

**SUPREME COURT OF NIGERIA**  
7TH JULY, 2000. SC. 25/1995  
**CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU,**  
**S. U. ONU, O. ACHIKE, U. A. KALGO, JJSC**

F.S.B. INTERNATIONAL BANK LTD. .... APPELLANT  
AND  
1. IMANO NIGERIA LTD  
2. AGRICULTURAL & FOOD PROCESSING ..... RESPONDENTS  
INSTALLATION LTD

---

**ACTIONS** - *Triable issue - Affidavit filed by the appellant - Raised a plausible defence.*

**APPEALS** - *Evaluation of evidence - Where evidence is purely documentary - The Supreme Court is in a good position as the lower courts - To examine the entire evidence - And arrive at a different conclusion.*

**COURTS** - *Resolution of conflicts - Should be by painstaking evaluation of facts or evidence - Placed before the court.*

**INTERLOCUTORY APPLICATIONS** - *Substantive case - Yet to be agitated by the parties - Should not be delved into by the Court - When determining an interlocutory matter.*

**PRACTICE & PROCEDURE** - *Extension of time - To file statement of defence - Purpose of rules of court - Is not to impede the promotion of justice.*

**SUMMARY JUDGMENTS** - *Essence of - Is not to unwittingly shut out a defendant - Statement of defence filed irregularly - Should be considered by the court - To ascertain whether there is a good defence.*

**SUMMARY JUDGMENTS** - *Triable issue - Strong and prima facie as-*

*sertions and evidence - Produced by the appellant - Demands that the parties be accorded a hearing.*

### **FACTS**

Before the Lagos High Court, the plaintiff/1st respondent instituted an action against the Appellant/1st defendant and 2nd respondent/2nd defendant. Plaintiff claimed a total of over six million naria from the defendants as the amount due on various promissory notes which were dishonoured upon presentation. It also claimed certain reliefs in the alternative. The respondent and 2nd defendant entered into a contract whereby respondent sold three fishing vessels. The 2nd defendant made a down payment of 4.5 million naria through the appellant who granted that amount as a loan. 2nd defendant then issued 9 promissory notes with different maturity dates valued at 5.5 million naira for the balance of the amount due. Respondent wrote a letter to the appellant requesting identification and confirmation of the signatories to the promissory notes which it did confirm. By mutual terms of settlement 2nd defendant settled the first 5 promissory notes. The remaining 4 were not even due for payment when the respondent called on the appellants to pay the sums due as confirmers. The appellant refused on the grounds that in confirming signatures on the promissory notes it was not a guarantor to the 2nd defendant.

Respondent then sued the defendants for the value of all the promissory notes plus interest thereon. Respondent having filed its statement of claim, appellant failed to file its statement of defence within the prescribed period, though it filed it subsequently. Prior to this time respondent had filed a summons for judgment under O.10 of the old High Court of Lagos State 1973 Rules. Affidavit in support and counter affidavit were filed by the parties. The learned trial judge signed judgment on the summons against the appellant. Appellant appealed to the Court of Appeal which dismissed its appeal by a majority decision. Still dissatisfied appellant has further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*1. Whether the appellant from all the material placed before the*

court, pursuant to Order 10 of the High Court of Lagos State (Civil Procedure) Rules, 1972, had shown a good defence to the respondent's action

2. *Whether or not a person who merely confirms the signature of another on promissory notes at the express request of a third party automatically becomes liable as endorser of the Promissory notes and therefore becomes a holder in due course under the law governing Bills of Exchange and Promissory Notes.*

**HELD** (Unanimously allowing the appeal per lead judgment of **ACHIKE JSC**)

***Actions - Triable issue***

1. In my view, the combined effect of paragraphs 7, 8 and 9 when read dispassionately is that it irresistibly raises a triable issue as regards the role of appellant's signatures on the said promissory notes sufficient enough, or at any rate to raise a plausible defence to the case sought to be made by the respondent for signing a summary judgment in his favour. (p. 2781 G)

***Extension of time - To file statement of defence***

2. An application for extension of time within which to file appellant's statement of defence is a deliberate effort to regularize the default in the late filing of the statement of defence. After all, the whole purpose of Rules of Court is to ensure that the affairs of the court are carried out in an orderly fashion with reasonable degree of certainty that prescribed acts have been duly complied with by the parties in the interest of justice. Obviously, interest of justice will frown on the parties and the court being enslaved to rules which are intended to promote justice; they should not, as it were, make round-about-turns and constitute themselves engines that would impede the promotion of justice. (p. 2782 F)

***Judgments - Essence of***

3. It must be borne in mind that the essence of proceedings under Order 10 is to summarily and expeditiously give judgment to a plaintiff where it

is crystal clear that the defendant is unable to muster a defence to the claim. It would therefore smack of injustice if the defendant is unwittingly shut out to deliver his defence by reason of undue adherence to technical rules of procedure. It is therefore my view that a statement of  
B defence, be it irregularly filed or any document whatsoever in addition to the affidavit to show cause would be worthy of the court's attention before signing of judgment under Order 10. The trial judge, therefore, in my view, was right to have given consideration to the irregularly filed  
C statement of defence in her quest for ascertaining whether the appellant herein has sufficiently demonstrated that he had a good defence to the claim. This is dictated by the interest of justice. Therefore, for the purposes of the proceedings for signing a summary judgment, I hold that the appellant's statement of defence was properly filed. (p. 2783 B)  
D

#### ***Courts - Resolution of conflicts***

4. A court of law - be it trial or appellate - is not imbued with divine or magical powers in the sense that it can divinely or magically resolve  
E conflicts in factual matters which may only be done, in certain circumstances, by dispassionate and painstaking evaluation of the facts or evidence placed before the court. I have reproduced above the brief observation of what was allegedly done by the learned trial Judge in respect of  
F perusal of the appellant's statement of defence which is not backed up by any showing whatsoever that any effort was made to evaluate areas of conflict of the parties' assertions in order to reach a fair conclusion whether the appellant has shown that he has a good defence to warrant its being  
G let in to defend the action. (p. 2784 F)

#### ***Summary judgments - Triable issue***

5. It is clear to me that placing reliance on Exhibit 'A' - respondent's letter dated 28th August, 1988 addressed to the appellant - and the various legal  
H issues raised in the appellant's affidavit to show cause as well as the comprehensive defence proffered by the appellant in its statement of defence, the appellant had clearly met the case of the respondent by a definite answer to the claim and thereby raised a triable issue to the

respondent's claim. It follows that from the foregoing that the appellant's defences under (b) and (c) above cannot be described as sham or arid. On the contrary, in the interest of justice, it ought to be conceded that the appellant has produced strong prima facie assertions and affidavit evidence which should be evaluated against the respondents assertions and affidavit evidence. It surely demands, in law either calling oral evidence to resolve the areas of conflict in the affidavit evidence and other factual assertions or, perhaps, better still, to accord the parties a hearing of the action on the merits which will facilitate the resolution of areas of conflict. (p. 2786 B) C

### ***Appeals - Evaluation of evidence***

6. I must emphasize that having regard to the nature of this application and there being nothing but documentary evidence placed before us that this Court is in as good a position as the trial High Court, as well as the Court of Appeal, to examine the entire documentary evidence and the other documents placed before the lower courts. Permit me, if only for emphasis to reiterate that I have carefully read all the documents as well as the affidavits deposed to by the parties and I have come to the irresistible conclusion that the appellant's affidavit to show cause and its statement of defence demonstrably disclose and amount to a good defence and triable issues to the respondent's claim. This is another way of saying that these documents disclose a defence on the merits. Strictly, therefore, all I have said is enough to let in the appellant to defend the respondent's claim and indeed sufficient for me to allow the appeal. (p. 2787 B) D E F

G

### ***Interlocutory applications - Substantive case***

7. It is erroneous for a court, whether trial or appellate, in determining an interlocutory matter to succumb to the temptation of deciding the substantive case that is yet to be agitated by the parties. That will evoke a serious outrage. The lower courts were wrong to have gone to that length. I would therefore restrain myself from giving a profound consideration to issue No. 2 more so as the resolution of Issue No. 1 has H

sufficiently provided an answer to this high-flying interlocutory application. See Sylvanus Mortune v Alhaji Mohammed Gambo (1983) 4 NCLR 237 at 242. (p. 2789 H)

**B NOTABLE POINT OF INTEREST**

**ACHIKE JSC**

*1. Brief writing - Good advocacy does not accommodate unnecessary repetition*

C I cannot overlook the rather cumbersome nature of respondent's brief. I find it needlessly verbose and prolix. The 'introduction' together with 'statement of facts' gulped a total of nine pages while the three issues for determination required 31 pages to put across the narrow issues in real controversy between the parties. A brief submitted on behalf of each  
D party to an appeal, as the term readily suggests, is a precis or an abridgement of the relevant submissions a disciplined counsel would wish to put across for consideration by the court demonstrating lucidly and succinctly why his contentions should be preferred rather than those of the  
E opposing counsel. Counsel should caution oneself and be reminded that good advocacy, like writing a good brief, does not accommodate unnecessary repetition since it has long been established that repetition does not improve an argument. (p. 2776 H)

**F REPRESENTATION**

Adekunle Oyesanya, Esq. for the appellant.

Chief Kayode Ogunmekan, with A. S. Yaya Esq and A. Ajanaku (Mrs.)  
G for the respondent.

**CASES REFERRED TO**

U.B.A. Ltd v Dike (1978) 11 & 12 SC 234 or (1984) NSCC 877

Macdonald v Nash (1924) Rep ALL E.R. 601

H Sylvanus v Gambo (1983) 4 NCLR 237 at 242

Gill v. Woodfin (1884) 25 Ch.D. 707

Macdonald v. Whitfield (1833) 8 A.C. 733 at 745

London & Southern Counties Investment Advance & Discount Co. Ltd

v. Clamp (1890) 7 T.L.R. 131

Falobi v. Falobi (1976) NMLR 169

**STATUTE & RULES REFERRED TO**

High Court of Lagos State (Civil Procedure) Rules 1973 0.10

B

Bill of Exchange Act SS. 85, 87, 55, 91

**LEAD JUDGMENT BY ACHIKE JSC**

In the High Court of Lagos, Ikeja Division, the plaintiff, herein respondent instituted this action against the 1st defendant, herein appellant and the 2nd defendant, known as Agricultural and Food Processing Installation Limited. The claim ran as follows:

C

*"i. From the 1st Defendant, the sum of N2,062, 500 (Two Million, Sixty Two Thousand, and five Hundred Naira only) being the total value of the First, Second and Third Promissory Notes of N687,500.00 each, which have been due and presented but dishonoured.*

D

*ii. Against the 2nd Defendant, the sum of N4,432,085, (Four Million, Four Hundred and Thirty-Two Thousand and Eighty-Five) being the total value of the remaining Promissory Notes Nos 4 to 9 inclusive and the variation on same as at the date of this Writ and in accordance with clause 3, Appendix B of the said Agreement dated the 28th August, 1987, whose breach by the 1st Defendant's failure to honour its confirmation and guarantee renders the whole sum in the Agreement due.*

E

F

**IN THE ALTERNATIVE:**

iii. Against the 1st and 2nd Defendants, the return of the Bills of Sale on the Vessels MT Aina, MT Agbeke & MT Aliyu and in addition the sum of N3 Million, being the sum due for loss of use of the Vessels since 28th August, 1987 to date, in accordance with clause 13 of the said Agreement

G

iv. Against the 1st and 2nd Defendants, the sum of N1.5 Million being general damages due to the plaintiff in accordance with clause 3 of the said Agreement.

H

v. Against the 1st and 2nd Defendants jointly and severally interest at 18% from 29th January, 1998 to the date of Judgment in this suit

or until the whole sum is liquidated for cash to the plaintiff, as holder in due course for value of Promissory Notes dated 29/1/88, 29/4/88, 29/7/88, 29/10/88, 29/1/89, 28/4/89, 29/7/89, 29/10/89, 29/1/90, drawn by the 2nd Defendant as Debtor to the plaintiff and indorsed and confirmed by the 1st Defendant as ACCEPTOR AND GUARANTOR of the 2nd Defendant in respect of the said Promissory Notes.

vi. And for interest on the amount found to be due to the plaintiff at 6% interest or such rate and for such period as may seem to the Court just and proper from the date of Judgment.

vii. A declaration by the Court that the 2nd Defendant's failure to provide the Guarantee as required under the clause 3(b) of Appendix B extinguishes their rights of claim, if any, to the Vessel or Trawler MT ALIYU."

The appellant, a commercial banker, had earlier on taken a mortgage over the vessels from the 2nd defendant. The facts that may be gleaned from the parties' pleadings which will lead to better understanding of the controversy between them may now be set out. By an agreement dated 28th August, 1987, the respondent and the 2nd defendant entered into a contract titled "MEMORANDUM OF AGREEMENT" whereby respondent sold three fishing vessels referred to as 'trawlers' in the said agreement. It was common ground that the 2nd defendant who was a customer of the 1st defendant banker, applied to the appellant for a loan to purchase the three fishing trawlers from the respondent. The application was granted and the appellant paid N4,500,000.00 (i.e. N4.5m) to the respondent on behalf of the 2nd defendant as deposit for the vessels. The 2nd defendant then issued nine Promissory Notes with different maturity dates valued at N5,500,000.00 (i.e. N5.5m) for the balance of the three fishing trawlers for which the purchase price was N10,000,000.00 (i.e. N10m). The notes were accepted by the respondent and were to mature at various dates stated thereon. Inter alia, the respondent by a letter dated 28th August, 1988 and addressed to the appellant requested a letter of confirmation from the appellant identifying the signatories to the Promissory Notes and confirming same (i.e. signatories of the respondent). It transpired that the appellants confirmed the



signatories to the promissory Notes simply by adding thereupon the words "We Federal Savings Bank of 23 Awolowo Road, Ikoyi, Lagos, hereby add our confirmation" and signed each of them. But the respondent contending to the contrary, argued that by endorsing the promissory notes the appellant constituted itself guarantor of the Promissory Notes in the sense that if the 2nd defendant did not pay on the promissory notes the appellant would pay. B

By mutual terms of settlement, the 2nd defendant settled the first five promissory notes. The remaining four were not even due for payment when the respondent called on the appellant to pay the sums due as 'confirmers'. The appellant refused on the grounds that in 'confirming' signatures of 2nd defendant on the promissory notes it was not a guarantor for the 2nd defendant. As earlier stated, consequent to this refusal, the respondent sued the appellant for the value of all the promissory notes plus interest thereon. D

The respondent instituted the action at the Lagos State High Court, having also filed its Statement of Claim. The appellant failed to file its statement of defence within the prescribed period under the Rules of Court, although it did so subsequently on 22/12/88. The appellant also filed an application for extension of time to file the statement of defence. But prior to this time, the respondent had filed a summons for judgment under Order 10 of the old High Court of Lagos State (Civil Procedure) Rules 1973. The summons was supported by a 32 paragraph affidavit sworn to by a litigation clerk in the chambers of the respondent's solicitors. In response to the respondent's summons, appellant filed a 19 paragraph affidavit to show cause pursuant to Order 10 rules 3 of the aforesaid High Court of Lagos State (Civil Procedure) Rules 1972, and annexed the respondent's letter dated 28th August, 1988 and marked Exhibit 'A'. The learned trial Judge signed judgment on the summons against the appellant. F G

Dissatisfied, the appellant appealed against the trial court's decision to the Court of Appeal. The parties filed and exchanged briefs of argument, the appellant having additionally filed a Reply brief. By the majority decision of the Court of Appeal - Sulu - Gambari, JCA delivering H

the leading judgment and with Pats-Acholonu, JCA concurring - the appeal was dismissed, while Uwaifo, JCA, delivered a minority judgment in favour of the appellant.

B Still dissatisfied, appellant has appealed to this Court against the majority decision of the lower court and filed two original grounds of appeal, and with leave of this Court, has also filed an additional ground of appeal. Appellant's learned counsel postulated three issues for determination, to wit,

C (i) *"Whether or not there was a cause of action which vested the trial court with jurisdiction to try the matter in the first place.*

(ii) *Whether or not a person who merely confirms the signature of another on a Promissory Note at the express request of a third party automatically becomes liable as an INDORSER of the promissory notes and therefore becomes a HOLDER IN DUE COURSE under the law governing Bills of Exchange and Promissory Notes.*

E (iii) *Whether or not, judging from the highly controversial nature of the facts before the Court of Appeal, it was proper for the Court of Appeal to have confirmed the judgment of the court of first instance which shut out the Appellants from defending themselves."*

Respondent's counsel also identified three issues for determination which are similar to those of the appellant's and are set down hereunder:

F *"1. Whether or not there was a cause of action which vested the Trial Court with jurisdiction to try the matter in the first instance.*

G *2. Can the endorsement of the 2 Senior Officers of a Commercial Bank i.e. the Managing Director and the Chief Accountant on the face of a Promissory Note be regarded as merely confirming the signature of the Banks Customer?*

H *3. On a Promissory Note Action, was the Court of Appeal's confirmation of the decision of the Court of first instance not the only Legal and equitable avenue open to the Court."*

I cannot overlook the rather cumbersome nature of respondent's brief. I find it needlessly verbose and prolix. The 'introduction' together with 'statement of facts' gulped a total of nine pages while the three

issues for determination required 31 pages to put across the narrow issues in real controversy between the parties. A brief submitted on behalf of each party to an appeal, as the term readily suggests, is a precis or an abridgement of the relevant submissions a disciplined counsel would wish to put across for consideration by the court demonstrating lucidly and succinctly why his contentions should be preferred rather than those of the opposing counsel. Counsel should caution oneself and be reminded that good advocacy, like writing a good brief, does not accommodate unnecessary repetition since it has long been established that repetition does not improve an argument. There is yet a new book on the subject of brief writing by Hon. Justice Niki iobi, JCA title The Brief System in Nigerian Courts (1999 ed.) which I warmly commend to serious-minded appellate court practitioners if they are to excel in this aspect of their legal practice. A good brief should be readable, concise but comprehensive, leaving no stone untouched in relation to the issues placed before the court which must be adequately addressed. In contrast, a bad brief bores the court and sometimes, even a painstaking judge, may be eluded in eliciting the matter in controversy to the chagrin of counsel's client. It is therefore hoped that in the interest of the court and the client's case, counsel should appreciate that presentation of a good brief is an indispensable asset to successful appellate legal practice.

Having digressed from the main issues to the equally important matter of good brief writing, we should now come to grips with what should be the appropriate issues(s) for determination by this court. With utmost respect to the two lower courts, it appeared that there was some derailment from the appropriate issue before the court into many aspects of substantive law, particularly the vexed areas of law, involving promissory notes and bills of exchange - their areas of similarities and dissimilarities. To my mind, that was, as it were, jumping the gun. This appeal from the decision of the Court of Appeal like that emanating from the judgment of the trial High Court raises a short and clear point in the sense that there is no dispute as to what is the issue contested by the parties but rather than attend to that issue, the two lower courts had, with due respect, been enmeshed in protracted discourse of an aspect of substantive

law on which proper oral evidence is yet to be established for the resolution of the said issue. But as far as one can gather, the real issue in controversy is the ascertainment of whether or not the appellant had sufficiently made out a case to be let in to defend the action. To further elucidate that appellant has a good defence it will be useful to also examine the parties' respective Issue No. 2 without making an elaborate thrust on the law of Bills of Exchange and Promissory Notes. In this regard, I prefer the appellant's Issue No. 2. Therefore, the two issues that call for determination, in my view, are:

1. Whether the appellant from all the material placed before the court, pursuant to Order 10 of the High Court of Lagos State (Civil Procedure) Rules, 1972, had shown a good defence to the respondent's action
2. Whether or not a person who merely confirms the signature of another on promissory notes at the express request of a third party automatically becomes liable as endorser of the Promissory notes and therefore becomes a holder in due course under the law governing Bills of Exchange and Promissory Notes.

The 1st issue is manifestly distillable from ground 3 of the Further Amended Notice of Appeal. Close scrutiny of the appellant's or respondent's Issue No. 3, shorn of their unnecessary embellishments, seems to reasonably tally with the suggested Issue No.1 for determination. No doubt the parties respective Issue No. 2 arises from ground 2 of the Further Amended Grounds of Appeal. Finally, I shall disregard the parties' respective Issue No. 1 arising from the Further Amended Ground 1 of the grounds of appeal. This is plainly irrelevant to the determination of the real issue in controversy between the parties.

It will be recalled that the respondent had sought a summary judgment under the procedure provided under Order 10 of the High Court of Lagos State (Civil Procedure) Rules 1972. In stiff opposition to the application for summary judgment, the appellant, as earlier stated, filed a 19 paragraph affidavit to show cause pursuant to Order 10 Rule 3 of the Civil Procedure Rules, 1972. Since the content of this affidavit is material to the opposition for summary judgment, it is needful to set out the



*on its merit as the 1st defendant has a good defence to the action".*

No doubt, paragraphs 7, 8 and 9 are very devastating to the respondent's great premium placed on the promissory notes prepared by the 2nd defendant. If only for the sake of emphasis, let me examine paragraphs 7,  
B 8 and 9 of the affidavit to show cause more closely and seriatim.

First paragraph 7 positively avers that at all material time, the relationship between the appellant and the 2nd defendant was that of banker and customer. Furthermore, in paragraph 8 it deposed and clarified how it came to append its confirmation to the promissory notes and  
C not to Guarantee or Accept the payment of the promissory notes as alleged in the respondent's affidavit in support of the summons for judgment. And for avoidance of doubt, appellant deposed in paragraph 9  
D that, all it did in respect of the promissory notes, was to confirm the signatures of 2nd defendant company on the promissory notes as it was requested by the respondent in its letter to the appellant dated 28th August, 1987. For ease of reference, the said letter is hereunder reproduced:

E "IMANO (NIGERIA LIMITED)  
THE LAW HOUSE  
AINA HOUSE, IJU ROAD, AGEGE,  
P. O. BOX 7375  
F LAGOS  
TELEPHONE 962906, 963926

*Your Ref:*

*Our Ref:*

*28th Aug. 1987 (sic 1988)*

G *The Manager,*  
*Credit & Loans,*  
*Federal Savings Bank,*  
*23, Awolowo Road,*  
H *Ikoyi - Lagos.*

*Dear sir,*

*Sale of MT. AINA, MT. AGBEKE, MR. ALIYU*

*We refer to your letter of today's date concerning the above men-*

*tioned Vessels and the payment to us of the sum of three million Naira (N3,000,000.00).*

*We give our payment instructions herewith in relation to N2,000,000.00 thereof;*

*Savannah Bank Nig. Ltd*

B

*Ikeja Branch,*

*Two million Naira (N2,000.000.00) for the Account of IMANO NIGERIA LIMITED. Account No. 3063106*

*By a copy of this letter, we are: requesting Savannah Bank to release to Fred Agbeyegbe whom we have today introduced to them in accordance with our agreement with you, the Bills of Sale for MT. AINA and MR. AGBEKE in return for;*

C

*(i) the two Million Naira (N2,000.000.00)*

*(ii) 9 Promissory Notes drawn by Agricultural & Food Processing Installations Ltd., accepted by us and confirmed by Federal Savings Bank for N687,500 each and one for N994,585 and*

*(iii) a letter of confirmation from Federal Savings Bank identifying the signatories to the Promissory Notes and confirming same.*

E

*Your faithfully*

*(sgd.) ????*

*Kayode Ogunmekan*

*(MANAGING DIRECTOR)*

F

*DIRECTOR*

*ALHAJI ALIYU MAI SAHGO (CHAIRMAN)*

*Kayode Ogunmekan (Managing)*

*Chief Bayo Kehinde, Chief T. S. Agboola".*

**In my view, the combined effect of paragraphs 7, 8 and 9 when read dispassionately is that it irresistibly raises a triable issue as regards the role of appellant's signatures on the said promissory notes sufficient enough, or at any rate to raise a plausible defence to the case sought to be made by the respondent for signing a summary H judgment in his favour.**

G

A more detailed examination of the appellant's affidavit to show cause also shed some light to its role in respect of the promissory notes.

Thus paragraphs 12 and 13 highlighted the fact that contracts entered into by the appellant such as the one involving liability under promissory notes would have the appellant's common seal fixed on the document to authenticate the validity of such contracts. The common seal was transparently absent in all the promissory notes exhibited by the respondent in their affidavit in support of their motion and marked Exhibits 'KOC'2' - KOC 10. Again, while paragraph 14 raises a fine triable legal point on whether or not the promissory notes had matured or not, paragraph 17 makes it clear beyond doubt that appellant has a good defence to the action and pleads for the action to be tried on its merit, contrary to the simplistic respondent's averment in its paragraph 29 of the affidavit in support of summary judgment under Order 10 that appellant has no defence to the action.

Another material placed before the trial court, that of necessity, should be of some assistance in reaching an appropriate conclusion, one way or the other, in respect of whether the appellant has a good defence to respondent's quest for summary judgment under Order 10 is the appellant's statement of defence. It is commonplace that appellant filed its statement of defence on 2/12/88, outside the period prescribed by the Rules of Court and also filed an application for extension of time within which to file its statement of defence. Even though the statement of defence was filed irregularly, the learned trial judge, did not shut its eyes to its content. **An application for extension of time within which to file appellant's statement of defence is a deliberate effort to regularize the default in the late filing of the statement of defence. After all, the whole purpose of Rules of Court is to ensure that the affairs of the court are carried out in an orderly fashion with reasonable degree of certainty that prescribed acts have been duly complied with by the parties in the interest of justice. Obviously, interest of justice will frown on the parties and the court being enslaved to rules which are intended to promote justice; they should not, as it were, make round-about-turns and constitute themselves engines that would impede the promotion of justice.**

It must be conceded that stricto sensu the filing of a statement



of defence after the plaintiff had commenced proceedings under Order 10 Rule 3 is completely outside the contemplation of such proceedings. I venture to say that it would make no difference even if such defence was filed before the commencement of the summary proceedings for signing of judgment under Order 10. Be that as it may, the question arises whether a court seised of the proceedings under Order 10 can overlook the statement of defence filed within time or irregularly in the sense that it was filed outside the prescribed period for so doing and not having regularized the said filing? **It must be borne in mind that the essence of proceedings under Order 10 is to summarily and expeditiously give judgment to a plaintiff where it is crystal clear that the defendant is unable to muster a defence to the claim. It would therefore smack of injustice if the defendant is unwittingly shut out to deliver his defence by reason of undue adherence to technical rules of procedure. It is therefore my view that a statement of defence, be it irregularly filed or any document whatsoever in addition to the affidavit to show cause would be worthy of the court's attention before signing of judgment under Order 10. The trial judge, therefore, in my view, was right to have given consideration to the irregularly filed statement of defence in her quest for ascertaining whether the appellant herein has sufficiently demonstrated that he had a good defence to the claim. This is dictated by the interest of justice. Therefore, for the purposes of the proceedings for signing a summary judgment, I hold that the appellant's statement of defence was properly filed.** See U.B.A. Ltd v Dike Nwora (1978) 11 & 12 SC.1 at pp 6 and 7 and Nishizawa Ltd v Jethwani (1984) 12 SC 234 or (1984) NSCC 877.

After the trial judge perused the content of the statement of defence, she observed, inter alia, as follows:

*"I have carefully perused the Statement of Defence filed by the 1st defendant. In my view it does not disclose any defence on merit. In other words the 1st defendant had not disclosed such facts deemed sufficient to entitle him to defend the plaintiff's claims.*

*The defence opened (sic) to a defendant in action predicated on*

*Bills of exchange is enumerated in Order 18 Rule 2 of High Court of Lagos State (Civil Procedure) Rules 1972.*

It reads;

"2. *In actions upon bills of exchange, promissory notes or cheques*  
B *a defence in denial must deny some matter of fact; e.g. the drawing, making indorsing, accepting, presenting, or notice of dishonour of the bill or note.*"

C *A defendant who has no real defence to a claim should not be allowed to dribble and frustrate the plaintiff by employing delay tactics aimed, not at offering any real defence but gaining time within which he may continue to postpone meeting his obligation and indebtedness.*"

D Immediately thereafter, the trial judge held that the plaintiff's application under Order 10 succeeded and she entered judgment accordingly.

Despite the judge's avowed perusal of the appellant's statement of defence and with due respect to the Judge, it is quite clear that she did not positively demonstrate to what use she put the perusal of the statement of defence, for example, she did not find time to resolve the serious areas of conflict between the statement of defence and averments in the affidavit in support of summary judgment under Order 10 on the one hand as well as between the supporting affidavit and averments in the affidavit to show cause deposed to by the appellant and the letter dated  
F 28 August, 1987 attached thereto (and reproduced herein), on the other. Conflicts in affidavit evidence on fundamental issues to the matter in controversy must be attended to and not just glossed over. **A court of law - be it trial or appellate - is not imbued with divine or magical  
G powers in the sense that it can divinely or magically resolve conflicts in factual matters which may only be done, in certain circumstances, by dispassionate and painstaking evaluation of the facts or evidence placed before the court. I have reproduced above the brief  
H observation of what was allegedly done by the learned trial Judge in respect of perusal of the appellant's statement of defence which is not backed up by any showing whatsoever that any effort was made to evaluate areas of conflict of the parties' assertions in order to**

**reach a fair conclusion whether the appellant has shown that he has a good defence to warrant its being let in to defend the action.**

Curiously, the learned trial Judge in the excerpt reproduced above identified five defences available to a person in the position of the appellant, in respect of action on promissory notes, which must be "a defence in denial and must deny some matter of fact; e.g.

- (a) The drawing,
- (b) the indorsing,
- (c) accepting,
- (d) presenting, or
- (e) notice of dishonour of the bill or note."

When the appellant's statement of defence and its affidavit to show cause in respect of the summons under Order 10 Rule 3, to which respondent's letter to the appellant dated 28th August, 1987 (reproduced herein) was attached are accorded dispassionate consideration it is crystal clear that (a), (d) and (e) cannot be invoked in any way against the appellant. with regard to (b) and (c), the appellant has denied endorsing or accepting the promissory notes not by mere empty denial but relies on respondent's letter dated 28/8/87 to categorically say that it has a good defence. Undoubtedly, the appellant's weighty denial of (b) and (c) cannot either by any imagination be dismissed as an empty claim or to have been duly met in any way by the respondent's statement of claim and the supporting affidavit to the summons pursuant to Order 10 proceedings.

A fair summary of the respondent's claim against the appellant is a claim for the sum of N6,494,585.00 being the value of 9 Promissory Notes confirmed (i.e. indorsed) and accepted by it. For the said confirmation (i.e. indorsement) and acceptance respondent relies on Exhibits KOC "2" to KOC "10" to emphasize that the appellant had no defence whatsoever to the suit. The appellant on its part, in its affidavit to show cause pursuant to Order 10 rule 3 denies confirming or guaranteeing or accepting the promissory notes Exhibits KOC "2" to KOC "10" but says that in compliance with respondent's letter dated 28th August, 1988, annexed as Exhibit 'A' it merely confirmed 2nd defendant's signature as requested in Exhibit 'A'. It further explains the entire scenario in its

statement of defence. Concluding, it states categorically that it never guaranteed the payment of the promissory notes and also raised various defences and urged that the matter be tried on its merits as it has a good defence to the action.

**B It is clear to me that placing reliance on Exhibit 'A' - respondent's letter dated 28th August, 1988 addressed to the appellant - and the various legal issues raised in the appellant's affidavit to show cause as well the comprehensive defence proffered by the appellant in its statement of defence, the appellant had clearly met the case of the respondent by a definite answer to the claim and thereby raised a triable issue to the respondent's claim. It follows that from the foregoing that the appellant's defences under (b) and (c) above cannot be described as sham or arid. On the contrary, in the interest of justice, it ought to be conceded that the appellant has produced strong prima facie assertions and affidavit evidence which should be evaluated against the respondents assertions and affidavit evidence. It surely demands, in law either calling oral evidence to resolve the areas of conflict in the affidavit evidence and other factual assertions or, perhaps, better still, to accord the parties a hearing of the action on the merits which will facilitate the resolution of areas of conflict.**

**F To buttress the above view, it may be useful to look at the observations of the learned trial Judge when confronted with the deposition in the affidavit to show cause filed by the appellant in regard to the summary judgment pursuant to Order 10. Her Ladyship observed:**

**G "I find paragraphs 7-13 very germane to the instant applicator (sic application), and they are as follows:"**

**H She went on to reproduce these seven paragraphs. I have earlier reproduced them in the judgment and there is therefore no necessity to do so again. I entirely endorse the above observation of the learned trial Judge. In fact, in my view, they are decisively very germane to the proper understanding of appellant's plea for a hearing on the merit of the action. So, if the learned trial Judge, in her wisdom and free volition, found those seven paragraphs very germane after reproducing them, it was awk-**

wardly surprising that without any challenge to their veracity, the learned trial Judge, with due respect, without either evaluating them or relying on any reason adduced subsequently somersaulted and simply said that these seven paragraphs which are unambiguous and lucid did not disclose any defence on the merits when in fact they disclose strong prima facie facts and affidavit evidence sufficient to compel a reasonable tribunal to let in the appellant put across its defence. B

**I must emphasize that having regard to the nature of this application and there being nothing but documentary evidence placed before us that this Court is in as good a position as the trial High Court, as well as the Court of Appeal, to examine the entire documentary evidence and the other documents placed before the lower courts. Permit me, if only for emphasis to reiterate that I have carefully read all the documents as well as the affidavits deposed to by the parties and I have come to the irresistible conclusion that the appellant's affidavit to show cause and its statement of defence demonstrably disclose and amount to a good defence and triable issues to the respondent's claim. This is another way of saying that these documents disclose a defence on the merits. Strictly, therefore, all I have said is enough to let in the appellant to defend the respondent's claim and indeed sufficient for me to allow the appeal.** C D E

Nevertheless, I shall now give consideration to the second issue. F  
Issue No. 2

Whether or not a person who merely confirms the signature of another on promissory notes at the express request of a third party automatically becomes liable as endorser of the promissory notes and therefore becomes a holder in due course under the law governing Bills of Exchange and Promissory Notes G

The purpose of the 2nd issue is to examine the effect of the respondent's letter to the appellant dated 28th August, 1987 (which ought to read 28th, August, 1988.) The letter was annexed to appellant's affidavit to show cause, and also marked as Exhibit 'A', and was expressly pleaded by it in the Statement of Defence. The said letter has been reproduced earlier in this judgment particularly as both parties not only pleaded H

same but heavily capitalized on it to project their respective case. I must be very frank to state that Exhibit 'A' occupies a pivotal position in the determination of the liability or otherwise of the appellant in the claim instituted by the respondent against it. If for purposes of argument I were still of the view after examining Issue No 1 that appellant had no defence to the respondent's claim then, perhaps, it would have been legitimate for me to give a niggling examination of the second issue to buttress and amplify my reasons for entering a summary judgment in favour of the respondent.

Clearly, I have expressed my opinion that appellant should be let in to defend the suit. Having taken this position, it will therefore be invidious for me to embark on an examination of the import of the appellant's signatures on Exhibits KOC "2" to KOC "10" vis-a-vis the divergent views on the vexed question raised by both parties in relation to Exhibit "A" without unwittingly deciding the issue that should go on trial before the High Court. The views expressed by the two lower courts in this regard may be examined. The learned trial Judge observing that the appellant appended its signatures on Exhibits KOC "2" to KOC "10" rather than simply comply with the tenor of Exhibits "A" by sending "a letter of confirmation from Federal Savings Bank identifying the signatures to the promissory notes and confirming same", readily came to the conclusion that the appellant by those signatures, incurred the liabilities of an indorser to a holder in due course. Accordingly, she found the appellant liable to the respondent.

The leading majority judgment of Sulu-Gambari, JCA, after an intensive examination of the provisions of sections 85, 87, 55, 91 of the Bills of Exchange Act, as well as the notable decision of Macdonald v Nash (1924) Rep ALL E.R. 601, which I must say is clearly distinguishable from the case under reference, opined as follows:

*"Appending signature to a document of the type admitted in this case, i.e. Exhibits KOC 2 - 10, appearing at pages 36 to 44 of the record, by the appellant is tantamount to an endorsement not in the sense that it was assigning or transferring its benefit to anybody but indicating that it has accepted by that signature on the document to become liable to the*

*respondent in all effects. Indorsement here loosely used implies signing on the document which in this case is the promissory note.*

*The case of Gerralld Macdonald v. Nash (supra) is highly instructive and afford (sic) a direct authority capable of justifying the conclusion reached by the learned trial Judge".*

In his concurring judgment, Pats-Acholonu, JCA, after also examining several sections of the Bills of Exchange Act found no difficulty in reaching the conclusion that the appellant having appended its signatures on Exhibits KOC "2" to KOC "10" "incurred liabilities of an indorser to a holder in due course".

Finally, in his dissenting judgment, Uwaifo, JCA., clearly in an attempt to refute the assertion of the majority judgment, also made extensive examination of some provisions of the Bills of Exchange Act, as well as the case of Macdonald v Nash (supra) and rightly, in my view, reached the conclusion that that case was clearly distinguishable from the case on hand, and reached the conclusion that the appellant was not liable, having regard to all the circumstances of this case. It is transparently clear that the lower courts without hearing evidence, and in the face of the maze of conflicting affidavit evidence and assertions made by the parties in their pleadings, decided the difficult question of fact relating to the true import of the appellant's signatures on Exhibits KOC "2" to KOC "10". The true position in this case is that on a proper evaluation of the appellant's affidavit to show cause and the supporting affidavit to the application under order 10 Rule 3 it would have been obvious to a reasonable and discerning tribunal that the fate of the appellant's signatures on Exhibits KOC "2" to KOC "10" could not be ascertained with any degree of certainty unless oral evidence was led in this regard. In the absence of such evidence the answer to that question remains an enigma. The result is that the application for summary judgment would be refused. Faced with this inconclusive resolution of the signatures on Exhibits KOC "2" to KOC "10", the two lower courts resorted to the determination of the import of these signatures under the Bills of Exchange Act in order to ascertain the liability of the appellant. **It is erroneous for a court, whether trial or appellate, in determining an interlocutory matter to succumb to**

the temptation of deciding the substantive case that is yet to be agitated by the parties. That will evoke a serious outrage. The lower courts were wrong to have gone to that length I would therefore restrain myself from giving a profound consideration to issue  
B No. 2 more so as the resolution of Issue No. 1 has sufficiently provided an answer to this high-flying interlocutory application. See Sylvanus Mortune v Alhaji Mohammed Gambo (1983) 4 NCLR 237 at 242.

C In the result, I will refrain from giving a determination to Issue No. 2

From the foregoing, I am clearly of the view that both the learned trial Judge of the Ikeja High Court, Olorunnimbe, J. and the learned Justices of the Court of Appeal who gave the majority decision (Sulu-Gambari  
D and Pats-Acholonu, JJCA) erred in holding that the appellant's affidavit to show cause and its statement of defence did not disclose any real defence to the respondent's claim. On the contrary, the appeal succeeds and is allowed and the minority judgment of Uwaifo, JCA (as he then  
E was) is upheld. The decisions of the trial High Court and of the Majority judgment of the Court of Appeal are hereby set aside and in place of those decisions I order that the appellant should be let in to defend the suit. I also order N10,000.00 costs against the respondent.

F \_\_\_\_\_

### KARIBI-WHYTE JSC

I had the privilege of reading the draft of the leading judgment of my learned brother Okay Achike in this appeal. I agree entirely with his  
G reasoning and his conclusion that the appeal be allowed. I also hereby allow the appeal of the Appellant against the judgment of the Court below.

Respondent shall pay N10,000 as costs to Appellant

H \_\_\_\_\_

### OGWUEGBU JSC

I had the advantage of reading in draft the judgment in this ap-



peal just delivered by my learned brother Achike, J.S.C. I agree with his reasoning and conclusion that the appeal ought to be allowed. I accordingly allow the appeal.

After reading the grounds of appeal and the briefs of argument filed by the parties, I am in no doubt that principal issue calling for determination in this appeal is whether the appellant who was the 1st defendant in the trial court satisfied the trial judge that he has a good defence to the action which ought to go to trial. This is the issue which learned counsel for the appellant was trying to formulate as issue (iii) in paragraph 3 of the appellant's brief. The defence to the action is to be ascertained from the appellant's affidavit to show cause under Order 10 of the High Court of Lagos State (Civil Procedure) Rules, 1972. Before the date fixed for the hearing of the application for summary judgment, the 1st defendant filed a motion for enlargement of time within which to file its statement of defence attached to the affidavit in support of the motion as duly filed. As the statement of defence was irregularly filed and time had not been enlarged, the trial judge will not disregard it, but will see whether it sets up grounds for defence which, if proved, will be material and if so, will deal with the case in the manner that justice can be done. Even though the learned trial judge purported to consider the statement of defence filed out of time and the affidavit in opposition to the application for summary judgment, he failed to appreciate the grounds of defence put up by the 1st defendant in both documents before arriving at the conclusion that the appellant has no defence to the action. See Gill v. Woodfin (1884) 25 Ch.D. 707.

The pertinent paragraphs of the appellant's affidavit in opposition to the application for summary judgment are paragraphs 8, 9, 10 and 11. They read as follows:

*"8. That the 1st defendant did not GUARANTEE or ACCEPT the payment of the promissory Notes as alleged in the affidavit in support in the summons for judgment.*

*9. That all the 1st Defendant did in respect of the promissory Notes was to identify and confirm the signatories of the 2nd Defendant company on the promissory Note as requested by the plaintiff to the 1st*

*Defendant vide their letter dated 28th August, 1988. The copy of the letter is herewith attached and marked Exhibit "A".*

10. *That the 1st defendant did not enter into any contract with the plaintiff over the promissory notes, and there was no consideration whatsoever from the Plaintiff to the 1st Defendant over the promissory Notes.*

11. *That the confirmation of the signatories of the 2nd defendant company on the Promissory Notes was a mere administrative service given to a customer under normal Banking duties which does not make the 1st defendant part of the contract between the plaintiff and the 2nd Defendant."*

On a cool, calm and objective reading of the above paragraphs of the appellant's affidavit which were reflected in the statement of defence, it was apparent that the appellant raised weighty issues which would entitle him to defend the action. At the stage, the 1st defendant was not bound to show a good defence. It must however satisfy the judgment that there is an issue or question in dispute which ought to be tried. The 1st defendant/appellant placed those materials before the learned trial judge and he ought to have given the appellant leave to defend the action so that justice would be done to both parties. There was no attempt by the appellant to dribble or frustrate the plaintiff as stated by the trial judge. Rather, the appellant who filed a motion for enlargement of time to file its statement of defence and to deem the accompanying statement of defence as duly filed gave cogent reasons in his affidavit for the delay. He could not be said to be playing for time. He disclosed a real defence to the action.

The learned trial judge and the majority of the learned justices of the court below (Sulu-Gambari and Pats-Acholonu, JJ.C.A.) who affirmed the judgment of the learned trial judge were clearly in error. I therefore uphold the minority decision of Uwaifo, J.C.A. (as he then was). I allow the appeal and set aside the majority decision of the court below. The case is remitted to the High Court and the appellant should be allowed to defend the action. The appellant is entitled to costs which I assess at N10,000.00.

### ONU JSC

I had the advantage of a preview of the judgment of my learned brother Achike, JSC, just delivered and I am in entire agreement with him that the appeal must perforce succeed. In allowing it, I have the following few words of mine to add thereto as follows:-

Firstly, is the point of want of jurisdiction the Appellant raised. This stems out of nine Bills - five out of which it was common ground, had not yet been settled in an earlier interlocutory consent judgment, leaving four Bills. The five Bills, namely Exhibits KOC.6 - KOC.10 which had not yet matured were dated 29th January, 1989, 20th April, 1989, 29th July, 1989, 29th October, 1989 and 29th January, 1990 respectively vide paragraph 14 of the Affidavit one Oladapo Ladenika, Banker and Credit Comptroller of the 1st Defendant were those deposed to pursuant to Order 10 rule 3 of the High Court of Lagos State (Civil Procedure) Rules, 1972. In support thereof the 1st Defendant had earlier averred in paragraph 13 of his Statement of Defence, thus:-

*"The 1st Defendant will contend that the action of the Plaintiff is hastily (sic) and premature in that five (5) out of the Nine Promissory Notes being claimed have not yet matured before this action was instituted."*

The deponent in paragraphs 15, 16, 17 and 18 of the Affidavits above, disclosed that after he had read Exhibit KOC. 1 attached to the Affidavit in support of the summons for judgment, he observed that there is an arbitration clause in clause 15 of the Agreement; that to his knowledge and belief, the matter culminating in the action had never been referred to Arbitration before the institution of the action; that contrary to the deposition contained in paragraphs 12, 14, 23, 24, 25 and 27 of the Affidavit in support of the Summons of the Plaintiff, the 1st Defendant owed no obligation to the Plaintiff for the sum claimed or any sum whatsoever and that it would be in the interest of justice if the matter was tried on its merit as the 1st Defendant had a good defence to the action. It was further contended on the Defendant's behalf that if there was no cause of action then there was no right of action and that that will affect the locus

standi of the Plaintiff to sue. It was therefore contended that, the summary Judgment on the four bills was given to the Plaintiff without jurisdiction. Hence the Order 10 procedure adopted in deciding this case, it was finally contended, was inappropriate and wrong and that the Summary Judgment awarded thereon was also wrong.

The learned Counsel for the Respondent (Defendant) for his part, argued that the argument of his learned friend was based on the facts as he alone saw them and that out of nine Bills of Exchange, three of them which were due had been dishonoured. After referring us to Section 9(1) of the Bills of Exchange Act, our attention was also adverted to Page 18 of the Respondent's Brief of Argument. Learned Counsel further submitted that the issue of jurisdiction did not arise at all because they went to Court after the three Bills hereinbefore alluded to arrived and were dishonoured. The trial Court, it was contended, rightly awarded judgment to the Defendant without a defence to the action. What is more, it was argued, as there was the Affidavit to show cause, there was therefore a defence. After we were next referred to the purport of Order 19 Rule 2 of the High Court Lagos State (Civil Procedure) Rules, as to what amounted to a defence, it was added that these defences cannot be found on the Court's record. It was also argued that the release made to the Respondent is not due to the defence and that the dissenting judgment of the Court of Appeal (per Uwaifo, JCA as he then was) assumed many things. We were called upon therefore to dismiss the appeal.

I see the merit in this appeal. 1st Defendant/Appellant was not allowed to defend the action; the dominant question or bone of contention being, whether as no trial had indeed taken place but the Order 10 Procedure was applied, the Court of Appeal by their majority judgment (per Sulu-Gambari and Pats-Acholonu JJ.CA) had not erred in law when they affirmed the High Court decision and so shut out the Appellant from defending itself. What led to the error of the Court below, in my view may be deciphered as follows:-

On pages 79-80 of the Record, paragraphs 7, 8, and 10 of the Appellant's Statement of Defence as well as on pages 83 - 84, paragraphs 9, 10 and 11 of the Affidavit showing cause which I had earlier set out

wherein the Appellant pleaded very clearly that it was the Respondent who requested for a letter of 28th August, 1988 (the letter actually reads 28th August, 1987), that the Appellant should "identify and confirm" the signatories of the 2nd Defendant Company on the Promissory Notes. The letter is pertinently contained on pages 85 -86 of the Record and as B these are exactly what the Appellant responded to, they simply confirmed and identified the signatures on the Notes as belonging to the Officers of the 2nd Defendant Company. Thus, as Uwaifo, J.C.A. as he then was, correctly put it in my view:-

*"It is not the case of the Plaintiff that the Promissory Notes were C not paid because those who signed them on behalf of the 2nd Defendant Company were not the signatories of that Company."*

From all that transpired in the trial Court which the majority judgment of the Court below confirmed, I am left in no doubt that there was a sharp D dispute as to the capacity in which the Appellant signed the promissory notes since the Respondent maintained that the Appellant signed as guarantors. It therefore behoved the learned trial Judge to have called evidence on the matter instead of giving Summary Judgement against the E Appellant. See Macdonald v. Whitfield (1833) 8 A.C. 733 at 745; London & Southern Counties Investment Advance & Discount Co. Ltd v. Clamp (1890) 7 T.L.R. 131: See also English and Empire Digest with Complete Annotations Vol. 6.

As this Court observed in Falobi v. Falobi (1976) NMLR 169:- F

*"When a Court is faced with affidavits which are irreconcilably in conflict, the Judge hearing the case, in order to resolve the conflict properly, should first hear oral evidence from the deponents or such other G witnesses as the parties may be advised to call."*

In the light of the above. I entirely agree with my learned brother Achike, J.S.C. that the first issue as to -

*"Whether the Appellant from all the material placed before the Court pursuant to Order 10 of the High Court of Lagos (Civil Procedure) H Rules, 1972 had shown a good defence to Respondent's action."*

Leads me to give an affirmative answer. I also endorse his views in respect of Issue No. 2 as considered by him.

It is for the above reasons and the more overwhelming ones contained in the leading judgment of my learned brother Okay Achike, JSC that I too allow this appeal. I make similar consequential orders inclusive of costs as contained therein.

B \_\_\_\_\_

**KALGO JSC**

I have had the advantage of reading in advance the leading judgment just delivered by my learned brother Achike, JSC in this appeal and I entirely agree with him that there is merit in the appeal. For the reasons set out in the leading judgment which I adopt as mine, I also allow the appeal and set aside the decision of the trial court and the majority decision of the Court of Appeal. I abide by the consequential orders made therein including the orders as to costs.

E

F

G

H