JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 98/87

BEFORE: THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN	ARTHUR BADALOO	PLAINTIFF/APPELLANT
AND	MR. & MRS. NEVILLE BRYAN	DEFENDANTS/ RESPONDENTS

M. Tenn for appellant

Mrs. M. Forte for Respondents

~~October~~ 13, 14, December 5, 1988
June 28 and July 31, 1989

CAMPBELL, J.A.

This appeal raises a point of civil procedure. The appellant issued a specially indorsed Writ of Summons sometime in early 1986 claiming $126,461.00 for goods sold and delivered. Judgment in default of appearance and of defence was entered on April 30, 1986 and duly recorded by entry in Binder 667 Folio 238 of the judgment record of the Supreme Court.

On January 5, 1987 a Summons was taken out by the Respondents seeking extension of time within which to file defence and counterclaim and for an order setting aside the default judgment. The summons was heard on February 18, 1987 by the Master and the following order was made:-

" By consent -

(a) That the judgment dated the 30th day of April, 1986 in favour of the Plaintiff be varied to Ninety Eight Thousand Six Hundred and Twenty-Two Dollars and Thirty-Seven Cents ($98,622.37)

(b) That there be no order as to costs of this summons."

A writ of seizure and sale based on this order was taken out on March 10, 1987. Thereupon the respondents took out a further summons for an order for extension of time for filing a defence and counterclaim and for the setting aside of the default judgment. This summons was dated April 9, 1987 and was fixed for hearing on June 2, 1987.

This summons was not heard on June 2, 1987 and appears to have been adjourned sine die. On June 4, 1987 a further summons in substitution for the existing one was filed which however, additionally sought leave to withdraw the consent given in the order dated February 18, 1987.

This summons came on for hearing on November 30, December 2, 4, and 7, 1987 on which latter date orders were made by the Master setting aside the consent order, and the default judgment and leave was granted to the respondents to file defence and counterclaim.

The formal order made on February 18, 1987 earlier referred to, had been duly filed but up to the date of the hearing of the summons filed on June 4, 1987 and even at the date of hearing of the appeal before us, no new judgment based on the consent order had been filed for entry in the appropriate judgment record of the court. Thus the only judgment recorded was the original default judgment.

The issue raised in this appeal are firstly whether the consent judgment arising out of the consent order was enforceable without being drawn up and entered in the judgment record of the court and secondly whether the Master was competent to set aside the consent order without the mutual agreement of the parties.

With regard to enforcement of the consent judgment created by the consent order, the provisions of Sections 579 (2) and (4) of the Judicature (Civil Procedure Code) Law are apposite. They are as follows:-

> " 579 (2) Subject to the provisions of Section 495 (not here relevant) every judgment or order shall, unless otherwise ordered be drawn up and entered by the party having the carriage of such judgment or order .....
>
> (4) A judgment or order hereby required to be drawn up and entered shall not be acted on or enforced unless and until such judgment or order has been so drawn up and entered."

Mr. Tenn submitted that a judgment or order is perfected when it is reduced into writing, stamped and checked by the registrar and accepted for filing. He submitted that the formal consent order which was filed in February 1987 constituted a perfected consent judgment and was thus validly enforceable and was also incapable of being set aside by the Master because the judgment being a final judgment which had been perfected could only be set aside by a fresh action brought for that purpose.

In my view the consent order dated February 18, 1987 was by its express terms not a judgment but an order entitling the plaintiff in the action to draw up and file for entry a new

judgment by way of variation and in substitution for the default judgment entered on April 30, 1986. No such judgment had been drawn up, stamped and filed for entry by or on behalf of the appellant. In consequence there has been a non-compliance with Section 579 (2) of the law recited above with consequence as stated in Section 579 (4) thereof. Since the consent judgment has not been entered, there can be no enforcement of the same.

The next issue is the competence of the Master to set aside the consent order. This raises a jurisdictional issue and must be resolved in favour of the Master because she has jurisdiction to set aside a consent order without agreement of the parties provided the order has not been perfected.

In this case, the consent order has not been perfected because in order to do so, it would have had to be incorporated by recital in the consent judgment which was to be drawn up and filed for entering under Section 579 (2) (supra). This consent judgment as earlier stated, has not been entered, hence the consent order which would necessarily have been incorporated therein also is not entered.

In Re Harrison's settlement (1955) CH. 260 Roxburgh, J relying on a number of cases therein cited, which conferred jurisdiction on a judge or Master to reconsider an order made, which had not been perfected, recalled and vacated orders made by him which had not been perfected by being drawn up and entered.

Mr. Tenn submits that even if the Master had jurisdiction to set aside the consent order she ought not to have done so because no satisfactory case had been presented to her to justify her in so exercising her discretion.

The affidavit evidence before the Master, if accepted as prima facie true, disclosed that some three weeks before the date when the default judgment was entered, statement of account had been submitted to the appellant by accountants on behalf of the respondents showing that contrary to the respondents being indebted to the appellant the former had over paid the latter. The respondents were thus, prima facie on the merit, not liable to have any default judgment entered against them. The exhibit namely, the statement of account annexed to the affidavit of the respondents which was before the Master, itemised the identical debits as those itemised in the endorsement on the writ but whereas the exhibit further itemised credits with dates thereof, the endorsement on the writ did not disclose these. Thus the appellant had been forewarned that if he persisted in his claim it would be resisted. The respondents' failure timeously to enter an appearance and to file a defence may well be due to their belief that at the time when the writ was issued which was in April 1986, but undated, the appellant had not then received the statement of account which was dispatched on April 9, 1986 but that having received the account he would not have persisted in his claim.

The default judgment, apart from not being justified nor entered in good faith, was also irregular on the face of it. It was for a sum which, due to error in summation, was in excess of the sum of the itemised debit claims. The respondent was thus 'ex debito justitiae' entitled to have it set aside (see ANLABY v. PRAETORIUS (1888) 20 QBD 76 and HUGHES v. JUSTIN (1894) 1 QBD 667.

The only obstacle in the way of this default judgment being set aside was the consent order referred to above.

With regard to this, it appears astonishing that the respondents without a sufficient explanation would have capitulated from a position where they were claiming an overpayment to one where they were admitting indebtedness for a substantial sum albeit less than that originally claimed. As earlier said, the respondents were relying on the statement of account prepared on their behalf by an independent firm of accountants which showed overpayment by them and there is no evidence that the accountants had notified any error on their part. What could have caused this change in stance? The answer is provided by the Attorney-at-Law who appeared on the respondents' behalf at the hearing on February 18, 1987.

His affidavit which was before the Master on the hearing of the summons to set aside the consent order, was to the effect that he misread the respondents' affidavit as amounting to a cross-claim by them to have an amount of $4318.63 set off against the claim endorsed in the writ as corrected by the appellant. He deposed thus:-

> "3 That from the affidavit of Neville Bryan sworn on the 19th day of October, 1986 it erroneously appeared to me that the only claim which the defendants had against the defendant (sic) was the sum of $4,318.63 referred to in paragraph 7 of the said affidavit".
>
> "4 That consequently I erroneously consented to the judgment entered on the 30th day of April, 1986 being varied from the sum of $126,461.00 to $98,622.37."
>
> "5 That the statement of claim endorsed on the writ of summons has an incorrect sub-total of $123,461.00 and an incorrect final total of $105,461.00 in paragraph 1."

> "6 That I am informed and verily believe, but I was not aware at the time that the sums claimed in paragraph 2 of the statement of claim were for returned cheques issued by the defendants in respect of payment for goods sold as stated and claimed in paragraph 1 of the statement of claim."

What the Attorney-at-Law is saying is that paragraph 1 of the endorsed claim is for a net sum of $105,461.00. This he erroneously thought was the net claim. It was wrongly totalled. This was corrected and he erroneously thought that what the respondents were claiming was that this corrected claim should be further reduced by the sum of $4,318.37. The Attorney-at-Law was, he said, mistaken as to what the true state of affairs was. This was an eminently reasonable ground for setting aside the consent order in order to pave the way for the default judgment to be set aside especially as the said judgment for reasons earlier stated had been irregularly entered thereby entitling the respondents to have it set aside as of right. The respondents ought not to be prejudiced in the circumstances by the mistake of their Attorney-at-Law.

Mr. Tenn for the appellant further complains that even if the Master was correct in vacating the consent order and the default judgment, the award of costs against the appellant was wrong. Costs he said should have been against the respondents who were the applicants.

All the proceedings subsequent to the signing of the default judgment were occasioned by the said default judgment. This was irregular and the respondents were entitled to have it set aside with costs (see Hughes v. Justin) (supra). It follows that the Master was not in error in ordering the appellant to pay the cost of not only the application to set

aside the consent order and the default judgment but also the cost incurred in respect of the Writ of Seizure and Sale which issued on the judgment which had not in any case been entered.

The appeal is accordingly dismissed, and the orders of the Master confirmed. The respondents will have their costs in this court, the same to be taxed if not agreed.

WRIGHT, J.A.:

This appeal challenges the correctness of certain orders made by the Master on December 1988 in respect of two Summonses filed by the respondents arising out of action taken by the appellant to the detriment of the respondents. It is my opinion that the Master's Orders were correct as I shall now demonstrate.

The appellant supplied the respondents with meat on an on-going basis and payment was made by means of Managers' Cheques, personal cheques drawn by the male respondent or by cheques received by the respondents and endorsed over to the appellant. On March 4, 1986 the respondents received a letter from the appellant's attorney-at-law requesting payment of the amount of $116,211.00 due for the period 6th December, 1985 to 27th January, 1986. This amount was arrived at as follows:

There were 11 outstanding amounts for which a total was reflected of	$123,461.00
Less payment	18,000.00
	105,461.00
Interest charges 30%	7,750.00
	113,211.00
Cost of collection	3,000.00
	$116,211.00.

A necessary comment is that the correct total of the eleven claims listed is $99,441.00 and not $123,461.00. Hence there is an unexplained excess of $23,520.00. The respondents' response was to secure from L. U. Cowan, a Registered Public Accountant, a statement of account for the period and this showed that but for $6,376.37 the respondents had paid their bills. This statement of account was sent to the appellant under cover of letter dated 9th April, 1986. Subsequently, however, this statement was amended and this amendment was sent to the appellant. It was discovered that a cheque for $10,000.00 which had been negotiated by the appellant on 30th December, 1985 had not been taken into account. Accordingly, the amendment now showed that the

respondents had overpaid to the tune of $3,623.63. This, however, did not lead to any change in the appellant's stance. He was bent on collecting and so filed action. Accordingly, in early April, 1986 the respondents were served with an undated Writ of Summons in which the unexplained excess was perpetuated. It was a specially endorsed writ. The credit of $18,000.00 was given but the interest charges and cost of collection were omitted so the total claimed was $105,461.00. A further and/or alternative claim was made for $21,000.00 in respect of two dishonoured cheques. It has not been disclosed on what date the respondents entered an Appearance dated 25th April, 1986. However, on April 30, 1986, the appellant entered Default Judgment which reads:

> "The Defendants Mr. & Mrs. Neville Bryan not having entered an appearance nor filed a Defence IT IS THIS DAY ADJUDGED that the Plaintiff do recover against the Defendants Mr. & Mrs. Neville Bryan the sum of One Hundred and Twenty-Six Thousand Four Hundred and Sixty One Dollars ($126,461.00)"

The next step in this scenario is that by Summons dated 5th January, 1987 the respondents sought the following orders -

1. That an extension of time be granted to file a Defence (and Counterclaim, if so advised) herein in the event that the Plaintiff persists in this action.

2. That the Default Judgment be set aside on such terms and conditions as this Honourable Court shall deem fit.

3. That the plaintiff be ordered to pay the costs of and incident to this Summons and Order.

At the hearing of this Summons on 18th February, 1987 the respondents were represented by Mr. Lawrence Philpotts-Brown of the firm of Silvera & Silvera, the attorneys-at-law for the respondents who had prepared and filed the Respondent's Application and supporting affidavit which incorporated an earlier affidavit dated 19th December, 1986, outlining the dealings between the parties and disclosing that the appellant was indebted to the respondents not only for the excess payment but for

an amount of $195.00 for supplies received by him and a loan of $500.00 thus making a total of $4,318.63 payable to them. These are the affidavits which were in the possession of the respondents' attorneys-at-law when Mr. Phillpotts-Brown appeared before the Master to seek the Orders which were in the Respondents' Summons. But, instead of protecting his clients' interest,as was expected of him, he became an actor in what approaches the bizzare. He consented to the irregular judgment of $126,461.00 being reduced to $98,622.37. I have tried in vain to ascertain what figures have been juggled to produce that result. And even an affidavit from him dated 28th November, 1987 blaming his conduct on his ignorance of Neville Bryan's affidavit dated 25th November, 1987, only deepens the mystery. But what is certain is that the consequence of his day in Court was to leave his clients saddled with a debt of $98,622.37 in circumstances where because of their insistence that they owed no money they were praying the Court to set aside the Default Judgment which sought to confirm them as debtors and permit them to come into Court and prove their contention.

No judgment was entered arising out of the hearing before the Master. The Default Judgment had been entered at Binder 667 Folio 238 and upon an Attested Copy thereof in the Judges Bundle, there is endorsed the Master's Order made 18th February, 1987 -

> "By Consent IT IS HEREBY ORDERED that the Judgment dated 30th April, 1986 in favour of the Plaintiff be varied to $98,622.37.
>
> No order as to costs."

Both Mr. Tenn and Mrs. Forte, at the instance of the Court, made searches in the Judgment Book of the Supreme Court and their finding, which has been confirmed by the Registrar of that Court, is that no judgment giving effect to the aforesaid Order has been entered. [Indeed none, says the Registrar, was filed]. It appears to me, therefore, that neither the figure $126,461.00 nor $98,622.37 represents a judgment on which execution can be levied.

The respondents were understandably dissatisfied with the debacle into which they were landed and so they persisted in their

application which had not been dealt with by the Master on February 18, 1987. The renewed application came on for hearing on June 2, 1987 and, quite predictably, was met with objection from the appellant's attorney. The Summons was adjourned sine die. But by 7:00 a.m. next day, the Assistant Bailiff of the Resident Magistrate's Court for St. Andrew descended upon the respondents' business place armed with a Writ of Seizure and Sale dated March 10, 1987 for the sum of $98,622.00. Entreaties by the respondents were to no avail. The Assistant Bailiff proceeded to levy execution.

On June 4, 1987 the respondents issued two Summonses. One sought Orders for the withdrawal of Consent in addition to the Orders for extension of time to file Defence and Counter-Claim as well as for the setting aside of the Default Judgment. The other Summons sought a Stay of Execution. Again their efforts were in vain; the summonses were adjourned sine die. Apparently prompted by these frustrating events, the respondents changed their attorney-at-law, notice of which was given on 30th October, 1987. The first move of their new attorney-at-law was to resurrect these adjourned summonses and to seek an injunction restraining the Bailiff or his servants/agents from disposing of the goods which had been levied. At last there was a hearing and, after four days of hearing, the Master on December 7, 1987 made the following Orders:

> "1. That the Consent Order given on the 18th day of February, 1987 on behalf of the Defendants be withdrawn and set aside.
>
> 2. That the Default Judgment entered hereon on the 30th day of April, 1986 be set aside.
>
> 3. That the Defendants be at liberty to file and deliver Defence and Counter-Claim within 14 days from the date hereof.
>
> 4. That the Plaintiff be ordered to pay the costs of and incidental to the application and Order.
>
> 5. That Leave to appeal is granted to the Plaintiff.

" AND ON THE SUMMONS FOR STAY OF EXECUTION dated 4th June, 1987 IT IS ORDERED:-

That the Default Judgment dated 30th day of April, 1986 and the Consent Order dated 18th day of February, 1987 having been set aside IT IS HEREBY ORDERED:-

1. That the Writ of Seizure and Sale be stayed.

2. That the goods seized by the Bailiff, Saint Andrew be returned to the Defendants.

3. That the costs incurred in respect of the Writ of Seizure and Sale be paid by the Plaintiff.

4. No Order as to costs on this Summons.

5. Leave to appeal in respect of this Summons is granted."

These are the Orders which are challenged by the appellant whose Grounds of Appeal complain that the Master failed to appreciate that the Default Judgment had been converted into a Consent Judgment as a consequence of which the nature of the applications was misconceived; that the Master erred in holding as sufficient in law for the setting aside and/or discharge of the Consent Judgment certain disclosures in the affidavit of Mr. Lawrence Philpotts-Brown; that the Master erred in ordering the Plaintiff to pay the costs thrown away and finally that it required a separate action to set aside a Consent Judgment.

In brief, the position of the appellant is that -

1. There was a proper Default Judgment.

2. This Default Judgment was by consent converted into a Consent Judgment.

3. That a Consent Judgment can only be set aside by a fresh action and not by proceedings taken as was done in the present case - Evans v. Bartlam (1937) A.C. 473.

4. Accordingly the proceedings are misconceived and the Master had no jurisdiction to set aside the Consent Judgment.

5. The Master was further in error in not ordering the respondents to pay the costs of and incidental to the setting aside.

The respondents' position is quite to the contrary. The appellant was not entitled to the judgment for $126,461.00 nor to any costs related thereto because the judgment was on the appellant's own pleading, irregular and consequently the respondents were entitled, as of right, to have it set aside. It follows, therefore, that there was not in fact any Consent Judgment requiring a fresh action to set it aside. The respondents are entitled to all costs incurred.

It is abundantly clear that the appellant is not going to reach very far without establishing the validity of the Default Judgment because if inherent therein is an uncured irregularity, where do we go from there? The position can be highlighted by raising an hypothetical question. Would the Default Judgment be valid if it had been entered for the sum of say $346,461.00? And if not, why? This figure only magnifies the status of the Default Judgment for $126,461.00. The hypothetical judgment would be unsustainable for the simple reason that there would be no evidence to sustain it and no one is entitled to a judgment in excess of what the evidence can support: Hughes v. Justin (1894) 1 Q.B. 667. It follows that the Writ endorsed with a claim for $126,461.00 which is in excess of the total of the details to justify the claim was and is defective. There has been no application to amend the Writ and inasmuch as the liquidated demand is endorsed on the Writ there would have to be service of the amended Writ.

Section 449 of the Judicature (Civil Procedure Code) states:

> "Every judgment shall be entered by the Registrar in the book to be kept for the purpose."

Does the entry of this Default Judgment alter its status? If a party could obtain a good judgment by entering a defective judgment the law would then be prostituted. In my opinion, "judgment" in the section can only mean a judgment recognised by law as valid a claim which cannot be maintained on behalf of this impugned judgment. Accordingly, it is my judgment that the respondents could ex debito justitiae have set that judgment aside with an order for costs in their favour. It was not the business of the respondents to correct the defect on the

appellant's Writ but the information supplied to the appellant by way of the Statement of Account (together with the amendment), if heeded, would have saved the appellant from further error. Indeed, there is nothing to show that any regard was paid to the Statement, for how could an affidavit of debt have been filed to ground the application for the Default Judgment? I have no idea of the workings in the Registry but speaking from experience, I would have thought that the affidavit of debt would have been checked for accuracy against the endorsed claim on the Writ which would also have to be checked. I could be wrong on this but to me it seems so necessary before sending the process of the Court further forward.

The respondents were unrelenting in their contention that they had paid all that was due to the appellant to the extent of paying more than was due and owing and so they sought opportunity to have their day in Court by their Summons dated January 5, 1987 for -

1. Extension of time to file a Defence and

2. to set aside the Default Judgment.

This Summons was supported by Neville Bryan's affidavit dated 19th December, 1986 which was served on the appellant's attorney on 30th January, 1987. That affidavit clearly set out the respondents' position. The appellant had been supplied with the Accountant's Statement for 9th April, 1986. Accordingly, there could be neither secret nor doubt as to what was the position of the respondents.

It was in those circumstances that the "Consent Judgment" was agreed to. The question is, did the respondents' attorney-at-law have any authority to give the consent which he purported to give? He had no explicit authorisation to do so and none could be implied from the brief which he held. Can he arrogate unto himself authority which is not in keeping with the interest of his clients?

It is recognised that counsel does not enjoy unfettered authority in the conduct of a case. In 3 Halsbury's Law of England 3rd Edition at para. 72 dealing with the Authority of Counsel it is stated thus:

"72. Conduct of Case:

If counsel is instructed, he ought to have control over the case and conduct it throughout. .....
.....

In civil actions, counsel's authority may be limited by the client, but only to a certain extent. .....
.....

74. Limitation of authority by client:

Questions of difficulty have arisen where the authority of counsel has been expressly limited by the client, and counsel has consented to an order or judgment in spite of the dissent of the client, or on terms differing from those which the client authorised. If the limitation of authority is communicated to the other side, consent by counsel outside the limits of his authority will be of no effect. See Scheyer v. Wontner (1890) 90 L.T.J. 116 C.A.; Strauss v. Francis (1866) L.R. 1 Q.B. 379."

How does this statement of the law apply in the instant case? It is certain that the appellant's attorney cannot plead ignorance of the respondents' contention and what he was at Court to achieve. Indeed, the Summons which occasioned the presence of the parties before the Master on February 18, 1987 was not even dealt with, except for the respondents' attorney giving his consent to the Default Judgment being varied to read $98,622.37. By his affidavit dated 28th November, 1987 he sought to explain his conduct thus:

"3. That from the Affidavit of Neville Bryan sworn on the 19th day of December, 1986 it erroneously appeared to me that the only claim which the Defendants (sic) had against the Defendants was the sum of $4,318.63 referred to in paragraph 7 of the said Affidavit.

4. That consequently I erroneously consented to the Judgment entered on the 30th day of April, 1986 being varied from the sum of $126,461.00 to $98,622.37."

It is obvious, therefore, that he had no authority, implied or express, to consent to the variation by which a credit of $4,318.63 was converted

into a debt of $98,622.37. I am still unable to solve the mystery of this last figure.

The Master, to the chagrin of Mr. Tenn, accepted Mr. Philpotts-Brown's explanation in setting aside the Default and Consent Judgment on December 7, 1987. No reasons were stated by the Master so there is but Mr. Tenn's word as to this.

Section 579(4) of the Civil Procedure Code states:

> "A judgment or order hereby required to be drawn up and entered shall not be acted on or enforced unless and until such judgment or order has been drawn up and entered."

As I have pointed out before, there has been no compliance with this section. It follows, therefore, that what purported to be a Consent Judgment was never perfected and accordingly, no valid execution could follow. But even if there had been compliance with the section such a judgment would, in my opinion, be bad for two reasons,namely, the irregular Default Judgment from which it resulted and the lack of authority on the part of the respondents' attorney to inflict such a judgment on them. It appears to me that under Or. 2 r 1 the defective Default Judgment could be set aside for the defects in the contents of the Writ and for reasons stated, the Consent Judgment didn't have a leg to stand on.

Now what about Mr. Tenn's complaint about the appellant having to pay costs? One question suffices to put the issue in focus - Who occasioned these Court appearances? The answer must, undoubtedly, be that it is the appellant. He paid no heed to the Accountant's Statement of Account calculated to avoid any untoward action on his part. Next, he issued a defective Writ which up to now remains unamended. He swore to an affidavit of debt which is false in a material particular. He perpetuated that error by the issue of the Writ of Seizure and Sale and in pursuance thereof proceeded to levy execution on the goods of the respondents who all along were endeavouring to restrain the appellant from such illegal acts.

In Hughes v. Justin (supra) where the plaintiff signed

judgment for more than was due him, Lord Esher, M.R. in delivering judgment in the defendant's appeal from the judgment of the Divisional Court upholding the plaintiff's contention that the Master was wrong in setting aside the judgment said at page 669:

> "The judgment for the debt and costs was wrong, and Anlaby v. Praetorius 20 Q.B.D. 764 shews that the defendant has a right ex debito justitiae to have it set aside. .....
> .....
>
> The plaintiff is only entitled to the costs up to signing judgment, and he cannot be entitled to the costs of signing an irregular judgment or to any subsequent costs."

Here, the appellant is in the position of one who has signed an irregular judgment who must accordingly suffer the consequences. Again in Bolt & Nut Co. (Tipton), Ltd. v. Rowlands, Nicholls & Co. Ltd. (1964) 1 All E.R. 137 at page 141 in delivering judgment in a case where the plaintiffs had entered judgment in default for an amount in excess of what was due and owing, Harman, L.J. remarked:

> ".... but Lord Esher's decision in Hughes v. Justin, shows quite clearly that, according to that great authority, a defendant who is entitled to have the writ and the judgment and all subsequent proceedings set aside is entitled to be indemnified, or, rather, to have his usual remedy in costs as well, and, therefore, that costs thrown away should be the defendants' and not the plaintiffs' costs, and that they ought to have the costs of the application to the registrar and to the judge and the costs of this appeal."

In the result, it is my judgment that the appeal should be dismissed, and the Master's Orders affirmed. The respondents should have the costs of the appeal.

MORGAN, J.A.:

I have seen the draft judgments of my learned brothers Campbell and Wright, JJA and I too agree that the appeal should be dismissed.