compartment is straight down from the top to the bottom.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

10 One cannot put in raw paddy at the top of the dryer but it can be done in other dryers where one compartment could be closed off - preventing the mixing of the new with the old.

Mahadeo
Bhagwandin

One cannot put in new paddy with the old. It has shocked me to hear that it can be done with the "Grantex" dryer. I do know Dr. Fraser. I heard he operates a Grantex Dryer.

Cross-
examination
(continued)

I see at page 12 of Exhibit "G" something on continuous drying and at page 13 about Batch drying. The paddy I used for testing was combine paddy - paddy grains are of different length.

2nd March 1965

Adjourned to 1.15 p.m. today.

20 2.3.65

Resumed:-

Cross-examined by Mr. Farnum cont'd:-

The drying temperature can be reached before one start drying the rice or paddy.

30 It is true that if the compartment separator is not properly adjusted the shell grain (rice) will go back into the sheller again and this will cause breakage. The speed of the compartment separator causes the separating. The tilting of the compartment is only for different types of grain. I had set the separator right before I placed the paddy in. I did this in both tests. I adjusted the separator until I got the best result. The principles of separators agree the same in all dryers. One adjusts the separator until all rice flows one side and all paddy the other.

By Mr. E.W. Adams - Re-examined:-

Re-
examination

40 The adjustment varies with the kind of paddy used and the type of drying. The vibrations regulate the climb, also the tilting regulates the climbing.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 5

Mahadeo
Bhagwandin

Re-
examination
(continued)

2nd March 1965

One of the first dryers in British Guiana was a blow type dryer erected by a Dutch engineer. I worked with Van Dyke on this. I had experience of the type of plaintiff's dryer in Sierra Leone. I went to the Sierra Leone Government to advise on rice mills and dryers. I saw them operated and made adjustments myself. When I left Sierra Leone the dryers were in operation. One can't mill unless the separator is properly adjusted. The old method of testing paddy is by biting it or by rubbing the paddy in your hands. 10

I took the moisture test when the paddy was going into the hopper. The paddy tested on Sunday did not vary much in moisture. The test is carried out after, while the paddy is coming out of the compartment. Constant tests are carried out until the required moisture content is obtained.

If the plaintiff's dryer as soon as the required moisture is obtained cold air is passed through, not so with the other dryers (of other makes). 20

The dryer is bolted down. There is no vibration: the mill vibrates. The first test I carried out was done on my experience. The second test by the instructions I remembered in the Booklet "G".

I have been to England twice. Temperature and humidity in England is different to that in Br. Guiana and that is why I started off with 90 to 110 degrees. I never operated at a much higher degree. 30

The "baffle" is before the flame of the furnace. One sees it first. I checked the mill in my second test as I did during the first test. It was in good condition.

Machinery (agricultural) instructions for use do not apply particularly to British Guiana. We have had to alter certain things in the Schule to adapt for British Guiana (local condition).

In plaintiff's dryer a less amount of paddy if put in cannot be in all the compartments. The paddy is only rotated after the 140 degrees is reached in plaintiff's dryer, according to the instructions. 40

No. 6

EVIDENCE OF JAI PERSAUD BALKISSOONIn the Supreme
Court of
British GuianaJAI PERSAUD BALKISSOON sworn:-Plaintiff's
Evidence

I live at Belvedere, Albion, Corentyne. I am a mechanic since 1936 when I started as an apprentice.

No. 6

I am 43. I began at trade at 15. I know about Diesel and petrol engines, Bulldozers, Combines, Draglines and industrial rice mills. I also grow my own rice and mill it. My father owned a rice mill and I worked in it since 1930.

Jai Persaud
Balkissoon

Examination

2nd March 1965

I worked with Bookers Stores Ltd., New Amsterdam in the machinery department from January 1962 to February 1964.

I left to work my own land. In 1962 while employed by Bookers I assisted in the assembling of a "Grantex" rice multi stage mill for the Basdeo Bros Bush Lot. Mr. Milton Chung was supervising the erection of the mill.

20 I know the plaintiff's mill which was also erected by Mr. Chung as supervisor. I worked from the commencement of the erection until it was completed. One Roy White assisted he came from the manufacturers.

The plaintiff's mill is the only electrical "Grantex" mill in this country. While the mill was being erected there was a little talk between Mr. Chung and Roy White over the foundation. There was some loud speaking.

30 The holding down bolts were not in alignment with the base of the compartment separator. The platform to accommodate the paddy cleaner, the aspirator, shaker and the grader were made out of wood - Greenheart. Some unnecessary holes were made by mistake and this had to be plugged. The grader and shaker also occasioned plugging holes. Mr. Roy White had to leave before the completion of the erection of the mill.

40 I know the dryer, I assisted to assemble it. The dryer has 4 double walls: 4 vertical sections on each of 2 sides. Each section has shelves. I

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 6

Jai Persaud
Balkissoon

Examination
(continued)

2nd March 1965

was present when the first test was carried out. Mr. Chung was our supervisor and boss. The plaintiff claimed at the very first test that he was not satisfied. I observed that after the paddy came out of the dryer all the grains were not evenly dried. The tester showed this part from the ordinary test by hand.

After the paddy passed the various processes a lot of broken grains are produced. The output about 5 or 6 bags at the discharging end of the mill instead of 16 to 18 bags which were expected. In the course of the drying the box gets empty the one before it gets into the cone. One has to wait until the compartment separator fill up the box or reservoir then it is operated again.

10

The platform of the mill had a lot of vibration. I can't say if that had an effect on the output. Mr. Chung carried out 4 tests at which I was present. To each test the plaintiff told Mr. Chung that he was not satisfied.

20

On the 4th test we used paddy from Dr. Fraser but results were the same. On each occasion at the end of the test a test sheet was signed by plaintiff, Chung and one Blair who was the general manager of Bookers Stores Ltd., Agricultural & Machinery Department. The signing of the test sheet by all was on the 4th test. Plaintiff quarrelled at the end of each test. He asked for a copy of the tests sheets. Chung said that Blair had gone away with it. The mill he handled in the same way and also the dryer in all the tests. There was more dust than usual at first. Then we had to build a cover and this ease off some of the dust.

30

At the first test the plaintiff's paddy was used. At the second test it was Esar's paddy. He was present. Mr. Chung was present when plaintiff spoke loudly. Esar ordered his paddy out and to be put on the drying floor.

At the second test Esar complained of the quantity of broken grains. Present were Esar, Nello, Best, Inshan, Mr. Chung and myself.

40

At the third test Mr. Chung was present when the owner of the paddy protested at the result and stopped the milling. The four tests took place

between October 1962 and January 1963. I made no note of this.

In the Supreme Court of British Guiana

Plaintiff's Evidence

No. 6

10

On the fourth test Dr. Fraser's paddy was used. Messrs. Chung, Best, Inshan, Nello, David and myself were at the 4th test. Chung promised to do his best about the broken rice. Chung spoke to plaintiff and the owner of the paddy on the 3rd (third) test. Plaintiff said he was not satisfied. He said so aloud. At the moment the operator is Baba. He was present at the 4 tests carried out by Chung. I think Chung did his utmost best.

Jai Persaud Balkissoon

Adjourned to 9 a.m. tomorrow.

Examination (continued)

3.3.1965

2nd March 1965

Resumed

3rd March 1965

JAI PERSAUD BALKISSOON sworn:-

20

At the last test with doctor Fraser's paddy Mr. Chung had asked me and the other men to go to plaintiff's mill and assist in the test to improve the paddy milling. After the fourth test was finish Mr. Chung order Inshan and myself to sweep up the paddy on the ground - we did so and placed it in a bag and took it to Bookers Stores and left it in the workshop. The fourth test produced no improvement.

By Mr. Farnum cross-examined:-

Cross-examination

30

I operate no mill now - I operated mills before. I operated a "Grantex" rice mill for Ramdeo of Bush Lot, Corentyne. I did so under Mr. Chung's supervision. I did so occasionally. After Mr. Chung erected Ramdeo's mill, he used to take us and other employees up to Ramdeo's place to teach us and Ramdeo how to operate the mill.

40

I knew I was to give evidence in this case about 3 Sundays ago. Plaintiff asked me to give evidence. I did know about this case against Bookers according to rumours around. I never gave a statement in writing to anybody about this case. Mustapha Ally knew what I was going to say because he was aware about the work I did on the rice mill. I did discuss with Mustapha Ally what I had to say

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 6

Jai Persaud
Balkissoon

Cross-
examination
(continued)

3rd March 1965

today. We spoke last night about tractor and my evidence. No one asked me to give a written statement.

After a mill is assembled Mr. Chung would go around and check and make adjustments if necessary.

I left Bookers in February 1964. It is not true that only one test was made and that was in July 1963. It is not true that the other 3 occasions when Mr. Chung went to plaintiff's mill were merely to visit and not to carry out tests. I say there were 4 tests in all. The mill was in operation when we went for the tests. It was not in operation on the 1st 2nd or 3rd tests. I was present when Mr. Chung told plaintiff that he had to get cleaner paddy. I cleaned the paddy and got a small quantity of straw and dust.

10

Mr. Chung did tell Ally that the "cone shoe" was tampered with. Mr. Chung on the 3rd test did say to plaintiff "If this state of things continue the mill will be destroyed before you can reap your crop." Mr. Chung was angry when he said this. He spoke loudly. Mr. Chung was angry with plaintiff Ally. He did not blame the operator. Mr. Chung was angry with Mr. Ally because he Mr. Chung found the cone shoe troubled with - I did not hear Mr. Chung tell plaintiff to get another operator who would benefit from his instructions. The tests were in relation to both white rice and parboiled test. Three (3) tests related to white rice. Esar stopped his parboiled rice to be hulled after 4 or 5 bags were milled.

20

30

I was not present at any time when Mr. Chung and Mr. Blair got 13 to 14 bags of rice per hour. I was not at the mills every day.

I do remember the names of some of the farmers whose paddy was milled - Esar was one. It is true that the aspirator paddy cleaner, and the shaker work by vibration.

The parts that rest on wooden platform are the motor that drive the paddy cleaner, the motor that drives the aspirator, the motor that drives the shaker and the motor that drives the grader sit on a wooden platform. These very platforms vibrated terribly. The equipment which is driven by these motors has to shake.

40

I am speaking the truth when I say that the platform did vibrate terribly. It is not true that the platform did not shake at all.

In the Supreme
Court of
British Guiana

It is not true that I was taken up there just to assist as an ordinary mechanic. I was employed by Bookers as a Diesel and Petrol mechanic. Whatever knowledge I have about plaintiff's mill I got from Mr. Chung - Mr. Chung taught me. Mr. Chung did not give me lectures but showed me how to assemble and operate the mill. He taught me how to assemble and operate the mill. He taught me how to adjust it. I knew nothing about "Grantex" mills before Mr. Chung taught me.

Plaintiff's
Evidence

No. 6

10

Jai Persaud
Balkissoon

Cross-
examination
(continued)

I assisted Mr. Chung in the assembling of 4 "Grantex" mills. Mr. Chung was the supervisor. Mr. Chung told me what to do on each occasion. He taught all our employees.

3rd March 1965

20

I did say that the compartment separator was not feeding the reservoir continually enough to satisfy the cones. Mr. Chung with us tried our utmost best to adjust it but to no avail - it did not improve.

Mr. Farnum asks that further cross-examination of the witness be deferred (agreed).

Re-examination:-

Re-
examination

I only took instructions from Mr. Chung. I did nothing on my own.

No. 7

No. 7

EVIDENCE OF RAMSOOK

Ramsook

30

RAMSOOK sworn:-

Examination

I live at Port Mourant. I am a rice farmer for 30 years.

3rd March 1965

I know plaintiff and his mill at Albion. In 1962 I took paddy after the big crop to plaintiff's mill - I took 180 bags of paddy to be milled. I was present at the milling (as is the custom). It was to be white rice.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 7

Ramsook

Examination
(continued)

3rd March 1965

The paddy was dried in a dryer. It was left overnight in the box of the dryer to cool off. The following morning an amount of rice was milled and I saw on receiving the rice that an amount was broken up. I did not expect so much to be broken, so I began to quarrel with Mr. Ally and stop the milling. The next day Mr. Ally came back with Mr. Chung of Bookers. I told Chung that the rice was breaking badly. Mr. Chung then took the paddy in his hand and rubbed it. He then bit some grains. Chung then said the rice was good and that he was going to adjust the mill. I did not agree but Mr. Ally said I must allow it and that he would give me the difference. I then agreed and all the paddy was milled - I got 60 bags whole grain and 25 bags broken rice.

10

Before that I had milled at Hack's mill at Hogstye - a different mill. I would have got about 80 bags whole grain and 2 bags broken. At ordinary mills I would have got about 90 bags whole rice and about 2 to 3 bags. Mr. Ally gave me \$290.00 I saw he was not charging me for 5 bags milling. He gave me the \$290.00 for the broken rice. He took the broken rice.

20

Cross-
examination

By Mr. King cross-examined:-

I planted rice at Port Mourant Self help scheme Co-operative - before 1962 I used to take my rice to Dennis Budhram's mill, Sunny Kudrat's and Mr. Hack's mill. I went to plaintiff because I heard that he had a new mill and it was the nearest to where I was living. I now say I took it to plaintiff's mill because it was the newest and I hoped to get better rice. Plaintiff gave me bags and I did the transport: as other mills did. My paddy was dried in "batches" of 20 to 30 bags a time. I stopped the milling because there was too much broken. It was white rice. I had to pay 12 cents per bag for the drying. When the paddy is dried on the drying floor I had to pay also.

30

The concrete drying is cheaper. When the weather is good the concrete drying is cheaper. If you have a bulk of rice 2 to 3 hundred bags the dryer is cheaper - but if you have small quantity the concrete is cheaper. I reaped my paddy by hand.

40

The milling of my rice began at about in the morning at 7 a.m. The next day early in the morning and finished in the afternoon. The milling was detained the first day by this adjustment and the other adjustment and I stopped them at midday time. I realise after 2 bags were milled that there was too much broken and they tried to adjust it. From 7 a.m. to 12 noon only about 4 bags were milled (on the first day) because plaintiff and engineer were trying to adjust here and there.

10

I only know that the engineer was from Bookers the 2nd day. He was a tall Indian chap. I took one bag to my home. From the 180 bags of paddy, I expected 80 bags white rice and about 2 bags broken. I would have got or I expect to have got 90 bags (brown rice) from the old time mill.

Mr. Ally asked me Sunday gone to come and give evidence about my paddy. I got no note and I made no notes. I remember I got the money. I don't remember how much I got before. I got this year 100 bags paddy. In my whole life only in 1962 I milled all my rice one time. I usually do not mill all my rice at one time, I mill little by little.

20

No Re-examination

Adjourned to 1.15 p.m. today.

No. 8

EVIDENCE OF RAMLALL LATCHMAN

RAMLALL LATCHMAN sworn:-

I live at Albion Front, Corentyne. I know about rice because I used to plant rice and mill it for about 10 years.

30

The plaintiff invited me to be present on 15th July, 1962 at a test (by Bookers) of his rice Mill dryer.

At this stage Mr. Luckhoo draws attention to court that Mr. Chung is in court.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 7

Ramsook

Cross-
examination
(continued)

3rd March 1965

No. 8

Ramlall
Latchman

Examination

3rd March 1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 8

Ramlall
Latchman

Examination
(continued)

3rd March 1965

Mr. Farnum states that the defendant's Company being a Corporation someone is bound to give his instructions and Mr. Chung is that person.

Mr. Chung remains in court.

(Witness Balkissoon put out of court and out of hearing).

(Evidence cont'd)

I went on that day to observe the test carried out by Bookers. I went with one Matadeen. It was a Tuesday - Paddy was brought by a truck belonging to Dr. Fraser of East Lothian. From Bookers was Messrs. Blair, Chung, Balkissoon, Inshan and others. The plaintiff himself was present. I made notes as to what occurred during the testing. I have the notes with me. Mr. Chung is in Court. There was one hundred bags of paddy of good - very good quality. The paddy was clean and had no foreign matter. The paddy was weighed by Inshan and Balkissoon. It was checked by Mr. Blair and the plaintiff. The total was 13,627 lbs. The weight was taken during the morning hours. The paddy was taken to the feeder to fill the dryer and Mr. Chung noted the time as 10.45 a.m.

10

20

Blair called on plaintiff to sign a document. The plaintiff signed the document. The paddy was fed into the dryer by the elevator and the dryer was filled. Only about half of the paddy was used to fill the dryer. After the dryer was filled Mr. Chung told Mr. Blair that the time was 12.15 p.m. Blair then called on Ally (plaintiff) who again signed. They all left for lunch and returned at 2.00 p.m. At 2.25 p.m. the dryer was lit and after about 18 to 20 minutes rotation started in the dryer. Chung and his men started the rotation and this continued until about 4 p.m. when the paddy was then discharged into the bin. (I did not note the time here). The dryer was stopped (furnace put out) and filled again with the balance of the paddy from the 100 bags. The operation commenced again (no spare paddy was left) and the process was repeated as before. The paddy was dried and then put into the bin which had received the first set of paddy. This was done at 8.10 p.m. on Tuesday 16th July, 1962. No further testing was done that night.

30

40

The following morning at about 9 a.m. Messrs. Blair and Chung left with Ally for New Amsterdam and returned after midday. They then started to adjust the mill by milling some paddy which resulted in 7 bags of whole grain rice and 3 bags of broken rice. The whole grains had a lot of broken rice also. I left after the plaintiff signed the document. The mill was stuck. When I left Messrs. Chung and Ally were in the yard.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 8

10 On Thursday 18th July 1962 Messrs. Chung, Blair and full staff returned to the mill. (I don't know the time). They then took out the paddy and pass it through the paddy cleaner and put it in bags. It was then clean paddy. (This was done to all the paddy in the bin). The paddy was then re-weighed and found to be 9,689. The paddy was then put into the mill again. (Plaintiff signed a document at this stage). The milling commenced at 1.30 p.m. under Mr. Chung's control. The milling was
20 continuous until 5.35 p.m. At around 3 p.m. Messrs. Blair and Chung spoke outside and then Mr. Blair returned and told plaintiff that he was going to Georgetown at a very important meeting. This annoyed Ally who stated that it was unfair as the test started and he (Blair) should have remained. Plaintiff told Blair "You see now that the dryer and the mill is no good so you getting away". Blair said take it easy Ally, we will do our best, I am ashamed of the poor production and the broken
30 grains from the dryer. I expect an expert soon and he is leaving Mr. Chung to take care of the balance. Mr. Blair then left. By 5.35 p.m. the total yield for that day 21 bags whole grain (including broken) and 7 bags pure broken. All the paddy was finished. The entire amount of paddy produced in all for that day from the 9,689 lbs. was 21 bags whole grain and 7 bags broken. (The day before we had got 7 bags whole grain and 3 bags broken).

Ramlall
Latchman

Examination
(continued)

3rd March 1965

40 Balkissoon and Inshan then scraped up some paddy from the ground near bin and dryer and placed it into a bag and tied it and threw it into their jeep and took it away when they left.

The 38 bags of milled rice were put near the door way of the mill and plaintiff called upon Chung to sign the document. Mr. Chung then said that he had not the document as Mr. Blair had taken it away because he was ashamed of the production.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 8

Ramlall
Latchman

Examination
(continued)

3rd March 1965

Cross-
examination

Plaintiff then told Chung that he had a record which he was making all through the test and asked Chung to sign that. Mr. Chung said he had not the power to sign that. The following day the Fraser's truck came and removed the milled rice 38 bags in the absence of plaintiff. Some bran was also taken away.

By Mr. Farnum:-

I worked at Albion - I have an all purpose fishing boat and I operate it myself.

10

There was a meeting of the G.A.W.U. (that is the Guyana Agricultural Workers Union) in the compound of plaintiff's mill on the Wednesday 17th or 18th (Thursday) around 5 p.m. It is not true that persons attended from 10 a.m. to 3 p.m. It is not true that some of the people who attended the meeting were in the mill itself. It is not true that many persons were in the mill. I do grow rice. Jumat Ally father of the plaintiff was present. There was no dispute between Jumat Ally and plaintiff about holding the meeting.

20

I made notes in a note book and Mr. Ally was making his notes on a white paper cover note book. It was not the first time I used my note book. I got it from Kirpalani in 1962 - I used it for addresses of friends and my business matters - I used it as a diary - I don't walk about with it. I can't remember the last time I used the book - The book is not finished - I wrote the dates in the book - I last looked at the book on Sunday last when I came to town. I can't say when before that I had looked at the book: I did use the book after the test but I can't say when. I kept the book in my wardrobe.

30

I don't know the compartment separator but adjustments were made. It is not true that the

mill did not work on the 17th. I did not hear Chung or Blair saying to plaintiff that the eccentric strap of the compartment separator was out of alignment - I don't know anything about when an electric motor gets a shortage. I had not my note book when repairs were going on. On 17th I had my book as Mr. Ally had asked me to observe. I have no interest in the mill. I am not related to Ally but I usually go there now and then when I have time.

10

You have suggested that a lot of my evidence is false but that is not true. Mr. Fraser's paddy was not end of crop paddy. It was a good paddy. I have not only come here to help the plaintiff: I am telling the truth. Mr. Blair did say he was ashamed of the production of the mill and dryer. I have not made that up. I am speaking the truth when I say that Mr. Chung saw that Blair took away the test document. I am not telling a falsehood. It is not true that Ally stopped Chung from passing the paddy through the paddy cleaner after about 10 bags was passed.

20

It is true that the paddy was put into the dryer in 2 batches. It is not true that the 100 bags were fed without a break. It is not true that when the first batch of 60 bags began to be discharged from the dryer the other 40 began to be fed into the dryer and the dryer operated continuously.

30

I saw Mr. Ally signed the paper Mr. Blair had (several times). This is the book (note) in which I made my notes. (Counsel inspects book.) I did write the account in the book during the test and not after. I now say I had taken notes on pieces of paper and then wrote out the statement in my book from the notes: I have not the notes now, I tore it up and threw it away. I used pieces of paper at the mill. I had the rough pieces of paper on me and after I completed my notes I wrote the statement in my note book. I wrote my statement every afternoon when I went home: The test started on the 16th.

40

I wrote on the 15th "that during the second week" appearing in the note book - I now say it may have been written on the 10th and not on the 15th. I wrote on the 10th what happened and I wrote on the 15th what happened. When I began making the record, I did not do so for the purpose of a

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 8

Ramlall
Latchman

Cross-
examination
(continued)

3rd March 1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 8

Ramlall
Latchman

Cross-
examination
(continued)

3rd March 1965

case. The first time I wrote was on the 10th - the second time was on the 15th July. I wrote out the statement from my memory. I agree that the statement is the only complete one on this matter or any matter in that book but there are other interesting matters in it: I did not make it up "the statement" for the purposes of this case. I went as an observer and I felt I must make - notes. I did not use the book after. I only used it for my personal affairs. A few pages are lost - I also wrote to friends on leaves and handed them. I never showed the book to plaintiff. He never asked to see it - I told plaintiff I had notes on Sunday when we were coming to Georgetown. I had told him this also while the test was going on. I was asked before last Sunday to give evidence - I can't remember when I was asked to give evidence. Plaintiff told me when he filed his case that he would need me as a witness. He said he might need me. I had my note book in my bag when we were coming down on Sunday. I told him it was in my bag. This is the note book - Tendered Exhibit "J".

10

20

I am not stopping at the same place as Mr. Ally. He never asked me to see the book. Plaintiff did ask me whenever we come to court if I remember what took place at the tests.

It is not true that Mr. Ally returned to sign slips. Mr. Chung never asked him to sign any slips.

Re-
examination

Re-examination:-

Ally did sign slips at the request of Mr. Blair. These are the slips I refer to as a document. Nobody else asked him to sign except Mr. Blair.

30

By Mr. King (through court): Some of the pages are loose. I shall number them in court: (numbers pages).

Adjourned to 9 a.m. tomorrow.

3/3/65

4th March 1965

Resumed - 4/3/65 - 9.30 a.m.

No. 9

EVIDENCE OF MUSTAPHA ALLYIn the Supreme
Court of
British GuianaMUSTAPHA ALLY sworn:-Plaintiff's
Evidence

No. 9

Mustapha Ally

Examination

4th March 1965

I am plaintiff. I live at Albion, Corentyne, Berbice. I am 33 years of age. I have experience for 10-12 years in mechanical machinery viz: draglines, tractors, trucks, cars. I am a contractor - This is my first experience in rice mills.

10 In 1960 - the latter part - I spoke to employees of Bookers Stores Ltd. - viz. Mr. Chung and Mr. Blair separately. Early in 1961 Messrs. Blair, Chung and Esslemont spoke to me at my home at Albion. Mr. Esslemont was then a director of Bookers Stores Ltd. Blair was the General Manager of the Bookers Agricultural and Machinery Department, Georgetown. Mr. Chung was the manager of the Branch of Bookers Stores Ltd., New Amsterdam.

20 The Booker Companies in British Guiana were carrying on business for many years in this colony. They are the largest group of companies in British Guiana. Bookers Stores Ltd., - the defendants - sell and deal with goods of all kinds. I had entire confidence in the defendants.

About ten years before this I was dealing with the defendants. I had bought 2 motor cars in 1958. In 1961 two trucks and a car on one day cash.

I must have spent about half a million dollars during the ten years 1951 - 1961 with them.

30 When Esslemont, Blair and Chung came to my home in 1961 they came to discuss with me the purchase of a "Grantex" rice mill and dryer. I told them how much I wanted to spend on this project. I told them I wanted to spend about \$100,000 (one hundred thousand dollars). They showed me literature of the "Grantex" Mills and dryer. The literature was similar to Exhibit "C". I now say this Exhibit "C" was the identical pamphlet shown to me by them. I have never seen any pamphlet like Exhibit "C" before. Both Mr. Chung and Mr. Blair showed me a multi-stage mill marked S-20/4 on back page of Exhibit "C".
40 (There is a red tick there). At the side are written the following words.

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"No. 72 Self Contained Mill (3 cones 1 polisher)
with cylinders for Rice Grading."

All of them told me that that mill - S 20-/4 is a two ton "Grantex" mill - multi stage mill - good enough to do - to mill 4300 to 5600 lbs. of paddy per hour and that this one shown in the picture S - 20/4 was a belt driven mill and competent to (mill) do above 5000 lbs. of paddy per hour.

They showed me at page 7 of Exhibit "C" the capacity set out with reference to the mill S-20/4. This is set out of No. 74 - or page 7 as follows: capacity lbs/hour paddy 4300 - 5000: diameter 30" width 12" Reno 300. B.H.P. 60: Length 48: width 25: Height 21: Gross weight Cwt. 460. Meast: Cubic ft. 2000: Code word SMENO. It is further described as TRIPLE CONE MILLS with one polisher. They told me that the picture (on page 6) which was shown to me as No. 72 mill was the picture of one ton mill and mine would be exactly built as this one No. 72, but it would be a two ton mill (and not 1 ton).

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At page 7 of Exhibit "C" the No. 72 Mill is set out with a capacity of 1900 to 2500 lbs. per hour (under the title "Triple Cone Mills with one polisher"). They told me "Man if you get a mill like this in this district you will be able to grasp the largest amount of paddy, not only from Albion and Port Mourant square but also farmers from Mora and other places (hearing of a good mill)". They told me that they erected one at Dr. Fraser's place a one ton (at East Lothian). That is about 6 miles away and they will show me it. They then took me with their car to Dr. Fraser's mill at East Lothian. I saw this mill, but it was not in operation. They told me that Dr. Fraser's mill will produce about 8 to 9 bags of clean rice per hour and if I bought a 2 ton mill it would produce 17, 18 or 19 bags per hour. Price was not discussed on that occasion.

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On that said day there was discussion in relation to a dryer. They showed me literature and gave me Exhibit "B". At page 5 of Exhibit "B" they showed me the dryer also "08", which set out the various capacities. They told me that I would have about 4 tons (four) of paddy dried every hour between 125 degrees and 150 degrees. This is set out under the capacity table at 08 to read as

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follows:-

Size 08: Size 08: 2.32, 3.28 4, 5.6 - (total H.P. required 15) (It is underlined in red.)

I was told that by then that the 4 ton dryer would reduce the moisture content by 6% in an hour. This is stated on the capacity table at page 5 of Exhibit "B" (circled). The price was not discussed about the dryer. They told me if I have the mill and no dryer like that the mill would be of no use because farmers of today, after reaping their paddy wanted quick drying and which ever mills have dryers they would clamour for and go to those mills. They told me that working from 7 a.m. to 4 p.m. in any one day I would dry 32 tons of paddy and that the dryer would be the best in the country and would do both parboiled and white rice. They said that in a days work I would dry 16 tons of parboiled rice or 32 tons white rice. They say that if I have both the mill and the dryer I would kill the other mills around. The capacity table on page 5, I understood to refer to white rice (and not parboiled). They spent about 3 to 4 hours with me on that day.

Sometime after (about a month after) I met Messrs. Blair and Chung who brought me to New Amsterdam in their car to the Y.M.C.A. hall New Amsterdam - there I saw Mr. Esslemont who asked me whether I was going to buy the mill or not. We then (Esslemont, Chung and Blair) discussed the matter. They repeated what they told me before and in addition they said if I bought an electrical driven mill and dryer I would have far greater capacity to the extent of 50% more than they stated and that these machines would be working like the Rolls Royce car. I then ask them the cost and they said about 1½ times more in price value than the belt driven mills. I then asked them the price for the belt driven mill and dryer and they said a rough average about \$39,000 (thirty nine thousand dollars) for the mill and \$19,000 (nineteen) for the dryer (both belt driven). I then asked them to get a quotation for me. Subsequently, I received this letter from Mr. Blair dated 25th April, 1961, quoting me the dryer etc. and equipment - Tendered, Admitted and Marked Exhibit "K1".

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In the meantime I was negotiating with the B.G. Credit Corporation for a loan to purchase cash, the mill and dryer from the defendants. The defendants knew of these negotiations and at my request the defendants wrote a letter to the B.G. Credit Corporation. This is the letter dated 19/6/61. Tendered, Admitted and Marked Exhibit "K2".

The \$50,000 quoted in Exhibit "K2" was for an electric driven mill. The \$26,000 was for a dryer to be electrically driven. The \$25,000 was for a generator to power the mill. The \$9,000 was for a boiler to steam parboil paddy. I was contemplating at this time electrical equipment.

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After the letter Exhibit "K2" was sent to the Credit Corporation, I had further discussions with Messrs. Blair and Chung. These discussions were confirmed in a letter dated 29/9/61 by Mr. Blair. Tendered Exhibit "K3". I had not got my loan from the Corporation yet. The word "detached" has not been mentioned up to this stage and was not mentioned in any correspondence. The mill I negotiated for was the one shown to me on the pamphlet Exhibit "C" S/20/4 (but 2 tons). The frame work of the mill shown as S-20/4 is of Iron - with lumber flooring. Up to this stage (29/9/61) there was no talk by defendants of varying the frame work as shown on Exhibit "C". After receiving the letter Exhibit "K3" I decided to place an order and I paid to the defendants the down payment of \$10,000 on 11th October, 1961. This is the receipt - Tendered Exhibit "K4". After I made this payment I had further discussion with Mr. Blair at New Amsterdam and he wrote to me a letter dated 17/11/61. This is the letter - Tendered Exhibit "K5". I had requested a good finish mill so I could case it well. A shaker conveyor is a piece of equipment to shake the parboiled paddy from the steaming tank into the dryer. It was to be electrically operated. I ordered that in order to have uniform drying, so that the farmers may obtain the best facilities. The shaker conveyor did arrive and I paid first about \$4,000 (but) it was never installed. Mr. Chung had measured the place himself to get the length for the shaker conveyor.

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Adjourned to 1.15 p.m. today

4/3/65

Resumed: 4/3/65 at 1.30 p.m.

Witness still on oath states:-

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10 After I paid the down payment of ten thousand dollars, I began building a paddy bond (to accommodate 100,000 bags of paddy) a milling machinery house, to house the machinery, at a cost of roughly fifty thousand dollars. I had to fill up a level land to the extent of \$22,000 (twenty two thousand dollars). The land was previously rice fields which I bought from Bookers Sugar Estates Ltd. The land cost about \$20,000 - the purchase price. I made a temporary drying floor intending to use it in case there was any breakdown in the dryer. This cost me about \$14,000. I built a bridge costing about \$5,000 - this was leading to the factory. I built fences to the amount of \$5,000. I bought a second hand boiler for soaking purposes. This and erecting cost was about \$8,000. I built a roadway at a cost of \$2,000. The house to house that power plant and foundation cost about \$7,000. The 2 watchmen houses cost around \$2,000. In all these cost about \$137,000 in preparation for the mill.

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30 On 13th January 1962 I paid an additional down payment of \$10,000. This is the receipt - Tendered Exhibit "K6". I then received this letter with Exhibit "K6": Tendered Exhibit "K7". I received a further letter from Mr. Blair. This is the letter: Tendered Exhibit "K8". The mill arrived in the colony on 15th February 1962 on the Arakaka - Mr. Chung and Mr. Blair told me this. Before the mill and dryer arrived in the colony both Chung and Mr. Blair spoke to me at Mr. Blair's office on 7/2/62 in Georgetown. They told me of the arrival of the mill the next week and that I would have to get up some lumber to fit the grading cylinder the jusks aspirator and paddy cleaner.

40 I was never told anything before about lumber. The letter gave me an order setting out the particulars of the lumber required: I then asked them what should I buy lumber for? Mr. Blair then said to wait and let him check the invoice. He did so with Mr. Chung and then brought the invoice with them. They then said "Man you have to get this lumber if you want the mill erected for the crop." I was determined that I would buy no lumber at all and told them that in the pamphlet I saw only iron. They left me in the office and then went and

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spoke aside. I then looked at the invoice which was on Mr. Blair's desk. I then saw the C.I.F. price. When they came in back to the office they told me that if I wanted the mill to be erected I must get the lumber. Mr. Blair said that there was no difference between the lumber and the iron and that it will do the same work. I relied on the judgment and skill of them, as they had vast experience in this field. I then purchased this lumber - the best lumber from B.G. Timbers Ltd. (C.D.C.). This is my delivery slip for the part of the lumber: Tendered Exhibit "K9". Later I was told to get extra lumber - that was in March or April 1962 when Mr. Blair instructed me to buy uprights and cross-beams. This is the slip for that lumber: Tendered Exhibit "K10". On this latter occasion I asked Mr. Blair why he wanted me to buy these heavy lumber and I reported about the iron frame - Blair stated that I must buy the lumber and at a later stage he would see what he can do as he did not see the iron frame come down. I asked Mr. Blair if he was certain that the lumber I purchase would take the machine. Blair then said "Ally when I tell you something I know what I am telling you."

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On 15th February 1962, I saw the mill and dryer on the wharf during the night when the Arakaka was moored. I was in Georgetown on the 16th February when fire took place in Georgetown and on the wharf where the mill and dryer was. The mill and dryer were destroyed by the fire.

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Mr. Blair then told me that he was cabling for a new set of machinery for me. On 6th March, 1962, I received this letter from Mr. Blair: Tendered Exhibit "K11". Stanleytown is on the East Bank of the Berbice River where there is a bridge wharf. The mill was sent there and from Stanleytown I transferred it with my trucks to Albion. I did not secure a loan up to March 1961. In the meanwhile I had involved myself in the expenditure I have related. I had not the ready cash to pay off and so I entered into an hire-purchase agreement in relation to the mill on 26th March, 1962. The mill was then at Stanleytown.

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(Mr. Luckhoo now states that he accepts Mr. King's statement that the mill was not lost in the fire but only the dryer).

On 26th March 1962 I entered into a hire purchase agreement with the defendants. This is the agreement: Tendered Exhibit "K12".

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10 I see on Exhibit "K12" the word "detached" written. At the time when I signed Exhibit "K12" I did not notice the word "detached". No one pointed out to me the word "detached". I only notice it now. After I had signed Exhibit "K12" it was left at Bookers Stores - I received it back after I paid for the mill in October 1963. When I signed Exhibit "K12" the mill was in crate in my truck at Stanleytown. I was given no copy of Exhibit "K12" - I did not read the printed matter at back or front of the document. No one read it for or to me. I can read and write alright. No one explained the hire purchase agreement to me. Mr. Chung witnessed my signature. The same Mr. Chung who took part in the negotiations. He Mr. Chung had telephoned the store at New Amsterdam to
20 prepare the hire purchase agreement in advance. We were then at Stanleytown Wharf: He Chung said that if the agreement was not signed before the store was closed at 11.25 that day I could not take the machinery so I went by car to Bookers New Amsterdam. I found the doors closed and so I went through the book and Mr. Madray gave me the form Exhibit "K12" which I signed and then went back to Stanleytown where I had left Mr. Chung. I spent about $\frac{1}{2}$ minute in the store at New
30 Amsterdam where I signed Exhibit "K12". I can't remember if any money was paid on that day - I don't think so. Although the agreement gave me 3 years to pay. I paid off for the mill in October 1963 (and I paid also for the dryer). I got the money from the B.G. Credit Corporation as a loan. I got \$80,000.

40 If I had got the loan in March 1962 I would have paid off Bookers (defendants). On 18th April 1962 I received this letter from Mr. Blair: Tendered Exhibit "K13". This was in connection with a generating set to power the mill and dryer. I eventually bought a "Dorman" generating set for \$20,000.

The paddy dryer arrived in May, 1962. It was sent to Stanleytown wharf (as the mill) I transported it to Albion after I signed this hire purchase agreement. Tendered Exhibit "K14". (The amount stated as rental was to be paid per year and

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not per month as is printed.) When I signed "K14" I did not read it at all. It was not read to me or explained to me. I knew the cash price for the mill and the dryer. Interest was added to the price. I did not know what was the rate of interest - Bookers did this. I did no calculations. I relied on them wholly - I had confidence in them. On the morning I was going for the dryer. I went to New Amsterdam first to the defendants and there I signed the H.P. Agreement Exhibit "K14" and then I went to Stanleytown to get the dryer. I had paid the said day \$7,600 to Bookers. This is the receipt: Tendered Exhibit "K15". I paid off the Hire agreement the same time I paid off for the mill in October 1963. Exhibit "K14" was also kept by defendants. I got both agreements after I paid in October 1963. Both the mill and the dryer were transported on the day each of the H.P. agreement was signed.

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The erection of the mill commenced with the foundation work first. This was in early 1962 - concrete with mild steel rods and BRC fabric No.65. This work of the foundation was supervised by Mr. Chung but I paid the cost (except for Mr. Chung). Two or 3 times Mr. Chung broke and recasted parts of the foundation. The cost of this foundation work was about \$12,000. This was completed in March 1962 to Mr. Chung's satisfaction. The erection started about a week or 2 after it arrived and continued until August 1962. The erection of the dryer commenced in August 1962 and completed by the end of October 1962. One Mr. Roy White - a Scotsman engineer was brought by the defendants and he was chief in charge in erecting the mill. Mr. Chung was next in charge. Inshan, Balkissoon, Nellow, Best and a few other men employed by the defendants assisted in the erection of the mill. I was paying for a mill fully assembled. Mr. Chung had opened the crates with the assistance of his men. When the crates were opened Mr. White told Mr. Chung that he made a blunder in the alignment of the foundation to carry the compartment separator. He also told him that the cone legs were supposed to have been supported by 12 inches more casting and that it was not in perfect alignment. He told them that the casting for the motor for the blower of the husk aspirator was badly casted. He asked Mr. Chung for the iron frames and ties for the grading cylinder paddy cleaner and husk aspirator and Mr. Chung told him "Man you

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come from the factory you should have known about that better than me." White then told him "If you did not order it how the hell you will get it." They had a heated and abusive argument over it.

The lumber I had bought was used in the erection of the mill. The lumber is still there with the equipment. I was continuously there to see the mill and dryer erected. I understood fully how the mill and dryer were being assembled. I took all that interest because of my whole lives savings being invested.

Adjourned to 9 a.m. tomorrow.

5/3/65

Resumed:- 9 a.m. 5/3/65

MUSTAPHA ALLY sworn (evidence cont'd):-

The assembling of the mill was completed about September 1962 and dryer about October 1962. The shaker conveyor was never erected. It is lying in the mill alongside the dryer. It has never been used or erected. I presumed it was not erected because Mr. Chung had dried 100 bags of parboiled paddy in the drier which took 13 days: That was between the 1st February and 13th February, 1963. The shaker was for parboiled paddy alone. The shaker conveyor takes the paddy from the steaming tank shake it and convey it to the drier to be dried. The shaker conveyor was assembled by Chung but never connected to the steaming tank and drier. It was never tried out because it has to be attached with electrical fittings and this was never done. I had purchased 150 ft. of bronze cable to be used from the switch board to the conveyor. The cable cost about \$200. It is still there not used. The 100 bags paddy which took 13 days to be dried was the 3rd test relating exclusively to parboiled rice. The first for parboiled rice was in January 1963. I did this test on my own. This took 2 days to dry in the drier 51 bags of paddy. The second test was also done in January by my drier 151 bags in 8 days.

I milled the 1st 51 bags and got about 20 bags of rice of which about 50% was broken grain.

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From 151 bags (2nd test) I got more than 80 bags of rice of which about 75 to 80% were broken.

The 3rd test was done by Mr. Chung and Inshan - 100 bags of paddy in 13 days and produced about 50 bags of rice of which 80% to 85% were broken. No further test was made for parboiled rice. The drier was never used for drying parboiled rice outside of testing. It was never used for commercial purposes.

The parboiled drying for commercial use was done by me on my concrete and at the mule pen concrete at Port Mourant. The parboiled paddy dried on the concrete has produced about 96 to 97% whole grain rice and 3 to 4% broken rice. This is very satisfactory. The paddy was milled by my mill at Albion. Lumber and transportation of lumber and machinery cost me over two thousand dollars. 10

The lumber for the dryer bin and the erection of the bin which is made of lumber and steel cost me \$5,000. The electrical installation and switches, cable panel boards cost me \$13,000. This is apart from that generating set. My liabilities are about \$140,000 (one hundred and forty thousand dollars) including my loan from the Credit Corporation of \$80,000. My interest charges are about 8% to the average. 20

Mr. White left about 2 months before the completion of the assembling of the drier. He told me that he had to leave because as he said that someone connected with him was very ill (in Scotland). Mr. White did not test the mill or the drier before he left. Mr. White was not replaced by anyone. Mr. Chung carried on and took full charge of the assembling and erection. After the equipment was installed Mr. Chung conducted the first test around mid December 1962. Present at this first test was Chung, Balkissoon, Inshan and 3 other Bookers staff members: I was there with my operator (Sulaiman) and my relatives. The test proceeded as follows. 30

I gave Mr. Chung 80 bags of paddy as requested. It was very good paddy. He dried the paddy in the electric drier. He fed the paddy into the hopper and filled the drier. It took about 50 to 52 bags to fill the dryer. The bags were not well rammed. The 40

50 to 52 bags were equivalent to about 47 to 48 normal bags of paddy - for white rice.

10 After the dryer was filled he lit the furnace for about 30 minutes. The temperature gauge was then raised to 144 degrees. He then began to rotate the paddy into the dryer. This was done for about an hour to an hour and a half. I did not make a direct check. The paddy was then emptied into the bin. At that time Mr. Chung tested the moisture content with a tester and also with his teeth. It was 14½% moisture to 15%. Before it was fed into the dryer the moisture was tested and showed between 16% to 18% moisture. The operation took about 6 hours from the time the paddy was fed into the hopper to the time it got into the bin. During that time Mr. Chung made adjustments to the mill. After the 52 bags of paddy were taken out of the bin the remaining paddy nearly 30 bags were fed into the hopper. The moisture content was as before.

20 The furnace was then lit again and the procedure repeated but the furnace took less time to be heated. The rotation of this paddy however took a little longer (5 to 10 minutes longer). The moisture test revealed the same as before and was then sent to the bin. The paddy remained in the bin over night for 12 hours.

30 The following day Mr. Chung and staff returned and milled the paddy. It took about 8 to 10 hours during which thorough adjustments were made to all the machinery. The result was 6 bags of rice, including whole grain and broken. That was all from the 80 bags of paddy. I spoke to Mr. Chung and he told me that he did not realise that the blower adjustment had opened fully and as such the paddy had blown away. The value of the paddy was about \$600. The milling had taken about 8 to 10 hours. There was heavy vibrations from the wooden timbers used on the mill. The elevator was not vibrating but shaking. I later had to collar these off about 40 3 hours after. This did not ease it. It still shakes. I operated this mill up to last Sunday. The timber works have intense vibrations now worse than before. The vibrations have progressively increased and the elevator is shaking more now. After the first test I carried out a test on my own (having been taught with my operator by Mr. Chung).

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In this test I used 180 bags of paddy - good clean paddy. It was witnessed. I used the same method of drying as Chung did - filling the dryer 3 times full and one time halfway. I took about 19 hours to dry the 180 bags of paddy for white rice. I used the same moisture as Mr. Chung. I did not mill the next day but on the 3rd day I began milling. I milled a little less than half. About 70 to 75 bags. It took 7 hours and it resulted in 40% broken rice. It produced about 25 to 26 bags of broken and whole grain rice. This paddy had belonged to one farmer named Ramsook. He took up a stick and wanted to beat me after he saw the amount of broken rice, and that is why I had to stop milling the rest. The remaining paddy was left there and I went and reported the matter to Mr. Chung who came the next morning. He (Chung) checked the paddy and said it was very good and that he could not see why it was breaking up. He began to mill the paddy himself and found it was breaking up as before. He mill all the balance and found this. It produced about 45 bags whole grain rice and broken in all. About 40% to 45% was broken. Mr. Chung had operated the mill himself. He took about 9 hours to do the milling. He then said he will return to do a drying of the white rice himself because I might not have used the dryer correctly.

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I had to compensate Mr. Ramsook in the sum of \$200.00. That was the only rice which passed for the lightest grade all throughout that dryer operation (by the rice marketing board). That was the very first time I had operated the dryer on my own.

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A day or 2 after Mr. Chung came for another test. I gave him 80 bags of good paddy. It was clean. Mr. Chung made adjustments to the dryer and dried the paddy the same way as I did. He dried all 80 bags in about 9 hours. The following morning he milled it in 5 to 6 hours and produced about forty something bags: 50% was broken and 50% whole grain in which there was about 30% broken (that is 30% in the whole grain itself was broken).

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The paddy belonged to a farmer named Seepaul Ganga - he was present. Mr. Chung said he did not know why the dryer was breaking the paddy so much - several adjustments to the mill and dryer were

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made by Mr. Chung during the test. I had to
compensate Ganga and another man named Ramdeen at
total of \$532.00. I was prepared to test and test
with the hope of getting the mill and dryer to work
as promised: I had paddy in the mill since August
1962 and the weather was bad for drying paddy on the
concrete. When Ganga's paddy was being milled a
quantity of Ramdeen's paddy 160 lbs. was being
dried by Mr. Chung. Mr. Chung milled the next day
10 Ramdeen's paddy. He had changed his system of
drying. He started to feed the hopper after having
lit the furnace about 10 minutes before. The
temperature then was 120-125. While he was feeding
the paddy he was drying it at the same time. When
the dryer was eventually filled he started to
discharge the paddy into the bin and at the same
time he was feeding paddy into the dryer while same
was being discharged into the bin. This process
continued until he dried the entire lot. This
20 system caused a great deal of choking of the elevator
but was a little faster. The paddy was finished
drying about 10 p.m. one night and was milled the
next day by Mr. Chung. The result was 58 bags of
whole grain rice of which 40% was broken and 26 bags
of broken rice. He made adjustments all the way
through after the results, Mr. Chung stated that he
would not carry out any further tests and would
report the matter to Georgetown and advise me to
hold on.

30 In January 1963 I made 2 parboiled tests which
I already described.

On January 26th 1963, I wrote a letter to Mr.
Boon a director of Bookers Stores Ltd. (defendant's
company). I posted the letter. This is the copy
of that letter - Tendered - Mr. Luckhoo states that
notice to produce was given but counsel for defen-
dants states that such a letter is not traced.
Leave asked to tender copy of letter which was
posted.

40 Evidence contd:-

This is a carbon copy of the letter which I had
posted to Albion Post Office. I later posted a
copy to Mr. Tasker. I addressed the first copy to
Mr. Boon, Bookers Universal Building, Church Street,
Georgetown. That was the head office at that time
of the defendant's. The letter was never returned

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as unclaimed. After addressing it I posted it myself. This is the copy: Tendered, Admitted and Marked Exhibit "K16". Prior to this letter Exhibit "K16" I had spoken to Mr. Boon about 3 times between 1st January 1963 and January 26th at the Universal Building Church Street. I asked Mr. Boon about 3 times between who was a director of the defendant's company "to root out the mill and dryer from my premises and pay me off my expenses incurred so I can acquire another mill for the crop." I discussed with Mr. Boon, the poor production, the excessive broken grains from the various tests (I described). Mr. Boon always on those occasions gave me hope that it would all be adjusted even if they had to bring the Manufacturers representative down.

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All the facts I have stated in Exhibit "K16" are true but the statement as to my opinion was hastily arrived at without calculations. The state of my mind was much perturbed at the time when I wrote Exhibit "K16" as the farmers had threatened me and I had to pay compensation. I was worried and a farmer cursed my wife that day. My mill was getting a very bad name.

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Adjourned to 1.15 p.m. today

Resumed 1.15 p.m. 5/3/65

(Evidence of plaintiff cont'd)

After I sent the letter Exhibit "K16" to Mr. Boon, I met Mr. Blair and Mr. Chung a few days after (4 or 5 days) in Georgetown. Both Messrs. Chung and Blair rebuked me for writing Mr. Boon.

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I told them about the first test I did and the damage I suffered. Mr. Blair then told me that he will send Mr. Chung to make a parboiled test. I then discussed with Mr. Blair the possibility of having Sir Jock Campbell and Dr. Jagan to be patrons for the official opening of the mill.

Later I received this letter from Mr. Boon: Tendered Exhibit "K17". Mr. Chung conducted a parboiled test between 1st February and 13th February 1963. (I described this already).

40

On 15th February 1963 I wrote a further letter

to Mr. Boon, addressed it to his proper address, Universal Building Church Street and posted it myself. It was never returned to me. (Notice to produce served - original not traced). I kept a carbon copy of the letter. This is the carbon copy: Tendered Exhibit "K18". After I posted Exhibit "K18", I came to Georgetown a few days later and I went to Mr. Boon at Universal Building. He told me that he was just about to reply to my letter.

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Mustapha Ally

Examination
(continued)

5th March 1965

The test referred to in par. 1 of my letter Exhibit "K18" did not refer to the test between 1st February and 13th February but was referring to a future test to be carried out subsequently. When Mr. Chung was completing his test on 13th February 1963 he told me that Mr. Blair would himself be coming with his Georgetown staff and with the Berbice staff would together carry out a thorough test.

It is true that whenever I discussed the mill with Blair and Chung, both of them became annoyed. The Smith I referred to in par. 3 of Exhibit "K18" was Mr. D.J. Smith who was the manager of Bookers Stores Ltd. New Amsterdam. I considered I was being victimised and I said so in the said letter. I tried to set out the facts as I saw them in the letter Exhibit "K18".

It is true that the dryer broke 2 shafts during 2 tests carried out by Mr. Chung. The shafts were broken between December 1962 and February 1963. The shafts were replaced by Bookers who get them made at a local work shop at their cost. The motor was burnt while I was operating it. I was in no way negligent in the operation. Bookers replaced this at no extra charges. When I wrote Exhibit "K18" the facts were fresh in my mind.

Adjourned to 1.15 p.m. Monday.

Resumed 1.15 p.m. 8.3.65

8th March 1965

MUSTAPHA ALLY sworn (evidence cont'd)

After I wrote Mr. Boon, I came afterwards to see him (Mr. Boon). I went to Universal Building office and there I met Mr. Boon and also Mr. Blair. Mr. Boon told me that he wanted to cancel the official opening of the rice mill. I asked him why?

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Examination
(continued)

8th March 1965

and he said the mill is not functioning well and that they were made to understand that I intend to criticise the mill and dryer in my opening speech. I told Mr. Boon that his information is not correct and that it would be detrimental to me to publicly criticise the machinery (on the opening day) on which I depend on for a living. They had got both of my letters and he requested me to return at 9 a.m. the following morning as Mr. Blair and the directors will sit at a special meeting with Mr. Blair.

10

I went at 9 a.m. as requested. I did not see Mr. Boon. I waited for Mr. Boon for over an hour while waiting after the hour, I wrote a letter from paper I had and a carbon sheet given me by his secretary (Boon's). I wrote a letter there with a carbon copy while waiting. I gave the original copy to Mr. Boon's secretary and I kept the carbon copy. It was March 1963. Towards the end of March I saw Mr. Boon and he said he received my letter. (Notice to produce served but original not immediately available). This is the carbon copy which I made at the time. Tendered Admitted and Marked Exhibit "K19". (Red ink in Mr. Luckhoo's writing).

20

The last 2 letters, referred to are those of 26th January and 15th February 1963. What I stated in Exhibit "K19" are the facts. Bookers had agreed to pay for the drinks at the opening. There was eventually an opening on the 9th March 1963. Bookers took up the drinks in question. There were about 1000 invitees including farmers, doctors, lawyers and prominent business people. I had expected Sir Jock Campbell to attend but he did not. I sent a telegram to Sir Jock at Colgrain House after the opening. I also sent one to Mr. Boon in reply on 21st March 1963. I received this telegram from Mr. Boon: Tendered Exhibit "K26". I had hoped to have a private talk with Sir Jock over the mill. On 22nd March 1963 I received this telegram from Sir Jock Campbell: Tendered Exhibit "K21".

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40

Between March and July I did not use the dryer. During that period I dried paddy at the agricultural station concrete at Black Bush about 30 miles from Albion and at the old mule pen concrete at Port Mourant and at my concrete at Albion. I had to do this because if I used the dryer I would have had to pay compensation to the farmers. The dryer

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Examination
(continued)

8th March 1965

was not any good. I had to use all three concrete
floors in order to get quick drying. Between
March and July 1963 I milled this paddy with my
new "Grantex" mill. The milling produced less
broken grains as the operation continued but it was
more expensive this way by drying the paddy on the
concrete and at different places. The capacity of
the mill did not improve at all. My complaint
about the capacity still remains. I only get to
10 the maximum 7 bags per hour and to the least 3 bags
per hour (180 lbs. per bag) I expected between 17
to 20 bags per hour and above. An ordinary old
fashion mill belt driven single stage with one
huller give 7 to 9 bags per hour. Two hullers
would give you between 14 to 18 bags per hour.
These 2 hullers stage mills the very best would
cost only about \$10,000. Single stage mills are
intended for parboiled rice. Multi stage mills
deal with either. When I refer to the single stage
20 mills milling 15 to 18 bags per hour this relates
to parboiled rice. My mill gave only 6 to 7 bags
of parboiled per hour and this is electrically
driven. I got 3½ to 7 bags white rice from this
"Grantex" mill.

After I had the replies from Boon and Campbell.
I went and met Mr. Boon and I told him that his
telegram stated that "if Bookers Stores could be of
any assistance?" when I approached him on many
occasions but to no avail Mr. Boon then rebuked me
30 for communicating with Sir Jock. He also said that
he told Mr. Blair to get the Manufacturers men to
come down. I told him that he had made that promise
one month before without any success and so I had to
see Sir Jock. I later went to Colgrain house to see
Sir Jock Campbell as he was staying there then. I
did not get to see him. Between the 9th March and
the ending of March 1963 Mr. Chung made 3 more tests.
I was at the tests only partially.

40 The first test was about 420 bags of paddy
belonging to one Lionel Jameer. It was dried in
the dryer and milled after and resulted in 122½ bags
whole grain rice passed for No. 6 and 60 bags broken
passed as unclassified.

The second test was 180 bags belonging to one
Kamall. The result was 51 bags whole grain passed
for No. 3 or No. 4 grade and 36 bags broken.

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Examination
(continued)

8th March 1965

The farmer Kamall had in all 206 bags of paddy 20 of those bags of paddy were dried on the concrete and this resulted into 10 bags of whole grain passed for No. 1 grade 1 and a half bag broken.

The third test belonged to one Walloo 145 bags of paddy. This resulted in 26 bags whole grain and 26 bags broken. All these tests related to white rice.

The farmer Walloo dried another 65 bags on the concrete and got 30 bags whole grain and 1 bag broken -

10

No. 1 grade rice was valued at \$21.96.

No. 3 grade \$18.00 (plus some cents).

No. 4 \$17.00 - \$6 or \$12 to \$13.00.

I had to compensate all these farmers. I had to pay Jameer \$2,454.57. All these tests were done by Mr. Chung. I paid Kamall \$448.00: Walloo \$350.00. He conducted all the tests for which I paid compensation. During the tests the rate of drying and of milling in the last 3 tests were the same. There were no improvements.

20

A special test was to be made on or about 24th March 1963 but a strike intervened and this test was delayed until July 1963 when both Georgetown and Berbice staff of Bookers were to carry out the test. I interviewed Mr. Tasker a Bookers director in June 1963 as a result of advice I got from one of Sir Jock's assistants.

On 5th July 1963 Mr. Blair wrote me this letter dated 5/7/63: Tendered Exhibit "K22".

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At every crop screens and knives have to be changed. The screens are in the cones for scraping the rice and the knives are filled in the huller for shelling the paddy. I had paid \$73.00 for these parts. Every piece of the dryer and mill was thoroughly checked by Mr. Chung and his staff before the test started. Inspection test started on 8th July to 15th July, 1963. Inshan and Balkissoon and others were there. Mr. Chung never stated at any stage of the inspection that anything was defective. The dryer and mill were in very

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good condition. I was always complimented by Bookers for keeping it clean and up to date. The actual test had begun on the 16th July 1963 and was finished on the 18th July 1963 (3 days).

10 Mr. Blair recorded the results on the test sheets. Myself and Mr. Blair signed that test sheet in the course of the test. No copy of the test sheet was handed to me. I am sure I had signed the sheets. It is not true that I refused to sign. (Messrs. Farnum and King state that according to their instructions no such sheet was signed by plaintiff).

Messrs. Blair and Chung took me to Dr. Fraser at East Lothian on the 15th July 1963 to get paddy. They got 100 bags of paddy selected by Messrs. Blair and Chung. It was of the best quality 100% clean. Previously Mr. Chung and I went to inspect paddy at the Agricultural Department but found Fraser's paddy better.

20 The paddy was taken to my mill by Dr. Fraser's truck. It was scaled by Inshan and Balkissoon. Mr. Blair and myself recorded the weight separately. It was 13,627 lbs. The test sheet was signed by Mr. Blair and by me. It was about 12" square and I signed it as to weight. I was glad to sign and I did sign. The paddy was fed into the hopper at 10.45 a.m. At 12.15 it was finished being fed (or 12.25 I think). About half was fed and they went to lunch. The half of the paddy filled the dryer.

30 The furnace began at 2.25 p.m. It was heated for about 18 to 20 minutes raising the temperature to 140 degrees fahrenheit. He then began to rotate the paddy in the dryer. He finished the first batch around 4 p.m. or a little after. I can't tell exactly. They then continued to treat the remaining paddy similarly and concluded at 8.10 p.m. The following afternoon some paddy was used for tuning or adjusting the milling side of the machinery.

40 They also cleaned an amount of paddy on the cleaner and refilled into bags. They returned on the Thursday morning and continued the tuning and cleaning the balance of the paddy which was in the bin of the dryer.

During lunch hour they scaled the said amount of paddy which weighed 9,689 lbs. They also scaled the amount of whole grain and broken rice they had. It was 7 bags whole grain with about 60% broken in

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it, and 3 bags pure broken rice.

No one went for lunch and the paddy began to be milled. I signed the test sheet as to the weight again. This was about the 6th time I signed. I signed first when the paddy was weighed.

Secondly when the paddy was fed into the hopper (time).

Thirdly the time after they finish or filling the dryer.

Fourthly when the entire lot was dried.

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Sixthly I signed for the 7 bags whole grain and 3 bags broken.

7th was the starting of the test operation. I signed no more test sheets after this as the sheet was alleged to have been taken away by Mr. Blair.

Adjourned to 9.15 a.m.

9th March 1965

9.3.65 - 9.20 a.m.

MUSTAPHA ALLY sworn (evidence cont'd)

On Thursday July 18th Mr. Chung started the milling of the 9,689 lbs of paddy. Present was Messrs. Blair, Richards, Persaud and another employer from Bookers Georgetown with Messrs. Chung and his Berbice staff. I made my own complete and full notes during the test stage by stage. I have these notes with me. All are in my handwriting except certain figures which were written by Mr. Blair and Mr. Inshan. The test began at 1.30 p.m. and was conducted by Mr. Chung assisted by every other person including Mr. Blair. Around 3 p.m. Mr. Blair called Mr. Chung outside of the mill building and they both had a talk. Mr. Blair then came back into the mill and told me that he had a very important meeting in Georgetown and that he had to leave for Georgetown. I then told Mr. Blair that he had spent over a week in having the test conducted and it is only a matter of an hour or two more he has to be here and then he can leave. I told him that all along he had proposed to have this test done in his presence and now the test

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was about to finish he is leaving. I told him it was not fair for him to leave at this stage. He (Blair) then said that the meeting is very important and that he is convinced as from today that the production of the mill is not up to standard and that he was also convinced that the dryer is breaking up the paddy rice badly. He further said that he will definitely within a month from now get the manufacturers representative down and that Mr. Chung will continue and finish the test and at the final signing of the test sheets will be done by Mr. Chung and me and that Mr. Chung had the test sheets. I quarrelled but he still left. It was about between 3 p.m. and 3.15 p.m. At that stage about half of the milling was already completed. At 5.35 p.m. the amount of 9,689 lbs. was completely milled the results were: 21 bags whole grain rice with about 50% broken in that and 7 bags pure broken grains (including quarter grain). (The 9,689 lbs. would have been 65 - 60 bags of paddy).

After the test was completed I called upon Mr. Chung to sign the test sheet and Mr. Chung said that Mr. Blair was ashamed of the results so far and that he took away the test sheets to Georgeown. (When Mr. Blair spoke to me about leaving the test sheets with Mr. Chung, he Mr. Chung, was not present).

I told Mr. Chung that I had made complete and full notes about the test and I have 9 observers at the test and that he can prepare another set of test sheets and let us sign up as the position now looks fishy. Mr. Chung then said that he is not in power to do any such thing. Chung and I then had a heated argument as I felt they were pushing me around.

The rice bran and empty rice bags were collected and put in front of the main door of the rice mill for shipping to the Rice Marketing Board so as to determine the grade as was arranged between myself and Mr. Blair. Mr. Chung left and went home. My observers were Pooran, Matadeen and Khemlall Latchman.

I saw both Inshan and Blair write the figures. These are the full notes of my test including the figures written by Mr. Blair and Inshan: Tendered and Admitted (by consent) and Marked Exhibit "L". The test pages are numbered from 1 to 19 by me. This test report on pages 1 to 19 of Exhibit "L"

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represents the true position of the results of the test. The following morning I made up the shipping form to ship the rice to the Board by Dr. Fraser's truck. I then left the premises to go to my estate for an hour. While returning I was told something and on arrival at the mill later I did not see the rice. Mr. Blair's and Inshan's handwriting in respect to the figures are on the back of pages 12 & 18 of Exhibit "L".

Mustapha Ally

Examination
(continued)

9th March 1965

On 22nd July 1963 I received a telegram from Mr. Blair. This is the telegram Exhibit "K23". As a result of Exhibit "K23" I went to Georgetown to see Mr. Wilkins at Universal Building. This was in connection with passing transport from Bookers Sugar Estates Ltd., to the B.G. Credit Corporation in respect to the land on which the mill stands and to discuss the possibility of Mr. Ottoman (electrical engineer) of Bookers - checking the electrical installation of my mill. The mortgage I had on the property was in favour of B.G. Credit Corporation (but this mortgage was passed in the manner of complete ownership to the Corporation and a right to me of redemption.) On 13th August I received this letter from Mr. Blair. Tendered Exhibit "K24". I repaid the \$435.00 mentioned in "K24".

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On 23rd August 1963 I wrote a letter to Mr. Anthony Tasker - Bookers Public Relations Officer who is a high official of the defendant's company. I posted this letter to Mr. Tasker after correctly addressing it to him. It was never returned to me. In June I had had a discussion with Mr. Tasker over the mill and dryer.

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Sir Jock Campbell is the chairman of Bookers Group of Companies. I had spoken to Mr. Tasker of the lack of efficiency of the mill and the trouble with the dryer. He (Tasker) spoke to a director of the company (an English director). I am not sure if his name is Bane. It was as a result of this interview that the test in July was arranged. (Notice to produce was served but no trace of letter). This is the copy which I checked with the original letter I posted to Mr. Tasker. Tendered (no objection), Admitted and Marked Exhibit "K25".

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In para. 3 of page 3 of "K25" I referred to

Sir Jock Campbell. That was in March when I attempted to see Sir Jock but was instructed to see Mr. Tasker. Para. 4 of page 3 referred to tests in July 1963. After I wrote the letter "K25" and I got no reply. I consulted my solicitor.

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Mr. Ottman (senior electrical engineer and a director) had visited the factory along with Mr. Blair twice - viz. in September and then in October 1963. They both inspected the electrical installations and as a result Mr. Ottman complimented Stanley Yearwood and his employees for the fine job they did with the electrical installations. Ottman told me that the generating plant was working as recommended and the motors were spinning as they should. He also said that it was the best electrical installation he saw in British Guiana including Bookers Sugar Estate. Yearwood is the senior electrical engineer of Bookers Estates - Albion.

Mustapha Ally

Examination
(continued)

9th March 1965

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This is my solicitor's letter - a copy of my solicitor's letter: Tendered Exhibit "K26". The \$70,000 mentioned in Exhibit "K26" was in respect to the mill and dryer and furniture and land and all my indebtedness to the Booker Companies. I had discussed the matter with my lawyers (Mr. H.D.S. Hardy and my solicitor) and as a result I paid off on their advice and the hire purchase agreements came to an end - viz. Exhibit "K12" and "14". The defendants' headquarters cancelled the two agreements - Exhibits "12" and "14". I later received this reply of Mr. Doobay's letter: Tendered Exhibit "K27". On 9th October I received this letter from defendants: Tendered Exhibit "K28".

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In October before the receipt of "K28" Mr. Blair had spoken to me about visiting my mill with Mr. Chung to mill some parboiled paddy. I had agreed but when I asked the farmer for his paddy he refused to allow me to mill his paddy for experimental purposes in my mill. The farmer having refused; I left a message at my home for defendants' agents, as I had to attend to an important domestic matter - the wedding of my niece. The cone stone was broken when the mill was being put up by the defendants who took it out to repair free of cost, but I did not want a repaired cone and so asked Bookers at my cost to replace a new one. This had to do with the mill. Ottman did go up and test the electrical equipment under load

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after Exhibit "K28" was received. He had previously tested it under load. I had bought the electrical plant from Sandbach Parker & Company Ltd., and the fittings from Ogle Central Depot (Bookers) and other places.

On 10th October 1963 my solicitor wrote this original letter and posted same to defendants. This is the letter: Tendered (from defendants) Exhibit "K29". I received this reply dated 16th October 1963: Tendered Exhibit "K30".

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Adjourned to 1.15 p.m.

Resumed 1.20 p.m.

(Evidence of plaintiff cont'd)

Two days after that is on the 18th October 1963 I received this telegram from Mr. Blair: Tendered Exhibit "K31". As a result Mr. Blair and Mr. Ottman went up to my mill on 24th October 1963 and made further checks on the installations. Mr. Ottman found all the installations electrical were satisfactory. Mr. Blair and myself then had an argument over the technician who was to visit the well and who was to come from the manufacturers. Mr. Blair told me that the technician could not come for that year. This made me angry and I took up a bar to beat Blair but I was held by other persons and he left.

20

On 29th October 1963 I caused my solicitor to file this action. On 23rd December 1963 I wrote Mr. Tasker a letter and kept a true copy. I addressed it correctly and posted it. It was not returned to me. This is the copy (no objection), Tendered Exhibit "K32". On 11th January 1964 I got this reply, Tendered Exhibit "K33".

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They have referred to my letter dated 23rd August 1963 in "K33". At no time did defendants offer to train me or/and my brother to operate the rice mill.

I took up Mr. Bhagwandin in February 1965 to make tests and he has given evidence with reference to these tests. I was present at these tests. The results were similar to those Mr. Chung obtained. I am willing to have the mill and dryer

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tested by the defendants' experts under the supervision of the Courts and with the best quality paddy obtainable.

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According to the booklets Exhibits "B" "C" and "G" the dryer should dry 32 tons per 8 hour day and the mill would do 4300 to 5600 lbs. and above paddy per hour. The mill's performance is doing only 1/3 of this capacity and the dryer a little above one quarter and damaging the paddy into broken rice.

Mustapha Ally

One hundred bags of paddy (weighing 150 lbs. per bag) when dried and milled should produce normally 48-50 bags of whole grain rice and about 2 bags broken rice (white rice) or 56 bags of parboiled rice whole grain and about 1 bag broken rice.

Examination
(continued)

9th March 1965

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My net profit to each bag of white rice would have been normally 50 cents per each bag of paddy. The same profit would accrue in respect to parboiled rice. I have a huge bond to hold about 60 to 70 thousand bags of paddy. I usually also store outside the mill about 10 to 20 thousand bags around the concrete.

By reason of the unsatisfactory condition of the dryer I have lost many customers and potential customers. The burning of fuel has been 8 to 9 gallons per hour. With an output that would have been obtained with an ordinary mill burning only 2 to 3 gallons fuel per hour and with better results.

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The electrical generating plant recommended by defendants was installed for the purpose of providing power for both the mill and dryer. Since March 1963 I have not used the dryer except for tests done by Bookers and Mr. Bhagwandin.

40

I have paid compensation to farmers as for paddy as follows:- Ramsook \$250; My own paddy \$600; Gange and Ramdeen \$532.00. On the fifth test R. Khan \$800 to Esar about - as I can't remember the exact amount - in the vicinity of \$1000. For the sixth test I due my father \$350. The 8th test was Jameer's paddy cost \$2,454.00. The ninth was Kamaludeen \$448.00. The tenth \$350.00 to Walloo. The amounts given are the deficit.

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I suffered loss of fuel to the extent of 5 to 6 pts. to every bag of paddy. A gallon of fuel is 39½ cents. I lost about 50 thousand gallons of fuel. I paid \$30,249.95 for the dryer. The mill cost \$62,673.50. The foundation and electrical works cost about \$25,000. The dryer bin cost up to \$5,000. The bin is of no use to me if I don't use the dryer. The generator cost about \$20,000. Housing generating set and installment \$5,000 cost of erection of drying floor \$15,000.

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The mill can't pay to operate. I have had to pay excess labour also. I must have paid about 15 to 20 thousand dollars in excess labour. When no work is done I have to pay a minimum of \$100.00 for watching etc. If the dryer was working I would have saved this. I am claiming \$500,000 in damages and cost.

Cross-
examination

By Mr. King cross-examined:-

This is not my first business venture. I began working since I was 14 years old. I have some experience as a businessman but not considerable experience.

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I had a grocery, provision and hardware store between 1950 to 1960. I used to do butchery between 1947 to 1954. I was a fruit and poultry vendor. I was in the trucking business from 1957 to the present. I had over a dozen trucks. I had bought some of the trucks cash and some credit and on hire purchase.

In 1960, I began to negotiate about a rice mill. I had a stone contract with E.M. Fredericks for supplying P.W.D. and the Estate and private firms in Berbice. It was a big undertaking. I had supplied Reynolds Metal Company with 2 trucks, 2 tractors, a jeep and a dragline - with my operators. I was paid \$33.00 per hour for 16 hours per day and above - I also did work for Albion Estate with dragline and trucks and tractors. I used to supply lumber also. The rice mill venture was my largest. I did all the supervising. I kept no particular system of books. I have given most of my figures from my memory. I kept account books in connection with the rice mill. I have the books relevant to this case.

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I have no records about how much fuel is used but I do have a record as to the expenses incurred including fuel in respect to the 1964 Spring crop.

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examination
(continued)

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10 Since I have the mill, I must have received about 60 to 70 thousand bags of paddy during the 2½ years 1962 December to now. That amount should have been 6 months work. I have an account for 11,624 bags of paddy milled during 1964 - Spring crop. This produced \$954 profits. If the mill was efficient as ordered I could have made 6 to 7 thousand dollars per crop. From 1960 (late) I investigated purchasing a rice mill. I saw Sandbach Parker mill in operation at Hack's rice mill at Hogs Stye. I never knew Mr. Bhagwandin before this case. I first knew him when he made the first test. I heard of him about a week before he made the test. I did not decide on him to make the test. My counsel made the arrangements. I had heard of his name before. I did not investigate the Shule mill although I had heard of it. There was a Grantex mill in my district Dr. Fraser's. I went and looked at that mill it was not in operation when I went and that was only once in company with Mr. Esslemont, Messrs. Chung and Blair. This was before I placed the order. It is not true that before I spoke to defendants about a mill I went alone to Dr. Fraser's mill and had a look at it. I went to Dr. Fraser with my father about buying sheep and not to see his mill. It is true that Dr. Fraser has sons. I only knew one named Richard. I never saw Mr. Chung at Dr. Fraser's mill while he Chung was making adjustments. I don't remember seeing Mr. Chung at Dr. Fraser's mill apart from the time when I went with him. I never went with my father to look at the mill while it was operating. I heard of Fraser's mill and I wanted a mill better than Hack's. When I saw Fraser's mill in 1961 it did appear as new. I would not go to Dr. Fraser alone to see his mill as he is a funny man. He does not like people looking around his place. It is not true that without any invitation of defendants I visited Dr. Fraser's mill on my own initiative and on more than one occasion. I never saw Chung there. I never discussed the operation of the mill with Chung there apart from what I stated.

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It is not true that I told Chung that I have been looking around at mills and I decided to buy a Grantex. It is true that Esslemont, Blair and

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9th March 1965

Chung took me to Dr. Fraser and they did make the resrepresentation I stated. I had intended to purchase a 2 ton Olmia mill and dryer from Sandbach Parker but on going to Mr. Baxter to negotiate for the land to erect the mill I was put off. While I was waiting Messrs. Esslemont Blair and Chung came to my home and took me to Dr. Fraser's mill. Baxter later told me that I would not get the land if I don't buy the mill from Bookers. I understand that Mr. Baxter is on retirement leave. I don't know that Mr. Boon is out of the colony. I know that Mr. Esslemont is on retirement leave. 10

I depended on the word of the defendants. Dr. Fraser's mill is a belt driven mill. I did not want to sit down at Dr. Fraser's mill to see it operated as I was busy then. I was making then one thousand dollars a day. I never told Dr. Fraser's son at any time that I was getting a mill like his. I might have told him I was getting a "Grantex" mill. His mill was a one ton multi stage belt driven mill. The one I ordered was electrical with iron frame. Dr. Fraser's was wooden structure. I was told that mine would be iron frame unique and modern. It is not true that Mr. Chung was not willing to sell me the mill and that my father had a quarrel with him before that. The quarrel by my father with Chung was after the mill began to operate in 1963. My father had no financial interest in this mill. It is not true that Mr. Chung refused to take the order. I went to Mr. Blair in Georgetown and asked him to take the order. This suggestion is not true. It is not true that Mr. Blair did not want to sell me the mill because I had no experience. I don't know if it was Mr. Esslemont who approved as I don't know their system. Mr. Esslemont came to my house. It is true that Mr. Esslemont calls me "Sunny". The very first time Mr. Esslemont spoke to me and I to him was when he came to my house with Blair and Chung. This was after I spoke to Baxter about the land. 20 30 40

10th March 1965

Adjourned to tomorrow
10/3/65 9 a.m.

Resumed 9.05 a.m. 10.3.65

MUSTAPHA ALLY sworn (cross-examined by Mr. King cont'd):

I had a large down payment of \$10,000. This

was requested by Mr. Blair. I don't know if the usual deposit on order was 5% and they made me pay 10% because they were sceptical of me as a customer. I would not know that. It is not true that I told Mr. Blair that I wanted a mill like Dr. Fraser's but larger capacity. My mill is 30-60/E No. 74. I don't know that number is Dr. Fraser's. I was shown the pamphlet Exhibit "C" by Messrs. Esslemont, Blair and Chung when they went to my house at Albion. It is not true that I got Exhibit "C" after my action was filed from Mr. Blair or Mr. Chung. The above 3 gentlemen made no appointment with me to call on me that day (when they came). They just dropped in. It was early in 1961 when they came. They did say the mill was capable of milling 4300 to 5600 lbs. paddy per hour intake and not 3500 to 5000 as you suggest. It is not true that Messrs. Esslemont, Chung and Blair were never at my home. They certainly were and they certainly took me to Dr. Fraser. It is not true that I met Chung accidentally at Dr. Fraser's mill and spoke to him about the mill in question. I never went to Dr. Fraser to inspect his mill previously to my visit with Messrs. Esslemont, Blair and Chung. I used to plant rice on Dr. Fraser's land and I knew he never liked anyone to go into his premises uninvited. I never went back subsequently to see Dr. Fraser's mill after the visit with Messrs. Esslemont, Chung and Blair and before I bought. I never saw a "Grantex" mill in operation before I bought. It is true I never saw the quality of the work a "Grantex" mill can turn out. It is true that they represented to me the intake and output (average). It is true that the output would vary according to the paddy quality.

I did not say I wanted a dryer at first. The defendants suggested to me to purchase the dryer to go with the mill. They used sales talk and put it over to me that if I have an up to date mill I should have a dryer. I did consider the dryer after the talk. I had thoughts of a dryer before it was suggested. It is true that I considered all aspects of the matter before I went into the project. I considered the output being so large that I built a bond to accommodate thousands of bags of paddy but only a small area of concrete for drying because I had faith on the representation about the dryer. I did not see Dr. Fraser's dryer operate. It is a smaller dryer. I was

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Plaintiff's
Evidence

No. 9

Mustapha Ally

Cross-
examination
(continued)

10th March
1965

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Plaintiff's
Evidence

No. 9

Mustapha Ally

Cross-
examination
(continued)

10th March
1965

impressed by the representation of the defendants and that is why I bought the "Grantex" mill. It is true that I believed that the "Grantex" mill would be the best. Defendants are the agents who sold me. I saw the representatives of the defendants viz: Esslemont, Blair and Chung at the Y.M.C.A. about 3 weeks or 4 weeks after they had visited me at Albion. It is true that at first I thought of a belt-driven mill but later decided on an electrically-driven mill. It is true that I met Blair and Chung with Mr. Esslemont at the Y.M.C.A. as I stated. It is not true that I went into Mr. Blair and said I wanted to change to an electrically-driven mill.

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I never tried to get power from Albion Estate. I did not consider it because their power was unreliable. There were power cuts often.

There was talk of Rural Electrification and Mr. Blair did talk about it, but I never would have depended on that I had to get my own generating set. I am satisfied about the generating set I got from Sandbach Parker. I bought it on hire¹ purchase.

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It is true that I was told that my production would be $1\frac{1}{2}$ times the belt driven mills. I believe this because a lot of time is wasted in belt cuts and swerves.

I am not an engineer, I was told that my mill is the first electric driven mill in the colony. I can't say now if its the only one now. It is true that I wanted the best mill in the colony and I felt I was getting the best. I may have told Mr. Blair that I wanted to show up Hack's mill at Hog Stye. I got the electrical side fixed by Albion Estate engineers, I paid for that. I arranged the electrical installation and connection under the advice of Mr. Blair but my responsibility - I had no trouble with this up to now. It is quite satisfactory. The defendants first laid the foundations early between January and March 1962, Mr. Chung looked after this. Mr. Chung worked with a blue print. I saw him with it. He did not give me a copy. (Shown a plan witness says it is not this.) I cannot say if this is the plan. The one I saw appeared smaller and in a frame. I now say this is not the plan: Tendered for identification only and Marked "M". The plan I saw

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was smaller it was crumpled or torn or soiled. That was green where this shown as red. It is not the same to my mind and I cannot say if the red part represents the concrete foundations of my miller without checking the plan against the foundations. I am saying definitely that the plan is not the same plan. I cannot say if it is similar. As I see 45' is the overall length of the foundation and Mr. Chung had casted 48' for my mill. Also 10 16'6" is the stated width of the foundation on this plan but my mill's width is about 21'. My mill is 48' x 21' casting. In between that Mr. Chung started to lay out the foundation before the arrival of the mill. I paid for the lumber and I provided a carpenter. Mr. Chung supervised. I paid for the lumber and I assisted in giving Mr. Chung one man with a saw and a hammer but all supervision of the erection of the wood work was done by Mr. Chung. I was told at the commencement of that all I had 20 to do was to buy the mill and they will erect it. I never knew I had to buy lumber. I supplied all the materials for the foundations. Some labour I supplied and they supplied some. I knew I had to supply all materials for the foundations. Defendants gave me a second list with specification for the lumber for beams after the steel frame did not arrive and this was after the mill was assembled in May 1962. The lumber is about \$750 and labour which paid was about \$50 for the 2 weeks plus some more 30 materials which I had to get from my yard. I do building contracting works. I am a building contractor. Mr. Blair had promised me a rebate on the lumber I bought the second time but I did not get the rebate. I had always complained about the wooden frame but I was told that that rocking was nothing to do with the production. I did see some wood work at Dr. Fraser's mill but I did not know that I would have had to provide a good frame. I never heard the name "detached" mill until I came 40 to court and in court: (reads page 5 note Exhibit "B").

It is true that it is easier to reduce moisture content from 22% to 16% than from 16% to 10%. The lower the moisture content, I can't say if it is more difficult. It is not more difficult. I am not an expert on this. (Reads note on capacity under other elements, page 5 of Exhibit "B".)

I had signed hire purchase contracts before.

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Plaintiff's
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No. 9

Mustapha Ally

Cross-
examination
(continued)

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Plaintiff's
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No. 9

Mustapha Ally

Cross-
examination
(continued)

10th March 1965

11th March 1965

This was not the first. I have never read hire purchase contracts although I had about 7. I know the usual conditions such as seizure for non-payments etc. It is not true that I insisted in reading the contracts in this case before signing. I do not consider myself a shrewd businessman but a good businessman. I would say I am a successful businessman. I read carefully contracts when I have to receive money. When I have to pay I only see what I have to pay as I know if I don't pay the thing would be seized. I did not study the contracts as I was told to get there before the place was closed that day.

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Adjourned to 9.15 tomorrow 11.3.65

Resumed 9.20 a.m.

MUSTAPHA ALLY sworn (Cross-examined by Mr. King cont'd)

I did not see Dr. Fraser's mill when he was getting it up. I may have asked him how his mill was going but I can't remember that. I am sure that I did not go into Dr. Fraser's factory and ask him about how the mill. But I may have met him otherwise and chatter with him. I don't remember at all any incident where I was at Dr. Fraser's mill and I asked him how the mill was going and he said "ask those men who operate it." I don't think that took place at the mill. I said before that I did not see the mill before I was taken there by Messrs. Chung, Blair and Esslemont. I used to go to Dr. Fraser to buy sheep and poultry about twice a year. Mr. Roy White had left a few weeks before the completion of the assembling of the mill. It is not true that I fabricated the story about the iron frame. I did say to you earlier that the mill I was promised was one better than Dr. Fraser's and that mine would have a metal frame. During the erection and assembling of the mill I was on the spot all the time because of the heavy investments. I did not spend any time looking at the operation of any similar mills. (When I saw Dr. Fraser's it was not in actual operation). The "shaker conveyor" was assembled. It only needed electrical connection. It was never tried out. It concerns parboiled rice. It was never installed. It has to be installed before connected. I have the cable and the fittings but it cannot be

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connected unless it is installed. It is not even fully assembled. I got the fittings (electrical) from Ogle Estates Central Depot in Georgetown.

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10 I have more bills. My mill No. is 54 by the Rice Marketing Board. All rice must be sent to the Board. In January 1963 I had dried 51 bags paddy for parboiled for one Ram Singh Jeet. He was my school mate and I did not compensate him and that is why I did not mention his name before. I can't remember if Jeet's rice was taken away by him or sent to the board by me.

Mustapha Ally

R. Khan had 151 bags paddy his rice showed 75% to 80% broken and I had to compensate him. I had to pay him for his paddy. When I don't use the dryer, I don't have to compensate farmers.

Cross-
examination
(continued)

11th March
1965

20 It is not true that Mr. Chung told me that Esaur's paddy was sun-cracked grains. Esar's paddy was used by Chung for the parboiled test. It is not true that I gave the farmers free bags and transportation when I opened the mill. I had loaned them bags.

30 It is true that when I started I did not know about rice mill work. It is not true that I took in poor paddy. I had a Dutch chap but he was not running the mill. He was a porter. He assisted around the mill - a handyman. My operator was one Sulaiman I took him on while the mill was being assembled. He is still with me. I did not dismiss him. He is more competent than Mr. Chung. I have seen both men operate and that is my opinion. It is not true that the Dutch fellow was learning to be my operator. He never operated my mill - he assists around the mill. It is not true that I reported to Mr. Chung after I got Sulaiman that the mill was producing 11 bags rice per hour and that I was pleased. This is not true.

40 It is not true that Mr. Chung found adjustments bad. It is not true that Mr. Chung appeared on one occasion to be annoyed and said that the adjustments were all wrong and that my mill would be destroyed before the crop was in. I asked him to show me and he said he did it already. This was merely a psychological manoeuvre as there was no ground for his statement. Mr. Chung stated that my operator was good.

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No. 9

Mustapha Ally

Cross-
examination
(continued)

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1965

It is not true that Mr. Blair mentioned in a letter in December 1963 that my operator was incompetent. This is a copy of the letter: Tendered and Admitted by consent Exhibit "K34". I did have a discussion with Mr. Blair but not what he stated about incompetence of my operator.

I ordered from Mr. Blair about 5 to 6 thousand dollars worth of machinery after I filed my action. This machinery is concerned with my "Grantex" mill to grade rice. The order concerns 1 grader a huller and 2 elevators for the said mill. I had paid \$1500 in advance and had agreed to pay 1/3 cost on arrival. When the machinery came they demanded full payment and forfeited my deposit of \$1500. This letter referred to a conversation I had about this machinery and to get Inshan to install it when it arrived as Chung was not available. At no time did Chung tell me that I would not get good results unless I get good operators.

In mid December 1962 Mr. Chung carried out a white rice test. It is not true that a lot of straw was in the paddy used in this test. It is true that clean paddy is to be used. We used clean paddy. I was never told that the dryer needed a paddy cleaner. I was not advised to buy a paddy cleaner and no second-hand one was offered to me. I bought a complete mill and dryer. The furnace took 30 minutes the first time when the dryer was lighted. The dryer was rotated for about 1 1/2 hours in this test. The whole thing took from 8-9 a.m. to 6 p.m. about 9 to 10 hours for 80 bags paddy. This was the first test. The milling took about 8 to 10 hours. We did realise before the operation ended that the rice was not coming as it should. Mr. Chung was searching for the adjuster, for the blower which was about 15' to 20' from the blower. When the rice was finished milling I then realised that most of the rice was blown out. When the blower adjuster is fixed one does not watch it for a year. It is not true that the blower adjuster has to be watched continuously. One does not hear the paddy breaking up unless you are looking for that. That was my paddy blown away. I lost \$600. I had in mind that the rate should have been from the commencement but I thought that the mill would have to be adjusted and I kept heart hoping it will be brought up to the standard required.

There was a heavy vibration and I collared off

them. This is only one cat walk in between two elevators. I never knew before this case that the vibrations were responsible for part of the poor production. I have noticed that the vibrations were great. I was shown the mill on the pamphlet: Exhibit "C". It is not true that I was not given any pamphlet.

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Evidence

No. 9

10 Ramsook's paddy was 180 bags. He was annoyed. It is not true that Chung said this was some cracked paddy - if it were I would not have got a few grade 1 whole grain rice. This was in December 1962. 80 or more bags of rice were produced. 60 bags were whole grain and about 20 bags broken. About 40% was broken in the whole grain. It might have been 18%. I now say that when I say 40% I meant 40% including the 20 bags broken grains, that is 40% on the whole lot. It might have been 18% broken in the whole grain rice apart from the broken rice. Up to 40 something 48% to 50% broken the rice is classified in (unclassified).

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Mustapha Ally

Cross-
examination
(continued)

11th March
1965

1st grain whole grain is allowed up to 20% of broken grain.

To cope with the world market one has to have not more than 6% broken rice - white rice.

I don't agree that Ramsook's result was adequate. It was bad result and I paid him \$290. It was an abnormal result.

Adjourned to 1.15 p.m. today 11.3.65

Resumed 1.15 p.m.

30 Cross-examined by Mr. King (of witness) (contd.)

Mr. Chung carried a test with one Seepaul Ganga's paddy (white rice). I made a mistake in my statement of claim by stating 217 bags but it should have been 248 (and I ask that it should be corrected).

40 88 (eighty eight) bags of Ganga's paddy produced 47 bags of rice in all viz. 22 broken and 25 whole grain of that amount 44 bags were sent to the Board. I can't say what % was broken among the whole grain but 22 bags were broken (the farmers took 3 bags). If the Board figures show that in the

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25 bags whole grain only 7.86% were broken, I would deny. But the 22 bags broken were abnormal - only the Board grade.

Plaintiff's
Evidence

It was not a poor quality paddy. I did not keep accounts about these losses I kept it in my head. I never made up income tax returns.

No. 9

Mustapha Ally

Cross-
examination
(continued)

It is true that the elevators have gates or slides to control the flow. With Ramdeen's paddy, Mr. Chung tried all kinds of methods. It is not true that it was dirty paddy that cause the choking. 10
When dirty paddy was brought in it is usually cleaned before putting it in.

11th March
1965

Ramdeen's paddy was originally 160 bags. After milled it was 58 bags whole grain and 25 bags broken. Ramdeen took a few bags (broken) to his house and the rest to the Board. I said that the broken grains in the whole grain set was about 30% to 40%. If Ramdeen whole grain show the Board's test as 21% broken I can't deny that. The board treats $\frac{3}{4}$ grains as broken to assist my mill. About 20
the generator. All advice was given by Bookers and they arranged with Sandbach Parker to supply the necessary requirements as to voltage etc. I only made the arrangements about the purchase of what was recommended by Bookers in respect to this generator.

Adjourned to 1 p.m. on Monday

15/3/65

15th March
1965

MUSTAPHA ALLY sworn (further cross-examined by
Mr. King):-

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Part of my paddy was blown away through the blower. I did say that the controller for the blower was about 20' away. But now I say that there are 2 controls for two blowers. Upon both blowers - one for rice and one for paddy - paddy and rice were thrown outside of the building until about at the finishing of the test the correct adjustment was made by Mr. Chung. It is true that the control for the blower is on the machine and not on the blower. The blower is at the side of the machine and not on the machine. It is connected. One is 40
about 20' away. The husk aspirator is a blower this is about 2' from the machine and this has the

control on it. The other blowers control is about 20' away.

I can't remember if I signed an order for the machine when I paid down the first down payment. My father did not go around with me to place the order. He had nothing to do with the transaction. I can't remember if an order was signed. I had no agent in this transaction. I see this document and I see the signature of my father. I gave my father the \$10,000 (ten thousand dollars) to pay for me as he was coming to Georgetown. It is the usual custom for one to sign the order and my father signed this although I did not tell him to sign. This is in the document called an Order: Tendered Admitted and Marked Exhibit "K35". (four sheets).

Page 2 of "K35" has a list of the equipment which I got. Page 2 of "K35" has a list of items which I did get. I now say I had paid the first ten thousand dollars and it was the second payment of \$10,000 which my father paid and signed Exhibit "K35" on that occasion. I say it could have been that when my father paid the \$10,000 this document "K35" could have been given to him and back dated without initials on the stamp and I further state that I am almost certain that I did not give my father any authority to sign any document on my behalf. I am also not denying. The date is written in my father's handwriting. If anyone back dated it, it would be my father in order to suite the date at the top - 11/Nov./61. It is true that the letter "K5" dated 17th November 1961 refers to my valued order. This order "K35" is dated 11 November 1961. It is not true that farmers prefer to dry their paddy on the floor. Paddy is dried on the floor. I would not say that there was less demand for the dryer than was hoped. If the dryer had worked I would have used it all the time and store the paddy to get a good grade.

I never asked Mr. Blair or Mr. Chung to get a sale for the dryer. I don't remember if I sent a copy of Exhibit "K16" to Mr. Blair. I sent a copy to Mr. Tasker. I am not saying that I sent a copy to Mr. Blair. I just can't remember, I posted the letter to Mr. Boon from either Albion or New Amsterdam. Albion Post Office is at Nigg. A copy of the letter I sent to Mr. Boon was sent to Mr. Tasker in August 1963. I got to know Mr. Tasker

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Cross-
examination
(continued)

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No. 9

in June 1963. I did not work out any estimate as to comparative cost of running a generating set to run the mill alone and one to run both mill and dryer. When I wrote the first letter dated January 1963, I realised that the dryer was a failure. It was early yet about the mill and so I expressed no opinion about the mill then. Later the mill proved not what was represented. It did not live up to my expectations.

Mustapha Ally

Cross-
examination
(continued)

15th March
1965

It is true that the motor was burnt while I was operating the mill. It was the motor connected with the disc sheller. Bookers replaced that at their cost. The motor has a governor (or trip) which turns off the current when an over load. It is not true that I cut off the governor. I held it - that is I held up the governor and it burnt out the motor. I don't regard that as a safety device. It is not true that the sheller was worn. It should not get worn in a month. I agree that the sheller was choking up and I tried to pep up the mill from getting only 6 bags per hour. It is not true that I was getting a normal production from the mill and that is why I did not mention in detail about the mill in Mr. Boon's letter of 15/2/63. I did say in Mr. Boon's letter that the mill was not working well.

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I was victimised. I did get a road to make at Albion Mr. King gave me the contract. I worked until August 1963 but after that they took away the work from me, after I filed my action. I was threatened to be victimised and was victimised. The contract with Shell was taken away. All trucking business was taken away. My light was cut off.

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I kept a copy of the letter I wrote Mr. Boon because I was not sure the opening might go through: I did not contemplate going to court at that time but I thought I should keep a record.

At the official opening paddy dried on concrete was used and the milling was nice but low capacity. My complaint against the mill is that the capacity is low and lower than an ordinary single stage mill belt-driven. I expected at least 18 bags per hour or 18 to 20 bags. The paddy used on the official day opening was good paddy. Grade 6 is the lowest grade paddy. It is true that out of 180 bags of

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paddy belonging to Jameer, he got 100 bags parboiled of which 99 was whole grain and one broken (all dried on concrete). This was first class rice but low capacity. It was about 7 lbs. per hour.

The balance of 420 bags paddy belonging to Jameer was done in the dryer by Mr. Chung and yielded 122 whole grains and 60 bags broken.

10 "W.A. broken" means white A broken. It was not suncracked paddy. Sun-cracked paddy is used to make parboiled rice as the soaking would mend the crack. Usually the farmers are advised to make parboiled from sun-cracked paddy.

20 It is not true that I took in bad paddy. No farmer plants bad paddy today. The Corentyne farmers plant the best paddy. I have no receipts from the farmers I compensate or I did not anticipate a legal action. I do keep books and I have Jameer's account. He owes me now twenty four hundred and fifty four dollars or fifty seven dollars I have this account. The amount due from the Board for the yield of 420 bags of paddy was held by the Board at the request of Jameer and I was not paid. Jameer claimed he was deprived of his full yield because of my drying from the dryer he lost a normal yield.

A fair result for white rice is about 3 to 5 bags broken to 100 bags clean rice.

30 I did receive a letter dated 25th March 1963 but I am not certain that this is a copy of that letter because I believe it was only one page. The letter I received I misplaced I can't say if this is a true copy. A letter dated 5th July 1963 refers to the letter dated 25th March but I have no recollection of it. I believed I received a one page letter but I now say I don't remember receiving any - Tendered letter 25th March 1963 for identification only, Marked "K36".

40 It is correct to say that Mr. Blair held up that test. He kept talking about the general strike and I kept plaguing him for the test which was finally done in July 1963.

In March 1963, I can't remember if I was milling Black Bush paddy. I might have been doing so. I did

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Cross-
examination
(continued)

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not put off the test because I was milling Black
Bush paddy.

Adjourned to tomorrow at 1 p.m.

Plaintiff's
Evidence

16.5.65

No. 9

Resumed:- 1.20 p.m. 16/3/65

Mustapha Ally

MUSTAPHA ALLY sworn (Evidence cont'd) Cross-examined
by Mr. King

Cross-
examination
(continued)

15th March
1965

Mr. Chung and his staff cleaned up and adjusted
the mill a week before the July test. It is true
that the screen and the cones were changed before
the July Test. It is not true that 3 bags of trash
were cleaned out of the dryer before the test. No
trash is collected in the dryer but a little foreign
matter is collected. It is not true that 3 bags of
trash was found when cleaning. I was present when
it was cleaned. About 1/3 of a bag of foreign matter
was found in the dryer and that was accumulated from
the time the dryer started to work to that day when
it was taken out. It is true that I never cleaned
it because one has to loose up nuts to get in. It
is not true that I argued with Mr. Blair as to the
assessment of time in the test in the manner he
suggested that is 3 stages in the process and each
counted separately.

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16th March
1965

Each bag of paddy was weighed separately and
noted and then added up. Dr. Fraser's paddy was
very good paddy. It is true that some of the bags
of paddy got burst. The paddy from Dr. Fraser's
was good paddy and not poor quality paddy. We
went first to the Bond at the Agriculture Depart-
ment Mr. Blair and Mr. Chung went in and I waited
downstairs. I did not go with them into the
department. It was good quality paddy. I don't
remember about any cup in the elevator of the
dryer being slack and had to be tightened. I had
no discussion about the time taken to repair any
cup should be counted or not counted. That never
arose, but having now refreshed myself from my
notes I see that the elevator was choked and they
had to clean it and adjust it. There was no
argument about the time to be counted.

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It is not true that I refused to sign a time
sheet recording 1 hour and 3 minutes as time to
fill dryer. I was not shown this sheet to sign.

I signed another sheet. This is the sheet you say I was asked to sign and I refused: Tendered for identification only and marked "N".

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It is not true that it took 55 minutes to empty the dryer and one hour to dry: a total of 3 hours. This is not true. (The 55 minutes not on "N"). There was not a single occasion in which something was presented to me and I refused to sign. It is not true that I refused to sign anything. After the first sheet I made my notes at the time except the 1st page. I made it while the test was going on stage by stage. It is true that I told Mr. Chung that the paddy was not supposed to be cleaned before as it was cleaned already. I said it would not be fair for him to do that. I don't agree that the paddy if cleaned before would produce better results because there is a cleaner attached to the mill for that purpose. It would affect the result if the paddy was abnormally bad otherwise it should not affect the result. The paddy was clean I did write down in my notes.

Mustapha Ally

Cross-
examination
(continued)

16th March
1965

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"By cleaning the paddy it may assist them to have the test done at record time" (page 11). When I wrote that, I felt so then. I did not stop them from cleaning the paddy. I did talk about it but I did not bother. It is not true that the sheller motor kept stopping or giving trouble - that is the way it works. On that day it did not stop. Perhaps, I was not present if it did stop that day. But while I was there it did not stop. I could have been in the mill compound and it stopped and started again without my knowledge. Mr. Blair did not tell me that because the motor was stopping the test was not inconclusive. Mr. Blair did not say so. Mr. Blair spoke to me a week after in town and was trying to solve the reason for the unsatisfactory results. Mr. Chung did not work on the sheller after Mr. Blair left.

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It is true that Mr. Blair took away the test sheets and Mr. Chung refused to sign mine (or to make a new one with the help of the observers). There was no trade union meeting by the G.A.W.U. at the mill during the test. There was a meeting while Mr. Blair and Chung were there but the mill was closed and these gentlemen were in the mill drinking with one Mr. De Abreu from Albion estate. It is not true that the people from the meeting were impeding the test. I was asked to allow the

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 9

Mustapha Ally

Cross-
examination
(continued)

16th March
1965

meeting there because the people were refused permission. I did not know that the Abary Scheme has an electrical mill and dryer (Grantex). Today is the first time I learn this. Mr. Ottman went up and checked the electrical installations.

When Mr. Ottman went up first the farmers refused to give their paddy. When Mr. Ottman went back Mr. Chung did not change any strap in the compartment separator. Some adjustment was made but no bearing was changed. It is true that the mill was working at full load when Mr. Ottman was making his test. Mr. Chung made adjustments. It is not true that on that day when Mr. Ottman was there the mill produced a bag of rice at the rate of 1 bag under every 5 minutes, that is about 13 bags per hour. Mr. Blair said that he had seen and checked by his watch that 4 bags of rice passed through the mill in 18 minutes. This is true because when the reservoir is filled it only has to pass out but this is not continuous. I did not pay much attention to what he said but the most I say one can get is 10 bags and not 13 bags. 13 bags would not be a good return. It should have been 17 to 20 bags. I would have been satisfied if I got 17 bags. The cheapest Satake mill gives good results. I had a row with Mr. Blair who spoke to me at the back of my mill. He said he was not satisfied with the performance of the mill and I got vexed and lost my temper as I realised he was then fooling me. I lost my temper and cursed him up and took up an iron bar to strike him I was held back. Mr. Chung was not near but he could have seen and heard as I spoke loudly. I just got mad.

Esar did not take away his paddy or stop the test. He stopped me at one point from milling his paddy but after that we dried 5 bags on the concrete and was then milled and got excellent results. Mr. Chung then told Esar to take out the rest of the paddy from the dryer and dry it on the concrete. I refused this and then after much argument Mr. Chung continued the operation and did it in 13 days in February 1963. No test sheet was signed before the July test. The July test was the only test in which every stage was recorded and the parties signed except the last stage after Mr. Blair left for Georgetown. The previous occasion were tests also by Mr. Chung but we did not sign.

I did receive the original to this letter:
Tendered (by consent), Admitted and Marked
Exhibit "K37". I don't know that the deposit I
made is not forfeited. I believe it was forfeited.
Those component parts stated in Exhibit "K37" are
for doing extra parboiled rice but I have not the
balance now to pay \$5030 or more.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 9

10 While the mill is in operation there was
employed an operator and an assistant and 2 labourers
and a bookkeeper. I pay 3 by the week - labourers
by the day. The bookkeeper the operator and the
handyman are on the weekly payroll. I am always
there. Sometimes the farmers assist to feed their
own paddy into the hopper. When the dryer is work-
ing the assistant used grease and look around. The
operator and the assistant check the feeding into
the hopper.

Mustapha Ally

Cross-
examination
(continued)

16th March
1965

Re-examined by Mr. Luckhoo Q.C.:

Re-
examination

20 Besides the notes I produced I have given my
evidence from my memory.

Adjourned to 1 p.m. tomorrow

16.3.65

No.10

No.10

EVIDENCE OF MAHADEO RAMDEEN

Mahadeo Ramdeen

17.3.65 1.15 p.m.:

Examination

MAHADEO RAMDEEN sworn:-

17th March
1965

I live at Tain Settlement Corentyne. I am a
rice farmer. I know plaintiff who is a rice miller
of Albion.

30 In December 1962 I had 160 bags paddy at the
plaintiff's mill. It was good paddy. I saw Mr.
Chung (of defendant's company) at plaintiff's mill.
I asked Mr. Chung to dry my paddy in the dryer and
he told me "tomorrow morning". I agreed. I went
8 a.m. that morning and my paddy was put into the
dryer. As Mr. Chung instructed I fed the paddy
into the dryer. We began at 8 a.m. and continued

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 10

Mahadeo Ramdeen

Examination
(continued)

17th March
1965

until 10 p.m. that day. The dryer took the 160 bags in parts and not altogether. Mr. Chung and one Inshan Alli conducted the operations of drying. After the paddy was dried it was put in a large bin. The next day I was told it would be milled. I went and the milling was done by Mr. Chung as he started to mill I saw when 5 bags milled that the rice was broken up badly. Of the 5 bags paddy milled I got 2 whole bags and 1 broken. I then began to quarrel for spoiling my rice and I stopped it, because I think it had too much heat. The operation was held up until the next day. Mr. Chung told me to come back the next day. I went and the milling commenced again and the same thing happened - too much broken rice. However all was milled, and I got in all from the 160 bags paddy 58 bags whole grain and 21 bags broken and seven bags chips. I began to quarrel with plaintiff and he told me to allow him a chance as they were trying to rectify the mill.

10

Normally 190 bags of the same paddy would have given me 100 bags of whole grain rice and in addition 4 or 5 bags broken rice. My mill would have given me this. I got this return for over 40 years. In my experience I always got 100 bags of clean whole grain rice and 4 to 5 bags broken from 190 bags paddy. I got that from Hack's mill at Hogstye and other mills.

20

I never got the returns in my whole life as I got from plaintiff's mill. The 21 bags went to the Board that is the broken rice. I took the 7 bags chips at my home. The 58 bags passed for No. 2 grade. I sent this 58 also to the Board. This was white rice. This rice was from pure line paddy. It was clean paddy cut by combine.

30

The plaintiff compensated me for my losses after I quarrelled. He gave me about \$250 or \$280. I had witnessed the whole operation of drying and milling by Mr. Chung at plaintiff's Mill.

Cross-
examination

By Mr. Farnum Cross-examined:-

It was the first time I went to plaintiff's mill. I went to Dr. Fraser's mill once but I had dried the paddy elsewhere and only milled at Dr. Fraser's. I had dried on Hanoman's concrete.

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The 160 bags paddy I took to plaintiff's mill was reaped in September 1962 with a combine. It

was bagged off by the combine, the whole 160 bags and then taken to plaintiff's mill where it remained until it was milled. The bags were opened and put into the feeder of the dryer. The whole 160 bags were done this way. The combine reaped and bagged off at the same time and stitched the bags also all in one operation. The bags were not opened until it was to be put into the dryer. Mr. Chung operated the mill. I don't know what Mr. Chung did. I see he catch fire and the thing make "budip" and light. Mr. Chung concentrated on his operations and I looked at putting in the paddy into the dryer. Mr. Chung did not speak to me during this operation I saw the elevator took the paddy up.

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During the milling I secured the paddy - rice at the milling end. After I saw the rice breaking I did not speak to Mr. Chung but the owner Ally because I am concerned with him and not Mr. Chung. I don't know who was in fault but Ally was the man I gave my paddy to. I don't know why the rice broke up, but drying on concrete does not break up the rice. Hack's dryer is different and dries alright. I believed that the fault was in plaintiff's dryer. I am not an engineer, I don't know the technical side. But I believe it was the dryer's fault from what I saw at Hack's mill. At Hack's mill I got pure No. 1 rice. I think that if the dryer is good it does not matter how its operated one will get good rice. It is not true that my paddy was lying on the concrete of plaintiff's place for several days - outside.

It is not true that Mr. Chung told me that my paddy was sun-cracked and poor quality. He said it was good quality paddy. It is untrue that Mr. Chung showed me the cracks in the paddy. Chung said it was good paddy. I did not note the number of bags I got. I remember. It is 3 years now. I now say 2½ years. I allowed the paddy to be milled because Ally asked me to do so in order to try out the mill. It is true that at the end of the milling I made a big quarrel and Ally paid me. When I saw the paddy breaking up I was worried and stopped it early but Ally asked me to allow it in order that the mill be tried. I stopped the mill again after 15 bags were broken up and Ally told me he is trying the mill and so I did not stop him again. It is true that we only spoke of compensation after all my paddy was milled. It is not true that I did not protest because it was sun-cracked rice.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 10

Mahadeo Ramdeen
Cross-
Examination
(continued)

17th March
1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 10

Mahadeo Ramdeen

Re-
examination

17th March
1965

Re-examined:-

If it were sun-cracked rice, all would have broken. I would not have got any whole grain.

The combine cleans the straw and wind rice out and blow it out from the paddy. It is the practice that after the combine bags off it is taken direct to the mill for drying. After the paddy is put into the hopper it can be seen whether dirty or clean as it remains for some time in the hopper.

10

Through court:-

The combine has a fan which cleans the rice. It does not need cleaning if the combine was not operating too fast.

It is true that after my rice is cut by combine and I do not clean it again. I was present when the combine was reaping and it did so at the correct speed. When I poured the paddy out it was clean.

No. 11

Permaul Wailoo

Examination

17th March
1965

No. 11

EVIDENCE OF PERMAUL WAILOO

PERMAUL WAILOO sworn:-

I live at Black Bush Polder. I am a rice farmer for past 10 years.

In March 1963 I had my paddy 210 bags at plaintiff's mill at Albion. Mr. Chung (in court) told me that he was going to dry my paddy and mill it and that my paddy was good paddy. I agreed as I needed the paddy. I was present when Mr. Chung dried 145 bags of my paddy in Ally's dryer. Mr. Chung operated the dryer from 8 a.m. to 11 p.m. or midnight in the night. I threw the paddy into the hopper at the directions of Mr. Chung. It was pure line paddy - good paddy. The following day Mr. Chung began to mill the 145 bags. I took the 65 bags remaining to the concrete drying floor for drying. Mr. Chung milled all the 145 bags and I got from that 26 bags clean whole grain rice and

30

26 bags broken and some bran. This was a poor return. The normal return was 65 bags whole grain and about 5 bags broken and I expected this. I quarrelled with Mr. Chung while he was milling the rice. I told him that the rice was broken badly and he, Chung, said I would be compensated. Later the plaintiff compensated me for the loss. He paid me \$350 since then I have not used the dryer again as I never took my rice there again.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 11

10 The 65 bags which were dried on the concrete was milled in the same mill and I got 30 bags clean whole grain rice and 1 bag broken. Mr. Chung himself milled this 65 bags also. The 65 bags paddy were the same paddy from the 210 bags. It was paddy cut with combine. The fan of the combine had cleaned it. I did not go back to plaintiff's mill as I lost there. I mill now at Black Bush mill - Olivia mill.

Permaul Wailoo

Examination
(continued)

17th March
1965

By Mr. Farnum Cross-examined:-

Cross-
examination

20 Black Bush is about 13 miles from (Albion) Ally's mill. I used to mill my rice before Ally's mill at Black Bush and outside. In 1960 I milled at Black Bush Co-op. mill at \$2.00 per bag. The plaintiff had charged me \$1.80 per bag. He was drying up to 11 p.m. in the night and said he was tired. My story is true that he dried up to 11 p.m. I did not give Ally a receipt for the compensation. Ally did not ask me for a receipt. He paid me \$350.00 He did not ask me for a receipt and I did not give
30 him one. He paid me at his house in notes.

40 The first time I heard Ally brought a case against Bookers was last week but I read it 2 weeks ago in the newspapers. I did not expect to give evidence at that time when I read the newspapers. Mr. Ally came last week to me at Black Bush and ask me to speak the truth as to what happened to his rice. I remembered straight away. I could not have forgotten that. I remembered all of that - the number of bags of paddy and the results. I paid 20 cents per bag for transportation from Black Bush to Albion to Ally's mill. Black Bush charged 25 cents per bag transportation and \$2.00 per bag milling - a private truck conveyed my paddy and not Ally's mill.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 11

Permaul Wailoo

Re-examination

17th March 1965

No. 12

Rahaman Khan

Examination

17th March 1965

Re-examination by Mr. Luckhoo:-

I know Mr. Chung by sight. He is right here in court. He had 2 or 3 boys with him - men.

No. 12

EVIDENCE OF RAHAMAN KHAN

RAHAMAN KHAN sworn:-

I am a rice farmer for 30 years. I live at Albion I know the plaintiff of Albion. In January 1963 I had 151 bags of paddy at plaintiff's mill. I soaked it in a concrete punt near where they steam the paddy alongside the mill. The rain fell for about 5 days and the paddy remained in the punt after that I ask to put it into the concrete a little and then into the dryer as I did not want it to stay too long in the punt. 10

The 151 bags were then dried in the dryer (for parboiled rice). The plaintiff operated the dryer with his operator. After it was dried it was milled and produced 28 bags whole grain and 58 bags broken. (The 28 bags were also broken much.) 20

I was displeased and told Mr. Ally that the rice was extra bad. He took the rice and paid me \$1600.00 (sixteen hundred dollars). I had used pure line seed paddy from the Agriculture Department. It was first-class paddy.

Normally I expected not less than 75 bags of parboiled rice with 3 bags broken. I don't know what caused so much broken grains.

By Mr. Farnum cross-examined:-

I was paid the \$1600 at the mill - inside the mill. He, Ally, got the money from his home and paid me in the mill. He did not ask me for a receipt and I did not give him one. He paid me himself. I knew Ally before. It was the first time I milled rice there. In 1963 I milled and got the damage with Ally. In 1964 I took my rice to Ally also.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 12

Rahaman Khan

Examination

17th March 1965

Re-
examination

10 Re-examination:-

Mr. Ally kept the rice and I kept the money. It was parboiled rice. In 1964 I took my rice to Ally 101 bags paddy and I got 50 bags rice and 2 bags broken (parboiled) I got super grade.

Adjourned to Monday 22/3/65 at 1 p.m.

No. 12A

No. 12A

MAHADEO BHAGWANDIN (recalled)

20 On the 2nd test on the 27th February 1965 I used field paddy which was stored in the mill (combined cut). Plaintiff gave me the paddy which was in the mill. I cannot say if that paddy was dried before.

Mahadeo
Bhagwandin
(Recalled)

Cross-
examination

22nd March
1965

I do not agree that paddy from the field must be 18% moisture. It could have been 12% as hand-cut paddy. In the first stages of the reaping it could be 18% and could be more. Paddy usually enters the mill premises between 16% to 18% moisture in September and 1st week in October. After that it reduces and can reach as low as 12%.

30 The paddy I used on the 27th February 1965 on the 2nd test was 15% moisture content I cannot say what was the moisture content when it had got there and I cannot say if it were dried before. It was stored in bags before used by me. I do not agree that if the paddy had been reaped with 15% moisture content that it would have been sun-cracked. In my view it would not be sun-cracked. The moisture content is dropped, firstly, because of the length

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 12A

Mahadeo
Bhagwandin
(Recalled)

Cross-
examination
(continued)

22nd March
1965

of time in the field and, secondly, by the sun. If paddy is left in the field until November or December it would spoil. Overdrying of paddy in the field and heavy dew on it would cause it to sun-crack. If paddy is ripe for reaping say mid October but left for 6 weeks in sunshine and then reaped it would be sun-cracked. This could be seen in the rice.

To commence drying the bottom of plaintiff's dryer has to be opened to start drying. The control panels must be opened when one is ready to discharge. 10

I opened the slides in all 8 compartments in order to feed the elevator evenly when drying. The capacity of the elevator controlled the rate of discharge. It is true that the dryer has discharge rollers. It has a control which regulates the speed of the discharge. I did not interfere with the rate of the discharge rollers during any test.

Re-
examination

Re-examination:-

From my experience I can say from visual examination whether paddy is sun-dried. None of the paddy I used on 21st February and on 28th was sun-cracked. The first test was 16½%. This was parboiled paddy from the concrete. One can get sun cracked paddy at 12% or 13% (where there was heavy dew). One can see the cracks on the grain through the shell. Another way is by rubbing the paddy on the palm of ones hand and if it is sun-cracked the paddy would shell and the grain would be seen broken. There are small machines which can determine this also. I had tested it from the moisture content. I had visually expected it and I had also rubbed it in the palm of my hand and I found no evidence of "sun-crack". From the milling also one can say if the paddy was sun-cracked as one can see cracks in the grains of the rice. I saw no signs of sun-cracking at all. 20 30

By looking at paddy one can tell whether it was reaped too early or in proper time or too late. If reaped too early one will see green grains. If the paddy is reaped at the proper time the paddy appears to be "golden" in colour and shines. If its late the colour would change. It be darkened. 40

The paddy I used was very good paddy which was reaped at the right time. In both tests the paddy used was good paddy as I had requested this before the test. (At this stage it is agreed that a witness from overseas be heard for defence - Lewis Richard Grant). (Mr. Luckhoo agrees to this).

In the Supreme Court of British Guiana

Plaintiff's Evidence

No. 12A

Mahadeo Bhagwandin (Recalled)

Re-examination (continued)

22nd March 1965

No. 13

EVIDENCE OF LEWIS RICHARD GRANT

Defendants Evidence

No. 13

LEWIS RICHARD GRANT sworn:-

Lewis Richard Grant

Examination

22nd March 1965

10 I am chairman and the managing director of Lewis C. Grant Ltd. makers of Grantex Rice Mill and Dryers Scotland. My firm was manufacturing Rice Mills since 1926. Prior to this we operated a factory under the name of Douglas & Grant. The basic principle of milling has not been changed over the years. The designs were improved from year to year. In 1935, I believe the firm began making dryers. The same principle of using warm air through the blower to dry the paddy is used up to
20 now.

This model which the plaintiff bought was designed over 7 to 8 years now and it employs the same principle of blowing hot air through the blower to dry the paddy is used up to now.

This model which the plaintiff bought was designed over 7 to 8 years now and it employs the same principle of blowing hot air through the paddy.

30 The present model was made more compact and more efficient. We have sold a number of such dryers in the United Kingdom, West Africa and other places. Quite a number sold in the United Kingdom are used for drying malted barley, wheat seeds, etc. It require accuracy in control of the

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 13

Lewis Richard
Grant

Examination
(continued)

22nd March
1965

heating so as not to spoil germination. We supplied dryers to people who supply malted barley to the Guinness Company. We supplied hundreds over the years for drying paddy. We never had complaints of abnormal breakage of the grains as alleged in this case. We have had no complaints of uneven drying of paddy. When the hot air comes into the dryers duct (about 10' high) it discharges into the centre of the dryer. There is column on each side of the space into which the hot air is blown. The 2 columns have compartments in them (4 compartments each). The grains as they come down the compartments go down in a zig zag manner as the shape of it. There are no obstructions to prevent the air from passing through freely. There are shelves but these do not obstruct the passing of the air. On the outside of the columns a continuous series of semi-circular sheets which top halves are perforated (and bottom solid) to allow the air to escape. This construction cannot affect the evenness of the drying because each bit of paddy from the top to the bottom is going through the same process and gets the same degree of heat in its journey from the top to the bottom. The depth of one of these panels is about 15 inches. The time the paddy would take to pass through would depend on the rate it is adjusted to pass through. Normally it would take about 5 to 6 minutes to pass one of the shelves (about 15" deep).

10

20

The temperature in the furnace is controlled by a thermostat. The sensing element is near the fan of the furnace. The fan sucks air through the furnace. The thermostat is set at the required heat and regulates itself. The grain comes down the unheated section at the bottom which can be made into a cooling section by fitting another fan. (The plaintiff's dryer is not fitted with this fan.) Once the dryer is started up the paddy is discharged by the discharge rollers. The rate of discharge is regulated by altering the speed of these rollers. The faster the discharge the less time will the grains be in the dryer. The range of variation is large. There are slides at the bottom of each compartment on the 2 columns which may be adjusted to ensure the evenness of flow from each compartment. The object of these slides is to ensure even drying and they are important. The rollers regulate the speed. Having got the slides adjusted so that each column is discharging at the same rate the slides are left in that position so the flow remains even.

30

40

One might have to open the slides more if you are going to jump to high speed if not it would not need further adjustments. I heard Mr. Bhagwandin said today that he did not interfere with the rollers but opened up the slides to get a greater flow. It is certainly not the right way to operate the dryer.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 13

Lewis Richard
Grant

Examination
(continued)

22nd March
1965

10 I should think if you try to operate the flow
by closing the slides the chances of getting an
even flow across the width of dryer would be
negligible and would return in uneven drying and
consequently would lead to more broken grains if
some were over dried. The elevator is capable of
lifting 5 tons of clean paddy per hour. It would
restrict capacity if the paddy had dirt, like light
straws etc. This would cut down the capacity to
about 20%. The dryer must be filled before one
starts drying in order to prevent air leakage or
loss of drying air. The top hopper must also be
20 filled to prevent the leakage. The paddy is put
into one compartment and when this is filled there
is a worm or scroll which moves to fill the other
compartments. After all are filled the surplus
would over flow. In the plaintiff's dryer the
entry of the paddy is further from the entry of the
hot air.

30 If the dryer is not completely filled the
compartment nearest to the hot air duct would lose
the hot air. That is why my instructions say that
the dryer must be completely filled. The dryer
should be maintained to the extent that a small
trickle should be coming down the overflow. When
the capacity goes down that is a trickle is not
coming out it should be stopped until more is put
in. At the end of the crop that is dried as a
batch something is put in at the top like mass or
something else to stop the air.

40 These dryers (Plaintiff's) are designed to use
for continuous drying and not batch but can be used
for batch drying. Overall time is increased in
batch drying.

In my literature table the hours refer to actual
drying time which does not include filling and
emptying the dryer. On Exhibit "B" (page 5) there
is a capacity table the plaintiff's size of
dryer should do according to the table 4 tons per hour

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 13

Lewis Richard
Grant

Examination
(continued)

22nd March
1965

if drying at 15% fahrenheit is used. This capacity is based on drying from 22% to 16% with atmospheric condition of 60% fahrenheit and 70% relative humidity. These conditions are not existing in British Guiana and therefore these tables would not hold good for British Guiana. I would expect in this country at 150% one would get with plaintiff's dryer about 3 tons per hour. At 140% 2.6 tons per hour would be the capacity. This is because of the climate here. Where the moisture content is less than 16% it is more difficult to get the moisture out.

10

From 15 to 13% moisture content to dry 4 tons in this country with plaintiff's dryer it would take about 1 hour and 20 minutes or a bit more. A moisture meter is an important instrument in the operation of the dryer to determine the content of moisture. I could not think it satisfactory at all to test the moisture content by biting the grain. It cannot be accurate. It may not make a lot of difference in milling but certainly in drying. If it is over-dried one would get a lot of breakage. If under-dried one can also get a lot of breakage.

20

Uneven drying in the plaintiff's dryer can only come from uneven flow caused by the slides or by dirt on the shelves holding up the flow or an obstructing on the shelves as accumulations of straw. If the grains were over heated the result would be abnormal breakage. If the temperature is too high the grain would be damaged also. If the paddy is flowing one can use temperature between 135 to 140 degrees but if the paddy is static I would not recommend using more than 120 degrees. If one is drying as a batch I would start rotating immediately that is after the hopper is filled and would start to rotate.

30

If one waits for 20 minutes after lighting furnace before commencing rotation this would result in the paddy in the dryer getting a 20 minutes start and this could result in the paddy getting over heated and also it could come out drier than the rest.

40

In this climate I would expect the thermometer to take 5 to 8 minutes to get to the temperature of 140 degrees. The air itself would heat up to that degree from the time one lights the furnace. I would not be surprised to learn that a lot of

paddy produced broken grain if the paddy was over heated. The number of things I related before can cause over heating.

In the Supreme Court of British Guiana

Defendants Evidence

No. 13

10

If the dryer is fed too slowly, that is, the grain passing through too slowly, this can over heat it. Apart from the operator not being competent, I can't think of no reason for over heating except that he want to dry and take out too much moisture at one pass. Too much broken grain could result from bad adjustment of the machines and not only from cracked paddy. Dirt would not break the grains only lessen the capacity.

Lewis Richard Grant

Examination (continued)

Adjourned to 9 a.m. tomorrow

22nd March 1965

22/3/65

Resumed 9.15 a.m. 23.3.65

23rd March 1965

LEWIS RICHARD GRANT sworn further states:-

20

If the top of the dryer is sealed with a dust cover this can have no effect on the drying process except if the outlet is too small it would restrict the capacity that is slow down the process. The fan would handle less air. This could not cause uneven drying.

If the dryer was used at 90° in this country the capacity of the dryer would be very small. At 120° it would be greater but not at its normal capacity. The normal temperature should be 135 - 140°.

30

This dryer (plaintiff's) was designed for continuous process. The shaker conveyor is to remove surface moisture from the paddy (parboiled paddy). It has nothing to do with feeding the dryer evenly. It is not to remove dust.

40

The cooling section is designed to bring down the temperature of the paddy so that it would not sweat in storage when put in a bin. This is not the same as the equalising process, as sweating is outside of the grains and equalising is spreading equally the moisture throughout the grain. The baffle plate is between the flame and fan. The rating capacity of the plaintiff's mill (30/60E) is 3,000 to 5,000 lbs. of paddy per hour intake depending on the quality of the paddy. The paddy

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 13

Lewis Richard
Grant

Examination
(continued)

23rd March
1965

in British Guiana is fairly poor quality. This milling of white rice in British Guiana would be about nearer to 3500 lbs. per hour and a little more for parboiled rice whether the mill is driven by belts or by motor would not affect the capacity. I am chairman and managing director of the firm of Lewis C. Grant Ltd. I am a Bachelor of Science in mechanical engineering of the University of Glasgow. I served a complete apprenticeship of 5 years and I worked for about 30 years since as an engineer. Most of the 30 years I was connected with machinery for milling rice. I spent 3 years with our agents in getting experience in Indo China. I had to inspect the big mills. I had to prepare lay outs and quotations from their enquiries. I saw mills in operations of our manufacture. I have visited mills in Malaya, West Africa, Portugal, India, Pakistan. These are the main ones. Around 1952 I was in this country. Whenever I visit countries I inspect the operations. I have got certain knowledge in paddy but I don't claim to be an expert in paddy.

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Similar dryers (as plaintiff's) have been installed in the United Kingdom and these have been giving the output as appear in the pamphlet and literature. These use barley, wheat, oats. In Spain some are operated under our licence and these use paddy. We have about 100 of these dryers working paddy and working satisfactorily to the best of my knowledge. I have had no complaint. I have seen similar dryers operating in British Guiana (this country) satisfactory viz. Dr. Fraser's, Anna Regina and several others which I have not seen. Making the necessary allowances for climate these dryers operate without complaints. This is the very first case I have heard of complaints. The process used is continuous drying.

30

This is a blue print of a 30/60 mill ordinary mill (not E). There is no difference in the principle here. This 30/60 has a later design in respect to the cleaner and husk aspirator. This mill has no huller it is intended for milling white rice.

40

I have not here a blue print of the plaintiff's mill but the principle is the same. This is the blue print of the 30/60 - Tendered Exhibit "C1".

The first process is to clean the paddy.

Initially the dust is lifted out then large and small impurities are sieved off and the paddy is given a final aspiration (marked 3 on blue print). The aspiration is one by a fan which drive air through the paddy and the sieving is done by a perforated sheet. If there is too much straw it can be a moisture and affect the other processes. The vibration of the platform cannot operate adversely on the capacity of the machines. The plaintiff's mill has platform. There is a magnet to collect metal particles at 4 (No. 4).

The next machine is at No. 5 called a sheller. This is a diagram enlarged of No. 5. The diagram is of the sheller as a spare part and is similar to the plaintiff's - Tendered Exhibit "02".

The sheller consists of 2 discs one stationary and the other rotating. They are covered with a composition "emery". The space between the discs can be adjusted to suit the length of paddy to be shelled. As the paddy is thrown out between the discs by centrifugal force the paddy would turn over and then in its upright position the discs would be in a position to nip the two ends off and the shell falls off. If the adjustments are too close the result would be breakage of the rice. The adjustments must be right. If the paddy grains are varying sizes it would not give a good result. Underneath the discs is a pan and the paddy with husk and grain fall into the pan and the sweeps sweep it round to the outlet. This is shown in Exhibit "02" (A1). If the "sweeps" are worn badly the stuff would not be swept to the outlet and would accumulate and choke the machine.

In an electrically powered machine it would cause a need for more power and if overloaded it would choke the starter and stop the motor. (Mr. Bhagwandin described the "sweep" as a pin or blade). The stuff (i.e. grain, husk and dirt) is then taken to the husk aspirator No. 7 in Exhibit "01". This machine has a sieve which recovers the bran and small bits of rice chipped off during the shelling operation. The balance falls into the aspirator portion where the husk is sucked out. If this is badly adjusted it can suck up some paddy or rice but I can't imagine 60 bags of paddy being sucked out.

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On the plaintiff's machine the control is actually on the side of machine for regulating the volume of air through the machine. If grains were being sucked out along with the husk this could be spotted simply by the operator because the husk which is lifted out by the aspirator is discharged out the side of the machine in a venturi and is conveyed out of the building. At the point when the husks leave the machine and go into the venturi it can be regularly sampled to see if any rice or paddy is being lifted out and this is just at the side of plaintiff's machine. The operator can sample with one hand and operate with the other. There is little to go wrong with the aspirator as its purpose is to lift the husk out. This machine is on the platform. The sieved portion is reciprocating and vibration cannot affect the operation.

10

The next operation is the compartment separator which is on the ground (No. 8 on Exhibit "01") this is exactly the same as plaintiff's. Its purpose is to separate the paddy from the rice by a difference in specific gravity. It does this by the internal design of the machine when it is reciprocating and the body of the machine is tilted slightly the paddy will move up the slope while the rice will move in the opposite direction. There are 2 adjustments in the machine viz. (1) the adjustment of the tilt and (2) the adjustment of the speed of the reciprocating.

20

30

In addition the feed to each compartment of the machine could be adjusted by slides (No. 8 on Exhibit "01"). There are 45 compartments and each has its own feed with slide. To adjust it properly one would put it at the correct speed and tilt from experience you would then alter the tilt to get the desired result and then you will do the final adjustment by altering the speed. The adjustment would be to get most of the rice free of paddy. The adjustment of the tilt is important as if paddy goes out with the rice it would not be milled and would come out as paddy in your rice and produce a low grade. The draw back also is that too little feed is sent to the cones it is not possible to get a completely clean separation. It is therefore essential to get as little paddy as possible going with the rice.

40

Other type of mills do use compartment separators but I know of none which can get 100%

separation. If straw is allowed to get as far as to the compartment separator it can cause considerable obstruction by blocking in the feed tubes. This can be seen by observation of the flow from the compartments. The rice then goes on to the whitening cones. Before the first cone there is a bin (No. 11 on Exhibit "02"). The bin provides a reserve supply of rice so that the cones are kept full of rice. This is a diagram enlarged of a whitening cone. - Tendered Exhibit "03".

10

The grain comes into the cone and falls down into the space between the emery covered cone stop and the casing outside covered with wire cloth or perforated sheets (or screens). At intervals around the casing and rubber blocks which project through into the space between the casing and the cone. These blocks are adjustments in and out. (No. 22 on Exhibit "03") (21 also). These blocks are to prevent the rice from swirling round with the cone. These blocks should also be adjusted so that the space between the blocks and the cone is such that the rice gets secured as it passes. If it is adjusted too closely one would have breakage as the rice would not get through. The outlet for each machine is so placed that the result can be easily sampled.

20

The whitening is caused by the scouring against the emery, the wire cloth and against itself. The important thing to watch is that the machine must be kept absolutely full. If it is not full one will get a lot of breakage in the rice (from being too loose). Too close of the adjustment of the rubber block would cause breakage. Too close of an adjustment of the screen or mesh could cut down capacity. All the cones work on the same principle except the last cone is sheep skin rather than emery lined as this is the polishing cone.

30

Adjourned to 1.15 p.m.

Resumed:

40 LEWIS GRANT sworn (cont'd)

I did say that each cone must be kept filled and each must be set so as to do an equal amount of work with the others so that there would be an even flow of grain. If one cone slowed up it would mean

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that the grain to the next was not sufficient to keep it working full. If the bin level runs low it would be necessary to either stop the cones or lower the cones down to commensurate with the smaller flow. If there is too little rice from the compartment separator there would not be enough to go forward to the bin. One or several of the situations I have described can cause the bin level to run low. (If the cones are not properly adjusted the bin would be low also).

10

Every stage of the operation requires skilful adjustment to gear with each operation. If the wire cloth or screws have holes by wear then the rice would go through the holes and escape. If the bearings are worn then this can cause the cones to wobble and result in breakage. The screws can be inspected daily, it takes about half a minute. It should be inspected thoroughly weekly. The cones surface must be kept sharp. It requires sharpening once a week. There is a special tool provided with the mill for this.

20

The next step is the rice grader. This is where the rice is graded. This has trays which have partly rotary and partly reciprocating action. This is a machine on a separate platform. Vibrations here would be due to the machine being out of balance. It should not vibrate. (But even so it would still do its job). This could be adjusted and put in balance and must be maintained in balance. Rice milling machinery in the course of use tends to need tightening up of the belts here and there - wear is not very rapid: certain parts like the wire and screen etc. would wear out and these are easily seen and replaced.

30

If the eccentric strap bearing in the compartment separator had to be changed this may have been the cause of lack of lubrication. There are service instruction booklet which are given to the owners.

There is another grade on the mill, a cylinder type this separates fine grains, dividing the broken grains again. This can be used for various things. This is not likely to cause broken grains or to slow down the capacity of the mills. This is attached to the under side of the platform to which the other grader is fixed. Vibration can affect the operation of this machine but it has to be a

40

reasonable amount of vibration to affect it.

The mill has elevators. One must see the potential of the belt to which the cups are attached. It must not be too slack or it would slip. If it is too tight it would slip. It would have to be an appreciable sway before any rice will fall out of the buckets. I know of no case where rice falls out by the swaying of the buckets.

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10 Having regard to the local condition and the type of paddy here I would expect 11 or 12 bags of rice at 180 lbs. each to be milled in an hour.

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I cannot see how the vibration of the platforms can reduce the capacity of the mill. I do not agree that if the mill was assembled or mounted on an iron frame it would increase the capacity.

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(continued)

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20 In our self contained mills the uprights are angle iron of 2½" x 2½". The plaintiff's mill has timber upright or 8" x 8" or 6" x 6". It is adequate from its appearance but I think it is as strong or stronger than angle iron. I have seen the plaintiff's mill and platforms. They appear adequate but being of timber the belts must be drawn up regularly. It lacked X braces between the uprights. Although the lack of braces would cause vibrations it would not reduce capacity.

30 Only ancillary machines are on platforms. If the sheller cones and the compartment separators were on such platforms which vibrate, this would have caused a reduced capacity. There was one piece of spouting which would reduce the capacity. This spouting I saw was lifted up and this kink in the bend affected the flow. This must be lowered to discharge on to the rice itself and not against the bin. It was apparently lifted up from the position it was which caused a hole in that position. The kink in the bend would prevent smooth flow and that would reduce capacity. This mill was not intended to give capacity. This mill was not intended to give a capacity of 16 to 20 bags per hour in
40 British Guiana.

One would look for husk about 20% of the weight of the paddy. The stones stray sets from the cleaner also have to be accounted for. (This is not included in the husks. I expect the average percent of straw husk would be 5%.

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I visited the plaintiff's mill on Friday March 12th. It was not running. The condition of the plaintiff's dryer appears from a visual inspection to be in a good condition. Nothing specially struck me. There was quite a bit of small broken grains of rice at the bottom of the exhaust it must have been blown out of the shelves. That must have been sweepings from the floor.

With combines harvesting one can get a lot of rice among the paddy when it is brought in from the fields. It would not interfere with the dryer - provided the dryer is not blamed for producing these.

10

I noticed straw in the mill at various parts which was not taken out up to the compartment separator. The straw should be removed from the paddy cleaner. The straw can affect the capacity of the mill. It seems to me that there was an abnormal amount of straw that it could have got down to the compartment separator. The screens I saw could have been replaced. The springs holding up the trays of the cleaner, husk aspirator and the vibrating sieve appear to be out of alignment. One appeared changed. The "out-of-alignment" can make the machine vibrate and affect the platform. It would not reduce the capacity of the mill.

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Cross-
examination

Cross-examined by Mr. Luckhoo:-

I agree that my company is well known world wide in respect to Rice mills the world over. I would expect purchasers of rice milling equipment to rely upon my company to supply first class and efficient equipment.

30

It is part of the sales promotion to prepare and distribute literature in connection with the equipment for sale such as dryers and mills. Exhibits "B" and "C" are leaflets or pamphlets which were printed on the authority of my company. My company authorise agents all over the world (including defendants) to distribute them to prospective customers of the equipment set out on the leaflet.

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The pamphlets B and C set out the specifications of the equipment and gave particulars of capacity under certain conditions - We expect readers to be intelligent and to be influenced by

the statement as to output and general performance of the machine.

It is intended that our agents make use of the content of Exhibits "B" and "C" for the purpose of negotiating sales. An expert was not sent down here to assist in the assembly of the mill and dryer. One Roy White was lent by us to Bookers to assist them in the assembly of several mills and dryers. I think we pay for Roy White travelling expenses to this country and Bookers paid for his subsistence. I think his salary was paid by us. (We have a staff of over one hundred). Mr. White was one of our best fitters. He was an expert in assembling mills and dryers after Mr. White completed the assembling of the equipment he would turn over the machines but not mill rice. I would expect Mr. White to witness a test provided it was possible to do so. It is an important consideration to see the dryer and the mill properly installed. If there is negligence or insufficiency in the assembling in certain respects depending on the circumstances it may reflect adversely in the efficiency and capacity of the mill or the quality of the product. I am aware that Mr. White had returned to the United Kingdom before the installations were completed. No replacement of Mr. White was asked for and if defendants needed help I expect they would have asked for it. Defendants did not ask as far as I am aware for a replacement of Mr. White. The average useful life of a mill and dryer like the plaintiff's is about 20 years. Providing parts are maintained. A dryer and mill like plaintiff's should maintain its capacity. I agree that the plaintiff's mill and dryer are relatively new equipment. From my visual inspection of the equipment I saw, both the mill and dryer appear in good condition.

I first learnt that the plaintiff was complaining about the equipment around March 1963 or April 1963. As far as I know the defendants did not send us any letters or copies of letters written to them by plaintiff. The defendants did send some report in connection with the plaintiff's complaint in respect of his mill and dryer. The defendants did ask to send down a technical man - an expert technician - to look at the mill and dryer. We did not agree to do so but asked for further particulars to consider the matter. We received particulars along with a test report which was purported to have been

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carried out by the defendants. We analysed the report. We decided that the information supplied by defendants was incomplete and we requested further particulars. We did not ask for further tests. We got these particulars required from the defendants and then decided not to send an expert as at that time we got a copy of the writ served on the defendants. It was after the receipt of the writ that the decision was taken not to send an expert. I don't think I have seen any correspondence between the plaintiff and the defendants. Although matters might have been quoted from such correspondence in letters to me. 10

I arrived in British Guiana for this case on Thursday 11th March 1965. When I left the United Kingdom I had not in mind participating in witnessing any test of the mill and dryer. Since my arrival it has been brought to my attention that the plaintiff was willing to permit me to conduct a test in relation to the mill and dryer in question. I had no reasons to doubt the accuracy of that information. I did consider this and assuming the legal advisers to defendants were to approve of this, I would not be prepared to conduct such a test. My reason for not conducting a test is that I am neither a rice miller nor a dryer operator, that is my sole reason. 20

If I were asked to be a witness or observer to a test carried out by a competent miller and operator I would not refuse provided that the conditions of the test are fair. I agree probably that the results of a fair test would be the best way of determining whether the mill and dryer are efficient or not. Another way of testing the mill is by looking up the record of the production of the mill for the last 24 months or any reasonable period. 30

I also agree that such an inspection of the records made and discloses an abnormal breakage and low capacity then those consequences could be the result of inefficient operating or inefficient milling or both. If I were to observe a test of the mill and dryer I would certainly be able to say if the mill was properly operated. 40

I can't say how long it would take to prepare both mill and dryer for a test as one has to examine the machines in this respect.

The dryer and the mill should be carefully inspected in order to ensure if any parts need replacement (that would naturally affect the test). Suitable paddy would have to be provided.

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10

On 12th March I inspected mill and the dryer. From my visual observations I saw that the perforated screen of the husk aspirator and cleaner were defective and such spares must be in plaintiff's possession if he is a good miller: You say he has these. My visual inspection lasted for about an hour and a half. During my inspection I made no written notes. I was allowed free access to inspect the equipment. No one stopped me. I had no blue prints with me. I took no measurements or checked on any levels or angles. I looked at the machines and the various parts which could have been seen. I could not say from the appearance of the dryer that it was not in regular use. There was only one test in which the necessary figures were sent to me, which enabled me to determine the performance of the dryer. That was in July 1963. I saw these figures during the last week end. Several previous figures were sent to me but I can't recall whether it was alleged that these earlier tests were made by plaintiff or defendants or both. I have some of the correspondence with me.

Lewis Richard
Grant

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examination
(continued)

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1965

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Adjourned to 9 a.m. tomorrow
23.3.65

24.3.65 Resumed 9.15 a.m.

24th March
1965

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LEWIS GRANT sworn - Cross-examined by Mr. Luckhoo
cont'd:-

It is true that when the mill and dryer were sold to British Guiana it was known that it was intended to process paddy which was grown in British Guiana.

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My company is familiar with the kind of paddy grown in British Guiana. We supplied the defendants our agents with general literature in respect of the machinery. I am not an expert in relation to the types and quality of paddy.

From the milling point of view I do know what are the determining factors to know good paddy. It has to be free from cracks and flaws be at a suitable moisture content for milling. It has to reach that

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moisture content under control and to be free from foreign matter as can be reasonably practicable. If the above conditions are obtainable then it can be considered to be paddy of good quality. That is the type of paddy contemplated in the leaflet "C". There is no reason why the above conditions should not be fulfilled in British Guiana to obtain good paddy.

It is true that designs in machines are changed from time to time. The designing of machines is highly technical. It is true that sometimes newly designed machines develop what we may call "teething troubles". It is true if the "teething troubles" are not remedied sometimes a newly designed machine may be scrapped. I agree that the successful test of the new machine lies in the successful normal working of the machine. I agree that, even in the case of machines which are made under successful designs that a particular piece of machine may be made which would need modification or alteration in order to work satisfactorily.

I agree that after installation of machinery (such as the plaintiff's mill and dryer) that a proper test would be the best means of revealing whether the equipment is satisfactory or not. The drawing office department of my firm was responsible for the design of the model of the plaintiff's mill and dryer. This dryer was produced about 7 years ago - in 1957. This dryer was manufactured during the year 1961 and 1962. I cannot think of any major modification made on the dryer between 1957 and 1961. I cannot think of any minor ones but there might have been. When I said that the plaintiff's dryer was redesigned I refer to a period which might have been prior to 1957. Three or more dryers were supplied through the Crown agents to Sierra Leone - that is to Freetown. I cannot recollect if the models supplied was similar to the plaintiff's. I am not aware that 3 of the dryers supplied to Sierra Leone were put out of use and replaced by "Schule" dryers. If there has been such occurrence it has not been brought to my notice. Pamphlets such as Exhibit "C" were printed about 15 year ago. Exhibit "C" may be a reprint of such pamphlets. Exhibit "B" was printed some years ago. The dryer plaintiff has was designed to dry all types of grain including barley, wheat oats, maize, paddy etc. The same dryer is used without any modification to dry all

these types of grain. I would not say that this type of dryer would prove more satisfactory for certain types of grain than paddy. I would say that it is equally satisfactory to all types of grain I have mentioned. When the dryer was designed the purpose was equally important to all the grains I have mentioned. The plaintiff's dryer is a Model 08 dryer. About 33% of these dryers sold are used for paddy. In British Guiana I think there are 2 similar dryers apart from plaintiff's. Dr. Fraser's and the other I cannot say. I now say that I only knew of Dr. Fraser's which is similar to plaintiff's. If I am told that Dr. Fraser's dryer is an 06 I would not swear that that is not so as I am speaking from my memory. It is true that Dr. Fraser's dryer is a belt driven one. I saw it on the 12th March 1965 and it was not then in operation. Between 12th March to now I have not witnessed any tests from Fraser's dryer. It is true that defendants were authorised to distribute the pamphlets as Exhibit "B" in promoting sales of those listed. Page 5 of Exhibit "B" set out the capacity table of an 08 dryer under the conditions stated. I would expect that capacity under those conditions. It is true that one can calculate the capacity under prevailing local conditions using the information stated plus other information which can be obtained such as local humidity, temperature etc. The average temperature here is about 85 degrees. Humidity here is about 85 to 90°.

I used tables prepared by my company to arrive at the result I have given. I did not bring the tables. I did the computation before coming here. I have seen the figures of the results of tests made by Mr. Bhagwandin. I have considered the figures. To reduce 16½% moisture to 14% at 140 degrees fahrenheit it should do around 3.4 tons per hour. This is to the best of my ability (working it out here roughly). By the lifting capacity of the elevator of the dryer - is meant the weight of the paddy plus anything else the elevator can feed from the hopper to the dryer per hour. This type of test is relatively simple and straight forward: 5 tons is 11,220 lbs. A lifting capacity of 7,000 lbs. would be almost about 40% below the capacity indicated. The lifting capacity of the elevator is a factor in relation to the running of the dryer.

I would be very surprised (provided the operational conditions were correct) if I were told that

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the lifting capacity of the plaintiff's dryer elevator is 7,000 lbs. per hour. (I am speaking of lifting paddy.)

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In "batch" drying if the dryer is filled with paddy it would hold approximately $3\frac{1}{2}$ tons. This is rotated for a length of time until the moisture content is correct the whole batch should be dried. I would say to fill the system for batch drying one needs 4 tons. If the 4 tons were dried for $1\frac{1}{2}$ hours I would expect the average grain to have passed through the dryer $1\frac{1}{2}$ times.

10

Cross-
examination
(continued)

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In continuous drying the dryer is filled and as the drying process starts the dryer is fed continually through the hopper with fresh grain and the grain which comes out from the bottom of the dryer is discharged and does not rotate. In this method the passage of the grain is one time only in that particular pass. If it is sufficiently dry it would go on to the bin. If it is insufficiently dried it goes to a bin and should remain there until it is ready for another "pass". I do not agree that for a second pass the dryer would have to empty and all the paddy had to be taken from the bin and put into the hopper. What is done is that at a convenient stage you stop feeding paddy and you bring the paddy from the bin to feed into the hopper again in order that such paddy may go through the dryer for a second pass. (In this case) one pass paddy will only mix marginally with the fresh paddy. The "one-pass" paddy would have to make a complete second pass. Under the conditions you have stipulated such paddy at the end of the second pass may have had too much moisture extracted but under correct operation that would not arise.

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During the second pass a grain of paddy is dried in the course of its passage.

To avoid over drying the drying rate has to be adjusted to either 1 pass or 2 complete passes or more.

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Adjourned to 1.15 p.m.

LEWIS GRANT sworn - Cross-examination cont'd:-

With an initial moisture content of 16% one "pass" through the plaintiff's dryer should reduce

it to 14%. To require more than one pass would depend on what temperature it is being put through. Used as a continuous dryer, I would be surprised if it requires 3 passes to reduce the moisture from 16½ to 14% at 140°. I have no experience of these dryers being used as a "batch" dryer.

I did say that a dryer such as plaintiff's could be used satisfactorily for "batch" drying but it was designed for continuous drying.

10 Exhibit "C" is our literature and the instructions contained therein are authorised by my firm. It is true that page 12 of Exhibit "D" sets out instructions for continuous drying at page 13 are instructions for "batch" drying. I agree that instructions for "batch" drying would not have been given if it were not approved.

20 I would say that "batch" drying is "recognised" and can be used with plaintiff's dryer. I did say that after filling the dryer and then lighting the furnace the rotation then commences immediately. At 4D page 11 of Exhibit "G" are instructions which I agree with. These instructions at page 11, (4D) Exhibit "G" have to do with continuous drying. I agree that the elevator should only start to operate for the drying process after the thermometer shows the required temperature. It is true that "4D" comes under the general head of dryer operations.

Page 12 gives the head - continuous drying and page 13 "batch" drying.

30 If I were told that it takes about 20 minutes from lighting the furnace for the thermometer to show 140 degrees, I would certainly be surprised. I would say that something is wrong somewhere and I would check if the burners are set alright and check the thermometer. When I inspected the dryer there was nothing to lead me to suspect that the burners were not set right. I would expect a thermometer like plaintiff's to take 4 or 5 to 6 minutes to record a temperature of 140 degrees. I would certainly expect defendants to supply plaintiff with a booklet such as Exhibit "G".

40

I am surprised to hear that they suggested that they did not. I do expect defendants to supply the booklets in respect to the various operations of the mill

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I am surprised if it was suggested that they did not supply such booklets. The plaintiff's mill is 30/60-E. The 30 means 30" diameter cones 60 signifies the year 1960 when the range of mills superseded the ones shown on Exhibit "G". E means electrical.

The mill shown on Exhibit "G" number S 20/4 on page 6 of Exhibit "G" has a lot of different features to the plaintiff's mill. None of the mills featured in Exhibit "G" is like the plaintiff's mill. I can say that S 20/4 resembles the plaintiff's mill in that it has a disc sheller a compartment separator, 3 cones and one polisher - all of different size than those of the plaintiff's.

10

It has also from my knowledge a cleaner and husk separator of older types and some sundry elevators. I see Ref. No. 74 at page 7. This does not refer to a mill as plaintiff's. (It is the code word "SMENO"). The above specifications do not refer to the plaintiff's mill. None of the reference on Exhibit "C" refer to the plaintiff's mill. It is true that nothing in Exhibit C specifically refers to plaintiff's mill. If the defendants had shown plaintiff Ref. 74 on Exhibit "C" and in relation to that supplied to

20

the mill which I have seen they would not have been authorised to do so without qualifications. I would not say that Ref. 74 closely resembles the plaintiff's mill. The flow diagram would be the same only. The plaintiff's mill is 30/60 E. We have not any pamphlets with ref. to this 30/60 E. None was ever printed. There was literature with

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reference to 30/60 E printed in respect of the price list and specifications for the agents quotation. It would contain a price we would sell to the agent - less a certain discount. The agent could not sell for that price unless he wants to make a loss. He would sell above that. I have none of these price lists etc. It would surprise me if Exhibit "C" were shown with particular reference to a particular mill on Exhibit "C" for 30/60 E. The capacity of the plaintiff's mill would be 3500 to 5000 pounds of paddy per hour. The capacity claimed in reference 74 in Exhibit "C" is substantially above that of plaintiff's mill. The plaintiff's mill is a triple cone mill with one polisher. None of the figures on Exhibit "C" is applicable to plaintiff's mill including Ref. 74.

40

The basis of capacity is set out at the bottom of page 7 Exhibit "C" (last 2 lines). The lower figures refers to paddy being difficult to mill and the higher figure to very good paddy. I do not agree that a strong steel frame work is more desirable than a wooden frame work. On Page 2 Exhibit "C" there are mills with steel frames.

10 Looking at the wood work on March 12th I could not have estimated the vibration with the mill not working. Excessive vibration on the wooden frame work I do not think it would adversely affect that operation and production of the mill. I agree that if the machine was in full operation, I would be in a better position to see this.

I was not informed that I could see the machine in operation.

20 I was told that an offer was made by counsel that a test could be made if I wanted to. For the reasons I have given, I did not avail myself of that opportunity. For parboiled rice (from good paddy) the allowance of 4% broken is a very reasonable allowance for broken grains.

When milling - good white rice I would expect to get about 20% broken rice and not 6 or 7% broken rice as suggested from good paddy.

30 The whole grain do make an allowance for a certain percentage of broken grains and that percentage whatever it is may be between 5 to 16%. I do not doubt. From 100 bags of white rice one can have normally from good paddy 20% of the lot broken rice.

40 Assuming a quantity of paddy were dried on the concrete and milled and a normal amount of broken grains was recovered and assuming that a similar quantity of similar paddy were dried through the dryer and milled in a like manner with a recovery of an abnormal quantity of broken grains these results would lead to the irresistible conclusion that either the dryer is defective or the operation of the dryer is inefficient or both.

I agree that such a test is a fair test assuming that the dryer is properly operated. I would expect from our dealings with the defendants

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No. 13

Lewis Richard
Grant

Cross-
examination
(continued)

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Cross-
examination
(continued)

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that they would have competent persons to test the mill and dryer. The relative difference between the price of plaintiff's mill and a similar mill on steel frame would be in the vicinity of 9202 to 9402 F.O.B. There is really no difference in efficiency between a belt driven mill and an electric driven one. The difference is negligible. It is true I had paid only one visit before in British Guiana and that was for 2 weeks. I think it was in connection with the Anna Regina Mill. I did come in connection with modifications to be made with that mill and modifications were made. I had inspected other mills also but I can't remember now. On this occasion I have not only seen plaintiff's mill and Fraser's mill but other mills. It is true that I have never been present at any official test of a dryer anywhere. To the best of my knowledge and experience I have now learnt that "batch" drying is generally accepted method of drying in British Guiana in mills of plaintiff's size.

10

20

Assuming that the plaintiff has the necessary basic intelligence. I would expect that defendants would have personnel capable of training plaintiff and his operators to work the mill and dryer.

I do know that the defendants do have competent personnel to operate our machines.

Electric mills cost more because of the cost of the motors not the mill itself. Its the same machine. I am surprised to learn that the "spouting" with the "kink" was so assembled. The spouting has a hand but it must be filled in an appropriate position. The duty of fitting it in the proper position is that of the persons installing the mill. If the spouting was installed as I saw it then it was not properly installed. In the end result, the capacity would be reduced but I can't say how much. It may not cause any reduction in the eventual output. This spouting could be easily corrected. The screening could have worked to some extent although not to my standard.

30

40

Exhibit "C" may have been first printed in its present form in 1948 or 1949. To my knowledge the plaintiff's mill is the first 30/60 E mill in British Guiana.

Re-examination by Mr. King:

10 It is true a test - a proper test, would be advisable to test the machines but not spot test because for a proper test, the machines should be inspected and repaired where necessary and parts replaced where necessary and be in good condition before the test. It might be necessary to dismantle certain parts which might be concealed. It may take about 3 days for inspection and the repairs if parts unavailable 6 months. If no parts are necessary it would take between 4 to 10 days. There should be paddy for about 16 hours milling about 375 bags of paddy.

No special literature was printed or produced for any particular country. There is no need for special instructions for operation in British Guiana.

20 The mills shown in Exhibit "C" were out of normal production since 1959. We have never had to scrap any of our machines for "teething troubles". We have replaced parts generally. We do make prototype before we put out on the market. We have had no complaints on similar mills and dryers.

The redesigning in 1957 refers to when this type of dryer came into being. The figures I have given of the reduction of moisture are 16½ to 14% at 140° - 3.4 tons per hour would not apply if the dryer only contained about 4800 lbs. to start. It must be filled in order to contain the hot air.

30 I would say that an operator who regulates the flow by the slides was not doing so correctly. It should be operated by the discharge rollers. If first "pass" paddy is put on top of fresh paddy an experienced operator could judge (a) by timing and (b) by the use of a moisture when the fresh paddy is running out.

40 On 12th March 1965 when I visited, the burners, I would not say if they were properly set or not. They did not appear damaged. The major difference between the plaintiff's mill and S-20/4 is on steel frame. We called these self-contained and the plaintiff's detached. The platforms appeared substantially made and adequate. It must be well bolted. Looking at the spout and the part of the bin which is worn, I would say that it was in the

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correct position before and it was pulled up later. The wear on the bin indicated this. Platforms may vibrate if the machine is out of balance.

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(Mr. Farnum asks that this witness for defence be interposed. No objection).

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Lewis Richard
Grant

Re-examination
(continued)

24th March 1965

No. 14

No. 14

Allan Cleveland
Chan

EVIDENCE OF ALLAN CLEVELAND CHAN

Examination

ALLAN CLEVELAND CHAN sworn:-

24th March
1965

I live at Forshaw Street, Queenstown. I am the General Manager of the Rice Development Company. I was employed since 1950. During my employment I served in several engineering capacities. The company has a "Grantex" multi stage rice mill at Anna Regina Essequibo. The mill is custom-built that is, not self-contained. The machinery was erected to the company's specification. All the platforms are of wood: Greenheart. The mill has been in operation since 1956 and is still in operation satisfactorily. Its capacity is 5 tons of rice per hour. At the Anna Regina mill we have 6 Grantex dryers - 4 for parboiled rice and white rice and 2 for field paddy. The 6 dryers are size 08. The "0" before the figure 8 means oil-fixed. The dryers are still being used since 1956.

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The dryers are working quite satisfactorily. The operators are classified as skilled workmen. They need technical knowledge in order to operate the dryers. These dryers are driven by electrical motors. If I were asked to dry paddy having 15% moisture content, I will not do so because it is not worth drying as the required temperature after drying is 14½% and it would only need ½% to be dried from 15%. I will not do this. I would store

30

10 this paddy aside and then clean it and soak it for
 parboiled rice. Combine cut paddy is usually
 around 20% moisture content. If the moisture
 content is 15% it would mean that it was over-
 dried in the field. If overdried paddy is dried
 in a "Grantex" dryer from 15% to 13% one would get
 a high percent of breakage after milling. The
 breakage is caused not by the dryer or mill but
 because of the overdrying in the field. I do not
 agree that combine-reaped paddy does not need
 cleaning because the fan in the combine cleans it.
 It must be cleaned of impurities and foreign matter
 viz. straw, light wind paddy - and balls and weeds
 and seeds. Growing paddy "stands" as well as falls.
 When it's fallen the combine scoops it up and in
 that way picks up mud and other foreign matter.

20 The first step to drying is to clean the paddy.
 This is very important. Next we assert the paddy
 according to the variety and moisture content.
 There are short, medium and long grain varieties.
 It is important to mill each variety separately.
 If this is not done the efficiency of the mill is
 reduced and the result is also more breakage. The
 next stage is that we fill the dryer and then light
 the furnace (if all fixed). It takes about 1 minute
 or so to meet air temperature of 120 degrees (field
 paddy). We use as much as 120 degrees depending on
 the amount of moisture in the paddy. When using
 high temperature you must exercise care.

30 We then allow the paddy to heat up for about
 10 minutes and then one starts to circulate the
 paddy until the required moisture content is reached
 (by testing with a moisture meter). When we begin
 to discharge the paddy at the discharge end reaches
 the moisture content. As we discharged at the
 bottom the paddy comes down gradually from the
 discharge shelves and we put in fresh paddy at the
 top as the finished paddy comes down. This is done
 as a continuous process from now on.

40 It is not true that fresh paddy cannot be fed
 on top of the dried paddy. It is not true that if
 fresh paddy is put on top of the dried it would
 cause uneven drying. We have used this process
 with success all the time. The drying time starts
 from the time the fresh paddy is introduced on the
 top of the paddy first put in.

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(continued)

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After the fresh paddy is put in on the top of the first set no further circulation is done. By the time the paddy put in at the top, reaches down it is ready.

The Rice Development Company purchased last year a 2 ton electrically driven (Grantex) rice mill erected at Mahaicony. It is a detached mill the machinery being on wooden platforms. This mill was erected in December 1964. This plan shows a similar mill to the one at Mahaicony. But in this mill each machine is driven by a separate motor whereas in the mill at Mahaicony the machines are driven by 3 large motors. In all other respects the lay out of the machinery at Mahaicony mill is similar to the plan. Tendered Admitted and Marked Exhibit "04".

10

I am familiar with the Grantex dryer and I know how it operates. In my opinion if the Grantex dryer is operated competently and under suitable conditions it cannot fail to give satisfaction.

20

The machines of wooden platforms are the paddy cleaner - (2) the husk aspirator on one platform and (3) the rotary grader which is on a separate platform. There are 2 wooden platforms. These machines on the platforms are auxiliary machines and not the main milling machines. The wooden platforms do vibrate as the machines have vibrating action. At Anna Regina we got a lot of vibration and these vibrations are sometimes extended to the building itself at Anna Regina.

30

The Mahaicony mill is a small mill and it does not vibrate as much but it does vibrate. The vibrations do not affect the production or the rice. If its excessive the machine itself might be affected but not the product.

The vibration cannot affect the paddy cleaner because this itself operates by movements and this also applies to the husk aspirator. These operate with shaking backward and forward movements. The vibrations tend to move in the same direction. This applies to the paddy cleaner and the husk aspirator. The grader has a rotary action and vibrates in a rotary action. I do not accept that the vibrations caused by the machines could cause the elevator (cup) to be shaken. The elevator

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belts itself vibrates in the normal process of its rotation. If I am told that the reservoir which feeds the cones run dry then that indicates that the mill is not run properly because at all times the cones must be kept filled. If the cones are not kept filled it will break the rice instead. If the reservoir begins to run dry it means (1) that the milling capacity of the cone is greater than the capacity of the compartment separator to supply the reservoir to the cone. In such a case one must either reduce the capacity of the cone or increase the capacity of the compartment separator. It may be necessary to adjust both. The main adjustment is the space separating the "rotating and stationary" discs. This adjustment determines the length of the grain (long, short or medium). The cones are adjusted according to the thickness of the grain. The correct adjustment of the sheller and the cones are important as maladjustment would lead to broken rice.

The only time one would get uneven drying in the "Grantex" dryer is when the dryer is dirty and clogged up. I have had this experience which results in a high percentage of breakage. The dryers must be cleaned at regular intervals.

I do know the process of "batch" drying i.e. the dryer is filled and that amount is processed completely and then another batch is done the same way. This is called batch drying but a lot of the time is wasted in filling and emptying the dryer.

If the "Grantex" dryer is filled with 7490 lbs of paddy with a moisture content of 15% and then heated for 20 minutes at that time the thermometer showed (at the end of 20 minutes) 140 degrees (fahrenheit). Then on these facts it appears that something is wrong in the operation because if the burners were properly adjusted that temperature of 140 degrees should have been reached in about 2 to 3 minutes. If the paddy were circulated for about 1½ hours after reaching 140 degrees (fahrenheit) that paddy would be over dried and when milled there would be more breakage in the grains.

If I were milling parboiled rice and then wanted to mill white rice it is very important that the whole mill should be cleaned out before embarking on the milling of the white rice because (1) parboiled rice is a brown rice or some of them

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Examination
(continued)

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would mix with the white rice and this mill will produce a lower grade when graded at the Rice Board.

I don't know the plaintiff's mill or dryer. My mills are both electrically driven. The source of power does not make any difference as to the quality and output of the mill or dryer.

This sample of paddy Exhibit "E2" shows under shelling the distance between the 2 discs was too great. Exhibits "E1" and "E2" show that the paddy was a mixture of long and short grains. Sample Exhibit "E4" Mark sample from No. 1 cone shows husk with rice which indicates that paddy went from the compartment separator to the cone and this should not have been and this is because the compartment separator was overloaded or not adjusted properly.

10

The compartment separator is overloaded when it has too much unshelled grains with the shelled grains. This could be caused by using mixed varieties of paddy or by maladjustment of the mill.

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Adjourned to 1.15 p.m.

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1965

(sic) 2.6.65 Resumed:-

Evidence in chief cont'd by Mr. Farnum:

The sample Exhibit "D1" is paddy which needs cleaning as it has a lot of foreign matter. It is also a mixed variety of paddy. It has different lengths. It is average paddy - needs cleaning and of mixed variety. I would only use this paddy (Exhibit "D1") for drying after cleaning. I see sample Exhibit "D2". The quality is average it's of mixed variety and it still has some foreign matter.

30

I see sample Exhibit "D4". There is a larger portion of unshelled grain and broken grain than should have been. The paddy is a mixed variety. This indicated that the sheller is not adjusted properly. The broken grains indicate that the paddy was overdried or the sheller overloaded.

I see sample Exhibit "H1" (paddy before drying). This is a cleaner sample than these I referred to before. Its a mixed variety of long

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and medium grains. It is about 11% moisture. I can't say if this paddy was dried in the field or during storage (witness opens parcel and bite grains).

I see sample Exhibit "H2". This paddy looks like the same type of "H1" but slightly drier than "H1". The quality is average.

10 This sample Exhibit "H3" has more broken grains than usual. It has some red rice and the unshelled grains seem to be a larger amount than should be normally found. This was caused by the sheller not being adjusted properly and or the mixed variety. If one plants a pure line seed one variety only would result.

20 The red rice is called "Jharanga". When there is more than one variety in the paddy to be milled one has to grade it and adjust the sheller to the size of the predominant variety and to expect a larger amount of broken rice than if the grain were of one variety.

30 I see sample Exhibit "H4" (taken from the compartment separator). This shows the red rice and also even more broken rice than the previous samples. This high percentage of breakage may be due to even drying or uneven drying and even bad adjustments of the sheller. It may be caused also by the disc surface not being even. The paddy passes the centre of the disc surface and travels outwards by centrifugal force. If the 2 surfaces of the discs are high and low - at one point too close and another too far - that will cause the paddy to break. Sometimes the discs may not be sharp enough and may need sharpening. This can't be remedied by adjustment. The disc has to be taken off if high and low surface and chip off the high spots, that is, level it. If the surface of the discs are even then the adjustments must not be too close one part and the other too far. It must be uniform or the paddy could break.

40 See sample Exhibit "H5" (from No. 1 cone) and Exhibit "H6" from No. 2 cone. In each case there is an abnormal amount of broken rice. The breakage is more in "H6" (than in "H5"). "H6" indicates that the paddy was either sun-cracked or overdried or unevenly dried.

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Cross-
examination

In drying if you try to dry too fast, the grains would crack even though you are reducing moisture from 22% to 16%. This is because of the moisture difference in the grain itself. The outer layers being very dry would contract faster and cause cracking. That is the rate of extraction being too great. If I were told that "H6" and "H5" were milled from paddy which had been put into the dryer with a moisture content of 15% and rotated for an hour and one half (1½) at 140°. I would say that that paddy was overdried and that is why it resulted in these broken grains. The presence of red rice is undesirable because the milling has to be harder and this results in low recovery and plenty more breakage.

10

I knew Mr. Bhagwandin a salesman (attached to J.P. Santos and Company) who sells combines (Case) etc. I do not know what Mr. Bhagwandin means when he referred to unevenness of the feeding system of the dryer. The dryer is fed from the hopper through a door to the elevator. The door between the hopper and the elevator is adjustable by means of a slide which can make it bigger or smaller as required. If the gateway is properly adjusted one cannot get uneven feeding.

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Cross-examined by Mr. Luckhoo Q.C.:-

I would be prepared to carry out a test on plaintiff's mill and dryer but it is not for me to say that. My company would have to give its approval.

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The Rice Development Company of which I am general manager is a Government concern. I did receive a copy of a letter of one sent to the Credit Corporation by the plaintiff. The plaintiff sent me a copy of the letter he wrote the Credit Corporation. I have not it here. It was in connection with plaintiff's mill. It was between 1963 and early 1964.

In 1964 plaintiff came to me with a delegation comprising plaintiff and (Angad Ally and Lallta Persaud) 2 other men. I know the men to be Ally and Persaud. He did ask me to visit the mill and see it in operation and to report to the Credit Corporation in relation as to if the mill is working satisfactory. I did tell plaintiff that

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the Credit Corporation has to make the request to my company before I can say anything. No request was made to my directors and I did not make any such request. If my directors would permit me to do so I would have no objection to carry out a test. I agree that the best way to determine the working of the mill is to put it through a test under proper working condition. I think that is the only way of determining whether the mill and the dryer are satisfactory. It would be to put it through a proper test. All machinery after erection must be tested.

10

Some machinery after erection disclose "teething trouble" and need adjustment. After the necessary adjustments the machines become satisfactory. If not solved then something else must be wrong. The proper installation of the Rice mill and dryer is of important consideration. If the mill and dryer are not properly installed it would not work satisfactorily. It is possible that in 2 machines of the same type one may be quite satisfactory and the other not so good or defective. I have not seen plaintiff's mill or dryer. My working experience is limited to the "Grantex" mills at Anna Regina and Mahaicony but I have visited and seen in operation other Grantex mills.

20

I agree that for the private miller the 2 more important considerations are (1) the quality of the production and (2) the capacity of the equipment.

30

At Anna Regina there is one large "Grantex" rice mill electrically driven and producing 5 tons of finished white rice or parboiled rice per hour. We have there 6 "Grantex" dryers all of similar models 4 being steam heated and 2 oil fixed. We have 2 other dryers "Hoss" U.S.A.

The "Grantex" dryers are each rated to dry 4 tons paddy per hour extracting 5% moisture. These have been in operation since 1956 until the present time.

40

The operation of the factory was working at a loss. Between 1956 and 1961 there was a loss and in 1962 a profit and in 1964 a profit but in 1963 a loss. This was not the machines fault. As far as the machines go both the mill and dryer live up to this expectation and claims.

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(continued)

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29.3.65

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ALLAN CLEVELAND CHAN sworn: Cross-examination
cont'd by Mr. Luckhoo Q.C.

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Cross-
examination
(continued)

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I am a mechanical engineer. I was trained for 4 years in the U.S.A. as a mechanical engineer. I have actually operated both a rice mill and a dryer. It is true that I don't frequently do so. The "Grantex" mill at Mahaicony Abary Rice Development Scheme Mahaicony was never operated for parboiled rice. Its a new mill. It really never went into operation on a large scale, but was tried and tested on and off. It was not used for a continuous full day. It was used for white rice, but seen after the manufacture of white rice was not needed. I did not keep figures of the tests. The Rice Marketing Board in November 1964 directed the cessation of white rice milling. It is true that the "Grantex" mill at Mahaicony Abary Rice Development Scheme has only one wooden platform. I don't know if the plaintiff's mill has 3 wooden platforms. The "Grantex" mill at Mahaicony Abary Rice Development Scheme does have a paddy cleaner and this incorporates a riddle or a seine. The Mahaicony Abary Rice Development Scheme "Grantex" mill does have a husk aspirator. The Rotary Seine at the Mahaicony Abary Rice Development Scheme is on a pedestal and not on a platform. My chief miller at Mahaicony Abary Rice Development Scheme is one Samuel Jai Singh. We should have the specifications for the "Grantex" miller at Mahaicony Abary Rice Development Scheme I have seen the specifications. I can't remember all of the specifications. I saw these specifications on a final purchase form. The specifications were in respect of the cleaner, sheller etc. The order form had a number. I can't remember the number. It was a 2 ton. I can't remember if the capacity of paddy per hour was stated. A drawing of the mill and parts were supplied prior to the order. I saw this over a year ago. My mill at Mahaicony Abary Rice Development Scheme is slightly different I believe having seen the drawing Exhibit "01" a mill. It is different either in relation to the machine itself or to the position of the machines. I say so as far as I recollect the blue print. The comparisons might reveal several differences but I can's say positively.

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I did take part in the ordering of the Mahaicony Abary Rice Development Scheme mill. We asked defendants for a quotation. Defendants gave us a quotation. I saw no pamphlets at all. We knew what we wanted and ordered it. We stated the capacity we wanted (2 tons). No rubber sheller 3 cones and a polisher and to be driven by 2 or 3 large electrical motors. I understood by 2 tons that the mill would process 2 tons of paddy per hour. I had in mind good clean paddy. I agree that the rate of production is important to any miller. If a 2 ton mill processes one ton or less, I would consider that unsatisfactory. The same would hold good in relation to a dryer.

10

My Mahaicony Abary Rice Development Scheme Mill was bought through the Credit Corporation. It costs around \$50,000 inclusive of the motors. The "Grantex" mill at Mahaicony Abary Rice Development Scheme does not look like any of the mills shown on Exhibit "C".

20

The dryer was installed about 1958. It is a steam heated and not oil heated. We did increase the height of the hopper by 4'. This was not done to increase efficiency. It was done to relieve the operator from checking so often.

There are 2 large drying concrete floors at Mahaicony Abary Rice Development Scheme. We never milled white rice at Mahaicony and that is why this mill was bought - but a cessation came about soon after for white rice. The "Grantex" dryer at Mahaicony is always used for white rice. The "Grantex" dryer is in use all the time at Mahaicony. All paddy for parboiled rice is dried there in the Grantex dryer and other dryers.

30

The concrete floors were used for drying paddy from the fields before storage. This paddy may have 18 to 20% moisture and even more from the field. We dry that down to 14 or 14% and then store. After storing we process it when needed for parboil. Depending on the moisture content paddy may lose moisture while stored.

40

I am familiar with the Anna Regina equipment. It is not true that the mill there has a steel frame. At Anna Regina the building that houses the mill is a steel structure it has a ground floor of concrete and two upper floors of wood. These

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floors are 12' above each other. On the 2nd wooden floor is erected the paddy cleaner and husk aspirator. Both (W) floors are supported by steel columns on wooden joists. The joists are on steel beams. There are a number of steel beams at about 15' apart. On these are wooden joists and the floor rests on these. I don't agree that the vibrations would be reduced by the construction. I now say I don't know.

Allan
Cleveland Chan

Adjourned to 1.15 p.m. today.

10

Resumed 1 p.m.:

Cross-
examination
(continued)

ALLAN CLEVELAND CHAN sworn - Cross-examination cont'd:

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1965

I did not participate in the ordering of the equipment for Anna Regina. I cannot say what were the specifications. By custom built is meant a large mill built according to the requirements of the purchaser.

I was at Anna Regina when the "Grantex" mill was first installed. I would not say it was not satisfactory. It had some "teething troubles" that is the adjustments of the machines were the main trouble. The louvre in the husk aspirator had to be altered a little. We had to change the supply mesh in the cones, to screens. The suction fan had to be adjusted. These affected capacity. Before the adjustments were made capacity was low. It took (about) nearly a year to overcome the teething troubles because we did not make the adjustments but only reported the matter. During the year we worked the mill. Mr. Grant came about 3 months after installation. He spent one month and went back. He sent some drawing to show modifications on the husk aspirator. He sent the perforated screens to replace the mesh. Mr. Bhagwandin did not do some work on the cones. He did no work at all to this mill. It is not correct to say that only the hullers were working satisfactory. All the modifications were done by local workmen. The matters bore the cost of the modifications. I cannot say what is the cost of the mill. I erected the mill at Anna Regina 1954-1956. Only one mill was put down at Anna Regina. The steel structure building was put down to accommodate the new mill. There are 6 "Grantex" dryers at Anna Regina. The dryer appears similar

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to the dryer on this pamphlet (page 3): Tendered Exhibit "05". Two are oil heated and 4 are steam heated.

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10 There is no compartment division between the top and bottom part of the dryer. The heat enters in 2 inlets, but there are no chambers in the dryer, the heat then travels freely. I have not seen a blue print of the plaintiff's dryer. I cannot say in what ways plaintiff's dryer may differ to the ones at Anna Regina. Sometimes paddy loses moisture during storage. Paddy which has a moisture content of $16\frac{1}{2}\%$ should be dried before milling to 14% or $14\frac{1}{2}\%$. Paddy which has 15% must also be dried to $14\frac{1}{2}\%$. I would say 13% is too dry. It is true that apart from the use of a moisture meter an experienced miller can estimate the moisture content by biting it or by rubbing it in his hands. That is he can say from his experience by so doing if the paddy is ready for milling.

Allan
Cleveland Chan

Cross-
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(continued)

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20 In one farmer's crop there may be a mixture of long and short grains. This is not separated by the farmer, but the sheller may be adjusted to the long grains and the short grains would go to the return sheller if there is one but this would reduce the output. When paddy is put into a dryer and the furnace is lit I would expect the thermometer to record a particular temperature as soon as that temperature is reached. Machines which vibrations may affect are never put on platforms, viz. 30 the sheller and the cone. These are never put on platforms. The husk aspirator is never affected by excessive vibrations it works by vibrations it would help it.

I do not agree that "batch" drying is more popular here. All of our drying is "continuous" drying. It is true we have a large stock of paddy. We work our dryers in "groups and series". I can't say what individual dryers produce but I can say what the group of dryers produce.

40 We pass our grains from one dryer to another to continue the drying. In parboil where we have to reduce from 32-35% we may pass the paddy through 5 dryers in order to achieve the result. We sometimes use 4. Sometimes when the paddy comes in at 20% moisture we dry it in 2 "passes" to achieve the desired result for storage. (14% is standard

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moisture). The amount of the samples I have seen are adequate for analyses.

I agree that assuming the mill is properly adjusted and assuming the paddy is not sun-cracked or overdried and there is an abnormal amount of breakage then it means that there is uneven drying which is responsible for the breakage.

I never sought approval of my employers to test plaintiff's mill. My employers did not give me any direction to make any test for plaintiff. As far as I am concerned I would be willing to make a test if my employers approve. I would be away until September 1965. I am leaving the colony on vacation on the 3/4/65 - Canada and U.S.A. I had stated before that I had received a copy of plaintiff's letter to the Credit Corporation early in 1964. I have since checked and I have discovered that I received both in September 1964.

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20

(I am going to California to one of the largest rice mills in the world).

Re-
examination

Re-examination:

This is the first letter I received from plaintiff: Tendered Exhibit "P1". It is dated 4th September 1964.

The "Grantex" dryer has the following moving parts (1) 2 discharge rollers; (2) Conveyor (screen); (3) possibly another conveyor at the bottom; (4) fan - it sucks and blows hot air through the perforated screens.

30

Nothing can go wrong with the dryer without an experienced operator detecting. In my opinion the defects if any can be readily adjusted. I personally feel that both the mill and dryer of the plaintiff can work successfully. When the plaintiff came to me I told him what to do in order to get permission for me to go and look at his machinery but I heard nothing more. My company falls under the Ministry of Trade and Industry. It is a Govt company. Assuming the plaintiff's dryer is the same type as those at Anna Regina. I would know what's wrong if anything is wrong.

40

Assuming that plaintiff's dryer was successfully operated by some one and later plaintiff's operation produced abnormal breakage. It might have been due to bad operation or other factors as bad paddy. A riddle is a seive a vibrating seive. It is used for taking out straw and foreign materials larger than a grain of paddy.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 14

10 I see the blue print "04". It is a plan of the layout of the general arrangement of mill No.30/60E a detached rice mill. The mill at Mahaicony Abary Rice Development Scheme appears to be the same model but I can have this verified. Seeing the drawing I would say that the layout is slightly different in that I have 3 large motors driving all the machines by belting and counter shafts.

Allan
Cleveland Chan

Re-
examination
(continued)

20 The platform in accommodating the cleaner and husk aspirator in Exhibit "04" is shown at 2 levels but the platform in our mill is at one and the same level. In Exhibit "04" also the grade is on a wooden platform whereas ours is on a concrete pedestal and not so high above ground.

29th March
1965

These variations in my opinion would make no difference whatsoever in performance, and would not affect the output or quality of production. We did the erection ourselves and not Bookers. We had the drawings from the manufacturer. The mill at Mahaicony Abary Rice Development Scheme was not tested for white rice as there was a cessation of milling this about the same time.

30 If a mill was used for parboiled rice it can be used also satisfactory for white rice. Paddy should be cut before it reached a moisture content of 15%.

If paddy were brought in from field in bags with moisture content of 18% and stored in this way for 3 to 4 months the paddy would go bad but can be milled and would produce a poor quality rice.

Adjourned to 1.45 p.m. tomorrow.

ALLAN CLEVELAND CHAN sworn:-

40 Re-examined by Mr. Farnum cont'd:-

30th March
1965

I have checked the mill at Mahaicony and found it to be a "Grantex" model 30/60E; 2 ton capacity.

In the Supreme Court of British Guiana

Defendants Evidence

No. 14

Allan Cleveland Chan

Re-examination (continued)

30th March 1965

By Court:-

This mill was not tested for capacity. But we tested each machine individually to see if they were working properly. They were all working properly. This mill is at the Mahaicony Abary Rice Development Scheme, Mahaicony. The machines were tested with lead and without lead. That is with Paddy and without paddy. Mr. Jaisingh did the assembling (not Bookers) Jai Singh is a member of my staff. This mill was completed in December 1964 for white rice. The individual machines tested by me did perform satisfactorily. I have no complaints about this mill.

10

From my experience I have no doubt that this mill would work satisfactorily from what I saw in the machines tested.

By Mr. Luckhoo Q.C.:

I agree that so far as to capacity output a test would have to be made. There has been no opportunity yet for that test. Jai Singh knows everything about this mill. He assembled it.

20

(No other witness to be interposed).

Adjourned for fixture.
30.3.65.

Plaintiff's Evidence

No. 15

Seepaul Ganga

Examination

22nd June 1965

No. 15

EVIDENCE OF SEEPAUL GANGA

Tuesday 22/6/65:

Last day of hearing was 30/3/65:

SEEPAUL GANGA sworn:-

I am a farmer and I live at Rose Hall Village, Corentyne. In 1962 I had paddy at plaintiff's mill - 88 bags. I had there. It was to be dried and milled. During December 1962 I arranged with plaintiff to dry and mill my 88 bags of paddy. The following day I went to plaintiff's mill and there I saw Mr. Chung of Bookers (plaintiff told me it was Mr. Chung). Plaintiff told me that Mr.

30

Chung would do the drying of the rice. Mr. Chung asked me "where is the rice?" I showed him the paddy which was in the mill. Mr. Chung then examined the paddy and then said "you have very good paddy!" I was then told by Mr. Chung to return the next day. I went the next day and Chung told me to put the paddy in the dryer. I did so and all 88 bags passed through the dryer from 8 a.m. to 5 p.m. Mr. Chung supervised the dryer, one Ta-oun and another fellow I don't know his name - one Inshan. I was then told by Chung to return the next day. I did so and I saw Mr. Chung, Ta-oun, Inshan and other persons. Milling started at about 8.30 a.m. of the very paddy which was dried before. The milling finished about 6 p.m. in the afternoon under Mr. Chung's supervision. The 88 bags produced 22 bags whole grain rice and 25 bags broken rice. The whole grain was valued at \$15.00 per bag and the broken about \$7.00 per bag. The rice was shipped to the Board. The 88 bags of paddy were contained in big sugar bags.. It was a crop from pure line paddy sowed. It was reaped with a combine. The paddy was not too dry or wet when reaped. It was cut in good time. It was not suncracked paddy. There was no foreign matter in the paddy. I had expected about 50 bags whole grain and 3 bags broken grain rice. I have about 15 years experience in planting rice. I am now 31 years old.

In my opinion the paddy was overdried in the dryer and it burned. I say so because when I tested it with my teeth by biting it, it broke up.

I talked to Ally (plaintiff) about my rice breaking up and he compensated me by giving me \$280.00. Since then I never went back to plaintiff's mill as my mind broke from the mill.

By Mr. Farnum Cross-examined:-

It was near Xmas time when I took the rice to the mill. It was milled near Xmas time. I don't know when the rice went to the mill. It went in my name. Seepaul Ganga. I am called Baba. The rice was sent in the name of B. Ganga.

I filled the drum with the paddy and an elevator took it up. I tested the rice before the milling. Mr. Chung was present when I tested it but I

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 15

Seepaul Ganga

Examination
(continued)

22nd June 1965

Cross-
examination

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 15

Seepaul Ganga

Cross-
examination
(continued)

22nd June 1965

told Chung nothing after I tested the paddy. At the time when I tested the paddy I believed it was going to break up. He had not started to mill yet. I believed that Mr. Chung was going to break up my paddy. I was willing that Mr. Chung should mill the paddy. Up to this point plaintiff had not promised me any compensation. Plaintiff was present with Chung before the milling started and I saw 1 bag whole grain and 2 bags broken; I called Chung's attention but I still wanted him to mill the whole 88 bags. After I got half way through I stopped Chung milling but Chung said the rice going to change. I told Chung "stop milling the rice too much breaking" then Chung said "the rice gwine change!" We had not quite reached the half way through when I stopped Chung. When I stopped Chung I had about 8 bags broken. I was an experienced rice farmer I had tested the paddy before the milling. I was satisfied that the whole 88 bags of paddy were over-dried.

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I believed Mr. Chung when he stated that "the rice would change" and I let him mill all. I needed money. My story is the truth. I have not come to bolster up any story. I do know that the mill is working. I gave no receipt to plaintiff for the compensation of \$280.00. Plaintiff did not ask me for a receipt and I gave none. I knew plaintiff for several years.

Plaintiff did not tell me that he was buying a mill. I saw the mill being put up. I heard about this case during the early part of this year. I got my bag from the Board and I got some from plaintiff. I paid Ally for his bags. I can't remember how much.

30

No Re-examination

No. 16

Kamaludeen Khan

Examination

22nd June 1965

No. 16

EVIDENCE OF KAMALUDEEN KHAN

I am a rice farmer. I live at Black Bush Polder. I have 10 years experiecene as a rice farmer. I know Plaintiff's rice mill at Albion. I took in March 1963 206 bags of paddy to plaintiff's mill. I grew it from pure line seeds - No. 79 paddy. It was reaped by combine. It was in

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10 very good condition and had no foreign matter. It was not suncracked. I took it to plaintiff's mill and delivered it to plaintiff. We had a talk and as a result I went back and I saw Chung there. I went to dry the paddy - plaintiff was there also. Chung asked me to dry the paddy on the dryer. It was poor weather for drying on concrete and I agreed for it to be dried in the dryer. Mr. Chung supervised the drying in the dryer. One Inshan and a few others came with Chung and did the drying.

Adjourned to 1.15 p.m. today.

1.20 p.m. Resumed:-

KAMALUDEEN KHAN sworn:-

20 The drying of the paddy started at 8 a.m. until 2 a.m. the next morning. Twenty bags were left and these 20 bags were dried on the concrete. Mr. Chung himself milled the 186 bags which he dried in the dryer. He started milling at 8 a.m. until midnight. The 186 bags produced 51 bags whole grain and 36 bags broken rice. The 20 bags were then milled. Mr. Chung milled this himself - the 20 bags produced 10 bags of whole grain and 1 1/4 bags of broken and chips. I had expected only 5 to 6 bags of broken rice from 100 bags of milled rice that is about 6%. The rice that was dried by the plaintiff's dryer was about 40% broken and this was abnormal.

30 After the first 6 bags of rice were milled I stopped Mr. Chung but he said the rice would come out good just now and he began to adjust the cones. He said he would pay me for the broken rice - Chung told me this after I insisted that he stopped the milling. I spoke to Chung about 2 or 3 occasions. I never got payment from Chung. I spoke to plaintiff after Chung told me to speak to plaintiff as he (Chung) made arrangements with Ally. I spoke to Ally (Plaintiff) and he paid me \$448.00 as compensation. All the rice was sent to the Board except the 1 1/2 bags broken chips. The 51 whole grain passed for "white 5, 4 and 6 grade". I got \$14.22 for white 6. I got \$7.20 per bag for the broken. The 20 bags (of the 206 bags) which were dried on the concrete was not so well dried and yet it produced only 1 1/4 bags of broken and chips.

In my experience I felt that the reason for

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 16

Kamaludeen Khan

Examination
(continued)

22nd June 1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 16

Kamaludeen Khan

Examination
(continued)

22nd June 1965

Cross-
examination

the great amount of broken rice from the 186 bags was because it was unequally dried. Mr. Chung had supervised all the drying and milling. I have not been back there since to mill my paddy. At Black Bush I am a chairman of Mibikuri Johanna Co-operative Society. The Society controls over 5000 acres and we are about 200 members.

By Mr. Farnum Cross-examined:-

After I got my money from plaintiff I was not fully satisfied but was glad to get it. I did tell plaintiff that Mr. Chung had sent me. I told plaintiff that Mr. Chung had told me that he (Chung) had made arrangements with him and what he was going to do. Plaintiff asked me for the grain certificate and I gave him. When Chung spoke to me I understood that Chung was paying. Chung said he (Chung) wanted to mill the rice and he (Chung) would pay. I never asked Chung how much he was going to pay. When Chung promised to pay me, about 30 bags of rice were already milled. Up to that time I was telling Chung to stop milling the rice and Chung said then I want to mill it I would pay you. The plaintiff was not present when Chung told me this. Plaintiff was present after Chung spoke to me. Shortly after Chung spoke to me plaintiff came in and I put my story to plaintiff who said nothing. My whole story is not entirely untrue.

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I realised that the rice was breaking because it was unevenly dried when the first lot came out that is 5 to 6 bags. I did not test the paddy before milling to see if it were unevenly dried. I did not interfere with the rice while it was being milled but I saw it coming out and sampled it from the beginning. It is true that when I saw the sample I knew that there was going to be a lot of breakage. I had spoken to Chung on about 3 occasions - one was at Bookers Stores New Amsterdam, another occasion was on the Corentyne road. This was between the time I was waiting on the certificate

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from the Board. I never told Mr. Chung how much I wanted. I never told anyone how much I wanted. After I got the compensation it was the end of the matter. The next time I was asked about the incident was about one year after. When plaintiff met me at Rose Hall, Corentyne while I was driving a car. Plaintiff stopped me and asked me if I could remember how much money he gave me and what happened when we were drying and milling the rice. That was all the conversation we had. Sometime after, during last year, plaintiff met me and said I had promised him to give evidence and I said yes. I met him at a wedding house at Albion when he told me this. I don't remember which wedding. I attended plenty weddings but I can't remember the names of the people concerned. I was asked last week to come to town to give evidence and plaintiff brought me down Sunday last. He had asked me before but I was in the rice field ploughing. I gave nobody any statement. I told my story. I now say that I gave a statement in writing at the wedding house at Albion. I had paper in my pocket. This was the only statement I gave. I had a written invitation to the wedding. I knew the people well. I now say I don't remember which is the identical place we met. I never gave any receipt to Ally for the money. Plaintiff did not ask for receipt and I did not give one. Plaintiff paid me in cash and not by cheque. The plaintiff took the grading certificate and calculated. I don't know how he arrived at the figures but he paid me \$448 and I took it and was satisfied. I did not claim any particular amount. I saw Chung several times after but we did not talk about it.

Re-examination:-

I attended plenty weddings could be anything between 2 dozen during the whole year. This was the only occasion when I received compensation for my rice from a miller. It was the only occasion when I had dried and milled at plaintiff's mill. All rice mills are numbered by the Rice Marketing Board and are referred to by the number. When the miller sends the rice to the Board he has to state in the notification form the name of the farmer whose rice it is. I had signed a form in relation to this shipment. My bags were marked by me "K.K." The notification forms have lines to be filled and

In the Supreme
Court of
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Plaintiff's
Evidence

No. 16

Kamaludeen Khan

Cross-
examination
(continued)

22nd June 1965

Re-
examination

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 16

Kamaludeen Khan

Re-
examination
(continued)
22nd June 1965

No. 17

Esaur

Examination

22nd June 1965

I sign the form after all the lines are filled up. I received the payment. I had received a grading certificate and I had given it to Ally. I am sure that the shipment sent to the Board was processed by Chung.

Through the Court cross-examined:-

The first time I ever wrote a statement at a wedding house was on that occasion.

No. 17

EVIDENCE OF ESAUR

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ESAU sworn:-

I live at Port Mourant, Corentyne. About 2 years ago I took 208 bags of clean paddy to plaintiff's mill for soaking and drying to mill brown rice. The paddy was soaked in 2 tanks. I then prepared 100 bags to take to Port Mourant to dry and 108 bags to dry at Jumat Alli concrete. Mr. Chung then came and arranged with me to dry 100 bags in the plaintiff's dryer. This is the same 100 bags - I wanted to take to Port Mourant. I asked him how much he charged and told me to go to Plaintiff I went to plaintiff and he (plaintiff) charged me \$30:- to dry the 100 bags in his dryer. I agreed. I went the following morning and Mr. Chung and Inshan and another took the paddy 100 bags and it was put into the dryer about 8 to 9 a.m. up to 6 p.m. and it was not finished and I left. The next morning I went back and Chung told me, 3 days after I must come back as the thing drawing heat. I left - after 3 days I went back to Chung the 3rd day and he told me to bear patience. I returned 9 days after from the 1st day and he said its alright.

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We now started to mill and after 2 bags rice, I told Chung that all the rice is being broken up. He then told me to take 5 bags out of the 100 bags of paddy and dry it on the concrete. I dried it

for 2 hours. Chung then put it on the mill and then I saw shine shine rice. The 5 bags produced 2½ bags whole grain and about a sauce pan broken rice.

Chung then advised me to dry the remaining 95 bags on the concrete but plaintiff said no - that he was going to dry it on the dryer as other rice was on the concrete.

10 The paddy was again passed through the dryer and 4 days later he Chung began to mill the rice again and milled all. I got a total of 29 bags broken and 19 bags whole grain from the whole 100 bags of paddy.

I then dried the 108 bags on the concrete and I milled it with another person at the same mill and got 64 bags whole grain and 4 bags broken.

20 I used the big blue sugar bags. I found no fault with this 108 bags. I sent all the 108 bags I milled to the Board. The rice Chung milled, I was dissatisfied, I told him that I lost and I should have got more. He said don't frighten you will get the money from Bookers. I said alright and the rice was packed and left there. Chung then asked me to go to Bookers in town New Amsterdam and he would write a report. I went 2 days after and he promised to write us and send me a letter when to come. After several weeks I did not get a letter and I went to town to meet Chung. I spoke to him and Chung said, 30 "Man that mill not me own", I told him I am a poor man. He made no settlement. I then went to plaintiff and he asked me to return in 3 days and he paid me \$250.00. I now say \$950: for all the rice - 48 bags. I don't know what plaintiff did with the rice and he told me that if Bookers paid me I have to give him back his money but Bookers never paid me.

I never went back to plaintiff: It was the first time I went to that mill.

By Mr. King cross-examined:-

40 Chung took 13 days to dry the 100 bags. I don't know how the rice broke. It must be the dryer. The rice show shine, shine, but a lot broken. He dried first for 9 days and then when milled it broke. I

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Court of
British Guiana

Plaintiff's
Evidence

No. 17

Esaur

Examination
(continued)

22nd June 1965

Cross-
examination

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 17

Esaur

Cross-
examination
(continued)

22nd June 1965

was planting rice since I was a boy. I don't know if the rice was overdried. Chung fatigue the rice. He dried it 4 times. I stopped Chung on the 9th day after he milled 2 bags. I then took 5 bags and dried it on the concrete and then milled it. It was beautiful and super rice - 2½ bags from the 5 bags. I realised that the concrete was the right thing. I allow the rice to go back into the dryer because plaintiff said that it must be done so. No one promised me compensation. I now say Chung promised me compensation after the rice came out of the dryer and milled it was broken up worse. I saw from the second bag of rice that too much was being broken. I stopped Chung "but he nah stop". He told me "I nah want my money" I said yes. So I contented that I would be paid and so I witnessed all the rice mill - 48 bags in all (29 broken 19 whole). I know plaintiff since he was a boy. I knew his father also. His grandmother lives near to me. I don't know what he did with the rice. I gave no receipt and took none. Plaintiff did not ask for receipt. I don't know about years. It is 2 crops now. I don't remember what year. "Me nah know about month and time". About 3 weeks ago I was asked to give evidence and I was told that I could get back my money I have to get about 10 bags more. Plaintiff is paying for my hotel and travel. I expect to get my money. I gave lawyers a statement 2 weeks ago. Plaintiff took me to give a statement. I expect to get my money after the case that is why I am giving evidence. I was paid in cash. It is true that Chung told me that Bookers would pay.

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No re-examination

Adjourned to tomorrow at 9 a.m.

23/6/65 Resumed 9.10 a.m.

No. 18

No. 18

Ramjit
Boopsingh

EVIDENCE OF RAMJIT BOOPSINGH

Examination

RAMJIT BOOPSINGH sworn:-

23rd June 1965

I live a Susanah, Corentyne Berbice. I am a certified electrician. I have engineering experience for 25 years: Mechanical repairing and electrical repairing. I worked at La Bonne Intention

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10 Estate East Coast Demerara for 10 years as an electrician and mechanic. I worked at Rose Hall, Canje and La Bonne Intention. I work at Resaul oil mills for 8 years as an electrician and chief engineer. In 1961 I worked at East Lothian estate, Corentyne, Berbice, in January 1961. Dr. Fraser is in charge at East Lothian. Dr. Fraser has a one ton Grantex Rice Mill. Later in 1961 Dr. Fraser acquired a Grantex Dryer. I worked on the mill as an operator with Dr. Fraser. I also operated the Dryer with the mill. I worked with Dr. Fraser up to 17th April, 1965. I was working as a whole time operator from 1962 on both the mill and the dryer. The mill used to turn out 4 to 5 bags per hour whole grain rice (white). I know Mr. Chung (in court). He. (Mr. Chung) was in charge of erecting the dryer. I was present. Before the dryer was erected Dr. Fraser dried paddy on the concrete floor. After the dryer was erected Chung operated the dryer a few
20 times then we operated it. During the time Mr. Chung operated the dryer no progress was made with it. When paddy was dried on the concrete and then milled we got 5, 6 or 7 bags broken from 100 bags paddy. When Mr. Chung operated the dryer the result was that we got 30 to 40 bags broken rice to every 100 bags of milled rice. We only got 60 bags or less of whole grain.

30 Farmers brought paddy to the mill at Dr. Fraser but only 2 or 3 farmers would use Dr. Fraser's dryer out of 100 farmers. All the other farmers used the concrete drying floor. Most of Dr. Fraser's paddy was dried in the dryer but when he got concrete he would use concrete. Dr. Fraser mostly use the concrete and not the dryer. Dr. Fraser's dryer dried 50 bags of paddy in about 4½ hours. In 1962 I took over the operation of the dryer in full. I used the dryer about 5 to 6 times during the crop. Sometimes I would dry only a thousand bags in the dryer a crop and about 150 thousand - I now say
40 60 thousand on the concrete. The dryer was of very little use. In April 1965 the plaintiff (Ally) made certain arrangements with me to make a test of his mill and dryer (Grantex make).

I went on the 21st April 1965 and I inspected the mill and dryer of the plaintiff's at Albion. The mill and dryer were in perfect condition. I inspected the paddy to make the test with. I found the paddy very good. It was the best paddy as it was passed through the paddy cleaner. "I was

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British Guiana

Plaintiff's
Evidence

No. 18

Ramjit
Boopsingh

Examination
(continued)

23rd June 1965

In the Supreme
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British Guiana

Plaintiff's
Evidence

No. 18

Ramjit
Boopsingh

Examination
(continued)

23rd June 1965

made to understand so." I now say it was without straw and clean. This is a sample before the test - Tendered: Exhibit "Q1". I selected 303 bags of paddy for my test. The paddy was of similar quality to "Q1". During my test I made notes.

The paddy weighed 56,948 lbs. I now say 45,948 lbs. This is the slip from plaintiff's adding machine: Tendered Exhibit "Q2". The paddy belonged to one "Bambola" of Port Mourant.

I began trying the paddy from midday in plaintiff's Grantex dryer. I used the very and same principle I used at Dr. Fraser's dryer in drying the paddy. The moisture content was 18%.

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I started at midday by the Batch system. I lit the fire and started to feed the paddy in the copper. I fed 50 bags of paddy in one hour and thirty minutes (1 hour 30 minutes). I took the same time to rotate the dryer. After rotating for another 1½ hours I then delivered it to the bin. (It is now 3 p.m.) I then took another 1½ hours to discharge it into the bin. (4.30 p.m.) This was the first batch of 50 bags. I did 6 batches in a similar manner. The total time taken was 25 hours. The paddy is put into the bin to cool off. I milled the said paddy after it was cooled. I began to mill on 23rd April 1965 at about 1.15 p.m. and I took 23 hours to mill the 303 bags of dried paddy. I was finished at 12.15 p.m. on the 24th April. The 303 bags produced 94 bags of whole grain rice and 54 bags of broken rice and 10 bags of chips. This is a sample of the whole grain produced: Tendered Exhibit "Q3" (It's white rice). This is a sample of the broken rice: Tendered Exhibit "Q4". This is a sample of the chips: Tendered Exhibit "Q5". I was present all the time during the drying and milling operations. I controlled the whole operation. I had to make necessary adjustments.

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On 26th April 1965 I made another test on the "continuous system" of drying - I took 100 bags of clean paddy (about the same kind as before). It weighed 15,110 lbs with moisture content 17%. I lit the furnace at 9 a.m. on 26th April 1965 I fed 50 bags and filled the dryer up to 10.30 a.m. I then rotated for 45 minutes up to 11.15 a.m. I then started discharging to the bin and at the same time started feeding the remaining 50 lbs. into the hopper. At 2 p.m. the feeding was

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completed and at 3.30 p.m. the drying of the 100 bags was completed. This took in all 6½ hours. The paddy remained in the cooling bin for 24 hours. On the following day I started to mill at 8 p.m. on 27th. As soon as the first bag of whole grain came off I got a report from the grower that the broken bag was filling up. I then looked and saw this.

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Court of
British Guiana

Plaintiff's
Evidence

No. 18

10 I then tested the paddy for moisture and found it 15% moisture content. I then stopped the milling and gave the farmer instruction to dry the paddy on the concrete floor as I was not satisfied. I did not mill the balance of paddy.

Ramjit
Boopsingh

Examination
(continued)

23rd June 1965

In connection with the first test the 158 bags were shipped to the Rice Marketing Board I signed the duplicate notification only. This is the duplicate which I signed (I did not sign the original): Tendered Exhibit "Q6". The rice was taken by the grower to the mill I did not go.

20 I did not see plaintiff in 1961 at any time in Dr. Fraser's mill compound - I now say I did see him. He was with Mr. Chung and two (2) other white men. Dr. Fraser plants good paddy.

By Mr. Farnum cross-examined:-

Cross-
examination

30 It is not true that Dr. Fraser dismissed me at Easter week end. I was not dismissed by Dr. Fraser. I am not working with Dr. Fraser now. I stopped working for Dr. Fraser on the 17th April 1965, because he closed down operation and told me to go home and he would send for me when he wants me. After I left Dr. Fraser I did not work for plaintiff on any night shift. It is not true that during the last crop (Spring) I worked for plaintiff. It is untrue that I was never in control of Dr. Fraser's mill and dryer. I was not operating the dryer under the instructions of Mr. David Fraser. It is not true that all of Dr. Fraser's paddy used to be dried in his "Grantex" dryer. It is true that farmers had to pay for the use of the dryer. They
40 do not pay for drying on the concrete. That is free. Dr. Fraser used to charge 32 cents per bag for drying in the dryer. The farmer used to bring his paddy and dried it himself on the drying floor.

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Court of
British Guiana

Plaintiff's
Evidence

No. 18

Ramjit
Boopsingh

Cross-
examination
(continued)

23rd June 1965

The first test was that of pure line paddy - that is the grains were of the same length and quality. I did examine it carefully.

Red rice was among the paddy I milled. Red rice is a good grain. I agree that when white patches appear on the rice it is evidence of immature paddy used. I don't agree that if immature paddy is milled that it would all break up. I would mill immature paddy. If I mill immature paddy its the growers fault. Immature paddy when milled break up easily. I see a white chalkiness on these 2 grains and these 3 grains taken from "Q1". All 5 grains have white patches or chalkiness. This indicates that these grains are immature. I have shelled some grains of the paddy from Exhibit "Q1" and these are white patches after shelling. I have shelled 5 grains of the paddy from the sample Exhibit "Q1". These are 4 of the 5 grains I showed you earlier. All taken from Exhibit "Q1". I agreed at first that the first set of grains showed signs of immaturity because of the bright white marks or patches. The 5 grains I shelled showed white marks but not bright white marks. The bright white marks show that the paddy would break faster, the white marks show that it would not break.

(Court examines white marks on grains - observe all white marks same colour none brighter - but patches larger than some). (Evidence cont'd).

It is true that all the grains shelled have a white patch.

(Mr. Luckhoo agrees from inspection of grains that observation of court is shared by him. The colour is the same but the patches vary in size). (Evidence cont'd).

When I did this test the mill was in good order but too slow. I believe it was electrical troubles.

It is true that in the second test the paddy was milled with too much moisture. It should have been 13% or 12½% but it was 15%. I agree it was careless of me to start to mill 15% moisture content. In white rice too much moisture would not clog the screens and slow up the production. If there is too much moisture it causes the rice to break up.

In the first test I did take the moisture content. I did not say so first but I did - I did so before I had started to mill. I did not take the moisture content in the second test before milling because the first was Batch drying and the second was continuous. I now say I forgot.

10 It is not true that I do not know much about dryers and that is why I forget. Dr. Fraser's dryer was the first I ever operated in my life and when it was operated it was only occasionally. Mr. Chung taught me to operate it. I know plaintiff's operator, I call him Baba.

Adjourned to 1.15 p.m.
23/6/65

1.15 p.m. Resumed:- 23/6/65

RAMJIT BOOPSINGH sworn: Cross-examined by Mr. Farnum (cont'd)

20 I know Baba (plaintiff's operator) from 21st April 1965. I never knew him before. I milled the rice of Bamboola for the purpose of this test. I have never milled any other rice for any other person. I do not know one Madray - of Port Mourant. It is not true that I was employed as the night operator of the plaintiff's mill this year or during the Spring crop. I have worked nowhere else since I ceased working with Dr. Fraser. When I said that Dr. Fraser closed down on the 17th April I mean that something was wrong with his mill. He was angry, and he told me to go home. Dr. Fraser did not accuse me of hiding any part of the mill. 30 The engine water pump seal was not missing. The engine needed a seal. It did not disappear to my knowledge. Dr. Fraser did not accuse me of removing the water pump seal. No one accused me of removing the seal. Dr. Fraser was not angry with me. He was angry because he did not get to ship his rice to the Board. I did return to Dr. Fraser's mill after the 17th April 1965 and I spoke to Mr. David Fraser. I did not tell Mr. David Fraser that 40 I was working with Mustapha Ally. Mr. David Fraser was there when I returned there. I now say he was operating the mill when I went there. I have not been sent for since. I never told David Fraser that I was working at plaintiff's mill. I had arranged about a month before to carry out a test. There is a discharge worm on the dryer. While I operated

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 18

Ramjit
Boopsingh

Cross-
examination
(continued)

23rd June 1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 18

Ramjit
Boopsingh

Cross-
examination
(continued)

Re-
examination

23rd June 1965

the dryer the worm did not break. I do not know if it broke with anyone.

By Mr. Luckhoo Re-examined:-

The motor of the electrical units do not carry enough power, and when I try to advance speed it would cut off. It can't carry more weight I could not get the mill to work faster. The amount of broken rice produced was not satisfactory. The mill and the dryer parts were in good condition. I made a visual check and found nothing wrong. The paddy I tested was matured and was similar to the paddy generally used.

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By the Court:-

The paddy which was dried and milled by Dr. Fraser's dryer and mill was not satisfactory. Dr. Fraser's rice which was dried in his dryer also broke up too much - plaintiff's mill was worse still. Dr. Fraser used the broken rice to feed his pigs. Dr. Fraser's mill and dryer were the only ones I operated. I never operated any other multistage rice mill. I never operated a Schule mill or any other.

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No. 19

EVIDENCE OF ZAILABDEEN HUSSAINIn the Supreme
Court of
British GuianaZAILABDEEN HUSSAIN sworn:-Plaintiff's
Evidence

No. 19

Zailabdeen
Hussain

Examination

23rd June 1965

10 I live at Albion Estate Nigg Settlement, Berbice. I am the manager and accountant of the plaintiff's Rice Mill. I was employed in 1962 by plaintiff as a part time payroll clerk. I held this position up to September 1963. From October 1963, I was employed as a full time accountant and manager of the mill at \$40 per week. I am 38 years old.

20 I worked from 1945 to 1956 with Bookers Sugar Estates Ltd., Albion Estate as chief time keeper and store keeper. I left Bookers at my own request. I then joined Messrs. Pauling and Co. of Black Bush Polder as a senior accounts clerk until their contracts were finished in Berbice in 1961. After that I joined the Rice Development Company of Black Bush Polder as a senior Field clerk and a Store keeper. I left of my own accord and joined the plaintiff's employment as a full time accountant and manager of his mill. My duties included supervising all labour and general accounts. I kept the books of assets and expenditure. I kept ledgers which were written up by me. I have the ledgers with me here.

30 From my ledger the total expenditure of the mill from 1st November 1962 to 5th June 1965 (\$74,011.98 cents). Seventy four thousand and eleven dollars and ninety eight cents. During the same period moneys received from farmers as milling fees from December 1962 to 5th June 1965 \$62,356.00. Deficit was \$11,655.98.

40 We had to convert the farmer's cheque into into our own use during the crop to survive. After the crop we borrowed money from Mrs. Ally (plaintiff's wife) which she accumulated from a trucking service which she owns. The plaintiff's mill owe nine thousand dollars to the Barclays Bank D.C.O. New Amsterdam Branch.

I kept a log book as to the time paddy took to be processed into rice. The time varied from

In the Supreme
Court of
British Guiana

3 to 7.4 bags per hour maximum in respect of milling only. I have experience of other mills at Black Bush Polder and at Hogstye. We are 3 times slower than the other mills.

Plaintiff's
Evidence

No. 19

Zailabdeen
Hussain

Examination
(continued)

23rd June 1965

I had several complaints from farmers. I am dissatisfied about the drying floor capacity. The dryer was used recently for making tests. Apart from these we were forced to use the dryer by a few farmers because the paddy was on the drying floor getting damaged by cattle. This was so because we had not enough drying floor space and could not cope with the amount of paddy we were getting in and it was raining. This happened last month - May. When it rains the paddy gets wet and the farmers ask plaintiff to pass it through the dryer at their risk. We dried also at Port Mourant and at the Agriculture drying floor at Black Bush Polder. There are disadvantages especially when it is raining on the drying floor. The farmer has to remain there several nights watching his paddy from being pilfered away or damaged by animals.

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My maximum output is obtained when 3 operators work that is plaintiff, Sulaiman and one Haniff. The mill gets the full capacity of feeding when the 3 operators stand by the elevators and by the cones in case of adjustment. At all times we receive paddy throughout the year. The paddy received is 95% good quality. Between 1962 and 1963 I saw Messrs. Chung, Inshan, Blair - Bookers employee at the mill. I paid no particular attention to their activities because at that time I was merely a part time worker. I do know that compensation was paid to growers for damaged paddy through the dryer.

30

Cross-
examination

Cross-examined by Mr. Farnum:-

I have been keeping books for many years.

Mr. Farnum:-

Question:-

Were any receipts given by the Rice Farmer to plaintiff in respect of the compensation paid to them for damaged paddy?

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Answer: I don't know about that! I now say I know one farmer who gave a receipt. The amounts paid out do appear in my ledger.

Question: Do you know that in making out your income tax returns you will have to show supporting vouchers.

In the Supreme
Court of
British Guiana

Answer: I do know that. I do not make income tax returns and I do not know who make out plaintiff's returns.

Plaintiff's
Evidence

No. 19

10 My books are audited by an accountant in Georgetown. I don't know the accountant. Mr. Ally takes the books down. I have not seen any auditors name in the books. I hold a London Chamber of Commerce intermediate certificate. I do know that auditors call for vouchers to support all items of expenditure. I have never seen an auditor's report as to the books.

Zailabdeen
Hussain

Cross-
examination
(continued)

20 Amounts paid out to farmers as compensation were paid before I kept the ledger. During my employment from 1962 to this year I have only made one entry as to compensation paid relating to T. Bambola in May 1965. While I was a part time worker with plaintiff I had seen him pay farmers compensation for damaged paddy. I don't know whether receipts were taken from the farmers. Plaintiff at that time kept his own books. This was in 1962 and 1963 before October 1963. I am not in a position to say (apart from the one entry I made) that there are entries in any ledger of any compensation paid.

23rd June 1965

30 The plaintiff's operator is a very experienced man his name is Sulaiman. He is at Albion still employed with plaintiff. He (Sulaiman) was working at the mill before I went there. I met him there. He is in charge of the mill operations. He knows all about the operations. Plaintiff was forced to use the dryer this year because paddy was wet on the floor and the farmers 3 or 4 insisted that it be used. The farmers included one Sunny Madray of Port Mourant. His rice was dried in the dryer and milled by plaintiff's mill. No compensation was paid to Madray. The plaintiff himself operated the mill when Madray's paddy was milled. It is true that plaintiff's mill was running 2 shifts during the Spring crop - a day shift and a night shift. The day shift was operated by either plaintiff himself or Aziz Haniff. Sulaiman operates alone in the night. Another farmer who assisted was Hector Bangar and another was Joe

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In the Supreme
Court of
British Guiana

Bangar. They insisted that the dryer be used. They were paid no compensation either. The other paddy which was not dried but wet had to be soaked for parboiled rice.

Plaintiff's
Evidence

No. 19

Zailabdeen
Hussain

Cross-
examination
(continued)

23rd June 1965

I would say that plaintiff's mill did not mill 16,000 bags of paddy between January 1965 and June. I can say from the books. I now say 7413 bags of rice were milled between January and June and that was 13,500 bags of paddy. This 13,500 bags of paddy produced the 7,413 bags of rice. All of this rice was shipped to the Board. This average is poor because of the number of hours it took to produce this rice. I do not agree that the yield was good. I agree that the amount of 13,500 bags of paddy yielding 7,413 bags of rice was a good yield but that included all the broken rice. There was a man named Ramoo who was employed by plaintiff in 1964 as a general labourer for cleaning and maintenance. I only knew Sulaiman as the only operator in 1962, 1963-1964. In 1965 Haniff came on. That is apart from himself.

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I see an entry at page 419 of the ledger in the name of Dadmusar. This shows that in April 1965 189 bags of paddy were dried in the dryer for Dadmusar. I had forgotten this. There might be more if I look through the books. I will check for you tonight. Drying in the dryer cost 45 cents per bag. The mill operated until 5th June 1965 and we closed up for this case. I know Boopsingh as the man who made a test of the mill in April 1965. I was present in the mill when he made the test. These 2 books show the amount of paddy milled. Tendered Exhibit "R1-2".

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Adjourned to 9 a.m. tomorrow
24/6/65

24th June 1965

Resumed 9.00 a.m. (Thursday) 24/6/65

ZAILABDEEN HUSSAIN sworn: cross-examination cont'd
by Mr. Farnum:-

I now say the dryer was used 3 times this year for 7 (seven) persons - all farmers viz: S. Madray of Port Mourant, Joe Bangar, Hector Bangar, Dadgosar, Sam Narine, Balgobin Jay Jay and Timal. The dryer dried 700 bags of paddy for the 7 farmers named. The maximum charge for milling and drying on

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concrete is \$1.80 bag. I now say \$1.50 per bag for milling alone and 30 cents per bag for drying on the concrete. When we (plaintiff) supply labour. We always supply the labour for drying on concrete and milling. I now say in minor cases sometimes a farmer walks with his labour: in that case he pays \$1.50 per bag milling but in 95% of all work done by us. The transportation is done by plaintiff's wife's trucking business. The \$1.50 per bag does not include transportation of the paddy to the mill. I do keep account for the transportation in the books of the mill. The amount received for transportation is not included in the figures I gave the Court. It is true that we used Mrs. Ally's transportation money in our Mill business. This is done with her consent.

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By Mr. Luckhoo - Re-examination:-

The weather has been very bad in April this year and that is why the dryer had to be used as drying on the concrete floor is delayed.

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No. 20

EVIDENCE OF HARRY PAUL

HARRY PAUL sworn:-

I am the Chief Agricultural Officer in British Guiana. I have experience in rice for 18 years. I see Exhibit "Q3" a sample of rice. Looking at this sample I am of the opinion that it is medium grain variety - probably No. 79. It has a high percentage of broken grains. When rice is milled it is not so easy to say whether it was matured or not, but looking at the paddy one can tell. I do see some white patches on the grain that is starch and which probably is an indication that some of the grains were not fully ripe.

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I see Exhibit "Q1" a sample of paddy. I have shelled a few grains and it is my opinion that there is a small percentage of unripe grains in the sample. I shelled 3 grains and all 3 are unripe that is immature. I selected these but it is my opinion that 3% of the sample is immature grain.

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In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 19

Zailabdeen
Hussain

Cross-
examination
(continued)

24th June 1965

Re-
examination

No. 20

Harry Paul

Examination

24th June 1965

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 20

Harry Paul

Examination
(continued)

24th June 1965

I have now shelled 6 grains 2 are red rice and out of the 6 one is an immature grain. Red rice is a wild variety of grain from paddy which was left from the old crop. The redness would affect the grading.

The 6 grains I just shelled I took at random. I agree that a white patch is also at the tip of 2 other grains, but at the tip, and the other is a streak along the back. I did not see this before. I now say it is a sign of immature paddy that is, not properly ripe. I would not say that the slight white patch in one grain at the tip is a sign of immaturity in white rice. When the white patch is at the body of it or middle it is a sign of immaturity. Out of the 6 grains 3 were red rice and 2 were immature. The presence of red rice shows that the paddy was not pure line seed. I selected the 6 grains at random from the sample. If 5 grains yesterday picked at random were with white patches, then I do agree that the sample Exhibit "Q1" has a high percentage of unripe grains. To remove the red colouration it calls for heavier milling, that is, more rubbing with the cones and this must cause increased breakage.

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I would select normal mature paddy and good quality to carry out a test on any mill. If one used immature paddy one would get a lot of broken grain.

Re-
examination

Re-examination:-

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There are degrees of immaturity. In these days with combine harvesting the variety which is used - 79 falls to the ground and farmers in an effort to avoid this reap the paddy slightly immature.

The sample Exhibit "Q1" (paddy) could be regarded as below the normal. I would not say that the sample is a good quality of paddy.

Most white rice has a white patch at the tip. The extent to which it stretches down may indicate the degree of immaturity. The white streak in a particular grain may be caused by paddy when being reaped had a certain amount of moisture and not being dried out to 14% before storing.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 20

Harry Paul

10 By Court:

I am a B.Sc. special in Chemistry of the University of London. I hold a masters degree in Agricultural Chemistry from McGill University and I am a Ph.D. London in agricultural chemistry etc. and I also hold Diploma of the Imperial College of Science and Technology London. I am also a Fellow of the Royal Institute of Chemistry by examination.

Re-
examination
(continued)

24th June 1965

No. 20A

EVIDENCE OF MUSTAPHA ALLY

No. 20A

Mustapha Ally
(recalled)

20 Application to recall Plaintiff to prove special damages.

Examination

24th June 1965

MUSTAPHY ALLY sworn:-

I am plaintiff I have been able to assess my special damage from vouchers and other documents and books for wages paid on the construction of my entire rice mill project. A fence and a bridge across a drainage trench were constructed thirdly bunk houses for labourers.

- 30 4th an engine house.
5th a concrete drying floor.
6th a boiler and accessories.
7th a dryer bin.
8th technical installations.
9th paddy bond and attachments.
10th machinery building.
12th An iron and wooden structure for the machinery.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No.20A

Mustapha Ally
(recalled)

Examination
(continued)

24th June 1965

The total sum I expended for all the above was \$131,703.02. This included materials, transportation. Bookers Sugar Estates charges - workmen's compensation during the time erection; Miscellaneous travelling expenses, the opening of the mill, stock in trade insurances and machinery insurances, for a period of 3 years (comprehensive).

My total labour cost for construction was \$67,692.23. Materials would be included in the amount and fuel. I now say it is not labour only. I paid \$20,000 for the generating plant. The total expenditure amounted to \$322,295.25. From March 1962 to date I have paid \$52,500 as interest on Hire purchase for the machinery and also to individuals and firm from whom I had borrowed money. I paid compensation to farmers \$8,000. My loss from my books in operating the mill for 3 years is \$11,655.98. Making a grand total \$394,454.23. I have also lost profits on my capital expenditure. I expected normally at least 25% and that is what I am asking on my capital expenditure. 25% would work out at \$98,612.81 per annum. In 3½ years I should have made about \$345,000.

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Ramjit Boopsingh was never employed by me on my payroll. I had paid him \$100 to carry out a test. He visited me several times after the test and looked on. If I had to go out sometimes he would assist me.

In April and May, 1965, my percentage of broken rice was very high, higher from 1963 to 1964. The percentage of broken rice was high in both cases of concrete drying and when the dryer was used because of bad and excessive rain fall during 1965. April and May 1965 rain fall was very heavy compared with several years back. My mill did work 24 hours per day because there was a sudden glut for white rice by the Board and there were rumours throughout the country by Rice farmers that the Board would be taken by another section of people - a change of administration. It was feared that rice would be sold at \$12.00 per bag and so farmers were very anxious to have their rice milled in consequence there was a rush.

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Resumed 1.15 p.m. 24.6.65:

MUSTAPHA ALLY SWORN: Cross-examined by Mr. King:

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 20A

Mustapha Ally
(recalled)

Cross-
examination

24th June 1965

10 I was my own contractor. I had no clerk of
works. Some of the buildings were put up by a
contractor one Rustum Alli. I had an oral contract
with him. My father added up the totals, I trust
him. He is not an accountant. I charged the
amount of \$10,000 for personal expenses: negotia-
tions, erection and travelling expenses and enter-
tainment etc. etc. for 20 mills at \$500 per mill -
\$10,000. During the 20 months for which I charged
\$500 per month I did nothing else but concentrated
on the rice mill. A lot of the vouchers are in
the name of Jumat Ally. He is my father about 65
years old. He is well known to the estate
authority. I only calculated all these expenses
about a month ago. I did not do so before the case
started. I gave my solicitor estimates visual
estimates - rough estimates to my knowledge as a
20 contractor. I thought that was adequate to commence
legal proceeding. I never had the accounts
audited. I can't afford it - I have vouchers for
all materials purchased. I have for labour also.
I can't remember doing another contract during the
20 months. I sold my draglines to Nabbi & Sons in
1963. In 1964 I was called in by Bookers for a
settlement of this case. I had then 5 trucks.
I have 3 now. I now say my wife has 3 trucks. She
30 borrowed money from her father and I used it to
start life in 1958. I made 300 thousand dollars
profit in 2 years during 1958 to 1960. I never
kept books for my enterprises. I don't keep books.
I keep books for the trucking business in a sort
of way nothing to talk about. I manage the
trucking business for her but she collects. I kept
books for the rice mill from the beginning. I kept
detail books from the beginning of the rice mill
project. I have never yet prepared an income tax
return in my life. The \$300,000 I made in profit
40 from 1958 to 1960 I kept all. I have not paid any
income tax on that yet and I kept no account about
it. I never kept books.

I charged a minimum of \$1.50 per bag to mill
a bag of rice and up to \$2.25 per bag. My mill
produce the best quality of milling but slow
production. I have no receipts at all for the
compensation of \$3000.00 which I paid to farmers.

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 20A

Mustapha Ally
(recalled)

Cross-
examination
(continued)

24th June 1965

I did not pay by cheque. The amount I paid to Bambola was not cash, it was an amount he owed me for milling fees, bags, etc. etc. and I waived it. I took no receipts from Bambola. I do not know if Hussain took any receipt. I borrowed money for completing the project. I borrowed from many people and I paid in all \$52,500 in interest on what I owed.

I built a house in 1961 cost \$70,000. I was my own contractor. My house was put in to obtain the mortgage from the Credit Corporation. I never kept books. I considered to pay an auditor to check my books a waste of money. I never kept books before I started to operate the mill rather before I began the project. I estimate my losses to be about \$100,000 per year on the capital expenditure. I gather this from my discussion with Bookers directors. I never had a rice milling business before. Ramjit Boopsingh called Jit only tested Bambola's paddy. I can't say if Boopsingh milled paddy for Cecil Govinda. He could have as he assisted me sometimes. He was never employed. There is a typewriter in the office. No test was on Govinda's paddy by Boopsingh. I see this memo which was in my book. There is a note here about Govinda's paddy but this test was not completed. I do not know Josiah West. I now see West in court and I do now remember meeting him at Dr. Fraser's mill. My memory tells me I saw him at Dr. Fraser's place. I have never seen Dr. Fraser's mill in operation. I really can't remember if I told Josiah that I went there to see how Dr. Fraser's mill is working. I just can't remember but I can't deny it. It might well be so. I never went to Dr. Fraser's place and ask West for Mr. Chung. I don't remember if West was working on the dryer at Dr. Fraser's. It is not true that I asked West for Chung. It is not true that Chung came up and inspected the dryer and I told him that I wanted a dryer like that. I do know Marshal Ramsey. I don't remember West driving Ramsey to my place. Many writs were served on me last year. I did not know that Marshal Ramsey had a stroke and a bad arm that he can't drive. I never saw West driving Ramsey to my place.

Sulaiman is a good operator. He is still with me. I never parted with him: All business today has labour troubles.

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Re-examination:-

In the Supreme
Court of
British Guiana

Plaintiff's
Evidence

No. 20A

Mustapha Ally
(recalled)

Re-
examination
24th June 1965

10 The very first time I went to Dr. Fraser's mill was in 1961 in company with Messrs. Blair, Chung, Esslemont. During the time when my dryer was being erected and the bin was to be made Mr. Chung asked the carpenter-foreman I had to accompany him to Dr. Fraser's. I myself wanted to go but Mr. Chung told me, "Man if I take you Dr. Fraser would chase all of us out of the place". Chung and I were very friendly then and I asked him why? and Chung actual words were "Since Dr. Fraser became aware of your putting up a mill at Albion some how or other he would chase all of us out as he does not like it". About 2 weeks before the opening of my mill I went to Dr. Fraser and he sold me 2 sheep. Early in January this year I went purposely to see a gauge and purchased one from Bookers for my dryer. That was the 3rd time and the last time I went to Dr. Fraser.

20 Before 1958 my father was a tenant of Dr. Fraser's ricelands. I performed all the services necessary to the running and managing of the milling affairs.

My father is a contractor and business man. He is a supplier of labour and materials to Bookers estate. He is not doing that now: He is not fully retired but he can't work.

No. 21

EVIDENCE OF SEWDAT RAMPAT RAM

No. 21

Sewdat Rampat
Ram

30 SEWDAT RAMPAT RAM sworn:-

Examination

24th June 1965

I am a clerk of the purchasing department of the British Guiana Rice Marketing Board. I was summoned to produce certain shipping documents of rice sent from Mill No. 54, plaintiff's mill at Albion Corentyne.

There is record of rice shipped from the plaintiff's mill between the 18th December 1962 and 24th December 1964: Tendered (15 pages), Admitted (by consent) and Marked Exhibits S1 to 15.

In the Supreme
Court of
British Guiana

I have the record of a shipment sent belonging to one Bambola. These are the records of Bambola's rice shipped in April 1965. Tendered, Admitted and Marked Exhibit "T1 to 9".

Plaintiff's
Evidence

No. 21

Sewdat Rampat
Ram

Examination
(continued)
24th June 1965

Cross-
examination

By Mr. King cross-examined:-

I have also the total bags of rice received from Mill No. 54 from 1st January 1965 to June 1965. This is the statement about that: Tendered by consent: Tendered Exhibit "T10".

No Re-examination

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CASE FOR THE PLAINTIFF CLOSED

No. 22

No. 22

Josiah West

EVIDENCE OF JOSIAH WEST

Examination
24th June 1965

DEFENCE CALLS

JOSIAH WEST sworn:-

I live at Vryheid, West Canje, Berbice. I am a carpenter contractor.

I know the plaintiff and the plaintiff's father. They both know me well. I know both plaintiff and his father since 1952. In April 1961 I was doing work at Dr. Fraser's rice mill, I was putting down the concrete foundations for the mill constructing bins and concrete foundations for a dryer and making a drying floor and foundation for

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the engine. I worked there for over 20 weeks during 1961. When the mill first began to operate the dryer was not yet there. While I was working there I saw plaintiff with his father and a woman who I believe was his mother. I saw plaintiff again for a second time. On the first occasion the dryer was not there yet but on the first occasion the mill was operating. The plaintiff came into the mill and then came to where I was working on the dryer foundation. Plaintiff asked me for Mr. Chung. I told plaintiff that Mr. Chung was some where around the mill. I then took plaintiff to search for Mr. Chung in the said mill. When I searched half way in the mill with plaintiff, I then met David Fraser and I told him that this gentleman is looking for Mr. Chung. David then took defendant away from me to go and look for Chung. I then went back to my work. A few minutes later I saw plaintiff and Mr. Chung coming towards me. A few minutes later plaintiff said to Chung "I want a mill like this". Both of them then left and went to the front part of the factory (mill).

I saw plaintiff on another occasion at the mill. I saw him go into the mill. The mill works day and night. He appeared being alone.

Cross-examined by Mr. Luckhoo:

This is the very first time I am giving evidence in any court apart from my own matters which I had twice. I was only asked to give evidence about 2 or 3 weeks ago. I was informed by Mr. Chung that I was wanted to give evidence. I saw Mr. Chung at Bookers and he told me he had a case with Mustapha. I made no written statement. I gave a statement to my lawyer around Monday this week. Mr. Chung had asked me to give evidence. I worked for 20 consecutive weeks at Dr. Fraser. It was not during the 20 weeks when the mill was erected that I saw the plaintiff go to Dr. Fraser's place. I now say it was after the mill was finished that plaintiff came. The plaintiff came first while I was doing the bin. That first visit he was not alone. I now say he was alone. On the second visit which was about 2 weeks after. I never saw Messrs. Chung, Blair and Esslemont. I can't remember how long after the 20 weeks I saw defendant. I can't remember the year of the first visit but I

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 22

Josiah West

Examination
(continued)

24th June 1965

Cross-
examination

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 22

Josiah West

Cross-
examination
(continued)

24th June 1965

do remember the second visit. I am sure that when plaintiff came the dryer was not there yet. The dryer was installed about 3 months after the first visit. I now say it was the second visit that I saw him. I saw him alone. I had no talk with him. He was alone.

The second visit was the time when I took him to look for Mr. Chung. On this second time he came with his father and mother. I did not take him over to Mr. Chung. When plaintiff and Chung spoke on the second occasion the dryer had not yet been installed. It is true that plaintiff told Mr. Chung "I want a mill like this". It would not be true to say that plaintiff said to Chung "I want a dryer like this" because no dryer was there yet. I did not hear plaintiff tell Chung "I want a dryer like this".

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Adjourned to 9 a.m. tomorrow
25/6/65

25th June 1965

Resumed 25/6/65 9 a.m. (Friday)

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JOSIAH WEST sworn: Cross-examined by Mr. Luckhoo continued:-

I only recollect that plaintiff told Mr. Chung "I want a mill like this". I did not hear what was Chung's reply. I made no written note of the conversation. The 20 weeks I worked with Dr. Fraser was not in connection with the Bond (rice) and foundation for the milling machinery. The mill was in operation at the time. During the 20 weeks I worked on the building in which the mill was housed. During my first week the mill was not yet installed. It was during the 20 weeks that this conversation took place. I can't remember what date in 1960 I began the work but it was in 1960. I can't remember the month. I don't remember if the mill of Dr. Fraser was tested in 1960 December. I don't remember the date on which the mill was opened by Dr. Fraser. I did make the dryer foundation for the dryer. The plaintiff came in 1961. The dryer foundation was made during the 20 weeks work. It is untrue that in 1961 I only worked at Dr. Fraser for one month. That suggestion is untruthful: I worked for some time there. I believe all through 1961 as I built servant quarters and I remember receiving Xmas

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presents in 1961. I said it is not true that I did only one month work in 1961 at Dr. Fraser's place. I actually worked that whole year.

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It is not true that the spot where the dryer was erected had thousands of bags of paddy. The dryer is in the same factory near to the mill. The building is 50' x 100' and all the equipment is in there. Only the paddy that was to be milled was taken there. No paddy was at the dryer spot. The dryer was installed during the latter part of 1961. It may be around December 1961. I built the concrete drying floor around 1963 and not 1964. It was not extended. It was started and finished in 1963.

Josiah West

Cross-examination (continued)

25th June 1965

No re-examination

No. 23

No. 23

EVIDENCE OF DAVID FRASER

David Fraser

Examination

25th June 1965

DAVID FRASER sworn:-

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I am the son of Dr. Hugh Fraser. I live at East Lothian Corentyne where my father's company (Gladys Hicken & Company) have erected a Grantex (one ton) Multi stage rice mill. There is also a Grantex "08" dryer. I know plaintiff. I am in charge of the entire operation and maintenance of the mill and dryer of the company since 1960. The dryer went into operation in 1961 I believe. It might be 1962. The mill was purchased and installed during the latter part of 1960. It went into operation in January 1961. The dryer was installed towards the ending of 1961 around November and December and it went into operation in 1962. I was in charge from the inception. I assisted in the assembling of the mill with Mr. Chung who taught me to operate the mill and later the dryer. I have practical experience only. Prior to my working at the mill I was in charge of the maintenance section of the mechanical agricultural equipment. The company is a big concern. The cultivation increased from 1958. But the maximum area we cultivate is 500 acres in rice. Our mill has given satisfactory

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performance and we would not trade it for any other Brand. In the operation of a mill one must start with proper dried paddy which is essential. One has to then watch the operations- the intake hopper, because paddy has a lot of foreign matter and this could cause blockage and there would be no free flow and would impede production. The paddy cleaner must be clean and properly adjusted. The sheller must be checked to see if the maximum production can be reached. I got as much as 90%. It depends on the adjustment of the sheller.

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Examination
(continued)

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On one occasion when we were milling white rice a quantity was being broken up and we traced the cause to the sheller adjustment. The paddy was No. 79 and short grain and we had set the for No. 79 and that caused the breaking. We had to readjust the sheller and this remedied it. In the process of milling one has to watch the several machines in operation. For instance the hopper, sheller, compartment separator and the pearling cones: that is why the mill is called a multistage mill. All these machinery require adjustments during the process of the operation. Failing to adjust results in broken rice, dirty rice, unevenly coloured rice - called red rice and streaks. Mal-adjustments certainly affect the production or output rate. About the dryer in actual operation we have a porter to fill the hopper and a person to supervise the operation, he also operated. We have an instrument which records the moisture content. I do the operating of the dryer also. I have taught my younger brother to operate the dryer now. One has to be trained to operate a dryer as it is a technical machine. In the course of drying one has to take moisture readings every 15 minutes in order to ensure that the paddy is not overdried or under dry. The porter duties as to the dryer is to fill the dryer and to make sure that stray does not block the floor. Paddy from the field has a high moisture content 18% to 30% and it does not flow freely it has to be assisted and the man at the hopper assists it. Paddy from the field also has a fair amount of stray and mud and must be cleaned. Paddy from the field with 15% moisture content is too dry from the sun and may be sun-cracked.

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When such paddy is milled there is a large percentage of broken grain. One has to make sure

that the dryer is filled completely. One must take the moisture content before the filling of the paddy. Then the burners are lit. The temperature gauge is checked between 140 - 150 degrees fahrenheit. The dryer takes about 10 minutes to heat up to this temperature. I then allow another 15 minutes to allow the heat to spread. The automatic thermostat hold the temperature at the determined level. After this 15 minutes we start to circulate the paddy and then take out at intervals samples to be tested as to moisture content. When the designed moisture content is ascertained, the paddy is discharged to a rest bin.

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Batch drying is known to me as well as continuous drying. The latter drying faster and I have used this but because of storage facilities I used the batch system more and because too of the dust nuisance. If the mill and the dryer were working together the dryer puts out more than double the capacity of the mill I am perfectly satisfied at the performance of our dryer. In the course of drying the louvres or screens get blocked and this can cause trouble because the system of drying is that the hot air must pass freely through the screens and if the screens are blocked the air cannot circulate evenly and this would result in uneven drying and broken grains. The screens must be cleaned and to get at the screens one has to go into the dryer. There is a door at the side to permit this or one may work from the top to get to the screens. It is a very unpleasant job to clean the screens. These screens may need cleaning more often if the paddy has a lot of foreign matter. The bulk of the company's paddy, the majority of it, once we are doing white rice, is dried in the dryer. We don't do parboil paddy in the dryer as we do not have a shaker conveyor to remove the excess moisture. We only use the dryer for white rice. This year the Board called for more parboiled rice. In 1964, all the company's paddy to be milled into white rice was dried in the dryer. We have done white rice this year - last month. All the company's paddy wet through this dryer last month for the white rice requirements. We do not suffer from excessive broken grains. We also mill farmers paddy. The farmers generally do the drying of their paddy on the drying floors mainly because labour is cheaper and it is considered as a family affair in providing the labour. The whole family

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(continued)

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comes to spread the paddy. The concrete floor is provided free of charge. We charge for the use of the dryer at the rate of 16 cents per bag of paddy. Generally the paddy should go through a fine cleaning machine to rid it of the foreign matter but we do not have a pre-cleaning plant and we just have to fight it out with the paddy cleaner on the mill. When the paddy is not cleaned it requires of the operator more attention at the hopper and the elevator for choking. I have seen the plaintiff at my mill many times. I do know when the plaintiff got his mill. I did see the plaintiff at my premises before he got his mill. The plaintiff came to my mill while it was in operation and soon after its erection between January and February 1961 he appeared to be looking around the plant. At one time Mr. Josiah West brought him to me in the mill and said to me that plaintiff was looking for Mr. Chung. I looked for Mr. Chung who was found outside the building and I introduced him (plaintiff) to Chung and I left to continue my work on the mill as at the time the mill was running. At the request of Mr. Chung I supplied 100 bags of paddy in July 1964 to plaintiff's mill. It was paddy that was lying close to the ground - bags were torn and the paddy had to be swept up as it was at the ending of the season for our milling. The paddy was not clean and had a lot of impurities or foreign matter. I was asked to supply 100 bags of paddy for milling and that was the only paddy I had. I don't know what came back of the 100 bags sent. My company got the proceeds of that rice after it was shipped to the board. If I were told that that 100 bags of paddy produced 18 bags of whole grain rice and 10 bags and 51 lbs broken rice, I feel that that was a good result having regard to the fact that it was sweepings.

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I do know Ramjit Boopsingh who used to work at the company's mill. Ramjit came on around the middle of 1962 as a casual labourer. From that he worked on the mill putting in paddy into the hopper. He was a labourer. He operated the mill towards the ending part of 1962 and onwards "off and on". He was always under my personal supervision. He never operated the dryer but he assisted in filling the dryer and seeing that there was no blockage of straw. The moisture meter was never operated by him. He (Ramjit) does not know to operate the moisture meter. When my company's

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dryer was first installed Mr. Chung carried out tests. During the tests it is not true that Chung got 30 to 40 bags broken out of 100 bags milled. The witness (Jit) Boopsingh never worked at my company's mill during the tests.

10 During early 1963 we got some paddy from Drill estate. The paddy was harvested late and this got wet also in transit. This paddy was broken up, say about 20 to 30 bags in 100 bags (white rice itself has a high percentage of broken grains). But this was apart from that allowed normally. This was due to the late harvesting of that paddy. It was what is known as "sun-cracked paddy". I can't be sure if Mr. Chung had anything to do with his operation but he might have been there. Drill estate belongs to the Company. Boopsingh was sent home. Trouble arose around the Easter week end. Boopsingh dismantled the water pump on the engine driving the mill and took out a seal which forced us to stop operation for a period of 2 days. He was not authorised to remove the "seal". At that time the Rice Marketing Board wanted white rice only. I was on holiday and Boopsingh had something, function in opening his house and did not want anyone else to operate the mill so he immobilise the mill by removing the seal. We had to get Bookers to fix the seal. We did not close down, but we had to stop operation for a few days. When I came back after vacation (4 days) Boopsingh was not recalled and has not been recalled up to now. He was at the mill a couple of weeks before and he spoke to me about the water pump seal. I then told him that I heard that he was working at plaintiff's mill with Mr. Ally. Boopsingh then said to me "yes a man has to live". I then told him to go home and return a week after. He did not return but sent a message. He had come to me to try and get back his job. He earned between \$28 to \$40 per week.

40 Adjourned to 1.15 p.m. today
25/6/65

Resumed 1.15 p.m.

DAVID FRASER sworn cross-examined by Mr. Luckhoo:

I am 27 years of age. I was abroad between mid 1956 to May 1958. I went on a course in agriculture to the University "Guelph" in Ontario

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Canada. East Lothian is an estate. My main function at this estate was on both the agricultural and mechanical sides. This syllabus at my college did include dealing with grain drills, engines, combines, sprays etc. and I did receive training in the use and maintenance of agricultural machinery. I had a specific training abroad in relation to rice mills prior to my joining the estate. My company did not have any dryer or mill before the present one. The present mill and dryer are the first such machinery the company own and operate. It is a one ton mill. The dryer is a 2 ton dryer. The milling machinery alone I believe cost about \$45,000. That is rough, and for the machinery alone, imported in package form (not foundation and assembling etc.).

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The dryer I believe cost about \$18,000 - a rough estimate. (to these must be added installation charges foundation building etc.) Prior to this mill and dryer I had not had any other experience with any other rice mill or Multistage mill. I have had no other commercial experience since with other mills but I have been asked to iron out difficulties with some other mills and machinery, but I did not operate any other. I have not had the opportunity personally of comparing the performance of my Multistage mill with other Multistage mills. I have not done this personally. I have not the time to operate any other Multistage mill. But I have seen machinery worn and I know of output and when I stated that I would not exchange my mill for any other, that statement is based on my experience with my mill and the parts I have seen of other mills at the welder. I have had many hundreds of operating hours with certain parts of my machinery but I have had not trouble whatsoever with my mill and dryer. I agree that wear and tear might depend on the case of the particular machinery and also the design. I have seen the designs of other Multistage mills; the basis of all such mills is the same. Each manufacturer has his own design but the principle the same. I have no log book noting the hours of the operations of the mills and its output. We keep no such detail records of the mills or the drying.

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My mill working average is at least 8 bags of rice per hour and at the worst 4 bags per hour, that is, rice produced. If the paddy is dirty and

you are getting chokes the average would be about 4 bags rice to the hour. The overall picture might well be about 6 bags rice per hour. This could include an involuntary stop to a point. But without any stoppages it might be 7 bags per hour. The drying, whether in the dryer or concrete, would not change the average capacity of the mill.

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Assuming the paddy is good and with combine cutting in 100 bags of white rice milled I expect about 5 to 6 bags of broken grains. In the case of parboiled rice, I would expect about 3 bags of broken rice in 100 bags.

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If my mill were to give 7 bags of white rice about 14 bags of paddy had to be put in. My dryer is a 2 ton dryer. It can take about 50 bags at one filling. This would take in time 45 minutes. The drying operation commences after the dryer is filled and then it would take about from 45 minutes to 1 hour to dry the paddy. I have never taken a batch of paddy dry some on the concrete and dry the balance in the dryer and mill both portions and noted the respective percentages of broken grains. The averages I have given you about 5 to 6 bags of broken grain to 100 bags of milled rice (white) are in respect to farmers paddy which was dried on the concrete. About 70% of all the paddy milled at our estate would be farmers' paddy. There is a big difference in the percentage of broken grains when the paddy milled is dried in the dryer as compared with the paddy which is dried on the concrete. Generally this is true with us because we have our own combine and we have an extensive acreage to cut which means that we have to start harvesting when the crop is not fully matured so that we would be finished before the rains arrive but at the end we would have a fair amount of sun-cracked paddy.

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From 100 bags of "dryer dried" rice milled, I get at the average of 10 bags broken; that is, about 10% compared with the earlier average of 6% when dried on concrete. This is because of the type of paddy we used but if this same was dried on the concrete I would expect the same 10% broken grain but I never actually did this to compare it. An average crop is about 250 acres: on my estate the average is about 14 bags of paddy per acre about 3,500 bags paddy per crop. In an average crop we

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process about 3,500 for ourselves and about 7,000 bags for the farmers. It takes us to reap sometimes 4 to 5 weeks depending on the weather. The average is about 7 weeks in all as sometimes on a piece of land one would only get 3 or 4 bags. Our objective is to reap the bulk of the rice when it is matured not sun-cracked.

My paddy in relation to maturity is almost favourable to that of the farmers. It is slightly less because of the extensive cultivation. The small farmer concentrates on his small crop and it gets better attention. In other words, we are mass producing. I would say that about 12% of our paddy is sun-cracked and 10 to 12% immature.

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The average in relation to farmers' paddy is about 6% sun-cracked and about 5 to 6% immature. My estate do have use for broken rice as stock feed. We have a few hundred pigs a few thousand chickens and ducks. But we feed the pigs with a mixed feed. We ship about 40% of our broken rice to the Board and keep 60% for our own use. Farmers to employ labour, to dry the paddy on the concrete - their own labour - 100 bags would take about 6 men at \$4.00 per day (\$24.00). If it rains the paddy would take from 2 to 4 days to dry: I have not seen the plaintiff's mill or dryer and cannot assess its efficiency.

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My company do business with Bookers buying agricultural machineries and supplies from them. I have known Mr. Chung since 1960 and onwards. He installed our mill and dryer and this is how I got to know Mr. Chung. I got friendly with Mr. Chung. I have never been shooting with Mr. Chung.

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Mr. Chung did tell me that he wanted a hundred bags of paddy for a test of plaintiff's mill and dryer. I understood that the test related to milling performance - rate of production and quality of product and percentage of broken grains as against whole grains.

In testing one must test bad paddy as well as good paddy. The best result would be on the best paddy. I did know that there was some dispute between plaintiff and Bookers about the performance of the mill. I did not know that Mr. Chung had gone to the Agriculture Department to get paddy for the test the day before.

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10 If I had more paddy Mr. Chung would have got the best but that was all we had then. It is not true that the paddy I supplied was the very best. It was the end of the crop and it was sweeping as I said. I do consider it was very poor paddy. It was well below average paddy. I agree. My father remarked that when he saw the paddy "This is terrible stuff". I don't think that Mr. Chung saw it before it was sent but I would expect that Mr. Chung would know what type it was when he saw it. Mr. Chung did speak to me about the paddy. He asked me for 100 bags of paddy. I can't be sure what kind he asked for but certainly not the worse. At that time I did not know that all I had was poor paddy. When he spoke to me I had good as well as poor paddy I could not say in terms of bags as we were in a push in getting out a shipment of rice for the Board: but we had more than 100 bags of good paddy. Mr. Chung did not specify any particular date for his requirement. It was delivered more than a week after he asked me and at the date of delivery we were pushed in getting out our paddy stocks in order to close off milling operations - that is to mill all the paddy we had. I had not put aside the 100 bags for Mr. Chung. On the day of delivery I was in an embarrassing position because what I figured would have been reasonable turned out to be poor and that was all we had left. We provided a truck to take the paddy to plaintiff's mill. We had no more paddy in that area at all. After the 100 bags were sent we had left about 75 bags from the same set and not more at all. I knew the kind of paddy I was sending but that was the only kind left which we had. I knew he was testing "capacity". I assume that Mr. Chung saw the paddy when it got to plaintiff's mill before the testing. Mr. Chung did not send it back. He did say something later about the paddy but I explained we had nothing better.

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Adjourned to 9 a.m. on Monday
28/6/65

Resumed 28/6/65

DAVID FRASER sworn: Cross-examined by Mr. Luckhoo cont'd:

One Wohab is my foreman. He was my foreman for 15 years. I do not think that Mr. Chung or

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Mr. Blair saw the paddy (100 bags) before it was removed. A similar quantity of paddy was used at the mill as a test. It was of similar quality also as that sent to plaintiff's mill. I can't be sure that Wohab knew about this he has nothing to do with the rice mill. He is a general foreman of the farm and to supply labour to the mill and generally but as far as the milling is concerned and the details he would not know.

David Fraser

Cross-
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Wohab keeps a book about labour - supplied and notes about paddy received and measuring of rice lands etc. He would note about paddy received in the absence of my father or myself or my brother. The paddy milled at my mill at that time was in the ordinary process of milling but the figures are always noted as to the result. Every bag milled is recorded. The result of this 100 bags of paddy was noted. I don't know about the comparison. Mr. Chung might have asked my father about that. My father must have taken the records because all milled rice is noted. The result is there but I can't remember what was the result but I believe that was dried on the concrete as we had a staff and when no other work is available we utilised them for drying on the concrete.

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I would not say that the 100 bags milled by us was done at the request of Mr. Chung. I never knew it was a test if it was. It was milled in the ordinary course of milling the remaining paddy we had in the mill as it was towards the ending of the crop. I did not set aside 100 bags for any test. If that were done I would not know exactly. The first time I am hearing of such a suggestion is here in court. I never knew that we milled 100 bags to compare it with the 100 bags sent to plaintiff's mill. I am certain it was the same quality milled but I can't be certain about the quantity. If I said (earlier) it was a test I am mistaken. I did not know it was any test but I did mill under my supervision all the remaining paddy we had at the mill. I do not know about the request to my father to set aside and mill 100 bags and no such request was made to me. It is not true that I had several hundred bags of paddy left after I sent the 100 bags to plaintiff's mill. It might have been 150 bags. I am only estimating. My records should show how much paddy was in store then. I do not recollect anything about the results

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obtained. But our production (daily) is noted. Mr. Chung did not speak to me about any results. If he checked with my dad I would not know. It is possible he might have spoken to my dad but I don't know about this if it were so or not. (Counsel (Mr. Lockhoo): "We agree it was dried on the concrete.") Mr. Chung did tell me of the results of the test at plaintiff's mill. If the paddy was good - the results were poor or bad that is if it were good paddy but as I said before it was poor paddy "terrible stuff". I can't say what percentage was sun-cracked. I saw what was sent. I can't estimate how much of the paddy was sweeping. There was about 1/3 of the paddy sun-cracked I believe. I am only estimating.

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My brother did dry in the dryer some farmer's paddy earlier this year- in April may be. I do not know of the result - if there were a large percentage of broken grain. I don't know.

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I don't know if the estate dried 200 bags of paddy in April 1965 but I do know that this year has a very poor crop.

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Bhoopsingh is deaf and was employed as a labourer but this year he was an operator but not a skilled operator. I taught Bhoopsingh to operate our mill. He knew nothing about it before. I would not entrust Bhoopsingh to operate our mill without supervision. When I went to Nickerie in 1961 Mr. Chung was left to supervise the mill. I was in Rupununi during the Easter holidays between the Thursday (Holiday) and Wednesday after Easter. What I learned about what happened in my absence with Bhoopsingh during the Easter holidays is from my father the manager and the records of bills for repairs and what he himself told me about the incident. He did tell me that the water pump was leaking and he took it out for repairs and that he did not turn out to work the next day because of some wedding. I told Bhoopsingh to have a rest for another week and then come and see me. I do not know whether the quality of the grain has been reduced since Bhoopsingh left. White rice has been milled since but from immature paddy from the Black Bush Polder. We are doing now Brown rice. Mr. Chung taught me to operate the dryer. I saw the assembling of the dryer. No literature was shown to me. I had oral instructions. I saw literature

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about the dryer but not from Mr. Chung. I read books on rice generally. I had no "Grantex literature".

I did receive written guidance as to the operation of the mill. It was typewritten instructions by Mr. Chung and with my experience in machines etc., I did apply some of my own technique in milling. I applied no variation in the drying operation I followed Mr. Chung's instructions and adjusted here and there viz. I used one burner instead of 2. I did this from experience gained in the course of drying. One has to be familiar with the adjustment chart of the moisture reader.

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I have seen pamphlets such as Exhibit "B" but not Exhibit "C" or "G". I saw Exhibit "05" before.

One Harry Pye did not make a fuss about the quality of his rice but he wanted to have his paddy milled first and we had to get a police and get him out as he got on stink because he wanted his rice to be milled before others.

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This is a testimonial from my father to Bhoopsingh - Tendered Exhibit "U".

At this stage Mr. Luckhoo asks that further cross-examination of this witness be deferred until certain records are produced. Mr. Farnum agrees.

Further evidence of David Fraser deferred.

No. 24

William Blair

Examination

28th June 1965

No. 24

EVIDENCE OF WILLIAM BLAIR

WILLIAM BLAIR sworn:-

I live at 19 Bel Air Gardens, East Coast. I am the manager of Bookers Stores Ltd. (Agricultural Machinery Department). I know plaintiff. He first called to see me early in 1961. He had expressed an interest in purchasing "Grantex" rice milling equipment for which my company is the local agents. He (plaintiff) told me that he was in touch with my branch manager Mr. Chung in New

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Amsterdam. I am stationed in Georgetown at the Water Street store. Plaintiff told me that he got a quotation from Mr. Chung and he wanted me to quote for additional equipment which consisted of a dryer and a boiler. Plaintiff left and I sent him by post a written quotation. He (plaintiff) called back to see me some time after the quotation was sent. (After April 1961). Plaintiff then told me that he changed his mind and is now interested in an electrically driven rice mill and dryer. At this time plaintiff was in touch with the British Guiana Credit Corporation and was negotiating a loan with the Corporation in order to purchase this equipment (Plaintiff told me then). I discussed with the plaintiff the reason why he chose an electrically operated mill and dryer when there was no electric current in the Corentyne district. I asked this because such a mill, to be run is more expensive to install and operate but plaintiff explained that he hoped to get power (electric) from Albion Estate and also that he had heard through a source from Government that they were soon to embark on Rural electrification of the Corentyne district. After that plaintiff left and I was requested by the British Guiana Credit Corporation to send them a quotation for equipment plaintiff discussed with me. I posted to Corporation the quotation requested. This is the quotation I sent to plaintiff Exhibit "K1" and then Exhibit "K2" is the quotation I sent the British Guiana Credit Corporation dated 19th/6/61.

My attitude in the proposed transaction was one of caution in dealing with the plaintiff because he had a lot of other business interests and he had also admitted that he had no previous rice milling experience. He had also purchased some trucks from Bookers Garage involving a fair sum of money and I thought that as a young man he was probably overstretching himself financially and businesswise as he was working with Albion Estate, Reynolds Metal Company, and also he had contract for transporting stone for the Public Works Department. I thought he would be unable to supervise all these concerns.

I personally had refused the business and this was after I had sent the British Guiana Credit Corporation the quotation because in order to get plaintiff's equipment to British Guiana it was necessary to get an order from the British Guiana

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Credit Corporation approving of the loan to the plaintiff and there was no such guarantee from the Corporation that plaintiff would have got the loan and so I refused to place the order solely on speculation that a loan would be granted by the Corporation.

Adjourned to 1.15 p.m.

1.15 p.m. resumed 28/6/65

WILLIAM BLAIR sworn: cont'd

I had further discussions with plaintiff and after my refusal plaintiff told me that he was going to purchase an "Olmia" rice mill from Messrs. Sandbach Parker and Company Ltd. I repeated to plaintiff the previous views I had experienced when he spoke to me again as to his ability to run a rice mill and the decision to purchase an Olmia mill is his and I have no say in it. He appeared not satisfied with my views and he asked to see my directors and he left.

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Subsequently about a few days after I received certain instructions from Mr. Esslemont one of my directors. In consequence I wrote to Mr. Ally (plaintiff) stating on what terms we were going to accept the business. Exhibit "K3" is the letter I wrote the plaintiff. After this letter either the plaintiff or his father came to our store in Georgetown and signed a special order form and deposited (\$10,000) ten thousand dollars. This sum is the normal deposit in such a transaction. We usually ask for 5% or 10% as a deposit.

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In November 1961 we wrote plaintiff Exhibit "K5". This is the special order form signed by Jumat Ally for plaintiff dated 11/10/61 Exhibit "K.35".

I had met plaintiff's father who came with the plaintiff to my office on one or two occasions. The order was signed in Georgetown but not in my presence. It is not true that prior to the plaintiff's order I went to his house at Albion. This is not true. After the order was placed, I went to plaintiff's house on a visit with my branch's manager Mr. Chung. I have never been in the Y.M.C.A. hall in New Amsterdam at any time.

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The visits I made to plaintiff's place were during the erection and after the erections of the mill in question. At no time at all did Mr. Esslemont accompany me to any visit to plaintiff's place during the time I visited.

I never at any time showed the plaintiff the Brochure Exhibit "C". I never showed plaintiff any Brochure and I never saw any one showing plaintiff any Brochures at all plaintiff told me that he had seen Dr. Fraser's mill and that he wished to order the mill like Dr. Fraser's but of 2 tons capacity. (Fraser's is a 1 ton). He told me this in my office. The 2 ton is No. 30/60 E. The letter "E" is for electric. The rice mill sold to plaintiff is detached like Dr. Fraser's. The "S" 24 shown on Exhibit "C" is a self contained mill. We have never sold a self contained mill here. It is more expensive. The plaintiff asked for a 2 ton capacity mill and the No. 30/60 E mill has a capacity of between 3,500 lbs to 5,000 lbs of paddy per hour. That meant that the mill can cope with that amount of paddy per hour depending on the quality of the paddy. Nothing can be said as to production as to rice as this would depend on the quality of the paddy. I never told the plaintiff as to what he would get as regards the finished product. It is generally accepted that if one put 2 bags of paddy into a mill you would get one bag of rice. I never discussed anything about capacity or production capacity per hour with the plaintiff. I never told the plaintiff nor was it told to plaintiff in my presence that the 2 ton mill would give 17 to 19 bags of rice per hour.

The reasonable assessment as to production would be based on intake. If 4,000 lbs of paddy is put into the mill I would expect 2,000 lbs. of rice within one hour working at full capacity. I never went to Dr. Fraser's house with the plaintiff. I never told plaintiff and no one in my presence ever told plaintiff that an electrically driven mill would have a 50% greater capacity or any greater capacity than a belt driven mill. The drive does not affect capacity. I never told the plaintiff anything about Rolls Royce and I never heard anyone in my presence say anything to plaintiff about his mill would run like a Rolls Royce. I never spoke to plaintiff about buying any dryer. What happened was that Dr. Fraser was at that time erecting his

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dryer which he purchased from me. The plaintiff during the same time came to me and said that he wished to purchase a dryer similar to Dr. Fraser's. I never told the plaintiff at all that a mill like his is of no use without a dryer. No one in my presence ever told plaintiff this. I never told plaintiff that farmers wanted quick drying and who ever had the dryer would get the business. I had no such conversation with plaintiff. I personally did not show plaintiff any Brochure and he had none with him.

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The plaintiff's dryer and mill were ordered together and came down together but the dryer was damaged by fire in the riots of February 1962 and so we had to reorder the dryer. The fundamental difference between the self contained and detached mill is that the self contained mill has its own steel platform to support certain components above ground level. In the detached type it is necessary to erect your own frame work from wood. This wood frame work is for the account of the customer. In conversation with the plaintiff after the mill was ordered and before arrival the plaintiff told me that he wished to put up one of the best mills on the Corentyne Coast and he had intended polishing the wooden frame work. Before the order was placed the plaintiff was told that the frame work (wooden) was for his account. This was clearly understood and was so stated in the order placed (see Exhibit "K35"). It is there stated.

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"All necessary wood work and extension ducting to be supplied by customer". Exhibit "K31" page 2.

It is not true that the plaintiff was told he has to get up lumber for the frame only when the mill arrived. No generating set was ordered with the mill and dryer as plaintiff said he was looking into the purchase of a reconditioned generator. He subsequently approached me to buy a generating set and to order one for him. This was after the arrival of the mill. I replied telling him that I could not supply a suitable generator under a period of 35 weeks and I suggested to him in the letter that he proceed to purchase a caterpillar generator from Sprostons. I wrote him to this effect. Exhibit "K31" is the letter. Plaintiff eventually bought a generating set from Sandbach Parker Ltd. The plaintiff never mentioned to me how the set worked.

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It is untrue that I told plaintiff that I was going to give him a refund because the iron frame did not come down. There was no question about this at all. This never arose and we never had any dispute with plaintiff over any iron frame. The mill came down and was erected. Mr. White erected same with Mr. Chung. I made visits during the erection and it was during this time that plaintiff invited me into his house and offered me a drink. The plaintiff's house is in the said mill compound. I got no complaints during the erection about anything. The first time I heard about a steel frame is in court, during this case.

I was away from the colony during July and November 1962. I returned in November 1962. On my return I made inquiries as to the progress plaintiff was making and I was told something by my Assistant manager (Mr. Vieira). I never heard from plaintiff until December 1962 when plaintiff came to me and told me that his generating set had arrived late and consequently he had missed a large part of the Autumn crop. Plaintiff mentioned at that time that he was considering taking legal action against Messrs. Sandbach Parker and Company for his loss on milling time (for late delivery). I saw the plaintiff several times after that and he discussed with me the question of the official opening of the Rice Mill. I believe at that stage he made reference to the performance of the mill. Until the official opening Mr. Chung and his assistants had visited the plaintiff to give instructions and to carry out any servicing necessary. Shortly before the opening the plaintiff told me that the electric motor for the disc sheller (of the mill) had burnt out. I made enquiries about this and I visited the mill and I found that due to inexperience the motor was burnt. In the presence of the plaintiff and Mr. Chung and myself the plaintiff explained what happened. He said that the motor was cutting out and the overload switch was not noticed which caused the motor to fail as this cause the motor to burn.

The tripping (or cutting out) of the motor was investigated by Mr. Chung during the time: I left.

The plaintiff complained that the dryer was causing a high percentage of broken grains in the milling. I spoke to Mr. Chung about this and while Chung was there I went up and found that the paddy used by plaintiff was very dirty - it had a lot of

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trash and this caused an uneven flow in the dryer. This caused reduced capacity and uneven drying which resulted in cracking of the grain and a lot of broken grains while milling. I had asked Mr. Chung to make arrangements about inspecting the dryer. I spoke to Mr. Alli about the dirty paddy and told him that he must either get the farmers to winnow the paddy or buy a paddy cleaner and charge the farmers for cleaning the paddy. Mr. Hooblall of Chester, West Coast Berbice had a paddy cleaner he was not using and we collected this paddy cleaner and took it to our branch at New Amsterdam and we offered it for sale to plaintiff at a very reasonable price about $\frac{1}{3}$ or $\frac{1}{4}$ of its new value. It was in good working order. The plaintiff did not accept the offer. He plaintiff thought that the dryer was no good. Plaintiff did complain about the performance of the dryer. I did not give plaintiff any guarantee about the dryer. All he ordered was a dryer similar to Dr. Fraser's and that is exactly what we supplied No. 08. The only difference is that Dr. Fraser's is belt-driven and plaintiff is electrically driven. Before the dryer went into operation the plaintiff did not speak to me about the dryer. I do remember that the plaintiff did say either to me or to Mr. Chung whether we would not take back the dryer. He was dissatisfied with the percentage of broken grains he got after milled. 10

The mill was open in March 1963. We gave a demonstration of the milling and this went off very well and there was no adverse comment as to the performance of the mill. Shortly after the opening the plaintiff complained that the mill was not operating as to capacity and also there was a fairly large percentage of broken grains. I gave instructions to Mr. Chung to go along and assist in adjusting the mill as much as he possibly can. I told plaintiff that I did not think that his operator was running the mill as efficiently as it could be run. I also noticed that a lot of the farmers whose paddy he (plaintiff) was milling were present in the mill and this was interfering with operator in carrying out his duties. I suggested to plaintiff that he should not let the farmers interfere with the operation of the mill. I can't remember if Alli told me about any trouble with his operators. I did agree to run a test in March 1963. It was not run in March because plaintiff 30 40

was milling Black Bush paddy and in order to make the test the mill would have had to be stopped and rechecked to make sure that it was in good condition for testing. The plaintiff said he did not desire to stop the milling of the Black Bush paddy and he asked us to delay the test until after he was finished with the Black Bush paddy. It was delayed and then the general strike of 1963 came on around mid April 1963 until July 1963 when the test was held.

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Adjourned to tomorrow 29/6/65
at 9 a.m.

William Blair

Examination
(continued)

9 a.m. 29/6/65 Resumed

28th June 1965
29th June 1965

WILLIAM BLAIR sworn (cont'd)

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Prior to the July test the plaintiff did speak to me but it is untrue that I got annoyed. I see Exhibit "K18". I don't know about this letter Exhibit "K18" but Mr. Ally (plaintiff) and myself did go to Mr. Boon on one occasion before the July test 1963. On that occasion plaintiff told Mr. Boon that he was not satisfied with the performance of his mill and asked Mr. Boon to get him some work from Albion Estates for his lorries. I then explained to Mr. Boon that Mr. Chung had visited the mill and had given instruction as to how to adjust the mill and had examined the mill and found no fault with the mill. I expressed the opinion to Mr. Boon that plaintiff's difficulties was the result of milling experience. The plaintiff who was present disagreed with my opinion. This was before the official opening of the mill. There was no suggestion of cancelling the opening because the mill was not working properly.

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The test was around mid July. The paddy for the test was obtained from Dr. Fraser. I first saw this paddy at plaintiff's mill. At that stage I did not examine the paddy. The purpose of getting the paddy from another mill was to compare the results with the other mill. Mr. Chung made all the arrangements about the paddy. I went to Berbice the evening before the test started and was present at the morning of the test. The first thing done was to weigh the paddy. A record sheet was prepared by Mr. Chung to record the test. The weight of the paddy was noted on a scratch pad by various persons. I assisted in checking the weight. We started first with the dryer. We commenced filling the dryer and

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asked plaintiff to make a note of the time. I explained to the plaintiff the basis of the test - that is filling time, drying time and discharging time. It is not true that I went with plaintiff and Mr. Chung at Dr. Fraser and there selected the paddy. This is untrue. I did not go. I see Exhibit "L". The figures in "red" are in my handwriting on the back of page 12 Exhibit "L" recording the weights. The procedure was that we first took the moisture content of the paddy after it was weighed. We then started to fill the dryer and noting the time of the commencement of the filling of the dryer: each stage was recorded. This is the test sheet to my knowledge but Mr. Chung signed it and I was present when Mr. Ally (plaintiff) refused to sign it. This is the sheet: Tendered Exhibit "N". At the commencement of the filling of the dryer we asked plaintiff to agree as to the time of the commencement of the filling and to record same. Plaintiff did not agree to record this. He wanted to record the filling, actual drying and emptying as one process and considered that as the drying time. I explained that that was 3 stages the time of filling was separate and the time for emptying was separate. This plaintiff disagreed with and he refused to sign the test sheet - Exhibit "N".

During the drying process one of the cups in the elevator worked loose and caused the elevator to jam. This took ten (10) minutes to clear, and then was noted as 10 minutes loss time. The plaintiff objected to the principle on which the test was based. We continued with the test in the presence of plaintiff as we had gone into much trouble to arrange the test and so we were anxious to have it done. The plaintiff did not sign any of the test sheets. It is untrue that the plaintiff signed any test sheets at all. I know of no test sheet 10" by 12" as alleged by plaintiff. Filling, drying and emptying of the dryer took approximately one hour in each operation - A total of 3 hours. The test of the dryer was to test the reduction of the moisture content in one hour (actual), drying time. The reduction was possibly 4½%. After the drying Mr. Chung completed Exhibit "N" and asked plaintiff to sign the sheet and plaintiff refused. The paddy was then stored for milling the next day.

The next day I went back for the milling.

Mr. Chung started up the mill and passed some paddy through in order to make some adjustments to the mill. We then started the test of the mill. It was a capacity test to determine whether the mill can take 3,500 lbs. to 5,000 lbs. per hour. We had difficulty at this stage with the disc sheller. When we got to a rate equivalent to 3,200 lbs. the motor of the disc sheller cut out. We suspected an electrical fault in the mill and Mr. Chung made various tests. We were unable to find the cause and I told plaintiff that I was leaving for Georgetown and will ask Mr. Ottman electrical engineer of Bookers Sugar Estates to check the electrical equipment. I further explained to plaintiff that until the fault was rectified we could not continue the test. The plaintiff did not complain about my leaving. During the test a large number of people came into the mill and I asked what they were there for and the plaintiff said to me that the Guiana Agricultural Union wished to call a meeting to call a strike against Albion Estate. They did not get permission to hold the meeting on the Albion road and he (plaintiff) gave them permission to hold the meeting on the mill compound. Many of the persons were walking around the mill and I complained to plaintiff and he asked them to leave and the door of the mill was closed. This meeting took up a lot of Mr. Ally's (plaintiff's) time as his father was very angry with him for giving permission to hold the meeting at the mill compound. I also explained to Mr. Ally (plaintiff) that I find it very difficult to understand his reason - on the one hand he asked Mr. Boon to assist him to get work from Albion Estate and on the other he let the Union be allowed to hold a meeting on his premises to call a strike against our estate. I left the mill premises to come down to Georgetown to contact Mr. Ottman. I left Mr. Chung still investigating the cause of the sheller motor cutting out when the capacity was raised. The mill was working but when the capacity rose to about 3,200 lbs. it would cut out and so Mr. Chung was left in charge and I went to Georgetown. I did not take the test sheet but it was left with Mr. Chung.

I never told the plaintiff when I was leaving that I was convinced that the capacity of the mill was not up to standard, and that the dryer was breaking up the rice. I never told plaintiff that I was ashamed of the production of the mill. I got in touch with Mr. Ottman as soon as I arrived

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in Georgetown. He made a visit to the mill and in October I accompanied Mr. Ottman to the plaintiff's mill. We had correspondence before as to when I could travel with Mr. Ottman. On one occasion I went with Mr. Chung before this to plaintiff's mill. It was a Saturday and Mr. Chung was with me. The plaintiff's mill was not working. The plaintiff told us that he was going to start milling parboiled rice the following day - Sunday. I then asked Mr. Chung to assist plaintiff in the operation of milling the parboiled rice and we went back as arranged to start the milling on the Sunday morning but we could not find Mr. Ally (plaintiff) or his operator at the mill and we therefore left. I subsequently referred to this incident in the letter "K28". Mr. Ottman and myself arrived at the mill in October and there we met Mr. Chung and Inshan who were repairing the compartment separator. After this was repaired Mr. Chung started the mill. We found when the mill started that the compartment separator was badly adjusted and feeding a lot of the shelled rice and unshelled paddy back to the disc sheller. I asked the plaintiff the reason for this and he told me that the return sheller could not take off a quantity of unshelled paddy being returned from the compartment separator. He (plaintiff) had therefore found it necessary (he said) to direct the flow back to disc sheller. I pointed out to plaintiff that this would have the effect of reducing the milling capacity and increase the percentage of broken grains. Having started the mill and found this Mr. Chung and Mr. Inshan readjusted the mill right through for an even flow. This compartment separator had to be readjusted to permit about 80% of the rice to go to its destination and the other 20% back for shelling but we had found the adjustment which allowed a 50 - 50 separation. After the re-adjustment Mr. Chung got the mill on to load. He fed the paddy within the rated capacity of 3,500 lbs. to 5,000 lbs. Mr. Ottman then checked the electrical installations under full load. I checked myself the output of rice and we were getting one bag of rice in just under 5 minutes which was about 13 bags per hour. The intake was equivalent to about 4,600 lbs. of paddy. I considered this production satisfactory for this mill. The plaintiff was not satisfied and I drew his attention to the fact that he was getting one bag of rice just under 5 minutes. I did not enter into any argument with plaintiff. I made no note of

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broken grains as this would depend on the quality of the paddy. It is untrue that I had a violent quarrel with plaintiff and he chased me out with an iron bar. This is untrue. I did not visit the mill again. I had no further discussions with the plaintiff before he filed his writ.

I was satisfied that the capacity of the mill was that as was told to plaintiff, that is, 3,500 lbs to 5,000 lbs. of paddy per hour intake.

10 I also was satisfied that the test of the dryer was satisfactory as per the test sheet Exhibit "N" signed by Mr. Chung.

Broken grains are due to the type of the paddy and also to the adjustments to the mill.

By Mr. Luckhoo Q.C. - Cross-examined:-

20 I agree that according to local standards this mill and dryer would be regarded as expensive equipment. I expect that a purchase of such equipment would expect the manufacturers rate of capacity. It is true that the greater the capacity the greater would be the profits. The operational expenses are reasonably standard in a properly managed mill. The capital cost is fixed. Assuming the miller does not purchase the paddy from the farmer but merely mills it and dries it he (the miller) would be paid per bag (x) cents. I would expect that a purchaser purchasing equipment of this kind to enquire as to the rate of production and capacity of the equipment. The defendants have been agents for Grantex machinery for many years prior to this purchase. It is true that the manufacturers send down literature from time to time for use of both seller and prospective purchasers such as Exhibit "B" (as to dryer) and Exhibit "C". The Exhibits "B" and "C" were not shown to plaintiff by me. I did not show plaintiff any literature at all. I did not show - Exhibit "05" to plaintiff. As far as I know no pamphlets were shown to plaintiff who appeared to me to know what he wanted. As far as I am aware no literature was sent to plaintiff. The mill and dryer the plaintiff purchased were not related or referable to any literature, such as pamphlets etc. No pamphlets were issued as to the mill purchased by plaintiff. The number "30/60E"

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mean that "E" stands for electrically driven. 30/60 refer to the milling capacity being 3,500 to 5,000 lbs paddy per hour. That is the reference number quoted by the manufacturer as against the written specification. The No. "60" refers to the year of manufacture. The 30 appears to be the reference number.

I would expect that the capacity of the mill was indicated to the plaintiff that is the range as to 3,500 to 5,000 lbs. of paddy per hour. This is described in local terms as a "two ton mill". That would indicate an intake of about 4,480 lbs per hour. I agree that a mill of this type is capable of producing good quality rice and a reasonable amount and not an excessive percentage of broken grains assuming that the paddy is of good quality.

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Adjourned to 1.15 p.m. today.
29/6/65

Resumed 1.15 p.m. 29/6/65

Mr. Luckhoo continues cross-examination of Mr. Blair:

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The pamphlet Exhibit "C" was not in use as it was obsolete but was on the premises in our store in Water Street.

The reference number "74" on Exhibit "C" does not apply to the plaintiff's mill. This mill "74" is similar to the plaintiff's mill in the respect that it is a triple cone mill with one polisher. (The plaintiff's is a triple cone with one polisher). With respect to the plaintiff's mill 30/60 "E". We have written specifications of this and can be produced if necessary. All specifications in respect of capacity assume that the paddy used is of good quality and of the same variety. Exhibit "C" speaks of (paddy) as good quality. No reference is made of the same variety. The specification which Mr. Chung gave to plaintiff in New Amsterdam in writing was with reference to a detached mill. I have seen this specification in writing. A copy of the same specification was kept. We do have the copy of the specification. It is true that at the time when plaintiff negotiated for the dryer Dr. Fraser's dryer was not yet installed. It is true that the plaintiff had not an opportunity of observing the efficiency of Dr. Fraser's dryer. At the

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time when plaintiff ordered the dryer the pamphlet Exhibit "B" was in existence in relation to such a dryer. The capacity table is shown at page 5 of Exhibit "B" under the size "08".

I do not consider myself sufficiently experienced to say that the dryer should dry as efficiently as concrete drying. I agree that a purchaser would be entitled to assume that such a dryer would dry paddy efficiently. It is true that the plaintiff was enthusiastic in acquiring this equipment. When I returned from leave in November 1962 my recollection is that the mill was in operation.

I believe that both mill and dryer were in operation towards the end of 1962. I don't know if Mr. Chung conducted preliminary test towards the end of 1962. I don't know if Mr. Chung milled some farmers paddy towards the end of 1962. I do deny any knowledge of tests as suggested by you. I see "K16" (an alleged letter to Mr. Boon). I cannot say that such a letter or copy was sent to Mr. Boon but I do know that plaintiff was in touch with Mr. Boon at an early stage after the installation of the mill. I knew that plaintiff had complained about the mill and dryer. His complaint referred to "performance" which I take to be capacity. I do not remember the complaint was as to broken grains. We knew about the complaint about broken grains before the opening of the mill in March 1963. Plaintiff had spoken to me and to my branch manager.

Provided that certain conditions are laid down the best way of determining whether a complaint as to capacity or as to the production of excessive broken grains were justified would be to carry out a full scale test using good quality paddy. The conditions I would lay down would be proper inspection and adjustments of the machine including replacement of worn parts as well as proper inspection of the paddy if that mill were to be used solely for the test.

When the complaints were made before March 1963, I had not in mind to make such a test at that stage. I had in mind such a test after the opening of the mill, sometime in March. After the mill was opened the plaintiff remained dissatisfied and he continued to complain and so I decided to suggest such a test. The test I had in mind was the type

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as you have described. The proposed test was one of importance in relation to the issue. I would not agree that the actual test in July was a failure - certainly not. I know that during the early hearings of this case the defendants were permitted to conduct a test if they were willing. I am aware that the defendants did not avail themselves of that offer to carry out another test. I do not recollect seeing a letter or a copy of a letter as Exhibit "K16". If I were shown it, I feel I would have remembered the contents. So I do not believe I saw any such copy of the letter Exhibit "K16". I do not recall seeing a letter like Exhibit "K18" and I cannot recollect the contents either. I now see Exhibit "K19". I never saw this or a copy of this "K19" before. I do know that plaintiff was in touch with Mr. Boon personally in relation with complaints as to the mill and dryer and also as to obtaining work from Albion Estate. I cannot say whether paddy was dried on the concrete and filled into the dryer bin for the opening. Mr. Chung made all the arrangements. I only know of one test that was in July. I know of no tests during the month of March 1963.

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Mr. Chung never submitted to me any results of any tests during March 1963 or any time between March and July 1963 I was aware that plaintiff was not using his dryer between March and July 1963 but the weather was dry from the beginning of 1963 and farmers prefer to dry their own paddy on the concrete as they do not pay for this extra.

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Arrangements were made for an adequate test of the mill and dryer. Exhibit "K22" is a letter I sent to plaintiff with reference to this test (dated 5th July). I did instruct Mr. Chung to inspect the mill and the parts. I checked with Mr. Chung and he was satisfied. I understood from Mr. Chung that the mill and dryer were in a condition to be tested. I had in mind that the milling results achieved should be compared with the results obtained by Dr. Fraser's mill for the same paddy. We were using Dr. Fraser's mill as a standard in as much as Dr. Fraser was perfectly satisfied with the performance of his mill and dryer. I had in mind also to compare the results of the test with the capacities as indicated by the manufacturers for the respective prices of equipment. I was aware that the manufacturers capacities call for paddy of good quality.

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It was my intention to secure paddy of good quality, and of the same variety.

Good paddy will mean clean paddy and good grains. Assuming the paddy was poor the intake of 3,500 lbs. should be reached. I did pass on instructions to Mr. Chung to get good clean paddy. I do not know if Mr. Chung investigated the paddy at the Agriculture Department. Mr. Chung reported that he was getting paddy from Dr. Fraser's mill. He made no report that he was unable to get good paddy, from Dr. Fraser's mill. When I got to the mill I then learnt that the paddy obtained was not good quality paddy. I learnt this from Mr. Chung. Mr. Chung placed the paddy in the category of poor quality. The paddy had a large percentage of straw. I can't say if it were sweeping. I recall mention being made of cleaning the paddy before the tests. I believe the plaintiff raised an objection as to the cleaning of the paddy. We could have cleaned it through the paddy cleaner in the mill. It is not true that the paddy from Dr. Fraser was of good quality and clean. The condition of the paddy was extremely poor from the amount of straw I saw in the paddy. The test was of some importance. I did not consider postponing the test. I was not with Mr. Chung when he was checking the screws etc. of the mill. It is true that in the letter Exhibit "K22" I stated that Mr. Chung was to make arrangements as to the paddy to be used as to ensure that suitable paddy was obtained. When the test was about to take place Mr. Chung had test sheets similar to Exhibit "N". I don't think any note was made on any of the sheets as to the condition of the paddy. I do not know what has become of the other sheets (test). I have only seen the test sheet Exhibit "N" which plaintiff refused to sign. Only the results of the drying test were recorded on Exhibit "N" as far as I can remember the test took 2 days. I may be mistaken if it is suggested that the test took 3 days. The plaintiff refused to sign the test sheet as he did not agree as to what was drying time, but we continued the test. When the milling commenced, I have no knowledge as to whether Mr. Chung filled up any other test sheet. If the plaintiff were to say he signed at various places on test sheets, this would not be to my knowledge. 100 bags of paddy were obtained for the test. A bag of paddy is between 140 to 150 lbs.

I would say that 7% to 10% is a reasonable

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percentage of broken rice. I had explained to plaintiff that we could not carry out the mill test as the electrical installation needed checking and no test of the milling was done.

We had 9,007 lbs. of paddy dried. We did not dry the remaining 40 bags only one filling was done - 60 bags I believe.

It is not true that the whole 100 bags were dried. We had made certain adjustments with a small quantity. Before I left for Georgetown we had started to fill the mill. I was interested in the intake. I did not know how much was produced when I left Georgetown.

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I do see a record of milled rice on Exhibit "N" in what appears to be Mr. Chung's handwriting - 28 bags whole grain 10 bags 52 lbs broken 5½ bags bran. I agree that if the paddy was good paddy that result would be a very poor result.

Adjourned to 29/6/65

30th June 1965

Resumed 9.05 a.m. 30/6/65

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WILLIAM BLAIR sworn: cross-examined by Mr. Luckhoo (cont'd):

I did say that the condition of the paddy was extremely poor. I did not open a single grain but I saw a lot of straw in it. I believe that I told Mr. King that the quality of the paddy was poor. I would be surprised if in my answer to Mr. King it was not recorded that I stated that the quality of the paddy was poor. The test sheet in question related to the drying test. The paddy from the drying test was to be milled all recorded. This test sheet Exhibit "N" is complete in relation to the testing of the dryer. It is not complete in relation to milling. I cannot remember if the test sheets were in triplicate copies. It is true that as the test progressed some one was to sign on behalf of defendants and some one on behalf of plaintiff. It was intended that the plaintiff would be given a copy of the test sheet as a record for himself. As far as I am aware the plaintiff was not given a test sheet with the results as recorded by Mr. Chung. It is reasonable to assume that I would have prepared the test sheets in

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duplicate if I intended to give to plaintiff a completed copy. To the best of my knowledge Mr. Chung had prepared more than one copy of Exhibit "N". I cannot remember if Mr. Chung wrote up more than one of the test sheets as the test progressed.

I cannot remember if Mr. Chung used any carbon paper to get a duplicate. I have not seen any other copy but Exhibit "N" which I saw recently. I expected a record would be kept of the progress of the test stage by stage. I agree that both parties ought to sign the sheets at every stage of the test. I would deny that the test lasted 3 days to my knowledge. I remember only two days. I was present at the test in July 2 days, but I can't remember the dates. If my recollection is right it must have been on the second day that the people of the G.A.W.U. workers came into the mill. I don't recall that the milling took place the day after the G.A.W.U. meeting.

It is true that Exhibit "N" relates to drying only. No column is there about milling. There is no log noted outside of what is stated in Exhibit "N". If we had the co-operation of plaintiff then there might have been more details but I would say that Exhibit "N" is an adequate log of the test to the dryer. I only knew of one operation in the dryer and that took about 55 to 60 bags of paddy. My recollection is that the remaining 40 bags were not dried. We did intend to dry the whole 100 bags and then to mill all 100 bags. I really can't remember more than 60 bags being dried. It is true that some paddy was used for tuning and adjusting the mill. When the result of the rice milled was recorded on Exhibit "N" I had already left the mill so I cannot say much about that but I agree that the amount of 28 bags of whole grain rice and 52 lbs of broken grains do appear to be an abnormally large result for 60 bags of paddy. The result appears to me to be more consistent with 70 bags of paddy but I cannot say what quantity of paddy was used by Mr. Chung to tune up and adjust the mill.

I honestly do not recall that the 100 bags of paddy were dried in 2 batches. The remainder of the 40 bags I believe was not dried because the test was null and void - the plaintiff having refused to sign the test sheets. This is a conclusion that I have drawn. We continued the test for our own

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British Guiana

Defendants
Evidence

No. 24

William Blair

Cross-
examination
(continued)

30th June 1965

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Evidence

No. 24

William Blair

Cross-
examination
(continued)

30th June 1965

satisfaction because we had arranged this test since March and went to a lot of inconvenience to arrive at this point and so we thought it best to continue the test. I was interested and concerned with the results of the test in view of plaintiff's allegation. All I can say is that after the 60 bags were dried I was satisfied and I was anxious then to move on to the milling. The certificate on Exhibit "N" is dated 19th July 1963. The record Exhibit "N" was kept for our own information. I do not agree that Exhibit "N" was not one of the original test sheets. Mr. Chung was asked to prepare sheets for the tests - suitable sheets for both milling and drying. From the nature of the preparation of the sheets they would have to be separate sheets. I do agree that no milling sheets has been produced. I explained already that the disc sheller of the mill was giving trouble and so the milling test could not be carried out and I left to get Mr. Ottman. I had felt the various casings of the motors and they were hot and then there was the cutting out, but I did not discover the fault of the motor.

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Sometime after Mr. Chung reported to me that he found the "sweeps" of the disc sheller were worn and this could have caused the motor to cut out. Mr. Chung had reported this about within a week of the time I had left the testing operations or shortly after. I can't be specific. We did not put in new sweeps before the test. I wrote a letter on the subject of my visit with Ottman and with plaintiff present when he Mr. Ottman inspected the installation. The letter was not posted on legal advice. Mr. Ally (plaintiff) must have known about the defective "sweeps" as he was there but I did not write him or tell him about it. The letter I referred to was to be sent to Mr. Doobay - plaintiff's solicitor. It did not refer to defective sweeps but to the production reached.

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Mr. Ottman found the electrical installation in good order in October 1963. I did not at any time since July 1963 suggest or request of the plaintiff that another test be made. I have no knowledge that any other person made any such request. I intended to compare the results with Fraser's mill and that is why the paddy was taken from there. I know of no instructions given to the Fraser's mill to set aside 100 bags of paddy

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except the 100 bags we collected for our own use at plaintiff's mill. The milling test was never completed to be compared. Mr. Chung recorded the milling figures on Exhibit "N" without any knowledge or authority. I certainly had in mind a comparison with Fraser's result. Mr. Chung subsequently contacted Fraser's mill to obtain the results from the Rice Marketing Board of the paddy we had borrowed from Fraser's mill that is the 100 bags which we took to mill at plaintiff's mill. I am not aware of the results of any similar paddy processed at Fraser's mill about the same time. No comparison was made as far as I know. It is true that my original idea was not carried out. I have never been told that from 100 bags of paddy the Fraser's mill got 49 bags whole grain and 2 $\frac{3}{4}$ bags broken grain from concrete drying paddy.

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It is not true that the disc sheller could cut out as soon as it is overloaded. It is true that a quantity of rice was produced before my departure for Georgetown in July 1963. I did not observe or take the trouble to observe the percentage of broken grains produced as compared to the whole grains. I did not know how many bags of whole grain rice or broken grains were produced before I left. I was never ashamed and I was never disappointed at the results. I am not disappointed as the results recorded in Exhibit "N" about the milling as I did not know about it. It was done in my absence. I was concentrating on the intake capacity of the mill. I was aware that plaintiff complained about (1) excessive broken grains - (2) poor capacity. I was more concerned with the "capacity".

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The plaintiff did attach importance to the excessive broken grains in relation to paddy passing through the dryer. I agree that the complaints were of equal importance for investigation. I never gave a thought when I was leaving to check the broken grains, whole grains, chips etc. produced so far. It would have been a simple matter to check this. The hurry to return to Georgetown was to find out why the electrical installation or equipment cut out and to see Mr. Ottman. I did not tell plaintiff that I had an important meeting. I did not instruct Mr. Chung to shut down the operation. I left him to continue to investigate the fault in the disc sheller. I did

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Evidence

No. 24

William Blair

Cross-
Examination
(continued)

30th June
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No. 24

William Blair

Cross-
examination
(continued)

30th June
1965

not leave him to continue the test. Mr. Ottman visited the mill in September for the first time. I observed the plaintiff making notes on a pad in respect to the weight of the paddy. In Exhibit "L" I wrote in red some figures. The paddy was weighed on 2 occasions separately. Firstly the total weight of the 100 bags. Then 2,000 the quantity of 60 bags to fill the dryer was weighed separately.

The total weight of the 100 bags of paddy was over 13,000 lbs. I cannot say if the plaintiff's notes are correct as I never checked them but as you suggest if the plaintiff note as to the paddy being put into the bin twice at 50 bags each time the record Exhibit "N" would be incorrect.

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I am not aware that in relation to the paddy used to time the mill that there was an excessive quantity of broken grains. I did not observe the ratio of broken grains. In October 1963 when I visited plaintiff's mill with Mr. Ottman I timed the rate at which the rice was coming through the spout. My timing was about 18 minutes for 4 bags, just under 5 minutes per bag. It is possible that this timing is possibly inadequate to assess the capacity of the mill. If the paddy box (or reservoir) were full one will get a steady flow of rice produced. The level of the box could go down but properly adjusted the level could be kept supplied. If the supply is exhausted it would take some time to fill it again. It is true that the best test would be from the commencement of feeding the mill - as to the timing of the cycle of the operation. One would need a reasonable amount of paddy - say 100 bags.

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From the time the mill was installed, until July 1963 Mr. Chung never supplied me with any particulars in relation to the performance of the dryer and in relation to capacity and broken grains. I was aware that Mr. Chung was giving instructions and this is part of our service to our customers but not testing. It was during the period when Mr. Chung was giving instructions that plaintiff made the complaints I told you of.

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I had asked Mr. Chung if anything was wrong with the mill to check it. I did not ask him for particulars and details in relation to the results obtained during the operations he obtained. The plaintiff told me that he had to pay compensation

to farmers. This was prior to the July test. I was not aware that the plaintiff was making negotiations about an "Olmia" mill at the initial stage of his negotiation with me. After I had refused the business the plaintiff had told me that he was going to purchase an "Olmia" mill from Sandbach Parker and Company Ltd. I never knew of any conversation between Mr. Baxter (a retired director of Bookers Sugar Estates) and plaintiff about his buying a Booker mill if it is to be put on Bookers land. I knew of plaintiff's business interests but not his financial standing. I knew that in 1961 he bought 2 trucks and a car from Bookers for 29 thousand dollars, cash. When plaintiff spoke to me in April, 1961, I did learn from him that he was working for Reynolds, Bookers Sugar Estates, Albion Estates and Stone for Public Works Department.

Adjourned to 9 a.m. tomorrow 1st
July 1965.

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Defendants
Evidence

No. 24

William Blair

Cross-
examination
(continued)

30th June
1965

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30/6/65

1/7/65 9.00 a.m. Thursday

Resumed

1st July
1965

WILLIAM BLAIR sworn:

I was concerned with quotations to the plaintiff not initially but subsequently. It is not correct to say that I always encouraged the plaintiff to place the order and I did not discourage him. I had refused the order. It is true that the electrically driven mill was more expensive than the belt-driven mill. I did not tell the plaintiff or indicate in any way that an electrically driven mill would be more efficient than a belt driven mill. I did not express the view to plaintiff that in a length of time the electrically driven mill would be more economical. I did not recommend the electrically driven mill as more preferable than the belt driven mill. I did not indicate to plaintiff the probability of Rural electrification. My quotation to the British Guiana Credit Corporation included a generating set. I never at all indicated to the plaintiff that a steel frame would be supplied with the mill. I did not tell the plaintiff that he would have to supply a wooden flooring and staircase. I do not know that the first purchase by plaintiff was flooring and staircase.

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Court of
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Defendants
Evidence

No. 24

William Blair

Cross-
examination
(continued)

1st July
1965

I do not know that plaintiff purchased lumber on 2 separate occasions. I do not know that his second purchase related to the wooden frame. I do not know of any purchase of lumber.

It is difficult for me to say generally that excessive vibrations would affect the production because on certain parts there must be vibrations.

I am certain that the interview alleged with me prior to the order never took place. (That is at the Y.M.C.A. and at plaintiff's home). That is untrue. Mr. Ivan McLean was a branch Assistant Manager of the defendants Company in New Amsterdam. I do not know if Mr. McLean was president of the Y.M.C.A. I have said that I have never been to the Y.M.C.A. in New Amsterdam. I do not know where the Y.M.C.A. Hall is in New Amsterdam. I learnt from plaintiff that a dryer shaft was broken during an operation by Chung. Mr. Chung did not tell me of this. I do not know that many reports were sent to Lewis Grant & Company (Manufacturers). I had reported the result of the July test and invited their comments as to the heating up of the motors. I know of no reports before this. I do remember an occasion prior to the opening of the mill when I brought plaintiff to Georgetown in a jeep. It is not true that the plaintiff told me in the jeep that if defendants take back the dryer he would be willing to forego the deposit and the installation charges. That conversation never took place. It is untrue that the plaintiff was offered a used paddy cleaner free. He was offered it at a reasonable price - about one thousand dollars (\$1000). The plaintiff never told me that he would like the dryer to be tested with 100 bags of clean paddy to determine whether the cleaner was necessary. The shaker conveyor was to be used in conjunction with the dryer for parboiled paddy. This conveyor was fitted into position in relation to the dryer but was never put into service by plaintiff. I am not aware of any test prior to July by Mr. Chung of the conveyor or any other machinery. I did not suggest to plaintiff that the shaker conveyor be sold.

The order "K35" was prepared in duplicate. One copy was to be given to the purchaser and one retained by defendants "K35" is a duplicate. Both copies were kept by defendants. I was not present

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when Exhibit "K35" was made out and signed. I certainly would have given a copy to plaintiff or his agent if I were present. I do not know of my own knowledge if the Exhibit "K35" was read to plaintiff's agent. It is true that there is no reference to the word "detached" in the order.

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Evidence

No. 24

By the Court:-

William Blair

10 If there were to be an iron frame it would have been on the list attached and referred to. The attached list comprises all the parts of the ordered mill and dryer. It does not include an iron frame. On the list is stated that the wooden work is to be supplied by plaintiff. I have never seen an iron frame. We never imported one and so I cannot say what wood work is necessary with an iron frame.

Cross-
examination
(continued)

1st July
1965

Re-examination by Mr. King:

Re-
examination

20 I cannot account for the reason why the plaintiff was not given a copy of the order. I was not present.

I said yesterday that a copy of the specification of the mill was given to plaintiff. I have a copy. This is the copy I was asked to bring (by Mr. Luckhoo) - Tendered by consent Exhibit "V" (2 pages). The very 1st paragraph states - detached. Mr. Chung gave to the plaintiff the original in Berbice. A covering letter was attached to the specification sent to plaintiff.

30 The pamphlet Exhibit "C" was out of date - obsolete. I don't know how the plaintiff got this. We kept the old pamphlets in our cabinet in our department not exposed to the public in Georgetown as far as I know. I said before that the description in Exhibit "C" page seven (7) did not apply to the mill ordered.

40 As I said only the triple cone and one polisher was in common and this does not relate to capacity but to only quality. As far as I know only one official test was carried out in July and I explained what happened then. The test was not conclusive as it was not concluded. It was my intention to complete

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Defendants
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No. 24

William Blair

Re-
examination
(continued)

1st July
1965

the test for our own satisfaction. The delay from July to October for Mr. Ottman to visit was because we had asked plaintiff to inform us when he was milling again so the installation may be tested under full load. A telegram was sent to plaintiff in this connection and we also got in touch with each other about this, then Mr. Ottman and I went in October, but Mr. Ottman went also in September but the mill was not working then. After this I just "timed" the number of bags and did not make another full scale test because we received the writ of summons in this case. Mr. Boon is in Trinidad now. He was transferred there in 1963.

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I had said that the dryer was not used between March and July and this is because the weather was very dry - there was a drought and most Indian families apply their own labour in drying their paddy on the concrete and this is better to them financially. A dryer is used in cases of need and when the weather does not permit drying.

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I did not personally write to the plaintiff about the worn sweeps as my intention was to go back with Mr. Ottman to examine the installations. In my mind I was thinking of the electric installations and despite Mr. Chung told me of sweep it did not occur to me to write to Mr. Ally (plaintiff) about it. Moreover I had stated that I had reported the heating of the motor casings and the test to the manufacturers and was anxiously awaiting their comments which I thought would help Mr. Ottman and so I did not think of writing plaintiff. I was not present when the worn sweeps were found by Mr. Chung. I would assume that the pad Exhibit "L" is the same pad that plaintiff had because I observe my writing on a page in red with reference to the weights. When I made the notes of the weights I did not see any other of the pages in the pad Exhibit "L" written up. Mr. Chung did the test in October when I "timed" one bag rice under 5 minutes.

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When plaintiff told me that he had paid compensation to farmers, I tried to give him some advice and warned him of the dangerous practice of doing this as it was most important to examine the farmers paddy coming in. I told him of an experience we had with tyres and warned him as to the danger of this practice and that he was inexperienced in rice milling and should take advice.

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Through court by Mr. Luckhoo:

I did indicate that capacity of a mill depends on a number of factors and one factor is the diameter of the cones. The plaintiff's cones are 30" in diameter.

In Exhibit "C" reference 74 the 30' is with reference to the pulley and not the cones.

By the Court:

10 The mill sold to Dr. Fraser was the same design as plaintiff's mill except that is a one-ton mill and the plaintiff ordered a 2 ton and, also Fraser's is a belt driven mill and the plaintiff's electrically driven. The plaintiff's reference when ordering his mill was confined to Dr. Fraser's mill. We have no brochures or pamphlets with reference to Dr. Fraser's mill. We had pamphlets about the dryer. The dryer plaintiff ordered was stated by him to be one similar to Dr. Fraser's. That was the very type of dryer we sold the plaintiff except that plaintiff's
20 is electrically driven. We have had no complaints from Dr. Fraser in respect to his mill or dryer. We have sold other dryers to customers similar to "08" but belt driven. One to Amjad Ally at Wakenaam. We had no complaints about broken grains being excessive. I believe the Rice Development Company has an electrically driven dryer similar to plaintiff. It might have been imported directly. I am not sure. As far as I am aware there is no mechanical defects in the mill or dryer. No defect was drawn to my
30 attention by the plaintiff's. We do undertake to assemble the mill and to test each component to ensure that they were running satisfactory. Mr. Chung did this in this case and in every case. The same procedure was adopted at Dr. Fraser's mill. I was never disappointed at any stage of the performance of the mill.

Mr. Luckhoo states that he would like Mr. Blair to know that plaintiff is willing at any stage for a test to be carried out.

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Defendants
Evidence

No. 24

William Blair

(continued)

1st July
1965

In the Supreme
Court of
British Guiana

No. 24A

EVIDENCE OF DAVID FRASER

Defendants
Evidence

DAVID FRASER sworn: (recalled to complete evidence)

No. 24A

David Fraser
(Recalled)

Cross-
examination

1st July
1965

I have brought the records required in respect to Bhoopsingh. I have not the records in relation to July 1963. I was unable to find them. There is a book called the "manufacturers daybook" in which is recorded the various quantities of paddy brought into the factory and the quantities of rice milled from that paddy, such as Exhibit "R1". It is a statutory requirement to keep such a book. The books are used in sequence. My mill came into operation in 1961. I did try to look at those books. We should have about 3 such books from 1961. I have not been able to find any other. The books are kept in the mill. I discover the books can not be found in the course of my search for over 2 hours. I made no inquiries. I cannot say they are stolen. I was unable to put my hands on them. I have not reported to my father that those books are missing. The book for this year is being used. We are not reluctant to produce the books. I now say that the current book is in use now. I have not brought that. I can't say when that was started.

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When a farmer brings in paddy a receipt is given to the farmer - it has a number. The number on the receipt given to the farmer is noted in the day book. When rice is shipped to the Board the miller prepares a notification slip on a printed form on which is noted the name of the farmer - the number of bags of whole grain - the number of bags of broken grains, date of shipment and other particulars. The notification forms has a number and this is also noted in the "day book". The form is prepared in triplicate and one kept in my records. I would have paddy receipt books and notification forms. The day books are missing but the paddy receipt books are there to the best of my knowledge. The Rice Marketing Board has asked for figures for the past 4 years and that is now being compiled. The notification vouchers are not in use.

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Adjourned to 1 p.m. today 1/7/65

Resumed 1.15 p.m. 1/7/65

DAVID FRASER sworn further states under cross-examination by Mr. Luckhoo:

In the Supreme Court of British Guiana

Defendants Evidence

No. 24A

David Fraser (Recalled)

Cross-examination (continued)

1st July 1965

No. 25

Milton A. Chung

Examination

1st July 1965

10 There is a book called the "manufacturers stock return book". It shows the quantity of paddy and rice in stock at the end of each month. My book of this should be there. The Rice Marketing Board has a copy of the contents of this book. I may be able to get these books by Monday. I have no knowledge that 40 bags of the 150 sent to plaintiff's mill were returned.

(Mr. Fraser further examination deferred until Monday 5th July 1965).

No. 25

EVIDENCE OF MILTON A. CHUNG

MILTON A. CHUNG sworn:-

20 I live at Delphi Canje Berbice. I manage the Agricultural and Machine Branch of the defendants company at New Amsterdam. I know the plaintiff. I can't recall visiting the plaintiff's home with Mr. Blair and Mr. Esslemont. I know plaintiff bought a mill and dryer. I never persuaded plaintiff or visited his home to persuade him to buy the mill and dryer before his purchase. I never persuaded plaintiff at any time to purchase the mill or dryer. The very first time I met plaintiff was at East Lothian. Dr. Fraser's place. I was there discussing with one West a contractor of Dr. Fraser's. He West was employed to erect Dr. Fraser's mill by Dr. Fraser. I had left West and had gone to the back. Later David Fraser told me something and we went to the mill building and there I was introduced to the plaintiff and his father by David Fraser. Plaintiff told me that he was trying to get hold of me for some 3 days and that he was at the store and they told him that I was at Dr. Fraser's and so he came to see me. He plaintiff told me that he had purchased some land at Albion Front and was interested in purchasing a rice mill and if I can explain to him the working of Dr.

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Defendants
Evidence

No. 25

Milton A.
Chung

Examination
(continued)

1st July
1965

Fraser's mill. I then obtained permission from Dr. Fraser to show the plaintiff the mill and I then took both the plaintiff and his father Jumat Ally and showed them both around the mill and the working of the mill. The mill was in operation at that time. I explained the various components to plaintiff and his father and told them of the purpose of each part. After I was finished the plaintiff asked what was the output and I told him that he can best ask the man who was bagging spout - as "no fisherman states that his fish is no good". The plaintiff and his father then spoke to this man who was at the bagging spout. He was one Naraine. I left them there and I went to discuss with Mr. West about the erection of Dr. Fraser's dryer. The plaintiff then came up to me and said that he had visited other types of mills and he was convinced that the "Grantex" mill was performing better than the other mills he had seen. He mentioned that he had visited Hack's (Hogstye) and a Japanese mill "Satake" and the Schule. Hack has an "Olmia" mill. The plaintiff then asked me if I can quote him for a mill like Dr. Fraser's but 2 tons as he had made up his mind. I then told him that if he can call at the store the following morning I can go with him into the quotation. This was in April 1961. The following morning the plaintiff came into me at the store and we discussed the matter during which I told him that mills do not necessarily go by tons. I then explained to plaintiff that Dr. Fraser's mill though referred to as a one ton mill was capable of a capacity of 2,200 to 2,700 lbs. of paddy (intake) but we do have a mill capable of 3,500 to 5,000 lbs. capacity intake which would answer his request. I also explained to him that the capacity of mills manufactured and brought here in British Guiana are based on "japanica" paddy that is a variety of paddy which grows in sub tropical climates and that the type we grow here is "Indica" type and that variety has been so corrupted here that it would be difficult to gauge capacity in these mills. We further discussed the matter and then I handed plaintiff specifications and quotations with reference to a 30/60 belt-driven mill. This Exhibit "V1" is a similar copy of the specification which I gave to plaintiff. Tendered (no objection), Admitted and Marked Exhibit "V2".

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(At this stage Mr. Luckhoo objects after inspecting document to its admissibility on the following

grounds:

- (1) Plaintiff does not admit receiving such a copy.
- (2) No notice to produce.
- (3) No recollection as to whether plaintiff was cross-examined as to this document.

Mr. Luckhoo suggests that document be admitted.
(Admitted subject to cross-examination by plaintiff. This agreed to.))

In the Supreme
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British Guiana

Defendants
Evidence

No. 25

Milton A.
Chung

Examination
(continued)

1st July
1965

10 During our negotiations I never showed the plaintiff any advertising pamphlets about any of our mills. I never showed him Exhibit "C" or any similar brochure relating to Exhibit "C" or of any mills. We had pamphlets like Exhibit "C" in a bin behind my desk on the ground floor - a number of pamphlets are kept there in an open bin. I never gave the plaintiff any pamphlet relating to the mill or any other mill.

20 The quotation I gave plaintiff was with reference to a belt driven mill. About 2 weeks after I believe, I saw plaintiff; by that I had received a letter from Mr. Blair quoting plaintiff for a dryer "Leffel" Boiler. The plaintiff was alone. Plaintiff told me that he went to Mr. Blair and he decided to buy a dryer as well - also he was considering purchasing a mill which was electrically powered instead of a belt-driven mill. I then asked plaintiff what was the advantage of buying an

30 electrical mill and plaintiff stated that Albion might be able to supply him with electrical power and also if that failed he got good information that Rural electrification was shortly to take place. I told him suppose these sources failed, he would be in trouble to get proper personnel in the rural areas to look after a switch gear and motors also if he is faced with putting in his own power plant to drive the motor it would be too costly an affair for such a small enterprise. My motive in attempting to dissuade him was that I personally did not

40 like electric mills in the country (rural areas) and I did not think plaintiff realised at that time the heavy cost in indulging in such a mill. I thought plaintiff was going beyond his capacity financially and I should warn him. I do this as part of my job

In the Supreme
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Defendants
Evidence

No. 25

Milton A.
Chung

Examination
(continued)

1st July
1965

to all customers. Plaintiff then left me saying that he would consider what I said. At that time I did not consider either that the spot - Albion Front was a good spot for such a mill because in that area there was not so much rice grown at the back and there were already 3 mills in that area. The mills were quite adequate to cope with all of the paddy grown then. Subsequently I had conversation with Mr. Esslemont (a director of Bookers Stores Ltd. at that time). I next saw plaintiff sometime in June 1961 with his father: plaintiff showed me a cheque for \$10,000 and said that he was going to Georgetown to place the order for the mill and dryer. I came to Georgetown the next day and met plaintiff and his father at Bookers Store machinery department Water Street. Plaintiff left and his father paid over the cheque. As I was there I went through the specification and signed as a witness to the order, "K35" is the document. I now say I made a mistake about June it was the month when the Exhibit "K35" was signed. That is in October 1961. I next saw the plaintiff in New Amsterdam and he plaintiff spoke to me about another portion of a mill. A shaker conveyor. We discussed it only. On the next occasion I saw plaintiff who came to me at Dr. Fraser's mill at East Lothian. I was then completing the installation tank for the dryer there plaintiff then asked me if his dryer was going to look like that, and I told him "yes except that Fraser's works by belt" I showed him around the dryer and explained to plaintiff workings of the dryer and plaintiff left after inviting me to see the building he erected for the mill. Plaintiff said it was marvellous. I visited the plaintiff's building sometime after and told him that though the building was marvellous he should have taken into consideration the relative position of the sum to the building since he would still need a drying floor because farmers in this country are sceptical in using a dryer when they can get drying freely on concrete floor. He said he had taken all that into account and was sure that he had the best laid out mill on the Corentyne. I had spent balance of that afternoon there. Before the dryer came I told plaintiff that he would find it difficult and that he should encourage farmers to dry their grains not only for milling but storage purposes also. Plaintiff had said to me that he had very little rice milling experience. I did give to plaintiff a leaflet on the dryer: when he told me about the

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dryer I gave him a leaflet because Fraser's dryer was not here yet. We had no leaflet on any pamphlets of the mill 30/60 E. We still have none. The pamphlet Exhibit "C" came out in 1956 (I believe). I could be wrong. I never gave the plaintiff the Exhibit "B" leaflet to persuade plaintiff to buy the dryer. I gave plaintiff the leaflet Exhibit "B" after he told me that he was going to buy the dryer. He came one day and asked me if we had leaflets on the dryer and I told him yes, and I gave him Exhibit "B". I never told plaintiff that it was not good buying a mill like that and not a dryer. I never persuaded plaintiff to buy the mill or the dryer. At no time I made plaintiff believe that his mill had an iron frame. At all times he knew that the mill ordered was similar to Dr. Fraser's except it was a 2 ton capacity and electrically driven. I have never seen a steel frame Grantex mill here - that is "self contained". I received the drawings of the mill in March 1962. Exhibit "04" is one sheet showing the front elevation and a "plan" view (looking down at it).

This is the foundation plan showing distinctly the wooden foundation. Tendered Exhibit "M". These plans were sent in duplicate (usually). The plaintiff saw the plans when I called on him to arrange for the laying of the foundation. I showed the plaintiff the plans and we went through it with his carpenter foreman and his mason foreman. The plaintiff was at all times aware that he had to supply the wood work and all foundation and I discussed with plaintiff what he had to get, and the wood he got was excellent stuff. After the foundations were laid. One Mr. Whyte who was on a visit to us from the manufacturers came to Berbice to join me in assembling the mill. There was never any discussion between myself and Mr. Whyte over any steel framework. After Mr. Whyte arrived and I took him up to plaintiff's premises we already had 2 cones in position (pearling cones). I introduced Mr. Whyte to all the men there (plaintiff was not there). The whole day was spent with Mr. Whyte assisting with the men. Plaintiff was not there throughout this erection. I introduced him I think the next day. We had a man around there. He appeared to be Dutch and assisted. Plaintiff told me that this man would do anything we ask. Mr. Whyte spent about 6 weeks and I did not spend all

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Examination
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2nd July
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my time there as Mr. Whyte was there. Mr. Whyte did not come down specially for this mill. We had several ordered and he came to assist us as a matter of routine. Before Mr. Whyte came one Mr. Tomdie had come. It was routine.

Adjourned to 9 a.m. tomorrow
2/7/65

2/7/65 Resumed: Friday

MILTON CHUNG sworn: further states:-

The mill and dryer were erected or assembled then the electrical installations were installed by the plaintiff's electrical engineer. These installations were completed in July 1962 but no power was available until towards the end of November when the generating plant came in. After the plant was put on its foundation and connected it was discovered that the rotation of the power engine was contrary to the rotation of the generator. After a couple of days to put it right we began to try out the mill. The plaintiff was annoyed at the delay and threatened to sue Sandbach Parker for the delay. I tried out the mill by turning over each component part of the mill and checked same to determine that it was in perfect mechanical order. We spent a complete day doing this and made a few adjustments which we found necessary. I then asked plaintiff to provide some paddy for trial run. The plaintiff hesitated but eventually gave me 25 bags and I had a trial run. This disclosed that one section of the mill - the compartment separator - needed cleaning. We then took the finished stuff and repassed it through the compartment separator to assist in the cleaning of it. This separator had on it an anti corrosive protection - from rust during transportation and this required more cleaning to get off the coating which was placed there to protect it. The mill then functioned well but not up to the required capacity like a new car it had to be worked in gradually to its capacity. It is untrue that all the paddy blew out of the husk aspirator. This was not possible at all. The control valve was near the operator and this can never happen. The very trial run of the mill was with this 25 bags of paddy which were dried on the concrete. This trial was to check and it lasted the whole day.

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There were no heavy vibrations on the wooden frame. The vibrations were what was expected. After this trial run in December, I was satisfied that the mill was functioning mechanically sound. After I was satisfied with the running of the mill, I asked plaintiff for his would-be operator. Plaintiff then told me that the Dutch lad would be his operator. I requested 2 men to be trained to run the mill. Plaintiff supplied another man called Mamoo. I commenced training both men. After 3 or 4 days I discovered that I was not making any progress with either of the 2 men. In one case the Dutch Indian was at a disadvantage in understanding English. Mamoo on the other hand appeared to be too old. He was over 50 years. He was not active enough. I told plaintiff that he must get a good operator to run the mill. The plaintiff then told me that he would try himself. I was pleased about this as I felt the owner should know something about his mill. I then began instructing the plaintiff. I spent 2 or 3 days doing this instructing the plaintiff how to make adjustments to the various components and how to derive the best results. The plaintiff did not understand the adjustments to the compartment separator. This worried him and he said that he was too busy to continue with it. I persuaded plaintiff and left 2 of my competent men to assist plaintiff in the milling operations and I left. A week after I again visited the mill and I found that plaintiff had employed one Sulaiman. The plaintiff told me that Sulaiman had experience with mills and Sulaiman did appear to have some experience. I spent a few days in the milling operations. I saw Sulaiman operating and he appeared to know what he was about. Up to this stage the plaintiff made no complaints. I left again and around Xmas time the plaintiff and his father Jumat Ally came to the store in New Amsterdam and both of them told me that they were doing quite well. They told me that they had received some good paddy from Black Bush and was producing about 11 bags of good rice per hour. This rate of production was within the capacity rate. In January 1963 the plaintiff complain to me at the store about getting some trouble. I then sent my foreman Mr. Inshan. The following day I went to the mill and there I saw that most of the adjustments were tampered with and not functioning properly. It appeared that some one had made wrong adjustments. The mill too was not cleaned as it

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(continued)

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should have been. I then told plaintiff that if that was the way he intended to keep and run the machinery it certainly would not last very long. I cleaned up the mill and made the necessary adjustments and got the mill going again in a normal good condition. I then spoke to the operator Sulaiman. Later in January the plaintiff again asked me to call as he intended to start milling parboiled rice. I went and gave instructions accordingly. Up to now I had no complaints. Before the opening of the mill I was asked to instruct as to the use of the dryer and paddy was provided but I cannot say if it were 80 bags but it was enough to fill the dryer. This was either late January or early February 1963. I explained the process to the plaintiff and dried the paddy. The paddy was milled and the result was about 30% broken grains. This I believe was due to the (quality of the) paddy. It appeared to be sun-cracked paddy but I had omitted to test the grains before the drying. I came to this conclusion after I had seen the grains and checked the shelled rice coming out of the sheller. I then drew the attention to the cracks in the grains to the plaintiff and explained why it was so important to check grains before milling as where grains are cracked the better process is to parboil it. It is not true that I told plaintiff that I did not know why the grains were breaking.

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(At this stage witness explains in detail the operation of the dryer).

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There is no difference in a belt operated dryer and an electrically driven dryer in relation to results. The only time I lit the furnace first was when I was trying it out and that is before filling the dryer. One should do this to ensure that the burners are in working order and having ensured this the burners are turned off, then you will proceed with filling the dryer. Before the opening I was called on to do some parboiled paddy in the dryer.

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Mr. Boon never spoke to me with reference to the plaintiff at any time and at no time. The first time I heard that the plaintiff wrote Mr. Boon was during the hearing of this case. I never knew before that plaintiff had written to Mr. Boon. It is not true that I was annoyed about plaintiff writing Mr. Boon as I did not know this then.

The official opening took place in March 1963. Dr. Fraser of East Lothian was among those who attended and it was the largest opening I had seen. Dr. Harry Paul was also there. There are other 2 ton mills in the Corentyne but not electrically driven. There is one at Bush Lot run by the Ramdeo's. One at West Canje run by Walter Ramsarran and one at Sisters East Bank Berbice run by one Osman Fazal all 2 ton mills and of same manufacture. All 30/60 E but belt-driven by diesel engine. The basic complaints have been when a lot of foreign matter accumulate the output capacity goes down. There is nothing we can do about this but to clean the mill.

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At the opening persons who knew about rice made very favourable comment as to the quality of the rice from the very poor paddy used. I found when the very best paddy is used at tests people feel that it is not fair and usually ask what about the ordinary poor paddy. The paddy had green grains and yet produced reasonably good quality rice. Everyone was satisfied with the demonstration at the opening. About 2 months after the opening Mr. Blair spoke to me and as a result I contacted the plaintiff and told him that Mr. Blair asked me to notify him of a coming instalment to be paid by plaintiff. The plaintiff then stated that the mill was not working right and that nothing was working right and that Bookers was not treating him right. I said no more to him and reported my interview I had with plaintiff. Sometime after or before the opening the plaintiff had burnt a sheller motor. I investigated this and found that the plaintiff had tied the trip switch which is a safety device to prevent the motor from burning up. I spoke to plaintiff about this and he plaintiff told me that he did it because the motor was cutting out. On examination I found that the discharge fins were considerably worn and this caused the sheller to build up and choke and resulted in tripping the switch (fins are made locally). The fins were worn from excessive dirt and sandy material in the paddy. For the time being we adjusted the fins and eventually defendants replaced them. (The fins cost about 10/- ten shillings). The plaintiff first expressed his dissatisfaction about the dryer sometime in 1963 after the opening of the mill. He told me that he could not get people to use it and I told him that once the sun was shining and farmers can get the concrete free it would be difficult to get the

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farmers on the Corentyne to use the dryer as this concrete drying has been a family affair for years. The farmer too, being ignorant of the working of the dryer entertains a fear that his paddy would be damaged. The plaintiff continued to complain, he said that he had tried some paddy himself and it was broken up paddy. I asked him how did he do this without a moisture meter and he said that he did not need that as he did as he saw me doing it and he had already got good results. I had brought down a moisture meter ordered by plaintiff -- 10
costing roughly \$450 but plaintiff has not taken it up. I still have it. I told him that he must have it but plaintiff wants defendants to give him free, after it was ordered. I still have it. It is absolutely essential if one is going to use the dryer. Dr. Fraser has such a moisture meter. Anjad Ally has one with his dryer which is also run electrically. It is difficult to test paddy for white rice with one's teeth. It may be alright 20
with parboiled rice. I always used the moisture meter. We must, when I used the dryer. One has to test the moisture content of the grains before drying in the dryer and during the course of the drying tests must be made from time to time to determine the extraction of the moisture for if more than 6% is extracted the grains would be damaged. The checking is necessary to ensure (1) that too much moisture is not extracted and (2) to make sure that you are drying evenly in every chamber 30
of the dryer. This refers to batch drying.

The plaintiff asked me to go and do a test for him. He told me that it was no good to him and that it was a "white elephant". Plaintiff spoke to Mr. Blair and he decided to have a test. I was instructed to get in touch with the plaintiff and the plaintiff was instructed to contact me. I informed plaintiff that we decided to have a test and that we will get paddy from Dr. Fraser's mill. Before the test I had to check the dryer and I indicated this to the plaintiff who told me that 40
he was then milling some customers paddy from Black Bush and that he would not like to stop doing so.

Adjourned to 1.15 p.m. today
2/7/65

2/7/65 Resumed: 1.30 p.m.

MILTON CHUNG sworn further states:-

In July 1963 Mr. Blair and myself went to plaintiff's mill to conduct a test. I had arranged since in March when I spoke to Dr. Fraser to let me have a hundred bags of paddy for a test. We got this 100 bags in July 1963. Before the test started I checked both the mill and dryer. I cleaned the dryer. It was in a very dirty condition. It was blocked up with straws and paddy awns and also particles of dry moss which comes in the bags when the combine loads the paddy. We had to clean the dryer and we removed 2 or 3 bags of this foreign matter. I then paid attention to the elevator and the moving parts and then checked the burners and the automatic lighting system. The following day I checked the mill. I found the pearling cone screens punctured. The rubber brakes used for polishing the rice in the cones were worn and were uneven. When screens are punctured some of the grains go with the bran and this reduced production. The brakes unevenness would result in some of the grains not properly polished and others broken. The knives on these 2 hullers were also worn. The elevator belts needed tightening. The paddy cleaner screen was dirty and bent in the middle causing a concave. The result of this would slow down output. The compartment separator pulleys were stuck and the eccentric strap were dragging and was overheating. It lacked proper greasing. The polisher lambs wool was worn at certain parts and this had to be replaced. The sheller fins I did not examine as this does not usually wear quickly. All the various matters were put right for the test. I did not go around the Agriculture Department and at different places looking for paddy. This is not true. Mr. Blair and I never went looking for paddy. I went to the Agriculture Department in respect of a cleaner they purchased from us but never for paddy.

I did not go to Dr. Fraser to select the paddy. I did not ask Dr. Fraser for any particular quality of paddy. On the day of the test of the dryer a few persons were around, that was the first day. I dried Dr. Fraser's paddy on the 1st day. It was about 60 bags weighing around 9,000 (plus) lbs. to fill the dryer. I then operated the dryer. I recorded the weights on Exhibit "N" the moisture content, the time taken to fill dryer actual drying time and moisture content after drying all recorded in Exhibit "N". Mr. Blair and plaintiff had a

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dispute as to what is actual drying time and plaintiff stated that he was not prepared to sign Exhibit "N" as this was not fair to him. He refused to sign the test sheet. I had prepared 4 copies of test sheets for the drying. We did not get to the stage to hand the plaintiff once because of the dispute as to what is actual drying time.

After the paddy was dried it was stored to cool off until the next day for milling. The following day we weighed 3,500 lbs of that paddy. During this time a lot of people were in the mill and we asked the plaintiff to get them out as the plaintiff had loaned the mill compound for a G.A.W.U. meeting. It was most disturbing and I was not happy in view of the situation during that time of the year. We then tried to get the feed aperture adjusted to enable me to feed at the rate of 3,500 lbs. per hour. I made an opening and checked and then had to do that again. I got the capacity adjusted but the plaintiff objected saying that I was trying to clean the paddy through the paddy cleaner. I tried to explain to plaintiff what I was doing but plaintiff said he won't have that. Mr. Blair then told me to carry on whether the plaintiff like it or not, as he was anxious to satisfy himself about the test. I passed about 10 bags through. I then tried to feed the balance to bring the capacity to the desired requirement. The result at that stage was satisfactory and I then decided to test for capacity. We started and got it up to 3,300 lbs. and the sheller motor began cutting out. I thought it was an electrical fault and I explained the control switch. I found that the overload device was not at its maximum. I then took it to the maximum and tried again and the same thing took place it cut out. Mr. Blair appeared convinced it was an electrical fault and he called outside and spoke to me about the overload. Mr. Blair then went to Plaintiff and told him what he said to me. Mr. Blair told plaintiff that he was going to Georgetown to see Mr. Ottman in order to get the installation (electric) checked. Mr. Blair then left for Georgetown. I was not convinced it was the overloading. I asked plaintiff to allow me to carry on but plaintiff said I can do what I like as he was convinced that I can't run the mill. Mr. Inshan was present and I released the belts from the motor and checked to see if it were coming up to speed. It did. I discussed it with my foreman and we felt something was wrong with the

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sheller and we opened the sheller and there I found that the discharge "fins" were worn worse than before. I had replaced these fins about 3 months before and it was very badly worn this indicated that the mill must have done a lot of work or that a lot of grit was present and that caused it to wear or that the metal was poor. The "fins" were locally made, I took them out and asked the foreman to get them built up at a welding shop not too far from plaintiff's mill about $\frac{3}{4}$ mile away. This was done. I had instructed to have the "fins" hard welded to last longer. This was done and replaced. I then decided to prove my theory and continued to mill the same day and I milled the lot and I succeeded in getting the capacity I had adjusted it for i.e. 3,500 lbs. per hour. It did not cut anymore.

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I drew the plaintiff's attention to the capacity and the working of the mill after. The plaintiff then told me that he was not concerned, as far as he was concerned I had already failed and the test was over. I pleaded with the plaintiff to admit that I did find the fault and got the mill to work successfully. He plaintiff used rough language. I made a record of the paddy milled on Exhibit "N". I noted (that returns from above paddy 100 bags milled in 3 hours giving 28 bags whole grain, 10 bags and 52 lbs. broken and 5 bags bran. It would appear a poor result but the paddy was very light the entire 100 bags weighed 13,690 lbs. and the return was 6800 lbs. of rice which is not bad for that quality. The broken grains were in keeping with the quality of paddy (in store for a long time) we used. It was not a bad return for white rice. I showed the plaintiff the record of 3 hours. He said he was not concerned.

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This performance was similar to all the other Grantex mills. There are 3 factors which control capacity (1) the ability of the operator to keep an even flow through the mill, (2) the quality of the grain you are milling including variety and the fact that it is pure line seed: and (3) the cleanliness of the grain that is it is free from straw and foreign matter.

I did not adjust the mill to produce more than the capacity of 3,500 because the quality of the

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paddy was poor. The plaintiff refused to sign the sheet but I compiled it for our own use and satisfaction. I was satisfied that the mill was working as it should. It was end of crop paddy and poor as it was discoloured grains and bottom paddy with dirt. It was "rough stuff" but I tried it as no other was obtainable then and it was paddy to give a test and if a given result is obtained with poor paddy one can gauge the performance with good paddy and more dirty paddy is brought to the mill more than good clean paddy "Black Bush" produces a fairly good paddy. The following morning I collected the milled rice and took it to Dr. Fraser and showed him a sample of the milled rice. At no time did Mr. Blair or myself express shame at the performance of the mill. Mr. Blair did not express any disappointment over the mill. I felt he was disappointed with me not checking the mill well. 10

At no time did I tell any rice farmer that Bookers would pay or that any one would compensate them. I never promised any one to pay compensation. I remember some paddy was 7 days on the concrete and was not being dried and getting damaged and I was asked to assist during a visit. I agree to assist as the paddy was going to be damaged. I went to Dr. Fraser and got a moisture meter. I could not have tested the paddy because the moisture content was so excessive that it could not register on that meter gauge. It was parboiled. Eventually I passed it through the dryer - 2 batches and placed it in the resting bin. I believe this is the paddy concerning Esar. I never promised him any compensation and the paddy was in a bad state. It was 7 days on the concrete. It is not true that Esar came to me at Bookers Stores or that I made any promise as alleged to him. 20 30

At no time did I arrange to pay compensation for paddy to anyone. There is nothing wrong with this dryer. I had dried one lot of paddy on the mill at plaintiff's request and he never complained: the result was reasonable. One always get better results from concrete drying than from using the dryer. The difference is about 5% or below. If a given quantity of paddy is dried on concrete and produces 100 lbs. of broken rice and similar quality when dried in the dryer and milled I would expect between 100 lbs and 105 lbs. Broken rice from the same type of paddy. The mill and dryer 40

were purchased by the plaintiff under a hire-purchase agreement Exhibits "K12" and "K14". Mr. Ally (plaintiff) spent considerable time reading the agreement.

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On the arrival of the machinery I received instructions from my Georgetown Office to use the money plaintiff had paid down as option money so that we can go ahead. I sent a message to plaintiff and he came down to the store in New Amsterdam. I told him what I was instructed to do that is to use part of the money he had paid as option money and he agreed to this. It was about 10.50 a.m. I drew up the necessary information on a piece of paper and passed it to the office for the hire purchase contract to be made up. I had left plaintiff sitting in the office and he plaintiff asked me if I can ring the Transport Department at Stanleytown so his trucks can go ahead and take delivery of the machinery. Subsequently I left plaintiff in the office and went myself to effect delivery. I then returned to the office and saw plaintiff speaking then to our Managing Director Mr. Smith. I asked the clerk if she had finished the agreement. It was finished and I handed it to plaintiff who looked at it for about 10 minutes or 5 to 10 minutes. He then signed it and the clerk signed also and I signed it. I was not present when the agreement for the dryer was signed. Mrs. Joyce Cameron is a clerk there and still there.

Milton A.
Chung

Examination
(continued)

2nd July 1965

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The operation of a dryer and a mill do call for skill. After I left I gave copies of instructions to the plaintiff for the operator's use. One for the owner and for the operator to be kept in the mill. I handed the plaintiff myself these instructions which were compiled from instructions I got from Mr. Tomdies of the Grantex works. He was then the designing engineer. These are 2 copies: Tendered and Marked for identification only.

Adjourned to 5/7/65
2/7/65

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5/7/65 Resumed

5th July 1965

MILTON A. CHUNG sworn:-

After the July test I returned to the mill sometime in October 1963 with Mr. Ottman who was the chief electrical engineer attached to Bookers

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Sugar Estates Ltd. When we got there we found some trouble with the compartment separator. We found the bearing of the eccentric strap seizing. We fixed it; we then proceeded to get the mill up to capacity and we reached between 3,500 lbs to 4,000 lbs of paddy. The mill operated well and then under a full load Mr. Ottman made tests for the installation. At no time or stage did plaintiff take up any iron bar to strike anyone.

Milton A.
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Examination
(continued)
5th July 1965

Cross-
examination

Cross-examined by Mr. C.L. Luckhoo Q.C.

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I am 17 years now employed with Bookers. I am a loyal employee. I was in the machinery department from the time I join defendant's company. It is true that I have worked myself up to the present position, I now hold. I am 43 years old now. It is true that I have had experience generally that in some new models of machinery there are defects. It has occurred that sometimes a particular model works very well but one may be faulty. I would say that the sale of Multi Stage rice mills has been very competitive in British Guiana. It is true that a few well known persons do sell such equipment. I do not get a commission on any sale of any equipment. I am a whole time employee with a fixed salary. I am concerned with the sale of products of my employers. I do use my best endeavour to promote such sales a transaction such as this - the sale of a rice mill - is a substantial investment. I would expect a purchaser to enquire as to the capacity of the dryer. I agree that a purchaser should have satisfactory drying from a dryer. I did say that in relation to broken grains that the operational result from a dryer may produce not more than 5% of broken grains as compared with concrete drying, assuming that the grains are the same variety. This is caused by the movement of the grains through the various component parts of the dryer on to the resting bin.

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In relation to actual drying, that the reduction of moisture content from grain dried on a

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drying concrete floor to that dried in a mechanically dryer. The extraction of moisture content should be the same.

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I have not found in this country with the ordinary farmer that literature in respect of machinery is very important. When a farmer comes to buy he wants to see that piece of machinery working. He decides when he sees the machinery working.

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Cross-
examination
(continued)

5th July 1965

10 It is true that I may have given to the plaintiff a pamphlet such as Exhibit "B" in respect of the dryer. I think I said I remember giving him a pamphlet like Exhibit "B". I don't remember if it was before the order was placed or after when I gave him the pamphlet. The plaintiff ordered a dryer like Dr. Fraser's. I did not show him any size in the pamphlet or at page 5 of the pamphlet. I knew that he wanted a dryer like Dr. Fraser's and that was a "08" dryer.

20 I did tell plaintiff that a "08" dryer would have a 4 ton capacity when being used at a near temperature for drying at 140 - 150° fahrenheit at a continuous rating that is continuous drying. I am quite sure that I said "continuous rating". I explained to plaintiff what was meant by continuous rating. I am sure I did that. I do remember explaining to plaintiff. Such a dryer would not have the same capacity for Batch drying for actual drying time.

30 The pamphlet Exhibit "B" does not state how many pounds of paddy the dryer would hold that is to say the "static" capacity. I estimate that the "08" dryer holds 3,500 lbs. approximately that is about 50-52 bags of paddy depending on the grain quality. I don't accept that according to the average local grain, that the average static capacity is 7,000 lbs.

40 If the paddy fed into the dryer has a moisture content of 22% then I would expect in Batch drying after circulating the grain for one hour using an air temperature of 145 to 150 degrees fahrenheit to extract or reduce the moisture content by 6%. If the moisture content was 20% then in an hour it would reduce the moisture content to approximately 5½% to 5%. If it were put in at 18% moisture content then it would reduce it in the same time

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(continued)

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about $4\frac{1}{2}$ to 4%. If paddy moisture content is 18% one hour circulation should reduce the paddy to milling percentage that is $13\frac{1}{2}$ to 14% for white rice. One pass takes about 1 hour.

A bag of paddy is about 145 lbs. 50 lbs. would 7,025. Four tons is about 9,000 lbs. I said circulating the grain for batch drying in one hour would process approximately 7,000 lbs. The actual drying time a batch drying would be approximately $\frac{7}{9}$ (seven-ninths) of actual drying rate of continuous drying.

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Adjourned to 1.15 p.m.
5/7/65

MILTON A. CHUNG sworn in further cross-examination by Mr. Luckhoo states:

Dr. Fraser's dryer is also a "08" model. I did explain to the plaintiff the 2 processes of drying. Batch and continuous. I told him that the difference between batch drying and continuous drying will differ in rate of output. I did not tell him what was the difference in time specifically but in terms of output. I explained to plaintiff that if one was doing continuous drying the grains would be dried, will be passed through the dryer and be elevated out in one pass while in the batch drying the dryer would have to be filled and the grains circulated until it reached the required moisture content and this would naturally entail more time for grain batch drying. That is the substance of what I told plaintiff.

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In continuous drying. In Batch drying is broken by filling then circulating. The extra time is the circulating time. In continuous drying the grain passes through the dryer once and then goes to a resting bin. In continuous drying if the paddy is 18% M.C. fed into the dryer and the hot air is set at 150 degrees fahrenheit and the regulated flow is properly set, one can extract $4\frac{1}{2}$ % to 4% in one pass. In batch drying however one has to circulate it faster as to ensure that the grain is not overdried. One can regulate the outlet feed to reduce the moisture content to any specific required to accord with the same rate as continuous drying. If it is so regulated as continuous drying the paddy would not be in the same condition as if

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circulated as it would be at the end of one pass in continuous drying. The first lot in continuous drying that comes out from the dryer will not be reduced to the specific moisture content as the remaining lot. In batch drying I can't say how many times one grain can pass round and round the dryer. It will pass more than once of course. It is true that a grain which passes through the dryer completely and then goes to the top of the dryer, would mix with grains which have been partially dried. The grains come uniformly and some mix up as suggested. If the grains are very clean and of good quality it is possible to fill a dryer in $\frac{3}{4}$ of an hour. The time I took to fill plaintiff's dryer is one hour and 3 minutes.

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It would not take the same time to fill the dryer as to circulate it out of the dryer. One can shorten the time to get the grain around by one pass faster than the time taken to fill because there is a regulating gear and when the dryer is filled for the first time all the light material remains at the top therefore allowing you much cleaner grain to commence circulation.

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The best time I took for actual drying time in plaintiff's dryer was 1 hour to 1 hour and 3 minutes. There is no statement in Exhibit "B" showing the difference in time or method between batch drying and continuous drying.

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At 145 degrees to 150 degrees in batch drying in one pass one would get near 2% or 2% extraction (by near 2 I mean less than 2%).

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In the second pass you may be able to reduce another 2% or 1.8% and on the 3rd pass the extraction rate would be less about 1%. My estimation are based on my experience. I agree if here is 3 passes it might be 5% or less extraction of moisture. One pass takes around 20 minutes. I have taken 20 minutes for a circulating pass on plaintiff's dryer. It is true that I had pamphlets like "C" in my bin at my store but I would not have shown plaintiff that as it was obsolete and I did not show him that. There was a more current pamphlet than Exhibit "C" and that contained information about mills like or similar to plaintiff's mill.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No.25

Milton A.
Chung

Cross-
examination
(continued)
5th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 25

Milton A.
Chung

Cross-
examination
(continued)

5th July 1965

I gave no pamphlet to any one about rice mills at that time. I can't say if any such pamphlets are there now. I have not looked and I can't remember when I last saw it but I know I saw it. It would be an illustrated pamphlet. But the pamphlet I am talking about could not have 30/60E. It would not have plaintiff's mill. It was a pamphlet showing an older model of a detached mill than the present model bought by plaintiff. It was not similar in appearance. I never showed plaintiff any pamphlet about mills. It was similar in being a detached type and in some other respect like plaintiff's. The Manufacturers have not produced any pamphlets in respect of 30/60 E. The pamphlet I was talking about is not as old as Exhibit "C" but older than the model plaintiff bought and I never showed that.

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Dr. Fraser's mill is known and called a 1 ton mill because its intake capacity is approximately a ton. Dr. Fraser's mill has 2 24" diameter whitening cones.

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The plaintiff's mill was intended to have a capacity of 3,500 to 5,000 lbs. intake capacity. I do not agree that the plaintiff's mill was intended to have twice the intake capacity as Dr. Fraser's mill. It is not true that I represented to plaintiff that the mill ordered by plaintiff would be double the capacity. I never called or described any mill by 1 ton or 2 tons. The plaintiff called it so and generally the owners describe such mills in terms of tons but the makers do not. My view of the mill at all times was that it was a 3,500 to 5,000 lbs. intake capacity mill but it was roughly described as a 2 ton capacity mill. That was written by Mr. Blair and one would naturally assume that it is around 2 tons intake capacity. I think I was aware that Mr. Blair did describe the mill as a 2 ton mill. As I said before it is a common description. It was never said in my presence to plaintiff that the mill has a 2 ton capacity. I did receive a copy of "K3" and I observe that reference is made to a two ton mill.

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I see Exhibit "V2". I would not swear that the original of Exhibit "V" was sent to the plaintiff. Letters similar to Exhibit "V2" were given to a number of people. Some were similar to

10 Exhibit "V2" and others a little different. Notes were made on a copy as the name of persons the copies were sent to, and on this copy Exhibit "V2" there are 2 names noted on it (1) M.A. Khan and (2) J. Sawh Bros. No. 71 (3) M.A. Khan Alness, Corentyne and J.A.S. above. It is in the handwriting of my assistant in New Amsterdam. The notes indicate that a copy of that letter was sent or given to those persons whose names appear there. If it were intended to send or a copy given to plaintiff it might have been noted on another copy.

It is true that I have been unable to trace the name of plaintiff on any such copy.

Adjourned to tomorrow at 9 a.m.
5/7/65

In the Supreme Court of British Guiana

Defendants Evidence

No. 25

Milton A. Chung

Cross-examination (continued)

No. 25A

No.25A

EVIDENCE OF DAVID FRASER

Resumed 6/7/65 9.15 a.m.

DAVID FRASER sworn (interposed) further states:-

20 I have been asked to produce 3 books or 3 sets of things. This is the paddy receipt book. It shows on 14th March (1963) 680 bags were received from Gladys Hicken Ltd. On 16th March 1963 180 bags from Gladys Hicken Ltd. (called Hicken).

No. 284 - 17/3/63 461 bags from Drill Estate

No. 285 - 18th March 1963 350 bags

No. 286 - 1st April 1963 48 bags from farmer

30 No. 287 - 1st April 1963 84 bags.

No. 288 - 1/4/63 Farmer 55 bags

No. 289 - 1/4/63 Farmer 79 bags

David Fraser (Recalled)

Cross-examination
6th July 1965

In the Supreme Court of British Guiana	No. 290 -	1/4/63	34 bags	
	No. 291 -	3/4/63	farmer	22 bags
<u>Defendants Evidence</u>	No. 292 -	3/4/63	"	80 bags
	No. 293 -	4/4/63	"	76 bags
No. 25A	No. 294 -	4/4/63	"	67 bags
David Fraser (Recalled)	No. 295 -	10/4/63	"	18 bags
	No. 296 -	10/4/63	"	18 bags
Cross-examination (continued)	No. 297 -	10/4/63	"	67 bags
6th July 1965	No. 298 -	10/4/63	"	44 bags
	No. 299 -	10/4/63	"	24 bags
	No. 300 -	28/4/63	"	45 bags
	No. 301 -		"	10 bags
	No. 302 -		"	13 bags
	No. 303 -	1st June 1963	"	34 bags
	No. 304 -	20th July 1963	"	400 bags
	No. 305 -	20th July 1963	Hicken	530 bags

The dates recorded do not necessary show that on that date the paddy was received because sometimes the paddy is brought in during the night and it would not be recorded until the farmer comes back and sometimes he does not return for days. That would not apply to Hicken Ltd. normally. Receipts would be issued from the said book. The entries Nos. 301, 302, 303, 304, concern farmers. I agree that the receipt No. 304 was issued to a farmer on 20/7/63 and that 530 bags of paddy were in our physical possession and stock on 20th July 1963 also for Hicken. The receipt 305 does not mean on that day the stock of Hicken paddy which had been brought in was checked and disclosed 530 bags. The receipt means that we had 530 bags of paddy for Hicken but it does not mean that the amount of 530

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10 bags, were still there on that date when the receipt was dated. In terms of the date on which the receipt of the paddy is recorded the book may not be accurate. It shows also stock in hand at a particular point of time but not necessarily on the date noted. It is true that the book (paddy receipt book) is supposed to be written up daily by the Rice Marketing Board regulation. The problem in issuing a receipt would not apply or arise in Hicken's paddy. My father used the receipt 305 for 530 bags. If there were no delay in the issue of the receipt the 530 bags must have been received by us. I am of the opinion that a delay was made in that entry 305. I say this because I am not sure how many bags of paddy were in the room and I had to check them and then issue the receipt.

20 The entries from the paddy receipt book are noted in the "Manufacturers stock return book". I can't find that book. I have not asked my father for it. He is the boss. When I went down last week end my father was there but he does not like me to be here and to produce any of his records. I did not report to my father that the book is missing. I don't believe he has the book. I believe it may be misplaced or lost. This book will show how much paddy we had on a certain day. My father does not know about these records which I have brought.

30 This is the notification voucher book from the Rice Marketing Board. This shows the bags of rice shipped to the Board.

In March 1963 Gladys Hicken Ltd. took in 680 bags plus 180 bags plus 461 bags plus 350 bags between the 14th and 18th March 1963 (inclusive) (Spring Crop) a total of 1671. This would be Spring Crop paddy and not end of crop paddy.

On 17th July 1963	10 bags	farmer	shipped to	
			Board	
On 27th July 1963	110 bags	Hicken Ltd.	"	"
40 On 25th July 1963	67 bags	"	"	"
On 26th July 1963	66 bags	"	"	"
On 30th July 1963	84 bags	farmer	"	"

In the Supreme
Court of
British Guiana

Defendants
Evidence

No.25A

David Fraser
(Recalled)

Cross-
examination
(continued)

6th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 25A

David Fraser
(Recalled)

Cross-
examination
(continued)

6th July 1965

1st August	100 bags	shipped to Board for farmer.
6th August	86 bags	farmer shipped to Board.
6th August	87 bags	" " " "
4th October	110 bags	Hicken Ltd. " " "

This shipment of 4th October 1963 was that of the new crop.

Between 17th July and 6th August 1963 a total of 605 bags of rice were shipped to the Board. I agree that the 100 bags of paddy given for the test was before 17th July 1963. 10

On 27th July 1963 from Gladys Hicken Ltd. was shipped to the Board 102 bags whole grain and 8 bags broken. On 25th July 59 bags whole grains and 8 bags broken.

On 26th July 61 bags whole grain and 5 bags broken sent for Hicken Ltd. to the Board and the 3 last shipments would relate to the rice from end of crop paddy (that is 27th, 26th and 25th July). The 3 shipments made on 27th July, 25th July and 26th July were rice which were milled and stored before the 100 bags of paddy were lent to Mr. Chung. It was not rice from paddy I milled after I loaned the 100 bags. This is our daily milling book. It shows what is milled from day to day and what is shipped. 20

It shows that from between 17th July 1963 to 31st July 1963 that 1296 bags paddy were milled. The milling dates are shown. If 100 bags were loaned on 16th July 1963 then between 17th July and 31st July I milled 1196 because 100 bags were milled by plaintiff's mill. 30

On 10th July 1963 my stock of rice was nil according to my record and signed by the Rice Marketing Board inspector. The stock of paddy then according to the record is 395 bags. After the 10th July the next entry was 17th July.

The rice from the 100 bags was returned to me and was sent to the Board but I cannot identify it in the shipment sent to the Board after it was received as it was not sent separately. In my daily milling book reference is made to receipt 305. 40

It shows that 530 bags were received and I milled from that 500 bags and that produced 265 bags of rice. It means that 30 bags of paddy were not milled.

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Defendants
Evidence

No. 25A

David Fraser
(Recalled)

Cross-
examination
(continued)
6th July 1965

On 10th August 29 bags of the 30 bags of paddy were in my mill but it was not good for milling. All the 500 bags were not all milled in my mill, it included the 10 bags loaned to Mr. Chung for defendants for the plaintiff's test.

10 I would accept what Mr. Chung said that the return of the 100 bags were 28 bags whole grain and 10 broken. I agree that the 38 bags (28 and 10) would be included in the 265 bags of rice shipped. It means therefore that my 400 bags yielded 227 bags of rice.

20 The 265 bags were shipped on 27, 26, and 25th July and this show that the 265 bags whole grain and 21 broken grains out of produce of 500 bags. The rest was kept for domestic consumption (the 10 bags broken are in the 21 bags broken). It is true that the result is a good result 400 bags producing 227 bags at that rate 100 bags produced 57 bags of rice. If plaintiff's mill produced 38 bags only from the 100 bags it would now appear that my average was much higher, about 50%.

Mr. Luckhoo: I am suggesting to you that the 500 bags were all milled by you the returns was 265 and was a good return.

30 Witness: I still maintain that I gave the 100 bags from this lot to Mr. Chung.

I agree that 500 bags of rice to produce 265 bags of paddy is good result. I can't say how many bags were whole grain and broken in the amount kept for domestic consumption.

The paddy in March 1963 should be better than the July 1963 paddy but I can't say if it were. Assuming the July 20th paddy came in after the loan then the 100 bags paddy loaned would have been the March paddy.

Adjourned to 1.15 p.m. today

Resumed 1.15 p.m.

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Defendants
Evidence

No. 25A

David Fraser
(Recalled)

Re-
examination
6th July 1965

DAVID FRASER sworn: Re-examined by Mr. King:

If a machine is tested for efficiency a test of bad paddy would show whether the machine can cope with it or not. In the Corentyne the average quality of paddy is fair. We do get bad paddy.

Wohab's duty did not include keeping any book. I said that the Autumn crop this year is poor. The spring crop was very poor because it was harvested prematurely to enable sowing for the Autumn Crop. It is not true that my grades of rice have dropped since Boopsingh left. I have checked with the Rice Marketing Board and found that it is not so. I have the records here, from the Rice Marketing Board duly authenticated by secretary - Tendered for identification only and Marked "X". My mill did not operate less efficiently since Boopsingh left. When paddy is discharged sometimes the number is marked on a bag and one has to wait until the farmer comes along to get his name. Many times the trucker brings the paddy with the farmers initials on the bag and it is left awaiting the farmer. When paddy comes in from Drill a receipt is not issued the same day. Again when paddy is brought in by my own men on trailers it is packed and not until weekend it is checked and recorded. The 530 bags of paddy were brought in and stored in a room during the Spring Crop. It came in by trailer - a trailer brings from the fields about 28 to 30 bags when the field is fairly dry. The paddy was brought within a period of time. I cannot say what period of time but it might have been within 7 to 14 days. We usually try to keep some paddy for seedlings. After this is obtained the balance is used for milling and it is at the stage after paddy for seeds have been taken out that a check is made and recorded and that account for the record of the 530 bags dated 20th July 1963. The 400 bags of paddy from its 530 were milled long before I sent the 100 bags to plaintiff's mill. When I say long before I mean a period of about 3 or 4 days. We had started to mill sometime before and were in the process of milling when I sent the 100 bags of paddy to plaintiff's mill. We do not ship to the board immediately after milling. We do have a man who is a deaf and mute. He drives a tractor. Whenever he brings in a load he is supposed to make a note of what he brings in. He failed to do so and that is why we were not sure

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10 as to how much was remaining from the Spring Crop. I keep broken rice for stock-feed - about 15 bags per month from my stock of broken rice. That amount would not be reflected in the records to the Board. Farmers use any bag they can get. They do not mind the capacity it can hold. They use any bag available from the blue hand bag which holds 200 and more lbs. the Government standard is 145 lbs. There are bags down to 71 lbs. and up to 176 lbs. in Exhibit "L". A bag is 3 lbs. The 100 bags sent to plaintiff's mill came out of the 530 bags.

By Mr. Luckhoo through the Court:-

The shipment of Hicken paddy according to my book to the Board was as following:

9th April - 29 bags whole grain and 5 bags broken
 9th April - 53 " " " " 6 bags broken
 18th April - 60 " " " " 3 bags broken
 (27th July, was noted before).

20 The total shipped to the Board from about 9th April to 26th July inclusive is 142 bags whole grain and 14 broken.

Once paddy come into the milling compound for processing into rice it is recorded. If a portion is to be utilised for seeds then a permit must be obtained from the Board. When we put aside paddy for seeds that paddy does not go to the mill but is in the farm section.

No. 25 B

EVIDENCE OF MILTON A. CHUNG

30 MILTON A. CHUNG sworn: Cross-examined by Mr. Luckhoo (cont'd):

When a person makes an inquiry about a rice mill most of them are taken by me to Fraser's mill to show them the working of the mill and I will send them also copies of the circular "V2".

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 25A

David Fraser
(Recalled)

Re-
examination
(continued)
6th July 1965

No. 25 B

Milton A.
Chung
(Recalled)

Cross-
examination

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 25B

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)

6th July 1965

I consider myself a competent person to instruct persons to operate a dryer and mill. But milling itself is not our job. We can detect faults in the mechanism. I did have control of the test in July. The defendant's employees did operate the mill. I do have experience in determining whether paddy is of good quality. If given enough time to put the mill in good order, I would be able to carry out a comprehensive test of the mill. I agree that such a test can be made and can be established. The test of the mill as to capacity was not conclusively established in July. The test in July was the only comprehensive test attempted. The dryer tested well and proved satisfactory but the mill's test was inconclusive in July. I agree that a fair test of the dryer would be to take a quality of paddy and divide it and dry one part on the concrete and the other part in the dryer reducing both to the same moisture content and then mill separately and the results would show whether the dryer dried paddy produced more broken grain than the concrete dried paddy. I have been told that the plaintiff is willing to have his mill and dryer available for testing at any time. Presently if my employers and Solicitor ask me to carry out a test I have no objection. I gather that plaintiff wanted to buy the best and he bought the best. Although I never told him it was the best. I do not know that the plaintiff is a progressive enterprising businessman but he appeared to be energetic. I did not know what was the extent of his business or his finances before the negotiations.

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It is not true to my knowledge that the plaintiff was dissatisfied from the time the trials of the mill started. That is not so. The trials of the mill began in December 1962. The dryer in January 1963. The plaintiff never complained to me about the mill before the opening in March he complained sometime after the opening. There were no complaints about the mill's capacity during that December to March. After the opening he complained about the capacity of the mill and the percentage of broken grains. As far as I know plaintiff did not complain about either of those matters between December 1962 and March 1963. Plaintiff complained about the dryer after the opening and his complaint was that he could not get people to use it and that it was breaking the grains. He made no complaints about the capacity of the dryer between December

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1962 and March 1963. He made no complaints about capacity of the dryer at all even after the opening. Plaintiff complained after the opening around April or May about the mill and that was for the first time in relation to capacity and breakage. The first complaint about the dryer was around May because it was a rainy month. The complaint was that the dryer was causing the rice to be broken up. It is true that the July test was agreed upon before or around March 1963.

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It was as a result of representations by plaintiff that the test was embarked upon. The complaints I understand were about both the mill and dryer and were made above my head which I only knew about after the action was filed. I have never seen the correspondence in respect of the complaints. Mr. Blair notified me about making the arrangements for the test. I was not aware of any complaints made by plaintiff to anyone before March. Mr. Blair did not notify me of the complaints before the test. On receipt of Mr. Blair's letter I discussed the matter with Mr. Blair. Before March the plaintiff spoke to me and I attended the mill and I discovered that his complaints were the result of sun-cracked paddy and dirt and straw and I explained to him the reason for the results he get. Apparently he, plaintiff, was not satisfied with my explanations and he wrote above my head to the director or to some of them. I only knew of this after the case was filed.

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6/7/65

7/7/65 Resumed 9.05 a.m.

At this stage Mr. Farnum asks to interpose the witness Dr. Fraser at this stage. No objection by Mr. Luckhoo

 No. 26
EVIDENCE OF DR. HUGH FRASERHUGH FRASER sworn:-

I am a veterinary surgeon. I am the Chairman of the Board of Directors of Gladys Hicken Ltd. I live at East Lothian, Corentyne, Berbice where my

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Court of
British Guiana

Defendants
Evidence

No. 25 B

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)
6th July 1965

7th July 1965

No. 26

Dr. Hugh
Fraser

Examination
7th July 1965

In the Supreme
Court of
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Defendants
Evidence

No. 26

Dr. Hugh
Fraser

Examination
(continued)
7th July 1965

company carries on a rice milling and growing business among other enterprises. I have been planting rice since 1950 (for my company). My company bought in 1960-1961 a Grantex Multi Stage Rice Mill and a dryer. The dryer does 50 to 55 bags of paddy as a batch and dries this in actual drying time in one hour. I use my dryer for the whole of my farm crop. I found it is satisfactory. There is no difference in the degree of quantity of broken grain if the temperature is controlled. One must control their temperature properly or you would get more breakage, that is, broken grains.

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I do mill paddy for farmers. They do not use the dryer very few of them use the dryer as they prefer the concrete because their family usually are engaged in this work and they themselves do the concrete drying. They do not pay for the concrete, but they have to pay for the use of the dryer. I am perfectly satisfied with my mill. The paddy that comes into our mill is of very little good quality. It's a poor quality filled with dirt and chaff and this is because of the method of reaping viz. combine tractor etc. The hand reaping with tractor trashing produces dirt and chaff. There is a cleaner in the mill that takes out dirt and chaff but some paddy have so much dirt and chaff that I tell the farmers "take it outside and clean it".

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We do not permit the farmer to do anything with our mill. They do not feed the hopper or do anything at our mill for milling. We have our own men for all labour in connection with milling operation. One cannot get efficient operation with several farmers passing through their lots of grain. They have no experience with these mills and choking can take place. I do know the plaintiff. The plaintiff visited my mill on several occasions. He visited it during operations. He asked me how I found the operations of the mill and I told him after showing him the operations to go and ask any of the 2 operators. Subsequently he plaintiff bought a Grantex Multi Stage Mill. Its the same make of mill as mine. The platform of wood is mine. There is vibration and little but this never interferes with the working of the mill. I attended the opening of the plaintiff's mill.

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In 1963 I lent Bookers Stores Ltd. 100 bags of paddy. Mr. Chung asked me to lend him some paddy

to run a test at plaintiff's mill. It was towards the end of the milling period around July 1963. It was bottom of the bags of paddy stored. Many bags were burst as well. It was poor paddy. I had some other farm paddy which I kept for the farm seeds. I had already dried it and it was better paddy but I could not have released that. I had about around 400 bags of very good paddy at the mill at this time which was left from the lot I had selected for seeds, and I was milling this at the time. The paddy sent to the plaintiff's mill 100 bags was shipped in my 400 bags making 500 bags paddy milled into rice. The 500 bags produced 265 bags of rice all were shipped to the Board. I shipped 243 bags to the Board and the 22 bags of broken rice were retained for my stock (as stock feed). Mr. Chung returned 38 bags of rice from the 100 bags of paddy I had loaned him. It was 28 bags whole grain and 10 bags broken. I regard that the 38 bags of rice obtained from the 100 bags of paddy was a fair return having regard to the poor quality of paddy milled.

By Mr. Luckhoo Q.C. cross-examined:-

I have not been subpoenaed to give evidence. It is true that I do not like to come to court at any time. I was asked for the first time to give evidence, I think, over a month ago or longer. I was asked may be around the beginning of the year about my mill. I was asked between one or 2 months ago to give evidence. I have not given a statement in writing to the solicitors. I made statements verbally. I have discussed the matter from time to time orally with the defendants and their lawyers. I only knew yesterday that I was required to give evidence today. I was in Georgetown yesterday on my own business, and I was told that I would be required today. I came to town by train yesterday spent the night in Georgetown. I had no discussion with the lawyers last night. I spoke to them this morning. David Fraser is my son. I was asked questions this morning and I gave answers. Up to now I have a faint idea of the evidence my son gave. Not from what he has told me. He has not told me in detail what his evidence was. I had very little discussion with my son on his evidence. The faint idea I have of his evidence is from what other people asked me. I have not discussed with my son

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(continued)

7th July 1965

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examination

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No. 26

Dr. Hugh
Fraser

Cross-
examination
(continued)
7th July 1965

his evidence. I have had discussions with Mr. Blair in this matter. My son lives with me. I did not know until yesterday afternoon that my son brought some books yesterday (except the wages book). I gave him a wages book after he asked me a question. I did not know what he wanted it for. He wanted information and I gave him the book. My son has access to some of the books. I am the boss. If my son were asked to bring books to court, I would frankly expect he would ask me. I do not accept that I am a strict disciplinarian. I endeavour to do my best in my business. Over the past 9 days my son did not ask me about books to bring to court. If he had I might not have permitted it. My company is not involved in this. I have seen very little of my son within the last 9 days. He might have given evidence several times but I can't say. I do not know about the books he brought to court. I do not keep all the books. I learnt what books were brought yesterday afternoon as my son brought them to me and I do check them and go through them as I can't remember everything that took place in 1963 accurately. The evidence I gave about the figures, I certainly got from the books because I could not possibly remember all these figures. I went through these books yesterday afternoon and my son was present with Mr. Blair and I was discussing certain matters with Mr. Blair. Mr. Blair asked me certain questions and my son was present. I did not ask my son anything. Mr. Blair and my son spoke. But I spoke most of the time with Mr. Blair. When Mr. Blair spoke to my son it was in relation to the books in my hearing.

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I have had relations chiefly in relation to the mill and dryer with defendant's since 1960-1961. I had dealings in 1935 over a car. But since 1960 I had more dealings with them. Over the past 5 years I had business with defendant's to the extent of around 100 thousand dollars including the mill and dryer.

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I certainly endeavour to plant and reap my paddy efficiently as reasonable high standards are practicable according to business standards. Mr. Chung did ask me some months before July to put aside a quantity of paddy to be used for testing the plaintiff's mill; about March or April 1963. The paddy was not put aside. Frankly I do not remember I was not interested in the test. He might have told me but I has not interested in the purpose of the test.

Mr. Chung asked me for a certain amount of paddy to test plaintiff's mill. There was no request for any particular kind of paddy and I would not have given him bad paddy if I had good paddy I would have given him the best I had. If I had good paddy in March or April I would have put it aside. I can't remember how many acres exactly I sowed in 1963 but it was between 4 and 5 hundred acres. I can't remember the germination but I usually put aside anything between 500 bags and 1000 bags for seeds. I estimate roughly what I need. After putting aside the amount and after sowing I may have over 500 bags left. When my paddy is reaped it is brought into the compound (of the company's estate). When it is brought there an entry is not made immediately - that depends on where it is stored. When I mill it I enter it. If it is stored in any of the bonds I do not have to issue a receipt because it is our paddy. I record it when I mill it.

If and when paddy is brought into the mill by farmers a receipt is issued. If and when paddy belonging to the company is brought into mill for milling and drying a receipt is issued. My mill records the paddy milled and shipped out but as far as the company's paddy is concerned I do not note the actual date of the bringing in of the paddy as it is ours. There is a record kept of the harvest - but not in any particular book. I know what comes in every day and it is noted in the company's book. It is not lost. It is the company's book, and I am not willing to produce the company's book unless the court so orders but my company is not a party here. I can tell roughly how many bags of paddy is in my bond. If a thousand bags is brought in bond it is noted. If 300 bags are transferred from bond to mill a receipt is not issued immediately. When it is milled it is recorded that so many bags of paddy is milled into so much bags of rice. There is no necessity to issue a receipt as it is our own paddy. Sometimes we do this at once and sometimes after milling. This is our own paddy. When paddy is taken from bond for planting a record is made. At any time by subtracting from the total quantity of paddy brought into bond, the quantity of paddy issued out of bond for seeds as well as subtracting the quantity transferred to mill one would have what is the actual stock in the bond.

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Defendants
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No. 26

Dr. Hugh
Fraser

Cross-
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(continued)

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No. 26

Dr. Hugh
Fraser

Cross-
examination
(continued)

7th July 1965

I can't say what is the stock in bond I had on 30th June 1963. It was recorded in July. It was 500 bags - the same taken to the mill. I draw this conclusion from the books I saw yesterday. I used paddy for seeds in March, April, May and June. I can't say how many bags were used in any particular month. I have good reasons for storing between 500 to 1000 bags of paddy for seedlings because the average is $\frac{3}{4}$ bag to sow 1 acre 75 bags to 100 acres. After we sow for instance 500 to 600 acres a few weeks or month after it is discussed that we have to sow a part all over again. This year we sowed about 400 acres and had to resow 200 acres and that is why one has to keep a large stock for seedlings. A farmer is at the mercy of the weather. My company is a private family company. I was asked to give evidence because of my personal capacity as a farmer.

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I cannot say what was the total quantity of paddy brought into bond between March and July 1963. I was not aware that I was going to ask questions about my company's business. I am giving evidence in my private and personal capacity as a farmer. In 1963 my concrete could have dried about 150 bags of paddy at a time. I have right now 1,000 bags of paddy dried and stored since March to be milled. I always keep dry paddy to be dried sometimes if there is a quantity of paddy to be dried and milled, one batch would be dried and while that is being milled another batch is being dried.

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Adjourned to 1.15 p.m.
7/7/65

Resumed at 1.20 p.m. 7/7/65

Cross-examined by Mr. Luckhoo cont'd (witness still on oath):

I have brought the 3 books you have asked for. This is the paddy milled and rice shipped book (counsel peruses book). I see noted under 14th March 1963:

Receipt No. 282	-	680	bags	for	Hicken Ltd.	
Receipt No. 283	-	180	"	"	"	"
Receipt No. 284	-	461	"	"	"	"
Receipt No. 285	-	350	"	"	"	"

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The first two lots of 680 and 180 were all milled. Of the 461 bags 275 bags were milled. 186 bags were not milled from the 461 bags. The last quantity of 350 bags only 150 bags were milled leaving 200 bags in hand. Of these lots 386 bags of paddy were not milled and on hand. The balance of paddy and rice on hand in the mill on 31/3/63, were 1,045 bags paddy, and 56 bags and 125/180 bags of these in the mill. This was checked and certified by the Rice Marketing Board officer.

10

In April no paddy of company was received and none milled.

On 20th April 1963 the paddy on hand certified was 447 bags and 79-10/180 bags of rice. In the mill as of 31st May 1963 we had 395 bags of paddy. As of 31st July 1963. I had 29 bags paddy on hand. The mill book show that in July 63,400 bags of paddy were brought in by receipt No. 304 dated 20/7/63 530 bags were brought in on receipt No. 305 on 20/7/63 Hicken's paddy. I am not surprised that all the items recorded in the receipt book appears in the paddy and mill book. Presumably the paddy was brought into the mill on the dates recorded on the receipt. I agree that the milling operations took place between 17th and 31st July 1963. I do not remember from my own memory the particulars as to the receipt of the paddy for milling in July 1963. I have to rely on the records. The paddy is stored in tiers sometimes 12 high usually, sometimes 24. You pack as high as you can go. You remove from the top and you may remove from 1, 2, or 3 tiers at a time. It all depends on the convenience of the portion then a whole tier may fall down and you remove that. I never kept any records myself about the number of hours operation of the mill and dryer but there are records, and it came up to standard. I looked at them a year or 2 ago personally all went well and to standard. I made inquiries as to how long in time the actual drying of a batch took and I myself stood up on occasions and saw this. It takes one hour or more. One pass may take 1½ hours or more when improperly done. The usual time is one hour. The longest is 1½ hours. Average time is one hour. The plaintiff has come to my premises to buy sheep, ducks, and chickens. The only time I saw plaintiff's mill and dryer was at the opening of the plaintiff's mill.

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In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 26

Dr. Hugh
Fraser

Cross-
examination
(continued)
7th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 26

Dr. Hugh
Fraser

Re-
examination
7th July 1965

By Mr. King re-examined:-

At the opening of the plaintiff's mill, it appeared to me that it worked well. There was a tremendous crowd there. Mr. Luckhoo reads out what was on the milling book and in the receipt book and they accorded. The milling book continues until all the paddy is milled. When the 530 bags were taken into the mill it must have been dried. It was taken in presumably on the date 20/7/63.

In the case of our own paddy of quantity are brought to be milled from day to day. I do not enter the each quantity at the time it is brought. We total the amount at the end or then make the entry. It could be that the 530 bags recorded on 17/7/63 were recorded at the end of the last lot brought and when added up produced 530 bags.

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I did refresh my memory from the books but I do remember lending the 100 bags of paddy to Bookers (defendants). My evidence was not made up to suit what my son said. I have not discussed it with my son. What I have said now is from my records and my memory not from my son.

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I was most surprised and annoyed when I heard that the company's books were brought to court. He did not ask my permission. I would not have been annoyed if it were brought for technical information.

I went to defendants' solicitors and gave them an oral statement and they took it down in writing but I did not give any statement in writing. I mean I never wrote a statement. There is a deaf and mute person who works on the estate as a casual labourer.

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The tractor driver or some other man is supposed to check the paddy that comes from the field.

By Mr. Luckhoo through court:

I can't say if I were present when the paddy (100 bags) were delivered.

No. 27

EVIDENCE OF NATHANIEL MADRAYIn the Supreme
Court of
British GuianaNATHANIEL MADRAY sworn:-Defendants
Evidence

No. 27

Nathaniel
MadrayExamination
7th July 1965

10 I am an employee of defendants at the New
Amsterdam Branch. I am a supervisor. I was so
employed in 1963. I know just around that time
when he (plaintiff) came in connection with the
mill and dryer to buy on hire purchase. When a
customer comes in to purchase on hire purchase it
is my duty to get all the particulars and to pass
it on to a clerk who makes up the form. In both
cases (with the mill and dryer) I had to get the
information for the hire purchase contract. After
the documents were made out by a Miss Kattick, I
supplied all the information.

20 When the agreement Exhibit "K12" was given to
plaintiff to sign plaintiff said that he could not
sign unless he had an opportunity to read it. I
told him to go ahead and read it. He took it and
was looking at it for some time about 5 minutes.
I can't say exactly how long and then plaintiff
said "Its alright I will sign it" plaintiff said he
was hurry to go through the whole thing and then he
said "Its alright I will sign it". The other agree-
ment I dealt with it in the same way. He did not
say he was busy in this case. I gave the informa-
tion to a clerk who was with Mr. Ally. I was not
there at the time of the signing. I was asked by
30 Mr. Chung if I remember the circumstances when the
2 agreements were signed. I did not give a state-
ment in writing to anyone. We do not sell equipment
like this often.

By Mr. Luckhoo - cross-examined:-Cross-
examination

40 It is not true that I do not remember the cir-
cumstances surrounding the preparation of the 2
agreements. The first was in 1962. I remember it
was in March 1962. I checked it on Saturday. If I
did not check the date I would not have remembered
I would have remembered the year. I can't remember
the names of the persons I prepared hire purchase
agreements in March or in 1962. The same answers
would apply in May 1962. It was routine work. After
I gave particulars to a clerk the agreement may be

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27

Nathaniel
Madray

Cross-
examination
(continued)
7th July 1965

Re-examination

signed in my absence. It is true that hire purchase agreements are often signed by a customer without he or she reading it. I do not know if a copy of the agreement was given to the plaintiff. My writing does not appear in any of the agreements.

Re-examination:-

I do remember the names of the persons who bought rice mills viz. One Ramdeo, Budhan, Hicken Ltd., Ramsarran and Fagal. In all these cases I supplied the information to the clerk and the hire purchase agreements were made. After plaintiff signed the agreements I heard his name mentioned from time to time.

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Adjourned to 8/7/65
7/7/65

No. 27A

No. 27A

Milton A.
Chung
(Recalled)

EVIDENCE OF MILTON A. CHUNG

MILTON CHUNG sworn - cross-examined by Mr. Luckhoo
cont'd:

Cross-
examination
8th July 1965

It is not true that in December 1962 during a trial of the mill a quantity of paddy was blown out. In December 1962 the plaintiff was drying and milling some paddy. In the course of his operations he (plaintiff) came to me and asked my help and he stated that the paddy was breaking up. I went to assist and tried to look for the trouble and assisted plaintiff in milling the remainder of the paddy. The broken grains were reasonably high in this

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In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)

8th July 1965

instant, that is it was above normal. I believe on
this occasion it was parboiled rice. I made no
record of the results. I never made any notes in
writing during the trials. I made observations
only and this is before July 1963. I can't remember
if I dried paddy in the dryer in December 1962 but
if the plaintiff says so, it could be. I don't
remember the name Seepaul Ganga. I have never seen
any such result as 50% broken and 50% whole grain.
10 This never happened in my experience at plaintiff's
mill or anywhere else. It is untrue. This never
happened. I see Exhibit "S1" under the name of B.
Ganga. Having seen this I still say it does not
indicate that that took place. I don't know if the
plaintiff's parboiled rice was breaking but plain-
tiff did on one occasion report that to me and I
went and I observed that he had the paddy for 7
days on the concrete for drying. Plaintiff told me
that the paddy was 7 days on the concrete. In the
20 early stages, that is, around February 1963 it may
have been in February that I did a parboiled drying
but I do not remember the name of any farmer.
Inshan might have been there. It is untrue that
any trial lasted for 13 days. This is utterly
untrue. I spent less than 2 days at the parboiled
trial. The trial possibly involved 100 bags of
paddy. Some of the paddy was dried in the dryer.
I found no difficulty whatsoever in extracting the
parboiled moisture content. I had to circulate
30 the paddy several times in the dryer, that is more
than one pass.

The elevators travel at a fixed speed and
feeding the elevator cups at maximum takes about
one hour to fill the dryer. Similar cups attached
to the same elevator are used to circulate the
paddy in the dryer. These cups would travel at the
same capacity as the cups used for filling the dryer.
Assuming that the circulating cups are working at
40 maximum, those cups would fill the dryer in an hour
and in less than an hour. The same rate of flow is
in the feed as the circulating. Out of 4 tons of
paddy if 6% moisture is extracted one gets about
10 gallons of water (10 gallons). The speed of the
elevator is constant.

I had made 2 complete passes and then the paddy
was discharged from the dryer.

By a complete pass I meant that the dryer was

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)
8th July 1965

filled and I passed all the paddy through the dryer. After the dryer was filled the burner lighted the required temperature indicated on the temperature gauge. I then adjusted the outlet rate by the variable speed mechanism, opened the outlet door at the bottom of the dryer and allow the dryer to empty for one pass in the resting bin, this is a one pass job: Two passes would be a repetition of the above process, that the paddy is taken from the resting bin and put into the hopper (feed) and the process repeated. 10

The dryer is notionally drying in 3 sections - the top the middle and the bottom sections. The top section will get the full effect of the drying air temperature. The middle section would get less and the bottom will get the lowest. It takes the top section to reach the middle section in 20 minutes. The bottom section would then go up to the top and the top comes to the middle and the middle to the bottom. When I said earlier that a pass took 20 minutes I meant that the top section takes 20 minutes to move to the middle and so on. The complete pass can be done in 1 hour but can be regulated to $1\frac{1}{2}$ or more. I do not accept that the maximum moisture content extraction in any one pass do not exceed between 2% and 3%. I can extract 6% depending on the moisture content of the grain put into the dryer and the grain. I can do this with 22% moisture content and bring it down to 16%. If it is continuous drying the process can be done in one hour. If it were batch drying it would take longer. I never obtained an extraction rate of 6% in white rice but in parboiled this was done. In white rice I get as much as 4% to $4\frac{1}{2}$ %. At the July test I achieved $4\frac{1}{2}$ extraction in white rice. I timed the operations as I was instructing persons. In parboiled rice I got a rate of extraction from 22% to 16%. On the occasion when I dried parboiled (you say it was Esar) and I said it took less than 2 days and you said 13 days. On this occasion the paddy was so damp that it was not possible to indicate the rate of the moisture content because it was higher than the meter could register. I made a complete pass and then got a moisture reading of 23%. I then passed it a second time and I got it down to between 18% and 20%. It was then discharged into the resting bin. I then went back the following day (second day) plaintiff was not there and I left (nothing was done). I did not go 20 30 40

back until the plaintiff came to me about a week after. I then went back with my foreman, and then filled the dryer. I then left my foreman with instructions and I left before the 1st pass was completed. The moisture content was about 18½ when we started (this 3rd pass). I returned about 2 days after I saw the plaintiff and he said the owner was not there and he can't mill it. I went back to do it a Sunday. It was then milled. I said I do not remember the quantity it might have been more than 100 bags or less. If the quantity dried was 100 bags it had to be done in 2 batches. It is not true that the paddy passed into the resting bins more than 3 times or about 6 times.

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The parboiled paddy is much easier to pass through the dryer than the white rice paddy. I never asked any of the farmers to put 5 bags of paddy on the concrete for drying. This is untrue. I did not suggest that the drying be completed on the concrete. It is true I milled the paddy that was passed through the dryer. I do not agree that the result was 19 bags whole grain and 29 bags broken. That is completely untrue. I can't give an estimate of the number of bags broken and the number of bags whole grain but I can say we got 1 bag broken to 5 bags whole grain that is one to 6 about 16% broken. I do agree that the farmer and plaintiff did complain about the result. I would not say they were angry but they appeared dissatisfied over the broken grains and for parboiled rice I would say it was a poor result. Normally parboiled average in broken grain is 1 bag broken in 15 bags of whole grain. I would say about 6%. I do not know that Esaur had a similar amount of parboiled paddy dried on the concrete. The plaintiff told me this about a week after. Plaintiff told me that he dried a similar amount of Esaur's paddy on the concrete and got marvellous results. He (plaintiff) did not mention the results he got.

It is completely untrue that I saw Esaur's paddy dried on the concrete. You are now suggesting that Esaur's paddy dried on the concrete was milled before the dryer paddy. When plaintiff told me it was after. I don't know about this. I only knew of this from what plaintiff told me. I have a faint recollection. I now say I may not be certain that I dried parboiled paddy for plaintiff (himself). I would give him the benefit of the doubt.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(recalled)

Cross-
examination
(continued)
8th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)
8th July 1965

A shaker conveyor was bought by the plaintiff for the purpose of shaking out the excess water after steaming before putting it into the hopper. The shaker conveyor was put into position and was left there for the plaintiff to grout it in and run his electrical installations to enable it to be operated. It was installed but plaintiff did not grout it.

It is untrue that it was not grouted because of the unsatisfactory result of the parboiled paddy. The plaintiff said then that he was not in a hurry to do this because there was no demand for parboiled paddy and more over he was not in a financial position to complete it.

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It is completely untrue that plaintiff had everything to complete the installation. The grouting or cementing of the shaker conveyor would have taken about \$50.00 to do that job and then the electrical installations had to be done. Plaintiff said he was not financially well then. I can't say if the plaintiff used the dryer for parboiled rice since then to now.

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I agree that for the opening of the mill the white rice was dried in the dryer and the parboiled on the concrete to the best of my recollection. I believe that the parboiled was stored in bags. It is not true that the white rice paddy was also dried on the concrete. I am almost sure that it was dried in the dryer. We did mill at the opening about 5 bags of white rice and about a similar quantity of parboiled. I can't say if the plaintiff used his dryer between the opening and the July test.

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I am surprised to hear that the plaintiff got permission to dry paddy at the Black Bush Agricultural Station. Between 9th March and end of March, I may have been instructing at the plaintiff's dryer and mill how to use the dryer and mill. If plaintiff say I was I would accept that. I can't say about the output during instructing time. It is my view that the figures suggesting as to output during that time is fictitious. If they are in returns of the Rice Marketing Board it means nothing as I have worked out the overall out to 1 broken to 13 bags whole white rice. I worked it out and it is here. When I am instructing I am not running the mill and not interested as to what

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results he was obtaining. After the opening I did go several times to assist in the operation of the mill.

Adjourned to 1.15 p.m. today
8/7/65

8/7/65 Resumed: 1.15 p.m.

MILTON CHUNG sworn further cross examination by Mr. Luckhoo:

10 On the occasion when I went to assist plaintiff the farmers did complain about the quantity of broken rice. It was decided (above my head) around March 1963 to have a comprehensive test. The holding of the test was delayed by the strike of 1963. The test related to both the dryer and the mill. The plaintiff did complain to me about the capacity of the mill, but not the capacity of the dryer. He did complain that paddy dried in the dryer was excessively broken when milled.

20 No trials between opening of the mill (9th March 1963) and the end of March in respect of drying on the concrete and as well as drying similar paddy on the dryer and comparing the results was done by me or in my presence. But the plaintiff told me he made trials and compared the results. He told me this prior to July 1963. I did such trials at Dr. Fraser's mill. If the plaintiff had requested I would have made such trials. I never suggested such trials I never participated in any such trials plaintiff said he carried out. When
30 the test was to be made in July, I realised that the intake capacity of the mill and the excessive broken grains (as a result of dryer dried paddy milled) were the issues and also actual drying time.

I knew that the manufacturers had stated in their literature of the dryer what was the intake capacity of the dryer and I knew that the manufacturers claimed that the intake capacity was 3,500 to 5,000 lbs. This capacity was based on good quality paddy. Good paddy would exclude immatured
40 paddy or sun-cracked paddy.

My intention at the July test was to obtain or receive good quality paddy for the test. I asked

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)

8th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Dr. Fraser to let me have 100 bags for the purpose. I did not request Dr. Fraser to put aside 100 bags of paddy. I asked Dr. Fraser for the best he could give me. I never went to the Agriculture Department for paddy. I went on business. I took Dr. Fraser's paddy either on the 15th or 16th July. I did not examine the paddy before I took delivery. It is not true that I went on the 15th July 1963 at Dr. Fraser's mill and inspected the paddy.

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)

8th July 1965

I inspected the paddy before the test. I was not satisfied with the condition of the paddy. I did not consider postponing the test because of the poor paddy. I discussed this with Mr. Blair in the hearing of plaintiff. We did not discuss the aspect of postponing the test. No one suggested postponing. I was not worried about the quality of the product because that was not an issue. The moisture content of the paddy would not have affected the actual drying time which was one of the issues. I realised that with the amount of dirt it had it would affect the intake capacity. I did not expect that that quality would give broken grains not in proportion to the usual amount such a quality is expected to give.

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For every 100 bags of whole grain rice from good quality paddy milled into white rice I would expect 10% broken grain that is 10 bags broken grain to 100 bags rice. I expected 30% to 35% broken grain from the quality I received from Dr. Fraser. When Mr. Blair left it was the last day of the test. I think it was the 3rd day if it were the stage when the meter was cutting out. Mr. Blair did leave on the last day of the test. It is true that the mill was checked for a number of days before the test. I can't say if it were 5 days. After the checking of the mill and dryer I was satisfied as to the condition of both the mill and dryer before the test started. I had prepared 4 copies of the test sheets for the dryer only. The sheets were not intended to be written on carbon to make carbon copies. The sheets were not foolscap size. I divided a foolscap sheet into 4. Similar sheets were not prepared for the mill test because the plaintiff stated he did not agree with the basis of the test on an "intake" capacity and he did not agree as to what was actual drying time and that is why I did not go further in preparing the sheets for the mill test. Plaintiff raised

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this issue from the beginning of the first day when we were discussing actual drying time. I did walk with the test sheets form for the dryer. We were quite prepared to state the facts about the milling if he had reached that stage.

10 It is not true that the total quantity of paddy was first weighed. In the dryer test 60 bags were weighed, and found to be 9007 lbs. That was recorded by me. Mr. Blair, Inshan and plaintiff supplied me the figure. The remainder of the 40 bags was weighed the next day. Doing the 40 bags was not part of the test.

20 It was never intended to test the results of 100 bags. It was intended to try the dryer once (60 bags). The remainder of 40 bags was not weighed the first day but on the second day after drying and before milling, I did not record the weight of the 40 bags before milling. I did not think it necessary to do so at that stage. The 40 bags plus the 60 bags were weighed before milling so as to know what was the weight of the paddy being milled. The total weight was recorded at 13,000 lbs. and over, that is after dried and before milled. The plaintiff and Mr. Blair did that. Although the plaintiff did not agree with the basis of the test, he still took part in the test but refused to sign. Exhibit "N" is the original test sheet. The weight was not put down on the Exhibit "N" because it was not a test any longer. It is not true that Exhibit "N" was not the original test sheet. There were no other test sheets or log sheets kept to show stage after stage in the progress of the test. We do this on Exhibit "N" in respect of the dryer. I expected that the total weight of the paddy would have been noted.

40 I do not agree that all 100 bags of paddy were weighed first. I do agree that the 100 bags were dried in 2 batches on the same day. I agree that there is no note to show that the 40 bags were dried on the same day because the 40 bags were not part of the test. A quantity of paddy was used for tuning the mill about 10 bags. While I was tuning the mill the remainder of paddy was being weighed. The remainder was not noted by me. It is true that the total result was 28 bags whole grain 10 bags broken plus 52 lbs. rice from the 100 bags of paddy milled.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)
8th July 1965

In the Supreme
Court of
British Guiana

Defendants
Evidence

No. 27A

Milton A.
Chung
(Recalled)

Cross-
examination
(continued)

8th July 1965

I said before that I was not at Fraser's mill when the 100 bags were loaded. I cannot say - where the 100 bags came from in Fraser's mill.

It is not true that - parboiled paddy after being dried and stored in a bin will get gluey from the quantity of moisture I described this morning in what is stated as Esaur's paddy. I did feel that the farmer feared the dryer and I might have used that word because the dryer is a mystery to them. The plaintiff did use the word that the dryer was a "white" elephant. Plaintiff said so after the opening but before the July test. It is true that the plaintiff was over enthusiastic about his mill and dryer.

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It is not true that plaintiff complained from the commencement that he was dissatisfied. I did not know his actual financial position but I got an idea.

Adjourned to Tuesday 13/7/65
at 2.30

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13/7/65

Re-
examination
13th July 1965

MILTON ALOYSIUS CHUNG: Re-examination by Mr. Farnum:

What Mr. Luckhoo called trials are only the starting up of the mills and occasions when I went down to explain any difficulty which arose and which plaintiff requested my help.

My job includes seeing that the purchaser of machinery whether mill or dryer gets service out of his machine. This includes giving advice to the purchaser and his workmen. In a dryer there are several moving parts viz. 1 feeder elevator (2) top distributing worm (or auger) (3) the lower variable speed gear (4) the axial flow fan (5) the air compressor and fuel pump (supply) to the burner. Those are the mechanical moving parts. When I saw the plaintiff's dryer all the above mentioned paddy was functioning satisfactorily.

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The excessive breaking up of grains dried by the dryer was due to (1) incompetent operation: (2) incompetent maintenance: (3) or bad grain from the beginning.

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It is true that Dr. Fraser's mill was used as a reference and that is because it was the first mill of the kind on that coast and ideally situated not far from New Amsterdam. I could have taken people from New Amsterdam to see what they were actually buying and also since Dr. Fraser was growing his own paddy he had permitted me to carry out experimentals on various milling and drying operations along with the assistance of his sons. Dr. Fraser's mill is the only mill properly maintained or run from my observation. The paddy grains received from Dr. Fraser's mill for the test were burst and moisture had got into them. (2) some of the grains were attacked by termites (3) the excessive amount of straw and muck make me believe it was sweeping. It is very usual for the bottom bags on a tier to be attacked by rats, weevil etc.

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When weevil eats into the grain there are usually more broken grains. In parboiled rice it is usual to get 1 bag broken to every 15 bags whole grain from good quality stuff.

In white rice it is usual to get 1 bag broken in seven or eight 7 or 8 bags broken from good quality stuff.

In March 1963 in parboiled, I got 5 whole grain to 1 bag broken. This was poor because the paddy was sun-cracked and this was the reason.

When plaintiff told me that he had dried the same quality paddy and got better results. I did not believe it as I did not see it.

By Court:

I was satisfied that the dryer worked satisfactory. If a customer were to ask me what he should expect from a dryer of plaintiff's kind 08. I would say that in respect to broken grains from paddy dried and milled he should get a normal return of 5 bags broken grains from 100 bags whole grain from the best paddy, comparing with concrete drying.

In the Supreme
Court of
British Guiana

Defendants
Evidence

No.27A

Milton A.
Chung
(Recalled)

Re-
examination
(continued)
13th July 1965

CASE FOR DEFENCE CLOSED

13/7/65

In the Supreme
Court of
British Guiana

No. 28

JUDGMENT OF KHAN J.

No. 28

1963:

No. 1965

DEMERARA

Judgment of
Khan J.

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

(Civil Jurisdiction)

12th November
1966

BETWEEN:

MUSTAPHA ALLY (Male East Indian)
- Plaintiff
and

BOOKERS STORES, LIMITED a company
incorporated in this colony under
the Companies Ordinance, Chapter
328, whose registered office is at
Lots 49/53 Water Street, Georgetown,
Demerara - Defendants.

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BEFORE: KHAN, J.

1965 February 25, 26.

March 2, 3, 4, 5, 8, 9, 10, 11, 15, 16, 17,
22, 23, 24, 26, 29, 30.

June 22, 23, 24, 25, 28, 29, 30.

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July 1, 2, 5, 6, 7, 8, 13.

September 27.

1966 January 11, 15.

November 12.

C.L. Luckhoo, Q.C., with B.O. Adams, Q.C., and E.W.
Adams for plaintiff.

G.M. Farnum with J.A. King for defendants.

JUDGMENT

In this action the plaintiff claims from the
defendants the sum of \$500,000.00 (five hundred
thousand dollars) damages for breach of warranty

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and/or condition and/or for fraud and/or for misrepresentation on the sale by the defendants to the plaintiff of one "Grantex" Model 30/60E Mill and one Grantex Electrical Paddy Dryer, Model "08", on the 26th day of March, 1962, and on the 30th day of May, 1962, respectively, in Georgetown.

In the Supreme
Court of
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No. 28

Judgment of
Khan J.

12th November
1966
(continued)

10 The plaintiff who resides at Albion, Corentyne, Berbice, is a young man of 33 years of age. He is a contractor with 10 to 12 years' experience in mechanical machinery such as dragline, tractors, trucks and cars.

20 In 1961 the plaintiff decided to enter the rice-milling business. He knew the defendants as traders, merchants and dealers in machinery including rice-milling equipment and machinery. Plaintiff during the years 1951-61 did considerable trade with the defendants and as a result had complete confidence in the defendants as reputable traders. As a prudent and enterprising businessman the plaintiff investigated the workings of several types of rice-milling equipment. In the course of his investigations he visited Dr. Fraser's East Lothian estate where a Grantex multi-stage mill was in operation and a Grantex "08" dryer was being installed. The plaintiff saw the mill in operation and spoke to Mr. Chung, the New Amsterdam (Berbice Branch) manager of the defendants' machinery business. Mr. Chung was at that time installing a Grantex "08" dryer for Dr. Fraser's company. The plaintiff spoke to Mr. Chung about rice-milling equipment and subsequently visited the defendants' Branch store in New Amsterdam where he again spoke to Mr. Chung, who gave him further information and supplied the plaintiff with quotations. In April, 1961, the plaintiff received further quotations from Mr. Blair, the manager of the Georgetown Branch of the defendants' company, as per letter dated 25th April, 1961:-

40 " BOOKERS STORES LIMITED
49-53 Water Street - Georgetown - British Guiana

Please Quote: Cable Address: "BOOST" DEMERARA
Our Ref: 1/3/769 Telephone: Dial 6 2171

25th April, 1961.

Mr. Mustapha Alli,
Albion Estate,
Corentyne,
Berbice.

In the Supreme
Court of
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No. 28

Judgment of
Khan J.

12th November
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(continued)

Dear Sir,

As requested, we have pleasure in quoting for the following equipment for use in conjunction with the Rice Mill as per quotation handed to you by our Mr. Chung:-

1 - JAMES LEFFEL 30 H.P. BOILER NO. 495 125 lbs/50 INCH WORKING PRESSURE, FURNISHED WITH 24" HERRINGBONE GRATES FOR HAND FIRING. NO SMOKE STACK OR GUY WIRE	<u>\$8,900.00</u>	10
1 - SIZE 08 GRANTEX UNIFLOW GRAIN DRYER ARRANGED FOR BELT DRIVE, OIL FIRED FURNACE, WITH DOUBLE ELEVATOR	<u>\$19,000.00</u>	
SINGLE ELEVATORS AS REQUIRED	28'3"		
PRICE A PACK.	<u>\$ 1,240.00</u>	
		Each	
ESTIMATED COST PER SQ. FOOT FOR FOUNDATIONS	<u>\$2.50</u> per sq. ft.	20

We trust you will find our quotations acceptable, and look forward to receiving your valued order in due course.

Yours faithfully

BOOKERS STORES LIMITED

Agricultural & Machinery Dept.

(Sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager.

WAY B:mm

30

Attach.

Group Parent: Booker Bros. McConnell & Co., Ltd.,
London.

Confirming House: Campbell Booker Carter Limited,
Bucklersbury House, Walbrook,
London, E.C.4"

The plaintiff is desirous of purchasing the equipment applied to the B.G. Credit Corporation for a loan and requested the defendants to send the

Corporation particulars of the equipment requested. On the 19th June, 1961, the defendants sent the following particulars to the Corporation:-

In the Supreme Court of British Guiana

" BOOKERS STORES LIMITED
49-53 Water Street - Georgetown - British Guiana

No. 28

Please quote:
Our Ref: L/21B/2095

Cable Address: CUMCULT
DEMARAARA
Telephone: Dial 62171

Judgment of Khan J.

19th June, 1961.

12th November 1966
(continued)

10 B.G. Credit Corporation,
39, Brickdam,
Stabroek,
GEORGETOWN.

Dear Sirs,

MUSTAPHA ALLY - ALBION

In accordance with your request, we have pleasure in detailing the equipment required by the above customer.

20

1 ONLY 30/60E GRANTEX RICE MILL, 2-TON CAPACITY, SUITABLE FOR OPERATION ON 220/440V. 50 CYCLES 3 PHASE SUPPLY ...	\$50,000.00
1 ONLY CUMMINS OR EQUIVALENT GENERATOR 100/125 W CONTINUOUS RATING ...	25,000.00
1 ONLY 08 DRYER ...	26,000.00
1 ONLY LEFFEL 30 H.P. BOILER ...	<u>9,000.00</u>
	\$110,000.00

The above prices are estimates given to the customer but should prove reasonably in line with actual cost.

30

Yours faithfully,
BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

(sgd) ????

pp. W.A.Y. Blair
General Manager.

In the Supreme
Court of
British Guiana

{ British Guiana }
{ Credit Corporation }
{ 19th June 1961 }
{ RECEIVED }

No. 28

WAYB: gl

Judgment of
Khan J.

Group Parent: Booker Bros., McConnell & Co.,
Ltd., London,

12th November
1966
(continued)

Confirming House: Campbell Booker Carter Limited,
Bucklersbury House, Walbrook,
London, E.C.4." 10

During September, 1961, the plaintiff inter-
viewed Mr. Blair, the Georgetown manager of the
defendants' Company and expressed his intention of
purchasing a Grantex Mill and Dryer. A few days
later Mr. Blair sent him the following letter setting
out the terms.

" BOOKERS STORES LIMITED
49-53 Water Street - Georgetown - British Guiana

Please Quote:
Our Ref: L/3/6012

Cable Address: "CAMCULT"
DEMERARA
Telephone: Dial 6 2171

20

29th September, 1961.

Mr. Mustapha Ally,
Albion Estate,
Corentyne,
BERBICE.

Dear Sir,

Further to our recent conversation concerning
a 2-ton Electrically driven Grantex Multi-Stage
Rice Mill, we confirm that we are prepared to place
this on order for you providing the following terms
are fulfilled. 30

- 1) \$10,000.00 to place order.
- 2) Balance to 1/3rd of value on arrival.
- 3) Remaining balance paid monthly over a two
year period.

4) Co-lateral security given for remaining balance after initial downpayment of 1/3rd.

We can undertake delivery of the mill in March 1962, if the order is placed during October.

Yours faithfully,
BOOKERS STORES LIMITED
Agricultural & Machinery Dept.
(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager

In the Supreme Court of British Guiana

No. 28

Judgment of Khan J.

12th November 1966
(continued)

10

WAYB:gl

c.c. Mr. M.A. Chung - N/A Branch.

Group Parent: Booker Bros., McConnell & Co., Ltd., London.

Confirming House: Campbell Booker Carter Limited, Bucklersbury House, Walbrook, London, E.C.4."

20

On the 11th October, 1961, the plaintiff's father signed an order on behalf of the plaintiff and paid to the defendants a deposit of \$10,000.00 (ten thousand dollars) on account of the said order for the equipment. The following is the order:-

" BOOKERS STORES LIMITED

DEPARTMENT: AGRICULTURAL & MACHINERY.

CUSTOMER'S SPECIAL ORDER FOR GOODS:

1. I, hereby, request BOOKERS STORES LIMITED Department to order expressly on my behalf:

1 - 30/60E Electric Powered Grantex Multistage Rice Mill complete with the following:-

30

Please find attached list of Equipment

.....
.....

In the Supreme Court of British Guiana

No. 28

Judgment of Khan J.

12th November 1966 (continued)

..... (here state description of articles to be imported)

2. I have today deposited the sum of \$10,000.00 on 11th October, 1961. Receipt No. 324651.

(in words)

against this order and agree that within one month of the goods arriving in the Colony, I will

(a)

(b) pay the balance necessary for a hire purchase deposit and take delivery of the goods within the stipulated month after arrival.

10

3. Should I fail to complete the transaction promptly, I agree that my entire deposit be forfeited and the goods sold elsewhere without any notification to me.

(Signed) Junat Ally

for Mustapha Ally

Date 11/10/61

20

Witnesses:

- 1. M.A. Chung
2. M. Munro

24 cents stamp

- 1. All Elevators
2. Paddy Cleaner
3. Husk Aspirator
4. Compartment Separator
5. Disc Sheller
6. Rubber Sheller
7. 2 - No. 1 Hullers
8. 3 Whitening Cones
9. 1 Polishing Cone
10. 1 Fan for Bran Extraction
11. Rotary Salve Grader
12. Cylinder Grader
13. Extra Fan to required distance all necessary motor and belts.

30

1 - 08 Dryer complete with the following:-

1. All necessary Elevators.
2. Drying Pile
3. Vibratory conveyor to handle par-boiled paddy
4. All motor & Belts.

3 Phase, 50 Cycles 220/440 Volts.

Delivery Approx: 31st March 1962.

All necessary Woodwork and Extension ducting to be supplied by Customer."

In the Supreme
Court of
British Guiana

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Judgment of
Khan J.

12th November
1966
(continued)

10 On 17th November, 1961, the defendants wrote the plaintiff as follows:-

" BOOKERS STORES LIMITED
49/53 Water Street - Georgetown - British Guiana

Please Quote: Cable Address: "BOOST" DEMERARA
Our Ref: L/3/7207 Telephone: Dial 6 2171

17th November, 1961.

Mr. Mustapha Alli,
Albion Estate,
Corentyne,
20 BERBICE.

Dear Sir,

We refer to your valued order calling for one 30/60E Grantex Rice Mill and No. 8 Dryer.

30 You will recall when you met the writer in New Amsterdam, that you requested we contact the suppliers concerning the finish of the Mill. We have now received advice to the effect, that special filling and extra coats of paint will be applied at no extra charge. They have further undertaken to send a supply of paint, to touch up any scratches which may occur during erection.

Delivery of the Mill and Dryer has been promised for February, 1962, and we have now received a firm price in respect of Mill, and have pleasure in quoting the sum of \$55,300.00 duty paid ex. Wharf Georgetown.

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Khan J.

12th November
1966
(continued)

We have requested Mr. Chung to get in touch with you, concerning the length of the Shaker Conveyor required for the Dryer, and until this information is to hand, we are unable to let you have a firm quotation. Lewis C. Grant Limited have also informed us, that the total collective load of the Motors for the Rice Mill and Dryer is 120 H.P.

We trust this information will be of assistance to you, in selecting a suitable Generating Set, which we feel should have an output of approximately 95 K.W. 10

We would appreciate if you will get in touch with Mr. Chung as early as possible, concerning the length of the Shaker Conveyor.

Yours faithfully,

BOOKERS STORES LIMITED

Agricultural & Machinery Dept.

(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager 20

WAYB:mm
c.c. to Mr. M.A. Chung.

Group Parent: Booker Bros., McConnell & Co.,
Ltd., London.

Confirming House: Campbell Booker Carter Limited,
Bucklersbury House, Walbrook,
London, E.C.4."

On 13th January, 1963, the plaintiff paid a further sum of \$10,000.00 (ten thousand dollars) on account of the order. On the 1st February the defendants wrote the plaintiff as follows:- 30

" BOOKERS STORES LIMITED
49-53 Water Street - Georgetown - British Guiana

Please Quote:
Our Ref. L/3/269

Cable Address: "CAMCULT"
DEMERARA
Telephone: Dial 6 2171

1st February, 1962.

Mr. Mustapha Ally,
Albion Estate,
Corentyne,
BERBICE

In the Supreme
Court of
British Guiana

No. 28

Dear Sir,

We refer to our letter dated 17th November, 1961, in which we quoted a price of \$55,300.00 for the 2-ton 30/60E Multi-Stage Rice Mill.

Judgment of
Khan J.

12th November
1966
(continued)

10 In order to quote for the dryer, we asked Lewis C. Grant Ltd. to prepare a suggested layout for the mill and dryer, and their proposals allow for a 28' shaker conveyor.

The dryer duty-paid, ex wharf Georgetown will cost \$27,500.00 this makes the total for mill and dryer \$82,800.00.

Mr. Chung has the suggested layout in his possession and will contact you to work out whether or not a 28' shaker conveyor is suitable.

20 We are also pleased to advise that a fitter from Lewis C. Grant Ltd. will be in the Colony during erection of your mill.

Yours faithfully,

BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager.

WAYB:gl.
c.c. Mr. M.A. Chung - N/A

30 Group Parent: Booker Bros., McConnell & Co.,
Ltd., London.

Confirming House: Campbell Booker Carter Limited,
Bucklersbury House, Walbrook,
London, E.C.4."

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Khan J.

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1966
(continued)

In February, 1962, the equipment arrived but the Dryer was damaged by the Fire of the 16th February, 1962, occasioned by Riots in the city of Georgetown.

The defendants sent the following letter to the plaintiff:-

" BOOKERS STORES LIMITED
49-53 Water Street - Georgetown - British Guiana

Please quote:
Our ref: L/3/511

Cable Address: CAMCULT
 DEMERARA
Telephone: Dial 6 2171

10

6th March, 1962.

Mr. Mustapha Ally,
Albion Estate,
Corentyne,
BERBICE.

Dear Sir,

We are arranging to ship your 30/60E Grantex Electric Multi-Stage Rice Mill to Stanleytown and will notify you by telegram when it is loaded on the carrying vessel.

20

Mr. Chung has been asked to draw up the contract, using the \$20,000.00 which you have deposited, and he will be contacting you in this respect.

The replacement electric dryer is due to be shipped in April.

Yours faithfully,
BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

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(sgd) W.A.Y. BLAIR
W.A.Y. BLAIR
General Manager.

WAYB: gl.
c.c. Mr. Chung - N/A Branch.

Group Parent: Booker Bros., McConnell & Co.,
Ltd., London.
Confirming House: Campbell Booker Carter Limited,
Bucklersbury House, Walbrook,
London, E.C.4."

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Plaintiff had not the ready cash to pay for the mill and decided to purchase same from the defendants on a Hire Purchase contract. The deposit of \$20,000.00 was utilized in this Hire Purchase transaction by mutual agreement.

In the Supreme
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By the contract of Hire Purchase dated 26th March, 1962, entered into between the plaintiff and the defendants the plaintiff bought from the defendants on Hire Purchase: 1-Grantex Model "30/60E" Detached Rice Mill C/W Electric Motors.

Judgment of
Khan J.

12th November
1966
(continued)

The cash price was \$55,300.00. On Hire Purchase the price was \$62,673.20 (see Exhibit "K12").

Clauses 9, 11 and 12 of Exhibit "K12" provide as follows:-

"Clause 9: The Hirer(s) may at any time during the hiring become the purchaser of the hired property by paying to the Owners such sum as will with the sums previously paid under Clause 2 equal the said Purchase Price and thereupon the hiring shall come to an end and the hired property shall become the property of the Hirer(s) and the Owners will assign and make over all their rights and interest in the same to the Hirer(s): PROVIDED ALWAYS that -

(a) the option hereby granted shall not prejudice any right of action or other remedy of the Owners in respect of any liability incurred by the Hirer(s) under this Agreement or of any breach of the terms thereof: and

(b) if the Hirer(s) shall exercise the option hereby granted, the Owners will return to the Hirer(s) such part of the said Purchase Price (if any) as represents the proportion of interest or collection charge for the unexpired period of the hiring."

"Clause 11: The Owners do not supply the hired property subject to any condition or warranty express or implied as to quality, description, suitability, fitness or otherwise but if the manufacturers of the hired property give any warranty in respect thereof the Owners will take such steps as they can to enforce the same.

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(continued)

"Clause 12: The Hirer(s) acknowledge that before the signing of this Agreement the Hirer(s) examined the hired property and agree(s) that the delivery of the hired property shall be conclusive evidence that it is equipped and in good condition."

The plaintiff spent some time reading the agreement and thereafter signed it in the presence of Mr. Chung and others.

The plaintiff as a businessman is not a stranger to Hire Purchase agreements. Soon after, Mr. Chung and other workmen of the defendants began the assembling of the mill at the plaintiff's premises at Albion, Corentyne. The manufacturer's engineer, Mr. Whyte, who was on a routine visit to this country at the time assisted Mr. Chung and his men. The plaintiff had made his own arrangements with another firm to supply him power equipment. This was delayed until November, 1962. In May, 1962, the Dryer "08" Grantex model arrived from the manufacturers and on the 30th May, 1962, the plaintiff entered into a second Hire Purchase agreement with the defendants for the purchase of the Dryer (see Exhibit "K14"). The Hire Purchase agreement for the Dryer was similar in terms and conditions to that entered into for the purchase of the Mill. The cash price of the Dryer was \$27,500.00 and the Hire Purchase price \$30,249.95. The Dryer was also assembled and installed before the plaintiff's power equipment was ready.

In November, 1962, power was obtained and both the dryer and the mill were tried out by Mr. Chung. During December, 1962, both the plaintiff and his father reported to Mr. Chung at New Amsterdam that the machinery was right. The official opening of the mill took place in March, 1963, before a very large gathering including Dr. Fraser whose rice mill the plaintiff had originally inspected. The demonstrations of the equipment were well received and everyone seemed satisfied.

About two months after the opening of the mill Mr. Chung spoke to the plaintiff about a Hire Purchase instalment falling due. The plaintiff then complained to Mr. Chung about the working of the mill. He told Mr. Chung that nothing was going right. Before or after the opening of the mill the plaintiff in the course of operating the mill had burnt a sheller motor.

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In respect to this incident Mr. Chung stated thus ---

"I investigated and found that the plaintiff had tied the tripswitch which is a safety device to prevent the motor from burning up. I spoke to plaintiff about this and plaintiff told me that he did it because the motor was cutting out. On examination I found that the discharge fins were considerably worn and this caused the sheller to build up and choke and resulted in tripping the switch, (fins are made locally). The Fins were worn from excessive dirt and sandy material in the paddy."

Some time in 1963 after the opening of the mill the plaintiff expressed his dissatisfaction with the dryer to Mr. Chung. He complained about excessive broken grains. Mr. Chung asked him about the process he employed and it was discovered that the plaintiff did not use a moisture meter to test the paddy. The plaintiff claimed that he had got good results without the use of a moisture meter. The defendants imported a moisture meter for the plaintiff but the plaintiff never took it up. The cost was \$450.00. According to Mr. Chung and Mr. Lewis Grant it is absolutely essential to use a moisture meter when using the dryer as it is difficult to test paddy for a dryer with one's teeth.

The plaintiff made several complaints to the defendants in writing and otherwise about the working of the mill. He described the Dryer as a "white elephant". At no time did the plaintiff complain about the want of an iron platform instead of wood for the erection of the mill. As a result of the plaintiff's persistent complaints the defendants decided to have a working test of both the mill and dryer. This was fixed for March, 1963, but was delayed firstly, because the plaintiff was engaged in milling paddy, and secondly, the General Strike in the country came on about the same time. The test was later attempted about mid-July, 1963. The arrangements for this test are set out in the following letter:-

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12th November
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(continued)

"Directors: H.E. Boon (Chairman). G.E. Bane.
H. Esslemont. H.C. Relhan M.C.
J. Hudson F.C.A. D.A. Blackman

BOOKERS STORES LTD.

20-23 CHURCH STREET - GEORGETOWN - BRITISH GULANA

Please quote L/1/816
Our Ref:

Cables Boost Georgetown B.G.
Telephone: 62171 (20 lines)

5th July, 1963.

Mr. Mustapha Ally,
Sandreef,
Albion Estate,
Corentyne,
BERBICE.

10

Dear Sir,

We confirm our conversation with you during which we arranged for a test to be carried out with your Dryer commencing Monday 14th July, 1963.

Our staff in Berbice will arrange to have the Dryer thoroughly inspected before the test is carried out and should it prove necessary to carry out repairs or replace any parts, this would of course, be for your account.

20

For the purpose of conducting this test, our Mr. Chung will prepare a test sheet on which will be recorded the results. This test sheet will be signed by you as the various stages of the test are recorded. The entire test will be controlled by Mr. Chung who will make arrangements concerning the paddy to be used.

We now refer to our letter dated 25th March, 1963 on the subject of testing the Mill.

30

The paddy used on the drying test, we propose using in testing the Mill and we hope you will be able to let us conduct this test immediately we have finished with the Dryer.

As you have directly milled a considerable quantity of paddy, it is once again going to be necessary to thoroughly check each component of the Mill before the test can be carried out. This will entail a certain amount of work and replacing worn

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parts, the total cost of which you will be required to pay.

We look forward to receiving your full co-operation throughout these tests.

Yours faithfully,
 BOOKERS STORES LIMITED
 Agricultural & Machinery Dept.

(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
 General Manager.

Confirming House: Campbell Booker Carter Ltd.,
 Bucklersbury House, Walbrook,
 E.C.4"

Before the actual test Mr. Chung checked both the mill and dryer. He described what he found and did in the following words:-

"I cleaned the Dryer. It was in a very dirty condition. It was blocked up with straws and paddy awns and with particles of dry moss which come in the bags when the combine loads the paddy. I had to clean the dryer and remove 2 or 3 bags of this foreign matter. I then paid attention to the elevator and the moving parts The following day I checked the mill and found the pearling cone screens punctured. The rubber brakes used for polishing the rice in the cones were worn and were uneven. When screens are punctured some of the grains go with the bran and this reduces production. The brakes' unevenness would result in some of the grains not properly polished and others broken. The knives on the two boilers were worn. The elevator belts needed tightening. The paddy cleaner screen was dirty and bent in the middle causing a concave. The result of this would slow down output. The compartment separator pulleys were stuck and the eccentric straps were dragging and was overheating. These lacked proper greasing. The polisher lamb's wool was worn at certain parts and had to be replaced. The sheller fins - I did not examine

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12th November
 1966
 (continued)

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(continued)

as this does not usually wear quickly. All the various matters were put right for the test. I did not go around the Agriculture Department and at different places looking for paddy. This is not true. Mr. Blair and I never went looking for paddy. I did not go to Dr. Fraser to select the paddy. I did not ask Dr. Fraser for any particular quality of paddy"

A test sheet to record the various stages was provided. Exhibit "N" is the sheet. The plaintiff and Mr. Blair who were present at the test had a dispute as to what was "actual drying time", as a result the plaintiff did not sign the test sheet (Exhibit "N"). 10

The capacity sought in respect of the mill was a feeding rate of 3500 lbs. per hour. The plaintiff objected to certain adjustments made by Mr. Chung but Mr. Blair directed that the test be carried out whether the plaintiff liked it or not as he was anxious to satisfy himself. 20

During the test for capacity the sheller motor began to cut out at 3200 lbs. Mr. Blair thought it was an electrical fault and left for Georgetown to see Mr. Ottman - Bookers electrical engineer - but Mr. Chung thought otherwise and on checking eventually discovered that the discharge fins were badly worn. Those were changed three months before. This indicated that the mill had either done a lot of work or that the metal of the fins was poor. These were locally made. Mr. Chung caused better fins to be made and replaced. This was done the same day and the test continued and the capacity of 3500 lbs. obtained. When the plaintiff's attention was drawn to this fact he told Mr. Chung that "as far as he was concerned the test failed". 30

A record Exhibit "N" was made by Mr. Chung. Commenting on the return Mr. Chung stated inter alia ----

"It would appear a poor result but the paddy was very light - the entire 100 bags weighed 13,600 lbs. and the return was 6800 lbs. of rice which is not bad for that quality. The broken grains were in keeping with the quality of paddy (in store for a long time) 40

used. It was not a bad return for white rice. I showed the plaintiff the record of 3 hours and he said again he was not concerned. This performance was similar to all the other Grantex Mills. There are 3 factors which control capacity:

(1) The ability of the operator to keep an even flow through the mill.

10 (2) The quality of the grains you are milling including variety and the fact that it is a pure line seed.

(3) The cleanliness of the grains, i.e. it is free from straw and foreign matter.

I did not adjust the mill to produce more than 3500 lbs. because the quality of the paddy was poor. The plaintiff refused to sign the test sheet but I completed it for our own use and satisfaction. I was satisfied that the mill was working as it should".

20 The plaintiff notwithstanding his dissatisfaction over the working of the mill and Dryer decided to pay off the defendants for both the mill and Dryer to the tune of \$70,000 (seventy thousand dollars), he having obtained a loan from the Credit Corporation.

On the 10th September, 1963 - just over 2 months after the July test, the plaintiff caused his solicitor to write the defendants the following letter:-

30 "L.L. DOOBAY

OFFICE:-

Solicitor
of the Supreme Court

15 & 16, Croal Street,
Georgetown, Demerara,
British Guiana.

10th September, 1963.

The Manager,
Bookers Stores Limited,
Church Street,
Georgetown, Demerara.

Dear Sir,

40 I write you on behalf of Mustapha Ally, of Albion Front, Corentyne, Berbice.

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(continued)

In the Supreme
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British Guiana

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Khan J.

12th November
1966
(continued)

Enclosed is an order for the sum of \$70,000.00 (seventy thousand dollars) payable to you in respect of all the balance of his indebtedness due to you up to this date.

My client wishes to inform you that despite all the genuine attempts on your part to have the Dryer and Mill function as was guaranteed and recommended on the purchase thereof both the Dryer and Mill failed to function properly.

The dryer damages the paddy causing broken rice and can only function to one third (1/3) of its normal capacity. 10

The Mill can only produce one half (1/2) of its capacity as recommended.

You will appreciate that my client is very much disappointed at the failure of the mill to function satisfactorily.

Your Mr. Ottman, Senior Electrical Engineer inspected the said Mill about two weeks ago and he found nothing wrong with the electrical installation. 20

My client still hopes that you will have all the defects on the Mill and Dryer remedied as early as possible for the Autumn Crop. He understands that an engineer from the Manufacturers of the Mill and Dryer is expected early to affect all necessary repairs.

You will, no doubt, realise that my client has lost considerably for the failure of the Mill and Dryer to function normally. He had to compensate several farmers for damages done to their paddy by the drier and in addition he has lost heavily on profits, he should have made on his investment. 30

Yours faithfully,

(sgd) L.L. DOOBAY".

In reply to the above the defendants wrote the plaintiff on the 13th September, 1963, the following letter:-

"BOOKERS STORES LIMITED
20-23 Church Street - Georgetown - British Guiana

In the Supreme
Court of
British Guiana

Please Quote: L/11/1185 Cables: BOOST GEORGETOWN
B.G.
Telephone: 6 2171 (20 lines)

No. 28

September 13 1963.

Judgment of
Khan J.

Mr. L.L. Doobay,
Solicitor,
Supreme Court,
GEORGETOWN.

12th November
1966
(continued)

10

Dear Sir,

Thank you for your letter dated 10th September,
written on behalf of Mr. Mustapha Ally.

The facts given to you by Mr. Ally on the per-
formance of the milling equipment, are not strictly
correct and you will appreciate that the quality of
the paddy fed into the mill is of paramount
importance in gauging performance.

20

We assure you however that every assistance is
being given to Mustapha Ally. On the question of a
visit from the Factory Engineer, we have suggested
this to our Principal in view of the fact that we
have a further two mills and a dryer to erect this
year, but so far, have not received confirmation.

Yours faithfully,

BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

(Sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager.

30

WAYB:jk

Confirming House: Campbell Booker Carter Ltd.,
Bucklersbury House, Walbrook,
London, E.C.4."

On 28th September, 1963, Mr. Blair spoke to
the plaintiff in his mill building and arranged to
take Mr. Chung with him the following Sunday to

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Court of
British Guiana

No. 28

Judgment of
Khan J.

12th November
1966
(continued)

assist plaintiff in starting off the mill in "par boiling". Messrs. Blair and Chung attended the Sunday morning, 29th September but the plaintiff was absent and no operator there, in consequence Mr. Blair wrote the plaintiff the following letter:-

"BOOKERS STORES LIMITED
20-23 Church Street - Georgetown - British Guiana

Please Quote: L/1/1345 Cables: BOOST GEORGETOWN B.G.
Our ref: Telephone: 6 2171 (20 lines) 10

9th October, 1963.

Mr. Mustapha Ally,
Sandreef,
Albion Estate,
Canje,
BERBICE.

Dear Mr. Ally,

It is sometime now since I requested you let me know when you were milling in order that I could travel with Mr. Ottman and that your electrical equipment under load. 20

I also refer to my visit in Berbice when I spoke with you in the Mill building on the 28th September, 1963. Mr. Chung and myself called on the Sunday morning as arranged to assist in starting off the mill for milling par-boiled paddy and were most disappointed to find that you were not there, nor, was there an operator we could have handed over to on starting up.

I would also urge you to send your cone stone to our branch in New Amsterdam for repair as this has been lying in your mill for some time now. 30

Yours faithfully,

BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager

WAYB:jk

c.c. Mr. M.A. Chung - New Amsterdam. 40

Confirming House: Campbell Booker Carter Ltd.,
Bucklersbury House, Walbrook,
London, E.C.4."

and on the 10th October, 1963, the plaintiff's solicitor wrote the defendants as follows:-

In the Supreme
Court of
British Guiana

"L.L. DOOBAY

OFFICE:-

Solicitor of the
Supreme Court

15 & 16 Croal Street,
Georgetown, Demerara,
British Guiana.

No. 28

Judgment of
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10th October, 1963.

12th November
1966
(continued)

The Manager,
Bookers Stores Ltd.,
Water Street, Georgetown.

10

Dear Sir,

Re: Mustapha Ally

Since your letter to me of the 13th September, 1963, nothing has been done by your Company to put the Dryer in order neither has the Mill been adjusted to function to its full capacity.

The rice crop is now on and in order to mitigate his heavy loss, my client has erected a concrete drying floor, whilst the Dryer a "white elephant" lies asleep.

20

I am instructed that this is the only type of Mill and Drying Unit in the Colony and my client had at the very beginning relied entirely on your skill and judgment especially since the mill and Drying Unit were so highly recommended by your Company.

As to the second paragraph of your letter of 13th September, 1963, my client states that your Company made several tests which proved that the Dryer was no good and the mill was not functioning as was guaranteed and he has been complaining bitterly all along to your Company.

30

My client is now being forced to seek other remedies for breach of warranty and/or guarantee and/or contract in this transaction with your company.

You will appreciate my client's loss is continuous and severe. If it is your desire to discuss a settlement with a view to avoid legal proceedings

In the Supreme
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instituted against your Company, I shall be happy
to do so.

Yours faithfully,

No. 28

(sgd) L.L. DOOBAY"

Judgment of
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On the 16th October, 1963, the defendants sent
the following reply to plaintiff's solicitor:-

12th November
1966
(continued)

"BOOKERS STORES LIMITED
20-23 Church Street - Georgetown - British Guiana

Please Quote: L/11/1374 Cables: BOOST GEORGETOWN B.G.
Our Ref: Telephone: 6 2171 (20 lines) 10

October 16th 1963.

L.L. Doobay, Esq.,
Solicitor,
Supreme Court,
Georgetown.

Dear Sir,

Thank you for your letter dated 10th October,
1963.

We had arranged with Mr. Mustapha Ally to
inform us when he was ready to commence milling to 20
enable the writer and Mr. Ottman to travel to
Berbice to test the electrical equipment under load.
Not having heard from Mr. Ally the writer, accom-
panied by the Manager of our New Amsterdam Branch,
Mr. Chung called to see Mr. Ally on the 28th
September. We were informed that he would com-
mence milling par-boiled rice on the following
morning and we arranged to return to assist in
adjusting the mill. We returned to the mill on 30
the morning of the 29th September to find that Mr.
Mustapha Ally was not there, nor did any arrange-
ments appear to have been made to commence milling.

You mention in your letter that the mill is
the only one of its type in the Colony. For your
information we erected three (3) identical mills
in Berbice in the same year. The only difference
is the source of power driving the mill i.e.
electricity as against a diesel prime mover. This
was requested by Mustapha Ally on placing the order
as he was considering the possible development of 40

rural electrification.

The reference in your letter to our recommendation of "GRANTEX" equipment to Mustapha Ally is incorrect.

Your client approached this department requesting we order the equipment on his behalf and it was only when he offered a deposit of \$10,000.00 to place the order that we accepted the business.

10 We have already given considerable assistance to your client but you will appreciate that we can only be of service if the mill is under the supervision of an experienced miller who can benefit from our help and guidance.

Please be assured that given the necessary co-operation we shall continue to render every assistance to your client.

Yours faithfully,
BOOKERS STORES LIMITED
Agricultural & Machinery Dept.

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(sgd) W.A.Y. BLAIR

W.A.Y. BLAIR
General Manager.

WAYB:jk "

30

During the same month, Messrs. Chung and Ottman visited the plaintiff's mill and found that the bearing of the eccentric strap was seizing. They fixed it and the mill was tried out to a capacity of 3500 to over 4000 lb. and found to be working well.

On the 23rd December, 1963, the plaintiff wrote Mr. Tasker the following letter:-

"Albion Front,
Corentyne,
Berbice.

23rd December, 1963.

Mr. Anthony Tasker,
Bookers Head Office,
Church Street, Georgetown.

In the Supreme
Court of
British Guiana

No. 28

Judgment of
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12th November
1966
(continued)

In the Supreme
Court of
British Guiana

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Khan J.

12th November
1966
(continued)

Dear Sir,

It is with deep sense of dis-appointment that I write you over correspondence which was directed to you some time ago in connection with my business transaction with Bookers Stores Limited and repeated complaints. I wish to place on record the action in writing to you was the result of a direct request from Sir Jock Campbell to me, as I gathered from him, he had passed certain information to you to investigate my complaints and arrange to have them resolved amicably. 10

I feel that I have been treated most discourteously by you who have failed to observe the common ethics by acknowledging receipt of my letter; because of this and my immediate plans to visit the United Kingdom with my legal adviser where I intend to see personally Sir Jock Campbell. I request that you forthwith return to me the correspondence I sent to you.

Yours faithfully, 20

(sgd) MUSTAPHA ALLY.

c.c. sent Sir Jock Campbell,
Bookers Group of Companies,
London, E.C.4., England."

On the 11th January, 1964, the secretary of the Resident Board representing the Booker Group of Companies in British Guiana (now Guyana) wrote the plaintiff the following reply:-

"RESIDENT BOARD

Representing

THE BOOKER GROUP IN BRITISH GUIANA

22 Church Street, 30

Georgetown,

British Guiana

Telephone: 62171

Cables: BOOKGROUP,
GEORGETOWN BG

11th January, 1964.

Mr. Mustapha Ally
 Albion Front
 Corentyne
 Berbice

In the Supreme
 Court of
 British Guiana

No. 28

Dear Mr. Ally,

Judgment of
 Khan J.

10 In Mr. Tasker's absence - he is out of the country at the moment - I am writing to acknowledge your letter of the 23rd December, 1963, requesting the return of previous correspondence sent to him in connection with your commercial activities with some of our companies.

12th November
 1966
 (continued)

The correspondence referred to is presumably the carbon copy enclosures sent under cover of your letter of the 23rd August, 1963 (received here on the 11th September, 1963), and these are accordingly returned with this letter.

20 At this stage, I am not prepared to go into any of the malicious accusations contained in your letter of the 23rd August, 1963, but in view of your letter of the 23rd December, 1963, I must make a few points absolutely clear to you. The first is that I utterly reject any suggestion that the mere absence of a formal acknowledgement of your earlier correspondence with Mr. Tasker was meant as a discourtesy to you. Indeed, the lengthy interview which Mr. Tasker granted you in June, 1963 (as a result of which you wrote your letter of the 23rd August, 1963); the readiness of the management of P.M.A. to see you at all times and to discuss the problems which had arisen, with a view to reaching an amicable settlement with you; and the continued efforts of our Stores Company - you will remember Mr. Blair and Mr. Ottman visiting your rice mill and carrying out checks on it as late as less than a week before you instituted legal proceedings against the Stores Company on the 29th October, 1963 - to provide you with satisfactory service, and to help you remedy the cause of your complaint, would all suggest that we have always endeavoured to treat you with respect and courtesy and with a sympathetic appreciation of your problems. This has always been, and will continue to be our attitude in our relationships with our customers and others.

The second point is that while we are always

In the Supreme
Court of
British Guiana

No. 28

Judgment of
Khan J.

12th November
1966
(continued)

willing and anxious to avoid litigation, and to investigate and remedy our customers' genuine complaints, we would not be persuaded to compromise our reasonable stand on any commercial issue by threats of one sort or another, or by litigation. So long, therefore, as your Supreme Court action against Bookers Stores remains sub judice, no one in the Booker Group can be of any further assistance to you in that particular matter. I understand that you have already been advised that we would be willing to help in training yourself and your brother to operate the rice mill, but that this would not be possible while the suit for breach of warranty of the mill remains pending in the Supreme Court.

10

You have not specifically referred in your letter of the 23rd December, 1963, to your complaints against P.M.A., but I am aware that the matter is still under discussion between yourself and the General Manager of P.M.A.

20

Yours sincerely,

(sgd) H. Singh

Secretary
Resident Board.

encl."

The above are the facts deduced from the mass of evidence.

On the 24th October, 1963, the Plaintiff filed the present action. By paragraph 4 of the plaintiff's statement of claim he alleges that the defendants by their servants orally warranted that the mill would be capable of milling more than 5000 lbs. of paddy per hour and that the Dryer would be capable of drying more than 4 tons of white rice paddy (or more than 2 tons of parboiled paddy) per hour. Plaintiff also alleges in paragraph 5 that defendants represented that the mill being electrically driven would have a greater capacity than a belt-driven mill. The only evidence adduced by the plaintiff as to these oral representations was the plaintiff himself. The defendants denied the allegations through their servants, Messrs. Chung and Blair. The pamphlets tendered as exhibits by the plaintiff did not

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relate to the mill ordered. In fact the defendants stated through their witnesses that no pamphlets were issued in relation to the mill purchased by the plaintiff. I have considered the evidence adduced in this respect and I am satisfied that the plaintiff decided to purchase both the mill and dryer after investigating and witnessing the operation of Dr. Fraser's mill. Although Dr. Fraser's Dryer was not yet in operation the plaintiff decided to purchase a similar Dryer. The plaintiff has impressed me as a keen - if not shrewd businessman. In the course of his evidence with reference to the volume of his business activities the plaintiff stated inter alia ----

In the Supreme Court of British Guiana

No. 28

Judgment of Khan J.

12th November 1966
(continued)

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"I made Three Hundred Thousand Dollars profits in 2 years - during 1958 to 1960. I have never kept books for my enterprises. I don't keep books. I keep books for the trucking business in a sort of way - nothing to talk about. I manage the trucking business for my wife but she collects. I kept books for the rice mill from the beginning of the rice mill project. I have never yet prepared an income tax return in my life. The Three Hundred Thousand Dollars I made in profits from 1958 to 1960 I kept all. I have not paid any income tax on that yet, and I kept no accounts about it. I never kept books.
.....
My mill produces the best quality of milling but slow production. I have no receipts at all for the compensation of \$8000.00 which I paid to farmers."

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He is not the ordinary man to believe that the capacity of a mill or dryer would be increased if electrically driven. I find that no such representation was made to him. I believe and accept the evidence of Mr. Chung and Mr. Blair wherever their evidence is in conflict or at variance with the plaintiff and/or his witnesses. The mill order was a "detached" mill and not a "self-contained" mill which carried iron platform. As I said before, the plaintiff is a young, intelligent and enterprising businessman. He stated that he began business at the age of 14. If an iron platform was part of the order the plaintiff would have included this in his complaints. His complaints were that the mill and dryer have not the capacity claimed by

In the Supreme
Court of
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No. 28

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Khan J.

12th November
1966
(continued)

the defendants and also that the dryer was causing excessive broken grains. I am satisfied that the capacity represented was that stated by Mr. Blair, i.e., the mill intake was 3500 lbs. to 5000 lbs. per hour and the dryer as that stated by Mr. Chung and Mr. Blair.

The test of July by Mr. Chung showed that the mill was capable of 3500 lbs. and over. When tested again by Messrs. Chung and Ottman it was capable of a capacity of over 4000 lbs. per hour. I believe and accept the evidence of Mr. Chung as to what took place at the July test and the results. Much time was spent in court investigating as to whether the paddy supplied by Dr. Fraser's mill for the July test was good quality paddy or poor quality. I have considered all the evidence in this regard and find that the evidence of Dr. Fraser, his son and Mr. Chung to be preferred.

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The plaintiff called an expert - Mr. Mahadeo Bhagwandin, who carried out certain tests. It is clear from the evidence before me that Mr. Bhagwandin knows very little about the "Grantex" Dryer and its mechanism. During the hearing Mr. Bhagwandin carried out certain tests to the mill and dryer. With great respect to Mr. Bhagwandin's ability, I am of the opinion that he is not sufficiently knowledgeable in Grantex machinery to carry out a proper test as he claimed he did. Mr. Bhagwandin stated that he saw several Grantex Dryers in operation but admitted it was the very first time he operated one himself. I am more impressed with the evidence of Mr. Lewis Grant that the machinery was mechanically in good order. No defect was disclosed in the Mill or the Dryer. I find Mr. Bhagwandin's claim that the vibrations from the wooden platform were responsible for low production unfounded. Mr. Cleveland Allan Chan of the Anna Regina Mill and the M.A.R.D.S. gave evidence in respect to wooden mounts and platforms and vibrations and I prefer his evidence to that of Mr. Bhagwandin whenever it is at variance.

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Mr. Chan is General Manager of the Rice Development Company. He manages the operation of Grantex Mills and Dryers at his company's premises. His experience is wide and far-reaching in the use of such rice mills. He has considerable experience in the operation of Grantex Rice Mills and Dryers

and I prefer his evidence wherever there is conflict or variance to that of Mr. Bhagwandin or to that of the plaintiff's witnesses. I believe and accept the evidence of Mr. Blair that the mill produced a bag of rice in 4 minutes - about 12 to 13 bags per hour. I did not believe the plaintiff's story that it was represented to him that the mill would have produced 17 to 20 bags of rice per hour. In this regard the plaintiff stated inter alia ----

In the Supreme
Court of
British Guiana

No. 28

Judgment of
Khan J.

12th November
1966
(continued)

10 "I had a row with Mr. Blair who spoke to me at the back of the mill. He said he was satisfied with the performance of the mill and I got vexed and lost my temper, as I realised he was then fooling me. I lost my temper and cursed him up and I took up an iron bar to strike him. I was held back. Mr. Chung was not near but he could have seen and heard as I spoke loudly - I just got mad."

20 I believe both Mr. Chung and Mr. Blair that this incident did not take place at all.

30 Mr. Lewis Grant, the chairman and managing director of Lewis C. Grant, Ltd., makers of Grantex Rice Mills and Dryers of Scotland, related the history of the manufacture of Grantex mills and dryers and explained the working and the mechanism. As I said before, there is no evidence of any defect in the mill or dryer and I accept the view of Mr. Grant that the trouble with the plaintiff's dryer is that it is not skilfully operated as it should. It is my view having regard to all the evidence adduced that excessive broken grain is the result of poor quality paddy used and/or unskilful operation of the machinery.

40 Mr. Chan stated that Grantex machinery is used at Anna Regina where there are six "08" dryers in operation since 1956. The dryers are still working satisfactorily. The operators of the dryers are classified as skilled workmen, who need technical knowledge in order to operate the dryers which are run electrically.

Mr. Chan and other witnesses explained the various causes resulting in excessive broken grains from dryer-dried paddy. The weight of the evidence shows that the source of power does not make any difference as to the quality and output of the mill

In the Supreme
Court of
British Guiana

No. 28

Judgment of
Khan J.

12th November
1966
(continued)

and dryer. With reference to Grantex equipment Mr. Chan concluded his evidence by stating inter alia ----

"As far as the equipment goes the mills and dryers live up to their expectations and claims."

It was conceded at the hearing that the mill is working well, except for capacity. The plaintiff's real worry is with the dryer, which he described as a "white elephant". I have examined all the evidence in this case and gave weighty consideration to each and every issue raised and I am satisfied that the performance of the mill in question is as was represented to the plaintiff as stated by Messrs. Chung and Blair. 10

In respect to the dryer I have no reliable evidence before me that its performance fell short of what was represented by the defendants. I accept Mr. Chung's evidence in preference to the plaintiff's and his witnesses' wherever there is variance and/or conflict. The incidence of excessive broken grains has been explained by Messrs. Lewis Grant, Chan and Chung and I accept their evidence. 20

Mr. B.O. Adams, Q.C., for the plaintiff, submitted that the court ought to look at the juristic nature of the contract which is really one of sale and not Hire Purchase and all the incidents of sale should follow. He contended that the Hire Purchase agreements (Exhibits "K12 & 14") were merely entered into as collateral security. I have considered his arguments and authorities cited but in the light of the documentary exhibits and facts I find his arguments untenable. The facts show that the transaction between the plaintiff and the defendants is a Hire Purchase contract simpliciter. The plaintiff exercised his option under Clause 9 of Exhibit "K12 & 14" and completed the sale and affirmed the contract after working both the mill and dryer from December 1962 to September 1963. He had adequate time for testing the machinery before he decided to affirm the contract and pay off the defendants for both mill and dryer. The plaintiff described the dryer to Mr. Chung several months before affirming the contract as a "white elephant". He was under no obligation to exercise the option to 30 40

purchase a "white elephant". He knew what the machinery was capable of producing and decided to exercise the option notwithstanding his complaints.

In the Supreme Court of British Guiana

No. 28

Judgment of Khan J.

12th November 1966
(continued)

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Mr. Adams, Q.C., conceded that the onus of proof that the machinery is defective and is unfit for the purpose for which it was supplied is on the plaintiff. I have considered the whole of the evidence adduced. I have considered the submissions and arguments of counsel for the plaintiff and the defendants and I have come to the firm opinion that the plaintiff has failed to discharge the onus of proof that the Mill or the Dryer is defective and is unfit for the purpose for which it was supplied. The action fails both in fact and in law and is dismissed with costs to the defendants to be taxed certified fit for two counsel. A stay of execution is granted for six weeks.

AKBAR KHAN

Chief Justice (Acting)

12th November, 1966

20

Solicitors

L.L. Doobay, Esq.

H.W. De Freitas, Esq.

No. 29

No. 29

ORDER ON JUDGMENT

Order on Judgment

1963

No. 1965

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
(CIVIL JURISDICTION)

12th November 1966

BETWEEN:-

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MUSTAPHA ALLY (male East Indian) Plaintiff
and

BOOKERS STORES LIMITED a company
incorporated in this Colony under
the Companies Ordinance Chapter 328
whose registered office is at lots
49/53 Water Street, Georgetown,
Demerara.

Defendants

In the Supreme
Court of
British Guiana

BEFORE THE HONOURABLE MR. AKBAR KHAN, CHIEF
JUSTICE (AG).

DATED THE 12th DAY OF NOVEMBER, 1966

No. 29

ENTERED THE 24th DAY OF FEBRUARY, 1968

Order on
Judgment

12th November
1966
(continued)

This action having come on for hearing on the 25th and 26th February, 1965, the 1st, 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th, 15th, 16th, 17th, 22nd, 23rd, 24th, 26th, 29th and 30th March, 1965, the 22nd, 23rd, 24th, 25th, 28th, 29th and 30th June, 1965, the 1st, 2nd, 5th, 6th, 7th, 8th and 13th July, 1965, the 15th January, 1966 and on this day AND UPON HEARING Counsel for the plaintiff and for the defendants and the evidence adduced AND the Court having ordered that the plaintiff's claim be dismissed with costs THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff do recover nothing against the defendants AND that the defendants do recover against the plaintiff their costs of this action to be taxed certified fit for two (2) Counsel AND IT IS ORDERED that execution herein be stayed for a period of six (6) weeks from the date hereof.

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BY THE COURT

H. MARAJ

SWORN CLERK & NOTARY PUBLIC
for REGISTRAR.

NO. 30

NOTICE AND GROUNDS OF APPEAL

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

GUYANA

CIVIL APPEAL NO.59 of 1966

B E T W E E N : MUSTAPHA ALLY
(male East Indian) (Plaintiff)
Appellant

- and -

BOOKERS STORES LIMITED
a company incorporated
in this colony under
the Companies Ordinance,
Chapter 328 whose
registered office is at
lots 49/53 Water Street,
Georgetown, Demerara

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

No.30

Notice and
Grounds of
Appeal

21st December
1966

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NOTICE OF APPEAL

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TAKE NOTICE that the (Plaintiff) Appellant being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the High Court of the Supreme Court of Judicature contained in the Judgment of the Honourable Mr. Justice Akbar Khan then acting Chief Justice dated the 12th day of November, 1966 doth hereby appeal to the Court of Appeal of the Supreme Court of Judicature upon grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision of the lower Court is complained of, that is to say the dismissal of the plaintiff's action with costs to the defendant to be taxed certified fit for two counsel.

3. Ground of Appeal

(1) The decision of the learned trial judge is

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

No. 30

Notice and
Grounds of
Appeal

21st December
1966
(continued)

unreasonable and cannot be supported having regard to the evidence.

4. The Relief sought

That the decision of the learned trial Judge be reversed and judgment be entered for the (Plaintiff) Appellant with costs both in this Court and in the Court below.

5. Persons directly affected by the Appeal

	<u>Name</u>	<u>Address</u>	
(1)	Mustapha Ally	Albion Corentyne West Coast in the County of Berbice.	10
(2)	Bookers Stores Limited	49/53 Water Street, Georgetown, Demerara.	

Dated the 21st day of December, 1966.

M.E. CLARKE

Solicitor for the (Plaintiff)
Appellant

NO. 31

JUDGMENT OF PERSAUD J.A.

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

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL NO.59 of 1966

—
No.31

B E T W E E N : MUSTAPHA ALLY Appellant
(Plaintiff)

- and -

Judgment of
Persaud J.A.

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BOOKERS STORES Respondents
LIMITED (Defendants)

16th June
1969

BEFORE: The Hon. G.L.B. Persaud - Justice of Appeal
The Hon. P.A. Cummings - Justice of Appeal
The Hon. V. E. Crane - Justice of Appeal

1969: February 19, 20, June 16.

J.O.F. Haynes, Q.C., B.E. Commissioning with him for
Appellant.

G.M. Farnum, Q.C., J.A. King with him, for Respondents.

JUDGMENT

PERSAUD, J.A.:

20

The appellant, a man of some business experience, entered into negotiations with the respondents, a company trading in Guyana, for the purchase of one 30/60E Grantex rice mill, and one 08 dryer with certain accessories. The quoted price of the mill, duty paid ex wharf, Georgetown, was stated as \$55,300, while that of the dryer was \$27,500, making a total of \$82,800.

30

On October 11, 1961, the appellant's father, acting as the appellant's agent, signed an order for the articles mentioned, at the same time depositing the sum of \$10,000 against the order, and agreeing that within one month of the arrival of the goods in the Country to pay the 'balance necessary for a hire-purchase deposit and to take delivery of the goods within the stipulated month of arrival'.

On January 13, 1962, a further sum of \$10,000 was paid by the appellant, and in February 1962 the equipment arrived, but the dryer was damaged by fire on February 16. It was therefore necessary to re-order one which arrived in May.

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

—
No. 31

Judgment of
Persaud J.A.

16th June
1969

(continued)

On March 26, 1962, the parties entered into a hire-purchase agreement in respect of the rice mill, utilizing the \$20,000 paid by the appellant towards the hire-purchase price which had by now risen to \$62,673.20, no doubt having regard to the various charges made in connection with hire-purchase agreements. This agreement was to run for three years. The important clauses, so far as this appeal is concerned, are clauses 9, 11 and 12, which it is necessary to set out in full hereunder:

10

"9. THE HIRER(S) may at any time during the hiring become the purchaser of the hired property by paying to the Owners such sum as will with the sums previously paid under Clause 2 equal the said Purchase Price and thereupon the hiring shall come to an end and the hired property shall become the property of the Hirer(s) and the owners will assign and make over all their right and interest in the same to the Hirer(s):
PROVIDED ALWAYS that -

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- (a) the option hereby granted shall not prejudice any right of action or other remedy of the Owners in respect of any liability incurred by the Hirer(s) under this Agreement or of any breach of the terms thereof; and
- (b) if the Hirer(s) shall exercise the option hereby granted, the Owners will return to the Hirer(s) such part of the said Purchase Price (if any) as represents the proportion of interest or collection charge for the unexpired period of the hiring."

30

"11. THE Owners do not supply the hired property subject to any condition or warranty express or implied as to quality, description, suitability, fitness or otherwise, but if the manufacturers of the hired property give any warranty in respect thereof the Owners will take such steps as they can to enforce the same.

40

"12. THE Hirer(s) acknowledge that before the signing of this Agreement the Hirer(s) examined the hired property and agree(s) that the delivery of the hired property shall be conclusive evidence that it is equipped and in good condition."

On May 30, 1962, the parties entered into a second hire-purchase agreement, on this occasion in connection with the dryer. This agreement, which was to run for two years, contained similar terms and conditions as the previous one. \$9,167 was paid on its signing, and the hire-purchase price was named at \$30,249.95.

In the Court
of Appeal of
the Supreme
Court of
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10 It is important to observe that in each case the appellant was given an option to purchase the equipment under hire, as it has been urged upon us that the true nature of the transaction is that of a hire-purchase, and that the exercise of the option to purchase by the appellant did not really alter that situation.

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20 By November 1962 both mill and dryer had been installed and it would appear that in December the appellant and his father reported to one Chung, the Manager of the Agricultural and Machinery Branch of the respondent Company in New Amsterdam, that 'the machinery was right' and that they were producing about 11 bags of good rice per hour, which rate, according to Chung, was within the capacity rate. Indeed, in December 1962, after the erection had been completed, Chung carried out a test which satisfied him that the mill was 'functioning mechanically sound'. Chung said: "The mill then functioned well but not up to the required capacity; like a new car it had to be worked in gradually to its capacity." In the light of this evidence, it is clear that up to December 1962, the mill, although functioning mechanically sound, was not performing to capacity.

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40 The mill was officially opened in March 1963, and from about May the appellant began complaining about the incompetence of the mill and the dryer. His first complaint was to Chung about the mill. On an examination, Chung found that a trip switch installed as a safety device to prevent the motor from burning out had been tied back. The appellant explained that this was necessary to prevent the motor from cutting out. On further examination, Chung found what is called the discharge fins badly worn thus causing the sheller to build up and choke, resulting in the tripping of the switch. Chung expressed the opinion that the fins were worn because of excessive dirt and sandy material in the paddy.

In the same year (1963), the appellant expressed dissatisfaction with the performance of the dryer, claiming that there was an excess of broken grains.

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It was discovered that the appellant was not using a moisture meter to test the paddy. Such an implement was imported into the Country, but the Appellant did not take it up, claiming that it ought to be supplied to him free of charge. The trial Judge found that a moisture meter was essential for the successful operation of the dryer.

Even though he continued to operate both the mill and the dryer, the appellant was unceasing in his representations about the lack of performance by the equipment, so much so that a test both of mill and dryer was arranged and carried out by Chung and other representatives of the respondent Company. According to Chung - and the Judge accepted this evidence - it was necessary to put several things right before the test could be done. The paddy used, it was conceded on all sides, was not of the best quality, but, nevertheless, a capacity of 3,500 lbs. per hour was achieved. The representatives of the respondents were satisfied about the performance of the mill but evidently the appellant was not, as he alleged that it had been represented to him by Chung and in pamphlets handed to him by Chung that the mill capacity was in the vicinity of 5,000 lbs. per hour. In this regard, it has been accepted that the appellant's mill was intended to have a capacity of 3,500 lbs. to 5,000 lbs. intake capacity. Chung conceded that the return of rice - and this is not the same, be it noted, as the intake capacity of the mill - was poor, but this was due to the quality of the paddy, but in any event was a fair return. He further stated that the performance was not dissimilar to that of other Grantex mills, and that he did not adjust the mill to a capacity greater than 3,500 lbs. because of the quality of the paddy. One is left to wonder why no steps were taken to procure good paddy and to carry out a proper test, particularly so when it was recognised by the respondents that the quality of paddy was of paramount importance in gauging the performance of the mill. [See letter (Exhibit 'K27') written by the respondents on September 13, 1963, in reply to one written by the appellant's solicitor on September 10, 1963, (Exhibit 'K26')]. In addition to this, in describing the results of the test, Mr. Chung said in evidence as follows:

"It would appear a poor result but the paddy was very light - the entire 100 bags weighed 13,600 lbs. and the return was 6,800 lbs. of rice which is not bad for that quality. The

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broken grains were in keeping with the quality of paddy (in store for a long time) used. It was not a bad return for white rice. I showed the plaintiff the record of 3 hours and he said again he was not concerned. This performance was similar to all the other Grantex mills. There are 3 factors which control capacity:

- (1) The ability of the operator to keep an even flow through the mill.
- (2) The quality of the grains you are milling including variety and the fact that it is a pure line seed.
- (3) The cleanliness of the grains, i.e. it is free from straw and foreign matter.

I did not adjust the mill to produce more than 3500 lbs. because the quality of the paddy was poor."

In passing, it is not without some importance to observe that David Fraser described the paddy used as 'sweepings'. A worse sample of paddy can hardly be imagined for use to test the capacity and milling performance of a rice mill. It is really difficult to reconcile Mr. Chung's evidence to the effect that the mill was working as it should when he did not adjust it to produce more than 3,500 lbs. because of the poor quality of the paddy. One would have thought that with an expensive bit of machinery involved, and in view of the continued protestations of the appellant, a good sample of paddy would have been procured and a test carried out to show what was the true capacity of both mill and dryer. Unless, of course, the persons concerned in carrying out the test were not sure either of themselves or of the machinery, and thought that they would rather avoid the risk of having the equipment fall down on the test.

In October 1963 both Chung and one Ottman, an electrical engineer connected with the respondents, visited the mill. They found some trouble with the compartment separator. On investigating, they found a fault which they proceeded to fix, after which they tested the capacity of the mill. The capacity achieved on this occasion was between 3,500 and 4,000 lbs. of paddy. The mill operated well and under a full load.

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Even before this, and notwithstanding the appellant's dissatisfaction with the performance of the mill and dryer on September 19, 1963, he paid the outstanding balance of \$70,000 then due on both pieces of machinery, thereby exercising the option under clause 9 of the hire-purchase agreements. He continued to maintain, notwithstanding, that both dryer and mill were not performing to their normal capacity as guaranteed and recommended. Then on October 10, 1963, through his Solicitor, he alleged that he had from the very beginning relied on the respondents' skill and judgment, especially since the mill and drying unit had been so highly recommended by the respondents.

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Some further correspondence passed between the parties, after which the appellant brought these proceedings in which he claimed damages for breach of warranty and for condition and/or fraud and/or misrepresentation on the sale of the items of machinery referred to. The trial Judge dismissed the claim accepting the evidence of the respondents' witnesses in preference to that of the appellant and his witnesses. So far as the mill is concerned, the Judge found that it was working well, except for capacity, and that the performance was as represented to the appellant by the respondents' agents. As regards the dryer, the Judge concluded that he had no reliable evidence that its performance fell short of what was represented by the respondents through their agents. Concluding his judgment, the trial Judge said:

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"The facts show that the transaction between the plaintiff and the defendants is a Hire Purchase contract simpliciter. The plaintiff exercised his option under Clause 9 of Exhibit 'K12 & 14' and completed the sale and affirmed the contract after working both the mill and dryer from December 1962 to September 1963. He had adequate time for testing the machinery before he decided to affirm the contract and pay off the defendants for both mill and dryer."

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It is only right to say that in making the final payment to the respondents, the appellant continued to maintain that neither mill nor dryer was performing to normal capacity. He alleged that the mill was only producing half its capacity, and the dryer one-third, and expressed the hope that the respondents would have all the defects remedied as early as possible.

In this Court the sole ground urged was that the decision of the learned trial Judge was unreasonable and could not be supported having regard to the evidence. Counsel submitted that he was not prepared to argue that there was a sale; he would prefer to found his submissions on the basis that the transactions were hire-purchase agreements. He argued further that an oral warranty was given to the appellant together with some literature, and these induced him to enter into the hire-purchase agreements; that it was important to find whether the oral warranty had been given; that the evidence of the test was such as to have led the Judge to hold that the witnesses on this particular issue were unreliable, and were giving untrue evidence to meet a difficult situation, in which case he should have examined their evidence on other issues of fact as to whether any warranties were given orally and/or by the delivery of certain literature to the appellant. It is relevant to set out what the Judge found on this issue. The Judge said:

"The only evidence adduced by the plaintiff as to these oral representations was the plaintiff himself. The defendants denied the allegations through their servants, Messrs. Chung and Blair. The pamphlets tendered as exhibits by the plaintiff did not relate to the mill ordered. In fact the defendants stated through their witnesses that no pamphlets were issued in relation to the mill purchased by the plaintiff. I have considered the evidence adduced in this respect and I am satisfied that the plaintiff decided to purchase both mill and dryer after investigating and witnessing the operation of Dr. Fraser's mill. Although Dr. Fraser's dryer was not yet in operation, the plaintiff decided to purchase a similar dryer."

It would also appear both from the evidence and from the volume of correspondence which flowed between the parties - some conciliatory, others not - that the respondents were saying that the operation of the mill and dryer should be carried on by an experienced miller, that they were willing to investigate and remedy the appellant's complaints, but that pending the determination of this action, they could be of no further assistance. No doubt they were not prepared to compromise their stand in this matter, an attitude which they are well within their rights to assume.

At this juncture, it will be convenient to examine

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the approach of appellate tribunals and the principles upon which they act when they are asked to reverse the findings of a lower court. There is no doubt that in appropriate cases, a court of appeal may substitute its own findings for that of a trial judge, as was done by the Court of Appeal of Trinidad and Tobago in Lucky v. Tewari (1965) 8 W.I.R.363 and approved by the Privy Council. In delivering the judgment, Lord Wilberforce said (at page 366 *ibid*):

"As to the attesting witnesses themselves, their Lordships agreed with the Court of Appeal that the reasons expressly given by the learned judge for disbelieving their evidence are unconvincing, and though their Lordships are prepared to assume that some reliance was placed by the learned judge on the manner and demeanour of the witnesses, although in his judgment he does not expressly say so, even allowing for this, their Lordships cannot accept that the point was reached, or indeed approached, where a total rejection of these witnesses' evidence was justified." 10 20

In The Glannibanta (1 P.D.283) this is how Baggally, J.A., put the matter (at p.287):

"Now we feel, as strongly as did the Lords of the Privy Council in the cases just referred to, the great weight that is due to the decision of a Judge of first instance whenever in a conflict of testimony, the demeanour and manner of the witnesses who have been seen and heard by him are, as they were in the cases referred to, material elements in the consideration of the truthfulness of their statements. But the parties to the cause are nevertheless entitled, as well on question of fact as on questions of law, to demand the decision of the Court of Appeal, and that Court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses, and should make due allowance in this respect. It should be added that 'due allowance' may go so far as to prevent the Court from altering the primary judgment." 30 40

See also Khoo Sit Hoh v. Lim Thean Tong, (1912) A.C. at p.325; Scott v. Pauly (1917) 24 C.L.R. at p.280)

and Powell v. Streatham Manor Nursing Home (1935) All E.R. Rep. at p.63 where Lord Atkin agreed with the view that on appeals from the decision of a judge sitting without a jury the jurisdiction of the Court of Appeal is unrestricted. "The court has to re-hear"; says Lord Atkin, "in other words, has the same right to come to decisions on the issues of fact as well as law as the trial judge. But the court is still a court of appeal, and in exercising its functions is subject to the inevitable qualifications of that position. It must recognise the onus upon the appellant to satisfy it that the decision below is wrong; it must recognise the essential advantage of the trial judge in seeing the witnesses and watching their demeanour. In cases which turn on the conflicting testimony of witnesses and the belief to be reposed in them, an appellate court can never recapture the initial advantage of the judge who saw and believed."

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In the case of Benmax v. Austin Motor Co.Ltd. (1955) 1 All E.R., the House of Lords was unanimous in its view that "Where there is no question of the credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial judge, and should form its own independent opinion though it will give weight to the opinion of the trial judge."

In his judgment Lord Reid, after quoting from the judgment of Viscount Cave, L.C., in Mersey Docks & Harbour Board v. Proctor (1923) A.C. at p.258, and after referring to Ord.58, r.1 of the Rules of the Supreme Court (U.K.), which prescribes that all appeals to the Court of Appeal shall be by way of re-hearing [our law permits the Appeal Court to draw inferences of fact (s.10(1)(b) of Ord.19 of 1958) and Ord.II, r.1(1) of the Federal Supreme Court (Appeals from British Guiana) Rules, 1959, provides that all appeals shall be by way of re-hearing] said:

"..... an appellate court should not lightly differ from the finding of a trial judge on a question of fact and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness. But I cannot help thinking that some confusion may have arisen from failure to distinguish between the finding of a specific fact and a finding of fact which is really an inference from facts specifically found, or, as it has sometimes

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been said, between the perception and evaluation of facts."

In the same case, Lord Reid referred to a dictum of Lord Thankerton in Watt (or Thomas) v. Thomas (1947) 1 All E.R. at p.587 and continued:

"But in cases where there is no question of the credibility or reliability of any witness, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal court is generally in as good a position to evaluate the evidence as the trial judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion."

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Lord Reid also quoted from the judgment of Lord Halsbury, L.C., in Rickman v. Thierry (14 R.P.C. at p.116) which can with profit be repeated in this judgment. Lord Halsbury said:

"Upon appeal from a judge where both fact and law are open to appeal, it seems to me that the appellate tribunal is bound to pronounce such judgment as in their view ought to have been pronounced in the court from which the appeal proceeds, and that it is not within their competence to say that they would have given a different judgment if they had been the judge of first instance, but that because he has pronounced a different judgment they will adhere to his decision.

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It is clear, therefore, that if a trial judge failed to appreciate the true issues before him, or if he dealt with the evidence inappropriately, or drew wrong inferences, a court of appeal may make its own assessment on the evidence and come to its own conclusions.

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The first hurdle to be negotiated in the instant case is, whether the respondents through their agents had represented to the appellant that the mill was capable of milling 4,300 to 5,600 lbs. of paddy per hour, as the appellant has alleged, or 3,500 to 5,000 lbs. per hour as the respondents' witness, Chung, maintains. I will deal with the dryer separately.

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The appellant's case is, that having inspected Dr. Fraser's mill, he decided to purchase one of that make, but a two-ton mill, that is, he had in mind a

mill of twice the capacity of Dr. Fraser's, and he conveyed this to Mr. Chung, who supplied him with a brochure (Exhibit 'C') indicating that a two-ton cone mill with one polisher was capable of milling 4,300 to 5,600 lbs. of paddy per hour. Mr. Chung, on the other hand, besides denying ever supplying the appellant with the brochure, said that the appellant, having expressed the desire to purchase a mill like Dr. Fraser's, but a two-ton mill, he (Chung) told the appellant that Dr. Fraser's mill was capable of milling 2,200 to 2,700 lbs. of paddy per hour, but that there was a mill with a capacity of 3,500 to 5,000 lbs. which he believed would suit the appellant's purpose.

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The learned Judge held the view that the capacity of the mill was that stated by a Mr. Blair, a witness for the respondents, that is, 3,500 to 5,000 lbs. per hour, and said that he believed and accepted the evidence of Mr. Chung and Mr. Blair wherever their evidence was in conflict or at variance with that of the appellant and/or his witnesses. He was satisfied that the performance of the mill in question was as represented to the appellant as stated by Messrs. Chung and Blair. The Judge preferred the evidence of a Mr. Lewis Grant, a representative of the manufacturers, that the machinery was mechanically in good order.

The learned Judge has made a finding that the respondents' agents - Chung and Blair - did not give the brochure to the appellant, as he alleged. But this finding seems to be against the weight of the evidence. Even accepting Mr. Chung's version that there was no visit to the appellant's home, but that the appellant visited Dr. Fraser's mill, and then his (Chung's) office, it is difficult to accept that Mr. Chung would not have given him the brochure - Exhibit 'C' - when he admitted giving him Exhibit 'B' which relates to the dryer. Mr. Grant himself said that he would have expected the agents to distribute the brochures (Exhibit 'C') to prospective purchasers, even though Mr. Blair expressed the view that they were obsolete. It seems more probable than not that Mr. Chung did give the brochure to the appellant, and if he did, surely it must be to represent to the appellant what was the milling capacity of the machinery in which the appellant was interested! And this notwithstanding the fact that the brochure related to a self-contained mill, whereas the appellant bought a detached mill. More of this later.

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The circumstances surrounding this aspect appear, to say the least, somewhat curious. Mr. Chung maintains that he never gave the appellant the brochure (Exhibit 'C'), although the appellant asserted in court that he was interested in a self-contained mill. If, in fact, Mr. Chung had given the appellant a copy of the specifications (Exhibit 'V1') in respect of a No. 30/60 Grantex Detached Mill, there might have been no necessity to give him the brochure, even though the specifications do not speak of capacity; but the covering letter does. There are certain features about Exhibit 'V1' which would bear examination. No notice was given to the appellant to produce this document at the trial, nor was he cross-examined about it. However, it was mentioned by Mr. Blair for the first time in these words: 10

"Mr. Chung gave to the plaintiff the original in Berbice. A covering letter was attached to the specification sent to plaintiff."

Then in his evidence, Mr. Chung said: 20

"I handed plaintiff specifications and quotations with reference to a 30/60 belt-driven mill. This exhibit 'V1' is a similar copy of the specification which I gave to the plaintiff."

But later in cross-examination, this witness said:

"I see Exhibit 'V2'" (referring to the letter which would accompany the specifications).
"I would not swear that the original of exhibit 'V' was sent to the plaintiff. Letters similar to 'V2' were given to a number of people." 30

The witness went on to point out the names of persons recorded by his secretary on the exhibit to indicate persons to whom the letter and specifications would have been sent, but conceded that he had been unable to trace the name of the plaintiff (appellant) on any copy.

This, in my view, is an important aspect, for if the appellant had indeed been served with the specifications and the letter, then it seems he could hardly maintain that the capacity of the mill represented to him was anything other than 3,500-5,000 lbs. per hour, as is stated in Exhibit 'V2'. 40

The learned trial Judge did not see fit to deal

with this, having held that he would prefer the evidence of the witnesses for the respondents wherever it conflicted with the evidence of the appellant and his witnesses. This statement has not been particularly helpful in view of the various substantial issues raised in this matter, issues in respect of which, it is my opinion, the Judge ought to have made specific findings.

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10 The letter, (Exhibit 'V2') clearly indicates that those persons to whom it was sent had inspected a similar mill at East Lothian (presumably Dr. Fraser's mill) which fact, in turn, would go to show that Dr. Fraser's mill was being used by the respondents' agent as a show-piece to prospective buyers. But this in itself does not put at rest the question whether the letter and specifications were in fact sent or given to the appellant by Mr. Chung. The circumstances referred to earlier seem to indicate that they were not, in which case it would follow that the evidence of Messrs. Chung and Blair is tainted in this respect. And if it is, one ought to approach the rest of their evidence with caution, particularly with respect to the alleged representation. On the balance of probabilities, I would say that the representation as alleged by the appellant was made as regards the capacity of the mill, which capacity the mill has been unable to achieve.

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30 With the knowledge that the mill has been unable to attain the capacity which was represented to him, and expressing the hope that the respondents would remedy the defects, the appellant exercised the option to purchase. It becomes necessary, therefore, to examine the implications of such exercise, and the effects, if any, that Clause 11 of the hire-purchase agreement would have.

40 In the course of his arguments before us, counsel for the appellant asserted that both transactions were hire-purchase agreements, and that he was not prepared to argue that there was a sale; and in the Court below it was submitted that it was the substance of the transactions evidenced by the agreements which must be looked at, and not its mere words.

In my judgment, this was clearly a case of hire-purchase agreements in which the hirer was given an option to buy, the exercise of which resulted in a sale. This is not a novel arrangement.

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Most hire-purchase agreements would contain a clause giving the hirer an option to purchase, for one of the objects of a hire-purchase agreement is to enable the hirer to purchase the article hired, if he so desires. Such an arrangement is not forbidden by law, not unintelligible, and not unreasonable.

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In the instant case, the appellant exercised the option to purchase both the mill and the dryer. The moment he did this, the hire-purchase agreement is put to an end, and he becomes the owner of the articles; but he is, in certain circumstances, not without a remedy, if the articles bought are not of the standard warranted to him, notwithstanding the exclusion clause in the hire-purchase agreements. 10

As was said by Lord Reid in Suisse Atlantique v. N.V. Rotterdamsche, (1966) 1 Lloyd Rep. at page 544:

"..... the true analysis seems to me to be that the whole contract including the clause excluding liability does survive after election to affirm it, but that does not avail the party in breach." 20

Lord Reid went on to say that the exclusion clause did not change its meaning, but that it never did apply to 'this type of breach', meaning a fundamental breach.

After analysing the Suisse Atlantique case (supra), Bolders, C.J., said in Bart v. British West Indian Airways (1967) 1 Lloyd's Rep. at p.272:

"..... where there is a fundamental breach or breach of a fundamental term, it does not automatically follow that the exclusion clauses would go. Whether the innocent party treats the breach as a repudiation, or whether he seeks to affirm the contract, it still becomes a rule of construction as to whether the party in breach can rely on the exemption clauses or not." 30

A breach of a fundamental clause is the type of breach which entitles the innocent party to treat it as repudiatory, and to rescind the entire contract. As Lord Reid said in the Suisse Atlantique case (p.544 *ibid.*): 40

"One way of looking at the matter would be to ask whether the party in breach has by his

breach produced a situation fundamentally different from anything which the parties could as reasonable men have contemplated when the contract was made."

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I think it can be said with a fair degree of certainty, having regard to cases like Karsales (Harrow) Ltd. v. Wallis (1956) 2 All. E.R.866, Charterhouse Credit Co.Ltd. v. Tolly, (1963) 2 All. E.R.432, U.G.S. Finance Ltd. v. National Mortgage Bank of Greece, (1964) 1 Lloyd's Rep.446, that where there is a fundamental breach, the exclusion clause will be of no avail to the guilty party.

It has never been the appellant's case that he was supplied a different article to the one he ordered, even though in his evidence he did on one occasion assert that he had not negotiated for a detached mill. But in any event, not only had he accepted the detached mill by signing the hire-purchase agreement on which was inserted the word 'detached', but he later affirmed the contract by paying off the full purchase price.

As I understand the law on the matter, if he intended to assert a fundamental breach, he must first repudiate the contract. Not having done so, cadit quaestio.

Now to the question whether there existed a collateral contract, that is, apart from a warranty, with regard to the representation in the same fashion as was the case in Webster v. Higgin, (1948) 2 All E.R.127. In that case, during the course of negotiations for the purchase of a second-hand car on hire-purchase terms, the vendor's agent told the purchaser that, if he bought the car, the vendor would guarantee that it was in good condition, and that he would have no trouble with it. The purchaser signed a hire-purchase agreement in which it was stated inter alia as follows:

"The hirer is deemed to have examined (or caused to be examined) prior to this agreement and satisfied himself as to its condition, and no warranty, condition, description of representation on the part of the owner as to the state or quality of the vehicle is given or implied any statutory or other warranty, condition, description or representation whether express or implied as to the state, quality, fitness or roadworthiness being hereby expressly excluded."

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But before signing the agreement, the purchaser was required to sign an order form on the back of which were several conditions including the following:

"The purchaser acknowledges that he has not been induced to enter into this purchase by any representation as to quality, fitness for any purpose, performance or otherwise of the goods other than the representation contained if the goods be not new, in the written description entered on this order form."

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Lord Green, M.R., held that there was a collateral guarantee which was broken and there was nothing in the hire-purchase agreement or in the order form to exclude or abrogate that guarantee.

Lord Green was obviously referring to the guarantee offered to the purchaser by the vendor's agent. Wrottesley, L.J., in his judgment said (at page 130 *ibid*):

"I have come to the conclusion that the words of cl.5 are not so clear as to invalidate the original promise, warranty, or condition, which was the basis of the whole negotiations, including the subsequent written contract.

20

And Evershed, L.J., said (at page 130 *ibid*):

"..... it would seem impossible to say that cl.5 clearly has the effect of abrogating a collateral contract of warranty which was brought into being by the execution of, but otherwise wholly independent of, the hire purchase agreement."

30

It is clear to my mind that in that case, the court held, firstly, that there was a collateral agreement; secondly, that the condition in the order form was not part of the contract (but a warning in which case it ought clearly to have been brought to the attention of the person to be warned); and, thirdly, that the exclusion clause in the contract itself was not clear enough to abrogate the promise.

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Lord Green laid great store in the fact that the exclusion clause spoke in the present tense, thereby implying, in my view, that unless there was a clause which included the abrogation of any earlier

collateral agreement, such collateral agreement is not extinguished by the contract.

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10 Could it be said, therefore, that there was a
collateral agreement in the instant case? As I have
already indicated, I would hold that the brochure
(Exhibit 'C') was given to the appellant by the
respondents' agents, and acting partly on the
information contained therein, and partly on his
inspection of Dr. Fraser's mill, the appellant made
up his mind to purchase. In my opinion, this can
hardly be regarded as a collateral contract, express
or implied. Speaking of collateral contracts in
Heilbut, Symons & Co. v. Buckleton, (1911-1913) All
E.R. Rep. 83, Lord Moulton said:

20 "They must be proved strictly. Not only the
terms of such contracts but the existence of an
animus contrahendi on the part of all the parties
to them must be clearly shown. Any laxity on
these points would enable parties to escape from
the full performance of the obligations of
contracts unquestionably entered into by them
and more especially would have the effect of
lessening the authority of written contracts by
making it possible to vary them by suggesting the
existence of verbal collateral agreements
relating to the same subject matter."

30 I believe that the highest the representation as
to the capacity of the mill can be put in this case is
that it was in the nature of a warranty. And, in fact,
the appellant so regarded the situation in his
pleadings; he alleged a warranty and a breach thereof
whereby he suffered damage. (See para. 13 of the
statement of claim).

40 A warranty has been described as an agreement with
reference to goods which are the subject of a contract
of sale, but collateral to the main purpose of such a
contract, the breach of which gives rise to a claim for
damages. It is accepted that it is not every
representation made during negotiations for a contract
that would amount to a warranty. This depends on the
intention of the parties, and must be deduced from the
totality of the evidence. As it has been put by
Holt, C.J., in Peek v. Derry, (1887) 37 Ch.D. 541:

"An affirmation at the time of the sale is a
warranty, provided it appears on the evidence
to be so intended."

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And the onus is on the plaintiff to show a warranty. It is also well to bear in mind the dictum of Lord Moulton in the Buckleton case (supra), at page 92 *ibid* :

"It is of the greatest importance, in my opinion, that this House should maintain in its full integrity the principle that a person is not liable in damages for an innocent misrepresentation, no matter in what way or under what form the attack is made."

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In McLay & Co. v. Perry & Co. (1881) 44 L.T.R. 152, for example, where during negotiations, a heap of scrap of metal was described as 'about 150 tons,' but upon being weighed after a contract of sale was entered into and discovered to weigh only 44 tons, it was held that the words 'about 150 tons' were merely words of estimate and expectation, and there was no warranty as to quantity. See also Barker v. Windle, 119 E.R.1015

20

I would hold, having examined the circumstances, that the parties bargained on the basis of the capacity of the mill, and the proper meaning to be given to the conduct of the respondents' agents was that they warranted the capacity as indicated both in the brochure, and in their representations. It is clear that, but for these representations, the appellant would have been unwilling to purchase.

That being so, the only remaining question to be answered is, whether there has been a breach of warranty and, if so, what effect clause 11 of the hire-purchase agreement would have.

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Any warranty given by the respondents' agent would normally bind the respondents, and in the absence of clause 11, there could be no doubt but that they would have been bound in this case. As was the case in Webster v. Higgin (supra), the exclusion clause is expressed in the present tense, and if one were to employ the reasoning of Lord Green in that case, the inevitable conclusion would be that clause 11 does not exclude warranty previously given, unless such warranty is expressly excluded by a term of the contract.

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It is only right to draw attention to the dictum of Denning, L.J. in Harling v. Eddy, (1951) 2 All E.R. at page 212, where a catalogue relating to a sale by

10 auction of cattle described therein as tuberculin-
 tested Guernseys contained the condition that 'no
 animal, article or thing is sold with a warranty
 unless specially mentioned at the time of offering,
 and no warranty so given shall have any legal force
 or effect unless the terms thereof appear on the
 purchaser's account'. At the sale, the defendant
 represented that he would absolutely guarantee a
 heifer, and he was willing to take her back, if she
 proved not to be as he had stated. Proceeding on the
 assumption that the representation was a warranty,
 Denning, L.J., said inter alia (at page 218 *ibid*):

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20 "The principle which underlies these cases is
 that if a person wishes to exempt himself
 from liability which the common law imposes on him
 he can only do so by an express stipulation
 brought home to the party affected and
 assented to by him as part of the contract
 The party who is liable at law cannot escape
 liability by simply putting up a printed notice
 or issuing a printed catalogue, containing
 exempting conditions. He must go further and
 show affirmatively that it is a contractual
 document and accepted as such by the party
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30 In the instant case, it has been said that the
 appellant, having entered into a hire-purchase agreement,
 is debarred from raising any question of guarantee or
 warranty, assuming such guarantee or warranty had been
 given to him. But, as I have already pointed out, the
 warranty was the very basis upon which he contracted,
 and using Webster v. Higgin (*supra*) as an analogy, I
 cannot find that the respondents have escaped their
 common law liability. A party will not be allowed to
 rely upon an exempting clause when he fails to deliver
 the article which is the subject-matter of the contract,
 and the courts will be reluctant to allow him to gain
 shelter under such a clause when the article he has
 delivered does not perform to the standard warranted.

40 I find, therefore, that in these circumstances,
 the respondents would be liable in damages for a breach
 of warranty, the warranty being as to the capacity of
 the rice mill.

So far as the dryer is concerned, the learned
 Judge had this to say:-

"..... there is no evidence of any defect in the
 dryer, and I accept the view of Mr. Grant

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that the trouble with the plaintiff's dryer is that it is not skilfully operated as it should."

And again:

"In respect of the dryer I have no reliable evidence before me that its performance fell short of what was represented by the defendants."

It will be recalled that it was admitted that a brochure (Exhibit 'B') was given to the appellant describing the dryer that he eventually bought. It could not be that the appellant made up his mind to purchase the dryer after seeing Dr. Fraser's dryer, as Dr. Fraser's dryer had not yet been installed when the appellant visited the former's premises. He must have relied entirely on the brochure, and the representation made to him by the respondents' agents. Mechanically, the dryer is sound, the complaint of the appellant being that the capacity of 4 tons represented by Mr. Chung has never been achieved even during the tests, and an excessive quantity of broken grains.

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The respondents maintain, as they did with regard to the mill, that the root cause of the inefficiency of the dryer is that it was being operated by persons inexperienced in the task, and that for good results, a thermostat ought to be used for controlling the temperature of the furnace, and that a moisture meter should be used to determine the moisture content of the paddy; they further maintain that there is a vast difference between batch drying and continuous drying, and that although the dryer is designed for the latter, the former process could be attained but with less desirable results. Mr. Grant said:

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"On Exhibit 'B' (p.5) there is a capacity table the plaintiff's size dryer should do according to that table 4 tons per hour if drying at 150°Farenheit is used. This capacity is based on drying from 22% to 16% with atmospheric condition of 60°Farenheit and 70° relative humidity. Those conditions are not existing in British Guiana (Guyana) and therefore the tables would not hold good for British Guiana. I would expect in this country at 150° one would get with plaintiff's dryer about 3 tons per hour. At 140° 2.6 tons per hour would be the capacity. This is because of the climate here. Where the moisture content is less than 16% it is more difficult to get the moisture out."

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An immediate observation on this bit of evidence would be that at a temperature of 140°, the tonnage is even less than that advertised in the brochure.

If the conditions in Guyana do not permit of a maximum capacity, then this fact should have been drawn to the appellant's attention, and in this regard it is idle to argue that the appellant could not have been relying on the representations made to him. It seems to me that it is nearer the truth to say that the respondents' agents did not have this aspect in mind during the period of negotiation, or if they had, in their enthusiasm to sell the dryer, they inadvertently omitted so to inform the appellant. Further, as in the case of the mill, one may well ask why is it that the respondents' representatives, being well aware of the fact that the standard of paddy would affect the efficiency of both mill and dryer, were content to use "sweepings" in the test in which it was intended to gauge the capacity of the machinery. This, in my opinion, is indefensible, and the respondents must bear the consequences of the omission of their agents.

It has been argued for the respondents that the appellant, having exercised the option to purchase with knowledge of the alleged defects, he cannot now complain that he has suffered loss by reason of the respondents' misrepresentation; and, in any event, during the life of the hire-purchase agreements, all liabilities for breach of warranty were excluded by clause 12 of the agreements. There are several answers to this submission.

Clause 12 has expressly declared that the hirer (the appellant) acknowledged that before signing the agreement he had examined the hired property, and that the delivery thereof should be conclusive evidence that it was equipped and in good condition. It is easy to see that this clause speaks nothing of malfunctioning or of lack of capacity. In exercising the option to purchase the appellant did not absolve the respondents of the responsibility of having the defects remedied. Nor can it be said that he was renouncing any right that might have accrued to him under a warranty. (See letter dated September 10, 1963 - Exhibit 'K26').

No doubt the submission to this effect was prompted by a statement which occurs in Goode's Hire Purchase (1962 Ed.) at page 26, and which is as follows:

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"It must inevitably follow that until a hirer has accepted the offer by exercising the option no contract of sale can subsist but that immediately the option is exercised a contract of sale is created into which are imported the terms implied under the Sale of Goods Act

"The implied condition of fitness for a particular purpose will not arise, since whilst the erstwhile hirer may well have made known at the date of the hire-purchase agreement the particular purpose for which the goods were required, it is unlikely that he would have done so again at the date when the contract of sale comes into existence through the exercise of the option. In any event, the Court would no doubt readily imply a term that the owner should not be answerable for defects brought about solely by the buyer's use of the goods during the currency of the hire-purchase agreement. Similarly, the condition of merchantable quality will not normally be applicable, since any defects in the goods will almost certainly have come to the hirer's notice before the time arrives for him to exercise his option, so that the owner will be covered by the proviso to s.14(2) of the Act."

S.14 of the Sale of Goods Act, 1893 (U.K.) referred to above, is similar in terms to s.16(b) of the Sale of Goods Ordinance, Cap.333 (G.). That section provides as follows:

"Subject to the provisions of this Ordinance and of any Ordinance in that behalf there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows -

(b) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which the examination ought to have revealed."

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10 The warranty given in respect of both the mill and the dryer does not relate either to quality or to fitness, but rather to capacity, and if the goods were in fact examined by the appellant (and I will assume that he did before installation), he could hardly be expected to have discovered defects as regards capacity. I feel, therefore, that s.14 of Cap.333 (G.) would not be applicable to the instant case; but that the reasons appertaining to my conclusion as regards the mill would be equally applicable to the dryer.

20 In the final result, and for the reasons I have given, I would accede to the submission that the decision of the Court below was unreasonable and could not be supported having regard to the evidence. I would allow the appeal, and remit this matter to the trial Judge for the purpose of assessing damages on the basis of the findings of this Court. The appellant should have his costs of this appeal and in the court below to be taxed certified fit for two counsel.

G.L.B. PERSAUD,

Justice of Appeal.

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JUDGMENT OF CUMMINGS J.A.

IN THE COURT OF APPEAL OF THE
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CIVIL APPEAL NO.59 of 1966

No.32

Judgment of
Cummings J.A.

B E T W E E N : MUSTAPHA ALLY Appellant
(Male East Indian) (Plaintiff)

- and -

16th June
1969

BOOKERS STORES Respondents
LIMITED (Defendants)

10

BEFORE: The Hon. G.L.B. Persaud - Justice of Appeal
The Hon. P.A. Cummings - Justice of Appeal
The Hon. V.E. Crane - Justice of Appeal

1969: February 19, 20, June 16.

J.O.F. Haynes, Q.C., B.E. Commissioning with him,
for appellant.

G.M. Farnum, Q.C., J.A. King with him, for respondents.

JUDGMENT

CUMMINGS, J.A.:

I have had the opportunity of reading the judgments just delivered by my learned brothers Crane and Persaud. 20

As I have already stated in several of my decisions in this Court, it is, in my view, this Court's duty to come to, and apply when appropriate so to do, its own conclusions with regard to the findings of fact in the Court below when those findings relate to conclusions based upon an evaluation of perceived facts, as distinct from the mere perception of those facts. (See Ivan Harris v. Toolsie Persaud Ltd. - Civil Appeal No.67/1965; Dennis Li v. Lucy Walker - Civil Appeal No.31/1966; and c.f. Sugrim Jeaman v. Le Ressenouvir Estates Ltd. - Civil Appeal No. 47/1968). 30

It is appropriate, in the circumstances of this case, that this Court should consider the findings of the learned trial Judge in the light of that principle.

This has been done; and I agree with the analyses of the evidence, the conclusions reached by my learned brothers upon the evaluation thereof, and the legal principles applied thereto.

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Accordingly, I also would allow this appeal with the usual consequences.

PERCIVAL A. CUMMINGS

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Justice of Appeal

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10 Dated this 16th day of June, 1969.

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JUDGMENT OF CRANE J.A.

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16th June 1969

CIVIL APPEAL NO.59 of 1966

B E T W E E N : MUSTAPHA ALLY Appellant (Male East Indian) (Plaintiff)

- and -

20 BOOKERS STORES Respondents LIMITED (Defendants)

BEFORE: The Hon. G.L.B. Persaud - Justice of Appeal
The Hon. P.A. Cummings - Justice of Appeal
The Hon. V.E. Crane - Justice of Appeal

1969: February 19, 20, June 16.

J.O.F. Haynes, Q.C., B.M. Commissioning with him, for appellant.
G.M. Farnum, Q.C., J.A. King with him, for respondents.

JUDGMENT

CRANE, J.A.:

30 The sole ground of appeal is, that the decision of learned trial Judge is unreasonable having regard to

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the evidence. This means that the appellant has saddled himself with the task of impugning the decision of the Court below principally on its findings of fact. Admittedly, it is a task which is no easy one, but it is not altogether insurmountable, even though it has been so truly said that an appellate tribunal having only the cold printed record of facts before it, can never recapture the initial advantage of which the trial Judge was possessed, he having seen and heard the witnesses, observed their demeanour and noted their disposition to speak the truth and thereby arrived at his decision. When such is the case, his decision ought not lightly to be disturbed; it ought to stand unless in law or otherwise he has clearly misdirected himself. 10

The principles on which an appellate court may act in reversing the decision of a Court of first instance on a question of fact, have time and again been stated; they are too well known to admit of any doubt. They are illustrated in a plethora of decisions foremost among which is the case of Watt (or Thomas) v. Thomas, (1947) 1 All E.R.582, where Lord Thankerton enunciates them in three propositions, viz.: 20

1. "Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. 30
2. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.
3. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses and the matter will then become at large for the appellate court." 40

I have thought it appropriate to set out the above principles because I will bear them constantly

in mind now that I am approaching consideration of this appeal.

Counsel for the appellant has contended for rule 3 above that there are matters of fact now at large at which this Court can have a fresh look and on which it can make its own decisions since it unmistakably appears from the evidence that the learned trial Judge, in arriving at his conclusions of fact, had not taken proper advantage of having seen and heard the witnesses. But before doing so, it will be necessary to set out in some detail the respective cases and the issues which he had to decide.

The appellant, who had impressed the trial Judge as a prudent and enterprising businessman and no stranger to hire-purchase contracts, entered into two such agreements with the respondent company. Both are in identical terms and of the Helby v. Matthews (1895) A.C.471 type, under which he undertook to pay hire-rent with the usual option entitling him to become owner of the hired property on payment of any balance of the purchase price due thereon. Under the first agreement, dated 26th March, 1962, the hired property comprised "1 Grantex Model '30/60E' Detached Rice Mill C/W Electric Motors"; while under the second, dated 30th May, 1962, it comprised "1 Grantex Electrical Paddy Dryer Model '08'".

The appellant's account of how he became the eventual owner of the above two pieces of machinery is as follows: It was early in 1961 when the respondents' agents, Messrs. Esslemont, Blair and Chung, visited his home at Albion, Corentyne. There they discussed with him the purchase of the rice-mill when they learnt that he was prepared to invest in the vicinity of £100,000 on the venture. They showed him a pamphlet (Ex. 'C') wherein was depicted various types of rice-milling machines which he had never seen before. A multi-stage rice-mill consisting of a triple cone with one polisher, the picture and description of which are shown thereon against serial number S20/4 as "No.72. Self-contained Mill (3 Cones, 1 Polisher) with Trieur Cylinders for Rice Grading", was pointed out to him. He was informed that the S20/4 was in reality a 1-ton capacity mill; that the mill would be capable of milling more than 5,000 lbs. of paddy per hour; that his order would be built exactly like it, with the exception that it would be of a 2-ton intake capacity with a range of 4,300-5,600 lbs. of paddy per hour

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which the mill with the reference No.74 therein is stated to be capable of.

They further told him that were he to buy a 2-ton of the description in No.72, he would be in a position to attract the largest amount of paddy custom from farmers, not only from the districts of Albion and Port Mourant, but also from as far away as Mara and other places when people heard of the good mill he was in possession of. As a matter of fact, they had just erected a 1-ton mill of its kind some six miles away from Albion at Dr. Fraser's farm at East Lothian. Fraser's 1-ton mill which was belt-driven, had a production capacity of 8-9 bags of clean rice per hour, but his order, being an electrically driven 2-ton mill, would have a greater production capacity of 17, 18-19 bags per hour. 10

At the same time, the agents discussed the purchase of the "08" dryer to accompany the mill. This employed the use of drying air to reduce moisture content by 6%. This, they said, had capacity for drying more than four tons of white rice paddy (or more than two tons of parboiled paddy) per hour. They also showed him literature on the subject in the form of another pamphlet (Ex. 'B') wherein is set out at page 5 in a capacity table that of the proposed dryer in tons per hour, and wherein it is shown that the dryer had a capacity of 4 (four) tons per hour at a temperature of 150° F. and other capacities. 20

So far, what has been stated refers to express and oral warranties as to capacity, but there is also alleged the breach of an implied warranty arising from the above representations which have been made by the respondents, viz. that both mill and dryer should have been reasonably fit for the purpose for which they were purchased; that it was in the respondents' course of business as merchants and dealers to sell and supply the mill and dryer that were advertised in the press and distributed in literature; and that the purpose for which they were required was at the time of sale made known by the appellant, who relied upon the respondents' skill and judgment. Both mill and dryer, it is said, were not in fact reasonably fit for that purpose since several tests conducted by both appellant and respondents revealed that the actual capacity of both pieces of machinery was far below what had been warranted, and, further, the mill produced an excessive percentage of broken rice. 30 40

The respondents, while admitting the hire-purchase agreements, denied the existence of any

10 implied term of fitness for the purpose for which the appellant required the machines; they also denied making the representations containing the express oral warranties alleged by the appellant, and pleaded an express exclusionary term contained in the agreement to the effect that they did not supply either mill or dryer subject to any condition as to quality, description, suitability, fitness or otherwise. In short, save that they admitted the existence of the hire-purchase contracts, the respondents, who were the defendants in the Court below, put the appellant to proof of everything stated above, and contended that, if indeed there was any failure of the mill to function properly, the fault lay with the appellant who had failed to exercise due care and skill in operating it in an efficient and competent manner.

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20 After considering the evidence in a trial which lasted nearly two years, the learned Judge made the following findings of fact on the issues which he had to consider:

1. That no pamphlets were in fact issued by the respondents in relation to the mill ordered by the appellant, and that those tendered as exhibits did not relate to the mill ordered.
2. There was no representation by the respondents as to the capacity of the mill or dryer (for he was satisfied that the decision to purchase the mill and dryer was made by the appellant after investigating the matter and witnessing the operation of Dr. Fraser's mill at East Lothian).
3. The mill ordered was a "detached" mill and not a "self-contained" mill which carried an iron platform.
4. That the capacity represented as being the mill's intake was in fact "3,500-5,000 lbs. per hour and the dryer as that stated by Mr. Chung and Mr. Blair".
5. That there was no evidence of any defect in the mill or dryer, and that any trouble which was occasioned the appellant in the use of the dryer was caused by his own unskilful operation and poor management of it.
6. That the plaintiff/appellant had failed to discharge the onus of proof that the mill and

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dryer were defective and unfit for the purpose for which they were supplied.

Such were the trial Judge's findings on which he concluded that the appellant's action failed and must be dismissed with costs. These findings were attacked on the ground indicated at the outset of this judgment, and it shall now be my purpose to examine them each in turn against the evidence on which they were established with a view to determining whether they were justified.

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On the first, which is inextricably tied to the second, there is no dispute about the accuracy of the Judge's finding. In reality, it is tantamount to the contention of the appellant that he was never shown nor issued a pamphlet relating to his 30/60E "detached" rice-mill, because none in fact existed. There is dispute, however, on the point whether Ex. 'C' was issued the appellant by the Company's agents at his home, as the appellant contends, or whether it was issued to him at all, which the respondents deny doing. There is, however, no direct finding by the Judge on this point. Both Blair and Chung positively deny having issued Ex. 'C' to the appellant or ever having had any discussion with him at his home. They explained it was unnecessary to show or issue him any literature beforehand on the rice-mill or dryer since he had already made up his mind to purchase a Grantex multi-stage "detached" rice-mill, having already seen Dr. Fraser's in operation. The only difference was that the appellant's order was to be in respect of a 2-ton mill and "08" dryer. Both Blair and Chung, however, admitted being in possession of pamphlets like Ex. 'C'. Chung said that they were kept in an open bin at the firm's branch office in New Amsterdam; Blair that they had been obsolete since 1956 and had been locked away in the firm's filing cabinet at their Georgetown office and not available to the public.

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The respondents had never, in fact, sold locally any Grantex "self-contained" mills which were on the expensive side. As I said, there is no direct finding of the trial Judge on this very vital point, but it seems quite clear that he must have decided it against the appellant, judging from his use of the well-known formula, by accepting Blair's and Chung's evidence on the point "wherever their evidence is in conflict or variance with the plaintiff and/or his witnesses". This formula, it is to be noted, is made use of more than once in the judgment without reasons being

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assigned by the Judge, who merely said several times that he considered the authorities cited and examined all the evidence and accepted Blair's and Chung's.

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10 While the use of the formula cannot be faulted in a case involving assessment of evidence based solely on the aspect of perception of the witnesses' testimony, it certainly can when the matter goes beyond that and involves evaluation of their testimony. In such a case, the formula is nothing but a vague general statement, and, without reasons, it is of little assistance to the Court of Appeal, which is left to speculate on the reasons which inspired the trial Judge's findings and to presume that he has appreciated the issues involved and fairly weighed the relevant evidence.

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20 I consider the question of whether Ex. 'C' was issued the appellant a most important finding for the Judge to have made, for on it hinged the question whether or not there was the likelihood of any representation made to the appellant as claimed. However, if the Judge's finding that Ex. 'C' was not issued to the appellant cannot be sustained, then in the face of the very positive denial of it by the respondents, it appears to me only reasonable to conclude that the representations alleged by the appellant ought to prevail, for then it can be rightly presumed, I think, that the denial was prompted by the fact that the respondents well knew that the appellant

30 has spoken the truth concerning it.

40 It is very plain that the Court did not approach the question of whether Ex. 'C' was indeed issued from a consideration of the probabilities inherent in the appellant's explanation of his possession of it, but rather solely from its belief in the credibility of Blair's and Chung's explanations, viz., that the appellant's mind was already made up on the make, capacity and size of the rice-mill and dryer he wanted, having seen Dr. Fraser's mill at work, and that all that was required was the placing of the order for him. But, quite apart from the appellant's explanation of his possession of the pamphlet which, prima facie, would appear to have been the more creditworthy, since he was in possession of a rice-mill for which a pamphlet had never been printed, the very fact of his possession of a pamphlet concerning Grantex rice-mills of varying sizes and descriptions including one capable of producing the capacity and possessed of features similar to one of

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which he is now in possession, went unconsidered by the learned Judge. From whence could the appellant have got a pamphlet admitted to be solely in the respondents' possession and issued solely by them, if indeed they did not give him? It has not been suggested how otherwise he became possessed of it, but certainly Chung's veiled suggestion, which implied that the appellant may have got it from the open bin in his office, can hardly be entertained. What reasonable inference, in the circumstances, ought a court to draw from such a state of facts in the absence of any positive suggestion from them as to how the appellant got possession of the pamphlet? I should have thought that here was a most important matter concerning evaluation of testimony, one fit to be weighed when considering the respective merits and demerits of both sides of the story, and one which ought to have been critically examined by the Court. 10

Again, the respondents' witnesses' explanation of the circumstances whereby the appellant came to place his order for the machinery so teemed with improbabilities, that they ought to have attracted the Court's attention and called for treatment, for such findings as were made on them were contrary to specific findings on the appellant's prudence and enterprise as a businessman. Instead, as it seems to me, undue stress was laid on the very frank but easily explainable admissions of the appellant in cross-examination that he kept no account books, that he had not yet paid income tax on profits made between 1958-1960, and that he had never made out such returns in his life. But from these admissions, it is respectfully submitted, no unfavourable inference can properly be drawn, because the mere fact that the appellant personally kept no books, nor made out income tax returns in his life, can never carry the implication that such books were never kept on his behalf or returns made out in like manner, since it is common place that these services are rendered by paid accountants on behalf of many a pre-occupied businessman. Again, the fact that he had not yet paid tax in respect of 1958-1960 did not necessarily mean he had no intention of paying. When, therefore, the above admissions, as extracted in the judgment, were passed over without any other comment from the learned Judge save in reference to the appellant's shrewd business proclivities, one is left to conjecture, in the face of the formula which immediately follows, whether the Judge's mind was not adversely affected by them. 20 30 40 50

On the respondents' side, the evidence is, that

the appellant agreed to purchase both mill and dryer on one and the same occasion, that is, when he saw their agents at Dr. Fraser's at East Lothian; but it is a most important fact, I think, that the dryer had not yet been installed there. Mr. Josiah West, for the respondents, was emphatic in his assertion that it would be untrue to say that the appellant told Chung, "I wanted a dryer like this" because, as he explained, there was no dryer at all at Fraser's farm then. Mr. Chung, too, admitted Fraser's dryer was not yet at the farm. How then can the findings of the Judge be justified that - "although Dr. Fraser's dryer was not yet in operation the plaintiff decided to purchase a similar dryer"? Assuredly, such a finding is contrary to the keen and shrewd businesslike qualities of the appellant to which the Judge gave credit by continuously stressing that he was impressed by them. It is pertinent to consider whether such a businessman would agree to purchase a dryer he had never seen without previously asking for literature on the subject, which in fact existed in the respondents' possession. The judge found as a fact that he was no stranger to hire-purchase agreements. I think it cannot otherwise be assumed then that he must have been interested in the important matter of capacity. Would he then not have wanted to ascertain whether its capacity was related to that of the mill he was desirous of purchasing before making up his mind - which was what the Judge was asked to believe and did believe? For myself, I can hardly believe the appellant would have been so naive. But when the Judge talked of the appellant's acumen and businesslike manner, ought he not to have considered at the same time that it was highly improbable that any reasonable purchaser, let alone a man of the type he found the appellant to be, would be so unbusinesslike?

Mr. Chung attempted, quite unsatisfactorily in my view, to furnish an explanation thus:

"I did give to plaintiff a leaflet on the dryer. When he told me about the dryer I gave him a leaflet because Fraser's dryer was not here yet. We had no leaflet or any pamphlets on the mill 30/60E. We still have none. The pamphlets on the mill, Ex. 'C', came out in 1956 (I believe). I could be wrong. I never gave the plaintiff the Ex. 'B' leaflet to persuade plaintiff to buy the dryer. I gave plaintiff the leaflet Ex. 'B' after he told me that he was going to buy the dryer. He came one day and asked me if we had leaflets on the dryer and I told him yes, and I gave him

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Ex. 'B'. I never told plaintiff that it was not good buying a mill like that and not a dryer. At no time I made plaintiff believe that his mill had an iron frame."

As it seems to me, it was in the face of this highly improbable account that the Court accepted that it was only after the appellant had made up his mind to purchase it that literature relating to the dryer had been handed to him. But there does not appear to have been the thought that if Chung could have issued Ex. 'B', why could he not have given the appellant Ex. 'C' also? Both pamphlets were at that time in Chung's possession. Nevertheless, such an important observation as this, as would affect the balance of probabilities, was passed over in silence by the Court, which seemed to think that "the only evidence adduced by the plaintiff as to these oral representations was the plaintiff himself", with which observation I respectfully beg to disagree. In fact, so many were the inherent improbabilities which appeared in the account given on behalf of the respondents when weighed with the appellant's version of the matter, that they ought to have put the Judge on inquiry and caused him to ponder as to whether he was being truthfully enlightened.

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It is evident that there was no judicial approach in balancing the respective probabilities and improbabilities in the cases urged on behalf of both sides. All that was essayed was a formula in which the Judge said he believed the witnesses Chung and Blair whenever they were in conflict or variance with the testimony of the appellant and his witnesses. Indeed, the situation appears to be somewhat more compelling than that considered by the Privy Council in the case of Lucky v. Tewari et al., (1965) 8 W.I.R. 363, in which Lord Wilberforce, when delivering the advice of their Lordships' Board, observed at page 366:

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"As to the attesting witnesses themselves, their Lordships agree with the Court of Appeal that the reasons expressly given by the learned Judge for disbelieving their evidence are unconvincing, and though their Lordships are prepared to assume that some reliance was placed by the learned Judge on the manner and demeanour of the witnesses, although in his judgment he does not expressly say so, even allowing for this, their Lordships cannot accept that the point

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was reached, or indeed approached, where a total rejection of these witnesses' evidence was justified."

In my judgment, the situation here is considerably more compelling, because, whereas in Lucky v. Tewari et al, the trial Judge did express some reasons for his disbelief of the witnesses' evidence, the trial Judge in the present case has expressed none. In both, however, one common feature is to be observed - there was a total rejection of the witnesses' testimony by the Judge.

The case for the respondents was constructed on the basis that the appellant went to Dr. Fraser's farm, declared he was impressed and would like to purchase a mill and dryer like Fraser's, yet, it is admitted, he had never set eyes on that dryer. This, I have already remarked, is improbable conduct and incompatible with the behaviour of the kind of businessman the Judge found him to be.

The question necessarily follows: Would a shrewd businessman announce that he was impressed and satisfied with a rice-mill without having seen literature concerning it, or without having even spoken to those who were concerned in selling it? With respect, I think the finding called for an explanation in view of the type of purchaser the Judge found the appellant to be. There was also no attempt made to consider and evaluate the truth of the appellant's testimony that it was after a discussion at his home with the Company's agents he was taken by them to Dr. Fraser's rice-mill to witness the operation of the mill, against the positive statement of Chung that, "When a person makes an inquiry about a rice-mill most of them are taken by me to Fraser's mill to show them the working of the mill." Fraser's mill was obviously a showpiece for the respondents. It was on private property where the public could not have access.

These are the reasons that have caused me to differ from the finding of the learned Judge and forced me to conclude that the pamphlet Ex. 'C' was indeed issued to the appellant. This being so, I think it must follow in the teeth of the respondents' emphatic denial, the only reasonable conclusion is that they have done so because they know fully well that the appellant's allegations with respect thereto are true.

As has been stated, the appellant's case is

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that when he was shown the pamphlet he was told that the mill to be ordered on his behalf, that is, the 30/60E, would resemble model No.72 - the S20/4; that it would be a 2-ton mill like it, with a capacity of 4,300-5,600 lbs. up to 2½ tons per hour like model No.74. It will be observed this is not altogether outside the realms of probability as the figure 4,480 lbs. is within this range.

On the third finding, I think it necessarily follows from the conclusions at which I have arrived that Ex. 'C' was indeed issued to the appellant, and that there was in fact a representation made to him that the mill to be imported would be a triple cone with one polisher having the capacity of the mill at reference No.74 in Ex. 'C'; that the mill would be self-contained and of the type described in that pamphlet. In the light of the evidence of Mr. Lewis Grant, a self-contained mill would necessarily be mounted on a steel frame. The respondents are, however, positive that what the appellant ordered was a Grantex 2-ton multi-stage "detached" rice-mill and that he knew this. In this regard, I must observe that there is no such indication in the Customers' Special Order for Goods (Ex. 'K35'). The respondents contend that before the order was placed, they advised that the cost of the mill's wooden framework would be charged to the appellant's account; that this fact was made clear to him in that Special Order, the particulars of which state inter alia, "All necessary woodwork to be supplied by the customer." The contention is, that it necessarily follows, in such circumstances, that a Grantex 2-ton "detached" rice-mill was in fact ordered by the appellant, the implication being that the reference to woodwork necessarily means a wooden frame. I must confess, however, that I find it rather difficult to follow this line of reasoning, for I cannot see that a stipulation providing that a customer should supply necessary woodwork furnishes any description whatever of the type of machinery the parties were binding themselves to buy and sell.

Here again, I think the criticism justified, that even though the text of the Order for the mill and dryer were fully set out, which is some indication that the Judge had adverted his mind to it, he never really analysed it. I respectfully say that had the evidence led by Messrs. Lewis Grant, Blair and Chung been carefully considered in the light of the order for goods, the Court could not have failed to have been influenced by the fact

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that the 30/60E Grantex 2-ton multi-stage rice-mill was going to be the first of its kind ever to be imported into Guyana; by the fact that the word "detached" was not mentioned in that order, and by the fact that there was no reliable evidence before him about the mill to be ordered, nor about its capacity range in terms of intake of paddy per hour, save what had been told him by the appellant. There was, in fact, no pamphlet concerning it and, according to Mr. Lewis Grant, Chairman and Managing-Director of Lewis C. Grant, makers of Grantex rice-mills and dryers, Scotland, none was ever printed. Had attention been paid to the list of equipment attached to the order, I believe he could not have failed to see another important point inviting comment from him since it attested to the truth of the appellant's story, viz., at items 8 and 9 *ibid*, there is reference to three cones and one polisher, which clearly referred to the self-contained mills in Ex. 'C'. This is exactly what the appellant urged that he was told, viz., that a mill of similar description would be ordered for him, and that it would be a 30/60E model very similar in appearance to mill No. 72 S20/4 in Ex. 'C'.

Admittedly, as Mr. Blair's answer to the trial Judge showed, the particulars did not contain the words "iron frame"; but that is only because an iron frame is necessarily part of the mill; there was no need to refer specifically to it. It is evident that attention was not directed to these matters which it is thought are at large for a Court of Appeal to consider, to comment upon, and draw its own conclusions on. They are matters based on the cold facts on the printed pages of the record and have no bearing on the conduct or demeanour of witnesses. It is in this respect that I call to mind the words of Lord Reid in Benmax v. Austin Motor Co.Ltd. (1955) 1 All E.R.326 at page 329;

"But in cases where there is no question of the credibility or reliability of any witness and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal court is generally in as good a position to evaluate the evidence as the trial Judge, and ought not to shrink from that task though it ought, of course, to give weight to his opinion."

In my view, the appellant has shown beyond

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probability that what he had bargained for was a "self-contained" mill which would necessarily carry an iron frame; and not a "detached" mill. He was therefore not required to provide a wooden frame. I think it is appropriate that I should state here that this finding of mine does not impute in any way any suggestion of fraud or misrepresentation on the part of the respondent Company. Indeed, it appears that the appellant was fully aware of the difficulty of substantiating such allegations which at one time appeared in the indorsement to his writ, but I believe he quite rightly abandoned them in his statement of claim. This fact seemed to have escaped the trial Judge who, at the outset of his judgment, obviously considered the matter in the light of the allegations of the indorsement of claim and not those in the statement of claim. Allegations in a statement of claim, of course, always supersede those in a writ of summons. The Judge considered he was dealing with allegations of fraud and misrepresentation whereas there were none before him to consider.

On the fourth point, an attempt is observed on the part of Mr. Chung obviously designed to affect the appellant with knowledge that he had ordered a "detached" type of rice-mill with an intake capacity of 3,500-5,000 lbs. of paddy per hour and to furnish documentary support for the respondents' case. I refer to the introduction of Exs. "V1" and "V2" into evidence, subject to cross-examination. These exhibits concern the specification of a belt-driven Grantex 30/60^E "detached" type of rice-mill about which Mr. Blair spoke and which Mr. Chung claimed to have handed the appellant with covering letter dated April 19, 1961, pursuant to a request by the latter for a quotation. It is clear that if these exhibits are properly admissible, they would certainly affect the appellant with knowledge of both the type and capacity of the mill he had bargained for, render it improbable that he was given Ex. 'C', and support the case for the respondents. They were first put in evidence by Blair and marked "Tendered by consent - Exhibit 'V' (2 pages)", though I should have thought the appropriate marking at that stage ought to have been "Tendered for identification." This is obviously the case because the documents did not emanate from Blair, and when Chung came to testify, he identified Ex. "V1" as similar to the specification he gave to the appellant.

Immediately after being introduced into evidence both documents were objected to and reasons given therefor.

It was agreed that their admission be made "subject to cross-examination by the plaintiff". This I take to mean in the context, subject to cross-examination of the appellant upon his recall for that purpose, and that thereafter the Court would rule on the question of the admissibility of those documents. In fact, the appellant was not recalled; he was therefore not cross-examined on the point. It must follow, therefore, that the exhibits are not properly admissible in evidence, the condition subject to which they were admitted not having been fulfilled. The Judge, therefore, could not properly regard them in the face of the appellant not having admitted receiving the originals, and the existing conflict of evidence between Blair and Chung on whether they were sent to him. There was no notice to produce served on the appellant, and he was obviously taken by surprise at the trial, but I consider it was a fatal omission for the Judge not to have stated what consideration he gave to this vital and damning piece of evidence which must have affected his mind. All he found and accepted is, that the appellant spoke to Chung who supplied him with quotations after giving further information about rice-milling equipment. When, therefore, preference was given to Chung's evidence wherever there was conflict or variance with the appellant's, such findings as he made with respect to the type of mill ordered on behalf of the appellant (see finding number 3 above), and on its capacity (see finding number 4 above), must necessarily have been affected thereby, because both exhibits referred to those matters. Likewise, reference in Mr Blair's letter (Ex. 'K1') to the appellant's receipt of a quotation from Mr. Chung is no proof that Chung handed it to the appellant; but the Judge has not spoken.

On the point of the capacity of the "08" dryer, Chung admitted he did tell the appellant it would have been of a 4-ton capacity when being used at a near temperature for drying at 140°-150°F. at a continuous drying. Both Messrs. Chung and Blair in fact expressed satisfaction with the dryer's performance at a test which took place at the appellant's mill in July 1963. This July test was arranged at the instance of the respondents as the result of numerous complaints in several letters from the appellant about mill and dryer's performance. All during that time those complaints were being made, the respondents consistently maintained that the root cause of the trouble was appellant's inexperience and poor management and operation of the mill. They

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contended that the cause of the failure of the mill to achieve the required capacity was the poor quality paddy used in the dryer. This was the reason for the excessive quantities of broken rice in the mill. It was in this state of affairs that in July 1963 the respondents undertook to demonstrate to the appellant the results which might be achieved with the use of good quality paddy and by efficient operation and management. The July test unfortunately did not achieve its desired end, despite all exertions on the respondents' part, and expense on the appellant's, since he had to replace all defective parts, to have the machinery of the mill working at its best. In view of all that had happened, it was surprising to find that the trouble sprang from a cause one would have hardly thought likely - the use by the respondents of poor quality paddy. As the respondents would have it, the test was successful with respect to the dryer, although "inconclusive" with regard to the mill. The appellant would have it, however, that the test failed in respect of both pieces of machinery.

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Paddy for the test was provided by Dr. Fraser about whom and whose mill at East Lothian something has already been said. Dr. Fraser was asked ever since March 1963 by Mr. Chung to set aside 100 bags of paddy for testing the capacity of the appellant's dryer and mill. But instead of providing paddy of a good, if not the very best quality (and I believe he had quite enough time to comply), Dr. Fraser provided the worst imaginable type which his son David properly described as "sweepings", and Chung as "awful stuff". But why should Fraser have been asked to supply paddy for the test passes my comprehension. Surely there were other farmers round and about who could have been asked to do so? From the very answers he gave in cross-examination, Dr. Fraser was portrayed as a miller not well disposed to the setting up of a rival only six miles away with a mill of greater capacity than his, competing for public patronage. The respondents had obviously failed to appreciate this side of human nature in business competition when they asked him to supply for testing a prospective rival's mill. Dr. Fraser quite frankly said he was not interested in the test, and, for myself, I really could not expect that he would have been either. In my view, what he was not interested in really was the success of the test. This much is clear. I cannot find otherwise because

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he fully knew of the purpose for which the paddy was wanted. As an owner of a rice-mill of the same make, he must have known that none other than good quality paddy could result in the test being carried out efficiently.

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10 The evidence of Blair and Chung, with which the Judge declared he was satisfied with respect to the dryer's capacity, was that on the day of the test in July 1963, the test went well and proved satisfactory.

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20 Of the test, Chung said the respondents were under no misapprehension as to the nature of the appellant's complaints. He fully realised that the issues to be resolved then were: (a) the mill's intake capacity; (b) the complaint of the excessive broken grains resulting from paddy milled after having been dryer-dried; and (c) the actual time the dryer took to accomplish the task. In fact, Mr. Chung laid down three conditions for ensuring the success of a capacity test: "There are three factors," said he, "which control capacity:

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- (i) the ability of the operator to keep an even flow through the mill;
- (ii) the quality of the grains you are milling including variety and the fact that it is a pure line seed;
- (iii) the cleanliness of the grains, i.e., it is free from straw and foreign matter."

30 In carrying out the test of the dryer, 60 bags from the paddy supplied by Dr. Fraser were used. The results were noted on a sheet of paper (Ex. 'N'), referred to by the Judge. This the appellant refused to sign because he objected to the drying time and system of drying employed. Speaking for myself, I must express astonishment at the excellent results noted on that test-sheet relating to the dryer's performance judging by the very poor quality paddy which had been used and its admitted moisture-laden condition. Fraser's paddy provided for the test consisted of burst grains in which moisture had penetrated; some grains were attacked by termites, and the excessive amount of straw and muck in it were observed by Mr. Chung who carried out the test on behalf of the respondents.

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The next day the remaining 40 bags which did not

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form part of the drying test of the previous day were dried and milled. The returns, also noted on Ex. 'N', clearly give the false impression of their having been produced solely from 60 bags, but they are in reality (from Mr. Chung's admission in cross-examination) the product of the entire 100 bags of paddy supplied by Dr. Fraser. On this matter there is a noteworthy conflict of evidence between Blair and Chung as to whether it was intended to have milled at the July test the entire 100 bags. Mr. Blair said it was their intention to dry the whole 100 and then mill them; while Chung said that it was never intended to test the results of the 100 bags, but to try the dryer once.

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The importance of this conflict is realised when regard is paid to the respective attitudes of both men to the results of the milling test. On the one hand, Blair insists that the figures of milling on Ex. 'N' were recorded by Chung without his knowledge and authority, but it is not possible to reconcile this with what he had led the appellant to expect in a letter dated July 5, 1963, in relation to preparations for conducting the July test. (See Ex. 'K22'). Therein, it was stated that, "The paddy used on the drying test, we propose using in testing the mill and we hope you will be able to let us conduct this test immediately we have finished with the dryer." Therefore, Blair's attempt to dissociate himself from the results of the milling test must be considered, in the light of the record made on Ex. 'N'. He must, in all probability, have considered the milling results for the 100 bags to have been very poor and for that reason was not aligning himself with them. The evidence, we are told, is that the 28 bags whole grain rice, 10 bags 52 lbs. broken, and 5½ bags bran were a poor result if grain of good quality were used, but a very good one for grain of the type in fact used.

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Chung's attitude, on the other hand, was that though the results of the milling test were inconclusive, they were still worthwhile recording since they were a fair result for the quality grain used, and, further, the result could be used as a guide to what capacity could be achieved when good grain was employed.

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It is stressed by the appellant that Blair had expressed shame at the poor results of the test and then returned to Georgetown before it was complete.

Both Blair and Chung, however, denied this. But where do the probabilities lie in the light of the undisputed fact that Blair left the selection of the test paddy entirely to Chung who had in fact conducted the test with sweepings? Why was Blair seeking to limit, in cross-examination, the test to the dryer's performance when by the terms of his letter extracted above, he fully well knew both tests were to be conducted on the same day? In my opinion, the tests of both mill and dryer, though severable, must be regarded as a whole in view of the appellant's complaint (which was one of the issues of which Mr. Chung was aware) that the excessive broken grains resulted from paddy milled after having been dryer-dried, and not only one test but both must be regarded as failures.

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But of all the statements made by him with respect to the July test, that which was the most amazing was that he was not "worried about the quality of the product because that was not an issue. The moisture content of the paddy would not have affected the actual drying-time which was one of the issues. I realised that with the amount of dirt it had it would affect the intake capacity." However, in view of the evidence led by the expert witnesses, I am surprised at the statement that moisture content does not affect actual drying-time; but the argument against the Judge's acceptance of Mr. Chung's evidence on the dryer's efficiency is that it is against the very weight of Lewis Grant's which specified the conditions for procuring maximum efficiency of the dryer, one of which was the employment of paddy of reasonably good quality, a fact which the respondents themselves fully appreciated, for they brought it to the appellant's attention. (See Ex. 'K27'). Mr. Grant also made it clear that the paddy should be free from dirt, straws and foreign matter. But the astonishing fact remains that the 60 bags used were not of good quality; yet the very best result was achieved after only one hour!

I think this fact ought to have struck the Judge - that something was amiss when, in the light of all that had been revealed in evidence about the quality of Dr. Fraser's paddy, the test-sheet showed a moisture content of 14½% only after one hour's drying, an indication that the paddy was ready for milling. This was a truly astonishing result for such poor quality paddy, and it is not difficult to see why the appellant refused to sign the test-sheet.

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There is an abundance of evidence contrary to the finding of the Judge that there was no defect in the mill or dryer. This is, in fact, a finding against the evidence of Chung who had attended and tested the appellant's mill and dryer on several occasions previous to the July test in response to repeated complaints of malfunctioning. Mr. Chung found what he described as "teething troubles" and excessive broken grains on many occasions. He himself agreed, after the July test, which he described as the only comprehensive one, that as far as the mill's testing went, it was "inconclusive". In this regard, the respondents' request of the manufacturers for technical assistance is not without significance. Mr. Grant did admit the receipt by his firm of a report from the respondents. This report clearly referred to the July test and the test-sheet with the information stated on it (Ex. 'N'). However, in view of the writ on the respondents, Lewis C. Grant & Co. decided not to send out the expert.

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To my mind, the point about the respondents' request for technical assistance from the manufacturers is a clear indication that they themselves, were in all probability, not satisfied with the performance of mill and dryer after the test. If they were, what need was there for an expert? When this fact is weighed with the appellant's insistence that both Blair and Chung had expressed dissatisfaction with the operation of the machinery, clearly the appellant's account ought not to have been lightly rejected without reasons, more especially as Chung admitted that he felt that Blair was disappointed with him for "not checking the mill well".

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The Judge also found that appellant failed to discharge the onus of proof that the mill and dryer were defective and unfit for the purpose for which they were required. As I see it, the learned Judge clearly went wrong on this question, for once the appellant had adduced some evidence to show that the mill was faulty and not working to capacity (for there had been quite frequently instances, admitted by Mr. Chung, of failure of the mill to attain the required capacity and the producing of an excessive quantity of broken grains during the subsistence of the hire), the onus shifted to the respondents to show that the fault did not lie in the machinery. This the respondents appeared to have appreciated when they requested technical assistance from abroad after the July test. This they were obliged to

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perform during the hire, but failed to do so by what in all probability, was due to their own fault - the use of poor quality paddy which, on Mr. Chung's evidence, rendered the test of capacity of the mill "inconclusive" and, I think, the dryer likewise inconclusive. The respondents clearly incapacitated themselves from discharging that onus by the use of bad grain. It was useless on their part to conduct an intake capacity test by trying to attain the minimum rate of which the mill was capable, viz. 3,500 lbs. of paddy per hour on a 2-ton mill. In good sense, how could that have been a capacity test? Clearly, what was necessary was a maximum capacity test; but that could only have been performed by the use of paddy of good quality.

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So that we get this curious situation: the respondents were, on their own admission, themselves guilty of the same faults in the operation of the mill and dryer for which they were consistently accusing the appellant, viz., unskilful management and the use of poor grain in operating the mill and dryer. But I am afraid nothing was said by the trial Judge on this matter which clearly excited comment.

Dealing with the question of the intention of the parties on the matter of the warranties, I consider, just as did Lord Moulton, whose analysis in Heilbut, Symons & Co. v. Buckleton, (1911-1913) All E.R. Rep.83 at page 90 I respectfully adapt to the circumstances of the instant case, that the appellant must show a warranty, i.e. a contract collateral to the main contract to enter into the hire-purchase agreements whereby the respondents, in consideration of his entering into those agreements, promised that the mill and dryer would have the stated capacities. That the appellant's interest was focussed on capacity in respect of both items seem to me beyond dispute, for he, having gathered that Dr. Fraser's mill had a capacity of only one ton, wanted a mill with double that figure. This appears to me to put beyond any doubt whatever his intention to enter competition with Fraser for the paddy patronage of the locality since both would then be owners of rice-mills bidding for custom - the appellant's having a decisive capacity advantage over Dr. Fraser's. It is principally for this reason that I think the parties must have intended in their negotiations leading up to the making of the hire-purchase agreements, that the representations were to be in the nature of warranties.

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The learned Judge, however, considered the matter of the existence of warranties solely from the testimony of the appellant. This, he said he did not believe; but it is my respectful opinion that the existence of the warranties ought to have been considered, not only from the representations alleged by the appellant to have been made to him, but also from the documentary evidence and its probabilities in the case. So that even if the Judge did not believe the appellant from what he perceived of him in the witness-stand, there was yet documentary evidence in the nature of Exs. 'B' and 'C' which fell to be properly evaluated and, in my opinion, this was not properly done merely by his saying that Ex. 'C' did not relate to the mill ordered.

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Finding, therefore, there were the express oral warranties as alleged given by the agents of the Company, I turn now to consider what is the effect thereon of the exclusion clause (No.11) pleaded by the respondents. Clause 11 is in the following terms:

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"The Owners do not supply the hired property subject to any condition or warranty express or implied as to quality, description, suitability, fitness or otherwise, but if the manufacturers of the hired property give any warranty in respect thereof the Owners will take such steps as they can to enforce the same."

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Clause 11 was not considered but only referred to by the learned Judge along with clauses 9 and 12 of the agreements. Clause 9 gives to the hirer an option to purchase on payment of any outstanding balance and become the owner subject to certain conditions not relevant here, while by Clause 12 he is deemed to have examined the hired property before signing and agreed that its delivery is conclusive evidence that it is equipped and in good condition. But it seems clear how the Judge's mind worked. He obviously appeared to think that as the appellant had exercised the option to purchase machinery which he knew to be defective, he became bound thereby, whatever the circumstances. In other words, the appellant cannot be said to have relied on the owner's skill and judgment as the defects were apparent to him at the time of the exercise of the option. This attitude is clearly seen in the concluding words of his judgment:

40

"The plaintiff described the dryer to Mr. Chung several months before affirming the contract as a 'white elephant'. He was under no obligation to exercise the option to purchase a 'white elephant'. He knew what the machinery was capable of producing and decided to exercise the option notwithstanding his complaints."

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10 With respect, I say this is a misunderstanding of
the law concerning a hirer's rights under a hire-
purchase agreement, for the respondents' agents,
having in my view given express oral representations
amounting to warranties as to capacity, heretofore
described, are precluded from relying on the
exempting provisions in clause 11. Those represent-
ations induced the agreements, they having been made
during and as part of the negotiations therefor;
they formed the third class of representations referred
to in Sullivan v. Constable, (1932) 48 T.L.R. 267, it
20 being, in my view (which I have already stated), from
a consideration of the whole of the evidence, the
intention of the parties that they should form part
of their agreements, seeing that the main pre-
occupation of the appellant was with capacity of the
machines. Luxmoore, J., said at p. 271, *ibid*:

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30 "..... representations fall into three classes:
(1) Representations which form no part of the
contract. (2) Representations which are of
the essence of the contract and entitle the
party to whom they are made to be discharged
from his liabilities under the contract. (3)
Representations which constitute subsidiary
promises, the breach of which confers the
right to recover such damages as the promisee
has sustained by the failure of the promisor
to fulfil his promise the second class
of representations are usually called
to conditions, while the third class are usually
termed warranties."

40 This being the case, I make the identical enquiry
as was made in the case of Webster v. Higgin, (1948)
2 All E.R. 127, and, as I construe clause 11, I
consider whether it is capable of having the effect
of negating or immediately rendering nugatory the
collateral warranties I have found to have been
given to the appellant. In my judgment, clause 11
from its language and intendment does not contemplate
collateral warranties such as were in existence side

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by side with the making of the hire-purchase agreements so as to preclude the appellant from setting up a claim for breach in respect thereof, notwithstanding he has elected to exercise his option to purchase.

I say so because the words "The owners do not supply" in clause 11 appear to me to mean that "the owners are not now supplying the hired property subject to any warranties expressed or implied which are made at the moment of the signing of the hire-purchase agreement". The present tense "do not" seems to give a clear indication to that view. If it had been intended to exclude prior warranties, i.e. those made during and forming part of the negotiations leading up to the making of the agreements, I believe clause 11, which must be strictly construed against the respondents, would have expressly so stated.

10

Admittedly, the appellant was not obliged, as the Judge remarked, to exercise his option to purchase, but then he would have forfeited his down-payment and instalments. This was undesirable to him, and so he exercised the option and elected to keep the mill and dryer and to become owner of them, but at the same time he had no intention of abandoning his common law remedy to sue for breach of any express or implied warranties made prior to the agreements.

20

An intention to preserve the respondents' obligations under the agreements is clearly to be discerned in the letter dated 13th September, 1963, written by his solicitor to the respondents in which the sum of \$70,000 was enclosed. In that letter the thought was expressed that the appellant "still hoped" after paying off the \$70,000 that all the defects in the mill and dryer would be remedied as early as possible for the autumn crop. The letter also referred to the visit of an engineer from the manufacturers of the mill and dryer, which has already been referred to above. This the respondents, in reply, acknowledged to be the case, only that they had not yet received confirmation of the expert's visit from their principals. As I have observed, the Judge appeared to have been mainly influenced by the fact that the appellant "knew" what the machinery was capable of producing and decided to exercise the option notwithstanding his complaints, and that "he was under no obligation to exercise the option to purchase a 'white elephant'". This was likewise the stand taken by Counsel for the

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respondents, but I believe it is a complete misconception of the rights of a hirer to elect to become the owner of the hired property and to sue for damages for breach of warranty.

Before concluding, I will deal with the legal argument of Counsel for the respondents consequent on the exercise of the option to purchase. It was submitted that immediately on the occurrence of that event, ipso jure there arose a contract of sale in which are imported terms implied under the Sale of Goods Ordinance, Cap. 333, s. 16, in that the erstwhile relationship of hirer and owner ceased and gave way to buyer and seller. In support, Counsel relied on the following passage which appears in Goode's Hire Purchase Law & Practice (1962):

"The implied condition of fitness for a particular purpose will not arise, since whilst the erstwhile hirer may well have made known at the date of the hire-purchase agreement the particular purpose for which the goods were required, it is unlikely that he would have done so again at the date when the contract of sale comes into existence through the exercise of the option. In any event, the Court would no doubt readily imply a term that the owner should not be answerable for defects brought about solely by the buyer's use of the goods during the currency of the hire-purchase agreement. Similarly, the condition of merchantable quality will not normally be applicable, since any defects in the goods will almost certainly have come to the hirer's notice before the time arrives for him to exercise his option, so that the owner will be covered by the proviso to s. 14 (2) of the Act."

In the first place, I will observe that the above statement represents only the author's viewpoint and, though entitled to the respect it deserves, is without legal authority in support; nevertheless, even if it does represent an accurate statement of the law, the very limitations contained in it serve to rule out its application to the case in hand. The unlikelihood envisaged in the statement of the hirer's informing the owner again of the purpose for which he requires the goods actually took place, for in the same letter in which the option was exercised, i.e. that forwarding the balance of the purchase price (Ex. 'K26'), the appellant made it

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clear that he still hoped that the respondents would "have all the defects on the mill and dryer remedied as early as possible for the Autumn Crop", and, further, in terms which I conceive to admit of no doubt whatever, he told them he understood they were engaging the services of an engineer from the manufacturers of the mill and dryer at an early date to effect all necessary repairs. This can only mean the appellant was reminding the respondents of his and their obligations, in clauses 8 and 9 of the second schedule of the hire-purchase agreements (Exs. 'K12' and 'K14') to have those defects remedied by their own workmen. This aspect has already been dealt with above. In the second place, it cannot be said that the defect in the mill and dryer relating to capacity was of a kind brought about solely by the buyer's use during the currency of the hire-purchase agreement so that the law would imply a term exonerating the owner from liability therefor. As I have shown, the respondents have not discharged the onus of proving this. In any event, an intake capacity is not, I believe, the kind of defect which the learned author contemplates above. Therefore, even if the passage cited does represent good law, it is submitted the facts of this case will render the exclusion of the implied condition as to fitness improbable.

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I would, accordingly, allow the appeal with costs. In view of my finding that oral warranties of the nature described do exist in this case, I have seriously considered whether we ought not to direct a new trial. However, since there exists on record sufficient evidence of a positive character which will justify us in substituting a finding of our own in the appellant's favour, I think the appropriate course to adopt is to remit the case to the learned trial Judge with the intimation that he should proceed to the assessment of damages.

30

V.E. CRANE

Justice of Appeal.

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Dated this 16th day
of June 1969.

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NO. 34

ORDER ON JUDGMENT

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

BEFORE: THE HONOURABLE MR. G.L.B. PERSAUD,
JUSTICE OF APPEAL

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

THE HONOURABLE MR. V.E. CRANE,
JUSTICE OF APPEAL

—————
No. 34

Order on
Judgment

DATED THE 16TH DAY OF JUNE, 1969

16th June
1969

10 ENTERED THE 24TH DAY OF JUNE, 1969

UPON READING the notice of appeal on behalf of the abovenamed appellant (plaintiff) dated the 21st day of December, 1966 and the record of appeal filed herein on the 2nd day of March, 1968:

AND UPON HEARING Mr. J.O.F. Haynes, Queen's Counsel and Mr. B. Commissiong of Counsel for the appellant (plaintiff) and Mr. G.M. Farnum, Queen's Counsel of counsel for the respondents (defendants);

AND MATURE DELIBERATION THEREUPON HAD:

20 IT IS ORDERED that this appeal be allowed and that the judgment of the Honourable Mr. Justice Khan dated the 12th day of November, 1966 in favour of the respondents (defendants) be wholly set aside;

AND IT IS FURTHER ORDERED that judgment be entered for the appellant (plaintiff) and that the damages to be awarded on this judgment be assessed by the trial Judge on the basis of the findings of this Court;

30 AND IT IS FURTHER ORDERED that the respondents (defendants) do pay to the appellant (plaintiff) his costs of this appeal and in the Court below to be taxed certified fit for two counsel and that there be a stay of execution of this judgment for six (6) weeks from the date hereof.

BY THE COURT

H. Maraj

SWORN CLERK & NOTARY PUBLIC

for REGISTRAR.

—————

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

NO. 35

BEFORE: THE HONOURABLE MR. V.E. CRANE,
JUSTICE OF APPEAL (IN CHAMBERS)

DATED THE 19TH DAY OF JULY, 1969

ENTERED THE 23RD DAY OF JULY, 1969

No. 35

Order granting
Conditional
Leave to
Appeal

19th July
1969

UPON the petition of the abovenamed respondents (defendants) dated the 4th day of July, 1969 for leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal of the Supreme Court of Judicature delivered herein on the 16th day of June, 1969;

10

AND UPON READING the said petition and the affidavit of Solicitor for the respondents (defendants) dated the 3rd day of July, 1969 in support thereof;

AND UPON HEARING Mr. J.A. King of counsel for the respondents (defendants) and Mr. J.O.F. Haynes, Queen's Counsel, of counsel for the appellant (plaintiff);

THIS COURT DOTH ORDER that subject to the performance by the said respondents (defendants) 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 Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the respondents (defendants);

20

AND THIS COURT DOTH FURTHER ORDER that the respondents (defendants) do within 90 days from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of \$2,400: (two thousand four hundred) with one surety or deposit into Court the said sum of \$2,400 for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the appellant (plaintiff) in the event of the respondents (defendants) not obtaining an order granting them 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 appellant (plaintiff) on such appeal;

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

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

No.35

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

Order granting Conditional Leave to Appeal

19th July 1969 (continued)

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

BY THE COURT

Sgd. H. Maraj
SWORN CLERK & NOTARY
PUBLIC FOR REGISTRAR.

NO. 36

No.36

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

Order granting Final Leave to Appeal to Her Majesty in Council

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

TERRITORY: GUYANA

CIVIL APPEAL NO.59 of 1966

14th February 1970

B E T W E E N : MUSTAPHA ALLY Appellant
(male East Indian) (Plaintiff)

- and -

40 BOOKERS STORES LIMITED, a company incorporated in this colony under the Companies Ordinance, Chapter 328, whose registered office is at lots 49/53 Water Street, Georgetown, Demerara Respondents (Defendants)

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

BEFORE THE HON. MR. G.L.B. PERSAUD, JUSTICE
OF APPEAL
(IN CHAMBERS)

DATED THE 14TH DAY OF FEBRUARY, 1970

ENTERED THE 16TH DAY OF FEBRUARY, 1970

No. 36

Order granting
Final Leave
to Appeal to
Her Majesty
in Council

14th February
1970
(continued)

UPON the petition of the above named respondents (defendants) dated the 12th day of January, 1970 for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 16th day of June, 1969:

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AND UPON READING the said petition and the affidavit of Solicitor for the respondents (defendants) dated the 12th day of January, 1970 in support thereof and the Order of the Court dated the 19th day of July, 1969:

AND UPON HEARING Mr. J.A. King of counsel for the respondents (defendants) and Mr. B. Commissiong, of counsel for the appellant (plaintiff) and being satisfied that the terms and conditions imposed by the said Order dated the 19th day of July, 1969 have been complied with:

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

BY THE COURT

H. Maraj

SWORN CLERK & NOTARY PUBLIC
FOR REGISTRAR

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IN THE PRIVY COUNCIL

No. 11 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 :

BOOKERS STORES LIMITED

Appellant
(Defendant)

- and -

MUSTAPHA ALLY

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

VOLUME I

SIMMONS & SIMMONS,
14 Dominion Street,
London, EC2M 2RJ.

Solicitors for the Appellant