

BETWEEN

ESR GROUP (NZ) LIMITED

Applicant

AND

IAN JAMES BURDEN

PLANTATION GROWN TIMBERS

(INTERNATIONAL) LIMITED

PLANTATION GROWN TIMBERS (VIETNAM)

LIMITED

Respondent

Hearing: 10 November 2017

Coram: Elias CJ
O'Regan J
Ellen France J

Appearances: J G Miles QC and A Pietras for the Applicant
A H Brown QC and J R E Wach for the Respondent

CIVIL LEAVE APPLICATION

MR MILES QC:

May it please Your Honour. I appear with Mr Pietras.

ELIAS CJ:

Yes thank you Mr Miles.

MR BROWN QC:

May it please Your Honours. Andrew Brown with Jason Wach for the respondents.

ELIAS CJ:

Thank you Mr Brown. Yes Mr Miles, we are out of the habit of having oral hearings in these matters but we do have rules which indicate that the parties are very confined in the time that they are allowed. I will just mention it.

MR MILES QC :

Well I recognise it was a privilege to be given an opportunity.

ELIAS CJ:

Well it is a privilege that – I mean you may cause us not to do it in the future so perhaps you should be on your mettle.

O'REGAN J:

No pressure.

MR MILES QC:

I had something like 15 or 20 minutes in mind.

ELIAS CJ:

Yes. That would be fine.

MR MILES QC:

Well that is what I will be aiming at. It seemed to me Your Honours that there are three issues here, each one of which has some significance. The first is whether a foreign owner incorporated in a non-designated country can sue in New Zealand by virtue of section 120 of the Copyright Act 1994 alone. And

we say no because section 232 is the section that deals with reciprocity of rights of copy right owners, not authors. That's the heart of that first point.

The second, when should knowledge be inferred to an otherwise innocent importer of copied goods. Now that assumes that the goods are deliberately, not use the word infringing, because it is not infringing act for a secondary importer to bring in copied goods unless you have got knowledge. So when should that knowledge be inferred? And the Court of Appeal said date of importing. And what is more it said that was agreed by the parties and it wasn't, so that is very much in contention. Thirdly and what we say on that essentially is it can't be so arbitrary as to get a letter the day before the goods have arrived in New Zealand. The date you have to look at is when the importer loses control of the goods, so that they will inevitably come into New Zealand. Put on the container in other words and heading inexorably to New Zealand. So that is the second point.

The third is what should be the appropriate remedies when copied goods are imported by an innocent infringer and what Justice Duffy said, of course, having found that they had knowledge said well, the infringing goods, which by the way were seized and they are still sitting in some warehouse. What should be done with them? Should they be destroyed or we say if you didn't have knowledge, if you are not an infringing importer you should be treated differently to an infringing importer and one of the remedies, the appropriate remedy should be that the goods are returned to the country of origin.

ELIAS CJ:

But on any argument, does that apply to the first two containers? Even if we are against you on your first two points.

MR MILES QC:

In the affidavit in support of leave, my client said all three of those shipments, 28 August, 5 September, 12 September were on the water when the Park letter of 7 August arrived and the reason why everything got muddled in the High Court is that the 7 August Park letter was never produced at the

hearing and it was never relied on until the closing, which of course technically is too late.

O'REGAN J:

Well it was produced, but it wasn't called as evidence. It was in the bundle.

ELIAS CJ:

It was a technical problem wasn't it?

MR MILES QC:

But of course as Your Honours will know, under the rules it doesn't become evidence and it never was because it was only referred to in the closing and hence the Court of Appeal said, well we will grant leave to introduce that but as a consequence everything about timing got a bit skewed. Those are the three issues. Now let me touch on the first which is really an issue of statutory construction. Now these seem to me to be the relevant points on this Your Honour. There is a clear distinction running in the Act between owners and authors and the characteristics which define the works that are entitled to copyright. So, there are three distinct elements there. Now typically and normally I suppose you'd say an author is the owner and of course the author is the owner unless the author happens to be an employee and section 21 kicks in and says that the employer is the first owner, not, authors have no rights if they are not the owners, other than moral rights which are irrelevant to what we are talking about today.

If you look at section 16, which I arranged to just be handed up to Your Honours just before the hearing. That's the section that deals really with the monopoly which copyright gives you. But it belongs to the owner, not to the author. If you go to then section 21, as I said that defines who the owner is, if you go to section 120, that's the section that says that owners can sue. Section 17 and 18, which I think my friend relies on, which is the one talking about authors and of course that's relevant to authors, and if an author happens to be a resident in New Zealand or resident in a designated country, then they have reciprocal rights as authors, not as owners, as authors and the

author here was an Australian which just happened that his employer was a Vietnamese company for part of the time and another company incorporated in the British Virgin Islands, an employer for the remaining time. So it is recognised and settled that the two employers, the two owners of copyright, were in non-designated countries.

So, if you go to section 232, which is what we say is the section that an –

ELIAS CJ:

There is no substantive of provision is there which you can pin your hat on in terms of the ownership?

MR MILES QC:

Not as clear cut as one would like.

ELIAS CJ:

Although on one view, section 18 is a peg because, not for you, but because it simply deals with qualification and on that approach section 232 is only concerned with works that qualify and the question of ownership is really not material?

MR MILES QC:

Right, two points Your Honour. Firstly, section 17 and 18 are essentially talking about the qualifications for copyright. They are not talking about ownership as such, simply qualifications relating to copyright. Who owns the copyright, you go to section 21 and to 120, which is the how you sue, and then when you go to 232 –

ELIAS CJ:

By why does 232 bite at all, except on qualification, on works?

MR MILES QC:

Because, if you go to 232(4) which is the crucial subsection –

ELIAS CJ:

The reciprocity?

MR MILES QC:

The reciprocity issue and it is a –

ELIAS CJ:

Quite a low bow.

MR MILES QC:

But as bows go Your Honour, it is quite a specific one because it is firstly mandatory, the Minister must not recommend the making of an order, applying any provisions to the Act, unless the entity is, an entity is not an argument of course, but the entity is a convention country. Now the reason for that Your Honour of course is that the conventions, Berne, etcera all give reciprocal rights. So if you are a convention country, then immediately you are in a position where a Minister is likely to say, we'll make you a designated country. Or provision is, or will be made, under the law of the entity, giving reciprocal protection to copyright owners in respect of works. Now, that is fundamental. It is fundamental because firstly it is mandatory. It is fundamental because it doesn't much matter in terms of reciprocity who the author is, because –

ELIAS CJ:

Oh, you need to speak a bit closer to the microphone, simply because it is being recorded.

MR MILES QC:

Sorry, but of course, of course. So, just suppose you have a cynical company incorporated in the British Virgin Islands for the usual reasons that they incorporate there and there are a couple of jollying Australian designers on the beach and they are available for hire and every time that company actually wants to design something, it hires the local Australian to run up the sketches, employ them of course on a contract, and they own the copyright and they

can sue in New Zealand under my friend's argument which is precisely what section 232 is clearly aimed at not doing.

ELIAS CJ:

Except 232 is directed only at entities. And entities, leaving aside whether what is a territory, what is a state. They are not owners, they are not people and if the reciprocity attaches to countries, isn't that the policy or states or territories. Isn't that the policy of 232 exhausted?

MR MILES QC:

Well it is because the emphasis was on owners and that is why I –

ELIAS CJ:

But in 232 it isn't, is it?

MR MILES QC:

Yes Ma'am, 232(4) "Provision will be made under the law or applicable to the entity giving reciprocal protection to copyright owners."

ELIAS CJ:

Yes but that is at a macro state or territory level, isn't it?

MR MILES QC:

You still can't be designated unless that protection is given.

ELIAS CJ:

All right I understand.

MR MILES QC:

Now the entity argument would seem to be more straight forward. The Court of Appeal didn't think it had to deal with it but when you go to the definition, as it were, at 232(1), they talk about any entity and the entity is either a state or a part of a state or a territory's international relations as stated responsible or a political union et cetera. Now Vietnam, of course, is straight forward, that is a

state and that is not listed although by the way it has become listed subsequently but not at the relevant time. British Virgin Islands is a territory administered by the UK but it is not listed in the order and when you go to the order, which is at tab 18 you see the list at schedule 2, which is the relevant section I think. No, sorry the first schedule and you will see on the third page, about six down, you have got Hong Kong China and right at the bottom of that page you have got Macau, China and over the page, Netherlands and the Netherlands Antilles and over the page, and it is the last one, four or five out from the bottom, United Kingdom and the Isle of Man. And what we have said in the submissions, is if you go to the Berne Convention and you may not wish to Your Honours but it is there. And they have listed Hong Kong, Macau and the Isle of Man as territories administered by China or the UK. So we say there is a clear indication, the list itself, that the order recognises that there is something less than a state and hence the British Virgin Islands are not there as a state on its own and are not there as a territory administered by the UK so it comes within that grouping as it were. Could I move on to the second point?

O'REGAN J:

Yes.

MR MILES QC:

About knowledge inferred. Now there are two issues here Your Honour. Firstly, the Court of Appeal said that the parties accepted that the time for inferring knowledge is the time when the goods are imported, arrive in the country. Unfortunately, that was a significant error because both in our submissions filed before the hearing and subsequent to the hearing, we were given leave to file more submissions because of new arguments raised by the other side and in both sets of submissions we specifically put this in issue and argued it. So if Your Honours would just accept for the purposes of the argument that at least it is open to discussion. *LA Gear Inc v Hi-Tec Sports plc* [1992] FSR 121 (CA) the one English authority which seems to be relied on, says nothing of the sort. *Gear* was about a different provision altogether. It wasn't talking about importing, it was talking about infringing by distributing

within the country. There's a remark by the trial Judge, well, of course once the Courts are imported into England, England has jurisdiction and of course if you are looking at when, at what knowledge you have and where you are looking at distribution in a country, you can look at any time. You can look before it has been imported if you've been over in Germany and having a look, you can just look at it at any time you like. It never considered the issue of what is the relevant date for importing goods, in terms of fixing knowledge and we say it cannot be as arbitrary as just literally the day it arrives.

ELIAS CJ:

Well, why hasn't this arisen before, because it is very easy to come to this Court and say, here's a novel point, nobody's ever argued it and therefore it is a point of public importance which is the criteria we have to apply but that may be because really it hasn't got much prospect at success, it hasn't been run. Why would it not have been run?

MR MILES QC:

I can't answer that Your Honour. What can I say is that my instructing solicitors have searched for authorities for the proposition and they haven't found anything on the point and it does seem on the face of it, a significant point and it is possible that knowledge can generally be inferred before the goods have gone onto the boat, who knows. But just putting that aside Your Honour it is clearly an issue of importance and it ought not to be the law that it should be so arbitrary as simply dictated the knowledge of the day that it arrives.

ELIAS CJ:

It is just that you put it on questions of knowledge, but really isn't it just what is importation and there must be plenty of decisions on that in other contexts?

MR MILES QC:

And of course it would be Ma'am but this issue is not about importation because section 35, being the key section, says that it is only infringing if the

importer has knowledge or had reasonable cause for knowledge. So, that's why knowledge is so crucial on –

ELIAS CJ:

Oh, I understand the knowledge point but it is at the point. It is not at a time, it's at the point of importation.

MR MILES QC:

Yes, but it doesn't say that. The section itself is wide enough to be construed in the way I am suggesting and I'm suggesting that and it was thrown up in sort of stark relief in this case because ultimately it became clear, the only knowledge that my client had, the products might be infringing was the letter from Park's and that arrived on the 7th of August, by that stage it was, the goods were on the ship, on the water.

Now the law recognises there's a significant difference between an innocent infringer and an infringer with knowledge. The remedies are different and the approach to the Courts are different. So, but if you become an infringer in that period after which you've lost control, it would seem, that's not what the law was meant to do when it recognised a distinction between innocent and a knowledgeable infringer, so that's the point.

The third point, which in a way flows from this one, but it arises out of my friend's argument that Justice Duffy held that the goods were pirated. Now, that rather dramatic word and it is in the Act but it has connotations rather beyond what it really means. A pirated product is simply one that has been copied. It is not one that's been hijacked by an importer but if an importer brings in a copied product, even if they are unaware of that, that's not an infringing product but nevertheless there are remedies open to the owner and the remedies of course can include that the products been seized, that the products be destroyed, or that they be deal with, there's a discretion as to how it should be dealt with and what we say is that that is an issue where the Courts ought to be given some guidelines from this Court because as it stands at the moment, the position my client is in, if you are with me on knowledge,

then an innocent importer, not an infringer, but nevertheless not only has the products seized, but they will be destroyed, with all the loss of capital et cetera involved in that, whereas we say, one of the obvious remedies ought to be that it be put on a ship back to the country of origin. No loss then to the plaintiff and a much-reduced loss.

ELIAS CJ:

Who pays?

MR MILES QC:

Sorry Your Honour.

ELIAS CJ:

Who pays?

MR MILES QC:

Who pays? I think probably if I was running the substantive argument, I would concede that it should be my client but that's...

ELIAS CJ:

It's an option that would have to be exercised, yes.

MR MILES QC:

It would be one of the conditions, one of the possible conditions. And that Ma'am is pretty much –

ELIAS CJ:

Did you want to say anything further at all on the criteria for leave, I think you've probably covered those?

MR MILES QC:

I thought the two or three pages we had on that, I thought if you were with me on any one of the others, as a significant importing and exporting country, we were dealing with issues that do have some significance, but merely beyond the commercial fight between the two parties. There were other arguments

advanced which seemed valid, but that was the heart of it I thought and if, as I was really implicit in what I was saying, that there's little authority for certainly the first two propositions and probably the third as well, then that in itself indicates a need for some guidance for the lower Courts.

ELIAS CJ:

Thank you Mr Miles.

MR MILES QC:

The distinguishing by the way of *Gear* in my submissions, I don't rely on, there is a paragraph and it's wrong. The real point is, it was dealing with a different proposition essentially.

ELIAS CJ:

So you don't rely on the submission you make which I think Mr Brown responds to?

MR MILES QC:

Yes, where we said the Court of Appeal went on a different tangent, they didn't, well, that was my reading is they didn't. The real point is that actually what we're talking about, that key issue was never an essential element of either judgments. Oh, and if you wouldn't mind adding another 30 seconds. If you go to the tail end, there's a small concurring judgment by Lord Justice Staughton in *Gear*. Just in the last couple of lines where he says, well, of course if knowledge makes you an innocent infringer, but nevertheless you're still dealing with the copies, then the remedies are different and you wouldn't consider destruction for instance and I meant to point that out as something that would assist my third proposition. And I promise I won't come back again.

ELIAS CJ:

Yes, Mr Brown.

MR BROWN QC:

Thank you Your Honours. I am just gathering my papers.

ELIAS CJ:

Yes that is fine, take your time.

MR BROWN QC:

The first point to address is the ownership and territories issue and the starting point there is that it has long been settled, that the qualification for copyright under the Act to enable an owner to sue for infringement is covered by sections 17 to 20 and there is an authority and I set that out in my submissions as to that .

ELIAS CJ:

I think the Act says as much.

MR BROWN QC:

One of the arguments relied on by the appellant is that the wording in section 17(4) where it said oh well that says that reference to any other provision makes it clear that the section 18 qualifications are not the last word. But the reason for section 17(4) is because there are other provisions in the Copyright Act which are required to be met in order to qualify for copyright. For example, originality section 14, it has to fall within one of the categories of works, section 14. It has to have, in certain cases, be recorded in a material form. And this qualification for copyright is entirely consistent with New Zealand's international obligations under the Berne Convention. And the Berne Convention which was built on by the TRIPS Agreement and article 9 of the TRIPS Agreement requires New Zealand to comply with articles 1 to 21 of Berne. All of that is clear. Now the argument from the appellant as to why somehow those qualifications for copyright should be augmented by having an ownership requirement, seems to entirely rest on the wording of section 232.

ELIAS CJ:

Well it is 232(4) isn't it?

MR BROWN QC:

And 232 is an empowering provision. It is under the heading in that part of the Act, other countries, you will see that just before section 229 and it is an empowering act which allows the making of an Order in Council to apply the provisions of the Act to any entity specified in the order. And the word entity –

ELIAS CJ:

So you say subsection 4 is really a direction to the executive council in making the order to look at reciprocity between countries.

MR BROWN QC:

Well it has two limbs Your Honour. If you look at it, it is a mandatory requirement to the Minister. That the Minister must not recommend the making of an Order in Council unless satisfied either that the entity is a convention country, that is a Berne Convention country or there is a second mandatory obligation attending for non-convention country, somebody like Afghanistan. There they have to ascertain that there is reciprocal protection. Now I guess what might cross your mind is well why do they use the word ownership there? And the reason for that is where there is a Berne Convention country under the first limb, there is an automatic surety that reciprocal protection is given because if you are a Berne Convention country you are required to under to, under the Berne Convention, so it is self-fulfilling. Under (b) the other provision, it is used as a testing to ensure that New Zealand owners will get reciprocal protection in the intended country if under section 232, the protection is extended to those countries. So it is obviously thought sensible to use that as a gate keeper criterion for inclusion of a non convention country. So as Your Honour the Chief Justice noted, it was a really long bow to suggest that that then imports an obligation to prove that an owner is a criterion for qualification. Nowhere is there any specific provision in the Act requiring this.

ELIAS CJ:

And in the convention is there anything that suggest that ownership is a criterion for accessing domestic Courts for enforcement purposes. I am just not very familiar.

MR BROWN QC:

No, it stands to reason that the precursor for being able to sue is that you are the owner of copyright and our section 120 does that but just to answer your question, footnote 14 of my submissions quoted from the Ricketson and Ginsburg book on the *International Copyright and Neighbouring Rights the Berne Convention and Beyond* and just note that there the authors note that, "Apart from the special provisions on cinematograph works, the Convention does not deal at all with these matters." So they are purely left to domestic law as to matters of then who can enforce the copyright, and obviously the owner is the person, but it is not an issue that goes to qualification for copyright under part 1. So that really deals with the first point.

The second point, I don't know whether Your Honours want to hear from me on the BVI point and the technical interpretation of that. It is quite a complex argument.

O'REGAN J:

We just want to know, is it a point that we need to deal with.

MR BROWN QC:

Well, I don't think it is –

ELIAS CJ:

It does strike me that if it were got to in a substantive hearing, the point does seem to me to have some legs. But it is a bit contingent.

MR BROWN QC:

I am confident that I could show Your Honours that BVI is covered because under the 1995 order, the definition of country was a country where the

country was responsible for the external relations of territories and the BVI is an overseas territory of the UK. The UK is a convention country and because the BVI was –

ELIAS CJ:

It just seemed to me that there was some sense and the order or section 232 isn't it, in referring to overseas territories for which the State is responsible for external relations I think it is, something like that, that that makes perfect sense because you'd want the territory in there because it will have a different domestic regime.

MR BROWN QC:

Absolutely. Well, no, no, because what it does it also, I think the evidence was the texts show and the statute show that the BVI actually has imported the UK Copyright, Designs and Patents Act 1988, so it applies in its own territory the UK domestic Copyright Act.

ELIAS CJ:

But there will be lots of jurisdictions where we've patterned ourselves on different things. It just seemed to me that the text of 232 did, it refers to, where is that provision?

O'REGAN J:

State, part of a State territory, for international relations, a State is responsible.

ELIAS CJ:

Yes, that did seem to be drawing a distinction between territories which were wholly administered by a State and territories where a State is responsible only for external relations and that therefore if the British Virgin Islands is one, I don't know whether it is, where it has control of its domestic laws but Britain is responsible for its external relations, then it should be separately listed in the order.

MR BROWN QC:

Well, we submit that, it would take me quite a long time to take you through the specific reasoning –

ELIAS CJ:

And we're not determining that here, we're just trying to determine whether there is some argument there that if it were reached and I know that there are several steps before it would be reached in this case, might be worth entertaining.

MR BROWN QC:

Well, the reason why it is not worth entertaining is because section 18(3) is absolutely specific. It says, where you have co-authors of a work and Mr Burden was a co-author, then you don't have to prove, you don't have to prove the provenance or the citizenship or any other author. Now, because he was an Australian citizen, the work qualified under section 18(3), because he is an Australian citizen, therefore it is not something that you need to go into because it is only if you accept the argument that ownership somehow becomes relevant, which is literally breaking new ground in copyright, that you would even then get to, to even have to think about this.

ELIAS CJ:

Yes I understand that.

MR BROWN QC:

Now if I could ask, to then turn to the second argument which is in relation to importation timing and that is an issue that was not argued at the Court of Appeal. When Mr Miles presented his arguments he said that because of certain concessions by the respondents, the matters were reduced in scope and that was – as to when importation, when you judge importation, was not something that was argued. At the hearing there was argument as to the documents actually putting the appellant on notice. A lawyer's letter of 7 August 2014 but there was no argument at all about the date of importation.

O'REGAN J:

There seems to be an element of pot and kettle here given that your case, I know not your fault, completely changed in the Court of Appeal. I mean I think probably should address whether the point is worth us hearing it rather than get too hung up on the procedural.

MR BROWN QC:

Well right. Just to finish that off though Your Honour. It was never argued in the High Court either so that because – the only argument there was that they had never had notice. So the issue of when was the date of importation was never something that was ever ruled on or even it was not called on. And if it had of been raised Your Honour, it is quite an important point because the respondents would have wanted to call evidence as to whether the containers could have been left on the vessel or whether they could have been not imported but treated as trans-ships goods and not imported into New Zealand. So none of that ever became relevant because it was never raised at trial. The only issue at trial was whether or not there was knowledge, based on the 7 August letter. And so what we have in the affirmation of Ms McClennan which is put before this Court for the first time is the statement that they lost control and tried to see if they could send the containers back but that was never in evidence in the High Court. This is the first time it has appeared before this Court in an affirmation so in fact it was actually inconsistent with what was argued at the High Court.

But on Your Honour's point as to the merits of it. My primary point would be how impossible this would be, because it would require a separate inquiry on the facts of every case as to when did somebody lose control of the goods on shipment. Instead of a straightforward application of importation being when it crosses the wharf in New Zealand, you would have to then enquire who owned the goods, when did they ship them from the foreign country and it would present an incompatibility between the Customs and Excise Act 1996, meaning of importation and the Copyright Act and as my main submissions outline, there is a crossover in the statutory provisions in the border enforcement provisions in the Copyright Act with that Customs and Excise Act

so it would be an extraordinary situation to have a difference in meaning under the Copyright Act and similarly there is a cognate provision in the Trade Mark Act 2002 which also has border enforcement provisions again importing the Customs and Excise Act. So you have a scheme if you like which brings together both Acts and it would be extraordinary to have to make that inquiry in each case. Those are the main points on that. The final point which my learned friend argued in relation to the release of the detained goods. Again I just draw attention to the fact that – well the respondents strongly object to that because the first instance the Judge actually made a declaration under section 141(3) that the goods detailed by Customs were pirated goods. There was no appeal against that declaration so Customs are not free to release the goods as indeed the Court of Appeal found, so that would seem to be an impediment in the way of the respondent raising that point now.

MR MILES QC:

That is not correct by the way.

MR BROWN QC:

Well, there was no appeal so...

O'REGAN J:

So what happens to the goods then, if this application for leave is denied, what happens to the goods?

MR BROWN QC:

Well, the goods then get dealt with by Customs. The Customs usually will either destroy the goods or they will, sometimes they might seek the consent of the notice owner as to whether they can be made available to the charity or something like that but that tends to be the way it goes. I've had situations where they seize shoes and so on, they've been forfeited but then the goods are given to charities as a means of somebody, under strict conditions, so that they can't be re-sold at all. Any other matters Your Honours?

ELIAS CJ:

No, I have none, thank you, thank you Mr Brown. Mr Miles, do you want to be heard in reply?

MR MILES QC:

Just two issues Ma'am. The appeal is, in wide ranging terms –

O'REGAN J:

This is the appeal to the Court of Appeal?

MR MILES QC:

Yes, yes Sir. Yes, ESR seeks the following by way of judgment from the Court, oh, this is the judgment from the Court of Appeal, that the High Courts, yes, that's right, that the High Court's findings against ESR be set aside and judgment be entered. Not the most explicit of grounds but covered everything. So there's no point on the first procedural point my friend raised.

On more substantive issues. The primary argument my friend raised on the second point is uncertainty and the suggestion is there has got to be an inquiry every time the goods are seized. In fact, there has to be anyway because they are seized and then notices are sent out and then there has to be an inquiry as to whether there was knowledge or not. There still has to be that inquiry. I mean, it may be that the inquiry tends to be, or did you know at the time it landed in New Zealand, that they're infringing or not, rather than six weeks earlier when the bill of lading were issued but it still comes down to an inquiry. There is no, there's nothing in that point, so we come back then to the substantive issue as to what is the appropriate time. On the Berne Convention, broadly speaking, it talks about protection for authors and when authors of course are owners, then that would follow but the primary concern of it there is owners and a recognition that the detail if you like are always dealt with by domestic legislation. So with that indulgence Your Honour that was all I wished to say.

ELIAS CJ:

Thank you, no questions? Thank you counsel, it has helped matters for us. It has clarified some points and we will be able to give you a prompt indication.

COURT ADJOURNS: 2.59 PM