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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">IN
THE APPEAL COURT FOR THE KINGDOM OF SWAZILAND
</span></font></font>
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">(Held
at Mbabane)</span></font></font></p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">Civil
Appeal No.32 of 1995</span></font></font></p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
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In
the matter between</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

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ERIC

MTHANDAZO MAHLALELA
<span
lang="en-US">Appellant</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

and

</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

UBOMBO

RANCHES LTD

<span
lang="en-US">Respondent</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%;

widows: 0; orphans: 0">
Shababgu

 for
the Appellant</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Kuny
S.C. and P. Flynn
 for
the Respondent</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Coram:

</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-left: 5.08cm; text-indent: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Schreiner
Leon and Browde JJA</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

JUDGMENT</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
SCHREINER
JA:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
The
Appellant sued the Respondent in the High Court claiming E 406
406 by
way of damages for repudication or breach of a contract of
employment. He alleges in his Particulars of Claim that he had
been
employed under a contract of employment constituted by a number
of
documents including a letter of appointment, an employment
agreement
and a schedule of service for pensionable staff.

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
These
allegations are admitted by the Respondent in its plea. After
making
certain allegations concerning the length of the term of
employment
and the benefits to which he was entitled the Appellant alleges
that
the Respondent dismissed him or terminated his employment on the
15th

March 1991 and that this amounted to a breach by repudiation of the

contract of employment.</p>

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The

Respondent raised by way of special plea an allegation that on the

3rd May 1991 the Appellant entered into an agreement with it wherein

he agreed that having received an amount of E2869,08 he would have no

further claims arising from his employment or the termination of the

contract. The alleged agreement is attached to the plea and its terms

are not in dispute. How the relevant document is to be construed and

whether it is binding upon the Appellant are issues which have to be

determined before there is any debate as to the matter raised concerning the validity of the dismissal.

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This

issue involves the construction of the agreement</p>

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2</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-

height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
of
employment and its application to the facts and the correctness
of
the procedures taken in the dismissal.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
The
document which is said to set out the contract which bars the
Appellant from proceeding with his claim for damages is in the
following terms:-</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"
UBOMBO RANCHES LIMITED
</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
SHORT
RECEIPT</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I,
E. Mahlalela do hereby certify that I have this 3rd day of May
1991
received the sum of E2869,08 (two thousand eight hundred and

sixty
nine Emalangi and eight cents) from Ubombo Ranches Limited
which is
in full and final settlement of all that was due to me up to and
including the 15th day of March 1991.

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

I

also certify that having received the above stated amount, I shall

have no further claims against the abovenamed Company arising from my

employment or the termination of my employment.

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Signature

of Recipient: E. Mahlalela Bate 3.5.1991</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Signature

of witness: Illegible Occupation: Salaries Accountant

"</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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Below

the short receipt and apparently on the same sheet of paper is a

certificate of the paying official a Mrs. Potgieter. This merely certifies that she paid to the Appellant the amount of E2869,08 partly by cheque and partly in cash.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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If

the document is a receipt and nothing more it would not constitute a

final bar to further proceedings it would have evidentiary value only. However, if notwithstanding its designation by the Respondent

as a receipt, it constitutes by its terms a binding contract of waiver or acceptilatio the special plea must be upheld and the appeal

dismissed.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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Normally

the onus rests upon a debtor to show that he has paid the amount of

the debt* If he produces a document signed by the creditor in which

receipt of the amount owed is acknowledged the burden of proof resting on the debtor to prove payment is provisionally discharged.

But it is not oonclusive proof and does not preclude the creditor from establishing that notwithstanding an acknowledgment that payment

has been made this is not so. Christie on the Law of Contract in South Africa 2nd Ed writes at p. 518</p>

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</p>

<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

<font size="2" style="font-size:

10pt">3</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

"To

assist him to discharge the onus on Mm the debtor is entitled to demand a receipt and to withhold payment if this is refused him.

A

receipt has the characteristic of an admission by the creditor and,

like any admission, is strong evidence of the fact admitted.

Unlike

an agreement of release or acceptilatio, however, it is not conclusive, "being the act of the creditor only, it can be challenged by him on the ground of his own

mistake".</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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The

difference in effect between a mere receipt and a contract

settling a

dispute between the parties is emphasised in the judgment of Centlivres J A in Lanfear v du Toit 1943 AD 49 at 69 to 70 and the

decision of both the majority of the Court and of Watermeyer JA involved a construction of the contract. Other cases which deal with

the effect of a receipt and a contract of settlement are Dunker v Paddon & Brock Ltd 1903 TH 166 and Merchand & Another v Butler's Furniture Factory 1963 (1) SA 885

(N).</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

<font size="2" style="font-size:

10pt">In
Merchand's case (supra) Harcourt J refers to the statement in
Halsbury Laws of England, Simonds ed. vol 15 p.411 para 735 where
the
author deals with the effect of a receipt and states that
"in
some cases a receipt may amount to a contract the terms of which
are
embodied in it" In a note to
this</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">

<font size="2" style="font-size:
10pt">passage
it is said:-</p>

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height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">

<font size="2" style="font-size:
10pt">"The
only question arising in these cases is really one of
construction of

a contract, the documents in question being something more than
mere
receipts. See Prosser v Lancashire and Yorkshire Accident
Insurance

Co. 1890 6 T.L.R.285 CA) Elton v Great Northern Rail Co (1901) 17
T.L.R. 453, CA."</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

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widows: 0; orphans: 0">

<font size="2" style="font-size:
10pt">As

a matter of principle there should be no objection to a document
constituting a simple receipt and, additionally, a contract of
abandonment, acquiescence, release renunciation, surrender or
waiver.

</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Christie
op cit at 524 says:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"Of
these words by far the most commonly used is waiver which is regarded
in many of the cases as interchangeable with any of the other words".</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Waiver
can only occur when the person foregoing a right contractually agrees
to do so. If there is no contract then recourse may have to be made
to estoppel. In the present case the first enquiry is whether there
was a contract giving rise to a waiver.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
4</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;

widows: 0; orphans: 0">
The evidence in regard to the execution of the "Short Receipt" is short and not by any means clear. There are two passages in the record dealing with the issue. The first is in chief where the Appellant is asked by his Attorney what he has to say to the allegation that he had settled the claim. He replies:-</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"I do not agree with that and I do not know how I would have settled it with then because I had never informed them or got in touch with them to tell then that I am taking this matter to court. So, there was nothing to settle I signed the document as an acknowledge (sic) that I was receiving it as it was put. I was receiving it as it was put and broken down in that receipt. And the signing was that I was not disputing the break down. And the signing was that I was not disputing the break down as it was put".</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Under cross-examination the Appellant said:-</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;

widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">"When
I went to Mrs. Potgieter for my dues my salary was withheld for a
reason I don't know, which has nothing to do with the
package
(inaudible). So now I said at least I must have my salary which
you
refused to give me which had nothing, like I said, it had nothing
to
do with this matter and she insisted that the company - I must
sign
this document and they will give me my salary which to me
reflects
that this clause has nothing to do with the short receipt. I
signed
for the short receipt, I never signed for this clause I was
signing
for what I was getting, for the money, I was receiving, in return
I
signed this document, this clause was just inserted there just to
...
to disorganise people like myself, otherwise I don't see
its
importance and its need in the receipt
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">ADVOCATE
KUNY: Well that may be we will obviously have to argue that
before
his Lord-ship, but I really want to establish the fact that when
you
signed that document, that clause was there, it was not inserted
sub-sequently. You may not have understood, you say what you were
signing, but it was there and you put put your signature to it
PLAINTIFF: The top of the form of this document is written short
receipt ADVOCATE KUNY: Yes</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

PLAINTIFF:

To me it appeared as a receipt, like you get a receipt for the dues,

that is what I was signing for ADVOCATE KUNY: You say you</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

5</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

PLAINTIFF:

To me it appeared as a receipt, like you get a receipt from the

any payment that you make. Basically that was the reason that I signed that I wrote up a short receipt and I signed it and that did

not matter to me because I was signing for a short receipt the money

that I had received"</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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I

have made no attempt to correct any punctuation or wording in the above extracts from the record because it is often not possible to

decide what was intended. The Court . must do the best it can from

the garbled transcript and assume that it reflects the garbled evidence which was given by the

Appellant.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

I

do not think that there is any doubt that a contract was concluded.

The offer proceeded from the Respondent when Mrs. Potgieter tendered

the short receipt for signature stating that the Appellant would not

receive his money unless he signed it. The Appellant signed it.

He

did not say that he did not know what he was signing or that he was

misled by the heading of the document into believing that it constituted an acknowledgement of receipt with no other provisions

attached. His attitude was that his signature was appended with a mental reservation on his part that he was signing the receipt part

only. There is nothing to suggest that Mrs. Potgieter was aware of

his private reservation and agreed that the apparent effect of the

signature was to be modified so as to constitute the signature of the

receipt simpliciter. In these circumstances a contract was concluded

in the terms of the document and it is not open to the Appellant to

set up a private reservation as to the effect of his signature. I do

not think that any issue of unilateral mistake can arise on the above

evidence.</p>

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<font size="2" style="font-size:

10pt">I
now turn to the interpretation of the short receipt. But for the
use
of the word "certify" in two places in the document
there
is no problem about its import. The document emanated from the
Respondent and in the ease of an insoluble ambiguity must be
construed contra proferentem. For the Appellant the argument is
that
the word "certify" goes no further than giving rise to
an
evidential representation and does not constitute a waiver or
abandonment of rights. While it is true that the word
"certify"
is unusual in a document of the present kind it is not wholly
inapposite. The signatory is abandoning any rights which he might
have and making his abandonment clear in a formal document. The
Shorter Oxford</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">6</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">Dictionary
includes among meanings of the word "certify" ..
"to
"to make a thing certain";, "to guarantee as certain";,
and
"to attest by formal or legal certificate". In the
present
context it is the formal recording of an act by the signatory.
The
act is the abandonment of any further claims against the
Respondent
arising from the Appellant's employment an the termination of his
employment. I do not therefore think that the wording of the
short

receipt is such as to change the nature of what the Appellant has done, namely, contractually abandoned all claims against the Respondent arising from Ms employment or its termination.

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

I

would therefore uphold the plea in bar and dismiss the appeal with

costs.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

It

is not necessary nor is it desirable to enter into questions concerning the wrongfulness or otherwise of the dismissal or the procedural steps which were taken to give effect to

it.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

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W.H.R.

SCHREINER

</p>

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</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

I

agree</p>

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</p>
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R.
LEON</p>
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</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
agree.<span
lang="en-US">..</p>
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</p>
<p align="justify" style="margin-left: 1.27cm; text-indent: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
J.
BROWDE</p>
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