~~P.C.~~
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IN THE PRIVY COUNCIL

Judgment 10/1964

No. 34 of 1962

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

Between CHARLES MORGAN

Appellant

and NAJO A. KHYATT

Respondent.

CASE

for the Appellant

CHARLES MORGAN
Appellant in Person
c/o New Zealand House,
Haymarket, London, S.W.1.

I would like to open these proceedings by referring first to the vital position of trees in nature. It is not generally known that if all trees and green herbage were to be totally destroyed from the earth then all animal life, and that means also all human life, would have disappeared, even before the last trees had vanished. For trees provide the vital function of producing the oxygen by which all animal life exists, and not only producing the oxygen, but doing so by a method that deals with the poisonous gases exhaled by animal life so that they are regenerated and returned to the life cycle.

The necessity and the beneficial nature of trees in the balance of nature has always been understood by the poets and much fine poetry has been written and many songs composed on this theme, but many people, not so gifted, yet have an instinctive understanding of the purpose of trees in nature and they plant and nurture the seedlings and even grow attached to their trees as other people grow attached to animals in their care, and in old age, when perhaps both humans and the trees are no longer in the beauty of their youth, you will find this attachment very strong so that you can have the curious anomoly, for I am sure that "curious" is the only description when speaking to a Court of Law, that the owner of a particular tree would far sooner go to prison than be a party to its wilful destruction.

For although the truth of the need for trees in the scheme of nature is known or understood by many people, there does not seem to have been any understanding of such matters in Law. In such actions as have been tested at Law, the defendants have usually been quite inarticulate to answer the specious reasoning used against them, and witnesses have not been concerned to examine the truth of the circumstances or the probabilities of truth where definite knowledge is not available; and all too completely have Judges and Counsel been prepared to jump to conclusions that even a little reflection would have shown to be based on very precarious reasoning, and it is for these reasons perhaps more than for the merits of the action that is to be decided (although that also holds questions of Justice that also need an answer) that this action has been brought to this stage.

I have had to wait in London for some months to bring this action to a hearing and during the period of waiting I have wandered all over London streets and London parks, and I have seen many thousands of

trees growing under all sorts of conditions, in roadways, in pathways and pavements, in parks, in gardens, alongside walls and buildings and in fence lines, and I found it very difficult to find anything wrong in the buildings or structures that I was examining, let alone find any damage that I could attribute to the growth of the trees, and because of a particular legal decision of many years ago where it was held that tree roots had caused a shrinkage of the ground, and because this precedent seems to be the precedent for many more far reaching decisions, I particularly observed the sites for any indication that there has been any subsidence of the ground and I could not even now show one position that could be said is evidence for such a theory.

Where such a claim is made, the evidence should be examined in detail and verified at every step for it is well known that walls or buildings can subside because of improper foundations and it could be that trees, being defenceless and having no advocate to speak for them are being made to carry a responsibility that should be placed on faulty workmanship or perhaps some excavation in the area sometime in its early history. It is common knowledge that roots only seek an area where nourishment is available to them and water is the very first necessity for them to get this nourishment. Whatever the past history, roots cannot be active in a dry area, and any theory that suggested that the roots themselves were responsible for the dryness must be very suspect although possibly such things can happen. Certainly it should be possible to observe it some place when seeking it, if it was a general possibility, but as I have said, I myself did not find any evidence at all. I did see subsidences in roadways and footpaths but it was clear that these arose from excavations for pipes or drainage or other reasons that necessitate these happenings and I could easily envisage that similar excavations could lay the foundations, or rather the lack of foundations, to make life difficult for some tree that might later grow in the area.

I did see places where roots had lifted paving stones a complete reversal of the subsidence theory, and I also observed that it was in contact with the trunk or the line of the root where any lifting or other disturbance was observed. In many cases where trees had a small clear area around them, this seemed adequate safeguard against any lifting action. It was very clear from observation that the trunk or root had to be in intimate contact where any lifting action was taking place. I draw attention to this observation, although it should be self evident, because in the particular action to be decided it is contended that roots only partially filling a gap,

can have a lifting action at a place remote from the roots and involving forces of many tons.

Coming now to the action before the Court, it would be helpful to myself and perhaps I could give the Court a clearer picture of the issues involved, if I may be allowed to present my case in the form of a general outline of the substance of the action as it presents itself to me.

Of necessity I cannot quote precedents of Law or refer to legal matters in the phraseology to which this Court is usually accustomed but I must instead make general statements of Law as I understand it to be.

The action has to consider the roots of trees growing on my property, and their involvment with my neighbour's draiange; I understand that it is the first time such an action has beem decided in the Courts although there must have beem many hundreds of thousands of times in recent years when such things have happened.

This may be because of a decision of Chapmam J. referred to by the trial Judge page I25 line 28 which should surely have been the proper precedent to adopt for this action.

It could be that the section of Halesbury's Laws that states "An owner or occupier of land who uses his land in the ordinary manner, is not liable for mischief occasioned to his neighbour by such use", has beem a complete bar to such actions,

but there are also precedents to say "you cannot complain of something to which you are particularly sensititive", and faulty drainage is particularly sensitive to attracting roots of trees or the roots of any other herbage.

But there is also a law that you cannot make a hiddem trap for man or beast and if faulty drainage is to be promoted in Law to being a legitimate source of legal action against neighbouring trees, then it also becomes a hidden trap for those trees and for their owmer. It may be that the original purpose of this Law was far removed from the interpretation I would now give to it, but the argument will no doubt appeal to a legal mind.

In assessing the value of the last two arguments as they are applicable to this action it must be kept in mind that there is a history of faulty drainage

covered by implication in much of the evidence but in particular by the documents as printed on page I62 lines 29 and 30, and page I56 line 6 onwards.

It is common knowledge but it is also well authenticated by authoritive evidence in this actiom thatt sound drainage does not attract roots to its vicinity nor can sound drainage be penetrated by roots. Both conditions only arise after there has been some breakdown in the system.

The same arguments apply to concrete walls and also to the more vulnerable type of structure such as we also consider in this action; what is more properly called a plaster shell covering a rock face. A breakdown of the structure with cracks appearing is a necessary preliminary to any root penetration.

It is, of course, possible to argue that pressure from growing roots or the tree trunks give rise to the initial failures; such argument was used in this action until I drew attention to the physical fact that my own drainage block was betweem the trees and the areas involved and detailed evidence and a plam that is part of these documents shows the clearances.

The reasoning to involve the roots was more indemious. It was contended that roots had gathered under the drainage block in large quantities sufficient to lift the drainage block and break the drains so releasing the contents of the drains to attract to the area sufficient roots to lift the drainage block.

I was minded of the argument of how a rabbit digs its hole by starting at the bottom and working upwards. There is the rabbit and there is the hole and unless we examine the evidence intelligently it seems quite feasilbe. But with the rabbit, as with the roots, how do they get underneath in the first place.

But no matter how the problems of this or similar actions are judged to arise it is also a matter of common knowledge, but well covered by authoritive evidence in this action, that repair of the faulty drainage is an urgemt, am immediate necessity. There is no legal problem when repairs have beem completed.

The evidence will show that I have beem, of necessity well aware of the condition of the drainage on my neighbour's property for many years and have always accepted that it was a breakdown of the drainage that originated the problem of roots, and repair of the drainage was the complete amswer. This was something that should have been attended to many years ago, evem before I became owner of my property and thatt I never had had any occasion to feel that there was any

responsibility attached to me about it. This was my position when a new owner took possession of the adjoining property.

The evidence will show that the new owner should have been well aware of the condition of her drainage when she purchased the property not only from observation of a defective structure but also because she had the occasion to use the services of two experienced men, one for re-modelling all her drainage in the area of the house to convert the property into three flats, the other because quite early in her occupation there was drainage trouble in the area, the subject of this claim. In the evidence the respondent makes the claim that it is my drainage that was at fault and although the probabilities are that it was her own drainage that received attention, it should be noted that the two sets of drainage lie side by side at this point, attention to one would have necessitated knowledge of the other and the nature of the evidence itself pre-supposes knowledge of both sets of drainage; whereas it is a major point of the respondent's claim that she had no knowledge of her drainage until this action is started some years later.

The Court will appreciate that when, some years after respondent had purchased the property, suggestions are made that all the damage to her drainage had only arisen during the short span of her ownership. I knew such a claim to be ridiculous and I had no hesitation in stating so. My knowledge of Supreme Court procedure in those days was very hazy but I thought the evidence so self convincing that I had every confidence in accepting the threatened law proceedings. I expected the respondent to be laughed out of Court, if the action reached such a stage, but as the history of this action shows, the proceedings developed on very contrary lines.

I had the misfortune to have the action heard by a Judge only recently appointed, and I say misfortune because it quickly became apparent that the Judge had appointed himself an advocate for the respondent and was diligently pursuing a theory that there had been a sudden acceleration in the growth of my trees all conveniently to co-incide with the period of the new ownership and although I could understand how a Judge so recently appointed could make the error of being partisan in the first case or two to come before him, I could not see how Justice was to be achieved thereby. But my Counsel seemed incapable of correcting the procedure. Then I found that my Counsel did not intend to deal with a very important part of my evidence, the evidence that is covered by the documents known as Exhibit 4 and printed on pages 156 - 164 of my Record.

The Court will observe that the respondent was recalled to the witness box after all the evidence had been taken on both sides, so as to be examined on this matter and I would stress that it was only because I had other papers relating to this matter, papers that I produced when shocked by the respondent's claim "I swear before God I did not know.....drains" page 35 line 40; that this evidence received any attention at all.

My Counsel had always held the document as printed on page 161 and would have been aware of its importance in substantiating the condition of the respondents property at an early date in her ownership and also for establishing the probability of her early knowledge of her faulty drainage. It is another well established precedent in law that if you do not immediately assert your rights (assuming that the root "trespass" did give some rights) then you acquiesce in what is happening and cannot later complain. I had expected my Counsel to use this document to establish such a defence, with the added weight that an action at law had been originated over this self same matter and then abandoned. In such knowledge as I had of the law, that in itself was a complete bar to the new action, or must have had great weight in any judgment if the new action was allowed to continue.

This Court will understand that in the culmination of these incidents and the complete and overwhelming judgment that was given against me, I had a strong feeling that injustice had been done to me and that there was a strong probability that it was a deliberately planned injustice at that.

I took my case to Appeal thinking that what I have just said would have been self evident to the Judges of the Appeal Court, as perhaps it was, but I did not make special reference to it and it did not receive specific attention, but now I feel that it is necessary that I make a definite statement on the matter as I think it is necessary that this Court should appreciate that these considerations have been underlying my determination to bring this action before this Court and to conduct my case myself. I prefer that you should know the truth of my position as I myself state it and not as it may be conjectured if I am silent on the matter.

I have already dealt with some principles of Law that can be applied to this action. Each of themselves, or all in culmination could justify a complete reversal of the judgment and the granting of my appeal but now I would present some further arguments that must arise in any actions concerning trees and their roots.

It seems that up to quite recent times the law has held that roots wander where they will, they are not under control and no action can lie because of them, and there seems much commonsense and justice in such a ruling on what is a quite involuntary and inevitable act for trees or the owner of the trees.

I do not know if this law has now been abandoned. I assume that it must have been, but if this is so I would submit that this Court should examine the grounds on which such a sensible restriction on law suits between neighbours has been removed and consider if it is not better justice that this law be re-instated. I do not make such a suggestion idly. I will deal with other considerations why this should be a sensible and just interpretation of any man's liabilities. It may be that the considerations I now advance have always been the reason for upholding this law in the past, but that they have been overlooked of recent times.

It is well established that where a person purchases a property they purchase all that is attached to it on or under the ground; and if it is something beneficial then the purchaser has no hesitation in claiming ownership and does have a clear title, and it does not matter if it is attached to or part of something on an adjoining property, fence lines are frequently in dispute and growing hedges - I have had this very problem with this self same neighbour on another section of this boundary as the printed evidence for this action discloses and although my neighbour had originated a survey to bring this problem to me, that was subsequently found to be in error, yet where trees or shrubs or fences are so placed because of genuine mistakes in the boundary lines, yet do they become the property of the person on whose land they exist.

Is there any difference between whole trees, or half trees or portion of the roots. Certainly it can be said that the owner of a property has complete control over all these things whem on his property. He is able to deal with them exactly as he may wish and is in fact in a unique position to deal with roots or drains that necessitate digging up his property whereas the owner of trees adjoining has no such rights.

There is the further consideration that the owner of a property is in a unique position to know of anything detrimental that may be happening to his property and to correct it, and if the commonsense of this argument is apparent to the Court, then any action in which damage is alleged from hidden agents - where the hidden agents are essentially under the control of a complainant, should no longer be possible.

The justice of adopting a title of ownership for existing roots where it is clear that a de facto title has always existed should be very apparent but where trees and roots were in position before either parties became owners of their respective properties, there is further reason for adopting this proposal and if this Court is of a mind to accept this argument then that could well be the end of this action.

The clarify the issues of ownership also clarifies the issue of responsibility for continued growth or for alleged damage.

Alternatively I would like to clarify the position of root trespass (as it is called) in itself. Counsel in cross examining me, and the Judge in reasoning on an injunction, seemed to deal with the issue of root "trespass" as if this was in itself a cause of action, and dealing with the matter as it applied to myself, I was at fault in permitting roots from my trees to cross my boundary. I would wish to ask the definite question, is it to be held that root "trespass" of itself is actionable or can we limit our consideration only to issues where damage also is alleged.?

For if root trespass of itself is to be a legal liability it could be said that no property owner dare use his property in such a natural way for the need to ensure that roots did not cross a boundary would put an intolerable burden on him.

But there is a precedent in Law that if a man is using his property in a natural manner, then if damage to an adjoining property should take place, no action can lie, and this should clearly cover any question of root "trespass" of itself.

That root damage is especially excluded from the cover of this law I am well aware and I propose to examine the propriety of such an exclusion and its justice a little later. Now I put forward only the issue of roots crossing a boundary line which could pedantically be classed as "damage" but what is a quite involuntary act as far as the owner of trees is concerned.

Alternatively we must examine the position of a new purchaser of a property where root "trespass" already exists associated with some "damage", and it should not matter whether the damage is known to or acknowledged by the new owner, although the ruling in the Appeal Court on my own action seems to attach considable importance to this point.

Drainage with cracks or holes through which roots may enter is material damage, likewise concrete walls with cracks even if it is claimed that no roots exist in either walls or drains at the time of purchase. I would submit that the ruling should be that there is a responsibility for the new owner to repair the existing damage before any action against others can be sustained.

Poor foundations, poor materials, poor construction, weathering through the years, or just plain old age are all possibilities for concrete failure: and with drainage, an initial blockage at a bend, or, through carelessness, allowing the contents to bank up and put pressure on any weak spot is usually the cause of initial leakages that bring other troubles in their train if not promptly attended to. But there are many other causes for drainage failures also.

Root penetration can be responsible for further deterioration but where the initial responsibility lies with the owner of the defective structure - and it is important to appreciate that repair of the structure would have satisfied the issue - can there be any liability on the owner of adjoining trees whose roots are but following the most elementary and essential needs of nature; seeking nourishment where it is available to them.

I have already referred to the evidence that root penetration cannot take place in a sound drainage although this is also a matter of common knowledge but neither will roots be found in the area in any more quantity than elsewhere. It can also be said without any dispute that if a drainage is defective then it is inevitable that it will attract to itself roots from any herbage in the area, and judgment of defective is to permit leakage of the contents - even as would be argued - minute leakage. For in law and in by-law, no leakage is permitted not even minute, and tests are made when drainage is installed to make sure that this is so.

Similar issues arise on walls or such like structures. Properly built they are not susceptible to root penetration but if defects arise in the form of cracks, then because these cracks hold moisture or often just because these cracks are available to exploring roots, it will often arise that roots are observed in the defects.

It does not follow that roots have been responsible for the development of the defects although many people jump to such a hasty conclusiom. It may be claimed that roots have extended the damage, but here also repair of the initial cracks would have satisfied the issue. It may be argued that a man is entitled to own a wall with cracks - it is not conceivable that such an argument could be advanced about drainage - but surely if a man owns a defective structure he is the author of his own difficulties.

I would repeat the pertinent issue that underlies the foregoing argument in case it needs clarifying.

Can a person buy or owm a defective structure that is in itself am enticement for root trepass and yet hold surrounding property owmers who have trees on their property, in jeopardy of extensive law suits.

The issues as regards an injunction are much narrower. However it may be held that damage arises it should be quite clear that repair of the damage is not only essential but is also a complete answer to the argument. It may be debated that the same issues may arise again and although this is not possible if repairs are properly carried out, the complete answer is that should such a situation arise, them there is a remedy in law and no injunction is necessary.

When dealing with the injunction as it applies to this action, it should be clear from the evidence that not only are the trees desirable and the most fitting for the area but they are also performing am essential function on the property in preventing erosiom and this function is necessitated primarily because of the actiom of the respondent's predecessors in title who excavated the hillside just beyomd my northern boundary to provide themselves with am access path to their elevated building site, so creating problems of stability for my access and the need to build this concrete "wall" the subject of this actiom. This makes the matter of the injunction even more unjust, if that is possible.

and if, as would likely happen, am owner of trees has no thought of guilt or responsibility to defective structures on am adjoining property even though roots from his trees are clearly visible, can it be held that he is obstructive and an order made to destroy the trees on the grounds that he did not immediately remove all the roots and repair all the damage when it was demanded of him.

Or should justice to himself and the trees grant am interval of time to re-orientate himself to the mew circumstances arising from a Court decision that he

could not have anticipated; and the opportunity given to discourage root growth in the area by spraying with copper sulphate or similar inhibitors.

I mentioned earlier that I was aware that the section of Halesbury's Laws that I was quoting definitely excluded damage caused by roots from the cover that the law gave. I would wish to ask the very pertinent question. Why should damage from roots be excluded.?

Is there in fact any substance to this Law that a man may use his property in a natural manner without any fear of lawsuits from his neighbours ?

Of all the usages that a man may wish to make of his property, the growing of trees or other herbage is the most prominent and widespread usage that would occur. Of all the actions at law that a man would wish to be protected from, specious and peculiar reasoning about the action of roots, most likely hidden from him and quite unknown, is the one action he would most wish to be guarded from. Why then does this so called law definitely exclude such a safeguard. I do hope this Court will give me an answer to this query that I make that is sensible and just and that all men can see to be so.

But all these issues that I have dealt with resolve themselves if title of ownership of any roots follows the title to the property, as it should.

I have now dealt with a number of issues that would apply to any action involving trees and roots and drainage, and of course apply equally as much for my own action, but now I would pursue arguments related to the evidence peculiar to my own action to show how the findings of fact, and the judgment of the trial Judge, and also the judgment of the Appeal Court cannot be sustained if there is a full understanding of the evidence.

But could I pick out first issues that over-ride in importance all of the detailed argument necessary if we are to examine the whole of the evidence, and when I have finished these important issues, perhaps the Court would indicate to me if it is necessary to prove my case in more detail.

The first question that I would wish to ask concerns the very nature of the processes of Law itself. Can it be understood that the whole weight of the Law is directed to giving Justice as between man and man in every circumstance where there is an injury sufferred by one of the parties; can it be inferred that there is a duty on the lawyers engaged in the preliminaries to ensure that there is a genuine "injury" involved in the proposed action.

It is necessary to ask this question as an examination of the circumstances of this action will show, but it is also a question that is being asked more and more frequently to-day by many people caught up in a web of litigation that is not of their choosing.

To many people it appears that lawyers are not concerned as to the merits of the action they investigate or the justice they would seek, but welcome plaintiffs no matter how preposterous may be their claims. It would seem that lawyers exercise their talents to so manipulating the presentation of the evidence that some colour of right of an "injury" is preserved for a Court to consider.

Although it would be a ready explanation for any such questionable circumstances that it is for a Court to decide the issue, it does not seem to the public at large that "justice" is the motive force for such actions.

Consider this action. There is definite evidence and it is evidence supplied by respondent's own agents that makes it absurd to claim that all the damage on her property arises during the short period of her ownership. Other evidence in hand or immediately available on enquiry shows that there was preliminary action taken for a Court action some years earlier, apparently abandoned. It would seem conclusive that if any injury has arisen them the respondent was in the most emphatic way, the author of her own misfortunes. If the meaning of the words in these documents as printed on pages I56 - I64 was in doubt, then examination of the area itself was practical and was in fact undertaken. How then can lawyers permit an action to go before the Courts that professes to show that the respondent has sufferred an "injury" that necessitates costly legal examination to determine.

If it is accepted that an injury exists. Then there is great discrepancy as to estimated costs of repairs. The respondent's claim has jumped from £266.4.9. PI45 L9. to £I406 page I49 and then back to £726 page I53. The appellant provides evidence that the work as

specified at £I406 is grossly over estimated. The valuer's estimate is £600. page 83.and the valuer makes a definite denial that his estimate is directed at the work done, the work on which the action is based page 82 line 50. The appellant provides a workmam willing to do repairs more thorough than anything proposed by the respondent so that all possible issues are settled and the cost is to be slightly more than respondent's original estimate. Appellant's workmam quotes £270 page 98.

It should be noted that the respondent originated this action in the Magistrate's Court on the basis of her original estimate, and then makes two other estimates that remove the action to the Supreme Court. But before the action comes to a hearing the respondent is allowed to proceed with renewal of her drainage on lines as proposed by appellant's workmam, and what should have been a slightly cheaper job. No documents were ever presented on the cost of the work done, the action is allowed to continue in the Supreme Court, and the judgment is eventually based on the estimate provided for substantially different work. Nobody is concerned to examine what should have been the true cost of the work done or the manner in which the appellant has been put at a disadvantage.

There seems no justification for the procedure followed. It could infer tacit acceptance by all parties of am estimated scale of costs for repairs that justified taking the action to the Supreme Court. Surely there is responsibility on a Judge to be watchful of such possibilities, but in this action the evidence of the appellant is discarded out of hand when he no longer has the opportunity to cover the need in some other way.

In many countries to-day, in England also I believe, the cost of Law actions is oft-times boosted to unnecessary heights. It could be said that Justice is being priced out of reach of the average man,although there is also a great cynicism of the Justice that is available in the Courts: the two issues are both inherent in this action and are worthy of the attention of this Court.

Next I would question the etiquette that bars any questioning of a Judge's "finding of fact". I know the argument used to support this policy. It was the first handicap imposed on me by the Appeal Court, but unless the findings are open to Appeal, there seems little purpose in an Appeal.

Appeal is invariably based on the issue that the Judgment is against the weight of the evidence and the appellant would assess the evidence to show the inconsistency. Of necessity the reasoning must include consideration of the "finding of fact".

May I say that if a "finding of fact" is to be inviolate whatever the evidence. then is the process of Justice completely closed to an Appellant.

In this action there is a "finding of fact"
"The process consisted in the invasion into cracks in the plaintiff's wall of encroaching roots with the result that cracks occurred in the enclosed drainage pipes.....accelerated since I954".

There is authoritive evidence on the age of the trees, and there habits of growth. Authoritive evidence on the age of the roots and the probable age of the cracks. All the probabilities show that the drainage block and drains developed cracks, most likely from thermal expansion, in its early history when the trees were vigorous of growth and that root penetration arose because of the original break down of the structure and was far advanced at the date when the respondent purchased the property.

Such probabilities of the early history of the property is supported by the evidence of the appellant who has intimate knowledge of the property back into the I940's

Such probabilities are given additional weight by the evidence provided by the respondent herself, or her agents, as given in detail in the documents printed on pages I56 - I64. We are given a detailed picture of the conditions of the property early in I956. We know that cracks existed in the drainage pipes at this time and that they date back to I952 at least

But the plan provided for this action gives details of the condition of the property in I960 and the details are confirmed for I96I. There is a close parallel in all the details, a complete denial of any finding "accelerated since I954". Nor can the contention implied by the continuation of the "finding of fact" page I25 line 25. "suitable for its purpose" be sustained. Neither fractured drains nor fractured "walls" can be classed as suitable for their purpose in a legal sense.

The only support for the Judge's "finding of fact" rest on the opinions of some of the witnesses and the evidence of the man who replaced the drainage. The man who made such an heroic fight against the roots that after two years and five cleanings the roots were then so thick "that you could not get a pencil through" page 46 L.I

Any man of commonsense, and possibly Judges also would know that such conditions cannot arise in a property of three flats in continuous occupation. But this same man, a licensed drainlayer, was under Health Regulations liability to repair a damaged sewer drain thoroughly. and should have put in a proper cleaning eye at the time he was first called to the property. But "no trouble doing maintenance ..... we had the hole", page 50 line 7, and any responsible tradesman can assess the value of this man's work and the value of his evidence.

The Judgment is noteworthy for its complete lack of understanding that there could be evem contributory negligence on the part of the respondent although her failure to repair her drainage in I956, if not at the time of purchase, should have been the only important factor for the Judge to consider.

The Judge discards the only precedent that parallels this action and wends his way through a whole series of precedents that are quite unrelated to the substance of the action here awaiting judgment. We are reminded of a man attempting a parody of a simple conjuring trick who shows what he is about by first throwing away the key card in the pack that would have led him immediately to the solution. He goes through an elaborate process of collecting foreign cards from other packs and by intricate manoevuring builds them into a maze by which he is eventually guided to a golden screem through which we can see the back view. somewhat distorted, of the figure of Justice.

Men of similar training would applaud the performance for its technical skill but a layman is only conscious that it is a distorted view of Justice that is disclosed and that Truth seems to have been lost in the maze.

Which brings me to the main issue that really underlies this Appeal. A precedent is being created that a respondent may deny knowledge of the true purchase price she paid for the property, page 39 line 50. She may deny knowledge that this action was originated in the Magistrate's Court page 38 line 48. She may deny knowledge that her survey made to support legal action on another section of this boundary was in error, page 39 line 9. She may deny knowledge of legal action or documents prepared and produced by her them solicitor in I956 pages I08 - II0, and these matters are of no consequence; so long as the denials are consistent and complete so that all knowledge of defects in her property at the time of purchase are deniend, then will the Law

ignore all the weight of evidence, and strain every detail to give her "justice". Page I40 line 3I onwards.

The precedent is being created that a respondent may bear false witness on material parts of her evidence; it can be so obvious that the trial Judge censures her conduct page II7 line 40, and the Appeal Judges uphold the truth of the censure, page I40 lines 28 - 36. but such matters are to be of no importance in assessing the value or truth of the action. or in influencing the judgment that will be given.

I would ask the very pertinent question - Since when has Truth beem a matter of no importance in British Justice.

The legal issue is simple. For when this action is stripped of all legal entanglements there is only one question that this Court has to answer.

Does a mam, when he buys an old property, buy also the need and the responsibility to repair that property; and does the liability to make the repairs stay with him down through the years, or can the liability be evaded after a suitable interval of time, by surrounding the issue with legal argument.

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CASE
for the Appellant

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