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IN THE PRIVY COUNCIL

No. 31 of 1960

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
(GOLD COAST SESSION)

B E T W E E N

JOHN KWESI TAYLOR (Plaintiff) Appellant

- and -

JOSHUA FANYE DAVIS (Defendant) Respondent

UNIVERSITY OF LONDON
V.C I.
10 FEBRUARY
INSTITUTE OF ADVANCED
LEGAL STUDIES

6354?

CASE FOR THE RESPONDENT

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1. This is an appeal from a judgment of the West African Court of Appeal dated the 28th June, 1956, dismissing the Appellant's appeal against a judgment of Acolatse J. in the Supreme Court of the Gold Coast dated 30th December, 1954, dismissing the Appellant's claim to an account of a timber business carried on by the Respondent as the Appellant's agent and for payment of the amounts found due to the Appellant on the taking of the account, and allowing the Respondent's counterclaim in the sum of £1,351.6.3 in respect of goods supplied and money lent by the Respondent to the Appellant.

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2. By a writ of summons dated 21st January, 1953, the Appellant instituted

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THE PRESENT SUIT

claiming against the Respondent the following relief :-

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(1) To have a full and true account of the timber business carried on by the Respondent as the Appellant's agent;

(2) Payment of the Appellant's share or interest under (an agreement under seal dated 31st January, 1946) by the Respondent;

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- (3) Damages for breach of the said agreement by the Respondent.

Alternatively the Appellant claimed :-

- (1) The Appellant and the Respondent were partners under the said agreement;
- (2) An account to be taken of the said partnership transaction and for payment by the Respondent to the Appellant of what is due to the Appellant under the said agreement;
- (3) The dissolution and winding up of the said business. 10

pp. 3-4

pp. 50-53

3. By his Statement of Claim delivered on 8th April, 1953, the Appellant pleaded that he was a timber merchant and that the Respondent was a timber contractor; that by an agreement under seal dated 31st January, 1946, the Respondent, as the Appellant's agent, agreed to carry on timber contract or business for the mutual benefit of the Appellant and the Respondent for the period of 10 years and to pay 50% or one-half of the nett profits of the said business, from time to time, to the Appellant; that the Appellant had performed his part of the said agreement by advancing such sums of money to the Respondent as the Respondent required from time to time for the said timber business or contract, but the Respondent had not, when required by the Appellant, paid to the Appellant his share of the nett profits of the said timber business or furnished the Appellant with any account of the said timber business from time to time, although required several times by the Appellant to do so; and that the Respondent had carried out extensive timber cutting operations on Basofi timber land in Assin-Apimenim State. 20

pp. 5-6

4. By his Defence delivered on 23rd April, 1953, the Respondent pleaded inter alia, that by the Agreement under seal dated 31st January, 1946, it was a condition precedent to any liability on the part of the Respondent that the Appellant should from time to time pay sums of money to the Respondent when and as required for the carrying out of the contract; that the Appellant had not at all times made such advances; that by reason of the Appellant's failure to advance such sums, the 40

Respondent had had to carry on the contract with his own money; that about the latter part of 1948, at the Appellant's request, accounts were taken between the Appellant and the Respondent by Mr. C.N. Ayornoo, who by consent of the parties investigated and audited the accounts, which showed that the Appellant was indebted to the Respondent; that the business books were then taken away by the Appellant and were still in his possession; that after the taking of these accounts all business relations under the said Agreement were by mutual agreement terminated and the Respondent thereafter carried on his own business; that in November, 1952 (as amended by order) the Appellant attempted by an arbitration to effect a reconciliation with a view to renewing business relations but failed.

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By his Counterclaim the Respondent pleaded that from 31st January, 1949 to 22nd June, 1951 he had supplied timber to the Respondent and had advanced sums of money on loan to the aggregate amount of £1,351.6.3., particulars of which were given; and that the said sum remained due and unpaid; and he claimed payment of that sum by the Appellant.

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5. By his Reply dated 11th May, 1953, the Appellant pleaded, inter alia, that under the Agreement of 31st January, 1946, the Respondent was the Appellant's agent in the acquisition of the Basofi Timber concession and any timber concession acquired by the Respondent; that under the said agreement the Respondent assigned to the Appellant all his interests (if any) in the said timber leases and agreements; that he denied the condition precedent alleged by the Respondent; that under the agreement the Appellant had from time to time advanced sums of money totalling £1,980.6.5 against which the Respondent had supplied timber and repaid moneys totalling £1,351.6.3 (the amount counterclaimed by the Respondent) leaving a balance of £629.0.2 in the Appellant's favour; that he denied that the accounts were taken in 1948, or that he had retained the business books; that he denied that the agreement was mutually terminated as alleged by the Respondent, and averred that all timber business carried on by the Respondent was so conducted as the Appellant's agent and as such liable to account; that the arbitration referred to by the Respondent was abortive through acts of

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the Respondent and no award was made; and that he denied that the object of the said arbitration was to renew business relations between the parties. In answer to the Counterclaim, the Appellant denied that he was indebted to the Respondent in the sum counterclaimed or any sum.

- p.10 6. The action came on for hearing before Acolatse J. on 23rd June, 1953, when the Appellant gave evidence. He deposed that he began in the timber business in 1944. He approached the Respondent as a personal friend to join him in the business in 1944. The Respondent was then a photographer. The Appellant "was having three concessions" at the time he asked the Respondent to join him. The concessions were in Assin Apimenim State. The parties went to the Omanhene of this State with a view to the Appellant obtaining a concession in Assin Bereku. The Chief demanded £200 which the Appellant gave to the Respondent by cheque in the Respondent's name to be handed over to the Chief. This cheque is recited in the Agreement of 31st January, 1946. The witness produced a copy of this Agreement, which was admitted in evidence by consent. (The said agreement is hereinafter referred to as "the Agreement"). The Appellant then deposed that the Agreement was for 10 years, that he was the principal man and it was his function to supply all advances of money required for the business. The Respondent's duty was to operate the business on advances made from time to time by the Appellant. The Respondent did not advance any money in the business. The parties were to share net profits on a 50-50 basis. The Appellant carried out his part of the Agreement. He advanced money to the Respondent from time to time. The Respondent kept the books, which the Appellant checked from time to time. The Respondent still had the books. 10 20 30
- pp.50-53
- p.11 7. At this stage an order was made by consent referring the question of accounts involved to E.J. Blankson, Court Clerk, to go into accounts and report his findings to the Court. The Referee heard evidence between 30th June, 1953 and 25th May, 1954. In the course of the proceedings before the Referee, the Referee, on the 8th October, 1953, sought further instructions from the Court and in answer to his request was told by the learned Judge to "take all available evidence of parties to assist you in the taking of accounts in this matter to arrive at your conclusion of facts". 40 50
- pp.71-129
- pp.88-89
- p.89

8. In his report to the Court the Referee fully set out the pleadings and issues, the evidence he had heard and his findings thereon.

9. The Referee set out the Appellant's allegation that between 1945 and 1950 the Appellant had made advances under the Agreement totalling £1,980.6.3 to the Respondent for the purposes of the business. Of this total, the Respondent challenged the sum of £590. The Referee accepted the Respondent's evidence entirely and rejected this sum of £590. The Referee accepted also the evidence of the Respondent that the Appellant withdrew a total of £740 from the business. By deducting these two sums, the Referee found that the Appellant had a credit of £650.6.3 balance of money invested in the business by him. The Referee further accepted the evidence of the Respondent that he had put a total of £701.11.3 into the business when the Appellant failed to make the necessary advances. As to the Counterclaim, the Referee accepted the evidence of the Respondent that the Appellant owed him £1,351.6.3 in respect of timber supplied and money lent between 1949 and 1951.

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The Referee accepted the evidence of Ayornoo, a witness called by the Respondent, that accounts were taken by him in 1948; that all books were supplied by the Respondent; that the business under the Agreement ceased when the accounts were taken; and that the books were then removed by the Appellant.

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The Referee accepted that the Respondent made loans to the Appellant after the business ceased, and accepted the evidence of the Respondent and his witnesses with regard to the attempted arbitration in 1952.

p.149, 1.8

p.149, 1.28

He found as a fact that no profit was disclosed for the period during which the Agreement was operated.

p.149, 1.39

He therefore concluded that the Appellant must regard the £650 balance found to have been advanced by him as a loss, that the Respondent on the other hand was entitled to be refunded the £701 advanced by him by reason of the Appellant's default, and that the Respondent was entitled to judgment for the amount of his counterclaim, £1,351.6.3.

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- p.23, 11.1-9
- p.23; 1.35 -
p.24, 1.2
- p.23, 11.14-22
- pp.25-37
- p.35, 1.9
- p.36, 1.33
- p.37, 1.1
10. The Referee presented his Report and record of proceedings to the Court on 8th December, 1954, and the learned Judge admitted the Report after objection taken by the Appellant.
11. The learned trial Judge delivered his judgment on 30th December, 1954. He held that the relationship between the parties under the Agreement was that of principal and agent, and that the Agreement came to an end, as found by the Referee, in 1948 when the parties reached disagreement. 10
- The learned Judge accepted that accounts were taken in 1948, and accepted the Referee's findings as to the respective sums advanced by the parties prior thereto, and that the business had run at a loss. He held, however, that the Respondent was not entitled to a refund of the money so advanced by him, nor to payment of the balance of £50 odd standing in his favour. He held that this was a bad investment, as although the Respondent was not obliged under the Agreement to make any advances, there was no evidence that the money was advanced at the request of the Appellant. 20
- After considering also the question whether the timber concession upon which the Agreement between the parties was founded was a valid Concession, and holding that it was not, the learned Judge held that the Referee's Report was full and comprehensive on all material facts, and he accepted and adopted it, and dismissed the Appellant's claims. 30
- As to the Respondent's counterclaim, the learned Judge accepted the Referee's findings of facts and gave judgment in favour of the Respondent accordingly.
12. The Appellant appealed from the said judgment to the West African Court of Appeal. The judgment in the said Court of Appeal was delivered by Korsah, C.J., who held that there was ample evidence on the record to support the findings of fact and the judgment. The learned Chief Justice also stated that in his opinion the conclusions of the learned trial Judge both in law and in fact were correct, and that it was right to assume that he formed his judgment irrespective of any view expressed by the Referee although he may have been in agreement therewith. Coussey P. and Baker Ag.J.A. concurred. 40

13. The Respondent humbly submits that this appeal should be dismissed with costs and the judgment and order of the West African Court of Appeal should be affirmed for the following, among other,

R E A S O N S

1. BECAUSE there were concurrent findings on the facts in issue in the Respondent's favour in the Courts below.
- 10 2. BECAUSE there was ample evidence to support such findings of fact.
3. BECAUSE the Agreement between the Appellant and the Respondent was terminated by mutual consent in 1948.
4. BECAUSE the accounts taken between the Appellant and the Respondent in 1948 correctly showed a balance in the Respondent's favour.
- 20 5. BECAUSE the Respondent is not liable to account to the Appellant in respect of any period after the termination of the Agreement in 1948.
6. BECAUSE the Appellant is indebted to the Respondent in respect of the amount claimed by the Respondent in his counterclaim.
7. BECAUSE the judgments in the Courts below are correct for the reasons therein stated and should be upheld.

BERNARD MARDER.

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- and -

JOSHUA FANYE DAVIS (Defendant) Respondent

CASE FOR THE RESPONDENT

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