them to be presented, the Appellant kept 3 trucks idle for 27 days at the **"pickup"** point. The damages claimed were set out as being

(a) M23 918-16 being the amount the Plaintiff could have made had the contract terms been fulfilled.

(b) M48 132-63 being the **"standing charge"** for the aforesaid days.

The Respondent in its plea denied that it entered into any written agreement with the Plaintiff and stated that on the date alleged it had made an offer to the Appellant on the terms contained in the order form which was described in the Appellant's declaration. The Respondent also denied that it was a term of the agreement that the bales would be so presented by the Respondent. The allegation was that the bales were to be delivered by another person and the Appellant was to transport them as and when they arrived upon notification by the Respondent. It is specifically denied in the plea that the Respondent kept the Appellant "posted at the pickup point."

It appears from the judgment of Guni J. that when the trial was called in court there was no appearance for the Respondent and counsel for the Appellant applied for default judgment to be entered against the Respondent. Because it was a claim for damages it was necessary for evidence to be led which apparently

was done.

The evidence however does not appear to me to have supported the appellant's claims. Firstly there was no evidence as to how the first claim of M23 918.16 was made up nor was any basis laid for a finding that this amount represented what the appellant could have made had the contract been fulfilled. Incidentally it is by no means clear from the evidence precisely what the terms of the contract were.

Secondly, due to the lack of evidence regarding the terms of the contract, there was no basis for a finding regarding the so-called "standing charges". What term of the contract, if any, required the appellant to keep vehicles standing idle at the "pick-up" point does not appear either from the pleadings or from the evidence.

In view of the fact that the damages alleged to have been suffered by the appellant were not proved, I am of the view that the proper order in the court below should have been one of absolution from the instance. This was properly conceded by counsel for the respondent.

Save, therefore, that the order of the court a quo is altered to read "Absolution from the instance is granted with costs" the appeal is dismissed with costs.

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J. BROWDE
JUDGE OF APPEAL

.....
G.P.C. KOTZE'
JUDGE OF APPEAL

.....
VAN DEN HEEVER
ACTING JUDGE OF APPEAL

Delivered at Maseru on the 29th June, 1996.