

~~E.H.L.C. 3.~~

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1951

No. 49 of 1948.

**In the Privy Council.**

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

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**BETWEEN**

**KOFI SUNKERSETTE OBU** (Defendant) - - - - *Appellant*

**AND**

**A. STRAUSS & COMPANY LIMITED** by their Attorney  
**ROBERT SIMMONS** (Plaintiffs) - - - - *Respondents.*

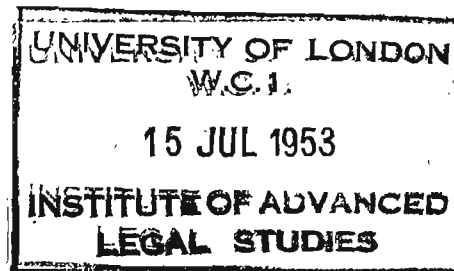
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**RECORD OF PROCEEDINGS.**

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**A. L. BRYDEN & COMPANY,**  
CRAIG'S COURT HOUSE,  
25 WHITEHALL,  
LONDON, S.W.1,  
*Solicitors for the Appellant.*

**WILLIAM EASTON & SONS,**  
43 LONDON WALL,  
LONDON, E.C.2,  
*Solicitors for the Respondents.*

**INSTITUTE OF ADVANCED  
LEGAL STUDIES.**

**25, RUSSELL SQUARE.**

**LONDON,**

**W.C.1.**

**In the Privo Council.**  
UNIVERSITY OF LONDON  
W.C.1.  
15 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

**ON APPEAL**

WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION).

BETWEEN

KOFI SUNKERSETTE OBU (Defendant) - - - - *Appellant*

AND

A. STRAUSS & COMPANY LIMITED by their Attorney ROBERT  
SIMMONS (Plaintiffs) - - - - *Respondents.*

**RECORD OF PROCEEDINGS**

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# In the Privy Council.

## ON APPEAL

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

BETWEEN

KOFI SUNKERSETTE OBU (Defendant) - - *Appellant*

AND

10 A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS (Plaintiffs) - - *Respondents.*

# RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

Suit No. 24/1945.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court holden at Kumasi.

Between A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs

and

20 KOFI SUNKERSETTE OBU - - - - Defendant.

To: Kofi Sunkersette Obu of Kumasi.

You are hereby commanded in His Majesty's name to attend before this Court at Kumasi on Saturday, the 14th day of July, 1945, at 8.30 o'clock in the forenoon, then and there to answer a Suit by A. Strauss & Company Limited by their Attorney Robert Simmons of Kumasi against you.

30 The Plaintiffs claim from the Defendant the sum of £365.8.4d. being balance due by the Defendant to the Plaintiffs in respect of moneys drawn by him for his personal benefit from funds managed by him as agent and trustee for the Plaintiffs under an agreement dated the 19th day of April, 1943 between August 1942 to December 1944 both inclusive.

\*2. The sum of £6,838.18.11 being the balance owing by the Defendant to the Plaintiff on general account for advances and credits as stated in the Ledger kept by the Defendant.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

No. 1.  
Writ of  
Summons,  
19th June  
1945.

\*Claims  
2 & 3  
added by  
leave of  
Court.  
(It'd.)  
R.Y.O.  
for  
R.D.C.  
Ksi.  
3/8/45

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

\*3. A declaration that the lease dated the 15th September, 1942 and made between Kodwo Esiam of Anyinasu, Lessor, and Defendant as Lessee of land at Anyinasu and the lease dated 1st October 1942 and made between Kweku Atta as lessor and the Defendant as Lessee of land at Aboabo were entered into by the Defendant for and on behalf of the Plaintiff and that the Plaintiff is entitled thereto.

No. 1.  
Writ of  
Summons,  
19th June,  
1945,  
*continued.*

Issued at Kumasi the 19th day of June, 1945.

		£	s.	d.
Sum claimed .. .. .	{	365	8	4
Court fees .. .. .	{	6,838	18	11
Bailiff's fees . . . . .	{	8	0	0
		15	5	0
		1	0	0
Total .. .. .		£7,227	13	3

W. H. IRWIN,  
District Magistrate for Judge.

CERTIFICATE OF SERVICE BY BAILIFF.

Upon the 21st day of June, 1945, the summons was served by me on Kofi Sunkersette Obu, of Kumasi, Defendant. This I did by serving a copy of the above summons on the said Kofi Sunkersette Obu, Defendant 20 personally at Kumasi.

J. W. KHARTOE,  
Bailiff.

No. 2.  
Court  
Notes,  
14th July,  
1945.

No. 2.  
COURT NOTES.

14.7.45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Saturday the 14th day of July, 1945, before His Honour Mr. Justice SMITH.

A. STRAUSS & CO. by Attny. ROBERT SIMMONS 30

V.

K. S. OBU

Cawston for Plaintiff.

Benjamin for Defendant.

Disputes claim, admits agreement 19th April, 1943. Says will counter-claim for commission.

Adjourned to 26th for hearing.

A. C. SMITH.

No. 3.

## COUNTER-CLAIM by Defendant.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court, Kumasi.

In the Matter of—

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs

*versus*

KOFI SUNKERSETTE OBU - - - - Defendant.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

No. 3.  
Counter-  
claim by  
Defendant,  
20th July,  
1945.

10 Please TAKE NOTICE that at the trial of the abovenamed case the Defendant will counter-claim and he hereby Counter-claims against the Plaintiffs for an account to be taken between them of all Rubber shipped by the Defendant to the Plaintiff Company in Europe from August 1942 to January 1945 inclusive and for the Court to order payment of what is found due to the Defendant on the taking of the said account; and the Defendant further claims commission on all the Rubber purchased by him for the Plaintiff Company.

Dated at Kumasi this 20th day of July, 1945.

H. A. H. BENJAMIN,  
Solicitor for Defendant.

20 The Registrar,  
Divisional Court,  
Kumasi.

And to :—

A. Strauss & Company, Limited,  
by their Attorney,  
Robert Simmons,  
Kumasi.

Filed 20/7/45

H. C.,

for R. D. C. Ksi.

30

Upon the 21st day of July, 1945, I served a copy of this Defendant's Counter-claim on J. J. Peele & Co., Solicitors for Plaintiffs, through their clerk Mr. Robert Arthur personally at Kumasi.

J. W. KHARTOE,

Bailiff.

21/7/45.

## COURT NOTES of Counsels' Opening Statements.

In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).

26/7/45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Thursday the 26th day of  
July, 1945, before His Honour Mr. Justice SMITH.

24/45—

STRAUSS &amp; CO. LTD.

V.

KOFI SUNKERSETTE OBU

10

Cawston for Plaintiff (Absent).

Benjamin for Defendant.

Adjourned to 2nd August for mention.

A. C. S.

2/8/45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Thursday the 2nd day of  
August, 1945, before His Honour Mr. Justice SMITH.

24/45—

STRAUSS &amp; CO. LTD.

V.

K. S. OBU.

20

Adjourned to 3rd August.

A. C. S.

J.

3/8/45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Friday the 3rd day of August,  
1945, before His Honour Mr. Justice SMITH.

24/45.—

STRAUSS & CO. LTD per  
Attorney ROBERT SIMMONS

V.

KOFI SUNKERSETTE OBU.

30

Cawston for Plaintiff.

Benjamin for Defendant.

*Cawston* :—

Claim for money owing on Defendant's personal account.

*Benjamin* :—

Defendants have filed a counter-claim.

40

No. 4.  
Court  
Notes of  
Counsels'  
Opening  
Statements,  
26th July—  
3rd August  
1945.

*Cawston* :—

I gave notice to Defendant to produce all original cables and letters received and copies of all sent and a specific notice to produce correspondence in this bundle.

(Copy now handed to Benjamin)

I have all originals and original copies in Court for reference, if wanted.

(Bundle admitted by consent, subject to any corrections the originals and original copies may reveal.)

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

No. 4.

Court  
Notes of  
Counsels'  
Opening  
Statements,  
26th July—  
3rd August  
1945,  
*continued.*  
Exh. " 1."

10

**PLAINTIFFS' EVIDENCE.**

No. 5.

**Victor Farrell Easmon.**

VICTOR FARRELL EASMON, sworn, states :—

*1st Witness for Plaintiffs.*

*Examination-in-Chief* :—

One of the managing accountants of Cassleton Elliott. My firm have for some time been the accountants for the Plaintiffs. I have been in charge of the accounts of Plaintiffs' transactions with Defendant. Early in May, 1945, I received these two ledgers from Mr. Simmons. This is one of the ledgers. At folios 160-1 is K. S. Obu's personal account from 1st August, 1942 to 30th November, 1944. This shows a balance debit £365.8.4. The calculations are correct. This is the ledger from which Plaintiffs' Profit and Loss accounts have been prepared. This Ledger is the Individual Ledger. This is the Assets Ledger. At folios 8-10 is a Building Account. The balance brought forward is from an earlier ledger which we haven't got. Both these ledgers handed to me to draw up a Profit and Loss account for the Plaintiff firm.

*Cross-examined* :—

There is no heading in either ledger to say what they are. I describe them by the nature of their contents.

*Re-examined* :—

I have had a number of interviews with Defendant and Mr. Fynn, Defendant's bookkeeper, over these accounts. They have seen both these ledgers. (Fynn identified.)

*Plaintiffs'  
Evidence.*

No. 5.

Victor  
Farrell  
Easmon—  
Examina-  
tion-in-  
Chief,  
3rd August  
1945.

Exh. " 2."

Exh. " 3."

Cross-  
examina-  
tion.

Re-  
examina-  
tion.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

**No. 6.**

**John Aggrey Fynn.**

**JOHN AGGREY FYNN, sworn, states :—**

*2nd Witness for Plaintiffs.*

*Plaintiffs'  
Evidence.* **Examination-in-Chief :—**

No. 6.  
John  
Aggrey  
Fynn.  
Examina-  
tion-in-  
Chief,  
3rd August  
1945.  
Exh. " 2. "  
Exh. " 3. "

Bookkeeper. Kept books for Defendant in connection with his rubber business. Defendant gave me this ledger to check for him. His own bookkeeper was away. I checked it with the Journal and Cash Book which he gave to me and found it correctly posted. Entry 1-17 September cash for car £325. I checked in April, 1943, and the balance then was £318.11.8. I checked books in Defendant's office. I have also called on Mr. Easmon at Cassleton & Elliott about these books. Last time about 10  
October-November, 1944. Mr. Easmon then had the books. I went to help him check the books. Don't know when they were returned to Defendant. I didn't check the Building Account in this ledger. I saw it in Defendant's office and he handed it to me to take to Cassleton and Elliott.

*Cross-  
examina-  
tion.*

**Cross-examined :—**

Took books to Cassleton & Elliott about twice. I didn't help check them. Defendant had the books in October-November, 1944. I took 20  
them to Cassleton & Elliott some time last year.

*Re-  
examina-  
tion.*

**Re-examined :—**

They are auditors. Handed to them for audit. Handed books to Easmon and told him Obu had sent them. Easmon knows me as a bookkeeper.

No. 7.  
Robert  
Simmons.  
Examina-  
tion-in-  
chief,  
3rd August  
1945.

**No. 7.**

**Robert Simmons.**

**ROBERT SIMMONS, sworn, states :—**

*3rd Witness for Plaintiffs.*

**Examination-in-Chief :—**

I hold a Power of Attorney from Plaintiffs. A Surveyor. Came here to investigate Plaintiffs' business with Defendant. Arrived November, 1944. Met Defendant at Cape Coast. I saw him almost daily for a period of 19 days, until 19th December. Saw him 11 times.

Exh. " 4. "

This Agreement bears Defendant's signature, which I know. He won't get any commission unless he does enough business.

Exhs. " 2 "  
and " 3. "

Defendant handed me these two ledgers in May, 1945. I asked for them in April and Defendant told me that Mr. Fynn had them, and I handed them to Cassleton & Elliott. (Exhibits " 2 " and " 3 " admitted.)

Folios 15-16: A Strauss & Co. Ltd. London Account. From 40  
September, 1942 to October, 1944. Shows balance owing to Plaintiffs as £6,838.18.11. Handwriting changes end July, 1944.



I know Plaintiffs authorised advance of £250 to Defendant to buy a car.

On folios 20 and 21 Cape Coast are two mud brick buildings 20' x 20' with old corrugated iron roofs. I estimate cost about £35-£40 each. I have experience of building in Africa. Huts built—one for smoking and curing rubber and the other as a store-room. Huts had plank doors and windows and earth floors. Bamboo racks in smokehouse. Store-room full of equipment for processing rubber. I understand the lots belong to Defendant. On a hill. Other nice houses in the neighbourhood. Not suitable site for smoke-house. Next to the huts a big house was being built for Defendant's brother and a large quantity of building material there. The two might be useful as store-rooms to the house. No sign of the smokeroom ever having been used. Walls and roof not smoked. Two more sheds almost identical built at Aboabo, near Kumasi, for Company's business, by Defendant, but these have cement floors. I estimate their cost at £60-£80 each. Walls about 9 feet high. At Cape Coast also, the frame in bush sticks of an open shed about 20' x 10'. No palm roof. At Aboabo similar shed with a palm roof. Cost of sheds not more than £10 each.

20 Letter from Defendant to Moore 10/10/42 remitting £40 for Cape Coast buildings. The Cape Coast Buildings quite useless and 30-40 miles from nearest source of rubber. The rubber estates from which rubber obtained were leased by Defendant for Plaintiffs. Leases in Defendant's name.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

*Plaintiffs'  
Evidence.*

*No. 7  
Robert  
Simmons.  
Examina-  
tion-in-  
chief,  
3rd August  
1945,  
continued.*

"1," p. 68.

---

No. 8.

**PLAINTIFFS' APPLICATION to Amend Claim and Order thereon.**

*Cawston :—*

I ask to amend claim by adding to claim the following :—

2. The sum of £6,838.18.11 being the balance owing by the Defen-  
30 dant to the Plaintiffs on general account for advances and credits as stated in the Ledger kept by the Defendant.

3. A declaration that the Lease dated the 15th September, 1942, and made between Kwodwo Esiam of Anyinasu, Lessor, and Defendant as Lessee of land at Anyinasu and the lease dated 1st October, 1942 and made between Kwaku Atta as Lessor and the Defendant as Lessee of land at Aboabo were entered into by the Defendant for and on behalf of the Plaintiffs and that the Plaintiffs are entitled thereto.

*Benjamin :—*

40 I object. We have been taken by surprise. The two claims are afterthought.

Amendment allowed.

---

*No. 8.  
Plaintiffs'  
applica-  
tion to  
Amend  
Claim and  
Order  
thereon,  
3rd August  
1945.*

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

*Plaintiffs'  
Evidence.*

No. 7 .  
Robert  
Simmons.  
Examina-  
tion-in  
Chief,  
3rd August  
1945,  
*continued.*

Exh. "2."  
Exh. "1,"  
p. 10.  
Cross-  
examina-  
tion.

Exh. "5."

Re-  
examina-  
tion,  
4th August  
1945.

Exh. "2."

Exh.  
"6A."

No. 7 (contd.).

Robert Simmons.

The cost of the leases and the rent the Defendant charged to Strauss and Co. The two leases are now in the custody of Plaintiffs' solicitors. Local price of rubber now about £120 a ton for first grade. Defendant has only shipped 104 tons of rubber all of which has been paid for. Payments shown in Strauss a/c in ledger.

I received this letter from Director, Rubber production. Defendant's books show that the first amount credited but the other two are not in.

Defendant's book shows lorry bought £250. In 1942 lorry damaged. 10 Defendant told me no salvage and no insurance.

As from 1/1/45 Plaintiff paid Defendant £20 per month and provided office and travelling.

*Cross-examined :—*

I came to investigate and continue if it were profitable. I transferred one bookkeeper from Kumasi to Konongo and appointed agent at £5 per ton commission. In Gold Coast since October, 1944. About 3 tons shipped since I arrived. Konongo business would have been successful if Government hadn't raised the price. London price first grade £130. Local price £120. 20

Defendant's bundle of correspondence.

The Cape Coast buildings on Defendant's land, for which he charged no rent. The other buildings on the leased properties. In both cases Defendant charged the Company for them. Don't know what Defendant paid for corrugated iron for roofing. It was second-hand. 1/- a square foot would be a very high price. Don't know who built the smoke-houses. Commission payable at Plaintiffs' discretion. I was sent out because of Plaintiffs' losses. I assume Plaintiffs bore cost of cables after he was appointed agent.

4/8/45. 30

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Saturday, the 4th day of August, 1945, before His Honour Mr. Justice SMITH.

24/45.

STRAUSS

V.

OBU.

All present.

ROBERT SIMMONS.

3rd Witness for Plaintiffs. 40

*Re-examined :—*

Folio 84—Cables, etc., Account. Large charges for cables. Individual cables over £20.

This the Cash Book handed to me by Defendant. This shows transfers from London. Cash Book open 3rd August, 1942—May, 1943.

Folio 126 contains Barclays Bank Account, December, 1942—January, 1945.

This is Cash Book April, 1943—December, 1944. These books appear to contain full record of all transactions except the last two payments of Rubber Bonus.

Folio 101. Cost of stamping leases charged to Plaintiffs, also drinks to Chief.

This is the Auditors' extracts from the Defendant's accounts as to cost of survey and legal expenses.

10 I was instructed to find out what Defendant had done with the last remittance of £3,000. I am satisfied that the Defendant received the money and entered it in his accounts and recorded in books how he spent it. Asked to find out how other remittances totalling £5,000 were disposed of. Further remittance £200, September, 1944. I gave instructions to the Auditors to make necessary investigations.

Letter 2nd February, 1943—Peele & Co. to Defendant—asking for mortgage of Anyinasu and Pietersen properties and Aboabo properties.

*Further cross-examination :—*

20 I brought some jewellery from Plaintiffs to Defendant. We agreed for Auditors to keep jewellery until accounts found correct. Defendant's books show all remittances. Strauss & Co. haven't opened up any new firm here.

*In the Supreme Court of the Gold Coast (Divisional Court).*

*Plaintiffs' Evidence.*

No. 7.  
Robert Simmons.

Re-examination,  
4th August 1945,  
*continued.*  
Exh. " 2."  
Exh. " 6B."  
Exh. " 2."  
Exh. " 5."

Further Cross-examination.

No. 9.

F. E. Lewis.

FRANK ERNEST LEWIS, sworn, states.

*4th Witness for Plaintiffs.*

*Examination-in-Chief :—*

30 Member, Cassleton Elliott & Co., Accountants to Plaintiffs in Gold Coast. Also did Defendant's accounts. These account books are Strauss & Co.'s books which are audited by my firm. Easmon has done some of the work. Never met Fynn. Heard of him.

This File contains Bank's statements—Barclays, Kumasi—from 1st April, 1943 to 31st March, 1945. There should be an earlier file but I haven't seen. Cash has been reconciled with Bank statements to December, 1944.

Folios 160–1 show amount actually owing by Defendant to Plaintiffs as at 1st December, 1944.

No. 9.  
F. E. Lewis.  
Examination-in-chief,  
4th August 1945.

Exh. " 7."

Exh. " 2."

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

Folio 6 shows credit to Strauss to be accounted for by assets. Books have not yet been fully audited and can't tell yet whether there is a shortage of assets or not. If there is any shortage, Defendant is responsible to Plaintiffs.

*Cross-examined :—*

*Plaintiffs'  
Evidence.*

Folios 97-8—Rubber Stocks for Shipment A/c.

Folio 63—Rubber Gross Profit A/c—shows a loss of £653.0.2.

No. 9.  
F. E. Lewis.  
Cross-

Cash book on the face of it appears to show all transactions of receipts and payments.

examina-  
tion, 4th  
August  
1945,  
Exh. " 2. "  
Exh. " 8. "

These are two Invoice Files of Rubber Shipments. 10

I haven't seen any account sales from Strauss and Company. I should want to see one. Necessary as a check on invoices.

If account sales show rubber sold for more or less than invoice prices, would have to make adjusting entries.

Adjourned to September 14th.

(Books and vouchers put in as exhibits to be released to Auditors.)

A. C. SMITH.  
J.

23/10/45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI. 20

At a Divisional Court held at Kumasi on Tuesday, the 23rd day of October, 1945, before His Honour Mr. Justice SMITH.

STRAUSS & CO.

V.

OBU

Cawston for Plaintiffs.

Benjamin for Defendant.

FRANK ERNEST LEWIS :—

*4th Witness for Plaintiffs.*

Cross-  
examina-  
tion.  
*continued.*

*Cross-examination, contd. :—*

30

All the expenses in the accounts went through Defendant's books as business expenses. Defendant is Plaintiffs' agent here and is not responsible for bona fide expenses. We have accepted the vouchers which Defendant submitted. I don't know if rubber prices in the accounts are ex-scale prices. The prices in the vouchers are the buying prices and there are further charges for transport to Takoradi, packing, etc. No information in books as to further costs after loading at Takoradi or what profits, if any, Strauss made. I don't know if Government pays railway transport. It may be free. I have not received any account sales from London—only a statement of account which is at folio 31 of our report.

40

*Re-examined :—*

I have statement of accounts from Strauss showing a profit in London on sales of rubber shipped by Defendant of £1,553.16/-. This would have to be set off against any local loss to arrive at the nett profit or loss. Local account shows a loss of £4,954.17.11, making a nett loss of £3,000 odd. Shipping documents against which Banks advance 90 per cent. are F.O.B. prices. The transport charges are very small, and are not necessarily for rubber.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

*Plaintiffs'  
Evidence.*

10 Properties valued by Mr. Laing at £120. Seen no contractor's receipts of costs of buildings produced.

No. 9.  
F. E. Lewis.

Advances referred to in page 37 of my report. Produce advances £686.10/-. Books show no collections, but now find £221.16.10 collected. People to whom advances made appear to be mostly cocoa brokers, etc.

Re-examina-  
tion.

p. 40.

p. 49.

p. 37.

Plaintiffs paid for all expenses of the lease. Defendant charged them with them.

No. 10.

John Stephen Mends.

JOHN STEPHEN MENDES, sworn, states :—

*5th Witness for Plaintiffs.*

20 *Examination-in-Chief :—*

Chief Clerk, Rubber Production, Kumasi. I produce declaration of Defendant of rubber held by him at 29th January, 1945—total 2,962 lbs. Value of rubber from 10d. to 1/2d per lb.—at 1/3d. lb. value £180.

No. 10.

John  
Stephen  
Mends.

Examina-  
tion in-

chief,

23rd

October

1945.

Shipments of 1,739 lb. rubber by Strauss & Co. in June, 1945. Value at 1/3d. £108.

In February, 1945 Defendant shipped 1,680 lb. at 1/3d. worth £105. No other shipments since January, 1945.

*Cross-examined Benjamin :—*

30 There is a difference between the price paid to the rubber producer and the F.O.B. price. The prices I have given are the prices paid to producers. I don't know what the shipping price is. Government pays all transport charges from buying centre to Takoradi. It doesn't pay other handling charges. Transport charges only paid for rubber bought from small producers, not from the large plantations. I don't know if Government pays C.I.F. charges to England. I don't know if rubber producers also deal in cocoa.

Cross-  
examina-  
tion.

*Re-examined :—*

Government pays a bonus of 4d. per lb. on all Funtumia rubber to the shipper. He has been drawing rubber bonuses.

Re-  
examina-  
tion.

40 Case for Plaintiffs.

## DEFENDANT'S EVIDENCE.

No. 11.

Kofi Sunkersette Obu (Defendant).

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

*Defendant's  
Evidence.* KOFI SUNKERSETTE OBU, sworn, states :—  
*Defendant.*

No. 11.  
Kofi

Sunker-  
sette Obu  
(Defen-  
dant).

Examina-  
tion in-  
chief,  
23rd  
October  
1945.

Exh. " 9."

Exh. " 5."

Exh. " 10."

*Examination-in-Chief :—*

Lives at Kumasi. Rubber shipper. I know Plaintiffs. They contacted me in 1942. First cable 11th April, 1942.

These are the cables received from Plaintiffs and my replies.

Plaintiffs didn't agree to a Syndicate and said Defendant's share of 10 total net profits would be made retrospective. I have kept the accounts audited by Cassleton Elliott. I asked Plaintiffs to open a credit for me to ship on consignment, but they never did so until Mr. Bennett arrived.

This is copy letter—Bennett's letter to Strauss 21/11/42.

First shipment sent away on consignment before Bennett arrived. Strauss cable 23/10/42.

I took the leases on my own account with money which Plaintiffs advanced to me. Bennett objected to my using Strauss & Co.'s name. All the credits at Bank in my name. Signed agreement on 19th April, 1943. Before agreement signed I told him Strauss & Co. should take 20 them over and give Power of Attorney to run business and I would go to the landlords and settle the terms of their taking over. Bennett said they wouldn't take them over as they may be saddled with damages and they wouldn't undertake responsibility. They expected me to charge them.

Exh. " 11." This is the Bank Credit Note for £5,000. I have drawn only the prices which Government authorises to be paid to the farmers. They never paid F.O.B. prices. F.O.B. Takoradi price £130.13.4 per ton. I only drew £108, the gazetted price. The F.O.B. price is still the same.

Exh. " 12." Gazette 68—30th September, 1942. 30

I put up the buildings in 1942 with Strauss' money. Some of the money went with the house. Bennett knew I was doing this. Corrugated iron very expensive then. That is why buildings cost so much.

I counter-claim for account sales. Not got them yet.

Cross-  
examina-  
tion.

*Cross-examined :—*

Plaintiffs never accepted syndicate proposition, but they continued to make advances to me. I asked for £1,000 for factories. Didn't spend quite. Moore my agent in Cape Coast. He received rubber. Not caretaker. I didn't pay him £11 as caretaker for store. I haven't signed mortgages transferring leases to Strauss & Co. 40

" B " 27. All my expenses entered in the books. Didn't get Plantation referred to in cable 15/8/42—" Planting more para on our land."

Cabled "Plantations agreement executed yesterday."

*Re-examined* :—

November, 1943, Martin wrote me congratulating me on output. Mead's letters re security and mortgages. Bennett saw Mead and told him not prepared to accept leases but only to take mortgages. Total shipments 104 tons.

Case for Defendant.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

*Defendant's  
Evidence.*

No. 11.  
Kofi  
Sunker-  
sette Obu  
(Defen-  
dant).  
Re-  
examina-  
tion.

28.

No. 12.  
Court  
Notes of  
Counsel's  
Addresses,  
23rd  
October  
1945.

---

No. 12.

COURT NOTES of Addresses of Counsel on behalf of both parties.

10 *Cawston* :—

Advance £5,000 to Defendant and not properly accounted for.

*Benjamin* :—

Onus on Plaintiffs not discharged to produce account sales. Can't accept their figure of £1,550 as nett profit in London. Submits Obu was not the agent of the Plaintiffs before agreement of 19th April, 1943. Plaintiffs estopped from saying leases acquired for them.

---

No. 13.

JUDGMENT of Divisional Court (Smith, J.).

Judgment for Plaintiffs on claim :—

20

£375. 8. 4 Personal Account.

729. 7. 0 Building Account.

---

£1104.15. 4

---

Judgment for Plaintiffs on Defendant's counter-claim.

Costs to Plaintiffs assessed at £51.11/-.

A. C. SMITH, J.

No. 13.  
Judgment  
of Divi-  
sional  
Court  
(Smith, J.,)  
dated 23rd  
October  
1945.

No. 14.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

**MOTION for Conditional Leave to Appeal to West African Court of Appeal.**

**IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court, Kumasi.**

Suit No. 24/1945.

No. 14.  
Motion  
for Con-  
ditional  
Leave to  
Appeal,  
25th  
October  
1945.

In the Matter of—

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS (Plaintiffs) - - - Respondents

V.

KOFI SUNKERSETTE OBU of Kumasi (Defendant) Appellant. 10

EX PARTE MOTION by Harry Augustus Hayfron Benjamin, Barrister and Solicitor of Kumasi of Counsel for and on behalf of the Defendant-Appellant herein respectfully asking this Honourable Court for conditional leave to appeal from the judgment delivered by this Honourable Court on or about the 23rd day of October, 1945, to the West African Court of Appeal (Gold Coast Session) and for stay of execution pending the hearing and determination of the said appeal and for any such further or other order as to this Honourable Court may seem just in the premises.

COURT to be moved on Saturday, the 3rd day of November, 1945, 20 at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Kumasi this 25th day of October, 1945.

H. A. H. BENJAMIN,  
Solicitor for Appellant.

The Registrar,  
Divisional Court,  
Kumasi.

Filed 26/10/45.

H.C.,  
for R.D.C.,  
Kumasi.



No. 15.

**AFFIDAVIT of Defendant in support of Motion for Conditional Leave to Appeal.**IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court, Kumasi.

Suit No. 24/1945.

Filed 26/10/45.

H.C.,

for R.D.C.,  
Kumasi.*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*No. 15.  
Affidavit  
of Defen-  
dant :  
Sworn and  
filed,  
26th  
October  
1945.

10 In the Matter of :—

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS (Plaintiffs) - - - Respondents

V.

KOFI SUNKERSETTE OBU of Kumasi (Defendant) Appellant.

I, KOFI SUNKERSETTE OBU of Kumasi, Merchant, make oath and  
say as follows :—

1. That I am the Defendant-Appellant in the above-named case.
2. That on or about the 23rd day of October, 1945, judgment was  
delivered herein against me for the sum of £1,104.15.4d. with costs assessed  
20 at £51.11/- by this Honourable Court.
3. That my counter-claim for accounts was dismissed.
4. That I am aggrieved by and dissatisfied with the said judgment  
against me on the counter-claim and desire to appeal therefrom to the  
West African Court of Appeal (Gold Coast Session).
5. That I am swearing to this affidavit in support of Motion respect-  
fully asking this Honourable Court for conditional leave to appeal from the  
said judgment delivered by this Honourable Court on or about the 23rd day  
of October, 1945, to the West African Court of Appeal (Gold Coast Session)  
and for Stay of Execution pending the hearing and determination of the  
30 said appeal and for any such further or other order as to this Honourable  
Court may seem just in the premises..

Sworn at Kumasi this 26th day of October,  
1945.

Before me,

F. A. H. BOTCHEY,

Commissioner for Oaths.

No. 16.

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

**ORDER granting Conditional Leave to Appeal to West African Court of Appeal.**

3/11/45.

No. 16.  
Order  
granting  
Con-  
ditional  
Leave to  
Appeal,  
3rd  
November  
1945.

IN THE SUPREME COURT OF GOLD COAST, ASHANTI.

At a Divisional Court held at Kumasi on Saturday, the 3rd day of November, 1945, before His Honour Mr. Justice KORSAH.

A. STRAUSS & CO. LTD.

V.

KOFI SUNKERSETTE OBU.

Mr. Benjamin for Defendant-Appellant. 10

Applies for conditional leave to appeal. Leave granted on the following conditions :—

1. Appellant to deposit £30 for the preparation and transmission of record of appeal.
2. To give a bond with two sureties to be justified in the sum of £100.
3. To serve notice of this appeal on Plaintiffs-Respondents and/or all interested parties.
4. Conditions to be fulfilled within one month from date hereof.

K. A. KORSAH. 20  
J.

No. 17.  
Notice of  
Appeal,  
9th  
November  
1945.

No. 17.

**NOTICE OF APPEAL.**

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

Divisional Court, Kumasi.

Suit No. 24/1945.

In the Matter of

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs-  
Respondents 30

vs.

KOFI SUNKERSETTE OBU of Kumasi - - Defendant-  
Appellant.

PLEASE TAKE NOTICE that the Defendant-Appellant herein intends to appeal and he hereby appeals from the judgment delivered herein on or about the 23rd day of October, 1945, by this Honourable

Court to the West African Court of Appeal (Gold Coast Session) WHEREFORE Conditional Leave to appeal was on the 3rd day of November, 1945, granted by this Honourable Court and NOTICE of such appeal is hereby given to you.

*In the Supreme Court of the Gold Coast (Divisional Court).*

Dated at Kumasi this 9th day of November, 1945.

H. A. H. BENJAMIN,  
Solicitor for Defendant-Appellant.

No. 17.  
Notice of Appeal, 9th November 1945, continued.

10 The Registrar,  
Divisional Court,  
Kumasi.

And to :—

A. Strauss & Company Limited,  
By their Attorney, Robert Simmons,  
Kumasi.

Filed 10/11/45.

H. C.,  
for R. D. C., Ksi.

20 Upon the 10th day of November, 1945, a copy of this Notice to appeal was served by me on J. J. Peele & Co., through Mr. Josiah Dadzie personally at Kumasi.

J. C. ANKRAH,  
Bailiff.  
10/11/45.

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No. 18.

MOTION for Final Leave to Appeal.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court, Kumasi.

In the Matter of

30 A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs-  
Respondents

*versus*

KOFI SUNKERSETTE OBU of Kumasi - - Defendant-  
Appellant.

No. 18.  
Motion for Final Leave to Appeal 5th December 1945. Filed 6th December 1945.

EX-PARTE MOTION by Harry Augustus Hayfron-Benjamin, Barrister and Solicitor of Kumasi of Counsel for and on behalf of the Defendant-Appellant herein respectfully asking this Honourable Court for FINAL LEAVE to appeal from the judgment delivered by this

*In the  
Supreme  
Court of the  
Gold Coast  
(Divisional  
Court).*

Honourable Court on or about the 23rd day of October, 1945, to the West African Court of Appeal (Gold Coast Session) and for any such further or other order as to this Honourable Court may seem just in the premises.

COURT to be moved on Saturday, the 8th day of December, 1945, at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

No. 18.  
Motion for  
Final Leave  
to Appeal,  
5th  
December  
1945.  
Filed 6th  
December  
1945,  
*continued.*

Dated at Kumasi this 5th day of December, 1945.

H. A. H. BENJAMIN,  
Solicitor for Defendant.

The Registrar,  
Divisional Court,  
Kumasi.

10

Filed 6/12/45.

H. C.,  
for R. D. C.,  
Kumasi.

No. 19.  
Affidavit  
of Defen-  
dant in  
support of  
Motion.  
Sworn 6th  
December  
1945.

No. 19.

**AFFIDAVIT of Defendant in support of Motion.**

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.  
Divisional Court, Kumasi.

In the Matter of

20

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs-  
Respondents

*vs.*

KOFI SUNKERSETTE OBU of Kumasi - - Defendant-  
Appellant.

I, KOFI SUNKERSETTE OBU of Kumasi, Merchant, make oath and say as follows :—

1. That I am the Defendant-Appellant in the above-named case.
2. That on or about the 3rd day of November, 1945, Conditional 30  
Leave to appeal was granted me by this Honourable Court.
3. That I have fulfilled all the conditions imposed herein within the  
period prescribed.

4. That I am swearing to this affidavit in support of Motion for Final Leave to appeal from the judgment delivered herein on or about the 23rd day of October, 1945, to the West African Court of Appeal (Gold Coast Session) and for any such further or other order as to this Honourable Court may seem just in the premises.

*In the Supreme Court of the Gold Coast (Divisional Court).*

Sworn at Kumasi this 6th day of } K. S. OBU.  
December, 1945.

No. 19.  
Affidavit of Defendant in support of Motion. Sworn 6th December 1945, continued.

Before me,

N'O. BADDOO,

10 Commissioner for Oaths.

Filed 6/12/45.

H. C.,

for R. D. C.,  
Kumasi.

No. 20.

ORDER granting Final Leave to Appeal.

No. 20.  
Order granting Final Leave to Appeal, 8th December 1945.

8/12/45.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

20 At a Divisional Court held at Kumasi, on Saturday, the 8th day of December, 1945, before His Honour Mr. Justice KORSAH.

A. STRAUSS & CO. LIMITED - - - Respondents

V.

KOFI SUNKERSETTE OBU - - - Appellant.

Mr. Benjamin for Appellant.

*Mr. Benjamin* :—

All conditions imposed have been fulfilled and I now apply for final leave.

*By Court* :—

30 Upon reading papers filed, and hearing Mr. Benjamin, Counsel for Appellant, it is hereby ordered that final leave be granted.

Granted accordingly.

K. A. KORSAH,  
J.

GROUNDS OF APPEAL.

No. 21.  
Grounds of  
Appeal,  
dated and  
filed 14th  
December  
1945.

IN THE WEST AFRICAN COURT OF APPEAL.

Between KOFI SUNKERSETTE OBU - - - Appellant  
and

A. STRAUSS & COMPANY LIMITED, by their  
Attorney ROBERT SIMMONS - - - Respondents.

The Appellant, being dissatisfied with the Judgment of the Divisional Court, Kumasi delivered on the 23rd day of October, 1945, and having obtained Final Leave to appeal therefrom dated the 8th December, 1945, 10 hereby appeals to the West African Court of Appeal on the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. Error in Law :—

(A) Because the accounts rendered did not show the true profits made by the Respondents.

(B) Because the Respondents failed to produce the account sales of all rubber shipped to them by the Appellant.

(C) Because certain items of the accounts which were admitted by the Respondents were not credited to the account of the 20 Appellant.

(D) Because the Agreement dated the 19th day of April, 1943, provided for commission to be paid to the Appellant which the learned Judge failed to consider.

(E) Because the Ayinasu Plantation belonged to the Appellant and the rubber produced from the said Plantation should have been credited to the Appellant's account at the ruling prices.

(F) Because from the beginning of the business to the 19th day of April, 1943, the Appellant was not the Agent of the Respondents and therefore rubber shipped to them during that period should 30 have been credited at the selling prices in England.

(G) Because the local accounts as compiled by the Auditors are incomplete and therefore no profit and loss account could have been struck.

(H) Because Mr. Robert Simmons' salaries and other charges ought not to have been debited to the Appellant's accounts nor could Mr. E. J. Bennett's salaries and charges be so treated.

2. Judgment was against the weight of evidence.

Dated at Kumasi this 14th day of December 1945.

The Registrar,  
West African Court of Appeal,  
Accra.

And to :—

A. Strauss & Company Limited,  
By their Attorney Robert Simmons,  
Kumasi.

10

H. A. H. BENJAMIN,  
Solicitor for Appellant.

Filed 14/12/45.

H.C.,  
for R.D.C.,  
Kumasi.

*In the  
West  
African  
Court of  
Appeal.*

No. 21.  
Grounds of  
Appeal,  
dated and  
filed 14th  
December  
1945,  
*continued.*

Upon the 14th day of December, 1945, copy of this Grounds of Appeal was served by me upon Messrs. J. J. Peele & Company, Solicitors for the Respondents personally at Kumasi.

ROBERT A. QUAYE,  
Bailiff.

No. 22.

20

**NOTICE to Amend Grounds of Appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL.**  
Gold Coast Session.

Between KOFI SUNKERSETTE OBU - - - Appellant  
and

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - Respondents.

30

PLEASE TAKE NOTICE that KOFI SUNKERSETTE OBU described as Appellant herein will ask leave of the Court at the hearing of his Appeal to amend his grounds of appeal by the addition of the following ground :—

(A) Because the Plaintiff Company not being locally registered could not bring the action herein and therefore have no *locus standi* in the suit.

Dated at Kumasi this 17th day of January, 1947.

(Sgd.) H. A. H. BENJAMIN,  
Solicitor for Appellant.

The Registrar,  
West African Court of Appeal,  
Accra.

And to :—

40 A. Strauss & Company Limited,  
By their Attorney Robert Simmons  
or their Solicitors J. J. Peele & Co.,  
Kumasi.

Filed 22/1/47 at 8.30 a.m.

D.N.

for Ag. Registrar  
West African Court of Appeal.

No. 22.  
Notice to  
Amend  
Grounds of  
Appeal,  
17th  
January  
1947.

*In the  
West  
African  
Court of  
Appeal.*

**CERTIFICATE OF SERVICE.**

Upon the 25th day of January, 1947, this Notice of Additional Grounds of Appeal was served by me upon John Mead, Esq., of Messrs. J. J. Peele & Co.

No. 22.  
Notice to  
Amend  
Grounds of  
Appeal,  
17th  
January  
1947,  
*continued.*

This I did by serving a copy of this Additional Grounds of Appeal on the said John Mead, Esq., of Messrs. J. J. Peele & Co., Solicitors for Respondents personally at Kumasi.

(Sgd.) ? NYANTEKYI,  
Bailiff.

**No. 23.**

10

**ORDER to Record Reasons for Judgment.**

No. 23.  
Order to  
record  
Reasons for  
Judgment,  
4th  
February  
1947.

4th February, 1947.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Tuesday the 4th day of February, 1947 : Before Their Honours Sir WALTER HARRAGIN, C.J., Gold Coast (President), LESLIE ERNEST VIVIAN M'CARTHY and MILES HAY MARTINDALE, JJ., Gold Coast.

(15) 38/45.

Civil Appeal.

A. STRAUSS & CO. LTD. by their Attorney ROBERT SIMMONS (Plaintiffs) - - - - - Respondents 20

V.

KOFI SUNKERSETTE OBU (Defendant) - - Appellant.

Appeal from Judgment of Smith, J., dated 23rd October, 1945.

Mr. C. F. Hayfron-Benjamin for Appellant.

Mr. Mead for Respondents.

Mr. Benjamin :

Additional Ground H added to Grounds of Appeal.

Admitted no objection.

Argues new Ground.

Then Ground la, b, c, g.

30

*Order :—*

The Court below to record the reasons for its judgment as recorded on page 18 of the typescript copy of the record and to consider any variation in the terms regarding stay of execution that may now appear just in view of the altered circumstances.

The costs of the day to be costs in the cause.

(Sgd.) WALTER HARRAGIN.



No. 24.

REASONS for Judgment of Smith, J.

IN THE SUPREME COURT OF THE GOLD COAST.

Divisional Court, Kumasi, Ashanti.

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS

V.

KOFI SUNKERSETTE OBU

REASONS FOR JUDGMENT.

*In the  
West  
African  
Court of  
Appeal.*No. 24.  
Reasons for  
Judgment  
of  
Smith, J.

10 While I have considerable doubt as to the power of the Appeal Court to make the Order of the 4th February, 1947, as a matter of courtesy to the Court I am quite prepared to give a summary of my reasons for the judgment in this case for the assistance of the Court in the hearing of the appeal.

*Record p. 1.*

The Plaintiffs claim, as amended, was for—

1. £365.8.4 owing by Defendant on his personal account.
2. £6,838.18.11d. balance owing by Defendant on general account.
- 20 3. A declaration that two leases obtained by the Defendant were entered into on behalf of the Plaintiffs and that the Plaintiffs were entitled thereto.

*Record p. 4.*

The Defendant counter-claimed—

- (1) for an account to be taken of all the Rubber shipped by Defendant and payment of any balance found due to him and
- (2) for commission on all rubber purchased by him for the Plaintiffs.

*Record pp. 102-3—Exhibit "4."*

30 The relationship of the parties was governed by an Agreement dated 19th April, 1943, under which the Defendant acted as the Agent of the Plaintiffs in the purchase and shipment of rubber upon the terms therein prescribed.

The Plaintiffs' claim on the personal account, though formally denied by Defendant's verbal pleading was not seriously contested and could not very well be, as it was clearly shown by the accounts kept by the Defendant himself.

*Record pp. 101A and 101B—See Exhibit "1"*

40 I now note however an apparent error in the amount for which I gave judgment under this heading. The Plaintiffs claimed £365.8.4d., the amount shown by the Defendant's account. In the Auditors' Balance Sheet however, this amount is given as £375.8.4d. (See p. 41 of Bundle B in trial Court docket) and I can now only suppose that I repeated this error in my judgment.

*In the  
West  
African  
Court of  
Appeal.*

No. 24.  
Reasons for  
Judgment  
of  
Smith, J.,  
*continued.*

As to part 2 of the Plaintiffs' claim, the Defendant's own accounts showed a heavy deficit (see Auditors' Statements at pp. 41-53 of Bundle "B" in trial Court docket) but I was unable to decide how much of this deficit was a genuine loss in the business and how much was a defalcation, though the general impression which the evidence gave me was that the Defendant had not properly applied or accounted for all the moneys which he had received from the Plaintiffs or on their account.

It was clear to me however that the Defendant had applied some of the money in erecting buildings on properties which belonged to himself or his brothers, which he claimed to be his own property and not the Plaintiffs, and that further he had charged the Plaintiffs for these buildings far more than they could possibly have cost (see evidence of Simmons—Record pp. 8-10 and Defendant Record p. 17). 10

Ex. "1." The Defendant's accounts of these expenditures will be found at pp. 101C and 101D of the record.

As however these buildings, or at least some of them, were used by the Defendant in carrying on the Plaintiffs' business, I considered that as the Defendant was keeping the buildings the Plaintiffs could properly be charged for their use. I therefore, in giving judgment for the amount spent on the buildings made the allowance which the Auditors had made by way of depreciation as appears at page 41 of Bundle "B" in trial Court docket, leaving the balance therein stated of £729.7.0d. 20

As to part 3 of Plaintiffs' claim, while I was of the opinion that originally the Plaintiffs might have been entitled to the declaration asked for, as the properties had been acquired with their money, the Plaintiffs had elected to accept the title deeds of these properties as security for the advances which they had made (see Exhibit "4"—Record p. 103).

Record pp. 74-9  
84-86 } and see Exhibit "1" 30  
and 88, 93, &c. }

They could not therefore now claim that the properties were theirs.

Record p. 102-3.

As to the Defendant's counter-claim, there was nothing in the Agreement (Exhibit "4") which obliged the Plaintiffs to account to him. He had to account to them.

Paragraph 6 of the agreement, providing for the Defendant's remuneration clearly stated "a commission is also to be paid to me by the Company which I have agreed to leave to the discretion of the Company."

Nothing is stated as to the basis upon which this commission, if given, is to be calculated, whether on total value of rubber shipped or on profits, or in any other way. 40

Record  
p. 15.

So far as the evidence went, the accounts showed a heavy deficit on the transactions in the Gold Coast and even if the profit made in London was taken into account (see evidence of Lewis)—Record p. 15—the Plaintiffs had still suffered a substantial loss in their dealings with the Defendant.

Furthermore the evidence as a whole revealed the Defendant as a plausible rogue, full of grand promises which he didn't fulfil and I could find no justification whatever for holding that the Plaintiffs ought to have exercised their discretion in the Defendant's favour.

I therefore gave judgment against the Defendant on his counter-claim.

(Sgd.) A. C. SMITH,  
Judge.

*In the  
West  
African  
Court of  
Appeal.*

No. 24.  
Reasons for  
Judgment  
of  
Smith, J.,  
*continued.*

No. 25.

COURT NOTES of Arguments.

10 9th December, 1947.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Tuesday the 9th day of December, 1947, before Their Honours Sir JOHN VERITY, C.J., Nigeria (Presiding J.), LESLIE ERNEST VIVIAN M'CARTHY, and JAMES HENLEY COUSSEY, JJ., Gold Coast.

(43) 38/45.

A. STRAUSS & CO. LTD.

V.

K. S. OBU

20 Benjamin for Appellant.

Mead for Respondent.

*Benjamin* :—

Agreement p. 102.

Judgment p. 18.

Reasons under Order of West African Court of Appeal 4.2.47.

Additional Ground (A) no power of attorney exhibited.

*Steven v. Schmidt* : Renner's Reports p. 770.

Evidence : what powers ? p. 8 and 11.

Grounds of Appeal 35-6. 1 (B), 1 (D) and 1 (G).

30 As to counter-claim p. 4. August 1942-January, 1945.

Exhibit 4 dated 19.4.43.

1 (B) Exhibit 5 p. 128-p. 108.

Halsbury 2nd Edition Vol. 1 p. 268 (para. 446).

*Harrington v. Churchward* 29 L.J. Ch. 521.

*Quantum meruit* on result of account.

1 (D) Exhibit 4 p. 103—"discretion."

*Bryant v. Flight* 151 E.R. p. 49.

*Bird v. M'Gahey* 175 E.R. p. 296.

1 (G) pp. 12 and 14.

40 Ground 2—Buildings—no evidence.

Personal account—deferred to account for commission.

No. 25.  
Court  
Notes of  
Arguments,  
9th  
December  
1947.

*In the  
West  
African  
Court of  
Appeal.*  
—  
No. 25.  
Court  
Notes of  
Arguments,  
9th  
December  
1947,  
*continued.*

*Mead :—*

*Stevens v. Schmidt*—plaintiff sued in his own name. Power of Attorney not questioned.

Power of Attorney is in Court, though not exhibited.

Terms : pp. 145, 126, 147.

Commission : pp. 102–3.

Fixed remuneration : also commission in discretion.

Personal account—not contested.

Building account—on Appellant's figures.

*Benjamin :—*

Judgment reserved.

10

(Sgd.) JOHN VERITY.

No. 26.  
Judgment  
of Court  
of Appeal,  
13th  
December  
1947.

No. 26.

**JUDGMENT of the Court of Appeal.**

13th December, 1947.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Saturday the 13th day of December, 1947, before Their Honours Sir JOHN VERITY, C.J., Nigeria (Presiding J.), LESLIE ERNEST VIVIAN M'CARTHY, and JAMES HENLEY COUSSEY, JJ., Gold Coast.

20

Civil Appeal No. 38 of 1945.

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS (Plaintiffs) - - Respondents

*versus*

KOFI SUNKERSETTE OBU (Defendant) - - Appellant.

**JUDGMENT**

Read by Coussey, J., Gold Coast.

In this suit the Plaintiffs (Respondents) obtained judgment against the Defendant (Appellant) on the first part of their claim for £375.8.4, on his personal account and for £797.7.0, on building account.

30

On the Appellant's counter-claim judgment was entered for the Respondents.

The trial Judge later transmitted to this Court a summary of reasons for the judgment and it is now clear that the sum for which judgment was entered on the first part of the claim must be amended from £375.8.4 to £365.8.4 and it is ordered accordingly. Although the appeal is from the judgment, it is clear from the Appellant's affidavit in support of conditional leave to appeal and from the grounds of appeal in the notice filed, that the appeal now before the Court with one exception, is only as to the Appellant's counter-claim which was dismissed.

40

The one exception is as to the following supplementary ground of appeal :—

“ That the Plaintiff Company not being locally registered in the Gold Coast could not bring the action and therefore have no *locus standi* in the suit.”

A submission, not strictly in terms of this ground, has been made to the effect that the person expressed in the writ of summons to be the Plaintiffs' (Respondents') attorney, did not produce his power of attorney in evidence and that on this ground the Plaintiffs' action must fail. In support of this proposition, the Appellant relies on *Stevens v. Schmidt, Kratzert, Claimant*, a decision of the Full Court, Accra, dated the 25th August, 1913. In that case the claimant in an interpleader suit, a person entirely unknown to the judgment-creditor, failed to prove his power of attorney from a foreign principal. It transpired that the claimant could not say that the goods he interpleaded were the property of his principals. Failing to show the extent of his authority the claimant was held not to be entitled to an order releasing the goods from attachment.

Here the facts are different.

The Plaintiffs-Respondents sue by their attorney Robert Simmons with whom, prior to the action, the Appellant and his solicitor dealt on the footing that Simmons was the Plaintiffs' agent and attorney. This is clear from the correspondence.

Further, the counter-claim filed by the Appellant before issue in the suit was joined, is directed to A. Strauss & Co., Ltd., by their attorney Robert Simmons, Kumasi.

It is in every case desirable that an attorney, suing as such, should produce his principal's authority if it is in writing. Under the Rules of the Supreme Court in England such an Instrument or a copy attested would be filed in Court and duly verified at the time action was instituted and be open to inspection. In the circumstances of this case, however, since Simmons' statement on oath that he held the Respondents' power of attorney remained unchallenged throughout the proceedings in the Court below, this point, taken for the first time on appeal, cannot be sustained.

If the objection had been raised at the proper time we have no doubt that the authority of the Respondents' agent would have been produced and duly proved. A power of attorney even in general terms entitles the attorney to sue.

The Appellant's counter-claim was in two parts, namely, a claim for an account to be taken of all rubber shipped by Appellant to Respondents from August, 1942, to January, 1945, inclusive, and a claim for commission on all the rubber purchased by the Appellant for the Respondents' Company.

The agreement between the parties is dated the 19th April, 1943. Shortly stated, it provided that the Appellant would, as the Respondents' agent, purchase, manufacture and export rubber in and from the Gold Coast for account and to the Respondents' order; that the Appellant would keep accounts of his business and produce such accounts to the Company whenever required and render an account of all advances of money already received or to be received by the Appellant. The Company for its part agreed to remunerate the Appellant's services with a monthly

*In the  
West  
African  
Court of  
Appeal.*

No. 26.  
Judgment  
of Court  
of Appeal,  
13th  
December  
1947,  
*continued.*

*In the  
West  
African  
Court of  
Appeal.*

No. 26.  
Judgment  
of Court  
of Appeal,  
13th  
December  
1947,  
*continued.*

payment of £50 to cover his personal and travelling expenses for the time being. The agreement concludes: "A commission is also to be paid to me (the Appellant) by the Company which I have agreed to leave to the discretion of the Company."

As against the learned Judge's finding that there is nothing in the agreement between the parties which obliges the Respondents to account to the Appellant, a finding with which we agree, it has been submitted that an agent is entitled to an account, and a statement in general terms to that effect in 1 Halsbury, Hailsham Edn. p. 268, is referred to by Appellant's Counsel. 10

But where parties have made an express contract the agent's right to an account and the conditions under which that right will arise must be ascertained by reference to the terms of the contract.

Looking at the agreement in this case it is clear that the Appellant was a servant and not a partner. There is no provision for a share of profits nor are the Respondents under any obligation to report to the Appellant the disposal of the goods he ships to the Respondents, the duty of the Appellant being to buy, process and ship rubber to the Respondents and, as pointed out by the learned Judge in his reasons, to account, i.e., to account for the moneys of the Respondents employed by him in and about the business in the Gold Coast. 20

It is not surprising therefore to find that *Harrington v. Churchward* (1860), 29 L.J. Ch. 521, does not support the Appellant's contention. In that case the servant was by the terms of the agreement to receive a salary in proportion to the profits of the venture and, as is to be expected, he was held to be entitled to an account of the profits of the business in order that his remuneration might be ascertained.

We are unable to find that the Appellant's right to an account was any stronger before the agreement was entered into namely for the period August, 1942, to 19th April, 1943. During that period the relationship between the parties was, on the evidence, exactly the same as after the latter date. 30

Coming to the only other ground of appeal which requires consideration, the learned Judge disallowed the Appellant's counter-claim for commission because "nothing is stated in the agreement as to the basis upon which commission, if given, is to be calculated, whether on total value of rubber shipped or on profits or in any other way" to quote his finding on this issue.

It will be as well before considering the point to again set out the words of the agreement upon which the Appellant relies as giving rise to this part of the claim:— 40

"A commission is also to be paid to me by the Company which I have agreed to leave to the discretion of the Company."

To support his contention that the Appellant is entitled to something by way of commission reference is made to two cases *Bryant v. Flight*, 151 Eng. Reps. 49, and *Bird v. M'Gahey*, 175 Eng. Reps. 296. In the first case, on a contract "the amount of payment I am to receive I leave entirely to you," and in the second case, where the expression was "whatever recompense the board might allow as right and proper," the Plaintiffs were held entitled to recover in an action on a *quantum meruit*. 50

The cases on this subject were considered in *Loftus v. Roberts*, 18 T.L.R. 533. There the promisor agreed to engage the Plaintiff who was an actress "at a west end salary to be mutually agreed upon between us." Vaughan Williams, L.J., summed up the case in the Court of Appeal as follows :—

*In the  
West  
African  
Court of  
Appeal.*

10 "It seems that there is some misapprehension as to the true ground of the decisions in the common law cases which have been cited, viz. *Taylor v. Brewer*, *Bryant v. Flight* and *Roberts v. Smith*. The decision in the first of these cases and the third and the dissentient view of Baron Parke in the second, was this—that wherever words which by themselves constitute a promise are accompanied by words which show that the promisor is to have a discretion or option as to whether he would carry out that which purported to be a promise, the result is that there is no contract on which an action can be brought at all."

No. 26.  
Judgment  
of Court  
of Appeal,  
13th  
December  
1947,  
*continued.*

By analogy if a house is taken for one year and at the end of the year the tenancy is to be continued at a rent to be agreed upon, the latter clause is not an enforceable contract.

20 When the contract in this case is looked at it will be seen that there was a remuneration of services at £50 monthly. That would seem to be reasonable remuneration. The words that follow "to cover my personal and travelling expenses" are ambiguous but we are satisfied, on a construction of the document, that this was payment for the Defendant-Appellant's services; and then follows a promise to pay commission in the company's discretion. It is true that the words used are "a commission is also to be paid" but the absence of any rate of commission or basis of calculation clearly leaves it to the honour of the company and we do not think the company in all the circumstances disclosed in this case are open to criticism in resisting the claim.

30 For these reasons the appeal fails and is dismissed with costs assessed at £33. 15. 6d.

(Sgd.) JOHN VERITY,  
Chief Justice, Nigeria  
(Presiding Judge).

L. E. V. M'CARTHY,  
Judge, Gold Coast.

J. HENLEY COUSSEY,  
Judge, Gold Coast.

Counsel :

40 Mr. C. F. Hayfron-Benjamin for Appellant.  
Mr. J. W. Mead of the firm of J. J. Peele & Co. for Respondents.

*In the  
West  
African  
Court of  
Appeal.*

No. 27.

**NOTICE of Intention to Appeal to Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL.  
Gold Coast Session, Accra.

No. 27.  
Notice of  
Intention  
to Appeal  
to Privy  
Council,  
18th  
December  
1947.

In the Matter of :—

A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS - - - - Plaintiffs

V.

KOFI SUNKERSETTE OBU - - - - Defendant.

PLEASE TAKE NOTICE that Kofi Sunkersette Obu the Defendant- 10  
Appellant herein being aggrieved by and dissatisfied with the Judgment  
of the West African Court of Appeal, Victoriaborg, Accra, delivered against  
him herein on or about the 13th day of December, 1947, intends to appeal  
and will appeal from the said Judgment to His Majesty's Privy Council,  
England and Notice of his intended application is hereby given to you in  
accordance with the provisions of Section 5 of the West African (Appeal  
to Privy Council) Order in Council, 1930.

AND please take notice accordingly.

Dated at Cape Coast this 18th day of December, 1947.

(Sgd.) C. F. H. BENJAMIN, 20  
Solicitor for Defendant-Appellant.

To the Registrar,  
West African Court of Appeal,  
Victoriaborg, Accra.

And to :—  
The Registrar,  
Divisional Court, Kumasi.

A. Strauss & Company Ltd.,  
By their Attorney Robert Simmons, Kumasi,  
or their Solicitors J. J. Peele & Company,  
Kumasi. 30

Filed 20/12/47,  
at 8 a.m.

W. W. A.  
for Registrar, West African Court of Appeal.

**CERTIFICATE OF SERVICE.**

Upon the 30th day of December, 1947, this Notice of Appeal was  
served by me on the Registrar, Divisional Court, Kumasi, and Messrs.  
J. J. Peele & Co., Solicitors for the Plaintiffs herein.



This I did by serving copies of this Notice of Appeal on the said Registrar Divisional Court, Kumasi, and Messrs. J. J. Peele & Co., thro' Mr. John Mead of the Solicitor's Company, both personally at Kumasi.

*In the West African Court of Appeal.*

**CERTIFICATE OF NON-SERVICE.**

Upon the same day the 30th day of December, 1947, I attempted to effect service of this Notice of Appeal on Robert Simmons, but I could not do so as I was told by Mr. Mead that the said Robert Simmons is presently in the United Kingdom. Service is therefore not effected.

No. 27.  
Notice of Intention to Appeal to Privy Council, 18th December 1947, continued.

S. K. NYANTEKYI,

Bailiff.

10

**No. 28.**

**NOTICE of Motion for Conditional Leave to Appeal to Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL,  
Gold Coast Session,  
Accra.

No. 28.  
Notice of Motion for Conditional Leave to Appeal to Privy Council, 29th December 1947.

In the Matter of :—

A. STRAUSS & COMPANY LTD., through their  
Attorney ROBERT SIMMONS (Plaintiffs) - - Respondents

AND

20 KOFI SUNKERSETTE OBU (Defendant) - - Appellant.

MOTION ON NOTICE FOR CONDITIONAL LEAVE TO APPEAL AND STAY OF EXECUTION UNDER SECTION 5 OF WEST AFRICAN (APPEAL TO PRIVY COUNCIL) ORDER IN COUNCIL, 1930.

30 PLEASE TAKE NOTICE that this Honourable Court will be moved by Mr. C. F. Hayfron-Benjamin of Counsel on behalf of Kofi Sunkersette Obu the Defendant-Appellant herein for an Order granting him Conditional Leave to appeal from the Judgment of the West African Court of Appeal, Accra, delivered herein on or about the 13th day of December, 1947, to His Majesty's Privy Council, England, and for a stay of execution in respect to the amount of the Judgment on the claim herein and for such further or other Order as to this Honourable Court may seem meet in the premises.

COURT TO BE MOVED on Friday, the 13th day of February, 1948, or other session of the West African Court of Appeal, Accra, at 8.30 a.m. of the clock or so soon thereafter as Counsel on behalf of the said

*In the  
West  
African  
Court of  
Appeal.*

Kofi Sunkersette Obu, the Defendant-Appellant herein may be heard in accordance with the provisions of Section 5 of the West African (Appeal to Privy Council) Order in Council, 1930.

Dated at Cape Coast this 29th day of December, 1947.

No. 28.  
Notice of  
Motion  
for Con-  
ditional  
Leave to  
Appeal to  
Privy  
Council,  
29th  
December  
1947,  
*continued.*

(Sgd.) C. F. H. BENJAMIN,  
Counsel for Kofi Sunkersette Obu,  
Defendant-Appellant herein.

To the Chief Registrar,  
Supreme Court,  
Accra.

10

And to the Registrar,  
Divisional Court,  
Kumasi.

And to Messrs. A. Strauss & Company Ltd.,  
Through their Attorney Robert Simmons, Kumasi,  
or their Solicitors Messrs. J. J. Peele & Co.,  
Solicitors, Kumasi.

Filed 29/12/47,

at 2.30 p.m.,

W. W. A.

20

for Registrar, West African  
Court of Appeal.

Upon the 3rd day of January, 1948, I served copies of this Motion Paper together with Affidavits attached on Messrs. J. J. Peele & Co., Solicitors for Plaintiffs herein, through Mr. R. Arthur of the Solicitor's Company and the Registrar Divl. Court, Kumasi, both personally at Kumasi. Mr. Robert Simmons not being found in Ksi.

S. K. NYANTEKYI,

Bailiff.

No. 29.

**COURT NOTES granting Conditional Leave to Appeal to Privy Council.**

10th February, 1948.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Tuesday the 10th day of February, 1948, before Their Honours Sir WALTER HARRAGIN, C.J., Gold Coast (President), JOHN ALFRED LUCIE-SMITH, O.B.E., C.J., Sierra Leone and JAMES HENLEY COUSSEY, J., Gold Coast.

Civil Motion.

10 A. STRAUSS AND COMPANY LTD., through their  
Attorney ROBERT SIMMONS (Plaintiffs) - - Respondents.

V.

KOFI SUNKERSETTE OBU (Defendant) - - Appellant.

MOTION ON NOTICE ON BEHALF OF DEFENDANT-APPELLANT HEREIN FOR AN ORDER FOR CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL AND FOR STAY OF EXECUTION.

Mr. C. F. H. Benjamin for applicant.

Mr. Mead for Respondents.

Mr. Benjamin moves.

20 Mr. Mead opposes motion for stay.

ORDER—

Conditional leave to appeal to the Privy Council is granted subject to the following conditions :—

30 (A) The Appellant within three months to deposit £500 in Court or to give security with two sureties to the satisfaction of the Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellant to pay the Respondents' costs of the appeal. The question of the sufficiency of the security is to be decided by a single Judge of the Court upon motion by the Appellant due notice thereof being given to the Respondents.

(B) The Appellant to deposit in Court within three months the sum of £40 towards the cost of preparing the record.

(C) The Appellant within three months to give notice to the Respondents.

40 (D) The Appellant to give a bond in £1,200 with two sureties to the satisfaction of a Judge, whereupon there shall be a stay of execution. Appellant to pay the costs of the day assessed at £7.7/-.

(Sgd.) WALTER HARRAGIN,  
President.

*In the  
West  
African  
Court of  
Appeal.*

No. 29.  
Court  
Notes  
granting  
Conditional  
Leave to  
Appeal to  
Privy  
Council,  
10th  
February  
1948.

*In the  
West  
African  
Court of  
Appeal.*

No. 30.  
Notice of  
Appeal to  
Privy  
Council,  
15th March  
1948.

**No. 30.  
NOTICE of Appeal to Privy Council.**

Filed 16/3/48 at 9.25 a.m.

W. W. A.

for Registrar,  
West African Court of Appeal.

**IN THE WEST AFRICAN COURT OF APPEAL.  
Gold Coast Session.**

Between A. STRAUSS & COMPANY LIMITED by their  
Attorney ROBERT SIMMONS (Plaintiffs) - - Respondents 10  
AND  
KOFI SUNKERSETTE OBU (Defendant) - - Appellant.

**NOTICE OF APPEAL.**

PLEASE TAKE NOTICE that the Defendant-Appellant KOFI SUNKERSETTE OBU in the above-named case intends to and doth hereby appeal from the Judgment of the West African Court of Appeal delivered against him on the 13th day of December, 1947, to the Judicial Committee of His Majesty's Privy Council wherefore Conditional Leave to appeal was on the 10th day of February, 1948 granted him by this Honourable Court and Notice of the appeal is hereby given to you. 20

Dated at Cape Coast this 15th day of March, 1948.

(Sgd.) C. F. H. BENJAMIN,  
Solicitor for Defendant-Appellant.

To the Registrar,  
West African Court of Appeal,  
Accra.

And to the Plaintiffs-Respondents,  
A. Strauss & Company Limited,  
Their Solicitors or Agents,  
Kumasi—Ashanti. 30

Upon the 19th day of March, 1948, I served a copy of this Notice of Appeal on Messrs. J. J. Peele & Co., Solicitors for Plaintiffs-Respondents herein, through Mr. R. Arthur, Chief Clerk of the Solicitors Co. personally at Kumasi.

S. K. NYANTEKYI,  
Bailiff.



No. 31.

MOTION for Final Leave.

IN THE WEST AFRICAN COURT OF APPEAL.  
Gold Coast Session.  
Accra.

*In the  
West  
African  
Court of  
Appeal.*

No. 31.  
Motion for  
Final  
Leave,  
20th April  
1948.

Between A. STRAUSS & COMPANY LTD. through their  
Attorney ROBERT SIMMONS - - - Plaintiffs-  
Respondents

AND

10 KOFI SUNKERSETTE OBU - - - Defendant-  
Appellant.

Filed  
27/4/48 at  
8 a.m.  
W.W.A.  
for  
Registrar,  
West  
African  
Court of  
Appeal.

MOTION FOR AN ORDER UNDER ARTICLE 3 OF THE WEST AFRICAN (APPEAL  
TO PRIVY COUNCIL 1930)

PLEASE TAKE NOTICE that this Honourable Court will be moved  
by Mr. C. F. Hayfron-Benjamin of Counsel on behalf of Kofi Sunkersette  
Obu, the Defendant-Appellant herein for an Order of this Honourable  
Court granting Final Leave to appeal from the judgment of the West  
African Court of Appeal delivered herein on or about the 13th day of  
December, 1947, and for such further or other Order as to this Honourable  
20 Court may seem meet in the premises.

COURT to be moved on Monday the 10th day of May, 1948, at  
8.30 a.m. of the clock as soon thereafter as Counsel on behalf of the  
Defendant-Appellant herein may be heard.

Dated at Cape Coast this 20th day of April, 1948.

(Sgd.) C. F. H. BENJAMIN,  
Counsel for Kofi Sunkersette Obu.

To the Registrar,  
West African Court of Appeal,  
Victoriaborg, Accra.

30 And to the above-named Plaintiffs-Respondents their Agents or Solicitors,  
Kumasi.

Upon the 3rd day of May, 1948, copy of this Motion on notice for  
Final Leave to appeal was served by me on Robert Arthur, Chief Clerk,  
J. J. Peele & Co. personally at Kumasi.

R. C. MILLERS,  
Bailiff grd. 1.



*In the  
West  
African  
Court of  
Appeal.*

No. 32.

**AFFIDAVIT of K. S. Obu in support.**

IN THE WEST AFRICAN COURT OF APPEAL.

Gold Coast Session.

Accra.

No. 32.  
Affidavit of  
K. S. Obu  
in support,  
20th April  
1948.

Between A. STRAUSS & COMPANY through their  
Attorney ROBERT SIMMONS - - - - Plaintiffs-  
Respondents

AND

KOFI SUNKERSETTE OBU - - - - Defendant- 10  
Appellant.

Filed  
27/4/48  
at 8 a.m.  
W.W.A.  
for  
Registrar,  
West  
African  
Court of  
Appeal.

I, KOFI SUNKERSETTE OBU, of Cape Coast, Merchant, make oath  
and say as follows:—

1. That I am the Defendant-Appellant in the above-named case.
2. That on or about the 13th day of December, 1947, the above-named Appeal was dismissed by the West African Court of Appeal, Victoriaborg, Accra, with costs assessed at £33.15.6d.
3. That aggrieved by and dissatisfied with the judgment of the West African Court of Appeal aforesaid I applied to this Honourable Court for and was on the 10th day of February, 1948, granted Conditional 20  
Leave to appeal and stay of execution as per the following Order:—

“Conditional Leave to appeal to the Privy Council is granted subject to the following conditions:—

(A) The Appellant within three months to deposit £500 in Court, or to give security with two sureties to the satisfaction of the Court in the sum of £500 for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining an Order granting him Final Leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council 30  
ordering the Appellant to pay the Respondents' costs of the appeal. The question of the sufficiency of the security is to be decided by a Single Judge of the Court upon Motion by the Appellant due notice thereof being given to the Respondents.

(B) The Appellant to deposit in Court within three months the sum of £40 towards the costs of preparing the record.

(C) The Appellant within three months to give notice to the Respondents.

(D) The Appellant to give a Bond in £1,200 with two sureties to the satisfaction of a Judge whereupon there shall be a stay 40  
of execution. Appellant to pay the costs of the day assessed at £7.7/—.

(Sgd.) WALTER HARRAGIN,  
President.”

4. That I have complied with the terms of the Order above stated within 3 months from the date of the Order granting Conditional Leave, that is (a) I have given Notice of Appeal from the Judgment of the West African Court of Appeal herein to His Majesty's Privy Council, England, to the Respondents herein and all such other persons as are directly affected by the said appeal, (b) have deposited into Court the sum of £40 towards the cost of the preparation of the Record herein and (c) have furnished two sureties in the sum of £500 and £1,200 respectively to the satisfaction of a Single Judge of the Court of Appeal sitting at Cape Coast.

*In the West African Court of Appeal.*

No. 32. Affidavit of K. S. Obu in support, 20th April 1948, continued.

10 5. That I am desirous of obtaining an Order granting me Final Leave to appeal from the Judgment of the West African Court of Appeal herein given on or about the 13th day of December, 1947, to His Majesty's Privy Council, England.

6. That in the circumstances, I swear to this affidavit in support of the application for an Order granting me Final Leave to appeal herein to His Majesty's Privy Council, England, and for such further or other Order as to this Honourable Court may seem meet in the premises.

Sworn at Cape Coast this 20th day of } (Sgd.) K. S. OBU.  
April, 1948.

20 Before me,  
(Sgd.) J. T. ODAMETEV,  
Commissioner for Oaths.

Upon the 3rd day of May, 1948, copy of this affidavit was served by me on Robert Arthur, Chief Clerk, J. J. Peele & Co. personally at Kumasi.

(Sgd.) R. C. MILLER,  
Bailiff grd. 1.

No. 33.  
COURT NOTES granting Final Leave.

No. 33.  
Court Notes granting Final Leave, 17th June 1948.

17th June, 1948.

30 IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Thursday, the 17th day of June, 1948, before Their Honours JOHN ALFRED LUCIE-SMITH, O.B.E., C.J., Sierra Leone (Presiding J.), ALLAN CHALMERS SMITH, Ag. C.J., Gold Coast and LESLIE ERNEST VIVIAN M'CARTHY, J., Gold Coast.

Civil Motion.

A. STRAUSS & CO. - - - - - Respondents

V.

KOFI S. OBU - - - - - Applicant.

40 Benjamin moves.

No appearance—Respondent duly served.

Benjamin informs the Court conditions fulfilled.

Final leave granted.

(Sgd.) J. LUCIE-SMITH,  
Presiding Judge.

*Exhibits.***EXHIBITS.***Defendant's  
Exhibit  
No. 9.***Defendant's Exhibit No. 9.****(1) Telegram, Martin to Defendant, 9th April, 1942.***(1) Tele-  
gram  
Martin to  
Defendant,  
9th April  
1942.*

Post Office Telegraphs, Gold Coast.

Date  
9 Apr. 1942  
Stamp.

To LC : Obu Capecoast.

Many thanks letter third March just received fullstop our friends Strauss Company cabling you direct about rubber hope substantial business 10 will materialise fullstop Am airmailing you concerning remainder your letter Best wishes.

PERCY MARTIN.

*(2) Tele-  
gram  
Plaintiffs  
to  
Defendant,  
11th April  
1942.***Defendant's Exhibit No. 9—contd.****(2) Telegram, Plaintiffs to Defendant.**

Post Office Telegraphs, Gold Coast.

Date  
11 Apr. 1942  
Stamp.

To LC : Obu Capecoast Goldcoast.

Referring mutual friend Percy Martins cable we are importing rubber for Ministry Supply and would welcome your regular offerings any quantity any quality fullstop Ministry will provide shipping space fullstop Please airmail us immediately type samples principle grades and on receipt will cable you regular FOB orders payment Capecoast eighty percent when rubber ready for loading balance after inspection here but meanwhile strongly recommend you consign us immediately any quality now available payment prompt cash for fifty percent of estimated value balance after sorting upon arrival fullstop Cable soonest when and for what likely tonnage shipping space required for consignment.

20

STRAUSS COMPANY,  
37 Lime Street.

30

*(3) Tele-  
gram  
Defendant  
to  
Plaintiffs,  
18th April  
1942.***Defendant's Exhibit No. 9—contd.****(3) Telegram, Defendant to Plaintiffs.**

Gold Coast Government Telegraphs.

Date  
18/4/42  
Stamp.To Strauss Company  
37 Lime Street London.

40

Thanks for proposals proceeding to Kumasi and other rubber centres for arrangements and supplies fullstop Cabling you fully my return fullstop Arranging dispatch samples.

OBU.



**Defendant's Exhibit No. 9—contd.**  
**(4) Telegram, Defendant to Plaintiffs.**

Gold Coast Government Telegraphs.

Date  
 Monday  
 18 May 1942  
 Stamp

*Exhibits.*  
 ———  
*Defendant's Exhibit No. 9, continued.*

To N.L.T. Strauss Company  
 37 Lime Street London.

(4) Telegram  
 Defendant to  
 Plaintiffs,  
 18th May  
 1942.

Returned have arranged large supplies from Chiefs Ashanti other  
 10 places fullstop Competition keen I need liquid finance least £500 fullstop  
 can you entertain posting proposition mutual friend Percy Martin can vouch  
 my bona fides shipments when finance question settled eighty percent  
 unworkable here cable indication general prices para funtumia vile have  
 mailed small samples larger following.

OBU.

**Defendant's Exhibit No. 9—contd.**  
**(5) Telegram, Plaintiffs to Defendant.**

Post Office Telegraphs, Gold Coast.

Date  
 25 May 1942  
 Stamp

(5) Tele-  
 gram  
 Plaintiffs  
 to  
 Defendant,  
 25th May  
 1942.

20 To LC : Obu Capecoast Goldcoast.

Quite agreeable remit fivehundred pounds but cannot indicate prices  
 obtainable without first knowing your proposed terms cable immediately  
 full details also what quantities and monthly quantities procurable.

Strauss Company.

**Defendant's Exhibit No. 9—contd.**  
**(6) Telegram, Defendant to Plaintiffs.**

Gold Coast Government Telegraphs.

Date  
 27/5/42  
 Stamp

(6) Tele-  
 gram  
 Defendant  
 to  
 Plaintiffs,  
 27th May  
 1942.

30 To N.L.T. Strauss Company.  
 37 Lime Street London.

Amount repayable by percentage off shipments always been entrusted  
 by European friends in London large sums for business never fail them  
 fullstop Suggest strongly your forming Syndicate exploit West African  
 Rubbers myself another African Honourable Moore be included Board  
 myself life director meanwhile suggest for immediate operation appointing  
 me your sole representative Gold Coast Northern Territories provisional  
 term five years until formation Syndicate impressing Chiefs seriousness  
 40 business advisable my posting fuller details proposed Syndicate avoiding  
 disclosure materials to European vested interest promise you success  
 venture your placing confidence in me your interest absolutely safe with  
 me will cable definite quantities monthly shipments during first months  
 operation shipments will be appreciable remit fivehundred pounds through  
 Barclays Accra open confirmed transferable credit ninety percent of fobs.

OBU.

*Exhibits.***Defendant's Exhibit No. 9—contd.  
(7) Telegram, Plaintiffs to Defendant.***Defendant's  
Exhibit  
No. 9,  
continued.*

Post Office Telegraphs, Gold Coast.

Date  
4 Jun 1942  
Stamp*(7) Tele-  
gram  
Plaintiffs  
to  
Defendant,  
4th June  
1942.*

To LC : Obu Capecoast.

Awaiting details proposed syndicate before deciding whether same necessary and desirable fullstop Meanwhile willing appoint you sole representative and being anxious commence immediate operations are remitting fivehundred pounds but hesitate advancing ninety percent 10 fearing quality might turn out substantially inferior possibly through deterioration in transit fullstop Until reliability for quality definitely established through actual shipments consider desirable you consign immediately five or ten tons every available grade see our cable ninth April.

STRAUSS COMPANY.

*Defendant's  
Exhibit  
No. 5.***Defendant's Exhibit No. 5.  
(1) Telegram, Plaintiffs to Defendant.***(1) Tele-  
gram  
Plaintiffs  
to  
Defendant,  
12th June  
1942.*

Post Office Telegraphs, Gold Coast.

Handed in at  
London.Date  
11

No. 62. 20

Date  
12 June 1942.  
Stamp.

To Obu Cape Coast.

Have you received fivehundred pounds fullstop Your three small samples arrived fullstop Are agreeable open telegraphic credit ninety percent payable against F.O.B. documents but relying on your personal assurance that qualities shipped will represent quality shown in your samples fullstop Cable immediately substantial offers all three grades 30 fullstop You must include your commission in your prices fullstop Believe can sell P/1/2 12 — 1/4 11 — 3/4 H 11 — 1/4 pence per pound F.O.B. shipment soonest possible fullstop When business done and rubber ready Westafrican Lines will indicate next steamer.

STRAUSS COMPANY.

*(2) Tele-  
gram  
Defendant  
to  
Plaintiffs,  
14th June  
1942.***Defendant's Exhibit No. 5—contd.  
(2) Telegram, Defendant to Plaintiffs.**

Gold Coast Government Telegraphs.

To Strauss Company  
37 Lime Street London.Date  
14/6/42  
Stamp. 40

Proceeding Accra thence Ashanti to start operations fullstop As your representative suggest allowing me monthly remuneration to cover travelling other personal expenses starting July also fix commission yourself fullstop Repeat immediately prices dont follow figures 12 and 11 send all cables letters Capecoast usual.

OBU.

## Defendant's Exhibit No. 5—contd.

(3) Telegram, Plaintiffs to Defendant.

Post Office Telegraphs, Gold Coast.  
 Handed in at  
 London.

Date  
 15

To Obu Cape Coast.

- 10 Referring ours eleventh Ministry today announced various price increases please hurry best possible offers and we will obtain best possible prices thereby protecting your Chiefs interest.

Date  
 16 June 1942  
 Stamp.

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.  
 (3) Tele-  
 gram  
 Plaintiffs  
 to  
 Defendant,  
 16th June  
 1942.

STRAUSS COMPANY.

## Defendant's Exhibit No. 9—contd.

(8) Telegram, Plaintiffs to Defendant.

Post Office Telegraphs, Gold Coast.

Date  
 18 Jun 1942  
 Stamp.

20 To LC : Obu Capecoast.

Agreeable in *principal* but quite impossible fix adequate allowance and commission without first knowing roughly what monthly quantities you can secure and what prices stop Please hurry this information and cable offers basis yours samples also all will grades. [sic]

*Defendant's*  
*Exhibit*  
*No. 9,*  
*continued.*  
 (8) Tele-  
 gram  
 Plaintiffs  
 to  
 Defendant,  
 18th June  
 1942.

STRAUSS COMPANY.

## Defendant's Exhibit No. 9—contd.

(9) Telegram, Plaintiffs to Defendant.

Post Office Telegraphs, Gold Coast.

Date  
 28 Jun. 1942  
 Stamp.

30

To NLT Obu Capecoast.

Attending formaldehyde and bags fullstop Referring required credit does transferable mean in your favour and your nominee and who guarantees that vouchers represent genuine values fullstop Agreeable supply finance pending formation syndicate have you mailed details fullstop Will pay all reasonable expenses but impossible nominate figure you must cable estimated amount required.

(9) Tele-  
 gram  
 Plaintiffs  
 to  
 Defendant,  
 28th June  
 1942.

STRAUSS COMPANY.

*Exhibits.***Defendant's Exhibit No. 9—contd.***Defendant's Exhibit No. 9, continued.***(10) Telegram, Defendant to Plaintiffs.**

29/6/1942.

*(10) Telegram Defendant to Plaintiffs, 29th June 1942.*

To N.L.T. Strauss Company  
37 Lime Street London.

Bagging fullstop Railing Thursday if railway vans available bags marked SC/0 fullstop Owing difficulty in obtaining formaline only two tons completed but manufacturing proceeding rapidly fullstop Using suitable native materials European firms using for bagging cable when Formaldehyde bags likely here open immediately credit my favour with full instructions on hypothecation advances transferable means between stations where Barclays established for vouchers read railway consignment notes instruct Bank apply from railway and guarantee for me vouchers used as cash payments for freights on consignments and deduct when making shipping advances owing keen competition have been leasing trees and advancing for my latex coming in satisfactory but must have formaline to coagulate have only one smoking room putting up others fullstop Ship immediately six bowtop type standard hand drive machines smooth rollers for sheeting and six standard bowtop type spiral grooved rollers for making from Planters Engineering Company London and one thousand gallons acetic or formic acid cable me transfer immediately one thousand pounds for Chiefs to pay for latex cost smoking rooms and second hand machines bought will require further four thousand pounds after first railing fullstop I am leasing Para plantations airmailing full details syndicate this week fullstop Conservative figures personal monthly expenses fifty pounds suggest payments quarterly or monthly in advance please add this to thousand pounds required fullstop May I buy one ton mixed native prepared rubber and consign for sampling European firms buying that also Chiefs impressed are fully backing us sending me latex than take elsewhere cable reply to Kumasi.

OBU.

*Defendant's Exhibit No. 5, continued.***Defendant's Exhibit No. 5—contd.****(4) Defendant's Notes and Suggestions to Plaintiffs on formation of a Company.***(4) Defendant's Notes and Suggestions to Plaintiffs on formation of a Company, 13th July 1942.***NOTES AND SUGGESTIONS FOR CONSIDERATION ON THE FORMATION OF A COMPANY TO EXPLOIT WEST AFRICAN RUBBERS.**

The war as we all see, is changing things rapidly especially as regards World Economics with special reference to the Colonies. And as an African and knowing how my people's feeling are as a whole regarding the treatment of the Combine European firms out here towards them which is detrimental to their social well-being and financial stability and general progress, I am putting forward certain suggestions for your consideration so that we may avoid certain fundamental mistakes which other firms made when they came out from Europe to establish branches of their home concerns.

My main object therefore is that we (yourselves including myself) should make the Chiefs and farmers I am dealing with feel that they are helping and co-operating with a concern which they are personally interested in that they will be fairly treated and that it will not be a case of

after helping us to build up they will just be relegated to the background as all the firms out here did to them after they were firmly settled on the land.

I am not suggesting for a moment that we are out as philanthropists but we want the Chiefs to feel that we will give value for value, in other words they will receive a fair margin of the profits we will make as their compensation. That is, we will not pay them mean prices, for their rubber, or any other product we may in future require from them.

#### THE NEW COMPANY.

- 10 1. I propose that the name of the Company be called " West African Rubber Limited " (" W.A.R." to be our mark). (Unless you can suggest a better one if you desire.)
2. The Registered Offices of the Company to be in England as we shall obviously place the shares at the Stock Exchange.

#### OBJECTS.

3. I leave this to you as you are in best position to cull from other Rubber Companies' Memorandum and Articles clauses suitable for our concern. But I suggest that as we are likely to buy other products than rubber from the natives of West Africa, possibly also we may deal in minerals etc., the Memo. and Articles may be drawn in such a manner to have a wide scope so that we may not have the necessity of having subsidiary companies if possible. The draft Memo/Articles of Association when completed should be forwarded to me for perusal with a view to suggest additions or otherwise and then return same to you for final draft. As I shall have to sign the first original copies for registration, you may when forwarding the draft copies enclose blank copies signifying the space I should sign. This will save time in sending the final draft for my signature and return.
- 20

4. The liability of the members to be limited.
- 30 5. *Share capital.*—This is for you to decide but at least one-fourth of the capital should be solely reserved for me to sell to my African Chiefs and few noted farmers and two or three influential African friends who are at present supporting me with the organisation. The shares so reserved must not be under any restrictions as to time of their being taken up. The African Chiefs and farmers with their scholars are poor except in very few cases. This state of affairs was brought about by the bad methods introduced by the Combine firms out here and other incidentals. The people are just being badly exploited. We are not out to throw money away but we must let our Chiefs and farmers feel that they get just enough
- 40 to live upon.

Mr. Huntermann (a Swiss) and General Manager for the S.A.T. is the only man as far as I know in the colony who has been able to warm his way with some individual African Chiefs and farmers as well as about ten African scholars. He is kind to them and treats them well. He financed them and the result is he personally has become a wealthy man and his firm has prospered extraordinary. That was one of the reasons perhaps, that the Agricultural Officer asked me to go to him when I had an interview with him. This gentleman (Hintermann) is at present on leave.

*Exhibits.*

—  
*Defendant's Exhibit*

*No. 5, continued.*

—  
(4) *Defendant's Notes and Suggestions to*

*Plaintiffs on formation of a*

*Company, 13th July 1942,*

*continued.*

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.  
 (4) Defen-  
 dant's  
 Notes and  
 Suggestions  
 to  
 Plaintiffs  
 on  
 formation  
 of a  
 Company,  
 13th July  
 1942,  
 continued.

The Combine Agent here and Accra have both tried to get some of the African Chiefs to co-operate with them in grouping farmers for rubber preparation but failed. I was approached some 6 months ago on the subject but I refused. The country is articulate and are now ready to support the company who means well by them. That is the only way to lasting prosperity.

#### ACQUISITION OF RUBBER FARMS AND FOREST FOR FUTURE PLANTATION.

6. I have already as I reported in my cable of the 6th July, 1942, obtained options on some very good Funtumia and Para farms in the Central and Western Provinces of the Colony. I am negotiating at present 10 for some farms also from Kumasi and districts. I did that when I found some of the U.A.C. and other firms' African friends were leasing trees. I should therefore like to have your approval to complete the deal by having a proper drawn agreement with the owners.

(A) I want also your permission and approval to be allowed to negotiate for a good virgin forest of a good area (you may look up from the reports of Offin River Estate Ltd. of Dunkwa in Ashanti districts and get the area of theirs to give you an idea as to the area of land I should acquire for the new Company should you think it desirable. With such land we could start planting Para and in a few years time we will be independent 20 of buying from outside as that of the Offin Company. Europeans are NOT permitted to buy large tracts of lands here and Africans cannot directly buy lands on behalf of whitemen for the latter's sole use. But here is different. Some of our Chiefs and farmers will be directly interested and I can therefore buy the land in my name and transfer or reconvey to the Company. I did the same to some European friends of mine some few years back when they wanted a land to plant cocoa.

All these are suggestions and you may decide as you think best.

After the war West Africa will change completely as is doing even slowly now. And if we wait cost of land may be such that you may not 30 feel inclined to buy. Now it is reasonable as to price per acre. It varies of course according to districts and places but not very much difference.

#### PLANT.

(B) At present I require hand driven machines but as soon as the building started for my factory is completed I should want a small plant such as that manufactured by David Bridge & Co., Engineers and Rubber Machinists of Castleton, London and Manchester. Their Battery of three (bird) Type 6" x 24" Sheeting Machines and one Marking Machine, Belt-driven through Heywood & Bridge's Patent Friction Clutch, fitted with "Acme" Semi-automatic Throwout Gear seem to me the ideal model 40 plant for rubber processes. But here again you being experts will be able to know and choose what you think best to ship out.

#### MY PLACE IN THE NEW COMPANY.

7. *Directorate.*—As I mentioned in my cable of the 27th May last, I must have a permanent seat on the Board of Directors and be made a life Director. I am also asking that the Management of the Gold Coast and Northern Territories activities should be solely under my supervision

and therefore be made the Managing Director of the Company. I shall in the usual manner have an agreement with the Company and my remuneration will be defined in such agreement. I shall have power of Attorney in the usual manner to act for the Company and see to all financial matters on the Coast. I shall have the power to engage and dismiss employees as is desirable to the conduct of the business and the welfare of same.

10 I do not know the number of Directors you contemplate but one of the seat should be left to me apart from my own as a life Director to select an African for it. They of course will not be life Directors but ordinary as all the others. I do not know whether you may wish some of the European Directors to be life members but that is for you to decide. The initial success of the whole organisation depends on my entire effort and I do not think anyone will grudge me of the position I ask so that I may organise in the manner best suited in the interest of the Company.

20 I will have now and again to visit England on leave and to see about my private and other business affairs but this will not disturb the running of the business and I will not leave for England until such time as I find convenient in the interest of the Company. But all this can be discussed later at the proper time. Only it is best to mention these things at the start.

I must also be free to attend to the Mining interest I am concerned as you doubtless know when I am required to do so from London. But here again, as I am not an engineer, it is only the documental side I am mainly concerned and it will not in the least affect our rubber business.

I am typing on a separate sheet draft clauses regarding myself on the Directorate for you to look through and decide as you think best. They are the ordinary clauses as one finds in various Companies in London and parts of Europe.

30

#### A. STRAUSS & COMPANY.

8. If the new Company will take some time in forming, that is about two months or three (Draft M/A may take a week or two to have drawn up and sending them to me for perusal and back to you two and half months as no airmail service operates from your end except ours), I suggest it may be advisable to send me your Power of Attorney until then. Even if the new Company is registered, it may be advisable still to continue to represent you as I suggested in my cable of the 27th May 1942, and of which you accepted.

#### TRANSPORT.

40

9. This is most important. I am not suggesting for a moment that we should run transport service or have a fleet of lorries and cars. This head means that it is absolutely necessary to have at least at this present juncture two (2) lorries and one car for my personal use. The car can be charged to my private account as personal. I have had to pay heavy charges for private lorries who go for my latex and places that are rather far for the farmers to bring in the latex in time. I am also conscious that it is safer for me to collect my latex from the farmers so advanced (money) as it has happened before that some farmers when they find no one has gone to collect the latex they have tapped for a length of time, and when some one

*Exhibits.*  
—  
*Defendant's Exhibit No. 5, continued.*

(4) Defendant's Notes and Suggestions to Plaintiffs on formation of a Company, 13th July 1942, continued.

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.  
 (4) Defen-  
 dant's  
 Notes and  
 Suggestions  
 to  
 Plaintiffs  
 on  
 formation  
 of a  
 Company,  
 13th July  
 1942,  
 continued.

not connected with us go to them, they are tempted to sell and start tapping other trees to fill the gap. This is also one of the reasons I have had to take options on rubber trees so that practice may stop.

I have also had to pay high rates for town carting and as I find all European firms engaged in rubber as well as the Africans have their lorries and cars I see no reason why we should not follow suit as it is more economical and less irksome.

The car I require for myself to travel here and there. There is not one of the Firms dealing in rubber that you find in one place for two days. They (the chief heads) are constantly on the move. They have to inspect 10 their labourers coagulating and pressing rubber. They have to supervise packing, sorting, etc. As it is not possible to have only one factory and in one place if you are shipping in quantities, car is a complete necessity.

I understand it is difficult to send out cars but if I have your permission and approval on the matter, I will arrange to buy two second hand lorries (or new ones as you may direct) from Union Trading Company (Basel) here, and the car also from them or from one of the Syrians who deal in cars. Should this item be approved you may cable to the effect when I will send you the estimate which I will obtain from the Owners. 20

I am at the moment waiting for the reply of my last cable and leave at once for the Western Province where the Chief who owns the Para Rubber Plantation has telegraphed me to go. I have to take a train which is slow whereas had I a car I could even have been there and back by now. To hire a car would be silly on my part as the cost is prohibitive. My personal expense at present is very high but I have had to send you a conservative figure of £50 which includes the payment of my travelling servant clerk and cook. The rest I will supplement until such time that the business is running smoothly for you to reconsider the amount. My own car "Crysler" got smashed in an accident. 30

10: *Finance.*—The Europeans since my appearance in the rubber market on your behalf have been watching me closely thinking that I will be taking the farmers latex on mere promises and not pay them. But when they found that I mean real business as themselves, some have since tried to befriend me and two have paid visits. But I give nothing away as to business secrets. The Manager of Barclays Bank at Accra tried to find out from me who you were etc. and I said to him that you are as good as the U.A.C. I am therefore extremely glad that you are giving me the support and backing commensurate to the proportion and volume of business contemplated. I have no wild scheme ideas of any kind but 40 just a reasonable size organisation that will command confidence of the people and the Government and the respective merchants without which I cannot succeed as you wish. And I am sure you do not wish me to start in a haphazard manner. You are laying out at present but this will soon be recovered. I only ask that what I ask may be given and quick.

Yours faithfully,

(Sgd.) OBU,  
 At Kumasi,

13/7/42.



SUGGESTED CLAUSES TO BE INCLUDED IN THE MEMORANDUM AND ARTICLES  
OF "WEST AFRICAN RUBBERS LIMITED."

*Exhibits.*

1. OBJECTS.—(To include if approved) the following in Memo of A.

*Defendant's  
Exhibit  
No. 5,  
continued.*

1. (A) To keep a Wholesale Store and to supply goods to the African members of the Company for their private use such as building materials or any such useful goods that they may require for the advancement of the Company's business.

2. (B) The right for all chiefs and farmers during their continuance of their membership to market their products through the Company or the  
10 Company's nominees.

*(4) Defen-  
dant's  
Notes and  
Suggestions  
to  
Plaintiffs  
on  
formation  
of a  
Company,  
13th July  
1942,  
continued.*

NOTE.—The store is very necessary in a country like Africa where the majority of the people are illiterates, and mostly farmers. They often bring products in exchange of European made articles especially building materials. I do not advise at all our opening any large stores but just one big wholesale store to keep in such goods as Cement Iron (Corrugated) sheets for roofing and bolts and nuts. The rest they can buy elsewhere. But this store need not take our attention now but at a later date. The Memorandum having a clause for it will cover us as and when we decide to take the steps for the goods.

20 If the clause is not necessary if you think so, you may leave it out. But I think it is. It is my opinion as well as few of the Chiefs whom I conferred with on the matter.

2. DIRECTORS.—KOFI SUNKERSETTE OBU shall be and he is hereby appointed the First Managing Director of the Company which office he shall hold until he dies, and as such Managing Director he shall exercise such powers and authorities as shall from time to time be vested in him by the Directors and shall receive such remuneration as shall from time to time be agreed upon between him and the Directors.

30 (A) Besides the Managing Director being African there must always be appointed to the Board another two African as Directors to be chosen by the Managing Director who in his opinion fit and proper persons to be on the Board.

NOTE.—With such additional Director, I will be able to form with him a sort of "committee" and to decide matters of policy in certain areas of the Company's estates as occasion may arise, as far as West Africa is concerned.

40 (B) As Managing Director of the Company KOFI SUNKERSETTE OBU shall be entitled to receive notices of the Company to attend meetings when such notices are issued to attend Board meetings whether in London or in Africa, and vote thereat.

(C) The Board shall transmit to the Managing Director when he is absence from London copies of all Minutes and proceedings of its Meetings immediately after the holding thereof.

NOTE.—The foregoing may require legal dressings and this is left to you to see to it.

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.

I am closing my remarks with this—That I will work hard and make the Company a complete success.

(Sgd.) OBU.

13/7/42

at Kumasi.

(4) Defendant's  
 Notes and  
 Suggestions  
 to  
 Plaintiffs  
 on  
 formation  
 of a  
 Company,  
 13th July  
 1942,  
 continued.

SUPPLEMENT.

I think your Directors will consider allotting me some of the new shares when created for organising the Company and for special services rendered to the Company as a whole.

I shall then transfer some of mine so allotted to any friend here who 10 has helped me in my undertakings.

OBU.

13/7/42.

Kumasi.

*Defendant's  
 Exhibit  
 No. 9,  
 continued.*

**Defendant's Exhibit No. 9—contd.**

**(11) Telegram, Plaintiffs to Defendant.**

Post Office Telegraphs, Gold Coast.

(11) Tele-  
 gram  
 Plaintiffs  
 to  
 Defendant,  
 14th July  
 1942.

To OBU Capecoast.

Date  
 14 Jul. 1942  
 Stamp.

20

Shipping five tons formaldehyde earliest opportunity cable estimated additional requirements fullstop Bag supplies extremely scarce suggest you continue bagging like others fullstop Your request for instructions about hypothecation unintelligible please elucidate fullstop When opening credit Bank will require our instructions regarding quantities and qualities stipulated in railway vouchers furthermore what value these vouchers should represent therefore you must cable us these three particulars whenever any rubber nearly ready for despatch indication destination shown in vouchers otherwise confusion likely and furthermore these 30 particulars are required when selling Ministry Supply fullstop Attending machine and acids cable your import licence number for machines which necessary for our obtaining export licence fullstop Agree your expenses arranging monthly but referring five thousand pounds you must immediately cable nearest possible estimate actual total all in cost per ton FOB shipping port and probable quantities and qualities otherwise entire proposition problematical and possibly uncommercial considering limitations Ministry prices and profits thereon fullstop We must satisfy ourselves in this respect before going much further fullstop Agree your purchasing native prepared cable price you paid. 40

STRAUSS COMPANY.

Defendant's Exhibit No. 9—contd.  
 (12) Telegram, Defendant to Plaintiffs.

23rd July 1942.

Kumasi.

N.L.T. Strauss Company  
 37 Lime Street London.

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 9,  
 continued.

(12) Tele-  
 gram  
 Defendant  
 to  
 Plaintiffs,  
 23rd July  
 1942.

10 Waited for import licence number A1041 fullstop Government controlled prices ending thirtieth September 1942 as follows hevea funtumia ceara first quality 1/2 second 1/1½ third 1/½ pence per pound FOB shipping port that is onehundred thirtypounds thirteenshillings fourpence first onehundred twentysix pounds second and onehundred sixteenpounds  
 10 thirteenshillings fourpence third quality respectively all in cost per ton FOB shipping port regarding railfreights authorities require threehundred pounds standing guarantee operate traffic facilities fullstop Open credit for fifty tons all grades instruct Bank advance ninety percent all grades prices from one ton upwards free on rail on surrendering railway goods identification note this only to reimburse my finance will cable always grades railed to Takoradi fullstop I pay suppliers of latex spot cash except two chiefs who credited me threehundred pounds worth latex in my store awaiting payment fullstop Account sales to suppliers unnecessary all rubber prepared by me and shipped belong to you fullstop  
 20 Formality sake send copies account sales my information leave you decide my ratio participation profits until formation syndicate fullstop Monthly estimated output on receipt formaldehyde machines funtumia alone from three provinces after completion smoking rooms fifty tons other types monthly output from three province sixty tons fullstop Reference para cabling from CapeCoast next week native prepared all in cost per ton FOB shipping port onehundred twentytwo pounds thirteenshillings fourpence fullstop My average manufacturing cost first three grades onehundred twentyfive pounds all in cost per ton FOB Takoradi I expect less cost completion smokerooms fullstop Require onethousand pounds  
 30 for immediate use in paying plots leased for building contractors smoke-rooms materials fittings iron sheets for roofing leased trees secondhand machine factory accessories and latex credited dangerous leave long building unroofed rains may damage fullstop Fourthousand for my standing liquid finance for daily purchases of latex and native prepared bought in three provinces deposit of rail guarantee and incidentals sending monthly accounts when properly established fullstop Please allow me freehand establish your interest to mutual advantage would not propose anything uncommercial or problematical fullstop Add with shipment three metrolac latex tester cable immediately transfer onethousand pounds  
 40 and advise.

OBU Kumasi.

*Exhibits.**Defendant's  
Exhibit  
No. 9,  
continued.**(13) Tele-  
gram  
Defendant  
to  
Plaintiffs,  
14th  
August  
1942.***Defendant's Exhibit No. 9—contd.****(13) Telegram, Defendant to Plaintiffs.**

Gold Coast Government Telegraphs.

Date  
14/8/1942  
Stamp.To LC Strauss Company  
37 Lime Street London.

All my shipments F1 guaranteed equal Ministry grade one fullstop  
 Yes I require liquid finance for houses and fifteen tons Ministry standard 10  
 grade one and for outside offers all other grades fullstop Difficult state  
 offhand specific amount each item but cable immediately remittance in all  
 fourthousand pounds fullstop Local market prices wild grades are as  
 published but less rail and for expenses see footnote controlled list airmailed  
 fullstop Have also started manufacturing myself at Kumasi native  
 prepared cabling on return total cost FOB after smoking fullstop Difficult  
 cable regular offers as local output irregular but production increasing will  
 do so soon fullstop Except few para plantations all other kinds rubber  
 grow wild fullstop Have completed deal today with Chief one para 20  
 plantation containing onethousand fullgrown trees for twentyfive years  
 lease with option further twentyfive years trees one penny per  
 tree per month that is fifty pounds per year fullstop Solicitor preparing  
 deeds negotiation for others proceeding fullstop Airmailing particulars  
 fullstop Please authorise my buying a car my use transport difficulties  
 hampering business and progress car cost twohundredandfifty pounds  
 charge my private account fullstop Thanks reference meeting seventeenth.

OBU.

*(14) Tele-  
gram  
Plaintiffs  
to  
Defendant,  
20th  
August  
1942.***Defendant's Exhibit No. 9—contd.****(14) Telegram, Plaintiffs to Defendant.**

Post Office Telegraphs, Gold Coast.

Date  
20 Aug. 1942.

To OBU Cape Coast.

Board appreciate your endeavour and will furnish all necessary  
 finance provided entire proposition thoroughly examined and found  
 commercially absolutely sound fullstop This necessitates visiting you  
 personally for general discussion fullstop Are therefore sending our  
 representative soonest possible by air fullstop Your letters 23/7 3/8  
 and cable 14/8 arrived today referring fourthousand pounds you must  
 endeavour cable approximate amount each item fullstop Meantime 40  
 are remitting thousand pounds smokehouses twohundredfifty pounds  
 motor car and opening credit for fifteen tons grade one fullstop Referring  
 outside offers will open credit whenever you buy any but you must  
 immediately in each case cable quantity grade and prices you have paid  
 fullstop Please airmail statement expenditure relative fifteenhundred  
 pounds previously remitted.

STRAUSS COMPANY.

**Defendant's Exhibit No. 5—contd.****(5) Receipt and Undertaking signed by Defendant.**

Kumasi.

26th August, 1942.

Received from Barclays Bank (Dominion, Colonial & Overseas), Kumasi, the sum of £1,250 (One thousand two hundred and fifty pounds) in payment of Telegraphic Transfer from their Circus Place Branch, London.

(Sgd.) K. S. OBU.

10 I hereby undertake that of the within-mentioned amount One thousand pounds will be utilised for provision of Smoke houses and Two hundred and fifty pounds for the purchase of Motor Car.

(Sgd.) K. S. OBU.

**Defendant's Exhibit No. 5—contd.****(6) Letter, Plaintiffs to Defendant.**

A. STRAUSS & CO. LTD.  
Founded 1875.

37-39, Lime Street,  
London, E.C.3,

Rubber Department.

7th September, 1942.

WG/HMR.

K. S. Obu, Esq.,

20 P.O. Box 37,  
Cape Coast,

Gold Coast.

Dear Sir,

This letter serves to introduce our representative Mr. E. J. Bennett.

The primary object of his visit, as you know, is to examine and report upon the present position and future prospects of the organisation which you have commenced to set up for obtaining supplies of rubber from the Gold Coast.

30 You will, we feel sure, give Mr. Bennett your utmost assistance in his task, since it is an indispensable necessity for us to satisfy our Board of Directors that the entire proposition has been fully examined and found to be on a sound business-like basis.

Until Mr. Bennett's report to this effect is to hand it will hardly be possible for us to enter into any extended and more important commitments.

40 Mr. Bennett, being the senior partner of our Malayan agents, has naturally had a good deal of experience in commercial organising of this nature. If, therefore, in the course of your deliberations, you should come across problems calling for adjustments, you will find in him a helpful adviser and useful guide.

Hoping that Mr. Bennett's visit will consolidate a close understanding between us and that in due course our respective efforts in the undertaking will lead to mutually satisfactory results.

We are, dear Sir,

Yours faithfully,

A. STRAUSS &amp; CO. LTD,

(Sgd.) ?

Manager,  
Rubber Department.

*Exhibits.*

Defendant's  
Exhibit  
No. 5,  
continued.

(5) Receipt  
and Under-  
taking  
signed by  
Defendant,  
26th  
August  
1942.

(6) Letter  
Plaintiffs  
to  
Defendant,  
7th  
September  
1942.

*Exhibits.**Defendant's  
Exhibit  
No. 5,  
continued.**(7) Letter  
Plaintiffs  
to  
Defendant,  
7th/12th  
October  
1942.***Defendant's Exhibit No. 5—contd.****(7) Letter, Plaintiffs to Defendant.**

Copy for following Mail.

WG/HMR.

A. STRAUSS & CO. LTD.  
Metal Merchants and Brokers.  
Founded 1875.37-39 Lime Street,  
London, E.C.3.  
Rubber Department. 10  
7th October, 1942.  
12thPer E. J. Bennett, Esq.,  
c/o Barclays Bank (Dominion Colonial & Overseas),  
Takoradi.K. S. Obu, Esq.,  
P.O. Box 37,  
Cape Coast, Gold Coast.

Dear Sir,

The outward postal facilities hardly make it worth while to write 20  
to you regularly, since letters apparently take an almost endless time to  
reach you. The homeward service, on the other hand, appears to be very  
satisfactory and most of your letters reach us fairly quickly. Your letters  
of the 6th and 23rd July, 3rd August and 5th September arrived on the  
1st, 8th and 18th August and 1st October respectively.

We thank you for the detailed information contained in these letters  
and we will confine our comments to the main points.

On page 2 of your letter of 6th July you give a list of the firms buying  
Rubber. From what you have written and cabled us since, we presume 30  
it is not possible for you to make purchases from them and that instead,  
they export the Rubber themselves for sale to the Ministry through their  
own European connections. It will, however, be well worth while to make  
sure that this is actually the position for, if it should be possible for you  
to buy from them at the ex scale fixed Government prices, it would enable  
us to sell any such purchases of yours to the Ministry on a f.o.b. basis at  
a profit. We want to emphasise here that in our mind, the whole of this  
Gold Coast Rubber business is divided into two parts: (1) Your own  
production, and (2) Purchases by you of native prepared Rubber as well  
as wild grades such as Paste, Flake, Biscuits, Lump and Ball.

We are under the impression that it is by no means easy for you to 40  
do much buying of actual ready Rubber. This is quite understandable  
when one bears in mind that all these other firms can do better business  
by selling their Rubber at the f.o.b. Government prices, whereas we could  
not pay these prices since they are identical with those which the Ministry  
pays us here. You are therefore right in your theory that your best  
procedure is to concentrate on your own production, but you will neverthe-  
less miss no opportunity to buy ready Rubber at a remunerative price.

We are hoping to hear any day now that our Representative, Mr. Ernest Bennett, who carries our letter of introduction, has safely arrived. Before his departure, we naturally discussed the situation pretty fully, and one of the first measures we would like you to take is to set up a complete list of type samples of every conceivable grade that might come up for sale. We told Mr. Bennett that a small cutting of each of these various grades should be air-mailed to us, you keeping an exact duplicate for reference purposes; each sample to be properly numbered for identification when cabling offers. Having despatched these samples, we would like  
 10 you to repeat the same thing on a large scale, shipping us about 5 lbs. of each of these same grades, under the same numbers. These will be wanted as and when the small samples deteriorate, as is invariably the case with these low qualities of wild rubber.

*Exhibits.*  
 —  
*Defendant's Exhibit No. 5, continued.*  
 —  
 (7) Letter Plaintiffs to Defendant, 7th/12th October 1942, *continued.*

We have asked Mr. Bennett to arrange with you a system of numbering all letters and cables. We had this system in operation with Singapore and, apart from acting as a check, it helps to minimise cabling expenses when making reference to previous letters or cables.

On the question of the formation of a new company, this matter will need very thorough discussion at this end, but this cannot be done until  
 20 Mr. Bennett's reports are to hand. You may rest assured, however, that whether a company is eventually formed or not, the writer has informed our mutual friend, Percy Martin, that your interests will be fully protected and your share of the total net profits of the entire enterprise will be made retrospective. We cabled you a word to that effect quite recently.

Another matter that will no doubt be closely examined by you and Mr. Bennett is the question of long distant commitments. You have cabled us on various occasions on the subject of obtaining leases on certain Rubber areas that you are actually, or contemplating, planting. You must bear in mind that once this war is over, the West African Rubber  
 30 proposition will again be up against Far Eastern competition and as a result, any Planting by you might, after the war, become a totally uncommercial proposition. On the other hand, of course, the Government may continue to exercise control over the commodity, but ordinary commonsense makes it inadvisable to rely on that as being a protection against any post-war loss resulting from any plantings that may have been made, or may be contemplated. We do not know to what extent, if at all, you have committed yourself in this respect, so we must await Mr. Bennett's report on the subject before we can decide on future steps to safeguard ourselves against any serious post-war losses.

40 In one of your cables you mentioned that you were paying a rental of 1d. per tree per month and that you had entered into some agreement for 25 years, with your option to renew for another 25 years. These matters will have to be very carefully examined and it is not, in the meantime, advisable to commit yourself further in this respect.

In making these comments, you must, of course, realise that we are largely groping in the dark at this end and hence it is not possible for you to proceed to London to discuss every aspect of the proposition with us, it became very essential for us to send our Representative to visit you.

We cabled you at the time that, whereas our Board of Directors is,  
 50 in principle, quite ready and willing to supply whatever finance may

*Exhibits.*  
 ———  
*Defendant's*  
*Exhibit*  
 No. 5,  
*continued.*

be necessary in building up this enterprise, it goes without saying that we must satisfy ourselves absolutely that the whole venture is on a commercially sound basis.

You will no doubt be assisting Mr. Bennett in furnishing him with all possible information and, in doing so, you will bear in mind that we require a true and comprehensive picture, including any possible snags.

(7) Letter  
 Plaintiffs  
 to  
 Defendant,  
 7th/12th  
 October  
 1942,  
*continued.*

*Cost of Production:* Needless to say, we were very interested to examine the cost of production shown on the last page of your letter of 3rd August, but since then, you have mentioned a variety of other prices, so that we are not quite clear how matters stand in this respect. On the 31st August you cabled us that you estimate your f.o.b. cost of production for your own native prepared as £102.5.5. You also mentioned in the same cable a price of £106.0.0 f.o.b. being paid by the merchants for outside offers, and that the merchants were drawing at £112. On the 4th October you cabled that outside sellers were asking £114.0.0 and that therefore, you could only continue to concentrate on your own production instead. These variations of prices are rather confusing, but we have no doubt that you will straighten this matter out with Mr. Bennett as soon as he arrives. The position is that outside sellers, naturally, are compelled to ask a higher price than that at which you are preparing your own production.

You sent us a copy of the Director of Agriculture's price list; the F.o.b. prices mentioned therein are in line with those payable by the Ministry here. For instance, Grade 1 is 12d. naked, ex scale, or 14d. f.o.b. The outside price of £114 per ton, which you say is too high for you to pay "compared with your own cost of production," works out at about 11.7/32d. per lb. f.o.b., so that we can well afford to pay £114.0.0 per ton, as that price, together with your own cost of production, still averages out very profitably compared with 14d. per lb. f.o.b. obtainable by us from the Ministry.

By the time this letter reaches you, you will very likely have received 15 tons Formaldehyde. This will substantially reduce the corresponding item in your cost of production inasmuch as you are calculating 11/4½ per gallon (or 3/8d. per lb. manufactured rubber). Our cost of this material works out at about 4/6d. per gallon c.i.f. Takoradi, and when you start using our own shipments, you will no doubt let us have a fresh estimate of your total cost of production.

As regards the other materials which you asked for in your letter of the 6th July, with the exception of the jute bags, everything is ready and waiting for shipping space. We recently cabled you to this effect.

Some time ago you cabled us that you were buying Lump at 9d. per lb. f.o.b., and asked us whether this price was acceptable. Since you are grading this Lump as "third" and as the Director of Agriculture's price list stipulates 7.1/4d. ex scale (9d. f.o.b.), it stands to reason that your purchase price is quite unworkable and in paying that price we would be doing the business at a loss, if we allow for overheads and interest on the invoice amount until we receive payment from the Ministry against shipping documents. We were somewhat perplexed that you should go as far as to ask us whether we could pay this price, but it may be that we have not properly understood your message and you will no doubt be able to explain the matter to Mr. Bennett.



On the other hand, quite recently you cabled us that you were buying Paste at 4.1/2d. per lb. f.o.b. Now, according to the official price list, this grade is fixed at 5.1/4d. ex scale, or 7d. per lb. f.o.b. We are equally puzzled, therefore, as to how it is possible for you to buy this grade at 4.1/2d. per lb. f.o.b. and in order to put the matter to the test, we cabled you that the Ministry will buy from us 25 tons at 7d. per lb. f.o.b., and we are now waiting to hear from you whether you can buy sufficient of this material for us to make this sale. We cannot help feeling that there is something not quite right, for it is inconceivable to us that the natives should sell you this Paste at 4.1/2d. per lb. f.o.b. when they can get 5.1/4d. per lb. ex scale or 7d. per lb. f.o.b. Please do not omit to enlighten us on these two queries when you next write to us, or explain the position to Mr. Bennett so that he can report to us.

As regards *Credits*, this is a matter that also needs thoroughly going into with Mr. Bennett. We want to make sure that you can make full use of our credits, even though actual shipping documents may not be available when you need the money. We explained this fully to Barclays Bank here and went so far as to ask them to cable out to their Accra branch to make sure that you fully understand the best method of utilising these credits. In one of your earlier letters you appeared somewhat displeased with Barclays' local manager, but we think you will find that his attitude—now that the Bank knows that we are backing you—will be a great deal more helpful to you.

You have so far advised us of shipment of a few oddments. We realise, of course, that you cannot possibly be in full swing as yet, but generally speaking, the Ministry much prefers to receive shipping advices for round, and as substantial, tonnages as possible instead of odd tons and cwts.

On the whole, it would appear quite obvious that the great thing for you is to organise yourself first and foremost for your own production on as substantial a scale as possible. How that can best be done will no doubt be one of the main subjects of discussion between you and Mr. Bennett. In conjunction with this particular part of the enterprise, and as the local prices are definitely fixed, the more outside Rubber you can buy on the ex scale basis, whether it is native prepared or any of the wild grades (such as Biscuit, Lump, Ball, Paste, Flake, etc.), the more will it assist in increasing the turnover with the Ministry of Supply, for it is quite clear that on any purchase you make of ex scale Rubber, we can make a quite satisfactory profit by selling it to the Ministry on f.o.b. terms.

In this connection, will you give Mr. Bennett particulars of the actual costs in putting ex scale, port of shipment, naked rubber, into F.o.b. We cannot help thinking that these costs must be very considerably under 2d per lb. and 1 $\frac{3}{4}$ d. per lb. respectively and therefore, these differentials automatically give us a profit on any ex scale purchases you can make at the official prices.

The three samples contained in your letter of 5th September show quite satisfactory quality, although B and C (outside offers) are not quite up to the standard of your own. It is nevertheless doubtful whether the Ministry will make any difference in price. According to your cables, your own production (Sample A) is guaranteed to be equal to Ministry grade 1, but we doubt if the same applies to samples B and C; it depends

*Exhibits.*  
 ———  
*Defendant's Exhibit No. 5, continued.*  
 ———  
 (7) Letter Plaintiffs to Defendant, 7th/12th October 1942, *continued.*

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.  
 (7) Letter  
 Plaintiffs  
 to  
 Defendant,  
 7th/12th  
 October  
 1942,  
 continued.

largely upon the percentage of adulteration contained in the bulk. You realise, of course, that unless we can guarantee that the adulteration at destination will not exceed 1 per cent., the Rubber cannot be classified as grade 1. At any rate, we should soon receive your reply to our cable of the 5th and when acknowledging same, we will add a word to the effect that these samples have been received and appear satisfactory. The great thing is to get as much Rubber as possible ready for Shipment and, as already stated, if it is necessary to pay for outside offers a higher price than your own production costs you, it is advisable to do so, so as to swell the available quantity as much as possible, for the more Rubber we can sell to the Ministry, the better. 10

We have now received from you six samples, viz. : the three mentioned above and three sent us some time ago marked F1, P1 and P2 which we presume indicate Funtumia 1, Para grade 1 and Para grade 2. In this connection, the quality of the sample marked P2 is considerably superior to any of those marked A, B and C received under your letter of 5th September. If, therefore, the latter are acceptable by the Ministry as grade 1, we shall not hesitate to sell any of your offerings of P2 as grade 1 also.

At any rate, for the purpose of future reference, we have given the six samples the following numbers and, after receipt of this letter, any offerings that come under these grades should be mentioned under the respective numbers :—

- No. 51 — P1.
- No. 52 — P2.
- No. 53 — F1.
- No. 54 — Native Prepared, sample A (your own).
- No. 55 — Outside offers, Native prepared, sample B.
- No. 56 — Outside offers, Native prepared, sample C.

We are starting from No. 51 so as to avoid the possibility of confusion in case, when you start sending us the samples asked for earlier on, you should already have commenced numbering them from one. 30

12.10.42. In the matter of cabling, Mr. Bennett will point out to you that in many instances your messages have not been as clearly worded as they might have been and it is most desirable that you study carefully the wording of each message before you despatch it and ask yourself how we are likely to interpret it. One is so liable to write down a certain message for despatch without realising that as it stands, the recipient might put to it a meaning different from that which is intended. As a further example, if you will look at your cable of the 8th inst., you will find that the phrase to the first "fullstop" is somewhat ambiguous. We think it would have been better to have worded it: "Controllers prices increased by 3d for Latex and farthing per lb for ex scale prepared rubber . . ." We cabled you that we assume that the increase for Latex is in respect of the price per 4 gallons, but we cannot be absolutely certain about that. 40

Referring to further contents of your cable in question where you say: ". . . may I add these to outside sellers . . .", it would have been clearer to say: ". . . may I increase my buying price accordingly."

As regards your request for further £1,000, we would have liked you to state the purpose for which this additional remittance is required. You 50

will have seen from our cable of the 9th September that, until Mr. Bennett arrives, it will be better policy not to incur any further expenditure for administrative and similar purposes and that instead, we desire you to confine your requirements to payments for purchases of Latex or outside offerings. For this purpose you have in hand two credits, one covering 15 tons and the other covering 10 tons, together £2,705 and as you know, these credits can be utilised against railway vouchers pending shipment and that it is not absolutely necessary to present shipping documents to the bank against such payments.

10 While on the question of documents, you cabled us on the 5th September that Elder Dempster had forwarded stamped Bs/Lading for the 2 tons Funtumia they had just shipped, and as these documents have not yet come to hand, we are beginning to wonder whether, by any chance, they were forwarded direct to the Ministry of Supply. We sincerely hope that such is not the case and we shall probably mention, when next cabling you, that all documents must be forwarded to us. This is important.

20 We note that to-morrow you will be cabling us from Kumasi exactly how much you have shipped so far and also what stocks you have on hand at Takoradi. If you have any other stock anywhere else, you should add these so that we can get a clear picture of how matters stand as regards actual trading commitments. We are also anxiously waiting to hear how much Paste you have bought so far, how much more you think you can buy and whether it is a reasonable risk to sell 25 tons to the Ministry now in anticipation of your being able to accumulate this quantity within the next few weeks.

30 We received a cable to-day from Mr. Bennett advising his likely arrival at destination within a week. You can readily understand that we are now awaiting with great interest his first reports and we have told Percy Martin that at a guess, and without having any actual clear data, we are feeling reasonably optimistic about the possibilities of the whole of this enterprise turning out profitably and to our mutual satisfaction.

The writer is very sorry that it was, unfortunately, not possible for him to buy for you the wrist-watch you asked for, as it would have given us great pleasure to add it to the suitcase, fountain pen and rugs, which we desire you to accept as a gift from us.

Yours faithfully,

A. STRAUSS & CO. LTD.

(It'd.) ?

Manager,  
Rubber Department.

40

*Exhibits.*  
—  
*Defendant's Exhibit No. 5, continued.*  
—  
(7) Letter Plaintiffs to Defendant, 7th/12th October 1942, *continued.*

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1.

(1) Note  
Defendant  
to Hon.  
G. E.  
Moore,  
10th  
October  
1942.

Plaintiffs' Exhibit No. 1.

(1) Note, Defendant to Hon. G. E. Moore.

*Private.*

To Honourable G. E. Moore, Esq.,  
Cape Coast.

NOTES FOR CAPE COAST FACTORY

1. Contracted with Kofi Ahuboh and Kojo Atta (Bricklayers) both of Amanful Cape Coast to build one Smoke House and one Packing House or Office at £5 and £5.10.0 respectively. Have advanced them £2. Balance to pay them after completion of both houses £8.10.0. 10

*Size of Smoke House—*

Length 19 ft. × 6 in. (outside)  
Height 11 ft. (back) (outside—short side)  
Height 13 ft (front) outside.  
Width 18 ft.

Size of Packing House—20 ft. × 18 ft. × 13 ft.

Materials and labour to be provided by me.

A token fee 2/- paid to bricklayers. This arrangement was made in the presence of Ekow Dansoe my nephew.

Dated at Cape Coast this 20th September 1942. 20

2. Labour is being employed at 1/6 per day for males and 1/- per day for females and 9d. or 6d. per day for children.

*Abasah* is head of all the labourers and is to sleep at Aboom in my place in one of the rooms (outhouses) to look after my own house as well as the building materials. This extra work involves no payments.

TIMBER FOR BUILDINGS, ETC.

3. One J. C. O. Turkson of Akroful Cape Coast District has contracted to supply the following boards and scantlings at prices set down here.

(A) 50 Boards 1 × 12 × 12 at 3/- delivered Cape Coast or to the works £7.10.0 and Scantlings 30 at 2/6 3 × 4 × 12 £3.15.0. 30  
Total amount to pay on delivery £11.5.0.

4. As there is no one in town to build the Oven for the Smoke House I will send down our mason from Kumasi to build same as soon as the smoke house is completed.

5. Abam our carpenter at Kumasi may be sent down to fit in the fittings for the smoke houses or Quansah the carpenter here may be taught on my return with specifications to do same. Instructions will be sent from Kumasi if I have not returned by then to explain what should be done after the buildings have been completed.

6. The Bricklayers building the Smoke and Packing Houses balance 40 is with Mama and if any further advance is required they may have same but it should not be more than £1 at a time.

7. Labour Wages. I am leaving you some money for that ; if short ring me up at Kumasi or wire for remittance. *Exhibits.*

8. All special or other accounts must first be referred to Kumasi before payment if you think it desirable. *Plaintiffs' Exhibit No. 1.*

(Sgd.) K. S. OBU.

10/10/42.

Cash enclosed for disbursement.

	£11.	5.	0.	for Boards & Scantlings (Item 3).
	10.	0.	0.	„ Labour (Item 2) Plus £5 (£15).
10	13.	15.	0.	„ Reserve against contingencies.
	5.	0.	0.	C.C. Factory.
	<hr/>			
	£40.	0.	0.	
	<hr/>			

(1) Note Defendant to Hon. G. E. Moore, 10th October 1942, *continued.*

(Sgd.) K. S. OBU.

**Defendant's Exhibit No. 10.**

**Copy, Cable, Plaintiffs to Bennett, 23rd October 1942.**

Put in evidence by Defendant accepted and marked " 10 " in A. Strauss & Co. Ltd. v. K. S. Obu.

J. E.,

Ct. Clerk,

Divl. Ct. Ksi.

23/10/45.

20

Copy of Cable from A. Strauss & Co. Ltd. London despatched 23/10/42 to Bennett care Obu Cape Coast.

*Defendant's Exhibit No. 10.*

Copy Cable Plaintiffs to Bennett, 23rd October 1942.

“ Obus first thirty bales arrived quality and packing satisfactory but somewhat undercured and insufficiently dried consequently centre sheets developed heavy sweat and mould.”

NOTE—

“ Undercured ” means “ Undersmoked ”.

*Exhibits.**Defendant's  
Exhibit  
No. 9,  
continued.***Defendant's Exhibit No. 9—contd.****(15) Letter, Town Clerk, Cape Coast, to Defendant.**No. 987/42. T.C.222/41.  
Municipal Office,  
Gold Coast.(15) Letter  
Town  
Clerk,  
Cape  
Coast, to  
Defendant,  
10th  
November  
1942.

10th November 1942.

Dear Sir,

With reference to your application dated 2nd November, 1942, I am directed by the President to inform you that no permit for cement can be granted as the quota for sale for the month of November is Nil. 10

2. I am further directed to inform you that since work cannot continue owing to shortage of cement permit for Iron sheets is also refused.

Yours faithfully,

(Sgd.) ?

Town Clerk,  
Cape Coast Town Council.Mr. K. S. Obu,  
88, Aboom Wells Road,  
Cape Coast.*Plaintiffs'  
Exhibit  
No. 1,  
continued.***Plaintiffs' Exhibit No. 1—contd.**

20

**(2) Letter, Bennett to Messrs. J. J. Peele & Co.**c/o K. S. Obu,  
P.O. Box 37,  
Cape Coast.(2) Letter  
Bennett to  
Peele & Co.,  
14th  
November  
1942.

November 14th, 1942.

Messrs. J. J. Peele & Co.,  
Kumasi.

Dear Sirs,

Messrs. Cassleton Elliott & Company (actually their Mr. Russell of Accra) have given me the name of your firm. 30

I am in this country on a special visit of investigation into a business started by telegrams and correspondence between my principals Messrs. A. Strauss & Company, Ltd., 37/9 Lime Street, London, E.C.3, and the gentleman whose name and address is given at the head of this letter. My principals, having decided to carry on the business by continuing to support Mr. Obu with the necessary finance, they have asked me to safeguard the capital they have and will put into the business as far as possible. As Mr. Obu has acted all along in his own name, it seems to me that all that can be done in the way of safeguarding Messrs. Strauss's outlays is in the direction of legalising Mr. Obu's position of Agent for 40 Messrs. Strauss in respect of capital outlays for buildings (rubber factories) and all such or other immoveable and moveable property which have been erected or purchased with the said money including latex and prepared rubber in Mr. Obu's possession. To particularise, I tabulate the property in question :—

1. Rubber factory buildings at Kumasi.

2. Rubber factory buildings in course of erection at Cape Coast.
3. Rubber factory buildings to be erected at Mansu.
4. All other buildings wherever situated built or to be built with money supplied by Messrs. A. Strauss & Co. Ltd.
5. Motor Car No. A.C. 3062 bought by Mr. Obu for his use in the business.
6. Lorries purchased or to be purchased.
7. All rubber of any description, raw or manufactured, liquid or solid in course of purchase or purchased by Mr. Obu.
8. All other property of any description purchased or to be purchased by Mr. Obu with money supplied by Messrs. Strauss.
9. An Agreement to be completed and signed by Mr. Obu that he is working solely for Messrs. Strauss in the rubber business he does in the Gold Coast and will not do any business of like description for any other person or firm whatsoever.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.**(2) Letter Bennett to Peele & Co., 14th November 1942, continued.*

I called at your offices yesterday, but unfortunately your Mr. Mead is away from Kumasi, and I understand he will not be back till Tuesday next. It is doubtful whether I can stay here till then, as I wish to travel back to Cape Coast by train Monday next, but if I do not see you, I feel that the above gives all the necessary details for action if, of course, you are prepared to do so.

Messrs. Cassleton Elliott & Co. will be doing the audit of Mr. Obu's books on Messrs. Strauss's behalf, and Barclays Bank are the bankers in the business, to whom any enquiries can be made with regard to myself and/or the business. If I do not see you before I return to Cape Coast, will you kindly write me there whether you are prepared to do the necessary work in the matter, and for any other details you may require.

I feel that this letter is rather an abrupt introduction to the suggested business, and of course everything would have been very much easier and clearer, in that respect, had I been able to see you personally. However, if you agree to accept the suggested work, I can let you have any other information you may require, by letter.

I am staying at Kumasi at the house of Mr. Hayfron-Benjamin, whom I expect you know, and who is on the telephone. Mr. Obu is in the habit of coming to Kumasi fairly frequently when he always stays with Mr. Benjamin. Mr. Obu can be got by phone through the Hon. Moore at Cape Coast and by telegram addressed to "Obu Cape Coast" as well as at the postal address given at the head of this letter. I am expecting a letter from Mr. Russell to arrive by the train from Accra this, Saturday, evening\*, and if there is anything pertinent in it, I will add to this letter as may be necessary.

Yours faithfully,

(Sgd.) E. J. BENNETT,

Representing  
Messrs. A. STRAUSS & CO. LTD.,  
London.

\* Later. Not arrived.

*Exhibits.*

*Defendant's  
Exhibit  
No. 9,  
continued.*

**Defendant's Exhibit No. 9—contd.****(16) Telegram, Bennett to Plaintiffs.****Gold Coast Government Telegraphs.**

(16) Tele-  
gram  
Bennett to  
Plaintiffs,  
17th  
November  
1942.

To L. C. Strauss Company,  
37 Lime Street, London.

Date  
17/11/42  
Stamp.

1208 ready to leave soon after my birthday when hoping sea passage available a little later which I will take to avoid probable further long delay unless you cable meanwhile that air definitely fixed 0709 Obu full- stop Acetic dont ship any more or anything else unless specifically ordered in the future with import licence quoted. 10

BENNETT.

*Plaintiffs'  
Exhibit  
No. 1,  
continued.*

**Plaintiffs' Exhibit No. 1—contd.****(3) Letter, Bennett to Peele & Co.**

(3) Letter  
Bennett to  
Peele & Co.,  
17th  
November  
1942.

Messrs. J. J. Peele & Co.,  
Kumasi.

c/o K. S. Obu,  
P.O. Box 37,  
Cape Coast.

November 17th, 1942.

20

Dear Sirs,

Further to my letter of 14th instant and interview with your Mr. Mead at Sekondi when he agreed to undertake the work outlined, I give below additional information of the property which it is desired shall be assigned by Mr. Obu to Messrs. Strauss or whatever other means you decide upon to protect Strauss's interests in the said property.

1. *Rubber Factory Buildings Kumasi.*

The site is actually in Abuabu, and the draft lease was prepared by Lawyer Brown of Kumasi. The buildings consist of one Smokehouse; one packing house (both of brick and cement structure); one pressing shed of wooden skeleton uprights. It is proposed to build in the future another smokehouse and packing house, both also of brick and cement. 30

2. *Rubber Factory Buildings Cape Coast.*

The site belongs to Mr. K. S. Obu who has the documents in his possession if required. The buildings are in course of erection and consist of: One smokehouse of brick and cement; one packing house of brick and cement, and one pressing shed of wooden or bamboo skeleton uprights. It is proposed to erect another packing shed of wooden uprights. 40

3. *Rubber Factory Buildings at Manso (or Mansu) Sekondi District.*

The site belongs to the Chief of Manso, but no buildings have yet been erected. Eventually, the buildings will be similar to the other two places.



Please note that certain sums of money are still out as advances to contractors and others for materials etc. for the three sites given above.

4. *Motor Car No. A.C. 3062.*

No further details are necessary, I think.

5. *Lorries.*

These have still to be purchased, when details can be furnished by Mr. Obu.

6. *An Estate containing 1,100 Trees Para Rubber.*

20 This is a property covering nearly 3 sq. miles, situated about 8 miles from the main road at Mansu. The legal documents covering the property appear to be in order and were prepared by Mr. Sekyi of Cape Coast, and are at present in Accra for registration. They are available at any time thereafter.

The above, plus items 4, 7, 8 and 9 per my letter of 14th instant, covers all the property required to be covered and the service agreement from Mr. Obu in his business relations with Messrs. Strauss, and I trust you now have all the details required. If not, please address Mr. Obu direct at above address, and he will answer any questions.

20

(Sgd.) E. J. BENNETT.

The Rubber Factories of course include their contents. If you will advise me of the amount of deposit you require for your services, I will arrange accordingly with Barclays Bank, Kumasi.

Plaintiffs' Exhibit No. 1—contd.

(4) Letter, Peele & Co. to Bennett.

From :—

J. J. Peele & Co.,

J. J. Peele,

Solicitors,

P.O. Box 2,

Kumasi—Gold Coast.

Ref. K.C. 11/42.

Dear Sir,

A. Strauss & Co. Ltd.

We are obliged for your letter of the 14th instant and we confirm your interview with us at Sekondi on the 16th instant when we informed you that we should be pleased to act on behalf of A. Strauss & Co. Ltd.

Should you be visiting Kumasi again our Mr. Mead would be pleased if you would accept an invitation to stay with him.

40 We shall no doubt be hearing in course of time from Mr. Obu with full particulars of the properties mentioned in your letter together with the title deeds where possible.

Yours faithfully,

for J. J. PEELE & Co.

(Sgd.) JOHN W. MEAD.

*Exhibits.*

Plaintiffs'  
Exhibit

No. 1,

continued.

(3) Letter  
Bennett to  
Peele & Co.,  
17th

November  
1942,

continued.

(4) Letter  
Peele & Co.  
to Bennett,  
18th  
November  
1942.

18th November, 1942.

To :—E. J. Bennett, Esq.,  
c/o P.O. Box 37,  
Cape Coast.

*Exhibits.**Defendant's  
Exhibit  
No. 5,  
continued.*

Defendant's Exhibit No. 5—contd.

(8) Letter Bennett (?) to Plaintiffs.

c/o K. S. Obu,  
P.O. Box 37,  
Cape Coast.

21/11/42.

(8) Letter  
Bennett (?)  
to  
Plaintiffs,  
21st  
November  
1942.Messrs. A. Strauss & Co. Ltd.,  
London.

Dear Sirs,

I confirm my last letter of 18th inst. This, I hope, will be my 10  
final written report.

? spelling

*Your Cable* 0912. I cannot see the ambiguity you say is in Obu's  
declaration of 18/11. It read as despatched (original) "Insure 1568 lbs  
Funtumia grade one Lump 178 lbs. grade one railed." The only thing  
that might be said to be wrong or unclear is the word "lump" coming  
before the figures 178 as "funtumia" comes after the previous given  
figures, so this was done in the repetition (Obus 0100) and the total of  
the two sets of figures was added for clarity. I have done my best to teach  
Obu correct wording of cables and impressed upon him that it is better to 20  
add a word or two rather than risk want of clarity, thereby necessitating  
further cables passing to elucidate an unclear message. From your end  
do not hesitate to cable Obu succinctly as you would any ordinary business  
connection. My opinion is that you were inclined to word your cables  
somewhat, shall I say, diffidently (?), with the result that both ends never  
clarified, for instance, the position of buying outside qualities. You may  
not be able to follow what I mean here, but I reiterate, don't hesitate to  
cable Obu straightforwardly on any subject. You can eliminate all  
"feeling" about *Prince*. That does not come into the business side in 30  
any shape or form.

*System.*—Factory returns forms are in course of printing, and when  
they are ready they will be made in quadruplicate, and one copy airmailed  
to you weekly. At least, I have instructed accordingly. From these  
returns you will be able to follow all quantities and qualities in and out.  
As regards invoicing, I am somewhat exercised as to the prices Obu should  
show on his invoices to you, but have finally decided that the round figure  
of £110 shall be the basis for Para and Funtumia Grade One. This should  
fully cover the cost including up to 6d. per 4 gallon tin commission on  
latex purchased. Some fixed figure is wanted as Obu has been in the habit  
of drawing and invoicing at the price per ton of the credits, which have 40  
varied each time, the last two being £104/6/8 and £114 respectively. Other  
qualities will be invoiced at Govt. ex scale prices irrespectively of actual  
price paid. By the way, the 178 lbs. lump advised by Obu 18/11 was  
bought at 6d. per lb., on the reasoning of, protection in the quality when  
buying (i.e. taking everything in that category as 4th quality, although it  
is really 1st, and shipping it as 1st). I have pointed out the danger of this  
to Obu, danger of dissatisfied buyers with consequent very small purchases,  
and danger from the Govt. in paying sellers below the standard prices. I  
think Obu had grasped these points and now realises that quantity is

what we want and that there is ample margin of profit in the Govt. fixed prices, for us. This is where Obu "fell down" when he cabled you "buying lump grading it third price 9 pence per lb." He really meant that he was buying lump and paying third quality price; viz. 9d. although it was 1st quality. Your reply to that cable stopped him buying further lump, although I do not think much, in quantity, has been lost actually. Obu has been "all at sea" all along on this question of buying other than latex, but I think he sees things clearly now as I have given him precise calculations to work on for everything. In passing, you realise, I hope, that one  
 10 has to conform to the Govt. standard prices. Offin River Co. were "hailed over the coals" for their advertisement offering 14/- per tin for latex, against the Govt. figure (then) of 12/6, although they had done nothing actually wrong.

*Exhibits.*  
 —  
*Defendant's Exhibit No. 5, continued.*  
 —  
 (8) Letter Bennett (?) to Plaintiffs, 21st November 1942, *continued.*

Of course it paid Offin handsomely to get latex at 14/- to add to their own crops without increasing their overheads, but it obviously started a vicious circle, as everybody else would have had stated fixed price of 12/6. Obu's general policy now of price paying, outside latex, is to follow U.A.C., the basis of which is  $\frac{1}{4}$ d. per lb. below the Govt. ex scale prices all round, which  $\frac{1}{4}$ d. deduction is to cover freight charges to port of shipment, which  
 20 is in order. Actually this charge is .16 to .17d. per lb. Then in my calculations to Obu I have allowed  $\frac{1}{4}$ d. per lb. brokerage (or commission). This I consider is quite legitimate as being the equivalent of the 6d. per tin allowed as brokerage on latex purchases, and  $\frac{1}{4}$ d. lb. is less than 6d. per tin. Here again, Obu was uncertain as to whether he could afford to pay brokerage on purchases of outside qualities, but he understands the position now.

*Bookkeeping.*—This is still in a bit of a muddle. Obu's bookkeeping is not the brightest of specimens and a damned slow worker. Am afraid the books will not be properly "ship-shape" till the auditors take them  
 30 over, which I have suggested they do; Obu sending them the vouchers for posting. I am still awaiting letters from C., E. & Co. on this point (it takes a deuce of a time to get replies to letters). However, I am satisfied that there is nothing really wrong in the books, but only slipshod and bad bookkeeping, but all I can do is to clear things up as far as possible. I cannot rewrite the whole thing from the beginning. At the moment I am awaiting the bookkeeping entries into the ledger of the discrepancies I have discovered and rectified, plus the entry of current vouchers, and I have hopes that a trial balance more or less up-to-date and fairly accurate will be ready to include with this letter. When Cassleton Elliott get  
 40 down to the books, they should be able to get them into the shape where quarterly statements to you will show the position here quite clearly.

*Finally.*—Everything now depends on Obu's ability to get in the latex he is so positive he *can* get, at least to the minimum of my estimate of 45 tons per month from the three factories when they are all completed. I must state, that in Mr. Obu you have an untiring worker who is "on the job" at all hours from early morning to late at night, and when I say "early morning" I mean it; 7 a.m. at the latest. I also must state that I consider Obu has done a very good job of work all round, in the progress he has made with the factories, considering the difficulties he has had to  
 50 contend with from major and minor Govt. officials, of which difficulties I have had practical experience. I have had my dubious moments about the

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 5,  
 continued.

success of the whole thing, but after conning over all the points, I feel my recommendation to continue, was the only possible course to take. On the subject of purchases of outside qualities, here also I have some hope that reasonable qualities will be coming in in the future to help things along generally.

(8) Letter  
 Bennett (?)  
 to  
 Plaintiffs,  
 21st  
 November  
 1942,  
 continued.

On the point of "thoroughly systematising" Obu, please remember that this is a one man show, and Obu's chief job is to get in Rubber, and at the moment to see the factory here finished and working and then to get Mansu up—so his time is more than fully occupied. I have put him on the road of the essentials in the way of system, but too much system would be to the detriment of the revenue side of the business. I think all that is necessary has been done, and things should run properly with the help of the auditors. 10

Yours faithfully,

I am not at all impressed with the efficiency of Barclays Bank out here. They are the Army paymasters, and it may be that they are so hard pressed with that work that they neglect other departments. However, having started with them, I suppose it is better to continue. Another point in the same direction is that I do not understand their London Office not pointing out to you that it would be better to work direct with the Branches out here where our business is being done. The remittances should go direct to Kumasi, and not to Accra. As it is Accra simply sends the money to Kumasi. London may not know of this, but they surely know that it is a waste of time to send the documents for the goods you have shipped to Obu, to Accra, when the goods themselves have gone to Takoradi, and Obu's permanent address is Cape Coast. Obu has had no advices from you, except telegraphically of any shipments, and it was only by my taking a special visit to Takoradi, 50 miles from here, that I traced the shipment of Formaldehyde (shall call this Formalin in future as this name is easier and it is the same) as having arrived about end of Oct. Since then I have had a lot of trouble with getting it cleared (not finished yet) in the absence of the documents, and it was only last evening that three stereotyped printed letters arrived from Barclays Accra, saying they had unspecified sight drafts on Obu, no amounts stated, "docs. free", with the request for a remittance of Bank charges and the printed "phrase" "If you do not intend to pay this bill please advise promptly with reasons". These notices are three in number dated 11th and 12th inst. and have therefore been over a week getting from Accra to here. I am taking the Bank to task for this delay, but you should have sent Obu mail advice of what you have done with the documents. Under the circumstances I can understand you using the Bank, but surely a copy of suppliers' invoices could have been sent to Obu. 20 30 40

I still do not know if there is any bill on Obu attached to these documents, so am somewhat in the dark, but in future unless you have some particular reason for using the Bank (if using the Bank send to Barclays, Takoradi), please send all the documents to Elder Dempster Lines Ltd. Takoradi. and ask them to clear the goods and apply to Obu for disposal instructions. Elder Dempster at your end can attend to the shipping of the goods and the Bs/L can be made out to their Takoradi people. Mail advice with copies of suppliers invoices to be sent 50

by you to Obu here. Then all Obu need do is to produce his Import Licence and tell E. D. Takoradi what to do with the goods. There is the question of possible Import duty and clearance charges but this can easily be arranged here, or perhaps Elder Dempster Liverpool will, on your instructions, tell their Takoradi people to trust Obu to pay them, as would any other responsible firm.

- 10 On the question of my cabling you not to ship any more Acetic Acid, this is not welcome now. I understood you could not get the stuff, otherwise would have cabled you earlier to cancel Obu's order for it. Your cabled advice of shipment was a complete surprise. There is more than enough Acetic here in the hands of the Govt. who will sell it to Rubber producers, the Govt. having ordered about twice the amount they really want. I have not yet got the necessary Import permit for Obu's lot but am hoping there wont be any trouble with it, but even so, dont quite know what Obu will do with nearly 700 gallons. It will last him a long time with the para from his 1100 trees ! Am afraid Obu was super-optimistic in ordering 1000 gallons and he would have to get special permission to sell it. I also cabled you, for safety, not to ship anything more unless it is specially ordered *in the future* with Import licence quoted. Obu has been a bit slack on this Import licence question, and the Govt. are very " sticky " about this procedure.
- 20

*Sunday, 24th Nov. 1942.*

- Credits for Rubber shipments.*— I suggest that these be opened always on the fixed values basis of £110 for Para and Funtumia Grade one, including Native Prepared and at Govt. standard ex scale prices for other grades. As regards the latter however, as the procedure will be to buy whatever is offering of other grades in whatever quantities may be available, you will not know of the purchases until you receive cabled advice of railings and therefore this latter suggestion is not feasible. Therefore I consider
- 30 it best to have all credits opened on the fixed basis of £110 per ton (see my remarks earlier regarding prices for invoicing) and I will arrange that Obu draws and invoices at this figure for Funtumia and Para Smoked Grade one, and at Govt. standard ex scale prices for other qualities, plus (for other qualities) an addition to the price of perhaps  $\frac{1}{4}$  per lb. where he knows that the rubber in question has cost him more, at port of shipment (where he has had to pay a commission bringing the cost above Govt. ex scale price, for instance). Obu will have a copy of this letter, so the position will be clearly before him. Then, I do not see the necessity of a time limit to credits against rubber shipments. They can only be used for actual
- 40 railings, and there is no object in opening a credit with a time limit, which may not be used, as has happened in the past. When Obu wants a fresh credit he will cable for one covering so many tons and you will arrange accordingly at £110 per ton. It does not matter if Obu draws at less per ton. (I had to point this out to the Bank at Kumasi who seemed to think that as your last credit is at the rate of £114 per ton Obu had to draw at that price !) All credits to be cabled direct to Kumasi or Takoradi according to Obu's request. Cut out Accra altogether. When rubber begins to be sent from Cape Coast, and (eventually Manso) it will go direct to Takoradi, and the Bank there will do the business and handle the documents?
- 50

*Exhibits.*  
—  
*Defendant's Exhibit*  
No. 5,  
*continued.*

(8) Letter  
Bennett (?)  
to  
Plaintiffs,  
21st  
November  
1942,  
*continued.*

*Exhibits.*  
 ———  
*Defendant's*  
*Exhibit*  
*No. 5,*  
*continued.*

(8) Letter  
 Bennett (?)  
 to  
 Plaintiffs,  
 21st  
 November  
 1942,  
*continued.*

*Collecting other qualities.* For your information, Obu has sent out 7 men from here during the last few days to try and get in some of this stuff. There is difficulty in getting receptacles in which to pack Paste, but I have told Obu to get the stuff in first and then worry about how it is to be despatched. With the stuff on hand, the Govt. are easier to handle in disgorging old cement barrels and such like for shipping purposes.

I am still without a reply from Accra regarding Obu's name on the list of approved shippers, and have not yet heard from there about "bareback" and the newly prescribed markings. There has hardly been time for a reply about the last two mentioned points, but plenty of time 10 for the first.

I enclose copy of my today's letter to Cassleton Elliott, Accra, also current Trial balance.

Yours faithfully,

*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

(5) Letter  
 Bennett to  
 Peele & Co.,  
 22nd  
 November  
 1942.

Plaintiffs' Exhibit No. 1—contd.

(5) Letter, Bennett to Peele & Co.

K. S. Obu,  
 Representing A. Strauss & Co. Ltd.,  
 London.

c/o K. S. Obu,  
 P.O. Box 37,  
 Cape Coast.

20

November 22nd, 1942.

Messrs. J. J. Peele & Co.,  
 P.O. Box 2,  
 Kumasi.

Dear Sirs,

A. Strauss & Co. Ltd.

I thank you for your letter of 18th and Mr. Mead's invitation to stay with him should I visit Kumasi again, which invitation I will be 30 happy to accept but I very much doubt that I shall travel to Kumasi again. Nevertheless, the kind thought is much appreciated.

You will in the meantime have received my letter of 17th instant which I think gives all the details required; except that I omitted to mention that item 6 is a lease of the property in question, to tap the rubber trees contained therein for a period of 25 years, and the lease is in the name of Mr. Obu.

There is no purchase of land in the business, so no title deeds come into question. The properties are those mentioned in my letters of 14th and 17th instant, plus one lorry costing £250 purchased since my letter 40 of 17th instant. Mr. Obu will answer any question you put before him, and I will of course help him in that direction while I am here, but please address all correspondence direct to Mr. Obu in case I leave suddenly.

Yours faithfully,

(Sgd.) E. J. BENNETT.

## Plaintiffs' Exhibit No. 1—contd.

(6) Letter, Peele &amp; Co. to Defendant.

From :—

J. J. Peele & Co.,  
Solicitors.  
J. J. Peele.

P.O. Box 2,  
Kumasi,  
Gold Coast.

30th November, 1942.

K. S. Obu, Esq.,  
P.O. Box 37,  
Cape Coast.

10

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(6) Letter  
Peele & Co.  
to  
Defendant,  
30th  
November  
1942.

Dear Sir,

A. Strauss &amp; Co. Ltd.

We understand that you have been informed by Mr. E. J. Bennett that we are acting for the above-mentioned Company and we have been instructed to satisfy ourselves regarding the properties which you are managing on behalf of the Company. We shall therefore be obliged if you will kindly forward for our inspection the title deeds and other documents relating to the following properties :—

20

- (1) Abuabu Land Kumasi with particulars of buildings.
- (2) Rubber Factory at Cape Coast with particulars of buildings.
- (3) Rubber Factory at Manso with particulars of buildings.
- (4) Manso Plantation.

We are also instructed to prepare an Agreement between yourself and the Company and for this purpose we should be obliged if you would inform us as to the terms upon which you are working for the Company.

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) JOHN W. MEAD.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.**(7) Letter Peele & Co. to E. J. Bennett, 30th November 1942.***Plaintiffs' Exhibit No. 1—contd.****(7) Letter, Peele & Co. to E. J. Bennett.**

From :—

J. J. Peele &amp; Co.,

Solicitors.

J. J. Peele.

E. J. Bennett, Esq.,  
c/o K. S. Obu, Esq.,  
P.O. Box 37,  
Cape Coast.P.O. Box 2,  
Kumasi,  
Gold Coast,

30th November, 1942.

10

Dear Sir,

A. Strauss &amp; Co. Ltd.

We are obliged for your letter of the 22nd instant and thank you for the information therein contained.

In order to enable us to draft the agreement between your Company and Mr. Obu will you please inform us of the terms upon which he is working. We have written to Mr. Obu requesting him to forward for our inspection all the title deeds in his possession relating to the properties mentioned in your letters to us. After we have examined these we will be able to decide the best method of safeguarding your Company's interest. 20 We presume that your Company wishes to be covered in respect of all advances made and to be made to Mr. Obu, and in this connection we shall require to know the extent of the advances made and what financial arrangements have been made for the future.

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) JOHN W. MEAD.



## Plaintiffs' Exhibit No. 1—contd.

(8) Letter, E. J. Bennett to Peele &amp; Co.

P.O. Box 37,  
Cape Coast.

December 2nd, 1942.

Messrs. J. J. Peele & Co.,  
P.O. Box 2,  
Kumasi.*Exhibits.**Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*(8) Letter  
E. J.  
Bennett to  
Peele & Co.,  
2nd  
December  
1942.

Dear Sirs,

10

A. Strauss &amp; Co. Ltd.

I acknowledge receipt of your letter of 30th ult. *Mr. Obu's terms with Strauss.* He is entitled to draw £50 (Fifty Pounds) per month as remuneration out of which he has to pay all office and travelling expenses. He has to give the whole of his time and attention to the business of buying latex and manufacturing it into shippable smoked sheet rubber and buying all other kinds of prepared and/or semi-prepared rubber and shipping it; all to the Ministry of Supply, U.K. on behalf of Strauss only. Any additional remuneration to Mr. Obu to be arranged mutually with Strauss according to the progress of the business.

20

*Advances to finance the business.*—A total of £5,250 in cash has been advanced to date by Strauss, and certain other sums have been credited by Barclays Bank Kumasi against rubber shipped or railed, in accordance with documentary credits opened by Strauss. Further finance by remittances from Strauss will depend on circumstances, but it is unlikely that additional money will be provided or be required for some time, as there are ample funds in the Bank a/c at present for all requirements for the time being.

30

Messrs, Cassleton Elliott & Co. Accra have undertaken the audit of Mr. Obu's books and will be able to give you any information on this score, from time to time.

I cannot think of anything else I can usefully add at the moment. I expect to leave here in the near future for Takoradi as my passage home is in view. Barclays Bank Takoradi would find me if need be, for a while.

Yours faithfully,

(Sgd.) E. J. BENNETT.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.*

(9) Letter Peele &amp; Co. to Defendant, 15th December 1942.

**Plaintiffs' Exhibit No. 1—contd.****(9) Letter, Peele & Co. to Defendant.**

From :—

J. J. Peele &amp; Co.

J. J. Peele,

Solicitors,

P.O. Box 2,

Kumasi—Gold Coast.

Telephone 121.

15th December, 1942.

To :—K. S. Obu, Esq.,

P.O. Box 37.

Cape Coast.

Dear Sir,

A. Strauss &amp; Co. Ltd.

10

With reference to our letter of the 30th ultimo, we shall be pleased to receive the information and documents as therein requested.

Yours faithfully,

for J. J. PEELE &amp; Co.

(Sgd.) JOHN W. MEAD.

(10) Letter Defendant to Peele &amp; Co., 15th December 1942.

**Plaintiffs' Exhibit No. 1—contd.****(10) Letter, Defendant to Peele & Co.**

P.O. Box 37,

Cape Coast.

15th December, 1942.

20

Messrs. J. J. Peele &amp; Co..

Solicitors,

Kumasi.

Dear Sirs,

Your letter of the 30th November, 1942, addressed to me and that of the 7th instant to Mr. Bennett have both been received by me (the latter having been opened as per instructions left by the addressee who you know has left the country for England).

I was waiting to return to Kumasi and to give you a call and to answer any questions you desire in person. I am due Kumasi this week and will ring you for an appointment to call and see you. Meantime I am enclosing you cheque for the sum of £20 as requested by you against fees and disbursements as per your letter of the 7th instant addressed to Mr. Bennett.

As I shall be in Kumasi before this week end will you kindly acknowledge receipt of this letter to my address in that place.

K. S. OBU,

c/o H. Hayfron-Benjamin, Esq.

B.L., Kumasi (P.O. Box 282).

Yours faithfully,

(Sgd.) K. S. OBU.

## Plaintiffs' Exhibit No. 1—contd.

## (11) Receipt for Documents.

Received from K. S. Obu, Esq., the following documents:—

(1) Conveyance on Sale from W. E. G. Sekyi, Esq. (Estate of W. E. Pietersen (deceased)) to K. S. Obu dated the 17th April, 1941.

(2) Lease of Ayinasu Rubber Plantation from Kodwo Esiam to K. S. Obu, Esq. dated 15th September, 1942.

Dated the 21st day of December, 1942.

Exhibits.

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(11) Receipt  
for docu-  
ments,  
21st  
December  
1942.

10

(Sgd.) R. ARTHUR,

for J. J. PEELE & Co.

## NOTES—

1. Mansu (Sekondi District) Lease not ready. £10 drink has been paid to Chief.
2. Kumasi Lease ready since Saturday the 19th December, 1942, but is to be executed today or when Nana Prempeh sent for me during the week.

(Sgd.) OBU.

21/12/42.

20

## Plaintiffs' Exhibit No. 1—contd.

## (12) Letter, Peele &amp; Co. to Defendant.

J. J. Peele & Co.  
J. J. Peele,  
Solicitors,  
P.O. Box 2,  
Kumasi—Gold Coast.  
Telephone 121.

27th January, 1943.

To :—K. S. Obu, Esq.,  
P.O. Box 37,  
Cape Coast.

(12) Letter  
Peele & Co.  
to  
Defendant,  
27th  
January  
1943.

Ref. No. KC.11/42.

Dear Sir,

30

A. Strauss & Co. Ltd.

With reference to your letter of the 15th ultimo we regret we have not yet had the opportunity of having the interview with you which you suggested in your letter.

Mr. Mead will be in Cape Coast on February 1st, and we would suggest that you arrange an interview with him on that date at Cape Coast. 3 o'clock in the afternoon will be a convenient time to Mr. Mead and we should be obliged if you would suggest where the meeting might take place.

Yours faithfully,

for J. J. PEELE & Co.,

(Sgd.) JOHN W. MEAD.

40

*Exhibits.*

*Defendant's  
Exhibit  
No. 5,  
continued  
(Plaintiffs'  
Exhibit  
No. 1,  
continued  
(13)).*

**Defendant's Exhibit No. 5—contd.**

**(Plaintiffs' Exhibit No. 1 (13))**

**(9) Letter, J. Peele & Co. to Defendant.**

J. J. Peele & Co.,  
Solicitors,  
P.O. Box 305,  
Sekondi,  
Gold Coast.

2nd February, 1943.

(9) Letter  
Peele & Co. Ref. No. KC.11/42.  
to  
Defendant, K. S. Obu, Esq.,  
2nd P.O. Box No. 37,  
February Cape Coast.  
1943.

10

Dear Sir,

We confirm our interview with you at Cape Coast on the 1st instant when you informed us that you had received advances from Messrs. A. Strauss & Co. Ltd. amounting approximately to £5,000. You further informed us that you receive a monthly remittance of £50 for expenses and that it was agreed you should share in the profits arising from the sale of rubber but that no percentage had been fixed, this percentage was 20 in the Company's discretion.

We informed you that we would draft an agreement between the Company and yourself whereby you agree to act as the Company's agent in purchasing rubber and forwarding it to the Company's order, and that you would not act for any other Company or on your own account so long as the arrangement subsisted between Messrs. A. Strauss & Company Limited and yourself.

We informed you that the Company would require security to be given in respect of advances made by the Company and for this purpose we proposed you should mortgage the Ayinasu property and the Pietersen 30 property, the Title Deeds of which property you have already forwarded to us, together with the Abuabu property, the conveyance of which to you have not yet been completed.

We will prepare the necessary documents as soon as possible and forward them to you for your inspection.

Yours faithfully,

for J. J. PEELE & Co.,

(Sgd.) JOHN W. MEAD.

**Defendant's Exhibit No. 5—cond.****(Plaintiffs' Exhibit No. 1 (14))****(10) Letter, Peele & Co. to Defendant.**

J. J. Peele & Co.,  
Solicitors,  
P.O. Box 2,  
Kumasi,  
Gold Coast.

Ref. KC.11/42.

20th February, 1943.

10 K. S. Obu, Esq.,  
c/o Messrs. Hayfron-Benjamin & Co.,  
Kumasi.

Dear Sir,

A. Strauss &amp; Co. Limited.

With reference to your interview with us this morning regarding the properties you are offering as security against the advances made to you by the above-mentioned Company, we regret to inform you that these properties do not appear to us to constitute sufficient security for the advances that have been made and which amount to over £5,000.

20 We shall be obliged if you will kindly inform us what further security you are able to offer, whether by way of properties, investments, or personal guarantees.

Your early attention to this will oblige.

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) JOHN W. MEAD.

**Plaintiffs' Exhibit No. 1—contd.****(15) Letter, Defendant to Peele & Co.**

K. S. Obu.

30 Telegrams : Obu, Kumasi.

P.O. Box 61,  
Kumasi.

Messrs. J. J. Peele & Co.,  
P.O. Box 2,  
Kumasi.

20th February, 1943.

Dear Sirs,

Messrs. A. Strauss &amp; Co. Ltd. and Myself.

I am in receipt of yours of even date and have noted contents.

There appears to be some misunderstanding as regards "Security" as you put it from me against advances made by the abovenamed Company.

40 This was not a matter raised between myself and the Company who are my Principals in London at all but working on different basis which they perfectly understand.

*Exhibits.*

Defendant's  
Exhibit  
No. 5,  
continued  
(Plaintiffs'  
Exhibit  
No. 1,  
continued  
(14)).

(10) Letter  
Peele & Co.  
to  
Defendant,  
20th  
February  
1943.

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(15) Letter  
Defendant  
to  
Peele & Co.,  
20th  
February  
1943.

*Exhibits.*  
 ———  
 Plaintiffs'  
 Exhibit  
 No. 1,  
 continued.

(15) Letter  
 Defendant  
 to  
 Peele & Co.,  
 20th  
 February  
 1943,  
 continued.

Mr. Bennett, in order to secure the Company as to materials, plants etc. bought by me with money supplied by the Company suggested, which I agreed, that the properties I have so acquired be given to the Company as they are not originally in their name. However, I am referring your letter to London, but must tell you that I am not prepared to offer any personal guarantee except the properties I acquire for the interest of the business which I daresay my Principals Messrs. A. Strauss & Co. Ltd. will understand.

I understood from Mr. Bennett before he left the Coast that you were just to accept the properties I have so acquired for the Company, but I did not understand that I was to put in any other securities than that. At any rate, I must make it perfectly clear that it cannot be done. I am working on mutual trust and bona fide basis mainly, and the Company my Principals understand the position clearly.

Mr. Bennett knew all this before he left, and I am afraid you have misunderstood him in some points on the subject. When the other leases are ready I will forward them on to you.

Yours faithfully,

(Sgd.) K. S. OBU.

P.S.—I am leaving town on Monday for a few days but will certainly be here by the end of March next.

(Sgd.) OBU.

(16) Letter  
 Peele & Co.  
 to  
 Defendant,  
 3rd March  
 1943.

**Plaintiffs' Exhibit No. 1—contd.**  
**(16) Letter, Peele & Co. to Defendant.**

From :—

J. J. Peele & Co.,  
 J. J. Peele,  
 Solicitors,  
 P.O. Box 2,  
 Kumasi—Gold Coast.

3rd March, 1943.

To : K. S. Obu, Esq.,  
 c/o Lawyer Hayfron-  
 Benjamin,  
 Kumasi.

30

Ref. KC. 11/42.

Dear Sir,

A. Strauss & Co. Ltd.

With reference to your engagement as agent of the above-mentioned Company, we would suggest that you sign an acknowledgment of the terms under which you are working and for this purpose we enclose a draft form of acknowledgment. This acknowledgment can be signed by you in its present form or can be altered so as to be in the form of a letter.

Will you kindly let us have your reply together with your observations at an early date.

40

Yours faithfully,

for J. J. PEELE & Co.,  
 (Sgd.) JOHN W. MEAD.

## Plaintiffs' Exhibit No. 1—contd.

(17) Letter, Defendant to Peele &amp; Co.

K. S. Obu,  
P.O. Box 61,  
Kumasi.

5th March, 1943.

Messrs. J. J. Peele & Co.,  
Kumasi.

Dear Sirs,

10

A. Strauss &amp; Co. Ltd.

I have received your letter of the 3rd instant, together with attached draft of "Acknowledgment."

As soon as I get through with it, I shall return same with my "observations" as the Acknowledgment in its present form does not constitute the terms of the engagement as you have worded same.

Yours faithfully,

(Sgd.) K. S. OBU.

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(17) Letter  
Defendant  
to  
Peele & Co.,  
5th March  
1943.

## Plaintiffs' Exhibit No. 1—contd.

(18) Letter, Defendant to Peele &amp; Co.

20 K. S. Obu.

Telegrams : OBU, Kumasi.

P.O. Box 61,  
Kumasi.

7th March, 1943.

Messrs. J. J. Peele & Co.,  
Kumasi.

Dear Sirs,

30 Further to my letter of the 5th March, 1943, and my interview with you on the 15th instant, I am now returning you the draft acknowledgment sent me on the 3rd instant with my alterations on a separate sheet to suit the situation.

If you will draw up something in that form and return to me, I will be glad to subscribe my signature to same and my principals Messrs. Strauss & Company, Ltd., London, will endorse same.

Yours faithfully,

(Sgd.) K. S. OBU.

(18) Letter  
Defendant  
to  
Peele & Co.,  
7th March  
1943.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.**(19) Letter Peele & Co. to Defendant, 26th March 1943.***Plaintiffs' Exhibit No. 1—contd.****(19) Letter, Peele & Co. to Defendant.****From :—**

**J. J. Peele & Co.  
J. J. Peele.  
Solicitors,  
P.O. Box 2.  
Kumasi—Gold Coast.**

Ref. K.C.11/42.

26th March, 1943.

**To :—K. S. Obu, Esq.,  
c/o Messrs. Hayfron-  
Benjamin & Co.,  
Kumasi.**

10

Dear Sir,

A. Strauss &amp; Co. Limited.

With reference to your letter of the 17th instant, we return herewith your draft, which you substituted for the draft forwarded by us, and as amended in red ink, we consider the document should not be found unsuitable to you. If you have any further objections to the draft as amended we think the matter might be more easily settled if you call and discuss your objections with us.

Yours faithfully,

for J. J. PEELE &amp; Co.,

20

(Sgd.) JOHN W. MEAD.

*(20) Letter Defendant to Peele & Co., 1st April 1943.***Plaintiffs' Exhibit No. 1—contd.****(20) Letter, Defendant to Peele & Co.**

K. S. OBU.

Tel. OBU, Kumasi.

P.O. Box 61,  
Kumasi.

1st April, 1943.

Messrs. J. J. Peele & Co.,  
Kumasi.

Dear Sirs,

30

I am in receipt of your Memo Reference K.C.11/42 dated 26th March, 1943 with draft Agreement.

There are few points which I do not still find suitable and I will give you a ring during the week for an appointment to discuss same before I leave for my headquarters, Cape Coast.

Yours faithfully,

(Sgd.) K. S. OBU.



**Plaintiffs' Exhibit No. 4.****Service Agreement between Defendant and Plaintiffs.**

Put in evidence by Plaintiffs, accepted and marked  
Exhibit " 4 " in Strauss & Co. Ltd. &c. v. K. S. Obu.

R. Y. O.,  
Divl. Court,  
Kumasi.

3/8/45.

*Exhibits.*  
—  
*Plaintiffs'*  
*Exhibit*  
*No. 4.*  
—  
Service  
Agreement  
between  
Defendant  
and  
Plaintiffs,  
19th April  
1943.

Service Agreement between Defendant and Plaintiffs.

10

446/43.

I KOFI SUNKERSETTE OBU of Cape Coast in the Central Province of  
the Gold Coast hereby acknowledge as follows :—

1. THAT I will faithfully serve A. Strauss and Company Limited whose registered office is situated at 37/9 Lime Street in the City of London England (hereinafter called " the Company ") in the capacity of Agent in the business of purchasing manufacturing and exporting rubber in and from the Gold Coast for the account and to the order of the Company aforesaid and during the continuance of the said employment I will give my time and attention to the management conduct and superintendence  
20 of the said business improving the same to the most of my power and ability and doing and performing all such acts matters and things in about or relating to the said business as the Company shall direct.
2. TO keep accounts of all dealings and transactions in connection with the said business and to produce such accounts to the Company's Auditors whenever required by the Company and/or its Agent or Agents and further whenever required by the Company to draw up a copy of such accounts and deliver the same to the Company or as it shall direct.
3. DURING the continuance of the business I will not deal or trade  
30 on my own account or on the account of any other person or Company in the purchasing manufacturing and/or exporting of rubber.
4. DURING the term of my employment I will forward to or to the order of the Company all rubber bought and/or manufactured for the account of the Company.
5. ALL advances which the Company has made to me up to the present totalling five thousand two hundred and fifty pounds and may make hereafter for the furtherance of the business are acknowledged by me and account thereof will be rendered to the Company and in respect of which I have handed to Messieurs J. J. Peele and Company the documents of title of the Ayinasu Plantation and Plots 20 and 21 Cape  
40 Coast.
6. THE Company has agreed to remunerate my services with a monthly sum of fifty pounds to cover my personal and travelling expenses

*Exhibits.*  
 Plaintiffs' Exhibit No. 4.  
 Service Agreement between Defendant and Plaintiffs, 19th April 1943, continued.

for the time being which I have accepted. A commission is also to be paid to me by the Company which I have agreed to leave to the discretion of the Company.

SIGNED by the abovenamed KOFI SUNKERSETTE OBU the 19th day of April, 1943. } K. S. OBU.

In accordance with section 18 of Cap. 154 I certify that in the opinion of the Commissioners of Stamps this Instrument is chargeable with a duty of Two shillings and sixpence.

Commissioner of Stamps Office. 19th April, 1943. R. SONNE, Commissioner of Stamps. 10

*Plaintiffs' Exhibit No. 1, continued.*  
 (21) Letter Peele & Co. to Defendant, 17th April 1943.

**Plaintiffs' Exhibit No. 1—contd.**  
 (21) Letter, Peele & Co. to Defendant.

From :— J. J. Peele & Co., 17th April, 1943.  
 J. J. Peele, Solicitors,  
 P.O. Box 2, To : K. S. Obu, Esq.,  
 Kumasi—Gold Coast. Kumasi. 20  
 Telephone 121.

Ref. KC.11/42.

Dear Sir,

A. Strauss & Co. Ltd.

With reference to your interview with us of today's date, we enclose for signature by you the Acknowledgment which is now in the form agreed upon by you. Will you please return this to us after signature.

Yours faithfully,

for J. J. PEELE & Co.  
 (Sgd.) JOHN W. MEAD. 30

(22) Letter Defendant to Peele & Co., 26th August 1943.

**Plaintiffs' Exhibit No. 1—contd.**  
 (22) Letter, Defendant to Peele & Co.  
 K. S. Obu.

J. J. Peele & Co., Kumasi.

Kumsri  
 26th August, 1943.

Dear Sirs,

I shall be glad if you will kindly supply me with a copy of the Ayinasu Plantation Lease Agreement for my file in order to know the dates due for payment of rents.

Yours faithfully, 40  
 (Sgd.) K. S. OBU.

Plaintiffs' Exhibit No. 1—contd.  
 (23) Letter, Peele & Co. to Defendant.

*Exhibits.*

*Plaintiffs' Exhibit No. 1, continued.*

From :—

J. J. Peele & Co.

J. J. Peele.

Solicitors,

P.O. Box 2,

Kumasi—Gold Coast.

Telephone 121.

27th August, 1943.

To : K. S. Obu, Esq.

Kumasi.

(23) Letter Peele & Co. to Defendant, 27th August 1943.

10 Ref. KC.11/42.

Dear Sir,

With reference to your letter of yesterday's date we shall be pleased to give you inspection of the Ayinasu Lease and for your information the rent is payable on the usual quarter days, the rent for the first year ending the 14th of September 1943 having been due in advance. The first payment of rent, therefore, becomes due on the 25th of December next.

The rent is apparently at the rate of a penny per tree capable of being tapped with a minimum one thousand, plus quarterly payments of £12 10/—.

20

Yours faithfully,

for J. J. PEELE & Co.

(Sgd.) JOHN W. MEAD.

Plaintiffs' Exhibit No. 1—contd.  
 (24) Letter, Peele & Co. to Defendant.

(24) Letter Peele & Co. to Defendant, 2nd September 1943.

From :—

J. J. Peele & Co.,

J. J. Peele.

Solicitors,

P.O. Box 2.

30

Kumasi—Gold Coast.

Telephone 121.

Ref. KC.11/42.

2nd September, 1943.

To : K. S. Obu, Esqr.,

Kumasi.

Dear Sir,

We have pleasure in forwarding as requested two copies of the lease of the Ayinasu Plantation. Our charges for the making of these copies are 10/6d., and we shall be pleased to receive a remittance at your earliest convenience.

Yours faithfully,

for J. J. PEELE & Co.

(Sgd.) JOHN W. MEAD.

40

*Exhibits.**Defendant's  
Exhibit  
No. 5,  
continued.**(11) Letter  
Percy  
Martin to  
(Defendant  
?), 2nd  
November  
1943.***Defendant's Exhibit No. 5—contd.****(11) Letter, Percy Martin to (Defendant ?).**

Percy Martin,  
13, Rood Lane,  
E.C.3,  
Nov. 2nd, 1943.

Dear Old Chap,

Many thanks for your airmail letter of October 11th which arrived yesterday, and I also have to acknowledge your September one.

I am sorry I haven't written to you before but, as you know, I see 10 all your letters to Strauss, and theirs to you, and I have really been waiting in the hope that I could give you something definite regarding cigarettes etc. We have pulled all strings possible here at the moment, and I am anxiously awaiting your news as to how you have got on with your latest application. As regards machines, I understand from Cumming that there is a surplus of them out there, and I don't think the Government is granting any further export licences for the moment. From what he says, a very large number were applied for, and only a very few put to use! Can you confirm this?

I had a great idea of getting an old friend of mine (of over 25 years 20 standing) who lived in West Africa on and off some time ago (and is used to rubber trading generally) to go across to see you so that you could put your heads together. His name is Simmons,—I think you would get on well with him, as he has been in most parts of the world and is, amongst other things, a mining engineer. The project is not completely dead, and if we decide to ask him to go out, I will see that you are cabled in good time. Meanwhile, my congratulations on increased output and quality—a good effort, especially without the consumer goods. Letters take so long from this side that they hardly seem worth while as all news must be old before they reach you. I don't know how long this will 30 take, but I take the opportunity to wish you very happy Xmas, and good health and prosperity during 1944.

The very best from,

Yours very sincerely,

PERCY.

**Plaintiff's Exhibit No. 1—contd.****(25) Letter, Peele & Co. to Defendant.***Exhibits.**Plaintiffs' Exhibit No. 1, continued.*

From :—

J. J. Peele & Co.,  
 J. J. Peele.  
 Solicitors,  
 P.O. Box 2,  
 Kumasi—Gold Coast.  
 Telephone 121.  
 Ref. KC.11/42.

2nd February, 1944.

To : K. S. Obu, Esq.,  
 c/o Messrs. Hayfron-  
 Benjamin & Co.'s  
 Office, Kumasi.

(25) Letter  
 Peele & Co.  
 to  
 Defendant,  
 2nd  
 February  
 1944.

10

Dear Sir,

A. Strauss &amp; Co. Ltd.

May we remind you that you informed us that you would deposit with us the lease of the land outside Kumasi which we understand you have rented from the Asantehene.

Yours faithfully,

for J. J. PEELE &amp; Co.

(Sgd.) JOHN W. MEAD.

**Plaintiffs' Exhibit No. 1—contd.****(26) Letter, Defendant to Peele & Co.**

(26) Letter  
 Defendant  
 to  
 Peele & Co.,  
 9th  
 February  
 1944.

20

K. S. Obu,  
 Representative, S. & Co. Ltd. London.  
 Telegrams : Obu Kumasi.

9th February, 1944.

J. J. Peele & Company,  
 Solicitors,  
 Kumasi.

Dear Sirs,

I enclose herewith lease for the land outside Kumasi. You will notice that it is not stamped and is due to a penalty of £5 making £6 in all. The lease was executed since March last year and not in March 1942 as the document shows. I tried to get the Asantehene's office to alter the date 1942 to 1943 and I have not been successful.

I shall be glad if you will kindly have the lease stamped and charge against the balance of the amount sent to you since the 15th December, 1942.

Yours faithfully,

(Sgd.) K. S. OBU.

30

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.**(27) Letter Peele & Co. to Defendant, 10th February 1944.***Plaintiffs' Exhibit No. 1—contd.****(27) Letter, Peele & Co. to Defendant.****From :—****J. J. Peele & Co.,  
J. J. Peele.****Solicitors,  
P.O. Box 2,  
Kumasi—Gold Coast.  
Telephone 121.****Ref. KC.11/42.****10th February, 1944.****To :—K. S. Obu, Esq.,  
Kumasi.**

10

Dear Sir,

A. Strauss &amp; Co. Limited.

With reference to your letter of yesterday's date, we acknowledge receipt of the lease as therein mentioned which we have to-day sent for stamping.

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) JOHN W. MEAD.

*(28) Letter Peele & Co. to Registrar of Deeds, Accra, 1st March 1944.***Plaintiffs' Exhibit No. 1—contd.****(28) Letter, Peele & Co. to Registrar of Deeds, Accra.**

20

**From :—****J. J. Peele & Co.,  
J. J. Peele.****Solicitors,  
P.O. Box 2,  
Kumasi—Gold Coast.  
Telephone 121.****Ref. KC.11/42.****By Registered Post.****1st March, 1944.****The Registrar of Deeds,  
Deeds Registry,  
Victoriaborg,  
Accra.**

Sir,

30

We are instructed by our client Mr. K. S. Obu to forward for registration the enclosed lease of the 1st of October, 1942, between the Asantehene and our client Mr. K. S. Obu.

We are enclosing the necessary copy for filing together with our cheque for 15/- in respect of the registration fees.

We are, Sir,

Your obedient Servants,

for J. J. PEELE &amp; Co.,

(Sgd.) JOHN W. MEAD.

## Defendant's Exhibit No. 11.

Letter and Credit Note, Barclays Bank Limited to Defendant.

Put in evidence by Defendant, accepted and marked " 11 " in *A. Strauss & Co. Ltd. v. K. S. Obu.*

J. E.,

Court Clerk,  
Divl. Ct., Ksi.

23/10/45.

Barclays Bank (Dominion, Colonial and Overseas)  
formerly  
The Colonial Bank.

Kumasi Branch.

27th May, 1944.

K. S. Obu, Esq.,  
Kumasi.

I am instructed to inform you that by arrangement with our Circus Place Branch, London, a Revocable credit has been opened in your favour with us to an extent not exceeding £5,000 (Five thousand Pounds) upon the conditions set out in the annexed statement.

20 If you desire to take advantage of this credit please sign and return the statement to me.

(Sgd.) S. A. GARDINER,

Manager.

CONDITIONS upon which a credit for an amount not exceeding £5,000 in all has been opened in favour of K. S. OBU at the Branch of Barclays Bank (Dominion, Colonial and Overseas) situate at Kumasi.

1. All advances are to be secured by a hypothecation of the produce in respect of which they are made.

2. The amount of the store advances is not to exceed  
30 £                      in all or                      per cent. of the current local market price, maximum advance for                      per ton. The amount of Bills of Exchange negotiated under this Credit is not to exceed £5,000 in all or 100% of the invoice value, maximum advance. All store advances and negotiations of bills are at the discretion of the Bank. The produce is to be 100% Invoice cost of Native prepared RUBBER packed in bales and/or bags.

3. Subject to the rights of the Bank under Condition 4, all produce upon which advances have been made is to be shipped through the Bank and consigned to Ministry of Supply notify Strauss & Co. Ltd. London and is not to be otherwise dealt with or disposed of without his/their consent

*Exhibits.*

Defendant's  
Exhibit  
No. 11.

Letter and  
Credit  
Note  
Barclays  
Bank Ltd.  
to  
Defendant,  
27th May  
1944.

*Exhibits.*  
 Defendant's  
 Exhibit  
 No. 11,  
 continued.  
 Letter and  
 Credit  
 Note  
 Barclays  
 Bank Ltd.  
 to  
 Defendant,  
 27th May  
 1944,  
 continued.

notwithstanding that the advances made by the Bank may have been repaid and if K. S. OBU shall fail to make such shipment the Bank shall be at liberty so to do. The documents relating to the said produce are to be delivered up against payment of the relative bills of exchange, which are to be drawn upon Strauss & Co. Ltd., London, at sight payable in London and must be accompanied by signed invoices in duplicate for the quantity shipped and full sets of on board Bills of Lading to order Ministry of Supply Detailed weight notes.

4. All advances made by the Bank are repayable upon demand, together with commission, interest, storage rent, insurance premiums, 10 freight and all other claims and charges, and in case of default of payment thereof or of any drafts negotiated by the Bank and relating thereto the Bank shall have an unqualified and unrestricted right of sale and realisation.

5. Fire Insurance to be effected by.....  
 to the satisfaction of the Bank.

6. Marine and War risks are to be covered by ..... in London to the satisfaction of the Bank.

7. The policies are to be handed to the Bank on demand.

8. Bills drawn under this credit must bear the clause—" Drawn under 20 A.P.D. No. 55/596 Barclays Bank (Dominion Colonial & Overseas) Circus Place Branch, dated 24th May 1944."

9. Unless previously exhausted this Credit shall cease to be available on the 24th November 1944, and it may be cancelled or varied at any time by the Bank before such date.

I/We agree to accept the credit opened in my/our favour as set out in the above mentioned conditions to which I/we assent and agree.

Dated this ..... day of May, 1944.

Signature .. .. . K. S. OBU.

Address .. .. . Kumasi. 30

Shipment to be effected by approved ship under ship warrant scheme. Shipments from Gold Coast to United Kingdom. Part shipments permitted.

Railway goods identification Notes may be accepted in lieu of complete set " on board " Bills of loading. Beneficiaries must guarantee delivery of B/Ladings when shipment effected. Bills not to be drawn at prices exceeding the Official ex-scale prices ruling for the grades indicated on beneficiary invoices.



Plaintiffs' Exhibit No. 1—contd.  
 (Defendants' Exhibit No. 5 (12))  
 (29) Letter, Plaintiffs to Defendant.

P.O. Box 37,  
 Cape Coast,  
 West Africa.

18th December, 1944.

K. S. Obu, Esq.,  
 Cape Coast.

*Exhibits.*

*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued*  
*(Defendant's*  
*Exhibit*  
*No. 5 (12)).*

(29) Letter .  
 Plaintiffs to  
 Defendant,  
 18th  
 December  
 1944.

10 Dear Sir,

In terms of the agreement made between us, it is hereby confirmed that from the 1st January, 1945, the salary payable to you by Messrs. A. Strauss & Co. Ltd., of 37-9 Lime Street, E.C.3, will be Twenty Pounds Stg. per month, your duties to be as before, to supervise the work of collecting, manufacture, curing, packing, and despatch of the rubber to the port of shipment, and preparation of all necessary shipping documents. Also to see that the Clerks employed by the Company at the various Collecting Stations keep proper records of all transactions at those stations, also that you yourself, in your capacity of Superintendent of the business, keep  
 20 correct records of your transactions, in accordance with instructions that may be issued to you from time to time by Messrs. Cassleton Elliott & Co., the Auditors of the Company.

It is also agreed that as soon as the output of rubber reaches the amount of your estimates of 100 tons per month, upon which estimates the amount of your original salary was based, this salary will again become payable to you, or in proportion to the monthly increase in output of rubber above the present average of three and one third tons per month.

It is also hereby agreed that all costs of transport incurred by you in the carrying out of your duties, will be paid by the Company.

30 In view of the fact that you have continued to advise our London Office that your previous estimated output of 100 tons per month is obtainable, no doubt, you have the rubber producing areas in sight which are capable of producing the 100 tons per month, so it is probable that you will soon attain the required output to restore your monthly salary to the original amount.

It is understood that additional remuneration will be paid to you if you are employed on any new business which the Company may undertake in this country.

40

For & on behalf of Messrs. A. STRAUSS  
 and Co. LTD., 37-39 Lime Street,  
 London, E.C.3.

(Sgd.) R. SIMMONS,

Agent.

*Exhibits.*

*Plaintiffs'*  
*Exhibit*  
No. 1,  
*continued*  
*(Defendant's*  
*Exhibit*  
No. 5 (13)).

(30) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
19th  
December  
1944.

Plaintiffs' Exhibit No. 1—contd.

(Defendant's Exhibit No. 5 (13))

(30) Letter, Defendant to Plaintiffs' Agent.

K. S. OBU,

Representative S. &amp; Co. Ltd. London. Telegrams : Obu Cape Coast.

Cape Coast,  
.19th December, 1944.

R. Simmons, Esq.,  
P.O. Box 37,  
Cape Coast.

10

Dear Sir,

Your letter of the 18th December, 1944 is received.

Being personally anxious to see the rapid growth of the rubber business which I have established in the country, I am prepared to accept a reduction of the original amount paid me per month by Messrs. Strauss & Co. Ltd., London, in connection with same and this must be £25 instead of the £20 you offer. This will be quite inadequate to contribute to my personal monthly overhead. The original amount allowed me was not based on a 100 ton output of rubber per month as I would not have agreed to that figure in any case.

20

Funtumia Rubber in this country grows wild and not on a plantation system and to organise a regular collection with no other inducement but the bare collecting rates to collectors is not an easy task. However, I am prepared to accept as a temporary measure £25 per month but will ask Strauss & Co. to permit me to revert to the original amount allowed me as soon as an increase of rubber output has been made by me.

Yours faithfully,

K. S. OBU,

Coast Representative,

STRAUSS &amp; CO. LTD. London. 30

## Plaintiffs' Exhibit No. 1—contd.

(31) Letter, Defendant to Plaintiffs' Agent.

K. S. Obu,  
Cape Coast,

19th December 1944.

R. Simmons, Esq.,  
P.O. Box 37,  
Cape Coast.

Dear Simmons,

10 With reference to my jewellery which was entrusted to you by Strauss & Co. for delivery to me and of which you suggested leaving them in a Bank in the country as a form of security to Strauss & Co. London for any future business that may result between them and me, and which I agreed, I shall be glad if you will give me a receipt on behalf of Strauss & Co. for these jewels with the exception of the Signet Ring which I require for my use.

Kind regards.

Yours sincerely,

(Sgd.) OBU.

*Exhibits.**Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*(31) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
19th  
December  
1944.

20

## Plaintiffs' Exhibit No. 1—contd.

(32) Letter, Plaintiffs' Agent to Defendant.

c/o Messrs. Cassleton Elliott & Co.,  
P.O. Box 242,  
Accra.

20th December, 1944.

Dear Sir,

30 Re the parcel of jewellery belonging to you, consisting of one 9 ct. gold cigarette case, one pair cuff links, four shirt studs and a local made "zodiac" ring, these as agreed have been deposited by me in a sealed envelope at the Bank of British West Africa, in the name of Messrs. Strauss & Co., 37-9 Lime Street, London, as a form of security, and same will be returned to you as soon as your accounts in your transactions for Messrs. Strauss & Co. have been passed as correct by their Auditors, Messrs. Cassleton Elliott & Co.

Your signet ring will be handed to you at our next meeting here or in Kumasi.

Yours sincerely,

(Sgd.) R. SIMMONS,

Agent

for Messrs. A. Strauss &amp; Co. Ltd.

40

K. S. Obu,  
P.O. Box 37,  
Cape Coast.(32) Letter  
Plaintiffs'  
Agent to  
Defendant,  
20th  
December  
1944.

*Exhibits.**Plaintiffs'  
Exhibit  
No. 1,  
continued.**(33) Letter  
Plaintiffs'  
Agent to  
Defendant,  
2nd  
January  
1945.***Plaintiffs' Exhibit No. 1—contd.****(33) Letter, Plaintiffs' Agent to Defendant.**c/o Cassleton Elliott & Co.,  
P.O. Box 172,  
Kumasi.

2nd January, 1945.

Mr. K. S. Obu,  
Present.

Dear Sir,

Please note that a current a/c has been opened at Barclays Bank, 10 Kumasi in the name of A. Strauss & Co. Ltd. and that from this date all amounts drawn on the floating credits established by that firm at the above bank against documents covering consignments of rubber to them, are to be transferred to their credit a/c.

Yours faithfully,

(Sgd.) R. SIMMONS,

Agent

for A. Strauss &amp; Co. Ltd.

NOTE :—

Found that my P/A did not cover operating of Banks a/c, so new 20 a/c was opened in my name.

*(34) Letter  
Plaintiffs'  
Agent to  
C. I. D.,  
16th  
January  
1945.***Plaintiffs' Exhibit No. 1—contd.****(34) Letter, Plaintiffs' Agent to C.I.D.**A. Strauss & Co. Ltd.  
c/o Cassleton Elliott & Co.,  
P.O. Box 172,  
Kumasi.

16th January, 1945.

The Superintendent,  
Criminal Investigation Dept.,  
Accra.

30

Dear Sir,

I have recently arrived from England as Agent for the above firm to inspect their business interests in the Gold Coast Colony, and to undertake the preliminary work of establishing local industries such as factories for making furniture, matches, soaps, candles, pineapple canning etc.

On the native staff here we have a Superintendent named K. S. Obu, and his accounts are found to be unsatisfactory. However I had intended

to give a responsible post on our new development schemes, but the following information has been brought to me :—

That in 1918 he was employed in the Political Department and forged names on Government permits for purchase of gunpowder, and was dismissed from Government service.

He then joined the firm of Dubart & Co., Saltpond, and was tried and sentenced to four years imprisonment for stealing the money of the firm. Sentence served in Cape Coast Prison.

10 Up to this period his name was Mends, but on release from prison, took the name of K. S. Obu (in 1924).

I should be very grateful if you would confirm whether his alleged prison conviction is substantially correct or not.

Yours faithfully,

(Sgd.) R. SIMMONS.

**Defendant's Exhibit No. 5—contd.**

(14) Letter, Defendant to Plaintiffs' Agent.

P.O. Box 61,  
Kumasi.

17th January, 1945.

20 R. Simmons, Esqr.,  
Kumasi.

Dear Sir,

I have heard certain reports by you to others about me and also trying to undermine me and my rubber business.

I do not know what instructions you brought from Messrs. Strauss and Company but I would like to emphasize that until this business is taken over by the Company from me on terms all business in connection with same must pass through me as before and not my subordinates as you intend doing.

30 *Accounts.*—I am getting my book-keeper to get the required figures for you as early as possible, until then I must ask you kindly to wait as I cannot do it with you, the entries being a bit technical for me.

I am forwarding a copy of this letter to London.

Yours faithfully,

(It'd.) K. S. O.

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(34) Letter  
Plaintiffs  
Agent to  
C.I.D.,  
16th  
January  
1945,  
continued.

*Defendant's  
Exhibit  
No. 5,  
continued.*

(14) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
17th  
January  
1945.

*Exhibits.*

*Plaintiffs' Exhibit No. 1, continued (Defendant's Exhibit No. 5 (15)).*  
 (35) Letter Defendant to Plaintiffs' Agent, 29th January 1945.

**Plaintiffs' Exhibit No. 1—contd.**  
**(Defendant's Exhibit No. 5 (15))**  
**(35) Letter, Defendant to Plaintiffs' Agent.**

K. S. Obu.  
 Kumasi.

29th January, 1945.

R. Simmons, Esq.,  
 Kumasi.

Dear Sir,

With reference to your message from Messrs. Peele & Co. to the effect that I requested to endorse the transfer of both Ayinasu and Aboabo leases to Messrs. Strauss & Co., I cannot do this as the documents were deposited with Peele & Co. as guarantees to Strauss & Co. as per agreement. 10

Messrs. Strauss & Co. have at no time during my transaction with them authorised me to acquire any lands or leases of lands for them. I acquired these lands and plantation for myself in order to enable me to do my work efficiently and in the interest of the Company. I have always charged them with the rents as I am charged by the Lessors for my leases so acquired. The leases were only to be transferred had a Company been formed (" West African Rubber Ltd.") to exploit Gold Coast rubber as I suggested in my Memorandum of the 6/7/42 and confirmed by my letter of 17/8/42 to Strauss & Co. and that for some consideration to be paid by Strauss & Co. or shares allotted to me in the new Company in lieu of the said transfer. 20

Yours faithfully,

(Sgd.) K. S. OBU.

*Plaintiffs' Exhibit No. 1, continued.*

(36) Letter Plaintiffs' Agent to Defendant, 30th January 1945.

**Plaintiffs' Exhibit No. 1—contd.**  
**(36) Letter, Plaintiffs' Agent to Defendant.**

Mr. Obu,

Herewith cheque for £30.13.2 to pay the following expenses at the 30 Kumasi office for January, 1945 :—

Yourself	.. .. .	£20	0	0	
Bookkeeper and Cashier	.. .. .	4	6	0	(The six shillings is for "away" exs. to 31st).
Junior Clerk	.. .. .	1	10	0	
Labourer	.. .. .	1	11	0	
Watchman at Aboabo	.. .. .	1	16	2	
Rent of Office	.. .. .	1	10	0	
		<hr/>			
		£30	13	2	
		<hr/>			

40

Please enter the above in your Day Book A/c., and get receipts where possible, for the Auditors.

(Sgd.) R. SIMMONS (Sgd.) K. S. OBU.

30th January, 1945.

## Plaintiffs' Exhibit No. 1—contd.

(37) Letter, Defendant to Plaintiffs' Agent.

K. S. Obu,  
Representative S. & Co. Ltd. London.  
Telegrams : Obu Kumasi.

R. Simmons, Esq.,  
Kumasi.

Kumasi.  
9th March, 1945.

*Exhibits.*  
—  
*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

(37) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
9th March  
1945.

Dear Sir,

As you stated to me yesterday and today that Messrs. A. Strauss & Co. Ltd. does not intend continuing rubber business in the Gold Coast at the end of March, 1945, I shall be glad if you will confirm this in writing so as to enable me to make the necessary financial arrangements elsewhere to continue the finance of my Rubber Organisation both at Ayinasu and Attobiasi and also for the upkeep of my Aboabo Factory and to continue shipments under my own name and marks as before.

You will appreciate the fact that I cannot allow my leases to run without their being used and unless I hear from you in time I shall proceed during the next week to make necessary arrangements as above indicated and to continue my rubber business as from 1st April 1945.

I may mention for your information and that of the Auditors when you discuss the matter of accounts with them that I am still without the Account Sales and my commission on all rubber I have shipped to Messrs. Strauss & Co. Ltd., up to date.

Yours faithfully,  
(Sgd.) K. S. OBU.

## Plaintiffs' Exhibit No. 1—contd.

(38) Letter, Defendant to Plaintiffs' Agent.

K. S. Obu.

R. Simmons, Esq.,  
Kumasi.

Kumasi.  
10th March, 1945.

(38) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
10th March  
1945.

Dear Sir,

Re my parcel of Jewels.

For the purpose of record, I acknowledge receipt of the copy of a letter which you allowed me to copy out of your file this morning purported to have been addressed to me by you and posted to my address at Cape Coast on the 20th December, 1944.

I must deny the statement in your copy letter under reply that we ever discussed the question of accounts in connection with my jewels except what is disclosed in my letter of the 19th December 1944 addressed to you. For I would never have agreed to leave my jewels with you for any such proposal as your copy letter states. I must however ask you please to withdraw my jewels from the Bank and deliver same to me as early as possible.

As regard my Signet Ring which you reported verbally to me as having been lost by you since December 24, 1944, and would replace same with another ring, may I ask you kindly to let me have same per bearer with thanks.

Yours faithfully,  
(Sgd.) K. S. OBU.

*Exhibits.**Defendant's  
Exhibit  
No. 5,  
continued.***Defendant's Exhibit No. 5—contd.****(16) Letter, Defendant to Plaintiffs' Agent.**

Kumasi.

15/3/45.

*(16) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
15th March  
1945.***Mr. Simmons,**

Mr. Parry came to the office about 11.50 a.m. today. I informed him of your intention to institute criminal proceedings against him for "obtaining money under false pretence". But he said he knew his ground too well and was not worrying about it. He further stated that you gave him the £12 not in one day but on different dates made up as follows: 10

(1) You handed to Lawyer Williams £4 cash (notes) which the latter gave you receipt as an amount to "sue K. S. Obu on behalf of K. A. Parry", and when judgment was secured he was to seize my car which you were prepared to buy for £300 cash. (2) £5 cash was given to himself Parry by you as loan of which you took two gold tie-pins (1 small, 1 large) from him as security for that amount. (3) £3 cash given him on the third occasion for his travelling expenses. Parry said you mentioned that the £5 given him on loan was to be repaid out of his £5 per ton commission on rubber. Parry further stated he had a processing licence for Juaso at the time the agreement was signed but that of Branso had not been renewed. 20

If the above statements are true as Parry gives them, especially if you took security (however small) re the £5 and Mr. Williams gave you a receipt for £4 to sue me, I don't see how Peele & Co.'s agency would help. Parry is bent on taking some sort of action against you and I think it will be best for you to take Peele's advice in the matter before the drastic steps you contemplate taking.

(It'd.) O.

*Plaintiffs'  
Exhibit  
No. 1,  
continued.***Plaintiffs' Exhibit No. 1—contd.****(39) Receipt signed by Chief Kwaku Atta.***(39) Receipt  
signed by  
Chief  
Kwaku  
Atta,  
7th April  
1945.*

Messrs. A. Strauss & Co. Ltd., 30  
c/o Cassleton Elliot & Co.,  
P.O. Box 172,  
Kumasi.  
7th April, 1945.

RECEIVED from A. Strauss & Co. Ltd. the sum of £11, being rent for the plot of land at Aboabo for the year ending 31st December, 1945.

Signed for and on behalf of

CHIEF KWAKU ATTA,  
Chief of Aboabo.



## Plaintiffs' Exhibit No. 1—contd.

(40) Letter, Peele &amp; Co. to Plaintiffs.

*Exhibits.**Plaintiffs' Exhibit No.1, continued.*

From—

J. J. Peele & Co.,  
Solicitors,  
P.O. Box 2,  
Kumasi—Gold Coast.  
Telephone 121.

P.O. Box 2,  
Kumasi,  
Gold Coast.  
9th April 1945.

(40) Letter  
Peele & Co.  
to  
Plaintiffs,  
9th April  
1945.

10 Ref. K.C.11/42.  
A. Strauss & Co. Ltd.,  
c/o Messrs. Cassleton Elliot & Co.,  
Kumasi.

Dear Sirs,

We acknowledge receipt of one envelope marked as follows :—

“Jewelry Property of A. Strauss & Co. Ltd.”

1. S. A. Yankson, Bomfa (security on advance of £22.18.1d. July/43)
- 20 2. Kobina Osei, Wassaw Manso (security on advance of £21.0.8d. April/43).

As requested we are retaining this package against your instructions.

Yours faithfully,

for J. J. PEELE & Co.,  
(Sgd.) JOHN W. MEAD.

## Plaintiffs' Exhibit No. 1—contd.

(41) Letter, Plaintiffs' Agent to Defendant.

A. STRAUSS & Co. LTD.  
c/o Cassleton Elliott & Co.,  
P.O. Box 172,  
Kumasi.  
30th April, 1945.

(41) Letter  
Plaintiffs'  
Agent to  
Defendant,  
30th April  
1945.

30 Mr. K. S. Obu,  
P.O. Box 61,  
Kumasi.

Dear Sir,

I regret to inform you the Head Office in London have instructed me to close their rubber business in this country, and I therefore have to give you notice that your services as Superintendent will terminate on the 31st May, 1945. Please also inform Mr. H. Hayfron-Benjamin that my Company will not be responsible for the rent of the office now occupied by them in his building, after the 31st May next.

40 Should you wish to take over the existing stocks, equipment, office furniture and other assets of my Company, you can arrange matters with Messrs. J. J. Peele & Co., Solicitors, P.O. Box 2, Kumasi, who have been appointed Liquidators of the Company.

Yours faithfully,

(Sgd.) R. SIMMONS,  
Agent & P/A for  
A. STRAUSS & Co. LTD.

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1,  
continued.

Plaintiffs' Exhibit No. 1—contd.

(42) Letter, Defendant to Plaintiffs' Agent.

Kumasi.  
30/4/45.

Mr. Simmons,

(42) Letter  
Defendant  
to  
Plaintiffs'  
Agent,  
30th April  
1945.

I am sending Books etc. per Mr. Ackun for the Auditors.

I understand you have instructed your Solicitors to write to the creditors and I did not think it wise for me to continue writing to them at the same time.

Please send cheque per clerk for £28 15/- for Kumasi Office for April. 10  
List attached.

I am expecting Estimates Catalogues etc. for soap, furniture and other machinery from England soon and will let you know when received.

Trust you keeping fit.

(Sgd.) OBU.

APRIL, 1945.

	£	s.	
Obu .. .. .	20		
Akun .. .. .	4		
Quaynor .. .. .	1	10	20
Office Rent .. .. .	1	10	
Watchman at 1/2 a day .. .. .	1	15	
	<hr/>		
	£28	15	
	<hr/>		

(43) Letter  
and  
Receipt  
Defendant  
to  
Plaintiffs'  
Agent,  
1st May  
1945.

Plaintiffs' Exhibit No. 1—contd.

(43) Letter and Receipt, Defendant to Plaintiffs' Agent.

Mr. Simmons,

I went to the Rubber Office yesterday for the Vouchers reference Refund on Invoice No. 20. The Officer informed me that the vouchers for withdrawal will only be ready after end of March as they are in their financial year and the Treasury is not accepting any claims until then. 30  
As soon as the vouchers are delivered I will send them myself to you to be cashed. Invoice No. 21 is only due on receipt of B/l from the Lighterage Takoradi. Herewith List Advances. Have you got the copy of the Agency ready.

(Sgd.) OBU.

RECEIVED from A. Strauss & Co. Ltd. the sum of Six Pounds (£6) being four months (4) wages due to Watchman in the Factory at Cape Coast at the rate of £1 10.0 per month for the months of January–April 1945 inclusive.

(2d. Stamp) 40

Kumasi.  
1/5/1945.

(Sgd.) K. S. OBU.

Plaintiffs' Exhibit No. 1—contd.  
 (44) Letter, Peele & Co. to Defendant.

J. J. Peele & Co.,  
 Solicitors,  
 J. J. Peele.

P.O. Box 2,  
 Kumasi,  
 Gold Coast.

19th May 1945.

K. S. Obu, Esq.,  
 c/o Hayfron-Benjamin & Company's Office,  
 Kumasi.

*Exhibits.*

*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

(44) Letter  
 Peele & Co.  
 to  
 Defendant,  
 19th May  
 1945.

10 Dear Sir,

We are instructed by Mr. R. Simmons, Agent and Attorney for A. Strauss & Co. Ltd. to proceed forthwith with the liquidation of their business and to dispose of the assets in such a way as we think best. We have today disposed of the safe, scales and 380 lbs. of rubber which are in the company's office and require immediate possession. We intend to remove the rest of the furniture, 3 cupboards, 3 chairs, 4 stools and 3 tables early next week.

You are aware that all the above effects were purchased by you as Agent for our clients the principals A. Strauss & Co. Ltd.

20 If you will attend at our offices on Monday the 21st instant at 11 a.m. we will discuss with you the account between our clients and you and the question of the return of jewelry.

Yours faithfully,

for J. J. PEELE & Co.,

(Sgd.) E. P. CAWSTON.

*Exhibits.**Plaintiffs'  
Exhibit  
No. 1,  
continued.**(45) Letter  
Defendant  
to  
Peele & Co.,  
21st May  
1945.*

Plaintiffs' Exhibit No. 1—contd.

(45) Letter, Defendant to Peele &amp; Co.

K. S. Obu.

P.O. Box 61,  
Kumasi.

21st May, 1945.

J. J. Peele & Co.,  
Kumasi.

Dear Sirs,

With reference to the last paragraph of your letter dated 19/5/45, 10 I must inform you that there is no personal account between me and Messrs. Strauss & Co., Ltd., except that I have not as yet received any Account Sales for all rubber I shipped to them and my commission thereon.

As regards to the Jewelry mentioned in your letter you seemed to have been misinformed about them. These have no connection whatsoever with my business relations with Strauss & Co., having been entrusted to them in London by my housekeeper there to be sent to me which were subsequently handed by them to Mr. Simmons when coming out, who in turn was to have delivered same to me.

Mr. Simmons, on the 19th December 1944, at Cape Coast while 20 staying at my house discussed with me about some business which his company Strauss & Co. were contemplating of setting up in the Gold Coast and offered me the agency of same, and, as a result and on his suggestion, and after consulting my relatives (some of the jewels belong to them) I agreed to leave same with Mr. Simmons to form a security for the proposed new business. When I became convinced that there was no "new business" coming I demanded the return of my jewels. (see letters, copy of, attached).

Under the circumstances I see no reason of calling at your office as stated in your letter for any discussion than to ask you to return to me 30 the jewels today when a receipt will be sent you for same.

I may mention that I will not be responsible for the illegality of either Mr. Simmons or you holding my family jewels should their handing over be delayed any further.

Yours faithfully,

(Sgd.) K. S. OBU.

Enc. 3.

Plaintiffs' Exhibit No. 1—contd.  
 (46) Letter, Peele & Co. to Defendant.

From :—

J. J. Peele & Co.,  
 J. J. Peele,  
 Solicitors,

P.O. Box 2,  
 Kumasi, Gold Coast.  
 Telephone 121.

To : Mr. K. S. Obu.  
 P.O. Box 61,  
 Kumasi.

May 21st, 1945.

*Exhibits.*

*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

(46) Letter  
 Peele & Co.  
 to  
 Defendant,  
 21st May  
 1945.

10 Dear Sir,

Messrs. Strauss Ltd.

Yours of even date just received. We have no desire to retain your effects longer than is justified and are making enquiries regarding what you tell us as to the position.

20 Meanwhile, we have been given full authority to handle the rubber business of our clients and having had a chance of giving the details that have been supplied to us a preliminary survey, and have decided that for another one or possibly two months, we shall continue the arrangements for the collection of rubber but it will be delivered to these offices and all funds paid by the collectors are to be paid to us here. We shall discontinue renting the office of Mr. Benjamin unless it is made clear that the concern Messrs. Strauss Ltd. are the tenants.

Accommodation will be given Mr. Ackun to keep the accounts of the rubber here for the time being at stated times.

30 We are now dealing with the preparation of Memorandum & Articles for a small company to take over what there is of the rubber transactions and arrangements and to organise certain further activities and there will doubtless be some chance of making some equitable arrangement regarding such work as you have done. You are therefore requested to further the interests of Messrs. Strauss Ltd. and to encourage the collectors to make special efforts to produce results in the near future.

40 Aboabo Store.—We have Mr. Simmons' note of the rubber at this store as at April 13th and should be obliged if you would say what further rubber has been collected there since and what is the total there at date. We also have what purports to be a list of moneys owing to Messrs. Strauss amounting to £524.6.2 of which there seems to have been £221.16.10 repaid to you. Please have the accountant send us a statement of the debts and payments on account to date and we will again make efforts to collect what is outstanding. He should also let us have a statement of the monthly receipts of rubber from the start of the business as this is required for the statement on which further capital would be raised.

50 Buildings.—The accounts show that we spent £360 on the buildings at Cape Coast and we assumed that there would be some good buildings there but the recent reports and information given us by Mr. Simmons seem to suggest that there are only the usual smoke sheds and so on. Would you please let us have your description of the buildings and say what value you put on them and what they cost. We assume that they were put up by your own labourers. You might also say what value could reasonably be placed on the buildings on the other properties.

Yours faithfully,

J. J. PEELE & Co.

(Sgd.) E. P. CAWSTON.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.**(47) Letter Defendant's Solicitor to Plaintiffs' Solicitors, 26th May 1945.***Plaintiffs' Exhibit No. 1—contd.****(47) Letter, Defendant's Solicitor to Plaintiffs' Solicitors.**

H. A. Hayfron-Benjamin,  
Barrister & Solicitor,  
Kumasi.  
Telephone 185.

P.O. Box, 282,  
Kumasi,  
Gold Coast,  
British West Africa.

26th May, 1945.

Dear Sir,

My client Mr. K. S. Obu of Kumasi has forwarded to me your letter dated the 21st instant with instructions to reply. 10

In the first place my client wants back his jewels which were handed to Mr. Simmons by Messrs. Strauss & Company for him as he contends that these jewels have nothing to do with the rubber business he did with Strauss & Co.

He further informs me that he is not owing Strauss & Company any money rather they are to send him account sales for all the rubber he had been shipping to them for the last two and half years. He also maintains that he is entitled to commission on the value of rubber shipped which was to have been decided by mutual agreement.

My client wishes me to inform you that his establishment was 20 organised by himself for himself in order to facilitate the supply of rubber to Strauss & Company with the credits and remittances which were opened or sent in his name. He therefore cannot accede to your request that his establishment be taken over by Strauss & Company and he be removed from the business.

As far as the accounts are concerned the books are with Messrs. Cassleton Elliott & Company and Mr. Simmons who has been staying with them has access to them.

*Aboabo Store.*—My client is instructing his Rubber Manager to send you a statement. 30

As regards the buildings all the particulars are in the books and as I have stated Mr. Simmons has all the books of account with him. To my client's knowledge Strauss & Company owns no buildings in the Gold Coast.

Yours faithfully,

(Sgd.) H. A. HAYFRON-BENJAMIN,  
Solicitor for K. S. OBU.

Messrs. J. J. Peele & Company,  
Kumasi.

## Plaintiffs' Exhibit No. 1—contd.

(48) Letter, Peele &amp; Co. to Defendant.

P.O. Box 2,  
Kumasi,  
Gold Coast.

K. S. Obu, Esq.,  
Kumasi.

1st June, 1945.

Dear Sir,

A. Strauss &amp; Co. Ltd.

We do not wish to withhold the remuneration for the month of May  
10 but you will remember that you arranged to call and deliver the rest of the  
furniture at Mr. Benjamin's office.

Mr. Benjamin informs us that the only piece of furniture in that  
office that belongs to him is the screen and under the circumstances we shall  
require delivery of the two other cupboards and the two tables and two  
chairs and if you will kindly arrange to call with them on June 7th we will  
let you have your cheque for £20. We have sent to Mr. Ackun who is  
now in our employ as liquidators for A. Strauss & Co. Ltd. cheque for  
£7 7s. 2d. out of which he will pay his own wages, the wages of the  
watchman at Aboabo and of the watchman at Cape Coast.

20

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) E. P. CAWSTON.

*Exhibits.*

Plaintiffs'  
Exhibit  
No. 1,  
continued.

(48) Letter  
Peele & Co.  
to  
Defendant,  
1st June  
1945.

## Plaintiffs' Exhibit No. 1—contd.

(49) Letter, Defendant to Peele &amp; Co.

K. S. Obu.

J. J. Peele & Co.,  
Solicitors,  
Kumasi.

P.O. Box 61,  
Kumasi.

7th June, 1945.

Dear Sirs,

30 Your letter of the 1st June 1945 is received.

I am surprised that you did not send me my May's allowance because  
of certain furniture in my office.

I am sending by bearer 1 Cupboard, 1 Table 2 Stools as pointed out  
to your Col. Cawston on his last visit as what were left in the office as  
furniture that I was using among these already in it.

The old long table was given me by Mr. Benjamin at my request  
for temporary use when I first took the room as offices before I started  
rubber business here. The two chairs were my own dining chairs which  
I brought from my house to use and also the short cupboard and the other  
40 small table.

Unless Mr. Benjamin cares to send you the long old table as present  
or otherwise from himself I have no right to send it to you.

I shall be glad if you will on receipt of the above furniture send me  
the £20 cheque per bearer and oblige.

Yours faithfully,

(Sgd.) K. S. OBU.

(49) Letter  
Defendant  
to  
Peele & Co.,  
7th June  
1945.

*Exhibits.**Plaintiffs' Exhibit No. 1, continued.*

(50) Letter Peele &amp; Co. to Defendant, 14th June 1945.

Plaintiffs' Exhibit No. 1—contd.

(50) Letter, Peele &amp; Co. to Defendant.

From :—

J. J. Peele &amp; Co.,

J. J. Peele.

Solicitors,

P.O. Box 2,

Kumasi, Gold Coast.

Telephone 121.

Ref. KC.11/42.

14th June, 1945.

To :—K. S. Obu,  
Kumasi.

10

Dear Sir,

A. Strauss &amp; Co. Ltd.

To prevent misunderstanding we write to say that our clients claim the exclusive use of any produce from the properties in respect of which their rubber operations have been conducted through your agency for the unexpired portion of the terms for which they have paid or been in the habit of paying the rent.

The question as to whether or no they are entitled to a transfer of the leases or a declaration by a court of competent jurisdiction that they are entitled thereto, can be held over for the time being without prejudice 20 to our clients' rights therein and claims thereto.

Yours faithfully,

for J. J. PEELE &amp; Co.,

(Sgd.) E. P. CAWSTON.

(51) Letter Defendant to Peele &amp; Co., 15th June 1945.

Plaintiffs' Exhibit No. 1—contd.

(51) Letter, Defendant to Peele &amp; Co.

K. S. Obu.

P.O. Box 61,  
Kumasi.

15th June, 1945. 30

Messrs. J. J. Peele &amp; Co.,

Solicitors,

P.O. Box 2,

Kumasi.

Dear Sirs,

I have received your memo dated 4/6/45. I have referred same to my Solicitor Mr. Hayfron-Benjamin who is at present on circuit with His Honour the Judge to the N.Ts and will deal with it on his return.

I have also instructed Mr. W. E. G. Sekyi my Solicitor at Cape Coast to act on my behalf in respect of the Ayinasu Plantation as it was he 40 who drew the deed for that Plantation and knew all about it. You may communicate with him if any information is wanted on the subject.



With further reference to the two leases Aboabo and Ayinasu please refer to my letter dated 29/1/45 addressed to Mr. R. Simmons which clearly states what the leases were obtained for. My deliveries of rubber to Strauss & Co. or their agent Mr. Simmons ceased as from 1/6/45 as per his letter dated 30/4/45.

*Exhibits.*  
 ———  
*Plaintiffs'*  
*Exhibit*  
 No. 1,  
*continued.*

(Sgd.) K. S. OBU.

(51) Letter  
 Defendant  
 to  
 Peele & Co.,  
 15th June  
 1945,  
*continued.*

10 P.S.—I charged Strauss & Co. with the rent of Ayinasu up to March 1945 which rubber from that period up to May 1945 they had collected. This included rubber taken from my office (Para) by your Col. Cawston last month. Please forward me a cheque for the two months rent for Ayinasu. April/May 1945 (£8.6.8).

(It'd.) K. S. O.

**Plaintiffs' Exhibit No. 1—contd.**  
 (52) Letter, Defendant to Peele & Co.

(52) Letter  
 Defendant  
 to  
 Peele & Co.,  
 19th June  
 1945.

K. S. Obu,  
 Kumasi.

19th June, 1945.

Messrs. J. J. Peele & Co.,  
 Kumasi.

20 Dear Sirs,

Mr. Tamakloe who I asked to see you about your letter of even date about the key which you wrote to demand has informed me of what you said to him.

As I pointed out to him and to you over the phone, I am holding things until Mr. Benjamin my Solicitor whom you are aware has been in communication with you on the whole matter between Messrs. Strauss & Co. and myself returns sometime this week with Judge and to meet and settle difference.

30 I give you my guarantee that I shall not touch any of the coagulating boxes or pans there until the matter is settled. The 200 coagulating pans sent to the Rubber Officer for sale by me sometime ago, were NOT mine or Strauss' but belonged to Messrs. Allied Cocoa Producers Ltd. who were in rubber business and had now ceased. These were sent by their bookkeeper Mr. J. A. Fynn who is at present in town. I think it is only fair to me that you should await Mr. Benjamin's return and for settlement. It would not have been necessary for me to leave the pans in the factory had I any intention of selling them.

Yours faithfully,

(Sgd.) K. S. OBU.

*Exhibits.*

**Plaintiffs' Exhibit No. 1—contd.**  
**(53) Letter, Peele & Co. to Defendant.**

*Plaintiffs' Exhibit No. 1, continued.*  
 (53) Letter Peele & Co. to Defendant, 19th June 1945.

From J. J. Peele & Co.,  
 J. J. Peele,  
 Solicitors,  
 P.O. Box 2,  
 Kumasi, Gold Coast.  
 Telephone 121.

June 19th, 45.

To :—  
 K. S. Obu,  
 c/o Messrs. Hayfron-Benjamin,  
 Kumasi, Ashanti.

10

Sir,

Messrs. A. Strauss & Co. Ltd.

You are aware that our clients have paid the rent for the Aboabo land and that the buildings erected thereon with their money and the contents of the buildings as shown on the schedule which you supplied them are their property. We have arranged for the sale of some of the coagulating tins and also for the wooden coagulating pans and find on visiting the property that the watchman says that you have the key and have taken it away. He knows you by sight and we have every reason to believe that you have the key seeing that you admitted it when we phoned you this morning. You are also aware that you are no longer the agent of our clients and have no legal right to have the key to their premises and we therefore notify you that unless the key to that property is handed to bearer on our behalf and in this office by noon to-day, we shall at once put the matter in the hands of the police.

Yours faithfully,

J. J. PEELE & Co.

pp. E. P. CAWSTON.

(Sgd.) E. P. CAWSTON.

30

(54) Letter Director of Rubber Production to Peele & Co., 23rd June 1945.

**Plaintiffs' Exhibit No. 1—contd.**  
**(54) Letter, Director of Rubber Production to Peele & Co.**

Ref. No. 215/25.SF1/44.  
 Director of Rubber Production  
 Office,  
 P.O. Box No. 113,  
 Kumasi.  
 23rd June, 1945.

With reference to your request I have to inform you that Mr. K. S. Obu has, according to our office accounts, drawn the following rubber bonuses :—

Voucher No. 11 of 9/10/40—4,213 lbs.	.. ..	£26 6 8
30 24/11/44—1,243 ,,	.. ..	7 15 4
4 11/4/45 —1,680 ,,	.. ..	10 10 0
		<hr/>
		£44 12 0

J. J. Peele & Co.,  
 P.O. Box 2,  
 Kumasi.

(Sgd.) ? MENDS,  
 for Director of Rubber Production.

Plaintiffs' Exhibit No. 1—contd.  
 (55) Letter, Peele & Co. to Defendant.

J. J. Peele & Co.  
 Solicitors  
 J. J. Peele.

P.O. Box 2,  
 Kumasi,  
 Gold Coast.  
 25th June, 1945.

*Exhibits.*  
 ———  
*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

(55) Letter  
 Peele & Co.  
 to  
 Defendant,  
 25th June  
 1945.

10 Ref. KC. 11/42.

K. S. Obu, Esq.,  
 C/o Messrs. Hayfron-Benjamin & Co.,  
 Kumasi.

Dear Sir,

A. Strauss & Company Limited.

We are instructed that in the accounts you have rendered in connection with our clients' rubber business you have omitted to show that you drew the following sums from the Director of Rubber Production, Kumasi :—

				£	s.	d.
20	9th October 1944	..	..	26	6	8
	24th November 1944	..	..	7	15	4
	11th April 1945	..	..	10	10	0
				<hr/>		
				£44	12	0
				<hr/> <hr/>		

These payments have been verified by the authorities concerned and the fact that you have not included them is verified by our Auditors. We accordingly request you to pay this amount to us on our clients' behalf by noon on Thursday the 28th instant or to provide some satisfactory explanation. We are reluctant to form the opinion that you have deliberately falsified the accounts and are holding money which you are  
 30 aware is the property of our clients.

Yours faithfully,

for J. J. PEELE & Co.

(Sgd.) E. P. CAWSTON.

*Exhibits.*

**Plaintiffs' Exhibit No. 1—contd.**

*Plaintiffs' Exhibit No. 1, continued.*

**(56) Letter, Defendant's Solicitor to Plaintiffs' Solicitors and Enclosures.**

H. A. Hayfron-Benjamin,  
Barrister & Solicitor,  
Kumasi.  
Telephone 185.

P.O. Box 282,  
Kumasi,  
Gold Coast,  
British West Africa. 10  
28th June, 1945.

(56) Letter Defendant's Solicitor to Plaintiffs' Solicitors and enclosures, 28th June 1945.

Dear Sir,

A. Strauss & Company Limited.

Your letter dated the 25th June last addressed to my client Mr. K. S. Obu with regard to the accounts of the Rubber business of the above Company has been forwarded to me with instructions to reply.

With regard to the sum of £26 6s. 8d. I am to say that this sum was duly passed and is shown in the account vide Cash Book 18.

With regard to the sum of £7 15s. 4d. and £10 10s. vouchers have already been prepared showing their disbursements and they would have appeared 20 in the March and June quarters accounts respectively had Mr. Fynn the bookkeeper whom Mr. Obu usually engages to pick the figures for the purpose of making up the accounts been available to pass the same through the books. Mr. Fynn I may say is well known to Messrs. Cassleton Elliott & Company as the man who usually prepares Mr. Obu's accounts for him.

I attach herewith copies of the vouchers for your perusal.

My client wishes to point out that it is not a matter of falsification of accounts but rather a matter of the accounts of two quarters not having been made up before the books were taken from him. 30

Yours faithfully,

(Sgd.) H. A. HAYFRON-BENJAMIN,  
Solicitor for K. S. OBU.

Messrs. J. J. Peele & Company,  
Kumasi.

(Copy)

Wafu Cash Voucher Date 24/11/1944.

For what required	Amount
	£ s. d.
Amount received from Treasury re bonus refunded on Rubber railed 18/10/44 .. .. .	40 7 15 4

Signature.....

Folio.....Passed by (Sgd.) OBU.

(Copy)

Wafu Cash Voucher Date 11/4/45.

For what required

Amount received from Treasury re bonus refunded on  
Rubber railed 3/1/45 .. .. .

Signature.....

Folio..... Passed (Sgd.) OBU.

*Exhibits.*

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*Plaintiffs'*  
*Exhibit*  
*No. 1,*  
*continued.*

Amount  
£ s. d.

10 10 -

(56) Letter  
Defendant's  
Solicitor to  
Plaintiffs'  
Solicitors  
and  
enclosures,  
28th June  
1945,  
*continued.*

(Copy)

10 Wafu Cash Voucher Date 1/1/45.

For what required

27/11/44 1st Class Fare to Skd and back Obu .. .. . 3 13 0  
3rd „ „ boy .. .. . 0 14 0  
Lorry Fare Skd to C/Coast and back Obu & boy  
at 5/- .. .. . 1 0 0  
Expenses & Maintenance for 34 days @ 20/-  
a day .. .. . 34 0 0

Meeting Mr. Simmons at Sekondi for Cape Coast .. .. . £39 7 0

Amount.  
£ s. d.

---

£39 7 0

---

20 Signature.....

Folio..... Passed by (Sgd.) OBU.

*Exhibits.*

Plaintiffs' Exhibit No. 1—contd.

Plaintiffs' Exhibit No. 1, continued.

(57) Letter, Plaintiffs' Solicitors to Defendant's Solicitor.

J. J. Peele & Co.  
Solicitors  
J. J. Peele.

P.O. Box 2,  
Kumasi,  
Gold Coast.

(57) Letter Plaintiffs' Solicitors to Defendant's Solicitor, 2nd July 1945.

H. A. Hayfron-Benjamin, Esq.,  
P.O. Box 282,  
Kumasi.

2nd July, 1945.

10

Dear Sir,

A. Strauss & Co. Ltd.

re K. S. Obu.

Replying to your letter of the 28th ultimo we have ascertained from our clients' auditors that a sum of £26.6.8d was paid into the Bank under the inappropriate heading "Rubber Gross Profit." This seems to have been the rebate from Director of Rubber Production. About the same date your client drew the same amount £26.6.8d and this was debited by him 20 to his private account.

As regards the items 24th November 1944—£7. 15. 4 and 11th April, 1945—£10 10/- this sum should, of course, have appeared in the Cash Book a few days after receipt and as your client had complete control of the books of account and the bookkeeper, until the end of April 1945, his suggestion that it should suffice if the items appear in the account for the following quarter seems untenable.

As regards the alleged copy voucher dated January 1st, 1945, this again—had it been genuine—should have been included in the 1944 account and our clients are not prepared to allow your client the £34 claimed 30 for his expenses and maintenance for 34 days seeing that he was living in his home town Cape Coast during that period. The sum of £34 will therefore be included in our clients' claim.

Our clients have now had the opportunity of investigating the sums alleged by your client to have been spent on the building of the drying sheds. These sums are :—

Aboabo	..	..	..	..	..	£544. 15. 10
Cape Coast	..	..	..	..	..	£338. 11. 4.

Our clients have evidence that the maximum reasonable sum for these is £75 at each station unless your client can satisfy them by 40 production of genuine receipts, the amount in excess of the £75 will be included in their claim against him.

Yours faithfully,

for J. J. PEELE & Co.,

(Sgd.) E. P. CAWSTON.

P.S.—Further regarding the claim of your client for the days he was at Cape Coast, discussing matters with our clients' attorney Mr. Simmons on the arrival of the latter at Cape Coast, we are now instructed that your client arrived at Sekondi from Kumasi on November 28th 1944 and was with Mr. Simmons at Cape Coast on and off from that date to December 18th when Mr. Simmons left for Accra but your client professed sickness and was away on December 2nd, 3rd, 9th, 10th, 11th, 12th, 13th, 14th; so that for eight days out of the 21 days he was not available to do business with Mr. Simmons. Moreover during the month of December 1944 he was  
 10 drawing the £50 per month salary which covered his living and travelling expenses. The claim of £1 per day is therefore without foundation.

(Itd.) E. P. C.

*Exhibits.*

—  
 Plaintiffs'  
 Exhibit  
 No. 1,  
*continued.*

—  
 (57) Letter  
 Plaintiffs'  
 Solicitors  
 to  
 Defendant's  
 Solicitor,  
 2nd July  
 1945,  
*continued.*

**Plaintiffs' Exhibit No. 1—contd.**

**(58) Memo made by Plaintiffs' Agent.**

Re Obu's claim for £1 p. day for living expenses at Cape Coast.

He attended on me for purpose of investigation of a/cs. of Strauss & Co. 28th Nov. to 18th Dec. He arrived at Sekondi from Kumasi on 28th Nov./44 and was with me at Cape Coast until I left for Accra on 18th Dec./44, a total of 21 days. He was away "sick" on 2nd & 3rd & 9th,  
 20 10th, 11th, 12th, 13th, 14th Dec./44. So 8 days from 21 days = 13 days.  
 (See my Diary.)

Until 31st Dec./44, he was drawing £50 p. month salary, and had to pay his own travelling expenses.

(Sgd.) R. SIMMONS.

(58) Memo.  
 made by  
 Plaintiffs'  
 Agent  
 (undated).

**Plaintiffs' Exhibit No. 1—contd.**

**(59) Letter, Defendant's Solicitor to Plaintiffs' Solicitors.**

H. A. Hayfron-Benjamin,  
 Barrister & Solicitor,  
 Kumasi.  
 30 Telephone 185.

P.O. Box 282,  
 Kumasi,  
 Gold Coast,  
 British West Africa.  
 13th July, 1945.

(59) Letter  
 Defendant's  
 Solicitor to  
 Plaintiffs'  
 Solicitors,  
 13th July  
 1945.

Dear Sir,

A. Strauss & Co. Ltd.—re K. S. Obu.

I have to acknowledge the receipt of your letter dated the 2nd July last and note the contents.

I regret that owing to pressure of work I have not been able to reply to it.

I will send you a reply in a day or two please.

Yours faithfully,

40

(Sgd.) H. A. HAYFRON-BENJAMIN,  
 Solicitor for K. S. OBU.

Messrs. J. J. Peele & Co.,  
 Kumasi.

Plaintiffs' Exhibit No. 2.  
K. S. OBU—PERSONAL ACCOUNT.

(Pages 160/1 of Exhibit "2")

1942		£	s.	d.	1942	£	s.	d.
Aug. 1/31	To Wages for Yaw	..	..	15 0	Sept. 30	By Balance c/d ..	..	478 15 6
	" Cash drawn	..	..	1 10 0				
	" Mess Account	..	..	1 0 0				
July								
Sept. 1/17	" Cash drawn	..	..	50 0 0				
	" August	..	..	50 0 0				
	" for Car	..	..	325 0 0				
	" for Towel	..	..	10 6				
	" Cash drawn	..	..	50 0 0				
				<u>£478 15 6</u>				<u>£478 15 6</u>
Oct. 1	" Balance c/d ..	..	..	478 15 6	Oct. 31	By Balance c/d ..	..	481 0 6
5	" Motor Car Licence	..	..	2 5 0				
				<u>£481 0 6</u>				<u>£481 0 6</u>
Nov. 1	" Balance ..	..	..	481 0 6	Nov. 3	By Management	..	150 0 0
30	" Battery Cells—Repairs on Battery	..	..	1 2 0	30	" Transfers ..	..	20 12 6
Oct. 20	" Interest on Circus Place ..	..	..	10 0	30	" Cash Transfer	..	12 17 4
Sept. 7	" Bank Charges on Transfer	..	..	1 0	30	" Balance c/d ..	..	300 17 2
Oct. 7	" Bank Charges on Transfer	..	..	1 0				
Nov. 30	" (By G. E. Moore) Cash paid Cook	..	..	5 0				
	for Mess ..	..	..	1 7 6				
"	" Interest on Circus Place ..	..	..					
				<u>£484 7 0</u>				<u>£484 7 0</u>



(Pages 160/1 of Exhibit "2"—contd.)

K. S. OBU—PERSONAL ACCOUNT—Contd.

		£	s.	d.		1942	£	s.	d.
1942						Dec. 31	300	17	2
Dec. 1	" Balance b/d ..	..	..	..			7	16	11
	" Amount for Sundries drawn ..	..	..	..			£308	14	1
						April 30	304	11	8
1943							14	0	0
Jan. 1	" Balance b/d ..	..	..	..			£318	11	8
April 22	" Cash drawn ..	..	..	..					
						May 1	318	11	8
1244							£318	11	8
4424									
May 1	" Balance b/d ..	..	..	..		May 1	318	11	8
							£318	11	8
May 1	To Balance b/d ..	..	..	..		May 30	318	11	8
30	" Cash ..	..	..	..			7	10	0
							£326	1	8
June 1	To Balance ..	..	..	..		June 30	326	1	8
19	" Cash ..	..	..	..			4	10	0
							£330	11	8

*Exhibits.*  
 —  
*Plaintiffs'*  
*Exhibit*  
 No. 2,  
*continued.*

Nominal  
 Ledger  
 (Pages  
 160/1 of  
 Ledger)  
 Personal  
 Account of  
 Defendant,  
*continued.*

*Exhibits.*  
*Plaintiffs'*  
*Exhibit*  
*No. 2,*  
*continued.*

Nominal  
 Ledger  
 (Pages  
 160/1 of  
 Ledger)  
 Personal  
 Account of  
 Defendant,  
*continued.*

(Pages 160/1 of Exhibit "2"—contd.)

K. S. OBU—PERSONAL ACCOUNT—Contd.

		1944		1944		1944		1944	
		July 31		Aug. 31		Sept. 30		Nov. 30	
		By Balance		By Balance		By Balance		By Balance	
		£ s. d.		£ s. d.		£ s. d.		£ s. d.	
1944	July 1	To Balance	..	..	330 11 8	..	..	..	333 11 8
	28	" Cash Drawn	..	..	3 0 0	..	..	..	£333 11 8
	Aug. 1	To Balance	..	..	333 11 8	..	..	..	334 11 8
		" J. E. Motchey	..	..	1 0 0	..	..	..	£334 11 8
	Sept. 1	To Balance	..	..	334 11 8	..	..	..	339 1 8
	Oct. 31	" Cash	..	..	2 10 0	..	..	..	
	"	" B.B.W.A.	..	..	2 0 0	..	..	..	£339 1 8
	Nov. 1	To Balance	..	..	339 1 8	..	..	..	365 8 4
	23	" Cash drawn	..	..	26 6 8	..	..	..	£365 8 4
	Dec. 1	To Balance	..	..	365 8 4	..	..	..	365 8 4

## Plaintiffs' Exhibit No. 3.

## BUILDINGS.

(Pages 8-10 of Exhibit "3")

	TOTAL	(a) KUMASI		(b) CAPE COAST		(c) AYINASU PLANTATION		(d) MANSO WASSAW			
		£	s. d.	£	s. d.	£	s. d.	£	s. d.		
1943											
April 1	To Balance brought forward .. .. .	891	5 5	474	14 7	283	11 4	31	8 0	101	11 6
20	" Kumasi Cash—Stores for Smoke House .. .. .	1	0 0	1	0 0	—	—	—	—	—	—
3	" Barclays Bank Cash 10,000 Bricks .. .. .	3	0 0	3	0 0	—	—	—	—	—	—
10	" Barclays Bank Cash Advance against attabs for pressing sheds .. .. .	10	15 0	10	15 0	—	—	—	—	—	—
May 15	" Kumasi Cash .. .. .	7	10 0	7	10 0	—	—	—	—	—	—
18	" Kumasi Cash .. .. .	7	16 3	7	16 3	—	—	—	—	—	—
June 23	" B.B.W.A. Cape Coast .. .. .	7	10 0	—	—	—	—	—	—	—	—
"	" Cape Coast Factory Cash .. .. .	7	10 0	—	—	—	—	—	—	—	—
July 9	" Bank Cash Iron Sheets .. .. .	30	0 0	—	—	30	0 0	—	—	—	—
14	" Do. Roofing .. .. .	10	0 0	10	0 0	—	—	—	—	—	—
17	" Do. Bamboo .. .. .	5	0 0	—	—	—	—	5	0 0	—	—
17	" Do. do. .. .. .	5	0 0	5	0 0	—	—	—	—	—	—
Aug. 26	" Do. Bamboo .. .. .	7	0 0	7	0 0	—	—	—	—	—	—
19	" Cape Coast Factory .. .. .	10	0 0	—	—	10	0 0	—	—	—	—
Oct. 12	" 300 attabs poles and scantlings for packing house .. .. .	12	0 0	12	0 0	—	—	—	—	—	—
16	" Materials for repairs Smokehouse .. .. .	5	0 0	5	0 0	—	—	—	—	—	—
8	" Workmanship roofing pressing shed (renewed) .. .. .	7	0 0	7	0 0	—	—	—	—	—	—
31	" 5 Bags Cement for pressing shed .. .. .	2	10 0	—	—	2	10 0	—	—	—	—
"	" 13 Brls. Gravels do. .. .. .	1	2 6	—	—	1	2 6	—	—	—	—
"	" Materials for smoke room repairs.. .. .	9	11 8	—	—	9	11 8	—	—	—	—
"	" 100 Trees for new Drying Shed .. .. .	6	0 0	6	0 0	—	—	—	—	—	—
Nov. 9	" 300 attabs for packing house .. .. .	11	0 0	11	0 0	—	—	—	—	—	—
		£1,047	1 10	£557	6 10	£351	15 6	£36	8 0	£101	11 6

Exhibits.  
Plaintiffs'  
Exhibit  
No. 3.

Assets  
Ledger  
(Pages 8-10  
of Ledger)  
Buildings.

## BUILDINGS (Contd.)

	TOTAL £ s. d.	(a) KUMASI ABOARO		(b) CAPE COAST		(c) AYINASU PLANTATION		(d) MANSO WASSAW		
		£	s.	d.	£	s.	d.	£	s.	d.
1944										
Jan. 5	1,047 1 10	557 6 10		351 15 6		36 8 0		101 11 6		
7	10 0 0			10 0 0						
17	6 0 0			6 0 0						
Feb. 28	5 0 0	5 0 0								
11	2 0 0			2 0 0						
	7 9 6	7 9 6								
Mar. 31	1,077 11 4	569 16 4		369 15 6		36 8 0		101 11 6		
	25 15 2	12 11 0		13 4 2						
31	1,051 16 2	557 5 4		356 11 4		36 8 0		101 11 6		
	63 16 8	34 1 0		21 3 3		2 5 6		6 6 11		
	987 19 6	523 4 4		335 8 1		34 2 6		95 4 7		
1944										
Mar. 31	59 16 10	31 18 5		19 16 9		2 2 8		5 19 0		
31	928 2 8	491 5 11		315 11 4		31 19 10		89 5 7		
	30 9 6	12 9 6		18 0 0						
May 26	897 13 2	478 16 5		297 11 4		31 19 10		89 5 7		
17	11 0 0	11 0 0								
	5 0 0			5 0 0						
June 27	903 4 2	479 7 5		302 11 4		31 19 10		89 5 7		
2	3 0 0	3 0 0								
	6 10 0			6 10 0						
	6 0 0	6 0 0								
Aug. 31	915 17 2	485 10 5		309 1 4		31 19 10		89 5 7		
	1 10 0	1 10 0								
	£917 7 2	£497 0 5		£309 1 4		£31 19 10		£89 5 7		