

The appellant sought to put in evidence the copy of a registered conveyance dated December 11th, 1961, which was in the register of instruments according to s.20(7) of the Registration of Instruments Act (*cap.* 256) and the Deputy Registrar General was in the witness box to produce it. It was objected to and the objection was upheld. This was the basis of another ground of appeal. In my opinion it was rightly refused. The requirements of ss.18 and 19 of the General Registration Act (*cap.* 255) had not been properly complied with.

The other grounds of appeal were concerned with the weight of evidence. The evidence supported the judgment.

I would dismiss the appeal.

DOVE-EDWIN, J.A. and COLE, J. concurred.

*Appeal dismissed.*

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## DAVIES v. COKER

SUPREME COURT (Marke, J.): November 4th, 1964  
(Misc. App. No. 34/64)

- [1] **Civil Procedure—appeals—time for appeal—leave to appeal out of time—defendant not notified of hearing—defendant's counsel, informed case listed, leaves court—extension of time refused:** Leave to appeal out of time will not be granted on the ground that the defendant had no notice of the hearing, if his counsel was in court on the hearing day and was informed that the case was on the hearing list but left without asking for an adjournment (page 170, lines 26-33; page 171, lines 11-12).
- [2] **Legal Profession—appearance in court—unreasonable failure to notify court that notice of hearing not received—no ground for extension of time for appeal:** See [1] above.

The applicant applied for leave to appeal out of time.

The date of hearing of a case between the applicant and the respondent was changed and the applicant did not receive notice of the new date arranged. On the day in question the applicant and his counsel happened to be in court and the counsel was informed that the case was on the hearing list, but as he had business elsewhere

he left without informing the court that notice of the hearing had not been received. The case was heard in his absence. The applicant applied for leave to appeal out of time, maintaining that notice of the hearing had not been received. The respondent argued that

*Smith* for the applicant;  
*During* for the respondent.

MARKE, J.:

This is an application by motion on behalf of the defendant for leave to present his appeal in this action out of time. The notice of motion does not set out the grounds on which the applicant applies for extension of time to appeal. From the argument of Mr. Doe Smith who appeared for the applicant the ground seems to be that the case was heard and determined by the magistrate in the absence of the defendant, and without due notice having been given the defendant. Mr. Smith stated in his argument that the case was adjourned on February 25th, 1964 to March 17th, 1964. On March 17th, 1964 there was no hearing of the case and no notice was served on his client (the defendant) or himself for the hearing on May 21st, 1964 when the case was proceeded with.

Mr. During in his affidavit in opposition to the application stated that on May 21st, 1964 he was in court and the applicant's solicitor was also in court and that he told the applicant's solicitor that the case was on the cause list for that day and that his (Mr. During's) client was in court. The applicant's solicitor told him that he had no notice of the hearing of the case that day and would not wait till the case was called. The defendant's solicitor left the court before the case was heard.

The entry on the record for May 21st, 1964 was as follows:

"21.5.64—Plaintiff present.

Ken During for Plaintiff.

Defendant absent.

Defendant's solicitor (Doe Smith) present in court but left before case called (case listed for hearing)."

Mr. Doe Smith in answer to Mr. During's affidavit said that on May 21st, 1964 he had engagements in other courts and therefore left.

Be that as it may, I feel Mr. Doe Smith could have informed the court that he had had no notice of the hearing for May 21st, 1964 and requested the magistrate to have adjourned the case, which the magistrate might have done. He knew that the case was on the hearing list for that day because Mr. During told him so. With that knowledge and instead of acting as any reasonable person would have done, he walked out of court without informing the magistrate that he had not received any notice of that hearing. The case being on the magistrate's cause list for that day had to proceed, Mr. Doe Smith's absence notwithstanding.

This I do not consider is good cause for extending the period for appealing in this matter. The matter proceeded in the absence of Mr. Smith through the fault of no other person but Mr. Doe Smith himself. After all, magistrates are entitled to be given some consideration by solicitors practising in their court and if the magistrate's attention had been drawn to the position by Mr. Doe Smith he would not have proceeded with the case as he did.

I dismiss the application with costs to be paid by the applicant-defendant to the plaintiff. Costs to be taxed.

*Application dismissed.*

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WRIGHT v. ALIEU MUSTAPHA and ABU HAIDAR

SUPREME COURT (Cole, J.): November 13th, 1964  
(Civil Case No. 21/62)

- [1] **Conveyancing—fraudulent and voidable conveyances—undue influence—**  
**independent advice—duty of legal practitioner advising:** Where an  
 intending donor takes independent advice from a legal practitioner,  
 the legal practitioner should satisfy himself that the donor under-  
 stands the transaction and wishes to carry it out and that the gift is  
 one which it is right and proper for the donor to make in all the  
 circumstances (page 176, lines 8–13).
- [2] **Conveyancing—fraudulent and voidable conveyances—undue influence**  
**—undue influence is to be proved where no relationship from which**  
**presumed:** Where there exists between the parties to a voluntary  
 conveyance no relationship of confidence from which undue influence  
 can be presumed, the onus of establishing undue influence lies on the  
 person alleging it (page 176, lines 31–35).