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IN THE PRIVY COUNCIL

No. 23 of 1959

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

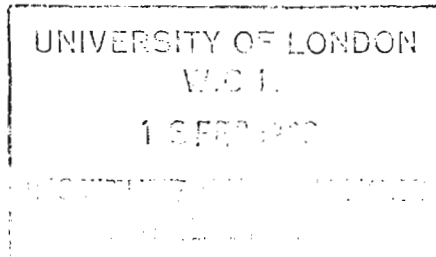
B E T W E E N :

OLATURUJI OMOTAYO Defendant - Appellant

- and -

A. Y. OJIKUTU Plaintiff - Respondent

RECORD OF PROCEEDINGS



63557

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Solicitors for the Appellant.

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 23 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :OLATUNJI OMOTAYO Defendant-Appellant

- and -

A. Y. OJIKUTU Plaintiff-RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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Hearing of Motion for Conditional Leave	11th March 1957
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IN THE PRIVY COUNCIL

No. 23 of 1959

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

OLATUNJI OMOTAYO Defendant-Appellant

- and -

A. Y. OJIKUTU Plaintiff-Respondent

RECORD OF PROCEEDINGS

No. 1

In the
Supreme Court

No. 1

10

WRIT OF SUMMONS

Writ of
Summons.

IN THE SUPREME COURT OF NIGERIA

7th January,
1954.

CIVIL SUMMONS

Suit No.662 of 1953

BETWEEN

A.Y. OJIKUTU ... Plaintiff

- and -

OLATUNJI OMOTAYO ... Defendant

To Olatunji Omotayo of 62, Wakeman Street, Yaba.

20

You are hereby commanded in His Majesty's name to attend this Court at Tinubu Square, Lagos on Monday the 22nd day of February 1954, at 9 o'clock in the forenoon to answer a suit by A. Y. Ojikutu of c/o His Solicitor 37, Broad Street, Lagos against you.

The Plaintiff's claim against the defendant is for a sum of £35,000. --. --. whereof £21,000.--. is Special Damages and £15,000 is General Damages

In the
Supreme Court

for Breach of the Contract of Agency between the
Plaintiff and Defendant.

No. 1

Issued at Lagos the 7th day of January, 1954.

Writ of
Summons.

(Sgd.) O. Jibowu
PUISNE JUDGE.

7th January,
1954
- continued.

	£	S	D
Summons ...	25.	-	-
Service ...		5.	6
Mileage ...			
	<hr/>		
	£25.	5.	6d
	<hr/>		

10

No. 2

No. 2

Statement of
Claim.

STATEMENT OF CLAIM

20th March,
1954.

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

Suit No. 662 of 1953

BETWEEN :

A. Y. OJIKUTU ... Plaintiff

- and -

OLATUNJI OMOTAYO ... Defendant

STATEMENT OF CLAIM

20

1. The plaintiff is a general Trader who lives and carries on business at No. 1, Jagun Lane, and No. 49, Idumagbo Avenue, Lagos.

2. The Defendant is also a general Trader, who lives and carries on business at No. 62, Wakeman Street, Yaba.

3. Early in September, 1952, the defendant went

to England as Agent of Nigerian Produce and Enterprises Ltd.

In the
Supreme Court

No. 2

Statement of
Claim.

20th March,
1954

- continued.

4. The Defendant, the plaintiff and some 3 other persons were shareholders of the said Nigerian Produce and Enterprises Ltd.

5. On the return of the Defendant to Nigeria later in September, 1952, the Defendant tried to persuade the said Company to enter on a business transaction.

10 6. The Defendant stated that he had met one B. Frankel in London who had 50 Bedford Trucks in Chassis available for Sale and Export.

7. The Defendant disclosed that the said Transaction would require a deposit of £5,000. - . - .

8. The said Company refused to enter upon the transaction on the ground that the Company could not afford it.

20 9. On or about the 23rd day of September, 1952, the Defendant approached the plaintiff in an attempt to persuade the plaintiff to enter upon the said transaction in his own personal capacity.

10. On or about the said 23rd day of September, 1952, the Defendant agreed to act as the plaintiff's Agent in the proposed transaction by seeing to the safety of all moneys advanced and a successful carrying out of the business transaction if the plaintiff would pay his expenses thus 35% of the Nett Profit on the whole transaction.

30. 11. The plaintiff agreed to pay the defendant a sum of £300. - . - for the Defendant's expenses and 35% of the Nett Profit as remuneration for the Defendant's services.

12. The plaintiff instructed the defendant to go back to England by Air and satisfy himself that the said B. Frankel was a good business man and that 30 of the Lorries were actually ready for shipment in October, 1952, and the balance of 20 in November, 1952, as the defendant had previously stated.

40 13. The plaintiff further instructed the Defendant to obtain and satisfy himself with a Banker's

In the
Supreme Court

No. 2

Statement of
Claim.

20th March,
1954

- continued.

Reference and or Guarantee from the Bankers of the said B. Frankel.

14. The plaintiff further instructed the defendant to see that the Vehicles were assembled before shipment.

15. The plaintiff promised to send the required deposit of £5,000. - . - to the defendant if the defendant after arrival in England was satisfied that it was a safe business transaction.

16. On the 29th day of September, 1952, Defendant by Cablegram which was later confirmed by letter informed the plaintiff "12 Vehicles already assembled Ready for shipment Customers impatient send Money immediately". 10

17. On the 1st day of October, 1952, the plaintiff sent a sum of £5,300. - . - to the defendant; £300. - . -. of which was in payment of the agreed sum of the expenses of the defendant and £5000.-- the required deposit for the said vehicles.

18. On the 10th day of October, 1952, the defendant by Cablegram informed the plaintiff "Position alright proceeding to Hamburg". 20

19. On the 31st day of October, 1952, the defendant got back to Lagos.

20. On the 1st day of November, 1952, the defendant reported that the said B. Frankel required a further deposit of £15,000. - . - to make a total deposit of £20,000. - . - before he could make the promised shipments.

21. £18,000. - . - of the said £20,000. - . - was to be a deposit against the shipment of the first 30 Vehicles. The total cost of these was £28,500.-- : £2,000.-- of the said £20,000.-- was to be a deposit against the shipment of the balance of 20 Vehicles. 30

22. Defendant assured the plaintiff that if Frankel were paid the £15,000. - . - the shipments will be effected

23. The defendant requested the said B. Frankel to come to Lagos.

24. On the 12th day of November, 1952, the said B. Frankel arrived in Lagos.

25. On the 13th day of November, 1952, the defendant and Frankel saw the plaintiff and persuaded the plaintiff that all that was needed to effect the shipment was a further payment of £15,000. -. - by the plaintiff.

10 26. On the 15th day of November, 1952, the plaintiff agreed to pay the further £15,000. -. - and also agreed that part deliveries are acceptable.

27. On the 15th day of November, 1952, the plaintiff handed a Cheque for £15,000. -. - in favour of the said B. Frankel to the defendant who handed it to the said B. Frankel.

28. On the 18th day of November, 1952, the said Frankel left for England.

29. The said B. Frankel failed to ship the said goods in spite of several requests.

20 30. The plaintiff later discovered that a Receiving Order in Bankruptcy was made against the said B. Frankel in London on the 18th day of June, 1953, that he was adjudicated a Bankrupt on the 24th July, 1953, that he had fled from England and that a Warrant was out for his arrest.

31. The plaintiff demanded from the defendant the Banker's Reference and or Guarantee which satisfied the defendant in the first place.

32. The defendant was unable to produce any such reference or guarantee.

30 33. The plaintiff acted throughout on the statements, assurances and advice of his said Agent, the defendant.

34. The said Statement, assurances and advice were negligently and or untruelly made by the said Agent, the defendant.

35. No Agent exercising Ordinary care would have made the said statements assurances and advice with intent that a principal do act on them as the defendant did. X

In the
Supreme Court

No. 2

Statement of
Claim.

20th March,
1954

- continued.

Strike out
at trial X

In the
Supreme Court

No. 2

Statement of
Claim.

20th March,
1954
- continued.

36. The defendant made the said statements, assurances and advice in breach of his Contract of Agency.

37. The plaintiff in consequence lost the said £20,000. - . - and has further suffered damages.

38. The plaintiff therefore claims £20,300. - . - as Special damages and £14,700. - . - as General Damages as per the Writ of Summons.

Dated the 20th day of March, 1954.

Lawson & Adewale
PLAINTIFF'S SOLICITORS.

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No. 3

Statement of
Defence.

20th April,
1954.

No. 3

STATEMENT OF DEFENCE

(Title as No.2)

STATEMENT OF DEFENCE

1. Save and except as may be hereinafter expressly admitted the defendant denies each and every allegation of fact contained in the plaintiff's Statement of Claim as if each were set out seriatim and specifically traversed.

20

2. The defendant admits paragraphs 1, 2, 6, 7, 16, 17, 18 and 24 of the Statement of Claim.

3. The defendant denies paragraphs 9, 10, 11, 12, 13, 22, 23, 27, 33, 34, 36 and 37 of the Statement of Claim.

4. The defendant is unable to admit or deny paragraphs 28 and 30 of the Statement of Claim.

5. With reference to paragraphs 3 and 4 of the Statement of Claim the parties and 3 others were at the material times partners in the firm known as Nigerian Produce and Enterprises Syndicate (hereinafter referred to as "the Syndicate") which had its office registered under the Registration of Business Names Ordinance, at 1 Jagun Lane, the residence of the Plaintiff. The defendant went to

30

England as the Agent for the said Syndicate in September 1952 returning the same month.

In the
Supreme Court

No. 3

Statement of
Defence.

20th April,
1954

- continued.

10 6. The defendant denies paragraphs 5 and 8 of the Statement of Claim with reference thereto and to the facts admitted in paragraphs 6 and 7 of the Statement of Claim, the defendant avers that on his return to Lagos he informed his partners of the nature of the business proffered by the said B. Frankel. The Syndicate considered that the proposed business was desirable but that it could not be entered into for lack of capital.

7. Thereupon the plaintiff agreed to lend and did in fact, lend the required money to the Syndicate on the basis that 50% of the profit from the transaction should go to him, 15% to the defendant, and the remaining 35% to the other three partners.

20 8. Paragraphs 9, 10 and 11 of the Statement of Claim are denied. In particular the defendant denies that he at any time attempted to persuade the plaintiff to enter into the transaction on his own behalf. The defendant avers that throughout his connection with this transaction he acted as the Agent of the Syndicate in respect of the sum of £5000 lent to the Syndicate.

30 9. With further reference to paragraphs 11 and 17 of the Statement of Claim the defendant avers that the expenses of £300 referred to was agreed to be paid to him, not on behalf of the plaintiff but on behalf of the Syndicate and same was to cover travelling expenses.

10. Paragraph 14 of the Statement of Claim is admitted under explanation that the instructions given were given and made by the Plaintiff acting on behalf of the Syndicate.

11. Paragraph 15 of the Statement of Claim is admitted but the Defendant states that the promise was made on behalf of the Syndicate.

40 12. The defendant admits paragraphs 19 and 20 of the Statement of Claim subject to the explanation that on his arrival at Lagos on 1st November 1952 he reported to his partners including the plaintiff that Frankel's demand for a further £15,000 had been made prior to his (Defendant's) departure from London and that he had refused to pay this further

In the
Supreme Court

No. 3

Statement of
Defence.

20th April,
1954
- continued.

sum as he had neither the funds nor the authority to do so.

13. The defendant denies putting forward the proposition contained in paragraph 21 of the Statement of Claim.

14. With reference to paragraph 25 of the Statement of Claim the defendant denies having persuaded or attempted to persuade the plaintiff to accept Frankel's terms. The defendant was present at the meeting on 13th November 1952. At that meeting Frankel refused to ship unless the further £15,000 were paid. The defendant, as Agent of the Syndicate thereupon washed his hands of the business and left the meeting.

10

15. On the 14th November 1952 the Plaintiff informed the defendant that he the plaintiff had come to an arrangement with Frankel. The defendant believes and avers that the arrangement included the terms set out in paragraph 26 of the Statement of Claim. These arrangements were entered into by the plaintiff on his own account.

20

16. The defendant believes it to be true that Frankel failed to ship the said lorries as stated in paragraph 29 of the Statement of Claim.

17. With reference to paragraphs 31 and 32 of the Statement of Claim the plaintiff demanded production of a Banker's reference and/or Guarantee only in December 1953. The defendant, not having obtained or been asked to obtain a Banker's guarantee was unable to produce such a document. The defendant avers that he was under no duty to do so. The defendant did obtain for his own information and satisfaction an oral reference from Frankel's Bankers.

30

18. Paragraph 35 of the Statement of Claim is irrelevant and embarrassing and should be struck out.

19. With reference to paragraphs 33, 34 and 36 of the Statement of Claim the defendant denies that there was any contract of Agency between him and the plaintiff, that he made any statement or gave any assurances or advice to the plaintiff as an individual or that any statements, assurances or advice made or given to the plaintiff in any

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Amended by
Order of
Court.
7.7.54.

capacity whatsoever were untrue or negligently made or given.

20. In the alternative if there was a contract of agency between the parties (which is denied) the defendant carried out his part thereof and made what statements and gave what advice and assurances he is alleged to have made and given, truthfully, in good faith and without negligence on his part.

10 21. With reference to paragraph 37 of the Statement of Claim the defendant does not know what damage, if any, has been suffered by the plaintiff but denies that any such damage was due to any act or omission on his part.

22. The action is misconceived and should be dismissed.

Dated at Lagos this 20th day of April, 1954.

Samuel Chris & Michael
DEFENDANT'S SOLICITORS.

In the
Supreme Court

No. 3

Statement of
Defence.

20th April,
1954

- continued.

No. 4

COURT NOTES OF ARGUMENT

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

WEDNESDAY THE 7TH DAY OF JULY, 1954,

BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

Suit No. 662/1953.

A.Y. OJIKUTU Vs. OLATUNJI OMOTAYO.

LAWSON for Plaintiff.
- for Defendant.

LAWSON: The 87 documents relied upon by Plaintiff were handed over by the Plaintiff to the C.I.D. in Lagos when Plaintiff lodged a complaint against the Defendant and one B.Frankel

No. 4

Court Notes of
Argument.

7th July, 1954.

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In the
Supreme Court

No. 4

Court Notes of
Argument.

7th July, 1954
- continued.

of London. This took place before the institution of this suit which was begun on 7th January 1954. The complaint is likely to result in criminal charge against Frankel in London not against the Defendant. The difficulty in England is to lay hands on Frankel who is reported to be in Germany. All our original documents are with the police in London and we have applied for photostat copies for use in this suit.

10

We applied to London for return of all the documents about mid May and then we got the C.I.D. to apply for the photostat copies (copy of C.I.D. Lagos letter dated 28th May to C. of P. London. I have a reply now, this was dated 9th June (Produced) and we now await further word from A.C.P (Company Fraud Dept.) now Scotland Yard. Since this letter Mr. Hamilton of C.I.D. came from England with the head of the local Fraud Section C.I.D. who was handling this matter here and is just returned from Leave. He has assured us that the documents, should arrive any time by post. At the present moment we cannot prove our case in the absence of the documents or copies, and ask for an adjournment. We filed our writ on 19th December. It was issued on 7th January 1954.

20

COUNSEL FOR DEFENDANT: The application is unopposed - But should be granted upon terms: and we will ask for inspection of documents and ask for a vacation date.

30

LAWSON:- We give the assurance refunding documents discovery and inspection.

FERGUSON ORDER:- There will be adjournment, but upon terms, which in all the circumstances, merit costs in the sum of Five (5) guineas to the Defendant in any event. Now this date is fixed for 9 A.M. on 26th October 1954.

40

(Sgd.) F.W. Johnston
PUISNE JUDGE.

FERGUSON for Defendant asks for amendment of Statement of Defence para.17 to substitute the

words "a Banker's guarantee" for the word "One" and to add the sentence - "The Defendant did obtain for his own information and satisfaction an oral reference from Frankel's Bankers."

In the
Supreme Court

No. 4

LAWSON (Unopposed) - But asks for costs.

Court Notes of
Argument.

ORDER: The statement of defence para.17 is amended by striking out the word "One" in the 1st line of the para and substituting therefor the words "a Banker's guarantee". And also by adding to the paragraph the following sentence:- "The defendant did obtain for his own information and satisfaction an oral reference from Frankel's Bankers". Upon this amendment I allow 2 (Two) guineas costs to the Plaintiff in any event.

11th July, 1954
- continued.

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(Sgd.) F.W. Johnston
PUISNE JUDGE.
7/7/54.

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No. 5

No. 5

COURT NOTES

Court Notes.

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

TUESDAY THE 26TH DAY OF OCTOBER, 1954,

26th October,
1954.

BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

Suit No. 632/1953.

A.Y. OJIKUTU Vs. OLATUNJI OMOYAYO.

30

AKINTOYE and LAWSON for Plaintiff.
FERGUSON and OGUNBANJO for Defendant and MAIANJU.

Calls Evidence

Re para 35 Statement of Claim.

LAWSON. Striking out of para 35 Statement of Claim: Supports the para.

ORDER:- I strike out the para which in my opinion is not, as it stands, be proper pleading. Also an application - The word S;rdicate is substituted for "his" in para 3 and 4 statement of Claim.

40

(Sgd.) F.W. Johnston
PUISNE JUDGE.

In the
Supreme Court

No. 6

Plaintiff's
Evidence

A.Y. OJIKUTU

P.W.1. Sworn, Examined, states:-

No. 6

A.Y. Ojikutu.

26th October,
1954.

Examination.

I am ABUDU YEKINI OJIKUTU; I live at 1 Jagun Lane Lagos. Government contracts and Trader and 49 Idumagbo Avenue, Lagos. I know the Defendant of 62 Wakeman Street, Ebute Metta and carries on business as Omotayo Brothers. I know Nigerian Produce and Enterprises Syndicate. These are 5 persons. I, Mrs. C.A. Young, the Defendant, Mrs. Odojukan and Mr. G.C. Omorodion.

10

Early in September 1952 we, the Syndicate, sent Mr. Omotayo to see to getting contracts (for Nigerian Produce) on behalf of the Syndicate. Defendant returned by 23rd September 1952 by air. He made a report of contact with one B. Frankel and had negotiated with him for the purchase of 50 new Bedford Truck chassis. He wanted us to deposit £5000. He told us that Frankel would like us to make a deposit with Frankel through Defendant on which Frankel would ship 30 of the chassis in October and the remaining 20 by November 1952.

20

On this occasion Plaintiff (myself), Defendant, Mrs. Young and Mrs. Odojukan were present. At the time Mr. Omorodion was on the Continent in Europe. Defendant was directed only to make contacts for Nigeria Produce and not for anything else when he was sent to England. We decided not to participate in this lorry deal because we could not afford to do so as we had not the money.

30

On the following day, the 24th September, the Defendant approached me. He said that he had flattered himself with Mr. Frankel that his people in Nigeria are people of no mean integrity and it would be a shame for him to go back and cancel the deal. He appealed to me personally to finance the deal and promised for his part to bring the deal to a successful end. That was early morning. I asked him to come back about midday for my decision. He came. I had detailed my Secretary to tell him to wait. I was out on business. I saw him at about 1.30 on my return. I told him I would be willing to finance the deal. We also, agreed that he would successfully accomplish the deal. I agreed to pay him £300 for his expenses. Also that

40

on successful completion of the deal I would give Defendant a 1/3 share of the net profit although he had asked for 35% of net profit. But later I agreed to give him the 35% which he asked for as the difference was small. This final agreement was not at the 1.30 meeting but was in the evening of that day. Because at this 1.30 meeting, my Secretary, Mr. Dos Ajayi, objected to my giving him the £5000 and suggested that instead I should open a letter of Credit. That is why we did not conclude our deal at 1.30 meeting.

10

The Defendant, on his part, had to fly back to England to complete this Truck deal. I did not give him the "money" before he went away. I did not give him any money at all. I gave him instructions. I told him to see that the chassis are assembled and not to be in cases. Also that he should find out to his satisfaction the financial position of Frankel before he parted with the money which I was going to send to him. Also I gave him this instruction and explained to him that I agreed to send him the money direct as, against the advice of my Secretary, because I was satisfied that he was a business man and owned property free from encumbrances over the value of this money.

20

Defendant even suggested that he would obtain Bank references of Frankel or a guarantee before he parted with any money to him. I agreed to that suggestion.

30

I received this letter from the Defendant confirming the matter. This was received at a later stage - Many other things happened before I got the letter.

(COUNSEL says letter refers to other matter also but convenient to go in at this stage)
(Letter in as Exhibit "A")

The Defendant went back to England. Mrs. Young got to know of Defendant's return to England. She wrote to me. I produce the letter (For Identification by Mrs. Young to be called as a witness).

40

Also Mr. Omorodion came to know and wrote to me. (For Identification by Omorodion as a witness).

I had promised the Defendant to send £5000 to him

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in England. He had to do something first. He sent me a cable in obedience to my instruction. (admitted Exhibit "B"). I regarded this as word that 12 vehicles were ready following my instructions to Defendant. I remitted to Defendant £5300 through the National Bank of Nigeria. (Remittance is admitted) Photostat receipt admitted as Exhibit "C". Original being sent to Scotland Yard. (Admitted as Exhibit "C").

I wrote Defendant on this occasion. (Admitted as Exhibit "D"... Produced by Defendant). I received letter from Defendant confirming his cable Exhibit "B" (Admitted as Exhibit "E").

10

My £5000 was the deposit Defendant had asked for and £300 being the agreed expenses for Defendant.

Defendant cabled and I received it on 10th October admitted as Exhibit "F". Defendant wrote acknowledging receipt of my Exhibit "D" and confirming Exhibit "F" (Admitted as Exhibit "G"). Again a letter from Defendant 20.x.52 (Admitted as Exhibit "H"). I wrote to Defendant on 27.x.52. (Copy admitted as Exhibit "J") The photo. Sent by Defendant (Admitted as Exhibit "K"); (It is a copy of maker's specifications).

20

Defendant returned to Nigeria on 31st October. He did not see to the shipment of any of these lorries before he left England. The 12 vehicles referred to in Exhibit "B" have never been shipped.

I have received neither chassis nor lorries.

30

Defendant said on arrival expressed Frankel's inability to obtain and ship the lorries because Frankel's business was delayed. Therefore Frankel had asked for further advance of £15000 to be in a position to complete the payment to Vauxhall. Defendant had told me that Frankel needed £5000. Now on his return he said that Frankel needed £15000.

Defendant advised me to give Frankel the £15000. So that the deal would be completed.

40

To Court.

TO COURT:- The deal I refer to is the completion of delivery of 30, and then of 20 lorries (total 50).

CONTINUUM: On the arrival of the first shipment of 30 I was obliged to pay the balance due on that 30. After that the balance of 20 was to be shipped. Mr. Frankel came to Lagos. Defendant had told me he was coming. He arrived about 12th November 1952. About 13th or 14th November, I had a meeting with Frankel, Defendant, and one Mac Vicker. Frankel expressed that his inability to get returns home some other business that he was doing and said that he required a further £15000 for this same transaction of trucks. I asked Defendant his opinion. He advised me to give Frankel £15000 after I had made it clear to him as my agent to see to the safety of all monies. So paid out and the success of the transaction.

10

Referred - Para 14 Statement of Defence (last 4 lines). That is untrue (last 2 sentences of para 14 Statement of Defence). It was after this meeting that the Defendant wrote Exhibit "A".

20

Defendant was acting as my agent and not as agent of the Syndicate: Frankel did not refuse to ship until the £15000 was paid to him but he asked for £15000 to enable him to ship 30 trucks. Defendant did not "wash his hands of the business or leave the meeting". He took further part in the transaction. On the day following the meeting Mr. Frankel sent me a letter. That letter is with Scotland Yard - This is photostat copy. (Admitted by consent as Exhibit "L").

30

Defendant assured me that the shipment would be effected on the 30 trucks on my payment of £15000. I agreed to pay it. I paid it on 15th November 1952 in the presence of Defendant in the Slaughter house at the Abattoir in Apapa where I was pressing dressing meat. I am a butcher. Defendant, Frankel and Mc Vicker came to me in the Slaughter house in a car. This was on the day after the meeting. At the Slaughter house the Defendant demanded the £15000. I gave the Defendant my cheque book as I was busy dressing meat. I told him to write a cheque for Frankel for £15000. Defendant wrote the cheque, and I signed it. Cheque produced in Defendant's writing. (Admitted as Exhibit "M") I do not remember why Defendant dated it 18th November. It was because I had to arrange an overdraft with my bankers and I asked him so to date the cheque.

40

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Total price was now £20300. £18000 was to be

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apportioned to the 30 trucks and £2000 of the first £5000 was apportioned to the shipment of the remaining 20 I handed the signed cheque to the Defendant. Defendant continued to act as my agent. - He gave me the original of a letter which, he said, he received from Frankel. The original has gone to Scotland Yard, who supplied the Photostat copy:- (Admitted as Exhibit "N"). Defendant acted as my agent. He supplied me with copies of his letters to Frankel, after the payment of the £15000. (Admitted as Exhibit "01, 2, and 3 by consent). No trucks were ever shipped to me.

10

I contacted Commerce & Industries Department to make a report about Frankel. I received a letter from the Department dated 24th November 1953. (Admitted by consent as Exhibit P).

I asked Defendant for Frankel's Bank reference or guarantee after I got Exhibit "P". He failed to produce either. Defendant was throughout my agent. On Defendant's advice and assurances I believed that the transaction would be safe. I had no other means of knowing whether the lorries were assembled and ready for shipment, than Defendant's statements.

20

Total cost of 12 trucks would be less than what I deposited if they had been ready for shipment. If they had been ready I do not know why then not shipped.

I have not recovered any of my money £20000 and no hope now from Frankel. I have suffered loss of £300 expenses. I had to get an overdraft for the whole of £20000. It carries interest which I am paying. I cannot state the amount. If the transaction had gone through I would have made £200 to £300 on each truck - £10000 to £15000 in all. Defendant has not satisfactorily discharged his own part. Otherwise I would not have suffered loss. I claim damages as per writ:-

30

(Statement of Claim : £20000 and £15000.)
(Writ £21000 15000.)

Lawson applied to amend Statement of Claim, para 38 to read £20000 Special and £14300 General.
Note: Difference between Statement of Claim and Writ and now evidence -

40

DEFENCE:- No objection.

ORDER:- Ruling: Later.

(Sgd.) F.W. Johnston
PUISNE JUDGE.

EVIDENCE IN CHIEF CONTINUES:

I instructed a Mr. Mac Vicker, formerly Frankel's agent in Nigeria to go to England to make inquiries about Frankel. I met him on Frankel's arrival. He and Frankel and Defendant came to me together but Mac Vicker had ceased to act for Frankel. Mac Vicker went to England. He returned and gave me his report (for Identification) in writing.

10 The Defendant told me that he had instructed his brother to make investigations in England. Then he gave me a copy of his brother's letter. He told me that it was his brother's reply to his request.

(Referred to Para 34 of the Statement of Claim)
 (Copy of letter admitted by consent as Exhibit "Q")
 - I paid Mc Vicker £250 for carrying out my instructions.

Cross examined: (Ogunbanjo) Ferguson.

20 I complain that the Defendant has let me down in his assurances. I am not able to say whether he has done so deliberately or not. Defendant knows whether he deliberately misled me or not. Where are the 12 trucks which he said were ready for shipment. On this I say that he deliberately misled me. He told me of contact with Frankel. An assurance was (1) that if £5000 was deposited he, Defendant, would bring the transaction to a successful conclusion. (2) He assured me on his 2nd
 30 return that if I gave Frankel a further £15000 that the 12 trucks ready for shipment would be shipped (3) Exhibit B and Exhibit "F" are further assurances and statements. Again I would describe Defendant's writing the cheque for £15000 himself as an indication of his confidence - I rely on his statements in Exhibit "B". Again his telling me that Frankel was coming out to confirm his statement to Defendant why £15000 further was necessary. If I can think of any more statements I will tell
 40 the Court.

Defendant's advice was (1st) to advise me to handle the truck deal myself when the Syndicate turned it down as a profitable venture (2nd) on his return from England he advised me to put up the £15000 if Frankel came and confirmed what Defendant said.

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That is all I can think of now. He had told me at the onstart that Frankel would finance the matter and I would pay here. At the £15000 period he advised me that Frankel was unable to finance the matter according to his promise as a whole, so that if I gave him a further £15000 he would be able to finance the rest which would be about £10500.

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examination
- continued.

I did discuss with Frankel, not his financial position which the Defendant had told me of previously, but that his expectation in the returns of his business had failed to materialize.

10

Question: Were you satisfied with Frankel's explanations ?

Answer: Yes. Because he confirmed what the Defendant had told me regarding Frankel's requirements to complete the transaction.

Question: Being satisfied with the explanation given by Frankel you advanced him £15000.

Answer: Yes, because Frankel would put in other £10000.

20

Question: You were satisfied then that Frankel had the other £10000 ?

Answer: Yes. Because of what the Defendant had told me and not because of what Frankel had said himself.

27th October,
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Wednesday the 27th day of October, 1954.

Cross-examination P.W.1. Continue

Frankel told me what the Defendant had told me. But I should rely on the statement of Defendant rather than that of Frankel whom I did not know before that date. I did not have same opportunity as Defendant for inquiring into Frankel's position. I did not discuss the position with Frankel because he had only come to confirm what the Defendant had told me. I spoke to Frankel and Defendant was there and was my agent. Mc Vicker was there too with Frankel and Defendant. I did not know then that Mc Vicker was Frankel's agent. Frankel and I reached agreement but I did so on Defendant's previous statement and assurances.

30

40

The Agreement was not reached as a result of my meeting with Frankel.

Referred to Exhibit "L" - This does not state the terms of an agreement between Frankel.

It does not set out the arrangement I made with Frankel.

I did not pay the £15000 on the strength of Exhibit "L" (dated 15th November 1952). It has relation to the facts. Para 4 is a correct statement of fact. The rest of the letter is not wrong but states what has taken place. It confirms the meeting between us. The 3rd para. of the letter did not influence me at all. This letter embodies the terms of the agreement reached between me and the Defendant on Frankel on the 13th November - That is, Frankel in the letter set out the terms of my agreement with the Defendant concerning Frankel.

I did not make any inquiries of Frankel's Bankers as set out in last sentence of the letter. It was impossible for me to make inquiries of Frankel's Bankers because I am in Lagos. My bankers in Lagos could have made inquiries for me if I had asked them to do so but I did not do so because I still relied on what Defendant had told me.

Before I met Frankel I relied on the Defendant and I still relied on Defendant because Frankel confirmed Defendant. I took the decision to pay the £15000; I admit that the meeting took place on 13th November. Four of us present. One Onafeko was not present at that meeting. Nor did Defendant and Onafeko advise against going on further with the transaction. Nor did they walk out of my house. Nor did I ask to be left alone with Mc Vicker and Frankel to reach an arrangement. I did not reach an arrangement with Frankel.

Question: Didn't you fix up a rubber contract with Frankel?

Answer: I did fix up a rubber contract with Frankel but not in 1952 and then it was through Mc Vicker. Nor was an exporting contract with Frankel the reason for my going on with lorry transaction.

I did not call Defendant to my house on 14th November. He always visit me - I cannot remember whether I had a meeting with Defendant on 14th nor

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can I remember Frankel being there. I remember
Exhibit "A".

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examination
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I remember the meeting now because Frankel came to me on the 14th November with the Defendant to confirm what had been arranged on the 13th November. Onafeko was not present. Onafeko was present at a later meeting I cannot well remember but it might have been in March 1953. I agree that Frankel came back to Lagos about May 1953. In that visit Defendant did not attend any meeting with Frankel nor did Onafeko. Onafeko did meet us at a meeting, one meeting, when Defendant, Frankel and Mac Vicker and I met. It was not during Frankel's first visit. I do not know how many visits Frankel made but to my knowledge he came 3 times.

10

The next visit was about March 1953 when he came to see the Defendant and his associates.

It was in March 1953 when a meeting took place at which Onafeko was present, the first time he entered my place. He came with defendant and Frankel. According to Frankel and Defendant Frankel had come to see Defendant relating to a previous discussion on rubber plantation and Cement business. Defendant was not handling these contracts on my behalf. It was not a meeting. They had met and they came to visit me.

20

Question: Did you take the opportunity to ask Frankel when he was going to deliver you paid for lorries ?

Answer: No. We never discussed anything like that.

30

Referred to Exhibit "L" - 2nd paragraph. I should have received delivery of lorries by 17th January but did not, - I had begun to work by mid March when I was going to get them. But I did not inquire of Frankel when I would get delivery because Defendant had told me that the course of the delay was whether the shipment had to pass through Tel Aviv.

FERGUSON: Now I ask for Production of the letter; produced yesterday. Letter from Frankel to Defendant. (The letter is one produced yesterday with Exhibit "O" but differed putting in). The letter is one from Frankel to Defendant -

40

Lawson objects. Does not hold the original -

Ruling:- I suggest further questions to witness
to settle identity of the letter.

(Sgd.) F.W. Johnston
PUISNE JUDGE.

Referred to Exhibit "0.1, 2 & 3":- There are copies
to me of letters within by Defendant to Frankel.

Defendant did not give me an original letter
received by him from Frankel dated 7/1/53.

10 I cannot remember well whether the Defendant
did or did not give me such a letter.

I was not worried at what I read because of
Defendant's assurances to me.

I report his previously stated assurances
verbal and written. In January 1953 the Defendant
did keep me advised on the position regarding the
truck transaction. I read Exhibit "0.1, 2 & 3"
when I got them. I have now read them again.

20 Referred Exhibit "0(3)": When I read 0(3) I began
to suspect and doubt. Whether the shipment would
ever come. I planned to arrest Frankel in March
1953. He was asking for more money and I then
asked him about the shipment. But the Defendant
intervened.

Question: You are now changing your evidence ?

30 Answer: I say now that there was a visit and
during the visit Frankel asked for more
money. I asked him about the shipment.
I decided to have Frankel arrested. The
defendant asked me to go softly about
it as he believed that they had made
the shipment.

40 I decided on Frankel's arrest when he asked
for more money - I admit that Frankel did ask in a
letter dated 7th January 1953 for more money. I
came to know that from the copy given to me of
Defendant's reply to Frankel. I don't remember
seeing Frankel's original letter of 7th January
1953. There was a meeting in March 1953 on the
occasion of a visit and in which Defendant was con-
cerned.

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May 1953. I asked Frankel in May 1953 when I was going to get delivery. His visit was a surprise visit. He flew back next day. I was not satisfied. I reported to Commerce & Industries. My Secretary reported to Scotland Yard. I obtained Exhibit "P" (letter of 24.XI.53) which convinced me I would not get my money back from Frankel so I decided to get it from Defendant because he was telling me that the money was recoverable. Defendant would be involved if I had had Frankel arrested. I did then turn to Defendant (Refers to Exhibit "Q" - Report by Defendant's brother on Frankel).

10

Letter produced - I admit that this is a letter written by me to Defendant (Admitted as Exhibit "R"). It is concerned both with the £15000 as well as the £5000.

Letter produced - This is a copy of Defendant's reply - Original produced (Admitted as Exhibit "S").

Letter produced - I admit my next letter to Defendant (Admitted as Exhibit "T").

20

Letter produced - I admit that this is a copy of Defendant's reply to Exhibit "T". The original is not available. (Copy admitted as Exhibit "U").

Referred Para. 8 of Exhibit "T" - I still say that Defendant handed over the cheque. The wording of the para may be in error in the heat of writing the letter. The cheque was drawn and Frankel's agreement made on the 15th November. On same day. The cheque was given in the morning and the letter came in afternoon of 15th.

30

The date on cheque is 18th but that was not the reason why.

I cannot remember whether there was a written agreement on the 14th which was not satisfactory.

Question: Put it that there was.

Answer: No Sir.

Referred to Para 2 in Exhibit "L" - The para does not suggest that Frankel had not received the £15000 on the date of Exhibit "L".

I entered into rubber contract with Frankel early in 1953. Its value was about £40000.

40

I shipped some rubber and received payment with much exertion. 2 weeks after shipment. Made early 1953. At the time of entering into the rubber contract Frankel was not yet in default on his assurance of shipment in Exhibit "L". The rubber contract was made directly between myself and Frankel. The contract for rubber was in writing.

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10 Frankel was in Lagos at the time, but it was not in November in Frankel's first visit. It was made early in 1953. I cannot remember when -
To Court I have the contract.

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20 I cannot remember the date of the contract. So I cannot be certain of the date. The 3 visits I mentioned (p.470) are those I remember particular visits but I cannot say how often he came. I exclude November 1952 for a rubber contract, but it was early in 1953. On the date which is in the contract. I do exclude May so it must have been sometime between December and April but I would not agree to March.

Cross-
examination
- continued.

Question: Surely the only available time was in March when he was here.

Answer: I cannot agree that that must be so.

I entered into no other contract for truck with Frankel. He offered 70 for more money on deposit but I did not accept.

30 I put only £200 into the "Syndicate". I did not offer to lend Syndicate £5000 on hearing Defendant's report on his return. I do not put £5000 into the Syndicate. 5 people subscribed £200 each and I did not put in £1500 or subsequently £20000.

40 To Court:- Suit 154 of 1953. I gave evidence in that case. (C.O. Olayinka vs. Madam C.A. Young). I gave evidence for the Plaintiff and present Defendant also gave evidence for the Plaintiff on that case. Evidence read to the witness - I admit that I gave the evidence as read from a certified transcript of the evidence. I spoke the truth. (Note: The passage of the witness's evidence-in-chief is read out to him and admitted). Additional evidence read. These are all my answers to the questions put to me.

To Court

I still say now that I did not put £20000 in

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the Nigerian Produce and Enterprises Syndicate.

I still say that I did not put in £1500 into the Syndicate.

The Defendant did not bring business on behalf of the Syndicate at all.

In using the word "our behalf" I was referring to the Syndicate in Suit 154 of 1953. The Defendant brought back business worth £50000 but that business for the Syndicate fell flat because the Syndicate had no capital.

10

I paid £1500 and £20000 as I said in evidence in Suit No. 154 of 1953, but that was not paid to the account of the Syndicate. I did not say I paid it to the Syndicate or say that the Defendant brought the business for the Syndicate - Record is now produced to Court

(Counsel for Plaintiff was not satisfied as to the authority of the certified Record of suit 154 of 1953:- The record may be examined by Mr. Lawson before he leaves the Court and he will inform me to-morrow whether he accepts or rejects it. In the event of its rejection Defendant may preserve the original record together with the copy).

20

Defendant went to England the 2nd time as my agent.

My premises were used as the Syndicate's address - Temporarily.

The Syndicate also used my premises and my letter head. Defendant's business was - not to be broken to the firm of Omotayo Bros. on behalf of the Syndicate. The Defendant was never so instructed.

30

In No.154 of 1953, I said (at p.9) "Omotayo was to attract business in his own firm's name on our behalf and so he did".

Question: How do you still say that he was not to attract business in his own firm's name ?

Answer: Now that I see what I said in the earlier case (154) I agree that that evidence is the correct evidence on this matter of Omotayo attracting business.

40

Thursday the 28th day of October, 1954.

Cross-examination of Plaintiff continued:

10 P.W.I. - The effective control of Syndicate Business was not entirely in my hands during Omotayo's absence. I am the Senior man but I did not solely control the Syndicate business. The correspondence did not come to me alone, to my address alone. I alone did not issue Syndicate instructions. They were issued by Syndicate all at once and severally. Some of the instructions were - transmitted through me to the Defendant and by the Defendant to me through other members of the Syndicate. Omorodion was absent from Lagos at different dates. He and Defendant left Lagos at different dates.

20 There were other members of the Syndicate who were business men. Mrs. C.A. Young - and Mrs. Odojukan. The proprietor and Principal of a School. These were two business people who were here when Defendant and Omorodion were absent. Madam Young is a Contractor shipper and supplier. She exports and is semi literate. Either I or Mrs. Young did the correspondence. Mrs. Young has clerks to assist her.

The Syndicate had no capital when the Defendant reported to it on his first return (Refers p.465). I did not offer to lend the capital to the Syndicate on that occasion and the Syndicate refused to act.

30 Question: You agree to divide profits ?

Answer: Untrue.

The Defendant did not go back to England for the Syndicate. Nor did I give the Defendant his instructions on behalf of the Syndicate.

40 On his return the 2nd time I cannot remember whether Defendant was met at Air Port by all members of Syndicate except Omorodion. I went to meet him. Defendant was driven in my car to his house at Yaba. There Defendant told me of Frankel's demand for another £15000 but I cannot remember whether the other members were there too. Nor did the Syndicate have anything to do with the matter of this £15000.

Meeting on 13th November: Onafeko was not present at 13th November meeting. Nor did Frankel endeavour to persuade me to put up the £15000;

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Frankel wanted it but McVicker said that on the truck deal he would have no say either way and would not discuss it. I did not know whether McVicker was Frankel's agent at that meeting. I am trying to do business with McVicker now. He is a partner in one or two of my business transactions. Onafeko did not attend. Defendant advice was to find the money to complete the deal.

Defendant and Onafeko did not leave the meeting. Onafeko was not there. Nor did I call the Defendant next day to tell him I had reached agreement with Frankel, or that I had agreed to enter into a rubber contract with Frankel. Nor did I ask Defendant to help me to carry out these businesses.

10

Question: I put it that on the 13th November you reached a business agreement with Frankel on your own behalf ?

Answer: I did not make any arrangement with Frankel other than the truck business which the defendant had brought. I had no rubber business with Frankel on 13th November; nor did the Defendant agree on 14th to give me certain assistance.

20

Referred to Exhibit "A". This relates only to the truck deal. Defendant was bound to assist me in the truck deal. I cannot remember whether Defendant made pro-forma invoices for the lorries on 14th November. Nor for rubber. I just cannot remember.

I never shipped any rubber to Frankel or to Frankel's Order; I did ship rubber to U.K. customers but not to customers introduced by Frankel but by other persons. I do not know whether Frankel had any connections with the customers. I never shipped rubber on contract to Frankel.

30

Question:

I did not see the letter of 7th January 1953 (Frankel to Defendant) I only saw a copy of Defendant's reply to Frankel from which I ascertained that Frankel was looking for more money; I this by adding that the fact is I cannot really remember.

40

In January 1953 I was good for another £10000 if I had needed it. But I was not prepared to pay a further £10000 to Frankel.

Frankel again in March 1953 asked for £10000. I then thought of having him arrested. My rubber transaction was not proceeding with Frankel in

10 March 1953. I was transacting rubber business yes, but not with Frankel. In asking for the £10000 Frankel referred to his so called agreement of 15th November 1952 to the paragraph containing the impression "As soon as shipment will commence". But since part shipment was acceptable, in the same para I saw no reason why I should pay him a further £10000 when I had already paid out £20000 without receiving any shipment. So I planned to have him arrested. If the trucks had come as arranged the transaction would have been very profitable.

Question: The real reason why you lost £10000 was Frankel's failure to deliver the trucks ?

20 Answer: Not only that. I have lost £20000 through the assurances statements and advice of Defendant my agent in whom I had confidence. He either deliberately or negligently caused me to embark on a business which was unsound. Not on good ground. The failure of Frankel did not occur because I refused the further £10000. I did not know Frankel I relied on Defendant.

Defendant did not carry out my instructions properly. Nor did he keep me advised but where is the money. No money back and no vehicles. It was wrong advice.

I did not have the same information available to me as had the Defendant. Nor did I decide on 13th November on my own account as principal. I relied on Defendant's earlier statement.

30 LAWSON: Record of Suit No.154 of 1953 admitted by consent (as to evidence of present Plaintiff pp. and of record) as Exhibit "V".

Friday the 29th day of October, 1954.

Plaintiff Re-examined by Lawson:

40 On his first return the Defendant described Frankel as a wealthy business man; He told me that Frankel owned the London Underground Railway and he was a producer of fur coats. I had never been to England. I don't know what the London Underground trains are like.

I only discussed with Frankel his failure to

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1954.

Re-examination
- continued.

provide money for the truck deal as I thought that failure was due to a temporary hitch in reference to his not getting returns from some businesses.

I did not discuss his financial position generally because I believed what Defendant had said.

Re Exhibit "L" (Last paragraph) I did not enquire of Barclays London because I believed my agents report. I paid Frankel £15000 as I had Defendant's cable and letter in mind as to the readiness of 12 vehicles for shipment. On which I had transferred £5300 to Defendant when Frankel confirmed Defendant's statement about the £15000.

10

I know that the 12 vehicles had value beyond the £5300.

Regarding evidence (p.474) of shipping rubber on contract with Frankel. I have since had an opportunity of looking at my documents regarding the contract which I had not referred to since I shipped this rubber. I find now, in those documents, that I got mixed up. I knew Mc Vicker through Frankel and I got the rubber contract through Mc Vicker. Frankel had some negotiations about this rubber as I had some communication from Frankel in July, 1953. Frankel conducted his negotiations on behalf of a Director of the Company - (Timax Timber Company Ltd.) named Mc Vicker. He is another Mc Vicker, a brother of the Mc Vicker in Lagos.

20

To Court

To Court:- The other party to my rubber contract is the Timax Timber Company Ltd. -

30

sic

The Mc Vicker in Lagos negotiated with me on behalf of Timax Timber Company Ltd. and was in that sense the agent of that Company which when I made the contract.

The connection between Frankel and Timax Director Mc Vicker is unknown to me. My knowledge that Frankel acted on behalf of Timax Director Mc Vicker is derived from a telegram which I received from Frankel - This is the Telegram (Admitted as Exhibit "W" without objection).

40

To Court

(NOTE: Nothing in Exhibit "W" to indicate a course of dealing with anyone other than Furofrank).
To Court: Furofrank. is the name used by Frankel in telegram. Prior to receiving this telegram I

had been in communication with Timax Timber Company Ltd. and their Bankers, on the subject of this same rubber transaction.

Continued to Lawson - Early in December 1952 Mc Vicker handed me a cablegram. Admitted Exhibit "W(2)". He told me that this was from Timax Timber Company. He gave it to me, for consideration and approval.

10 To Court: At this stage I had no rubber contract with anyone. This is my first introduction to the subject of exporting rubber.

Lawson:- I agree to sell and I agreed with Mc Vicker on terms reduced to writing: I cannot produce that agreement. It is mislaid somewhere in my house. Timax Company Limited opened credit in my favour on 12th December. I produce the B.B.W.A. confirmation. (Admitted as Exhibit "W3") and I produce further correspondence with Timax Timber and B.B.W.A. (Admitted as Exhibits "W4 to 10").

20 I produce a letter from Defendant during his 1st visit to England, compare it with letter Exhibit "E" during his 2nd visit to England to show the Court how he addressed correspondence to me in each visit. Sample letter admitted as Exhibit "X" for the purpose of showing how it is addressed.

Referred to his evidence in Suit No. 154 of 1953.

30 In suit No. 154 of 1953 the main issue was recovery of cost of a car sold to Defendant; I gave evidence for the Plaintiff. I was a witness not a party. The business of the Syndicate came into my evidence in answer to question put to me and just by the way.

Question: How do you reconcile your evidence in that case with your evidence in this case ?

40 Answer: I gave that evidence in No.154 in answer to Counsel's questions when asked whether I had paid any other sum of money to any member of the Syndicate. I had no opportunity to explain the circumstances under which various sums of money were paid.

I paid the £1500 to Omorodion then in Luanda in Europe when he obtained a contract in the name of Mrs. C.A. Young. It had nothing to do with the Syndicate; Mrs. C.A. Young was liable to me personally for that advance of £1500.

In the
Supreme Court

Plaintiff's
Evidence

No. 6

A.Y. Ojikutu.

29th October,
1954.

Re-examination
- continued.

In the
Supreme Court

Plaintiff's
Evidence

No. 6

A.Y. Ojikutu.

29th October,
1954.

Re-examination
- continued.

The £20000 had nothing to do with the Syndicate. It is the total of the £5000 and £15000 in the present action.

In that case Exhibit "V" I tendered the Partnership deed of the Syndicate and have since given it to Defendant.

Order:- By consent para 38 of Statement of Claim is amended to read as follows ; "Plaintiff therefore claims £20300 as Special Damages and £14700 General Damages" - Also a clerical error is amended in Writ of Summons £36000 instead of £35000.

(Sgd.) F.W. Johnston
PUISNE JUDGE.

10

No. 7

O. Porter.

29th October,
1954.

Examination.

No. 7

O. PORTER

P.W.2. Sworn. Examined, states:-

Xd. Lawson: I am OBASA PORTER. I am an Accountant engaged in National Bank of Nigeria and live at 33 Breadfruit Street, Lagos. Plaintiff is a customer of our Bank and had a transaction on 1st October 1952. He got overdraft of £5300 @ 10% from the Bank. The interest was £71.0.11 up to the 18th November 1952. He got further overdraft of £15000 on 18.XI.52 @ 10%. The interest due on total from 18th November 1952 up to date is £3932.1.0. And the total interest on both overdraft to date is £4003.3.11.

20

Cross-
examination.

Cross-examined Ferguson:- The overdraft is in the current account and I cannot say whether any interest on the overdraft has been paid from time to time.

30

No. 8W.E. McVICKER

P.W.3. Sworn Examined States:-

10 Xd. Lawson: I am WILLIAM ERIC McVICKER. I arrived in Lagos on 13th July 1952. I live at Ikoyi Rest House 4 Lees Road since February 1953. I am representing several firms in Germany in relation to a process of building houses. I did know one Benno Frankel. I met him a few days before leaving for

20 Lagos in July 1952. I met him with one Gourewitz. Gourewitz said he was in touch with a firm Omotayo Bros in Nigeria in connection with purchase of rubber. He gave me a letter of introduction to Omotayo Bros. and verbally asked to investigate the position regarding rubber and trucks. I came out on a 2 month expense contract for Gourewitz and Frankel. My contract was actually entered into with Frankel. I was specifically instructed to make a survey of the Omotayo rubber estates by Mr. Gourewitz.

On arrival in Nigeria I met Defendant. We spoke of many things. I gathered that the family did not then possess rubber estates. I had no knowledge of Frankel's business contracts of him at all. He paid my passage.

30 September 1952. I saw Defendant on his return from London in September 1952. He referred to a letter which he had written to me from London mentioning 2 projects. One being a shipment of 2 lots of sample rubber, and the other being the truck business. I had replied to that letter.

40 On the truck business the Defendant said when we met he wanted to go through with the truck business as there was a lot of profit in it. He wanted to know if I could find £5000. I went to him on the day of his return in response to a message. He wanted it to pay a deposit against delivery of trucks. I told Defendant I was against the Defendant paying the money as a deposit. I suggested that the correct procedure was to open a letter of credit against delivery of shipping documents and that any cash that had to be paid should be covered by a banker's guarantee.

The Defendant agreed to transact the business by opening letter of Credit in conjunction with a

In the
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W.E. McVicker

29th October,
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Examination.

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Evidence
 No. 8

local firm here. I introduced the Defendant to that firm. Brandler and Rylke Ltd. We reduced our business to an agreement - written - to finance Defendant on letter of Credit basis.

(Copy of agreement admitted by consent as Exhibit "Y").

W.E. McVicker.
 29th October,
 1954.
 Examination
 - continued.

On 27th September I gave Defendant guidance instructions in writing Original.

(NOTICE to Produce. Did not specify this document.
 NOTE:- I then refuse the copy.)

10

Defendant returned to England on his behalf and on behalf of Brandler and Rylke Ltd. but of no one else to my knowledge; I gave the Defendant instructions regarding instructions and shipment.

Through inspection by Cargo Superintendent and to see the lorries. Later I saw a cablegram from Defendant addressed to Brandler and Rylke. In consequence of it a letter of Credit was opened for 13 trucks. After then I had a cable from Omotayo. I cannot find it I destroyed it as of no value.

20

To Court.

To Court:- The cable was transmitted by Cable & Wireless and received by me early in October 1952.

The truck transaction fell through because of dead silence on the part of Defendant who gave us no news. I did not as yet know the Plaintiff.

I saw Defendant on his return from this 2nd trip to U.K. I asked him what had become of the Brandler and Rylke Limited's letter of Credit and the business relating to it. He said he could not put through the Brandler business and that he had done it in another way. He showed me a receipt for £5000 from B. Frankel as deposit on the truck deal. I started trading in West Africa in 1927. At that time I cannot recall whom he said had paid the money but very shortly afterwards I came to know that it had been paid by the Plaintiff when I met him a few weeks later.

30

If I had such a transaction in hand I would thoroughly investigated status and financial background by banker's investigation, and I would require a banker's reference.

40

A letter of Credit is a normal business practice. A cash payment should be covered by a banker's guarantee if the goods have not been received.

I was shocked that defendant had paid Frankel £5000 and annoyed that the Brandler business had gone. Shocked because I don't do business that way and I had warned defendant against it.

10 November 1952 I saw Frankel in November 1952. I met him when he arrived and I was with him during several meetings. He came for purpose of seeing defendant. We both saw defendant. He introduced us to Plaintiff. Shortly after Frankel's arrival; there was a meeting at 49 Idumagbo Avenue. Present were Plaintiff, Defendant, Frankel and I. This was the 1st Meeting. We discussed the truck business and Frankel was asking for more money - £15000; Defendant was very optimistic at the meeting about the outcome of the truck business. There was a
20 General discussion and defendant recommended the payment of the £15000. Plaintiff wanted more guarantee. He wanted some sort of letter. Eventually he agreed. Defendant did not, at that meeting, say he was washing his hands of the business and he did not walk out. That was at another meeting at the Bristol Hotel at which Frankel, Defendant, and I were present. Plaintiff was not present. There was an argument between Defendant and Frankel about the terms of the letter which the Plaintiff required
30 from Frankel I was a bystander. Defendant threatened to walk out. Also Frankel threatened to walk out.

Frankel gave ground on the demand of the Defendant and the letter was typed. Exhibit "L" is the letter.

40 At the first meeting at Idumagbo Avenue, the continuance of the business was recommended by defendant. The relevant matter was £15000. I was present when the Cheque was given. It was towards the end of the week 14th or 15th November. I am not sure of exact date.

Defendant went to Apapa. I drove the car. Frankel was with us. Frankel and I waited in the car and Defendant handed Frankel the cheque. He waved it as he approached the car.

January 1953. In January 1953 I had a meeting with

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Supreme Court

Plaintiff's
Evidence

No. 8

W.E. McVicker.

29th October,
1954.

Examination
- continued.

In the
Supreme Court
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Evidence

No. 8

W.E. McVicker.
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1954.
Examination
- continued.

with Plaintiff and Defendant and we discussed Rubber Business. I expressed doubt. I said I wasn't happy about the truck business. Defendant was certainly annoyed at my reference to the truck business. He said it was not my affair. He said he was going to report me to Frankel.

I incorporated in a letter to the Defendant all the fear I had expressed previously. I handed it to Defendant.

(Notice to produce this letter expressly) I handed one copy to defendant's uncle. I hold a copy of the letter.

10

Ferguson for Defendant:- Defendant denies having received this letter.

I produce my copy of letter delivered to Defendant.

To Court.

To Court: This letter was delivered to Defendant by me at his house at Yaba 62, Wakeman Street, Yaba. I know this address very well. Defendant was upstairs in his dining room. It was in the morning. It was on the date stated on the letter. There were some women there; I typed the letter early that morning and took it to Defendant at his house.

20

To Court.

To Court: Defendant took the letter from me, I left.

Cross-examination.

Cross-examined by Ferguson on this letter.

preferred to hand the letter over personally a letter by post takes 5 days to Yaba. I made a point of delivering it personally because Frankel was either due or already in Lagos and I wanted to clear myself on this truck business. I had neither Messenger nor Despatch Clerk.

30

Question: What was the considerable importance in this truck business.

Answer: When I discovered that Defendant had paid £5000 I told him I washed my hands of the business and did not wish to associate myself with him with any business. And I had a partnership Agreement with Defendant dated 30th August 1952 and had the opening para. I cancelled that partnership. That was the reason for this letter. The letter sets out the facts.

40

The letter is now admitted as Exhibit "Z".

Evidence in Chief continued

Frankel was in Lagos for about 9 days in January. I went to England about September 1953 on Plaintiff instruction to investigate the position and report to him on Frankel. I submitted a report to him on my return to Lagos.

(Admitted as Exhibit "AA") Defendant did not speak to me about this report.

10 Frankel was in Lagos for 3 days in May 1953. He was to have come in March but came in May. At this time the Plaintiff was antagonistic to Frankel. He wanted him to him. But I advised Plaintiff to send Defendant back to England to investigate Frankel's business rather than take precipitate action. Defendant was not at the May meetings Exhibit "W(2)" I handed this to Plaintiff in relation to a rubber contract between Timax Timber Co. Ltd. and Plaintiff. I introduced the parties.

20 (Exhibit "W(1)". R.J. McVicker, Director of Timax Timber Company is my brother: Cables. Faro Frankel signed are from Office of B. Frankel. Frankel was not concerned with the Contract as a party but he was interested in it as he was interested in all my business that originated in 1952 because he was entitled to a share of any profits.

Tuesday the 2nd day of November, 1954

3rd. P.W. Examination-in-Chief continued.

30 I produce the letter which Defendant wrote to me from England during his first visit to England. (Dated 5.9.52. Admitted as Exhibit "BB").

Cross-examined (Adesanya)

40 It was in July 1952 when I met Frankel and Gourewitz in London, a week before I came to Nigeria. My brother introduced me to Frankel and I think my brother met Gourewitz a few days before I met him. I cannot say whether my brother had any business relationship with Frankel. Later next time in England I learnt that my brother was not satisfied with Frankel's business methods. I took £250 from Plaintiff for my expenses for investigation in England in September 1953. My brother told me that he had parted from Frankel many months

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Cross-
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Evidence

No. 8

W.E. McVicker.
2nd November,
1954..

Cross-
examination
- continued.

earlier. Later I saw Frankel in Frankport and I asked him about the £20000 which he had had in November 1952.

I don't think my brother had mentioned Frankel much in his correspondence.

In London I got information from a Mr. J. J. Marker who was Frankel's Confidential Secretary. I got the story about Frankel from Marker. My brother put me in touch with Marker. I do not know whether my brother was closely associated with Frankel. At the moment I am the Plaintiff's partner. A Company has not been formed yet. It is the formation. We are negotiating for a contract and we have been together for the last 3 months. No business name as yet.

10

I gave defendant a letter of introduction to my brother but nothing to Frankel. I do not deny that Defendant told me on his return he had had lunch with my brother and Frankel on his first trip to England. My brother at that time was working in Frankel's office but I cannot recollect the word Secretary in that connection Defendant told me that my brother and Frankel had visited his bankers during his first visit. In September and October 1952 I thought that the truck business was genuine.

20

Later stage at time of the payment of £15000 I was not so sure about Frankel I would not express an opinion but I told the Meeting then, in November 1952 that I had no interest in the Truck business in view of £5000 deposit paid to Frankel. The business might have been genuine.

30

To Court.

To Court: Neither I nor Brandler and Rylke gave Defendant any money to go to England. Brandler and Rylke opened letter of Credit for Frankel in London for, I think, £9500 in London. It was rejected by Frankel but we had no news at all until the return of Defendant.

At this time I did not know that the Plaintiff was interested or that he had put up the £5000 and I did not know Plaintiff.

40

Defendant had not spoken of the Syndicate. I thought that the Defendant was acting for his firm of Omotayo & Brothers.

I did not tell the Plaintiff about the relations which the Defendant had previously with

Brandler & Rylke. On about his going to London with my instructions. I was a comparative stranger to the Plaintiff at that time.

Cross-examination continued:

Frankel did not stay in Lagos as my guest I merely arranged hotel accommodation for him.

10 Frankel bought a car for me before he left in November 1952. My connection with Frankel ended at the end of 1952. My 2 months express contract continued to the end of 1952. But I was not responsible for Frankel's action. I was not his agent. I did not know that my brother was actually connected with the truck business in September 1952. I gained that knowledge when I heard from Defendant by letter. (Referred to Exhibit "EB"). I believe, but I am not sure, that it was my brother who introduced the idea to Frankel and to the Defendant of importing these trucks into Nigeria.

20 Defendant and I had entered into a partnership Agreement in August before Defendant left for London (1st trip): It related to General Business. Defendant was my friend until he parted with £5000 to Frankel. I had confidence in the Defendant at that time of his departure to England on his 1st trip. From England Defendant wrote Exhibit "EB" to me.

(Date 5th September 1952 a few days after Defendant's arrival in England).

30 My connection with Frankel was extending to end of 1952. It had not been broken off because he paid my expenses up to end of 1952. I did not get any money from Frankel after 1952. I had money from Timax Timber Company up to May 1953.

40 Refer Exhibit "Z". - I referred in this letter to being an "employee" in relation to November 1952. By December I began to doubt Frankel I did not like his business methods. I told Plaintiff of my doubts. In January before Frankel arrived in Nigeria I told Plaintiff in the presence of Defendant. When Frankel arrived meetings were held. Defendant had taken exception to my expressions of doubt about Frankel. Plaintiff's confidence was shaken by what I had said about Frankel but not Defendant's. Plaintiff called a meeting at 49 Idumagbo Avenue when Frankel arrived as well as I

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Supreme Court

Plaintiff's
Evidence

No. 8

W.E. McVicker.

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1954.

Cross-
examination
- continued.

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Evidence

No. 8

W.E. McVicker.

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Cross-
examination
- continued.

recollect, in January 1953. I don't agree that Defendant did not see the Plaintiff in January 1953.

Question: You refer to November 1952 Meeting at 49 Idumagbo Avenue ?

Answer: No I refer to January - but admit that I cannot be positive on this my memory is not too good on this point. Onafeko was present at the meeting but I cannot say whether it was November or January. 10

I do not know of any subsisting Rubber Contract between Plaintiff and Frankel in January 1953. Frankel never made a rubber contract with the Plaintiff: There was one between Plaintiff and Timax Timber Company which subsisted in January 1953.

(Referred evidence of Frankel being entitled to share in any profits of witness).

Frankel projected himself with the Rubber Business between Plaintiff and Timax: Frankel's interest was only his interest in learning of anything that would accrue to me in profit. 20

(Exhibit "W.1" referred to) I agree that this telegram could come only from someone interested in the transaction referred to - I do not think there was confidence between Plaintiff and Frankel. There was no real money involved in the Rubber transaction. I was representing Timax Timber Company but neither as a buyer nor as a seller. The matter was all on paper. No money involved. 30

Frankel bought me a car. He was going to lease timber concessions and all sorts of things and to buy machinery. The amount involved was not discussed. Maize, Transport Lagos - Benin were other prospects but he did not say anything about value. He talked Rubber too but not so definitely as of timber and transport. He did not give any details of money or of how much he would be prepared to subscribe to any of these ventures. Frankel required the registration of 2 Companies. I instructed Adefarasin. This was November, December 1952, and January 1953 I told Adefarasin how much Frankel was prepared to subscribe. I think 40

Defendant and I prepared the instructions jointly. I originally wrote the instructions. Memorandum produced. Memorandum (admitted as Exhibit "CC"). Plaintiff had agreed to be a member at that time, December 1952, and Frankel was to finance the business. Frankel too was going to finance or get funds to finance the other Company which was registered.

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Supreme Court
Plaintiff's
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No. 8

W.E. McVicker.

2nd November,
1954.

Cross-
examination
- continued.

10 Chief Akpata Ayobahan subscribed to the Company which was registered also a Mr. Randle. I took Chief A. Ayobahan with me to ask Adefarasin and Makanju about their bill for registering the Company.

20 I did not represent Frankel to Africans to be a business man of Great Credit; I said that I believed that Frankel was an honest business man. I introduced Frankel to Chief Ayobahan, who came from Benin. He was only one whom I introduced to Frankel. Possibly I introduced Randle too but he is not a merchant. Also a Merchant named Odeh.

I did not represent Frankel to Adefarasin as a man of high business Credit and standing but only as a man having connections with important business men in Germany. That was true.

Re 1st Meeting with Frankel present (and 13th November)

30 I believe that the 1st meeting at which Onafeko was present was in January 1953 but I am not sure - I do not think Onafeko was present at November meeting because I had wanted to give him a copy of my letter to Defendant. It must have been the January. My recollection is that only 4 of us met in November. I met Aderafasin after the January meeting; The Bristol Hotel meeting was on 15th November when both Defendant and Frankel wanted to look out of the business. I may have met Adefarasin during the course of that meeting and told him what was happening.

40 Exhibit "L" was originally addressed to Omotayo Bros. Omotayo only threatened to back out at the Bristol Hotel meeting in 15th November 1952, because there was an argument.

I do not clearly remember - about the price of the trucks Frankel had mentioned a price higher than the original price. Defendant said he would have nothing to do with it.

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2nd November,
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Cross-
examination
- continued.

Frankel explained that the higher price included 10% commission which he had to give away. Defendant did not leave the room. The Plaintiff was not there.

Frankel had not mentioned this commission at the meeting on the 13th or if he did it was included in the original price but I say it was not mentioned.

I think the Plaintiff eventually knew about the increase in the price. I typed Exhibit "L" but I don't think Defendant said "Take my name off this". I think it was Frankel who asked me to change the name of Addressee to Plaintiff.

10

If I told Adefarasin that Onafeko had backed out it happened at the meeting.

I would not know Plaintiff's re-action to the Exhibit "L" but I think he was relying on the Defendant. I assumed that Plaintiff was satisfied.

Frankel had a few meetings with the Plaintiff during this November visit. I took Frankel around and if I left him alone with the Plaintiff at any time it was for a very short time. There were 2 or more meetings. I had only met the Plaintiff then. I suggested all this to the Defendant. I was not interested in the business with Frankel I had been interested earlier with Defendant's business in relation with Brandler and Rylke;

20

I had a talk with Frankel about Brandler and Rylke. He told me not to interfere with his truck business. I was his paid agent. I did not suspect anything. I attended meetings but I did not smooth up their differences and I did not interfere.

30

Question: Then why did you write Exhibit "Z" (12th January)

Answer: This was to cancel my agreement with Defendant and to go on to explain why I did not trust him further. As to the truck business I referred to action which I had taken earlier.

Exhibit "W.9" This is my brother's letter to Plaintiff. I was not tied up with Frankel and with my brother in relation to truck and rubber business.

40

I was at this earlier time I was agent for my brother in Timax Rubber Company. I was not an Agent for Frankel after 1952. I was never Frankel's Agent in relation to the truck business.

My agency for Frankel was purely oral.

Frankel did not tell me all his business with the truck deal.

10 I attended the meetings because I was taking Mr. Frankel around. The car was bought for the African European Timber Company Ltd., which had been registered. Frankel bought it. I registered it as the property of African European Timber Company Ltd.

Wednesday the 3rd day of November, 1954.

Cross-examination of P.W.3 McVicker continued:

20 African European Timber Company Ltd. was registered on instruction of Frankel but the Company never operated. Frankel's instructions were passed on by me to Adefarasin. I still use the car.

Question: I put it to you that on 12.1.53 the car was registered in your name ?

Answer: I admit that.

30 To Court: I registered the car as African European Timber Company in November 1952 and I registered it in my own name in January 1953. The Company was registered on 23rd December 1952. I renewed registration of car in my name but it is property of Company. I represent the Company. I did not make a return to Registrar showing that the car is property of the Company. It is registered in my name.

Re - The African European Timber Company I gave instructions in good faith. Randle. Chief Ayobahan and I were the named subscribers but Timax Timber Company had intended to subscribe.

40 It is possibly March last since I saw Chief Ayobahan. March of 1953. I was in funds when the Company was formed. I was not going to subscribe anything. My funds were in my wife's name in National Bank in Oxford Street London.

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Plaintiff's
Evidence

No. 8

W.E. McVicker.

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Cross-
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To Court.

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Cross-
examination
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I always pointed out to Chief Ayobahan that I had no resources and that Frankel was in touch with people on the continent who had resources. I never exaggerated my financial resources. I had not been trading in West Africa on my own behalf.

At the time of this transaction I did not know about Frankel's business connections in London. My brother was in his office at the time and I was his employee in Nigeria.

Question: The reason that Plaintiff paid £15000 was because of your statements to him about Frankel's business position ? 10

Answer: I had warned the Defendant that I did not approve of his business practices but at that time I had not spoken to the Plaintiff about Frankel's business position.

To Court.

To Court: I had confidence in Frankel at that time but not to the extent of trusting him with a large sum of money.

Exhibit "CC" contains the instructions given to me from Frankel and Defendant in which I prepared the draft. I believed then that Frankel was in a position to finance the Company. Not limited to the £9000. And to finance the other Company personally or by his friends. And to acquire a Rubber estate to purchase produce. If Company business had materialized I would have been guided by the letter of Credit. 20

I came to know in 1953 that he was a fur dealer. I had believed what Frankel had told me. His powers of persuasion were considerable. 30

Referred to Exhibit "AA".

I saw 2 of Frankel's business connections in Germany. They were sound people but they would not have anything more to do with Frankel.

I got information in Exhibit "AA" from Marks which I believed regarding Frankel's intended activities.

I saw Frankel in Frankfurt. I did not go to his bank. 40

As to Banker's reference I know that Mr.

Omotayo was up to £5,000 only at the time he was in London. A banker's reference can be given verbally.

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Supreme Court

Plaintiff's
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W.E. McVicker.
3rd November,
1954.

Cross-
examination
- continued.

10 Question: You discovered on your investigation in England for Plaintiff in 1953 that the Defendant in arrival in London paid £5000 to Frankel in 2 instalments before he had received the sum from the Plaintiff and that it was after the defendant had paid the £5000 to Frankel that the Plaintiff reimbursed the defendant by a like sum ?

Note - This was not pleaded nor had it been put to the plaintiff when he was cross-examined. (Intld.) F.W.J.

J.

20 Answer: I did not go into that. I did not ask my brother to take me to where the trucks were. No point in doing so. He mentioned that the truck business was with Vauxhall Motor at Luton Bedford. I was not investigating trucks. I was trying to chase after the Plaintiff's money, £20000. My brother put me in touch with J.J.Marks. I don't know whether my brother got any commission. I did not ask him. As to introduction to Frankel referred to in Exhibit "Z". I wrote these in general terms. I maintain what I said (at p.20) about Defendant. I did not introduce Defendant to Frankel. The letter is incorrectly worded.

My brother had washed his hands of Frankel and he did not want to discuss him at all.

30 Re-examined Lawson:

Re-examination.

My partnership with the Defendant was a general partnership. My interest in the Brandler and Rylke and Defendant dealing was my partnership with the Defendant. If he had carried out the deal to profit or loss apart from Brandler and Rylke I would be entitled to share on my partnership agreement with Defendant.

40 When the Defendant went to England on his second trip for Brandler & Rylke he did not disclose the fact that he was acting also for the Plaintiff or for the Syndicate.

Marks had been Frankel's Confidential Secretary for about 8 years. He handled Frankel's

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Plaintiff's
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W.E. McVicker.

3rd November,
1954.

Re-examination
continued.

finances. It was Marks who told me of Frankel overdraft of £4400 which he wiped out by the payment to him of the £5000 by Defendant.

I produce the purchase receipt of the car. (Admitted as Exhibit "DD").

The car was bought before the Plaintiff issued the cheque for £15000.

Defendant said on 7th January when I expressed my doubts about Frankel's to the Plaintiff that I should mind my own business. That the matter had nothing to do with me and that he would report me to Frankel. 10

Referred to meeting of 13th November at 49 Idumagbo Avenue Onafeko was not present at that meeting.

Regarding the two companies I had no evidence of his Frankel's means but I had then no reason to disbelieve him.

I relied on him and proceeded to draw up Memo.

I would not have paid Frankel £5000 I would have first investigated his position. 20

My impression that Plaintiff relied on Defendant's judgment is founded upon defendant's assurance to Plaintiff that the trucks were available and ready for shipment. Plaintiff sought his information from Defendant.

Defendant assured him in the matter of the £15000. I gathered from my brother that his reluctance to discuss the truck business was because it had been crookedly mishandled. 30

I was not going to part with any money without careful investigation.

No. 9

P. OBOR

In the
Supreme Court

Plaintiff's
Evidence

No. 9

P. Obor.

3rd November,
1954.

Examination.

P.W.4. Sworn, Examined, states :-

PHILIP OBOR, Chief Inspector of Police, Nigeria Police, attached to C. I. D. On 11th December 1953 the Defendant in this case made a statement in connection with a Truck Business in which the name (Inter alia) of Frankel appeared. The statement is typewritten.

10 Both sheets are signed by Omotayo.

Cross-examined.

Statement is admitted for Identification.

Admitted by consent as Exhibit "EE".

Cross-
examination.

Cross-examined by leave:

I do not know the Plaintiff in this case. Our file contains a statement made over the signature of A.Y. Cjikutu.

20 Lawson: We object to admission of Plaintiff's statement at this stage. We refuse to agree to admit it.

Objection.

RULING.

The Plaintiff's objection to this is sustained. It is an after thought entirely. The same source of information has all along been open to the Defence who have chosen not to examine it. I refuse the statement for identification, since Defence Counsel has not obtained leave further to Cross-examine the Plaintiff.

30 (Sgd.) F.W. Johnston
PUISNE JUDGE.



No. 10

In the
Supreme Court

Plaintiff's
Evidence

No.10

G. Omorodion.
3rd November,
1954.

Examination.

P.W.5 Sworn, Examined, states :-

I am OMORODION (GEOFFREY). I am a Personal Secretary to Manager of British West African Corporation (Nig.) Ltd. at Yaba. In October 1952 I was in business I was a partner in Nigeria Produce and Enterprises Ltd. I know Plaintiff and Defendant. They too were partners. Mrs. C.A. Young and Mrs. P.E. Odojukan were partners.

10

In September 1952 we, the Syndicate sent the Defendant to the United Kingdom.

I was in Lisbon when the Defendant returned in September. In October 1952 I received a letter from Mrs. Young. I wrote at once to Plaintiff supporting Mrs. Young. This is my letter to Plaintiff (Previously tendered by Plaintiff). (Admitted as Exhibit "FF"). I returned to Nigeria on 31st December 1952. I met Defendant after my return. He did not tell me that the Syndicate had any money invested in this Truck Business. Not that any partner had lent the Syndicate £5000 to invest in the truck business. No partner told me that the Syndicate was interested in a truck business, and I did not expect to share in any such business. We had not got the money for such business. Plaintiff did not lend the Syndicate £5000.

20

Cross-
examination.

Cross-examined Odesanya:

I was a witness and gave evidence in Civil Case No. 154 of 1953 between C.O. Olayinka and Mrs. Young. (Referred to Exhibit "V").

30

I first heard about the truck business in Exhibit "FF". That business was not discussed by me with anyone after my return to Nigeria.

The letter of Mrs. Young referred to in Exhibit "FF" was about the truck business. She had said to me.

To Court.

To Court: I have this letter in my file. The substance of this letter was about namely this truck business - (To be produced to-morrow).

40

I did not hear the Plaintiff's evidence in No.154/53 and I was not told about it.

There were no decisions taken by the Syndicate after I left for Europe.

I know Mrs. Young as a partner in the Syndicate. I was called by Mrs. Young to give evidence in 154/53.

10 She did not tell me of Plaintiff's reference to lending the Syndicate £20000. I returned to Nigeria. I did not know then where Defendant was but I found that knowledge, in October that, Defendant was in England on the truck business of which I first heard about from Mrs. Young in her letter. I did not hear of what progress the business made and I didn't bother as I was not interested in it. The Syndicate were not interested. I knew that.

Thursday the 4th day of November, 1954.

Cross-examination of Omorodion P.W.5. continued;

ODESANYA;- Letter from Mrs. Young to witness. Counsel does not wish to use it. It is returned to witness.

20 There was disagreement and a split in the Syndicate relating to this Truck Business which I learnt about in England on receiving Mrs. Young's letter. I got home on 31st December.

Referred to Plaintiff's evidence in Exhibit "V":

30 The several contracts which I brought back with me were in the name of the Syndicate and not in the name of Mrs. Young and I brought back some in name of "Young Bros. and Sons". Not in name of Mrs. Young. Mrs. Young was a partner in Young Bros. & Sons. I made my report to Mrs. Young and Mr. Young. Same person as Madam C.A. Young in 154 of 1953. I maintain I brought this business. The confusion arose after my return because the Syndicate could not take up these contracts. A majority of us decided we were not interested in the Truck Business. That brought disagreement.

40 Referred to Plaintiff's Evidence in 154/53 - That evidence at page 9 is untrue. Plaintiff was the chairman of the Syndicate. We respected his advice as such. He did not spend £20000 on behalf of the Syndicate and did not spend £1450.

Re Mrs. Young's Letter and Exhibit "FF":

I say that these 2 letters were not to my knowledge;

In the
Supreme Court

Plaintiff's
Evidence

No.10

G. Omorodion.

3rd November,
1954.

Cross-
examination.
- continued.

4th November,
1954.

In the
Supreme Court
Plaintiff's
Evidence

typed on the same typewriter nor by the same person. I did not take a typewriter to England. I used one there. I cannot remember the make of it. Mrs. Young cannot read and she cannot write save to sign her name.

No.10

G. Omorodion.
4th November,
1954.

Re-examined Lawson;

Refers to Exhibit "V" - Page 9.

Cross-
examination
- continued.

I brought contracts but those contracts did not bring any business to the Syndicate. None were executed. I spent £1450 but the money was sent by Mrs. Young. I know now that there was an Agreement between Mrs. Young and Mr. Ojikutu.

Re-examination.

10

No.11

D.O.S. Ajayi.
4th November,
1954.

No. 11

D.O.S. AJAYI

P.W.6. Sworn, Examined, states :-

I am DANIEL OWE SHIJUOLA AJAYI. I live at 20 Akinwunmi Street, Yaba. Trader.

Examination.

I know the parties in this action. I am the Plaintiff's Secretary. For 24 years and his Attorney since 1949. I remember seeing Defendant on a date late in September 1952 in Plaintiff's Office. Plaintiff was not there but I had been told that Plaintiff was to meet Defendant there. Plaintiff came after 1 o'clock. Defendant was still there. Plaintiff called us and Defendant introduced the subject. His return from England and wanting money Commission was the main topic, re Bedford lorries Defendant asked for 35% - Plaintiff suggested 33 1/3%. They did not agree. I suggested that the money should be paid into the Bank and a letter of Credit opened. That was not decided then either. Plaintiff told Defendant he could see him again in the evening. He wanted to consider the whole project. I did not hear any reference to the Syndicate.

20

30

It was Plaintiff who was to pay the money, £5000, but neither said that the money was to be paid on behalf of anyone else.

Cross-examined Cdesanya:

I was not a member of the Syndicate and did not attend its meetings and I would not have known of any arrangement between Plaintiff and the Syndicate.

10 If Plaintiff said he lent the money to the Syndicate he might be lying. He would have consulted me before doing so. I am more than Plaintiff's employee. Association for 24 years. And my Secretaryship is part time only. I am a Solicitor's Clerk. Full time for J.I.C. Taylor and his father before him. I worked for J.I.C. Taylor up to 1947. Three months after his father died.

Mr. Omotayo's first trip to England was on account of the Syndicate and his next was on account of the Plaintiff.

20 I know Mrs. Young. I am unaware of her falling out with Plaintiff. I was not visiting Plaintiff regularly at the end of 1952 owing to a difference of opinion. Plaintiff did not discuss his relations with the Syndicate so I do not know of them. I would not necessarily have been told even though Plaintiff had interest in the Syndicate.

I did not attend further meetings between Plaintiff and Defendant. I did not know whether Plaintiff lent money to Syndicate in relation to Defendant.

Re-examined -

30 I have known the Plaintiff to be a truthful person.

Plaintiff's Case Closed

In the
Supreme Court
Plaintiff's
Evidence

No.11

D.O.S. Ajayi.
4th November,
1954.

Cross-
examination.

Re-examination.

In the
Supreme Court

No. 12

O. OMOTAYO

Defendant's
Evidence

No. 12

O. Omotayo.
4th November,
1954.
Examination.

D.W.1. Sworn, Examined, states :-

Examined Odesanya:

I am OLATUNJI OMOTAYO. I am living at 62 Wakeman Street, Yaba, Produce Merchant. I was a member of the Syndicate in 1952 with Plaintiff, Madam Young, Mrs. B. Odojukan, Mr. Omorodion.

I was sent to England in September 1952 by the Syndicate to attract business for the Syndicate. The Syndicate was the business in general. 10

Mr. McVicker, P.W.3, gave me 2 letters of introduction. One to his brother McVicker in London and the other was to Mr. Frankel.

When I got to London I met McVicker senior at Airway's Office Victoria Street and gave him the letter. He told me that Frankel was unable to come that day. This was on the 3rd September, 1952. He McVicker asked me to meet him at Oddennios Hotel for lunch on the 4th. There I met Frankel and Mr. S.O. Abudu and McVicker. I produced samples of produce to Frankel and McVicker. Including Nigerian Cedar. Frankel first asked me by what means we carried timber from bush to Lagos and I said by lorry. He asked me if I was interested in Bedford trucks. I said I was. He said he was friendly with the Manufacturers. McVicker confirmed this. Later on I learnt that McVicker senior was Secretary to Frankel. 20

I learnt that Frankel was a furrier and was in Rubber business. I had learnt from the witness McVicker before I went to England that Frankel had sent him to Nigeria and that Frankel was a wealthy man. 30

I went with him, Frankel, to his office in a Daimler Car. He had 2 business names there. He told me that he would see Vauxhall Motors about Bedford trucks and let me know on the following day.

I had a letter from Frankel on the following day. I gave it to the Plaintiff. It was dated 40

4th September.

Lawson:- We have not been asked to produce this letter. -

Odesanya:- Refers to a request for discovery in general terms.

By Court:- Plaintiff's Counsel is to make the letter available.

Letter is produced:- Admitted as Exhibit "GG" copy.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

4th November,
1954.

Examination
- continued.

10 After this I wrote to Frankel (Exhibit "HH" admitted) - I handed these letters to the Plaintiff by posting them to the Plaintiff from England. Next I met Frankel again. I told Frankel that I had posted his letter to Nigeria and I told him that I would like to meet him in my banker's office in Long Lane - the Farmers And Commercial Bank of London. The meeting took place. The Bank Manager, a Mr. Coker, was present. He is now in Lagos as a barrister practising. He was the Manager of the bank. Frankel and McVicker showed me a letter from 20 Vauxhall Motors and showed it to the Manager, Mr. Coker: Mr. Coker went through the letter. I had taken them to my bank so that my bank could investigate Mr. Frankel's financial position.

The Manager promised to investigate Frankel's financial position. He asked Frankel who were his bankers. Later what he told me satisfied me as to Frankel's financial position. Then I met again with Frankel and Frankel confirmed his offer. At that time I had no money in London. I know that 30 Vauxhall factory is at Luton. I went there with Frankel on my next (2nd) visit to London.

On my return to Nigeria Plaintiff, Mrs. Odojukan, Madam Young met, with me at Plaintiff's house, 49 Idumagbo Avenue. I reported what had happened in London. They asked me whether I had seen the trucks, I said No. They said I should go back and see whether they had right or left hand drive.

40 The Syndicate had no money, not sufficient at that time and this Plaintiff offered to finance the venture by paying the deposit if after I got back to London and found that the Trucks were the sort wanted.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

4th November,
1954.

Examination
- continued.

The Plaintiff said at the meeting that he would finance the business on behalf of the Syndicate: I told the meeting that I would require more money to cover my expenses I said £300. Plaintiff asked what his commission would be on the money advanced by him to the Syndicate.

The agreement reached at this meeting was:-

- (1) That the Syndicate would accept the advance.
- (2) That Plaintiff would get 50% of the profits.
- (3) The other partners to get 35%.
- (4) That I should get 15%.

10

All agreed to this.

- (5) That when I got to London I should cable to Nigeria for the £5000 advance and £300 expenses.
- (6) The Plaintiff was to advance the £300 for this Syndicate.

Arrangements were made to run the partnership business during my absence I went to England on the Syndicate's agreement on 27th September by Air.

I saw Frankel. He asked me for the £5000 deposit. I told him the money was ready but I would like to see the trucks. He took me to Luton, to the Vauxhall Factory.

20

(Exhibit "K" is a picture of this truck type which I wanted).

On arrival at Luton Mr. Abudu and I were asked to wait in Frankel's car. He went in and in the interval we got out and I took some photographs of the place. Frankel came out with a European who was introduced to us as Sales Manager. He said that the 25 trucks arranged by Frankel were ready for shipment. I saw Trucks being driven out of the Factory, from where we stood.

30

They appeared to be undergoing a test. It seemed to be a very busy factory. More of the factory was elsewhere.

Next this man who was introduced by Frankel

as a Sales Manager went back into the factory, having given me Exhibit "K".

Then we drove back to London. I had been told by the Sales Manager that 25 trucks were ready for Mr. Frankel:

To Court: - The Sales Manager did not point out the Trucks to me in the Factory:

Continued - I was taken to a place called Edgware. There I saw 4 brand new Bedford Trucks of the same sort. I went into a showroom. The Manager of that place told me that Frankel had booked 25 trucks all told. He was giving special tyres to Frankel's order; 825 X 20 - tyres. Frankel was present. This place was a Vauxhall Motor Showroom where I examined the 4 trucks.

Mr. Abudu is still in London. Next we went to the Office of a Shipping Agent; there I gathered that Frankel had arranged shipping space for 25 trucks for Nigeria in two consignments first 12 and later 13. Not at the same time. Next I went home. I cabled to Nigeria but before doing so I saw my Bankers. I told Mr. Coker the Manager of all that I had seen. Then I cabled home.

My impression at this time was that Frankel was a very big business man. I had seen his 2 registered business listed at his office. So many clerks in different rooms. Daimler Car and 2 drivers. He paid by cheques for the hotel lunches costing £10 or so by giving cheques for £50 on which the places gave him the change. McVicker and my bankers contributed to my impressions. Expensive cigars, three or four trunk calls would reach his office when I was there with him.

I cabled Mr. Ojikutu because he had advanced the money for the Syndicate and also that his house was the registered office of the Syndicate.

Exhibit "B" is my telegram (the first one) to Plaintiff.
Exhibit "F" is another telegram to the Plaintiff.

12 vehicles were ready. That is based on what the shipping agent said. I heard McVicker's evidence about an arrangement which I made with Brandler and Rylke made before I left for England on this trip.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

4th November,
1954.

Examination.
- continued.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.
4th November,
1954.

Examination
- continued.

5th November,
1954.

When I left the Syndicate meeting at which the agreement was reached I went to McVicker at the Bristol Hotel Lagos. Before I left for London at all I had left my car with McVicker; I went to see him about what my partners have decided. When I told him he questioned the arrangement as strange because the Syndicate were not paying my fare back to London at that moment. He said he was friendly with Brandler and Rylke, and that there was a shortage of trucks for 15 months past. He said that he would approach Mr. Brandler because of the shortage of trucks. Brandler and Rylke were timber merchants. I went with McVicker to Brandler and Rylke. Mr. Brandler was interested. We discovered the truck business. They were prepared to finance the truck business by means of a letter of credit in London.

10

Friday the 5th day of November, 1954.

Defendant's Evidence-in-Chief continued:

The reason I made this arrangement with Brandler and Rylke was because I was asked to return to England by the Syndicate. When I asked the Syndicate for my fare I was told to go to England at my own expense and then cable back home for the £5000 and £300 expenses to be sent to me. The arrangement made by the Syndicate with the Plaintiff for financing the truck business was satisfactory but the arrangement whereby I had to pay my fare to England first before I get my expenses money was not satisfactory.

20

30

The Plaintiff had told me how he was going to raise funds to help the Syndicate. He said he would do so by overdraft on the National Bank.

The Plaintiff had not arranged his overdraft before I left for England.

Brandler and Rylke agreed to open a letter of credit for the trucks to number of 25.

I agreed with Brandler and Rylke as to the Commission which I would be paid by them if the truck business, as to 50 trucks was successful.

40

To Court.

To Court: The 50 trucks in respect of which I was to receive commission paid by Brandler and Rylke are the same 50 trucks promised by Frankel in respect of which I had made the arrangement with the Syndicate.

Brandler opened a letter of credit in favour of Mr. Frankel. Frankel said that he was not interested in a letter of credit, because he wanted cash £5000 to which he said he would add money to pay to Vauxhall Motors so that is why Frankel never accepted the letter of credit, and I got no money from Brandler and Rylke.

10 My partners paid Frankel £500 in supplement of £500 and £4500. Upon receipt of this Frankel said he would ship the truck in November. He did not do so, but he asked me for a further advance of £18000, which he then reduced to £15000, before he made the first shipment, I said No. That I would not give him more. It was contrary to the original arrangement and told him I had not got authority or the money. I came back home by air.

20 On my return home I reported the matter to the Syndicate. Omorodion was not included because he was not in Nigeria. Present at the meeting were Plaintiff, Madam Young and Mrs. Odojukan.

My attitude was that I objected to a further advance. They all agreed that no further advance should be given to Frankel. This meeting was on 2nd November.

30 Frankel arrived at Lagos on 12th November. He and McVicker saw me at Idumagbo Avenue No. 39. It was McVicker who had invited Frankel to Nigeria and sponsored his arrival. They saw me on the 12th November. They told me that they came out for rubber and timber.

I went to the Plaintiff that evening. I told him I had seen Frankel in town. Next day a meeting was held at Plaintiff's house at 49 Idumagbo Avenue. Plaintiff called the meeting. Plaintiff, Mr. Y.O.T. Onafeko, McVicker, Frankel and myself.

First we discussed Rubber and later the truck business. My attitude was opposition to further advance to Frankel. Onafeko supported me.

40 McVicker wanted the payment to be made because he said Frankel was wealthy but wanted more money because he was embarrassed at that time. Frankel said that unless he got more money he would be unable to ship the trucks. McVicker said that perhaps Frankel had invested the money. The

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

5th November,
1954.

Examination
- continued.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

5th November,
1954.

Examination
- continued.

Plaintiff was willing to abide by McVicker's suggestion. Onafeko and I objected strongly; we both left the meeting. I told Plaintiff I would have no hand in giving further money.

Nextday the Plaintiff sent for me and told me that after our departure, Mr. Frankel had convinced him and that he was prepared to sell Rubber up to 300 tons to Frankel amounting almost to £7000. I prepared a proforma invoice for Plaintiff. That was a chief contract between the Plaintiff and Frankel, to be prepared in the name of Timax London. I understood from this that Frankel owned the Timax business. Next I saw an agreement for £15000 relating to Bedford Trucks between Plaintiff and Frankel. (Referred to Exhibit "L"). Plaintiff told me of the Truck Agreement on the 15th at the Plaintiff's place at No. 1 Jagun Lane, Lagos. Present were McVicker and Frankel as well and Plaintiff and I.

10

Plaintiff produced to me the original of Exhibit "L" and when I saw the name Omotayo Brothers on it I objected because since the 13th I had dropped any connection with the truck business. Plaintiff then said that the letter could be changed to his name. He did not suggest that he made the £15000 advance because of assurances or statements made by me. Moreover I had advised against the advance and told Plaintiff that it had been agreed that the £5000 already paid was to have the truck sent to Nigeria.

20

30

McVicker typed Exhibit "L". I was not present when McVicker got the instructions but Plaintiff was there when it was amended. Then the meeting ended and we left. Frankel was not pleased with my attitude at these meetings.

I was not present at other meetings.

On the 17th November McVicker and Frankel came to me in car and told me that the Plaintiff had asked them to get me to go with them to Apapa. At that time McVicker was a partner in Omotayo Brothers. I went with them. It was McVicker's car. When we saw the Plaintiff he was busy cutting up meat. He said he had asked for me to bring McVicker and Frankel to Apapa. He gave me his cheque book and told me to draw the cheque in favour of Frankel for £15000. Plaintiff signed

40

it, and gave it to Frankel. I wrote the cheque because Plaintiff's hands were dirty. We returned to Lagos.

My instructions from the Syndicate to attract business was verbal.

10 I did not tell Plaintiff that it would be a shame for me to miss the opportunity re the trucks or that I had flattered ourselves to Frankel. I did not hand the £15000 cheque to Frankel nor did I advise him to give £15000 or assure Plaintiff that I would see that the money was safe, or say that shipment would start immediately he had paid the money. Plaintiff did not tell me to get a banker's guarantee or Frankel before paying Frankel any money. Nor did he ask me for it at any time. I told Plaintiff after my 1st trip that my bankers in London had made inquiries about Plaintiff financial position and I told him that I was satisfied with those inquiries.

20 I told the Syndicate of Frankel's reasons for failure to ship the first lot of trucks. Frankel's reasons were:- first, no shipping space and that he had been unable to finance the business to pay the money to Vauxhall Motors because his fur business took a lot of money.

Plaintiff's evidence that I advised him not to get Frankel arrested on his return to Lagos in January 1953 is untrue. I did not invite Frankel to Nigeria.

30 I did not know of Frankel's visit in March 1953. I never told Plaintiff anything about the lorries in March or that they had to pass through Tel-Aviv.

I had little interest in the truck business after the Plaintiff paid his £15000 but at times I wrote to Frankel for the Plaintiff. The Syndicate had no further interest in the business beyond the first £5000.

40 Referred to Exhibit "EE"; (Statement of Defendant to Police)

Question: Omission of any reference to the Syndicate. Why?

Answer: At the time when I made this statement the Syndicate had ceased to exist. Plaintiff

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.
5th November,
1954.

Examination
- continued.

In the
Supreme Court
Defendant's
Evidence

had told me of intention to take criminal action against Frankel. He asked me to go to the C.I.D. and make a Statement and I did so. The Plaintiff was present when I made the statement.

No. 12

Re page 2 para. 2:- The date stated on this page should be the 18th and not the 17th and that Frankel said that he had "cashed" the money. I made this statement from memory. I had not my file with me.

O. Omotayo.
5th November,
1954.

Examination
- continued.

At the meeting of 13th November 1952 I was agent of the Syndicate. I was never the Plaintiff's agent and there was no agency agreement verbal or written with the Plaintiff.

Cross-
examination.

Cross-examined Lawson:

I traded as Omotayo Brothers alone no partners. This was known to members of the Syndicate. I discussed to members of Syndicate that I had entered into a partnership with McVicker and they knew that that meant myself and McVicker; McVicker was known to Mrs. Young of the Syndicate. I cannot say as to the others.

We had no letter heads on the Syndicate when I went to England. We discussed printing arrangements for them before I left I wrote to Mrs. Young from London asking for letter heads so that I could use them for Syndicate business. It had been agreed before I left Nigeria that I should make business contact for the Syndicate in the name of my firm. It was pending the printing of the letter heads and that authority would not go beyond my receipt of printed letter heads of the Syndicate.

I did not forget to take them with me. It was as I explained my letter to Mrs. Young - (admitted as Exhibit "JJ").

I do not wish to change my evidence. Mr. Ajayi was asked before I left to print them and had not done so, had not got them printed. It cannot be correct that I omitted to collect them. It was agreed that I should make contacts in my firm's name as I said.

Reference Exhibit "EE":- I got 2 letters of introduction. When I made this statement I was

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thinking chiefly of Frankel. Referred to "a letter of introduction to McVicker." I did not say there that I was given a letter to Frankel.

Before I returned to Nigeria to report to Syndicate on my 1st trip I had received Exhibit "GG" from Frankel, which next day I answered by Exhibit "HH". I had then entered the contract before I had consulted the Syndicate.

10 I did not inform McVicker before I wrote Exhibit "HH". Re the letter produced by Frankel from Vauxhall Motors to Defendant's bankers -

I cannot remember whether that letter stated 30 or 50 trucks and I did not get a copy and did not ask for one.

Question: Put it that Frankel did not contact Vauxhall Motors until the 6th October.

Answer: That cannot be correct.

20 I reported to the Syndicate on my arrival home, in September that Frankel had 50 Bedford trucks available for import and Plaintiff was at the meeting. I do not agree that the only available trucks Frankel had were produced in November and therefore could not have been available in September. (Frankel was to deliver 30 and then 20) No I cannot remember that. It was 50 in all. I do not know what arrangement Frankel had made with Vauxhall Motors. I see this document, produced, for the 1st time (Shown to Witness). Frankel did not send it to me and I did not hand it to the Plaintiff. (Another document produced to witness). I admit that this 2nd document was written by me. (Admitted as Exhibit "KK") I agree now that these documents (previously denied) are those referred to in Exhibit "KK". (Admitted as Exhibit "LL" (1) and (2)). I agree that Frankel sent these to me, in connection with the truck business. I learnt from this that Frankel was arranging for 30 trucks on 6th October. Also delivering from 1952 production.

Question: Now do you agree that your statement on return that Frankel had 50 for sale and export was untrue.

Answer: No. The document I saw at the bank in September was for 50 trucks and not for 30.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

5th November,
1954.

Cross-
examination
- continued.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

5th November,
1954.

Cross-
examination
- continued.

That either was from Vauxhall Motors. I cannot remember out of which production of car delivery was to be made. It showed that 50 trucks were ready to be shipped to Israel but had not been taken up by the consignee and were therefore available to Frankel. There were 25 at Luton and 25 in London. The price on the latter was £707 packed.

I could not say whether Frankel had taken up the 50 trucks in September. The letter was brought to the Nigerian Farmers and Commercial Bank of Nigeria in London and now in liquidation. I saw Tel-aviv in the letter at the bank.

10

I had not received an acknowledgment of the sum of £5000 which I had paid at the time I got Exhibit "LL". I received that later.

I had not seen the trucks up to the time I reported to the Syndicate and I told the Syndicate that I had not seen the trucks.

My instructions were not limited to this truck business when going back to England the 2nd time; Plaintiff had asked me to make contact with Ministry of Food. He did so by a letter sent to me when I was in England. Exhibit "D" is the letter in question. I saw the Ministry about the various items in Plaintiff's letter. I heard that the Ministry of Food matter was Plaintiff's favourite business and I reported back to him - I also wrote to Plaintiff from time to time reporting the truck business as Chairman of the Syndicate.

20

30

Question: You agree that there was no difference in method of addressing both sorts of letters.

Answer: There was none reference to Exhibit "X". It is about the Syndicate business and written during my first trip to England. On this occasion I addressed the letter as stated.

I did not address any of the truck deal letter to the Syndicate, care The Plaintiff. I addressed all these letters to the Chairman of the Syndicate who is the Plaintiff. I had been instructed by the Syndicate to address all correspondence to the Plaintiff. I did not add "Chairman Syndicate". The Syndicate did not ask me to deal with the Plaintiff on the truck deal and not with the Syndicate.

40

Tuesday the 9th day of November, 1954.

Defendant's Cross-examination by Lawson Continued.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.
9th November,
1954.

Cross-
examination
- continued.

10 I received Exhibit "GG" before lunch on probably, 5th September. I think I replied on the same day and sent the letter to Nigeria on the 6th or thereabouts. I did not inform my partners in the Syndicate that Frankel would be requiring the £5000; there was no question of paying a deposit of £5000 when I accepted this offer on the 5th September in Exhibit "GG".

Question: When did Frankel first ask you to deposit £5000 with him ?

Answer: About 3 days after my acceptance.

Question: What was his reason ?

Answer: He said that Vauxhall Motors wanted him to deposit money. He added also something to the effect that it was because it was the first transaction that we had together.

20 Question: When you saw Exhibit "LL" were you not surprised that there was nothing in it about a deposit ?

Answer: I was not surprised because the price stated on Exhibit "LL" was not the price which I had seen on the letter shown to me in my banker's office.

30 I had seen £707 as the factory price on that letter which was a Vauxhall Motors letter. I first saw the letter in Frankel's office before I went with him to my banker's office. I think it must have been on 6th September after I discussed the £5000.

Referred Exhibit "L". The 1st para. speaks of two additional percentages and the price is £612. When I was in London the price was £707 and nothing about additional percentage increasing to 17%. Those percentages might be 5% to Frankel and 12% to his agent when he came out here.

40 I did not investigate the factory price myself on that first trip. I saw £707 on the letter and relied on it.

In the
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O. Omotayo.

9th November,
1954.

Cross-
examination
- continued.

To Court.

It was when Frankel came out that I learnt that the price had dropped from £707 to £667. It was, I think now, when I got back to London on my 2nd trip that I heard of the reduction to £667.

Question: Did you try to find out why the price was reduced?

Answer: I did so and Frankel said that that was a later price given to him and reason, reduced cost of production.

10

To Court: I did not check this information independently from the factory. That reduced price was to my own advantage;

I cannot remember whether I was requested by Frankel to ascertain the factory price. According to a letter now shown to me I remember that I was directed to ascertain the correct and published factory cost price and I had these instructions from McVicker before I left on the 2nd trip. I got the original;- (For exhibit).

20

(Original to be produced to-morrow).

Banker's investigation -

I did not pay the bankers anything for their investigations. They did not charge me.

Re - Syndicate evidence p.37 - I do not think the Syndicate had any money at this time. I do not remember anything more than I have stated as having been discussed at the Syndicate meeting. They did tell me to see that the truck was suitable for Nigeria and having done so I should cable home for the £5000 required as a deposit and my expenses. As well which were not as yet exactly known. I think it was the Plaintiff who, as chairman also told me to see the lorries assembled before shipment.

30

(The reference is to para 15 Statement of Defence).

After I had made that arrangement with Syndicate I went on to McVicker and to Brandler and Rylke.

40

Question: Did you ask Brandler and Rylke to pay you advance money before leaving Nigeria ?

Answer: No. - I agree that they were willing to pay me 50% only but they were going to give me reasonable Commission allowing me to sell 50% of the trucks myself.

That was better than the Syndicate offer. Plaintiff was going to have to raise an overdraft.

10 To Court: At that time, my transaction with Brandler and Rylke I told them that Frankel wanted \$5000 deposit but they said that they would show a letter of credit and I agreed to that.

I did regard the transaction of business of this sort by letter of credit as the normal way of doing such business.

Referred to Exhibit "Y". Description of trucks. Brandler and Rylke wanted right hand drive and trucks without cabs.

20 I cabled to McVicker telling them that I had seen the truck. (Cablegram produced Admitted by Defendant and put in as Exhibit "NN").

I saw the truck before I sent Exhibit "NN". They were right hand drive and without cabs. I saw some in London - Show Room at Edgware 4 in number.

In Luton I simply saw truck being driven around right hand drive and no cabs - but some with cabs. I did not know who owned them.

30 Question: You visited no Factory at all -

Answer: I did.

Exhibit "G" referred to - I did not lie in Exhibit "G" to the Plaintiff.

Exhibit "B" referred to -

Question: Did you see any vehicles intended from Frankel to the Plaintiff before you sent Exhibit "B" ?

Answer: No. I was told of them by the Sales Manager - Exhibits "B" represents that information.

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Cross-
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- continued.

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1954.

Cross-
examination
- continued.

I saw trucks at Luton. These I saw were not pointed out as Frankel's but the Sales Manager said that 25 were ready for Frankel and later I saw 4 at Edgware.

I wrote Exhibit "G" (N.B. para. 3) October 9th I sent cablegram on 29th September. But on the 29th September I had already been told about the 25 trucks but the Sales Manager did not mention whether they were with or without cabs.

I cannot remember when I learnt that the trucks were only as described in Exhibit "G" but I think it was at Luton at the Sales discussion and Frankel told me I think. (Witness is asked to compare Exhibits "B" and "MM"). "Deposit against 50" Both telegrams are true. 10

I had seen 2 different types:-

Referred to difference at p.38:- I saw only the 4 trucks at Edgware, before I sent Exhibit "MM".

The trucks at Edgware were with right hand drive and without cabs. 20

Question: When you got the information from Frankel which led you to write Exhibit "GG" then you must have realised that the 4 trucks you saw at Edgware were not on Frankel's order because they had right hand drives and no cabs ?

Answer: No.

But I now agree that the 4 trucks at Edgware were not Frankel's trucks.

Question: So now you will agree that you never saw Frankel's trucks before you sent Exhibit "B" and Exhibit "MM". 30

Answer: Not so.

Exhibit "EE" referred to on this point. I had not got my notes with me when I made Exhibit "EE".

Question: Then why refer to Abudu instead of telling police that you had the note of the whereabouts of the London show room in your file ?

At Edgware I think it was the Manager who pointed the trucks out as Frankel's I have a note in my file to this effect. 40

On the 2nd trip I arrived in England on 28th September and I arrived on 29th and went that day to Luton and Edgeware and cabled (as stated previously).

About 29 trucks were ready at that time according to Frankel and it appeared from his letters that he placed his order with Vauxhall Motors but whether at Luton or Edgeware I do not know.

10 The letter he produced at my banker's referred to one lot of 50, but I was not surprised when the Sales Manager at Luton told me that Frankel had arranged for 25 trucks with them.

When I first returned to Nigeria there were not 50 ready for shipment.

Question: If only 12 ready for shipment why cable in Exhibit "B" and Exhibit "MM".

Answer: I considered that the interval between shipments would not be long:

20 I did go to the shipping agents but I do not remember going into the Office. I saw the Manager Mr. Frankel brought him out to me.

To Court: I was on the premises but not inside the Office Frankel introduced him as Manager. He did not give me any reason for not taking me with him into the Office.

To Court.

Wednesday the 10th day of November, 1954.

10th November, 1954.

Cross-examination of Defendant by Lawson Continued.

I have not got the original instructions given to me by McVicker on behalf of Brandler & Rylke.

30 I say to-day (contradicting evidence of yesterday) that I never received the original instructions from McVicker for Brandler and Rylke of which this document (the "copy" acknowledged by the Defendant yesterday) purports to be a copy; (Copy of Instructions repeated by Defendant).

40 I admit that I was given instructions. I think the instructions were written - I say that I received only the agreement Exhibit "Y". There is nothing in Exhibit "Y" as to me ascertaining the correct and published price of the lorries for

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Defendant's
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No. 12

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Cross-
examination
- continued.

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1954.

Cross-
examination
- continued.

Brandler and Rylke. Exhibit "Y" agreement was handed to me by McVicker I agree that it is in the form of a letter from me to Brandler and Rylke. I heard McVicker say that he handed the original written instructions to me at my house. I read the copy yesterday.

I cannot remember being instructed by Brandler and Rylke to ship through responsible Agents.

Referred to Exhibit "MM". It contains name of shipping Company and details as to arrangements but I did that of my own accord and not upon instructions of Brandler and Rylke.

10

I did not state instructions in Exhibit "B" because I was a member of the Syndicate it was unnecessary.

I do not remember whether Brandler and Rylke required me to give them the details, of shippers etc.

Nor do I remember Brandler and Rylke instructing me to arrange for instructions of trucks by Cargo Superintendents.

20

Nor do I remember making any arrangements with Brandler and Rylke regarding Insurance of the trucks.

I think it is possible that Brandler and Rylke may have mentioned Marine Insurance for the trucks. No instructions were put in writing.

I think Brandler and Rylke did instruct me to check tool kits.

I don't remember that they told me that they preferred "Good Year Tyres"; I suggested "Good year" tyres. I now agree that Brandler and Rylke preferred "Good year". I admit direction as to numbering of cases and that horse-power should be rated at 27.34 h.p. It surprises me to know that all these instructions are contained in the "copy of instructions" which I admitted yesterday and denied this morning.

30

I cannot remember the name of the shipping agents. I did not go into the Office because Frankel did not ask me to do so. He did not ask

40

me to wait outside. I did visit the shipping Agent. I discussed freight London to Nigeria, London to Lagos. He told me from memory. He suggested Vessel London to Lagos. I did say that the trucks had to pass through Tel Aviv. I gathered from Frankel that he had discussed everything with the shipping Agent.

10 I did not demand anything in writing from the shipping agent. I do not remember Brandler and Rylke giving me any instructions on dealing with shipping agent. If I had been instructed I would have asked the shipping agent for confirmation of his arrangements in writing.

Referred para. 4 as Exhibit "Y". I expected to get this from Frankel. But I did not obtain it from Frankel.

I took care to discharge my duties properly I did my best.

Referred para.15 Statement of Defence:

20 I admit that I did nothing further on my 2nd trip to England to investigate Frankel's financial position. I heard that a business man's financial position changes. I had left London for one week only.

I do know that if money is deposited on a banker's guarantee it will be paid by the bank if need be. I did not ask for a banker's guarantee on this transaction.

30 I relied whereby upon what my bankers told me on my first trip.

I did not know that the Bank Manager in London Mr. Coker was a Law Student in London at that time. I know that he returned to Nigeria this year and that he is now a barrister. I cannot remember whether the Bank went into liquidation in 1952, - but it did go into liquidation after my dealings with Frankel.

40 I never asked the Bank for the receipt they got from Frankel and I am not aware that there cannot be traced any record of the transaction in the bank.

On each occasion the money was paid by the

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Cross-
examination
- continued.

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Cross-
examination
- continued.

To Court.

Banks own cheques. The Banks books passed to Official Liquidator.

I did not visit any other shipping agent. I say that I don't remember visiting any other. It would be right to say that I did not visit any other agent. I do not remember making contact with any other agent.

I think that contact was made by my brother with another shipping agents. My brother did make contact by telephone before I went to Hamburg. My brother and I wanted shipments for Nigeria.

I agreed that the trucks should come to Nigeria through Tel Aviv. I did not know that that was a Vauxhall Condition. I only saw Tel Aviv in the letter. "Tel aviv Allocation". I read the letters. The port was not mentioned.

To Court: I do not know that Tel Aviv is a port. Referred Exhibit "LL"(2) - It shows C.I.F. Tel Aviv. Referred Exhibit "G". I had not received "LL2" before I wrote Exhibit "G".

Question: Where then did you get the information "according to agreement signed Vauxhall and Frankel" - (LL2).

Answer: I did not see the agreement between Frankel and Vauxhall. I saw a signed agreement but not LL(2) - The agreement which I saw provided for 50 trucks but stated that between 12 and 30 would be delivered by November. I saw it 4 or 5 days before I wrote Exhibit "G" on 9th October. I asked Frankel for a copy of that agreement when I received Exhibit "LL(2)". At that time he did not give it to me: Exhibit "LL" is the one which he gave me later.

Question: Clearly the earlier one never existed. Only one was Exhibit "LL" ?

Answer: No.

(Referred to Exhibit "J") I admitted I received Exhibit "J" from the Plaintiff - I sent Exhibit "F" (10th October) to Plaintiff. I did not see any shipping documents before I sent Exhibit "F". Nor any document to show title to trucks vested in Frankel.

10

20

30

40

I got nothing in writing from the shipping agents. I took no steps to ascertain whether the trucks could be shipped before I sent Exhibit "F". (and went off to Hamburg.)

I first knew in London on my return from Hamburg that Frankel intended to visit Nigeria. He told me of McVicker's letter. I got back to Nigeria on November 1st and I met the Syndicate at Yaba that very day. The decision of the Syndicate was that Frankel should ship trucks to the value of the £5000 already deposited.

10

Question: Why did you not write this to Frankel as he had not arrived until the 12th.

Answer: He had said he was arriving earlier. I made up my mind to discuss the Syndicate's decision with Frankel on his arrival. At the meeting I told Frankel that he had better ship up to the value of the £5000. I did not tell him that that was a decision taken by the Syndicate.

20

Question: That decision was never taken. If it had you would have told Frankel of it ?

Answer: The decision was taken. The Syndicate had not met since 1st November. Frankel did not agree,

Question: So it was necessary to summon a meeting of the Syndicate to report to them that Frankel turned down their decision.

Answer: I did not think it necessary.

30

My evidence regarding the Syndicate is not entire fabrication.

No steps have been taken by the Syndicate to recover this £5000.

The Syndicate had no bank account. There is no written agreement; relating to the £5000 loan nor to any other transaction.

40

No arrangement has been taken by the Syndicate to repay the Plaintiff his loan. No demand has been made. No discussion has taken place about it yet.

In the
Supreme Court

Defendant's
Evidence

No. 12

C. Omotayo.
10th November,
1954.

Cross-
examination
- continued.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.
10th November,
1954.
Cross-
examination
- continued.

Question: Syndicate had nothing to do with the transaction ?

Answer: It was the Syndicate -

Referred to Exhibit "EE"
Statement to Police

Question: You were specific regarding Syndicate in relation to your 1st visit to England and regarding the Plaintiff in relation to 2nd visit ?

Answer: Plaintiff had told me that he wanted to institute a Criminal proceeding against Frankel and that the C.I.D. asked for me and that is why I wanted the police to believe that in connection with my 2nd visit to England I was asking for the Plaintiff.

10

To Court: What I said was that on my 2nd visit to England I did go to England as Agent for the Plaintiff and not for the Syndicate.

(That is, what I wanted the police to believe at that time.)

Because there was no discussion then about the Syndicate.

Referred again by Counsel to Exhibit "EE".

20

Question: Even though you say there was no discussion about the Syndicate at that time you did say that you left Nigeria as a representative of the African Syndicate on your first trip (2/9/52).

Answer: That is so.

Referred to Exhibit "A" (15.XI.52).

30

Question: Why did you not refer to Ojikutu in this as reference of Syndicate ?

Answer: At that time Plaintiff had taken over the business of the truck deal himself.

I wrote Exhibit "A" after Plaintiff told me that he had taken over the truck business and after he had decided to pay the £15000.

Question: How do you reconcile Exhibit "A" with your evidence that at the meeting on the 13th

November you had washed your hands of the whole business

In the Supreme Court

Answer: I agree that according to Exhibit "A", I continued to act as the Plaintiff's Agent after the 13th November "Until the deal comes to a successful end".

Defendant's Evidence

No. 12

10

Referred Exhibit "L". This is Frankel's signed acceptance of the order. It is the only signed acceptance made by Frankel in November relating to the truck business to my knowledge.

O. Omotayo.
10th November, 1954.

I was not the one who gave Exhibit "L" to Plaintiff after receiving it from Frankel.

Cross-examination
- continued.

Referred to Para.4 Exhibit "A".

N.B. "Enclosed herewith please find,....."

Question: You sent Exhibit "L" to Plaintiff under cover of Exhibit "A".

Answer: I now remember that I forwarded Exhibit "L" to the Plaintiff under cover of Exhibit "A".

20 (Support McVicker's story).

It was Mr. Frankel and Mr. McVicker who gave it to me (Exhibit "L").

Mr. McVicker typed Exhibit "L" but it was not prepared in my presence at the Bristol Hotel. He told me he had typed it. Mr. McVicker's evidence on this is not the true evidence.

I did not advise the payment of the £15000.

30

Referred Exhibit "EE" "A few days later" I advised Ojikutu not to pay any more money".....
"bn 17-11 I saw Frankel"

(- I pretended in Exhibit "EE" that it was Ojikutu who told me that he had received Exhibit "L" from Frankel).

Question: Why did you pretend so to Police ?

Answer: That was my "interpretation" of what actually happened.
When I made this statement I remembered that it was I who had written the cheque.

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Supreme Court

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Evidence

No. 12

O. Omotayo.

10th November,
1954.

Cross-
examination
- continued.

Question: Why then you said that you saw Frankel on 17th and he told you he had got the money.

Answer: It was on the 18th when Frankel told me that. My statement to Police is incorrect on the date. Frankel told me that he had cashed the cheque at the bank, and not, as in Exhibit "EF" that Ojikutu had given him the money.

I did not recommend the payment and I had nothing to do with the payment of the £15000.

There was no reason to refuse Plaintiff's request to me to write the cheque. I wrote other things besides cheque for him.

10

Referred Exhibit "O"1 and 2 and 3.

I wrote Exhibit O.1 and 2 and 3.

Telegram produced to witness. I admit I sent this to Frankel. (Admitted as Exhibit "NM").

I wrote Exhibit "O.1" and 2 and 3 and sent this telegram in pursuance of my letter Exhibit "A". Referred to Exhibit "O"(3) - passage relating to £15000 - I wrote this not as Agent of Plaintiff but as the man who initiated the truck deal.

20

Referred to words "We are finding it difficult to pay"

Question: £8500. Who are the we ?

Answer: If £8500 had been paid Plaintiff would have paid it. I wrote "We" because I had used it through the letters. I agree that I was writing on Ojikutu's behalf. I know what I wrote in Exhibit "O.3") - para 3. Para. 3 is correct and I went on to say what follows.

30

Frankel expressed that desire at the meeting on the 13th November and that is why I walked out of the meeting. Again to Exhibit "A". - It was important to put down in writing the understanding that existed between me and the Plaintiff.

Question: Why did you not put it down that you objected to £15000 advance and say that you were acting as agent under protest ?

Answer: I did not think of it.

40

I did not remember to state my objection to the £15000 in writing Exhibit "O"(3) to Frankel.

My relative Onafeko was present at only one meeting between Plaintiff, Frankel, McVicker and myself.

Document produced to Witness - I say that Onafeko was present at the meeting of 13th November. He was not present at a meeting on 14th January.

10 (Referred to Exhibit "EE" - No mention of Onafeko being present at 13th November meeting).

In making my statement to the Police about the meeting of the 13th November I was not asked who else was present hence the omission of Onafeko's name.

20 To Court: A police officer wrote it down. Exhibit "EE" what is contained in Exhibit "EE" is the record of my narrative from beginning to end as I related what had happened. The record in Exhibit "EE" is not one of my Answers to a series of questions.

Thursday the 11th day of November, 1954

Cross-examination of Defendant by Lawson Continued.

It was an omission not to say that Mr. Onafeko was present during the discussion.

30 I invited Onafeko to join me. I went to his house and asked him to come with me. He was a member of the European African Trading Company which was to be financed by Frankel and the Memorandum and Articles of that Company had been prepared before Frankel arrived in November. McVicker had promoted it before Frankel came.

Exhibit "CC" referred to: The preparation was started in November before I went to England on my first trip.

Question: You said that only Mrs. Young knew McVicker but name of Ojikutu appears as subscriber?

Answer: Plaintiff joined the proposed new Company after Frankel's arrival.

40 I wanted Mr. Onafeko to meet Mr. Frankel. We all met at Plaintiff's house.

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Evidence

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O. Omotayo.
10th November,
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Cross-
examination
- continued.

To Court.

11th November,
1954.

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No. 12

O. Onotayo.

11th November,
1954.

Cross-
examination
- continued.

What I referred to in Exhibit "EE" was a meeting for introductions on the 12th. The business meeting was on the 13th. Onafeko was not present on the 12th. That was at No.1 Jagun Lane. The meeting on the 13th was at 49 Idumagbo Avenue, Lagos.

Question: Exhibit "EE" - refers to the 13th and Onafeko was present.

What I told Frankel in England was that Ojikutu was chairman of the Syndicate. I do not refer to Frankel coming out to meet the Syndicate in Exhibit "EE") because that statement was given to assist Plaintiff to receive his money from Frankel. £20000.

10

Onafeko attended the meeting of 13th November and no other. I gave evidence in No. 154 of 1953.

Referred to Exhibit "V" pp. 5, 6 and 7.

(Note: Plaintiff's contention as to Exhibit "V" is that Defendant brought the business to the Syndicate who could not take it up and so Plaintiff took it personally)

20

Pp. 5, 6 and 7 is record of my Evidence in Exhibit "V" (154 of 1953).

I was not asked to explain the circumstances of Plaintiff's payment of £20000 "to the Syndicate" and that evidence is accordingly not wholly correct. Ojikutu did not put £20000 into the Syndicate business.

Meeting of 7th January and McVicker's Evidence thereabout - I do not remember any meeting in January. One of Frankel's business was a limited company.

30

In December 1953 the Syndicate had not been dissolved but had ceased to do business.

I cannot remember whether Frankel told me in first trip that the lorries would be shipped in December. If he had said so I would not have come home to ask the Syndicate for the money. It is not correct that I wanted the contract in my own hands. Nor did I only think of Syndicate and Plaintiff when I handed £5000.

40

I arrived in England on 3rd September. Had dinner on the 4th and got the letter accepting truck deal.

In the
Supreme Court

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Evidence

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Referred Exhibit "BB" (5.9.52): Delivery during December. I admit writing Exhibit "BB". I do not remember telling Plaintiff that the 1st Shipment would be in October. (Referred to Exhibit "E")

O. Omotayo.

11th November,
1954.

Referred Exhibit "E".

Cross-
examination
- continued.

10 " Exhibit "J" (Letter to Defendant) I agree that Plaintiff was expecting shipment either in October or November.

Referred Exhibit "GG": "Delivery in December" - Frankel told me however that shipment would be earlier. I posted Exhibit "GG" to Plaintiff as Chairman of the Syndicate.

Referred Exhibit "BB": Estimate of profit of £200 on each truck.

20 Because a partner was entitled to work on his own when away. I did not want to gain that profit for myself - I wrote no letter to the Immigration Department when Frankel came to Nigeria.

Before I went to England I conducted an expert business with U.K. and Germany. Some in my name and some in Madam Young's name.

Letter produced to witness

I received this letter from Frankel and I passed it on to the Plaintiff. (Admitted as Exhibit "00").

Re-examined Ferguson:

Re-examination.

30 I passed Exhibit "00" to the Plaintiff because he was then handling the business and I was only helping him in correspondence. Immediately I wrote for Plaintiff I passed it to him.

I did nothing of which I did not tell Plaintiff. - I have not seen these letters since that date.

Referred Exhibit "A".

40 I wrote this I left the meeting on the 13th and then on the 14th in afternoon I met the Plaintiff. He said he had come to an arrangement with

In the
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Defendant's
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No. 12

O. Omotayo.

11th November,
1954.

Re-examination
- continued.

Frankel regarding Rubber and Trucks. He was going to do the truck and rubber business on his own and he asked me to prepare pro forma invoice for 300 tons of rubber, about £67000. He told me he was prepared to give Frankel £15000 and he cabled me to help to sell the trucks when they arrived. I prepared this invoice for Plaintiff and gave it to him on 15th.

The reason I wrote Exhibit "A" is because the Plaintiff told me that he had taken over the truck business and had asked me to help him to sell the trucks when they arrived.

10

In saying that I would act "until the deal comes to a successful end" I was referring to my assistance to be given to the Plaintiff to dispose of the trucks. I was not to be handling any of the financial aspect of the deal at all.

I was unaware of Plaintiff's arrangement with Frankel or its terms until he told me on 14th November.

20

Referred Exhibit "A" again:

In saying that I continued to act as the Plaintiff's agent after 13th November I want the Court to believe that I was agent for the Syndicate up to the 13th November and that from the date of this letter Exhibit "A", I was helping the Plaintiff with the sales of the trucks. This was a new arrangement as from the 15th November date of Exhibit "A". I was not an "agent" in this. I was to help him and without agreement as to remuneration at that time.

30

Question: Referred to Exhibit "EE" - and evidence I wanted the police to believe that I went to England as agent for Plaintiff and not for Syndicate - in relation to Exhibit "EE".

Answer: I want the Court to believe my evidence that on my second trip I went to England as Agent for the Syndicate. That is the actual fact.

When I made my statement to the police the plaintiff wanted to institute a prosecution of Frankel to recover the £20000.

40

Question: How was the £20000 put into the truck business ?

Answer: \$5000 was paid to Frankel by my bankers in London on behalf of the Syndicate and the remaining £15000 was paid to Frankel by Plaintiff on his own behalf.
All the money came out of Plaintiff pocket.

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.
11th November,
1954.

Re-examination
- continued.

I was not asked to explain to police the financial structure of the matter. I did not think it was important because the Plaintiff, if he was able to recover the money, would help to Syndicate in regard to repayment of the £5000 but to the Syndicate.

10

The Syndicate Letter Headings:

The Syndicate asked Mr. Ajayi to help us to print letter heads. I was not to collect them from Ajayi. Referred in Exhibit "JJ". I wanted Madam Young to collect the letter heads. They were not ready before I left for London.

I did in fact omit to collect them. I had arranged for Ajayi to collect them. I went then to get them but they were not ready.

20

I do not perhaps understand the word "Omit". I have not seen one of those letter heads yet.

I do not agree that I should have informed McVicker about the truck deal before I entered into it.

My bankers did in fact pay Frankel the £5000 in London.

Referred to Evidence at p.47.

To Court: I had received a letter from my Bankers confirming their payment of £5000 to Frankel before I got Exhibit "LL".

To Court.

30

Exhibit "L" - The only percentage that figured in my original agreement with Frankel was 5% only. I had no part in the percentage agreement in Exhibit "L". I was content with Frankel's information in the price reduction because he was the person with whom I was dealing directly: I did not doubt it.

I don't doubt people with whom I deal. I am in timber and produce - In my own business I ship through agents. I had no experience of shipping procedure personally.

40

In the
Supreme Court

Defendant's
Evidence

No. 12

O. Omotayo.

11th November,
1954.

Re-examination
- continued.

My ordinary business was conducted through local agents.

I visited U.K. twice in 1952 as stated: September 1952 was my first visit. I have been in business since 1951. I had known Plaintiff long before that: but not as a business connection but as a butcher, a big trader.

My brother telephoned another shipping agency in order to get the trucks down earlier. I was expecting to have right hand drive trucks shipped (Referred to Exhibit "G").

10

I learnt that I had to take lorries with left hand drives from the contents of the letter from Vauxhall Motors to Frankel which Frankel showed to me at the Bank. This was on my first trip to London.

There are other methods of obtaining trucks e.g. by paying cash. By paying a cash deposit. These and letter of credit are 3 methods. Payment at sight terms by these shipping the goods and sending the bills for collection through my Bank.

20

Referred to Exhibit "Y": I signed the original of Exhibit Y. It is also signed by Mr. Brandel. Mr. McVicker prepared Exhibit "Y". He was then my partner.

The Syndicate took no steps to recover the £5000 because the Chairman, the Plaintiff, had never called any meeting hence I did not ask for a meeting to be called -

Referred to Exhibit "A" - I omitted reference to my objection to the payment of £15000 to Frankel in Exhibit "A" because that was Plaintiff's personal affair.

30

12th November,
1954.

Friday the 12th day of November, 1954.

Re-examination by Ferguson of Defendant Continued

Re O(3) : Re Omission in Exhibit "O(3)" no objection to the £15000. By saying, I did not think about it, I mean that it had been a matter between the Plaintiff and Frankel.

Re Exhibit "EE" - In saying I "pretended" - at that time I had none of my files with me and so I told the police that it was Ojikutu who told me

40

that he had received Exhibit "L" from Frankel.

I first heard of Plaintiff's arrangement with Frankel from the Plaintiff himself.

I first discussed the truck business with the Syndicate following my arrival from my 1st trip.

10 Ref: Exhibit "GG". This is Frankel's first offer. I posted it to the Plaintiff on the following day and I first heard about the required deposit of £5000 about 2 days after my reply to Exhibit "GG" after I had forwarded Exhibit "GG" to the Plaintiff.

I did not invest any money in this transaction.

If I had had my own money invested in it I would have handled the business in the same way.

I did in fact pay the deposit against my own account and Plaintiff reimbursed me with his £5000.

At that time my view of the arrangement was that it was perfect.

No. 13

20 J. A. ADEFARASIN

D.W.2. Sworn, Examined, states:-

Examined Adesanya:

I am JOSEPH ADETUNJI ADEFARASIN. I live in Abeokuta I am a Magistrate Grade I. I know Defendant, I have known him for several years. He is my relation. He was doing produce work. For many years he worked as a Clerk. He went into produce business on his own account late 1951 or early 1952. I know the Plaintiff.

30 Towards end August 1952 Defendant introduced McVicker to Makanju and self in my chambers. I was practising then. He introduced him as a friend. On that occasion McVicker said he had come to Nigeria to do business and that he would employ my professional services later on. He did not say on that occasion there whether he was on his own or not.

In the
Supreme Court

Defendant's
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No. 12

O. Omotayo.
12th November,
1954.
Re-examination
- continued.

No. 13

J.A. Adefarasin.
12th November,
1954.

Examination.

In the
Supreme Court

Defendant's
Evidence

No. 13

J.A. Adefarasin.

12th November,
1954.

Examination
- continued.

He came a few days later alone and told me he wanted to form companies in Nigeria. This was towards end of August. He said he was agent for Mr. Frankel.

Lawson:- We claim client's privilege for McVicker's disclosures to his, then Solicitor.

Noted:

McVicker described Frankel as a very wealthy man who had sent him to Nigeria. He said that Frankel wanted to attract Nigeria Africans into Companies which would be formed by and financed almost entirely by Frankel.

10

On a number of occasions McVicker brought African business men to my chambers and before then he repeated what he had already told me of his business in Nigeria and of Frankel's fabulous wealth and the small sums which these business men need contribute.

Referred Exhibit "CC". I prepared this from McVicker's draft. Final draft was prepared between November and December 1952.

20

The Plaintiff was not brought to my Chambers. I never met Frankel. I heard of his arrival in November 1952. McVicker told me of Frankel's arrival. He did not discuss the purpose of Frankel's visit, I told McVicker that I was too busy to see Frankel. Next day, following McVicker's report of Frankel's arrival McVicker came and asked me whether I had seen Defendant. I said no and McVicker said he had just come from a meeting at which he, defendant and Frankel had been present. He said that Defendant had "backed out" and explained that Defendant had walked out and said he had no further interest in the truck business. McVicker left. I did nothing. I expected that Defendant would see me.

30

I saw McVicker subsequently up to December. He did not discuss defendant's attitude.

There was another Company formed and registered McVicker told me that Frankel was to finance it.

40

Cross-
examination.

Cross-examined Akintoye:

Defendant is a cousin, not a mere one. Defendant was working for C. Izard & Co. before I

went to England in 1945 for 3 years or more. He was a clerk. I don't know details that his work was connected with produce. I cannot remember that McVicker told me that Frankel had business connection in England and Germany. He told me of Frankel's wealth: I do not remember if he said that Frankel had wealthy business friends.

In the
Supreme Court

Defendant's
Evidence

No. 13

10 I don't know of a partnership between Defendant and McVicker. Defendant did not tell me of one. Nor did McVicker.

J.A.Adefarasin.

12th November,
1954.

Cross-
examination
- continued.

No. 14

A. COKER

D.W.3. Sworn, Examined, states:-

No. 14

A. Coker.

12th November,
1954.

Examination.

20 I am AKITOYE COKER of 38 Macaullum Street, Ebute Metta. I am a Legal Practitioner. I know Defendant. I saw him in England in my Office in September 1952. At that time I was London Representative of Nigeria Farmers and Commercial Bank, in July 1951. I took over the work of Manager. It was early in September 1952. I did not know him before. He was brought and introduced to me by a customer of the bank, S.O. Abudu. I took him round the Office and introduced him to the clerks. Defendant told me that he came on business to get contracts for supply of rubber, timber and other commodities. That is all he mentioned that day.

30 He came again a few days later. He told me how he had met Frankel and how he was prepared to supply him with trucks. He said he had been introduced by one McVicker of Nigeria. He asked me to assist him by making enquiries about Frankel's Credit. I helped him. I invited Frankel to my Office. He came with his Secretary a Mr. McVicker - Defendant and Mr. Abudu were also present. I asked Frankel if it was true that he was going to supply trucks. He showed me an offer from Vauxhall Ltd. for supply of 50 Bedford trucks. More than £35000 in cost.

40 I asked Mr. Frankel how soon he could ship. He said within 30 to 60 days. He said that Mr.

In the
Supreme Court
Defendant's
Evidence

No. 14

A. Coker.

12th November,
1954.

Examination
- continued.

Omotayo would have to pay cash. I told him it would be impossible for any African to pay such a lump sum. Then he said that we should have to make a deposit against the order. And payment on a Sight Draft basis.

He agreed to a deposit of £5000, to ship the lorries and to payment of the balance on arrival of each lorry in Nigeria.

Frankel asked for the deposit. The Defendant accepted this suggestion. I asked Frankel the name of his Bankers. He told me it was Barclays Bank of Bishop Gate. I asked him how long he had been in business. He said over 25 years. I obtained his consent to make inquiry of his bank and he agreed. I told him I would report to Defendant and then go further into the matter. I telephoned the Manager of the Bank. Frankel's Bank, whether Frankel was a customer, and that one of our customers wanted to do business with Frankel. I discussed the value of the business. That it involved a lot of money.

10

20

I was satisfied with the result of my investigation. I invited Frankel and his Secretary to call and I reached final arrangements with them. That if Defendant paid £5000 deposit Frankel must ship 12 lorries within 60 days. Frankel agreed to do this. After this interview I went to Frankel's Office. He introduced me to his staff and showed me round when I was leaving I told Frankel that I would see Mr. Omotayo.

30

I wanted to know what his business office was like. That he had one and had a good one.

I was favourably impressed by all I saw. A dealer in furs, a city office and staff. Rental value of premises not less than £1500.

Defendant came to my Office. I told him how far I had gone. That Frankel's terms well reasonable in regard to the total sum involved and to the fact that Defendant had done no previous business with Frankel. Defendant said he would have to go back to Nigeria as he had no funds with him, and to make sure that the trucks were suitable.

40

Defendant told me that he had a Syndicate who had sent him to England.

I saw Defendant again when he came back, towards the end of September. He told me he would soon be in funds. I said that being so I would pay Frankel an instalment. I paid £500 to Frankel at beginning of October. Two days afterwards I paid the balance on the Defendant's account. Defendant reimbursed me a few days later.

Cross-examined Lawson:

10 I cannot remember whether there was anything about date of delivery in the Vauxhall letter. I would have asked the question if the document had contained the 30 to 60 days.

20 Referred to Exhibit "G" - I was of opinion that it might be possible for Frankel to ship at an earlier date even though he had written of shipment in December. I would not have thought it necessary that offer to ship between 30 to 60 days should be put in writing. I would have advised the customer that the verbal offer to ship in 30 to 60 days was sufficient as it all depends on how the money was to be paid.

All that I remember about the letter produced by Frankel is the number and approximate value of the trucks.

30 The terms, I cannot be exact, were by letter of Credit. I found that Frankel was in a position to open a letter of Credit for £35000: He might not require any money to do that. The Manager informed me that Frankel had been a good customer and had a good turnover. He told me that Frankel was in a position to do the business. I did not know that early in October Frankel had an overdraft of £4400 with his bank. No enquiries would have revealed that to me.

I got Frankel's permission to ask his banker about his account.

I did not think it necessary to find out whether his account was in credit or not -

40 In some cases we require collective security. It depends upon the customer.

I agree that Frankel would have taken a risk

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Defendant's
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No. 14

A. Coker.

12th November,
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Examination
- continued.

Cross-
examination.

In the
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Evidence

No. 14

12th November,
1954.

Cross-
examination
- continued.

in taking the order from Defendant without a deposit: There was also an element of risk to Defendant in making a deposit.

Frankel could not have got his banker to give a guarantee. A Banker's guarantee would not be given in the circumstances for Frankel. It would have been necessary to cover Defendant's objection to pay the balance of the truck transaction.

I agree that a banker can be requested to give a guarantee on behalf of a customer that the customer would be in a position to pay. 10

I was a Law Student at this time. I had had something to do with banking before in auditing accounts of the bank in Nigeria for about 3 years. I studied banking and became an Associate of the Institute of Bankers.

I am not in a position to say whether it would have been irregular for a request to be made to Frankel's Bankers to give a guarantee that Frankel would be in a position to pay £5000. 20

If the Defendant had sought my advice on the wisdom of paying this deposit, I would have told him, in view of Frankel's Bank Managers Assurances that he might well pay the deposit in view of the total value of the contract.

Defendant had the choice to accept or to reject the terms.

It was not possible for me to see the trucks.

I remember, before the money was paid, that Defendant told me that he had been taken out to the Bedford Works (To see the trucks). 30

I went to Frankel's Office to know what sort of a place it was and how he carried on, staff, the house, the situation of the office. To do that was necessary after my discussion with his Bankers.

We were not in liquidation at this time.

Re-examination.

Re-examined Adesanya:

The state of a customer's account does not necessarily determine whether that customer is in position to do a certain business or not. A bank might be willing to render all the necessary assistance. I was a full time bank Manager. I established the London Branch, employed the staff, and could engage or dismiss staff. 40

No. 15P. ODOJUKANTuesday the 16th day of November, 1954.D.W.4. Sworn, Examined, states:-

I am PATIENCE ODOJUKAN I live at 31 Ricca Street, Lagos. A teacher. I know Plaintiff and Defendant. I was a member in 1952 of the Syndicate named in this case.

10 We decided that 2 members of the Syndicate should go about to look for business for the Syndicate. Mr. Omotayo was to go to England and Mr. Omorodion was to go to Ruenda. Each member of Syndicate was to put up £200 for the expenses. I subscribed a £100 through my friend Madam C. A. Young. Defendant left on 2.9.52. He returned on the 21st and was met on the 22nd at Plaintiff's house, 49 Idumagbo Avenue, Lagos.

20 At the Meeting: Defendant reported that he had arrived the day previous. That whilst in England he met a Mr. Frankel who had 50 Bedford trucks for sale. He said that Frankel said that if the Company would pay £5000 he would ship 30 trucks against a sight draft. We discussed the cost. I cannot remember the figures now but the Syndicate decided to send Defendant back to England to be sure of the type of trucks being the type required in Nigeria. And if they were the right type required in Nigeria he should send a cablegram.

30 There was a discussion about the money. The Plaintiff said that on Mr. Omotayo's return to England he should send for the £5000 to be sent to him on behalf of the Syndicate. We all agreed to this suggestion. All the members were present except Mr. Omorodion who was away. Defendant said that his premature return to Nigeria and next return to England would cost more money than the sum previously allowed to him. He said he would require about £300 more. Plaintiff said that he would send him the £300 in addition to £5000 both on

40 behalf of the Syndicate. We agreed that Plaintiff would have a large portion of the profit on the venture and the other members would have a share. Defendant went again to England.

Defendant returned again on 1st November. The

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Defendant's
Evidence

No. 15

P. Odojukan.

16th November,
1954.

Examination.

In the
Supreme Court

Defendant's
Evidence

No. 15

P. Odojukan.
16th November,
1954.

Examination
- continued.

members met him at Airport. Plaintiff, Mrs. Young, myself. We went to his house at 62, Wakeman Street, Yaba. At the meeting Defendant reported that before the money came from Nigeria he had already paid Frankel the £5000 and that after he paid the money he went to Hamburg and on his return Frankel had said that no trucks had been shipped because £15000 more was required from the Syndicate and that he had told Frankel that the Syndicate were not prepared to do that. We were all surprised. Each of us was unwilling to pay any more. Defendant too was unwilling to pay any more money. I said that we should ask Frankel to send trucks to cover what we had already paid. No decision was reached. No one opposed my suggestion. So we concluded.

10

Regarding Defendant's correspondence when he was abroad all letters were usually directed to the Plaintiff. The Plaintiff was chairman.

Cross-
examination.

Cross-examined Lawson:

20

Defendant and I are of the same tribe but not related. Madam Young and Defendant and I are all Ijebus.

I do not remember it being said that we could not afford to enter this business we only discussed how to get the money. I do not remember discussion of U.A.C. monopoly of Bedford trucks. The introduction of the truck business did not cause trouble in the Syndicate. I have heard nothing more about the Syndicate since 1952 at the meeting with Omotayo. The Syndicate had no account book to my knowledge. No minutes of the meeting were recorded. We did not discuss about taking any loan from Plaintiff. Nor discuss paying interest on the loan. I was not told that Plaintiff was going to borrow the money from the bank. An overdraft was not discussed at the meeting.

30

No decision was taken upon how the money was to be sent. No written acknowledgement was given to Plaintiff for the loan. The Syndicate had no money at this time and no assets.

40

I agree that we were not in a position to go into this business on our own account. Each member of Syndicate was entitled to share profit equally on all Syndicate business.

Plaintiff's share in truck business was not in accordance with the Partnership Agreement. (Partnership Agreement admitted by consent as Exhibit "PP").

10 The Syndicate made no arrangement for repayment of the Plaintiff's loan. The £5000 was a loan to the Syndicate. I cannot remember the exact proportion of profit the Plaintiff was to receive but it was the "lions share". Nor whether that was decided. Nor can I remember what share the Defendant was to have. I might remember if definite percentage had been agreed to but I cannot so remember.

Terms of Agreement read Exhibit "PP" re Accounts Books. Para II.

I agree that there is no record of the truck transaction.

20 Para 21 - The truck business was not carried out to the name of the partnership. We were not registered before Defendant went to England. That is why the truck deal was not done in the name of the Syndicate. The Syndicate was registered after Defendant left for England in his first trip.

Ref: Clauses 3 & 4: This £5000 loan was not paid into the Syndicate's bank account. No decision was taken to apportion any losses on truck business.

Ref: Clause 17: I did not see any written report or account by Defendant of the truck business.

30 No decision was taken in regard to sharing losses on truck business. If there had been losses I would have thought that the Syndicate would have met and taken a decision on sharing.

Ref: Clause 22

Ref: Clause 26: "Recorded Meeting" There was no recorded meeting to my knowledge at which the truck business was discussed.

If the Syndicate had taken up the truck business the Defendant would not be allowed to take it up with another firm.

40 I did not pick up in conversation my evidence

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Supreme Court

Defendant's
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No. 15

P. Odojukan.
16th November,
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Cross-
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- continued.

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P. Odojukan.
16th November,
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Cross-
examination
- continued.

of Defendant telling Syndicate that Frankel would ship 30 trucks. What Defendant said was that Frankel had 50 but would ship 30 on payment of £5000 and against Sight Draft and he told the Syndicate this on his first return from England in September 1952.

This truck business is the only business the Syndicate has done. We have received no trucks and no decision has been taken regarding the £5000. I was not informed of any member asking for a meeting to be called nor have I demanded a meeting. No member has expressed anxiety regarding this £5000 to my knowledge.

10

Mr. Omorodion had some contracts in Ruanda work some £1500 made when there for the Syndicate Plaintiff advanced the £1500 for those contracts. It was a personal arrangement by the Plaintiff.

All I know is that at the initial stage I believed that the Plaintiff was acting in the interests of the Syndicate but later I knew nothing more about it.

20

Question: Were you aware of fact that Defendant was instructed to find out whether this was a safe transaction ?

Answer: That might have been a discussion between the Plaintiff and Defendant as Plaintiff was to finance the business.

I cannot remember whether Defendant was to have a share of the profits greater than mine.

17th November,
1954.

Wednesday the 17th day of November, 1954.

Cross-examination of D.W.4. continued:

30

Defendant was sent to England to look for business generally. He was instructed before he went I was not present at that meeting but I was told what happened.

The Syndicate was formed for General Business.

(Referred Exhibit "PP" - Para. 1 - "Produce Dealers"). I had no copy of Exhibit "PP". We formed business for Produce dealings according to Exhibit "PP".

As between Plaintiff and Defendant I know

40

only what happened at the meeting - I remember a discussion at the meeting between chairman and Defendant about truck cabs - trucks without cabs. Discussed when Defendant returned from 1st trip.

I cannot remember what sort Defendant spoke of. The truck business did not, to my knowledge, bring any misunderstanding into the Syndicate. I agree it was the only business introduced to us but there was no quarrel.

10 Our last meeting was 1st November 1954 on this truck business. But we had another meeting after that when Omorodion returned from England in January 1953 or thereabouts.

20 I cannot remember the date of Omorodion's return. More attention was called to Defendant's return and I made a note of it. I think I made a note of Omorodion's return. I looked at my diary before giving evidence. I was not prepared for this case. I cannot remember discussing the truck business in January 1953 or £5000.

No comment and no decision taken on my suggestion that Frankel should ship trucks in value of £5000 paid. We were still expecting the trucks in January 1953 and so there was no need to discuss about the £5000. I was not told that Frankel had been to Nigeria. I cannot remember whether Defendant told us at meeting in November that Frankel was coming. We did not meet in January to discuss Defendant business at all.

30 I knew Omotayo was trading as "Omotayo Brothers". He was permitted to make contract in name of "Omotayo Bros." for the Syndicate. There was something published on Defendant's departure which contained a reference to Omotayo Bros. and it was explained to me that it was so stated because the Syndicate had not been registered. Defendant did not tell me who were partners in 'Omotayo Bros.'

40 No meeting of Syndicate has taken place since January 1953. I had told the Syndicate that I would not be active in its business because I had my own business to attend to. We did not object to the Truck business but welcomed it. We hadn't the money but the Plaintiff financed the business and I knew he could do so. My evidence is of what I

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P. Odojukan.
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Cross-
examination
- continued.

Re-examination.

know and heard at this meeting. It would not surprise me that Defendant left the Syndicate's meeting and went to another firm and entered a contract with them for the truck business.

I would not have gone to meet Defendant at Air port if I had not been a member of the Syndicate. I did not go on his first return nor did I go to meet Omorodion but of that I am not sure.

It is true that there was a meeting of the syndicate on Defendant's return in January 1953.

10

Re-examined:-

I usually got my information from the Chairman and from Madam Young. The Chairman was looking after the truck business and he was to guide us. I trusted Plaintiff's guidance in regard to Syndicate taking up the truck business.

Plaintiff was financing the business for the Syndicate. The Syndicate's interest in the business extended up to Defendant's return from his second trip and for £5000 only.

20

The Syndicate had no account at that time and no records of meetings were kept.

By saying the business was not registered I mean that the partnership agreement was not stamped until after the Defendant left for England.

I trusted that the Plaintiff would finance the business but I had some doubt whether he could do so and so would not be surprised to learn that Defendant had gone elsewhere.

No. 16

Y. Onafeko.
17th November,
1954.

Examination.

No. 16

Y. ONAFEKO

D.W.5. Sworn, Examined, States:-

Examined Adesaya:

I am YUMUSA ONAFEKO. I live at 16 Ojogiwa, Lagos, a trader and know the partners in this case and McVicker. I met McVicker in 1952, about August. There was a proposal of business but no business

30

really speaking between McVicker and me. The proposal was of import and export of goods and of timber. I was told that Frankel would finance it. McVicker described Frankel as financially a big man - Referred to Exhibit "CC". I agreed to take up the shares as in Exhibit "CC". I had not paid anything. Africans were to be in the business to protect it. Frankel came in November 1952. I met him.

10 On Monday November 13th Defendant came to my house. He told me that Frankel had arrived on 12th and that a meeting would take place at Plaintiff's house 49, Idumagbo Avenue. He asked me whether I would like to meet Frankel. I said Yes and I went with Defendant and there I met Plaintiff, McVicker, and Frankel. Several discussions took place on timber and rubber between the others. Later they spoke of the Bedford trucks deal of which I had heard before from Defendant.

20 Frankel told the house he would require £15000 more to enable him to ship the trucks, and Defendant objected and said that he had told him in London that he would not pay a penny more and I supported the Defendant.

Plaintiff spoke in favour of giving more money to Frankel. McVicker supported Frankel and is the reason why Defendant and I left the meeting.

Cross-examined Lawson:

30 I do not agree that the timber and rubber business concerned me more than the truck business. (Witness intent to Exhibit "CC"). The business in Exhibit "CC" had not been formed. I was more concerned about the truck business because it concerned my relative and he was doing business with Frankel. He had given £5 000 to Frankel. Frankel asked for more money and I did not want the Defendant to take the risk. I don't know that Frankel was in Nigeria in January 1953 and I did not meet him in January 1953.

40 I cannot remember how much money Frankel asked for at the meeting on the 13th November but I think he may have asked for as much as - I cannot remember, but I remember that at least he wanted £15000.

Omotayo said he would not recommend the payment if any additional money Defendant offered a

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No. 16

Y. Onafeko.
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- continued.

Cross-
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No. 16

Y. Onafeko.

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Cross-
examination
- continued.

suggestion all he said was that Frankel ship trucks against the £5000 deposit or ship trucks to the value of £5000. His first suggestion was that the truck should be shipped against the £5000 deposit and the balance at sight and his alternative was that Frankel should ship just the number of trucks to cover the £5000.

My suggestion was exactly the same with one addition namely that if he could not do either thing he should return the £5000 and told Frankel that if he returned the £5000 no action would be taken against him for breach of contract.

10

I cannot remember what Frankel said in reply to these suggestions but he did not agree and he pressed for £15000.

We walked out because we were not in agreement with proposal to pay £15000. Defendant said he would have no more to do with the transaction if the £15000 was paid and that was why he left.

I am not surprised that Defendant helped Frankel to draft Agreement about the £15000. I cannot say how strongly Defendant felt about it.

20

I cannot remember whether McVicker saw me on 8.1.53 but he used to come to me. He did not tell me that Defendant had threatened to report to his boss: Referred Exhibit "Z". I don't remember getting a copy of Exhibit "Z". I did not receive a copy of Exhibit "Z". I cannot read properly. Not everything. I did not call any meeting, and I recall nothing of the matter in the letter Exhibit "Z".

30

It is true that I was at the 13th November meeting.

No re-examination.

Defendant's Case Closed

No. 17ADDRESSES BY COUNSELA D D R E S S :FERGUSON for Defendant:In the
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Counsel.17th November,
1954.

10

The Plaintiff in any event adopted the whole transaction in regard to the £15000 regardless of how it began. At its lowest if Defendant was Plaintiff's agent throughout the Plaintiff's decision to pay the £15000 was his own. Defendant's agency though subsisting was not operative at that meeting.

20

The Plaintiff's evidence contains the facts supporting this submission. Plaintiff had the same source of information as Defendant, Exhibit "L" - Agreement following the £15000 payment. Plaintiff made no inquiry to find out whether the lorries were ready. The period of 60 days ought to have put the Plaintiff on his guard. Exhibit "J" shows Plaintiff had shipment in view.

Refer to plaintiff's re-examination and "temporary hitch". Frankel thus confirmed what Defendant had told the Plaintiff. Plaintiff neglected opportunity to inquire of Barclays Bank. Defendant at this stage was not conducting Plaintiff's business for him. Plaintiff paid the £15000 without agreement and against agent's advice.

30

Regarding the negotiation stage: The Court is asked to accept the defence that the truck business was put into operation by the Syndicate. Submit that Onafeko was at 13th November meeting. Defendant did become an agent for Plaintiff after 13th November meetings. That was with a view to selling the trucks here. Defendant's letter Exhibit "A" was his expression of an entirely new agency.

40

It was natural that the other members of the Syndicate should leave all to and rely upon the Plaintiff. So correspondence was addressed to him. The money had to come from Plaintiff. He had the office and the address. It is true that the Syndicate business was very oddly run. It had not foreseen a truck business.

They disregarded this partnership Agreement

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Supreme Court

No. 17

Addresses by
Counsel.

17th November,
1954
- continued.

Exhibit "PP": The Syndicate however went into this business: Both Plaintiff and Defendant gave different evidence in suit No.154 of 1953. (In Exhibit "V") but that is not the true story. Truth is that Plaintiff put his own £15000 to use in 1952 to Frankel. In the earlier case neither Plaintiff nor Defendant was concerned with the details.

It is a fair deduction that the business up to the payment of the £5000 was Syndicate business: 10

Exhibit "EE" given a contrary impression. Impression that the business was wholly Plaintiff's and none Syndicate. Defendant went to C.I.D. to make a statement to support Plaintiff's intended Criminal prosecution of Frankel.

18th November,
1954.

Thursday the 18th day of November, 1954.

Ferguson addressing:-

Defendant does not state specifically in Exhibit "EE" that he went to London as agent of Defendant. He did say so in relation to 1st trip. We admit that the reference as to the Plaintiff's correspondence was with Plaintiff: It was not important to Defendant then to go into financial structure. Attitude is consistent with that of the Plaintiff at the same time. Plaintiff spoke of putting £20000 into the business. In this trial we get the detailed facts on both sides. 20

Likewise is the evidence in Suit No.154/53. Neither party gave details. Neither was called upon to do so, only Syndicate's business was then referred to. 30

It is true that the Truck Business was outside scope of Syndicate's purpose as set out in Exhibit "PP". But it was reasonable to send Defendant to U.K. for business and to send him back on truck business. Defendant was agent of Syndicate up to 13th November 1952: Then he entered a new arrangement with Plaintiff as described in Exhibit "A". 40

If Defendant was Plaintiff's agent was he in breach by negligence? Regard the history. It shows how deeply impressed Defendant was by Frankel's apparent affluence. It seems now that the whole of the events and discussions of 29th

September in London seem to have been a gigantic bluff put up by Frankel. Defendant seems to have been left outside the door on the round of calls.

Defendant got and relied upon his bankers assurance. He was not negligent in accepting his bankers' advice.

10 Exhibit "Y". The standard of skill which the Plaintiff can be expected to have required is governed by the sort of person whom he employed as agent. Defendant never set up to be a mercantile agent. He was, as he is, a stranger to U.K. likewise Plaintiff no knowledge of facts of London business (Exhibit "J"). Plaintiff paid £15000 to Frankel without checking up. Without inquiry. Defendant paid £5000 to Frankel after inquiry. Plaintiff paid £15000 because the bait of promises of further contracts was dangled before him by Frankel.

20 Last para. Exhibit "O"(2) - Defendant's letters. To be considered from view point that continuation of contract was at behest of Plaintiff.

Defendant carried out his part with the utmost care of which he is capable which is on high as Plaintiff's own standard. Price & others Vs. Metropolitan House Investment and Agency Company Ltd. (1907). 23 T.L.R. - p.63 - All the skill of which he is capable. Defendant did so. Defendant was not plaintiff's agent. If he was he carried out the duties satisfactorily.

30 Defendant used Brandler & Rylke to cover risk of Plaintiff being unable to remit his money to U.K.

40 Defendant had to go to U.K. without the £5000 and without the £300 additional expense money. Is of interest in showing how the business ought to have been done. Contract with Plaintiff's nebulous instructions. The Defendant was entitled to disregard Brandler and Rylke's "instructions" when he did the business for the plaintiff - Exhibit "Y" did not raise the standard of case for Defendant. Damages:- The £300 would have been a deduction whatever would have happened. Plaintiff, for Syndicate, paid it as expense money and Defendant did other business for the Plaintiff with Ministry of Food and so forth. Loss of profit is vague. Plaintiff expected to make £200 to £300 on each truck. It is in evidence for purpose of General

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Damages. (Also Exhibit "BB"). In Exhibit "O"(3) Defendant referred to Sales being seasonal. Also Exhibit "O"(1).

Profit depends upon the vehicles being available in season.

Bank interest as damages: Too remote. Plaintiff's account was a running account. We have not got overdraft account.

Credibility. Defendant has not had the documents in this case in his hands for a long time, although they might have been discovered. Defendant's evidence hangs together. Also it is apparent that Defendant's command of English is not of high standard. Vide his interpretation of "pretend" in Exhibit "EE" - Our witnesses gave convincing evidence. 10

Deals with doubts raised by Plaintiff's witnesses. Notably McVicker. Plaintiff's evidence that Defendant "deliberately" misled him: This imputes fraud. It is not pleaded. I refer Lord Tentidon Act. p.6. In this case there is no fraudulent misrepresentation unless one says that it is contained in Exhibit "B" that the trucks are ready for shipment and Exhibit "F" and Exhibit "G". Any inducement, and there was none, lay in Defendant's oral description of the business to the Plaintiff. 20

- Points (1) Plaintiff controlled payment of the £15000. (2) Defendant was Syndicate's agent. (3) Defendant carried out agency with diligence for a person of his capability for such work. (4) Damages remote. (5) Application of Lord Tenterdium Act. 30

LAWSON:-

Breach of contract of agency.

- 5 Issues (1) Existence of Contract of Agency between the parties? (2) If so had there been a breach? (3) If a breach what damages to Plaintiff entitled to? (4) Whether loss of (1) £5000 and (2) £15000 was thereby occasioned. 40

Point (1) We say there was an oral contract.
(Chitty 20th Edition p.1099 and Halsbury 3rd Edition Vol. I p.145). (Bowstead Agency Act 9 p.11).

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10 Defendant purported to act as Plaintiff's agent. Refer Exhibit "EE". It is under defendant's hand: It is admission that he represented to Frankel that he was acting for Ojikutu (Moore V. Peach Vol. 7 T.L.R. at p.748). Throughout Defendant purports to act for Plaintiff and he therefore cannot deny that. He did act. In no document is there a line to suggest that Defendant acted for Syndicate - Defendant deal with Brandler and Rylke indicate Defendant's idea was to protect himself alone. Exhibit "LL" - Defendant's efforts to deny this are sample of his lack of credibility. Also Exhibit "L" taken with Exhibit "A" and Defendant's evidence show his lack of truth.

20 Defendant's contradictions re trucks seen and tyres what he wanted and what he saw in Edgeware Road. Also evidence of 29 trucks ready and evidence of 50 trucks original order.

Note again Defendant admission first and denial next day of having received the document.

Defendant's explanation of contradictions in Exhibit "EE" is a bold attempt. It points to his evidence in this case being untrue.

Defendant's going to Brandler and Rylke is indication that the Syndicate had not taken a firm decision to operate the contract.

30 Exhibit "EE" bears on this "Ojikutu agreed on my recommendation to send me the money". This is defendant's own personal narrative of events.

Friday the 19th day of November, 1954.

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Re Evidence - Mrs. Odojukan (D.W.1). It shows - It points to fact that Syndicate never intended that sort of business Exhibit "PP" (P.1).

They were produce dealers, and para. 11 is definite as to accounts of contracts.

40 Look at paras. 6 and 22 also on profits and losses: This is in conflict with Defendant's evidence of percentage shares of profits (50%, 15%, 35%) and para. 7 Statement of Defence - These

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shares in truck venture support Plaintiff's case that it was his personal business and not of Syndicate. Syndicate indifference supports Plaintiff's case. Onafeko's evidence is a pointer, if true at all, that the Syndicate never entered into the matter.

Defendant admitted getting Exhibit "D" from Plaintiff. This letter as a whole makes it clear that the Plaintiff treated the truck business as personal and there is no doubt that it was Plaintiff's. Roberts V. Osilody (147 E.R.P. 89).

10

(2) Was there a breach:- Chitty on Contract - 20th Edition p. 1088: Skill and care as is natural in the circumstances of the agency.

Defendant disobeyed the Plaintiff (p. 15 Statement of Claim) Para. 15 admitted in para 11 Statement of Defence.

This instruction required further steps to be taken by Defendant as his 2nd trip beyond what he had done on his 1st trip.

20

Halsbury 3rd Edition Vol. I. page 183: Duty to carry out personally the instructions. Defendant relied on Frankel. He did not check up himself, or expect the Plaintiff.

Defendant was an agent for reward (p. 1090 Chitty): The degree of skill and care required. Kramer V. Cornelius (141 E.R. p.94) agreed to the duty to be carried out.

Defence submission is related to gratuitous agent. Halsbury Vol.I. p. 185. (3rd Edition) Agent for reward. Must imply the skill required for the agency. Beal V. 8th Devon Railway 11 L.T.R. - p. 184 at p.188. Defendant undertook to employ the skill and care requisite by accepting the agency.

30

Defendant had the benefit of Brandler & Rylke's instructions. Defendant's admission here are important. Regard Defendant's evidence of his visit to Luton (and to Edgware). It makes clear his neglect of duty. The 4 trucks at Edgware were not even of the type which Frankel had undertaken to ship. These 4 were exact opposite with the right hand drives and without cabs. They were not Frankel's trucks and Defendant has admitted that

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under Cross-examination. (He should have stopped here and reported to the Plaintiff fully). In the face of this fact of Frankel's failure to produce any trucks the Defendant cabled for the £5000.

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Defendant's evidence of his visit to some shipping agents later on that day is in keeping with his earlier evidence displaying lack of diligence - (Failed to take elementary precautions).

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10 Defendant took no steps in this case to check the truth or untruth of what he had been told. Or that Frankel had 50 or any Bedford Trucks.

Defendant's most important "misrepresentation" to the Plaintiff is in Exhibit "B" - his cable to Plaintiff "12 vehicles assembled and ready" - Defendant had not seen even one Frankel truck in any condition. There were no trucks and there never was "immediate" shipping space.

This untrue cable was sent for purpose of getting Plaintiff to remit £5300 which he remitted.

20 Exhibit "G" contradicts Exhibit "B" cost shipping space: (November).

Exhibit "LL"(1) and (2) - Defendant again should have checked when No. of trucks became 30 instead of 50. In view of Mrs. Odojukan's evidence it is clear that Coker and Defendant never saw a Vauxhall Motor Company's letter in Frankel's possession relating to 50 trucks. If any it related to 30 as Defendant informed the Syndicate.

30 It is further evidence of gross negligence on the part of Defendant that in view of what is stated in Exhibit "LL" he failed all along to obtain from Frankel a copy of the Vauxhall letter to Frankel which Defendant and Coker say Frankel produced to them at the bank in September. Otherwise Defendant and Coker have lied and the letter never existed.

40 Refer Exhibit "J" - Exhibit "J" Plaintiff to Defendant: shows that Plaintiff was led to believe that vehicles would be shipped before Defendant left England.

Refer Exhibit "GG" and Exhibit "LL"(2) Exhibit "GG" Frankel's offer: 50 trucks shipping December - In confirmation of Exhibit "GG" re December

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shipping - and vehicles to come from "November production". In light of all this Defendant misled Plaintiff.

The Defendant was clearly in breach.

Exhibit "MM" Reveals Defendant's conflicting interest with Brandler and Rylke. He intended to ship part of the trucks to Brandler and Rylke and portion to Plaintiff. (A possibility but his Brandler and Rylke deal may have been an "Insurance" deal in case Plaintiff failed to remit the £5300).

10

(3) Damages - The amount loss Actual loss and compensation for time lost. (1905 A.C. p.302: Actual loss and trouble incurred.)

(4) The payment of the £15000.

Defendant purports to show that he advised against this

But see Exhibit "A". "L", "EE", and Exhibit "O(1) (2) and (3)". Exhibit "A" and Exhibit "L" which goes with it be taken together.

20

If the Defendant had opposed the payment of £15000 by the Plaintiff he would have expressed it or referred to it in Exhibit "A". And again in Exhibit "O(3)" which was a history of the transaction.

Exhibit "EE" must be considered in connection with Defence that Defendant opposed the payment of £15000: "On 17.XI. met Frankel and Frankel said he had got the money" - Defendant forgot he wrote the cheque. Odojukan was not present at meeting on 13.XI.

30

It is wrong in law to say that Plaintiff has opportunity to check Frankel's position before paying the £15000. - If Plaintiff had such he was under no duty to do so, and it does not absolve Defendant. (Smith Vs. Barton (1866) 15 L.T. Ref: P.294) if he failed to do so.

No doubt on this authority that whether the Plaintiff checked up on Frankel or not Defendant was still liable for his failure and his negligence: Moreover as in Becker V. Nedd (13 T.L.R. p.313, 314) when Plaintiff suffered loss due to Defendant's negligence. Plaintiff's own negligence

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was immaterial. He was under no duty to the Defendant. This disposes of reference in Exhibit "L" that Plaintiff could make independent inquiry of Frankel's bank.

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10 Plaintiff's mind was never disabused of the false or untrue statements made by Defendant while Defendant was in England. Plaintiff had in mind Defendant's information that trucks were ready (12) for shipment. This representation still operated in Plaintiff's mind. Defendant had failed to tell the Plaintiff the fact, known to Defendant, that no vehicles were ready for shipment; that he had seen none. If Defendant had done this duty then the Plaintiff would never have parted with his £15000.

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Damages. The £300 remuneration of expense money.

P.1094 Chitty - Agent who fails - No right to remuneration. The £300 is special damages.

20 General. The 'Overdraft' is loss in interest - We ask Compensation for loss of time and money. Loss of use of money which might have earned £10000 if truck business had materialized.

Defendant ought to have obtained a banker's guarantee.

Exhibit "V" Earlier sent evidence:- Plaintiff did not then explain the circumstances of his £20000 payment: Defendant had said the same thing: Neither went into the circumstances. This exhibit should be discounted.

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J U D G M E N T

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

FRIDAY THE 26TH DAY OF NOVEMBER, 1954.

BEFORE THE HONOURABLE

MR. JUSTICE FREDERICK WILLIAM JOHNSTON

PUISNE JUDGE

Suit No. 662/1953.

BETWEEN:

ADBUDU YEKINI OJIKUTU

Plaintiff

- and -

OLATUNJI OMOTAYO

Defendant

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J U D G M E N T

In this case the Plaintiff has sued the defendant for breach of contract of agency claiming special and general damages. It is not in dispute that the defendant was an agent for reward. The first issue is whether the defendant was an agent for the plaintiff or for the Trading Syndicate of which both parties were members. It is common ground that the defendant made his first trip to England as agent for the Syndicate. He then returned to Nigeria and informed the Syndicate of his negotiations with Frankel in London for the purchase of 50 New Bedford Trucks (motor lorries) for shipment to Nigeria.

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I find that the defendant made his 2nd trip to England as the Plaintiff's Agent. Defendant admitted as much in his statement to the police in Exhibit "EE", which was his own narrative of events. And in view of the evidence including the defendant's correspondence with the plaintiff.

30

I find that what the defendant stated in Exhibit "EE" on this point was the truth. It is true that the Plaintiff's evidence in Suit No.154 of 1953 yields the impression that the defendant

was sent to England as agent of the Syndicate but I accept the plaintiff's evidence that that was not so on the 2nd trip.

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10 The examination of Odojukan produced the Syndicate partnership agreement Exhibit "PP" as an Exhibit. This alone would be sufficient in the light of subsequent events to raise some doubt that the Syndicate entered the truck deal or sent the defendant on his 2nd trip as their agent. The defendant's evidence of his profit share in the truck deal which is contrary to the Syndicate Agreement on percentage shares of profits supports my view on this issue. I reject Mrs. Odojukan's evidence in her support of the defence. My impression of her as a witness being that her evidence in many respects was given after careful instruction by the defendant.

20 Then that very untruthful witness Onafeko (D.W.5) was called by the defendant to testify to his presence at the crucial meeting of the 13th November. I reject his evidence that he was present at the meeting. In stating in his evidence that he told Frankel at the meeting that no action for breach of contract would be taken against him if he refunded the £5000 it is clear that this witness had overlooked, or had not been told of the fact, that if the defendant's evidence was to be accepted as true then it must follow that any question of suing or forbearing to sue Frankel
30 would be a matter for the Syndicate to decide for itself.

40 There is also to be considered on this issue the evidence of W.E. McVicker (P.W.3.) and of the defendant on the matter of the defendant's collateral arrangement to negotiate for the trucks in England as agent of Messrs. Brandler & Rylke Ltd. This was at the time unknown to the Plaintiff. McVicker, and probably Brandler & Rylke, thought that the defendant was acting for his firm of Omotayo Brothers, of which defendant was sole proprietor. Also McVicker did not tell the plaintiff of defendant's going to Brandler and Rylke because at that time as I am inclined to agree with McVicker, McVicker had not as yet become sufficiently acquainted with the Plaintiff.

If the defendant had in fact reached agreement with the Syndicate on the terms stated in his evidence in regard to his second trip to England,

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and had believed and known that both the Syndicate and the Plaintiff were behind him, he would not have been persuaded by Mr. McVicker to take the truck business to Brandler and Rylke. At the most he would have gone back to the Syndicate and informed them, including the Plaintiff, of the interest being taken in the truck business by Brandler and Rylke.

I reject the defendant's explanation of his course of dealing with Brandler and Rylke. If the explanations were true, and if the defendant's evidence of Agreement reached with the Syndicate were true, the defendant would, in my opinion, have come to some sort of agreement with the Syndicate of the relatively minor detail of his personal expenses for the 2nd trip. Defendant's answers strengthen my belief that he became the Plaintiff's agent and then enlisted Brandler and Rylke as an interested party as a safety measure against default by the plaintiff on his commitments. I do not think that the defendant and the Plaintiff trusted each other very far. A few observations at this point on the evidence of the plaintiff's witnesses G. Omorodion (P.W.5), and D.O.S. Ajayi (P.W.6). Omorodion gave evidence in Suit No. 154 of 1953. This witness supports the Plaintiff's case that the Syndicate was not involved in the truck business.

His evidence that the Plaintiff's evidence in Suit No.154 of 1953 was untrue and his subsequent response to Counsel's re-examination by which the witness then watered down his earlier attack on Plaintiff's probity have been of no value to either party. As a witness Omorodion was unreliable and his evidence is of very little value.

Mr. D.O.S. Ajayi was a witness of much better quality. I accept his evidence, supporting the Plaintiff case, to the effect that the Plaintiff's dealing with the defendant were taken by the Plaintiff on his own account and not as a member of the Syndicate.

The defendant went to England on his 2nd trip as agent for reward for the Plaintiff thus it must be said that he held himself out as a person possessing the skill and sense of responsibility necessary to and commensurate to the undertaking with which he was entrusted. It is manifest from an abundance of evidence during the trial and

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10 notably in the cross examination of the defendant that he failed to discharge his task with sufficient care. It is clear that the defendant on his first trip was much impressed by Frankel's ostentatious mode of living and his show of apparent business prosperity. It is a safe assumption that defendant's Bank Manager in London made an inquiry into Frankel's business and financial position which if not as thorough an investigation as it might have been satisfied the Defendant already so favourably impressed by what he had seen of Frankel. The Defendant, in other words, had developed that degree of confidence in Frankel which Frankel had worked to instill in the defendant.

20 Defendant's negotiations on the 1st trip led to Frankel's offer of a contract on the 5th September in Exhibit "GG". Then three days after the Defendant accepted the offer, Frankel according to Defendant, made his first request for a deposit £5000. In regard to this £5000 paid by defendant on behalf of the Plaintiff on his return to England on the 2nd trip, the defendant admitted that there was no question of paying a deposit of £5000 upon his acceptance of Frankel's offer of the contract. He gave evidence of Frankel's explanation of his need for the deposit.

30 This explanation of Frankel's ought to have been enough to impress on defendant's mind the need for caution in his future dealings with Frankel. He did not trouble then, or later on his 2nd trip, to verify Frankel's statement that Vauxhall Motors wanted a money deposit. They may have wanted a deposit, if they had had any dealings at all with Frankel. Then again Frankel's rejection of defendant's wish to transact the business by letter of credit ought to have been a warning to defendant that Frankel's financial position called for caution on defendant's part.

40 On his return to Nigeria the defendant got instructions from the plaintiff which required the defendant to do more than he had done on the trip. The £5000 was now about to be hazarded. In addition to Plaintiff's instructions the defendant had the benefit of the instructions given to him by the firm of Brandler and Rylke. These were fairly comprehensive and enough to make the defendant realise that the conduct of the sort of business he was about to do for the Plaintiff demanded diligence, care and skill.

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The critical day on defendant's return to England was September 29th. On this occasion the defendant acted with a childlike lack of care. The train of events established by lengthy cross examination has made it clear that at the end of the day the defendant had seen nothing and had investigated not at all. He saw no truck of the sort required by him or promised to him. It should have been clear to him that he was being deceived in every direction. In the face of a clear demonstration on the 29th September that there was nothing ready for shipment, and nothing likely to be shipped the defendant, disregarding a double need for caution, paid the £5000 deposit. He had failed to check Frankel's representations. He still pinned his faith on Frankel's words. His gross carelessness is emphasised by his statements of fact in Exhibit "B" and Exhibit "MM". When he had no more than Frankel's assurance that only 12 trucks were ready for shipment. It is convenient in relation to the sequence of issues and events to say at this stage that I find that the defendant by his negligence on the 2nd trip to England committed breach of his contract of agency in regard to the sum of £5000 paid by him to Frankel and is liable to that extent on this first decision of plaintiff's claim to special damages.

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I turn now to the events of the 13th November in Lagos at the meeting when Frankel and the witness McVicker were present with both parties.

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It is necessary to deal with the evidence of the Plaintiff and of Mr. McVicker.

The Plaintiff after relating the defendant's moves until his return from England on the 30th October, said that "Defendant expressed Frankel's inability to obtain and ship the lorries because Frankel's business was delayed".

Frankel at the meeting on the 13th November told the Plaintiff of his inability to get "returns" from some other business which he was engaged in and said that he required a further £15000.

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Notwithstanding plaintiff's repeated and very much repeated assertions in evidence that defendant throughout was the medium of negotiation with Frankel it is my opinion and finding that at this stage the Plaintiff negotiated direct with Frankel and was persuaded or resolved, with the silent acquiescence or approval of McVicker which I shall refer to later, to put up the £15000. Frankel was

a very persuasive fellow. The Plaintiff in cross examination said that he discussed with Frankel "not his financial position" of which the Defendant had told him of previously but that his, Frankel's "expectations in the return of his business had failed to materialize". This was a trenchant admission on the part of the plaintiff. So putting together what the defendant had told the Plaintiff regarding Frankel's difficulties and what the Plaintiff discussed direct with Frankel, when he was armed with this knowledge, it must be held that the Plaintiff had ample information to put him on his guard and to employ caution to the fullest extent.

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No trucks had as yet reached Nigeria or had been shipped by Frankel.

According to the Plaintiff's evidence he failed, as defendant had previously failed, to have Frankel's financial position definitely ascertained - through his bank. He advanced the £15000 to Frankel on, I find, the 18th November, after he had obtained Exhibit "L" forwarded by the defendant to the Plaintiff under cover of Exhibit "A". Plaintiff had ignored the newly discovered risk of parting with more money to Frankel. The defendant had by this time seen the risk at last but the Plaintiff took matters into his own hands and lost his money.

20

I reject, of course, the defendant's evidence that he "walked out" of the meeting. He put that in his defence for good measure. The defendant was undoubtedly impressed on the 13th November by the Plaintiff's courage or foolhardiness in intervening to finance Frankel further. He has admitted that he "continued to act as Plaintiff's agent after the 13th November" and intended so to act, as he said in Exhibit "A", "until the deal comes to a successful conclusion". His answers to questions put to him in cross-examination regarding the later correspondence in Exhibit "O"(1), (2) and (3) make it clear that he resumed agency work. The lure of a share in expected profits proved too strong to be disregarded by the Defendant.

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The witness W.E. McVicker (P.W.3) cast both influence and shadow on the course of events. He came to Nigeria in 1952 to make contact with Omotayo Brothers, in other words the defendant, as an agent for one Gourewitz with a view to rubber purchases and Frankel paid his passage money. He

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saw the defendant on the defendant's first return from London in September 1952. He and the defendant discussed rubber and motor lorries. His evidence is not inconsistent with the defence already dealt with and my finding that the defendant took his instructions from Plaintiff personally to return to England. He went on to say later that he saw the defendant on his return from his 2nd trip and defendant told him of making the deposit of £5000 with Frankel. He also said that Defendant's contract with Brandler and Rylke fell through because of Defendant's departure from instructions and because of defendant's silence. He also said that he met Frankel in Nigeria in November 1952 and that defendant introduced Frankel and himself to the Plaintiff. I reject his evidence that the defendant supported Frankel in his request for £15000. Also in regard to the Plaintiff's cheque for the £15000 McVicker purported not to remember the correct date but by his answers referring vaguely to the 14th or the 15th as the date I find he was assisting the Plaintiff, just too skilfully to be regarded as genuine on this point. I have already said that I believe the cheque to have been given on the 18th November when the Plaintiff got possession of Exhibit "L".

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McVicker is at present the plaintiff's partner.

I find that in September and October 1952 McVicker thought that the truck business was genuine on Frankel's part but I am convinced that McVicker had his doubts when Frankel asked for a further £15000. It may be noted at this point that in December 1952 a Company was mooted between McVicker, one Randle, and one Chief Ayobahan. Frankel, it seems, was behind McVicker and bought a car for the company as a bait for business. The Timax Timber Company and Frankel are said by McVicker to have promised investments and if this is true it was because of McVicker's representations to Ayobahan and Randle which induced them to come in. The Company did not materialise as McVicker had no personal means and help from Frankel and Timax did not arrive. This stage of the trial afforded means of judging Frankel's persuasiveness and McVicker's credibility.

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Again, since the matter cannot be disregarded, it is my impression that the plaintiff entered into his rubber business with Frankel because he considered that Frankel was behind, if not a member

of Timax Timber Company. The telegram Exhibit "W" supports this view. It would seem that McVicker presented Timax Timber Company in a favourable light to the Plaintiff and that Plaintiff somehow gained the impression that Frankel was behind it and financially interested in the venture. I am of opinion that McVicker was as much deceived by Frankel's promises as the Plaintiff and the defendant.

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10 Regarding Exhibit "L". I am of opinion that McVicker took the name of Omotayo Brothers off this letter because defendant told him to do so and not because Frankel told him to do so. But this does not alter the fact that it was the Plaintiff who advanced the £15000, relying as I have found, on Exhibit "L" obtained by him before he gave Frankel his cheque.

20 It is my opinion that McVicker was more in Frankel's confidence than he would have the Court believe. At the same time he was trying to advance the interests of Timax Timber Company with the Plaintiff because of his brother's interest in that concern and Frankel's supposed interest also. I am of opinion that when the November meeting took place on the 13th McVicker at that meeting said nothing of his doubts about Frankel to the Plaintiff. I believe that McVicker by that time entertained doubts but it did not suit him because of his various interests to make them known to the Plaintiff, his future partner, at that stage. Nor do I believe that McVicker had any difference of opinion with the Defendant. In fact McVicker stood by and he let the Plaintiff make his deal with Frankel on his own initiative which he did partly because McVicker said nothing against it.

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40 In my opinion the Plaintiff would have paused for a while or wholly decided against giving this £15000 to Frankel if McVicker, in whom the plaintiff undoubtedly had confidence, had disclosed his doubts to the Plaintiff. I regard McVicker as a plausible witness. He is not a reliable witness. He has avoided antagonizing either the Plaintiff or the Defendant throughout his evidence. That suits his business, by middle 1953 McVicker had come to realize that Frankel had deceived everyone by his false promises and from that time onwards he had seen that it lay in his own interest to give what assistance he could to the Plaintiff and thereby make the Plaintiff forget that he sat on

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the fence in November 1952 and to that extent encouraged the Plaintiff to add £15000 to his loss already incurred by the negligence of the defendant.

This case presents the somewhat unusual event of a revocation of an agent's authority, not by any express, withdrawal but by a course of conduct manifesting the same intention and taken in the presence of the agent.

This was done by the Plaintiff negotiating with Frankel in disregard of a known risk in doing so which he had come to know both by what the Defendant had told him and from what he had learnt from Frankel. The Plaintiff on his own initiative, as I have resolved the facts, gave Frankel £15000 and with it his acceptance of Frankel's assurances in Exhibit "L". Having done so the Plaintiff resumed with the Defendant the interrupted relationship of principal and agent. 10

In these circumstances I disallow the Plaintiff's claim to £15000 of the special damages on the ground that that money was paid to Frankel without the agency of the defendant and that this payment was uninfluenced by the Defendant's previous conduct in words or writing. 20

I do not regard the £300 paid by the Plaintiff to the Defendant as coming within the scope of special damages. It was paid to Defendant to cover expected out of pocket expenses connected with his 2nd trip to England but I am of opinion that the Plaintiff has established good ground for general damages in relation to his loss of the £5000 paid to Frankel by the defendant. I assess these damages in the sum of £500. If I had arrived at a decision whereby I found the plaintiff to be entitled to recover £20000 special damages my assessment of general damages would have been £5000. 30

I enter judgment for the Plaintiff for £5,500 and proceed to assess costs having regard to the extent to which the Plaintiff has succeeded.

(Sgd.) F.W. Johnston 40
 PUISNE JUDGE.

Lawson:- Four weeks trial. The trial will have occupied some time if only £5000 had been seek for.
 Asks 500 guineas.

sic

Ferguson:- Opposes 500 guineas. Suggests 100 guineas.

In the
Supreme Court

ORDER AS TO COSTS:-

No. 18

I regard this case as properly on for more than 1 Counsel on each side.

Judgment.

Plaintiff sued by at least 2 Counsel.

26th November,
1954

This is a factor.

- continued.

Thus complexity of the case and I think that length of time would have been better loss if claim were for £5000 only. I assess costs to the Plaintiff in the sum of 375 guineas.

(Sgd.) F.W. Johnston
PUISNE JUDGE.

No. 19

NOTICE and GROUNDS OF APPEAL filed by
A.Y. OJIKUTU

In the
West African
Court of Appeal

No. 19

CIVIL FORM 1

IN THE WEST AFRICAN COURT OF APPEAL

Notice and
Grounds of
Appeal filed by
A.Y. Ojikutu.

NOTICE OF APPEAL

19th February,
1955.

(RULE 12)

Suit No. 662 of 1953

BETWEEN:

A.Y. OJIKUTU Plaintiff/Appellant

- and -

OLATUNJI OMOTAYO Defendant/Respondent

TAKE NOTICE that the Plaintiff being dissatisfied with the Judgment of the Supreme Court, Lagos, contained in the Judgment dated the 26th day of November, 1954, doth hereby Appeal to the

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10

In the
West African
Court of Appeal

No. 19

Notice and
Grounds of
Appeal filed by
A.Y. Ojikutu.

19th February,
1955

- continued.

West African Court of Appeal upon the Grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the Name and Address of the person directly affected by the Appeal is set out in paragraph 5.

2. The whole decision, excepting the findings on the portion of the claim for £5,000.-- is complained of.

3. Grounds of Appeal.

10

(i) The learned trial Judge misdirected himself in finding:

(a) "That the plaintiff negotiated direct with Frankel and was persuaded or resolved with the silent acquiescence of McVicker to put up the £15,000. - . -."

(b) "That McVicker stood by and let the Plaintiff make his deal with Frankel on his own initiative which he did partly because McVicker said nothing against it. The Plaintiff would have paused for awhile or wholly decided against giving this £15,000. - . - to Frankel if McVicker in whom the Plaintiff undoubtedly had confidence had disclosed his doubts to the plaintiff".

20

(c) "That the plaintiff had ample information to put him on his guard and to employ caution to fullest extent".

30

(d) The plaintiff "gave Frankel £15,000.--. and with it his acceptance of Frankel's assurances in Exhibit L. Having done so the plaintiff resumed with the defendant the interrupted relationship of principal and agent".

and could not have come to the conclusion which he did in finding against the plaintiff for the £15,000 had he not thus misdirected himself.

(ii) The learned trial Judge erred in holding that the £15,000.--. was paid by the plaintiff to Frankel without the Agency of the defendant and that this payment was uninfluenced by the defendant's previous conduct in words or writing having

40

found that the £15,000. -. -. was paid after Exhibit J had been accepted and there being evidence, inter alia, on the face of Exhibit A that the defendant was still acting as Agent of the Plaintiff.

In the
West African
Court of Appeal

No. 19

10 AND there being no evidence that the Plaintiff's mind had in anyway been disabused of the Defendant's false representations and statements on material issues or that the effect of the defendant's found Negligence and false representations had ceased to be operative on the Plaintiff's mind.

Notice and
Grounds of
Appeal filed by
A.Y. Ojikutu.

19th February,
1955

- continued.

20 (iii) The learned trial Judge was wrong in law to have considered in favour of the defendant, the Plaintiff's failure "to have Frankel's financial position definitely ascertained through his bank" before paying the £15,000 as such failure is not, in law, excuse the Negligence of the Defendant or in any way absolve him from responsibilities and liabilities.

(iv) The learned trial Judge erred in finding against the plaintiff on the loss of the £15,000 as there was abundant evidence to establish that the loss naturally flowed from the negligence of the Defendant acting as the Plaintiff's agent for reward.

4. Relief Sought from The West African Court of Appeal.

30 That the Judgment of the Lower Court be varied by a Judgment being entered for the Plaintiff for £20,000.-- as Special Damages and £5,000.-- General Damages instead of the one for £5,000.-- and £500.-- Special and General Damages respectively and costs to be re-assessed accordingly.

5. Person directly affected by the Appeal.

<u>Name</u>	<u>Address</u>
Olatunji Omotayo	62, Wakeman Street, Yaba.

Dated the 19th day of February, 1955.

40
Lawson & Adewale
APPELLANT'S SOLICITORS.

In the
West African
Court of Appeal

No. 20

NOTICE and GROUNDS OF APPEAL filed by
O. OMOTAYO.

No. 20

Notice and
Grounds of
Appeal filed
by O. Omotayo.
24th February,
1955.

IN THE WEST AFRICAN COURT OF APPEAL

Suit No. 662/53.

BETWEEN:

A.Y. OJIKUTU

...

Plaintiff

- and -

OLATUNJI OMOTAYO

Defendant

NOTICE OF APPEAL

10

TAKE NOTICE that the defendant being dis-
satisfied with the decision of the Supreme Court,
Lagos, contained in the judgment of Mr. Justice
F.W. Johnston dated the 26th day of November, 1954
doth hereby appeal to the West African Court of
Appeal upon the grounds set out in paragraph 3
below and will at the hearing of the appeal seek
the relief set out in paragraph 4 hereunder.

And the appellant further states that the
name and address of the person directly affected
by the appeal is A.Y. Ojikutu, No. 1, Jagun Lane,
Lagos.

20

2. Only the decision against the defendant, namely
that he should pay £5,000 to the plaintiff with
costs assessed at 375 guineas, is complained of.

3. The grounds of appeal are :-

(a) That the decision is against the weight
of evidence.

(b) That the learned trial Judge misdirected
himself on the law and the facts in hold-
ing that the defendant was an agent for
reward to the plaintiff.

30

(c) That the learned trial Judge misdirected
himself when he held that the plaintiff
did not lend to the Syndicate the £5000
remitted to the defendant because this

finding is contrary to the plaintiff's evidence in Suit No.154/53 (Exhibit "V").

- (d) That the learned trial Judge did not direct his mind to the failure of the plaintiff to adduce conclusive proof of Frankel's bankruptcy.
- (e) That the learned trial Judge misdirected himself on the law and the fact when he founded the negligence of the defendant on his failure to ascertain that Frankel had twelve trucks ready for shipment when the plaintiff by his pleadings founded it on the defendant's failure to obtain a Banker's Guarantee or Banker's Reference about Frankel's business credit.
- (f) Further grounds of appeal will be filed after the receipt of the Record of Proceedings.

4. The Relief sought:-

20 That the part of the judgment of the Supreme Court, Lagos, hereat specifically appealed against be set aside and that the respondent be condemned in the cost of this appeal.

Dated at Lagos this 24th day of February, 1955.

Samuel Chris & Michael.
Legal Representatives to the
Defendant/Appellant.

In the
West African
Court of Appeal

No. 20

Notice and
Grounds of
Appeal filed
by O. Omotayo.

24th February,
1955

- continued.

In the Federal
Supreme Court

No. 21

HEARING OF APPEAL

No. 21

Hearing of
Appeal.

WEDNESDAY THE 19TH DAY OF DECEMBER, 1956.

F.S.C. 138/1956

19th December,
1956.

A.Y. OJIKUTU

Appellant/Respondent

Sic

Vs.

OLATUNJI OMOTAYO

Respondent/Defendant

Lawson for Ojikutu
Makanju for Omotayo.

Lawson opens and refers to the Judgment at page 102, and to the Grounds of Appeal 111. He states he intends to argue grounds (1) (a) & (b) together. He refers to page , from line He states that McVicker was meeting the plaintiff for the first time on the occasion and that it was unreasonable to expect him to tell the plaintiff about Frankel's business. See page 109 lines 32 to 35 At the time McVicker and the plaintiff were not friendly. He was first then being introduced to the plaintiff with whom he had become friendly before the order was see page 26 lines 1 to 3 That was all the plaintiff said about McVicker, at that stage; page 33 from line 9 - 14. This is McVicker's evidence as regards the meeting of the 13th November, 1952, at page 36 lines 11 & 12 McVicker said he was plaintiff's partner, but that was at the time he gave evidence, see page 36 - line 44 to page 37 1.3. He refers to page 109, lines 36 to 40. There is no evidence that McVicker and plaintiff met again until plaintiff parted with £15,000 by cheque to Frankel. See page 37, lines 37 - 38. This was after he had become familiar with the plaintiff and then he spoke to plaintiff about Frankel, but that was after payment of the £15,000. He refers to page 58 lines 20/21. He adds that the defendant did not deny that Mr. McVicker was introduced to plaintiff on the 13th November. On the 13th November, McVicker was Frankel's agent and he was well known to the defendant. He submits that it was unreasonable to expect the plaintiff to rely on McVicker's silence on the day they first met.

If the learned Judge had not misdirected himself about McVicker's position on the 13th November, he would have been in a position to realise that the statements made by the defendant to the plaintiff about Frankel of the business in hand would still be operating in the mind of the plaintiff.

In the Federal
Supreme Court

No. 21

Hearing of
Appeal.

19th December,
1956

- continued.

10 Ground (1) (c). See page 107, lines 11 - 14
He reads from line 1, he reads also Ex. A at
page 167 ; also Ex. L at page 166. He now
refers to paragraph 15 of the Statement of Claim
at page 4, this was admitted at paragraph 11 of
the Defence at page 7. The Judge found that he
was agent of plaintiff not of the Syndicate.

20 He was to satisfy himself that the business
was a safe one to embark upon and he went to
England as an agent for reward. The learned Judge
found that it was his duty to act with care, dili-
gence and skill. The defendant sent cablegram Ex.
B informing plaintiff that 12 vehicles had been
assembled and ready for shipment. These were untrue.
It was also untrue that he had ascertained what
the freight would be. This cablegram at the time
impressed upon plaintiff that 12 vehicles already
assembled were ready for shipment, the defendant
confirmed the cablegram by letter Ex. E at page 156
Page 154 lines 1 - 9, Ex.D shows the impression
left on plaintiff's mind. The defendant then sent
cable Ex. F at page 159 See also Ex. S at page 213
30 Defendant went on in this letter to make more false
statements, knowing this to be untrue. Frankel
had no authority to buy the lorries. The 2nd para-
graph of the letter was untrue Vauxhall did not
confirm any such order. Vauxhall merely gave
Frankel a quotation: see Ex. LLL at page 157
Defendant wrote letter Ex. G two days after seeing
Ex. LLL. See page 164. The plaintiff had no reason
to disbelieve the information given him by the
defendant, he finally believed the order for the
40 Bedford trucks had been confirmed by Vauxhall, see
page 117 lines 23--29. All the statements were
proved to be untrue by his answers on cross-exam-
ination. The position then was plaintiff was made
to believe 12 Lorries were ready for shipment and
that shipping arrangements had been made for
November, Frankel then came out and asked for
£15,000 to enable him to ship the lorries. The
fact was that Frankel told plaintiff that owing to
other commitments he could not find the £15,000 to
bring the lorries out. It was then the duty of
50 the defendant to disclose the mind of the plaintiff

In the Federal
Supreme Court

No. 21

of the effect of his previous false statements. The Judge found as a fact that the defendant realized the risk. He submits the finding at page 107 lines 11-14 was unjustified.

Hearing of
Appeal.

19th December,
1956
- continued.

He wishes to argue grounds (i) (d) & (ii) together Ground (i) (d) & (ii) See page 109 from line 42 to p.110 l. 18. The learned Judge did not believe defendant's evidence that he washed his hand off the business during plaintiff's interview with Frankel. At which stage then did the Judge think the agency was suspended? See page 70 line 38 to page 71 l. 6 also page 107 lines 29-38.

10

He submits that the interview with Frankel did not put an end to the agency.

He refers to Eyre V. Lowell and Another 99, E.R. 540.

He further submits that the finding of the learned Judge was wrong that the plaintiff's mind was not influenced in parting with the £15,000 by the defendant's previous conduct. See page 110 lines 19-24 the references made by the learned Judge, he submits, were not justified by the evidence. He refers to page 16 lines 20 - 23 page 18 lines 37-39; page 27 lines 26 - 29; page 28 lines 14 to 15. If he had only known that defendant was deceiving him; he would not have parted with his money.

20

The defendant got Ex. L from Frankel and forwarded it to the plaintiff, he accompanied Frankel to the abattoir where Frankel got a cheque for £15,000 from plaintiff, written out by the defendant. He submits that it was not unreasonable for the plaintiff to part with the £15,000 having regard to the information already given to him by the defendant, his agent. See page 57 lines 16-19. The plaintiff, no doubt acted reasonably.

30

Ground (iii). He submits that the defendant owned duty of course to his principal and he cannot plead his principal's negligence in excuse of his own negligence. He refers to Smith Vs. Barton, 15 L.T.R. 294. Backer Vs. Megg, 13, T.L.R., 313, at 314. The Earl of Teners Vs. Robins, 150, E.R. 65. He submits that any negligence on plaintiff's part would not be an answer by the defendant for his own negligence.

40

Ground (iv). This has already been answered but he wishes to refer to some authorities on the Measure of Damages. He refers to Salvesan and Co. Vs. Rederi 1905, A.C. 302, at page 312; Johnston V. Braham and Campbell 1916, 2 K.B. 529; In this case the agent himself made the statements to his principal. Mr. Makaju replies, Plaintiff's grounds of appeal, he observes, are based on specific findings of fact by the learned trial Judge. Defendant's grounds of appeal are at page 114.

In the Federal
Supreme Court

No. 21

Hearing of
Appeal.

19th December,
1956

- continued.

Ground (a). He says the Judge was wrong in finding the defendant was negligent; he does not now dispute that the defendant was plaintiff's agent.

He refers to page 4, paragraph 15 of the Statement of Claim. This was admitted by para. 11 of Defence at page 7.

He refers to paragraphs 13, 31 and 32 of the Statement of Claim. Paragraph 17 of Defence at page 8 denied paragraphs 31 and 32 of Statement of Claim. He refers to page 50, from line 35 states that defendant gave a full account to the plaintiff. P.42, l.33 to p.43, l.14. He states that defendant's instructions were to see that the business would be a safe one. He says that defendant did see trucks at Luton and Edgware to which places he was taken by Frankel. He wrote to Ojikutu and Ojikutu wanted to know what he meant by "assembled". He states that defendant made efforts to find out the financial position of Frankel; see page 81 lines 30-38; p. 82, lines 10-35.

N.B. His attention is drawn to page 18 to show that Counsel had been referring the Court to the inquiries made on defendant's first trip.

He refers to page 83 line 2. The defendant was satisfied it was a safe business transaction and therefore borrowed £5,000 to advance to Frankel before he received a remittance from Ojikutu. If Ojikutu had not sent the money, he would have been liable to repay this money. He says that defendant had no special qualification as a car dealer he was a produce dealer. The question then is whether he had made reasonable enquiries about the business.

He says that it was Frankel who should have asked for a guarantee as he was to ship 30 lorries on a deposit of £5,000. He refers to page 83 line 30 et seq.

In the Federal
Supreme Court

No. 21

Hearing of
Appeal.

19th December,
1956

- continued.

He submits that the defendant has not been negligent.

He abandons his grounds (b), (c) & (d).

Ground (e). He refers to page 106 from lines 16 - 20 page 63 line 22 et seq. He says plaintiff's case does not support the judgment for £5,000.

He refers to page 106 lines 42 to end. The learned Judge had given a considered opinion. See also lines 1 - 16 of page 107; he refers to Ex.L at page 166 he says this is a new agreement which had nothing to do with the defendant. He refers to page 109 lines 10 - 17 page 39 line 39 to page 40 line 4; page 40 l.10-13; Page 166, l.22-25; p.143; in this the price of a truck was £707 and in Ex. L £673; page 109 line 13. Frankel promised to ship the trucks on receipt of £5,000.

10

He got the £5,000 and did not ship. He then came down to Lagos to ask for more money. Delivery was promised within 60 days in Ex.L. These should have been sufficient to put plaintiff on his guard.

20

He refers to page 107 lines 10 - 16 Ex. L was dated 15th November and the money was paid on the 19th November. He submits that the agency was ended when the plaintiff dealt direct with Frankel. The Agency was resumed - see page 107 lines 41 to 43. He suggests the agency was resumed by Ex. 01 & Ex. A.

Adjourned to 20th December.

(Sgd.) O. JIBOWU.
Ag. F.C.J.
19/12/56.

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No. 22

FURTHER HEARING OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

20th of DECEMBER, 1956

F.S.C. 138/1956.

In the Federal
Supreme Court

No. 22

Further Hearing
of Appeal.

20th December,
1956.

A.Y. OJUKUTU Appellant

- and -

OLATUNJI OMOTAYO Respondent

10 Makanju continues his argument.

He refers to page 76 lines 9 - 12 to show why defendant wrote Ex.A. (N.B. attention is called to McVicker's evidence at pages 32 - 34). He refers to page 15 lines 30 - 32 and 48 also page 215 lines 34 - 39.

20 He submits that the defendant did not recommend the payment of £15,000. He refers to page 108 lines 16 - 18 also page 110 lines 13 - 16. He says these show that the Judge did not believe the evidence of McVicker and refers to defendant's evidence from page 7, lines 21 - 26, also page 10, lines 15 - 18.

When Frankel came, plaintiff took matters into his own hands and lost his money. He refers to page 212 lines 22 - 29. This shows that plaintiff's claim is an after-thought. See page 213 lines 14 - 23 is the defendant's reply.

30 He submits that the defendant relied on what Frankel told him. Frankel told him he had placed an order with Vauxhall for the trucks and there was no evidence that this was untrue. He refers to page 81 lines 36 - 38 also to page 170 lines 36 and 37 this suggests that an order had been placed with Vauxhall Motors. See letter at page 144 in which the defendant agreed to buy 50 trucks from Frankel. He refers to page 25, lines 44 and 45; also to page 33, lines 14 & 15, page 28, lines 20-21. He refers to Benmax Vs. Austin Motor Co. Ltd. 1955 A.C. 370. He says the Judge had made his findings after assessing the credibility and demeanour of
40 witnesses.

In the Federal
Supreme Court

No. 22

Further Hearing
of Appeal.

20th December,
1956

- continued.

He says the case hinges on facts and the Judge should therefore be left undisturbed.

He asks that Ojikutu's appeal should be dismissed. Lawson answers back - He says that there is nothing in Ex.L inconsistent with the previous statements made by the defendant to the plaintiff. The price of the trucks in Ex. GG and Ex. L. Ex. GG is at page 143. It is dated 4th September, 1952 and was received by defendant on his first trip. At page 16 lines 29 - 32. There defendant knew of the reduction in price. It is not correct that the price was reduced in Ex.L to induce plaintiff to enter into the Contract. He refers to Ex.LL2 at page 158 line 26 the same price shown in Ex.L is quoted in the letter.

10

The question of shipment within 60 days - This is consistent with the false statements previously made by the defendant that there had been an order for 50 lorries of which only 12 were ready for shipment. Ex.L provides for part delivery. See page 53 lines 10 - 20. The plaintiff might still reasonably be believed that 12 would be shipped in November and the rest within 60 days of the date of Ex. L.

20

He submits that the Judge did not reject the evidence of McVicker with regard to the preparation of Ex. L. See page 109 lines 10 - 15. The Judge believed that defendant asked that plaintiff's name be put in the agreement. See defendant's evidence at page 56 lines 13 - 19. He lied then before Ex.A was put to him; he sent Ex.L to plaintiff, see page 70 line 38 - P. 71 lines 10, 15-19. At page 58 lines 11 - 12. The Judge found he was agent for plaintiff and not the Syndicate. If he was agent then and he continued after that date to be agent, there was no evidence that he ceased to be an agent. Re falsity of McVicker's statements - he refers to Judge's finding at page 106 lines 2 - 10. See evidence at page 52 lines 26 - 30 page 53 lines 40-41; P.63, lines 26-28, 34-39 to p.64, 11.1-4 compare with page 160 Ex. G. lines 36 and 37. He provided left hand drive. See page 64 lines 28 and 29 page 65 lines 19 - 25. He did not even go into the office, yet he wrote to say shipping space had been arranged.

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P.68 1.40-43 to p.69, 1.1-4. He submits that that there was complete evidence to justify the Judge's findings.

He submits it was the duty of the defendant to find out things for himself and not to rely on information of witness and if he did, he should tell his Principal so. He refers to the English and Empire Digest, Vol. 1, page 430, see 1215.

In the Federal Supreme Court

No. 22

Further Hearing of Appeal.

20th December, 1956

- continued.

He submits that the mind of the plaintiff was never disclosed of the false statements made by the defendant. He says that facts contained in ground of appeal (a) are incorrect. He refers to paragraphs 12, 33 & 34 of the plaintiff's Statement of Claim.

10

He asks that plaintiff's appeal be allowed and defendant's appeal dismissed.

C.A.V.

(Sgd,) O. JIBOWU
Ag. F.C.J.
20/12/56.

No. 23

J U D G M E N T

No. 23

Judgment.

20 IN THE FEDERAL SUPREME COURT OF NIGERIA

23rd February, 1957.

HOLDEN AT LAGOS

SATURDAY THE 23RD DAY OF FEBRUARY, 1957

BEFORE THEIR LORDSHIPS

OLUMUYIWA JIBOWU FEDERAL JUSTICE
M.C. NAGEON DE LESTANG FEDERAL JUSTICE
PERCY CYRIL HUBBARD AG. FEDERAL JUSTICE

F.S.C. 138/1956

A.Y. OJIKUTU Appellant

V.

OLATUNJI OMOTAYO Respondent

30

J U D G M E N T

JIBOWU, F.J.

On the 19th December, 1953, A.Y. Ojikutu sued

In the Federal
Supreme Court

No. 23

Olatunji Omotayo claiming £36,000, whereof £21,000 is special damages and £15,000 general damages for breach of contract of agency between them. Pleadings were ordered and filed.

Judgment.

The issues raised on the pleadings were:

23rd February,
1957
- continued.

(1) whether the defendant was plaintiff's agent or agent of the Nigerian Produce and Enterprise Ltd., of which both parties were members;

(2) whether the defendant, as plaintiff's agent, persuaded the plaintiff to advance £5,000 on motor truck business which the defendant was then arranging with one Frankel in London; 10

(3) whether the plaintiff advanced £15,000 more on the motor truck business to Frankel in Lagos on the 15th November, 1952, relying on the assurances from the defendant that the business was a good and safe one;

(4) whether the defendant had been guilty of any negligence in advising the plaintiff in respect of the transactions, and/or whether he had made statements to the plaintiff, which he knew to be untrue, in order to induce the plaintiff to embark and advance his money on the said motor truck business; 20

(5) whether the defendant had been guilty of any breach of duty as plaintiff's agent which had resulted in the loss to the plaintiff of the money he had invested in the motor truck business, and

(6) whether the defendant was liable to make good plaintiff's loss on the business. 30

The learned Judge found on (1) that the defendant was plaintiff's agent and not the agent of their Trading Syndicate, the Nigerian Produce and Enterprise Ltd.

On (2) he found that the defendant persuaded the plaintiff to advance the sum of £5,000 on the motor truck business.

On (3) he found that the plaintiff advanced £15,000 more to Frankel in Lagos on his own initiative and not on any advice previously given him by the defendant. 40

The learned Judge's finding on (4) was that

the defendant had been guilty of negligence and that he had made statements which he knew to be untrue which induced the plaintiff to advance £5,000 on the said business.

In the Federal
Supreme Court

No. 23

On (5) his finding was that the defendant had been guilty of a breach of his duty to the plaintiff as a result of which the plaintiff lost £5,000, and on (6) he found the defendant was liable to make good plaintiff's loss of £5,000.

Judgment.

23rd February,
1957

- continued.

10 He assessed plaintiff's general damages at £500 and therefore gave judgment for the plaintiff for £5,500 and 375 guineas costs.

These are cross appeals from the decision.

20 It is proposed to consider the learned Judge's decision in three sections in order to see (1) whether the learned Judge came to a right conclusion when he found that the defendant was plaintiff's agent and not the agent of their Trading Syndicate; (2) whether the learned Judge's finding in favour of the plaintiff in respect of the advance of £5,000 paid by plaintiff to Frankel through the defendant was justified by the evidence before him, and (3) whether the learned Judge's conclusion with regard to the further advance of £15,000 made by the plaintiff to Frankel on the motor truck business could be supported.

30 With regard to the first point, I should observe that defendant's Counsel did not contend before us that the learned trial Judge was wrong in reaching the conclusion that the defendant was clearly acting as plaintiff's agent in respect of the motor truck business and not as agent of their Trading Syndicate, the Nigerian Produce and Enterprise Ltd. As a matter of fact, he told this Court that the defendant was no longer disputing that he was plaintiff's agent in the business.

40 All I need say, therefore, on the point is that there was abundant evidence before the learned Judge to justify his conclusion and that it would have been unreasonable for him to hold otherwise.

Coming now to the 2nd point, the defendant's Counsel submitted that the evidence before the Court did not support the Judge's finding that the defendant had been negligent in the conduct of the business as plaintiff's agent as the defendant made

In the Federal
Supreme Court

No. 23

Judgment.

23rd February,
1957

- continued.

necessary inquiries as to the financial standing of Frankel and dealt with Frankel in consequence of the satisfactory result yielded by his inquiries. In this connection, it should be noted that the defendant made two trips to England in September, 1952; the first on the 2nd September and the second on the 27th of the same month. On the first trip, as found by the Judge, he went to England as an agent of their Trading Syndicate in order to look for produce business for the Syndicate. In the course of this trip he came into contact with Frankel who offered to supply him at a certain quotation with 50 Bedford Trucks which he told him he had arranged to buy from their manufacturers, the Vauxhall Motors, which offer the defendant accepted.

10

He returned to Nigeria and reported about the negotiations regarding the Bedford Trucks to the Syndicate which was not interested in that line of business and had no money to finance it. The Plaintiff undertook to remit to the defendant the deposit of £5,000 asked for by Frankel and also £300 to cover defendant's expenses after the defendant should have satisfied himself that it was a safe and sound business to embark upon. The defendant was to receive a percentage of the net profit on the sale of the motor trucks as his remuneration. The defendant, therefore, made the second trip to England as aforesaid as plaintiff's agent. I should mention that before he left Lagos for London on this second trip the defendant contacted the firm of Brandler and Rylke, to interest them in the same 50 trucks for which he was making the second trip as plaintiff's agent. The firm welcomed the business but were only willing to buy 13 of the trucks on a letter of credit in favour of Frankel and not on cash deposit basis. Frankel would not deal with the firm on the basis of letter of credit.

20

30

The defendant's evidence is clear that apart from the inquiries which he alleged he made on his first trip about Frankel's financial position through a Law Student, Coker, who was then Manager of Nigeria Farmers & Commercial Bank's branch in London, he made no other inquiries about Frankel when he made the second trip. The defendant could not produce any evidence showing the nature of the inquiries made by his Bankers on the first trip. Failure by the defendant to make any inquiries at all about Frankel's business and financial position

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50

on the 2nd trip before handing £5,000 over to him is in itself some evidence of negligent handling of the important business. Quite apart from this, the defendant cabled to the plaintiff informing him that 12 vehicles had been assembled and were ready for immediate shipment, and calling upon the plaintiff to cable the deposit of £5,000 plus his £300 expenses, when, in fact, he had not seen any vehicles assembled and ready for shipment by Frankel to the plaintiff. In fact, he had no proof that Frankel had ever placed any firm order for Bedford Trucks with the Vauxhall Motors. He had seen no agreements signed between Frankel and Vauxhall Motors; he saw lorries being driven out of the Vauxhall Factory at Luton, probably for testing, and he did not know if the lorries were intended for Frankel, yet he sent plaintiff cables and letters in evidence demanding the deposit and giving the impression that all was well. From the defendant's own evidence it is clear that he had been fooled by Frankel and his associates, but he has himself to blame if he trusted Frankel and failed to show care, diligence and skill which his position as an agent demanded before involving his principal in a financial loss which due care and diligence could have averted.

I find no substance in the submission of the learned Counsel for the defendant on this point as the evidence clearly supported the learned Judge's findings on the point.

I now come to the third point as regards the £15,000 further paid by the plaintiff to Frankel in Lagos in November, 1952. In my view, the history of this payment begins with Frankel's demand for £15,000 more from the defendant before he left England on the 31st October, 1952. When he returned to Nigeria on the 1st November, 1952, the defendant informed the plaintiff about this further demand before there could be any shipment of the required Bedford Trucks or lorries. Frankel arrived in Lagos on the 12th November, 1952, and on the 13th November, 1952, there was a meeting between Frankel and the plaintiff in plaintiff's house at which McVicker and the defendant were present, as found by the learned Judge.

The learned Judge's finding on this point was:

"Notwithstanding plaintiff's repeated and

In the Federal
Supreme Court

No. 23

Judgment.

23rd February,
1957

- continued.

In the Federal
Supreme Court

No. 23

Judgment.

23rd February,
1957

- continued.

"very much repeated assertions in evidence that defendant throughout was the medium of negotiation with Frankel, it is my opinion and finding that at this stage the plaintiff negotiated direct with Frankel and was prepared or resolved, with the silent acquiescence or approval of McVicker, which I shall refer to later, to put up the £15,000".

He said further:

"In fact McVicker stood by and he let the plaintiff make his deal with Frankel on his own initiative which he did partly because Mr. McVicker said nothing against it. In my opinion the plaintiff would have paused for awhile or wholly decided against giving this £15,000 to Frankel, if McVicker, in whom the plaintiff undoubtedly had confidence, had disclosed his doubts to the plaintiff".

10

The principle is well settled that a Court of Appeal should not lightly disturb the findings of facts of the Court below which had the opportunity of watching the demeanour of the witnesses with a view to assessing their credibility, but this is subject to the qualification that such findings may be disturbed if they are based on mis direction. In this case it appears that the learned Judge had clearly misdirected himself on the evidence, failed to direct himself on some aspect of the evidence, and therefore reached a wrong conclusion.

20

The evidence is abundantly clear that McVicker and Frankel met the plaintiff together for the first time on the 13th November, 1952. McVicker, according to the evidence of the defendant himself, was before then not only a friend but also a business partner of the defendant. The only connecting link between Frankel and the plaintiff was the defendant, and it will be turning one's back on common sense to reject the evidence of both McVicker and the plaintiff that the defendant introduced McVicker and Frankel to the plaintiff on the 13th November, 1952. The learned Judge had himself found as a fact, which finding is justified by the evidence, that McVicker's passage to Lagos was paid by Frankel. It is, therefore a reasonable inference to draw that Frankel and McVicker were no strangers to each other and probably had common business interests. As the plaintiff and McVicker met for the first time that day, the learned Judge

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misdirected himself in holding that the plaintiff undoubtedly had confidence in McVicker. What confidence could a man have in a perfect stranger he was meeting for the first time? The learned Judge himself seemed to have realised that the plaintiff on that occasion looked for some support before deciding what his line of action would be, but he wrongly held that he looked for support from the wrong quarter as McVicker's presence at the meeting could only have been due to his interest in Frankel. It appears the most natural thing any one in the plaintiff's position would do was what he said he did, and that was to consult his own agent, the defendant, who had initiated the transaction. In the circumstances, it is only reasonable to expect that McVicker would not take any part in the discussions between the plaintiff and Frankel about the demand for £15,000 further advance in which he was not concerned. If the stranger, McVicker, is eliminated from the picture, we have then the plaintiff, the defendant and Frankel left. Having regard to the fact that Frankel had come out in respect of a business transaction initiated by the defendant on behalf of the plaintiff, one would naturally expect that the discussions which followed would be taken part in by the three of them. The defendant tried to give the impression that he advised the plaintiff against giving any further advance and so walked out of the meeting, which fact was denied by both the plaintiff and McVicker. The learned Judge disbelieved the defendant's evidence that he walked out of the meeting and disbelieved him that his uncle Onafeko was present at the meeting. The plaintiff testified that the defendant advised him to pay the further sum demanded so that the shipment of the trucks might be made. It seems to me unreasonable to hold that the plaintiff, for the mere asking agreed to part with £15,000 to Frankel when £5,000 he had already paid through the defendant had yielded no result. It appears to me an unsound proposition to put forward that, at that stage the plaintiff could and would have forgotten that the defendant, as his agent, had cabled and written to tell him that he had seen some of the trucks required already assembled and ready for immediate shipment and that all shipping arrangements had been made for the month of November, 1952. It does not appear that the learned Judge considered what would have been the effect on the plaintiff of an admission by the defendant at that meeting that he had not,

In the Federal
Supreme Court

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Judgment.

23rd February,
1957

- continued.

In the Federal
Supreme Court

No. 23

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23rd February,
1957

- continued.

in fact, seen any trucks assigned to Frankel assembled and ready for immediate shipment as he had previously stated, and that he knew no more of the matter than what he had been led to believe by Frankel and his associates. If the defence had been that the defendant had tried to disabuse the mind of the plaintiff of his previous false assurances and that the plaintiff had still insisted on throwing more money down the drain, then the learned Judge's finding would have been right that the plaintiff acted entirely on his own initiative. It is clear from the evidence that the defendant lied and lied as regards what happened at the meeting only to save his own skin, and the plaintiff's evidence which has the ring of truth should have been accepted, as also McVicker's evidence as to the part the defendant played at the meeting. The learned Judge gave no reason for rejecting McVicker's evidence that the defendant supported Frankel in his request for £15,000 and his reason for rejecting his evidence regarding the date the cheque for £15,000 was handed over to Frankel appears inadequate. On this point the learned Judge said: "McVicker purported not to remember the correct date but by his answers referring vaguely to the 14th or 15th as the date I find he was assisting the plaintiff, just too skilfully to be regarded as genuine. On this point I have already said that I believe the cheque to have been given on the 18th November when the plaintiff got possession of Exhibit L".

The plaintiff gave evidence that he gave the cheque on the 15th November, but that it was dated the 18th to enable him to arrange an overdraft with his Bank. He did not deny receiving letter Exhibit L, which is dated 15th November, and his evidence that he gave the cheque on the 15th November is not inconsistent with his having received Exhibit L on the same date. Furthermore, the Judge's finding that the cheque was given on the 18th November is not supported by the evidence of the defendant who gave the date as the 17th November, and there was no evidence that the plaintiff received Exhibit L on the 18th November. I can, therefore, find no justification for the learned Judge's view that McVicker was trying to assist the plaintiff either skilfully or otherwise when he put the date at the 14th or 15th November and then stated that he could not remember the exact date. He was sure it was towards the end of the week, and 1952 diary shows that 15th November, 1952, was a Saturday and the

end of that week. Furthermore, the learned Judge does not appear to have considered that McVicker gave evidence before him in October, 1954, of transactions which took place in November, 1952, almost two years before.

In the Federal
Supreme Court

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Judgment.

23rd February,
1957

- continued.

10 The defendant was, no doubt, aware of the risk the plaintiff was running by agreeing to advance more money on the business, as the learned Judge found, but it was his clear duty then to let the plaintiff know the whole truth about the business, which he failed to do. With respect to the learned Judge, this aspect of the case does not appear to have been considered by him. The evidence of McVicker is clear as to how the letter, Exhibit L, came to be prepared after the discussions on the 13th November, 1952. The plaintiff was not present, but the defendant was. The learned Judge's finding was: "Regarding Exhibit L, I am of opinion that
20 McVicker took the name of Omotayo Brothers off this letter because the defendant told him to do so and not because Frankel told him to do so".

30 The question which the learned Judge failed to ask himself was why was the letter confirming the result of the interview of Frankel with the plaintiff on the 13th November, 1952, addressed to the defendant's firm in the first instance and had to be altered to the plaintiff's name at the request of the defendant, if the defendant's story of the interview was correct and true, and why should
30 McVicker make that alteration not at the request of Frankel the interested party?

40 The defendant again lied about this letter, and would not admit that he had anything to do with it until Exhibit A was produced to show that he received the letter from Frankel and forwarded it to the plaintiff. In the circumstances, it is difficult to see on what evidence the learned Judge based his finding that the defendant ceased to be plaintiff's agent and later resumed his agency, after rejecting the defendant's evidence that he had washed his hands of the business at the meeting of the 13th November, 1952. The evidence shows that the defendant encouraged the plaintiff to pay the £15,000 demanded by Frankel. The evidence goes further to show that the defendant, Frankel and McVicker prepared the letter Exhibit L in the circumstances described in McVicker's evidence; the defendant later on wrote out for the plaintiff

In the Federal
Supreme Court

No. 23

Judgment.

23rd February,
1957

- continued.

the cheque on which the £15,000 was paid to Frankel. After Frankel left Lagos and no trucks were shipped, the defendant wrote letters Exhibits 01, 02 and 03 to Frankel about the truck business, and in Exhibit 03 he threatened to cancel the agreement and recover the £20,000 paid in respect of the truck business if no shipment was made by a certain date.

With respect to the learned Judge, he mis-directed himself on the evidence when he held that the plaintiff paid the sum of £15,000 to Frankel without the agency of the defendant and that the payment was uninfluenced by the defendant's previous conduct in words or writing. 10

As a very large sum of money was required by Frankel, one would have expected the plaintiff to make assurances doubly sure by asking his own Bankers to investigate Frankel's financial standing, and he was no doubt negligent in failing to do so, but could this negligence exonerate the defendant from liability for the false assurances he had given the plaintiff and for refraining from disabusing the plaintiff's mind of the false assurances which obviously formed the basis of the plaintiff's dealing with Frankel? 20

Becker v. Medd, 13 T.L.R., 313 is an authority for the proposition that an agent who has been guilty of negligence cannot exonerate himself from the consequences of his own negligence by alleging that the principal has also been guilty of contributory negligence. 30

In my view, the plaintiff had established his claim against the defendant in respect of the £15,000 also. The measure of damages that a principal could claim from an agent who had occasioned him loss by untrue statements negligently made would be the amount of loss he had actually sustained, and he cannot claim the profits he might have made if the venture had not miscarried. See Johnston v. Braham and Campbell 1916, 2 K.B.D. 529. 40

The learned Judge was, therefore, wrong in awarding the plaintiff £500 general damages. It should be noted, however, that this point was not raised by or for the defendant. Subject to this, I would, therefore, allow the plaintiff's appeal with costs and dismiss the defendant's appeal with costs.

The judgment of the learned Judge is, therefore, set aside with the order for costs and judgment is entered for the plaintiff for £20,000 with £500 costs in the Court below and £128 costs of this appeal. The defendant's appeal is dismissed with 25 guineas costs to the plaintiff.

In the Federal Supreme Court

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Judgment.

23rd February, 1957

- continued.

(Sgd.) O. JIBOWU, F.J.

I concur. (Sgd.) M.C. NAGEON DE LESTANG, F.J.

10 I concur. (Sgd.) P.C. HUBBARD, Ag. F.J.

Mr. A.O. Lawson for the appellant.

Mr. A.K.I. Makanju (with Mr. S.O. Abudu) for the respondent.

No. 24

No. 24

FORMAL ORDER ON APPEAL

Formal Order on Appeal.

IN THE FEDERAL SUPREME COURT OF NIGERIA

23rd February, 1957.

HOLDEN AT LAGOS

Suit No.662/1953
F.S.C. 138/1956.

20 ON APPEAL from the JUDGMENT of the HIGH COURT of the LAGOS JUDICIAL DIVISION

BETWEEN:

A.Y. OJIKUTU Plaintiff/Respondent/Appellant

- and -

OLATUNJI OMOTAYO
Defendant/Appellant/Respondent

(Sgd.) O.Jibowu
FEDERAL JUSTICE.

Saturday the 23rd day of February, 1957

30 UPON READING the Record of Appeal herein and after hearing Mr. A.O. Lawson of counsel for the

In the Federal
Supreme Court

No. 24

Formal Order
on Appeal.

23rd February,
1957.

- continued.

Plaintiff/Respondent/Appellant and Mr. A. K. I.
Makanju (with him Mr. S.O.O. Abudu) of counsel
for the Defendant/Appellant/Respondent:

IT IS ORDERED that this appeal be allowed,
judgment of the Court below and the order for
costs thereon be set aside and that judgment be
entered for the Plaintiff/Respondent/Appellant for
£20,000 and £500 costs in the Court below:

AND IT IS FURTHER ORDERED that the Plaintiff/
Respondent/Appellant be allowed costs of this
appeal fixed at £128:

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AND THAT the Defendant/Appellant/Respondent's
appeal be dismissed and that the Defendant/Appell-
ant/Respondent do pay to the Plaintiff/Respondent/
Appellant costs of this appeal fixed at 25 guineas.

(Sgd.) W.A.H. Duffus
CHIEF REGISTRAR.

No. 25

Order on Motion
for Stay of
Execution.

11th March, 1957.

No. 25

ORDER ON MOTION FOR STAY OF EXECUTION

IN THE FEDERAL SUPREME COURT OF NIGERIA

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HOLDEN AT LAGOS

Suit No.662/1953
F.S.C. 138/1956.

APPLICATION for an order for stay of
execution of judgment debt and costs
pending the determination of appeal.

BETWEEN:

OLATUNJI OMOTAYO Applicant

-- and --

A.Y. OJIKUTU Respondent

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(Sgd.) S.Foster Sutton
CHIEF JUSTICE
OF THE FEDERATION.

Monday the 11th day of March,
1957.

UPON READING the application for an order

for stay of execution of judgment debt and costs pending the determination of appeal, the affidavit sworn to on the 28th day of February, 1957, filed by the Applicant and the Counter-Affidavit sworn to by the Respondent on the 11th day of March, 1957 and after hearing Mr. S.O. Lambo (with him Mr. A.K.I. Makamju) of counsel for the Applicant and Mr. A.O. Lawson of counsel for the Respondent:

In the Federal Supreme Court

No. 25

Order on Motion for Stay of Execution.

11th March, 1957
- continued.

10 IT IS ORDERED that the application for stay of execution be granted subject to Applicant entering into good and sufficient security for payment of judgment debt and costs up to date to the satisfaction of the Chief Registrar of the Federal Supreme Court.

IT IS FURTHER ORDERED that this Order should be complied with by the 10th day of April, 1957 and that the Applicant do pay to the Respondent costs of this application fixed at £6. 6. 0d.

20 (Sgd.) W.A.H. Duffus
CHIEF REGISTRAR.

No. 26

ORDER granting FINAL LEAVE to APPEAL to
HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.662/1953
F.S.C. 138/1956.

30 APPLICATION for an order granting final leave to appeal to Her Majesty's Privy Council.

BETWEEN:

OIA FUNJI OMOTAYO Applicant

- and -

A.Y. OJIKUTU Respondent

(Sgd.) O.Jibowu Wednesday the 22nd day of
ACTING CHIEF JUSTICE May, 1957.
OF THE FEDERATION.

UPON READING the application herein for an

No. 26

Order granting Final Leave to Appeal to Her Majesty in Council.

22nd May, 1957.

In the Federal
Supreme Court

No. 26

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

22nd May, 1957
- continued.

order granting final leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated 23rd February, 1957, and the affidavit sworn to on the 4th day of May, 1957, filed by the Applicant, and after hearing Mr. S.O. Lambo of counsel for the Applicant and Mr. J.M. Udochi of counsel for the Respondent:

IT IS ORDERED that final leave to appeal to Her Majesty's Privy Council be and is hereby granted.

(Sgd.) F. Olawale Lucas
AG. CHIEF REGISTRAR.

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Exhibits

"PP"

Partnership
Agreement.

30th August,
1952.

Exhibit "PP" - PARTNERSHIP AGREEMENT

AN AGREEMENT made the 30th day of August 1952 BETWEEN ABUDU YEKINI OJIKUTU of Number 1, Jagun Lane in the town of Lagos in the Colony of Nigeria Contractor (hereinafter referred to as the party of the first part CHRISTIANA ADUKE YOUNG of Number 22 Catholic Mission Street in Lagos aforesaid (hereinafter referred to as the party of the Second part OLATUNJI OMOTAYO of Number 62 Wakeman Street Yaba Estate (hereinafter referred to as the party of the third part and GEOFFREY OSAYONAME OMORODION of 61, Oke-Suna Street in Lagos aforesaid (hereinafter referred to as the party of the fourth part PATIENCE EBUN ODOJUKAN (hereinafter called the party of the fifth part)

20

WHEREBY IT IS AGREED as follows:-

1. The parties hereto will become partners and continue as such together in the trade or business of Produce dealers for the term of years to be computed from the date hereof, determinable nevertheless as hereinafter mentioned
2. The business of the partnership shall be carried on under the style or firm of THE NIGERIAN PRODUCE ENTERPRISES SYNDICATE on the premises belonging to the party of the first part situate at Number 8, Jagun Lane Lagos aforesaid or in such other places or place as

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the partners shall from time to time mutually agree upon.

Exhibits

"pp"

Partnership Agreement.

30th August, 1952

- continued.

3. The capital requisite for carrying on the said business shall be advanced by the partners in equal moieties. The parties shall satisfy their liabilities to provide capital under this clause by subscriptions of the sum of TWO HUNDRED POUNDS each. Each partner shall pay the balance of his capital in cash to the account of the partnership business at The Nigerian Farmers and Commercial Bank Limited at Tinubu Street Lagos on or before the day of next.
- 10
4. The bankers of the partnership shall unless and until the partners otherwise agree be the said bank of The Nigerian Farmers and Commercial Bank Limited.
5. Each partner shall be entitled to receive out of the gross profits of the business interest at the rate of Ten pounds per centum per annum on his or her capital for the time being in the said business. If in any year the gross profits of the business shall be insufficient to pay such interest the deficiency shall be made good out of the gross profits for any subsequent year or years.
- 20
6. The partners shall be entitled to the profits of the said business in equal moieties and all losses (if any) arising in such business shall be borne by them equally unless occasioned by the wilful neglect or default of either of them in which case the negligent or defaulting partner shall make good the same.
- 30
7. No partner shall draw for his own use any sum of money of the said business until the consent in writing of all the parties should have been obtained in writing and such money if granted shall be duly accounted for on each succeeding settlement of account and division of profits of the said business and any excess of the drawings of any partner over his or her share in the net profits for that current year shall be refunded.
- 40
8. Clerk's salaries, servants wages and all other expenses and outgoing payable or incurred in the course of the business shall be paid and

Exhibits

"PP"

Partnership
Agreement.30th August,
1952

- continued.

- borne out of the funds of the partnership. No apprentice, clerk, or servant shall be taken or engaged in or discharged from the said business by either of the partners without the consent of the other of them.
9. All premiums and emoluments whatsoever received in the course of the said business shall be considered as part of the profits thereof and shall be divided accordingly.
10. On the day of August in every year of the said partnership a full and correct account in writing of all the partnership property, capital debts, credits, and effects shall be stated in books to be kept for that purpose and signed by both partners and each partner shall be concluded thereby unless some manifest mistakes or error shall appear therein and be notified to the other partner within 3 calendar months next after the signing of such account in which case such error or errors shall be rectified. 10
11. Proper Accounts shall be kept by the partners of all moneys received and paid, all contracts entered into, business transacted and all other matters of which accounts ought to be properly kept in the said business. The partnership books, deeds, papers and vouchers shall be kept in the counting-house at the said place of business and not elsewhere, and be open at all times during the hours of business for inspection of all the parties who shall be at liberty to copy or make extracts from (but not to remove) the same. 30
12. The partners shall be faithful each to the other in all their dealings and transactions whatsoever in the partnership business and will at all times during business-hours diligently and faithfully employ themselves respectively in the conduct and management of the business and concerns of the said partnership and use their best endeavours to promote and beneficially extend the same. 40
13. Neither partner shall give credit or lend any of the partnership moneys to any person firm or company whom the other partner shall have previously forbidden him to trust or give any bill, or security or contract any debt on

account of the said partnership except in the usual and regular course of the business for which their consent in writing should have been obtained or compound release discharge or postpone any debt duty or demand to the said firm or become bail or surety or enter into any gaming transaction or neglect to punctually pay his or her private debts or do or suffer anything which shall be prejudicial to the commercial reputation of the partnership in which case such partner involved shall personally bear the loss and the same shall be chargeable to his shares in the business.

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14. Neither partner shall without such consent as aforesaid sell assign or otherwise part with his share or interest in the said partnership business capital stock or effects or directly or indirectly carry on or be engaged or interested in any other trade or business whatsoever the like of this business of the partnership business or knowingly or wilfully do commit or permit to be done any act matter or thing whatsoever whereby or by means whereof the said partnership moneys or effect or his interest thereon shall be seized attached extended or taken in execution or prejudicially affected.

15. In case either partner shall become incapable or incompetent to act in the proper discharge of his duties as such co-partner as aforesaid or shall be guilty of any breach of any of the aforesaid agreements or be convicted of any charge of a criminal nature or commit any act of bankruptcy it shall be lawful for the other partners within one month after becoming aware thereof to determine the said partnership by giving to such partner at his last known place of abode notice in writing specifying the particular grounds of complaint and thereafter any sum of money due to him under the partnership business shall be paid to him.

16. If any of the parties shall die during the continuance of this agreement the surviving partners shall have the option of purchasing his or her share of the business and shall pay to the legal representative such dues.

17. At any time and at the entire discretion of the partners the parties shall send overseas

Exhibits

"PP"

Partnership
Agreement.30th August,
1952

- continued.

Exhibits

"PP"

Partnership
Agreement.30th August,
1952

- continued.

- their representative or representatives for the partnership business to make contacts at the expense of the partners who shall render a true and full account of his expenses and state in writing a list of contacts so made and in the name of the partnership.
18. Any partner or partners so sent abroad shall indemnify the other partners against damages for loss of life or any other injuries he may sustain and same shall not be payable by the partnership business as such journeys shall be taken at the risk of the partner so concerned. 10
19. During such tours of the European continents he shall not be entitled to any remuneration or bonus for loss of his jobs in Nigeria other than the allowance granted him or her by the partnership business.
20. During such tours he shall not unduly commit the partnership business in any sum of money on which the consent of the other partners should not have been obtained and shall not apply for overdraft or incur any unnecessary expenditures whereby the interest of the partnership business shall be unduly prejudiced. 20
21. All business connection shall be made in the name of the partnership and shall do his or her utmost to promote the good name of the business generally.
22. All losses (if any) arising out of the business transactions generally shall be borne in the proportion of 20% each. 30
23. The parties of the first and second parts shall endorse and sign all cheques for and on behalf of the partnership business in the meantime.
24. Any partner undertaking such journeys as aforesaid in para. 20 supra may extend his tour to Luanda Angola Portugal in the interest of the partnership business.
25. On the arrival in Nigeria of such partner or partners a true and correct statement of account of journeys so undertaken on behalf of the partnership shall be exhibited and signed and same shall be kept in the counting-house of the partnership business. 40

26. A recorded meeting of the said partnership business shall be held once every three months.

Exhibits

"PP"

27. If any dispute shall arise either before or after the expiration or determination of the partnership, between the partners or those claiming under them touching or relating to the construction of these presents or to the said partnership property or effects or to any such dispute or difference or the accounts, business or transactions whatsoever every such dispute or difference shall be referred to the arbitration of two indifferent persons and their umpire to be chosen by the referees before entering upon such reference and the awards of such referees or umpires shall be considered as final and legally binding. Such arbitration shall be conducted in accordance with the Arbitration Act, 1889.

Partnership Agreement.

30th August, 1952

-- continued

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IN WITNESS whereof the said parties hereto have hereunto set their hands and seals the day and year first above written

(Sgd.)	A. Yekini Ojikutu	X
"	S. Aduke Young	X
"	O. Omotayo	X
"	G.O.Y. Omorodion	X
"	P.E. Odojukan	X

SIGNED SEALED AND DELIVERED)
by the within-named parties }
in the presence of :- }

30

PROVIDED ALWAYS AND IT IS HEREBY AGREED between the said parties that the business hithertofore carried on by the party of the second part shall not form part of this partnership business and all contracts secured prior to the formation of this partnership shall hold good and stand in the undisputed name of the party of the second part namely CHRISTIANA ADUKE YOUNG.

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(Sgd.)	A. Yekini Ojikutu
"	O. Omotayo
"	G.O.Y. Omorodion
"	P.E. Odojukan.



Plaintiff's
Exhibits

Exhibit "JJ" - LETTER from Omotayo to
Madam C.A. Young

"JJ"

Letter from
Omotayo to
Madam C.A.
Young.
3rd September,
1952.

Olatunji Omotayo,
St. Paul's Vicarage,
Finchley.

3rd September, 1952.

Madam C.A. Young,
22, Catholic Mission St.,
Lagos.

Dear Madam,

This is to confirm my cablegram of today's
date which reads:-

"Arrived Safely".

In order to facilitate my business contact
here I should be grateful if you will arrange to
furnish me with the following particulars and in-
formation as soon as possible and by Air:-

(a) Syndicate Letterheads. I omitted to collect
these from Mr. D.O.S. Ajayi. Please contact him
and forward them to me.

(b) Mr. Wiess' receipt in respect of the amount
of £120 loan. I intend to visit Hamburg and give
him a surprise packet.

(c) The full address of Messrs. Metalllo Company
and that of Mr. Wiess.

(d) The addresses of those buyers of Piassava
and other Nigerian products which you have in hand
at the moment.

(e) I am expecting the remittance to me the
balance of ninety pounds £90 from the Syndicate.

I should thank you sincerely for the grand
reception which you arranged in honour of my de-
parture from Nigeria. I am indeed mindful of the
confidence you repose on me and I hope we shall all
be granted the opportunity of reaping the fruits of
our labour. You will kindly help me to extend to
Messrs. Ojikutu and Omorodion and Mrs. Odojukan for
the part they also played in the function and other
arrangement in this matter.

I hope you will appreciate that I am unable to
write a separate letter to my wife, Iyalode. You
will do well to greet her and I trust she is in the
best of health. Please convey similar message to
every body in the house.

I should look forward to an early reply to
this letter as I am thinking of proceeding to the
continent very soon.

Yours very sincerely,
(Sgd.) O. OMOTAYO.

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Exhibit "GG" - LETTER from Frankel to
Omotayo Bros.

Defendant's
Exhibit

"GG"

B. FRANKEL
Export - Import

Letter from
Frankel to
Omotayo Bros.

Brook's Wharf,
48 Upper Thames Street,
London, E.C.4.

Telephone:
Central 9828
Central 4125

Cables:
Eurofrank, London

4th September,
1952.

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4th September, 1952.

Messrs. Omotayo Bros.
St. Paul's Vicarage,
Long Lane,
London, N.3.

Dear Sirs,

With reference to your enquiry today for 50
(fifty) Bedford 5 tons Cab/Chassis we have pleasure
in making you the following offer, subject to con-
firmation.

20

50 Bedford 5 ton Cab/Chassis, new, delivery
within 90 days shipment to commence during
December at the price of £707 (seven hundred
and seven pounds stg.) each nett f.o.b.

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It is understood that this is the nett factory
price to us and that you will cover us for either,
a buying commission of 5% or divide with us equally
the profit you are making on this deal. We must
advise you that normally it would be impossible for
you to purchase Bedford or Vauxhall vehicles except
through the United Africa Company, who are sole
distributors for British West Africa.

Yours faithfully,

MCV/RR.

(Sgd.) B. FRANKEL.

Defendant's
Exhibit

Exhibit "HH" - LETTER from O. Omotayo to
B. Frankel

"HH"

Letter from
O. Omotayo to
B. Frankel.
5th September,
1952.

Phone Finchley 1746
(London)

c/o St. Paul's Vicarage,
Long Lane,
London, N.3.
5th September, 1952.

Messrs. B. Frankel,
Brook's Wharf,
48, Upper Thames Street,
London, E.C.4.

10

Dear Sirs,

With reference to your letter of the 4th
September, 1952 we have to accept the offer of 50
Bedford Trucks 5 tons Cab/Chassis at £707 each fob,
and now look forward to your confirmation.

We welcome the idea of your charging us 5%
buying commission and we shall be prepared to pay
at sight in Lagos.

Yours faithfully,

20

(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibit

Exhibit "BB" - LETTER from Omotayo to McVicar.

"BB"

PRIVATE & CONFIDENTIAL

Letter from
Omotayo to
McVicar.
5th September,
1952.

Olatunji Omotayo,
St. Paul's Vicarage,
Long Lane,
London, N.3.
5.9.52.

Dear Mr. McVicar,

This is to confirm my telegram of the 3rd
reading as follows:-

30

"Arrived Safely".

I am happy to report that your brother has really
been very active as I expected and relying on your
recommendation. He was at the Airways Terminal,
and we have since met every day.

I confirm your difficulty in connection with transport and he made me more certain of his intention to supply you with a Ford 'Prefect' as soon as possible. I even remarked that you are a man with very ripe experience and that you have been well admired by those who come in contact with you. He is really pleased to know that you are progressing.

Plaintiff's
Exhibit

"BB"

Letter from
Omotayo to
McVicar.

5th September,
1952

- continued.

10 Your brother has been able to arrange a bulk order of 50 Bedford Trucks 5 ton subject to confirmation at £707 each f.o.b. Delivery is to commence during the month of December. It is agreed that we are paying Messrs. B. Frankel under the auspices of whom the contract is arranged, a buying commission of 5%. You will be surprised to learn that the U.A.C. in Nigeria sells a truck for £1,150 and delivery is not even immediate. A prospective buyer has to be put on the waiting list for upwards of about 24-36 months. You may like to verify this statement and perhaps make enquiry about the heavy demand from Arab Brothers or any transporter in Lagos. I have been on the list and paid the necessary deposit since 17th January, 1950 and I am still waiting.

30 The particular business which interest Frankel is rubber. Your brother even told me that you quoted him 20d per lb. C.I.F. B2. During my short stay I realise that Importers here desire to buy but on the arrangement of having the first sample shipment in this country on consignment basis. Messrs. Frankel have asked us for immediate shipment of 5 tons each of grades A3 & B2 respectively. We are yet to convince them to meet us with 75% payment against documents, and at the price of 20d for B2 and 23d A3 C.I.F.

40 I estimate that we shall make at least £200 on each truck, i.e. about £10,000. On the rubber shipment I do not think we can loose up to £500 in any event. I can assure that Arab Brothers or Elkalil is in position to clear the whole consignment on production of documents to ensure that the trucks are on board.

I hope you will appreciate the need for immediate reply in this connection, as I must be wary to commit Omotayo Brothers on this deal. I should ask you to confirm if you can arrange to ship on the basis requested by them in Omotayo Brothers.

Yours sincerely,
(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibit

Exhibit "X" - LETTER from Omotayo to Ojikutu

"X"

Olatunji Omotayo,
care St. Paul's Vicarage,
Long Lane,
London, N.3.

Letter from
Omotayo to
Ojikutu.

8th September, 1952.

8th September,
1952.

Sirs,

I confirm the following telegram sent you on the 6th:-

"Profitable contract available bulk shipment rubber stop Buyer now opening credit for immediate shipment 5 tons B2 5 tons A3 as samples at 20d and 22 Cif respectively Stop strongly advise syndicate undertake trial subject future prospect stop confirm possible date shipment 100 tons Obeche fifteen pounds Fob Lagos cable reply".

10

Since my arrival in this country, Messrs.Coker and Somefun Manager and Trade Liaison Officer respectively, and of the Farmers Bank, London have conducted me round to interview Buyers and Brokers. Believe me, Nigerian Produce has not gained that high demand which we think of. The reason for this being the disappointment suffered by overseas buyers who received goods not comparing favourably with the samples sent to them from West Africa. In consequence of this irresponsible act of our people, Buyers here are only willing to buy on consignment, or to act as agents, especially with a firm yet unknown here in the realm of export. We are yet to be informed that the overseas buyers are suffering a great deal in that they have to pay heavy damages and compensation each time this sort of anomaly happen.

20

30

The sample shipment now asked for in the telegram is for 5 tons each of grades B2 & A3 and at 20d & 22d CIF. There is prospect for a large order if we are able to build up the necessary trade reputation. A European customer to whom I have shipped timber and sees nothing to complain about assisted me in my contact and he is responsible for this contract. The order for 100 tons of Obeche is very urgently required and I should be too happy to hear what the Syndicate is doing in this connection too.

40

Mr. Shomofun also introduced me to the Chairman of the West-Minister Chamber of Commerce, Mr. Norman Lloyd. He confirmed that they have resolved to act only as agents and that when Nigerian shippers are aware of their responsibilities, they can take risks. The onus now lies on us to prove our mettle.

Plaintiff's
Exhibit

"X"

Letter from
Omotayo to
Ojikutu.

8th September,
1952

- continued.

10 My tour of the continent of Europe has got to be delayed a bit for purposes of confirmation by those who are to put me through over there. Nigerian Farmers and Commercial Bank, London wrote to buyers in Holland and Germany and I am expected to cross over around the end of this week. Similar correspondence have been put forward to Paris and Norway and I hope I shall cover other important centres during the tour.

20 I expected the remittance through the Farmers Bank of the £90 which the Syndicate promised to send to me. The Bank says that they have no such news for me. Will you be good enough to forward the money as soon as possible; I only wish I could have it before I proceed to the continent.

30 Timber: Apart from the 100 tons referred to in my cablegram, there is further demand for Obeche at £15 per ton Fob Lagos. Payment by letter of credit for 80% and balance on arrival of goods in U.K. Before I left Nigeria, Obeche was sold for £11.10/- and the price must be less in Benin-Sapele. If you find this reasonable to accept; please let me know immediately. At the moment I have not got any price higher than this in London.

Iron Sheets: Please let me know if you are interested in this offer: 8' x 6' x 8/3" 36 gauge £152.2.3 per ton CIF; 34 gauge £144.12.2; 32 gauge £137.2.8. Cement £10.6/- per ton CIF Lagos the usual BSS 12/1957.

40 If you have other items of goods in which we may deal, please give me information about their selling prices so that I may not snatch at a too high offer or refuse any at competitive prices.

I now look forward to your comments and early reply.

Yours faithfully,

(Sgd.) O . OMOTAYO.

My London CABLE ADDRESS:-
"TEMLIDIRE LONDON"

Plaintiff's
Exhibit

Exhibit "Y" - LETTER of agreement from
Omotayo to Brandler &
Rylke.

"Y"

Letter of
agreement from
Omotayo to
Brandler & Rylke.

Copy of Letter from
Omotayo Brothers
62, Wakeman Street, Yaba.

26th September, 1952.

26th September,
1952.

PRIVATE & CONFIDENTIAL

Messrs. Brandler & Rylke, Ltd.
64, Campbell Street,
LAGOS.

10

Dear Sirs,

BEDFORD TRUCK ORDER, (Ex-ISRAEL Quote)
Shipment of 50 - 5 ton Cowl-Chassis,
long wheel-base, without Cab.

I write to confirm the several conversations held between Mr. Brandler, Myself and Mr. McVicar, and hereby confirm an agreement reached between ourselves regarding the purchase, shipment and marketing of the above.

20

It is therefore agreed as follows :-

ORDER: The order has been placed by me with Messrs. B. Frankel, of Brook's Wharf, 48, Upper Thames Street, London, E.C.4., who state they can obtain the trucks from Bedfords out of the quantity allocated to Israel, and not taken up. This London House will require 5% of the F.O.B. value, on shipment as their commission.

FINANCE: Messrs. Brandler & Rylke, Ltd., have agreed to finance the whole transaction, on the following terms.

30

- (i) Letter of Credit will be opened immediately on evidence seen by me, that the trucks are available for shipment. It will be for me to ascertain the quantities ready for earliest shipment for this order true cost F.O.B., and the name of the shipper. The value of the Letter of Credit will include the 5% due, as

40

commission, to Messrs. B. Frankel. Letter of Credit will be negotiated by beneficiaries on production of shipping documents, together with the Factory Despatch Note from Bedford's.

Plaintiff's
Exhibit

"Y"

10 (ii) In any shipment the Bills of Lading will be split in two, in order to facilitate my taking up on arrival of shipment at Lagos. And in the event of an approximately total shipment of the order in one lot, the B of L's will be divided proportionately.

Letter of agreement from Omotayo to Brandler & Rylke.

26th September, 1952.

- continued.

20 (iii) It is my intention to take up documents for as many trucks as I am able, before they are landed. But it is agreed that, should I not be able to do this, Messrs. Brandler & Rylke, Ltd., will carry these documents not taken up, and continue to finance the landing of these remaining trucks, clearance through Customs, and assembly for sale on terms agreed hereunder for this additional financial accommodation.

(iv) Having regard to the unauthorodox nature of this transaction, that is to say the transference of Bedford's export quota of 1952 from a Middle East territory to a West African territory, already covered by a sole agency, I will make it my first business in London to -

- 30 (a) Make sure of this shipment on F.O.B. terms, by some form of irrevocable confirmation in writing.
- (b) Obtain the earliest possible shipment of the trucks.
- (c) Obtain the right type of truck, as already discussed - i.e. OLBS, long chassis, right-hand drive, No Cab & c.

PROFITS: The division and allocation of profits on this venture have been agreed as follows:-

40 (i) By virtue of their undertaking the whole of the finance of this transaction, Messrs. Brandler & Rylke, Ltd., will receive either -

(a) $7\frac{1}{2}\%$ of the total C.i.f. value of the

Plaintiff's
Exhibit

"Y"

Letter of
agreement from
Omotayo to
Brandler &
Rylke.

26th September,
1952

- continued

documents I take over, before the trucks are landed, as a fee to cover their financial assistance and risk thereto.

or (b) $33\frac{1}{3}\%$ of the profits gained on the sale of trucks, after landing, assembly and testing. The costs of this being undertaken by Messrs. Brandler & Rylke, Ltd., and the costs being added to the c.i.f. value in order to arrive at a true cost per vehicle before sale. 10

Messrs. Brandler & Rylke, Ltd., reserving the right to request a fee, as stated in (a) above, i.e. $7\frac{1}{2}\%$ on the total finance employed to assembly and ready for the road, ex-garage, or $33\frac{1}{3}\%$ as already stated and whichever is the greater.

or (c) 50% of the profits gained on the sale of vehicles assembled and sold by them to their own customers. Messrs. Brandler & Rylke, Ltd., reserving the right to assemble and sell 50% of the vehicles bought and shipped under this contract. 20

EXPENSES: All accounts of this transaction will be kept by Messrs. Brandler & Rylke, Ltd., and all direct expenses (that is to say all direct expenses made in connection with the physical and financial handling on this one particular transaction, from payment on shipment - including 5% commission - to assembly in Lagos and delivery to the buyer) will be chargeable to the cost of the vehicles, before actual profit is ascertained and apportioned. It is also agreed that 50% of my return air-passage from London, undertaken specifically on account of this transaction, will be borne out of the profits made by Messrs. Brandler & Rylke, Ltd., and paid to me, as and when the transaction has been satisfactorily concluded. 30 40

To make this agreement binding I am signing hereunder before witnesses I am known to, and respectfully request you to do likewise.

Yours very truly,

(AYINKER ?)

<u>Witness</u>	Felix Stores	<u>Signature</u>	O. Omotayo	50
<u>Witness</u>	W. Edmundson	<u>Signature</u>	J.L. Brandler	
<u>Witness</u>	W.E. McVicar.			

Exhibit "B" - CABLEGRAM from Omotayo to Ojikutu.

Plaintiff's
Exhibits

OFFICE OF ISSUE
54.

"B"

Circuit	Clerk's Name	Time Received	C & W LTD. 29 Sep 52 Lagos.
		PM 1 56	

Cablegram from
Omotayo to
Ojikutu.
29th September,
1952.

19 OP755 D LONDON 40/37 29 1348

= URGENT = YEKINI OJIKUTU 8 JAGUNLANE LAGOS =

10 TWELVE VEHICLES ASSEMBLED ALREADY FOR IMMEDIATE
SHIPMENT PRICE SIXHUNDREDANDSIXTYSEVEN POUNDS
FREIGHT INCLUDING ALL CHARGES ONEHUNDREDANDFIFTY
POUNDS REMIT IMMEDIATELY FIVETHOUSANDAND THREE
HUNDRED POUNDS DEPOSIT DELAY DANGEROUS SELLER
UNSATISFIED MY INABILITY TO DEPOSIT NOW = OMOTAYO.

Exhibit "MM" - CABLEGRAM from Omotayo to McVicar

Circuit	Clerk's Name	Time Received	ISSUING OFFICE 123 C. & W. Ltd. LAGOS.
		30/IK	

"MM"

Cablegram from
Omotayo to
McVicar.

20 TAVL184 LPH602 LONDON 61 29 1853 =

LT = MCVICAR HOTEL BRISTOL LAGOS =

29th September,
1952.

FACTORY COST CHASSIS ONLY L 667 FREIGHT
QUOTATIONS FROM SHIPPING AGENTS HOGG ROBINSON AND
CAPEL CURE 199/6 PER TON INCLUDING ALL CHARGES CIF
13 AVAILABLE FOR IMMEDIATE SHIPMENT BUT AS FRENDEL
WANTS 15000 DEPOSIT AGAINST ENTIRE FIFTY PAYMENT AT
SIGHT AGAINST DOCUMENT AT LAGOS FOR EACH SHIPMENT
HAVE SEEN EVIDENCE MYSELF EXPECTING REMITTANCE
WEDNESDAY = OMOTAYO.

Plaintiff's
Exhibit

Exhibit "C" - RECEIPT issued by the
National Bank of Nigeria for
£5333.18.6.

"C"

Receipt issued
by the National
Bank of Nigeria
Ltd. for
£5333.18.6.

THE NATIONAL BANK OF NIGERIA LIMITED

No. 4931.

1st October,
1952.

Received from Yekini Ojikutu Esq.

The sum of Five thousand three hundred thirty
three pds. 18/6d

On account of T.T. London.

Amount £5300. -. -

Exchange 33. 3. 6

Cost of Cable -.15. -

£5333.18. 6d.

10

1 Oct. 1952.

..... Cashier

National Bank of Nigeria Ltd.

Contra

Cashier

Lagos.

Exhibit "D" - LETTER from Ojikutu to Omotayo

Defendant's
Exhibit

A.Y. OJIKUTU
(General Contractor)
(Dealer in Cattle and Rams, Timber Merchant etc.)
Chairman, The Lagos Wholesale Butchers' Union.

"D"

Letter from
Ojikutu to
Omotayo.

D.O.S. Ajayi Esq.
Personal Secretary.

2nd October,
1952.

Telephone No. 761
P.O. Box No.

1, Jagun Lane,
Lagos, Nigeria.

2nd October, 1952.

10

Branches:-
Ibadan, Minna, Zonkowa,
Kaduna, Kano, Iguru,
Jos, Portiskum, Puntuwa
& Daudawa.

Mr. Omotayo,
Long Lane,
London E.3.

Dear Mr. Omotayo,

20

I have to refer to your cablegram of the 29th
Sept. and mine of the 1st inst. From these you
would gather that a sum of five thousand three
hundred pounds sterling has been deposited with
the Head of Office of The National Bank and in-
structions passed to their branch office to make
this available for the purposes required as a
deposit against the shipment of fifty Bedford

30

Chassis without Cab, Brand New, part of which,
according to you are ready for immediate shipment.
I am confident that you will make the best out of
the job.

I shall be expecting your cablegram regarding
shipment, stating the quantity shipped and the
name of the boat PROVIDED all cannot be shipped
at a time. It must be clearly borne in mind that
collections must be through the National Bank here
and the lorries consigned to me personally as here-
under:-

A.Y. Ojikutu, 1 Jagun Lane, Lagos, Nigeria.

40

It must be again be stated by me that the
lorries must be brand new and not reconditioned
ones and are fully insured to their destination
here.

Defendant's
Exhibit

"D"

Letter from
Ojikutu to
Omotayo.

2nd October,
1952

- continued.

According to your cablegram, you stated that twelve Bedford Lorries are assembled and ready for shipment. I cannot fully understand this and the word "assembled" used by you either they have been cased and ready for shipment or they have already been fitted as lorries ready for service. But I must suggest this that they should be packed in cases rather than uncased so as to save space and cut down considerably the freight dues.

Whatever the case might be, you will please use your discretion.

10

Either before or when returning from the continents you can pass to Germany and see whether what could be done there about lorries, particularly BEDFORD, as this lorry is in general demand here but do not forget to state what kind of lorries they can offer for Nigerian Markets either new, reconditioned or otherwise. Please quote different prices and freight delivered Lagos.

IN LONDON, it is my desire that you get in touch with the Minister of Food as to the contract of supplying frozen pork to them at minimum rate of 30 tons per month starting anytime. I want their quotation F.O.B. Lagos. It must be here stated that I have complied with all the requests of the Medical Officer of Health here governing sale of frozen pork outside Nigeria and I have the permission of the government to deal in such lines abroad. For your personal direction, I here state the prices at which these commodities can be supplied are from 2/7 - 2/9 per lb.

20

30

I have implicit confidence in your trade ability but must state that you should not disclose the prices until your views are heard and their prices known. Please obtain the highest quotation of the Minister of Food and cable me for confirmation. If their quotations are on C and F then that will be far different from the above quotations. At any rate, try and obtain quotations for f.o.b. as well as c.i.f.

40

The pork will be well wrapped in white clean stockinnett before delivery to the steamer covered by government certificate of cleanliness and fitness for consumption attached to each side of pork sides will be delivered minus the head and fore feet.

TURKEYS. I am also in a position to supply frozen

turkeys for Xmas and I invite their quotations through you. They can be supplied in weights of approximately 10 lbs and upwards per bird quotations for different lines as hereunder should be stated, namely:-

Defendant's
Exhibit

"D"

(i) Prices for turkeys, plucked and drawn and quantity required.

Letter from
Ojikutu to
Omotayo.

(ii) Prices per lb of whole turkey undressed and frozen at the minimum weights of 10 lbs and upwards per bird.

2nd October,
1952
- continued.

10

You should see whether there are markets for these lines in the continents and if you are in difficulty in locating the Ministry of Food during your continental tours, please consult with the British Representatives over there.

20

I am also in a position to supply any quantity of sheer nuts and can forward samples by air. I can supply either London or the continents if quotations are encouraging at minimum price of £25 per ton, and upwards. I am laying particular stresses on your interviewing the Minister of Food in London and engage in personal discussions with him before proceeding to the continents and then report results by cablegrams.

30

I may mention that there is an african in the person of Mr. Oki working at the office of the Ministry of Food, but would suggest that you do not respect his opinion about what is obtaining in their department UNTIL you get personal contact with the Minister.

With very best wishes for a successful tour.

Yours faithfully,

(Sgd.) A. YEKINI OJIKUTU.

Plaintiff's
Exhibit

Exhibit "E" - LETTER from Omotayo to Ojikutu.

"E"

Letter from
Omotayo to
Ojikutu.

3rd October,
1952.

Councillor A.Y. Ojikutu,
8, Jagun Lane,
Lagos.

Olatunji Omotayo.
c/o St. Paul's Vicarage,
Long Lane, Finchley,
LONDON, N.3.
3rd October, 1952.

I confirm the following cablegrams and your
reply yet in hand:-

10

29th Sept. "Twelve Vehicles Assembled
Already For Immediate Shipment Price £667
Freight Including All Charges £150 Remit
Immediately £5300 Deposit Delay Dangerous
Seller Unsatisfied My Inability To Deposit
Now"

Yours 1st Oct. "Demand National Bank Fivethousand
Threehundred Pounds Letter Follows"

On arrival the suppliers felt disappointed in
that I promised them before I came home that funds
will be available to them on Wednesday the 24th
September, and I was unable to fulfil this promise.
It came out that I have no intention of taking up
the lorries when I could not again produce the
money when I came to London. On the whole I con-
vinced them that I had certain documents to exchange
for money here, while I sent you my first telegram
as above. Your immediate reply by cablegram was
appreciated, but I was at a great dilemma when both
the National Provincial Bank and the French National
Bank said there was no instruction from National
Bank of Nigeria. I was at these Banks with the
Director of the Supplying Company. As you are
aware this people are not the manufacturers of
Bedford, but they are buying agents. This led to
my telegram of yesterday which reads: "Money Not
in London Bank Anxious You Expedite". I was at
both banks this morning and I had similar reply
and so I could not make my way to their office.
At the moment I am perplexed over this issue and I
still look forward to whatever news you have for
me.

20

30

40

Thanking you in anticipation of an early reply.
Yours faithfully,

(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibit

Exhibit "LL2" - LETTER from Orchard to
B. FRANKEL & CO.

"LL2"

VAUXHALL MOTORS LTD.

Letter from
Orchard to
B. Frankel &
Co.

Telegrams: CARVAUX: LUTON.
Telephone: Luton 2600

Kimpton Road,
LUTON Beds.

7th October,
1952

Our ref 601/AO/SD.

Date 7th October 1952

Messrs. B. Frankel & Co.,
48 Upper Thames Street,
LONDON, E.C.4.

Your enquiry Ref. No. Dated

10

Dear Sirs,

With reference to your above enquiry, we have pleasure in rendering our quotation in respect of the undermentioned vehicles subject to the terms and conditions detailed herewith

BEDFORD 5 TON CHASSIS CABS (QUANTITY 30)

To supplying :

1 only Bedford 5 ton long wheelbase Model OLBC chassis cab to standard export left hand drive specification but fitted with 7.50 X 20 - 10 ply tyres front and 8.25 X 20 - 12 ply dual rear and spare in lieu of standard and fitted with double acting shock absorbers front and rear. Complete unit prepared for unboxed shipment and delivered to London Docks for the sum of (including 10% discount) £673.12. 0d in primer.

20

BEDFORD 5 TON CHASSIS CABS (QUANTITY 30)

To supplying :

1 only Bedford 5 ton long wheelbase model OLBC chassis cab to standard left hand drive export specification less standard tyre equipment, but fitted with double acting shock absorbers front and rear. Completed unit prepared for shipment in double unit boxing condition and delivered ex.works (including 10% discount) for the sum of £574. 5. 0d.

30

Approximate Insurance & Freight

delivered Tel-Aviv £67.15. 0d.

Total C.I.F. £642. 0. 0d.

DELIVERY:

All vehicles will be available for shipment from November 1952 production.

Plaintiff's Exhibits

"LL2"

TERMS AND CONDITIONS.

Letter from Orchard to B. Frankel & Co.

7th October, 1952

- continued

10

1. It is understood and agreed that the price quoted above is approximate only and that the actual price to be paid for the vehicle will be the price current on the day when the vehicle is delivered in C.I.F. contract, the price to be paid is the C.I.F. price current at the time of shipment.

20

2. In the event of cessation of Manufacturer or supply of the vehicle, whether the time for delivery has arrived or not, Vauxhall Motors Ltd. shall be at liberty to return any deposit paid and declare this contract to be at an end without further liability.

30

3. Vauxhall Motors Ltd. reserve the right to alter the design, construction or equipment of vehicles without previous notice, and the vehicle ordered may be supplied with or without such alteration.

4. The time of delivery is not guaranteed by Vauxhall Motors Ltd. but every endeavour will be made to secure delivery of the vehicles on the estimated delivery date or dates. Vauxhall Motors Ltd. will not be liable for any damages or claim of any kind in respect of delay in delivery or any claim arising thereupon.

for VAUXHALL MOTORS COMPANY,
LIMITED.

(Sgd.) A. ORCHARD

EXPORT SALES DIVISION.

In. 88/2:

Exhibit "F" - CABLEGRAM from Omotayo to Ojikutu.

"F"

TAWL 626 LPH675 LONDON 11 8 2132

Cablegram from Omotayo to Ojikutu.

GMF = OJIKUTU 1 JAGUNLANE LAGOS =

8th October, 1952.

POSITION ALL RIGHT LETTER FOLLOWS

OMOTAYO.

Plaintiff's
Exhibit

Exhibit "G" - LETTER from Omotayo to Ojikutu

"G"

Olatunji Omotayo,
St. Paul's Vicarage,
Finchley,
London, N.3.

Letter from
Omotayo to
Ojikutu.

9th October, 1952.

9th October,
1952.

Councillor A.Y. Ojikutu,
1, Jagun Lane,
Lagos, Nigeria.

Dear Sir,

10

This is to confirm the receipt of your registered letter dated the 2nd inst., and cablegram of the 8th also, and my cablegram of the 8th reading as follows:- "Position Alright Letter Follows".

The position of the Trucks order is that Messrs. Frankel got authority to buy the quantity allocated for Israel which country is unable to pay in sterling. This order has been confirmed by Messrs. Vauxhall Motors the makers of Bedford Trucks to Messrs. Frankel who is buying on my behalf on a commission of 5%. They (Frankel) have bargained with the shipping company who promised shipping space for November. We are still pressing other shipping companies as I urge that shipment should be made immediately as I have promised many of my buyers that shipment will be made in October. At the moment I can only confirm that shipping space is available for November. If we succeed earlier than that, I shall let you know.

20

There is another one important point which I ought to make you aware of, as you are aware, we cannot at any time get straight supply for West Africa as the U.A.C. have the monopoly to import Bedford that way. The buying of Israel allocation makes it imperative that we must take the exact goods reserved for that country. Hence the trucks are all left hand drive and with cabs. We are at the moment trying to persuade Vauxhall to supply those without cabs, although the price is the same as I quoted you. I hope they will agree to this suggestion because they will have the cabs to their advantage.

30

40

If you are not in agreement to this, please let me know in time. According to the agreement signed by the Vauxhall and Frankel which I have seen, it is likely we receive between 12-30 trucks in November. I shall post you a photo copy of this agreement as soon as it is ready.

Plaintiff's
Exhibit

"G"

Letter from
Omotayo to
Ojikutu.

9th October,
1952

- continued.

10

In order to show you the exact type of trucks which I have negotiated for, I enclosed herewith a leaflet and I am sure this must be the kind you have in mind when sending your cable of the 8th.

20

PORKS, TURKEYS AND SHEANUTS: You requests for these articles received my immediate attention. I have interviewed the department concerned. According to them, they have permanent contract for supply of the first two from Australia and New Zealand and other countries and have been directed to certain Broker in London for the last one. At any rate, I have been asked to present a written firm offer on the items I can supply in large quantities. You will therefore post your offers to me for presentation to them.

I shall proceed to Holland and Hamburg this evening and hope to be back in London by next Monday.

Please extend my good wishes to all concern.

Yours faithfully,

(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibit

Exhibit "FF" - LETTER from Omorodion to
Ojikutu.

"FF"

Letter from
Omorodion
to Ojikutu.

c/o Hotel Franfort,
Rua De Santa Justa,
Lisbon, Portugal.

17th October,
1952.

17th October, 1952.

A.Y. Ojikutu, Esq.,
Chairman,
Nigeria Produce Enterprises Syndicate,
1, Jagun Lane,
Lagos.

10

Dear Sir,

I received few days ago a letter from Mrs. C.A. Young, a co-Director of our Company in which she enclosed a copy of her letter to you regarding the proposed importation of Bedford Lorries from the United Kingdom by Mr. M.O. Omotayo.

I wish to inform you that I whole-heartedly support her move in objecting to it.

To the best of my knowledge, our infant company is not financially strong to embark upon such enterprise and we are not interested in raising any loan for the importation of any Bedford lorries. To be frank with you, £5,000. (Five thousand pounds) is not a small amount and as our company has got no 5,000 pennies is useless committing ourselves.

20

If you are keen in pursuing this business further, please note that it should be done in your own name (A.Y. Ojikutu) and not in the name of "NIGERIA PRODUCE ENTERPRISES SYNDICATE".

30

I am happy to inform you that am pushing ahead successfully and you will hear again from me in the course of few days.

You will be now have received the Rubber Contracts which I have since forwarded to you.

Yours faithfully,

(Sgd.) G.O. OMORODION

Exhibit "H" - JETTNER from Omotayo to Ojikutu.

Plaintiff's
Exhibit

"H"

Olatunji Omotayo,
c/o St. Paul's Vicarage,
Long Lane,
London, N.3.

Letter from
Omotayo to
Ojikutu.

20th October, 1952.

20th October,
1952.

Councillor A.Y. Ojikutu,
1, Jagun Lane,
Lagos.

10 Dear Sir,

This is to report that I returned from the continent of Europe yesterday as relayed to you in my cablegram which reads:-

"Returned to London".

20 I have since phoned to contact Messrs. Frankel in respect of those Bedford Trucks. They have given me appointment for further interview with them on Thursday 23rd October. I shall report to you immediately after the interview, and I do hope to be able to confirm the exact day when I propose to leave London for Nigeria.

30 I visited Amsterdam, Rotterdam, Hague, Utrecht and Hamburg. The Journey is very pleasant indeed, but I regret to report that many of our people have already spoilt Nigeria's name all over the continent. In England the position is a bit fair in that our people find it difficult to dupe them. There are various complaints from different buyers and exporters about the conduct of the Nigerians. They have lost much that they now conspire never to deal with Nigerians unless they are prepared to open letter of credit. They have much to say against our exporters as well as for the unmarketable stuff which arrived in continental countries from Nigeria.

40 I do not forget your enquiries regarding those commodities you are desirous of supplying, but the people of the continent are not dealing in such lines. I have written once again to another branch of the Ministry of Supply while I am waiting for your firm offer in respect of the first contact.

With my best wishes to all.

I remain,
Yours sincerely,
(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibits

"KK"

Letter from
Omotayo to
Frankel.

24th October,
1952.

Exhibit "KK" - LETTER from Omotayo to Frankel

OMOTAYO BROTHERS
(Regd. in Nigeria No. 17073)
General Merchants

62, Wakeman Street,
P.O. BOX 113,
YABA, NIGERIA.

Cables and Telegrams:
TOMOTAYO, IAGOS.
Telephone:

Our Ref:
Your Ref:

Please reply to:
c/o St. Paul's Vicarage,
Finchley,
London, N.3.

24th October, 1952.

10

Messrs. B. Frankel,
48, Upper Thames Street,
London, E.C.4.

Dear Sirs,

This is to acknowledge the receipt of the
photo-copies of correspondence Ref 601/A0/SD of
7th October, 1952 together with the two enclosures
of the same reference.

Yours faithfully,
(Sgd.) O. OMOTAYO.

20

"J"

Letter from
Ojikutu to
Omotayo.

27th October,
1952.

Exhibit "J" - LETTER from Ojikutu to Omotayo

27th October 1952.

Mr. Olatunji Omotayo,
c/o St. Pauls Vicarage,
Finchley London N.3.

Dear Sir,

Further to my cablegram of even date: your two
letters and cablegram were received with thanks.
It is a pity that Pork and Turkeys were not re-
quired by the Ministry of Food London. I hope you
will be able to make a successful mission with
other Ministry mentioned in your last letter.

30

The price for Frozen Pork will be 2/8 per lb

f.o.b. Lagos wrapped in stockinette with every certificate of fitness for human consumption from the Medical Officer of Health attached to each side of pork.

Plaintiff's
Exhibit

"J"

Turkeys at 6/6d per lb f.o.b. Lagos Plucked and wrapped as well at a minimum weight of 11 lbs upwards.

Letter from
Ojikutu to
Omotayo.

Good quality beef in sides at 2/- per lb beef hinds alone at 2/2 per lb f.o.b. Lagos all wrapped.

27th October,
1952

- continued.

10 We are in position to supply 30 tons of Pork monthly at the minimum also 800 Turkeys for Christmas and if so required 150 Turkeys monthly as a contract. Please contact any Ministry of supply interested and cable me either their acceptance of our prices or their counter offer anticipating your cable latest 31st instant. All your activity and efforts are well noted and appreciated. We can supply 30 tons of beef in sides or 20 tons in hinds also monthly at a minimum.

20 The photograph of the Bedford Lorry in your first letter meet my expectation and satisfaction, you could not have done better. You need not worry about the cab let the lorry be shipped with cab as they are required like that in Lagos and since the lorry are built up to be lefties so much the better but try all means to see that as many as possible are shipped early in November if not all before your departure from U.K. I am sure that you will make solid arrangements for the early shipment of
30 what may be left behind after you have left. We are all anxious as well as the customers to receive the invoice also the lorry in reality. Once more I thank you very much and I am still expecting to hear from you of any further offer of good business on any line what so ever after your discretion.

Yours truly,

(Sgd.) ?

Plaintiff's
Exhibit

Exhibit "I" - LETTER from Frankel to Ojikutu

"I"

Letter from
Frankel to
Ojikutu.
15th November,
1952.

B. FRANKEL
Export-Import.

Brook's Wharf,
48 Upper Thames Street,
London, E.C.4.

Telephone:
Central 9828
Central 4125

Cables:
Eurofrank, London

15th November, 1952.

A.Y. Ojikutu, Esq.,
1, Jagun Lane,
LAGOS, Nigeria.

10

Dear Sirs,

I hereby confirm my acceptance of your order for 30 Bedford Trucks, long wheelbase model OLBC Chassis cab, at factory price of £673.12.0d delivered London Docks, plus 12% plus 5%, representing agreed commissions to be paid to myself and my Agents.

Delivery will take place within 60 days of my receiving the sum of £15,000 to augment the £5,000 already acknowledged by me, which I will take at 30/50 proportion of the overall contract for 50 Trucks, and credit you with the sum of £3,000, for the above mentioned 30 Trucks.

20

I hereby undertake to indemnify you against any loss or losses whatsoever that may arise from this deal through my inability to deliver to Lagos Port.

As soon as shipment will commence you will have to cover me for the difference in the sum received and the final C.I.F. costs. It is understood that part-deliveries are acceptable.

30

My Bankers are Messrs. Barclays Bank, Ltd., 232, Bishopsgate, London, E.C.3, to whom enquiries can be made to your satisfaction.

Yours faithfully,

(Sgd.) B. FRANKEL.

Exhibit "A" - LETTER from Omotayo to Ojikutu

Plaintiff's
Exhibit

"A"

OMOTAYO BROTHERS
(Regd. in Nigeria No. 17073)
General Merchants.

Letter from
Omotayo to
Ojikutu.
15th November,
1952.

62, Wakeman Street,
P.O. Box 113
Yaba, Nigeria.

10 Cables and Telegrams: Please Reply to:
Omotayo, Lagos. P.O. Box 113,
Telephone: Yaba.

Our Ref: MOO/00 15th November 1952.
Your Ref:

Councillor A.Y. Ojikutu,
1 Jagun Lane,
Lagos.

Dear Sir,

20 Pursuance to the meeting held yesterday the
14th instant at your residence 49, Idumagbo Avenue
Lagos between yourself, Mr. B. Frankel and the
writer in his representative capacity as the Mana-
ger and Proprietor of Messrs. Omotayo Brothers and
with reference to the 30/50 Bedford Trucks thereat
discussed and against which you have already sup-
plied the sum of £5,300 (Five thousand and three
hundred pounds) sterling £5,000 being deposit
against the deal and £300 being part of my expenses.

30 As already mutually agreed upon, it will be
your responsibility to finance the execution of the
deal from the beginning to the time the Trucks were
sold on arrival in Lagos.

I on my part responsible for rendering to you
accurate account of all the expenses that may be
incurred to bring the deal to a successful end.

Enclosed herewith please find the signed
acceptance of the order for the 30/50 Bedford
Trucks by Mr. B. Frankel for your retention and
acknowledgment.

40 Perhaps you will be good enough to signify to
us in writing per return your acceptance of this
proposal or any other proposal you may have in
view.

I remain,
Yours faithfully,
(Sgd.) O. OMOTAYO.

Plaintiff's
Exhibits

Exhibit "DD" - RECEIPT by Union Trading
Company Ltd. for £812.1/-.

"DD"

Receipt by Union
Trading Company
Ltd. for
£812.1/-.

17th November,
1952.

c/o Barclays Bank (D.C. & C.) LTD.,
Marina,
Lagos.

No. 16341

UNION TRADING COMPANY LTD.

MOTOR DEPARTMENT.

Branch LAGOS 17th Nov. 1952.

RECEIVED from the African & European Timber Co.
Ltd. the sum of Eight hundred and Twelve Pounds
One shilling and Nil Pence.

10

Cheque No. E/A 929977 for payment of a Car.

£812. 1.-d for UNION TRADING COMPANY LTD.

(Sgd.) ?

Checked by

Exhibit "M" - CHEQUE for £15000

"M"

Cheque for
£15000.

18th November,
1952.

National Bank of Nigeria
Ltd.

Barclays Bank (Dominion,
Colonial and Overseas)

CONTRA
Cashier
L A G O S

L A G O S.

20

No. NB 30940
25

Nigeria
24

LAGOS 18th November 1952.

TWO
PENCE

Stamp Duties
5 50

THE NATIONAL BANK OF NIGERIA LIMITED
37, MARINA, LAGOS.

30

Pay B. FRANKEL
Fifteen Thousand Pounds Only
£15,000 = 0 = 0d.

A. YEKINI OJIKUTU.

National Bank of Nigeria Limited

P A I D

18 Nov 1952.

(Back)

B. FRANKEL

B. Frankel.

ENDORSEMENT CONFIRMED

For BARCLAYS BANK (DOMINION, COLONIAL AND OVERSEAS)

40

?

Manager
LAGOS.

Exhibit "W2" - CABLEGRAM from Timax Timber
Co. to McVicar, Lagos.

Plaintiff's
Exhibits

"W2"

Circuit	Clerk's Name	Time Received	C. & W LTD. PM 3 13 LAGOS	Office of Issue 230
---------	-----------------	------------------	---------------------------------	---------------------------

Cablegram from
Timax Timber
Co. to McVicar,
Lagos.

28th November,
1952.

AWL793 UK217 LONDON 29 28 1304 =

MACVICAR HOTEL BRISTOL LAGOS

10 YOUR 27th CONFIRMED PURCHASE OJIKUTU 300 TONS JAN
FEB 18 1/4 FOB 90/10 STOP AIRMAIL IMMEDIATELY
TIMAX CONTRACT PROFORMA INVOICES TRIPLICATE EN-
ABLING OPENING CREDIT CABLE CONFIRMATION.

Exhibit "W3" - LETTER to Ojikutu from The
Manager, Bank of British West Africa, Lagos.

"W3"

All Communications to be addressed to the Manager.

BANK OF BRITISH WEST AFRICA LIMITED,
(Incorporated in England)

POST OFFICE BOX NO. 176.

Letter to
Ojikutu from
The Manager,
Bank of British
West Africa,
Lagos.

20 When replying Marina,
Please Quote LAGOS,
Ref: CREDITS/BAW/DAI. NIGERIA, WEST AFRICA.
Your Ref: 12th December, 1952.

A.Y. OJIKUTU Esq.,
1, Jagun Lane,
Lagos.

Dear Sir,

OUR LONDON OFFICE CREDIT NO.20375

30 We give hereunder the text of a cable which
we have received from our London Office in respect
of the above-mentioned Credit opened in your
favour :-

"OPEN CREDIT 20375 ABOUT £11,500 FAVOUR A.Y.
OJIKUTU 1 JAGUN LANE a/c TIMAX TIMBER CO

Plaintiff's
Exhibits

"W3"

AGAINST FOB DOCUMENTS B 2 RUBBER 25 TONS EACH
LIVERPOOL HAMBURG AND HAVRE AT 18½ POUND
BASIS 90 PERCENT EXPIRES 28 FEBRUARY."

Letter to
Ojikutu from
The Manager,
Bank of British
West Africa,
Lagos.

This is advised to you without incurring any
responsibility on our part and we reserve the
right to alter and amend the terms and conditions
of this Credit upon receipt of the airmail con-
firmation.

Yours faithfully,

12th December,
1952
- continued.

For BANK OF BRITISH WEST AFRICA LIMITED.

10

(Sgd.) ?
for ASST. MANAGER.

"N"

Exhibit "N" - LETTER from Frankel to Omotayo
Bros. and INVOICE.

Letter from
Frankel to
Omotayo Bros.
and Invoice.

Telephone
Central 9828
Central 4125

B. FRANKEL
Export - Import

Cables
Eurofrank, London

23rd December,
1952.

Brook's Wharf
48 Upper Thames Street,
London, E.C.4.

20

23rd December 1952 F/JD.

Messrs. Omotayo Brothers,
62, Wakeman Street,
Yaba,
NIGERIA.

Dear Sirs,

I thank you for your letter of the 15th of
December which I did not answer before I was taken
ill in Germany and have only just returned to
London for one day. To-night I am going to
Switzerland for a short vacation. As a matter of
fact, I had anticipated to be in Nigeria before
Xmas!

30

Shipment of the trucks will definitely com-
mence at the beginning of the next year.

I beg to hand you enclosed proforma invoice for £28,500:- The exact shipping price will be adjusted afterwards. Please be good enough to arrange for

£28.500.-
- 18.000.-
£10.500.-

Plaintiff's Exhibit

"N"

Letter from Frankel to Omotayo Bros. and Invoice.

23rd December, 1952.
- continued.

to be sent on to me immediately.

10 I thank you for your Xmas greetings. I hope that yourself and your family are well and that you are on the best possible terms with Mr.McVicar.

Yours truly,

Enc.
C.C.McV.

(Sgd.) B. FRANKEL.

INVOICE

Telephone
Central 9828

Cables
Eurofrank, London

Bought of
B. FRANKEL
Export - Import

20

Brook's Wharf,
48 Upper Thames Street,
LONDON, E.C.4.

23rd December, 1952.

Messrs. Omotayo Brothers,
62, Wakeman Street, Yaba, Nigeria.

30 BEDFORD TRUCKS 5 Tons, long wheel, OLBC Chassis
Cab @ £950. £ st. 28,500.

Plaintiff's
Exhibit

Exhibit "01" - LETTER from Omotayo to Frankel

"01"

Letter from
Omotayo to
Frankel.

3rd January,
1953.

OMOTAYO BROTHERS
(Regd. in Nigeria No. 17073)
General Merchants

62, Wakeman Street
P.O. Box 113,
YABA, NIGERIA.

Cable and Telegrams:
TOMOTAYO, LAGOS
Telephone:

Please reply to:-
P.O. Box 113
YABA, NIGERIA.

10

3rd January, 1953.

B. Frankel Esq.,
Brook's Wharf,
48, Upper Thames Street,
London, E.C.4.

Dear Sir,

We thank you for your letter of the 23rd
December and were very sorry to learn of your
recent illness. We hope have completely recovered
and now quite fit for your normal duties.

20

We have taken the note with pleasure that
shipment of the thirty Bedford Trucks would defin-
itely commence at the beginning of this new year.
By this we presumed you mean early part of current
January. It cannot be gainsaid that this truck
deal had been dragging on for quite a long time
now and because the Cocoa Season, which is the
only season the trucks can be sold without diffi-
culty is now drawing to a close, we hope you will
appreciate the necessity for earliest possible
shipment.

30

Against our cash deposit of £20,000 you have
in your letter under review accounted for only
£18,000, and would like to invite your explanation.
It should be noted that the £20,000 deposit should
be put up against the thirty Bedford Trucks ship-
ping early this month and the balance shall be paid
by us against sight draft documents on presentation
through the Bank as previously arranged.

On completion of this first deal, however, we
shall be pleased to arrange a fresh deposit to
cover the other 20 Bedford Trucks.

40

We hope you will find this in order and now
await with keen interest your early good news
while, in the meantime, wish to seize this oppor-
tunity of wishing you and yours the season's
greetings.

Yours faithfully,
(Sgd.) O. OMOTAYO.

Exhibit "00" - LETTER from Frankel to
Omotayo Bros.

Plaintiff's
Exhibit

"00"

B. FRANKEL
Export - Import

Brook's Wharf,
48 Upper Thames Street,
LONDON, E.C.4.

Telephone:
Central 9828
Central 4125.

Cables:
Eurofrank, London.

Letter from
B. Frankel to
Omotayo Bros.

7th January,
1953.

7th January, 1953.

10

Messrs. Omotayo Brothers,
62, Wakeman Street,
P.O. Box 113,
Yaba,
NIGERIA.

Dear Sirs,

I beg to acknowledge receipt of your letter dated the 3rd instant and confirm having sent you to-day the following cable :-

20 "YOUR LETTER RECEIVED REFERRING MY LETTERS AWAITING
"PAYMENT £10,000. - STOP REFERRING AGREEMENT 15th
"NOVEMBER £18,000 TO BE SET OFF AGAINST THIRTY
"TRUCKS YOU TO COVER DIFFERENCE OF CIF COSTS AS
"SOON AS SHIPMENT COMMENCING."

30 I admit that I cannot understand your letter. In our agreement it was pointed out that the £3000.- will be set off against the 30 Trucks while the £2000 will be held in abeyance for the other twenty trucks. It was specially pointed out that as soon as shipment will commence you will have to cover me for the difference in the sum received and the final C.I.F. costs.

Shipment can start immediately. Will you therefore please be good enough to let me have the £10,000 by cable transfer. Any other business I will discuss with you when I come to Lagos within the next week or ten days.

Yours faithfully,

(Sgd.) B. FRANKEL.

40 c.c. Mr. Ojikutu
c.c. Mr. McVicar.

Plaintiff's
Exhibit

Exhibit "02" - LETTER from Omotayo to Frankel

"02"

OMOTAYO BROTHERS
(Regd. in Nigeria No. 17073)
General Merchants

Letter from
Omotayo to
Frankel.

62, Wakeman Street, P.O. Box 113,
YABA, NIGERIA.

7th January,
1953.

Cable and Telegrams:
TOMOTAYO, LAGOS
Telephone:

Please reply to
P.O. Box 113,
YABA, NIGERIA.
7th January, 1953.

10

Our Ref: MOO/T
Your Ref.

REGISTERED.

B. Frankel Esq.,
Brook's Wharf,
48, Upper Thames Street,
LONDON, E.C.4.

Dear Sir,

Further to our letter of the 3rd instant, which we now confirm, we have pleasure in enclosing herewith cutting of a press release published in the DAILY SERVICE issue of Monday the 5th January 1953, regarding the financial crisis at present facing Israel. This news item has, since its release, been causing us very grave concern, as we feel it might eventually interfere with the immediate conclusion of our Bedford Trucks deal. This, of course, is a matter of personal opinion and we shall be grateful to hear from you as a man well conversant with the affairs of things as are at present obtaining in Israel. Besides, however, and as we have previously pointed out the cocoa season is fast running to a close and it will therefore be extremely difficult if not altogether impossible for us to dispose of the 30 Bedford Trucks now being arranged by you for shipment for our account unless such shipment could be effected without a minute delay.

20

30

Furthermore, top secret information has revealed that the U.A.C. are endeavouring to ease their delivery position and that before the end of February next all the names on their waiting list shall have been altogether satisfied. Which means that, were the Trucks shipped immediately there is still every possibility of the Trucks having to be disposed at very great losses to ourselves, if at all.

40

We commend this matter to your serious consideration and we must emphasise that unless the 30 Trucks are shipped inside the next fortnight, which ultimatum expires on the 21st January 1953, and relative shipping documents delivered to the Bank sending us an advance copy of the invoice in accordance with the trade usage, we shall be compelled to refrain from pursuing the deal further and the contract shall therefore be deemed cancelled. In that regard it shall become imperative for you to make to us an immediate refund of the sum of £20,000 which you at present holding up to our credit in regard to the deal.

10

We now await your early news with the greatest of impatience while in the meantime, we assure you of our best cooperation in every possible way.

Yours faithfully,
(Sgd.) O. OMOTAYO.

20

c.c. A.Y. Ojikutu Lagos.
" S.O. Abudu, London.

Plaintiff's Exhibits

"02"

Letter from Omotayo to Frankel.

7th January, 1953

- continued.

Exhibit "NN" - Copy of TELEGRAM from Omotayo to Frankel

"NN"

No. 964569 CASH MESSAGE NO. 5683 19

Copy of Telegram from Omotayo to Frankel.

LT

8th January, 1953.

LN
TOMOTAYO the sum of:- 14/8

For CABLE AND WIRELESS LIMITED

(Sgd.) ?

Only the Company's Official Receipt will be recognised.

30

YOURS SEVENTH STOP FINAL LETTER IN POST STOP
UNLESS THIRTY TRUCKS SHIPPED IMMEDIATELY WILL
REGARD CONTRACT CANCELLED.

TOMOTAYO.

Plaintiff's
Exhibit

Exhibit "03" - LETTER from Omotayo to Frankel

"03"

Letter from
Omotayo to
Frankel.
10th January,
1953.

OMOTAYO BROTHERS
(Regd. in Nigeria No. 17073)
General Merchants.

A.Y. OJIKUTU Esq.,
LAGOS.

62, Wakeman Street,
P.O. BOX 113,
YABA, NIGERIA.

Cables and Telephones.
TOMOTAYO, LAGOS.
Telephone:

Please reply to:
P.O. Box 113,
YABA, NIGERIA.

10

Our Ref: MOO/T
Your Ref:

REGISTERED

B. Frankel Esq.,
Brook's Wharf,
48, Upper Thames Street,
LONDON, E.C.4.

Dear Sir,

We beg to confirm the receipt of your cable of the 9th January 1953, deploring the tone of our cable of the 8th and requesting an explanation for same. Before you can sufficiently appreciate the reason for the tone employ it will be necessary to refresh ourselves about the long history behind, what to us now seems, an unfortunate deal. Unfortunate because, as we have repeatedly pointed out, sale of any kind of vehicle in Nigeria is inevitably seasonal; and the only season is the cocoa season.

20

Now to the deal. When you and the writer first met in London on the 3rd of September 1952, the day on which the truck deal was first proposed, it was scarcely realised it would drag on for such a respectable length of time as this before bringing it to a mutually satisfactory conclusion. When by your letter of the 4th September 1952, the offer of the 50 Bedford Trucks was made to, and accepted by us, you will remember there was no such question as having to make any cash deposit against the delivery and shipment of the trucks. It was however, during a later casual discussion that you expressed a desire to have some £5,000 as cash deposit, since that, as you then put it, was our first business transaction. And in guarantee of our good faith and intention no time was lost in placing at your disposal the required £5,000. It may be worthy of mention here

30

40

that before this amount could be arranged it had to involve the writer in having to fly to Nigeria and back to London which travelling has cost him petty £350. This in itself is sufficient proof of our honest intention regarding the deal.

Plaintiff's
Exhibit

"03"

When in the month of November last you paid a visit to Nigeria in the interest of your business you seized that opportunity to see the writer and expressed a desire to have a further cash deposit of £15,000 thus bringing the whole cash deposit against the 50 Bedford Trucks to £20,000. You then said, we hope you will remember, that with this amount in your hand you would be able to expedite shipment.

Letter from
Omotayo to
Frankel.

10th January,
1953
- continued.

The paragraph in your letter of the 15th November 1952 to Mr. Ojikutu in connection with this matter, it may be necessary to remind you, was an expression of your own personal wish and at no time has it received either Mr. Ojikutu's or my assent. And so, you see, the writer fails to see why that should now be used as an excuse for delaying shipment.

Owing to unceasing international unrest, particularly in Israel from whence the trucks are to be shipped to us, we are finding it extremely difficult to see the wisdom of sending you further cash deposit of £8,500, if even we had wanted to. In order therefore to be as cooperative with each other as possible, we would suggest you ship to us, and that between now and the 21st instant just the number of the Bedford Trucks that the amount in your hand will cover and on receipt hereof such trucks we can then arrange how best we can take on the remaining vehicles.

We hope you will find this proposal a mutually satisfactory solution to the unforeseen problem or else we shall be compelled to regard the contract as unfulfillable and therefore cancelled, in which case it shall be your responsibility to see that the amount of £20,000 now standing to our credit in your book is telegraphically returned to us without a minute delay.

We regret that through your manoeuvring you have allowed the matter to come to such a pitch and now await with the greatest of interest your early news of shipment within the specified time.

We are, dear Sir,

Yours faithfully,

OMOTAYO BROTHERS

cc. Mr. A. Y. Ojikutu Lagos P.O. BOX 113, YABA.
" " S.O. Abudu London.

Plaintiff's
Exhibit

Exhibit "Z" - LETTER from McVicar to Omotayo

"Z"

Letter from
McVicar to
Omotayo.
12th January,
1953.

From W.E. McVicar.

c/o Bristol Hotel,
P.O. Box 43,
LAGOS, Nigeria.

12th January, 1953.

Olatunji Omotayo Esq.,
62, Wakeman Street,
YABA, Lagos.

My dear Mr. Omotayo,

After very careful consideration, I feel it right and proper to put on record certain matters concerning our business association, which date back to the 29th August, 1952, when we agreed on a partnership which was never fulfilled owing to disagreement and mutually dissolved on your return from a visit to the United Kingdom (the second time), at the end of October, 1952. 10

I would like to state that I always have had, and still maintain, a very high regard for you, but cannot reconcile myself to your attitude in regard to the Truck deal that you have entered into against my advice from the very beginning. Both your Uncle, Mr. Y.O.T. Anafeko and your very good friend, Mr. C.O. Olayinka will bear me out in witness. To recapitulate I have to state that : 20

- (a) In reply to a letter-card of yours from London dated the 5th September, 1952, I replied on the 10th advising you to defer any decision regarding the Truck deal. I introduced you to Frankel in good faith and without commitment. 30
- (b) On the 21st September you arrived back from London, and stated you were going ahead with the Truck deal, and asked for my assistance. Having regard to the fact that you had expended £250 on the round trip, I did my best to assist in arranging that Messrs. Brandler & Rylke, Ltd., financed the business in such a way as to safeguard your interest. Details are outlined in an agreement dated the 26th September, 1952, and some notes I handed you the day you flew back to London, i.e. the 27th September, 1952. I understood subsequently that this arrangement was completely repudiated. 40

(c) On the 25th October, 1952, I wrote you a letter, asking what was happening, as neither Messrs. Brandler & Rylke, Ltd., or I could understand your silence. You returned to Lagos a few days later, and it transpired that you had paid over £5,000 as deposit for Trucks to be shipped. I clearly stated that I would have nothing to do with this deal and it was mutually agreed that our business association was terminated.

Plaintiff's
Exhibit

"Z"

Letter from
McVicar to
Omotayo.

12th January,
1953

- continued.

(d) On the 11th November, 1952, Mr. B. Frankel arrived in Lagos, and left again for London the following Tuesday, the 18th November, 1952. During this time, by virtue of being an employee, I was present at meetings held between Mr. A.Y. Ojikutu, Mr. B. Frankel and yourself. It was clearly stated and understood at these meetings that I had no connection with the business discussed, which was the Truck deal.

(e) During a discussion I had with Mr. A.Y. Ojikutu at which you were present, on the evening of the 7th January 1953, regarding the purchase of rubber, I mentioned that, while I had every interest in the delivery of the rubber contract, I had nothing to do with the Truck deal which was an entirely different matter and affected another party, and pointed out that I had advised against it from the start.

(f) The following day, the 8th January, 1952, I went to see your Uncle, Mr. Y.O.T. Anafeko, as I have always done to report to him that you had taken grave exception to my statement to Mr. A.Y. Ojikutu, of the previous evening regarding the Truck deal, and intended to write to Mr. Frankel, in London, about my action and, in fact, suggesting that I should be recalled - or, in other words, be dismissed. Your Uncle very kindly arranged a meeting the same day, at 11.30 a.m., at your Produce Store. The whole matter was fully discussed at this meeting, and it was agreed that I was not connected in any way whatsoever with the Truck deal, and I agreed to refrain from discussing the matter again.

In fairness to myself I am arranging to hand a copy of this letter to your Uncle, Mr. Y.O.T. Anafeko and another copy to your Solicitor, MR.J.A.

Plaintiff's
Exhibits

Adefarasin, who are both neutral parties to the past difference of opinion between ourselves.

"Z"

I can only add in closing this letter that I sincerely trust we shall remain good friends in the future years I hope to spend in Nigeria, and that I wish you every prosperity.

Letter from
McVicar to
Omotayo.

Yours very truly,

12th January,
1953
- continued.

(Sgd.) W.E. McVicar

Exhibit "W4" - LETTER to Ojikutu from McVicar

"W4"

TIMAX TIMBER CO. LTD.

10

Letter to
Ojikutu from
McVicar.
4th February,
1953.

Directors,
Group Captain
F.E.R. Dixon, M.C.
R. J. McVicar
C. Lerner.

Eagle House,
109, Jermyn Street,
London, S.W.1.
Tel: Whitehall 1728/9
Cables: BESMALT.

Our Ref: McV/JD
Your Ref:

4th February 1953.

Messrs Ojikutu
1, Jagun Lane,
Lagos,
NIGERIA

20

Dear Sirs,

We confirm having sent you the following cable on the 2nd instant and are surprised that we have not received any confirmation from you or reply to date:-

"ELDER DEMPSTER LAGOS HAVE BEEN INSTRUCTED BY
"LONDON AGENT KILLICK MARTIN WHO HAVE BEEN
"INSTRUCTED BY OUR SHIPPING AGENT ALL TRANSPORT
"LIMITED TO PAY FREIGHT CHARGES FOR RUBBER SHIP-
"MENTS FOR US STOP DECLARE STEAMER CABLE REPLY
"BESMALT LONDON".

30

Although we have not had any official information from you direct, we have been advised that you have shipped 25 tons of rubber on the APAPA for Liverpool. Will you please note that the remaining 50 tons of the 75 tons credit opened in your favour by us, 25 tons have to be shipped to

Hamburg on a Through Bill of Lading and 25 tons have to be shipped for Havre on a Through Bill of Lading, both dated February.

Plaintiff's Exhibits

"W4"

We wish to thank you for your prompt shipment of the first 25 tons and hope to have news from you that the remaining 50 tons have been shipped to Havre and Hamburg respectively.

Letter to Ojikutu from McVicar.

Kindly confirm that this is in order at your earliest convenience.

4th February, 1953
- continued.

10

Yours faithfully,
for TIMAX TIMBER CO. LTD.
(Sgd.) R.J. McVICAR
DIRECTOR

Exhibit "W1" - CABLEGRAM from Frankel to Ojikutu.

"W1"

Circuit	Clerk's Name	Time Received	Cable & Wireless	Office of Issue
		PM 3 08	16 Feb 53 Lagos.	0098

Cablegram from Frankel to Ojikutu.
16th February, 1953.

20 AWL 69 OCN91 LONDON 33 16 1307

OJIKUTU 1 JAGUN LANE LAGOS

YOUR CABLE 13TH SHIP 25 TONS BY FIRST LONDON STEAMER WITH THROUGH BILL OF LADING HAMBURG STOP AS SOON AS SHIPPING CONFIRMATION RECEIVED WILL OPEN FURTHER CREDIT

MUROFRANK.

13TH 25 AND 1. "VIA IMPERIAL"

30 Any enquiry respecting this Telegram should be accompanied by this form and may be made at any of the Company's Offices.

Plaintiff's
Exhibits

Exhibit "W5" - LETTER to Ojikutu from The
Manager Bank of British West Africa, Lagos

"W5"

All Communications to be addressed to the Manager.

Letter to
Ojikutu from
The Manager,
Bank of British
West Africa,
Lagos.

18th February,
1953.

BANK OF BRITISH WEST AFRICA LIMITED
(Incorporated in England)

POST OFFICE BOX NO. 176.

When replying
Please quote
Ref: CREDITS/EAW/YAS.
Your Ref:

Marina,
LAGOS,
NIGERIA, WEST AFRICA.

18th February, 1953.

10

A.Y. Ojikutu Esq.,
1, Jagun Lane,
LAGOS.

Dear Sir,

CREDIT NO. 20375 - £11,500.--

We acknowledge receipt of your letter of the
16th instant, and have to advise you that this
Credit has today been transferred to our Sapale
Branch.

20

Yours faithfully,
For BANK OF BRITISH WEST AFRICA LTD.
(Sgd.) ?
for MANAGER.

Exhibit "W6" - LETTER to Ojikutu from McVicar

"W6"

TIMAX TIMBER CO. LTD.

Letter to
Ojikutu from
McVicar.
20th February,
1953.

Directors,
Group Captain
F.E.R. Dixon, M.C.
R.J. McVicar
C. Lerner

Eagle House,
109, Jermyn Street,
London, S.W.1.
Tel: Whitehall 1728/9
BESMALT.

30

Our Ref: CL/JD.
Your Ref:

20th February, 1953.

Messrs. A.Y. Ojikutu,
1, Jagun Lane,
Lagos, NIGERIA.

Dear Sirs,

We refer to the cables exchanged with you and

would like to point out that a ship called ARCH-
MABLE is not to be found in Lloyds Register. We
are waiting for the exact name of the ship, weight
note and shipping marks. We are getting ourselves
into extreme difficulties if we are not in possess-
ion of these documents before the ship docks, as
demurrage and other costs are being incurred. We
furthermore ask you to send the goods for Hamburg
on the first possible boat with a Through Bill of
Lading. We are quite prepared to open a further
credit on your behalf but we would like to know
first that the goods for which you have a Letter
of Credit have been shipped.

Plaintiff's
Exhibit

"W6"

Letter to
Ojikutu from
McVicar.

20th February,
1953

- continued.

You explained to Mr. McVicar that you had all
the rubber ready and that it would be shipped on
the 28th of January, but to-day is already the 20th
of February and we have only received advice for
the first twenty tons. We have extreme difficul-
ties with these as we ought to have had copy
invoice, weight note and shipping marks in advance.
The documents have only just come over and the
goods could not have been cleared yet.

We regret that we are not able to give you a
credit other than agreed, namely 90% against ship-
ping documents and 10% after arrival and inspection
of the goods. If you want full 100%, we are
willing to pay you Cash against Documents on a
London Bank.

Hoping to hear from you.

We remain,

Yours faithfully,

for TIMAX TIMBER CO. LTD.

(Sgd.) ?

DIRECTOR.

10

20

30

Plaintiff's
Exhibit

Exhibit "W8" - LETTER to Ojikutu from The
Manager Bank of British West Africa, Lagos

"W8"

Letter to
Ojikutu from
The Manager,
Bank of British
West Africa,
Lagos.
23rd February,
1953.

BANK OF BRITISH WEST AFRICA LIMITED
SAPELE BRANCH.

23rd February, 1953.

To A.Y. Ojikutu,
1, Jagun Lane,
Lagos.

Dear Sir(s)

REFERENCE No. 20375 (which please quote)

10

We have been requested by (1) Timax Timber Co. Limited to advise you of the issue of their (2) Letter of Credit (3) No.20375 in your favour, for account of Timax Timber Co. Limited for amount of £11,500 (in words) (eleven thousand, five hundred pds) available by your drafts on Timax Timber Co. Ltd., 109 Jermyn Street, London, S.W.1. at 3 days' sight, against delivery to us of the following documents :-

- 1. Full set (2/2) Clean on Board Bills of Lading to order of shippers and endorsed in bland. 20
- 2. Signed Invoice in duplicate.
- 3.
- 4. Weight Note.
- 5. Certificate of Origin.
- 6.

relating to 75 tons NIGERIAN B2 RUBBER, 25 tons shipped to Hamburg 25 tons to Liverpool and 25 to Le Havre, at 18½d per lb. All shipped from Sapele FOB.

(12/3/53 London B.P.75 - £3,066.- 20 tons to Liverpool) 30

in (2) one shipments
one or more

We are authorised to negotiate documents at the following rate (2)

- a) On Rail @ nil
- b) In Lighterage/your own Store @ nil
- c) Against shipping documents as above @ 90% of invoice value.

Fire Insurance on produce on rail or in store is to be effected by (2) you openers

The Credit is available for negotiation of drafts not later than 28th February, 1953.

We have no authority to confirm this Credit and the above particulars are advised to you for your guidance only.

Yours faithfully,

(Sgd.) ?
MANAGER.

10

Plaintiff's Exhibits

"W8"

Letter to Ojikutu from The Manager, Bank of British West Africa, Lagos.

23rd February, 1953
- continued.

Exhibit "W7" - LETTER to Ojikutu from McVicar

"W7"

TIMAX TIMBER CO. LTD.

Letter to Ojikutu from McVicar.

Directors:
Group Captain F.E.R. Dixon, M.C.
R. J. McVicar
C. LERNER.

Eagle House,
109, Jermyn Street,
London, S.W.1.
Tel: Whitehall 1728/9
Cables: TIMAXTIM LONDON.

26th February, 1953.

Our Ref: McV/JD
Your Ref:

26th February, 1953.

20 Messrs. A.Y. Ojikutu,
1, Jagun Lane,
Lagos,
NIGERIA.

Dear Sirs,

We thank you for your Invoice of February the 2nd and have received the documents from our Bankers.

30 We are in touch with our buyers and await their passing of the rubber, after which we shall arrange for the 10% to be remitted to you.

Yours faithfully,
for TIMAX TIMBER CO. LTD.

(Sgd.) R.J. McVICAR
DIRECTOR.

Plaintiff's
Exhibit

Exhibit "W9" - LETTER to Ojikutu from McVicar

"W9"

TIMAX TIMBER CO. LTD.

Letter to
Ojikutu from
McVicar.
10th April,
1953.

Directors:
Group Captain
F.E.R. Dixon, M.C.
R.J. McVicar.

Eagle House,
109, Jermyn Street,
London, S.W.1.

Telephone:
Whitehall 1728/9
Bentley's 2nd Code.
F/McV/JD.

Inland Telegraphic Address:
TIMAXTIM, PICCY, LONDON.
Overseas Cable Address:
TIMAXTIM, LONDON.

10

10th April, 1953.

Mr. A.Y. Ojikutu,
1, Jagun Lane,
Lagos,
NIGERIA

Dear Sir,

re: Contract for 300 tons Nigerian RSS Grade B.2.
Rubber, Shipment December 1952/February 1953
In part or whole

We have your letter of the 16th of March and
have not replied earlier owing to heavy pressure of
work in this office. If there is any meaning in
worse at all, then you are in flagrant breach of
your contract with us, and no amount of double
talk and equivocation from you can alter that posi-
tion. We think you will be well advised to take
legal advice, and the facts which are on record
are as follows :-

20

On the 29th November, 1952 you sold to us and
contracted in writing to deliver "300 (Three hun-
dred) tons Nigerian R.S.S. Grade B.2 Rubber, (No
cuttings) @ 18 $\frac{1}{4}$ d per lb. F.C.B. duty paid.
Shipment during December 1952 to February 1953 in
part or whole."

30

On the 11th of December 1952 we established a
Letter of Credit covering 75 tons, being part of
the goods as per contract, and confirmed same,
accordingly.

On the 2nd February, 1953 you despatched 20
tons as part of the 75 tons as per contract and
left a balance of 55 tons still to be delivered.

40

On the 13th February, 1953 you cabled us that you were shipping 30 tons per s.s. ARCHMABLE.

Plaintiff's
Exhibit

"W9"

For reasons we do not propose to go into with you at this stage, we caused enquiries to be made at Lloyds and discovered there was no such steamer as 'Archmable' that could be traced. We cabled you accordingly.

Letter to
Ojikutu from
McVicar.

10 No reply to that cable, which contained a serious allegation, was made by you and on the 24th of February, 1953 we cabled you, asking whether it was your intention to fulfil the terms of the contract and requested you to declare the steamer of shipment.

10th April,
1953
- continued.

20 On the 28th February, 1953 you cabled us that you were fulfilling your contract and stated that shipment to continental ports was difficult. As we had cabled you on the 15th February, 1953 to ship the goods on a Through Bill of Lading to London, your excuse about difficulty in shipment to continental ports was a piece of arrant humbug. Even as late as the 28th of February you were in default in the delivery of 55 tons which was the balance due to be delivered by you against the Letter of Credit. At the end of February, 1953 you were in breach of your contract, and we repeat you are in breach and again request you to let us know whether you are prepared to accept liability in the loss we had sustained.

30 You state that your cable to us regarding the ARCHMABLE was an error on the part of your sub-contractor. We are not concerned with any errors on the part of your servants or agents and as we have been put to loss as a result of what you say is mis information, we must hold you responsible. Your statement that you passed the information on to us in good faith is vitiated by the contents of your letter, wherein you say that this information was not a declaration of shipment but as an advance advice for our information only, as an indication that you required us to fulfil our side of the contract and arrange a further credit. The absurdity of this argument is too manifest for us to make further comments.

40

Yours faithfully,
for TIMAX TIMBER CO. LTD.

(Sgd.) R.J. McVICAR
DIRECTOR

Plaintiff's
Exhibit

Exhibit "V" - PROCEEDINGS in Suit 154/1953
C.C. Olayinka and Madam C.A. Young

"V"

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.
13th April to
30th July, 1953.

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

MONDAY THE 13TH DAY OF APRIL, 1953,

BEFORE THE HONOURABLE
MR. JUSTICE OLUMUYIWA JIBOWU
ACTING SENIOR PUISNE JUDGE

Suit No. 154/1953

C. O. OLAYINKA ... Plaintiff

10

- and -

MADAM C. A. YOUNG ... Defendant

ADEFARASIN for Plaintiff.
DAVID for Defendant.

Pleadings ordered : 30 days to each side.

(Sgd.) O. Jibowu
Acting Senior Puisne Judge.
13/4/53.

WEDNESDAY THE 17TH DAY OF JUNE, 1953.

Before HIS LORDSHIP
MR. JUSTICE EVELYN BROWN,
AG. PUISNE JUDGE.

20

Suit No. 154/1953

C.O. OLAYINKA Vs. MADAM C.A. YOUNG

MAKANJU for Plaintiff.
BURKE for DAVID for Defendant.

Adjourned: 28/7/53 for hearing.

(Sgd.) Evelyn Brown
17/6/53.

TUESDAY THE 28TH DAY OF JULY, 1953,

BEFORE THE HONOURABLE
MR. JUSTICE OLUMUYIWA JIBOWU
AG. SENIOR PUISNE JUDGE.

Plaintiff's
Exhibit

"v"

Suit No. 154/1953

C.O. OLAYINKA Vs. MADAM C.A. YOUNG

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

Stand over till later in the day.

13th April to
30th July, 1953
- continued.

(Sgd.) O Jibowu.
28/7/53.

- 10 ADEFARASIN for Plaintiff.
BURKE for Defendant (holding DAVID'S brief)

Cross examined by Adefarasin - Chillon Olayinka, male, Yoruba, sworn on the Bible, states in English language as follows :- I live at 39, Idumagbo Avenue, Lagos. I am a trader. I know the Defendant: She is the mother-in-law of one M.O. Omotayo and they are partners in business. M.O. Omotayo is my best friend. In March, 1952, the Defendant asked me to lend her my car No. G8874 Omotayo came with her. She wanted the car for 3 months. I agreed. She was not to pay anything for the use of the car. At the time I had two cars. I wanted to use G 8874 as a taxi but I could not get Hackney Carriage Licence for it. Omotayo asked me to allow her to have the car and I agreed. I lent the car out about a month after I bought it. I bought it from Mr. M.O. Omotayo I tender my purchase receipt. (- He wants to put in a receipt in respect of Car No. G 3030. Burke objects - objection is upheld).

- 20
- 30 The car I bought from Omotayo was G 3030. I got the number changed in the Town Council to G 8874 as also the vehicle licence. The car was then registered in my name.

It is not correct that the Defendant bought the car from Omotayo in July, 1952.

- 40 The Defendant did not return the car to me at the end of three months. I demanded the return on several occasions and I reported her to Mr.Ojikutu and to Mr. Omotayo. I instructed my Solicitor to write to her. I reported her also to the police.

Plaintiff's
Exhibit

"v"

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

13th April to
30th July, 1953
- continued.

She has not returned the car to me. She got the car from me and not from Mr. Omotayo. Omotayo was my best friend. The relationship between us was very close. The Defendant and Omotayo came together. The Defendant asked for the car. She is a good friend of mine. I knew her through Omotayo. I used to go to her with Omotayo when there was a dispute between Omotayo and his wife.

I wanted to use G 8874 as a taxi to make money. It is a lucrative trade. I am an Ijebu man. I gave the car to Defendant free of charge for 3 months. The car was G 3030 when I bought it. I changed the number because I did not fancy it. I wanted my other number. I did not want the number to be associated with me. I got a quarter's licence. I don't remember how much I paid for it. The car numbered G 8874 is a Morris car. I don't know whose the licence plate G 3030 is. An Opel car may be bearing No. G 3030 as the Town Council might give it to another car. I threw away plate G 3030. I know Mr. Omotayo's car; it is an Opel car. The number is G 3030. I don't know where Omotayo got the number plate from. G 8874 is not an Opel car number; it belongs to a Morris Car. The Opel car was not licensed as No. G 8874. I did not change over the licences on the Morris and Opel cars. The Defendant did not buy the car from Omotayo on the 5th July, 1952. The car was then in my possession. I paid for the car on 1st July, 1952. I handed the car to the Defendant towards the end of March. It was in the last week of March. Letter now produced marked Ex. A. was written on my instructions by my Solicitor. My Solicitor must have made a mistake. I did not give the car to Defendant in July but in March. I did not ask him to say that I gave her the use of the car for 6 months. I used to see the Defendant using the car. I used to see the car in front of her house. I demanded the return of the car several times in company of Mr. Omotayo. She asked me to wait until she got her own car. She had the key of the car. I did not take the car as it would be against the law. I did not know the Defendant paid Omotayo £350 for the car. Omotayo did not deliver the car to the Defendant on 28th July, 1952.

Re-examined by ADEFARASIN. She told me she wanted to buy a car from an European. Number G 8874 was given to me by the Town Council. Vehicle licence was issued to me and I placed it on the wind screen of the car. The Defendant is in possession of the vehicle licence.

Cross-examined by Adefarasin 2nd P.W. Tijani Iginla, male, Yoruba, sworn on Koran, states in English Language as follows:- I live at 28, Omididun Street, Lagos. I am the licensing officer at the Lagos Town Council.

Plaintiff's
Exhibit

"v"

10 I have not got here particulars about Opel Car G 3030. I have here particulars about car No. G 8874. The car was registered on 6th July, 1952 by C.O. Olayinka of 39, Idumagbo Avenue. The car is a Morris Car. I tender the Registration Form, marked Ex.B. I don't know if the car had a previous number. We have particulars of all motor vehicles registered in Lagos. I don't know the car. The user must have described it as a new car when applying for registration I did not issue out the Licence. Ex.B was signed by my assistant. A new number is given to a car without a previous identification number. We have a book containing all registered cars. The present owner of the car is Mrs. Young. I tender the notice of change of ownership, marked Ex.C, it was changed on 15th April, 1952. I tender further particulars of the registration of the car No. G 8874, marked Ex. D. The new owner has to apply for change of ownership.

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

13th April to
30th July, 1953
- continued.

No cross-examination by Burke.

30 Cross-examined by Court. Registration number of a car cannot be changed. When an old car is sold, the old number goes with it. Further cross examination by Adefarasin by leave of Court. If a registered car is damaged beyond repairs or discharged, its number can be assigned to another car, Motor vehicle licence cannot be changed otherwise. We don't usually look at all the cars brought to be licensed.

Cross-examined by Adefarasin 3rd P.W. Olatunji Omotayo, male, Yoruba, sworn on Koran, states in English Language as follows :- I live at 62, Wakeman Street, Lagos. I am a produce buyer and general merchant.

40 I know the Defendant; she is my mother-in-law and partner in business. Five of us are partners. Other partners are A.Y. Ojikutu, Mrs. Odojukan and Mr. O. Omorodion. The partnership came into being in August, 1952. I know the Plaintiff. I sold a car to the Plaintiff on 1st July, 1952 for £400. The number of the car was G 3030. I gave him a receipt. I tender the receipt, marked Ex.E. I

Plaintiff's
Exhibit

"v"

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

13th April to
30th July, 1953
- continued.

don't remember the chassis number. The chassis number on Ex.E is 280921. After I sold the car to the Plaintiff, the Defendant approached me and asked me to speak to Plaintiff to lend her the car for some hire because she was then expecting a car from Mr. Goodman of the Nigerian Railway who was retiring shortly. She being my mother-in-law and the Plaintiff being my personal friend I went with her to the Plaintiff. I asked the Plaintiff to lend her the car and he agreed. There was no agreement for payment of rent. She was to have the car for two or three months. She first spoke and I supported her. This was towards the end of March, 1952. The car was handed to the Defendant. At the time the car was handed to the Defendant the number was G 8874. To my knowledge the Plaintiff changed the number at the Town Council. The make of the car is Morris Oxford Saloon, maroon colour. I bought it in 1950. It is the same car I sold to the Plaintiff that he handed to the Defendant.

10

20

On my return from England, the Plaintiff made a report to me and I went to Defendant to ask why she had not returned the car to Plaintiff. She told me Mr. Goodman let her down. I told her to return the car.

The Plaintiff later made a further report to me about the car. I referred him to Mr. A.Y. Ojikutu. It is not correct that I sold the car to the Defendant for £350 on 5th July, 1952.

30

I received £130 from Defendant on 5th July, 1952. It was part payment of a loan of £200 given to Defendant when she had a case in Court. The 1st payment was in cheque and the balance was paid in cash. I sold logs for her for £93 odd and she paid me £70 out of it. She borrowed £200 from me in December, 1951. I took no receipt from her for £200. She paid me £100 on 2nd August, 1952; it was in respect of the car; it was paid into partnership account. Each parties was to pay towards costs of sending two partners overseas to make business contracts.

40

She contributed £213, I paid £250, Mrs.Odojukan £90, Ojikutu £503 and later £20,000. I went to England and Omrodun went to Lurando in Portugues Angola and Italy. All the other partners knew about the payment made by the Defendant. She gave me £100 for equipments and she paid £113 towards my air passage. I was not in Nigeria on 15th

September, 1952. I left Lagos on 2nd September, 1952 and returned on 21st September, 1952. I went back on the 27th September, 1952 and returned on 2nd November, 1952. I tender my passport, marked Ex.F. She did not send me any money when I was away. I tender letter received from Defendant in England, marked Ex.G. I did not receive the sum of £10 from her. Opel Car No. G 3030 is my Car. I bought it on 8th July, 1952, brand new. I got it registered as G 3030. When Plaintiff changed G3030 for G8874 I got back G3030. I did not register Opel Car as G 8874. The Defendant knew the car was Plaintiff's before she went to ask for its use.

Plaintiff's
Exhibit

"v"

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

13th April to
30th July, 1953
- continued.

XXD. BURKE. The Defendant knew the Plaintiff before she asked for the car. The two of us have been going to Defendant's house and the Defendant has gone before with me to the Plaintiff's house.

The Plaintiff told me he did not like the two 0 0's in 3030 and wanted to change the number, I did not express preference for G 3030. When I got to the Town Council and found the number had not been issued to another car and I took it. I searched the record myself. The number G 3030 had not then been assigned to another car. U.T.C. made my number plate. I paid out £12 for a year's licence. The horse power is 13-9. I sold the car to the Plaintiff for £400. I wrote Ex.E in February, 1952. It is not correct that I wrote it recently. Plaintiff told me he wanted to use the car as a taxi and that he was not able to obtain hackney carriage licence. This was about a month after the purchase. The Defendant and I went to the Plaintiff in March, 1952. It was not odd for the Plaintiff to give the car free of charge. I left my car for Plaintiff's use when I was away from the country. I received £213 in partnership business and £200 in respect of loan to her. I wrote cheques for her to sign. She gave me loan of £200. I also gave her a loan of £200 in December, 1951. I repaid her own loan within 2 weeks in notes. I have paid her and I don't owe her £200. I gave her loan in currency notes. I received about £213 from her in August, 1952. I received £10 on 2nd August, £100 on 3rd August and £113 on 15th August according to cheques produced marked Ex. H - H2.

(N.B. BURKE asks for leave to amend September in para 5(III) of the Statement of Defence to August - ADEPARASIN has no objection. Amended accordingly) The £10 was part of the money she refunded after loan I gave her. She did not pay me £130 for car:

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- continued.

it is not correct that she paid £100, £113 on account of the car. Omorodun spent £1,251 out of partnership I spent £750. Omorodun is Defendant's husband. Omorodun is a partner and knew about the partnership business.

Re-examined by Adefarasin. I knew Defendant in 1951 through one Mr. Browley. I shipped over £3000 worth of logs through her without a receipt. Defendant is my mother-in-law and we belong to the same cult hence I don't take or give receipts. 10

Further XXN by Burke by leave of Court The name of our firm is African Produce Enterprises. The firm is registered. I don't remember the registration number. I see the Daily Times of the 2nd September 1952, containing my photograph and reference to my visit to England; marked Ex. J. The reference is wrong. My passage to England is £113.

Examined by Adefarasin 4th P.W. Yekini Ojikutu, male Koruba, Sworn on Koran, states in English Language as follows:- I know both parties in this action. I know the last witness, Omotayo, Mrs. Odojukan. There is a partnership between me, Omotayo, Mrs. Young, Defendant, Mrs. Odojukan and Omorodun. I tender our partnership deed, marked Ex. K. The name is Nigerian Produce and Enterprise Syndicate. We agreed to subscribe £200 each last August for forming a capital for the Company and to send Omotayo and Omorodun to United Kingdom to attract business. The money was paid. I paid over £1,500 at the initial stage and over £20,000 later. Omotayo went to England in the interest of the Company. Omorodun went to Angola. The Defendant paid £213 in August, 1952 to Omotayo. It was her share to the Company's fund. Exhibit J was executed on the 30th August, 1952. Omotayo made a report to me about the Defendant on his return from England in the consequence of which I saw the Defendant on behalf of Omotayo. 20 30

The Defendant told me she would settle with Omotayo. The report was in respect of a car. Omotayo and Plaintiff came to me about twice before I intervened in the matter. I asked the Defendant to return the car to the Plaintiff. The £213 paid by Defendant was in respect of the Company. 40

Cross-examined by David: Every partner was to pay £200. When the Company was formed, we had no Treasurer. The monies were to be paid to Omotayo

and Omorodun. I have written to the Defendant to come so that we might dissolve the Company. She would not attend. Omotayo brought business. He went to England twice. Omorodun brought no business although he spent £1,450.

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10 Omorodun would not render an account hence we wanted to dissolve the Company. The business brought by Omotayo is worth £50,000. The Defendant told me she paid and Omotayo confirmed it. I don't know Omotayo got £223. I cannot explain why Defendant paid £213. Defendant had a Company of her own and so did Omotayo. Omotayo was to attract business in his own firm name on our behalf and so he did.

Then we had no papers with letter headings. Omorodun brought contracts in Defendant's name. The Defendant did not tell me she bought the car from Omotayo. She paid no other money to the business to my knowledge.

20 No Re-examination

30 Examined by Adefarasin: 5th P.W. Patience Odojukan female, Yoruba, sworn on the Bible, states in English language as follows - I am a teacher in Patience Modern School. I am the Proprietor of the School. I live at 31, Ricca Street, Lagos. I knew the Defendant: She is my friend. I knew Ojikutu, Omotayo and Orodun. They, myself and the Defendant are partners of the Nigerian Produce Enterprises Syndicate. In August last year we agreed to contribute £200 each to the Company's funds. We thought of sending Omotayo and Omorodun to U.K. in connection with business. I paid £100 in part-payment. I don't know if the Defendant paid her own share.

Cross-examined by David

40 I was not at the meeting when the decision was taken to send two members to Europe, read the agreement and signed it before Omotayo left. I paid my £100 to Defendant. I relied on what Defendant told me about the Company. I knew the Defendant had a car, I knew nothing about it.

Re-examination

Plaintiff's case.

Adjourned to 29th at 10.30 a.m.

(Sgd.) O. Jibowu
Acting Senior Puisne Judge.
28/7/53.

Plaintiff's
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WEDNESDAY THE 29TH DAY OF JULY, 1953.

BEFORE THE HONOURABLE
MR. JUSTICE OLUMUYIWA JIBOWU
PUISNE JUDGE

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

Suit No.154/1953.

C. O. OLAYINKA vs. MADAM C.A. YOUNG

13th April to
30th July, 1953
- continued.

ADEFARASIN for Plaintiff.
DAVID (BURKE with him) for Defendant.

David says that the Defendant was taken by surprise by the evidence of partnership.

10

Cross-examined by David: Christiana Aduke Young. Female, Yoruba, sworn on the Bible, states in English Language as follows :- I live at 22, Catholic Mission Street, Lagos. I am a trader. I know Omotayo. I did not know Plaintiff until I saw him in the Court on the 13th April, I have a Morris Car, No. G3874. I bought it from Omotayo. My first car AC 6444 got damaged. Omotayo told me he wanted to buy an Opel Car and I told him to sell his old car to me. He agreed to sell at £400. I offered to pay £350 and he agreed. This was in February, 1952. It was early in February. He asked me to lend him some money to make up the price of the Opel car and promised to lend the Morris car to me when he got the Opel car. I lent him £50 & £80 by cheques from me and from Omorodion. The money was an advance on the Morris Car. Omotayo's evidence is untrue that it was in repayment of a loan. It is not correct that we had transactions without receipts. I usually gave him cheque and never cash. I never sold logs for £95 nor did I pay him £70. Omotayo handed the car to me in my house. He drove it to the house. He did not tell me the car had been sold to anybody. I know nothing about Ex.E. The number of the car was G3030 when I was negotiating for the car. When he brought the car it was G8874. I asked him why he changed the number and he said 3030 was his popular. I got the car between 2 - 4 weeks after I paid for it. The car was brought to me on the 28th February, 1952. I was using the car all the time. Omotayo went away on 2nd September, 1952. Nobody demanded the return of the car before he went away. I executed Ex. K. Nobody paid a brass farthing in respect of it. I had my own business and so did Omotayo. I was to carry out contracts entered to before the execution of Ex. K.

20

30

40

On 2nd August, 1952, Omotayo asked me for a loan of £100, he wanted the money for repairs of the lorry. He wrote out the cheque, for me. I tender the counterpart, showing that it was a loan, marked Ex. L. I took his passport for him and paid his passage. I gave him £10 on 15th August, 1952. He wrote out the cheque. I tender the counterpart showing what the money was for, marked Ex. M.

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10 On 15th August, 1952, I gave him money by cheque which he wrote out. I tender the counter-foil, marked Exhibit N. He complained that I did not want to pay his balance. I then brought the cheque back to me wrote out the cheque for N. He was to return £3 out of the £113 to me.

13th April to
30th July, 1953
- continued.

20 The £113 is not a loan but balance due on his car. It is not true that I was to pay his passage to England is my own contribution to the partnership business. Ojikutu refused to bring out money and it was agreed that each person must pay for his own passage. Omotayo agreed to pay his own passage, but Omorodun said he had not enough money to cover his passage. Mrs. Odojukan and I agreed to lend Omorodun money. Mrs. Odojukan paid £100 to me which I handed to Omorodun who gave her a receipt. It was a loan to Omorodion.

30 He borrowed £200 from me in September, 1952; he has since paid it and I gave him a receipt. Ojikutu did not bring £1,500 at first. He paid that amount when Omotayo brought business. He gave Omotayo £500. I don't know of any other payment. That had nothing with the partnership business. Omotayo did not come to see me on his return from England. I met him at Ojikutu's house. Omotayo told me nothing about the business. Ojikutu did and told me it had nothing to do with our partnership business. When Omotayo returned the second time, he told me nothing about the car in dispute. Omotayo and the Plaintiff did not come to demand the return of the car from me. The car is always outside my house as I have no garage. I keep the key. The car is always left open. Omotayo went with me when I went to change ownership of the car. I claim the car as mine because I bought it from Omotayo. I am not mother-in-law of Omotayo. I have no child. Omorodion is not my husband. I am married and so is Omorodion.

40

Cross-examined by Adefarasin: - I was born in Lagos

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and not at Owo. I met the Plaintiff for the first time at St. George's Hall when this case started. I wanted to go to Omotayo's house to salute him and his wife. I have never met you in Omotayo's house nor have I at any time met you and Plaintiff in Omotayo's house. I don't know the connection between you and Omotayo. It is not true that I have met you and Plaintiff in Omotayo's house. I never heard of the Plaintiff until I saw him in Court. I got the letter you wrote on behalf of the Plaintiff. I don't know Iyabode, Omotayo's wife. Iyabode is not Omotayo's wife; she is a small baby. The Iyabode I mentioned in my letter is a little child. I wrote letter.

10

I did not transfer the money mentioned in Ex.G Ojikutu did. By "we" I meant Mr. Ojikutu. I gave Omotayo a receipt for £200 which he paid to me. It was not written in a counterfoil receipt book.

Omotayo had bought the new car before handing the old one to me. His driver drove L 3030 to my house to take him back. I filed up Ex. C. He and I went to the Town Council together. I asked him why Olayinka was shown as registered owner. He told me he wanted to change it into Olayinka's name but that he did not do so. I changed the licence for the car on the same day. The vehicle licence was in Omotayo's name and not that of Olayinka. Omotayo spoke to the clerk before I filed in Ex. C. Omotayo handed the old licence in a glass holder to the clerk. I did not get the car from Plaintiff's house. I gave cheque for £100 to Omotayo on 2nd August, it was for the car. I did not pay the money for our business. It was not agreed that the money should be regarded as a loan until the Company was formed.

20

30

Money was given to Omotayo for a purpose I don't know. Omotayo did not give money to Omorodion before he got my cheque. I had business in rubber with Omotayo and Omorodion. Omorodion did not buy rubber for me nor did Omotayo give him £10 which he got back from me. Omotayo was buying rubber from Omorodion. Omorodion is not my husband. I did not live with him. I live in my husband's house. £100 was for the car: £113 was the balance for the car. I give cheques and take receipts. I have no receipts for the purchase price of the car. I have only one ignition key to the car. I don't know Olayinka has the other key. Omotayo gave me only one key. I paid nothing for the business.

40

Nobody paid anything. The Company never operated. I heard Ojikutu's evidence: no one paid £200. His evidence is not true. I heard Mrs. Odojukan's evidence. She did not tell the truth when she said she paid in pursuance of the agreement. Ojikutu also lied when he told the Court he came and spoke to me about the car. I don't know Omotayo's wife, Iyabode. I don't know the name of any of Omotayo's wives. I used to go to salute one of his wives when she gave birth to a child.

10

I have never been to Massey Dispensary to see Iyabode. I went home after the car was handed over to me hence I did not change the ownership before April, 1952, when I returned to Lagos. I spent more than a month at home. I left the car in Lagos. Omotayo knew I changed the ownership.

Re-examined by David. I don't know if Omotayo gave any money to Omorodion. I don't know what the £10 was taken for. I gave it towards the car.

20

Cross-examined by Court: I paid £350 for the car by instalments of £130, £100, £113 and £10. My cheque book did not show that I paid my money for car. I asked him for receipts and he told me he would give me a receipt when I had paid him in full. I asked for a receipt when I got Olayinka's Solicitor's letter.

30

Cross Examined by David: 2nd D.W. Tijani Iginla, Male, Yoruba, sworn on Koran, states in English Language as follows :- I live at 28, Omididun Street, Lagos. I am the Motor Licencing Officer, Lagos Town Council. (Note: He is asked to go and produce all papers relating to registration of G3030 and G8874)

40

Cross-examined by David: 3rd D.W. Geoffrey Omorodion, male, Benin, sworn on the Bible, states in English Language as follows :- I live at 61, Oke Suna Street, Lagos. I am a trader. I know the Defendant: she is not my wife. I have my own wife. I have never lived with Defendant. I know Defendant has a Morris Car No. G8874. She got it from Mr. O. Omotayo. Every transaction took place in my presence. In February, 1952, I was with Defendant in her house when Omotayo came - told her he wanted to dispose of his Morris Car to buy an Opel Car and that he had not enough money to pay for the car. The Defendant agreed to give him money provided he sold the Morris Car to her. They agreed on £350 as the price of the Morris Car.

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Plaintiff's
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Omotayo wanted £400 and Defendant offered £350 which Omotayo accepted.

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Young.

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- continued.

The Defendant then gave him £50 cheque and asked me to give him a cheque of £80 on the Farmers' Bank. The monies were advanced as part payment for the Morris Car. There was no receipt given. Omotayo said that no receipt was required as the payments were made by cheque. The car was not delivered at the same time. It was delivered about 3½ weeks later. I was present when the car was delivered to the Defendant towards evening. The key of the car was handed to Defendant by Omotayo who drove the car to Defendant's house. He then asked for the payment of the balance. She promised to pay at a later date. I knew the Plaintiff. I met him once in Omotayo's house; he was not present when Omotayo delivered the car. It is not correct that Plaintiff lent the car to the Defendant. I am a member of the Nigeria Produce Enterprise Syndicate. I contributed £500 to the business. I did not pay it to anyone. We were to pay £200 each according to Ex. K. but no one made any contribution. Ojikutu said he was not prepared to finance the business unless there was some business. He said he was prepared to refund my expenses to Europe if I brought out business. I had my own personal money and I got £200 from Defendant and Mrs. Odojukan. This was a loan to me. I had £500 which I knew would not be sufficient. I went to Lurandu, Lisbon by plane. From Lisbon I went to Geron in Italy and to Tourin. I brought back several contracts in the Company's names. There were over 10 contracts. I communicated these to Mr. Ojikutu. There were letter headings printed by Ojikutu before I left. I left on 9th September, 1952. Omotayo left a week earlier. Everything was ready before Omotayo left. I handed the contracts to Ojikutu. Omotayo returned to Nigeria before me. We all met on my return from Europe. The Company gave me no money hence I did not account for my expenditures.

I was not asked to account for the money I spent. Ojikutu only asked me for the results of my tour and I gave him the results. Omotayo told me he had given account of his own tour.

Cross-examined by Adefarasin: Omotayo handed only one key to the Defendant. There was a vehicle licence on the car when it was brought. I looked at it. It bore the name of Omotayo. That was on

the 28th July, 1952. I cannot drive a car. Omotayo went home by a car, probably by his Opel Car, He did not go with L3030. The transaction took place in Defendant's parlour. I went out with Omotayo. I wrote out the cheque for £50 for Defendant. The object of the cheque was not endorsed on the counterfoil. I showed on my counterfoil "a tran to Mrs. Young". The Defendant asked for a receipt and Omotayo said that it was unnecessary until the whole money was paid. She asked for a receipt immediately after giving Omotayo the cheque. I used to deal in rubber. I remember Omotayo paid me and another £10 for rubber. It was for travelling expenses in respect of rubber purchased. Omotayo was our partner then in rubber business. The Defendant was also a partner in the business. We had no written agreement. Omotayo was then interested in rubber business. The 10 Pounds was not a loan. We were all doing the business. Omotayo got a cheque for £10 plus the Defendant. The Defendant was never my lover. I have an office in Defendant's house. I left B.B.W.A. on medical grounds. I spent only £700 on my tours. I had £700 before I left Nigeria. Ojikutu did not send me any money. No account was opened on my behalf by Ojikutu. I called to the Company for money deposited in favour of a Firm in Livenda. It was for £1,400. The money was not released to me at Livenda. It was not paid to the Firm although I called for the release of the money. The Defendant was not in Omotayo's house on the day I saw the Plaintiff there. I paid about fifty something pounds to Livenda.

I knew everyone was to pay £200 but no one contributed.

I was present when Omotayo sold the car to Defendant.

Re-examined by David: £1,400 was deposited by Ojikutu, against performance of the Livenda contract. I knew of this before I left. I cabled for the money as the Firm at Livenda would not do any business unless the money was paid to them. It was not paid although I cabled for the money. The money was not released.

Cross-examined by Court: Ojikutu had no money at all in the business. It is not true that Ojikutu paid about £5,400 or £22,000 into the business fund. I know Mrs. Odojukan. I think she was present at the meeting at which it was decided that we should pay £200 each. She gave me a loan.

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- continued.

Cross-examined by David: 2nd D.W. Tijani Iginla,
warned of his oath, continues:- G3030 was first
registered in respect of a Morris Oxford Car be-
longing to O. Omotayo of 62, Wakeman Street, Yaba
on the 3rd April, 1950. Odugbesan made a note on
Register Book that the car was sold out of the
country. Odugbesan has been dismissed. There is
no letter in our file about the sale of the car
out of the country. If sold out, or out of use,
the number can be given to another car. I know
the Defendant and also Mr. Omotayo. I see Ex. C.
Odugbesan wrote his hand on it. Ex.C is dated
15th April, 1952. I was not then in the Branch.
I was in Water Rate Arrears Section.

10

G3030 was issued to Opel Car.

Cross-examined by Adefarasin: There is only one
G3030 in our books today. The chassis No. of
G3030 is 2809251 L.V. The engine number is 26420.
26420 is on Exhibit C. The same car was licensed
as G8874. The number G3030 was not in use before
it was assigned to the Opel Car.

20

Omotayo registered G3030 for his Opel Car.
C.O. Olayinka registered G8874 for the Morris Car.

The name of the previous owner is on Ex. C.
The new owner has to supply the name of the pre-
vious owner which we check with our book. If it
agrees then the form is endorsed. The vehicle
licence has also to be produced to show that it is
in the name of the previous owner. The previous
owner is C.O. Olayinka.

30

Re-examined by David: I remember the African JA'A
Trading Company case. It is not compulsory that
the vehicle licence be produced. Inquiry may be
made to find out if a certain number has been
given out. Members of the Public are not allowed
to see our book.

Case for Defence.

Adjourned to 30th for Counsel's address.

(Sgd.) O. Jibowu
PUISNE JUDGE.
29/7/53.

40

THURSDAY THE 30TH DAY OF JULY, 1953.

BEFORE THE HONOURABLE
MR. JUSTICE OLUTUYIWA JIBOWU
PUISNE JUDGE

Plaintiff's
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Suit No. 154/1953

C.O. OLAYINKA V. MADAM C.A. YOUNG

Proceedings in
Suit 154/1953
C.O. Olayinka
and Madam C.A.
Young.

DAVID for Defendant addresses the Court.

13th April to
30th July, 1953
- continued.

10 He submits that the case involves only ques-
tions of fact. The question is which side is
speaking the truth. Was £130 paid for the car or
is it a refund of a loan. Mr. Olayinka belongs to
a tribe of keen traders; would he give his car
for which he had just paid £400 to Defendant on
behalf of Omotayo? He wanted to use the car for a
taxi. The car was taken in March, 1952, no steps
were taken to recover the car until Omotayo went
to England and returned. No steps taken until
letter was written in March, 1953 by Plaintiff's
Solicitor. Letter Ex.A. says car lent for 6
20 months. He asks the Court to say that Ex.E. was
not prepared in July, 1952, but recently. He asks
the Court to say that the Defendant told the truth.
Cheque for £100 is shown as a loan. She is il-
literate. The Defendant paid more than her contri-
bution as she paid Omorodion also. Did car still
remain in the name of Omotayo! The licence was not
changed - Car was registered as a new car. There
were two ignition keys: why did not the Plaintiff
go and drive the car away?

30 ADEFARASIN replies - He leaves the facts to the
Court. He refers to Plaintiff's claim. Did the
Plaintiff give car to Defendant through interven-
tion of Omotayo? Car registered by Plaintiff on
day Defendant said she bought. Defendant denied
all knowledge of Plaintiff until she got his let-
ter. She admitted from Ex.C. that she knew about
Olayinka when she went to Lagos Town Council. She
tried to wriggle out by saying that Omotayo told
her it was all right.

40 Defendant should have tendered her vehicle
licence to show Olayinka was owner - she wants the
Court to believe that the vehicle licence bore
Omotayo's name.

See Ex.B. It is not suggested that the name

Plaintiff's Exhibits

"v"

of Olayinka was a forgery. If she was buying the car, she could only have bought from Olayinka. G3030 was changed to G8874 - same car has its number altered.

Proceedings in Suit 154/1953 C.O. Olayinka and Madam C.A. Young.

13th April to 30th July, 1953 - continued.

Evidence for Defendant don't support Defendant's story. At first it was suggested that Defendant lent Omotayo £200 which he has not refunded. Later she said the money had been paid and receipt given. She agreed that £113 was for Omotayo's air passage. That she told the Court it was paid towards purchase price for car. £100 in her evidence was said to be a loan and also £10, yet she said they were paid for car. She has not proved that she paid anything for the car. See Ex.G. Iyabode referred to. Would a young child be dreaming? Defendant did not tell the truth when she said no one contributed towards the partnership. Mrs. Odojukan's and Ojikutu's evidence should be accepted. They are not in controversy with Defendant. Asks Court to hold that monies paid by Omotayo are for partnership purposes.

10

20

Judgment is reserved till the 31st instant.

(Sgd.) O. Jibowu, 30/7/53.

Exhibit "W10" - LETTER to A.Y. Ojikutu from McVicar

"W10"

Letter to A.Y. Ojikutu from McVicar.

9th June, 1953.

TIMAX TIMBER CO. LTD.
Directors: Group Captain F.E. Dixon. Mr.R.J.McVicar
M. Rosengarten

Eagle House,
109, Jermyn Street,
London, S.W.1.

30

Telephone:

Whitehall 1728/9

Bentley's 2nd Code.

ON/BH.

Mr. A.Y. Ojikutu,
1, Jagun Lane,
Lagos, NIGERIA.

Inland Telegraphic Address:

TIMAXTIM, PICCY, LONDON.

Overseas Cable Address:

TIMAXTIM, LONDON.

9th June, 1953.

Dear Sir,

40

We acknowledge receipt of your letter of the 15th April and refer to our letter of the 10th of that month.

We have not received a reply to this letter, and before replying to your letter with reference to the question of the 10 per cent, which would have been due to you had you honoured your Contract, we would like to know whether you are prepared to accept liability for the Breach of Contract.

Plaintiff's Exhibits

"W10"

Letter to A.Y. Ojikutu from McVicar.

9th June, 1953
- continued.

Yours faithfully.
for TIMAX TIMBER CO. LTD.

10

(Sgd.) ?

DIRECTOR.

Exhibit "AA" - LETTER from McVicar to Ojikutu.

"AA"

LAGOS.

Letter from McVicar to Ojikutu.

12th October, 1953.

12th October, 1953.

A.Y. Ojikutu, Esq.,
1, Jagun Lane,
LAGOS.

Dear Mr. Ojikutu,

20

With reference to your two letters dated the 2nd September, 1953, I am giving you below a full report and itinerary of my visit by air to England and Germany.

I left Ikeja Airport on Sunday, the 13th September, and arrived in London the following morning. I stayed in London until Friday, the 18th September, when I left by air for Frankfurt-Main in Western Germany. My movements during the twelve days I spent in Germany were as follows:-

30

18 Sept:	arrived and stayed in Frankfurt
19 "	Went to Bad Homberg
20 "	Went to Wiesbaden
21 "	Went to Mainz
22 "	Went to Kaiser Lautern
23 "	Went to Dusseldorf, via Cologne
24 "	Went to Brunswick
25 "	Frankfurt

I had my first meeting with Mr. B. Frankel on

Plaintiff's
Exhibit

"AA"

Letter from
McVicar to
Ojikutu.

12th October,
1953

- continued.

Friday morning, the 25th September. At this meeting and in front of a witness I asked him on your behalf what the position was in regard to the money you had deposited with him against goods to be delivered. He stated that he would require to seek legal advice, that he had business to transact in Munich and he would be getting in touch with me again at the Hotel where I was staying in Frankfurt.

I left Frankfurt without seeing Mr. B. Frankel again, on the evening of Wednesday, the 30th September, and returned by air to London. I had to remain in London until the 10th October, as the B.O.A.C. aircraft were fully booked for practically the whole of October. I eventually managed to get an early reservation on Air France - London, Paris, Algiers, Niamey to Lome, in Togoland, and thence to Lagos. As already stated, I left London on the 10th and reached Lagos airport on Sunday afternoon, the 11th October.

10

I had therefore been away from Lagos a whole month, instead of the ten days I had planned to be away.

20

I will now recount (a) what I personally found out on your behalf during my trip; (b) what I was informed about Mr. B. Frankel - for your personal and confidential information, and (c) conclusions and advice I tender to you in confidence also for your private information and without any prejudice whatsoever to the writer of this letter, i.e. myself. We have already gone into the past history of this business in which I energetically and in writing advocated against it and, further, please remember that I pointed out that I had undertaken this investigation on your behalf against my own personal wish and only because of my regard for you. To begin, therefore, with

30

(a) On my arrival in London I went immediately to the City of London, and found that the Offices of B. Frankel, at No. 48, Upper Thames Street, E.C.4. were vacated, with no furniture fixtures or fittings in them and obviously to let. This confirmed the suspicions I had passed on to you in Lagos last July. I made various enquiries in London about B. Frankel, and the main items of information are condensed and reported in (b). After three days in London, I cabled you on the 17th October, and left for Germany on the 18th.

40

I sent you a letter from Frankfurt on the 29th October, and returned to London on Wednesday the 30th. I sent further cables to you from London on the 1st and 5th October, reporting my movements and giving you my telegraphic address in case you wished to give me any instructions.

Plaintiff's
Exhibit

"AA"

Letter from
McVicar to
Ojikutu.

12th October,
1953

- continued.

- 10 (b) From information I received from reliable sources (whom I can produce if and when necessary) it is clear to me that B. Frankel was made bankrupt in England last June, with total liabilities probably exceeding £100,000. I understand also that his affairs in France are in a similar bad condition. There is little possibility of financial help from his wife's family, who live in poor circumstances. All personal effects that existed have since been sold. B. Frankel is trying to start up in business again in Western Germany but it may well be that he will move on into Switzerland. His friends have been temporarily supporting him, but these will shortly cease their support.
- 20

It is my own profound belief that B. Frankel will never pay any of his numerous debts, and it is fruitless to say any more about this person.

- 30 (c) After careful thought and long study and research in London, on ways and means of tackling this problem my conclusions and sincere advice to you, my good friend, are as follows:-

(Please note this advice is given without prejudice voluntarily and reserved at my discretion of any action)

- 40 (i) Provided Omotayo, who originally acted against my advice, obtained Bank references before depositing the first £5,000 of your money with B. Frankel, then the Bank Manager of Barclays Bank, Bishopsgate, London, can be sued. As I verily believe that this £5,000 covered an overdraft at this Bank of some £4,400 so that the Bank in fact did knowingly use money placed in good faith on deposit to clear a Client's indebtedness. Furthermore, I have been informed and I

Plaintiff's
Exhibits

"AA"

Letter from
McVicar to
Ojikutu.
12th October,
1953
- continued.

believe this information to be true that B. Frankel, through Companies that he controlled has had countless Bills protested and cheques returned. Everything, of course, hinges on the wording of the Bank Reference, if it was what is known as a negative one it is useless, but if the reference was good enough for Omotayo to deposit £5,000 with B. Frankel, then the information given by the Bank was false, and they can well and truly be sued for the total of £20,000. A powerful firm of Solicitors in London, like Lathan, Vandyck & Co. would cause Barclays Bank to settle out of court. This sum great as it is to you or me, is nothing to Barclays Bank.

10

- (ii) Hands can be placed on B. Frankel wherever he is in Western Germany or Switzerland, at short notice, and whenever you wish it.

20

(Sgd.) W.E. McVICAR.

"Q"

Exhibit "Q" - LETTER to Omotayo from his Brother.

Letter to
Omotayo from
his Brother.
7th November,
1953.

St. Paul's Vicarage,
Long Lane,
Finchley,
London, N.3.

7th November 1953.

30

O. Omotayo Esq.,
P.O. Box 113,
Yaba, Nigeria.

My Dear Brother,

It is just inevitable that we have to reopen the matter of Mr. Frankel once again; and in fact I have predicted that this must come to pass. My last letter on this issue was that of the 15th August. It does not appear to me that you took any step in consonance with my advice or from people at home who are experienced in legal matters.

40

I have warned that there can be no grain of

10 truth in whatever kind of news Mr. McVicar may tell about his boss. I have since the receipt of your letter gone a step forward in making investigations about Mr. Frankel. My only handicap is lack of finance, and at the same time, I am not capable of handling the matter on any elaborate scale since you have not given me the authority to do so. So far as I know, Mr. Frankel is still in his Baker Street address where you and I have always met him. It is a fact that he spent most days of the week outside London and that makes it difficult to get him out. Mr. McVicar is not correct to say that he has left for Frankfurt permanently. His office at Brook's Wharf still exists.

20 I can possibly get an official & confirmed report of the business position of Mr. B. Frankel from the Registrar of Business here, if, and only if, you want me to initiate enquiry about him. In addition Mr. Frankel is not an Englishman and that places him at a disadvantage, in that he cannot easily escape justice, even if he now makes Frankfurt his home.

30 Scotland Yard and Fraud Court are very reliable in matters of this nature. It is up to you and Mr. Ojikutu to decide how the matter should be handled. Instead of the £500 bonus to Mr. McVicar a deposit of £300 would have been sent to meet up expenses of a Solicitor and other necessary investigations. By now we should have known how to get in touch with whatever investments Mr. Frankel had made since the receipt of that money.

40 The case of the Farmers Bank is still pending at the Privy Council. Mr. A.S.O. Coker is in London. I have spoken to the Ex-Manager of the London Branch, unfortunately he is unable to trace any papers connected with the initial payment to Mr. Frankel. I think you realise that the Manager of the Bishopsgate Branch of Barclays Bank was only responsible for the £5,000 cheque through the Farmers Bank. Other amount if paid through the Barclays Bank did not go through the Farmers Bank.

However, Mr. McVicar has also been able to exploit the situation if the story by Mr. Ojikutu is correct to the extent that he parted with his £500 to Mr. McVicar an agent of Mr. Frankel. It sounds very insinuating and ridiculous for any business man to so act.

Plaintiff's
Exhibit

"Q"

Letter to
Omotayo from
his Brother.

7th November,
1953

- continued.

Plaintiff's
Exhibits

"Q"

Letter to
Omotayo from
his Brother.
7th November,
1953
- continued.

As I said previously, I need the original documents and other correspondence between you and Mr. Frankel to show the correct position of the case and an official power of attorney as per my letter of the 15th August. I cannot tell what costs will be meanwhile, but a sizeable amount is required to commence proceedings. There has been unnecessary delay in the past and I can only advise you again, that the more you delay to act, the more difficult and complex you make the position of things.

10

What is the position now of the Zini shipments. Are you able to dispose of any quantity at reasonable price ?

We are all pretty well.

Our best Compts. to all.

Yours truly,

(Sgd.)

Exhibit "P" - LETTER from Director Commerce
and Industries to Ojikutu

20

"P"

Letter from
Director
Commerce and
Industries to
A.Y. Ojikutu.
24th November,
1953.

Telegrams:
DIRCOMIND, LAGOS.

No. CT/7566/29.

All communications
should be addressed
To: "The Director" (and
not to officers by name)
and the number given
above should be quoted.

Department of
Commerce and Industries,
Lagos, Nigeria.

24th November, 1953.

A.Y. Ojikutu, Esq.,
1, Jagun Lane,
Lagos.

30

Dear Sir,

Mr. B. Frankel, London

Further to my letter No. CT/7566/26 dated the 27th of October, the Prosecutions Branch of the Board of Trade in the U.K. are still undecided whether or not to prosecute for fraud and are trying to ascertain the precise location of Frankel. This is variously stated to be Israel, Germany and the Continent, and enquiries have also been initiated in Frankfurt, but the police there state that they have been unable to trace his whereabouts.

40

2. The developments to date are that the Official Receiver has issued a warrant for the arrest of Frankel because of his failure to attend the examination in bankruptcy. There was a creditor petition for bankruptcy and a receiving order was made on the 19th June. Frankel did not attend the examination on the 30th July and an adjudication of bankruptcy was made on the 4th August, 1953. Since Frankel did not attend, there is no Statement of Affairs available. Frankel's wife is reported to have left the country, but her destination is unknown.

10

3. There seems very little hope of your obtaining any redress. If you were to issue a writ for Civil proceedings in U.K. then you would only get whatever final dividend was declared and this, subject to Frankel's appearing for the bankruptcy examination. On the other hand, if you issue a writ in Nigeria, then you have to first locate Frankel and serve the writ through his solicitors and then presumably, Frankel would move from the country in which the writ is to be served.

20

4. The Prosecutions Branch suggest that you should prove yourself a creditor and formerly inform the Official Receiver in Bank Buildings, Carey Street, London, W.C.2., so that you may have the benefit of any dividend finally declared.

5. The Board of Trade have not yet decided if they will prosecute, and if so, whether they will include the Nigerian case. This depends, of course, whether the fraud is adjudged to have taken place in Nigeria or in the U.K. Should they prosecute, then a detective from the Yard will be detailed to go to France to collect evidence, as it is understood the French Authorities have already issued a warrant for his arrest on a criminal charge of fraud.

30

6. Please inform me in due course if you will take action as suggested by the Prosecutions Branch of the U.K. Board of Trade, or if you prefer to issue a writ for civil proceedings.

40

Yours faithfully,

(Sgd.) ?

for Acting Director.

Plaintiff's
Exhibit

"P"

Letter from
Director
Commerce and
Industries to
A.Y. Ojikutu.

24th November,
1953

- continued.

Defendant's
Exhibit

Exhibit "R" - LETTER from Ojikutu to Omotayo

"R"

Letter from
Ojikutu to
Omotayo.
24th November,
1953.

Bankers:-
The National Bank of
Nigeria Ltd.
Marina, Lagos.
Branches: Ibadan, Akure,
Owo, Benin,
City, Kaduna,
Jos, Zaria,
Kano, Nguru,
and Sokoto.

A.Y. OJIKUTU
(General Merchant)
Personal Secretary
D.O.S. Ajayi Esq.,
Solicitors:-
Messrs. Lawson & Adewale,
1, Jagun Lane,
Lagos, Nigeria.

24th November, 1953.

10

Mr. O. Omotayo,
P.O. Box 113,
Yaba.

Dear Sir,

I have read the contents of your brother's letter to you dated the 7th November, 1953, and regret to state that the statements therein contained are valueless to me. 20

2. Please note that I am trying to recover money advanced to you and through you for goods that had never been received, and all I wanted from you, is evidence that you did take up references from Mr. B. Frankel's Bank Manager in accordance with my oral instructions to you before parting with the first Five thousand pounds sterling of my money. Your brother's reference to this vital matter in paragraph 4 of his letter is very vague and useless to me. 30

3. As the matter is now taking a very serious turn as the money advanced could have been devoted to more profitable business, had you not given approval to the genuiness of the transaction, I must now demand from you a statement that you did in fact take references from Barclay's Bank London as stated above after which I may proceed to whatever measure that is open to me to recover the sum of Twenty-thousand pounds sterling. 40

4. Please and without bitterness attend to the request herein contained with the urgency it deserves without any further delay.

Yours faithfully,

(Sgd.) A. YEKINI OJIKUTU.

Exhibit "S" - LETTER from Omotayo to Ojikutu.

Defendant's
Exhibit

OLIATUNJI OMOTAYO
62, Wakeman Street,
P.O. Box 113,
YABA, NIGERIA.

Councillor A.Y. Ojikutu,
1, Jagun Lane,
Lagos, Nigeria.

"S"

Letter from
Omotayo to
Ojikutu.

Date: 28th November, 1953.

28th November,
1953.

My Dear Sir,

Your letter dated 24th November, 1953, received yesterday contents of which have been read with a pinch of surprise.

10 It may be true you have not found my brother's letter passed on to you by me for attention, of much value, but it should be remembered the young man was only trying to assist.

As a matter of fact, I cannot remember being given any oral instructions to take Mr. Frankel's references.

20 As far as I can remember, it was Mr. Frankel himself who in his letter addressed to you on the 15th November, 1952, suggested that you could refer to the Barclays Bank for any information you may wish to acquire respecting his financial standing, should you so desire.

30 Since the payment to, and receipt by, Mr. Frankel of the sum of £5,000 (Five thousand pounds) sterling is never in dispute it does not appear there will be much difficulty in recovering from him the amount he Mr. Frankel has received for a consideration which he has since failed to implement.

Trusting that this will satisfy your requirement.

Yours sincerely,

(Sgd.) O. OMOTAYO.

Defendant's
Exhibit

Exhibit "T" - LETTER from Ojikutu to Omotayo.

"T"

Letter from
Ojikutu
to Omotayo.

3rd December,
1953.

Bankers:
The National
Bank of
Nigeria Ltd.
Marina, Lagos.
Branches:
Ibadan, Akure,
Owo, Benin City,
Kaduna, Jos,
Zaria, Kano, Nguru
and Sokoto.

A.Y. OJIKUTU
(General Merchant)
Personal Secretary:
D.O.S. Ajayi Esq.,
Solicitors:
Messrs. Lawson & Adewale.

1, Jagun Lane,
Lagos, Nigeria.

10

3rd December, 1953.

O. Omotayo, Esq.,
62, Wakeman Street,
P. O. Box 113,
Yaba, Nigeria.

Dear Sir,

Referring to your letter dated the 28th November, 1953, in reply to mine dated the 24th November, I am agreeably surprised that you should be surprised at the contents of my letter.

20

2. If your brother at any time attempted to assist in the matter, he should have done so on a misleading basis as is evidenced by a copy of letter from the Nigeria Commerce and Industries herewith attached for your perusal and retention - this letter is self explanatory and confirms every statement made by Mc. McVicar and showed that gentleman as a very honest and sincere worthy of greater trusts than the one showed by you.

30

3. The assurance given in your letter by way of cablegram from London dated the 29th September, 1952 was the basic confidence before I remitted to you a sum of Five thousand three hundred pounds sterling through The National Bank Ltd. of the Marina, Lagos.

4. Likewise and in like manner in your cablegram to me from London dated the 3rd day of October, 1952, you reported the position as "alright" followed by a confirmatory letter from you.

40

5. In all these circumstances, you must have been convinced of the genuineness of the transaction and your position as my agent fully secured as to

the exact position of the order and the subsequent shipments to me before you sent such a cablegram to me, and on my part, I reposed the greatest confidence in you which I had no doubt then was a misplaced trust, and relying on all these demands of yours, I remitted the amount called for by you, with some surplus to cover all incidental expenses, and I assure you, I never parted with this huge sum of money UNTIL the assurances given by you in your several cablegrams and letters have been carefully considered.

Defendant's
Exhibit

"T"

Letter from
Ojikutu to
Omotayo.

3rd December,
1953

- continued.

6. Literate as you are, I reposed the fullest confidence in you, that under no circumstances would you part with my money, namely a sum of £5,300 to an unknown man whose financial status and Bank reference was not good, despite my warning to you in a letter dated the 3rd day of October, 1952, to the effect that on no account should you part with the money without first of all satisfying yourself as to Mr. Frankel's (your friend) financial stability.

7. Subsequently, you flew back to Nigeria early in November, and gave me the assurance that the vehicles were already assembled, but on Mr. Frankel's failure to implement the deposit of £5,000 he was coming down to Lagos himself to explain the situation to me and that if possible I should pay him further sums of monies as he might demand and that the situation was secure in my favour.

8. Consequently, he came down, according to plan between both of you on or about the 12th November, 1952 and confirmed the statements made by you to me and in your presence, and at your request and sponsorship, I handed a cheque for fifteen thousand pounds to him (Mr. Frankel) drawn on The National Bank of Nigeria Ltd. in his favour, in consequence of which Mr. Frankel in a letter or shall I say a so-called agreement to me dated the 15th November, 1952, agreed to make part shipment on the 30 trucks so ordered through you, and so I parted with a sum of Twenty-thousand pounds to an unknown man to me on your assurance.

9. In all these circumstances, and on my part, and acting on your advice and suggestion as my agent, I perfected my part of the contract by paying out through you on both occasions to Mr. Frankel the amount required of me all totalling a sum of

Defendant's
Exhibits

"T"

Letter from
Ojikutu to
Omotayo.

3rd December,
1953
- continued.

TWENTY THOUSAND POUNDS STERLING, exclusive of what came into your possession as my agent and representative. By this payment, you told me that arrangements for quick and immediate shipment had been perfected by me on a verbal promise from you, but up till now every promise and assurance given by you both in writing and verbally have failed judging from the copy of letter herewith attached.

10. To ease a very serious situation, I am now asking you for the Bank reference obtained as to Mr. Frankel's financial position in terms of my letter to you referred to supra as my agent and representative in London in the transaction before you parted with my money.

10

11. On the other hand, and in terms of your cablegram dated the 20th September, 1952, I ask in all sincerity, what has become of the vehicles already assembled and ready for shipment.

I should be happy to receive an early reply to this letter, as the reply will dictate to me what further steps I should pursue, acting, however, on the advice of people who know better than both of us.

20

I should be exceeding sorry if it turned out that I have trusted a man whom I should have suspected.

Awaiting the favour of an early reply.

Yours faithfully,

(Sgd.) A. YEKINI OJIKUTU.

Exhibit "U" - LETTER from Omotayo to Ojikutu

30

"U"

Letter from
Omotayo to
Ojikutu.

5th December,
1953.

Councillor A.Y. Ojikutu,
1, Jagun Lane,
Lagos, Nigeria.

5th December, 1953.

My Dear Sir,

I refer to your letter of the 3rd December, 1953.

Beyond my letter of the 28th November, there

is nothing further I would like to say in regard to the taking of Mr. B. Frankel's Bank reference.

Defendant's
Exhibit

"U"

However, I should like to say that I have read paragraphs 7, 8 and 9 of the letter with the gravest of concern. You seemed to suggest that Mr. Frankel and I conspired in the Bedford business deal. This is a monstrous suggestion which I feel should be resented with all the emphasis of word.

Letter from
Omotayo to
Ojikutu.

5th December,
1953

- continued.

Yours faithfully,

(Sgd.) O. OMOTAYO.

10

Exhibit "EE" - STATEMENT of Omotayo

Plaintiff's
Exhibit

STATEMENT

"EE"

Name: Olatunji Omotayo
Age: 39
Occupation: Trader
Religion: Muslim
Address: 62 Wakeman Street, Yaba.

Statement of
Omotayo.

11th December,
1953.

Having been duly cautioned that he was not obliged to say anything unless he wished to do so but that whatever he says will be taken down in writing and may be given in evidence elects to say voluntarily as follows :-

20

On 2/9/52 I left Nigeria as a representative of the African Produce Enterprises Syndicate to make business contacts. Before I left Lagos I was given a letter of introduction from Mr. W. E. McVicar of Lagos to his brother who met me at London air terminus. Mr. McVicar whose address in London I do not know, told me that he would arrange a meeting with his boss Mr. Frankel the following day at the Oddenino hotel. Next day I went to this hotel with Mr. S. O. O. Abudu of St. Paul's Vicarage Finchley N.3. Mr. Abudu is my cousin and is still at this address. We met a certain Mr. Frankel with Mr. McVicar. Mr. Frankel told me he would get me 50 Bedford trucks at about £673 each. He said he could get the trucks from the Vauxhall works at Luton. Next day Frankel and McVicar entertained me to lunch at the same hotel and Frankel gave me a written undertaking that he was in a position to

30

40

Plaintiff's
Exhibit

"EE"

Statement of
Omotayo.
11th December,
1953
- continued.

supply the trucks. On 19/9/52 I returned to Nigeria and told Mr. Ojikutu of this offer. Frankel had asked for a deposit of £5,000. He gave me to understand that he was a wealthy man dealing in furs, rubber and timber. Mr. Ojikutu on my recommendation agreed to send me £5,300. I returned to London at the end of September, 1952. I called at the Nigerian Farmers and Commercial Bank at 85 Longlane to tell the Manager to expect this money. A few days passed and the money did not arrive. Mr. Coker the London Manager of the Farmers Bank offered to advance the money to me. Frankel came to the bank on 1/10/52 and was given a cheque for £500 on the Midland Bank. On 3/10/53 Mr. Frankel, Mr. McVicar and I again visited the Farmers Bank at Longlane. The Manager gave Mr. Frankel a further cheque on the Midland Bank for £4,500. The same afternoon the money arrived from Lagos and I paid the cheque for £5,300 to the Farmers Bank thus crediting my account with £300.

10

About the 6th October 1952 Frankel took Mr. Abudu and I to Luton in his car. We visited the Vauxhall Works and while Abudu and I waited outside Frankel interviewed someone whom he described as the Export Manager. Frankel then showed me about 25 new Bedford trucks and said they were part of his consignment. He then took us to London and showed me four new Bedford trucks saying that they were also his order. I cannot remember where this workshop is situated. Mr. Abudu knows where it is. Frankel took me to shipping agents whose last name was Hogg. Frankel went into the shipping office and brought out a man who told me he was the Manager. This man said he would ship 12 trucks to Lagos immediately he could find shipping space. Abudu was present. I cabled Ojikutu that everything was arranged and went to Holland and Western Germany. On my return from Germany I asked Frankel about the position of the trucks. He said the manufacturers would not deliver the trucks to him unless he paid a further deposit of £28,000, that he would find £10000 and that I should raise £15000. I said I could not get this amount and he said he would go to Lagos to see his representative and as well as Mr. Ojikutu the man whom I said that gave me the £5,000. Three days later I telephoned Frankel but he made excuses. A few days later we met and he said he had not found the money to pay for the trucks.

20

30

40

On 2/11/52 I returned to Nigeria and met Mr.

Ojikutu and told him what had happened. I advised against advancing any further money to Frankel. About the middle of November I met Mr. McVicar in the shop of Mr. Olayinka at 39 Idumagbo Avenue Lagos and in the presence of the latter McVicar told me that Mr. Frankel would be coming to Lagos and asked me to sponsor him. I would not do this. A few days later Frankel and McVicar met me at the same shop. I asked about the trucks but he said he wanted to see Mr. Ojikutu. We went to Mr. Ojikutu's house and Frankel asked for £20,000 which he later reduced to £15,000. McVicar was present during this discussion. I advised Ojikutu not to pay any more money. On 15/11/52 Mr. Ojikutu told me that he was convinced by Frankel and he has had a written agreement about the transaction from Frankel. On 17/11/52 I saw Frankel at 39 Idumagbo Avenue Lagos in the company of W.E. McVicar. Frankel said he had got the money from Ojikutu.

10

20

I got nothing from Frankel.

In May this year Frankel and McVicar called at 181 Idumagbo Marina and Frankel told me he was in Lagos at the request of Ojikutu. That was the last occasion I saw Frankel.

30

W.E. McVicar told me that he came to Nigeria as an employee of Frankel. Frankel used to send £100 monthly to McVicar which for a time was paid through my account at Merchant Bank Lagos. Frankel told me he wanted to deal in timber and rubber in Lagos and that McVicar was here on his behalf.

I am prepared to travel to London to give evidence against Frankel if required.

Read over and certified correct.

(Sgd.) O. OMOTAYO: 11/12/53.

The above statement was made and signed in my presence:-

(Sgd.) ?
Cpl. 1061 "X".

Plaintiff's
Exhibit

"EE"

Statement of
Omotayo.

11th December,
1953

- continued.