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IN THE SUPREME COURT OF
THE TERRITORY OF PAPUA
AND NEW GUINEA

No. W.S. 96 of 1959 (P)

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
THE LIBRARY

BETWEEN:

FRANZ SPERRER

Plaintiff.

v.

WILLIAM JOHNSTON

Defendant.

JUDGMENT

At the conclusion of the hearing of this action I indicated to Counsel that I had come to the conclusion that the Plaintiff was entitled to recover the sum of £986.13.8. with whatever costs might be appropriate, having regard to the payment into Court by the Defendant and the issues remaining for determination at the trial. I also indicated that in my view the actual hearing was mainly concerned with the determination of what amount, if any, ought to be paid to the Plaintiff in excess of the sum paid into Court. I was disposed to allow the costs incurred since the payment into Court, or the costs of the actual hearing, at a lower rate. I intimated, however, that although I felt disposed to exercise my discretion in this way, it was proper first to determine what might be the correct form of judgment to enter and that prima facie this would determine the question of costs.

I have consulted the English Practice and Rules which at the present date are broadly similar to the Rules at present in force in Papua. I think the correct analysis of the matter is this that the Court should not only consider the fact that money has been paid into Court. It is necessary to look at the pleadings or in our case Notice of Defence to ascertain precisely what issues are alive and therefore before the Court for determination at the trial. If the Plaintiff was

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required to establish any general issue as a condition to re-covering judgment, he is prima facie entitled to the costs of the action although he may lose the costs on any particular issue upon which he fails.

In this case the liability of the Defendant was admitted but Paragraphs 5, 6 and 7 of the Statement of Claim were denied. In the result, the Plaintiff would have had judgment entered against him had he failed to prove that he sustained the injuries set out in Paragraph 5, the consequences set out in Paragraph 6 and the damage set out in Paragraph 7.

The Defendant may be taken not to have contested the quantum of the Plaintiff's claim up to a certain figure but he did not admit in relation to that figure either that the Plaintiff had suffered this damage or was entitled to judgment for any sum of money. Before recovering any sum as a judgment, even the sum paid into Court, it would have been necessary for the Plaintiff on the pleadings to prove facts sufficient to complete his cause of action.

Therefore I think that the Plaintiff is entitled to judgment for the sum of £986.13.8. and not merely for the balance in excess of the sum paid into Court. The Plaintiff did call evidence to establish the facts to which I have referred, and the witnesses were cross-examined on the hearing in relation to those facts. I think therefore that the judgment should carry costs on the scale appropriate to a judgment for £986.13.8.

I direct that the money in Court be paid out of Court to the Plaintiff or his Solicitor and that the costs of the action be taxed.

Chief Justice.

1/12/1959.