(1)

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NOS 7 & 8 of 1982

BETWEEN:

1. FREDERICK MELIUS
2. RAYMOND MELIUS - Appellants

V

THE QUEEN - Respondent

Before: The Hon. Sir Neville Peterkin - Chief Justice
The Honourable Mr. Justice Berridge
The Honourable Mr. Justice Robotham

Appearances: K. Foster for both Appellants
S. d'Auvergne, D.P.P., for the Crown

1982: October 18.
1983 Feb 1.

JUDGMENT

PETERKIN, C.J., delivered the Judgment of the Court.

The two appellants were convicted at the June Assizes, 1982, and were both sentenced to death. No. 1 appellant, Frederick Melius, was convicted of the murder of Harold Mathurin on 23rd August, 1981, at Chateau Belair, while the second appellant, Raymond Melius was convicted of the offence of abetting his murder. They have both appealed against their convictions on the following grounds:

"1. That the verdict was against the weight of the evidence, is unsafe and cannot be supported.

2. The learned trial's directions on common design in relation to the specific facts and the Appellant's defence were inadequate and/or insufficient, whereby the jury had no alternative but to convict, there being no proper directions to differentiate his separate defence.

3. The learned trial Judge failed properly and/or adequately to put the case for the Appellant to the jury."

Before arguing the third ground of appeal, learned Counsel sought and was granted leave to add the following words:

"And in particular the defences of self-defence, provocation, or, in the alternative, that someone else had inflicted the injuries."

/The.....

The evidence discloses that on 23rd August, 1981, at about 7 p.m., an altercation took place at Chateau Belair between the members of two families, the Melius family and the Mathurin family. In its early stages it amounted to no more than insults, and an accusation of stone throwing. It developed, however, as the parties reached the junction which led to their respective homes nearby. At that stage, those present were Frederick Melius and his wife Mary, Eugene Dujon, his son in law, with his wife Ti Femme, and his son Ronald. Also present were Polycarp Hubert, otherwise known as Henry, and his wife Eulalie, daughter of the deceased Harold Mathurin.

From here on the Crown's case depended mainly on the evidence of Polycarp Hubert and his wife. Apart from the Police witnesses and the doctor there were no independent witnesses on either side, and the Jury were left with a collision of evidence from which to decide as there were two separate and distinct versions.

According to the witnesses for the Crown, the quarrel continued at the junction where Frederick is alleged to have struck Polycarp with a stick. What is alleged to have followed is best told in the words of the witness Polycarp Hubert himself.

> "First accused told me "bet I strike you with the piece of stick." First accused struck me with the piece of stick then threw it away. My wife's father Harold Mathurin came. In first accused's presence and hearing Harold Mathurin asked me what was the matter. When I was telling him, first accused said "Harold shut your arse." Then first accused called for his cutlass. Second accused came from his father's house with two cutlasses. He gave first accused one and he held the other in his hand. First accused walked to Harold Mathurin with the cutlass that second accused gave him and dealt Harold Mathurin a blow in the neck with the cutlass. Mr. Harold fell to the ground."

The Crown's case then was that the first appellant had struck the deceased a deliberate cruel blow to the neck with the cutlass, and that he fell to the ground mortally wounded. The doctor's evidence is

/that it.....

that it was a 5 x 5 inch laceration and 3 inches deep. It completely severed the carotid artery. The internal and external jugular veins were also severed, so was the cervical portion of the spinal cord. The cause of death was haemorrhage and shock, and it resulted within 3 to 5 minutes.

The defence on the other hand was that neither accused had had anything to do with Harold Mathurin that night. Indeed, the wife of the first accused, Frederick Melius, testified at the trial that Polycarp Hubert was the one who had dealt Harold Mathurin the fatal blow to the neck with a plang.

At the trial No. 1 accused said in part on oath:

> "Whilst I was answering my wife, Eulalie and Henry came. My wife asked Eulalie and Henry why is it the two of you bare my husband on the road and want to beat him up. After my wife had said so, Henry left where he was standing in front of my wife, walked towards me and chucked me. He pushed me in the back. When I went to hit him back, Raymond left by my house coming. Raymond held me and told me, "Father don't fight." I struggled with Raymond and said I was going to hit Henry back. Raymond put his hand under my arm and said "Daddy let's go." We both left. Whilst we were going Dujon came. Before I reached by my kitchen door I heard E-gas, E-gas". When I looked back I saw it was Henry and Eugene fighting. I made Raymond let me go. I went and parted the fight between Eugene and Henry. Henry was on top of Dujon. I held Henry by the back part of his collar. Eulalie jumped on me. I released Henry. Eulalie and I started fighting. In fighting I missed a fall and I fell lower down the hill. At the same time my thumb was in her mouth - my right thumb. I was struggling to remove my thumb from her mouth. All how I struggled with her I couldn't remove it. I bit her on her face. That is when she released me. When she released me I left where I was going towards my kitchen. When I reached my kitchen, I looked at the back of my foot and saw I was wounded. I did not see Harold Mathurin at all that night. I did not do anything to Harold Mathurin."

No 2 accused also testified. He said in part:

> "When I reached the T-junction I met my father, Polycrap, my mother, John - no one else. I held my father. I asked him what was wrong with him. He told me that Henry had punched

/him....

> him in the back. I told him let's go up, don't fight. Whilst I was going up, my father and I, I met Dujon going down. Dujon asked me what had happened by the road. So I told him that it was Henry who wanted to fight my father by the road, so I am taking him up. When I reached by my father's kitchen I heard E-gas, E-gas." My father told me to let him go for him to go and see what is happening by the road. I let him go. He went by the road. I saw Henry and Eugene fighting on the ground. I stood there and my father went and parted Dujon and Polycrap. Eulalie came and jumped on my father. They started fighting on the other side on a little hill. I walked towards Polycrap and Dujon to part them. I saw Francisca and Hilary going towards Henry and Dujon as if to part them. Hilary is Eulalie's sister. I saw Francisca hold Polycrap. After I saw that I left and went lower down to part my father and Eulalie. I saw John swinging his cutlass between the two people that were fighting. I called out to John and he ran up the hill. As I was about to hold my father my father fell to the ground. He got up and I told him to go up to his house. When I was returning I met my mother and Polycrap fighting. I saw my mother holding Polycrap by the shirt and Polycrap had a plang upraised in his right hand. I stood up there to see what would happen. When I saw he was going to wound my mother with the plang I went and held my mother. Eulalie came and struck me with a cutlass at the back of my neck. When Eulalie struck me, I ran and I returned by the road. I saw Polycrap with his knees against my mother's tummy on the ground. I went to help my mother up. Eulalie came and told Polycrap to give her the plang. She told my mother to let go her husband's shirt. My mother got up and I went to my father's home with her. When I reached by a cedar tree I heard Eulalie's voice shouting "oh God, oh God, Gleau Caco is dead." When I was going to separate Henry and Dujon I saw Harold Mathurin coming on the other side. I did not see my father do Harold Mathurin anything that night."

He later said in cross-examination,

> "Harold Mathurin did not do me anything. He did not do my father anything. I did not see Harold Mathurin with anything in his hand."

It is evident from their verdict that the Jury accepted that No. 1 accused had dealt the blow to the neck of the deceased, thereby causing his death.

Learned Counsel argued the third ground of appeal on behalf of No. 1 appellant. He referred to the evidence, and argued that the

/trial Judge.....

trial Judge had wrongly withdrawn provocation from the Jury as there was some evidence in the case capable of amounting to provocation. He contended that the evidence all showed that there was a fight, and that provocation need not necessarily move from the deceased. He cited the cases of, (1) R v Porritt, 1961, 45 C.A.R., 348, and (2) Shoukately v Reg., 1962 W.I.R., Vol. 4, p. 111. He finally submitted that to have withdrawn provocation as a defence from the Jury in the instant case amounted to a misdirection on the part of the trial Judge.

Had the trial Judge been administering justice in accordance with the English system of law as it now stands we would have to agree, as in all the circumstances of this case, we feel that there would have been evidence of things both said and done which, though not moving from the deceased himself, would be capable of being regarded as amounting to provocation, and that it would have been the duty of the trial Judge to have left provocation as a possible defence to the Jury. But the learned trial Judge in the instant case was administering justice in accordance with the Criminal Code of St. Lucia, section 174 of which reads

> "Where a sufficient provocation has been given to the accused person by one person, and he kills another person under the belief, on reasonable grounds, that the provocation was given by him, the provocation shall be admissible for reducing the crime to manslaughter in the same manner as if it had been given by the person killed; but except as in this section mentioned, provocation given by one person is not a provocation to kill a different person."

In our view he acted correctly in withdrawing provocation as a possible defence from the Jury. There could have been no belief, on reasonable grounds, on the part of No. 1 accused that the provocation had been given by the deceased. His evidence was that he did not see Harold Mathurin at all that night, nor did he do anything to him. He could not therefore possibly claim to have had the belief, on reasonable grounds, that the provocation was given by the deceased. For the

/reasons.....

reasons given this ground of appeal cannot therefore in our view succeed.

We do not consider that there is any merit in either of the two remaining grounds so far as they relate to the first-named appellant, Frederick Melius. His appeal is accordingly dismissed, and the conviction and sentence affirmed.

However, before passing on to deal with the appeal of the second-named appellant, Raymond Melius, we would like to express, for the consideration of the Law-makers, the hope that they might see their way to amending Sec. 174 so as to bring it into conformity with the English Law.

In relation to the case of the second appellant, Raymond Melius, the trial Judge in his summation to the Jury said at page 46 of the record:

> "Now it is true that when the existence of a particular intent forms part of the definition of an offence, a person charged with abetting - the com ission of the offence - must be shown to have known of the existence of the intent on the part of the person so aided - abetting, aiding one of the same. So that if the Prosecution are to succeed, the Prosecution must - that is on the second count, the Prosecution must prove that the second accused knew of the existence of his father's intent to cause the death of Harold Mathurin or that he knew of his father's intent to cause the death of some other person."

And again, at page 83:

> "Now whether you find the second accused guilty of abettment or not depends on whether you feel sure that the Prosecution has proved that the second accused knew that his father intended to urlawfully cause the death of somebody, be it Henry or Harold Mathurin, be it anybody by unlawful harm. In other words you have to ensure that the Prosecution have proved that the second accused knew that his father intended to commit murder that night, and that in bringing the cutlass he was assisting him to comait murder that night."

We regard these directions by the trial Judge as being both accurate and adequate. The difficulty here however, is whether it has been

/shown....

shown beyond a reasonable doubt that the appellant Raymond Melius, at the time he handed the cutlass to his father, knew then that it was the intention of his father to cause the death of another person intentionally by unlawful harm, in short to commit murder, and that in bringing the cutlass he was assisting himso to do. This question can only be resolved in the context of all the facts and circumstances. In the instant case it remains a matter of inference only.

In accordance with section 35 of the West Indies Associated States Supreme Court (Saint Lucia) Act, (No. 17 of 1969), this Court is charged to allow an appeal against conviction if we think that the verdict of the Jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. In the words of Widgery L.C.J., in the appeal of Sean Cooper, 53 C.A.R., 82, at page 86,

> "That means that in cases of this kind the Court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the Court experiences it."

We have given earnest thought to this matter, and, after due consideration, we have decided that we do not regard the verdict in the case of Raymond Melius as being safe. Accordingly, we shall allow his appeal and quash the conviction. The sentence is set aside and the appellant is discharged.

N.A. PETTERKIN,
Chief Justice

N.A. BERRIDGE,
Justice of Appeal

L.L. ROBOTHAM,
Justice of Appeal.

(6)

ANTIGUA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 of 1986

BETWEEN:

S. ROY MENDES - Defendant/Appellant

and

TEXACO WEST INDIES LIMITED - Plaintiff/Respondent

Before: The Hon. Mr. Justice Bishop - Chief Justice (Acting)
The Hon. Mr. Justice Moe
The Hon. Mr Justice Williams (Acting)

Appearances: Mr. F. Clarke for the Defendant/Appellant
Mr. S. Christian for the Plaintiff/Respondent

1987: Nov. 2
1988: Feb. 22.

JUDGMENT

BISHOP, Chief Justice (Acting)

This is an appeal against the decision of the learned trial Judge, in which he ordered that Texaco West Indies Limited recover from S. Roy Mendes the sum of $498,324.75 or any part thereof remaining unpaid by S.R. Mendes (Antigua) Limited (in Receivership) and costs to be agreed or taxed.

In October, 1983 Texaco West Indies Limited (also called Texaco) filed a Writ of Summons endorsed with a Statement of Claim showing that it claimed from S.R. Mendes (Antigua) Limited (in Receivership), hereinafter also called the Company, $539,133.82 owed by the latter and/or against S. Roy Mendes as guarantor of the indebtedness of the Company, the said sum or any balance thereof remaining unpaid by the Company.

The claim was based upon a guarantee dated 6th September, 1978; and whereas on the one hand Texaco alleged that S. Roy Mendes guaranteed payment of all sums owing to Texaco by the Company (see paragraph 5 of the Statement of Claim), on the other hand the defendant pleaded, on the 17th April, 1984, that he gave the guarantee but its terms were not accurately stated or sufficiently set out. He asserted that he would "refer to the said guarantee.....for its full term and effect" (see paragraph 1 of the Defence). This assertion must be borne in mind.

S. Roy Mendes also alleged in his defence that he gave the guarantee, relying on the representation by Texaco that the credit facilities granted to the Company would be limited to $272,000.00, that that amount would not be exceeded at any time, and that thereby his liability under the guarantee

/would.....

would only amount to the said sum of $272,000.00. It was further pleaded that this representation was made orally by Texaco to S.R. Mendes at the Company's premises around August, 1978 and "was confirmed by letter from Texaco dated 26th September, 1978". This defendant asserted that without his knowledge or consent Texaco granted credit facilities to an amount of $647,002.19 to the Company, and in all the circumstances, he was discharged from all liability under the guarantee.

I think that the case as conducted in the Court below, departed from the tenor and facts of the pleadings, in some respects; but I shall confine myself to the appeal as argued before us.

Each of the five grounds of appeal concerned the guarantee. It is appropriate then to set out the following part of that document;

> "Gentlemen,
>
> For value received, and to induce you, your divisions and subsidiaries to undertake or continue to sell goods and/or lease property to STEPHEN R MENDES (ANTIGUA) LIMITED, hereinafter called the debtor, the undersigned, jointly and severally, hereby unconditionally and absolutely guarantee payment when due of any and all present or future indebtedness owed to you, your divisions and subsidiaries by the debtor and hereby agree to pay such indebtedness punctually if default in payment thereof is made by the debtor.
>
> .....
>
> Without in any way limiting the generality of the foregoing, the undersigned acknowledges that this guarantee encompasses debtor's purchases of goods on account (including credit card purchases) and service, handling and delinquency charges incurred thereon, debtor's rental obligations for leased real and personal property, money borrowed by debtor (whether secured or not) and interest thereon, and debtor's obligations to account for goods consigned to or in the care or custody of debtor.
>
> This guarantee is unlimited as to amount and time, but may be revoked by the undersigned effective five (5) days after receipt by you of notice to that effect, signed by the undersigned and delivered to you ar the above address, marked for the attention of the Credit Manager, but such revocation shall not affect liability on any indebtedness then existing....."

This document dated 6th September, 1978 showed clearly on its face, that it was the guarantee of S. Roy Mendes Esq., to TEXACO WEST INDIES LIMITED, that it was witnessed by Christopher J. Blackstone and signed by the guarantor on the said 6th September, 1978.

There can be no doubt at all that the parties to this contract were Texaco and S. Roy Mendes.

In his decision delivered on the 7th May, 1986 Matthew J. stated:

/"The second.....

> "The second defendant contends that he was mis-represented as to the terms of the guarantee. Here is a retired businessman aged 65 and Senator of this country. He has been in the family business since he was 16 until he was retired in 1981. He was Managing Director and in charge of the Board for some time up to 1978 when Mr. Blackstone was made Managing Director, but he remained Chairman of the Board of Directors until his retirement and even after that. He appears to be well versed in business matters and gave an impressive opinion as to the reasons for the failure of the business. The Managing Director of Texaco came to him in Antigua and spoke about the guarantee..... He was reluctant at first to give it..... . He realised the agency depended on his giving the guarantee and he signed a document containing 17 lines ..... in fairly simple language and reads in part -"This guarantee is unlimited as to amount and time". There are no sums of money whatsoever in the document. Yet the second defendant says when he signed he understood it to be a guarantee limiting him to pay in the event of the Company's default, an amount not exceeding $272,000.00. I completely reject the second defendant's evidence here. He knew very well what he was doing and that is why he was reluctant....."

The learned Judge expressed the opinion that S. Roy Mendes had every interest in signing that guarantee, as guarantor, as he did not wish his company to lose an agency that was viable and that the Company held for 30 to 40 years.

In arguing the appeal learned Counsel pointed out - quite correctly in my view - that the duty of this Court was to interpret the guarantee of 6th September, 1978. Then Counsel submitted that in discharging that duty (1) it was necessary to consider the whole transaction between Texaco and the Company and (2) merely to look at the document alone and say that one is giving a guarantee that is unlimited as to amount and time must, (in Counsel's words) "be ambiguous in the sense that it would be unreasonable to expect anyone to give a guarantee couched in that term". Learned Counsel reviewed the evidence and the exhibits which he regarded as helpful in interpreting the guarantee. There was the testimony of Trevor Edgehill, an employee in the Credit and Collections Department of Texaco Eastern Caribbean Limited, a company providing management services for Texaco, and the testimony of Stephen Roy Mendes, the guarantor. In addition to the guarantee there were two letters dated 18th September and 26th September, 1978 exhibited.

Counsel submitted that it was clear from all the circumstances that the letters should be read together with the guarantee and that when the discussions held by Ralph Carter, Managing Director of Texaco and Roy Mendes were borne in mind with those documents, the only proper conclusion for this

/Court.....

Court was that the guarantee was limited in amount to $272,000.00. Counsel contended that this was supported by the dealings between Texaco and the Company from 1978 onwards; or to put it in other words, by the subsequent dealings after the signing of the guarantee, which, in his view, served to emphasise that the parties intended that the credit facilities ought to be kept within a specified limit and not be extended without any limit; consequently the guarantee was limited.

In support of his submissions and arguments Counsel for the appellant cited two cases: HOLMES v MITCHELL (1859) 26 Digest 58 and AMALGAMATED INVESTMENT & PROPERTY CO. LIMITED v TEXAS COMMERCE (1981) 3 All E.R. 577. With due respect, I did not find either of these cases to be particularly helpful with the duty of construing the guarantee of 6th September, 1978.

Learned Counsel for the respondent contended that there was no justification for looking to extrinsic evidence to interpret the document since there was no ambiguity that demanded clarification. Further, Counsel submitted, the guarantee was a normal business document which could not be described as unreasonable because it was unlimited in amount and time.

Counsel referred to the document and pointed out that it showed beyond doubt, not only that it was "unlimited as to amount and time" but that the guarantor agreed "to guarantee payment, when due, of any and all present or future indebtedness" to Texaco.

So far as the letters (of 18th September, 1978 and 26th September, 1978) were concerned, Counsel submitted that, as the learned Judge found, these letters dealt with a change in the accounting procedure, in order to assist and benefit Stephen R. Mendes (Antigua) Limited. The appellant was not a party to this correspondence which was entered into after he signed the guarantee.

At the trial the Judge permitted Roy Mendes to give evidence of the content of a discussion which he, Christopher J. Blackstone and Ralph Carter of Texaco, held in Antigua in 1978. The discussion concerned credit arrangements for the operation of Texaco's business in Antigua. There was alteration to the initial terms of payment set out in the Distribution Agreement signed on the 23rd of July, 1976 on behalf of Stephen R. Mendes (Antigua) Limited and on behalf of Texaco West Indies Limited. In my view the content of the discussion was irrelevant to the interpretation of the guarantee as will be shown later.

Under the Distribution Agreement Texaco undertook to sell and deliver or to cause to be sold and delivered to Stephen R. Mendes (Antigua) Limited (the Distributor) and the latter undertook to buy, receive and pay for the entire quantity of petroleum products mentioned in the Agreement and required by the

/said Distributor.....

said Distributor for re-sale or for its own consumption, and such other petroleum products that Texaco might introduce from time to time. Under the paragraph of the Agreement which dealt with the terms of payment, it was stipulated that at the end of each month the Distributor should submit promptly to Texaco a sales statement showing the quantities of each product purchased. The statement was required to be in accordance with Texaco's accounting procedures and to show the amount due to Texaco. Thereafter Texaco should verify that statement and if agreed, the sum shown should be paid by the Distributor to Texaco within a stated period. Where the Distributor failed to pay within that period, interest at 1% per month or part thereof should be charged.

It is undisputed that Stephen R. Mendes (Antigua) Limited fell into difficulty running Texaco's business in Antigua; and as a result, in 1978 new arrangements for payment were discussed and finalised. This led to the letters of 18th September, 1978 and 26th September, 1978. The former, from the General Manager of the Company to Texaco (for the attention of Ralph Carter), referred to discussion held on 12th September, 1978 and summarised the conclusions to show, that Texaco had approved a credit limit for the Company of E.C. $272,000.00, and that Roy Mendes' personal guarantee of this indebtedness had been tabled. Clearly that was the guarantee signed on the 6th September, 1978. The letter also explained, under the head "Implementation", what would be the position at the end of each accounting period when the Company completed their monthly account; they would adjust the balance upward or downward in the manner stated, so that the monthly current account would always show a balance of $272,000.00. The second letter, from R.H. Carter, Managing Director of Texaco, to the Company, was typed prior to the receipt of the letter dated 18th September, 1978, and it referred to the meeting in Trinidad of 12th September, 1978. Then it advised that from 20th September, 1978 credit facilities were granted by Texaco to the Company up to a limit of U.S. $100,000.00 (which was then equivalent to E.C. $272,000.00). It stressed that that figure represented the total exposure and was not to be exceeded at any time. It also set out how compliance with the limited credit facility could be achieved.

It is significant, in my opinion, that apart from referring to the fact that the personal guarantee of Roy Mendes was tabled at the discussions there was no specific mention of its limit or of any other term in it. It was not revoked as it could have been. It was left in such terms as were accepted and set out on the 6th September, 1978.

It is crystal clear, in my opinion, that the letters were concerned with credit facilities and accounting procedures for the Company to follow in the future, in its business with Texaco. They bore no relation to the PERSONAL guarantee which was a matter between Roy Mendes and Texaco.

/As Counsel.....

As Counsel for the appellant said, the duty of this Court is to interpret the guarantee dated 6th September, 1978.

The contract of guarantee is, in general, not dissimilar from any other contract; thus it is governed by similar rules of interpretation. The parties thereto must be taken to have contemplated and considered what they intend and to have expressed their intention in the contract. They have therein said what they meant and meant what they said. "Where.....a clear meaning appears without any evidence at all, the Court will not break in upon the rule which prohibits the variation of a written document by extrinsic evidence" (Volume 18 Halsbury's Laws of England (3rd edition) page 441, paragraph 814).

In 1970, in the case JAMES MILLER & PARTNERS LTD. v WHITWORTH STREET ESTATES (MANCHESTER) LTD. (1970) 1 All E.R. 796, a contract had to be construed and Lord Reid said this:-

> ".....I must say that I had thought it now well settled that it is not legitimate to use as an aid in the construction of the contract anything which the parties said or did after it was made. Otherwise one might have the result that a contract means one thing the day it was signed but by reason of subsequent events meant something different a month or a year later."

In my view these words are appropriate to the instant case. If it was correct to call in aid in the construction of the guarantee anything which the parties to that guarantee said or did after 6th September, 1978, then that guarantee would have one meaning on the 6th September and a different meaning on the 18th September; but, of course, the more important point is, that the parties concerned with the guarantee were not the parties connected with the credit facilities and the alteration in the accounting procedure.

In L. SCHULER A.G. v. WICKMAN MACHINE TOOL SALES LTD. (1973) 2 All E.R. 39 Lord Reid observed that the Court of Appeal were influenced by a consideration of actings subsequent to the making of the contract. This (he said) was inconsistent with the decision of the House of Lords in the James Miller & Partners Ltd. case. he saw no reason to change his view in that case.

The above quoted passage from Lord Reid's opinion was also cited, in part, by Sir John Pennycuick in BUSHWALL PROPERTIES LTD. v VORTEX PROPERTIES LTD. (1976) 2 All E.R. 283, at p. 293 letter g. In AMALGAMATED INVESTMENT & PROPERTY CO. LTD. (in liquidation) v.TEXAS COMMERCE INTERNATIONAL BANK LTD. (1981) 3 All E.R. 577, Lord Denning M.R., in his judgment, dealt with subsequent conduct and quoted the passage (to which I have referred above) before saying this:-

/"I can.....

> "I can understand the logic of it when the construction is clear; but not when it is unclear."

I have already quoted from the guarantee and I share the view of the learned trial Judge to the effect that it is short and in fairly simple terms which ought not to have presented any difficulty to a man of the pre-eminence of the appellant. So that on the 6th September, 1978 he must have understood what he was signing. Indeed even after the receipt of the letter of 26th September, 1978 there was no change in the terms and no revocation of the guarantee. In my opinion there was no ambiguity or other form of difficulty in the guarantee. It was clear, and "S. Roy Mendes Esq.," was bound by its terms. There was no room for any extrinsic evidence as to what he meant or understood when he signed the guarantee. It was not a limited guarantee; it was, as it said, "unlimited as to amount and time" and the guarantor unconditionally and absolutely guaranteed payment, when due, of any and all present or future indebtedness owed to Texaco by the Company. Further, the guarantor agreed to pay such indebtedness punctually if default was made by the Company.

Counsel for the appellant pointed out that if it was found that the guarantee was unlimited then the fifth ground of appeal could not arise. I have so found.

I have been unable to find any merit in the other grounds and I would therefore dismiss the appeal with costs.

E.H.A. BISHOP,
Chief Justice (Acting)

G.C.R. MOE,
Justice of Appeal

S/ L.G. Williams

L.G. WILLIAMS,
Justice of Appeal (Acting)