

Sy. Overleaf

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between:-

GENTIRUCO A.G. ..... APPELLANT

AND

FIRESTONE SOUTH AFRICA (PROPRIETARY) LIMITED .. RESPONDENT

Coram: Ogilvie Thompson, C.J., Trollip, Rabie,

Muller, JJ.A. et Corbett, A.J.A.

Heard: 19 November 1971.      Delivered: 16 February 1972.

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J U D G M E N T .

Trollip, J.A. :-

The provisional orders for costs made by this Court in this litigation and the reasons for them are set out at the end of the judgment delivered on 22 September 1971 (not yet reported) and need not be repeated here. In pursuance of paragraph D of those orders Firestone applied, and Gentiruco counter-applied, for them to be varied in certain respects. This judgment deals with those applications, and it should be read with our previous judgment. (The references to the latter are to the typed pages thereof.)

This Court provisionally ordered Gentiruco to pay 40% of Firestone's taxed party and party costs in all three courts (excluding certain costs separately dealt with). Firestone in its application for a variation claimed that it should be awarded all its costs, or, alternatively, that the proportion of 40% should be substantially increased; Gentiruco resisted that application and counterclaimed for an order that Firestone should pay a substantial proportion of its costs, or, alternatively, for a substantial reduction of the proportion of 40%, and for certain other relief.

As appears from this Court's previous judgment, Firestone, although the successful party, was provisionally not awarded all its costs of the litigation because it had raised and failed on the objections of lack of novelty (anticipation) and subject-matter (inventiveness). The first broad submission made on its behalf was that the claims of the specification in suit were so vague and insufficient that it had acted reasonably and properly

in raising and persisting in those objections. In support thereof it invoked Nel v. Nel 1943 A.D. 280 at p. 288/9. The defect in the claims mainly relied upon was the uncertainty of the meaning of "computed Mooney". That defect, it was pointed out, also affected certain other integers in the claims and, indeed, permeated all the claims, thereby vitiating them, as this Court has held. The expression "computed Mooney", it was also emphasized, was hitherto unknown in the art; it had been coined by the inventors and used for the first time in the specification. Consequently, so the argument proceeded, Firestone, when sued by Gentiruco, was faced with the uncertainty of the meaning of the claims created by the use of that expression; hence, with its back to the wall in the litigation (cf. Nel v. Nel, ibid.), Firestone had acted reasonably and properly, not only in raising those objections, but also in relying on an extensive range and variety of documents to prove them, i.e., to prove that, whatever the Court ultimately found the claims .... /4

claims meant, they had been anticipated or were not inventive. Indeed, it was even maintained that, by framing the specification in such an ambiguous and insufficient manner and by refraining throughout from amending the claims to remove such defects, Gentiruco, and not Firestone, was "responsible" for Firestone's having raised those objections and for the manner in which they were canvassed. (For the origin of the use of "responsible" in this context, see the dictum of Gardiner, J., in the Union Share Agency case, 1926 C.P.D. 129 at p. 141, quoted on p. 272 of our previous judgment.)

Those arguments, in my view, cannot prevail.

Firstly, despite the novelty of the concept and the uncertainty of the meaning of "computed Mooney", it must have been quite clear to Firestone that the invention, as described and claimed in the specification, related fundamentally to the use of tough or high (measured) Mooney rubbers with a minimum

degree of toughness, i.e., those rubbers hitherto regarded as practically unprocessable (see pages 96, 172, and 241 of this Court's previous judgment), and that the phrase "a 'computed Mooney' plasticity of at least 90" was used in the relevant claims to express that minimum degree of plasticity. (On this aspect I think that any difficulty created by the rubber, Diene 55, can be disregarded, for it was an unusual rubber and probably unknown at the effective date of the specification - see p. 144 - and that must have been known to Firestone at all material times.) Consequently Firestone, being in doubt about the precise meaning of the phrase, should nevertheless have assumed at the outset that that integer of the claims involved the use of tough rubbers with a measured minimum Mooney of about 90. Accordingly, it could and should have made and prepared for its objections of anticipation and obviousness on that basis. That would have been a safe, practical, and fair assumption to have made. For it is clear from the explanation of "computed Mooney" in the body of the specification (and this

was common cause) that, whatever its true meaning, the computed Mooney of a rubber is sometimes the same as, but it is never less than, its measured Mooney; so, if tough rubber with a measured Mooney of a least 90 is assumed, it would mean that its computed Mooney would also not be less than 90; and that is what claim 1 (the broadest claim) and most of the other claims prescribed.

It was, however, submitted that, since the meaning of "computed Mooney" was so uncertain as to be meaningless, Firestone was entitled to assume, and this Court ought to have assumed, that rubbers of any toughness or softness were useable in the invented process. But that would have been quite unrealistic. For this Court did not hold that the expression "a 'computed Mooney' plasticity of at least 90" was meaningless; it merely held that it was uncertain which of four different possible meanings or methods of computation it conveyed; and, in any event, such an assumption would have been a travesty

of the invention as described in the specification.

It was for those reasons that this Court itself, having held that the meaning of "computed Mooney" was ambiguous, assumed that that integer of the claims involved the use of tough rubbers having a measured Mooney of at least 90 in order to determine those objections (see pages 180 and 243). And despite Firestone's criticism of it, I think that that assumption was correctly made. Firestone should also have made and acted on the same assumption at all relevant times.

Indeed, it is clear, I think, that Firestone, from an early stage, did approach the situation on that basis. Thus, Dr. Bull, who was mainly responsible for collecting possible anticipatory documents for Firestone, explained under cross-examination that, by "tough" rubber "in the context of the anticipations", he meant generally rubber with a measured Mooney of more than 90, and that it was reasonable to adopt that figure for the purpose of discussing anticipation. And when Firestone's counsel opened its



case at the trial, he stated in regard to the objection of anticipation that, notwithstanding the novelty of the concept of computed Mooney,

"the Court will accept, where necessary, a conversion from the recognised standards of measurement of viscosity, or plasticity, .... to this new scale of 'computed Mooney' .... (and) will be entitled to use the inventors' own definition, viz. that the 'computed Mooney' must be equal to, or greater than, the actual measured Mooney. So that accepting for the purposes of this aspect of our case, that computed Mooney is a valid concept .... then it is sufficient for us to show that rubbers had a measured Mooney of at least 90 to bring those anticipated uses within the scope of the claim".

The other ambiguities or insufficiencies in the claims relied on by Firestone do not take its argument on this aspect any further.

Consequently, in my view, the ambiguity or uncertainty of the meaning of "computed Mooney",

and .... /9

and other defects in the claims, did not necessitate or justify the production and use by Firestone of the mass and variety of documents relating to anticipation and obviousness (said by Gentiruco to be about 120 documents) and the protraction of the litigation caused by them and the evidence concerning them. In that regard it is also relevant to bear in mind that an appreciable number of those documents were relied on to prove obviousness; but, as Firestone did not prove that they or any part of them constituted common knowledge at the relevant time, they did not even qualify for consideration in the determination of that issue (see pages 233 to 236); and the incurrence and wastage of those costs were not in any way due to any defects in the claims.

Secondly, I must confess to some difficulty in understanding how, because of the defects in the claims, Gentiruco was "responsible" for Firestone's having raised anticipation and obviousness as objections, let alone for the somewhat extravagant manner in which they were canvassed. However, in

order to dispose of this part of Firestone's argument, it suffices merely to say that we entertain no doubt that, even if the claims had been reasonably certain in meaning and not insufficient in any respect, Firestone would still have raised those objections and canvassed them in the manner that it did. Or to put it in another way: we are satisfied that it was not the defects in the claims that induced Firestone to raise those objections and to canvass them as it did, but its determination to attack the patent on the grounds of lack of novelty and subject-matter.

In support of its argument under this head Firestone also relied on sections 43 (6) and 54 (1) (a) of the Patents Act, No. 37 of 1952. Both provisions say in effect that the Commissioner may, in the exercise of his discretion as to costs, take into consideration the conduct of the patentee in framing defective claims and permitting them to remain defective. The situation postulated by those sections for the exercise of that discretionary power against

the patentee, is, of course, not present here. It only arises where the specification or claims are defective but the Commissioner nevertheless decides in the patentee's favour to uphold the specification, subject to its being suitably amended, instead of revoking the patent, or to grant relief in respect of any valid claim that has been infringed. Nevertheless, Firestone contended that those provisions embody a principle of general application, namely, that a patentee can and ought to be penalised by an adverse order of costs for framing defective claims and allowing them to remain defective. Assuming, without determining, the existence and content of such a principle, I do not think that it ought to be applied here, since, for reasons already given, there was no causal connection between the defects in the claims and the raising of and the manner of canvassing the objections. In other words, sections 43 (6) and 54 (1) (a) do not advance Firestone's cause.

Thirdly, even if it could be assumed

to have been reasonable, proper, or prudent for Firestone to raise those objections and to canvass them in the manner that it did, I do not think that that assists it. In our previous judgment we held that it was reasonable and proper for Firestone to have denied infringement, and, applying Nel v. Nel, supra, we awarded the costs of that issue to Firestone (see pages 282/3). But we provisionally differentiated between the issues of infringement and of anticipation and obviousness. In consequence, we provisionally declined to apply Nel v. Nel, supra, to the latter issues and preferred to adopt in respect of them the dicta of Gardiner, J., in the Union Share Agency case, supra, and of Bowen, L.J., in the Badische Anilin case, 2 R.P.C. 73 at p. 118. The reasons for doing so are fully set out at pages 272 to 284, and need not be repeated here. It suffices to say that I have not been persuaded by Firestone's argument that our provisional decision was wrong in any respect.

Consequently, Firestone's first

submission .... /13

submission fails.

Firestone's second broad submission for variation of the 40% proportion related to the particular order made by the Court a quo in paragraph 7 (e) of its orders, namely, that all the costs of the trial and appeal to it occasioned by the calling of certain overseas witnesses (Deutsch, Meishner, Hainbach, and Zutrauen) had to be paid by Firestone (see p. 268). Firestone's cross-appeal against that order was struck off, so that the order in par. 7 (e) has to stand (see p. 269). In addition, this Court, in provisionally ordering Gentiruco to pay 40% of Firestone's costs in each of the two lower Courts, excluded the abovementioned costs therefrom (see paragraph C, pages 289 and 290). The result is that Firestone will therefore have to pay Gentiruco's costs in the lower Courts relating to the calling of those witnesses, whilst Firestone's costs in those Courts relating thereto are provisionally excluded from the 40% apportionment. (If the evidence of those witnesses

occasioned .... /14

occasioned any costs to Firestone in the appeal to this Court they would be subject to the 40% proportion, for we made no order excluding them.) It should also be explained here that those witnesses were called by Firestone on the issues of anticipation and obviousness. Firestone therefore submitted that, since the Court a quo's order in par. 7 (e) in Gentiruco's favour has to stand, "the overall picture of costs" was substantially altered, and that the effect of also excluding those particular costs from the 40% apportionment was "to penalise Firestone twice for the same error of judgment", which was inequitable.

In considering this argument I find it convenient to deal also with Gentiruco's counter-application that the proportion of 40% ought to be substantially altered in its favour. This Court, in fixing that proportion, did take into account, as a broad but not precise factor, the still extant, special orders of the Court a quo obliging Firestone to pay certain costs of Gentiruco's, including those relating

to the abovementioned witnesses. That is indicated by the wording of the relevant orders. In Gentiruco's counter-application facts were furnished purporting to show the amount of time taken up at the trial by the evidence of those witnesses and by canvassing the issues of anticipation and obviousness. Thus, the evidence of those witnesses occupied 511 pages, or about 10%, of the record of the viva voce proceedings. That represents an appreciable amount of time at the hearing. But as against that, the other data, and especially the information on the documentary evidence, concerning the issues of anticipation and obviousness tend to show that the proportion of 40% was somewhat too favourable to Firestone. But the latter factor must not be pushed too far in Gentiruco's favour. For it seems probable that Gentiruco's data and information do not take sufficient account of the fact that a not insubstantial portion of that evidence and those documents related to the issues on which Firestone succeeded, such as the state of the art at the relevant



time and the technical background to the invention. Those factors therefore tend to cancel each other out. As explained in our previous judgment, the proportion of 40% was a practical estimate of the appropriate apportionment of the costs between the parties, and it was only arrived at after long, careful, and anxious consideration. In the result I have not been persuaded by the arguments of either party that it was wrong or ought to be altered.

Consequently, Firestone's second submission and Gentiruco's counter-application in regard to the 40% proportion both fail.

Gentiruco also submitted that Firestone ought to be ordered to pay the costs relating to the issue of infringement on grounds that can be summarised thus: Firestone unnecessarily denied the relevant facts relied on by Gentiruco, it adopted a tardy and less than candid attitude towards its obligation to discover documents relating to infringement, and the costs thereby unnecessarily incurred by Gentiruco were

not insubstantial. The reasons for provisionally awarding those costs to Firestone appear from our previous judgment (pages 282/3). Counsel for Gentiruco conceded that ordinarily, for those reasons, Gentiruco should pay those costs, but he contended that the aforementioned grounds constituted exceptional circumstances justifying a different order. I do not agree. Despite the argument to the contrary, I still do not think that Firestone acted unreasonably or improperly in completely denying infringement. After all, the onus was on Gentiruco to prove it, and in our previous judgment we merely assumed, without deciding, in Gentiruco's favour that it had discharged that onus. Moreover, the evidence on the issue, which was given by three witnesses, only took up about two days of the trial, the argument in each Court less than one day, and the relevant documents filled less than one volume of the record. Hence, as our previous judgment stated (p. 283), the investigation of the issue in each Court did not, relatively speaking,

unduly protract or materially add to the costs of the litigation. Lastly, even if there were substance in Gentiruco's complaint about Firestone's conduct concerning discovery, I do not think that, by itself, it justifies a variation of the order of costs at present under inquiry. That order must therefore remain undisturbed.

Gentiruco also raised the question of the costs of the massive record of the trial that took place in Baltimore, U.S.A., concerning the American patent, between the parent companies of the parties. Its counsel submitted that the record was mainly, if not wholly, irrelevant to any issue on which Firestone had succeeded. It became common cause, however, that the only order that could be made by this Court is that the Taxing Master of the Court concerned should determine in the ordinary way all questions arising in regard to those costs. Such an order will be made.

That leaves for consideration the question of the costs of the expensive U.S.A. Commission.

The order for that commission was granted by consent on Firestone's application. However, at the instance of Gentiruco, the costs of the application and commission were reserved for the decision of the trial court; the order also expressly noted that Gentiruco did not at any time concede that the commission was necessary. The Court a quo, reversing the order made by the Commissioner at the trial, ordered Gentiruco to pay those costs, but allowed the costs of only one counsel at the commission (see pages 266 to 270 of our previous judgment). Gentiruco appealed, inter alia, against that order. This Court, whilst not overlooking that the commission dealt mainly with the issue of inventiveness, nevertheless provisionally ordered those costs to be costs in the cause. In doing so, it was influenced by the view of the Court a quo that Gentiruco had itself largely brought about the need for the commission by unnecessarily refusing Firestone's reasonable requests to make certain admissions. That provisional order means that if it stands, Gentiruco would have to

pay 40% of Firestone's costs of the commission. Gentiruco contended that that would be inequitable, since, for various reasons urged by it, Firestone ought to be made to pay all the costs thereof.

We have been furnished with a copy of the somewhat elaborate and complicated proceedings for the issue of the commission. The answering affidavit filed on behalf of Gentiruco made its attitude to Firestone's application quite clear: it did not concede that any of the evidence sought to be taken was relevant to any of the issues to be canvassed at the trial, but it appreciated that the Commissioner could not at that stage determine its relevance or admissibility; moreover, Gentiruco was not desirous of holding up the trial, the commencement of which had already been delayed; consequently, it agreed to the granting of the commission, subject to the costs being reserved and not being made costs in the cause (as Firestone prayed), for, it submitted, if such evidence turned out to be inadmissible on any ground,

Firestone should be ordered at the trial to pay the costs.

In the result, the Commissioner, with the parties' consent, reserved the question of the costs. Consequently, I think that the appropriate order to make now must depend upon the nature of the evidence actually taken on commission, its relevance and probative value to the issues raised and determined in the litigation, and this Court's decision on those issues and on the costs relating thereto.

According to Firestone's application the evidence sought to be adduced on commission related to (a) facts concerning anticipations, (b) facts concerning certain documents which Firestone intended using at the trial in connection with common knowledge, (c) facts for the purpose of identifying and proving the records of the trials in Baltimore and Canada, (d) facts concerning criticisms of the specification in suit, and (e) facts relevant to the allegation that the specification and claims in suit were not

framed in good faith and with reasonable skill and knowledge.

The evidence adduced on commission relating to (a) and (b) was directed mainly at proving the publication, circulation, or accessibility in the U.S.A. of certain documents, including some of the tire test reports dealt with in our previous judgment (see pages 239 and 240), and at showing that some of them were in the possession of General Tire and Rubber Company or were known or available to certain of its employees, including the inventors of the patent in suit. Its relevance and probative value to the issues of anticipation and common knowledge or inventiveness are most obscure and its contribution to proving the state of the art at the relevant time or the technical background to the invention in suit was negligible, if not nil. Firestone should therefore bear the costs of such evidence, since we have held that it failed on those issues and is liable for most of Gentiruco's costs relating thereto.

No evidence was adduced on (c), presumably because the parties came to some arrangement about the records of the Baltimore and Canadian trials.

In regard to (d) and (e), the only witness examined was one TeGrotenhuis, a lawyer, who assisted in drafting the American and South African patents. His examination was directed at showing that he and the inventors possessed certain information at the time the invention was evolved, and also at proving that there were certain discrepancies in the figures and data between the South African specification and certain disclosed documents. These discrepancies were ultimately admitted by Gentiruco at the hearing before the Commissioner but without its conceding their relevancy. Again, the relevance and probative value of that evidence to any issue between the parties at the trial is not apparent. Certainly, the allegation of want of good faith or absence of reasonable skill and knowledge in framing the specification and claims was not put to TeGrotenhuis crisply.



And if that allegation was relevant, as, for example, to a possible attempt by Gentiruco to amend the specification, and TeGrotenhuis's evidence thereon was necessary, the allegation in Firestone's application for the commission - "from enquiries made by it Firestone believes that Mr. TeGrotenhuis is unwilling to come to this country to testify on behalf of Firestone" - was not substantiated. For at the commission he testified, without being challenged thereon, that he was never asked by anyone whether he was willing to come here to testify in person.

On the question of Gentiruco's alleged unreasonable refusal to admit certain facts, thereby rendering the commission necessary, the position is as follows. Gentiruco did make many admissions in terms of Firestone's requests. But Firestone alleged in its application that the commission was nevertheless essential because Gentiruco's qualifications to those admissions rendered them inadequate to establish the facts that Firestone was seeking to prove. In reply

to that allegation Gentiruco pointed out that it had previously informed Firestone that, if it reframed its requests for admission without referring to the record of the Baltimore trial, Gentiruco might make further admissions, but, it alleged, that was never done, in consequence of which, when the trial was set down for hearing in September 1967, it (Gentiruco) had then refused to make any further admissions.

But, Gentiruco stated further, once the relevant documents had been properly identified and considered by it, it would be in a position to make further admissions which might eliminate the need for some of the evidence sought to be taken on commission. (That apparently did subsequently happen.) Firestone answered by denying that its requests for admissions were not thereafter reframed and that the relevant documents had not hitherto been properly identified, and it concluded by stigmatising Gentiruco's attitude as being throughout "obstructive".

In view of that dispute on the affidavits,

I cannot say, at any rate without having heard argument thereon, that Gentiruco's refusal to make further or unqualified admissions was unreasonable at the time of the application for the commission. And, in any event, even if it was then unreasonable, I do not think that it has now any decisive bearing on the issue of the costs of the commission. For, as stated earlier, that issue must now be resolved by the nature of the evidence actually taken on commission, its relevance and probative value to the issues in the litigation, and this Court's decision on those issues and on the costs relating thereto.

Section 76 (1) (g) of the Patents Act, 1952, empowers the Commissioner to issue commissions de bene esse. That discretionary power is exercisable "where it appears convenient or necessary for the purposes of justice" (see Rule of Court 38 (3), rendered applicable by the concluding part of section 76 (1) and section 82 (1) of the Patents Act). Despite Gentiruco's disputing from the outset the relevance

and admissibility of the proposed testimony, it must have appeared, prima facie, to the Commissioner that it was convenient or necessary for the purposes of justice for the commission to issue, especially as Gentiruco consented thereto. However, as costs were reserved and in view of that dispute and Gentiruco's present application, I think that the onus is on Firestone, as the applicant for the commission, to satisfy us now that the commission was convenient or necessary for the purposes of justice in order to justify our confirming that the costs should be costs in the cause. For reasons already given, I do not think that Firestone has discharged that onus. Moreover, as also pointed out above, in so far as the commission related to the issues of anticipation and inventiveness, the liability for those costs must fall on Firestone. It should therefore be ordered to pay all those costs. It follows that it should also pay all Gentiruco's costs incurred on the appeals to the Court a quo and this Court in respect of the viva voce and

documentary evidence taken on the U.S.A. commission.

But the time of the actual hearing on the appeals taken up by such evidence was negligible, and the same can be assumed to apply to the trial, since the contrary was not contended. Hence, for taxation purposes, such time can be ignored. The provisional orders previously made by this Court must therefore be varied accordingly.

As to the costs of the present proceedings, we were asked by Firestone to order that they be costs of the appeal on the merits, since, it was contended, the present proceedings were merely an extension of the hearing of that appeal. It is true that, where this Court leaves the question of costs open for later debate, such an order may be justified. But the present proceedings are distinguishable from such a situation. We canvassed the question of costs fully in our previous judgment, arriving at certain provisional conclusions thereon, in an effort to induce finality in this lengthy litigation and especially

to avoid the expense of a hearing on costs. Hence, the present proceedings are not merely an extension of the hearing of the appeal on the merits; they are in reality fresh proceedings initiated by the parties' applications to have the provisional orders varied. Now Firestone has failed entirely in its application, whereas Gentiruco has succeeded in having the provisional orders amended in an important respect, which was also an issue that it raised by its appeal to this Court against the relevant orders of the Court a quo. Consequently I think that Gentiruco is entitled to these costs. To make them costs of the appeal would mean condemning Gentiruco to pay 40% of Firestone's costs of proceedings in which Gentiruco has succeeded and Firestone has failed, which would be most inequitable.

The following orders are therefore made:

I. The orders made on 22 September 1971 by this Court are amended in terms of paragraph D thereof as follows:-

(i) .... /30

(i). Paragraph B2 thereof is amended to read as follows:-

"2(a). Firestone is ordered to pay the costs of the appeal to this Court relating to the recorded viva voce and documentary evidence taken on the U.S.A. commission granted on Firestone's application.

(b). For the purpose of the taxation of costs, the length of time occupied by the hearing relating to such evidence can be regarded as nil.

(c). Gentiruco is ordered to pay 40% of Firestone's taxed party and party costs of the appeal, including the costs in respect of three counsel, but excluding those costs dealt with in this sub-paragraph and paragraph A hereof".

(ii). Paragraph C thereof is amended to read as follows:-

"C. The Orders of the Court a quo.

1. Paragraph (6) of the orders of the Court a quo, as amended, is amended to read as follows:

'(6). Save to the extent set out in paragraph (7) hereof, the Respondent (Gentiruco) is ordered to pay -

(a). 40% of Appellant's (Firestone's) taxed party and party costs of the action and counterclaim, excluding those particular costs mentioned in paragraph (7) hereof;

(b). 40% of Appellant's (Firestone's) taxed party and party costs of the appeal, including the costs of the application to amend this Court's order, but excluding those particular costs mentioned in paragraph (7) hereof;

(c). Appellant's (Firestone's) taxed party and party costs in respect of Respondent's (Gentiruco's) application for leave to take evidence on commission in the U.S.A.

(d). Appellant's (Firestone's) taxed party and party costs for its application for the setting aside of certain notice of



set down filed by the Respondent (Gentiruco)  
for 16 May 1966.'

2. Paragraph (7) of the orders of the  
Court a quo, as amended, is amended by adding the follow-  
ing sub-paragraph thereto -

'(f). Firestone is ordered to pay the  
costs of its application to take evidence on commission  
in the U.S.A., the costs appertaining to such commission,  
and the costs of the trial and appeal relating to the  
recorded viva voce and documentary evidence taken on  
that commission. For the purpose of the taxation  
of costs, the length of time occupied by the hearing  
at the trial and on appeal relating to such evidence  
can be regarded as nil.'

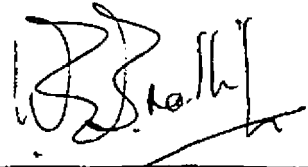
3. Paragraph (8) of the orders of the  
Court a quo, as amended, is amended by deleting the  
words, 'save that the costs of only one counsel are to  
be allowed in respect of the proceedings before the  
U.S.A. commission.'"

II The following paragraphs are added to the orders

of this Court made on the 22 September 1971 -

"E. All questions whether, and if so, to what extent and in what amount or amounts, the costs of Firestone relating to the record of the trial in Baltimore, U.S.A., should be allowed and taxed in Firestone's party and party costs in any court, shall be determined in the ordinary way by the Taxing Master concerned.

F. Firestone is ordered to pay the costs of the parties' applications and the hearing on 19 November 1971 for the variation of the provisional orders made on 22 September 1971, such costs to include the costs relating to three counsel." ]



W.G. Trollip, J.A.

Ogilvie Thompson, C.J. :-		
Rabie,	J.A. :-	concur.
Muller,	J.A. :-	
Corbett,	A.J.A. :-	