

A **BURNS PHILP (SOUTH SEA) CO. LTD.**

v.

DIN SHIU PRASAD

[SUPREME COURT, 1965 (Hammett P.J.), 16th, 30th July]

B Civil Jurisdiction

Practice and procedure—judgment by default—entered for excessive amount—jurisdiction to amend.

Judgment—judgment by default entered for excessive amount—amendment of judgment on application of plaintiff.

C When judgment by default has been entered and it is subsequently ascertained that it has been entered for an amount in excess of that actually due and owing the court has jurisdiction, on the application of the plaintiff, to amend the judgment by substituting the correct figure.

D Cases referred to: *Hughes v. Justin* [1894] 1 Q.B. 667; 70 L.T. 365; *Muir v. Jenks* [1913] 2 K.B.412; 108 L.T.747.

Application in Chambers to amend judgment — reported by direction.

K. A. *Stuart* for the plaintiff.

E K. C. *Ramrakha* for the defendant.

HAMMETT P.J. : [30th July, 1965]—

This is an application by the Plaintiff to amend a Judgment.

The facts are not in dispute and are as follows:

F On 11th June 1964 the Plaintiff issued a specially endorsed writ against the Defendant claiming £489.9.8 being the balance of goods sold and delivered. The Defendant entered an appearance but did not deliver a defence and on 15th August 1964 the Plaintiff signed Judgment against him by default for £489.9.8 and £7.17.0 costs.

G On 17th August 1964 the Defendant applied to set aside the Judgment on the grounds that:

- (a) He did not deliver a defence because he was awaiting further and better particular of the claim; and
- (b) that although he had received the goods payment for them was not yet due.

H On 28th August 1964 this application by the Defendant was withdrawn on the Plaintiff's undertaking not to take any steps to enforce the Judgment within 14 days so as to allow the Defendant time to

make arrangements to pay the debt. He did not satisfy the Judgment as promised.

On 22nd January 1965 the Defendant again applied to set aside the Judgment. This summons he again withdrew on 29th January 1965 on the Plaintiff's undertaking to allow him a further 14 days to pay all sums due under the Judgment and costs together with the costs of a Bankruptcy Notice that had, in the meantime, been served on him by the Plaintiff firm. Again the Defendant did not fulfil his promise to satisfy the Judgment.

On 25th May 1965 the Defendant saw the Plaintiff's solicitors and for the first time complained that he had been overcharged an item of £9 by the Plaintiff Company. His complaint was checked and was found to be justified. The Plaintiff Company has now applied to the Court to amend the Judgment by reducing it by £9 on the ground that due to inadvertence Judgment was signed against the Defendant for £9 too much, i.e. to amend the Judgment to an amount for £480.9.8 and costs instead of £489.9.8 and costs against the Defendant.

The Defendant objects to the Judgment being amended. He asks that the Court set it aside as being irregular and bad in law because it is for £9 more than the correct sum due to the Plaintiff at the time.

I have been referred to two authorities in particular. *Hughes v. Justin* [1894] 1 Q.B. 667 which was applied and explained in *Muir v. Jenks* [1913] 2 K.B. 412.

I am quite satisfied by the authority of *Muir v. Jenks* that I have the power to amend this Judgment on the application of the Plaintiff by reducing it by £9 to the correct sum due to the Plaintiff at the date it was entered. As no possible prejudice or disadvantage has been or would be occasioned the Defendant if I exercised this power, I shall do so.

Application granted. Judgment amended by reducing it by £9 as prayed.

I shall make no order as to costs.

Order for amendment of judgment.