

COURT OF APPEAL SITTING

COMMONWEALTH OF DOMINICA

11th – 15th April 2011

STATUS HEARING

Case Name: Leonard Moise v Emanuel Moise
[High Court Civil Appeal No. 14 of 2007]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Singoalla Blomqvist-Williams

Issues: Status of matter – Whether the learned Judge erred and was wrong in law in considering the consent order

Result: The appeal is struck out for want of prosecution.

Reason: No appearance of the appellant.

Case Name: Luke John v Curtis George
[Magisterial Civil Appeal No. 10 of 2007]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues:

Withdrawal of appeal – Whether time for leave to appeal should be extended

Result and Reason:

The appeal having been withdrawn is accordingly dismissed.

Case Name:

**Truxton Chalmers et al v Jane Kitson et al
[High Court Civil Appeal No. 12 of 2005]**

Date:

Monday 11th April 2011

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

Appearances:

Appellant: Mr. McDonald Christopher

Respondent: No appearances

Issues:

Striking out of appeal – Whether there was procedural unfairness and a breach of the constitutional right to a fair hearing

Result:

The appeal is struck out for want of prosecution.

Reason:

The matter had been in the system for six years and there seemed to be no one interested in prosecuting it.

APPLICATIONS AND APPEALS

Case Name: Desmond Williams v Rosemarie Williams
[Magisterial Civil Appeal No. 4 of 2010]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mrs. Dawn Yearwood-Stewart
Respondent:	No appearance

Issues: Extension of time to appeal and permission to rely on affidavit evidence – Whether the decision of the Magistrate was wrong and oppressive

Result: Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Commonwealth of Dominica.

Reason: To facilitate service on the respondent.

Case Name: Janet Nicholas v Irving Felix Shillingford
[High Court Civil Appeal No. 6 of 2011]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mrs. Dawn Yearwood-Stewart
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Respondent: Mrs. Dyer

Issues: Leave to appeal – Whether the learned judge erred in considering the affidavit and application before him and ruling that the defence filed was out of time and void *ab initio*

Result:

1. The hearing of this application is adjourned to the Court of Appeal's case management conference list for May 2011;
2. Solicitors for the appellant must file and serve written submissions on or before Friday 6th May 2011 if necessary.
3. Set down on chambers list for consideration on paper.

Reason: Counsel for the respondent was ill (medical certificate produced).

STATUS HEARING

Case Name: Manager, Marpin Telecoms and Broadcasting Company Limited et al v Broadcasting Company Limited
[High Court Civil Appeal No. 19 of 2005]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Steven Isidore

Respondent: Mrs. Heather Felix-Evans

Issues: Status of matter – Whether the learned judge erred in law and in fact in considering the responsibility of the receiver

Result / Order & Reason: The appeal is withdrawn and is accordingly dismissed with no order as to costs.

APPLICATIONS AND APPEALS

Case Name: J. Astaphan & Co. (1970) Limited v Alfred Dib
[High Court Civil Appeal No. 7 of 2009]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

	Appellant:	Mr. Allain Shepherd (lead counsel), with him, Mrs. Hazel Johnson
	Respondent:	Mr. Gerald Burton

Issues: For report – Whether the learned Master failed to consider properly the valuation of shares of the company

Result / Order: [Oral delivery]

1. The assessment of damages in this matter is remitted for retrial before a judge of the High Court;
2. The parties are at liberty to adduce further evidence at the retrial;
3. The parties shall bear their own costs in this appeal.

Reason: Consent order by both the appellant and respondent accepted by Court.

Case Name: John Henry Abraham v Kever Dwight Darroux et al
[High Court Civil Appeal No. 17 of 2010]
Bobby A.C. Frederick v Ambrose George et al
[High Court Civil Appeal No. 25 of 2010]
Claudius Sanford v Ashton Graneau et al
[High Court Civil Appeal No. 26 of 2010]
Ronald a.k.a. “Ron” Green v Petter Saint Jean et al
[High Court Civil Appeal No. 27 of 2010]
Maynard Joseph v Roosevelt Skerrit et al
[High Court Civil Appeal No. 28 of 2010]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Douglas Mendes, Senior Counsel, with him, Mr. Jeffrey Letang
Respondent:	Mr. Anthony Astaphan, Senior Counsel, with him, Mrs. Heather Felix-Evans

Issues: Application for appeal to be struck out and dismissed with costs – Whether the Court was wrong in finding that the petitioners had absolutely failed to properly plead or perfect the allegations of bribery

Result / Order:

1. The appeals in these matters have been withdrawn and accordingly dismissed with no order made as to costs (by consent).
2. The applications herein accordingly fall away and

are also dismissed.

Reason: Notice of withdrawal was filed.

Case Name: Anthony Luke v The State
[High Court Criminal Appeal No. 1 of 2011]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Darius Jones
Respondent:	Mr. Clement Joseph (Director of Public Prosecutions' Chambers)

Issues: Application for notice of appeal to be deemed validly filed – Whether the trial was unfair – Whether credit was given for good character and early guilty plea

Result / Order: [Oral delivery]

1. It is deemed that the notice of appeal has been properly filed in relation to time and circumstances;
2. All subsequent matters are to be in accordance with the rules;
3. The hearing of the appeal is adjourned to the next sitting of the court in Dominica during the week commencing 7th November 2011.

Reason: Appeal had been properly filed in relation to time and circumstances.

Case Name: Ambrose Cadette v Harry Cyrille
[High Court Civil Appeal No. 3 of 2011]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Don Christopher

Respondent: Mrs. Singoalla Blomquist-Williams

Issues: Leave to extend time to appeal – Leave to appeal – Stay of proceedings – Stay of order – Whether there was an abuse of power and error of law in taking the view that a prima facie defence was not worthy of a fair trial

Result / Order:

1. The application herein is granted;
2. In the circumstances of this case, the application is also treated as the appeal and the appeal is allowed;
3. In consequence of paragraph 2 of this order, the order which the Master made herein on 14th March 2003 is wholly set aside, and, in particular the Defence is hereby restored;
4. This case is remitted to the High Court for scheduling as a matter of urgency as a first hearing of the fixed date claim.
5. Costs in the proceedings today will be in the cause.

Reason: Procedurally, the trial was unfair.

STATUS HEARING

Case Name: Magdalena Victor v Fort Young (1986) Limited

[High Court Civil Appeal No. 11 of 2006]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Lennox Lawrence

Respondent: Ms. Hazel Johnson

Issues: Status of matter – Whether the learned trial judge erred in law and / or in fact in considering the evidence / or in finding that the claimant was contributorily negligent

Result / Order: The appeal is withdrawn.

Reason: The parties have settled.

APPLICATIONS AND APPEALS

Case Name: Albertina Defoe et al v Tessa Joseph
[Magisterial Civil Appeal No. 20 of 2010]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Duncan Stowe holding papers for Ms. Gina Dyer
Mr. David Bruney for Mc Lean Lewis

Respondent: Mr. Lennox Lawrence holding papers for Mr. Julian Prevost

Issues: Whether the learned Magistrate's reasons for the decisions are in accordance with the law

Result / Order: The matter is traversed to the next sitting of the Court of Appeal in the Commonwealth of Dominica during the week commencing 7th November 2011.

Reason: Counsel for the appellant was unwell (medical certificate produced).

Case Name: Clayton Hector v Dominica Agricultural Industrial and Development Bank
[High Court Civil Appeal No. 10 of 2011]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Duncan Stowe holding papers for Mrs. Zena Dyer
Respondent:	Mr. Anthony Commodore

Issues: Leave to appeal – Whether the learned Judge erred when he held that he had no jurisdiction to grant an extension of time to appeal

Result / Order: The matter is traversed to the next sitting of the Court of Appeal in the Commonwealth of Dominica.

Reason: Mrs. Dyer, counsel for the appellant was unwell (medical certificate produced).

Case Name: Curvan Frederick v The Police
[Magisterial Criminal Appeal No. 27 of 2010]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Duncan Stowe holding papers for Mrs. Zena Dyer
Respondent:	Mr. Clement Joseph (Director of Public Prosecutions' Chambers)

Issues: Appeal against conviction – Careless driving – Whether the decisions of the learned Magistrate were unsafe and unsatisfactory

Result / Order: The hearing of this appeal is traversed to the next sitting of the Court of Appeal in Dominica during the week commencing 7th November 2011.

Reason: Mrs. Dyer, counsel for the appellant was unwell (medical certificate produced).

STATUS HEARING

Case Name: Benoit John Baptiste v Henry Hillaire et al
[High Court Civil Appeal No. 16 of 2005]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Duncan Stowe holding for Mrs. Zena Dyer

Respondent: No appearance

Issues: Status of matter – Whether the learned Judge misapplied the law in respect of resulting trusts, constructive trusts, promissory estoppel and proprietary estoppel

Result / Order: The matter is traversed to the next sitting of the Court of Appeal in Dominica during the week commencing 7th November 2011, and is to be placed on the status hearing list for that sitting.

Reason: Mrs. Dyer, counsel for the appellant was unwell (medical certificate produced).

Case Name: Ionie Theresa Charles v Hilma Elizabeth Matthew
[High Court Civil Appeal No. 14 of 2006]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Duncan Stowe holding for Mrs. Gina Dyer

Respondent: Mr. William Riviere

Issues: Status of matter – Whether the learned Judge erred and

was wrong in law by failing to consider that there is in existence a Certificate of Title in the name of the trustees of the Methodist Church

Result / Order: The appeal is traversed to the next sitting of the court in Dominica during the week commencing 7th November 2011, and is to be placed on the status hearing list for that sitting.

Reason: Mrs. Dyer, counsel for the appellant was unwell (medical certificate produced).

Case Name: Jamie Vidal et al v Kenneth John
[High Court Civil Appeal No. 2 of 2007]

Date: Monday 11th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Ms. Colleen Felix
Respondent:	Mrs. Dyer

Issues: Status of matter – Whether there was an error in ruling and procedure on the part of the Magistrate since the Court summons was not served on the appellant

Result / Order: The appeal is struck out with liberty to the appellants to apply within 30 days of today's date to have it restored.

Reason: There had been an error in ruling and procedure on the part of the learned Magistrate. Further, this matter had been on the Court's list for a very long time.

APPLICATIONS AND APPEALS

Case Name: Derrick Daniel v Ravineau Daniel
[High Court Civil Appeal No. 10 of 2009]

Date: Tuesday 12th April 2011

Coram: The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Don Christopher
Respondent:	Ms. Laurina Vidal

Issues: Whether the learned Judge erred in the exercise of his discretion by failing to take into account and giving too little weight to relevant facts

Result / Order: [Oral delivery]
1. The appeal is allowed and the matter is remitted to the High Court for re-listing and re-hearing of the fixed date claim.
2. All proceedings in Suit No. 194 of 2006 are stayed;
3. No order is made as to costs.

Reason: Mr. Justice Matthew had exercised his jurisdiction contrary to or disregarding the directions given by the Court of Appeal for relisting and rehearing of the Fixed Date Claim.

Case Name: Skeffington Benjamin v The State
[High Court Criminal Appeal No. 5 of 2010]

Date: Tuesday 12th April 2011

Coram: The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Duncan Stowe holding papers for Mrs. Dyer – Mr. David Bruney was yesterday formally assigned to represent the appellant

Respondent: Mr. Clement Joseph (Director of Public Prosecutions' Chambers)

Issues: Appeal against conviction – Malicious damage – Whether the trial was unfair due to lack of evidence

Result / Order: The appeal is dismissed.

Reason: The appeal was withdrawn.

Case Name: Ben Darroux v The State
[High Court Criminal Appeal No. 1 of 2010]

Date: Tuesday 12th April 2011

Coram: The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Bruney (who was yesterday assigned to formally represent the appellant)

Respondent: Mr. Gene Pestaina

Issues: Whether the Judge failed to advise the appellant of his

rights to call witnesses – Whether the lack of assistance to the unrepresented accused resulted in an unfair trial.

Result / Order: [Oral delivery]
The appellant's conviction and sentence are quashed.

Reason: The entire trial of the appellant was rendered unfair.

Case Name: Royston Bontiff v Constable Joseph Prevost
[Magisterial Criminal Appeal No. 2 of 2011]

Date: Tuesday 12TH April 2011

Coram: The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Ms. Rose-Ann Charles
Respondent:	Mr. Gene C. Pestaina, Director of Public Prosecutions

Issues: Leave to appeal – Whether the Magistrate's decision to convict and sentence the appellant in his absence was irregular

Result / Order:

1. The application for leave to appeal is treated as the appeal in this matter.
2. The appellant's conviction and sentence are quashed.

Reason: The decision of the learned Magistrate to convict and sentence the appellant in his absence involved a serious procedural irregularity.

Case Name: Windward Islands Banana Development & Exporting Co. Ltd. et al v Felix Christmas
[High Court Civil Appeal No. 5 of 2011]

Date: Tuesday 12th April 2011

Coram: The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Kondwani Williams
Respondent:	Mr. B. McDonald Christopher

Issues: Leave to appeal – Whether the learned Master erred in law when she proceeded to consider the assessment of damages as a hearing in default

Result / Order:

1. The Draft Notice of Appeal is to be treated as the Notice of Appeal filed on 25th February 2011.
2. The matter is to proceed in accordance with CPR 62.9 and 62.11.
3. The costs ordered on the application for leave to appeal in the sum of \$750.00 shall be paid to the respondent by the appellant no later than Tuesday 26th April 2011.

Reason: A procedural error was corrected in accordance with the Civil Procedure Rules 2000.

STATUS HEARING

Case Name: Richardson Seaman v The Queen
[High Court Criminal Appeal No. 5 of 2008]

Date: Wednesday 13th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Richardson Seaman (in person)

Respondents: Mr. Clement Joseph (Director of Public Prosecutions' Chambers)

Issues: Status of matter – Whether the Judge imposed an excessive sentence

Result / Order: The matter is traversed to the next sitting of the Court of Appeal in Dominica during the week commencing 7th November 2011.

Reason: More time was needed to consider the transcript.

APPLICATIONS AND APPEALS

Case Name: Ramie George v The Police
[Magisterial Criminal Appeal No. 26 of 2010]

Date: Wednesday 13th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Dawn Yearwood-Stewart

Respondent: Mr. Gene Pestaina, Director of Public Prosecutions

Issues: Appeal against conviction – Possession of cannabis – Possession of cocaine – Whether a fair trial was given – Whether sentence imposed on appellant was too excessive

Result / Order: [Oral delivery]
1. The appeal against conviction and sentence is allowed;
2. The order of the magistrate is quashed and the case is remitted to the Magistrate's Court for trial de novo as a matter of urgency.

Reason: The Court was of the view that the appellant was denied a fair trial, and also that the sentence imposed was manifestly excessive.

Case Name: The Attorney General of the Commonwealth of Dominica v Jacqueline Theodore
[High Court Civil Appeal No. 9 of 2008]

Date: Wednesday 13th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Levi Peters
Respondent: Mr. Lennox Lawrence

Issues: Wrongful seizure of land – Amount of compensation to be paid to the respondent – Whether the respondent was deprived of reaping the fruits of the monetary award in her favour

Result / Order: 1. Mr. Vincent Robinson, Licensed Surveyor of

Louisville, Roseau is appointed as the court's expert for the purpose of providing a report to the Court of Appeal in this matter.

2. The said report is to focus on the following:
 - i) The value of the land before the interference
 - ii) Any diminution in value resulting from the said interference with the land;
 - iii) Alternatively, the cost of restoring the land as far as possible to its original state to take into account any (a) reforestation, (b) slippage;
 - iv) The report is to address any consequential loss flowing from the loss of crops, loss of trees removed or cut down from the land;
 - v) Loss flowing from the removal of whatever equipment was left on the land;
 - vi) The report to be submitted by 30th May 2011;
3. The report is to focus on the value of the trees and crops at market value on the date of the interference, and is to include comparisons from other sales of comparable property.
4. The value of the trees and crops are to be determined not only by the use to which they were being put at the time but also to the uses which they were reasonably capable of being put in the future.
5. A copy of this Order to be served by the Registrar on the expert on or before Friday, the 15th day of April 2011.
6. Costs for the Expert and this appeal are reserved to the final determination of the appeal.

Reasons:

Parties agreed to consent order.

Case Name:

**Neve Williams et al v Andrell Laville
[High Court Civil Appeal No. 11 of 2009]**

Date:

Wednesday 13th April 2011

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. B. McDonald Christopher

Respondent: Mr. Lennox Lawrence

Issues:

Whether the appellant was able to sustain a caveat in view of the fact that there was no certificate of title and whether caveat matter was properly filed as there was a previous civil suit

Result / Order:

[Oral delivery]

1. The appeal is dismissed and the decision and order of the learned trial judge are affirmed;
2. The appellant shall pay \$600.00 costs to the respondent there being no cross-appeal in relation to costs.

Reason:

Under s. 33 of the Title by Registration Act, Chap. 56:50, Revised Laws of Dominica 1990, the persons in adverse possession could not maintain an action in the absence of certificate of title.

Case Name:

Marcellinus Carbon v Curtis George
[Magisterial Civil Appeal No. 2 of 2010]

Date:

Wednesday 13th April 2011

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Rose-Ann Charles

Respondent: No appearance

Issues:

Whether the principles of natural justice principles were applied – Whether there was sufficient evidence to

determine amount of damage

Result / Order:

[Oral delivery]

- 1. The appeal is allowed;**
- 2. The decision and order of the magistrate are set aside;**
- 3. The respondent is to pay \$500.00 costs to the appellant.**

Reason:

The appellant was deprived of a fair hearing.