In the West Indian Court of Appeal.

No. 12. Judgment of Mr. Justice Thomas, 17th November 1921.

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Judgment of Mr. Justice Thomas.

This is an appeal from a judgment of the senior puisne Judge of British Guiana dismissing an action brought by the Plaintiffs, the present Appellants.

The Demerara Bauxite Company, Ltd., are a Company incorporated in British Guiana on the 18th day of September 1916. The principal objects of the Company are, as the name suggests, the winning of bauxite by mining or otherwise and extracting therefrom certain valuable minerals. For this purpose they hold large areas of land and, in 1920, owned some 20,000 acres altogether. Lying between their lands are two estates, known as Aurora and Semerie, having together an area of about acres.

These two estates were the property of one Thomas Hubbard and during his lifetime, in 1914, certain negotiations were made for their purchase by one G. B. McKenzie (who was largely instrumental in floating the Appellant Company) and one J. A. King (a solicitor, and since 1916 Chairman of the Appellant Company) with the curators of Thomas Hubbard, he being of unsound mind, viz., Herbert Burrowes and J. V. Mittelholzer.

On the 4th January 1915 the curators petitioned the Supreme Court for leave to accept an offer made by G. B. McKenzie of $500 for a right of way over and across the lands of Aurora, with the exclusive right to mine for and take away bauxite, the said lands still remaining the absolute property of Thomas Hubbard. That petition was granted on the 9th January 1915 by the Chief Justice of British Guiana.

A draft agreement was submitted to the curators which they, however, refused to approve; and in September 1915 J. A. King, as attorney of G. B. McKenzie, lodged a petition in the Supreme Court to compel the carrying out of the alleged agreement.

Thomas Hubbard died on the 29th September 1915, leaving a will dated the 16th April 1910, by which an undivided half of Aurora and Semerie was bequeathed to one Catherine Van Sertima, whilst Louisa Malvina Hubbard, his widow and one of the Respondents, was appointed sole heiress to the rest and residue of his property wheresoever situate. The executors of this will were Colin Fernandes De Ros, Herbert A. N. Burrowes and Louisa Malvina Hubbard. Before that will could be lodged, it was found that an earlier will had been lodged but not yet certified. After a discussion with the Registrar, the will of 1910 was admitted to probate. As under the will of 1909 there was a legacy of $10,000 which, by the will of 1910, had been reduced to $50, it was of importance to Mrs. Hubbard that the will of 1910 should be admitted to probate.

The papers for estate duty were then prepared and shortly after, in February 1916, Mr. Burrowes (one of the executors) approached Mrs. Sertima as to her share of Aurora and Semerie, offering to purchase at half the values of the properties which in the Declaration for Estate Duty he states was placed at $1,500. After some short negotiations,

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No. 12. Judgment of Mr. Justice Thomas, 17th November 1921 —*continued.*

Mrs. Sertima accepted $900 for her share and transport was passed to Mrs. Hubbard in April 1916.

Hugh Chester Humphrys, the second Respondent, is a barrister, practising in British Guiana, and under the Rules of Court is permitted to practise also as a solicitor in certain matters which include conveyances of land.

He is a cousin and great friend of Mr. H. A. N. Burrowes.

In 1915 he was instructed by Mr. Burrowes to deposit and obtain probate of Mr. Hubbard's will of 1910. Mrs. Hubbard was at that time in Barbados. On her return she was taken to Mr. Humphrys' office, and he was introduced to her as the lawyer looking after her estate. Mrs. Hubbard expressed her gratitude as to the will and said if the other will had been deposited very little of the estate would have been left. After that Mr. Humphrys prepared an inventory of the estate from information obtained from Burrowes and he also advised generally in winding up the estate. Applications were then made for the discharge of the curators and the properties were placed in the hands of the executors. For all these matters and the purchase of the share of Mrs. Sertima, Humphrys acted on behalf of and was paid by Mrs. Hubbard.

In April 1916 an action, *Gravesande* v. *Hubbard*, was commenced against Mrs. Hubbard and Mr. Burrowes. The plaintiffs were twenty-one in number, and the retainer was fixed at $300 as the action was likely to be a long one and extend over several months. Mr. Humphrys was retained for the defendants and gave a receipt for that sum of $300. The action, although it related to the estate of Thomas Hubbard, did not affect the properties Aurora and Semerie.

In August 1916 a probate action (*Joseph Thomson Hubbard* v. *Burrowes and Others*) was commenced against the executors and others. In this action also, Humphrys represented the executors.

Both of these actions were eventually determined in favour of the executors. In addition to these matters Humphrys prepared a petition to the Government in 1915, and in 1913 he had prosecuted a man named Renton for larceny of timber from Aurora and Semerie.

In all these matters Humphrys was paid, and in connection with them he had seen Mrs. Hubbard on several occasions, always at his office. In 1916, shortly after the Plaintiff Company had been formed, Humphrys had been appointed a proxy director of that Company and in that same year Mr. A. G. King spoke to him about the properties of Mrs. Hubbard telling him the position of the purchase of mining rights and right-of-way and informing him that the Company wished to buy the properties outright.

Early in 1918, Mr. A. G. King, secretary of the Company and son of Mr. J. A. King, the Chairman of the Company, asked Humphrys if Mrs. Hubbard would sell Aurora and Semerie for $3,000. Early in January 1918, Humphrys mentioned the suggestion to Mrs. Hubbard, and she said that Mr. King had tried to rob her by offering $1,500 for right-of-way and mining rights and now offered $3,000. Humphrys said this $3,000 was for the whole property. Mrs. Hubbard shook her head.