Privy Council Appeal No. 9 of 1992

(1) Robert D. Honiball and
(2) George A. Brown *Appellants*

v.

Christian Alele *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY 1993

Present at the hearing:-

LORD GRIFFITHS
LORD OLIVER OF AYLMERTON
LORD LOWRY
LORD SLYNN OF HADLEY
LORD WOOLF

*[Delivered by **Lord Oliver of Aylmerton**]*

The appellants are the registered proprietors under the Registration of Titles Act of Jamaica of land which includes a parcel (referred to as lot 96) which had previously been sold to the respondent by the former registered proprietor, Cardiff Hall Estates Limited. That company was, at all times material to these proceedings, in creditors' voluntary liquidation. In this appeal the appellants seek the reversal of an order made in the Court of Appeal of Jamaica (Carey, Downer and Gordon JJ.A.) on 14th March 1991 whereby the Registrar of Titles was directed to cancel the Certificate of Title to the land issued to the appellants and to issue a new certificate in the name of the respondent. The principal issue before their Lordships' Board is whether, on the evidence before it, the Court of Appeal was right in finding - or, indeed, was entitled to find - that the respondent had been deprived of the land comprised in lot 96 by the fraud of the appellants.

The circumstances in which the appellants came to be registered as proprietors of the land are indeed curious, to say the least. The first-named appellant, Mr. Honiball, is described as a company director. The second appellant, George Alfred Brown, is an Attorney-at-Law and is described in the appellants' case as "of some standing", an

expression which, it must be assumed, is intended to convey both respectability and experience. In February 1970 Cardiff Hall Estates (to which it will be convenient to refer hereafter as "the company") agreed to sell to a Mr. Tretzel a plot of land described as lot 309 for a sum of $15,000, of which a sum of $5,000 was paid to the company by way of deposit. That agreement was never completed and on 30th September 1974 Mr. Tretzel assigned to the appellants the benefit of the agreement against a payment of the amount of the deposit and an indemnity against the obligations under the agreement. The agreement remained uncompleted and on 20th November 1975 the company went into creditors' voluntary liquidation, a Mr. Mair being appointed liquidator. A statement of affairs as at 22nd May 1975 disclosed an estimated deficiency as regards creditors of $387,383. Assets not specifically pledged were stated to include 52 lots on phase I and 42 lots on phase II of a projected development, valued at nil unless the development project could be completed.

These lots, which were enumerated in schedules, did not include lot 96, the subject matter of this appeal. That was not surprising since lot 96 had been sold by the company to the respondent for a sum of $10,000 on 1st November 1968. That sale was completed by transfer to the respondent on 8th May 1971 and at the same a duplicate Certificate of Title was sent to the respondent's attorneys. The land, which comprises some 72,000 square feet, is said to be located in one of the prime tourist resorts in Jamaica. According to evidence which has not been challenged, the respondent (who resides in the United States) took possession after the sale, in the sense that he thereafter paid the property taxes due on the land. He did not, however, proceed to register his transfer, being minded to develop the land but unsure whether to carry out such development as an individual or through a company to be formed for the purpose. In the result, the land, although not included in the company's assets in the statement of affairs, remained registered in the company's name.

The next step in a very strange history was a demand by the appellants upon the company addressed to the company's registered office, dated 12th May 1977 and making time of the essence of the contract for sale to Mr. Tretzel of lot 309 and calling for specific performance. There is, it has to be said, a certain air of unreality about this. The company had been in liquidation for over eighteen months and it is clear from the letter that the appellants were then aware that a receiver had been appointed in May 1975. The letter appears to have been received by someone on behalf of a company called Lai Corporation Limited who forwarded it to Mair Russell & Partners, the liquidator's firm, at the firm's address in West Arcadia Avenue, Kingston. The appellant, Mr. Brown, was informed of this in August 1977 and certainly from that date onwards, if he was not already aware, he was aware of the identity of the liquidator and of the address at which he could be contacted.

On 14th November 1977 the appellants issued a writ against the company, which failed to mention that the company was in liquidation. It did not in fact claim specific performance as claimed in the letter before action, but claimed simply a return of the deposit of $5,000 together with interest from 5th February 1970. Service of the writ was effected by handing it to a Mr. West, an accountant, at the company's registered office although by this time the appellants and their attorneys were perfectly well aware of the liquidator's address in Kingston. In fact he knew nothing of the proceedings and emigrated to the United States a month later. No appearance having been entered, judgment against the company for a sum of $9,036. 64 and costs was entered on 29th March 1978. Not altogether surprisingly, the judgment remained unsatisfied and in the following year the appellants issued a summons for leave to execute by issuing a writ of sale. On 7th November 1979 an order was made for various parcels of the company's land to be sold by public auction at reserve prices to be fixed by the Registrar, liberty being given to the appellants to bid. The Master who made the order cannot have been aware that the company was in liquidation for the order provided for the purchase price, after payment of taxes, auctioneers' fees and expenses, to be paid in full to the appellants up to the amount of their judgment. The failure of the appellants and their attorneys to bring to the notice of the court that the defendant was an insolvent company in liquidation was thus calculated to produce the result that the appellants would be paid in full in priority to other unsecured creditors.

One of the parcels referred to in the order was lot 96, though how this came to be included has not been explained. According to Mr. Brown's evidence, it then transpired, on enquiry before the Registrar, that only one of the plots mentioned in the order was unencumbered. An order was accordingly made for the sale by auction of the one unencumbered plot (volume 1072 folio 645). Mr. Brown said that various attempts were made to sell this plot, (which had been professionally valued at that time at $8,000), but each was abortive because it failed to achieve the reserve, the amount of which is not in evidence. The appellants, it seems, then bid beyond the reserve price and the necessary documents to enable a sale to them to proceed were lodged with the Titles Office in November 1985. It was then discovered, according to Mr. Brown's evidence, that a third party had already acquired a title to the property, although how this could have taken place without the concurrence of the company through its liquidator remains unexplained.

The appellants then applied to the court by summons on 12th March 1986 for leave to issue a fresh writ of sale in respect of three other plots, one of which was lot 96. The summons purported to be served by registered post addressed to the liquidator at an address in West

Kirkland Heights which was not his address and with which he had no obvious connection, he having been resident in the United States for the past seven years. It was also served upon a company called Syndicated Developers Limited, in whose name a caution had been noted against each of the properties concerned. An order was made on 24th April 1986 for the properties to be sold by public auction or, if not disposed of after two auctions held two weeks apart, then by private treaty. An enquiry was held by the Registrar who, on 4th August 1987, certified the titles to the property and assessed the amount owing under the judgment at $14,128.43.

The next stage in the history is difficult to understand. Attorneys for Syndicated Developers Limited having indicated that they had no further interest in any of the properties concerned, there was no impediment to the sale taking place. On 10th November 1987, however, the appellants, through their attorneys, issued a summons for variation of the order of 24th April 1986 praying that, instead of a sale, the existing Certificates of Title should be cancelled and new certificates issued showing the appellants as proprietors of the land. The appellants' attorneys, and certainly Mr. Brown himself as an experienced attorney, must have known perfectly well that the court had no jurisdiction to make such an order by way of execution. Nevertheless that is what was sought and the summons was supported by two affidavits of Mr. Brown. In the first Mr. Brown submitted that, the auctions under the original order of November 1979 having failed to reach the reserve in respect of the plots then offered for sale, any auction now of the plots referred to in the order of 24th April 1986 would be futile. He therefore asked for the properties to be vested in the appellants as proprietors. The second affidavit, sworn on 7th December 1987, simply added that he "verily believed" that the lands concerned were worth no more than $10,000. On 10th December 1987 an order was made in the terms asked for in the summons. That in itself is astonishing and it has to be said that it is inconceivable that the court would have made an order of this nature had it not been for Mr. Brown's valuation - if, indeed, that is what it can be called. It was, in fact, not evidence of value at all but merely the unsupported statement of the belief of a party to the litigation who has made no claim to any expertise in valuation. It falls to be considered against the indisputable fact that the respondent had paid a sum of $10,000 for only one of the three plots concerned nearly twenty years before the date of the order and against undisputed evidence from the respondent of an expert appraisal which puts the value of lot 96 in July 1987 at not less than $180,000. What is, perhaps, even more extraordinary is that on 19th January 1988 the court was persuaded to issue a certificate to the Registrar of Titles certifying that the appellants had been "declared the purchasers" of the company's interest in the lands the subject of the order and that these lands had been "sold pursuant to" an order of the court. That in turn was followed by an application by the appellants to the Registrar

of Titles for a new certificate in relation to lot 96 which was supported by a further affidavit of Mr. Brown, deposing this time to his "information and belief" that the land concerned was valued at no more than $3,500. Acting upon these documents, the Registrar of Titles cancelled the company's Certificate of Title and registered the appellants as owners of the land.

The proceedings and the order made in relation to lot 96 not having been brought to the notice of the liquidator, it is not altogether surprising that the respondent in the United States knew nothing whatever about them. Nor is it surprising that, when he did hear about them in June 1988, he immediately instructed his attorneys to write to the appellants notifying them of his prior title under the completed contract for sale and requesting that the land be forthwith transferred to him. The reply was not encouraging and was to the effect that the appellants had obtained title "by virtue of due process of the law" and that such title was indefeasible. The respondent accordingly took steps to have the land valued by professional valuers and on 1st July 1989 served a notice of motion in the proceedings seeking, first of all, an order giving leave to the respondent to intervene as an interested party and to be joined as a defendant to the action and, secondly, for an order that the order of 10th December 1987, the cancellation of the company's Certificate of Title, the new certificate issued in the name of the appellants and the default judgment against the company of 29th March 1978 be set aside. The grounds to be relied on, on the hearing of the notice of motion, were stated to be found in the accompanying affidavits sworn by the respondent, the liquidator and a Mr. McConnell, a member of the respondent's attorneys who had previously acted for Syndicated Developers Limited.

In his affidavit in support of the motion the respondent roundly asserted that the order of 10th December 1987 and the subsequent cancellation of the registration had been based upon evidence given fraudulently and dishonestly that the land concerned and the other two parcels comprised in the order were together worth no more than $10,000. The affidavit went on to allege that the true value of lot 96 alone was between $180,000 and $250,000. Reliance was placed on two expert valuations, copies of which were exhibited. The first, by a firm of appraisers and property consultants, valued the land at $180,000 as at 27th July 1987. The second, made by another firm of real estate appraisers in September 1988, placed on the land a market value at that time of $250,000. It was also claimed that the proceedings resulting in the cancellation of the company's Certificate of Title were defective by reason of failure to serve the liquidator and that the order was made without jurisdiction and without invoking any of the proper procedures by way of obtaining valuations and offering the property for sale.

At first sight the raising of an issue of fraud by way of a motion in the action may appear to be an unusual, or even an eccentric, method of proceeding and their Lordships do not wish to say anything which might be thought to encourage it as a permissible substitute for the normal procedure for setting aside a judgment obtained by fraud by means of an action commenced by writ. A motion supported by affidavit evidence is not an ideal way of defining or trying issues of fraud and misrepresentation. In the instant case, however, there was a certain logic in the procedure adopted. The action in which the order had been made was one against the company and the company by its liquidator was a necessary party to any proceedings to set aside the order and cancel the Certificate of Title of the appellants, for the effect of that relief, if granted, would merely be to reinstate the title of the company. It would then be for the respondent to lodge his executed transfer and apply to the Registrar of Titles to register him as proprietor, an application which the company might wish to resist. There was, therefore, a certain logic in applying to intervene in the action in which the order under attack had been made and to which the company was already a party, although it must be extremely rare, if, indeed, it is possible at all, for a person to be given leave to intervene in an action in which the judgment has already been delivered and the order has been drawn up, except perhaps in cases where his presence may be necessary for accounts and enquiries to be taken or held in working out the order. The motion was, in truth, more in the nature of an originating motion. Nevertheless, the issue to be determined was fairly and squarely raised and the method of bringing it before the court was, in the final analysis, no more than a procedural irregularity. It did not invalidate the proceedings and in their Lordships' judgment the Court of Appeal of Jamaica was right not to attach critical importance to a purely procedural objection. As it was expressed by Carey J.A. in the course of his judgment:-

> "The practical effect of the appellant's procedure of a motion ... amounts to the same as if he had proceeded directly. This circuitous route which the appellant chose pales into insignificance and merges into the real issue which fell to be determined, namely, whether the appellant could prove fraud."

There was, however, a difficulty in the respondent's way in establishing his title to the relief claimed and it was a difficulty which existed whatever the procedure adopted. In order to establish a *locus standi* to intervene, he had necessarily to show that he had an interest in the land the subject of the order. Section 161(a) of the Registration of Titles Act of Jamaica provides that no action for the recovery of any land shall (except in a number of specific cases) be sustained against the person registered as proprietor under the provisions of the Act. It thus confers, save in the specific cases enumerated, an unassailable title on the registered proprietor. The only exception specified in the section which has any materiality

in the instant case is that in section 161(d) which refers to "the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud". The issue of fraud was thus directly before the court for decision not simply as one of a number of alternative grounds for setting aside an order made without jurisdiction but as a matter which had to be determined as an integral part of the decision as to whether the respondent had any interest in the land which would justify his application to be joined.

The respondent's motion was heard by Walker J. in the Supreme Court of Jamaica in October and December 1989. On 18th December 1989 the judge made an order dismissing the motion with costs. In the course of the judgment he expressed himself as unsatisfied on the evidence that Mr. Brown did not honestly believe that the values which he attributed to the land and upon which the order of the court was based were correct. He observed that it was notorious that land values in Jamaica had dropped between 1970 and 1980 and he deduced from this that, despite the recent valuations produced by the respondent, it would have been possible for Mr. Brown to entertain an honest belief that lot 96 was worth no more than $3,500. He therefore held that the respondent had failed to discharge the onus of proving fraud and he found it unnecessary to consider the issues raised in the respondent's affidavit regarding the procedural irregularities by which the order of the court had been obtained.

From this decision the respondent appealed to the Court of Appeal, which, on 14th March 1991, unanimously allowed the appeal, ordered that the Registrar of Titles cancel the Certificate of Title issued to the appellants and issue a new certificate and duplicate thereof in the name of the respondent and directed that the record be sent to the Director of Public Prosecutions for his consideration. In his judgment, Gordon J.A. concentrated upon what, in their Lordships' view, was the real nub of the case against the appellants, namely, the evidence filed on their behalf by Mr. Brown for the purpose of inducing the court to make its extraordinary order vesting the respondent's land in them. Section 61 of the Civil Procedure Code Law authorises the execution of a judgment by way of issue of a writ of sale and section 612 provides that all such sales shall be made by public auction, subject to a proviso that the court may authorise a sale to be made in some other manner. But, as Gordon J.A. pointed out, nothing but execution by way of a sale in some form is contemplated and whatever may have been envisaged by the order which the Master was induced to make (which did not even mention the satisfaction, either in whole or in part, of the judgment debt) it was not a sale in any accepted sense of the term. That the order was made without jurisdiction is something which certainly ought to have been known to Mr. Brown as an experienced attorney. But that he, through his legal

advisers, persuaded the court to make an order beyond its jurisdiction is not, in itself, evidence of fraud. What was important was the means adopted in the form of the inducement held out to the court to procure the making of the order, whether or not it was an order which could properly be made. As to this, Gordon J.A. gave, in his judgment, cogent reasons for an irresistible inference that Mr. Brown could not have believed the values to which he deposed for this purpose to be accurate.

Similar reasoning is to be found in the judgments of Carey and Downer JJ.A., but these judgments were also extremely critical of Mr. Brown on other grounds and referred to the curious procedural history already outlined as further evidence of an intention to acquire title to the land by fraud. The service by the appellants' attorneys of the original writ at the company's registered office and not on the liquidator, whose appointment was well known, was treated as an element to be taken into account as indicative of fraud although this was not relied on in the respondent's affidavit as more than a procedural irregularity. Again, it was said that Mr. Brown failed to disclose to the Registrar conducting the enquiry under the writ of sale that the company was in liquidation. Certainly this was so as regards the original order for sale in 1979 but as regards the 1987 order it was, perhaps, less than fair, since the Registrar's report on 4th August 1987 shows that he, certainly, was then aware that Mr. Mair was the liquidator of the company. Yet again, the purported service by the appellants' attorneys in 1986 to 1987 of notice of proceedings on the liquidator at a wrong address, whilst it requires some explaining - and no satisfactory explanation has been given - can hardly be said in itself to be evidence of personal fraud on the part of Mr. Brown. Finally, the Certificate of Sale of Land signed by the Registrar of the Supreme Court on 19th January 1988, although certifying quite untruthfully that the land had been "sold" to the appellants, was a document presumably prepared by the appellants' attorneys rather than by Mr. Brown himself. It was this document in particular which Carey J. considered constituted a criminal offence under section 178 of the Registration of Titles Act and which seems to have moved him to refer the record to the Director of Public Prosecutions.

Mr. Mahfood Q.C., who has appeared for the appellants, has criticised these passages in the judgments of the Court of Appeal as being less than fair to Mr. Brown since they were matters which were not relied upon by the respondent either in his affidavit or in his notice of appeal as evidence of fraud and were, in any event, irregularities perpetrated not by Mr. Brown personally but by *ex facie* responsible attorneys acting in what they no doubt conceived to be their clients' best interests. In their Lordships' view, there is a measure of justice in this criticism, for irregular, irresponsible or incompetent acts by an attorney, although no doubt attributable to their client as principal, are not necessarily pointers to deliberate fraud on his part, even

though he may himself be legally qualified and so ought to be aware both of what is done in his name and of its legal consequences or validity. There is, it has to be said, much that is unsatisfactory and even suspicious in the way in which the proceedings were conducted. Some of it is, no doubt, consistent with the fraudulent scheme which the majority of the Court of Appeal were evidently convinced had been formed by Mr. Brown from the inception. But consistency is not proof, nor had Mr. Brown been called on by evidence filed by the respondent to answer a case of fraud based upon such irregularities. Their Lordships do not, therefore, feel that they can endorse this part of the Court of Appeal's judgment nor do they think that the history of the litigation, albeit displaying many unsatisfactory features, by itself warranted the severe step of referring the record to the Director of Public Prosecutions for investigation. Indeed, if the appeal depended on this alone, their Lordships would be disposed to allow it.

Nevertheless there remains an undeniable core of hard fact in which Mr. Brown was undoubtedly personally involved and for which he is personally responsible. No allegation of any sort has been made against the first-named appellant, but if the transaction is vitiated by fraud on the part of Mr. Brown that must equally vitiate it as against his co-appellant. There is no escaping the facts (i) that it was Mr. Brown personally who swore the two affidavits of value to which reference has already been made; (ii) that those affidavits were sworn with the intention of persuading the court to make the order which the respondent has sought to have set aside; and (iii) that it was those affidavits which induced the Master to make the order, because it is inconceivable that she would have done so if she had not been persuaded that the lands concerned could not possibly, on a sale, realise as much as the judgment debt. If Mr. Brown did not honestly believe in the accuracy of the values to which he deposed then he was beyond doubt guilty of fraud. All three members of the Court of Appeal found it an inescapable inference from the evidence that Mr. Brown did not and could not have believed in the truth of the evidence which he gave. There were numerous factors which made that inference inevitable. There was, first of all, the fact that Mr. Brown, who was perfectly well aware from his previous experience in 1981, if from nothing else, of the proper procedure for obtaining an order for sale by the court and of the necessity for exhibiting a professional valuation, took it upon himself to swear an affidavit deposing to a virtually negligible value for the three lots concerned. Whether this was done on the advice of his attorneys is immaterial. The importance of it could not have escaped him. Whether the land was to be sold by auction or by private treaty, he must have known that a sale required to be supported by a proper professional valuation. The only possible purpose of this manoeuvre was to avoid that necessity and to induce the court to forego its ordinary procedure

and thus to confer on the appellants a benefit in priority to the other unsecured creditors of the company by vesting the land in them as beneficial owners. It was therefore doubly important that the court should have before it fair, reliable and convincing evidence to show that a professional valuation was unnecessary. Secondly, Mr. Brown must have been familiar with the land concerned, for it is inconceivable that he could have expressed any opinion as to its value without inspecting it and without any enquiry as to its situation, amenities or unimproved value. He knew that, under the order for sale made in 1979, plot 109 on the same development had been professionally valued at $8,000 in the market and at $6,000 on a forced sale. That was a plot of an area of some 22,000 square feet, a little under one-third of the area of lot 96. At the abortive auctions which had taken place his own evidence was that the bidding had gone to $5,000, which was less than the reserve, and that he and his co-appellant had then been prepared to buy it in at a price in excess of the reserve. The actual amount of the reserve does not appear from the evidence, although Mr. Mahfood surmised that it was $8,000, the amount of the valuation. It cannot well have been below the amount of the knock-down valuation of $6,000. That there was still at that time a market for the land was indeed demonstrated by the fact that, when the sale to the appellants came to be completed, it was found that a third party had purchased the land. Mr. Brown knew also of course that the earlier sale to Mr. Tretzel of a plot on the estate had been at a price of $15,000. Walker J. had, it is true, observed in the course of his judgment that land values had fallen between 1970 and 1980 and that this fact was notorious; but Mr. Brown's affidavit was sworn in 1986 and, as Gordon J.A. mentioned in his judgment in the Court of Appeal, it was equally notorious that prices rose astronomically between 1981 and 1990.

Mr. Brown must also have known, if he had made any enquiry at all - and it is inconceivable that he should have made none - that the unimproved value for tax purposes of lot 96 alone was $38,000. The Court of Appeal of Jamaica are no doubt familiar with local conditions and they took judicial notice of the fact, which they also stated to be notorious, that unimproved values were normally substantially below market values.

But even if these factors in combination can be described as no more than straws in the wind and even if the many and various procedural irregularities can be ascribed either to a series of (from the appellants' point of view) happy coincidences or to sustained incompetence or irresponsibility on the part of their attorneys, the uncontradicted evidence of the actual value of lot 96 was so startling that Mr. Brown's unsupported opinion, said to be based upon information from an unidentified source, simply could not be explained away as an honest but unfortunate error attributable to lack of expertise. Here was totally convincing evidence from two experts which was put forward to support a clear and unequivocal allegation of

fraud. It cried out for an answer. Yet, in his evidence in answer, Mr. Brown did not for a moment seek to controvert a single fact in the evidence against him but met it simply by relying upon the binding effect of an order for sale, the absence of any step on the part of the respondent to protect his title by a caveat and the indefeasibility of the appellants' title arising from the fact of registration. Mr. Mahfood has sought to counter the inevitable and only inference that could be drawn from this in two ways. First, he suggested that, because the respondent chose to advance his claim by way of motion and affidavit rather than by the more conventional procedure of a writ and statement of claim in which the allegation of fraud was particularised, it was an allegation made without sufficient particularity and was not therefore one which the appellants ought to have been called upon to contest by evidence. In their Lordships' view there is nothing in this purely procedural point. The fraudulent nature of the affidavit of value was clearly, distinctly and unequivocally alleged and particularised in the respondent's affidavit and whilst an action commenced by writ is certainly a more correct method of proceeding, it would be putting it much too high to say that it is the only possible vehicle for trying such an issue. Indeed, for what it is worth, the Registration of Titles Act itself, in sections 153 and 154, contemplates that an issue of fraud may fall to be determined informally on a summons to show cause in any case where the Registrar of Titles, by means which are not prescribed in the Act, is satisfied that the registration has been procured by fraud.

Secondly, Mr. Mahfood has submitted that since there were no affidavits from the valuers verifying their respective reports, the respondent's evidence as to this was mere hearsay which did not call for an answer. If that objection had been taken in Mr. Brown's affidavit, it might carry more weight. But it was not; and, in any event, the objection is misconceived. Whilst it is true that, in the end, the Court of Appeal treated the hearing as one which finally determined the rights of the parties, inasmuch as they directed the Registrar of Titles to issue a certificate in the name of the respondent, the proceedings in their inception and form were interlocutory proceedings aimed simply at setting aside an order which was alleged to have been wrongly obtained and restoring the parties to the position as it was in the action before the order was made. Affidavit evidence of information and belief, disclosing the source of the information, was therefore permissible. It was not, as their Lordships have already observed, an ideal method of supporting an allegation of fraud but, on any analysis, it required an answer and a full answer. To this day, Mr. Brown has never sought to verify the opinion to which he deposed, to justify his valuation or to tender any explanation at all of how his affidavit came to be sworn. Whatever the explanation for the other extraordinary and unsatisfactory features of the

proceedings, the valuation of no more than $3,500 was so ludicrously low as to be evidence of fraud and the Court of Appeal drew, as regards this evidence, the only inference that could reasonably be drawn.

Their Lordships will, accordingly, humbly advise Her Majesty that the appeal should be dismissed. The respondent has not been represented by counsel at the hearing before their Lordships' Board but is entitled to such costs as he has incurred in relation to the appeal to the Board.