

R.B. Manderson-Jones

Appellant

v.

**Societe Internationale De Telecommunications
Aeronautiques (SITA)**

Respondents

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE

13th July 1998,

Delivered the 27th July 1998

Present at the hearing:-

Lord Goff of Chieveley
Lord Lloyd of Berwick
Lord Hoffmann
Lord Hope of Craighead
Lord Clyde

[Delivered by Lord Hope of Craighead]

This is an appeal from a decision of the Court of Appeal of Jamaica dated 25th February 1997 upholding the respondents' preliminary objection to an appeal against the setting aside of a default judgment on the ground that the Court of Appeal had no jurisdiction to hear the appeal by virtue of section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act. When the appeal came before their Lordships' Board the appellant was represented by Mr. Goffe Q.C. The respondents had not lodged a written case and they were not represented. At the conclusion of Mr. Goffe's argument their Lordships indicated that they would humbly advise Her Majesty that the appeal should be allowed with costs, and that they would deliver their reasons later. Their Lordships now

set out the reasons for the decision which they have reached.

The case concerns a dispute between the appellant and the respondents as to the amount of the fees claimed by the appellant as remuneration for legal services which he had rendered to the respondents in his professional capacity. Having failed to arrive at a settlement, the appellant issued a specially endorsed writ of summons in which he claimed the sum of \$1,203,325.87 with interest on the principal sum at 20% per annum from the date of the writ until judgment. The respondents entered appearance on 24th September 1996. Further efforts were then made to arrive at an amicable settlement. But on 7th October 1996, no defence having been delivered in the meantime, the appellant returned to the court. He obtained judgment in default for the sum claimed by him with interest at 6% per annum on the principal sum from the date of the writ. On 8th November 1996 the respondents filed a summons for stay and to set aside the judgment. The summons was heard on 20th November 1996 by Cooke J., who set aside the judgment on the ground that it had not been regularly entered. He held that, as the appellant's claim for legal fees was not one for a definite sum of money, it was not one for a debt or liquidated demand within the meaning of section 245 of the Judicature (Civil Procedure Code) Law. He gave leave to the respondents to file and serve a defence within 14 days.

The appellant then appealed against Cooke J.'s judgment. In his Notice of Appeal he objected to the setting aside of the default judgment on various grounds, alleging that the judge was in error in holding that the judgment was irregular. But in the Orders which he sought he made it clear that he was content that the judgment should be set aside so long as this was done on conditions. What he sought was a condition requiring the respondents to pay into court within 30 days the sum of \$900,000 to await the outcome of the action, failing which he would be entitled to enter final judgment for the amount claimed in his writ. In the course of the hearing before their Lordships Mr. Goffe accepted that the amount of the fees claimed by the appellant was still in dispute and that the question whether the sum claimed

was or was not liquidated was not now in issue. He explained that the purpose of the appeal was to ensure that the judgment was set aside on terms which would provide security for the appellant's claim.

The only question which their Lordships had to consider in these circumstances was whether the Court of Appeal were well founded in their decision to uphold the preliminary objection to the appeal. The Court of Appeal reached this decision because they considered that the order which was made by Cooke J. was tantamount to granting the respondents unconditional leave to defend within the meaning of section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act. This provision states that no appeal shall lie from an order of a judge giving unconditional leave to defend an action. On the view which the Court of Appeal took of the nature of Cooke J.'s order setting aside the default judgment, no condition or terms could have been imposed on the respondents as to their defence because the disputed nature of the claim required that it be determined by a hearing on the merits of the dispute.

Their Lordships consider, with respect, that the Court of Appeal were in error in taking this view, for two reasons. The first reason is that the order which Cooke J. made was not in terms an order giving unconditional leave to defend an action. The issue which he had to decide was whether the default judgment should be set aside on the ground that it was not regularly entered. The question whether the respondents had a good defence to the claim was not before him. The question was whether the appellant's claim was only for a debt or a liquidated demand. The second reason is that section 11(1)(b) as to the granting of "unconditional leave to defend" applies only to a case where leave to defend has been given under section 83 of the consolidated Judicature (Civil Procedure Code) Law.

Section 83 deals, and deals only, with cases which have been brought before the court for summary judgment under the procedure which is set out in title 13 of the Code, which is derived from R.S.C. Ord. 14. It is a prerequisite in such cases that the plaintiff has stated his belief that there is no defence to the action except as to

the amount of the damages claimed, if any: see section 79(1). If this requirement is satisfied, the next question for the judge under section 79 is whether the defendant has satisfied him that he has a good defence to the action on the merits or discloses sufficient facts to entitle him to defend the action generally. The following sections set out the procedure to be followed thereafter in various circumstances, such as where part of the claim is not contested or where another defendant to the action has no defence. Section 83 deals with the giving of leave to defend where the judge is satisfied that a defendant has a good defence. It enables him, among other things, to give unconditional leave to defend.

The present case was not brought under title 13 of the Judicature (Civil Procedure Code) Law. The appellant did not ask for judgment to be given under section 79, and Cooke J. did not give unconditional leave to defend under section 83. What he did was to set aside a default judgment. It has always been open to a judge, when setting aside a default judgment, to require that any defence be filed within a given time limit and to impose such conditions as to the giving of security as he may consider to be appropriate. And it has always been open to a plaintiff who has obtained a default judgment which is set aside as irregular, if he seeks to uphold the judgment or to have conditions imposed on the defendant as part of the order, to take his case to appeal.

In their Lordships' opinion the Court of Appeal erred in upholding the preliminary objection. This appeal must be allowed and the case returned to the Court of Appeal so that the appellant may be heard on the merits of his appeal.