JUDGMENT 17, 1973

17

Appeal 3 OF 1972

TRINIDAD AND TOBAGO.

IN THE COURT OF APPEAL
ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD & TOBAGO
Civil Appeal No. 51 of 1968

Between

GERALD ECKEL — Appellant/Respondent

And

KIRPALANI'S LIMITED — Respondent/Petitioner.

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.....

RECORD OF PROCEEDINGS.

Documents to be included in the Record

NO.	DESCRIPTION OF DOCUMENT	DATE
1.	Record before the Court of Appeal	
2.	Judgement of the Court of Appeal	4.6.71
3.	Order of the Court of Appeal	4.6.71
4.	Order to leave to Appeal to Her Majesty in Council	
5.	Order for final leave to Appeal to Her Majesty in	

We agree that the above-mentioned documents should be included in the Record.

DATED this day of JULY, 1971.

Solicitors for the Appellant/ Respondent:

Solicitor for the Respondent/ Petitioner:

SETTLED.

Registrar, Supreme Court of Judicature.

Documents to be excluded from the Record.

NO.	DESCRIPTION OF DOCUMENT	DATE
1.	Petition for leave to appeal	24.6.71
2.	Affidavit in support	25.6.71
3.	Application for final leave to appeal	
4.	Affidavit in support	
5.	Certificate of Registrar, that the Records are in order	

We agree that the above-mentioned documents should be excluded from the Record.

DATED this day of July, 1971.

Solicitor for the Appellant/ Respondent:

Solicitor for the Respondent Petitioner:

S E T T L E D.

Registrar, Supreme Court of Judicature.

Documents to be Excluded from the Record

NO.	DESCRIPTION OF DOCUMENT	DATE
1.	Entry of Appearance	20.9.65
2.	Summonses in Chambers	4.10.65
3.	Affidavit of G. Eckel	4.10.65
4.	Affidavit of Ram Kirpalani	28.10.65
5.	Order of de la Bastide, J.	25.10.65
6.	Request to enter action on general list	10. 1.66
7.	Request to issue writs of Subpoena	

We agree that the above-mentioned documents should be excluded from the Record.

Dated this day of November, 1968.

Solicitors for the Plaintiff-Appellant: Solicitors for the Defendant/
Sgd. F.S.A. 16/12/68. Respondent

S E T T L E D

Registrar, Supreme Court of Judicature.

Note: The exhibits mentioned herein were not received. I was informed that they were with the Trial Judge.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 51 of 1968

Between

GERALD ECKEL — Plaintiff/Appellant

And

KIRPALANI'S LTD. — Defendant/Respondent

RECORD OF PROCEEDINGS

Documents to be included in the Record

No.	Description of Document	Date	Pages
1.	Writ of Summons with Statement of Claim endorsed thereon	16.9.65	1 – 3
2.	Defence	15.11.65	4 – 5
3.	Particulars of Defence	27.1.66	6 – 7
4.	Affidavit of Gerald Eckel	7.9.66	8 – 11
5.	Affidavit of Ram Kirpalani	7.10.66	12 – 14
6.	Judge's Notes of Evidence at Trial of Action		15 – 63
7.	Written Judgement of McMillan, J.	14.10.68	64 – 73
8.	Formal Order of Mc Millan, J.	14.10.68	74
9.	Notice of Appeal	25.10.68	75 – 76
10.	Supplementary Notice of Appeal		77
11.	Exhibits Listed hereunder viz:-		

Mark	Description of Exhibit	Party who put in Exhibit	Witness who proved Exhibit	Pages
A1 – A18	Bundle of Documents	Plaintiff	By consent	78 106
B	Deed No. 171/63	– do –	– do –	107 – 112
G.E.1	Letter	– do –	G. Eckel	113
G.E.2	Letter	– do –	– do –	114
G.E.3	Letter	– do –	– do –	115
G.E.4	Letter	– do –	– do –	116
G.E.5	Handwritten Document	– do –	– do –	117
G.E.6	Millers Offer	– do –	– do –	118
B.R.1	Registrar General's File	(To be produced if necessary)		119
G.E.7	London Fashion's Offer	Plaintiff		120 - 121
G.E.8	Letter	– do –		122
D.L.1	Accounts for London Fashion ending 31-12-64			123
L.K.1	Balance Sheets & Accounts 31-12-62	– do –	L. Katz	125/127

Mark	Description of Exhibit	Party who put in Exhibit	Witness who proved Exhibit	Pages
L.K.2	Cheque No. 336/C 42980	Defence	L. Katz	128
L.K.3	Cheque No. 336/073615	– do –	– do –	129
L.K.4	Cheque No. 336/C45843	– do –	– do –	130
R.K.1	Cheque No. 336/C45745	– do –	R. Kirpalani	131
R.K.2	Cheque No. 336/C45845	– do –	– do –	132
R.K.3	Cheque No. 336/C45844	– do –	– do –	133
R.K.4	Letter & Accounts	– do –	– do –	134 – 135
R.K.5	Receipt	– do –	– do –	136
R.K.6	Affidavit of Defendant	Plaintiff		137 – 138
C	Letter	By Consent		139
R.K.7	Large Daily Record Book	Defence	R. Kirpalani	140
R.K.8	Loose Ledger Sheet	– do –	– do –	141
R.K.9	Accounts Balance Sheet	– do –	– do –	142 – 148
R.K. 10	Small Daily Record Book	– do –	– do –	149
	Judgment of the Court of Appeal		4.6.71	150 – 162
	Order of the Court of Appeal		4.6.71	163
	Order to leave to Appeal to Her Majesty in Council			164 – 165
	Order for final leave to Appeal to Her Majesty in			167

We agree that the above-mentioned documents should be included in the Record.

Dated this day of November, 1968.

Solicitors for the Plaintiff-Appellant: Solicitors for the Defendant/Respondent SETTLED.

Registrar, Supreme Court of Judicature.

Fitzwilliam, Stone & Alcazar

TRINIDAD AND TOBAGO.

(Writ of Summons
Specially Indorsed)

IN THE HIGH COURT OF JUSTICE.

No. 1773 of 1965

BETWEEN

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of Trinidad and Tobago and of Her other Realms and Territories, Head of the Commonwealth. 10

TO: Kirpalani's Limited
75–77, Queen Street,
Port of Spain.

WE command you, that within eight days after the service of this Writ 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 GERALD ECKEL ———————————————————————————————— and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence. 20

WITNESS: The Honourable Mr. Justice Clement Phillips, Acting ———— Chief Justice of our said Court at Port of Spain, the said Island of Trinidad, this 16th day of September 1965.

N.B.– This Writ is to be served within Twelve Calendar months from the date thereof or, if renewed, within Six Calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registrar's Office at the Court House, in the City of Port of Spain

If the Defendant enter an appearance it must also deliver a defence within fourteen days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge, otherwise judgment may be entered against it without notice, unless it has in the meantime been served with a summons for judgment. 30

STATEMENT OF CLAIM

1. The Plaintiff is a real estate agent carrying on business at No. 11a Rockery Nook, Maraval.

2. At all material times the defendant company carried on inter alia the business of a departmental store at Frederick Street, Port of Spain, and prior to the 12th day of March, 1963, the defendant company's name was Kirpalani United Company Limited.

3. On the 19th March, 1964, the defendants by their director one Ram Kirpalani orally requested the plaintiff to negotiate the purchase from the owners of a certain business and premises on Frederick Street suitable for the expansion of the defendant's said business without disclosing the defendant's name and agreed to pay the plaintiff the usual realtor's commission in respect thereof.

4. The plaintiff, sometime in or around the month of June, 1964, informed the said Ram Kirpalani of the suitability of and was requested by him to make similar secret negotiations for the business and premises of the firm of "London Fashion" and No. 21, Frederick Street and No. 18, Chacon Street in the said City .

5. After conducting considerable negotiations terminating with a meeting on or about the 6th November, 1964, between the plaintiff and one Chiam Gottfried and Leo Katz of the said firm, the said Ram Kirpalani instructed the plaintiff on or about the 18th November, 1964, to prepare a letter to the said firm (to be delivered on the 23rd November, 1964) offering inter alia to purchase the said premises for $550,000.00 with stocks and fixtures therein at cost or market value, whichever was lower.

6. Upon the said 23rd November the said Ram Kirpalani instructed the plaintiff not to send the aforesaid written offer. However, later the said day the said Ram Kirpalani, on behalf of the defendants, agreed to purchase from the said firm the said premises for the sum of $570,000.000 but with the stocks and fixtures priced as above. In pursuance of the said agreement the defendants thereafter caused the said premises to be conveyed at their direction and have entered into possession of and now carry on their said business thereat.

7. The Plaintiff said that a realtor's usual commission is 2½ per cent. of the entire purchase price and the premises he is entitled to such percentage on the actual price paid in respect of the said purchase but the defendants have refused to pay the said or any realtor's commission. And the plaintiff claims damages.

(s) Fitzwilliam, Stone & Alcazar
Plaintiff Solicitors

And the sum of $75.60 (or such sum as may be allowed on taxation) for costs; and also, in case the Plaintiff obtain an order for substituted service the further sum of $50.40 (or such sum as may be allowed on taxation). If the amount claimed is paid to the Plaintiff or his Solicitors or Agents within four days from the service hereof, further proceedings will be stayed.

This/

This Writ was issued by Fitzwilliam, Stone & Alcazar, Solicitors whose address for servicw is No. 17 St. Vincent Street, Port of Spain, Trinidad Solicitor for the said Plaintiff who reside at 11a Rookery Nook, Maraval, Commission Agent.

/s/ Fitzwilliam, Stone & Alcazar
Plaintiff's Solicitors.

A true copy of this writ was served by me at 75-77 Queen Street, Port of Spain on the Defendant Kirpalani's Limited, personally, c/o Lal Shahani Secretary on Thursday the 16th day of September 1965.

Indorsed the 16th day of September 1965.

/s/ Frank Adolphus
Marshal's Assistant

(Address) High Court, Red House
Port of Spain.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965.

Between

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendant

DEFENCE

1. The defendant admits paragraphs 1 and 2 of the Statement-of-Claim.

2. As to paragraph 3 thereof the defendant says:

(a) that the unidentified business and premises referred to are the business and premises owned by and known as Miller's Stores Ltd. (hereinafter referred to as "Millers").

(b) that the request was never to negotiate the purchase of the business and premises of Millers, but for the building alone.

(c) that the oral agreement referred to was reduced to writing by the plaintiff in the form of a letter dated the 19th March 1964 and signed by the plaintiff and by the said Ram Kirpalani on behalf of the – defendant.

3. The defendant denies that the plaintiff ever informed the said Kirpalani of the suitability of the business and premises of London Fashion was alleged. On the 3rd day of July 1964, the said Kirpalani informed the plaintiff that he was already in negotiation with the owners of London Fashion through one Joseph Gabe, but that if the plaintiff could acquire the premises for the defendant by such secret negotiation at a price stipulated by the defendant on the terms and conditions as in the case of Millers, the plaintiff would be entitled to a realtor's commission. The defendant will refer at the trial to the letter of the 19th March 1964 aforesaid for its meaning and effect.

4. The defendant denies that it requested the plaintiff to acquire the business of London Fashion as alleged in paragraph 4 of the Statement of Claim. The plaintiff's authority was limited to the acquisition of the premises alone.

5. The defendant by a letter to the plaintiff dated the 6th October 1964 stipulated the price of $550,000.00 as the maximum price, but the plaintiff failed to acquire the said premises at this price or at all.

6. The defendant denies the allegations contained in paragraphs 5 and 6 of the Statement of Claim. On the plaintiff's failing to procure the premises of London Fashion at the price stipulated by the defendant, the said Kirpalani on the said 18th November 1964 informed the plaintiff that if he failed to acquire Millers by Saturday the 21st November 1964, he the said Kirpalani would on Sunday 22nd November 1964 conclude a contract for the purchase of London Fashion through the agency of the said Joseph Gabe.

7. The plaintiff having failed to acquire Millers as stipulated, the said Kirpalani on behalf of the defendant on Sunday 22nd November 1964 acquired the premises, the furniture and the stock of London Fashion at the respective prices of $510,000.00, $8,000.00 and $163,000.00.

8/

8. The defendant says that in the premises, the plaintiff is not entitled to the commission claimed or any part thereof.

9. Save as is hereinbefore expressly admitted, the defendant denies each and every allegation and/or implication of fact in the Statement of Claim contained as if the same were herein expressly set out and traversed seriatim.

L. A. Seemungal
Of Counsel.

Delivered this 15th day of November, 1965, pursuant to the Order of the Honourable Mr. Justice Karl de La Bastide made herein on the 25th day of October, 1965, by Mr. Edward Cyril Sirjoo of No. 2 Sackville Street, Port of Spain. Defendant's Solicitor.

/s/ E.C. Sirjoo
Defendant's Solicitor.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965.

Between
GERALD ECKEL Plaintiff,
And
KIRPALANI'S LIMITED Defendant.
* * * * * * * * * * * * *

PARTICULARS

Delivered in answer to letter of 16th December 1965 from Plaintiff's Solicitors requesting particulars.

The following are the particulars of the Defence:-

(A) Under Paragraph 3

(a) Of the informing of the plaintiff.

The plaintiff was orally informed on the 3rd July 1964 at the office of Ram Kirpalani at Port-of-Spain and the terms are as stated in the said paragraph.

(b) Of the negotiations with the owners of London Fashion.

The negotiations with the owners of London Fashion were oral, made on behalf of the defendant by the said Ram Kirpalani and on behalf of London Fashion by the said Joseph Gabe in Port of Spain and started late in the month of June 1964.

(c) Of the stipulated price.

The amount stipulated is as pleaded in paragraph 5 of the Statement-of-Claim.

(B) Under Paragraph 6.

(a) Of the informing of the plaintiff.

The informing of the plaintiff was oral and made at the office of the said Ram Kirpalani in Port of Spain aforesaid.

(b) Of the Agency of the said Gabe.

The defendant does not know of the particulars of the agency of the said Joseph Gabe with London Fashion or the date, nature or acts of agency performed by the said Gabe on behalf of London Fashion other than those pleaded in the defence. Insofar as the said Gabe took any part on behalf of the defendant, he was a friendly volunteer without any terms between them.

(C) Under Paragraph 7.

(a) Of the acquisition of the 22nd November 1964.

The aquisition of the 22nd November 1964 was oral, made by the said Ram Kirpalani on behalf of the defendant and by the said Joseph Gabe on behalf of London Fashion at 44 St. James Street, San Fernando for the prices stated in paragraph 7 of the Defence.

(b)/

(b) As to remuneration.

The said Ram Kirpalani received no remuneration for his services from the defendant nor did the said Joseph Gabe. As far as the defendant is aware, the said Joseph Gabe received no remuneration from London Fashion.

L.A. Seemungal
Of Counsel.

Delivered the twenty-seventh day of January, 1966, by Mr. Edward Cyril Sirjoo of No. 2 Sackville Street, Port of Spain. Solicitor for the Defendant.

/s/ Edward S. Sirjoo
Defendant's Solicitor.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965

Between

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendant

****

I, GERALD ECKEL, of No 11A Rookery Nook, Maraval, in the Ward of Diego Martin, in the Island of Trinidad, in this Territory, Real Estate Agent, make oath and say as follows:

1. I am the plaintiff herein.

2 I have in my possession or power the documents relating to the matter in question in this suit and set forth in the First and Second Parts of the First Schedule hereto.

3. I object to produce the documents set forth in the Second Part of the said First Schedule hereto on the grounds that the same are privileged and came into existence and were made after this litigation was in contemplation and in view of such litigation for the purposes of obtaining for and furnishing to my Solicitors herein evidence and information as to the evidence which will be obtained and otherwise for the use of my said Solicitors to enable them to conduct the claim in this action and otherwise to advise them herein.

4. I have had but have not now in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

5. The documents in the said Second Schedule were last in my possession or power as to those numbered 1 prior to their delivery by hand or post to the addressees thereof and as to those numbered 2 when the same were returned to the said Fitzpatrick, Graham & Co. in or about December, 1964.

6. According to the best of my knowledge, information and belief I have not now and never had in my possession, custody, or power or in the possession, custody or power of my Solicitors or agents, or in the possession, custody or power of any other person or persons on my behalf any deed, account book of account, voucher, receipt, letter memorandum, paper or writing or any copy of or extract from any such document whatever relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than ane except the documents set forth in the said First and Second Schedules hereto.

THE FIRST SCHEDULE

PART 1

No.	Description of Documents	Date
	ORIGINALS:	
1.	Letter from Millers to Plaintiff	22nd August, 1963
2.	Note from Millers to Plaintiff	27th May, 1964
3.	Letter from Kirpalani to Plaintiff	25th August, 1964
4.	Letter from Kirpalani to Plaintiff	6th October, 1964
5.	Letter from Messrs. Fitzpatrick, Graham & Co., to the Plaintiff and enclosures	28th October, 1964
6.	Memorandum of fixtures comprised in business of London Fashion	
7.	Handwritten memo from Kirpalani to Plaintiff outlining offer to Millers	
8.	Letter from D. Law to Plaintiff	5th November, 1964
9.	Letter (offer) not delivered from Plaintiff to London Fashion	23rd November, 1964
10.	Letter from Kirpalani's Ltd. to the Plaintiff	26th November, 1964
11.	Receipt for registered article	27th November, 1964
12.	Bundle of correspondence from the defendant and/or the defendant's Solicitor to my Solicitors tied up in a bundle and numbered 1 to 4	20th April to May 31, 1965

DUPLICATE/

No.	Description of Documents	Date
	DUPLICATES:	
13.	Letter from Plaintiff to Millers	1st August, 1963
14.	Letter from Plaintiff to Millers Stores Limited	17th September, 1963
15.	Agreement between Kirpalani and Plaintiff	19th March, 1964
16.	Offer of purchase from Ram M. Kirpalani Director of Kirpalani's Ltd., to Millers Stores Ltd., (original signed by G. Eckel) with covering letter from G. Eckel	
17.	Letter from the Plaintiff to Mr. George Black c/o James Miller & Co. Ltd.	16th May, 1964
18.	Letter from the Plaintiff to London Fashion Ltd.	21st May, 1964
19.	Letter from Plaintiff to Kirpalani United Ltd. (encl. plans)	12th August, 1964
20.	Letter from Plaintiff to Kirpalani (encl. plans)	10th. September, 1964
21.	Letter from Plaintiff to Millers Stores Ltd.	20th October, 1964
22.	Letter from Plaintiff to Kirpalani United Ltd.	22nd October, 1964
23.	Letter from Plaintiff to London Fashion	22nd October, 1964
24.	Letter from Plaintiff to Kirpalani (balance sheet enc.)	7th. November, 1964
25.	Offer from Plaintiff to Millers	18th November, 1964
26.	Letter from Plaintiff to Kirpalani United Ltd.	24th November, 1964
27.	Letter from Gerald Eckel to Millers Stores Ltd.	25th November, 1964
28.	Letter from Gerald Eckel to Kirpalani United Ltd.	27th November, 1964
29.	Bundle of correspondence from my Solicitors to the defendant and/or the defendant's Solicitor tied up in a bundle and numbered 1 to 3.	April 15 to May 17, 1965

PART II

The Plaintiff's Solicitor's Supreme Court File relating to this matter containing the statements from myself, my witnesses, instructions to Counsel and advices to Counsel, Counsel's opinion, draft affidavits, miscellaneous newspaper clippings and searches etcetera and correspondence between myself and my Solicitors.

THE SECOND SCHEDULE

1. Originals of the bundle of duplicate letters twelfthly described in the First Schedule hereto.

2. Enclosures to document described as 5 in First Schedule hereto.

Sworn to at No. 30a St. Vincent Street, Port of Spain, this 7th day of September, 1966.

/s/ Gerald Eckel

Before me

/s/ O.E. Morle
Commissioner of Affidavits.

Filed on behalf of the Plaintiff herein.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965

Between

GERALD ECKEL Plaintiff,

And

KIRPALANI'S LIMITED Defendant

****

I, RAM KIRPALANIof the City of Port-of-Spain, in the Island of Trinidad, Managing Director, make oath and say as follows:—

1. I am the Managing Director of the defendant and am duly authorised to make this affidavit as the facts deposed to herein are within my knowledge.

2. That I have in my possession or power the documents relating to the matters in question in these proceedings set forth in the Schedule hereto annexed and marked "X".

3. According to the best of my knowledge, information and belief, I have not now, and never in my possession, custody or power of any other person or my Solicitor, or in the possession, custody or power of any other person on my behalf any deed, account, or any copy of or extract from such document, or any other document whatsoever relating to the matters in question in these proceedings, or any of them other than and except the documents set forth in the said Schedule hereto.

Sworn at No. 18 Frederick Street,
Port-of-Spain, this 7th day
of October, 1966.

/s/ Ram M. Kirpalani

Before me,
/s/G. T. Collier
Commissioner of Affidavits.

Filed on behalf of the Defendant herein.

"X"

This is the schedule referred to as marked "X" in the affidavit of Ram Kirpalani, sworn to on the 7th day of October, 1966. Before me,

/s/ G.T. Collier
Commr. of Affdvts.

SCHEDULE

Item:	Date:	Nature of documents:
1.	19.3.64	Letter from Gerald A. Eckel, and signed by him to Messrs. Kirpalani United Co.
2.	19.3.64	Letter from Gerald A. Eckel to Messrs. Millers Stores Ltd.
3.	12.8.64	Letter from Gerald A. Eckel to Messrs. Kirpalani United Ltd.
4.	25.8.64	Copy of letter to Gerald Eckel signed by C. Maharaj for R.M. Kirpalani.
5.	10.9.64	Letter from Gerald A. Eckel to Kirpalani United Company Limited.
6.	6.10.64	Copy of letter written to Mr. G.A. Eckel and signed by C. Maharaj for R.M. Kirpalani.
7.	22.10.64	Letter to Messrs. Kirpalani United Co. Ltd. written by Gerald A. Eckel.
8.	7. 11.64	Letter to Messrs. Kirpalani United Co. Ltd. to the attention of Mr. Ram Kirpalani written by Gerald A. Eckel.
9.	24.11.64	Letter to Messrs. Kirpalani United Co., Ltd. written by Gerald A. Eckel.
10.	26.11.64	Copy of letter to Mr. Gerald Eckel signed by R.M. Kirpalani on behalf of Kirpalani's Ltd.
11.	27.11.64	Letter to Kirpalani United Co. Ltd. written by Gerald A. Eckel.
12.	15.4.65	Letter to Gerald Eckel through his Solicitors to Kirpalani's Limited.
13.	20.4.65	Copy of reply to gerald Eckel's solicitors re letter of 15.4.65.
14.	27.4.65	Letter to Kirpalani's Limited by Gerald Eckel through his Solicitors.
15.	3.5.65	Copy of reply to letter of 27.4.65 to Gerald Eckel through his Solicitors.

16./

16.	31.12.64	Copy of deed Conveyance from Chaim Gottfried to R. K. Limited, in respect of Nos. 21 Frederick and 18 Chacon Streets, Port-of-Spain.

TRINIDAD AND TOBAGO.

15

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965.

Between

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendants

****

NOTES OF EVIDENCE

T. Hosein, Q.C., E. Hamel-Wells, Q.C., and Z. Hosein for Plaintiff

A. Wharton, Q.C. and L. Seemungal for Defendants

T. Hosein, Q.C. opens: 10

Claim is for commission on oral agreement. [By consent Leo Katz substitutes for Max Katz in paragraph 5 of Statement of Claim].

Issue of oral agreement not disputed but alleged by Defendant to be reduced to writing and that Plaintiff's authority limited to acquisition of property only.

Price stipulated on 6th October, 1964. (See paragraph 5 of Defence).

[Wharton: Leave to amend by adding at end of paragraph 7 of Defence "$90,000 by way of goodwill."

Hosein: No objection. Leave granted.]

Hosein continuing:

Refers paragraphs 6 and 7 of Defence and particulars delivered. 20

Note in Defence Gabe agent of London Fashion but in particulars also acting in same respect for Defendant.

Q. 1. What was the agreement between Plaintiff and Defendant with respect to London Fashion? Does it relate to property only or also to stock-in-trade, goodwill, etc. of business?

Q.2. What price did Defendant Co. acquire property and business from London Fashion?

Q.3. Is Plaintiff entitled to commission in respect of what Defendant acquired from London Fashion, and what commission?

Evidence will show Plaintiff Real Estate Agent for over 15 years, and business concentrated in Port of Spain. In or about July 1963 Plaintiff had approached Miller's Stores (Mr. Black) on behalf of another client interested in acquiring Miller's Stores premises. In consequence, on 1st August, 1963, 30 Plaintiff wrote to Mr. Black who replied on 22nd August, 1963. Matter did not go further.

In March 1964 Plaintiff heard Defendant interested in any property on lower Frederick Street, Port-of-Spain, and went and interviewed Ram Kirpalani, Director of Defendant's Company, and pointed out Miller's Stores was a possibility and showed his letter from Millers dated 22nd August, 1963 – Refers letter.

Wharton objects:/

[Wharton objects: Not in evidence.
Court allows Plaintiff to refer to letter subject to formal proof.]
(Continuing):

Ram Kirpalani asked whether Millers wanted to sell as he did not understand reference to lease therein. Plaintiff said Millers interested in selling business but might sell building alone. Ram Kirpalani said he was prepared to make offer but not at any price as some people expected, and referred to attempts to purchase Lotus Building – not successful and a comparison then made with Millers.

Plaintiff said he would negotiate without disclosing purchaser. Question arose about Plaintiff's commission. Ram Kirpalani agreed Plaintiff should act without disclosing his name and to pay commission saying he preferred Plaintiff to negotiate for building only, if possible, and instructed Plaintiff to prepare offer to purchase building for $750,000. On 19th March, 1964, Plaintiff wrote to Defendant.

By Consent: Bundle of correspondence tendered and marked Exhibit "A to 24" respectively. "A. 1" is letter of 19th March, 1964.

On 19th March, 1964, Plaintiff forwarded original of "A.2" to Millers with attached offer from Defendant. (Note: name R.M. Kirpalani does not apper on original since negotiations were secret). " "A.2" delivered personally to Mr. Black. Subsequently, Plaintiff interviewed Mr. Fraser of Millers as Mr. Black was away in the United Kingdom.

About end of May 1964 Plaintiff saw Ram Kirpalani who suggested he should write Mr. Black in the United Kingdom as he (Ram Kirpalani) was going on world trip and wanted to finalize matters before departure. In consequence, Plaintiff wrote letter to Mr. Black, dated 16th May, 1964. (Not agreed). (Wharton objects to any reference to – not agreed.
Hosein: Only referring to facts of letter.)

On 27th May, 1964, Plaintiff received written reply to offer and showed it to Ram Kirpalani same day Discussion followed and Plaintiff suggested take over Miller's Stores and Ram Kirpalani called for Balance Sheets for past three (3) years.

Plaintiff and Ram Kirpalani again met in June. Ram Kirpalani said he wanted Plaintiff to pursue Millers' matter but if it came to nought he, Ram Kirpalani, wanted and alternative to Millers and asked Plaintiff if he knew of anything going for sale. Plaintiff said he heard that London Fashion might be interested in selling and had approached them for another client but that Mr. Katz could not give idea of price. Ram Kirpalani said he also heard London Fashion was likely to sell and asked Plaintiff to approach them on behalf of Defendant on same basis as with Millers. Plaintiff agreed. Ram Kirpalani informed Plaintiff one Mr. Maharaj would act in his absence as he was going away on leave and introduced Mr. Maharaj.

Note: At this stage Millers negotiations extended to whole business – not building alone.

Plaintiff then saw Katz and asked whether they were interested in selling and indicated cash or mortgage and enquired as to price asked from London Fashion.

Subsequently, Mr. Black returned and Plaintiff continued Millers negotiations.

Then Plaintiff wrote "A.3", dated 12th August, 1964, to Ram Kirpalani disclosing results. Reply dated 25th August, 1964, "A.4." This is first reference to London Fashion in correspondence. Plaintiff replied on 10th September, 1964 – "A. 5". Price of $750,000 for London Fashion obtained from Leo Katz. Ram Kirpalani replied on 6th October, 1964 – "A.6"

On 20th October, 1964, Plaintiff wrote Millers increasing offer as instructed and on 22nd October wrote London Fashion offering $550,000 on behalf of Defendant. This letter handed to Katz personally who requested Plaintiff to discuss with Gottfried of London Fashion as final decision with him. On 22nd October Plaintiff also sent "A. 7" to Defendant.

At end of October or early November Plaintiff was introduced to Gottfried who said offer was too low and he had rejected an offer of $600,000, but if Plaintiff's client would pay that sum and take over stock at cost he would agree. Plaintiff said client would not agree. List of fixtures and value supplied. Plaintiff then saw several people as to what stock would realise and wrote Defendant on 7th November, 1964 – "A. 8". – (No fixture attached).

Recess/

RECESS
RESUMPTION

Hosein Continuing:

"A. 8" handed to Mr. Maharaj as Ram Kirpalani still abroad. Mr. Maharaj said to Plaintiff London Fashion had approached him, Mr. Maharaj, offering building for sale and he, Maharaj, said he had suggested $500,000 but promised to keep the document until Ram Kirpalani returned.

When Ram Kirpalani returned Plaintiff went to his office and about mid-November 1964 about Millers. Ram Kirpalani said he had not yet taken decision and to return later. Plaintiff returned on 18th November and Ram Kirpalani was busy but spoke to him in doorway and instructed him to make offer to Millers along lines in handwritten document (not agreed document). Plaintiff read it and said there was no provision for severance pay for Miller's Staff. Ram Kirpalani said if any proposal for severance pay reasonable he would consider it.

Plaintiff asked if Ram Kirpalani would increase offer for building alone. Ram Kirpalani said he would go up $25,000— no more — said that Plaintiff should request very early reply and if no answer by 23rd November (a Monday), he, Plaintiff, should deliver offer to London Fashion along similar lines as Millers. Ram Kirpalani said Plaintiff should offer $550,000 for London Fashion Building and offer should include proposal for payment of stock to be deferred for (6) months at 4% — that Kit Kat Restaurant — one of tenants — should not be able to control tenancy i.e. not subject to rent control, and London Fashion to be responsible for discharging own staff.

Alternatively, Plaintiff instructed to offer $750,000 for building and stock provided that landed cost of market value (whichever lower) was not less than $200,000, and fixtures were of value shown on list of fixtures sent with "A.8" — actual working, and preparation of latter left to Plaintiff. Plaintiff asked why Ram Kirpalani did not offer $700,000 as Plaintiff suggested. Ram Kirpalani said he did not think London Fashion would sell for that sum and he wanted matter settled early and instructed Plaintiff to draft and deliver both offers (Millers and London Fashion) — Millers' offer to be delivered as soon as possible and London Fashion's on 23rd November, 1964, if nothing materialised.

Plaintiff drafted offers and delivered Millers on 18th November, to Mr. Black and prepared London Fashion's offer but never delivered.

Between 7th November and 18th November Plaintiff had calls from Katz and on morning of 23rd November, not hearing from Mr. Black he telephoned him. Mr. Black said he was awaiting information from Tobago Branch and would let Plaintiff know position not later than Wednesday 25th. Plaintiff telephoned Ram Kirpalani about 9.30 a.m. on 23rd and Ram Kirpalani instructed him to withold London Fashion's offer until he heard from Mr. Black and informed Plaintiff that London Fashion would call for appointment to see him (Ram Kirpalani) but were still unaware Plaintiff was acting for Defendant, that he (Ram Kirpalani) would listen to what they had to say and let Plaintiff know between 1.00 and 2.00 p.m.

Not hearing by that time Plaintiff called Ram Kirpalani at 4.00 p.m. and was told London Fashion were seeing Ram Kirpalani at 5.00 p.m. and was asked to come in the following day i.e. 24th.

Plaintiff saw Ram Kirpalani on 24th and Ram Kirpalani said he was hoping to come to terms with London Fashion for $570, 000 for building premises, expenses for stock, etc. and was hoping to get their formal acceptance. Plaintiff asked what made him decide against waiting for Mr. Black's reply and Ram Kirpalani said he was doubtful Miller's matter would be finalised for some time and because of indecision as to price severance pay, etc. Plaintiff asked if he should withdraw Miller's offer but Kirpalani said wait until London Fashion's matter decided. Plaintiff asked why he, Ram Kirpalani, had not stuck to $500,000 which Maharaj had mentioned and let Plaintiff submit offer he had already prepared. Ram Kirpalani said he felt, as did his Bankers, that he had done extremely well. Ram Kirpalani said he would give him $1,000 for efforts on behalf of London Fashion's transaction.

Plaintiff asked what he meant by that his commission equal 2½%. Ram Kirpalani said as far as he was concerned Plaintiff was not acting for him and that buyer was never expected to pay commission, but he felt some token of appreciation warranted. Plaintiff said there was signed agreement which indicated terms in which he was acting. Ram Kirpalani said if so, he had signed without reading. Plaintiff said he would send copy and left.

On 24th November, about 3.00p.m. Mr. Black phoned Plaintiff and spoke to him whereupon Plaintiff called Ram Kirpalani. Ram Kirpalani said he was no longer interested in Miller's offer. Plaintiff phoned Mr. Black and followed up with letter of 25th November withdrawing offer made on Defendant's behalf.

On 24th November Plaintiff wrote to Ram Kirpalani – "A. 9". 10

Reply dated 26th November – "A. 10".

Plaintiff wrote "A. 11" on 27th November, followed by Solicitor's letter – "A. 12".

"A. 13" is Ram Kirpalani's reply thereto, to which Solicitors replied – "A. 14".

Ram Kirpalani's reply – "A. 15".

"A. 16" is reminder from Plaintiff's Solicitor.

"A. 17" is letter from Defendant's Solicitor.

Facts in "A. 9" not disputed though Solicitor now acting for Defendant. But on 31st May, 1965, Solicitors sent "A. 18".

According to Defence purchase price for premises was $570,000 but certified copy of Deed 171/65 – By Consent tendered and marked Exhibit "B" – shows $510,000. Evidence will show 20 additional price of $60,000 not shown because there was conference with Katz Brothers, at which Ram Kirpalani present, where Katz brothers were expecting $30,000 each and $510,000 put on for stamp duty purposes, Ram Kirpalani paying $30,000 to each brother. Evidence to show also figure for actual stock also $183,819,04 and not $163,000 as on deed.

Submit Plaintiff entitled to commission even though Ram Kirpalani interviewed and concluded transaction with London Fashion and not necessarily for Plaintiff personally to do so.

Green v. 1863 32 L.J.C.P. 261 (8 L.T. 503)

Burchell v. Gowrie etc. Ltd. 1910 A.C. 614

Price Davis & Co. v. Smith 1929 141 L.T. 490

Bows Emporium v. Brett 1927 44 T.L.R. 194. 30

There will also be evidence to show that on morning of 23rd November another agent, C. Mendez, spoke to Ram Kirpalani and mentioned London Fashion and Ram Kirpalani said he was dealing with Plaintiff and had instructed him to make offer on his behalf.

(THE

GERALD ANTHONY ECKEL On Oath States:

Live Rookery Nook, Maraval, and have been in Real Estate Business for approximately 15 years. Have dealt with commercial and residential properties mainly in Port-of-Spain. Know Miller's Stores Limited at 6, Frederick Street, Port-of-Spain — Lower Frederick Street area, the best retail area in Port-of-Spain for Department Stores. I know of no other better shopping area in Port-of-Spain. Millers is general department store. Directors are Messrs. George Black, Ronald Fraser and a Mr.

In 1963 I approached Millers on behalf of another client who wanted to purchase building. I spoke to Mr. Black. Negotiations fell through. I had correspondence with respect to these negotiations. I had first dealt with Defendant Co. in March 1964. Originally it was Kirpalani United Ltd. but was changed to present name. I dealt with Mr. Ram Kirpalani whom I understood to be Managing Director. I visited his office at Kirpalani United Ltd. in lower Frederick Street and spoke with him in outer office. I went to offer him Miller's Stores Ltd. I told him I understood he was on market for property on lower Frederick Street and he said this was a possibility.

I showed him copy of reply I had from Millers in August 1963. This is document, dated 22nd August, 1963. Tendered and marked "G.E. 1". No objection. (writing on face of document only. He asked whether I knew if they wanted to sell, at what price, as he did not understand what was meant by "lease" referred to in document. I said I thought it meant that if they (Millers') were willing to lease for 25 years they would sell their business as going concern or alternatively that they may be persuaded to sell building alone outright.

I then asked if he was prepared to make offer. He said people thought that Kirpalani's would pay any price and this was not so. He said he had been recently involved in negotiations for possible purchase of Lotus Building, then corner Queen and Henry Streets, but was not successful. I invited him to compare size of Lotus Building with Miller's building. He compared his notes and from rough measurements I had taken of Millers we concluded both properties (i.e. building as opposed to land) were about same size — approximately 10,000 sq. ft.

I proposed then to Mr. Ram Kirpalani that I could undertake to negotiate purchase of Miller's property on understanding that his name be not made known provided he agreed to pay my commission. He asked what commission would be and I said my letter to Millers, of August 1st., a copy of which was then attached to "G.E. 1" stated commission was to be 2½%. Can't recal whether I actually showed Ram Kirpalani but he agreed that I should act on his behalf keeping his name out of negotiations and he would pay my commission of 2½%. He said he considered 2½% reasonable. He said he would prefer if it were possible to negotiate for building alone and instructed me to prepare offer for $750,000, which I did. "A. 1" is letter. I prepared same day of conversation for Mr. Ram Kirpalani to sign. Insert part about Kirpalani signing duplicate of any offer I made of my own accort. I also inserted about paying realtors commission. It was already mentioned in correspondence I had with Millers.

Miller's store is large concern. Real Estate Commission is 2½% minimum but parties may agree more.

[Wharton: I accept 2½% is usual commission but deny that there was any agreement to pay in the circumstances alleged]

"A. 2" is letter and copy of offer to Millers. Same day Mr. Ram Kirpalani signed copy I was to retain but I signed and sent original to Millers. I delivered it to Mr. Black personally same day. Subsequently, I returned to see Mr. Black but did not and saw a Mr. Fraser. I got no immediate answer from Mr. Fraser. I spoke to Mr. Ram Kirpalani and told him about failure to get reply and he asked me to write to Mr. Black in United Kingdom as he (Ram Kirpalani) was going on world trip and wanted matter finalised. This conversation was about mid-May. I wrote to Mr. Black on May 16, 1964 and got reply from Millers, dated 27th May, 1964. It was given to me by Mr. Fraser same day at his office. Same day I went to Mr. Ram Kirpalani and showed him. This is document — Tendered and marked

"G.E. 2"/

"G.E. 2" – no objection. I suggested to him to look over Millers as going concern. He said if I got balance sheets for last 3 years he would give it consideration. I went and spoke to Mr. Fraser and obtained balance sheets eventually and gave them to Mr. Ram Kirpalani.

Sometime in July after Mr. Black returned I spoke to him. Mr. Ram Kirpalani was on world trip, but I had discussion with him before he left. He wanted me to continue negotiations with Miller's in his absence, but thought that in event nothing materialised we should have alternative.

I had not up to then discussed any alternative with him. I had none then. I mentioned I had made approach to London Fashion for another client but that nothing had materialised. I was given no indication by London Fashion that they wished to sell or not and so informed Mr. Ram Kirpalani. I told him Mr. Katz would not confirm whether they would sell nor could I get any indication what price he was asking if they decided to sell.

Mr. Ram Kirpalani said he had also heard London Fashion was interested in selling and asked me to approach them on his behalf but that I should do so on same terms we had agreed with Millers.

I agreed to that and I also told him I would look out for other possibilities. He said one Mr. Maharaj would keep him informed of developments. I had not known Mr. Maharaj before but I was then introduced to him. This conversation was shortly before Mr. Ram Kirpalani left on world trip. It was in June. I don't know when he actually went on trip. All he said was he was leaving shortly. London Fashion was firm on 22 Frederick Street – a man's outfitting firm. It ran from Frederick Street through to Chacon Street. It was fair size business. I always dealt with Mr. Leo Katz as one of owners. I knew he had a brother but was never introduced.

Adjourned to 3rd November, 1967.

Continuing 3rd November, 1967

Appearances as before:

Gerald Eckel on oath continuing:

After conversation with Ram Kirpalani immediately prior to his world trip I visited Mr. Leo Katz. This was same week of the conversation. I would say – can't recall exactly.

I told Mr. Katz I approached him on behalf of another client and whether he had come to any decision re the sale of his property. He said that they had not but asked me what terms or payment would be. I said he should quote net figure to himself and there would be no mortgage involved. He said if and when they decided to sell he would contact me.

A. 3 is dated 12th August, 1964 and it refers to floor plan of Miller's building. I got plan from Mr. Black a matter of days before writing A. 3. He had returned from England by then and I had spoken to him before writing A. 3. A. 3 represented terms of that conversation.

Re Para. beginning "However" I had been discussing purchase of business with Mr. Black and I had asked for balance sheets so that Ram Kirpalani could make bid for Miller's business. A. 4 is reply from Mr. Ram Kirpalani. I had seen Katz before I got reply. He had not told me anything about prices. A. 5 is next letter from me to Defendants. I refer to having just been given price for London Fashion in penultimate para. on page 2, and enclosing plans. I prepared plans myself. I have copy (rough sketch). By consent attached to A. 5.

I took measurements myself a few days before date of A. 5 – 10th September, 1964. Price of $750,000 for London Fashion referred to in A. 5 (letter) I got from Katz a few days before. He told me that they had arrived at that price for building. I suggested $500,000 which was rejected and he referred to prices other vendors had received. Vendors were Tip Top Tailors comparable building in same area also the Fogarty Building next to the Canadian Bank of Commerce. They are referred to in letter A. 5. It was then I made measurements for plan of London Fashion.

In letter I referred to counter offer. In A. 6 reply to A. 5 – I was authorized to offer more and did so in writing on 20th October, 1964. (Letter dated 20th September, 1964 from Plaintiff to Miller's – Tendered Admitted and Marked G.E. 3 no objection).

A. 6 also authorised and offer for London Fashion up to $550,000 in same way as done with Miller's. In consequence I wrote letter dated 22nd October, 1964, to London Fashion. I have copy of

letter/

Letter (By consent Tendered Admitted and Marked G.E.4.) I took it myself to Leo Katz about 23rd October, 1964. He read letter and said Mr. Gottfried would be coming to Trinidad shortly and that I should leave letter with him Leo Katz as Mr. Gottfried would have final say. I did not know Mr. Gottfried before and had never heard his name mentioned before in connection with London Fashion or at all. From way Katz spoke I thought Gottfried was partner.

I asked Katz about tenancy of London Fashion as requested by Ram Kirpalani in letter. He Katz gave me particulars of tenancies.

In A.7 I supplied information to Defendant (See 2nd para.)

About end of month (October) I got telephone call from Mr. Leo Katz and I went to see him. Mr. Gottfried was also present and I was introduced.

Mr. Gottfried asked on whose behalf I was negotiating. I said I could not disclose that. He said it was important that he knew type of business my client was involved in. I asked why it was important. He said he would prefer a negotiation that would include his stocks, which I think he then mentioned was $200,000, and his fixtures, and that if my client was involved in a similar type business he would have to stock the building in any case. I said I did not think my client would be interested in the stock and fixtures. He (Gottfried) said he had already turned down offer of $600,000 for building, because the people were not interested in taking the stock. I said in that case we could not conclude transaction as my client was not prepared to pay more than $550,000. He said even though he considered $600,000 a very low figure if I could get my client to match $600,000 and take stocks and fixtures at cost he would agree. I again told him I did not think my client would be interested in stock and fixtures but in any event the figure would not be $600,000 as he (Gottfried) would have had to pay the agent involved in the offer of $600,000 previously made a commission of 5%, meaning thereby he would not get $600,000 net. Gottfried said he was not dealing with any agent and offer arose from direct negotiations. He then spoke of value of his stocks and explained he had done buying and was located at the source of supply — I think he mentioned U.S. — and that this enabled him to buy at good prices.

I had also some discussion with Katz about stock. He said what Gottfried had said was true and that if anybody bought on terms indicated by Gottfried that person would be getting a bargain. I told him he did not seem to appreciate that my client may not want to carry on the same sort of lines as London Fashion — in which case the purchaser would have had to have a closing down sale to get rid of stock and this would result in purchaser taking loss on stock. Katz said that even in that event he could guarantee that purchaser would make profit of at least 20 percent in stock. I said if that was the case why they did not take $600,000 that had been offered and sell out stock themselves. Katz said that if they decided to sell they would want to sell everything and clear out. He went on to say they would give terms on the payment of stock at low interest rate.

At that meeting Katz gave me list of fixtures.

A.8 was written and sent by me to Defendant as result of that meeting and attached list of fixtures thereto.

A.8 also referred to Miller's Stores. I had by then put an offer of $850,000 by G.E. 3 on behalf of Defendants and so stated in letter A.8. I encolsed Balance Sheets which I had obtained from Miller's with A.8. I eventually got them back and eventualy returned them to Miller's.

I delivered A. 8 to Mr. Maharaj of Kirpalani's personally.

He told me Mr. Ram Kirpalani was expected back shortly and that London Fashion had approached him offering their building for sale and that he had told them they (Defendants) may be interested at around $500,000.

Subsequently I heard Ram Kirpalani had returned. He invited me to visit him on 16th or 17th November. I actually visited him at his office on 18th — I saw him in doorway. He said he had come to a conclusion and gave me hand written document instructing me to make offer for Miller's Stores along lines indicated in the document or memo. This is memo. (Tendered admitted and marked G.E. 5 no objection). I read it and told him he had made no provision for severance pay. He said he would consider that if it was reasonable and if they could tell him what the amount was.

I asked whether he would consider increasing offer for building alone. He said I could go up by $25,000 and more. He also instructed me to prepare offer to London Fashion in sum of $550,000 for building along similar lines to what he had prepared for miller's, plus stocks. He said offer should

include/

include that Kit Kat Restaurant on Chacon Street side should not be rent controlled. I understood him to me he wanted vacant possession. Offer should also make London Fashion responsible for getting rid of their staff and payment for stock deferred for 6 months at 4% interest.

He said to make alternative offer to London Fashion of $750,000 on understanding that stock was valued at $200,000, fixtures according to the list of A.5 and that if when stock was taken valued of stock, (the invoice of market value) was less he would deduct the difference from the price.

I asked why he did not offer the $700,000 I had recommended. He said he did not think they would sell for that price and he wanted to get something finalised as soon as possible. He told me to prepare the offers and submit the one to Miller's as soon as possible and if nothing was finalised with Miller's before 23rd November, 1964 I should then submit offer to London Fashion.

I prepared the offers. This is the original Miller's offer (Tendered Admitted and Marked G.E.6. no objections) I delivered it on 18th November, 1964 to Mr. Black at his home.

On morning of 23rd November, 1964 at approximately 8.00 a.m. I called Mr. Black and told him I had no reply and if he had any news for me. He said he was awaiting information from his Tobago Branch and he would let me have an answer by 25th — I told Ram Kirpalani around 9.00 on 23rd November, 1964 what Mr. Black had told me and he said I should withold London Fashion's offer until we had Mr. Black's reply. He also said that London Fashion had called and asked for an appointment and that they were still unaware I was acting on his behalf. He also mentioned that this approach by London Fashion was further to the approach London Fashion had made previously.

He said he had given appointment for 11.00 a.m. and would listen to their proposition and let me know result of conversation around 2.00 p.m. that day.

Between 7th and 18th November Mr. Katz had called me quite a few times to ascertain whether I had any furhter offer for him. I kept stalling him saying my client was giving consideration. On 23rd November, 1964 after speaking with Ram Kirpalani I had a call from Mr. Charles Mendez around 11.00 a.m.

Question:

What did Mr. Mendez say?

Wharton objects hearsay.

Wells: Phipson 10th Ed. p. 273 para. 631.

We propose to call Mr. Mendez as witness.

Objection sustained.

Mr. Ram Kirpalani did not call me back around 2.00 p.m. and I called him around 4.00 p.m. and he said London Fashion were coming to see him around 5.00 p.m. and I should visit him next morning 24th November, 1964. On that day 24th about 100.00 a.m. I visited him and he said he had come to terms with London Fashion at price of $570,000 for the building plus stocks at cost. I asked him what made him decide against waiting on reply from Mr. Black. He replied he did not think he would be able to come to quick conclusion with Miller's as there were several outstanding matters to be decided e.g. price, severance pay stock etc.

I told him I would withdraw the offer I had made to Miller's. He instructed me not to do so saying he was still waiting on formal approval from London Fashion.

I asked Ram Kirpalani why he did not stick to original offer of $500,000 for London Fashion and allow me to put in offer with the two alternatives I had prepared previously. He said he had done extremely well not only in his opinion but that of his banker as well. He then offered me $1000.00 as my Commission for efforts in the London Fashion negotiations. I asked what he meant by that as my fees were to be calculated at 2½ per cent. He said in so far as he was concerned I was not acting for him in these negotiations and that in any event a buyer is never expected to pay the commission. I told him he had a signed agreement which outlined the terms that I was supposed to be negotiating on his behalf. He said if he signed any agreement he had done so without reading it and he asked me to produce it. I said I would do so and left. (By consent witness stood down to take evidence of:-)

Boodram Ramdial on oath:

Clerk attached Registrar-General's and deputed to produce Register of Business Names and in particular anything relating to London Fashion. Register of Business Names for 1938 Book 82 Fol.

363 relating to London Fashion. Partners listed are Chaim Gottfried and Adolph Katz and Max Katz. Principal place of business is stated at 21 Frederick Street, Port of Spain.

Cross-examined by Wharton:

There were 4 partners before. On first registration on the 7th September, 1938 there were 3 persons as partners. November entry Gottfried was only partner and owner then. I say so because of entry of 10th August, 1943. When there is a change we record changes of names on top. We enter names on top but not dates of change. The entry for 10th August 1943 would show date of change on that date. Max and Adolph Katz and Solomon Gross also admitted as partners.

According to record present parties were Gottfried, Max and Adolphus Katz.

Has not yet been struck off.

Re-examined by Hosein:

According to Register from 1958 partners were Adolph Katz, Max Katz and Chaim Gottfried. No changes since. By constant Registrar Tendered Admitted and Marked Ex. B.R. 1 and released in custody of Registrar-General.

Gerald Eckel recalled for further cross-examination-in-chief:

I now produce offer I prepared for London Fashion. I prepared on 18th but not dated it 23rd November, 1964.

I never delivered it. Tendered Admitted and Marked G.E. 7 no objections.

On morning of 24th November, 1967 after I want to see Mr. Ram Kirpalani, Mr. Black called me around 3.00 p.m. and told me they had come to certain conclusions as to price etc.

I told him I'll pass the information on to my client and phoned Ram Kirpalani and told him Mr. Black had called me and given me a price. Ram Kirpalani said he was no longer interested in Miller's and to withdraw the offer. Ram Kirpalani was rather abrupt I found. I asked what he was annoyed about; he said he was not annoyed. I said I would withdraw offer and put phone down. I phoned Mr. Black same day and withdraw offer and followed it up by letter next day. This letter dated 25.11.64 Tendered admitted and marked G.E.8.

A.9. is my letter to Defendant dated 24th November, 1964. I wrote it on the same evening after Ram Kirpalani told me to withdraw offer. Can't recall whether it was sent on 24th or 25th but it was by hand – by messenger. In last paragraph I asked back for documents relating to Miller's which I subsequently got.

After 24th I had no personal meeting with Ram Kirpalani. In A. 10 dated 26th November, 1964 reference is made to Mr. Joseph Gabe. I don't know who he is or was. I have heard of a Mr. Joseph Gabe who had some kind of shop in San Fernando. Before A. 10 Gabe's name had never been mentioned to me by Ram Kirpalani.

I have not been paid any part of commission on London Fashion sale.

Cross-examined by Wharton:

I would say I have earned a commission on that sale.

In my opinion I am an experienced real estate agent. I do business in Port of Spain particularly: I sometimes have business in San Fernando – not very often.

I may or may not have contracts with principal in writing. I use my discretion. It would depend on how well I know person and how long I have been dealing with them. No other considerations.

I have got contracts for fixed periods sometimes. In my experience I sometimes find the business I am pursuing does not materialise. I would then have done a lot of work with no financial gain to myself. I suppose its true that principal has last word in transaction. It has happened that princi pals change their word whether buying or selling, but this is seldom my experience. They also have to my knowledge more than one agent but this is not personal experience. I agree that one way to avoid this would be to have sole agency agreements.

I don't know what other agents do. In March 1964 I went and introduced myself to Ram Kirpalani as estate agent. He did not send for me. It is true to say estate agents go and look for

business they don't usually wait for it to come to them. In 1963 I had unsuccessful negotiations to purchase Miller's for another client. I went to see if Kirpalani's might be interested and went to see Ram Kirpalani to get him interested in Miller's Stores Ltd.

A.1 resulted from this letter with Ram Kirpalani.

By Miller's Stores Ltd. therein I refer to business as going concern. It is possible it could mean buying the shares, but not the stock alone. You can't buy the business by buying stock alone. This was intended for Mr. Kirpalani to buy the business including shares.

Question:

Did Ram Kirpalani give you any instructions to buy Miller's shares?

Answer:

He said he would prefer to negotiate building and instructed me so to do.

Question repeated

Answer:

He never instructed me to buy the shares from Miller's.

Mr. Ram Kirpalani had made it known to me he was not to be disclosed as principal. But not that he was to sign any offer that I would make – not at that time. I had not met Ram Kirpalani before nor did I know him. I do not think inserting that he was to sign any offer was to protect him but rather me.

In last para. I see word property, he agreed to pay usual commissions for purchase of property. I understood before I wrote A.1 that he was interested in acquiring building only but by the end of our conversation I understood him to mean both building and business.

First para. of A.2 was written because of instructions I got from Ram Kirpalani. The letter contains all the instructions I had from Ram Kirpalani for purposes of making the offer referred to in A.1.

Looking at documents Ex. A. witness says now): It contains all the instructions for purposes of the offer in A.2 – not in A.1. I say so because Ram Kirpalani had given me impression that if he did not succeed in purchasing building alone he would then consider it as a going concern i.e. business and building.

That was what I thought we had concluded. I wrote A.1 in those terms because of that I referred both to Miller's Stores Ltd. and to the property.

I expected a commission if Ram Kirpalani purchased store. I don't understand you when you ask if I would also have expected commission if he purchased stock.

He never made it clear to me he was interested in the building only. A.2 was intended to show Ram Kirpalani was interested only in the property i.e. building. Para. 5 of A.6 instructs me to write London Fashion in same way as I did Miller's. Interpreted this to mean to make $550,000 offer for building. The reference to same terms as Miller's referred to A.2 which I had previously written. The offer in A.2 refers to a deposit and the continuation of occupancy etc. I wrote London Fashion but not in those terms. G.E. 4 is the letter to London Fashion. I don't think this is to be read side by side with A.2.

I did not get G.E. 4 signed by Ram Kirpalani because Ram Kirpalani was not here and he had not told me he had authorised Mr. Maharaj to sign on his behalf. Mr. Maharaj wrote A.6.

A.6 was basis of my G.E. 4.

Adjourned/

Adjourned to Monday at 9.00 a.m.

Monday 6th November 1967:

Appearances as before.

Gerald Eckel resworn:

Cross-examination continued by Wharton:

I agree that I could not write G.E. 4 but for A.6 from Mr. Maharaj. Don't know that Ram Kirpalani left Trinidad for U.K. on 7th July, 1964. That may be so. When he introduced Mr. Maharaj to me he said Mr. Maharaj would take his place in his absence and act for him. What he actually said was Mr. Maharaj would pass his (Mr. Ram Kirpalani's) instructions to me.

It was because of that I acted on A.6.

I do not know, but would not deny Ram Kirpalani returned on 9th November, 1964. I did not show him letter when I found out he had returned.

G.E. 4 is offer for freehold property alone. Between his return and 18th November, 1964 I saw Ram Kirpalani possibly twice. It was then i.e. on 18th November, 1964 he told me to make offer to London Fashion as well as Miller's.

G.E. 7 dated 23rd November, 1964 is offer to London Fashion but I actually wrote it on 18th nvember, 1964.

I did not show it to Ram Kirpalani although he was in Trinidad. I did not think it necessary to do so. I did not think confirmation was necessary.

G.E. 7 sets out basis on which Defendants would acquire property and stock. Did not think Confirmation of terms by Ram Kirpalani was necessary or proper. He had instructed me to make an offer on those lines and which were recorded roughly on G.E.5 — in his hand.

I admit G.E. 5 is related to Miller's but he had said he wanted offer on similar lines.

I did not seek confirmation because on 18th November, he instructed me to prepare the 2 offers and deliver them one on 18th November and other on 23rd.

I wrote his instructions in respect of London Fashion. I was not writing a contract. I did not get confirmation in writing because I was to keep his name secret.

The situation was different with Miller's when I got him to sign duplicate of A.2. That was a firm offer. G.E. 7 was an offer to agree in principle only along certain lines. I included it as an offer that would have to be confirmed. If London Fashion had accepted I would get a formal offer from Kirpalani and submit it to London Fashion. That was always my intention. I did not show G.E. 6 to Ram Kirpalani either.

On March 19th 1964 I had impression Ram Kirpalani would be interested in buying building but it necessary would b y out the business. Consequently I wrote A.2.

When I approached him it was on basis that he was intermated in buying a property so I put it to him with respect to Miller's.

I admit it was I who put idea of taking over a business as well as property into Ram Kirpalani's head. It is not true that it was only after Miller's replied in terms of G.E.2 I had done so before.

Not true that Ram Kirpalani on 19th March 1964 said he was only interested in Miller's building only when I said I had been negotiating with them for another client.

I showed him G.E. 1 on 19th March, 1964. He did not say he was not interested in lease but property only.

The/

The suggestion to keep name secret on negotiations came from me not from him.

I can't recall seeing Ram Kirpalani around 3rd July, 1964 in connection with Miller's. I saw him a few days before he left on tour but can't recall exactly when. It did not look as if Miller's deal was coming off. We spoke of that. Mr. Ram Kirpalani did not then speak to me about his having discussions with Mr. Gabe about London Fashion. Not true that he then suggested I might approach London Fashion without mentioning his name as Gabe his friend was dealing with them for him. Ram Kirpalani had left me with impression that Miller's was his real choice but only if that failed he would take something else. It was not in that setting he spoke about Gabe and London Fashion.

Adolph Katz is one I referred to as Leo Katz.

I first spoke to Leo Katz in May 1964 about his selling London Fashion to anybody. I first saw Gottfried around October 1964 with Katz.

It is not true I saw Katz first in March/April 1964. First time was in May. Second occasion may have been in August or before.

I may have seen him in August. There was an occasion on which I asked Katz for details of the property. In October I again saw them London Fashion and made offer in writing. I gave Mr. Gottfried the letter G.E.4. They did not tell me then they were not selling property alone. They did not say they had rejected offer previously for property alone. G.E.4. was offer for property only. It was not within my knowledge in 1964 that London Fashion was going out of business. I did not know this was generally known around. It was only in May 1964 I heard this and went to see Katz about it.

It is possible just as I heard this, others could have heard ' went back to see Katz sometime after delivering G.E. 4. It may have been in early November, but I recall conversation with him on or about 18th November.

I think it was around end of October I saw both Gottfried and Katz i.e. after submission of G.E. 4. At that meeting I did not tell them that if I put the deal through they would have to pay me 5% commission. I never at any time told them this.

Gottfried never told me that all he was prepared to pay was 2½ per cent. I did not agree. At that meeting (i.e. after 22nd October, 1964) I told them I could not disclose my client's name and did not. Gottfried did not tell me that it might be wise to do so because if my client's name was in his list I would get no commission.

I did not say all right that when I came back with final offer I would get them to sign agreement about commission.

I agree that I saw them i.e. had personal interview once after 22nd October, with them but I spoke to them several times on phone.

Recess -- Resumption.

Gerald Eckel Cross-examination continued:

(Leo Katz called into Court) That is the gentelman with whom I had discussion re London Fashion.

G.E.5 was given me on 18th November, 1964 and was terms of my G.E.6.

On 18th November, 1964 I took it seriously that Ram Kirpalani was giving both myself and Miller's up to the 23rd November as deadline.

I did not necessarily understand that if nothing materialised with Millers by then negotiations there would be at end. In G.E.6 I spoke of pressing element of time but did not think it necessary to maintain 23rd as deadline. Can't recall whether on 17th November, 1964 Ram Kirpalani get in touch with me. It was either 16th or 17th he called me and asked me to come in and see him. I went as a result on Wednesday 18th November, 1964. He did not on that day (18th) tell me he found Miller's deal was taking too long and that it looked as if nothing would come of them.

He did not hand me G.E.5 and tell me that if I could not close the Miller's deal by 21st they would be off.

He did not put G.E.5 before me as the terms in which that deal will be closed. He did not say if it was not closed by 21st he would see Gabe about London Fashion on 22nd.

21st was a Saturday. It is true Ram Kirpalani told me to prepare offer to London Fashion and also deliver it on 23rd.

He did also speak to me on 23rd about postponing delivery of that offer.

He did not telephone me about 11.30 a.m. on 21st nor did he then ask me about Miller's. I did not then ask him to give me extension until Monday 23rd nor did I ask him to postpone his discussion with Gabe until 23rd. Not true he declined to alter his decision to see Gabe on 22nd. I agree I telephoned Ram Kirpalani on 23rd but around 9.00 a.m. not midday.

I had not then heard he had done business with London Fashion — positive.

I did not then remonstrate with him for not giving me further opportunity with Miller's.

I went to see Ram Kirpalani on Tuesday 24th November. I would not accept that my manner was mild on that day. I was normal. I admit asking him why he did not want to see if I would bring Miller's deal to success. This was because he said he had just made deal with London Fashion. He did not reply that it was taking too long and that he had given me until the Saturday 21st. It was on that day 24th he offered me $1000. He did not offer me this for my pains or trouble and efforts in Miller's. Those were not his words.

It is not true that I did not make claim then i.e. at that meeting for my commission. It was after he offered me $1000 I raised claim for my commission immediately. It was not clear to me before meeting on 24th that Ram Kirpalani was no longer interested in Miller's — he actually told me not to withdraw offer. He did not tell me he had bought London Fashion he said he hoped he would come to terms with them.

He mentioned the terms $570,000 for building plus cost of stocks. It was not at that stage I asked for commission. I made no notes of terms then. It was while I was still in his office. I learnt there was no commission for me with respect to London Fashion./

Fashion. I don't know why I made no note of price and work out commission and say this is my commission. I did not think it necessary then. We had an agreement which showed terms in which I was to negotiate in his behalf.

Question:

Did you effect purchase of London Fashion on behalf of anyone?
[Hosein objects. This is question for Court on facts deposed.
Wharton: Case for Plaintiffs that he was to purchase on behalf of undisclosed principal and I am asking whether he purchased on behalf of any person. Objection overruled.]
Answer No.

In relation to London Fashion deal the letter G.E.7 which I drafted on 18th was the last thing I did. 10

[Witness referred to page 3 of A.9 para. (a)]

I was referring to the offer of $600,000 that London Fashion had told me they had got previously. They said they had been offered $200,000 for stock. That para. beginning "For this reason" to end of para. was to reviewing the situation because he told me he could not remember having any agreement between us.

I had told him on 24th that I had agreed in writing, with him. I was referring to A.1. That document does not only refer to the Miller's building but I agree offer in A.2 does.

Re-examined by Hosein: 2

By reference to Miller's Stores Ltd. in A.1 I referred to both building and business and I negotiated for both business premises and the business as well as shares of Millers.

I never negotiated with London Fashion for both business and premises. I made offer for premises alone. G.E.7 however was intended to be offer for premises and stock. It was on instructions of Ram Kirpalani. It was not intended to buy out business.

Ram Kirpalani finally acquired building and business. I did not get that letter confirmed because Ram Kirpalani had instructed me to deliver offer in that time.

When I was negotiating for Miller's, Millers was a going concern and still is under same management. 3

David T. Sneddon Law on oath:

Chartered Accountant and partner of Law & Martinez Chartered Accountants 23/25 Phillip Street, Port of Spain. At one time I was associated with Hunter Smith & Earle. Have been Accountant in 1956. In 1961 I was auditor of London Fashion and until it sold out. Partners of that firm were Gottfried and the two Katzs. Each partner had 1/3 interest in Capital $150,000. Building was owned by Gottfried not partnership. I believe Gottfried lived in Aruba — but he lived out of Trinidad.

In 1964 I was given certain instructions re accounts of firm. I had to prepare final accounts before 31st December, 1964, which would have been end of financial year, because business was being sold.

Partners called me in and Mr. Gottfried had his personal accountant.

Know/

Know Ram Kirpalani. I was present at one of meetings with the Katzs and Gottfried at which Ram Kirpalani was present. This was November, December, 1964, but exact date would be recorded in my diary. I was then preparing final accounts. My advice was sought by Mr. Gottfried and the personal accountant Mr. Levin. Levin was interested as to whether Gottfried would be subject to Capital gains tax in U.S. for any disposal of his assets here. He also wanted to know whether London Fashion had claimed any depreciation allowances on assets. Mr. Gottfried also wanted to know how he could compensate the 2 Katzs because he was selling out. This was mainly from tax point of view.

[Wharton objects to whole of evidence irrelevant — Court will hear evidence before determining relevance.] Part of time Ram Kirpalani was there. Sometimes he was downstairs negotiating about stock. I gave certain advice to Mr. Gottfried in the office.

Not sure where Ram Kirpalani was. I would think he was present. Business and premises were finally sold and prepared statement of distribution.

Question:

What was figure for stock in final accounts?

Wharton objects — not relevant.

Sustained. Defendant no party to accounts not bound by them.

Question:

Do you know what was their purchase price paid?

Wharton objects — price paid disclosed by deed and pleadings not challenged.

Exchange between counsel.

Adjourned:

Tuesday, 7th. December, 1967.

Appearances as before.

[Hosein abandoned questions to which objection taken.]

David Law continuing:

Taking stock by Mr. Ram Kirpalani and London Fashion went over period of 3 days for purpose of arriving at price mutually acceptable to the parties. Price was $183,819.04. This price was given me by Leo Katz.

I said yesterday Gottfried asked me for certain advice. I subsequently found out what was paid for building as distinct from stock. On one of days subsequent to having given advice to Gottfried, he and Mr. Ram Kirpalani came into office upstairs and Gottfried in presence of Ram Kirpalani told me they had decided to follow my advice and compensate the 2 Katz brothers with payment of $30,000 each and after deducting this from agreed price of $570,000 for building and this would be a good idea to use $510,000 for stamp duty purposes.

[Wharton objects — not in accordance with opening — not on issue in the case — not pleaded. Not issue between commission agent. Objection overruled — relevant as to price of property agreed and paid.

Witness continuing:

$570,000 was agreed price for the property.

Cross-examined by Wharton:

Don't know whether my advice was actually carried out. I agree not justified on the balance sheets.

I don't see anything wrong with what I advised from my client's point of view — effect of that was to reduce stamp duty. Client was Gottfried (refreshing memory from documents). Book value of machinery was $2114, two thousand and one hundred and fourteen in 1963 and office furniture was $10305.

Depreciation in 1964 which was written off was:

Office Furniture	—	$2305
Machinery	—	2114
Making a total of	—	4419

Book value therefore at end of '64 was $8000. This is value at which they went in transaction.

Figure of $183,819.04 shown in accounts was stock value. There were no outstanding accounts recoverable they were all written off as it was not a business that traded on credit.

Amount written off $9394.97 by London Fashion. I had written them off before business was sold. They were old debts.

As at end of 1963 debts recoverable $7171. No allowance was made at end of 1963, for these debts. This was because the debts were considered good. They were not good in 1964 because if business closes down one does not have chance to collect. I would not by such a debt recoverable. It was an arbitrary decision on my part as business was closing down.

Of $9,394 — $7,500 was a loan to Manager who was no longer around.

At end of 1963 trade debts recoverable were $7171. $1,860 was left at end of 1964.

In 1964 there were credit sales which helped to make figure of $1860.

Katz gave me figure of $183,819.04 at completion of stock. He came into office and handed me figure saying stock was completed figure including all stock fixtures, machinery, etc.

I know how figure of $183,819.04 was made up because I actually made up the accounts. I did not take stock. I never asked Katz how figure was made up. It was an adding machine slip he handed me.

It is not clear the actual figure he gave me I don't have slip here. My workings show that figure of $183,819.04. I wrote off debts because purchaser was not interested in the machinery because I was so instructed by Leo Katz. I'm sure it would have been Leo Katz also who gave instructions to write off debts because I always dealt with him when I said earlier I arbitrarily wrote off I meant I physically did it.

I dispute that there was figure for stock of $163,000 agreed (looking at accounts). There was for furniture $8000.

Question:

What was outstanding account due to London Fashion — was it $12819.04?

[Wells objects: not relevant. See para. 6 of Statement of Claim and para. 7 of Defence. No question of outstanding account pleaded.

Wharton: question relevant to whether figure was $183,819 or not for stock. Overruled.]

There was not $12819.04 for any such accounts. I have no such figure on account. I know of no agreement between parties for take over by Ram Kirpalani of any such accounts.

I made up final accounts. They were not audited. Ram Kirpalani took no part in that i.e. making of accounts.

Re-examined by Wells:

I was referring to accounts of London Fashion for 1964 prepared by me. They are Balance Sheets and Profit & Loss Accounts. (Tendered) [Wharton objects:

Witness was asked to use document to refresh memory to answer questions and asked questions on it; and cross-examined on them.]

Admitted and marked D.L.1.

On Balance Sheet I have figure of $183,819.04 (now underlined in red.). Looking at accounts now it is obvious it is made up of $8000 for furniture $175,819.04 for stock. Mr. Katz would have given me those figures.

I was working on figures to make up accounts.

I have no figure of $12819.04 marked in these accounts — never used such a figure in making up these accounts.

Charles Cuthbert Mendez on his oath:

Live at 27 Sydenham Avenue. Real Estate Agent. Know Plaintiff. Mr. Ram Kirpalani and Defendant Company.

Know Defendant/

Know Defendant bought the London Fashion building in 1964. I learnt of transaction at end of year. Before sale went through I had dealings with Ram Kirpalani. I went and offered him a downtown property for sale. I went to his Frederick Street business on Monday 23rd November, 1964 around 11.00 a.m. He said he was not interested because he had already made offer for it but owners wanted a great deal more and he was not interested. I asked him if he would be interested in London Fashion building – I mean property. He said he could not do any business because he had asked Mr. Eckel to make offer to the owners of the property and he expected a reply that same day. He said he regretted not being able to do business and he said if the offer was accepted by London Fashion he would no longer be interested in any other property.

Before leaving Mr. Leo Katz of London Fashion came in and said may I see you for a few minutes. I excused myself and left.

Before this I knew of no connection between Plaintiff and Ram Kirpalani.

I returned to my office on 15 St. Vincent Street and called Mr. Eckel on phone and spoke to him.

Cross-examined by Wharton:

I told Ram Kirpalani which property I had come to him about. I did not have any agency from the owner to sell it.

Question:

Is this normal approach without agency?

Answer:

I had nothing in writing. I also mentioned price to Ram Kirpalani. I thought he could buy it. I offered him land – no building, it was burnt down. When he refused it I asked if he was interested in the London Fashion building. This was only other property mentioned. I had no agency from London Fashion. I had none in writing.

Question:

Did you have authority?

Answer

After long pause – yes.

I got authority sometime in April from Mr. Leo Katz. He gave me price of $750,000 and asked me to sell building at that figure – not business.

I did not tell Ram Kirpalani this figure. I offered no one apart from Ram Kirpalani the London Fashion property. I never made any attempts in writing to offer London Fashion for sale to anybody. I took no one to see it. Did not know dimensions of property.

I knew it was 2 story building which I do not think went through to Chacon Street. Anyone standing on sidewalk could see its 2 storey building. I was shown property by Mr. Leo Katz in April. He told me it did not extend to Chacon Street. I have said all that transpired at my meeting with Kirpalani. He did not say he had concluded deal with London Fashion. When I left him I went straight to my office to telephone Plaintiff – we are not partners. We are competitors.

I had no hope of selling London Fashion to Ram Kirpalani. I understood Plaintiff was effective agent. I called him to let him know that Mr. Katz had come in to see Ram Kirpalani and because of what Ram Kirpalani had told me. Ram Kirpalani did not tell me from whom he was expecting reply. All he said was he had asked Eckel to make offer and he was expecting reply by midday.

I did not know whether or not Eckel was to disclose Ram Kirpalani's name to London Fashion. I was only intending to advise Eckel of what occured when I called him. I don't know whether this is customary with agents. I only know what happened to me that day.

I'm not a confidente of Plaintiff or vice versa. We are friends and visit each other. We don't tell each other our business. I told Eckel I saw Katz going to see Ram Kirpalani. That's all I told him. Eckel thanked me. He said perfectly all right I know all about it.

Kirpalani never mentioned Miller's Stores property no did Mr. Eckel.

Not re-examined:

Recess – Resumption.

George Black on oath./

George Black on his oath:

Cross-examined by Wells:

Live Fort George, Managing Director of Miller's Stores Ltd. from 1963 to date. Miller's carries on business at 6 Frederick Street. Know Plaintiff. He was in negotiation in 1964 with me concerning purchase of Miller's building. Negotiations fell through. About midday on 23rd November, 1964 Plaintiff called me by phone and asked for answer to his offer. I was not able to do so as we were waiting on information from our Tobago Branch. I promised to let him have an answer by the Wednesday. G.E.6 is the offer to which I refer. As far as I can recall conversation was around midday on 23rd. I called him on Tuesday 24th and told him we would not be interested in offer. This was between 9.00 – 10.00 a.m.

Plaintiff called me back same day and said he was with-drawing the offer. It was probably after lunch when he called back. The following day I got G.E.8 from Plaintiff.

Before that I had given Plaintiff Balance Sheets which I subsequently got back.

Cross-examined by Wharton:

I think Plaintiff brought G.E. 6 personally to me on 18.11.64. One of terms of offer was to pay severance pay and I was waiting for certain figures relating to dates of service of employees in Tobago Branch.

I gave Plaintiff that figure $4.10 per share plus $110,000 for severance and told him at same time we were not interested in 1st offer.

G.E.6 contained offer of $875,000 for building, also offer for business. I told Plaintiff that we were not interested in 1st offer at all. I probably told him this on 18th November and was only looking into the second one.

Sure it was on 23rd midday I spoke to him not sooner.

Case for Plaintiff closed.

DEFENCE:

By consent evidence of witness in absence of Mr. Ram Kirpalani.

Leo Katz on oath:

Full name is Adolph Leo Katz but have dropped Adolph by deed. Now live outskirts of Tel Aviv, Israel. Do not now carry on business. I was at one time partner of London Fashion with Chiam Gottfried and Max Katz – partners. Max was my brother-in-law we married sisters.

Know Plaintiff. I would not say I had business transactions with him. In March-April 1964 he approached me at my business (London Fashion) and asked whether it was for sale and I said yes and gave him particulars – measurements of property from Frederick to Chacon Street and the tenants – and the price we were asking. I only told him we had tenants on Chacon Street side. I gave no information about stock at time. I did not give it in writing and he took no note in my presence.

He came on another occasion – this was in August I believe and asked for more particulars. I gave him and told him I had many offers for property alone but we were not interested in selling property alone but stock and furniture as well. I did not see him make any note in my presence. This was his second visit. I did not give him any price of stock then either. I did not tell him who had made offers nor did he disclose his client. I saw him again when he brought a written offer for the property. G.E.4 is copy of offer. Originally has been destroyed since business closed.

Can't recall the exact time. It was in the morning. Can't recall date it may have been date after that shown. I read it but we had no conversation and he left. I saw him again in October when Mr.

Gottfried/

Gottfried came to Trinidad.

It was after I got G.E. 4 about 4 or 5 days later.

Gottfried lived in U.S. then and on that occasion spent 2 – 3 weeks in Trinidad. We three – Gottfried Plaintiff and I were together in office. Plaintiff spoke of offer and Gottfried told him we were interested in selling property and stock together and Plaintiff said if the deal came through he Gottfried would have to pay 5% commission. Gottfried said in a deal like that he would not pay more than 2½%.

Plaintiff agreed to that. Further Gottfried told him it would be wise for him to disclose his client because if client was on his (Gottfried's) list we would pay no commission.

Gottfried had a list of people who were interested in property they were business people – not real estate agents.

I do not have list now. Plaintiff said O.K. and that when he came back with final offer he would make him sign agreement for commission and then he would disclose client. Nothing further took place. He left and I never saw or heard from him again about this. I met him since by de Lima's but we had no discussion.

It was in June 1964, we decided to sell. The list was made up in May or June. There was no secret we were to sell even before June 1964.

Max Katz and I lived in Trinidad then he still lives at Brives Road, Maraval. I left Trinidad in 1965. In 1964 people were constantly making enquiries of us for sale of property we had an enquiry through Mr. Gabe from Kirpalani in connection with the building stock and furniture. This was in June. We had told Gabe to approach Kirpalani on subject. In 1964 Gabe had pants factory and we used to buy from him. We asked to approach Kirpalani with a view to them buying business and property.

He came back and said (no objection) Kirpalani showed interest but as he was about to go on trip to India he could not negotiate then but would when he returned.

When Ram Kirpalani returned Gottfried was away and Gabe saw me, and said Ram Kirpalani was offering $550,000 for the property and he had appointment with him in San Fernando on a Sunday. I called Mr. Gottfried in New York about this offer.

Following this I instructed Mr. Gabe to close deal between $550,000 and $600,000 and stock and furniture to be agreed on Gabe called me at my home on the Sunday he had appointment with Ram Kirpalani and said he had agreed with Ram Kirpalani for the property at $570,000 and stock and furniture to be agreed with condition that Ram Kirpalani could use name of London Fashion.

Then after this Mr. Gottfried came to Trinidad while I was taking stock with my wife. After a while Ram Kirpalani and his staff begun helping us and then Mr. Gottfried arrived in middle of stock-taking.

We began taking stock the firstworking day after Xmas 1967, and Mr. Kirpalani sent over his staff same day.

After Gabe reported and before stock taking we met with (Kirpalani, and made out an agreement on piece of paper.

[Hosein objects to its being tendered in evidence. Not disclosed in particulars on affidavit of documents cannot be put in evidence.

Wharton: Agreement was between Gabe & Ram Kirpalani. There is no other agreement.

Court would hear evidence on sale later.]

Witness Continuing:

It was not an agreement it was just a note on piece of paper which has since been destroyed. (not pursued).

Before stock-taking I met Ram Kirpalani. I met him on the Monday or Tuesday after 22nd November, 1967 at his office. It was in the morning. He was in his office. I did not notice anyone there. Office is upstairs of his business on Frederick Street. I spoke to him about the transaction. I went to finalise business after Gabe spoke to me, We had a little misunderstanding and finally solved it over the table.

I met him constantly until the final closing of the London Fashion business until the deal was practically closed. I met him often. Deal included stock for which we had to do stock taking and were assisted by Kirpalani staff. We came to figures for stock and furniture. We also had outstanding account.

Figure for/

Figure for stock was $163,000 fixture was $8,000 and building was $570,000, but when taking stock there was a misunderstanding with Ram Kirpalani and he said he would not pay amount, I asked for furniture, then I said all right and we finally agreed that he would pay $510,000 for building $90,000 for Goodwill and $163,000 for stock and $80,000 for furniture.

I was originally asking $37,000 for furniture and that was what the misunderstand was about.

Question: How did you arrive at goodwill figure?

Answer: It is the difference between $510,000 and $570,000 and the difference between what I got ($8000) and what I originally asked ($37,000 for furniture).

We agreed for Ram Kirpalani to use the name of London Fashion and passed on the port quotas in our name to him. We had foreign suppliers and also turned them over to Kirpalani's.

We also had outstanding accounts for trade customers and suppliers. We requested Kirpalani's to take over.

Hosein objects: Cannot lead evidence of outstanding account under defence. Wharton's evidence is only to explain reason for figure of $183,819.04. Leading evidence to show separate transaction to take over of business. Court will hear evidence and rule later.

Continuing:

The outstanding accounts was over $10,000. I can't recall exact figure. After stocktaking was finished I took list with amount of outstanding debts over to Kirpalanis and asked them to take it over. It was included in the stock figure of $163,000.

Amount agreed totally for stock was $163,000 which included the $10,000 for outstanding accounts.

We got 3 payments from Kirpalani. One was in November for $50,000 second was on 15th December, 1964 for $50,000 and balance was in January 1965.

I have no documents from which I can refresh memory.

Cross-examined Hosein:

I left for Israel in May 1965. Firm accounts were closed. We destroyed books of accounts before my departure – about a week before.

Accounts would have entries relating to price at which various things were taken over. Miss Pereira was our book-keeper As far as I know she is alive and in Trinidad.

Before I left Ram Kirpalani told me he was having trouble with Plaintiff he did not tell me it was about commission. I knew it was concerning sale of premises. It was in May 1965 before I left Ram Kirpalani told me this. I told him when he needs my assistance he could call me. I did not hand him books of accounts I handed him list of debtors. I had guaranteed if he did not collect debts I would refund.

List had names addresses and amounts of each persons debt.

Some were local people who brought in credit. Each person bringing in credit would be given charge bill and account open.

Adjourned 8th November, 1967

Wednesday 8th November, 1967: Appearances as before.

Leo Katz resworn:

Cross-examination continued by Hosein:

I started taking stock on first working day after Xmas 1964 and continued for a few days. We went into early January 1965. Store was closed for period and stock-taking continued on each working day.

Kirpalani and staff helped. During stocktaking stock was listed on ruled foolscap.

Some of stock priced at cost and some agreed between Ram Kirpalani and myself. After that we added up figures and arrived at totals. Kirpalani and staff and I both checked figures and passed to my office. We each had our own sheets. I destroyed mine. Can't say whether Ram Kirpalani has his still. Sheets would show total value of stock arrived at.

Business operated right up to 24th December 1964, for ourselves i.e. London Fashion. Business was not taken over on 23rd November, 1964.

Saw Plaintiff several times at my store. Can't recall my telephone conversation with him – I would not deny there were.

I gave

I gave him particulars of the property. At some stage I told him price was $750,000. Can't recall whether it was in August 1964 or March 1964.

Building belonged to Gottfried. Partnership was renting at $600 per month. Any sale of building would require participation of Gottfried.

Can't remember whether discussed rent paid by Tip Top Tailors with Plaintiff. I may have. Plaintiff may have suggested $500,000 when I gave price of 750,000.

These were just passing things which I cannot now recall. I may have given him particulars of tenants and rents paid. I can't recall positively. I did not give him a list of fixtures. We did not come to that point. (Shown attachment to A.8) it is a correct list of fixtures Eckel may have got it from London Fashion. If he did I handed him and would accept that. I said we had not come to that yet because I can't recall everything that happened 2 years ago. It was a copy not prepared for Plaintiff. I had about 3 copies in my drawer and had several offers. I gave them to prospective buyers when I thought necessary.

Can't recall any particular person to whom I gave. I did not give to Mr. Ram Kirpalani. We made no details one comprehensive figure. We give him one figure and said thats what we were asking. It was for him to agree. I can't say he did not make his own list of fixtures. Shown G.E.4: Plaintiff handed me this personally. We had brief chat 2 or 3 minutes but can't recall what was said. I did not read it in his presence. I read it after he left maybe 15 – 30 minutes depending how busy I was. It is possible that I told Plaintiff Mr. Gottfried had to come from U.S. and it would be matter for him to decide.

I may have written to Gottfried after reading it – I did not telephone I do not have letter now. He came to Trinidad either at end of October or early November and I brought G.E. 4 to his notice. We were interested in selling business at that time. Gottfried came down to discuss things generally. I wrote him and told him I had offer from Mr. Eckel and amount. He had several offers.

When Gottfried came there was a meeting with Eckel, Gottfried and myself. I may have phoned Eckel for purpose.

When I got G.E. 4 I understood Eckel was acting for one of his clients not for us, London Fashion. At meeting with Gottfried and Eckel and myself we discussed offer and Gottfried made it clear we wanted to sell stock as well.

Nobody mentioned any other price then. I think I am correct on that.

Did not hear Gottfried tell Eckel he had offer of $600,000 for property alone. I may have left discussion for brief moment.

Nobody mentioned price for stock. I don't think we said stock was at cost that was understood, but we may have mentioned it. If Eckel put questions to us what price for stock we may have said approximately $200,000 we could have mentioned it but I don't recall. $200,000 would not have been approximately correct at that time. At that time if we mentioned price we would have said approximately $200,000 for stock.

I would not remember whether contents of A.8 were discussed at meeting. I would not deny it took place, but I do not recall any such things being discussed. I do not know what you consider important.

I recall that Eckel asked for 5% and Gottfried 2¼% which was agreed. I clearly remember that.

Gottfried had list of interested purchasers and brought it to Trinidad with him. He had it always in his pocket. He did not take it out at meeting and no one discussed it.

Eckel did not ask for list to see whether his client was on it. When Gottfried told Eckel it would be better for him to disclose his client he (Eckel) replied that when he came back with firm offer and had got Gottfried to sign agreement about commission he would disclose name of client. I am not saying that Eckel was acting as our agent at anytime in this transaction. [To court: Gottfried agreed to pay 2½% to Eckel for selling property].

Have known Gabe since 1938 and have been friendly with him since and we visited each other's home.

I first asked Gabe in June to approach Kirpalani. London Fashion was opposite Kirpalani's. I knew Ram Kirpalani as businessman. We started London Fashion on Frederick Street in 1947, we were elsewhere before. I knew Ram Kirpalani for several years and spoke to him when we went to Chamber of Commerce Meetings. I did not approach him myself as I never approached him on business.

Gabe reported that Ram Kirpalani showed interest but would discuss when he returned from his

trip/

trip. When I first asked Gabe to approach Kirpalani and told him to offer building, stock, everything, but mentioned no price. Gabe did not say Kirpalani was interested at any particular price. Gabe just said he was interested (no objections).

The next time I saw Gabe about this was on 19th November. I had heard that Ram Kirpalani had returned on 9th November, 1964. I used to see Gabe once a week but not about this transaction. On 17th November, Gabe said he had appointment with Ram Kirpalani and I said go and see if he was ready to negotiate. That's all I told him. Gabe had come to see me as usual. In course of conversation I said to see if Ram Kirpalani was ready to negotiate. He said he had appointment with him on the Sunday about London Fashion and he would let me know what occurred. That's all. On the Sunday Gabe phoned me at home and told me Ram Kirpalani was offering $550,000 for building. I put call through to New York to Gottfried same day on the afternoon.

I think I telephoned Gabe after that same evening, at his house, in San Fernando and told him to close deal between $550,000 and $600,000 for building and for Kirpalani to take stock and furniture some at landed cost and others to be agreed.

Late that evening Gabe called me back and told me Ram Kirpalani had agreed to pay $570,000 for building stock to be taken at landed cost for goods only, and others to be agreed. Furniture he said would also be taken over and told me to see Ram Kirpalani next day. Next day I saw Ram Kirpalani. I went to his office without appointment. It was between 9.00 a.m. — 11.00 a.m. We had duscussion as to how we would finalise price and how we would take stock.

We did not discuss how we would pay. I did not ask him if he would pay cash on spot. I did not dare. I asked for no deposit. I did not mention approximately price of stock. We did not mention goodwill. I did not ask for anything in writing. He did not ask what fixtures consisted of.

We first confirmed what Gabe had told me.

I told him I heard from Gabe he had prepared to buy property for $570,000 and furniture and stock at prices to be agreed. Gabe never told me that Ram Kirpalani would take over furniture at price of $8000 and stock at $165,000 or $90,000 for goodwill. He did not say Ram Kirpalani was prepared to buy building for $510,000.

Yesterday I mentioned Kirpalani and I signed note. This was during stock taking. I don't have it. It is destroyed. It just mentioned that Kirpalani agreed to buy at $570,000 furniture and stock to be agreed on. He wrote it out at his office. I was there at time. This was in December 1964 after Xmas — and about 2 or 3 days after stock taking began.

Ram Kirpalani asked me to read the note I read it and signed it of my own free will and kept it. don't know if he had another copy. I only signed one.

I did not give Gabe a copy. First payment on account was $50,000 in November 1964. I gave no receipt for that or second amount of $50,000 also. Second was in December. The balance was paid in January 1965, approximately $200,000 can't say exact amount.

Gottfried was not in Trinidad in December. He may have come in at end of December or early January. I would not deny he signed Deed Ex. B. on 31st December 1964. He was present from 31st December, 1964, until stocktaking complete. He stayed at my house. I don't know exactly what time he arrived. He brought a gentlemen down with him. I don't recall his name as Levin. Don't know what he was.

Gottfried was not in Trinidad at beginning of stocktaking. I saw deed before today but never read it through. I knew however that deed has $510,000 as consideration. I discovered this a few days after. I was not surprised on discovery.

During stock taking there was misunderstanding between Ram Kirpalani and myself. I wanted $37,000 for furniture. He did not want to pay that much. He eventually paid $30,000 as goodwill. He saved no money. Price of property was reduced by $60,000. I got $30,000 and Max Katz $30,000. Goodwill came up for first time when we had misunderstanding about price of furniture.

We had discussed and agreed in everything else.

Know David Law. He was auditor of firm.

He made up final account of firm. I saw them.

Ex. D.L.1 is accounts in connection with my firm which I have seen before and made up to 31st December, 1964.

I accept Mr. Law's figures as correct.

Ram Kirpalani is carrying on different line of business now at London Fashion building.

Net profit according to D.L.I. for 1963 was $2031.

Show document:

Question:

Do you accept this as copy of balance sheet for year ending 1962?

Answer: Yes.

[Wharton objects to its being put in – Not in affidavit of documents.

Hosein: It is on question of goodwill – to show trend of business.

Affidavit of documents showed that documents were or had been in possession of parties at time.

Balance sheets were in custody of Mr. Law. In any event all goes to credibility of witness.

Admitted L.K.1 to purposes of credibility. Objection overruled – document admitted as Ex. L.K.1.]

I accept that profit for 1962 was $7610.06.

Recess

Resumption.

Leo Katz continuing – Re-examined:

I am British nationality but of Jewish stock. Languages are Jewish and German normally. I came here in 1938 from Rumania and grew up in that part of Rumania.

This document shown me is cheque I got from Kirpalani in December, Itis dated 24th November, 1964 and is for $50,000 payable to Gottfried. I endorsed for him. Tendered Admitted and Marked L.K.2. No objections expect Wells for Defendant asks to note it was not disclosed in affidavit. Second cheque was issued on 15th December, 1967, for $50,000 (not produced). Last cheque was in January but don't recall date or amount. This cheque shown as dated 9th January, 1965 payable to London Fashion for $183,819.04 issued by Kirpalani and endorsed by me is the third cheque. T.A.M. L.K.3 (No objections subject to some observation).

Total L.K.2 & 3 is $233,819.04. A considerable sum still outstanding but this would have been paid to Gottfried personally. I know his signature. It appears on this cheque from Defendants to Gottfried for $460,000 (Tendered Admitted and Marked L.K.3 no objections subject to some observations.)

I don't recall receiving a cheque from Defendants payable to me. My brother-in-law received one. I think it was January 1965. I have settled in Israel since leaving Trinidad. I came to Trinidad because Ram Kirpalani spoke to me in New York when on a visit and as a result I came here to give evidence. I have no interest in this case.

I have received my settlement in the transaction i.e. sale of London Fashion. I was not present at signing of deed Ex. B. I did not discuss the question of deed with Gottfried or his solicitors. I was interested in the business side of deed.

Cross-examined further by Hosein Q.C. with leave:

I did not insert payees name on L.K.1 Ram Kirpalani gave me this cheque at his office in Frederick Street. It might have been on this same day that he prepared note which I signed but which has since been destroyed. I did not receive any other cheque after L.K.2 which is dated 9th January, 1965.

Re-examined by Wharton with leave:

I am not an accountant.

Goodwill was discussed between Defendants firm and my firm and figure arrived at as result. I have not sought to defraud anybody of commission. Gottfried was aware of transaction relating to goodwill and has not complained.

Have not sought to defraud anybody on 1964 dealings.

Joseph Gabe on oath:/

Joseph Gabe on oath:

Live in Miami, Florida. I lived in Trinidad for 30 odd years from 1932 to 1965. I am retired from business. I had dry goods store on High Street, San Fernando and Manufacturing business for men's and ladies slacks in Marabella. Trade was mostly local – some export trade. Know Ram Kirpalani and did quite a lot of business with him. I sold his firm's goods and would see him approximately once per week. Know Leo Katz. He was connected with London Fashion they also bought my garments. I was friendly with him knew Gottfried – also a good friend. He was partner in London Fashion.

On one of weekly visits to Port-of-Spain Mr. Katz and Mr. Gottfried asked me to see whether Ram Kirpalani would be interested in buying London Fashion. This was early or mid June 1964. Later that same day I was at Kirpalani's and asked Ram Kirpalani whether he was interested. He said he was negotiating at time for another Frederick Street property and could not give an answer as he was making arrangements to leave for India and would not be back until November, 1964.

In early November when he returned I saw him. It was either 9th or 10th I saw him at his office. I asked him then whether he had settled with other property or whether he was not interested in London Fashion. He said definitely before end of month he would give answer.

We had discussed no price. I told him I was no Commission Agent and was acting as friend and needed no commission. We only raised price on 17th November, 1964 when I next saw him at his office. We discussed price then I told him what London Fashion wanted and he said what he was willing to pay if he did not get the other property. London Fashion wanted $600,000 he offered $550,000.

These prices were for property and name of London Fashion. We eventually made appointment to meet in San Fernando on 22nd November – a Sunday at Ram Kirpalani's manager's house on St. James Street.

On 17th November, 1964 when I had Ram Kirpalani's offer of $550,000 I went to London Fashion for further instructions and saw Leo Katz and we telephoned Gottfried in New York and he then gave me instructions that when I saw Ram Kirpalani on 22nd to use my discretion between $550,000 and $600,000 and they would accept what I decided.

I next saw Ram Kirpalani on 22nd as arranged.

I was trying to divide $550,000 in half to get $575,000. I eventually closed deal for $570,000 for building property and name of London Fashion.

I got in touch with Katz and told him I had got $570,000 and to take over from there.

Before this Ram Kirpalani and I discussed about stock fixtures but I eventually left this to be decided between Ram Kirpalani and Katz. I called Katz at his home from San Fernando and told him what occurred and to take over. He said he would make arrangements with Ram Kirpalani next day to settle minor matters – the main thing was the building. Sunday 22nd was fixed in my mind because Ram Kirpalani had said if he did not get other property by 21st he would then be in position to negotiate with London Fashion.

After that I took no further part though both parties would tell me what was going on.

Cross-examined by Wells:

I speak and understand English well I think. I had no difficulty in business with language. It would be quite unfair to say I did not understand business man's language when deal was being discussed. There is a possibility I may have omitted to give evidence in same matter but . . . .

I came here to give evidence in this matter.

I don't think I can add anything to what I said. It could have been the later part or early part of June. I was asked to approach Ram Kirpalani. Both Leo Katz and Gottfried gave me those instructions. Gottfried might have spoken to me in New York, but I am sure they both spoke to me about seeing Ram Kirpalani. I asked only once to see Ram Kirpalani. It could have been in Trinidad or New York I was asked. I was asked to find out if Ram Kirpalani was

interested/

interested in buying London Fashion.

I had discussion with Ram Kirpalani as result. I have said all that took place the first time I approached Ram Kirpalani.

On 9th. November, 1964 I asked him if he had settled his other business. He said he would let me know at end of month. He had another discussion about London Fashion but we spoke of other things. That was extend of London Fashion discussion.

I next recall the 17th. November, 1964 because I came to Port-of-Spain weekly, and my book would show. I checked my books. They are at Cherokee Ltd. in San Fernando. I checked backed because I wanted to see when I came to Port of Spain. It is order book. It has no entry other than recording visit to Port of Spain.

I used to see Ram Kirpalani weekly on business and that helps me to remember dates. On 17th November, 1964 was first time I mentioned price I knew it was then because the next appointment with Ram Kirpalani was for 22nd.

I got figure of $600,000 from between Katz and Gottfried. After the 17th, when Ram Kirpalani showed interest, I got the figures. It was right after the same day.

When I went to see Ram Kirpalani on 17th I had figures already. After talking to Ram Kirpalani I went to London Fashion to get instructions on the two figures.

When Ram Kirpalani returned in November, I don't recall the particular day, I had the figure of $600,000. Leo Katz would then have given me. I said both Katz and Gottfried gave me. I was referring to final instructions.

It was in November. Katz gave me figure I can't recall date.

If Katz said $550,000 was mentioned for first time on 22nd November 1964, I would say it is impossible because I closed deal for $570,000 on 22nd November, 1964 without any reference to Katz on that day because of previous instructions.

Adjourned:

Continuing Thursday 9th November, 1967.

Appearances as before:

Joseph Gabe resworn:

Cross-examination continued by Wells:

Don't know why Ram Kirpalani went to San Fernando on 22nd November. He called me on phone a day or two before and made appointment. This could have been on Saturday 21st. He probably called me at my store on the Saturday as I am usually there.

One of the reasons for his coming was to see me, but he generally visited his San Fernando Stores in San Fernando. I had no other business with Ram Kirpalani that day. I did other business with Ram Kirpalani weekly once sometimes twice i.e. buying my goods. Ram Kirpalani also bought my business (the store) after London Fashion transaction. This was in June or July 1965. We finalised in June or July 1965, but discussions started in April 1965 approximately. I say April because it takes 2 or 3 months to complete negotiations. I cannot be more specific than that. He paid me deposit in June and we started taking stock and as fast as Ram Kirpalani got in money from business he would deposit on account for premises. I got $140,000 and was paid as follows $20,000 deposit and mortgage for $120,000, $20,000 was on closing of deal $120,000 still outstanding. Mortgage Deed was signed some time in June or July 1965.

I read English.

I read it in newspaper that Kirpalani had bought business. The press usually print what they like for what you tell them.

Article was purporting to be announcement that Ram Kirpalani had bought business – I don't recall date of article. It wont surprise me if article was on Tuesday 27th April, 1965 as we began in April with negotiations.

Wharton objects/

Wharton: Objects to all the above.

Wells: Also credit test memory allowed for purpose.
Shown newspaper Mirror for 27th April, 1965. I see article referring to business transaction between Ram Kirpalani and myself. That article in so far as it refers to the buying of the building could be correct but not figures.

Re-examined Wharton:

This transaction with Ram Kirpalani was in respect of my San Fernando store — dry goods — I owned building. Ram Kirpalani bought my property and business. The deal was put through in April but completion — stocktaking and etc. was in June — July. I don't recall exact date of Mortgage Deed.

Mr. Ashford Sinanan Solicitor acted for me and I drew up that deed. He also drew up the conveyance for building. It was one deed for conveyance and mortgage. Ram Kirpalani had Lawyer to act for him.

This transaction was in no way connected with London Fashion. It was in no way responsible for article in newspaper and I was trying to keep my business out of papers as far as possible — it was my private business.

Deed was signed after article in papers as deed took sometime to prepare.

Ram Metharam Kirpalani on his oath:

Managing Director of Defendant Co. also manage business of Company. Born in Hyderabad, India — Native language is Hindi.

Graduate University Bombay. Came to Trinidad first in 1949 remained for about 18 months and left in 1950. Returned in 1953 and have been residing here since.

Know Plaintiff. First got to know him on 19th March, 1964. He made appointment with my Secretary to come and see me in my office 18 Frederick Street on morning of 19th March, 1964 and he did. He asked me if I was interested in any business property on Frederick Street as he came to know I was looking for one. I said yes, I was interested if I get good buy. Then he said there was possibility that Miller's Stores may sell their property. He showed me correspondence with Miller's to prove this. I think it was offer for some lease or something like that. I told him I was not interested in lease, that I was led to buy property. G.E.1 is the document he showed me. I am not the "client" referred to therein.

We discussed prices generally and referred to property at Queen and Henry Street which Standard Distributors had bought and came to conclusion that if I could get Miller's property for $750,000 that would be good price. We discussed property only — no business.

I had no intention of buying anybody's business or goods. I made that quite clear to Plaintiff.

Then talk of commission arose. He told me it would facilitate his talks with Miller's if I agreed to pay his commission. When I say "I" I am referring to Defendant Company. I told him I knew that generally it was seller who paid commission. He persuaded me to pay as otherwise Mr. Black would not be likely to sell. I agreed and we spoke of percentage. He said normally it was 5% but on big deals as this he would work on minimum of 2½. We discussed on whose behalf he would make offer. I said if he used our name the price would go up as there was the tendency and he said it was normal for a client's name to be kept secret and he suggested he would negotiate without disclosing name of my Company. He said he had done this before for others.

Then we agreed that offer would be in writing to be prepared by the Plaintiff and for me to see it. He left and returned the same afternoon with 2 documents. A.1 is one of documents. The offer only in A.2 is the other not the covering letter. I signed both and he gave me copies to keep. He left and came to see me several times thereafter keeping me informed of progress of negotiations. At one stage he said he could do nothing until he got a reply.

=

At one/

At one stage he brought in G.E2 which indicates my offer was not enough. He also showed Miller's concern about their staff and because of this question of business came up — Plaintiff brought it up he said Miller's was concerned about staff which was very old and there would be talk of severance pay involved, and Miller's claimed a moral responsibility for thier staff. I told him staff was out of question because they are unionised — mine is not and most of their people are old but personally I do not mind buying building stocks, furniture and fixtures but that Miller's would be responsible for their staff. He said why not offer to take over whole business with condition that I would not be taking over their staff and I could liquidate if necessary. I told him that sounded nice. He said why do that as it seemed only way of getting building.

I said if he got me 3 years balance sheets I would be able to arrive at price of shares and be able to make an offer.

I am not sure of date on which G.E.2 was brought to me it was late May or earlyJune 1964. There was nothing further discussed that day.

I left for India on 7th July 1964. Plaintiff knew. I had told him this on day he brought G.E.2. I told him I was going on world tour for about 4 months and I would like to get the balance sheets before I left. He said he would write Millers to that effect. Subsequently he spoke to me and said that Miller's were in touch with London about balance sheets.

Plaintiff was actively in touch with Miller's and with me and saw me repeatedly.

Before I left for India I did not get sheets. Consequently on 3rd July, 1964 I called Plaintiff to my office and told him I was leaving on the 7th July and I introduced him to Mr. G. Maharaj and told Plaintiff Mr. Maharaj would be acting Managing Director and while I was away you (Plaintiff) deal with him. He never raised any question about Maharaj's authority. I also told Plaintiff that day that Mr. Gabe of San Fernando had offered me London Fashion property. That was the first occasion on which London Fashion was mentioned between us. I told Plaintiff that Mr. Gabe was working as friend and was not involved in getting commission on either side. Mr. Gabe had told me that on 25th June, 1964 when he came to see me on one of his business visits. I told Plaintiff that Gabe had told me that Mr. Gottfried of London Fashion had told Gabe to offer me London Fashion property.

I told him that since Gabe was not going to get any commission and owners of London Fashion knew it was Kirpalani, negotiating through Gabe, why not you (Plaintiff) negotiate with them the same as with Millers. He agreed. I meant for him to negotiate London Fashion keeping my name secret and that I would pay commission. I actually thought but did not say that since he was negotiating with London Fashion he would ask them for a commission in case I concluded deal through Gabe who was not acting for commission. I felt Miller's deal was not going to come through and I was giving him another opportunity of earning commission on London Fashion deal during my absence. If he succeeded I would pay commission if he did not I concluded deal through Gabe. I felt he would get from London Fashion not from me. In this context I told him get the property of London Fashion on same terms as Millers. A.1 and A.2 (offer) was what I was referring to — I did not discuss this but I meant by same terms as Miller's on the same basis as contained in A.1 & A.2. Don't recall any further discussions with Plaintiff between 3rd July 1964 and date of my departure on tour on 7th July 1964, I would have paid a commission if Plaintiff had got me the London Fashion property in way I spoke about. He never at any time offered me to give him sole agency nor did I at any time discuss that with him.

I returned from tour on 9th November, 1964..

Recess Resumption/

RECESS

RESUMPTION

Ram Metharam Kirpalani examined-in-chief:
Continuing:

On or about 10th or 11th I called Eckel in. I had found on my return the Miller's balance sheets and letter dated 7th November, 1964 from Plaintiff and called him in. A.8 is letter Mr. Maharaj had it.

I had expected to get the balance sheets before I left on tour but Plaintiff had said Miller's were reluctant as we were their business competitors and had to get O.K. from London Office and that was providing a hard job. And A.8 refers to Plaintiff having to persuade Miller's to produce balance sheets (see p.2). When I called on Plaintiff on my return he came and I told him I had just returned and I was very busy and to wait 3 or 4 days and I would call him. I wanted some time to examine balance sheets. We had no talk about London Fashion then even though London Fashion was referred to in letter.

Miller's was my preference. I don't know if I said so initially in evidence. The door was wide open for Miller's.

About 3 or 4 days after this he called me and asked whether I had time to go through the Miller's balance sheets. This may have been around 15th or 16th. I told him not yet but as soon as I was ready I would give him a call and that it would be in a day or two and on 17th November, 1964 I phoned him and asked him to come and see me. He came in on Wednesday 18th in the morning. I told him I was ready with Miller's offer and gave him G.E.5 — we had conversation — I told him if he looked at whole thing it (Miller's transaction) had taken 7 or 8 months and we had reached nowhere. I handed him G.E.5 and said if he did not conclude deal by Saturday 21st 12 o'clock I would close London Fashion deal with Gabe with whom I had appointment to see on 22nd Sunday. I told him this. I told him also I did not think he would conclude the Miller's deal and I was giving a final offer. All along we discussed the counter offer Miller's was making and so I gave him up to 21st. He told me why I did not allow him to make offer to London Fashion and he suggested certain conditions I don't recall exactly as I had nothing in writing. This included things like payment for stock at low interest etc. I said to him I had no more time that he had four months and reached nowhere I feel as if I sit at table with Gabe who is mutual friend I would get through faster. He said he was sure he would close with Miller's by deadline on 21st. He suggested he make offer to London Fashion. I told him no.

I gave him no authority to write to London Fashion on my behalf.

I did not tell him I gave him up to 23rd to close with Miller's — I gave up to 21st.

G.E. 7 is dated 23rd November, 1964. I gave Plaintiff no authority to write that on my behalf nor did I gave him any such instructions.

This is first time I am seeing it. It was not shown me before today not even when put in evidence.

After conditions in G.E.5 I felt Miller's would not accept condition B. "A" I had struck off before handing over to Plaintiff.

Also felt they would not accept D-il "depreciation."

I wanted a realistic figure on depreciation. I had only seen figures on balance sheets and book figures did not give realistic figures.

In course of going through balance sheets I made notes which is G.E.5. I did not make G.E.5 for Plaintiff as such. The query on Tobago property was put there by me when examining books — it was a query I posed myself as to what would become of Tobago property in the deal.

There are entries at beginning of G.E.5 with 2 colums of figures. Left figures are from the balance sheets and right hand figures are what I felt I could get for the items if sold. The & sign before a figure means I would get that much more for property i.e. left plus right figures; in minus signs would mean I would get left minus right. Some owners of property (building) depreciate value in their books we do not.

The balance sheets did not show how left had figures arrived at for the property.

For the/

Re para. 9:

We spoke about Miller's on 23rd but he never advised me as alleged therein and I never advised him to hold any offer until 23rd or 25th. I never told him London Fashion had phoned for appointment. I told him I had appointment at 5.00 p.m. There was no such talk as is referred in para. 9 (1) & (2). I only had one talk on 23rd that was around 11.30 a.m. He did not telephone me about 4.00 p.m. Leo Katz had come to see me between 10.00 – 10.30 a.m. just to shake hands on the deal. Max and Leo came back again at 5.00 p.m. Leo Katz came before Plaintiff had phoned me and asked me to see him.

Re para. 10:

I did not request him to come and see me on 24th. On 23rd when he called and asked to see me I said he could come on 24th as I had appointment with London Fashion. After closing deal with London Fashion I had no further interest in Miller's on any basis.

Re para. 11:

I never offered him $1000 for efforts in London Fashion.

Re para. 12:

Sub. para. (a) ends with advice.

I replied on 26th November, 1964 by A.10 Ref. to "in my presence" in para. 2. I refer to in my presence at my office on 24th.

Re para. 3:

Is that what you would have required if you had employed Mr. Eckel?

Answer: I would have put it in writing if I had employed him in respect of London Fashion on a commission.

Re para. 7:

I meant if he produced such an agreement to which he referred I would pay commission if not I would pay commission if not I would pay nothing not even the $1000 which I had offered him for his efforts in Miller's.

Adjourned to Monday 13th November, 1967.

Appearances as before:

Ram Kirpalani resworn continuing in examination-in-chief:

I saw Gabe before I left on tour and told him I would see him about London Fashion on my return.

Gabe used to come to town every week. I returned on 9th November and I saw him either on that day or the next in my office at Port of Spain. He asked me about my decision re London Fashion and I told him that I had just returned but by end of month (i.e. November) I would make up my mind. There was no further talk about this then.

On 17th November I saw him in my office again. He again asked about London Fashion. By that time I was through with Miller's Balance Sheets and cash and spoke to Gabe about price for London Fashion as I felt Miller's deal will not come through. He said they would sell property for $600,000. I said I would not pay more than $550,000. That is first time we spoke about price. I said I could not commit myself now and I would meet him on Sunday 22nd November at our staff house in San Fernando at 2.00 p.m. I used to go to San Fernando every Sunday because I had business there. I had no further conversation i.e. London Fashion on 17th. Apart from this we used to buy clothes from Gabe who manufactured them.

Staff house was on St. James Street, San Fernando. After speaking to Gabe I phoned Plaintiff and asked him to come and see me and he did on 18th. On 22nd November I saw Gabe at Staff House, San Fernando.

We spoke about price. Gabe said he had to finish the deal between 500 and 600 thousand dollars and in fairness as we were all mutual friends he said $575,000. I argued for a while and finally we closed at $570,000 with conditions that they (London Fashion) would allow me to use name to dispose of stock. It was more or less same as my line of business. I stipulated this because Gabe had said they would not sell property alone since 17th and would be necessary for me to buy stock and fixtures also. On 22nd I agreed with Gabe to buy stock at market

prices or/

For the lift (elevator) I only have balance sheet value.

The $450,000 shown and front of right hand column is a round figure which would be the realised profit on the total of left hand column. The left hand figures are also the rounded figures – balance sheet may show odd dollars.

Left hand figures would total $489,331 i.e. rounded balance sheet total. If you add left hand column you would not get $45,000. I was taking rounded figures for purpose or arriving at what offer to make for shares in Millers.

Capitals were based on the 1963 balance sheet. Miller's close books at end of September. I therefore noted on G.E.5 offer at £3.10 per share based on 1963 Balance Sheet. Figure will be changed if 1964 balance wheet has major changes.

If the 1964 figures were materially different I would alter offer.

Nothing further happened on 18th November, 1964.

On Saturday 21st about 11.30 a.m. I phoned Plaintiff and asked whether he had word from Miller's. He said no, but he expected a call by Monday. I told him I was sorry and could not wait any longer and was going to close deal the next day with Gabe. Before he said anything I hung up.

On the Monday 23rd November, 1964 he phoned me around 11.30 a.m. and said that he had just got call from Charlie Mendez and that Mendez was talking a lot of nonsense if it was true. I said yes, I closed the deal for $570,000 for property of London Fashion yesterday. He asked if he could come and see me I said no, that I had meeting with London Fashion Partners at 5.00 p.m. and he could see me the next day. That's all that occurred then. On same day around 11.00 a.m. on Queen Street side of Kirpalani's I met Mendez in the store. I was coming downstairs, we stood up and spoke. I mentioned to him, as I was excited at having closed deal with London Fashion and I had done business with Mendez previously, that I had closed the deal with London Fashion and your friend Eckel I had lost a chance.

This is what I understood what Eckel meant by "nonsense".

That was all the conversation I had with Mendez.

When Eckel phoned he did not tell me how I could do that when I gave him the business or any such words what he said was why I could not wait for Miller's – you like it so much you could have waited till Monday.

On morning of November 24th 1964 Plaintiff came to see me – he was very depressed. We talked about London Fashion and Miller's. I told him I gave him lots of chance with Miller's but it was not my fault that deal fell through. I told him I also gave him a chance with London Fashion but he did not do anything. I gave him a cheque for $1000 which I had already made out in his favour and said this is to compensate you for all the trouble you have taken in trying to close Miller's deal. I never told himit was for trouble or commission with London Fashion.

He gave me back cheque saying I had agreement in writing with him that whether I bought London Fashion through him or not I would pay him commission. I never had any such agreement and was surprised. I said Mr. Eckel I do not remember signing any such agreement with you. If I did that may be I did not read it. He said he would produce it. I told him produce it and I would give him a cheque for commission right away. He did not produce any such agreement. He walked away. Shown A.9 I received that on 25th November, 1964 I think. He enclosed photostat copy of A.1 which was referred to in para. 1. Plaintiff never tendered to me in writing for my confirmation any offer he was proposing to make on my behalf for purchase of London Fashion. I never asked him on 24th whether to produce A.1. I requested him to produce agreement he said he had relating to London Fashion.

I did not ask him to write me a letter either.

Re para. 8 of A.9.

The reference to London Fashion therein and in particular $550,000 plus stock or $750,000 cash has no meaning to me. I gave no such instructions.

Re. para. 9./

price or cost whichever was lower and furniture and fixtures at price to be agreed on between Leo Katz and myself.

Nothing else happened at San Fernando. Next day Leo Katz came to see me at my office in Port of Spain and we shook hands on deal.

I paid London Fashion by cheques first $50,000 on 24th November, 1964 (L.K.2.) then $460,000 on 31st December, 1964 for the property (L.K.4.).

I gave Leo Katz L.K.2 in my office. On Monday 23rd November, 1964 when Katz came to see me we agreed for me to write a note agreeing to price of property and goodwill at $570,000.

On 24th I gave him L.K.2 towards the $570,000.

We spoke then about goodwill. He suggested that goodwill should be $60,000 and property $510,000. I said I had no objection, that is why I paid only $460,000 additional towards property in final payment.

On 15th December 1964 I paid another $50,000 by cheque to Mr. Leo Katz. Cheque Tendered Admitted and Marked R.K.1. – no objections. It is not firm of Leo Katz and is for goodwill.

On 31st December, 1964 I issued another cheque for $5,000 to Leo Katz for goodwill. R.K.2 no objection. And on same day issued this cheque for $35,000 to Max Katz.

Tendered Admitted and Marked R.K.3. No objections.

Of this $35,000 – $5,000 is to complete payment for goodwill which was $6,000.

After Xmas we began looking at fixtures and negotiating to arrive at price. We could not agree on furniture and fixtures. There was a big difference of view. They asked $50,000 then came down to $38,000 then $32,000. We noticed while looking at them that they were eaten up by wood lice. We had no final decision I was dealing with Leo Katz. Before 31st December, 1964 he had asked if I would pay $30,000 extra pending completion of final figures on stock furniture and fixtures. This is why I gave R.K.3 for $35,000.

We finally arrived at $163,000 for stock on or about 8th or on morning of 9th January, 1965.

We also arrived at final figure of $8000 for furniture.

On 9th January 1967 I made payment of $183,819.04 by L.K.3 There is difference of $12,819.04 on the $163,000 for stock.

At that time Gottfried was here and he and Leo Katz re-questioned me to take over the outstanding book debts. That was not part of the transaction of buying building stock and furniture.

This request was made on 7th or 8th Janaury, 1965. They also had some claims against their suppliers and insurance companies. And also goods for which they had paid but had not received into stock. They wanted me to pay for these as welll on the condition that if I am unable to collect it they would pay me back what I did not collect. I agreed and the $12,819.04 was for all this.

I set about collecting outstanding accounts and insurance claims and goods, and got them and this wiped off the $12,819.04 except for about $400 and wrote to Gottfried about this on 14th April, 1966, and sent a list of persons from whom I did not collect. The actual amount is $403.51. Letter of 14th April, 1966 Tendered Admitted and Marked R.K.4 – no objections. I was sent to Gottfried in New York.

I got from Max Katz the sum of $403.51 subsequently and issued this receipt to him on 31st April, 1966 – Tendered Admitted and Marked R.K. 5. no objection. This took care of the $12,819.04.

The $8,000 was what London Fashion had said was then book value of the furniture and I agreed to pay that.

Total of these cheques is $783,819.04. If one deducts $12,819.04 from that it leaves $771,000 which represents:

$510,000/

$510,000	for property
90,000	for goodwill
163,000	for stock
8,000	for furniture.

I came to no agreement about stamp duty or evading stamp duty. If $90,000 or any sum assigned to Goodwill it is considered a capital expanse and not allowed to be written off for income tax.

If I had paid that sum for stock furniture or fixtures I would have saved 4½% or a saving of $38,250.

To Court: If I paid it for the property it would also be capital expenditure and could not be written off either.

I have explained how we arrived at $90,000 for goodwill.

$60,000 is difference between

$570,000 and $510,000.

As we had dispute for furniture, fixtures and stock and they were asking for about $60,000 more I said let us agree that $30,000, the sum I had already paid on account on 31st December, 1964 be treated as goodwill. This was agreed.

These negotiations went on up to 8th or 9th of January, 1965. After 24th November, 1964 I did not see Plaintiff. He never came to see me between 24th and conclusion of transaction and never took part or offered to take part in negotiations.

Cross-examined by Wells:

Question: While on that last note did Mr. David Law take part in these transactions?

Answer: What note?

I am now 43 years. I graduated in LL.B on B. Com. I was not called to bar in Bombay. I do not know if law of Bombay different from Trinidad have not tried to find out.

Do not know if Law of Contract in Bombay is English Law of Contract. I must have studied contract for exam but do not remember the law – it's over 20 years.

I am Director of following companies: Kirpalanis Ltd., Rest Rite Ltd., R.K. Ltd., Paper Converters Ltd. (a T'dad Co.), Syncreators Ltd. (also T'dad Co.) H. & C., Co. Ltd (also T'dad Co.), Kirpalani Ltd. Guyana; Kirpalani Ltd. (Surinam); Kirpalani Ltd. (Barbados).

Nine Companies in all.

It is business empire started by my father and uncle.

Since this year (1967) there has been a split in family. Even now I am a very busy man. In 1964 I was busier. Purpose of world tour was 100% holiday not business.

I still say I know nothing now of law of contract. All these companies are trading companies and manufacturing companies. The London Fashion business is the only one I have in lower Frederick Street. The other Kirpalani business at 18 Frederick Street has gone to Kirpsons Ltd. Lower Frederick Street is most desirable business area in Port of Spain. That is area for Top Flite dry goods merchant to have shop. There are no empty sites on Frederick Street. One would have to displace another merchant to get an empty site. And such a merchant would have to give up his business.

Any person wishing to purchase would not necessarily have price affected by fact that vendor giving up business. A person may be going out of business. I agree apart from that one could not buy unless price included vendor giving up his business and this would be so whether what was purchased is building only or business as well. Competition is not as keen for places today as money is short – same in 1964, things were worse.

Shown G.E.6. – I have never seen this before. If Miller's had accepted $875,000 contained therein I would have bought. If there was no 2B in it I would also have agreed to take over the company. If there had been an agreement with Miller's and myself on either of those terms I would have paid Plaintiff a commission, because of agreement with him to that effect.

In 1963/1964 properties in lower Frederick Street changed hands.

In 1963 J.T. Johnson corner store sold to Bank of Nova Scotia. 14a Frederick Street from Tip Top to Bata Store. Corner of Queen and Frederick Street from Massey to Delima & Co. Ltd./

Ltd. (Canning Corner) 29 Frederick Street from Stauble to Sabga.

It is true to say that Plaintiff was employed to buy Miller's property alone.

Question: Then why would you have paid commission if he secured take over of Company?

Answer: It was after he brought me balance sheets and said that was only way of getting property. I said all right and if he succeeded in that offer I would have paid him commission.

I do not say it was a contract it was an agreement modifying the original agreement. I do not agree that it is not true to say that I never at any time employed Plaintiff to buy a business. I never employed him to buy a business I employed him to buy shares in Miller's but with conditions that I be allowed to close down. By Buying business I mean buying a running business — goodwill, liabilities, stock, building and taking over employees. If I bought shares of a company I would not get same thing. If I bought up whole share holding, yes. I don't know if that is called a take over in business parlance. The price would be same whether I bought business or shares.

There would be nothing to stop me making special conditions with respect to a sale. One of these terms could be take over of staff or any other.

With respect to London Fashion I personally started with Gabe. This was in June 1964.

I had four conversations with him up to and including 22nd November, 1964 re London Fashion. June — November 10th, November 17th and 22nd. I had no other personal contact with him re London Fashion.

I think I have said everything that took place at these meetings with Gabe.

RECESS

RESUMPTION

Cross-examined by Wells:

I have seen A.3 before. It was when my solicitor called on me for all documents that I first saw it. While I was away I was in correspondence with Trinidad. Mr. Maharaj gave me substance of A.3. I wrote to him as result.

The figure in A.4 was written on my instructions — I admit now that A.4 was written on my instructions — all of it. It is not signed as managing director by Maharaj. It is signed for R.M. Kirpalani. Contents of A.5 were also communicated to me.

I authorised Maharaj to write along the lines of A.6. It is signed by him for R.M. Kirpalani. A.7 was also communicated to me. No reply was sent to it. I arrived back early November A.8 was shown me when I came back.

Now say that I never knew of A.7 until I came back as letter written to keep me informed, as one did not get to me in time and was returned.

I never called for file as Plaintiff was available and I had A.8 in my hands. In A.6 there was query of income from tenants of London Fashion. I got the answer a few days after I returned. I saw A.8 about a week after my return. There is nothing in A.8 about income from tenancies. I found out about tenants when letters from Maharaj were returned about one week after my return to Trinidad.

On 3rd July, 1964 I told Plaintiff to go ahead and negotiate in my absence on same terms as with Miller's. This was with respect to the property. It was to keep my name secret and I was to pay him same commission as with Miller's. This agency with respect to London Fashion was not limited to the period while I was away. My return did not put an end to his negotiations for London Fashion. At that stage i.e. on my return I knew London Fashion was not prepared to sell building only but stocks and furniture as well.

I did not know that they were going out of business.

I saw Eckel on 10th or 11th November. I called him in and told him I was busy to give me three or four days to look over the Miller's documents.

On 18th/

On 18th he came back and that was the first time I mentioned London Fashion. I don't know who brought it up.

I was in Court when Eckel gave evidence-in-chief. I heard what he had to say. I was not taking notes.

[Case turns on small issue.

Question of fact whether Eckel was employed as he says not relevant. Sustained]

On 23rd November, 1964 I had meeting with Leo Katz in the morning. Also in the afternoon. On 24th November, 1964 there was meeting, again in the afternoon. I gave him L.K. 2 cheque for $50,000 then.

He asked for note in writing on 23rd November, 1964 at morning meeting. I prepared such a note and gave it to him. I kept no copy. It was not ecessary.

Note said that Kirpalani had agreed to buy property of London Fashion the property and goodwill of London Fashon for $570,000. I signed it as Director of Defendant Co. under company stamp.

I gave it to him I don't think he signed.

I got no receipt for L.K. 2.

Next payment was on 15th December, 1964 by R.K.1. $50,000 to Leo Katz.

I met with the Katzs practically everyday thereafter.

Purchase price was $570,000 at the time but $60,000 for use of name. I decided this to use name when I met with Gabe.

I never decided to take $60,000 from purchase price it was London Fashion people who decided to take that for name.

On 23rd November,1964 at morning meeting Leo Katz had said there would be 50 to 60 (thousand) for goodwill but that Mr. Gottfried will confirm it. I was never asked this before that is why I now mention it.

Katz discovered this with me because $570,000 was property and goodwill and talk came up as to how much was goodwill he said 50 to 60 thousand but that Gottfried will confirm.

Not true that price of goodwill only came up because of dispute over fixtures.

I heard Mr. Law say that $30,000 was to be taken off purchase price and given to each of Katz.

I can't recall whether my counsel put to Law that that was not true. I heard him suggest that this was his advice and I don't know whether this discussion took place.

$60,000 was fixed for goodwill on the day there was meeting of London Fashion partners and Law. I was coming and going and what they discussed was not my business.

Stock taking commenced on first working day after Xmas and completed a few days before cheque for $183,000 (L.K.3.) was given. Payment for balance due on property was on 31st December, 1964.

On 7th October, 1966 I swore to affidavit relating to documents. Tendered Admitted and Marked R.K.6. No objection. Affidavit is on oath because one is expected to talk truth. In affidavit I swore I did not have an never had documents in my power or possession, any documents except those mentioned. None of cheques put in evidence are mentioned. The note is not mentioned — I never had it in my possession. I made it and passed it on to Mr. Katz.

I took over stock sheets which were made up at time of stock taking — they were destroyed.

I sold the stock.

At that time I was not required by Inland Revenue to keep books for 6 years only 3 at the time.

I destroyed them immediately after I sold stock. I took over book debts — there was a list of people given as from whom we were to collect. That list was destroyed in first or second week on day after we transferred it onto sheet. I have the sales figures on books for stock sold.

We entered in our books the purchase of the London Fashion stocks at $183,819.04. Books are available now. It was not $163,000 entered. I made entries in January – On 9th January, 1965. [Witness asked to produce book.]

Question: Is that not true that on 22nd November, 1964 there was no agreement to acquire furniture and stock at $510,000. $8,000, and $63,000 respectively.

Answer: There was no agreement in those terms on that date I agree.

Question: Was your memory any better on date of delivery of defence than it was now?

Wharton objects – No evidence besides anything that is in defence – sustained.

I gave facts to my solicitors. When I gave those facts my memory was better than it is now.

I don't remember whether I was asked for further facts on 16th December, 1965.

By consent letter from Defendant's solicitor to Plaintiff's solicitor. (Tendered, Admitted and Marked Ex.c.

Adjourned: Tuesday 14th November, 1967.

Tuesday 14th November, 1967.

Appearances as before:

Wharton: Asks leave to amend para. 7 of defence by deleting words

"at the respective prices" and to end of para. and substituting

"at the price of $570,000 for the premises and right to the name, London Fashion and the furniture and stock in trade at a price to be agreed, which was subsequently fixed at $510,000 for premises alone $8,000 for furniture and $163,000 for stock in trade together with $90,000 for goodwill.

Hosein: Objects.

Defence delivered 15th November, 1965 particulars requested on 16th December, 1965 and delivered. No question there as to what defendants rely on.

In July 1966 Ex. C. asks for further particulars.

Nothing new – need for amendment must have been apparent long ago not elicited in cross-examination of opponents amendment does not even specifically state when price subsequently fixed, being evasive.

See 1962 A.P. Ord. 28 R.1. p. 624.

Wharton: See p.625 amendment may be granted at end of Plaintiff's case and pleading.

In this case Ram Kirpalani still in box.

As to Exc. C. Plaintiff did not pursue request for particulars.

Hosein:

If amendment to be granted should be argued that Defendant allege full particulars.

Court asks Counsel to give better particulars of subsequent fixing of prices.

Stood down therefore particulars to be formulated.

Resumption 11.45 a.m.

Wharton: Amendments now finally put in writing.

Leave to amend granted in terms as filed and delivered.

Hosein: Asks leave to recall any witness as may deem necessary and reserves question of costs.

Court indicated this will be permitted.

Ram M. Kirpalani:

Cross-examination continued:

I have brought books in which I entered value of stock. It is entered under daily book on date Saturday 9th January 1965.

The first entry is issue of cheque for $183,819.04 and other entry of purchases local for same amount.

[Entries now marked in red.]

We also make monthly entries in ledger and this is sheet for year 1964/5. As we close books on 30th April in each year it would not show the figure 183,819 as such.

I have no other book with entry relating to those figures. It is not necessary. That is the

book/

book to which I was referring yesterday.

It is not a stock book. We do not keep a daily stock book. When we take stock at end of store year we take stock and enter in book that would be stock books.

I bought the goods not the business and so just noted it as purchase. Daily book tendered and entries marked in red and marked R.K.7.

I said in examination-in-chief that I closed with Gabe on 22nd November, 1964 for $570,000 with condition that Katz would allow me to use name to sell stock and also to buy stock at price to be agreed on by Leo Katz and myself at market price or cost whichever was lower — furniture and fixtures to be agreed. This was verbal agreement reached that day.

I would be surprised to know that Gabe said he reached no agreement as regards stock, fixtures and furniture or even as to further negotiations. Gabe and I started our discussions on 22nd at 2.00 p.m. It lasted a few minutes — 10—20 minutes. During that time we reached figure of $570,000. I have related the full conversation during that time. After we discussed the deal we remained a few minutes chatting and he left. He never returned that day nor telephoned me that day afterwards.

He telephoned no one from the premises while I was there.

It would not surprise me unless I know times that Leo Katz said he had at least 3 calls that day from San Fernando.

I said Katz saw me twice on 23rd November, 1967. In the afternoon he came with Max Katz, just to say hello and they were explaining why they sold. In morning Leo Katz came and just congratulated me on the sale and we spoke about price and as to when stock taking should begin. We discussed this in detail in the afternoon of 23rd. In the morning we also had chats about goodwill whether it was 50 — 60 thousand the exact figure was to be confirmed by Gottfried.

I would be surprised if Katz said he did not discuss goodwill with me. He did and he confirmed it on 24th again. He came on 24th to collect cheque. Perhaps he did not ask for cheque on 23rd that is why I did not give him that day. If I gave him cheque on 24th he definitely asked me. It was cheque for down payment on the property — I don't know if you will call it binding bargain. I'm not a millionaire. I only have a few thousand on my own.

I never told Eckel that I confirmed the sale on 24th.

It is not true that on 28th or at any other time I told Eckel I thought I had concluded deal but was waiting for final acceptance.

Use of name and goodwill not same thing. Goodwill includes use of name but covers much more. It can conclude much more e.g. use of place — particular type of business.

On 22nd November, 1964 Gabe and I closed for property and right to use name. No particulars amount was specified for right to use name it could be any amount.

On 23rd November, 1964 Leo Katz and I discussed goodwill. It was fixed later at $60,000.

Don't know how it was arrived at they suggested it and I accepted it. I still can't say how it was arrived at. Yet I was prepared still later to increase it by $30,000 because I got something else from them. This something was not the scaling down of furniture $8,000. If anyone said this is why extra $30,000 was agreed for goodwill he would be wrong. When on 7th or 8th January, 1965 we sat down to agree final figures for stock furniture and fixtures while agreeing to give $30,000 goodwill, I put a condition they would give me export then import quotas and name of their suppliers for ladies outwear department and luggage.

I had not spoken of this before no one asked me.

I can show my balance sheet which will show goods mentioned for goodwill before 2nd November, 1967. Balance sheets are for year ending 30th April, 1965. It would be in ledger also. It should be in day book R.K.7. The figures in R.K.7 would be separated though. I will work the figures in blue. One is under date 30th October, 1964 and is $10,000 other is 25th November 1964 and is $50,000 the other is 15th December, 1964 and is $50,000. The entry of 31st October, 1964 for $10,000 is a transfer entry which would therefore reduce figures to $90,000.

It is not true to say that by 15th December, 1964 I had made all payments on account of goodwill.

When I first told plaintiff to get me London Fashion on same terms as Miller's I agreed to pay him commission. That has always been my position.

On 24th November, 1964 we disagreed as to whether he was entitled to commission or not.

He was claiming one and I was rejecting this claim.

He therefore wrote me on 24th November, 1964 – A.9 is that letter.

Adjourned – 1.00 p.m.

Wednesday 15th November, 1967.

Appearances as before.

Ram Kirpalani cross-examination continued:

Entry in R.K.7 of $10,000 on 31st December, 1964 is in my handwriting. This is only entry that has reference to goodwill.

Ref. A.9:

There was difference between us then as to basis on which he was to negotiate with London Fasnion.

Re. para. (4):

The exact circumstances apply with respect to London Fashion refer to preceding paras. 2 and 3 and I agree that that is so i.e. circumstances are same, but it is not correct however that he told me he had approached London Fashion before.

Question:

Did you hear your Counsel suggest to Mr. Eckel that it was not true that Eckel had approached London Fashion for another client before?

Answer:

I can't remember.

The contents of A.7 were conveyed to me on my return from India. Reference to para. 2 of A.7. I still say Plaintiff had never told me that he was conducting negotiations for another client before he came to me.

The last sentence of para. 4 of A.9 is correct except the statement that we discussed other alternative possibilities.

Re para. 5. The first sentence in para 5 is correct. I think the second is also correct.

Re. para. 6: It is correct.

Re para. 7: I don't know whether he made written proposal to London Fashion but we did get the information refereed to [Shown G.E.4. I would accept that he sent that letter]

The rest of para. 7 is correct.

Re para. 8: I did authorise him as alleged therein to make offer to Miller's for take over as going concern, but it is not correct that I instructed him to prepare offer to London Fashion at all. That part is a deliberate untruth. Don't know when he invented that.

I now understand that the reference to $750,000 cash is not when I received letter.

Question:

Did you think it referred to preceding paragraph

Answer: No.

Re para. 9: Not correct that he advised me on 23rd November, as to Miller's being still undecided and that they had promised to let us know by Wednesday 25th. It is not correct that I asked him to withold London Fashion offer as alleged in second sentence. Again that sentence is false. Whole of next sentence is not true. I said Leo Katz came to see me on morning of 23rd.

Re last sentence: Not true he telephoned me on the afternoon only in the morning. I was put out by those untruths normally. I never advised him then they were coming to see me at 5.00 p.m. I told him so in the morning. And in fact Leo and Max came to see me around 5.50 p.m.

It was in the morning I asked Plaintiff to come back the following day.

Re para. 10

Re para. 10:

He did not visit me. I told him I had concluded deal for $570,000 plus stock etc. at cost, but not I had hoped to so conclude. Nor did I mention it was subsequent to formal approval the deal was concluded. The expression "hoped to come to terms" and subject to formal approval are false. Save for that rest of para. is true.

Re para. 11: I offered him at that stage $1,000, but not for the efforts in London Fashion. I told him Miller's. I did not tell him I offered him for the reason given – not in those terms – everything is twisted. I did not tell him he was not acting on my behalf with London Fashion he was.

I told him a buyer was not expected to pay commission but added unless there was an agreement.

Normally it is the seller who pays. I felt a commission was warranted in connection with Miller's.

He said he was not accepting $1,000.

Re para. 14: I never attempted to check his files or discuss matters with him.

Re para. 16: I did not instruct him on evening of 24th to withdraw Miller's offer. I did so in the morning when he visited me. I see G.E.8. It is incorrect to say he was instructed yesterday evening to withdraw offer.

Ref. A.10: That is my reply. I was surprised at his letter of 24th;

Re. para. 3: It does not say that Plaintiff should have got a letter from me.

I do not agree that it is saying I was not going to pay commission in absence of letter.

Re para. 4: I am not saying there I did not authorise the Plaintiff to act on my behalf.

Re para. 2: The question that was being discussed was not whether there was one committing me to pay any commission regardless. I was not discussing no letter no commission. He was saying he had letter committing me to pay commission, whether or not he concluded sale and I was saying produce it. That is explained in para. 7.

It is true that I had told him I was negotiating with Gabe who was acting as friend. The third sentence " I wanted you to negotiate" is true. The next sentence reference to "them" is London Fashion. If i.e. Kirpalani bought through Gabe he would not get any commission. I did not accept that meaning there is that I had no agreement with him.

Re para. 2, 3 & 4:

Do not accept these paragraphs meant to convey to Plaintiff (a) You are not my agent; (b) there is nothing in writing and (c) you must look to London Fashion for commissions; (d) I am not responsible for commission – not in that sense.

The dispute at the time was commission only and that was all I wished to comment on. That was the main thing in issue – I was not concerned with other untruths as I was very very busy at time.

Ref. A. 11:

Para. 2: By reference there to "re-affirming an agreement" I understand the Miller's agreement.

If London Fashion was different from Miller's I expected him to get agreement for it. He was saying he had one. I said I signed none. He came up with long letter and I was annoyed.

A. 13 is my reply to A.12,. I signed it.

Re para. 2: There was some misunderstanding as to who bought property. That is not reason for not paying commission. A. 12 was wrongly addressed it should have been addressed to Kirpalani Ltd. I bought the property not Kirpalani Ltd. and it should have been addressed to me personally. When I say me personally I mean R. Kirpalani Ltd. Maybe it is because of ignorance I did not put this in my reply. I have seen A.14 and replied by A.15 which I signed.

I refer there to dispute with us." I realise my folly in answering the way I did in A.13 and decided to refer matter to solicitors and wrote A.15 on their advice.

RECESS/

RECESS

RESUMPTION

Cross examination continued:

Question:

Are you saying that Mr. Eckel's claim for commission for London Fashion is on an exclusive agency?

Answer: On 24th November, 1964 he said so.

On 24th he was claiming exclusive agency and I was saying he was not – that was the dispute.

I have read A.9 but I have never studied it. I do not see any such claim therein in actual words but that is the presumption.

Re-examined by Wharton:

A.1 was enclosed with A.9 That was not the letter which I was querying on morning of 24th. At that time I was aware of existence of A.1. He was not on 24th claiming with respect to Miller's. He was claiming commission on London Fashion transaction and he said he had exclusive agreement in writing that I would pay commission regardless from whom I bought the property. That was the letter or agreement. I was asking him to produce that is why I expressed surprise in A.10 – he had produced the Miller's agreement instead.

He has not produced any offer re London Fashion for me to sign.

Re. A. 10:

Para. 2. It is true he told me he had letter reference to London Fashion. I told him I did not remember signing any such letter. I told him I had been negotiating with Gabe since 3rd July, 1964. I didn't however actually express my intention that I wanted him to get commission from London Fashion.

Para. 3:

On 19th March, 1964 Eckel wanted everything in writing. I have never since then told him or he me that no writing was necessary.

Re Para. 7:

He told me he had letter that I would pay commission whether or not I bought through him and that is why I withdrew offer.

Re A. 11: On 19th March, 1964 Eckel never said it was ridiculous to reaffirm Miller's agreement in writing – on contrary he wanted written agreement. I did not think A.1 was absurd.

When deed re property was drawn property was conveyed to Ram Kirpalani Limited.

When I was negotiating for London Fashion Mr. P.S. Kirpalani oldest director opposed it. As result I was forced to buy it in name of Ram Kirpalani Ltd. After I wrote A.13 I sought to get advice. I was acting for Kirpalani Ltd. when I sought that advice.

I was asked to produce certain documents yesterday by Plaintiff's counsel. This is part of my ledger.

Hosein objects: Request was for documents relating to sum of $183,819.04. Answer was that there was another document except day book. Not competent now to introduce new evidence.

In any event ledger is not in Court there is only a sheet of paper.

Would let document go in subject to production of ledger.

This loose leaf sheet is extracted from Ledger for year ending 30th April, 1965. Tendered Admitted and Marked R.K.3 subject as above. The account is 3A. and name is property 21 Frederick 18 Chacon Street – Goodwill. There is entry of $10,000 that refers to transfer entry in R.K.7. Also has entry relating to issue of two cheques. First entry is dated 25th November, 1964 – $50,000 and next 15th December, 1964 for $50,000 also.

1st cheque was issued on afternoon of 24th after buying lands. This entry made in ledger on 25th. The entry in day book was also made on 25th also. I also have reference also to

goodwill/

goodwill in balance sheet. I have another balance sheet for year. (Tendered Admitted and Marked R.K. 9 – no objections.)

On assets side there is entry goodwill $81,012 – costs and written down value at $81,012.

Also in schedule of fixed assets there is goodwill relating to acquisition of London Fashion $81,012.

We incurred certain capital expenditure in changing the front of building not allowed for tax purposes and we added it on to the goodwill. Expenditure was $2,812 which we added on to the $90,000 on 22nd April, 1965.

On March 10th 1965 there was capital profit of $11,800 which reduced figure to 81,012.

Today it is completely wiped out. This would also be in Day Book but not R.K.7 which only goes to end of January, 1965.

Defendant still trades under Kirpalani Ltd. at 75, 77 Queen Street, 21 Frederick Street (the London Fashion building). Ram Kirpalani Ltd. owns 21 Frederick Street. Defendants pay rent. Day book is Kirpalani Ltd. (Defendants).

Re A. 9:

I at no stage told Plaintiff he was not representing me or acting on my behalf or that a purchaser does not pay commission – not in that way. What I told him was unless there was an agreement from me to him to pay him commission regardless I would not be liable.

Cross-examined by Hosein with leave: (Wells absent)

I have considerable experience of keeping accounts. R.K.8 is in handwriting of Mr. P. Maharaj. He is keeper of ledger.

Entry on R.K.8 "gain on furniture" could refer to my furniture I don't know.

The debit entries amount to $21,800; two credit entries of $50,000 would amount to $100,000. Debit entry of $2,812 of 2nd April, 1965 makes $102,812 on credit side. If you take away $21,800 you get $81,012.

Kirpalani Ltd. bought goodwill and stock in trade and furniture etc. Ram Kirpalani Ltd. bought premises alone. Kirpalani Ltd. issue all cheques but on account of Ram Kirpalani's trustee I am trustee for my father's estate. There is entry on balance sheet of $181,357 for stock. It refers to all Kirpalani's stock and may include London Fashion stock if any was left over. It also shows what cost of goodwill was on 30th April, 1965.

Charging capital improvement against goodwill is not ridiculous from account practice or conditions would not have allowed it. Day book for 1965 would show it also but not R.K.7 which ends on 31st January, 1965.

Kirpalani Ltd. still bought goodwill despite opposition to deal.

Adjourned Thursday 15th.

Thursday 16th November, 1967.

Appearances as before.

Ram M. Kirpalani further cross-examined:

Continuing:

Wharton: Witness has now other books showing entries relating to goodwill. Would like to put them in through witness now and the ledger book.

Hosein: No objection.

To Wharton:

I now produce the ledger from which R.K.8 was extracted. Witness asked to insert R.K.8 in original place in ledger.

R.K.6 is day book to end of January. This book is day book for 1st February, 1965 to 30th April, 1965 end of financial year. Tendered Admitted and Marked R.K.10.

Witness points to entry on 10th March, 1965. Account is goodwill London Fashion – gain on furniture sales transferred $11,800 and on that side the account is sales retail London Fashion (London Fashion) furniture profit transferred $11,800.

There is also entry on 22nd April 1965 on left hand side and Barclays Bank cheque drawn for $2,812 and on right hand side account is 18 Chacon Street, 21 Frederick Street. Goodwill account/

account – Farinha & Mount Ltd. $2,812.00. Farinha & Mount was firm that fitted aluminium front on 21 Frederick Street.

Entries now marked in red.

Cross-examined:

Entry for 10th March 1965 sales retail shows furniture was sold in course of our business. I sell furniture but not that kind of furniture. This sale was not in ordinary course of business. It will not be possible to say what part of $11,800 relates to sale of London Fashion furniture. It could relate to both our furniture and fixtures and London Fashion's.

Shown R.K.9 (Balance Sheets).

Question:

Can you point to any item in schedule of fixed assets which refers to $11,800?

Answer:

Yes. There is figure of $5,742 in brackets. Brackets means they are sold.

There we write off (2267) against $5,742. Net is therefore $3,475.

We did not treat London Fashion furniture and fixtures separate but as stock purchases is local and that's why it does not appear as furniture in balance sheet. When it was sold we checked back and put back the profit as capital profit.

In day book London Fashion furniture is treated as furniture not stock.

Profit and loss account show 62% of profits for tax.

In 1961 we paid out goodwill of $2,500 to get property 77 Queen Street. We had to write this off from either profits on capital profits.

Profits are taxable but not capital profits. (not pursued).

Re-examined Wharton:

Balance Sheets and accounts are audited. Books are regularly audited three times per year.

By consent ledger returned and photostat copy of sheet R.K.8 put in evidence.

Case of Defence closed.

Seemungal addresses:

Refers to Pleadings:

On what premises Plaintiff's claim is? Is it:

(a) Absolute on exclusive contract for commission once property purchased – Not on evidence.

(b) A – 9 para. 12(c) also attempts reason for commission conditioned London Fashion to accept figure lower than they were asking; but whole efforts of Plaintiff useless since whole purpose was to conduct secret negotiations to that Defendant could buy more cheaply than on open market – but purchase was in fact open.

(c) Plaintiff worked hard – not so he never did what he should have on his own evidence: Letter of 23rd.

(d) Eckel effective case of transaction – this is how case opened. (Inherent in A.9 is that Plaintiff prevented from earning commission).

Submit (1) Assuming everything defendant states is true – Plaintiff not entitled to commission on basis of effective cause or otherwise.

Plaintiff relies on A.1. When was it imported into London Fashion Plaintiff say in or about June. Despite precision on other matters not able to specify date in pleadings – Kirpalani's precise 3rd July, 1964 was first talk re London Fashion. Whatever date of agreement what is it? Whether property or property business immaterial. Will deal with this later. Plaintiff submits A.1.

Even A.9 written by Plaintiff refers back to A.1 and Miller's dealings subsequently cannot apply to London Fashion. Interpretation of A.1 see Price Davies & Smith Greer L.J. 1929 L.T. 494 rule should be applied. Submit it applies to property only. A.1 required Plaintiff.

(1) to make offer;

(2) to keep name secret;

(3) to get Ram Kirpalani's signature;

(4) copy to be given Defendant;

(5) Commission in event of Plaintiff acquiring property

(5)/

(5) Commission in event of Plaintiff acquiring property not business etc. These are only terms and no question of or commission for preconditioning London Fashion owners to accepting lower figure.

What did Plaintiff do? First thing after London Fashion's agreement is letter. See A.3. On August 12. Nothing about London Fashion – all about Miller's. Plaintiff's heart on Miller's and we concede he worked hard there. On 25th August Maharaj asks about London Fashion see A.4. Nothing done. A.5 is first about London Fashion i.e. 10th September, 1964, see para. 10 and 14. Offer of $500,000 rejected. This is only offer we hear of $500,000 made to London Fashion. It was on behalf of Ram Kirpalani not any previous client. Even according to Plaintiff he was brushed aside when he approached London Fashion on behalf of previous client – no sum disclosed there.

Note casual terms of para. 14: "would you care ..."

See A6 para 5 by Maharaj.

That cannot mean within the same terms (meaning the state of Miller's negotiations. It may be with respect to A.1. A.7 – rejection of $500,000 is the London Fashion offer previously made.

A.8 – This is stage at 7th November, 1964.

Advises offer of $700,000.

Nothing else to support Plaintiff's case thereafter as to instructions on 18th November, 1964.

He does not get signature of Ram Kirpalani to offer G.E.7 – ample time to get his signature.

Why? This answer was G.E.7 was not an offer. Yet earlier he said he was told on 18th to prepare offer and see para. 5 of Statement of Claim. Nowhere in evidence does he call G.E.7 an offer. If not an offer Ram Kirpalani never authorised it and Plaintiff never carried out instructions.

The letter is clear its not an offer; it first indicates his clients may at some time make offer and then invites offer of $750,000 for London Fashion. And last para. is clear. G.E.7 is not an offer and that is admitted. Self serving document purely for bringing case. Has not coupled with instructions even if Kirpalani instructed him as alleged.

RECESS

RESUMPTION

Seemungal continuing:

G.E.7 was from memory not checked with Ram Kirpalani. Offer subject to offer drafted with express purpose of not needing written confirmation with clear consciousness. A.1 required confirmation and by person with full knowledge of law and intention that there should be no confirmation.

Suggest not written on 18th at all but when it became apparent to another writing was necessary – offer of $550,000 had written approval of Maharaj even though Plaintiff thinks otherwise. None with respect to $750,000.

Did Plaintiff effect transaction? Up to 24th November, 1964 all here is in any event offer subsequent to offer:-

Christie Owen & Davis & Co. v. Stockton 1953 2 A.E.R. 1149 offer meaning firm offer capable of being turned into contract by acceptance. Offer to purchase subject to contract was inconsistent with willingness.

Wilkinson Ltd. v. Brown & Or. 1966 1 A.E.R. 5. Contract in each of above was to introduce person willing ready and able to enter into contract. Bold offer means offer capable of being turned into contract by acceptance. Here Plaintiff is actually required to acquire not to introduce.

Burnet /

Burnet Weldon & Co. v. Wood 1950 2 A.E.R. 134 Plaintiff did not enter into contract and not entitled to commission.

Re Plaintiff's authorities:

Burchell's case: 1910 A.C. 614:

See Lord Atkinson p. 625:

There agent advised against sale but was held to be effective case of sale but agent had effected introduction. "If an agent (such as Burchell was) bring a person into relationship..." Lord Atkinson at p. 625.

Price Davies & Co. v. Smith 141 L.T. 490:

All Court decided was there was evidence for jury to find Plaintiffs were instrumental in bringing about sale – action failed as not.

Green v. Bartlett: 1863 32 L.J. C.P. 261, or 8 L.T. 503.

There relationship of buyer and seller was brought about by what Plaintiff had done. Sale 262 "the rule has been..."

Agrees principle but facts here not similar to Burchell's case in any event subject to Luxor's case.

Bow's case 1927 T.L.R. 194 decided that where agent employed to make enquiries about particular business with view to his employer acquiring it on terms of his being paid by purchaser a commission on purchase price of business transacted and where parties brought together by agency he is entitled to commission even where purchase ultimately effected though intervention of another agent provided that his services are really instrumental in bringing about transaction.

Submit in Plaintiff's authorities:

doubtful whether these principles still law today –

Luxor v. Cooper 1941 1 A.E.R. 33.

Even if principles applicable Plaintiff not entitled.

Circumstances of this case make it impossible for authorities to be applied. In all these cases single line of endeavour and that by agent into which employer broke, completed transaction to exclude agent. Does not occur here. Plaintiff was hired as agent with one primary function – secrecy. Not to find a seller because by the time of the agreement he had voluntarily told Ram Kirpalani (i.e. according to his evidence) of London Fashion and on his evidence the case is acquiring London Fashion and I'll pay commission. Principle of seeking and finding purchaser or seller cannot apply here.. Defendants told Plaintiff about London Fashion.

Plaintiff's purpose was to bid secretly. Not exclusive contract and open to Ram Kirpalani to still negotiate personally and Plaintiff realised this. He does not protest when Maharaj informs him that London Fashion approaches Defendants and never protested about Gabe on ground of exclusive agency. See A.9.

Here situation is secret negotiation by Plaintiff and private and open negotiations by Defendants. Parallel lines. Through which line was sale affected? Open line not secret. Does not matter in fact whether Kirpalani dealt through Gabe or direct with London Fashion on open line. Nothing came about as result of secret negotiations. On Burchell's principle transaction as actually transpired here, did Eckel bring about relationship of vendor and purchaser – Answer – no. Gabe did – Mere fact that before Ram Kirpalani told Plaintiff to negotiate Plaintiff said London Fashion was available not material if Gabe effected introduction and sale openly.

Did Plaintiff do effective part of transaction – No; he hardly did any work – furthest he got was offer subject to offer according to his evidence.

London Fashion were rejecting whatever he did on secret agency. Kirpalani by buying openly paid high price – see A.9 para. 12(a). where Plaintiff shows its higher than what Plaintiff might have achieved.

No evidence of Labour and expense exerted as in Burchell's case. Plaintiff prevented from earning commission.

Mona/

Mona Oil Equipment & Supply Co. Ltd. v. Rhodesia Ry. Ltd. 1949 2A.E.R. 1014.

If there is implied term it must be pleaded. See Devlin 1017 at B.

Not Plaintiff's case.

Adjourned to 17th November 1967.

Friday 17th November 1967

Appearances as before.

Seemungal continuing:

As to amendments sought by Defendant it might be agreed that transaction never took place before 31st December, or 9th January, but see paras. 516 of Statement of Claim which states transaction on 23rd November, 1964.

As to introduction of London Fashion to Ram Kirpalani (Defendant) by Plaintiff it was prior to agreement and not in pursuance of it -- nothing at that stage to stop Ram Kirpalani walking across and purchasing merely because Plaintiff mentioned it. Plaintiff himself acknowledged that Defendant knew London Fashion was selling.

As to Mona Case -- no pleading of implied term necessary none pleaded here because it would be absurd.

A.8 to Estate Agents Commission. 3rd Hals. 1 p. 198 para. 457. As to difference of agency from others see Luxor case -- a unilateral contract. No obligation to do anything and no implied term not to prevent agent earning remuneration.

Question is what is contract?

See Scheggia v. Gradwell 1963 3 A.E.R. 114.

There contract was to introduce purchasers entering into legally binding contract and agent did. No question of sympathy. It was not case as here of agent acquiring. All arguments so far presented on basis of Plaintiff's case being true, but is it?

David Law: advice to pay $30,000 each to Katz brothers.

$183,819.04 had no reference to figure of $12,819.04.

Does not support Plaintiff's case.

Charlie Mendez: Katz had told him in April that London Fashion for sale. Asks nothing till November when he goes to Ram Kirpalani at 11.00 a.m. who tells him he has asked Eckel to make offer and expecting reply, but expected Eckel at 9.00 a.m. and he was told to hold up London Fashion transaction. Both cannot be right. Later Mendez telephoned Eckel -- Eckel I know all about it. Defendant's case is Katz and himself met on 23rd November and shook hands on deal.

George Black of no use to Plaintiff.

Ramdial confirmed Katz brothers were partners so that paying off Katz brothers quite in order and Law's advice to pay them off no fraud. Particularly they did not own the building.

But what is area of dispute:

On 3rd July, 1964 was it through P

1. (a) On 3rd July, 1964 was it through Plaintiff, Ram Kirpalani got to know of property. No -- Eckel admits this.
   (b) Did Ram Kirpalani tell Plaintiff about Gabe. Plaintiff says no not until 26th November, 1964.
   (c) Was it property or premises on that date?

   What occurred on 18th November, 1964: Plaintiff's case is Ram Kirpalani said prepare 2 offers one for Miller's and similar offer for London Fashion. Ram says never occurred.

   What occurred on 23rd November, 1964.

   Was $90,000 for goodwill genuine or fraud.

Examines Plaintiff's evidence:

Property v. Business:

First/

First meeting Plaintiff puts to Ram Kirpalani on market for property. Plaintiff mentions age and introduces going concern but adds Miller's might be pursuaded to sell building alone and is told prepare offer for building.

See A.1. and A.2.

A.1. "Miller's Stores Ltd." and "in event of my acquiring the property" . . . clearly refers to property only i.e. building and land. . ..3. shows Plaintiff introducing transaction for stock. Should Ram Kirpalani so desire — not as he desires in agreement. Yet see what he asks Ram Kirpalani to consider: property transaction not business or stocks or shares.

A.4 refers only to property.

A.5 only properties no business.

See para. 12.

Plaintiff using "property" to mean building and land.

Para. 14 asks about offer and A.6 offer is about property only.

A.7 property only not business.

A.8 On first time stocks mentioned.

See evidence of Plaintiff which indicates London Fashion raising question of purchase of stock with Eckel who states client not interested. This is before A.8 is written. Clearly shows no authority to negotiate for anything but property.

See para. 5 also evidence of Plaintiff before Ram Kirpalani went on leave about take over subject to consideration of Balance Sheets and first offer for Miller's business is on November 18.

See G.E.6.

London Fashion never got any offer for anything but property since G.E.7. not sent.

Submit everything shows property — acquire property and get commission. Plaintiff even at pains to discourage Katz about stocks — "my client not interested."

A.9 Both parties agree that on 23rd November, 1964 call for document proving terms. Plaintiff says complete denial of agency. But instead of producing A.1 writes epistle — involved document and Ram Kirpalani puts it aside and see his reply — A.10 which elicits A.11 which indicates Plaintiff's intention when he wrote A.9 "lawyer's letter.

Contrast G.E.7. with G.E.6.

G.E.6 straight forward offer not G.E.7.

G.E.7 fabricated only for purposes of claim. Ram Kirpalani never authorised it even on Plaintiff's own evidence. If Plaintiff told to draft letter on 18th and told why date it 23rd Plaintiff says he was to prepare letter similar to Miller's G.E.6. G.E.7 is not similar for obvious reasons — never so instructed. G.E.6 shows Ram Kirpalani giving Plaintiff last opportunity with Miller's and reference to passing element of time confirm Ram Kirpalani's evidence of giving Plaintiff up to 21st with Miller's.

Consider the Defence and Witnesses:

Ram Kirpalani's case is on 3rd July, 1964 — he authorised Plaintiff to negotiate for property of Ram Kirpalani. Same terms as with Miller's — A.1.

Ram Kirpalani's precision as to dates.

Stuck to his story. Not that there was no agency but none for exclusive agency. [Not taking point that purchase was by Ram Kirpalani personally and not Defendant Company.]

Gabe — not interested party.

Katz — not interested. His memory not as good as Gabe's, or Ram Kirpalani but no reason to remember.

Evidence of Plaintiff unsupported on main issues. Seemungal explains A.10 — Ram Kirpalani concerned with denying he had agreed to pay commission to Plaintifff whether he acquired property through Plaintiff or not. Plaintiff maintains he had agreement to that effect and Ram Kirpalani says produce and withdrew offer of $1,000 for efforts in Miller's. A.11. Plaintiff's reply does not deal in detail either with Ram Kirpalani's allegations in A.10.

Summary/

Summary: (a) even if Eckel's best version accepted – not entitled to commission – he did not acquire – not effective cause.

(b) Plaintiff's evidence has elements of gave suspicion.

Submit for judgement.

Monday 20th November, 1967.

Appearances as before (Wharton absent)

Hosein replies:

Again relates issues:

(1) Was there agency agreement with respect to London Fashion? Both sides agreed yes.

(2) Did it extend to premises alone or business also – at large.

(3) Has Plaintiff become entitled to commission – question of law.

But facts to be determined:

(1) Introduction of premises.

(2) Negotiations and extent thereof by Plaintiff.

(3) Conclusion of transaction by whom and in what manner.

Credibility of Plaintiff: Attack unfounded.

Defendant showed lack of candour – distorted truth on number of vital matters see correspondence and pleadings.

First issue: Property – or business and property:

Agreement: A.1. does not apply to property alone – (When signed 20.3.64? See offer on A.2.)

"Purchase of Miller's Stores Ltd." all embracing not only property.

"Property" in para. 2 must relate back – generic term for everything relating to Miller's and including book debts.

Definition: Strouds 3rd Ed. Vol. 3. p. 2340.

See also Burrows (include Bank debts).

If ambiguous: Defence say apply contra pref. rule.

Part: 2 principles of doubt.

1st – consider surrounding circumstances at making of document Hals. 3rd Vol. 11, 405/6 para. 638 p.410 para. 666.

2nd – Conduct of parties under agreement.

Also contra pref. rule – only applicable where all other rules fail to resolve ambiguity: ibid p. 394 para. 642. Surrounding conclusions: Consider need of Defendant for premises in downtown area: difficult if not impossible to get empty property without business – Defendant preferred (only) building.

Negotiations for Miller's extended to business at later stage. When that occurred neither party made enquiries as to commission because both parties assumed agreement sufficient to protect Plaintiff. Defendant said he would have paid commission of either offer on G.E.6. accepted.

London Fashion agreement sometime in June accroding to Plaintiff. Defendant say 3rd July, 1964 yet Ram Kirpalani said that after G.E.2. was shown to him which is late May or early June and would show that parties then negotiating for business of Miller's as well. It is agreement that backfired London Fashion agreement entered into.

Conduct surrounding:

Submit negotiations conducted by Plaintiff for Plaintiff alone must be viewed in light of circumstances that Defendant had preference for building alone and would acquire business only if necessary and Plaintiff trying only to carry out instructions.

Defendant consider situations at 3rd July 1964 – cannot be correct. Previous to that day talk of talking over Miller's and subsequently also relevant to what was London Fashion agreement.

As to/

As to A.4 land and building.

A.8 after London Fashion agreement Plaintiff writing about stock and fixtures and fixture list. Defendant never said not interested.

This is against Miller's background.

Submit 1. A.1. where construed ordinarily include business but if necessary to examine with regard to evidence in surrounding circumstances same conclusion.

2. London Fashion agreement made in light of known necessity to acquire not only building but business and conduct of parties under agreement indicates negotiations extended to business as well.

Is Plaintiff entitled to commission?

Submit whether Plaintiff or Defendant's version accepted Plaintiff still entitled in law.

As to law:

Nature of agency: Plaintiff authorised to negotiate for particular premises – not at large: Miller's & London Fashion.

Vendor known to Plaintiff and Defendant. Services are for acquisition of identified premises.

Exclusively: Concede: If sole agent appointed principal may himself acquire (but he may not sell through another) and at all times entitled to refuse to proceed until binding contract made through agent: but subject to fundamental provision that if he sells or purchases to every person with whom agent in negotiation question is whether agents services effective cause of transaction. If yes Plaintiff entitled. That is effect of Luxor's case.

See 1 Hals. 3rd 201/2.

Situation is not affected if principal not disclosed. Since principal can sue on contract (will deal with point later). Distinction must be made between completed and uncompleted contract.

Completed Contracts: Hambury on Agency 2nd Ed. 1960 p.53.

"Through all cases ....."

Uncompleted contract: Question is whether agent did what contract required him to do.

Defendant's authorities: Burnett v. Wood 1950 2 A11 E.R. 154 is incompleted contract – not relevant.

Christie Owen v. Davies 1950 2 A11 E.R. 1149.

No transaction materialised.

Wilkinson v. Brown 1966 1 A.E.R. 509.

Agent introduced person but no contract signed and vendor sold to another.

Luxor's case: All that decided: No implied term.

Scheggia v. Gradwell 1963, 3 A.E.R. 114.

Court held agent did what he was employed to do.

What is remote or not.

Green v. Baltell: Agent effective cause there.

Hodges Hackbridge 1939, 4 A.E.R. 347.

Government introduced by Agent but acquired by compulsory acquisition – agent not effective case. Different terms.

Pathin v. Barrett 1889, 6 T.L.R. 30.

Agent found purchaser's term not accepted principle – puts house for auction – agent not effective case.

Tontium v. Del 1887, 58 L.T. 96.

Agent paid tenant – tenant subsequently buys – not effective case. See also Dowstead on Agency Ed. 12 p. 126 Art. 163 which shows law not altered by Luxor.

If agent effective case – entitled to commission.

None of above cases relevant where transaction completed.

Position here is Defendants bought.

See Allan v. Lerkins Ltd. 1957 1 L1. R. 127.

(Undisclosed principal).

Devlin considered also course of negotiations see p. 132/3 "I have not the slightest ....."

Decision not founded on any principle set aside by Luxor's case.

Here Plaintiff employed to negotiate with particular purchaser and introduction unimportant and Ram Kirpalani cannot conclude transaction and say Plaintiff did not close deal.

So far as introduction of London Fashion concerned Court should accept Plaintiff's story.

Katz said he was approached by Plaintiff since April which confirms Plaintiff's assertion to that effect.

See Bows Emporium 44 T.L.R. 195

Plaintiff effective case.

What negotiations Plaintiff effected.

On 24th Plaintiff withdraws Miller's offer confirmed by Black and on 25th G.E.8 written by Plaintiff – it also shows Plaintiff met Ram Kirpalani in evening.

Is Black co-conspirator?

Note: "Tobago property in G.E.5 has significance: Acquiring shares is of whole undertaking.

Ram Kirpalani's answers shows he lacks candour.

Fact that Ram Kirpalani prepared analysis of question and reviewed Balance Sheet means he knew he was not wasting time.

Whole of this shows he was still very interested and not likely to fix 21st as deadline.

Plaintiff's evidence ought to be accepted.

Ram Kirpalani said discussion with Gable on 22nd lasted 15 – 20 minutes.

Vital: Shows Plaintiff's effort's have been successful, otherwise Defendant would not know on what basis to negotiate and see A.8 where Plaintiff reviews for Defendant possible offers. But for this information other enquiries would have been necessary on 22nd before concluding with Gabe.

No need for Plaintiff to protest at Ram Kirpalani seeing Katz on 23rd – Plaintiff knew what his position was. He had brought parties very close.

Defendant's theories underground (secret) and overground (open) an agreement though subtle has no substance. Ram Kirpalani knows what vendor is thinking at that stage and lines are not independent.

Katz said he was not told of Plaintiff. This is because if Ram Kirpalani failed he could continue negotiations through Plaintiff.

Whole basis of negotiations with Gabe on basis of what Plaintiff advised.

So far as events between 18th, 23rd concerned Plaintiff's evidence to be preferred. Documentary evidence supports it. G.E.5. also supports it as it shows further negotiations contemplated with Millers on 18th.

Gabe's position:

Gabe is agent of London Fashion. See particulars (b) under para. 3. Gabe himself at all times said he negotiated for London Fashion. Inconsistent with what Ram Kirpalani says in A.10 that Gabe negotiating for Defendants – untrue.

So that Ram Kirpalani negotiated with Gabe (not through) and as agent for London Fashion.

Sum total of Defendant's evidence is that Plaintiff brought negotiations to a stage at which Ram Kirpalani first closed.

Oneither version Plaintiff or Defendants. Plaintiff entitled to succeed.

Submit: Plaintiff's version ought to be accepted.

As to credibility:

Defendants admit agency but glad authority limited to acquisition of premises alone.

But see A.10 – contains position inconsistent with Defence.

A.5 to para. 2 – no negotiations with Gabe at time not on evidence.

Never told Plaintiff that Gabe acting not even as agent.

As to $1000 commission why would Ram Kirpalani be offering $1,000 for Miller's – Plaintiff made claim for commission and Ram Kirpalani feeling that he had negotiated directly with London Fashion felt commission not earned and offered token sum.

A.9 sets out step by step correspondence and what transpired. Not full of inaccuracy – not repudiated – even after Defendants written to by solicitors about evading Ram Kirpalani's replies A.15 about seeking counsel's advice and then Defendants' solicitor and other legal correspondence.

Bow Emporium p. 196/7 199:

"The test is whether or not the ultimate sale was brought about ....." Burchell's case at p. 625 most effective thing is bringing parties into relationship and submit Plaintiff brought parties in relationship of vendor and purchaser not Gabe.

As to goodwill – evidence conflicting and evidence ought not to be accepted. See also Saville v. C.I.R. 156 E.R. 397. Submit Plaintiff entitled to commission on whole sum paid. But as to $12,819.04 – give Defendant benefit of doubt.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965

Between

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendants.

: J U D G M E N T :

The Plaintiff who is a real estate agent brings this action against the Defendant Company for damages for breach of an alleged oral agreement under which he claims to have been authorized to negotiate secretly on behalf of the Defendant Company for the purchase of the business and premises of the firm of London Fashion, formerly of Frederick Street, Port of Spain. It is the case for the Plaintiff that on March 19th, 1964, the Defendant Company through one of its Directors, Mr. Ram Kirpalani, orally requested the Plaintiff to negotiate for the purchase of a certain business and premises (to wit Miller's Stores Ltd. on Frederick Street) which were suitable for expansion of its business without disclosing the Defendant's name and on payment of the usual realtor's commission, and that in June 1964 he was again orally requested to make similar secret negotiations with respect to the business and premises of London Fashion. He further asserts that after conducting negotiations in that behalf he received oral instructions on November 18th, 1964 to prepare an offer to purchase the premises of London Fashion for $550,000 together with stocks and fixtures at cost or material value whichever was the lower, but that on November 23rd he was instructed not to submit the same and that later the same day the Defendant Company agreed to purchase the said premises for the sum of $570,000 together with stocks and fixtures, as stated above, and subsequently caused the premises to be conveyed at its direction. Accordingly, the Plaintiff alleges in his Statement of Claim that he is entitled to his commission but that the Defendant Company refuses to pay the same. Thus the only breach alleged is the failure to pay the agreed commission.

Substantially, the defence is a denial of the full scope of the Plaintiff's agency both with respect to Millers Stores Ltd. and London Fashion and of the alleged oral request of November 18th, and a plea that the Plaintiff's authority was limited to the acquisition of the premises only of London Fashion on terms agreed with respect to the Miller's transaction but that the Plaintiff having failed so to acquire, the Defendant Company of November 22nd 1964 acquired the premises furniture and stock of London Fashion through their agent, Joseph Gabe with whom the Company had been negotiating previously, for the sum $570,000 with the right to use the name of London Fashion, but with furniture and stock-in-trade of the said firm to be agreed; all of which it is alleged, was subsequently varied to $510,000 for the premises alone, $90,000 for goodwill, $8,000 for furniture and $163,000 for the stock.

It was common ground that the Plaintiff did not himself conclude any agreement with the owners of London Fashion with respect to either the acquisition of the premises or their stock or fixtures or business. Accordingly, it was contended on behalf of the Defendant Company that whatever the agreement with the Plaintiff, he is not entitled to any remuneration since he had not done what he had contracted to do and further on the authority of Luxor (Eastbourne) Ltd. v. Cooper 1941 A.C. 108, that no term could be implied that the Company would not so act as to prevent the Plaintiff from earning his commission no binding contract having been concluded by the Plaintiff, and that in any event no such term was pleaded. Senior Counsel for the Plaintiff nevertheless contended that it is not necessary that the Plaintiff should have completed the transaction provided that it was brought about by him and submitted that the Plaintiff's efforts were the effective cause of the transaction being concluded in the form it finally took and he was, therefore, entitled to his commission. He relied on many authorities, but it is sufficient for me, I think, to state succinctly the law as enunciated and applied in the cases without referring to them in detail.

An agent has no right to remuneration from his principal unless there is some contract expressed or implied to that effect. This is not in question here. Generally, in order to be

entitled/

entitled to his remuneration he must have carried out that which he bargained to do, but provided the ultimate transaction was brought about by his direct efforts he is entitled thereto. In other words, his efforts must be the causa causans of the transaction being concluded and not a mere sine qua non:

Bows Emporium Ltd. v. Brett & Co. 44 T.L.R. 575
Burchell v. Gowrie etc. Collieries 1910 A.C. 614
Price Davies & Co. v. Smith 1929 141 L.T. 490

I doubt whether on the pleadings it was open to counsel for the Plaintiff to shift his claim from one for damages for breach of contract to a claim for commission earned on a transaction brought about by him as a direct consequence of his efforts. I do not propose to decide the point, however, as it was not taken by counsel for the Defendant Company, Mr. Seemungal being content to submit on the facts that the Plaintiff was not the effective cause of the ultimate transaction and that in any event principle no longer applied since the decision in the Luxor case must be taken as altering the law as stated by the cases referred to above and consequently overruling them. In my view Luxor's case decided no more than that so long as matters are still in negotiation and no binding contract has been made there can be no implied term that the principal would not refuse to conclude the transaction and does not affect the decision in Bow's Emporium Ltd. v. Brett & Co. or the other cases which followed it, and I hold it is still the law that the agent is entitled to claim his commission if he is the effective cause of the transaction being completed: Vide Allan v. Leo Lines Ltd. 1957, 1 Lloyd's Rep. 127. In order to be entitled however, the concluded transaction must have been within the scope of his agency: Vide Toulmin v. Miller 1887, 58 L.T. 96 H.L. and generally Hals. 3rd Ed. Vol. 1 p. 200 para. 459, where the law is stated.

It is therefore necessary for me to determine the scope of the Plaintiff's agency and the nature of the ultimate transaction to see whether the case for the Plaintiff as finally put can succeed. Both parties agree that the agreement with respect to London Fashion incorporated the terms of the Miller's agreement. Senior Counsel for the Plaintiff submitted that in this regard I should look no further than the Miller's agreement which was reduced to writing, and that I should not examine the evidence unless there was some ambiguity in that agreement. If I were dealing with the Miller's transaction solely, this may well have been true, but bearing in mind the dispute turns largely on the question whether the Plaintiff's agency was limited to the acquisition of the London Fashion property only, as distinct from property and business of London Fashion and that the agreement relating thereto arose subsequent to the Miller's agreement and is not in writing, I must examine the evidence to ascertain what was in fact agreed.

The evidence ranged far and wide and involved the previous agreement between the parties with respect to Miller's Stores Ltd., but I do not propose to gallop fully over the course. In so far as it deals with the scope of the present agreement, I have only the evidence of the Plaintiff himself and Mr. Ram Kirpalani who at all times acted for and must be identified with the Defendant Company. In reviewing their evidence I do so in the light of the opinion I have formed that each of them was prepared to sacrifice candour on the altar of expediency and I hesitate to act on their evidence except where there is some independent evidence to lend support thereto.

It is not disputed that on March 19th 1964 the Plaintiff of his own accord approached Mr. Kirpalani and ascertained from him that the Defendant Company was interested in acquiring property on lower Frederick Street. Both however gave a different account of their understanding of what was discussed and agreed at that meeting, the Plaintiff contending that he understood from Mr. Kirpalani that he was interested initially in acquiring the property but that he subsequently agreed to negotiate for the business as well and so authorised the Plaintiff, whereas Mr. Kirpalani maintained he discussed properties only and relative prices and made it clear that he was not interested in any business and explained later in cross-examination that he was not interested in acquiring any business as the staff was unionised and he did not employ union labour. There were divergent views as to who raised the question of secret negotiations

but/

but I accept Mr. Kirpalani's evidence that it was he who expressed the view that if his name was used openly the price would tend to be higher for the reasons he gave since the Plaintiff finally admitted under cross-examination that Mr. Kirpalani had made it known to him he was not to be disclosed as principal. However, following that interview the Plaintiff prepared and submitted to Mr. Kirpalani the following drafts:

(a) a letter dated March 19th 1964 setting out the terms which he claims were agreed at the meeting between them — Ex. A.1. two letters of the

(b) two letters of the same date to Miller's Stores Ltd., one containing an offer to Miller's which Mr. Kirpalani had authorised him to make and the other a covering letter.

Ex. A. 1 is in these terms:

" March 19th, 1964.

Messrs. Kirpalani United Co. Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. Ram Kirpalani
Dear Sirs:

This serves to confirm my proposal that I will negotiate, on your behalf, in the possible purchase of Messrs. Millers Stores Ltd., on the understanding that your name is not made known to them and any offer that I put forward, the duplicate shall be signed by your goodselves as confirmation of the terms stated therein, prior to any offer being formally submitted, a copy of which shall be retained by both parties.

" It is also uderstood that in the event of my acquiring the property you will pay me a Realtor's commission

Yours faithfully,

(Sgd) Gerald A. Eckel

Agreed:
KIRPALANI UNITED COMPANY LIMITED
(Sgd) Ram Kirpalani

Although it does not specify the actual rate of commission, before me it was conceded that the rate would be 2½ per centum.

Thereafter as the correspondence shows the Plaintiff busied himself trying to negotiate for the acquisition of the Millers property; as distinct from the business thereof, but as the directors of that firm rejected the offer and subsequent modifications thereof, at the same time expressing concern for their staff, the Plaintiff suggested to Mr. Kirpalani on May 27th, 1964, that he take over Millers Stores as going concern as it appeared the only means of obtaining the property. Mr. Kirpalani, while showing some interest did not commit himself and asked to be provided with the balance sheets of that firm for the past three years. These balance sheets were not made available however, until 7th November 1964 when they were forwarded to Mr. Kirpalani under cover of a letter of that date — (See Ex, A.9). On 7th July 1964, Mr. Kirpalani left on a world trip but before leaving there was a meeting with the Plaintiff. There is some dispute as to the precise date of that meeting. The Plaintiff suggested that it was in June, Mr. Kirpalani was more specific, and put it as the 3rd July, 1964. On balance I accept Mr. Kirpalani's evidence that it was 3rd July, shortly before he left, as I think he would have had more reason for recording the date since, as he had explained, not having received the balance sheets from

Millers/

Millers up to that time he called in the Plaintiff and indicated to him that he was going away on leave and introduced a Mr. Maraj, who was to act for the Defendant Company in his absence. It is agreed that it was at that meeting that the question of acquiring London Fashion was raised, but whether as a going concern or the premises only is not agreed.

The Plaintiff admits that the Defendant raised the question of an alternative to Millers but he maintains that it was he who mentioned London Fashion as a possibility as he had approached the parties of that firm earlier on behalf of another client but that there was no indication that they were willing to sell or not and nothing had materialised. He was prepared to concede however, that Mr. Kirpalani had stated he was aware that London Fashion was on the market.

Mr. Leo Katz, a partner of the firm, stated in evidence that in March or April 1964, the Plaintiff had so approached him. Mr. Kirpalani on the other hand claims that it was he who mentioned London Fashion as an alternative and said that a Mr. Gabe had approached him on behalf of that firm. Gabe who gave evidence for the Defendant, but who impressed me nevertheless as a witness on whom I could rely, gave evidence to the effect that in early or mid June 1964 he had so approached Mr. Kirpalani but stated that Mr. Kirpalani then informed him he was negotiating for another property and could not then give an answer as he was about to go abroad. Bearing in mind that the Plaintiff had no certain knowledge that London Fashion was on the market, I think it was unlikely that he would raise this as a possible alternative, and I accept Mr. Kirpalani's evidence that it was he who mentioned it as an alternative as he felt the Miller's deal would not materialise. I do not accept however, that he mentioned either Gabe's name then or that Gabe was then acting as a mutual friend without commission since Gabe. himself stated that he only told Mr. Kirpalani this on or about the 9th or 10th November, 1964 when on Mr. Kirpalani's return to Trinidad, he (Gabe) again approached him on behalf of London Fashion.

The Plaintiff claimed that subsequent to the meeting at which London Fashion was first raised and before Mr. Kirpalani left for his trip abroad, he approached Mr. Leo Katz of London Fashion who informed him that the partners had come to no decision as to whether they would sell. If this was so, I find it strange that he did not communicate this to Mr. Kirpalani who on the Plaintiff's evidence was still in the country. According to Mr. Katz, the Plaintiff had first spoken to him in March – April 1964, i.e. before he had been requested to do so by Mr. Kirpalani, and again for the second time in August 1964 he thought. It is significant I think that in all the correspondence with the Defendant Company the Plaintiff makes no mention of having approached London Fashion until his letter of September 10th, 1964 (Ex. A.5) when, following a query by the Defendant Company by letter dated August 25th, 1964 (Ex. A. 4) as to whether the Plaintiff had approached London Fashion, he makes mention of London Fashion for the first time. That letter which is rather lengthy deals almost exclusively with the Miller's and other properties as indeed all the preceding correspondence, and only two paragraphs refer to the London Fashion transaction.

It is interesting to note the terms of these two paragraphs:

.....

As requested, it may be well to mention at this stage that I have just been given a price by the owner of London Fashion for his property at $750,000 (attached please find plan of same) which works out at approximately $100.00 per square foot. I suggested $500,000.00 to them which they rejected and were quick to refer to Tip Top Tailors opposite who got $350,000.00 for 3,000 square feet. Also the Forgarty Building next to the Canadian Bank of Commerce on Independence Square has just been sold to an insurance company for the sum of $420,000.00 the area of which is 110' x 64', i.e. approximately 7,000 square feet which works out at $60.00 per square foot."

.....

"With regard to London Fashion, would you care for me to make a counter offer on your

behalf/

behalf as was done in the Millers case and, if so, please advise what the offer should be."

.....

In view of the terms thereof and in the circumstances I am forced to accept Mr. Katz' evidence, even though as a witness he was most unimpressive, otherwise, that the Plaintiff did not see him again between his first approach in March–April 1964, and his approach in August, 1964 which I find resulted from the query in Ex. A.4.

It is even more significant I think that the price quoted in Ex. A.5 is $750,000 for the London Fashion property and I stress the word property, and a reference to an offer of $500,000 made by the Plaintiff being rejected. It underscores what Mr. Katz said namely, that he informed the Plaintiff at their August meeting, that they (i.e. the London Fashion partners) were not interested in selling the property alone. Nevertheless the Defendant replied by letter dated October 6th 1964, (Ex. A.6) authorising a maximum offer of $550,000 for the property and on October 22nd, the Plaintiff wrote London Fashion enquiring whether they would be interested in an offer of $550,000 for their freehold property. In that letter, Ex. G.E.4., the Defendant Company enquired whether a portion of the London Fashion building was tenanted and as to the rental thereof. In consequence, the Plaintiff claims that when he delivered his letter of October 22nd he asked and obtained from Mr. Katz the necessary information and on the same date, October 22nd, he wrote the Defendant Company accordingly. Again that letter (Ex. A.7) like those that preceded it also refers to the Miller's property and to other properties as being available.

Thus up to October 22nd, 1964 apart from the one suggestion I find the Plaintiff made to Mr. Kirpalani on or about the preceding May 27th, that he should acquire Miller's as a going concern (when Mr. Kirpalani merely indicated he would give it consideration if he obtained the firm's balance sheets), all the negotiations conducted by the Plaintiff under his agency and the correspondence relating thereto dealt exclusively with property. Indeed, it is not until November 7th, 1964, that there is any reference to the Defendant Company acquiring anything else but the London Fashion property and this, as in the case of Millers, comes from the Plaintiff. According to him, he had a meeting with Mr. Katz and Mr. Gottfried both Directors of London Fashion. This is his evidence relating to that meeting:

"Mr. Gottfried asked on whose behalf I was negotiating. I said that I could not disclose. He said it was important that he knew the type of business my client was involved in. I asked why it was important. He said he would prefer a negotiation that would include his stocks, which I think he then mentioned was $200,000 and his fixtures, and that if my client was involved in a similar type of business he would have to stock the building in any case. I said I did not think my client would be interested in the stock and fixtures. He (Gottfried) said he had already turned down an offer of $600,000 for the building, because the people were not interested in taking the stock. I said in that "case we could not conclude the transaction as my client was not prepared to pay more than $550,000. He said even though he considered $600,000 a very low figure if I could get my client to match $600,000 and take the stocks and fixtures at cost he would agree. I again told him I did not think my client would be interested in stocks and fixtures....."

There was some discussion also, he said, as to the price the London Fashion partners would finally obtain if they had to pay a commission and Mr. Gottfried indicated that he was not negotiating through an agent and spoke about sources of supply and Mr. Katz told him that if anybody bought London Fashion on the lines indicated by Gottfried he would be getting a bargain. And he continuted...:

"I told him he did not seem to appreciate that my client may not want to carry on the same sort of lines as London Fashion in which case the purchaser would have to have a closing down sale to get rid of stock and this would result in the purchaser taking a loss.

Katz/

Katz said that even in that event he could guarantee that the purchaser would make a profit of at least 20 percent. I said if that was the case why they did not take $600.000 that had been offered and sell out the stock themselves. Katz said that if they decided to sell they would want to sell everything and clear out. He then said they would give terms on the payment of stock at low interest rate ....."

Katz' account of the interview is somewhat different but I prefer to accept the Plaintiff's version since Katz' recollection of things did not always impress me and Mr. Gottfried was not called as a witness.

Following this meeting with Gottfried and Katz, the Plaintiff by letter dated November 7th, 1964 (Ex. A.8), wrote the Defendant Company indicating the substance of his interview with Katz and Gottfried and advised:

"I am of the opinion you should try an offer of $700,000 on the basis that you could probably slowly liquidate their stocks at reduced prices... whilst gradually replacing your own lines. Estimating your recovery in stocks and fixtures to be $150,000 the net cost to you for the building would be in the vicinity of $550,000...."

which again, in my view, puts the accent on the cost of the property to the Defendant Company. The letter also indicated that Miller's Stores Ltd., had rejected the Plaintiff's offer of $850,000 for their building and enclosed therewith the Balance Sheets of that firm for the past three years which Mr. Kirpalani had requested prior to his going abroad and before he would consider taking over the Miller's business.

Reviewing this aspect of the evidence, I must conclude in so far as the scope of the Plaintiff's agency is concerned that the scales are tipped heavily against him and in favour of the Defendant. I am fortified in that view by the Plaintiff's own admission when cross-examined that it was he who put the idea of acquiring any business into Mr. Kirpalani's head, although he sought to explain that it was before May 27th when he obtained Ex. G.E. 2 from Miller's in which Miller's rejected the offer of March 19th and expressed concern for their staff. Earlier he tried to explain that he wrote Ex. A.1 (the Miller's Agreement) in the manner he did because Mr. Kirpalani had given him the impression that if he did not succeed in purchasing the Miller's building (property) alone he would consider it as a going concern, and thought that that was what was agreed. When it is recalled that his own evidence is that on his first approach to Mr. Kirpalani he enquired and was told that Mr. Kirpalani was interested in acquiring property on lower Frederick Street, and in the light of the correspondence in evidence, I am hard put to accept his explanation and find that up to November 7th, 1964, his only authorisation was to negotiate for the purchase of the premises alone of London Fashion on the terms of the Miller's agreement.

The Plaintiff stated, however, that in response to a call from Mr. Kirpalani who it appears had returned to Trinidad on or about November 9th, 1964, he visited Mr. Kirpalani at his office on November 18th. There in the doorway, he said, Mr. Kirpalani informed him that he had come to a conclusion and gave him a written document – Ex.G.E.5, and instructed him to make a written offer to Miller's on the terms therein recorded and after some discussion relating to the Miller's offer Mr. Kirpalani then instructed him to submit an offer containing two alternatives to London Fashion, the terms of which he mentioned in evidence – one of which is the alleged offer pleaded in the Statement of Claim the other being an offer of $750,000 for the property, fixtures and stock of London Fashion. As a result he said he asked Mr. Kirpalani why he did not offer $ 750,000 as the Plaintiff had advised in his letter of November 7th and was told by Mr. Kirpalani that he did not think they (London Fashion) would sell for that price. He then stated that he was instructed to prepare the two offers and submit one to Miller's Stores Ltd. as soon as possible and that if nothing was finalised with Miller's before November 23rd he should then submit the offer to London Fashion. These two offers (the one to Miller's Stores Ltd. and the other for London Fashion) he claimed he prepared the same day but submitted the Miller's offer only. The London Fashion offer was never submitted but it was tendered in evidence without objection as Ex. G.E.7 and is dated November 23rd, 1964. I do not think it

necessary/

necessary to refer to either of them except to observe that in my view the terms of the Miller's offer tend to support Mr. Kirpalani's evidence that he was not interested in taking over staff which was unionised and that the Plaintiff knew that he was seriously considering London Fashion and requested an early reply because of the pressing element of time. None apparently was forthcoming and the Plaintiff claims that on November 23rd about 8.00 a.m. he telephoned Mr. Black of Miller's Stores who indicated that he was still awaiting certain information relevant to the offer but would give an answer by November 25th. I pause to observe that Mr. Black who was a witness for the Plaintiff and who I found was most reliable, said that it was around midday on November 23rd that he had such a conversation with the Plaintiff and that between 9.00 a.m. and 10.00 a.m. on November 24th he informed the Plaintiff he was not interested in the offer.

Nevertheless, the Plaintiff claims that around 9.00 a.m. on November 23rd, he communicated this information to Mr. Kirpalani who instructed him to withold the London Fashion offer until Mr. Black had replied, intimating that he had again been approached by London Fashion and had an appointment with them for 11.00 a.m. but would let the Plaintiff know the result of that meeting around 2.00 p.m. that day. As a result, he said that, not having heard from Mr. Kirpalani he called him around 4.00 p.m. but was told to get in touch with him next day as London Fashion were coming to see him around 5.00 p.m. that very day.

It is agreed that on the morning of the 24th the Plaintiff called on Mr. Kirpalani at his office, According to the Plaintiff Mr. Kirpalani then informed him that he had come to terms with London Fashion "at the price of $570,000 for the building plus stocks at cost," and then followed some discussion as to why Kirpalani did not await a reply from Mr. Black and as to why Kirpalani did not let him submit offers to London Fashion on the terms he had previously advised in his letter of November 7th – Ex. A.8. He said that Mr. Kirpalani told him he decided against waiting on a reply from Mr. Black as he did not think he could come to a quick conclusion as there were several outstanding matters to be decided with Miller's but nevertheless told him not to withdraw the Miller's offer as he was still waiting on formal approval from London Fashion. I find it odd that Mr. Kirpalani would, if he had come to terms with Gabe, make such a request and it is no doubt for this reason the Plaintiff shifted his ground under cross-examination and claimed that what Mr. Kirpalani had in fact said was that he hoped to come to terms with London Fashion. He finally said with regard to the meeting on 24th that Mr. Kirpalani then offered him $1,000 for his efforts in the London Fashion negotiations claiming that the Plaintiff was not working for him in those negotiations. This he declined. Much of which he said took place is contained in his letter to the Defendant Company dated November 24th 1964 – Ex. A.9. in which he purports to review the dealings between Mr. Kirpalani and himself following his rejection of the offer of $1000. He claims also that about 3.00 p.m. on November 24th Mr. Black telephoned him and informed him that they (Miller's) had come to certain conclusions as to price etc. which information he said he passed on to Mr. Kirpalani. I only observe that this alleged conversation with Mr. Black strikes me as being odd if Mr. Black is speaking the truth.

Mr. Kirpalani's version of the events that took place from November 18th onward was different. He denied having authorised the Plaintiff to submit any offer to London Fashion. He admitted authorising him to make the offer to Millers on the 18th but maintained that he explained that as the negotiations were protracted, if the transaction was not concluded by midday on Saturday November 21st, he would close the London Fashion negotiations with Gabe with whom he had previously arranged an appointment for Sunday 22nd at San Fernando. According to Mr. Kirpalani it was the Plaintiff who then raised the question of his making an offer to London Fashion but he rejected this as the Plaintiff appeared to be getting nowhere and he felt he could negotiate more quickly with Gabe personally, and gave the Plaintiff up to Saturday 21st to close with Millers. The reference in Ex. G.E.6. to the pressing element of time tends to support this. On that day Mr. Kirpalani alleged, he telephoned the Plaintiff enquiring about the Millers offer but was informed there was no reply from Mr. Black but that he expected one the following Monday. As a result he said he informed the Plaintiff he could wait no longer and was going to close with Gabe, and did so on the 22nd. He further claimed that

he/

he next heard from the Plaintiff around 11.30 a.m. on Monday 23rd November, when following a conversation with Mr. Mendez another estate agent, the Plaintiff telephoned him but was informed that the London Fashion transaction had been finalised the day before and was given an appointment for the next day, November 24th when matters came to a head.

I do not think it necessary to determine which of these versions I accept or whether Mr. Kirpalani did on November 18th authorise the Plaintiff to submit the alleged offer to London Fashion since it is admitted it was never submitted, albeit on the request of Mr. Kirpalani, and nothing was done by the Plaintiff in pursuance of any such authorisation. On balance, nevertheless, I prefer Mr. Kirpalani's version not only because his evidence as to his meetings with Gabe is corroborated by Gabe whom I accept as a witness of truth, but also because I find it difficult to believe that Mr. Kirpalani would not have, as with the Miller's offer, produced some written memorandum thereof. Indeed every other offer both in respect of Miller's and London Fashion authorised by the Defendant Company had some written authorisation from Mr. Kirpalani of Mr. Maharaj. Further if Mr. Black was speaking the truth, and I find that he was, then the Plaintiff was in no position to inform Mr. Kirpalani on the morning of November 23rd that Miller's was still awaiting information from their Tobago Branch, and I accept Mr. Kirpalani's evidence that the only conversation he had with the Plaintiff on November 23rd was following Mr. Mendez' conversation with the Plaintiff by phone. Indeed the information which the Plaintiff received from Mr. Mendez that day following Mr. Mendez' conversation with Mr. Kirpalani, and from Mr. Black on the morning of November 24th in my view sufficiently throw into true perspective Mr. Kirpalani's evidence that on the morning of November 24th, 1964 when the Plaintiff came to see him he was very depressed, for by then I find he well knew that not only the Miller's deal was off, but that Kirpalani had been in direct contact with Mr. Katz.

In the result then I find that it was Mr. Kirpalani who raised the question of the London Fashion property as an alternative to Miller's that he had done so after Mr. Gabe had spoken to him on behalf of that firm but that he did not initially mention Gabe's name to the Plaintiff. I also find that the Plaintiff's agency was at all times limited to negotiations for the acquisition of the property only on terms of the Miller's agreement, and I agree with counsel for the Defendant that the only terms relevant are the negotiations should be on terms of secrecy, that any offer submitted by the Plaintiff should be signed or agreed to by Mr. Kirpalani previously and that commission would only be paid if the Defendant acquired that property.

In arriving at the above conclusion I must not be taken to have overlooked the Plaintiff's letter of November 24th, 1964 to the Defendant Company, nor the reply thereto by Mr. Kirpalani on November 27th – Ex, A.10. That reply is perhaps rather infelicitously worded and opened the door for comment as to Mr. Kirpalani's credibility and I have certain mental reservations as to whether he did not in fact try to outwit the Plaintiff when Gabe disclosed that he was not acting for a commission. However, I accept Mr. Seemungal's interpretation that it was intended to rebut only the Plaintiff's contention that he had a written agreement, showing his entitlement to a commission whether the London Fashion transaction was concluded through him or not.

I turn next to the transaction as finally concluded between the Defendant Company and London Fashion. Again I do not propose to review the evidence in detail It is not disputed that the London Fashion partners were not interested in selling their property without their stocks and were holding out. No doubt this was because, as the evidence disclosed, one partner owned the property independently of the partnership. Mr. Kirpalani's evidence was to the effect that as the Plaintiff seemed to be getting nowhere with London Fashion and as the Miller's negotiations did not appear to be coming to a successful conclusion, he had agreed to meet Gabe at San Fernando on November 22nd and that he did so agreed with Gabe to acquire the building for the sum of $570,000, the furniture and fixtures at a price to be agreed, and the stocks at market price or cost whichever was the less. This was supported by Gabe and Katz and I accept that evidence. However, he claimed that finally it was agreed between himself and the London

Fashion/

Fitzwilliam, Stone & Alcazar

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1773 of 1965.

Between

GERALD ECKEL Plaintiff

And

KIRPALANI'S LIMITED Defendant

****

Before the Honourable Mr. Justice Kester Mc Millan

Dated and Entered the 14th day of October, 1968. 10

This action having on 2nd, 3rd, 6th, 7th, 8th, 9th, 13th, 14th, 15th and 16th November, 1967 been tried before the Honourable Mr. Justice Kester Mc Millan and the said judge having on the 14th day of October, 1968 ordered that judgement as hereinafter provided be entered for the defendant.

It is this day adjudged that the defendant recover against the plaintiff his costs of action to be taxed.

It is ordered and directed that execution herein be stayed for a period of six (6) weeks from the date hereof.

Registrar.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 51 of 1968.

Between

GERALD ECKEL — Appellant/ Plaintiff

And

KIRPALANI'S LIMITED — Respondent/ Defendant

****

TAKE NOTICE that the APPELLANT/PLAINTIFF being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgement of Mr. Justice Kester Mc Millan dated the 14th day of October, 1969, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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 of the decision.

3. 1. The judgement of the learned trial judge is unreasonable and/or against the weight of the evidence and/or cannot be supported having regard to the evidence.

2. The learned judge misdirected himself in holding that the Appeallant/Plaintiff's efforts as the agent of the Respondent/Defendant were not the effective cause of the transaction.

3. The learned judge was wrong in law in holding that the Appellant/Plaintiff was not entitled to the commission which he claimed.

4. That the judgement referred to in paragraph 2 be set aside and that judgement be entered for the Appellant/Plaintiff with costs before the Court of Appeal and in the Court below to be taxed.

5. Persons directly affected by the appeal:

Name	Address
1. Kirpalani's Limited	75/77 Queen Street, Port of Spain.

2./

2. Gerald Eckel — 11a Rookery Nook, Maraval.

Dated this 25th day of October, 1968.

Sgd: Fitzwilliam Stone & Alcazar
Appellant/Plaintiff's Solicitors
78, Independence Square,
Port of Spain.

To: The Registrar of the Supreme Court of Judicature.

To: Kirpalani's Limited and
Mr. Edward C. Sirjoo,
2, Sackville Street,
Port of Spain.
Respondent/Defendant's Solicitor.

SUPPLEMENTARY NOTICE OF APPEAL AMENDED PURSUANT TO RULE 7 (1) (b) of the Court of Appeal Rules 1962.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 51 of 1968.

Between

GERALD ECKEL — Appellant/ Plaintiff

And

KIRPALANI'S LIMITED — Respondent/ Defendant

****

TAKE NOTICE that pursuant to rule 7 (1) (b) of the Court of Appeal Rules 1962 the Appellant hereby amends the Notice of Appeal filed herein on the 25th day of October, 1968, in the following manner, that is to say, by adding to the grounds therein the following:

4. The learned judge was wrong in law in holding that the concluded transaction was totally different (or different at all) from that which the Plaintiff was authorized to effect, and was consequently outside the scope of the plaintiff's agency.

Dated this day of January, 1969.

Appellant/Plaintiff's Solicitors.

To: The Registrar of the Supreme Court of Judicature

And To: Kirpalani's Limited and Mr. Edward Sirjoo,
2, Sackville Street,
Port of Spain,
Respondent/Defendant's Solicitor.

A – 1

March 19th, 1964.

Messrs. Kirpalani United Co. Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. Ram Kirpalani

Dear Sirs:

This serves to confirm my proposal that I will negotiate, on your behalf, in the possible purchase of Messrs. Millers Stores Ltd., on the understanding that your name is not made known to them and any offer that I put forward, the duplicate shall be signed by your goodselves as confirmation of the terms stated therein, prior to any offer being formally submitted, a copy of which shall be retained by both parties.

It is also understood that in the event of my acquiring the property you will pay me a Realtor's commission.

Yours faithfully,
(Sgd) Gerald A. Eckel

Agreed:

KIRPALANI UNITED COMPANY LIMITED
(Sgd) Ram Kirpalani

A – 2 (a)

March 19th, 1964.

Messrs. Millers Stores Ltd.,
Frederick Street
Port of Spain.

Attention: Mr. George Black

Dear Sirs:s,

Further to my letter of August 1st, 1963, and to other correspondence between us during the latter part of 1963, enclosed please find a formal offer for your business premises at No. 6 Frederick Street, Port of Spain.

Yours faithfully,

(Sgd) GERALD A. ECKEL

A – 2 (b)

March 19th, 1964.

Messrs. Millers Stores Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. George Black

Dear Sirs:

I have been instructed by a client of mine to make you a firm offer of Seven Hundred & Fifty Thousand dollars ($75,000.00) for your Freehold Property known as No. 6 Frederick Street and which extends through to Henry Street (i.e. the entire area that you now occupy) on the following terms and conditions:

1. A deposit of FIFTY THOUSAND DOLLARS towards the Purchase Price will be payable to you on my receipt of your acceptance of this offer
and the balance will be payable on completion of the transaction.
2. You shall be at liberty to continue in the occupancy of the premises for a period of SIX MONTHS from the date of your acceptance of this offer after which you will deliver the property to my client with vacant possession.
3. Completion of the transaction shall be within the said PERIOD OF SIX MONTHS when you will give my client an effective conveyance of the property, free from all encumbrances with a good marketable title.

If you wish to accept this offer please sign the form of acceptance endorsed at the foot of the duplicate hereof and return same to me.

Dated this 20th day of MARCH 1964

for KIRPALANI LIMITED
RAM M. KIRPALANI
DIRECTOR.

. . . .
Witness

We, Messrs. Millers Stores Limited, hereby accept the above offer on the terms and conditions stated therein.

Dated this day of 1964.

. . . .
Witness

A – 3

Messrs. Kirpalani United Ltd.,
Frederick Street,
Port of Spain.

August 12th, 1964.

Att: Mr. Ram Kirpalani

Dear Sirs:

Re: Miller's Stores

Enclosed please find a sketch of the floor plan of the Millers building drawn from a plan prepared by Mence & Moore A/L R.I.B.A., Chartered Architects, some years ago. I have calculated the areas in three (3) parts, Frederick Street North, Frederick Street South and Henry Street and the approximate areas are as follows:

North Portion "A" Frederick St.	approx.	43' x 134'	= 5,762 sq. ft.
North " "B" " " "		25' x 134	= 3,350 " "
			9,112 " "
Henry Street, Portion "C"		30' x 114'	= 3,576 " "
			12,688

The plan shows that my rough estimate of the area was low, for as you will recall we had thought the building to comprise approx. 10,000 square feet and put in an offer of $75.00 per sq.ft. i.e. $75,000.

With the approximate true area we find

Last Offer at $750,000 for 12,688 sq. ft. = approx. $58.50 per sq. ft.

Whereas " $950,000 " 12,688 sq. ft. = " $75.00 " " "

i.e. at the same price per square foot the price of
$950,000 would be a comparable offer.

However

After weeks of trying to get a decision from Mr. G. Black he has decided that he could not consider an offer to take over the business as a going concern because he considers, most strongly, that he has an obligation to his staff which he considers must be discharged to his satisfaction. He feels, therefore, that as it would be impossible to impose such conditions on any purchaser he can only consider the sale of the building and undertake the responsibility of staff severance pay, pensions, etc. and the liquidation of the Firm himself. He would be willing to sell over the stock separately, should you so desire, and has stated that this you could get at what he would consider to be a most advantageous price to you. In so far as the price of the building is concerned he has given me a verbal price of $100.000 per square foot which he considers to be very low when, as he says, it must be borne in mind that a large part of it will be lost in the settlement of his staff obligation and other losses that he will incur generally in liquidating the firm.

For your consideration I have prepared a list of recent transactions that have taken place in lower Frederick Street area within recent times which show the approximate price that

properties/

properties in the immediate area have changed hands for:

LAND & BUILDINGS

		Purchase Price	Price per sq. ft.
de Lima from Hi Lo Cor. Frederick & Queen Sts.			
Approx. 80' x 38' = approx.	3,000 sq. ft.	$382,500	$124.00
B. O. L. A. M. from Laquis & Co.			
Approx.	6,000 sq. ft.	$625,000	$104.00
Nova Scotia Bank from J.T. Johnson & Co. Ltd.			
Approx.	6,500 sq. ft.	$1,000,000	$150.00
Bata Shoe Co. from Tip Top Tailors			
Approx. 118' x 25' = Approx.	3,000 sq. ft.	$350,000	$117.00
LAND ONLY			
Staubles Bakery Old Site, Frederick Street			
(Building of no value and demolished)			
Approx. 62' x 64' = Approx.	4,000 sq. ft.	$230,000	$ 57.50

Bearing in mind the increased area by approximately 2,600 odd square feet and Mr. Black's figure, I am wondering if you would care to consider the following:

(1) Taking the entire property and selling off either the Northern portion of Frederick Street or, alternatively, the rear portion of Henry Street. Apparently they are, according to Mr. Black, three (3) independent buildings and could be sold separately.

(2) Authorizing me to put in a counter offer of say half way between $75.000 and $100.000 i.e. at $87.50 per square foot which at approx. 12,600 sq. ft. x $87.50 = approx. $1,100.000.

(3) Or, should your counter offer be rejected, consider taking an option to purchase at this price for a period of say Three (3) months on the pretext that the additional financing would entail some expenditure and effort and you would like to have something in writing to work on.

In conclusion I would say that I feel that due to the larger square area than we had originally considered the figures are not all that far apart, and it appears to me possible to arrive at a conclusion to this negotiation to the mutual satisfaction of both yourself and Miller's Stores. Should you feel the same way, therefore, I look forward to your views and instructions so that I may pursue the matter further.

With the hope that you and your family are well and enjoying your holiday, I remain.

Yours Sincerely,
(Sgd) G. Eckel.

A – 4

KIRPALANI'S LTD. 25th August, 1964.

Mr. Gerald Eckel,
11a Rookery Nook,
Maraval.

Dear Sir:

This is to acknowledge with thanks your letter dated August 12th 1964 together with a floor sketch.

The offer of $750,000.00 was made on the presumption that the floor space was around 12,000 sq. ft. It was based on the recent deal of property at the corner of Henry & Queen Streets.

We have noted with interest the prices paid by the buyers of similar properties.

In the case of de Lima's deal, the property is a corner property. Prices paid by Bookers cannot be taken as a guide.

In case of Tip Top, the building is brand new. In the case of Millers – it will be a purchase of a piece of land and not the property.

Can you give us an idea what will portion of property on Henry Street side fetch if we try to sell that portion only?

We do not think it is wise at the present stage to increase our offer.

What about Taurel & Co.'s building? Did you see London Fashion partners? Are they interested?

Sincerely,
(Sgd) C. Maharaj
for R.M. Kirpalani.

A – 5

Kirpalani United Company Limited,
75 Queen Street,
Port of Spain.

September 10th, 1964.

Att: Mr. Ram Kirpalani

Dear Sirs:

I acknowledge receipt of your letter of August 25th, 1964, for which I thank you.

With regard to the comparison mentioned in the second paragraph of your letter, re the Lotus property, I have prepared a plan with detailed measurements for your consideration. The areas are as follows:

2 Storey Building	8,954 square feet
Covered Passage	430 square feet
Open Yard	1,316 square feet
TOTAL:	10,700 square feet

On the Ground Floor there are four tenants (two of whom are protected by the Rent Restriction Ordinance) and the condition of the tenancies are as follows:

Ground Floor:

N.S. Sabga	$ 60.40 per month)	
Ballerina Shoe Store	129.60 " "	) rent controlled
Hadeed International & A. J. Charles	600.00 " "	Leased, 5 yrs. unexpired

First Floor:

Lotus	Lease expired	possession possible

Within the next five years, therefore, possession can only be had of the Black Cat Bar and an area behind Hadeed International, on the Ground Floor, (as shown on plan) totalling an area of approximately 4,000 square feet.

Subject to correction, I recall that after deducting the passage area, i.e. 10' wide x 81' long, we estimated the Lotus Building to be approximately 10,000 square feet, more or less, and that my rough measurements (by pacing out same) of the Millers Stores led up to assume that the properties were approximately of the same area.

However, for your further consideration, the comparison of the two properties shows:

Lotus/

	Lotus Building	Millers Stores
Land Area	10,700 sq. ft.	12,688 sq. ft.
Bldg. area (less yard & passage)	8,934 " "	12,688 sq. ft.
Possession on Ground Floor for next 5 years	4,000 " "	12,688 sq. ft.
Non-possession of Ground Floor for next 5 years	4,964	nil
Possession of First Floor	full possession	full possession
Price paid for Lotus Land	$55.00 per sq. ft	
Price offered for Millers Stores	$58.50 per sq. ft.	

The comparison shows that whilst the price per square feet (i.e. $55.00 – $58.50) are close, one property offers full possession whilst the other offers less than a half of its area on the Ground Floor.

Whilst I appreciate that you want to negotiate at the lowest possible price, I trust that you will accept my personal opinion in the same good faith that it is intended and reconsider the alternatives I suggested in my letter of August 12th, 1964.

I personally believe that $75.00 per square foot (which I had thought our offer was based on) would have been a very favourable purchase but I also believe that $100.00 per square foot is not unreasonably high, bearing in mind that it runs from Frederick through to Henry Street, giving access from both sides and also by comparing same to other recent purchases.

As requested, it may be well to mention at this stage that I have just been given a price by the owner of London Fashion for his property at $750,000.00 (Attached please find plan of same) which works out at approximately $100.00 per square foot. I suggested $500,000.00 to them which they rejected and were quick to refer to Tip Top Tailors opposite who got $350,000 for 3,000 square feet. Also the Fogarty Building next to the Canadian Bank of Commerce on Independence Square has just been sold to an insurance company for the sum of $420,000.00 the area of which is 110' x 64', i.e. approximately 7,040 square feet which works out at $60.00 per square foot.

In respect to your enquiry as to what the Henry Street side of Millers would fetch, I would suggest that with access only from Henry Street that portion would not have the same value as the Frederick Street side, but would be more valuable than Forgarty's Independence Square. I would suggest that $75.00 per square foot for the portion would be fair and should at that figure attract much interest, due to its central location. I.e. 3,576 square feet at approximately $75.00 per square foot = $268,200.00, say $250,000.00. Bearing in mind that it is 576 square feet larger than Tip Top, at $160,000.00 less than they got it seems to me to be a fair figure. For a quick sale I would think that it would be snapped up at $200,000.00.

In so far as the Miller building is concerned, and in respect to your remarks about same, I have revisited the premises and had a critical look at the building. I would hardly think that a purchaser who intended to use the property for retail purposes would demolish the building as it is structurally very sound, having thick masonry walls throughout, with floors on the Ground Floor of concrete with a tile finish. The ceilings and upper floors are

all in good condition, whilst the roof is of steel frame covered with galvanised iron sheets. The general decor of the interior is quite attractive and the building contains the normal amenities such as adequate stairways, lavatories, vaults, etc. If you consider it to be otherwise, I would suggest that we have an Engineer carry out a survey in order that we establish the extent of any structural defects and the approximate cost to have same remedied. I look forward to your decision on this point as you may well view the proposition in a different light if you could be assured, and I am sure that you will be, that you are not just purchasing a piece of land only. I do think, however, that should a purchaser wish additional prestige value the front could be modernised, together possibly with the office arrangement on the First Floor.

I have endeavoured to give an unbiased assessment of the situation as I see it and look forward to your further advise and comments. As the matter now stands our offer has been rejected, a counter figure has been suggested and the next move, therefore, is up to us.

With regard to London Fashion, would you care for me to make a counter offer on your behalf as was done in the Miller case and, if so, please advise what the offer should be.

With regard to the Taurel Building, Mr. Quesnel again says that they could not consider disposing of the property for $550,000.00, They are still quoting $850,000.00. Again should you care for me to make another offer please advise. In so far as this property is concerned, the Government is interested and the property has already been inspected by their Engineers who are, they informed me, to submit a report to Cabinet for their consideration.

I trust that I have dealt with all the points contained in your letter of August 25th and with kind regards, I remain,

Yours sincerely,
(Sgd) Gerald Eckel.

A – 6

KIRPALANI'S LTD.

Mr. G.A. Eckel,
11a Rookery Nook,
Maraval.

Dear Sir:

Thank you for your letter dated September 10th, 1964.

I have noted with admiration your interesting comparison regarding various properties.

Taking everything into consideration, I feel the price of $100.00 per sq. ft. is out of the question.

In the case of Millers, we can go up by say maximum $100,000.00. In other words $850,000.00 – I do not think it is worth any more. The building will require at least $100,000.00 to $150,000.00 to be put back into shape. I take your word for granted that it has solid foundation etc.

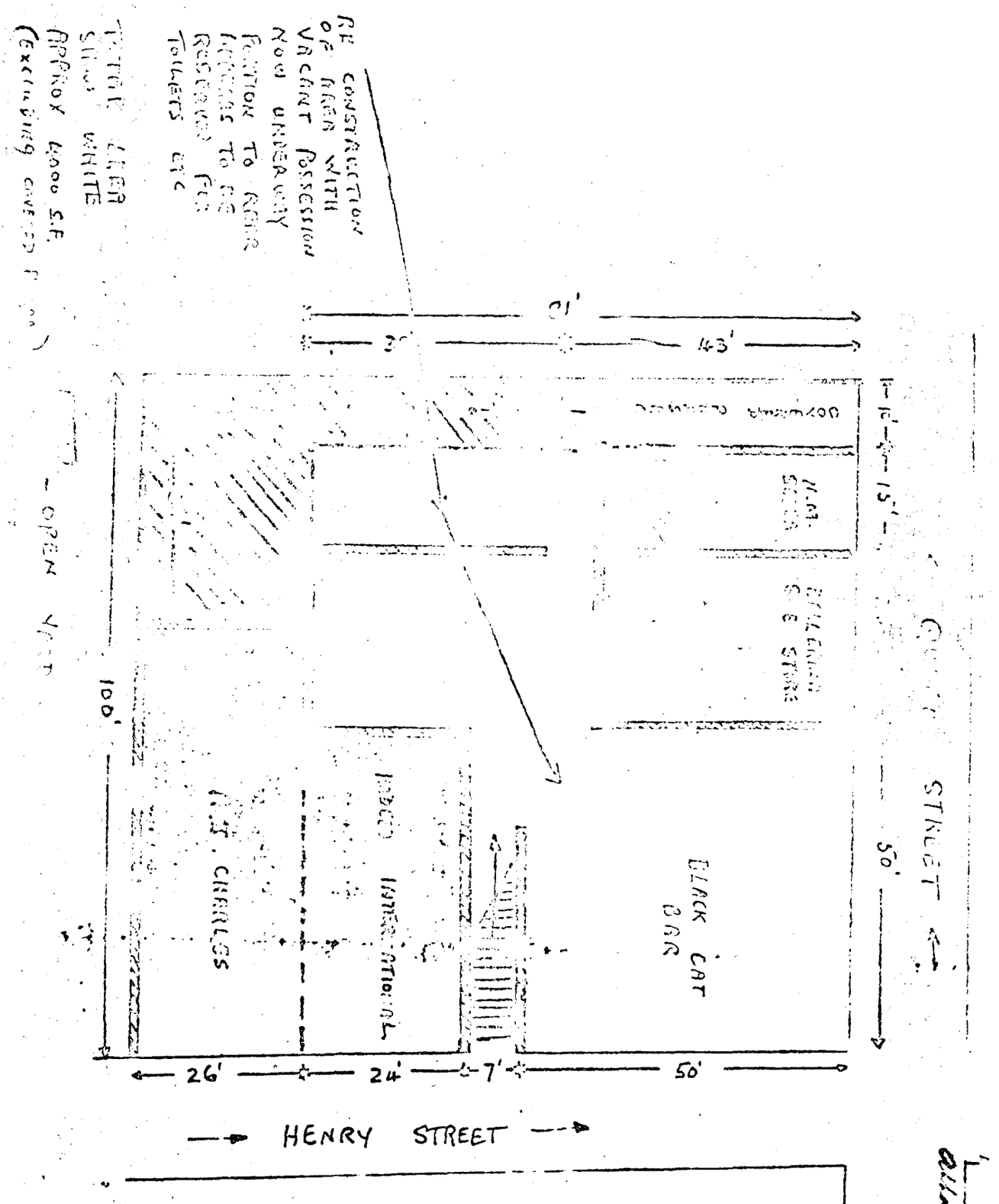
In the case of London Fashion, I think the price of $500,000.00 is reasonable. You can offer $550,000.00 maximum. We will not pay more. I think London Fashion on Chacon Street side is rented. What is the income and what are the tenancy conditions? You write them in the same way as you did with Millers.

If Government is interested in Taurel's building, I think they will get the price they want. I wish them all the luck. I do not think I can pay more than $550,000.00 for that property.

By the way, they (Taurel & Co.) have a piece of land measuring about 15,000 sq. ft. adjoining their buildings. Do you think they will sell that land separately. If they are willing, we are interested in buying that piece.

With best regards.

Yours sincerely,
C. Maharaj for
R. M. Kirpalani.



FLOOR PLAN
LOTUS BLDG.

A – 7

October 22nd, 1964.

Messrs. Kirpalani United Co. Ltd.
Frederick Street,
Port of Spain.

Attention: Mr. Ram Kirpalani

Dear Sirs:

Many thanks for your letter of the 6th instant. With regard to the negotiation with Millers Stores, as instructed I have advised them in writing of my instructions to increase the offer by a maximum of One Hundred Thousand Dollars ($100,000.00 i.e. to $850,000.00) and pointed out at the same time your opinion as to the necessity of having to spend between $100,000,00 to $150,000.00 on same to put back in shape, modernize. etc. I have since been advised that they are considering the matter and will let me have their answer as soon as possible. As soon, therefore, as I hear from them I will immediately contact you.

In the case of London Fashion, as advised they have already rejected a written offer from me of Five Hundred Thousand Dollars ($500,000.00) however, I have written advising them of my authority to increase the offer to $550,000.00 and am awaiting their reply. The rents at London Fashion are:

Ground Floor: Rented to Messrs. Lampkin & Gomes. The lease, I am informed, has expired and the rent is $600.00 monthly.

Second and Third Floors: The only information that has been given me is that they are rented as ten offices to various persons for a total monthly rent of $550.00.

With regard to the Taurel Building, the deal with Government has fallen through and they have gone ahead and rented about half of the building. They still have for rent, lease of sale, the following:

Front Retail Section:	Ground Floor	6/7,000 sq. ft.)	rent or sale
	1st floor	3,750 " ")	price not
		)	determined
Warehouse Section (center):		9,000 " "	Price for rental 12¢ per sq. ft. per month. Sale price not determined.

Vacant Land: Approximately 16,500 sq. ft.

Mr. Taurel says that he is reluctant to part with the vacant land as it would devalue the rest of the property. However he has told me to advise you that he may consider selling same for $3.00 per square foot or approximately Fifty Thousand Dollars ($50,000.00).

Please let me know if any of the above is of interest to you.

I can also offer you, see attached plan, a parcel of land on the Morne Coco Road, just North of Goodwood Park that has been approved by Government for light industry. This site was not affected during the 1960 flood and is located in a peaceful area, free of hooligans and yet within easy distance of Port of Spain, particularly when the new highway is completed. The area is approximately 30,000 square feet and can be had for Two Dollars ($2.00)

($2.00) per square foot. It is the best site in the area and has the advantage of considerable road frontage. The building can easily be converted into a factory. It has a concrete floor, a ceiling of approximately 9' high (which can be raised), built of heavy timber frame roof and aluminum cover. The walls are partly brick and partly wire. It measures 24' x 320' i.e. approximately 7,500 square feet, and has water and light already installed, and can be had for a nominal value of approximately $1.35 per square foot, or alternatively, any salvageable materials may be removed, in which case you would pay the land value only. The Starlight Drive-In owners are also marketing some of their land fronting on the Diego Martin Main Road (ex Children's playground) and the asking price of same is $3.00 per square foot.

Please advise if the above is of any interest, I understand that you are expected back some time next month and should no further developments take place I look forward to seeing you then. 10

Yours sincerely.

(Sgd) GERALD A. ECKEL.

Messrs. Kirpalani United Co. Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. Ram Kirpalani

Dear Sirs:

Further to my letter of October 22nd, 1964, I have had a meeting with the owners of London Fashion at which time I was advised of the following:

(a) That they claim to have an offer of $600,000.00 for the building.

(b) This was unacceptable as the buyer does not wish to take over the stocks, for which they are asking the net landed cost.

(c) No agreement was reached on the takeover of the fixtures.

I was told that an offer along the following lines would be acceptable:

Building	$600,000.
Estimated Stocks (approx.)	200,000.
Fixtures (see attached	60,000.
	$850,000.

They are willing, they say to give reasonable time for the payment of the stocks and fixtures at a low interest rate.

I am of the opinion that you should try an offer of $700,000. on the basis that you could probably slowly liquidate their stocks at reduced prices over a period of say six to nine months, whilst gradually replacing same with your own lines. Estimating your recovery in stocks and fixtures to be $150,000. the net cost to you for the building would be in the vicinity of $550,000. I may mention that I suggested that they could be given time to liquidate the stocks themselves which did not meet with their favour, on the excuse that if they sold they would want to include everything and clear out.

Insofar as Millers Stores are concerned, I regret that Mr. Black has rejected our offer of $850,000. for the Port of Spain building only. At our meeting I was able to persuade him to let us have his Balance Sheet for the last three years so that we might have an opportunity to make a bid for the takeover of the Company.

He has again requested that the matter be kept confidential as he does not want his staff to become upset over something that may not materialise. I would prefer not to mention in detail in this letter his personal views of the Company's affairs and look forward to discussing this matter with you on your return.

I have/

I have had my Accountant give his personal and confidential view of the worth of the Company's shares as a Chartered Accountant and look forward to comparing same with your assessment.

Awaiting your further instructions, I remain with Compliments,

Yours sincerely,

(Sgd) GERALD A. ECKEL

rle/

Encls.

Note: I should appreciate your returning the enclosed Balance Sheets (photostats) after you have given them your attention, so that I may return them to the Company.

FIXTURES -- LONDON FASHION

APR.		
120 Wooden Cases & Show cases	250	30,000
Light Fixtures & Signe fans	6000	6,000
15 Machines		6,000
Office & Equipment		6,000
Cash register		2,000
Displays		1,000
Skirt & dress racks		1,000
Ladders Rolling		500
Window Glass		500
		53,000

Messrs. Kirpalani United Co. Ltd.,
Frederick Street,
Port of Spain.

November 24, 1964.

Attention: Mr. Ram Kirpalani.

Dear Sirs,

In reply to your query this morning as to the basis on which I was to negotiate for you in respect of the Realtor's commission as requested attached please find a photostat copy of our agreement dated March 19th, 1964.

In the long negotiation with Millers Stores you may recall that I first approached them on behalf of another client, as far back as August 1963, and that I showed you a copy of their reply dated August 22nd, 1963, to that approach. At that time my approach to Millers was on the basis that they would be responsible for my commission as there was no understanding between my then client and myself along the lines agreed by us, as shown re our agreement attached.

Our agreement to keep your name secret and that you assume the responsibility of commission is known to Mr. Black, who can verify same, and is in keeping with recognised Real Estate practice.

In the case of London Fashion, the exact circumstances apply, whereby I approach them for the same former client on May 21st, 1964, again this approach came to nothing as London Fashion were not interested in the terms and conditions contained therein. Shortly prior to your departure from Trinidad, at one of our meetings in your office when we reviewed the chances of finalising with Millers and discussed other alternative possibilities, you requested me to approach London Fashion on the same conditions, i.e. that your name be kept secret, etc.

During your absence from Trinidad I received a letter from your firm dated August 25th, 1964, asking me if I had seen London Fashion. On September 10th I replied stating that I had just been given a price of $750,000.00 at which time I enclosed a sketch floor plan of their property and asked if you would care for me to make a counter offer on your behalf as was done in the case of Millers and, if so, what the offer should be.

On October 6th I received a letter from your firm authorising me to offer $550,000.00 and instructing me to write them in the same way as I did with Millers and requesting me to enquire as to the income and conditions of tenancies.

On October 22nd, made a written proposal to London Fashion as authorised by you and on the said date wrote your firm to the effect that I had done so, and at the same time reported the information given me with regard to the rentals. On November 7th, after lengthy discussions with London Fashion, I wrote your firm stating that I had another meeting with them and I outlined the terms and conditions on which they were prepared to reduce their price and which, including stock, amounted to $850,00000. In the said letter I recommended that you should try an offer of $700,000.00 giving my reasons for such an offer and mentioned that they were not in favour of liquidating their stock themselves.

On/

On November 18th, you authorised me verbally to give, and outlined in your own handwriting, the price and terms and conditions, of an offer to Millers for the takeover of the Company as a going concern and at the same time you instructed me to prepare an offer to London Fashion to be delivered not before the 23rd November, giving two alternatives, (i.e. $550,000.00 plus stock of $750,000.00 Cash) in the event that the Millers deal came to nothing.

On the morning of Monday, November 23rd, I advised you that Millers were still undecided as to the offer of November 18th and/or terms and conditions and had promised to let us know something by Wednesday the 25th. Your instructions were to withhold the offer which I had already prepared, to London Fashion until we had a reply from Millers. You at the same time informed me that further to the approach that London Fashion had made to your firm when they were told that your interest did not exceed $500,000.00 that they had telephoned for an appointment on the said morning of the 23rd and you further informed me of the following:

1. That they were still unaware that I was acting on your behalf.
2. That you would listen to their proposition and let me know the results of the talks between 1 and 2 p.m. on the said day.

Nothing having heard from you during the course of the evening I telephoned you at approximately 4.00 p.m. when you advised that they were coming to see you again at 5.00 p.m. and asked me to come into your office on the following morning, i.e. Tuesday November 24th.

As requested I today visited your office, at which time you advised that you hoped that you had come to terms with London Fashion for the sum of $570,000.00 plus stocks, etc. at cost, subject only to their formal approval, you also stated that whilst you were still more favourably impressed with the Millers deal due to its location, you were doubtful that a conclusion to that transaction would be finalised for quite a while due to undecided items such as price, severance pay, re-employment of staff, etc.

At this stage, I was offered by you the sum of $1,000.00 for the efforts that I had extended on your behalf in the negotiation with London Fashion, for the reasons that in so far as you were concerned, I was not acting on your behalf in that transaction or/alternatively, that a buyer is never expected to pay commission, you however felt that some token recompensation was warranted, a suggestion to which I immediately and still maintain is unacceptable.

In this brief resume of the facts as I record them I would like to make the following comments:

(a) In view of London Fashion's claim to an offer for the building only of $600,000.00 and as the interested party was not interested in taking over their stock, and in view of the fact that it was estimated that the liquidating the stock themselves would have produced a net figure of maximum 50%, their position was at its best.

Building	$600,000.00
Stocks & Fixtures at 5%	125,000.00
	$725,000.00

For this reason and because they had become very anxious to conclude a sale I feel that you should have maintained your stand at $500,000.00 and allowed me to put in

the/

the offer as we had agreed, for either:

$750,000.00 Cash for everything

or

$550,000.00 Building, plus stock at cost or market value, whichever was lower.

I cannot help but feel that at $750,000.00 which figure exceeded by $50,000.00 the target I was aiming for, or the alternatives as above, I would have concluded the transaction.

(b) My further negotiations with London Fashion was awaiting, on your instructions, the decision of Millers.

(c) Acting on your behalf I was instrumental in convincing London Fashion that their expectations insofar as price was concerned, was not negotiable due to present business trends, financial considerations, etc., and in conditioning them to negotiate at a much lower figure.

(d) Your reacting to the conclusion of the entire proceedings is that you have done exceedingly well, not only in your opinion but in that of your banker.

Without, therefore, the necessity of analysing the entire proceedings in further detail I must confess that I am dismayed over the outcome of my efforts on your behalf, which until the present time have been most friendly and cordial.

In conclusion, I would like to stress that I am eager to resolve any misunderstanding on your part and as such I am willing, at any time, to discuss and/or examine my files with you or anyone you may appoint in an effort to restore our relationship.

Finally, I trust that you will enlighten me as to your disagreement of any part of my assessment of the above or as to any dissatisfaction you may have in my efforts on your behalf, either in the case of Millers or London Fashion, so that I may at least have the opportunity of replying to any query relating to our joint endeavour.

As per your instructions this evening, I am writing to Messrs. Millers Stores Ltd., withdrawing our offer and as such I would appreciate your returning to me their Balance Sheets, together with the letter I sent you from Mr. David Law, Chartered Accountant.

In anticipation of your early reply, I remain,

Yours sincerely,

(Sgd) Gerald A. Eckel.

Encl.

A – 10

KIRPALANI'S LTD.

Mr. Gerald Eckel,
11a Rookery Nook,

26 November, 1964

Dear Sir:

Thank you for your letter dated November 24th, 1964. I am really surprised to see the photostat copy of the letter signed by me in connection with Miller's Ltd. transaction.

In my presence, you told me you have a letter from me in connection with London Fashion. I told you I do not remember signing any one because it was I who told you that I was negotiating with London Fashion through Mr. Gabe of San Fernando, who was acting as a friend. I wanted you to negotiate with London Fashion without disclosing our name, because I told you Mr. Gabe was negotiating with them on behalf of us as Kirpalani's Ltd. I wanted you to get commission from them (as Mr. Gabe was not getting any) because I thought you had worked (and at that time you were working) hard on Millers transaction and if we decided on London Fashion, you would be left out.

I am really surprised. You, being a man who wants everything in writing, in the case of London Fashion would have got a letter from me, just like Millers, stating that I would be responsible for commission.

But how can I be negotiating as Kirpalani's on one side – whereas you say, the name "Kirpalani's" will have tendency to boost up the price – where I who have to pay no commission can authorise you to negotiate, without disclosing my name, or payment of commission?

I feel there is no question of dispute or mis-understanding.

On my part, I offered you $1,000.00 (One Thousand Dollars) – not as a commission, but a sum to compensate you for all the trouble you have taken. I told you I was not bound to give this amount, but because of sincerity with which you worked with Millers and not London Fashion.

I withdraw my offer as soon as you told me that you had written authority from me that I would pay you commission, if I got London Fashion – whether through you or not. I warned you that in case you were unable to produce the letter, I would not give you even $1,000.00 which you agreed.

I am afraid I can do nothing further in the matter.

Yours faithfully,

KIRPALANI'S LIMITED
(Sgd) R.M. Kirpalani.

Encls. Copies of Balance Sheet, Plans, etc.

A – 11

D No. 151454
Receipt for a Registered Article Addressed
Kirpalani United Co. Ltd.
Frederick Street
Port-of-Spain.
Signature: ?, Pierre

November 27, 1964.

Attention: Mr. Ram Kirpalani

Dear Sirs:

I am in receipt of your letter of November 26, 1964. I am afraid that your entire letter is inaccurate.

What I told you was that I had a written agreement with you as to the conditions under which I was employed to negotiate for you, you could not recall ever signing any such agreement and said that if you had then you had signed same without reading it. You asked for proof of such an agreement. I consider it ridiculous to suggest that in dealing with a man of your standing I should have thought it necessary to have you reaffirm our agreement or that I would undertake to negotiate with London Fashion, and without disclosing your name, under such absurd conditions.

I had hoped that my letter of November 24, 1964, would have restored your reason but your reply indicates clearly that the matter can only be settled in Court and as such I have placed the matter in the hands of my Solicitors.

Yours faithfully,

(Sgd) Gerald A. Eckel

A – 12

Fitzwilliam, Stone & Alcazar,
Solicitors & Conveyancers:

17 St. Vincent Street,
Port of Spain.
15th April, 1965.

Kirpalani's Limited,
Queen Street,
Port of Spain.

Dear Sirs:

We have been consulted by our client Mr. Gerald Eckel whom you retained as a Real Estate Agent in connection with your purchase as a going concern of those premises at No. 21 Frederick Street, Port of Spain, from London Fashion.

Counsel has advised that you are liable to our client for his commission on the purchase price of the said premises which we are instructed you bought for approximately $800,000.00. Two and a Half (2½%) Per Cent of this sum we calculate to be $20,000.00 and we should appreciate receiving your cheque for this sum within the next ten (10) days failing which we have instructions to issue a Writ.

Yours faithfully,

FITZWILLIAM & CO.

JM/hc.

A – 13

KIRPALANI'S LTD.

20th April 1965.

Messrs. Fitzwilliam, Stone & Alcazar,
17, St. Vincent Street,
Port of Spain.

Dear Sirs:

Thank you for your letter dated 15th April, 1965.
This is to inform you that we have not bought property known as 21, Frederick Street.
There seems to be some misunderstanding.

Yours faithfully,

KIRPALANI'S LIMITED
(Sgd) R. M. Kirpalani.

RMK/ip

A – 14

FITZWILLIAM , STONE & ALCAZAR
Solicitors & Conveyancers.

17, St. Vincent Street,
Port of Spain.

27th April, 1965.

Kirpalani's Limited,
Queen Street,
Port of Spain.

Dear Sirs,

Re: Mr. Gerald Eckel.

We thank you for your letter of the 20th April, 1965, and note your use of the word "Misunderstanding". Apparently our letter was not considered worthy of reply other than evasion.

We are advised that the mere fact that the land was conveyed to a third party at your direction does not alter your liability.

We accordingly repeat the request contained in the last paragraph of our letter of the 15th April, 1965.

Yours faithfully,

FITZWILLIAM & CO.

JM/hc.

A – 15

KIRPALANI'S LIMITED

3rd May, 1965.

Messrs. Fitzwilliam, Stone & Alcazar,
17 St. Vincent Street,
Port of Spain.

Dear Sirs,

Re Matter – Gerald Eckel

We acknowledge receipt of your letter dated 27.4.65.
We would like an opportunity to have counsel's advice regarding your dispute with us.
We promise to write you on our final decision regarding this matter before 15th May.

Yours faithfully,

KIRPALANI'S LTD.

(Sgd) R.M. Kirpalani.

RMK/ip

James Morgan

17th May, 1965.

Kirpalani's Ltd.,
Queen Street,
Port of Spain.

Dear Sirs:

Re: Gerald Eckel

Despite the promise made in the last paragraph of your letter of the 3rd May, 1965, we regret that we have not heard from you.

Unless we do so within the week, we regret that our instructions are to issue a writ.

Yours faithfully,

FITZWILLIAM & CO.

JM/hc.

A – 17

E. C. SIRJOO

20th May, 1965.

Messrs. Fitzwilliam Stone & Alcazar,
Solicitors & Conveyancers,
17, St. Vincent Street,
Port of Spain.

Dear Sirs,

Re: Gerald Eckel

I am now acting for Messrs. Kirpalani United Co., Ltd., in the above. 10

My client is still awaiting Counsel's opinion in this matter and as a result was unable to send you his reply to yours of the 27th ultimo as mentioned in his letter to you on the 3rd instant.

I am today informed by Counsel that I should have the opinion around the end of next week and as soon as I do I shall send you our reply to your said letter as early as possible thereafter.

Yours faithfully,

Sgd. E. C. Sirjoo.

A – 18

E.C. Sirjoo.

31st May, 1965.

Messrs. Fitzwilliam Stone & Alcazar,
Solicitors & Conveyancers,
17, St. Vincent Street.

Dear Sirs,

Your letters of the 15th and 27th April have been passed to me by Kirpalani United Company Limited for attention.

My clients regret that you have thought fit to characterise their letter as an evasion, and I must confess that it is at least unusual that a polite denial of liability and rejection of inaccurate and unfounded instructions (if your client's letter to my clients of the 24th November 1964 is any guide) should be so described. 10

However, if such things are to be spelled out, I am instructed that your client's letter of the 24th November 1964 is so full of inaccuracies as to make it unnecessary to do any more than to reject them, together with your client's claim, and to inform you that I will accept service of any writ your client may wish to issue in this matter.

Yours faithfully,
Sgd. E.C. Sirjoo.

This Deed was prepared

Conveyancer.

THIS DEED is made this [illegible] day of [illegible] in the year of Our Lord One thousand nine hundred and [illegible] Between CHARLES CONRAD STOLLMEYER of the City of Port of Spain in the Island of Trinidad, Merchant, (hereinafter called "the Vendor") of the One Part and R. A. LIMITED, a company duly incorporated under the laws of the Territory of Trinidad and Tobago and having its registered office at Champs Fleurs, in the Island of Trinidad aforesaid, (hereinafter called "the Company") of the other Part:

WHEREAS the Vendor is seised and possessed in un-incumbered fee simple of all those two several messuages and parcels of land more particularly described in the Schedule hereto SAVE AND EXCEPT all oil and mineral rights lying in upon or under the said parcels of land (hereinafter referred to as "the said oil and mineral rights") reserved unto Charles Conrad Stollmeyer by deed of Conveyance dated the 25th day of May, 1945 registered as No. 9803 of 1945 and made between [illegible]

...Charles Conrad ...Hollmeyer ... the one part and the Vendor of ...

AND WHEREAS th... Vendor ha... contracted a... agreed with the Company ... the absolute sal... to the C...pany of the ...me at and for the price or ... of Five Hundred ... Ten Th...sand Dolla... free from all encumbrances ...ve and Except the ... il ... mineral ...nts.

NOW THIS I... T...NESS ...that in ...sideration of the said recited ...reement and in ...ideration of the s... of FIVE HUNDRED AND TEN THOUSAND ...LARS paid by ... Compar...to the Ve... on or before the execution of ...se presents ... e ...recei... whereof t... endor hereby acknowledges) the ...dor as Benef... a... Owne... EREBY CONV... ...nto the Company ALL AND ...GULAR those ... ...evera... certain mes... es and parcels of land described ...the Schedule ...reto S... AND EXCEPT... e said oil mineral rights ...O ...the same unto and ... he use of ... Company in fee simple.

IN WITNESS W... the parties ...to have hereunto set their hands ...day and year ... ...reinabove wri...

THE SCHEDUL... ...FERRED TO

ALL AND SING...LAR those two several messuages and parcels of ...situate in the City of Port of Spain in the Island of Trinidad THE ...T THEREOF formerly known as Number Twelve Frederick Street but since ...umbered and now known a... assessed as NUMBER TWENTY-ONE FREDERICK STREET ...abutting on the North partly upon Lot Number 23 or 25 Frederick Street ...erly Number 30 Queen Street and partly upon Lot Number 23 Queen Street ...erly Number 31 Queen Street on the South upon Lot Number 19 Frederick ...et formerly Number 12a Frederick Street on the East upon Frederick ...et and on the West upon Number 18 Chacon Street formerly Number 6 ...con Street together with the buildings thereon and the appurtenances ...reto belonging AND THE SECOND THEREOF formerly known as Number Six ... Chacon Street but since renumbered and now known and assessed as ...BER EIGHTEEN CHACON STREET having a frontage of 34 feet/.....

...d upon Cha... Street by 116 ... pth and abutting on the North upon ... Number 67 Queen Street f... nerly numbers 32 and ... ueen Street on ... South upon the rema... g portion of Lot Number 18 C...con Street ...merly described as ... remaining portion ... Number 6 Chacon ...eet on the East upo... t Number 21 Frederick Street formerly Number ... Frederick Street a... the West upon Chacon Street together with the ...ldings thereon and the appurtenances thereto belonging.

...NED AND DELIVERED by the ...dn-named CHAIM GOTTFRIED ... and for his act and deed in ... presence of:

Chaim Gottfried

And of me,

Ramkissoon Pooran.

C.B. Samuel
Writing Clerk.

I, CHARLES BENJAMIN SAMUEL of the City of Port-of-Spain ... the Island of Trinidad, Writing Clerk, make oath and say that ... as personally present together with Ramkissoon Pooran, ...icitor and Conveyancer, on the 31st day of December, 1965, at ...-of-Spain aforesaid, and did then and there see Chaim Gottfried ... of the parties to the within written deed purporting to be ... d of two parts and made between the said Chaim Gottfried of ... one part and R.K. Limited of the other part sign and deliver ... same as and for his act and deed: that the signature ...im Gottfried" at the foot of the said deed subscribed is of ... true and proper handwriting of the said Chaim Gottfried and ... the signatures "C.B. Samuel" and "Ramkissoon Pooran" also ...scribed at the foot of the said deed as those of the witnesses ...sting the due execution of the same by the said Chaim Gottfried ... of the true and proper handwriting of me this deponent and of ... said Ramkissoon Pooran.

...n to at No. 7 St. Vincent ...et, Port-of-Spain, this ... day of December, 1965.

C.B. Samuel

Before me,

Commissioner of Affidavits.

Registrar General—24

A.

I, EAROL DONA[illegible] STEWART BRA[illegible]WAITE, Acting

Registrar G[illegible]al of the ~~Territory~~ of Trinidad and Toba[illegible] do hereby Certify

that the annexed Deed dated the 31st day of Dece[illegible]r

in the year One Thousand Nine Hundred and sixty-[illegible]

and expressed to be made between CHAIM GOTTFRIED [illegible] one part and

T. K. LIMITED of the other part,

[P.T.O.

T

was delivered to me by Charles Samuel, Law Clerk of Port of Spain.

for Registration on Friday the 8th

day of January in the year One Thousand Nine

Hundred and sixty-five at 20 minutes before 10 o'clock in the f

and that the said Deed is Registered under No. of the year One

Thousand Nine Hundred and sixty-five and that the number

of Pages on which the said Deed is written is

Dated at Port-of-Spain, 8th day of

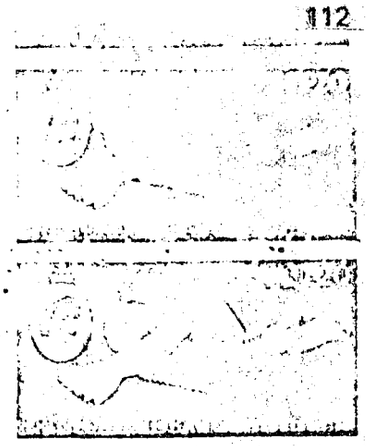
January in the year One Thousand Nine Hundred

and sixty-five

Fee $9.

Acting Registrar General

...P., Tr./To.—371—30,000—5/66



TRINIDAD AND TOBAGO.

REGISTRAR GENERAL'S OFFICE,
RED HOUSE,
PORT OF SPAIN.
19th April, 1967.

I certify that the foregoing five pages contain a true and correct copy of the Original protocoled under No. 171 Protocol of Deeds for the year 1965.

Acting Deputy Registrar General

G.E. – 1

MILLER'S STORES LTD.
Trinidad, W.I.

P.O. Box No. 285
Port of Spain.
22nd August 1963.

Gerald A. Eckel, Esq.,
11A Rookery Nook,
Maraval.

Dear Sir,

Your letter dated 1st August was placed before the Board of Directors of this Company and we have to inform you that they are prepared to consider an offer from your client together with an agreement covering a 25 year lease and the terms and conditions thereof.

We shall be glad for an early reply.

Yours faithfully,
Miller's Stores, Ltd.
(Sgd) G. Black
Director.

MILLER'S STORES LIMITED G. E. – 2

P.O. Box 285
Port of Spain.

27/5/64.

(a) that the offer is not enough

(b) that we would like to know what sort of business is taking the building as the only satisfactory way would be for them to absorb some or all of the staff.

G.E. – 3

Messrs. Millers Stores Ltd.,
Frederick Street,
Port of Spain.

October 20, 1964

Dear Sirs:

Attention: Mr. George Black

Further to the offer of purchase dated March 19th, 1964, re your premises at Frederick and Henry Streets, and to past correspondence, I wish to advise that the parties interested in the property have indicated to me that they are unable to meet the figure that you suggested to me some months ago. They say that on professional advice received it is estimated that it will cost in the vicinity of One Hundred to One Hundred & Fifty Thousand Dollars ($100,000.00 – $150,000.00) to convert and modernise the building to their needs, to install their required offices and to generally carry out substantial improvements on the First Floor.

I have now been authorized to increase the offer by a maximum of One Hundred Thousand Dollars ($100,000.00) to Eight Hundred & Fifty Thousand Dollars ($850,000.00) for the freehold property only, i.e. exclusive of your fixtures, stocks, etc., which can be disposed of separately.

Also it does appear that they would still be interested in making a bid for the take over of the Company of the basis of a going business. I recall your concern over the latter possibility when we last discussed the matter but I am wondering if (should the take over bid be acceptable to you) you could not discharge your personal obligations to your staff in the form of an independent gratuity and leave such matters as severance pay, etc., to the new management.

I look forward to hearing from you in respect to either of the two proposals and in the meantime, I remain with Compliments,

(Sgd) Gerald Eckel.

G.E. – 4

Messrs. London Fashion Ltd.,
Frederick Street,
Port of Spain.

October 22, 1964.

Dear Sirs:

Att: Mr. Leo Katz

Further to past correspondence, I have been instructed to enquire whether your Company will accept a maximum cash offer of Five Hundred & Fifty Thousand Dollars ($550,000), (excluding fixtures, stocks, etc.) for your Freehold Property at Frederick Street through to Queen Street, Port of Spain.

Should you be willing to accept same I will ask the interested party to submit a formal offer to you.

I would appreciate hearing from you in this respect in due course.

Yours faithfully,

Sgd: G. Eckel.

Property	[illegible]	+	250,000 00
Furniture	20,134	–	10,000 00
Office Machs	24,000	–	4,000 00
Lift	1,200	–	– – –
Motor Vehicles	12,500	–	4,000 00
Stocks	725,444	–	85,000 00
Debtors	111,847	–	35,000 00
			[illegible]
			450,000 00

41,000
8,000
61,000
221,000
60,000
136,000

144 — 375

576

offer [illegible] per share

Based on 1963 balance sheet

(figure will be changed if 1964 balance sheet has major changes)

(a) Present staff will be paid by Milroys upto date of take over (i.e. so far as new owners are concerned the staff will be considered to be new employees on the date of take-over)

(b) There will be no binding on the new owners to employ all or any of the present staff

(c) There will be no binding on the new owner to carry on same business.

(d) (i) The valuation is based on the assumption that the stock taken is either cost or market value whichever is lower.

(ii) That the depreciation written off on Furniture, motor cars etc is as realistic

G.E. – 6.

PRIVATE AND CONFIDENTIAL

Messrs. Millers Stores Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. George Black

November 18, 1964.

Dear Sirs:

Further to my letter of October 20th, 1964, I wish to inform you that the parties interested in your property have been advised by me of the necessity on your part to have the negotiation concluded, one way or the other, due to the reasons as given me by Mr. Black. In the light of the above and due to other immediate possibilities now before them I have been requested to state that either of the below mentioned offers represents the maximum that they are able to pay after a most careful analysis of other properties, business trends and financial considerations, and as such represents their final offer:

1. The sum of Eight Hundred & Seventy Five Thousand Dollars (875,000) for the Port of Spain property only, exclusive of your fixtures, stock, etc., giving your ample time to liquidate same, the period for which can be discussed.

   They are prepared to negotiate the take-over of the Company along the following lines:

   (a) The sum of £4. 10. 0d. per share based on the 1963 balance sheet (figure will be adjusted if the 1964 Balance Sheet has any major changes).

   (b) Severance Pay to the Staff will be in addition to the above figure, providing:

      (i) That Millers can advise as to the amount that will be involved.

      (ii) That the figure is reasonable and acceptable

   (c) There will be no binding condition on the new owners to employ any or all of the present staff.

   (d) There will be no binding condition on the new owners to carry on the same business.

   (e) That the figure is based on the presumption:

      (i) That the stock taken is either cost or market value, whichever is lower.

      (ii) That the depreciation written off on furniture, motor cars, etc., is realistic.

Due to the pressing element of time I sincerely trust that you will be able to give me a very early reply

I wish to take this opportunity to thank you for past favours and consideration shown me.

Yours faithfully,

(Sgd) Gerald A. Eckel

B.R. – 1

REGISTRAR GENERAL'S FILE

(TO BE PRODUCED IF NECESSARY)

GERALD A. ECKEL (REALTOR & VALUATOR)

November 23rd, 1964.

Messrs. London Fashion Ltd.,
Frederick Street,
Port of Spain.

Dear Sirs:

Further to my letter of October 22nd, 1964, with regard to the possible sale of your building and/or stocks, I have to advise you that my clients are not prepared to increase their offer of Five Hundred & Fifty Thousand Dollars ($550,000). for the building, they are prepared, however, to consider the takeover of your stocks on the lines as suggested by your goodselves, i.e. payment for same deferred for six months at a 4% interest rate. As such the offer would be based as follows:

1. A deposit of Fifty Thousand Dollars ($50,000.) on your acceptance of this offer.
2. A further deposit of Two Hundred & Fifty Thousand Dollars ($250,000.) to be paid immediately on the clearance of the title of the property, when you will give up vacant possession of the sections of the premises now occupied by your goodselves.
2. The balance of Two Hundred Thousand Dollars ($200,000) will be paid to you on completion of the transaction when you will give the purchasers an effective conveyance of the property.
4. Completion of the transaction shall be within six (6) weeks from the date of your acceptance of the offer.
5. That your tenant of the Kit-Kat Restaurant on the Chacon Street side of the building is not protected by the Rent Restriction Ordinance, or subject to any lease, i.e. that he is occupying same on a month to month basis at a rental of Six Hundred Dollars ($600.00) per month.
6. You will be solely responsible for the discharge of and the purchaser shall be under no obligation to employ any or all of the present staff.
7. The offer is subject to good title, free from all encumbrances, save and expect the existing tenants who shall become the purchaser's responsibility, insofar as their future tenancy is concerned.
8. That the purchaser will take over your stocks and fixtures at either cost or market value, whichever is lower, payment for same to be six months from the date of the completion of the transaction.

Alternatively, they are prepared to consider a cash offer of Seven Hundred & Fifty Thousand Dollars ($750,000), for your building and stocks on the presumption that the cost value of your stocks is not less than Two Hundred Thousand Dollars ($200,000.) and the book value of your fixtures is not less than Fifty Three Thousand Dollars ($53,000.). In the event that after stocktaking it shows that the stock or fixtures value is less than the above mentioned figures such lesser amount shall be deducted from the said purchase price.

I have/

I have been requested to state that either of the above mentioned represents the maximum that they are able to consider paying after a most careful analysis of other properties, business trends and financial considerations, and as such represents their final interest.

Should you be willing to accept either of the two alternatives I will ask the interested parties to submit a formal offer to you.

Yours faithfully,

(Sgd). Gerald A. Eckel

rle:

G.E. – 8

Messrs. Millers Stores Ltd.,
Frederick Street,
Port of Spain.

November 25th, 1964.

Attention: Mr. George Black

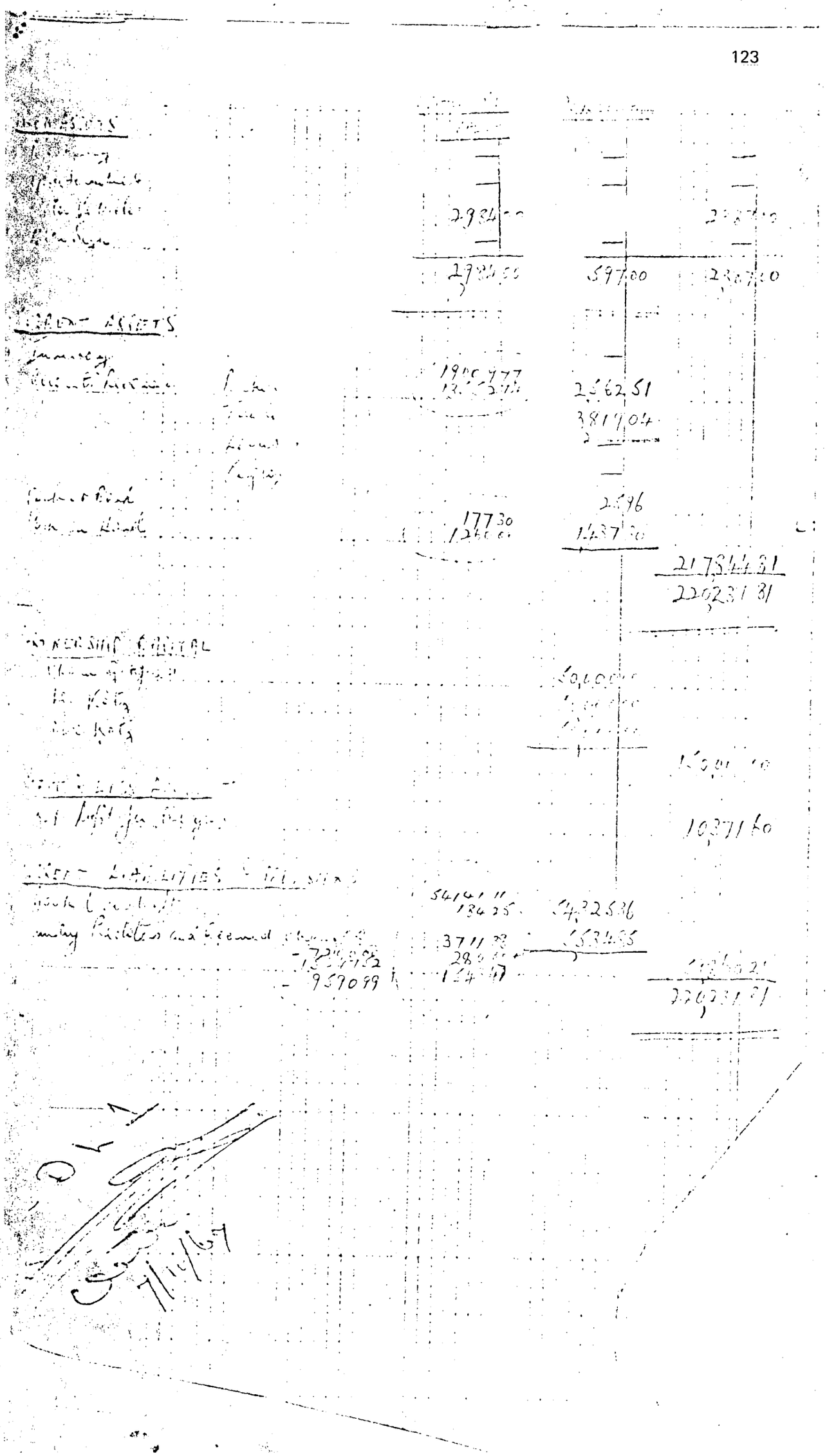
Dear Sirs:

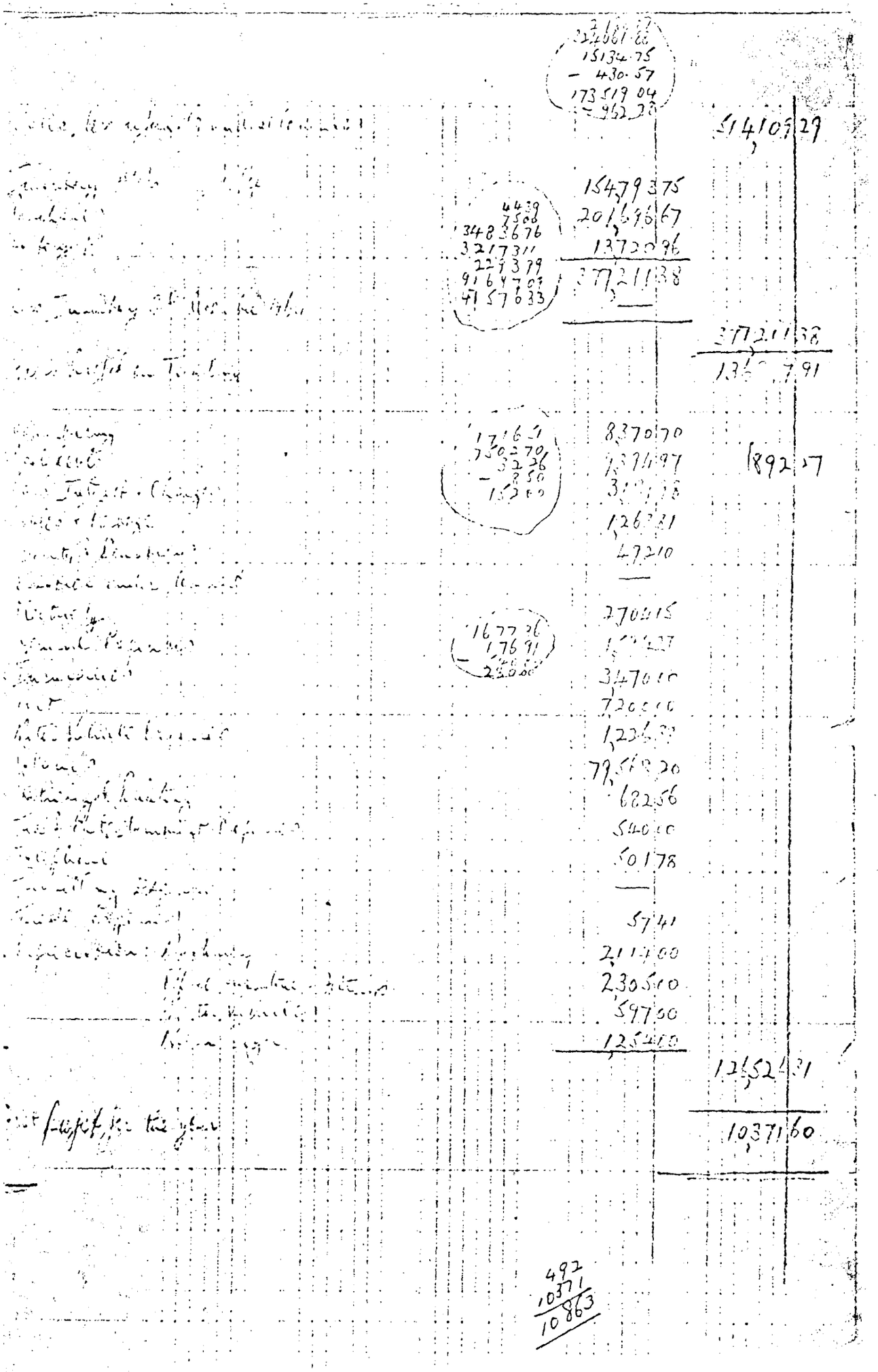
I wish to inform you that I was instructed by my clients yesterday evening to withdraw, in writing, any offer in respect of my approach to you with regard to the possibility of negotiating the sale of your property or business as a going concern.

I regret any inconvenience that you have been put to and once again wish to express my appreciation for the cooperation you have given me in the past.

Yours faithfully,

(Sgd.) G. A. Eckel.





LONDON FASHION

TRINIDAD

BALANCE SHEETS AND ACCOUNTS

31ST DECEMBER 1964

DAVID LAW, M.A., A.C.A.

CHARTERED ACCOUNTANTS

LONDON FASHION

TRINIDAD

BALANCE SHEET — 31ST DECEMBER 1962

1961		Written Down Value	Depreciation	
	FIXED ASSETS at cost less depreciation			
2,926	Machinery	2,925.66	438.86	2,486.80
12,722	Office Furniture & Fixtures	12,722.26	1,272.23	11,450.03
4,681	Motor Vehicles	5,642.33	1,663.69	3,978.64
1,548	Neon Sign	1,548.00	154.80	1,393.20
21,877		22,838.25	3,529.58	19,308.67
	CURRENT ASSETS			
168,753 –	Inventory as valued by Mr. L. Katz		175,643.28	
–	— Partners		12,148.72	
8,500	Accounts Receivable— Trade		6,090.69	
7,503	— Loans		7,502.70	
32	— Employees		32.26	
26	Cash in Bank		25.06	
1,346	Cash on Hand		1,834.18	
				203,277.79
208,037				222,586.46
	PARTNERSHIP CAPITAL			
50,000	Chaim Gottfried		50,000.00	
50,000	Leo Katz		50,000.00	
50,000	Max Katz		50,000.00	
				150,000.00
	PROFIT & LOSS ACCOUNT			
13,007	Net profit for the current year			7,610.06
	CURRENT LIABILITIES & PROVISIONS			
24,345	Bank Overdraft		44,533.27	
10,629	Sundry Creditors and Accrued Charges		20,443.13	
10,056	Balance on Partners Current Accounts		—	
				64,976.40
208,037				222,586.46

LONDON FASHION

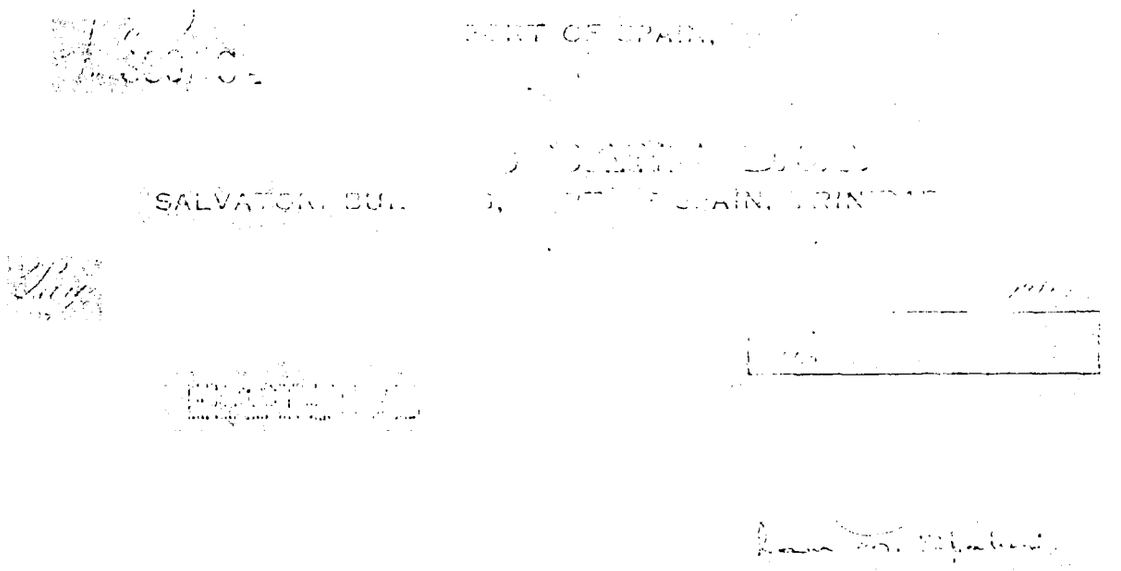
TRINIDAD

TRADING AND PROFIT & LOSS ACCOUNT – FOR THE YEAR ENDED 31ST DEC. 1972

1961			
371,562	Sales, loss refunds and allowances		336,680.51
157,996	Inventory, 1st January 1962	168,753.48	
236,224	Purchases	206,688.95	
11,515	Factory Wages	11,086.59	
405,735		386,449.02	
168,753	Less Inventory 31st December 1962	175,643.28	210,805.74
236,982			
134,580	Gross Profit on Trading		125,874.77
8,736	Advertising	8,829.27	
–	Bad Debts	3,515.81	
1,997	Bank Interest & Charges	3,090.88	
1,452	Cables & Postage	1,360.31	
1,701	Charity & Donations	549.60	
167	Donation under Covenant	166.67	
3,845	Electricity	4,085.20	
1,952	General Expenses	2,183.28	
2,738	Insurance	3,075.60	
7,200	Rent	7,200.00	
2,026	Motor Vehicle Expenses	1,279.39	
76,883	Salaries	73,701.57	
558	Stationery & Printing	649.32	
540	Tea & Entertainment Expenses	540.00	
684	Telephone	440.10	
7,120	Travelling Expenses	3,523.85	
312	Trade Expenses	444.89	
–	Loss on Sale of Motor Vehicles	99.39	
516	Depreciation – Machinery	438.86	
1,414	Office Furniture & Fittings	1,272.23	
172	Neon Sign	154.80	
			118,264.71
13,007	Net Profit for the year		7,610.06

198

L.K. - 2.



L.K. - 3.

336/073615. PORT OF SPAIN, 1st January 1945

BARCLAYS BANK D.C.O.
SALVATORI BUILDING, PORT OF SPAIN, TRINIDAD.

Pay

or Order

LTD.

Manager

Inspector

206

130 V

200

L.K. - 4.

No. 336/ C45843 PORT OF SPAIN, 31st December 1964

BARCLAYS BANK D.C.O.
SALVATOR[illegible] UILDING, PORT OF S[illegible]IN, TRINIDAD.

Pay Christian Gottfried

[illegible] DOLLARS

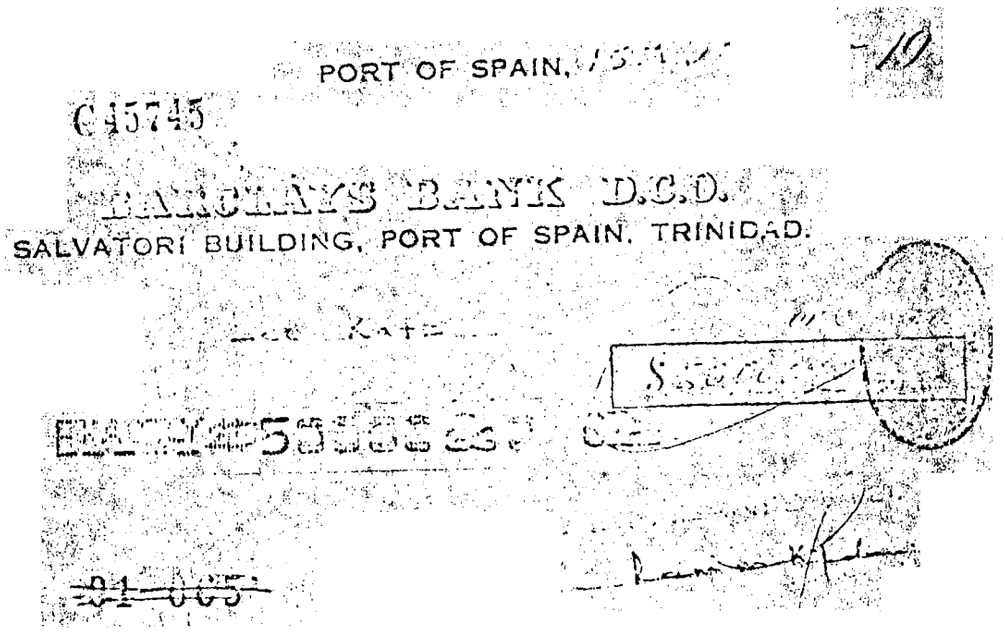
[illegible] Order

$ [illegible]

[illegible]

[illegible]

[illegible]


PORT OF SPAIN,
C45745
BARCLAYS BANK D.C.O.
SALVATORI BUILDING, PORT OF SPAIN, TRINIDAD.

R.K. - 2.

PORT OF SPAIN, 31st December 1914

L/C 383/045845

BARCLAYS BANK D.C.O.

SALVATORI BUILDING, PORT OF SPAIN, TRINIDAD.

Pay ... Lcc ... or Order

019

R.K. - 3.

A/C 336/ C45844 PORT OF SPAIN, 31st December 1944

BARCLAYS BANK D.C.O.
SALVATORI BUILDING, PORT OF SPAIN, TRINIDAD.

Pay Max

Order

$35,000

Exchange

Balance

11 019 0.F 065

01 065

Ramon M. Kabdebo

R.K. – 4

KIRPALANI'S LTD.

14th April, 1966.

Mr. Chaim Gottfried,
Ruxtor Textile Mills Corp.,
371 Broadway
New York 13, N.Y.,
U.S.A.

Dear Mr. Gottfried,

We are enclosing herewith list of London Fashion Accounts, totalling $403.51, which we are unable to collect despite our several threatening letters. 10

Under the circumstances, we shall appreciate your sending us a cheque in settlement of this amount.

In the meantime, if you wish us to take legal action against these customers on your behalf, please let us know so that we can do the needful.

Yours sincerely,

Sgd. R.M. Kirpalani.

RMK/ip
Encl.

KIRPALANI'S LTD R.K. – 4

LONDON FASHION ACCOUNTS

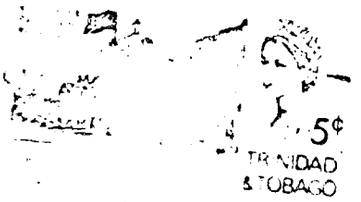
NAMES	ADDRESSES	AMOUNTS
Mr. A. G. Abreu	62 Ind. Square, P.O.S.	$ 10.00
Mr. Noel Ali	c/o Barclays Bank, Park Street	14.00
Mr. O. B. Charles	Carnbee, Tobago	64.35
Mr. George Dhanny	14 St. Vincent Street, P.O.S.	115.50
Mr. Herman Majely	Salvatori Bldg. P.O.S.	39.00
Mr. David Nigrini	c/o Macqueripe Club, Chaguaramas	75.00
Mrs. J.A. Pierre	16 Victoria Ave., P.O.S.	29.70
Police Canteen	Headquarters, St. Vincent St.	12.60
Mr. George Rooks	14 Sea View Terrace, Cocorite	7.60
Mr. A. Toby	2 Saddle Road, Maraval	5.00
Mr. Carlton Wint	15 Springfield Ave., Valsayn Park	30.76
		$403.51

10

30th April 1966.

Received from Mr. Max Katz the sum of Four Hundred and three dollars and fifty one cents ($403.51) in full settlement of London Fashion Accounts.

for and on behalf of
KIRPALANI



18 & 21 Frederick Street
75-77 Queen Street,
18 Chacon Street

AND SHOWROOMS
112 High Street,
96-98 Coffee Street, San Fernando.

R. K. – 6

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE.

No. 1773 of 1965.

Between

GERALD ECKEL — Plaintiff

And

KIRPALANI'S LIMITED — Defendant

****

I, RAM KIRPALANI of the City of Port of Spain, in the Island of Trinidad, Managing Director, make oath and say as follows:–

1. I am the Managing Director of the defendant and am duly authorised to make this affidavit as the facts deposed to herein are within my knowledge.

2. That I have in my possession or power the documents relating to the matters in question in these proceedings set forth in the Schedule hereto annexed and marked "X".

3. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power of any other person or my Solicitor, or in the possession, custody or power of any other person on my behalf any deed, account, or any copy of or extract from such document, or any other document whatsoever relating to the matters in question in these proceedings, or any of them other than and except the documents set forth in the said Schedule hereto.

Sworn at No. 18 Frederick Street,
Port-of-Spain, this 7th day
of October, 1966.

Ram M. Kirpalani

Before me,
M. Milne
Commissioner of Affidavits.

Filed on behalf of the Defendant herein.

jk/

R.K. – 6

SCHEDULE

Item	Date:	Nature of Documents:
1.	19.3.64	Letter from Gerald A. Eckel, and signed by him to Messrs. Kirpalani United Co.
2.	19.3.64	Letter from Gerald A. Eckel to Messrs. Millers Stores Ltd.
3.	12.8.64	Letter from Gerald A. Eckel to Messrs. Kirpalani United Ltd.
4.	25.8.64	Copy of letter to Gerald Eckel signed by C. Maharaj for R.M. Kirpalani.
5.	10.9.64	Letter from Gerald A. Eckel to Kirpalani United Company Limited.
6.	6.10.64	Copy of letter written to Mr. G.A. Eckel and signed by C. Maharaj for R.M. Kirpalani.
7.	22.10.64	Letter to Messrs. Kirpalani United Co. Ltd. written by Gerald A. Eckel.
8.	7.11.64	Letter to Messrs. Kirpalani United Co. Ltd. to the attention of Mr. Ram Kirpalani written by Gerald A. Eckel.
9.	24.11.64	Letter to Messrs. Kirpalani United Co. Ltd. written by Gerald A. Eckel.
10.	26.11.64	Copy of letter to Mr. Gerald Eckel signed by R.M. Kirpalani on behalf of Kirpalani Ltd.
11.	27.11.64	Letter to Kirpalani United Co. Ltd. written by Gerald A. Eckel.
12.	15.4.65	Letter to Gerald Eckel through his Solicitors to Kirpalani's Limited.
13.	20.4.65	Copy of reply to Gerald Eckel's Solicitors re letter of 15.4.65.
14.	27.4.65	Letter to Kirpalani's Limited by Gerald Eckel through his Solicitors.
15.	3.5.65	Copy of reply to letter of 27.4.65 to Gerald Eckel through his Solicitors.
16.	31.12.64	Copy of deed of Conveyance from Chaim Gottfried to R.K. Limited, in respect of Nos. 21 Frederick and 18 Chacon Streets, Port-of-Spain.

Exhibit C

Mr. E.C. Sirjoo,
Solicitor & Conveyancer,
2, Sackville Street
PORT-OF-SPAIN.

June 7, 1966.

Dear Sir:

Re: High Court Action No. 1773/65
Gerald Eckel vs. Kirpalani's Ltd.

We refer to our letter of the 16th December, 1965, requesting certain particulars of your defence in this matter, and particularly, to the request on Page 2 thereof under paragraph (7).

By a clerical error in transcription, the word "consideration" in Counsel's draft, was reproduced as "remuneration".

We wonder whether you would be kind enough to furnish us with the particulars under Paragraph (7), requested in our said letter of the 16th December, 1965, but reading the word consideration for the word remuneration quoted therein.

Yours faithfully,

Sgd: FITZWILLIAM & CO.

JM:pa

cc: File.

R.K. – 7.

LARGE DAILY RECORD BOOK
(TO BE PRODUCED IF NECESSARY)

141

Sheet No.

R. K. 8

Terms

Rating

Credit Limit

1773/65 Gerald - Isabel

NAME

ADDRESS

Account No. 3.A.

Date	Description	Folio	✓	Credits	Monthly Total	Date	Description	Folio	✓	Debits	Monthly Total
Dec 31											
Jan 10											

KIRPALANI'S LIMITED

ACCOUNTS

FOR THE YEAR ENDED

30TH APRIL, 1965

Fitzpatrick, Graham & Co.
Chartered Accountants,
Trinidad.

REPORT OF THE AUDITORS TO THE MEMBERS OF

KIRPALANI'S LIMITED

We have audited the annexed Balance Sheet dated 30th April, 1965 and have obtained all the information and explanations which we have required.

In our opinion, such Balance Sheet together with the note thereon is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, according to the best of our information and the explanations given to us and as shown by the books of the Company.

TRINIDAD:
12th June, 1965

FITZPATRICK, GRAHAM & CO.
Chartered Accountants: 10

PROFIT AND LOSS APPROPRIATION ACCOUNT

1964		
6,900	Appropriation for Charities	6,000
	Income Tax Provision – 1965 Year of Income	62,000
56,702	Balance carried forward – 30th April, 1965	71,557
		$ 139,557

30TH APRIL, 1965

1964			
61,632	Balance brought forward – 1st May, 1964	56,702	
230	Add: Income Tax overprovision In previous years	2,605	
61,862		59,307	
20,700	Less: Dividend Paid (net)	20,700	
41,162			38,607
72,440	Net Profit for the Year		100,950
$113,602			$ 139,557

BALANCE SHEET

1964			
	SHARE CAPITAL		
	Authorised		
	10,000 Shares of $100 each	$1,000,000	
	Issued and Fully Paid		
750,000	7,500 Shares of $100 each		750,000
42,669	**CAPITAL RESERVE**		42,669
	REVENUE RESERVE		
56,702	Unappropriated Profit		71,557
849,371			864,226
782,491	**UNSECURED LOANS**		550,565
	CURRENT LIABILITIES and PROVISION		
—	Bank Overdraft partly secured (see note below)	475,263	
329,242	Bills Payable	311,971	
66,762	Trade Creditors	207,071	
95,002	Current Accounts	52,713	
7,270	Customers Deposits	6,786	
72,105	Accruals	74,945	
	Income Tax Provision — 1965 Year of Income		
51,361	less Instalment Paid	50,000	
621,742			1,178,749
$2,253,604			$2,593,540

Note :

The Freehold Properties at 18 Frederick Street and 75 Queen Street are mortgaged to the extent of $450,000 as security for overdraft facilities with Barclays Bank D.C.O.

30TH APRIL, 1965

1964		Cost	Depreciation Amortization	Written Down Value 30/4/65	
	FIXED ASSETS				
	(As per Schedule)				
	Goodwill	81,012		81,012	
574,563	Freehold Property	574,563	—	574,563	
50,000	Leasehold Property and Deposit thereon	235,159	215,159	20,000	
74,819	Office Furniture, Fittings and Equipment	106,043	35,978	70,065	
1,759	Household Furniture and Fittings	1,759	—	1,759	
38,965	Motor Vehicles etc.	48,485	8,143	40,342	
740,106		1,047,021	259,280		787,741
	CURRENT ASSETS				
	Stocks at the lower of cost or net realisable value				
1,049,142	On Hand		1,325,542		
145,070	On Hire		181,357	1,506,899	
	Debtors				
230,154	Trade		186,112		
50,659	Sundry		71,575	257,687	
123	Deposit			885	
38,350	Cash in Hand and at Bank			40,328	
1,513,498					1,805,799
		Director			
		Director			
$2,253,604					$2,593,540

KIRPALANI'S LIMITED

TRADING and PROFIT AND LOSS ACCOUNT

FOR THE YEAR ENDED 30TH APRIL, 1965

1964				
	Sales			
5,075,701	Port of Spain		5,275,069	
2,218,267	San Fernando		2,031,056	
7,293,968				7,306,125
	Stocks on Hand and on Hire 1st May, 1964			
979,654	On Hand	1,049,142		
173,744	On Hire	145,070	1,194,212	
	Goods Purchased			
5,363,847	Importations and Local Purchases	5,670,610		
	Charges on Goods, Manufacturing Charges on locally converted Goods, Exchange and Bank			
174,892	Charges on Imported Goods	156,487		
670,235	Customs Duty	608,949	6,436,046	
7,362,372			7,630,258	
	Deduct: Stocks on Hand and on Hire 30th April, 1965			
1,049,142	On Hand	1,325,542		
145,070	On Hire	181,357	1,506,899	
6,168,160	Cost of Sales			6,123,359
1,125,808	Gross Profit for the year			1,182,766
	% on Sales 1964 15.43			
	% on Sales 1965 16.19			
	Deduct: Expenses (as per Schedule—			
	Salaries, Commission and			
555,215	Bonus to Employees		607,779	
409,582	Other Charges		404,679	
20,126	Cash lost in Burglary			
18,445	Depreciation etc.		19,358	
50,000	Amortization of Leasehold Property		50,000	
1,053,368				1,081,816
72,440	Net Profit for the Year transferred to Appropriation Account			$ 100,950

SCHEDULE OF FIXED ASSETS FOR

	Cost		
	At 1/5/64	Additions (Sales)	At 30/4/65
Goodwill			
Relating to the acquisition of the Business of London Fashions	–	81,012	81,012
Property			
Freehold			
18 Frederick Street	136,038	–	136,038
75 Queen Street	357,000	–	357,000
Boundary Road, San Juan (Warehouse)	81,525	–	81,525
Leasehold			
77 Queen Street – expiring 1972	215,159	–	215,159
23 High Street – San Fernando – Deposit	–	20,000	20,000
	789,722	20,000	809,722
Furniture, Fittings and Equipment			
Office	107,425		
Household – 43 Alberto Street	1,759		
	109,184		
Motor Vehicles	95		95
Phillips Bicycle	3,353		–
PG 4837	4,995		–
PG 6254	4,156		
PG 1757	3,197		
PG 1284	3,088		3,088
PH 3493	3,838		3,830
PH 3775	6,471		6,471
TH 2795	4,275		–
TG 6497	4,038		–
TG 3448	3,955		–
TG 6203	3,307		–
TG 4758	4,773		4,773
TH 3072	–		–
PF 5144	–		–
PG 5972	–		–
PG 7534	–		–
TH 4836	–		5,829
PH 987	–		–
PH 7460	–		4,745
PH 7970	–		–
PH 7863	–		3,460
TH 8442	–		4,940
TH 7908	–		3,861
TH 8350	–		3,942
TH 9519	–		3,443
	49,541		48,485
	$948,447		47,021

THE YEAR ENDED 30TH APRIL, 1965

	Depreciation			
At 1/5/64	This Year	Written back on Sales	At 30/4/65	Written Down Value 30/4/65
—	—	—	—	81,012
—	—	—	—	136,038
—	—	—	—	357,000
—	—	—	—	81,525
165,159	50,000	—	215,159	—
—	—	—	—	20,000
165,159	50,000	—	215,159	594,563
32,606	5,639	(2,267)	35,978	70,065
—	—	—	—	1,759
32,606	5,639	(2,262)	35,978	71,824
45	13	—	58	37
1,048	69	(1,117)	—	—
1,436	445	(1,881)	—	—
1,818	374	(2,192)	—	—
799	384	(1,183)	—	—
—	772	—	772	2,316
—	960	—	960	2,878
259	1,553	—	1,812	4,659
1,229	508	(1,737)	—	—
1,515	353	(1,868)	—	—
1,196	517	(1,713)	—	—
1,136	174	(1,310)	—	—
95	1,169	—	1.264	3,509
—	—	—	—	—
—	—	—	—	—
—	125	(125)	—	—
—	—	—	—	—
—	991	—	991	4,838
—	144	(144)	—	—
—	593	—	593	4,152
—	240	(240)	—	—
—	277	—	277	3,183
—	445	—	445	4,495
—	425	—	425	3,436
—	329	—	329	3,613
—	217	—	217	3,226
10,576	11,077	(13,510)	8,143	40,342
208,341	66.716	(15.777)	259.280	787.741

SCHEDULE OF EXPENSES

FOR THE YEAR ENDED 30TH APRIL, 1965

1964			
	Salaries, Commission and Bonus		
543,215	Employees	595,779	
12,000	Managing Director's Salary	12,000	
555,215			607,779
	Establishment		
38,953	Rents	53,405	
15,520	Rates Taxes and Maintenance of Property	25,733	
23,459	Insurance	28,441	
12,118	Telephone and Electricity	16,936	124,515
	Administrative		
1,800	Audit Fees	2,200	
3,261	Postages and Cables	3,761	
5,429	Printing and Stationery	6,773	
8,111	Repairs and Maintenance of Furniture and Fixtures	14,105	
10,578	Sundry Expenses	7,787	
25,204	Travelling Expenses	15,073	
18,391	Vehicle Expenses	20,896	70,595
	Selling		
18,998	Commissions	6,347	
122,098	Advertising	127,535	
16,465	Receipt Stamps	16,300	
46,898	Bad Debts less recoveries	19,075	169,257
	Financial		
42,299	Interest on Loans and Overdraft		40,312
409,582			404,679
20,126	Cash Lost in Burglary		
	Depreciation etc.		
	Depreciation		
4,694	Furniture, Fittings and Equipment	5,639	
12,438	Motor Vehicles	11,077	
449	Obsolescence – Electrical Equipment	—	
864	Loss on Sale of Fixed Assets	2,642	
18,445			19,358
50,000	Amortization of Leasehold Property		50,000
			$1,081,816

R.K. – 10

SMALL DAILY RECORD BOOK
(TO BE PRODUCED IF NECESSARY)

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No. 51 of 1968

Between
GERALD ECKEL — Plaintiff/Appellant
And
KIRPALANI'S LTD. — Defendant/Respondent

Coram: Sir Arthur H. McShine, C.J.
Clement E. Phillips, J.A.
Karl de la Bastide, J.A.

June 4, 1971

Hosein, Q.C., Wells, Q.C. and Z. Hosein — for the Appellant.
Wharton, Q.C. and Seemungal, Q.C. — for the Respondent.

JUDGMENT

The question raised by this appeal is whether the appellant who carries on business as a real estate agent for the sale and purchase of businesses and properties is entitled to his commission on a transaction of sale carried out between the respondent and a firm known as 'London Fashion,' under the circumstances hereinafter mentioned.

The respondent is a company registered in Trinidad under the Companies Ordinance. It carries on business as dry goods merchants and acted in this transaction through its managing-director, Ram Kirpalani.

The appellant has contended on the authority of Green v. Barlett (1863) 14 C.B. (N.S.) 681 that "If the relation of buyer and seller is really brought about by the act of the agent, he is entitled to commission although the actual sale has not been effected by him." Further that he is not to be deprived of his commission by reason of the fact that the property was ultimately purchased on terms and at a price somewhat different from and beyond that which was imposed on the agent. See Price Davies & Co. v. Smith (1929) Vol. 141 L.T.R. 490. And as the third proposition that "although commissions on sales are usually paid by the vendor an express bargain may throw the commission upon the purchaser." See Bow's Emporium Ltd. v. A.R. Brett & Co. Ltd. (1927 – 28) Vol. 14, T.L.R. 194.

The facts in this case as are to be gathered from the testimony and the correspondence put into evidence are not only lengthy and complicated but are also largely in controversy, in the result the findings of fact and judgement by the trial judge are challenged as being "unreasonable and/or against the weight of evidence and/or cannot be supported having regard to the evidence." The whole of the decision of the judge is also impeahced on the grounds that –

"2. The learned judge misdirected himself in holding that the Appellant/Plaintiff's efforts as the agent of the Respondent/ Defendant were not the effective cause of the transaction.

3. The learned judge was wrong in law in holding that the Appellant/Plaintiff was not entitled to the commission which he claimed."

And/

And 4 as later amended –

"4. The learned judge was wrong in law in holding tht the concluded transaction was totally different (or different at all) from that which the plaintiff was authorized to effect, and was consequently outside the scope of the plaintiff's agency."

The challenge to the decision in this case is thereofre on a question of fact as well as of law. The evidence in its substance disclosed that it had come to the knowledge of the appellant that the respondent would be interested in acquiring property "on lower Frederick Street" i.e. in a desirable location in the main shopping street in Port-of-Spain, and with that in mind the appellant approached Mr. Ram Kirpalani, the managing-director of the respondent in order to ascertain whether this was so.

In July 1963 the appellant had busied himself on behalf of a client with a view to the purchase of Millers Stores, a firm which had its premises situate and which carried on business therein on lower Frederick Street at No. 6. This endeavour did not fructify, and so it was in March 1964 that an approach was made by the appellant to Ram Kirpalani pointing out that a possibility existed that Millers Stores would sell their premises. Ram Kirpalani said he would be prepared to make an offer and that the appellant should negotiate without disclosing the name of Kirpalani's, that he would wish that the negotiations be for the building only and that he would be prepared to pay a real estate agent's commission.

There is no doubt that the appellant made prolonged and massive efforts to try to persuade Mr. George Black, the managing-director of Millers Stores Ltd. to sell to the respondent. The obstacles of Millers' business, its stock, fixtures, furniture and future arrangements for its staff proved insurmountable and no sale ever materialized. Indeed by letter dated November 25, 1964 the appellant on instructions from Ram Kirpalani withdrew all offers for the purchase of the Millers property and/or business.

Negotiations for Millers Stores began in March 1964 and as confirmation of the agreed terms which should govern the negotiations, the appellant wrote to the respondent a letter dated March 19, 1964; This letter, Exhibit A.1. should be quoted in full.

"

March 19th, 1964.

Messrs. Kirpalani United Co. Ltd.,
Frederick Street,
Port of Spain.

Attention: Mr. Ram Kirpalani.

Dear Sirs:

This serves to confirm my proposal that I will negotiate, on your behalf, in the possible purchase of Messrs. Millers Stores Ltd., on the understanding that your name is not made known to them and any offer that I put forward, the duplicate shall be signed by your goodselves as confirmation of the terms stated therein, prior to any offer being formally submitted, a copy of which shall be retained by both parties.

It is also understood that in the event of my acquiring the property you will pay me a Realtor's commission.

Yours faithfully,

(Sgd) Gerald A. Eckel.

Agreed:

KIRPALANI UNITED COMPANY LIMITED
(Sgd) Ram Kirpalani"

This

This letter is of significance for it substantially forms the basis and sets out the terms upon which the appellant was to negotiate for London Fashion.

In about July 1964 shortly before Ram Kirpalani went off on a world trip he held a discussion with the appellant whereupon both realized that negotiations with regard to Millers Stores might not materialize. On the suggestion of Ram Kirpalani it was though that there should be some alternative. Thereupon the appellant mentioned to Ram Kirpalani that he had made an approach on behalf of another client to the proprietors of London Fashion, a firm of men's; clothiers and dry goods merchants owning premises and carrying on business as such at lower Frederick Street No. 21. Nothing had come of this approach. The appellant had no real indication then whether London Fashion would sell or not, or what price was being asked, if they were willing to sell "Ram Kirpalani then said he had also heard London Fashion was interested in selling and asked me to approach them on his behalf but that I should do so on same terms we had agreed with Millers". This was the direct testimony of the appellant and so the importance of the letter (A.1) of March 19, 1964 becomes manifest.

The case for the respondent is that the scope of the appellant's agency extended to the purchase of the Millers building alone, and so also only to the building of the London Fashion. It was said that this was contained in the letter of March 19, 1964 and also in the testimony of Ram Kirpalani that negotiations for London Fashion were to be conducted on the same terms as for Millers. There were of course other terms contained in that letter such as not disclosing the name of the principal, obtaining signed confirmation of an offer, and the payment of "a realtor's commission". The evidence and correspondence clearly establish that the appellant exerted himself considerably in his endeavours to obtain Millers Stores Ltd., that is, at one time for the building alone and subsequently when it was not possible to acquire that alone, efforts were made to acquire the whole undertaking in order to get the building. If there was one factor that aborted all efforts in this regard, it was what was to be done with the staff of Millers. There was no gainsaying the fact that the appellant had worked assiduously with regard to Millers Stores to the extent that the respondent made him an offer of $1,000 as he said for his efforts in regard to the negotiations for Millers Stores. The appellant's version of this was that on the conclusion of the agreement to acquire London Fashion the respondent was attemption to do him out of his earned commission on the London Fashion transaction and offered this sum as an ex gratia award for his offices in regard to the negotiation for London Fashion.

Almost immediately upon agreeing that there should be an alternative to Millers, the appellant busied himself with negotiations for acquiring London Fashion.

The paramount question which here arises is whether the scope of the appellant's agency was limited to the acquisition of the London Fashion building only i.e. No. 21 Frederick Street as separate and distinct from the rest of its undertaking.

The first thing to be looked at in this regard would be the letter of March 19, 1964 and it will be necessary to give it its true meaning. This letter by common consent adumbrated the terms upon which negotiations for Millers should be governed and it was the accepted evidence that negotiations for London Fashion should proceed on the same footing. The trial judge did not adopt the suggestion that he "should look no further than the Millers' agreement" (the said letter) to determine whether the scope of the appellant's agency was limited to the acquisition of the London Fashion property only, and thought he should "examine the evidence to ascertain what was in fact agreed."

There seems to be no difficulty in construing the expression "the possible purchase of Messrs. Millers Stores Ltd" in the second line of the letter, in my opinion as meaning the whold Millers' undertaking, i.e. building cum business in its total complex. But at once doubt is cast when one reads the last paragraph of the letter, for therein it is said "in the event of my acquiring the property you will pay a realtor's commission." The words 'the property' may reasonably be defined to mean the building alone at No. 6 Frederick Street. The trial judge so interpreted the expression "the property." Whilst this may be correct he did not go on to relate it to the earlier expression "Messrs. Millers Stores Ltd.", and above all in the submission of the appellant he

failed/

failed to accord it with the evidence.

It was argued on behalf of the appellant that the expression 'property' was only a convenient term for referring to the whole, but clearly the whole of the Millers undertaking was being referred to in the expression "Messrs. Millers Stores Ltd." It has been urged on behalf of the respondent that in order to arrive at a true construction of this letter three other exhibits must be regarded in this setting viz. A.2 (a) and (b) and A.8. The first two are letters also of March 19, and the last of November 7, 1964. The relevant expressions used in these exhibits are respectively "your business premises at No. 6 Frederick Street," "firm offer . . . for your freehold property known as No. 6 Frederick Street and which extends through to Henry Street (i.e. the entire area that you now occupy) ..." and lastly "Mr. Black has rejected our offer ... for the Port of Spain building only." This last letter 'A.8' of November 7, 1964 makes lengthy reference to negotiations with London Fashion, suggesting in one paragraph that London Fashion was reluctant to negotiate for the building alone saying "if they sold they would want to include everything and clear out." These letters so far would seem to create ambiguities and so it was that the trial judge turned his attention on this score to the testimony of the principal witnesses in the case viz. the appellant and Ram Kirpalani. When being cross-examined on the letter A.1 and particularly on the meaning of the word 'property' appearing in the last paragraph thereof the appellant said this:

> "In last paragraph I see word property, he agreed to pay usual commissions for purchase of property. I understood before I wrote A.1 that he was interested in acquiring building only but by the end of our conversation I understood him to mean both building and business."

After stating that A.2 was written in accordance with instructions from Ram Kirpalani the appellant went on to say —

> "It contains all the instructions for the purposes of the offer in A.2 — not in A.1. I say so because Ram Kirpalani had given me impression that if he did not succeed in purchasing the building alone he would then consider it as a going concern i.e. business and building. That was what I thought we had concluded. I wrote A.1 in those terms because of that I referred both to Millers Stores Ltd. and to the property."

It was conceded by the respondent that the appellant should negotiate for London Fashion (in the words of Ram Kirpalani) "the same as with Millers". But somewhat strangely, Ram Kirpalani went on to say, "He agreed. I meant for him to negotiate London Fashion keeping my name secret and that I would pay commission."

The substance of the respondent's answer to the appellant's case is that Ram Kirpalani did not at all authorize negotiations for anything beyond the Millers building and accordingly the London Fashion building. Ram Kirpalani in his evidence in chief said this:

> "We discussed prices generally and referred to property at Queen and Henry Street which Standard Distributors had bought and came to conclusion that if I could get Miller's property for $750,000 that would be good price. We discussed property only — no business.
>
> I had no intention of buying anybody's business or goods. I made that quite clear to Plaintiff.

Then/

> Then talk of commission arose. He told me it would facilitate his talks with Miller's if I agreed to pay his commission. When I say 'I' I am referring to Defendant Company. I told him I knew that generally it was seller who paid commission. He persuaded me to pay as otherwise Mr. Black would not be likely to sell. I agreed and we spoke of percentage. He said normally it was 5% but on big deals as this he would work on minimum of 2½. We discussed on whose behalf he would make offer. I said if he used our name the price would go up as there was the tendency and he said it was normal for a client's name to be kept secret and he suggested he would negotiate without disclosing name of my Company. He said he had done this before for others."

It was the view of the trial judge broadly speaking from all this that the scope of the appellant's agency did not extend beyond negotiating for Millers' building and hence the building of London Fashion. But can this conclusion in the totality of the case be correct? It becomes necessary to go into the evidence in much more detail in order to determine this question.

The negotiations for Millers by the appellant on behalf of the respondent commenced in March, 1964. The appellant had understood that the respondent was considering the acquisition of premises at lower Frederick Street and so the appellant 'offered' respondent "Millers Stores Ltd." The statement was supported by a letter on behalf of another client of August 22, 1963, that Millers was "prepared to consider an offer . . . together with an agreement covering a 25 year lease . . .". A lease was not acceptable to the respondent and thus negotiations proceeded on the basis of a purchase of the freehold of Millers at No. 6 Frederick Street. There were also imposed terms and conditions which should govern the negotiations, inter alia, these were that on a completed transaction the respondent would pay a commission of 2½%, that the name Kirpalani should be kept secret or "out of the negotiations' and that as appears in the evidence of the appellant Ram Kirpalani said "he would prefer if it were possible to negotiate for building alone and instructed me to prepare offer for $750,000." This the appellant did by letter Exhibit A.2(b) of March 19, 1964. It will be noticed from this letter that only the "Freehold Property" was being considered and the terms and conditions of the offer dealt only with the financing of the purchase, vacant possession and the title to the property. There was no mention up to then of the rest of the Millers Stores undertaking.

Many months elapsed thereafter during which time the appellant obtained a mass of information concerning the areas of buildings in the immediate vicinity and the approximate purchase prices of these premises. The letter of August 12, 1964 to Ram Kirpalani Exhibit A.3 evidences the work put in by the appellant as to floor areas of Millers, and of comparable buildings, plans and 'purchase prices.' From about this date it would seem that there was the growing feeling that Millers were reluctant to sell the building alone. The appellant stated in his evidence that "Ram Kirpalani had given me the impression that if he did not succeed in purchasing building alone he would then consider it as a going concern i.e. business and building." It was because of this the appellant stated he had drafted A.1 the letter of March 19, in the terms therein as "both to Millers Stores and to the property." It is quite clear that at one time negotiations were conducted with Mr. Black the Managing Director of Millers Stores Ltd. on the possible basis of the acquisition of the whole undertaking. There is evidence of the concern of Mr. Black about the branch of Millers Stores in Tobago and more pointed is the fact that when Ram Kirpalani realized that negotiations for the Millers building would not materialize, consideration and instructions were given for the acquisition of the whole undertaking. The documentary evidence supports this. In the letter of November 7, 1964 (Exhibit A.8) the following appears:

> "Insofar as Millers Stores are concerned, I regret that Mr. Black has rejected our offer of $850,000. for the Port of Spain building only. At out meeting I was able to persuade him to let us have his Balance Sheet for the last three years so that we might have an opportunity to make a bid for the take over of the Company.

He has/

> He has again requested that the matter be kept confidential as he does not want his staff to become upset over something that may not materialise."

And secondly Exhibit G.E.5 is a memorandum of rough financial calculations intended to be the basis for the take over of the whole Millers undertaking. This memorandum, followed in terms by letter of November 18, 1964 Exhibit G'E.6, was based on the Millers Balance Sheet for 1963. The Balance Sheets had been sought by Ram Kirpalani clearly in order to afford him information so as better to make an appropriate offer for Millers Stores. Balance Sheets would be wholly relevant to the business as distinct from the building. This document referred not only to 'property' but also furniture, office machines, motor vehicles, etc. and above all in the written out conditions (d) "that the stock taken is either cost or market value whichever is lower." This document was prepared and written by Ram Kirpalani himself. In these circumstances it would seem impossible to suggest that at no time was there agreement for the appellant to negotiate for the whole undertaking that was Millers STORES Ltd. In this setting if there was a "sacrifice of candour on the altar of expediency" as the judge remarks, Exhibit G.E.5 places that squarely on the shoulders of Ram Kirpalani, for it cannot be true what Ram Kirpalani said:

> "We discussed property only not business. I had no intention of buying anybody's business or goods. I made that quite clear to the plaintiff."

These expressions were made, it is right to say at an early stage of the association between the appellant and respondent with reference to the purchase of Millers but without question negotiations for London Fashion had been in progress at a time when it was known to the respondent that if it was to get the Millers premises at No. 6 Frederick Street it would also have to acquire the whole complex of that company. It has been argued that it would not be conceivable for one to get premises in lower Frederick Street in which business was being carried on unless arrangements were also made for the disposal or acquisition of the stock in trade and that Ram Kirpalani always knew or must-have-known that the acquisition of the building No. 6 Frederick Street could only materialize if and when arrangements had satisfactorily been made for the acquisition or disposal of the stock in trade, fixtures, and possibly for the future of the staff.

It is in the setting that it was urged that the appellant negotiated for Millers Stores, that is, first a valiant attempt to acquire the Millers building alone and if this should fail an attempt be made to come to terms for the whole undertaking, realizing at all times that if the building is acquired as a necessary consequence some arrangement must also be made for the take over of the business as part and parcel of the transaction.

It becomes necessary not to consider the facts and circumstances as they more directly apply to the London Fashion transaction. It is of importance to determine when first the question of negotiating for London Fashion was introduced in the discussions between the appellant and respondent. This would be so for the reason that if negotiations for London Fashion were to be on the same basis as for Millers then the question would be what was the extent of the negotiations that were being conducted with regard to Millers at the time instructions were given to negotiate for London Fashion.

The evidence of Ram Kirpalani the Managing Director of the respondent company is that the first occasion on which London Fashion was mentioned between him and the appellant was on July 3, 1964 when the appellant had been called to his office. The version of Ram Kirpalani is that he was at about that time leaving for India and also going on a world tour. In fact he left Trinidad on July 7, 1964. Up to that time (July 3) Ram Kirpalani had not got the Balance Sheets of Millers. Clearly the need for the study of the Balance Sheets was in order to obtain a true appreciation of the nature and extent of the business Millers was doing, irrespective of the value of the building. Ram Kirpalani further testified that —

"I also told Plaintiff that day that Mr. Gabe of San Fernando had offered me London Fashion property. That was the first occasion on which London Fashion was mentioned between us. I told Plaintiff that Mr. Gabe was working as friend and was not involved in getting commission on either side. Mr. Gabe had told me that "on 25th June, 1964 when he came to see me on one of his businessvisits . . . . . .

I told him that since Gabe was not going to get any commission and owners of London Fashion knew it was Kirpalani negotiating through Gabe, why not you (Plaintiff) negotiate with them the same as with Millers. He agreed. I meant for him to negotiate London Fashion keeping my name secret and that I would pay commission . . . . . .
I felt Miller's deal was not going to come through and I was giving him another opportunity of earning commission on London Fashion deal during my absence. If he succeeded I would pay commission if he did not I concluded deal through Gabe. I felt he would get from London Fashion not from me. In this context I told him get the property of London Fashion on same terms as Millers. . . on the same basis as contained in A.1 & A.2."

It is to be noticed here that the two main factors over and beyond the authorization to negotiate for London Fashion were the payment of commission and keeping of the name Kirpalani in the negotiations secret. It can be thought not unreasonable that at this time also, negotiations for Millers being beyond merely negotiating for the building, there might have been some specific reference (and exclusion) when giving instructions for the acquisition of London Fashion that only the building was contemplated. The final aspect on this part of the testimony of Ram Kirpalani which if in no other way may have a bearing on liability is that he says "I would have paid a commission if plaintiff had got me the London Fashion property in the way I spoke about." One is mindful that Ram Kirpalani did not at this meeting of July 3, specifically exclude the London Fashion business.

The appellant had said in his evidence that he understood before he wrote (Exhibit A.1) the letter of March 19, that Ram Kirpalani was interested in acquiring building (Millers) only "but by the end of our conversation I understood him to mean both building and business." Later the appellant said that "Ram Kirpalani had given me the impression that if he did not succeed in purchasing building alone he would then consider it as a going concern i.e. business and building." It is true that on October 6, 1964, Mr. Maraj by his letter Exhibit A.6 on behalf of Ram Kirpalani was still considering an offer for the building of London Fashion alone, and therein he suggested a maximum figure. So also the appellant on October 22, 1964 was attempting to negotiate for the London Fashion building alone going to the limit of his instructions as to price of the building of London Fashion. The appellant said that it was he "who put the idea of taking over the business (Millers) as well as property into Ram Kirpalani's head." This was before the letter G.E.2 of May 27, 1964 and not because of that letter. In any event it seems reasonable to suppose that by May 27 it was being realized that it would be near impossible to acquire Millers building without acquiring their whole business.

The appellant admitted that he had spoken to Ram Kirpalani "around 3rd July . . . a few days before he left on tour," and then it seemed to the minds of both the appellant and Ram Kirpalani that "it did not look as if the Millers deal was coming off." It is here that the appellant denies that it was at that meeting that Ram Kirpalani mentioned to him that he was having "discussions with Gabe about London Fashion." The appellant went on to say that it was "not

true/

true that he then suggested I might approach London Fashion without mentioning his name as Gabe his friend was dealing with them for him."

Ram Kirpalani had said he told the appellant that Mr. Gabe of San Fernando had offered him "London Fashion property." Joseph Gabe was a business-man who carried on a dry goods business at San Fernando. He was well known to Mr. Gottfried the owner of the building in which the London Fashion firm carried on its business at 21 Frederick Street. Leo and Max Katz were the principal partners of the business of London Fashion and likewise, Joseph Gabe was well known to them. Gabe did business with Ram Kirpalani once or twice per week, and Gabe would purchase goods for his store from Ram Kirpalani. Indeed sometime after the transaction with London Fashion had been concluded, Ram Kirpalani between June – July 1965 bought Gabe's business i.e. his store at San Fernando. According to Gabe in 'early of mid June 1964' Katz and Gottfried asked him to see whether Ram Kirpalani would be interested in buying London Fashion. Gabe went on to say that later the same day he saw and put the question to Ram Kirpalani, and was told that he (Ram Kirpalani) was negotiating for another Frederick Street property and could not give an answer, and also that he was on the eve of departure for India until November 1964. This makes it certain that it was before July 3 that Gabe had offered London Fashion to Ram Kirpalani and hence the evidence of the appellant was to be preferred that July 3, was not the "first occasion on which London Fashion was mentioned" in their conversations, and that Ram Kirpalani on that date did not inform the appellant that he was in negotiation with London Fashion through its "agent" Joseph Gabe. It should be noticed that at no time did the respondent claim either in its pleading or in the evidence that Gabe was its agent in the negotiations for London Fashion. Indeed Ram Kirpalani granted that Gabe was "acting as a friend" and that he (Gabe) was not getting any commission.

The letter of August 12, 1964 (Exhibit A.3) from the appellant to the respondent is of assistance in determining what were the conditions under which the appellant should negotiate for London Fashion if they were to be the same as for Millers. In this letter to which there has been no contradiction from Ram Kirpalani, the emphasis clearly is upon the Millers building and an analysis is made of prices and areas. Comparison is also made with buildings comparable in size in the neighbourhood. But it is seen from this letter that the building (Millers) was not to be obtained unless provision had been made for the rest of the undertaking, indeed no one had said that any premises with vacant possession could at all be had in lower Frederick Street. In this letter it was reported to Ram Kirpalani that "Mr. Black had decided that he could not consider an offer to take over the business as a going concern" as he had an obligation to his staff; and as to the stock in trade, it was stated that Mr. Black could sell this separately or that the respondent could get it at what was to be considered 'a most advantageous price.'

The position at about this date would in my judgement be that the appellant was to endeavour to obtain the Millers building alone, but because of the near impossibility of obtaining that building or for that matter any other building on lower Frederick Street with vacant possession negotiations would have to encompass the rest of the undertaking. I am of the opinion that the learned judge erred in holding that when the appellant was asked to consider as an alternative to the purchase of Millers, the acquisition of LondonFashion his instructions did not extend beyond negotiations for the London Fashion building alone. It has been said that Gabe was not the agent of Ram Kirpalani with respect to the London Fashion transaction, but clearly the appellant was engaged to negotiate for London Fashion i.e. as I have held, for the building but failing this the whole undertaking. It is now left to be considered whether

the/

The appellant's efforts were the effective cause of the transaction for London Fashion being concluded by the respondent.

The evidence of the appellant is that after London Fashion had been suggested as an alternative he mentioned to Ram Kirpalani that he had already "made an approach to London Fashion on behalf of another client but that nothing had materialized, and even then he was given no indication by London Fashion (whether) they wished to sell or not." Clearly then the appellant would have to start from scratch (so to speak) to condition the owners of London Fashion for a sale of their property and business. In view of the fact that no premises with vacant possession was obtainable on lower Frederick Street the negotiations for London Fashion had to encompass the possible purchase of the business, but the conditions which were to be the same as for Millers would attach to commission and the secrecy of the name of the party interested in purchasing.

The appellant approached Mr. Leo Katz and inquired whether the proprietors of London Fashion decided they would sell. The answer at first was no but Katz nonetheless showed possible interest in that inquiry by asking what would be the terms of payment. The appellant then asked Katz to quote a (net) figure and said there would be no mortgage to be taken. In Mr. Maraj's letter to the appellant of August 25, 1964 (Ex. A.4.) in reply it was being asked of the appellant whether he had seen London Fashion partners and whether they were interested in selling. The appellant prior to this reply had seen Mr. Katz. In his letter of September 10, 1964 (Ex. A.5.) the appellant refers to a price given him for London Fashion for "his property," attached a plan. The appellant suggested a much lower figure, as purchase price, and many discussions were held with the object of closing this gap i.e. between the $750,000 being asked by London Fashion and $520,000 being offered on behalf of the respondent. It is not necessary to go into all the details of the negotiation and the work the appellant did in this regard but suffice it to say he obtained measurements, made sketches, ascertained rents and comparison was also made with respect to the area and price being asked for the London Fashion building with other comparable transactions, e.g. the sale of Fogarty's building to a commercial bank. It was here that the appellant sought the approval of Ram Kirpalani to make a counter offer for London Fashion as was done in the case of Millers. On October 6, 1964 Mr. Maraj acting on behalf of the respondent instructed the appellant that he could offer $550,000 for London Fashion ($520,000 having been rejected) stating that price to be "the maximum" and adding "we will not pay more." He suggested that the appellant write to London Fashion as he had done in the case of Millers. The appellant did as he was instructed. He was not content to rest on this but made, in a further endeavour to close the gap of difference between London Fashion and Ram Kirpalani, an investigation into the quantum of rents for the different offices and other spaces in the London Fashion building.

By letter of November 7, 1964 (Ex. A.8) the appellant advised Ram Kirpalani that he had "had a meeting with the owners of London Fashion who had advised him that they had an offer of $600,000 for their building but that they could not accept this as the purchaser did not wish to take over the stocks for which they are asking the net landed costs" and that no agreement had been reached as to "the takeover of the fixtures." What now follows in this letter is important and I quote:

"I was/

"I was told that an offer along the following lines would be acceptable:

Building	$600,000
Estimated Stocks (approx.)	200,000
Fixtures (see attached)	50,000
	$850,000

They are willing, they say, to give reasonable time for the payment of the stocks and fixtures at a low interest rate.

I am of the opinion that you should try an offer of $700,000. on the basis that you could probably slowly liquidate their stocks at reduced prices over a period of say six to nine months, whilst gradually replacing same with your own lines. Estimating your recovery in stocks and fixtures to be $150,000, the net cost to you for the building would be in the vicinity of $550,000. I may mention that I suggested that they could be given time to liquidate the stocks themselves which did not meet with their favour, on the excuse "that if they sold they would want to include everything and clear out."

What is most significant here is that there was no contradiction from Ram Kirpalani to the effect that any consideration of stock or fixtures was wholly dehors the appellant's instructions or authority. On the contrary the evidence points to an authorization for the take-over of Millers Stores as a going concern and accordingly of London Fashion. At this time the negotiations for Millers were still on foot. Indeed the instructions for an offer to Millers as a going concern were given according to the evidence of the appellant partly verbally and partly in writing by Ex. G.E.5. Inter alia, one of the conditions was that (d) "the valuation is based on the presumption (i) that the stock taken is either cash or market value whichever is lower, (ii) that the depreciation written off on furniture, motor cars, etc. is realistic."

The appellant accordingly conducted negotiations with London Fashion in the light of all this. It is clear in my view that the appellant was forced, if he was to succeed in obtaining the London Fashion building for Ram Kirpalani, to negotiate for the disposal of the stock in trade and fixtures of London Fashion. In my judgment it would be wrong to say that the authorization of the appellant went no further than his power to negotiate for the London Fashion building. Enough has been said to make it manifest that the appellant did a considerable amount of work in trying to bring about a 'deal' with London Fashion. Indeed his efforts were hardly less in regard to London Fashion than they had been with respect to Millers.

This brings one to the inquiry as to what was the true position and status of Gabe in the London Fashion transaction, and whether that position would be sufficient to deprive the appellant of his right to commission. It has been submitted by counsel for appellant that it was not pleaded nor did it appear in the evidence that Gabe was the authorized agent of the respondent, indeed Ram Kirpalani himself said that Gabe was only acting in the transaction as a 'friend'. It is necessary therefore to inquire what Gabe did to bring about the transaction with London Fashion. According to Ram

Kirpalani/

Kirpalani on June 25, 1964 when Gabe visited him as was his wont, he offered London Fashion for sale. On July 3 just before Ram Kirpalani left on his tour abroad he says he told the appellant of this offer for London Fashion by Gabe, acting on behalf of Mr. Gottfried. Ram Kirpalani added that "Gabe, acting on behalf of Mr. Gottfried. Ram Kirpalani added that "Gabe was working as a friend and was not involved in getting commission on either side." It is clearly because of what Ram Kirpalani said further that the appellant increased his efforts in the negotiation for London Fashion. This is what Ram Kirpalani said:

> "I told him that since Gabe was not going to get any commission and owners of London Fashion knew it was Kirpalani negotiating through Gabe, why not you (Plaintiff) negotiate with them the same as with Millers. He agreed. I meant for him to negotiate London Fashion keeping my name secret and I would pay commission. I actually thought but did not say that since he was negotiating with London Fashion he would ask them for a commission in case I concluded deal through Gabe who was not acting for commission. I felt Miller's deal was not going to come through and I was giving him another opportunity of earning commission on London Fashion deal during my absence. If he succeeded I would pay commission if he did not I concluded deal through Gabe. I felt he would get from London Fashion not from me. In this context I told him get the property of London Fashion on same terms as Millers."

This is in my view sufficient authorization to the appellant to negotiate for London Fashion and I have already discussed just how much work the appellant put into those negotiations. Nothing more is seen or heard of Gabe until after the return from abroad of Ram Kirpalani. He returned to Trinidad on November 9, 1964 and on or about 10th or 11th November called in the appellant for discussions, he stated inter alia that he wanted time for examination of Millers' balance sheets, here again with a view to negotiating for the whole Millers complex. Ram Kirpalani did not at this interview discuss London Fashion. At the invitation of Ram Kirpalani on November 18, the appellant saw him and he said that the negotiations with Millers had taken 7 – 8 months and nothing had come of it. The appellant was unable to come to agreement with Millers and ultimately all offers were withdrawn by letter of November 25, 1964.

Ram Kirpalani met Gabe by appointment on Sunday November 22 at San Fernando. That meeting only lasted 20 minutes. There was no question of Gabe having to persuade Ram Kirpalani as to the factors material to the negotiation, and finally Ram Kirpalani "closed the deal for $570,000 for property of London Fashion." It is to be remembered that $550,000 was being offered by the appellant on behalf of Ram Kirpalani and London Fashion had been asking $600,000. Two points are here noteworthy, the letter of Maraj (October 6) had fixed a maximum offering figure and all that Gabe did was (in his own words) "trying to divide $550,000 in half to get $575,000." What is meant is obviously endeavouring to obtain the mean sum between $550 and $600 thousand. What really did Gabe do? He said London Fashion wished to sell, but that was already known to both the appellant and Ram Kirpalani what was the price being asked, Gabe said $600,000, the appellant already knew this and was trying to close the gap between $500 and $600 thousand; that Gottfried the owner of the building had to approve, the appellant had already conditioned the Katz brothers for this; that agreement had to be arrived at with regard to the stock, furniture and

fixtures/

fixtures; this was worked upon by the appellant, and lastly Gabe did nothing with respect to the stock and fixtures of London Fashion for indeed his evidence is that London Fashion would not sell the building alone so when he closed with the respondent at $570,000 for the building he phoned Katz and told him to take over from there i.e. to complete the deal by negotiating with regard to the stock, etc.

In my judgment the intervention of Gabe cannot be held to have been a decisive factor in the concluded transaction for the purchase of London Fashion. It cannot be right for a principal to authorize a maximum price for his agent and then go just beyond this limit himself and so deprive the agent of the commission which in all other respects he had earned. It must be clearly understood that the efforts of Gabe were only directed to obtaining the sale of the London Fashion building with Ram Kirpalani having to negotiate for the rest of the undertaking on his own. The appellant had been trying to do both these things one being used persuasively to ease the difficulty of the other. In my judgment the learned judge erred in holding in the first place that the authorization of the appellant as agent did not extend beyond negotiation for the London Fashion building and moreover he had also erred in holding that the efforts of the appellant were not the effective cause of the respondent being able to conclude the agreement for the purchase of London Fashion.

What I have stated does not in any way go contrary to the findings of fact by the trial judge. In this case there is sufficient evidence to justify substituting my own findings for those of the trial judge, particularly that upon which the judge failed to give due weight, and also because the proper inferences that are to be drawn from the facts were not so drawn by the judge. See Lucky v. Tewari and another 8 W.I.R. 363 and also Benmax v. Austin Motor Co. Ltd. [1955] 1 ALL E.R. 326. In the Benmax case Viscount Simonds quoted Lord Halsbury in Montgomerie & Co. v. Wallace-Jones (1904 A.C. at p. 75), as saying:

> "But where no question arises as to truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position to decide than the j udges of an appellate court."

One need only add that the principles upon which the Court of Appeal acts in this regard are to be found in sec. 39 of the Supreme Court of Judicature Act 1962.

The question now must be, on what sum should the commission earned by the appellant be calculated as the measure of damages.

In his statement of claim (para. 7) the appellant claimed commission at the rate of 2½% of the entire purchase price i.e. "on the actual price paid in respect of the said purchase" meaning thereby, $570,000 the cost of the building "with stocks and fixtures therein at cost or market value whichever was lower." Clearly in my judgment the appellant is in any event entitled to his commission at the rate of 2½% on the sum paid for the London Fashion building, i.e. on $570,000 in other words to $14,250.

I have already stated that it was almost impossible on Frederick Street to obtain premises with vacant possession. Ram Kirpalani was not at first inclined to purchase the stock in trade of either Millers or London Fashion but it must clearly have been appreciated by both the appellant and the respondent that the paramount negotiation would be for the building having to judge largely of its economic potential, and as to stock this would be secondary and would lend itself easily to a concluded negotiation once the building had been obtained. I have looked at the letter of March 19, 1964 (Ex.A.1) very carefully and anxiously. The last paragraph thereof speaks of the "realtor's commission" and there it is stated that "in the event of my (appellant) acquiring the property you will pay me a realtor's commission." I construe the word 'property' in that setting, i.e. for the purpose of the payment of commission, to mean the building alone. Accordingly I am of opinion that the commission to which the appellant is entitled is the amount calculated at the agreed rate of 2½% on the price paid for the

London/

London Fashion building alone and not on the value of the stock or fixtures.

The appellant had earned his commission as long ago as November 1964 but in my view has unreasonably been kept out of the fruits of his labour for nearly seven years. There has been unfortunately some delay in the delivering of jugements both at the High Court and in this Court. Accordingly I would award interest as well in accordance with the provisions of sec. 26 of the Supreme Court of Judicature Act 1962, at the rate of 6% per annum for 5 years on the sum awarded. The appeal is therefore allowed with costs both this Court and in the Court below. The order of the trial judge is set aside, and there will be judgement for the appellant in the sum of $14,250 with the calculated interest on that sum of $4,275 making a total of $18,525. Execution stayed 28 days by consent.

Arthur H. McShine

Chief Justice

I agree.

Clement E. Phillips

Justice of Appeal

also
I/agree.

Karl de la Bastide

Justice of Appeal

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No: 51 of 1968
High Court No: 1773 of 1965

Between

GERALD ECKEL — Plaintiff/Appellant

and

KIRPALANI'S LIMITED — Defendant/Respondent

Entered and Dated the 4th day of June, 1971

Before the Honourables SIR ARTHUR MC SHINE, Chief Justice (President)
MR. JUSTICE C.E. PHILLIPS
MR. JUSTICE KARL DE LA BASTIDE

UPON READING the Notice of Appeal filed herein on behalf of the abovenamed Plaintiff/Appellant dated the 25th day of October, 1968 and the judgment hereinafter mentioned

UPON READING the record filed herein

UPON HEARING Counsel for the Plaintiff/Appellant and for the Defendant/Respondent

AND UPON MATURE DELIBERATION THEREUPON HAD

AND the said Court having directed that Judgment as hereinafter provided be entered for the Plaintiff/Appellant

IT IS HEREBY ORDERED

(i) that this appeal be allowed

(ii) that the Judgment of the Honourable Mr. Justice Kester McMillan dated the 14th day of October, 1968 be set aside and that the Defendant/Respondent do pay the Plaintiff/Appellant $14,250.00 and Interest thereon at the rate of six per centum (6%) per annum for a period of five years commencing from the month of November, 1964, amounting to the sum of $4,275.00 and making in the aggregate $18,525.00 and his costs of the appeal and of the Court below to be taxed.

AND IT IS BY CONSENT FURTHER ORDERED that execution herein be stayed for a period of twenty-eight (28) days from the date hereof.

Errol Matthews
ASST. REGISTRAR.

TRINIDAD AND TOBAGO.

In the Court of Appeal
On appeal from the Court of Appeal

Civil Appeal No. 51 of 1968

Between
KIRPALANI'S LTD. Respondent-Petitioner

And

GERALD ECKEL Appellant-Respondent.

Entered the 16th July 1971.
On the 9th July 1971.
Before The Honourable Mr. Justice Clent Phillips, Chief Justice (Ag.)
Mr. Justice Aubrey Fraser
Mr. Justice Karl de la Bastide.

UPON READING THE PETITION of the above named petitioner dated the 24th day of June 1971 preferred unto this Court this day for conditional leave to appeal to Her Majesty in Council against the Judgment of this Court made herein on the 4th day of June 1971 AND the affidavit of Ram Kirpalani sworn the said 4th day of June both filed herein

AND UPON HEARING counsel for the petitioner and counsel for the respondent

THIS COURT DOTH ORDER that subject to the performance by the petitioner of the conditions hereinafter mentioned and also to the final order of this Court upon the compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment is hereby granted to the petitioner

AND THIS COURT DOTH FURTHER BY CONSENT ORDER:

1. That the petitioner do within 90 days provide security in the sum of £500 sterling to the satisfaction of the Registrar or deposit into Court the said sum for the due prosecution of the said appeal.

2. That the judgment debt of $18,525 be paid into Court within 14 days of the date hereof with interest thereon at the rate of 6% from the said 4th June 1971 until such payment and that the same thereupon be deposited in a bank by and in the name of the Registrar upon a fixed deposit for not less than one year to be paid out by the Registrar to the party succeeding in the appeal to Her Majesty in Council

3. That the petitioner do within 14 days of the taxation of the costs ordered by this Court to be paid furnish a bond to the satisfaction of the Registrar by way of security for the payment of such costs should the appeal be discontinued or be dismissed by the Privy Council

4. That the petitioner do within ninety days from the date hereof take out all appointments that may be necessary for the settling and preparation of the transcript record in such appeal to enable/

enable the Registrar to certify that the said transcript record has been settled and that the provisions of this order on the part of the petitioner have been complied with and that the said transcript record which the petitioner proposes will be printed in Trinidad and Tobago be transmitted to the Registrar of the Privy Council within sixty days from the date of such certificate.

5. That the petitioner do within one hundred and twenty days from the date hereof bring this petition into Court upon an application for the final order for leave to appeal.

6. That the costs of an occasioned by this petition be costs in the cause to abide the result of the appeal.

7. That each part may be at liberty to apply as may be advised

AND 8 That the petitioner do have and is hereby granted leave to write up this order. 10

TRINIDAD AND TOBAGO:
ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO:
Civil Appeal No: 51 of 1968:

Between

KIRPALANI'S LIMITED — Respondent/Petitioner

and

GERALD ECKEL — Appellant/Respondent

: : : : : : : : : : : : : : :
: : : : : : : : : : : : : : :

Entered the day of November, 1971
Dated the 5th day of November, 1971
Before the Honourable MR. JUSTICE H.A. FRASER
MR. JUSTICE KARL DE LA BASTIDE
MR. JUSTICE P.T. GEORGES

UPON MOTION made unto this Court this day by Counsel for the above-named Petitioner for an Order granting the said Petitioner final leave to appeal to Her Majesty in Her Privy Council against the Judgment of the Court of Appeal dated the 4th day of June, 1971, and the judgment of the Honourable Mr. Justice Kester Mc Millan dated the 14th day of October, 1968, upon reading the Notice of Motion dated the 29th day of October, 1971, the affidavit of EDWARD CYRIL SIRJOO sworn to on the 29th day of October, 1971, and the certificate of the Registrar of the Court dated the 29th day of October, 1971, all filed herein, and upon hearing counsel for the Petitioner in the presence of counsel for the Respondent.

THIS COURT DOTH ORDER

That final leave be and the same is hereby granted to the said Petitioner to appeal to Her Majesty in Her Privy Council against the said Judgment and the costs of this motion be costs in the cause.

Wendy Sandra Punnett
Assist. Registrar.