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31, 1961

IN THE PRIVY COUNCIL

No. 31 of 1960

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

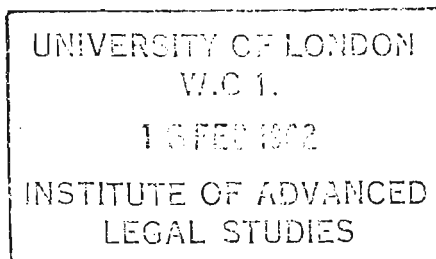
B E T W E E N :

JOHN KWESI TAYLOR (Plaintiff) Appellant

- and -

JOSHUA FANYE DAVIS
(Defendant) Respondent

RECORD OF PROCEEDINGS



63541

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant.

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors for the Respondent

IN THE PRIVY COUNCIL

No. 31 of 1960

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

B E T W E E N :

JOHN KWESI TAYLOR (Plaintiff) Appellant

- and -

JOSHUA FANYE DAVIS
(Defendant) Respondent

RECORD OF PROCEEDINGS

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Notice of Motion for Final Leave to Appeal	22nd October 1956
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IN THE PRIVY COUNCIL

No. 31 of 1960

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

B E T W E E N :

JOHN KWESI TAYLOR
(Plaintiff) Appellant

- and -

JOSHUA FANYE DAVIS
(Defendant) Respondent

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

In the Supreme Court of the Gold Coast
Central Judicial Division

Divisional Court holden at Cape Coast.

John Kwesi Taylor of Assin Akropong
in Assin Apimenim State and Cape
Coast Plaintiff

versus

Joshua Fanye Davies, Timber
Contractor of Assin Breku in
Foso, Cape Coast District Defendant

20

To Joshua Fanye Davies, Timber Contractor of Assin
Breku in Foso Cape Coast District.

YOU ARE HEREBY COMMANDED in His Majesty's name to
attend before this Court at Cape Coast on Monday
the 2nd day of March 1953, at 8.30 o'clock in the
forenoon, there and then to answer a Suit by John
Kwesi Taylor of Assin Akropong in Assin Apimenim
against you.

30

In the Supreme
Court

No. 1

Writ of Summons

21st January
1953.

In the Supreme
Court

No.1

Writ of Summons.

21st January
1953 -
continued.

By a contract under seal dated 31st January 1946, between the Plaintiff and the Defendant for the consideration therein mentioned, the Defendant, as the Plaintiff's agent for the purpose of their timber contract or business contained in the said agreement to be carried on for the mutual benefit of the parties thereto, agreed for a period of ten (10) years to pay fifty (50%) per centum or one-half of the nett profits of the said business from time to time to the Plaintiff.

10

The Plaintiff has performed his part of the said agreement by advancing such sums of money that the defendant required from time to time for the said timber business or contract, but the defendant has not, when required by the Plaintiff, paid to the plaintiff his share of the nett profits of the said timber business or furnished the Plaintiff with any accounts from time to time of the said business although requested several times by the Plaintiff so to do.

20

The Plaintiff claims:-

- (1) To have a full and true account of the said timber business carried on by the defendant as the Plaintiff's agent.
 - (2) Payment of the Plaintiff's share or interest under the said agreement by the defendant.
 - (3) Damages for breach of the said agreement by the defendant:
2. In the alternative, the Plaintiff claims that:-

- (1) The Plaintiff and the Defendant were Partners under the said agreement. 30
- (2) An account to be taken of the said Partnership transaction and for payment by the defendant to the Plaintiff of what is due to the Plaintiff under the said agreement.
- (3) The dissolution and winding up of the said business.

3. The Plaintiff also claims such further and other relief in the said premises as the Plaintiff

3.

may be entitled to against the defendant.

Issued at Cape Coast the 21st day of January, 1953.

Sum claimed	...	Judicial Relief
Court Fees	...	3. - . - .
Bailiff's fees	...	<u>1.13. 6.</u>
Total		<u>£4.13. 6.</u>

In the Supreme
Court

No.1
Writ of Summons
21st January
1953 -
continued.

(Sgd.) Roger van der Puije
REGISTRAR DIVISIONAL COURT.

No. 2

No.2

10

STATEMENT OF CLAIM

Statement of Claim.

(Title as No. 1)

8th April
1953.

STATEMENT OF CLAIM DELIVERED ON THE 8th DAY OF APRIL, 1953, BY F. AWOONOR WILLIAMS OF COUNSEL FOR THE PLAINTIFF, PURSUANT TO ORDER OF THE COURT MADE HEREIN ON THE 21st MARCH 1953

1. The Plaintiff is a Timber Merchant residing at Akropong in Assin-Apimenim State and also of Cape Coast.

20 2. The Defendant is a Timber Contractor of Assin-Breku in Foso and of Cape Coast.

3. By an Agreement under seal dated the 31st January, 1946, between the Plaintiff and the Defendant for the consideration therein contained, the Defendant, as the Plaintiff's agent, agreed to carry on timber contract or business for the mutual benefit of the Plaintiff and the Defendant for the period of ten (10) years and to pay fifty per centum (50%) or one-half of the nett profits of the said business, from time to time, to the Plaintiff.

In the Supreme
Court

No.2

Statement of
Claim.

8th April 1953
- continued.

4. The Plaintiff has performed his part of the said agreement by advancing such sums of money to the Defendant as the said defendant required from time to time for the said timber business or contract, but the defendant has not, when required by the Plaintiff, paid to the plaintiff his share of the nett profits of the said timber business or furnished the plaintiff with any account of the said timber business from time to time, although required several times by the plaintiff so to do. 10

The Defendant has carried out extensive timber cutting operations on Basofi Timber land in Assin-Apimenim State.

The Plaintiff claims:-

- (a) To have a full and true account of the said timber business carried on by the defendant as the Plaintiff's agent.
- (b) Payment to the Plaintiff of his share or interest under the said agreement by the defendant.
- (c) Fifty thousand pounds (£50,000) damages for breach of the said agreement by the Defendant. 20

5. In the alternative the Plaintiff claims that:-

- (a) the Plaintiff and the Defendant were and are Partners under the said agreement;
- (b) an account to be taken of the said Partnership transaction or business and for payment by the defendant to the Plaintiff what is due to the plaintiff under the said agreement.
- (c) the dissolution and winding up of the said partnership business. 30

6. The Plaintiff also claims such further relief in the said premises as the Plaintiff may be entitled to under the said agreement.

Dated at Sekondi on 8th day of April, 1953.

(Sgd.) F. Awoonor Williams
COUNSEL FOR PLAINTIFF.

The Registrar,
Divisional Court,
Cape Coast.

And to the Defendant,
Joshua Fanye Davis,
Assin Breku, Foso District. 40

Or his Counsel,
J. Bannerman-Hyde, Esqr.,
Barrister-at-Law,
Cape Coast.

DEFENCE

STATEMENT OF DEFENCE

DELIVERED THIS 23rd DAY OF APRIL, 1953 PURSUANT
TO THE ORDER OF COURT MADE HEREIN ON THE 21st
MARCH, 1953

- 10 1. The Defendant is a Timber Contractor residing at Saltpond and carrying on business at Assin Bereku in the Assin Apimenim State and other places in the Western Province.
2. The Defendant admits paragraphs 1 and 2 of the Plaintiff's Statement of Claim.
- 20 3. In reply to paragraph 3 of the Plaintiff's Statement of Claim the Defendant avers that by the Agreement under seal dated 31st January 1946, referred to therein, it was a condition precedent to any liability on the part of Defendant that the Plaintiff should from time to time pay sums of money to the Defendant when and as required for the carrying out of the contract.
4. The Defendant denies, in reply to paragraph 4 of the Statement of Claim that the Defendant has at all times made such advances.
5. The Defendant avers that he has had, by reason of the Plaintiff's failure to advance such sums, to carry on the contract with his own money.
- 30 6. The Defendant further avers in reply to the allegations contained in paragraph 4 of the Statement of Claim that about the latter part of 1948, at the request of the Plaintiff accounts were taken between the Plaintiff and the Defendant at Assin Bereku by Mr. C.N. Ayornoo, who by consent of parties investigated and audited the accounts which shewed that Plaintiff was indebted to the Defendant. The Books kept in the ordinary course of business, namely, Ledger, Journal and Cash Book were then taken away by the Plaintiff and are still in his possession.
7. The Defendant says that after the taking of

In the Supreme Court

No.3

Defence.

23rd April 1953
- continued.

accounts as stated in the preceding paragraph hereof all business relations under the said Agreement were by mutual agreement terminated and the Defendant, thereafter carried on his own business.

8. The Plaintiff in 1949 attempted by an arbitration to effect a reconciliation with a view to renewing business relations with the Defendant but failed.

9. The Defendant, therefore, joins issue with the Plaintiff on his claim and contends that the Plaintiff is not entitled to any of the reliefs claimed herein.

10

COUNTERCLAIM

10. The Defendant repeats paragraphs 1 to 9 inclusive of the Statement of Defence.

11. The Defendant at the request of the Plaintiff supplied to the Plaintiff from 31st January 1949 to 22nd June 1951 Timber logs and Mahogany Curls, and also advanced to the Plaintiff sums of money on loan to the Plaintiff within the said period all to the aggregate amount of £1,351.6.3d which is now outstanding and unpaid, particulars of which are as under:-

20

31.1.49	Mahogany Curls	...	...	£173. 0. 0.
15.2.50	Wawa Logs	...	...	228. 6. 3.
31.5.49	Loan	...	...	100. 0. 0.
22.6.51	do.	...	...	850. 0. 0.
				<hr/>
				£1351. 6. 3.

The defendant claims that the said sum of £1,351.6.3d. be paid to him by the Plaintiff.

Dated at Cape Coast this 23rd day of April, 1953.

(Sgd.) J. Bannerman Hyde
" Kweku Anu Sekyi

30

COUNSEL FOR THE DEFENDANT.

To The Registrar,
Divisional Court,
Cape Coast.

And to the Above-named Plaintiff,
John Kwesi Taylor of Assin
Akropong & Cape Coast.

Or His Counsel
F. Awoonor Williams Esqr.
Sekondi.

40

No. 4

REPLY TO DEFENCEIn the Supreme
Court

No.4

PLAINTIFF'S REPLY TO DEFENDANT'S
STATEMENT OF DEFENCEReply to
Defence.

11th May 1953.

1. The Plaintiff joins issue with the defendant on his Statement of Defence filed herein on the 24th April, 1953 and served upon the Plaintiff on the 30th day of April, 1953.

10 2. In reply to paragraph 3 of the said Statement of defence, the Plaintiff avers that the defendant, under the agreement of 31st January, 1946, referred to in the said paragraph, was the Plaintiff's agent in the acquisition of the Basofi Timber Concession and any timber Concession acquired by the defendant, and under the said agreement assigned to the Plaintiff all his interests (if any) in the said timber leases and agreements to Plaintiff. The Plaintiff denies any condition precedent as alleged by the
20 defendant in the said paragraph to any liability by the defendant under the said agreement of 31st January, 1946, to Plaintiff.

3. In reply to paragraphs 4 & 5 of the said Statement of Defence the Plaintiff avers that, under the said agreement, Plaintiff had advanced from time to time various sums of money to the total of £1980.6.5d to the said defendant against which the said defendant had supplied timber and curls and repaid Plaintiff moneys amounting to the total sum of £1351.6.3d
30 (One thousand three hundred and fifty-one Pounds six shillings and threepence) leaving a balance of £629.0.2d. in plaintiff's favour.

4. In reply to paragraph 6 of the said statement of defence, the Plaintiff denies that accounts were taken between the Plaintiff and the Defendant in the year 1948 by one Ayornoo or by any person or that the Plaintiff had retained the books mentioned in the said paragraph.

40 5. In reply to paragraph 7 of the said Statement of Defence, the Plaintiff denies the allegation therein contained and avers that all timber business carried on by the said defendant were so conducted by the defendant as the Plaintiff's agent and as

In the Supreme
Court

No.4

Reply to
Defence.

11th May 1953
- continued.

such liable to account to Plaintiff for all the profits of the said business.

6. In reply to paragraph 8 of the said Statement of Defence, the Plaintiff avers that the arbitration referred to in the said paragraph was abortive through acts of the defendant and no AWARD was made between the parties. The Plaintiff denies the object of the said arbitration was to renew timber business relations between the Plaintiff and the defendant.

7. The Plaintiff denies, in reply to paragraphs 10 and 11 of the defendant's Counterclaim, that the Plaintiff is indebted to the defendant in the sum of One thousand three hundred and fifty-one pounds six shillings and three pence (£1351.6.3d) or any sum whatsoever.

10

8. Saving and excepting where expressly admitted the Plaintiff joins issue with the defendant on the defendant's statement of defence as if every paragraph thereof were herein written and traversed seriatim.

20

Dated at Sekondi the 11th day of May, 1953.

(Sgd.) F. Awoonor Williams
" O.A. Alakija

COUNSEL FOR PLAINTIFF.

The Registrar,
Divisional Court,
Cape Coast.

And To the Defendant, Joshua F. Davis,
Asin Breku

Or His Counsel, J. Bannerman-Hyde, Esqr.,
Barrister-at-Law,
Cape Coast.

30

9.

No. 5

NOTICE OF AMENDMENT OF DEFENCE

Take Notice that the Defendant herein will ask leave of Court to amend the Statement of Defence filed herein, by substituting "November 1952" for 1949 as stated in paragraph 8 thereof, and by substituting "1949" for 1937 as appears on paragraph 11, item 1 of the particulars of Counterclaim.

Dated at Marmon Chambers, Cape Coast, this 13th day of May, 1953.

(Sgd) J. Bannerman Hyde
COUNSEL FOR DEFENDANT.

To The Registrar,
Divisional Court,
Cape Coast.

And to the above-named Flaintiff,
J.K. Taylor,
Cape Coast.

In the Supreme
Court

No.5

Notice of
Amendment of
Defence.

13th May 1953.

10

No. 6

COURT NOTES GRANTING AMENDMENT

Divisional Court, Cape Coast,
Central Judicial Division,
Tuesday, the 23rd day of June, 1953
Coram: Mr. Justice C.S. Acolatse.

Suit No.7/1953

J.K. TAYLOR ... Plaintiff

v.

J.F. DAVIS ... Defendant

No.6

Court Notes
granting
Amendment.

23rd June 1953.

20

Williams for Plaintiff.
Hyde for Defendant with him K. Sekyi.

BY COURT:- Defendant's Counterclaim - £1351.6.3d.

COURT:- Williams opens on the pleadings on file.

HYDE:- I ask leave to amend Statement of Defence as appears in Notice of Amendment filed 13.5.53.

WILLIAMS:- No objection.

COURT:- Leave to amend granted in terms of Notice of Amendment on file herein.

30

In the Supreme
Court

PLAINTIFF'S EVIDENCE

No. 7

Plaintiff's
Evidence

JOHN KWESI TAYLOR

No.7

John Kwesi Taylor - s.o.b. in English:-

John Kwesi
Taylor.

Examination.

23rd June 1953.

Timber Merchant of Akrrppong in Assin Apimenim State and Cape Coast. I began in Timber business in 1944. I approached Defendant as my personal friend to join me in the Timber business in 1944. The Defendant was then a photographer at Saltpond. I was having three Concessions at the time I asked Defendant to join me. The Concessions were in Assin Apimanim State. The Defendant and I went to the Omanhene of Assin Apimanim State with a view for me to obtain a Concession in Assin Breku. The Chief demanded £200. I gave Defendant a cheque in his name for £200 to pay it over to the Chief. The Cheque number is recited in the Agreement between us in relation to the business. It is dated 31.1.46. I gave the original to my Counsel. He has informed me that the original is misplaced. This is the copy of the Agreement.

10

20

BY CONSENT:- Accepted for both parties and marked Exhibit "A".

The cheque number in the Agreement is 22488 dated 27th August 1945 for £200 as an advance against the concession to the Defendant as my Contractor. The Defendant has never alleged that the original Agreement was destroyed between us at any time nor in his pleadings on file served on me.

WILLIAMS:- I produce and tender a letter dated 17.2.53 from Defendant's Solicitor and my reply thereto dated 27.2.53.

30

HYDE:- No objection.

COURT:- Accepted and marked "B1", "B2".

The Agreement between the Defendant and myself was for a period of ten years. I was the Principal man under the agreement and it was my function to supply all advances of money required for the business. The Defendant's duty was to operate the business on advances I made to him from time to time.

40

11.

The Defendant did not advance any money in the business. The Defendant and I were to share the nett profit of the business on 50 - 50 basis. I carried out my part of the agreement. I advanced money from time to time to Defendant for the business. The Defendant kept the books in connection with the business which I checked from time to time. The books were and are still in possession of the Defendant. I have served notice on defendant to produce the books this morning. It was filed on 22.6.53.

In the Supreme
Court

Plaintiff's
Evidence

No.7

John Kwesi
Taylor.

Examination
23rd June 1953
- continued.

No. 8

ORDER REFERRING ACCOUNTS TO REFEREE

BY CONSENT:- At this stage question of accounts involved to be referred to E.J. Blankson, Court Clerk to go into accounts and report his findings to the Court. Each party to deposit £5.5/- into Court.

Remuneration to the Referee - E.J. Blankson at £1.1/- each sitting.

20 BY COURT:- Usual Order.

(Sgd.) C.S. Acolatse
J.

No.8

Order Referring
Accounts to
Referee.

23rd June 1953.

In the Supreme Court

No. 9

EVIDENCE OF MR. E.J. BLANKSON, REFEREE

No.9

Evidence of Mr. E.J. Blankson, Referee.

9th October 1954.

In the Supreme Court of the Gold Coast, Central Judicial Division, Divisional Court Cape Coast, Saturday, the 9th day of October, 1954, Coram: Mr. Justice Benson.

John Kwesi Taylor

versus

Joshua F. Davies

10

Awoonor Williams with him Alakija and Ademola for Plaintiff.

Bannerman-Hyde for Defendant.

E.J. BLANKSON - S.o.b. in English:-

My name is Emmanuel Jeurry Blankson. I am a Higher Executive Officer and a Clerk attached to the Divisional Court, Cape Coast. On 24th June 1953, I was appointed by this Court as Referee to go into the accounts in this case. After several sittings I concluded the enquiry and made my report and notes of the evidence. I tender my report and notes of evidence - that is the original and one copy signed by me.

20

(Counsel for Plaintiff objects to the reception of the Report and evidence in this Case. Court ordered that Mr. Blankson go into the accounts under Old Rules Order 37 Section 3 Cap.4 - but not to decide who was the owner of properties etc. or decide questions of law - by consent the agreement went in between the parties - pleadings were ordered - Referee did in fact decide questions of law and therefore all proceedings before him are void - Under Rule 9 of Order 3). Court may reject evidence and report - objection must be taken now or cannot be raised later - 4 W.A.C.A. page 147 Solomon versus Solomon.

30

Rec. p.148.

Page 16 of Report filed and now tendered - paragraph 4 - Referee found business ceased at a certain date

In the Supreme Court

No. 10

COURT NOTES

No. 10

22.11.54.

Court Notes.

22nd November 1954.

In the Supreme Court of the Gold Coast, Central Judicial Division, Divisional Court, Cape Coast, Monday, the 22nd day of November, 1954, Coram: Mr. Justice Benson

John Kwesi Taylor

versus

Joshua F. Davies

10

Alakija and Awoonor-Williams for Plaintiff.

K.A. Sekyi, Benjamin and Bannerman-Hyde for Defendant.

Issues have been settled between the parties and filed: Counsel agree to the trial of these issues and the question of actual accounts will be deferred until the decisions on the issues have been given.

Counsel for Plaintiff states that an agreement re Basofi Concession was tendered and received in evidence at the hearing of this case in this Court on 23rd May 1953 and marked Exhibit "A".

20

COURT:- I was unaware that the hearing of this case had begun before Acolatse J. and I cannot continue the case where it was left off without consent of parties: case will either have to be started de novo, or by consent, the evidence so far given to be accepted.

Counsel for Defendant does not agree to case being continued from where it was left off by another Judge and asks that it be commenced de novo.

30

Counsel for Plaintiff asks that case be continued by Acolatse, J.

COURT:-

As the Judge who started the case is still in

15.

Cape Coast, I think the proper course is for him to continue with the hearing from where it was left off by him. As stated I was not aware that the case was part heard and my attention was not drawn to that until to-day, otherwise I would not have made any order as to settlement of issues and other matters.

In the Supreme
Court

No. 10

Court Notes.

Case to be mentioned before Acolatse, J. tomorrow at 9 a.m.

22nd November
1954 -
continued.

10

(Sgd.) H.B. Benson,
J.
22.11.54.

23.11.54.

23rd November
1954.

Williams and Alakija for Plaintiff.
Hyde and Benjamin for Defendant.

20

WILLIAMS:- I was not in Court yesterday before Benson, J. otherwise I would have insisted for Benson, J. continuing with the case instead of the case being sent back to this Court after Benson, J. had heard argument on the Referee's Report. This Court only dealt with the preliminaries.

BENJAMIN:- At a certain stage issues were settled before Benson, J. on the Referee's Report. Issues were filed. Case came on before Benson, J. for hearing yesterday. Alakija for Plaintiff objected to the case being heard de novo or its being continued from where it was left off.

30

COURT:- It is most unfortunate that the question of the case being part heard was not brought to the notice of Benson, J. since the case came before him on 1st May, 1954 and he continued to deal with the case right on to 22nd November 1954, when Counsel took the objection. It is most irregular and I deplore Counsel's conduct in this matter.

Adjourned for hearing - 8.12.54.

(Sgd.) C.S. Acolatse,
J.

In the Supreme Court

No. 11

EVIDENCE OF E.J. BLANKSON, REFEREE

No. 11

8.12.54.

Evidence of E.J. Blankson, Referee.

BY COURT:- Referee's Report before the Court.

REFEREE:-

8th December 1954.

EMMANUEL JEURRY BLANKSON - s.o.b. in English:-

I am clerk of this Court and Higher Executive Officer at Cape Coast. On 23rd June 1953 the Court appointed me a Referee in this matter. I took evidence of the parties and also went into the accounts and made my Report. I produce the Report. I submitted the Report on 22nd June 1954.

10

No. 12

No. 12

Court Notes.

COURT NOTES

8th December 1954.

BY COURT:- Report tendered.

Rec. pp.129-150.

ALAKIJA:- I object to the admission of the Report on ground that the Referee has exceeded the terms of his Reference by deciding questions of law. Refers to page 28 of the Report also pages 17, 25, 16, 15, Referee has no power to express his opinion in his finding on questions of law.

20

BENJAMIN:- Referee's Report is admissible at this stage on the evidence of the Referee in absence of any material irregularity and then after argument on the Report the Court will be able to decide whether to adopt or reject the report.

RULING:-

In my opinion it is obvious that the Report should be admitted in evidence at this stage to enable Counsel to argue upon its merits and demerit and any irregularity involved so as to enable the Court to go into the Report whether it should be adopted or rejected. I accept the Report in evidence at this stage and over-rule the objection.

30

Report marked Exhibit "R" in this Court.

In the Supreme
Court

—
No. 12

Court Notes.

8th December
1954 -
continued.

10 ALAKIJA:- Refers to Plaintiff's claim on Writ of Summons and in the Report at pages 130-131. The Agreement in evidence - Exhibit "A" - is to be considered whether the parties are Principal and Agent or carrying on Partnership business. Pleadings ordered and filed in this Case. Refers to paragraph 2 of the Plaintiff's reply to Defendant's Statement of Defence. The Referee must have concentrated his attention on the money transactions between the parties. The Referee jumped to the conclusion that the business relationship must have ceased between the parties because of no advances made between 1948-50. Refers to page 16 paragraph 4 of the Report. Submits that only the Court could decide whether the Agreement ceased or not between the parties and not the Referee. Referee was wrong to touch upon any question of law and he was wrong in giving his opinion upon the contents of the lease - identification "1".

20 BENJAMIN:- Plaintiff's claim is vague. Plaintiff's claim for an account failed to disclose any period of time. Referee's Report is full and conclusive of facts. Defendant is entitled to judgment on his Counterclaim for £1,351.6.3d. as recommended by the Referee on page 17 of the Report. Admission by Plaintiff on oath of Defendant's counterclaim on page 25 of notes of evidence before Referee.

Rec. p.148.

Rec. p.87.

30 Referee was most cautious in the taking of the evidence before him - See page 26 of the proceedings. Referee has powers under the Ordinance to accept or reject admission of material evidence subject to the Ruling of the Court. Plaintiff has not shown that any of the documents were inadmissible and if so whether Referee's finding was based on the inadmissible evidence.

Rec. p.88.

40 Plaintiff must prove his case and not for Defendant to prove the case for him. Plaintiff's case should have been thrown out. Refers to page 17 of the Report. No foundation for Plaintiff's case in absence of the books of account. No material available for Referee to go with the accounts for any stated period. Referee found on the evidence that the business ceased in 1948 after certain attempts to go into accounts. No basis to support claim.

Rec. pp.148,
149.

In the Supreme Court

No. 12

Court Notes.

8th December 1954 - continued.

Submits Referee's Report full and comprehensive on all material facts and should be adopted.

Plaintiff relies on Exhibit "A" as the foundation of his claim dated 31st January, 1946.

Exhibit "A" is inadmissible. It is not the original. It is a copy of the original. It is immaterial whether it was admitted in evidence without objection.

Submits an appeal Court may in its discretion entertain any objection to evidence received in the Court below though not objected to at the time it was offered.

10

Cites Central Province Farmers Group Ltd. & anor. versus B.B.W.A. & anor. 4 W.A.C.A. 217 G.C. Original Agreement destroyed. (See page 57 of proceedings re evidence of Isaac James Amoah). A copy of the Agreement was not in existence when the original Agreement was destroyed. Exhibit "A" was produced by Plaintiff in this Court and where it came from nobody knows. Referee's finding on page 17.

Rec. p.149.

20

Plaintiff has no locus standi if Exhibit "A" is inadmissible.

Exhibit "A" is not partnership agreement. It is more or less Principal and Agent Agreement.

BY COURT:- At this stage - Hearing adjourned to 10.12.54.

(Sgd.) C.S. Acolatse
J.

10th December 1954.

10.12.54.

30

Alakija for Plaintiff.
Hyde with him Benjamin for Defendant.

BY COURT:- Part Heard.

BENJAMIN:- Refers to Phipson's Law of Evidence on Secondary Evidence - 16th Edition page 542. It states "among inadmissible forms of secondary evidence are copies of copies, which will, in general, be excluded."

Plaintiff has no case under Exhibit "A".
Plaintiff sued in respect of the work of a Concession which is no Concession and is void in law and he cannot claim an account in respect of the alleged Concession. Referee found as a fact at page 15 of his Report that the Plaintiff failed to subsidise the business as provided for under Exhibit "A".

In the Supreme Court

No. 12

Court Notes.

10th December 1954 - continued.

Ref. pp.146,147.

10 ALAKIJA:- Defendant is an accounting party as Agent to Principal. Refers to Bowstead on Agency - 10th Edition page 81 on Money received. Die Mattos vs. Benjamin (1894) 63 L.J.Q.B. 248. Bowstead on Agency - 8th Edition page 146. Williams vs: Tyre, 1854, 23 L.J. Ch.860. Gray vs: Haig - E.R.52 page 587. Defendant did not plead on his Statement of Defence any question of destruction of the original document, Exhibit "A". Refers to Exhibits "B1" and "B2".

20 Pleadings of parties filed in this case. Case opened before Referee on 12.8.53. No cross-examination of Plaintiff on destruction of the original of Exhibit "A".

BY COURT:- At this stage - 2 p.m. - case adjourned - 13.12.54.

(Sgd.) C.S. Acolatse,
J.

13.12.54.

13th December 1954.

BY COURT:- Same Counsel.
Part Heard.

30 ALAKIJA:- Counsel for Plaintiff cannot raise issues not pleaded. It was not pleaded that the Concession was void. Blay vs: Pollard and Morris, I.K.B.D. - Law Reports 1930 at page 634. Referee's Report cannot stand. Referee's question at page 35 of Evidence on question of destruction of the original agreement when no evidence was led on the destruction of the document up to that stage. Submits Exhibit "A" is a copy of the original agreement. Admission by Counsel is conclusive if made with a
40 view to dispense with proof.

Rec. p.99

BY COURT:- Judgment Reserved.

(Sgd.) C.S. Acolatse,
J.

In the Supreme
Court

No. 13

JUDGMENT

No. 13

Judgment.

30th December
1954.

In the Supreme Court of the Gold Coast,
Central Judicial Division,
Divisional Court, Cape Coast,
Thursday, the 30th day of December, 1954,
Coram: Mr. Justice C.S. Acolatse.

Suit No.7/1953

John Kwesi Taylor of Asin
Akropong in Asin Apimenim
State and Cape Coast .. Plaintiff

10

versus

Joshua Fanye Davies, Timber
Contractor of Asin Breku in
Fosu Cape Coast District Defendant

JUDGMENT

In this case the Plaintiff sued the Defendant upon an Agreement under seal dated 31st January 1946, between the Plaintiff and Defendant for the consideration therein contained. The said Agreement was tendered in evidence "By Consent" and marked Exhibit "A".

20

Upon the matter coming before the Court and during the course of hearing pleadings were ordered and filed accordingly by the parties. Later in the course of the proceedings the Court, by consent of parties, agreed that matter of accounts was involved and the parties were accordingly referred to a Referee to go into the accounts between the parties and to take evidence and submit his Report and Finding to the Court under the Courts Ordinance.

30

The matter came before me in its final stage to consider the Referee's Report and Finding on 8th December, 1954. The Referee's Report was accepted by me in evidence and marked Exhibit "R" after objection taken by Plaintiff's Counsel. Counsel for parties argued on the Report and Finding and judgment was reserved.

The Plaintiff's claims are fully set out in the Writ of Summons and Statement of Claim in which after basing his claim on Exhibit "A" he claims:-

(a) To have a full and true account of the said timber business carried on by the Defendant as the Plaintiff's agent.

(b) Payment of the Plaintiff's share or interest under the said agreement by the Defendant.

10 (c) Damages for breach of the said agreement by the Defendant.

In the alternative:-

(a) The Plaintiff and the Defendant were partners under the said agreement.

(b) An account to be taken of the said partnership transaction and for payment by the defendant to the Plaintiff of what is due to the Plaintiff under the said agreement.

20 (c) The dissolution and winding up of the said business.

The Defendant in his Statement of Defence joined issue with the Plaintiff on the claim and contended that Plaintiff was not entitled to reliefs claimed. The Defendant filed a Counter Claim in his Statement of Defence claiming the sum of £1351.6.3d being sums of money advanced to Plaintiff on loans between 31st January 1947 up to 22nd June, 1951.

30 The facts of the case are fully set out in the proceedings and Report of the Referee and no good purpose would, therefore, be served by a recapitulation of the same. The case depended on the construction of the Agreement, Exhibit "A".

One of the questions the Court was asked to determine was whether the relationship between the parties under Exhibit "A" was to be considered as Principal and Agent or Partners carrying on partnership business? I have no hesitation in holding that the parties under Exhibit "A" were not partners in business and were not carrying on partnership business. The addendum in Exhibit "A" is clear on

In the Supreme
Court

No. 13

Judgment.

30th December
1954 -
continued.

In the Supreme
Court

No. 13

Judgment

30th December
1954 -
continued.

the point and decisive on that issue.

Under the Agreement - Exhibit "A" - it was agreed that Defendant bought a "Basofi Concession" in 1945 for the Plaintiff on an advance of £200 on the instruction of the Plaintiff. The Defendant under the Agreement assigned or relinquished his right title and interest and all obligations under the said Concession to the Plaintiff as the owner and "Disclosed Principal" of the "Concession". The Defendant took up the duty of a Contractor for the Plaintiff to work the said "Basofi" Concession on condition of money advances to be made regularly by the Plaintiff. The nett profit accruing therefrom was to be divided into two equal moieties.

10

The Plaintiff failed to carry on his obligation as to providing money regularly to the Defendant in the field to enable him to operate the Concession, and in 1948 matters came to a head and the accounts were called for. It was admitted in the proceedings by the witnesses for the parties that the "Concession" was operated at a loss and there was to be a deficit in 1948 when the parties met their friends with one Ayornoo to audit the accounts. The accounts were gone into in presence of the parties by Ayornoo. The books were alleged to have been taken away by Plaintiff after Ayornoo had audited the books. These books were not produced from the custody of the Plaintiff nor the Defendant to assist the Referee in the matter of the accounts as to the Expenditure, Profits and sale of logs from the Concession. The Referee was only able to take accounts of all monies advanced by each party in the business and drawn out by each party.

20

30

It was admitted by Plaintiff that he advanced altogether the total sum of £1980.6.3d. less £590 leaving £1390.6.3d. less £740 found to have been withdrawn by the Plaintiff according to the receipts before the Referee. The Plaintiff, it was found, has £650.6.3d. to his credit out of the monies paid into the business.

40

The Defendant on the other hand was found to have advanced his own money solely in the interests of the Concession in total sum of £701.11.3d. It would be seen that as against the balance of £650.6.3d. to Plaintiff's credit, the Defendant had more money standing at a loss in the business.

There is then, in my opinion, a balance of £50.13.9d in favour of the Defendant on the Capital Account, or in the alternative under the Agreement the whole amount of £701.11.3d. since the Defendant was not to provide moneys for the business. I think, under the circumstances, one has to hold that as a bad investment in the capital account since there is no evidence that the money was advanced at the request of Plaintiff. Plaintiff's portion might go to Profit and Loss Account. I agree with the Referee on the fact that the Plaintiff removed the account books away in 1948 after Ayornoo audited the accounts.

In the Supreme
Court

—
No. 13

Judgment.

30th December
1954 -
continued.

10

20

I find no difficulty in accepting the finding of facts from the proceedings before the Referee that the Plaintiff owes Defendant the amount claimed on the Counterclaim. The Counterclaim was admitted on oath by Plaintiff in his evidence and it was not seriously contested. I therefore give judgment for the Defendant on his Counterclaim in the sum of £1,351.6.3d. against the Plaintiff herein with costs to be taxed.

30

I hold the opinion that Exhibit "A" is admissible as a copy of the original. The Defendant did not object to its admission or its contents. I take the view that the relationship between the parties under Exhibit "A" is one of a "Disclosed Principal" and a Contractor and each entitled to $\frac{1}{2}$ share in the net profit of the operation of the "Concession" as long as the Principal, as Plaintiff, advanced monies for the working of the Concession. The said agreement to my mind came to an end, as found by the Referee in 1948 when the parties reached disagreement.

40

In construing Exhibit "A" which relates to the operation of a "Concession", I take the view that the foundation of the Agreement is without any legal vestment, inasmuch, as the "Concession" lease - Identification "1" - was a Concession in law and the Plaintiff cannot claim any right, title or interest in any agreement based on a Concession which conflicts Section 8(5) of the Concessions Ordinance No. 19 of 1939. I find that the subject matter upon which the Agreement rests and out of which profits of the accounts were to be derived does not exist at all in law or in evidence before this Court. The claim under Exhibit "A" has its roots

In the Supreme
Court

in the alleged concession which was never validated
by the Court.

No. 13

Judgment.

30th December
1954 -
continued.

I hold that the Referee's Report and Finding is full and comprehensive on all material facts and I accept and adopt it. There was no foundation for Plaintiff's case and no material available before the Referee to determine the accounts in full. The Plaintiff, I hold, is not entitled to accounts on the operation and profits accruing from a Concession, which if produced before the Court, would be held to be null and void. The Plaintiff could not claim any rights based on a Concession dealing in the operation of timber rights which did not come within the ambit of the Concessions Ordinance.

10

I therefore dismiss the Plaintiff's claims herein against the Defendant with costs to be taxed.

Costs for Counsel allowed at 150 guineas.

(Sgd.) C.S. Acolatse,
JUDGE.

20

Counsel:

Williams for Plaintiff.
Hyde for Defendant.

No. 14

NOTICE AND GROUNDS OF APPEAL

In the West African Court of Appeal

No.14

IN THE WEST AFRICAN COURT OF APPEAL,
GOLD COAST SESSION,
ACCRA

Notice and Grounds of Appeal.

NOTICE OF APPEAL

17th January 1955.

John Kwesi Taylor of Assin }
Akropong in Asin Apimenim } Plaintiff-
State and Cape Coast .. } Appellant

10

vs.

Joshua Fanyo Davies, Timber }
Contractor of Asin Breku in } Defendant-
Fosu, Cape Coast District } Respondent

TAKE NOTICE THAT the Plaintiff being dissatisfied with the decision more particularly stated in paragraph 2 of the Divisional Court, Cape Coast, contained in the Judgment of C.S. Acolatse, J., dated the 30th day of December, 1954, DOTH hereby APPEAL to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

20

AND the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Part of the decision of the lower Court complained of :

3. Grounds of Appeal:

30

(a) BECAUSE the learned Judge, having found that the case depended on the construction of the Agreement Ex. "A", the construction of which was not referred to the Referee, was wrong in adopting the Referee's Report that the business under the said Agreement terminated in 1948.

(b) BECAUSE the learned Judge was wrong in agreeing

In the West
African Court
of Appeal

—
No.14

Notice and
Grounds of
Appeal.

17th January
1955 -
continued.

with the Referee that the Defendant had advanced the sum of Seven Hundred Pounds (£700.11.3d) eleven shillings and three pence out of his own money solely in the interest of the concession, there being no evidence to support this finding: and this conclusion depended upon the construction of the Agreement Ex. "A".

- (c) BECAUSE the learned Judge having found that the Referee confined himself solely to the question of monetary advances between the Plaintiff and the Defendant and not to timber account or transaction, the learned Judge should have ordered accounts as between Principal and Agent; that apart from the timber transaction under the said Agreement, Exhibit "A", there was no provision under the said Agreement for the defendant to make any monetary advances to the Plaintiff-Appellant. 10
- (d) BECAUSE the learned Judge was wrong in giving Judgment on the Counterclaim for the sum of One Thousand Three Hundred and Fifty-one Pounds Six Shillings and Three pence (£1,351. 6.3d.) to the Defendant-Respondent; there being no provision under the said Agreement for the Defendant-Respondent to make any advances to the Plaintiff-Appellant under the said Agreement; and, if any advances had been made by the Defendant-Respondent under the said Agreement, the same must have related to the timber transactions between the parties; and such advances were proceeds of the timber business. 20 30
- (e) (i) BECAUSE the Learned Judge was wrong in the construction of the Agreement, Exhibit "A", in holding that the foundation of the said Agreement was the Concession lease or Basofi Concession; the said concession lease, if any, or Basofi Concession not having been put in evidence. 40
- (ii) BECAUSE the Plaintiff and the Defendant being natives of the country were not bound in law to take a lease of timber rights of any timber land.
- (iii) BECAUSE the Plaintiff and the Defendant

being natives were entitled, according to Native Custom, to make a purchase of timber trees on any land without any written lease or document.

In the West
African Court
of Appeal

No.14

Notice and
Grounds of
Appeal.

17th January
1955 -
continued.

- 10 (iv) BECAUSE the Defendant-Respondent not having pleaded Section 8(5) of the Concessions (Amendment) Ordinance No. 9 of 1939, the Court was wrong in law in taking the said Concessions Ordinance into consideration and so deciding on an issue which was not before the Court or on the pleadings.
- 20 (v) BECAUSE as between the Plaintiff and the Defendant the relation of the parties under the said Agreement, Ex. "A", was that of Principal and Agent; and even if the Defendant-Respondent had taken a lease under the Concessions Ordinance as Agent of the Plaintiff-Appellant, the Defendant was bound in law to render accounts of all proceeds and transactions under the said Agreement relating to the said Basofi lease or concession or any rights which the Defendant-Respondent had acquired under the said lease or concession to the Plaintiff-Appellant.
- 30 (vi) BECAUSE the Agreement, Ex. "A", went beyond the Basofi lease or concession and covered all timber transactions under the said Agreement between the Defendant-Respondent and the Plaintiff-Appellant.
- 40 (f) BECAUSE the Order of the Court in directing the Referee to take "all available evidence" related only to the question of accounts as between the Plaintiff-Appellant and the Defendant-Respondent; and such order did not authorise the Referee to go beyond the question of the accounts between the parties or to make any legal pronouncement as to the status between the Defendant-Respondent and the Plaintiff-Appellant, therefore the Court was wrong in adopting the Referee's Report and finding and giving Judgment thereon in favour of the Defendant-Respondent.

4. Relief sought from the West African Court of Appeal:

In the West African Court of Appeal

No.14

Notice and Grounds of Appeal.

17th January 1955 - continued.

(a) To set aside the Judgment of the Court below and on the evidence and on the construction of the Agreement, Ex. "A", to make an order directing the Defendant-Respondent to make and give an account of all timber transactions under the said Agreement from 1946 to the date of issue of Writ and all consequential Orders after the issue of the said writ.

(b) The Appellant also seeks a DECLARATION that the Court should make an Order that all monetary transactions between Plaintiff-Appellant and the Defendant-Respondent was under the said Agreement Ex. "A"- and that the Respondent, under the said Agreement, was entitled to no REMUNERATION apart from the (50%) Fifty per centum given to the said Respondent under the said Agreement.

10

(c) And for such other order or relief in the premises as to this Appeal Court may seem just.

5. Persons directly affected by the appeal :

20

Names:

Addresses:

Joshua Fanye Davies

Timber Contractor, Asin Breku, Via Fosu:

Dated at Petusie Chambers, Sekondi, the 17th January, 1955.

(Sgd.) O.A. Alakija

COUNSEL FOR APPELLANT.

The Registrar,
W.A.C.A.
Accra:

30

And To Defendant :-

Joshua Fanye Davies,
Asin Breku,
Via Fosu.

No.15

COURT NOTES

In the West
African Court
of Appeal

No.15

Court Notes.

30th April
1956.

30th April, 1956.

In the West African Court of Appeal, Gold Coast
Session: Cor. Coussey, P., Korsah, C.J., and
Baker, Ag. J.A.

Suit No.3/56

John Kwesi Taylor

versus

Joshua Fanye Davis

10

Same Counsel.

Alakija:

Ground (a)

Judge was wrong to agree with Referee that
the agreement came to an end in 1948. Referee
went at side scope of enquiry - decided question
of law - Inquiry therefore void and Report value-
less.

Aderokun versus U.A.C.
4 W.A.C.A. 161.

20

Ground (c)

Issue agreed upon was whether parties were
principal or agent or partners - we say it is
principal and agency. P.82 defendant admits did
not keep account of Basofi concession.
P.42 - Defendant had assigned his rights in the
concession to plaintiff therefore finding that
defendant had every right to provide money etc.
is wrong. Agreement A provides that Concession is
assigned to and vested in Plaintiff. (But defen-
dant says plaintiff failed to make advance so
defendant had to, to save situation.)
Defendant could not explain how agreement ended
in 1948. Did not allege Agreement destroyed.
P.76. Agreement was used at arbitration in 1952.
P.78. Defendant did not mention in evidence that
the agreement was lost. Eduful said original
agreement was produced at Saltpond. When plain-
tiff's case was proceeding. Defendant did not know
how to establish that Agreement was terminated in
1948. Later in his own case said it was destroyed.
But Referee reported that agreement terminated in

30

40

In the West
African Court
of Appeal

No.15

Court Notes.

30th April
1956 -
continued.

1948. Defendant's Counsel did not object to copy Agreement admitted in evidence before Benson J. on 22nd November.

Which account was taken in 1948 - not of Basofi concession. In breach of trust defendant as an employee - contractor worked concession for his own use without accounting.

Q. Why did not plaintiff take steps at the time?
A. He did so.

As to item £701.11.3d - plaintiff objected to the receipt tendered - not proved. 10

If plaintiff can establish that the Referee's conclusions are wrong then plaintiff is entitled to have a fresh account taken but satisfied with Referee's account and report.

Satisfied to account from 1948 to 1950 because after 1948 parties agreed that business continue. Refers to item £5 of 7/1/49.

P.72 - Defendant run away axle of timber lorry.

Adjourned 31st May. 20

(Sgd.) J. Henry Coussey
President.

1st May 1956.

1st May, 1956.

Counsel as before.

We ask Alakija to indicate in what respect the findings of the Referee on the several sums claimed and counterclaimed by the parties are wrong.

Alakija - After going through the findings:

Agrees he cannot dispute that £590 of the plaintiff alleged advances were correctly disallowed by the Referee. As to £701.11.3d, the relevant Receipts were made by defendant to himself. 30

Before upholding Referee's Report this Court should have decided:

(1) Ownership of the Basofi Concession.

(2) Whether plaintiff was entitled to this Concession.

Whether defendant should have accounted for the proceeds of the Concession as Agent as he entered it with plaintiff's authority. 40

White versus Bailey and others
1861, 30 L.J.C.P. 253.

Bossman:

As to £70,000.00. defendant's expenditure. It is true defendant produced receipts to himself for these moneys but Ayornoo at P.85 investigated all this with the Police and found that Davishad ceased the expenditure.

10 The circumstantial evidence apart from Ayornoo's evidence is that after meeting of 1948, the relation between plaintiff and defendant ceased. Meeting was in December 1948. After that date plaintiff paid nothing. After that date plaintiff bought from defendant timber bearing defendant's mark for which he gave a credit note dated 31st January 1949 for timber taken. The marked is "J.S.F.D. PP. 52, 56, 79.

20 All timber produced by defendant was sold to Briscoe. Plaintiff stopped Briscoe payments to defendant. Defendant annoyed, ceased business. No evidence that status auto was reverted to, by plaintiff writing Briscoe that he and defendant had resumed business relation again - P.86. The books have been restored to Davies by plaintiff if they had agreed to continue business. After this plaintiff was borrowing heavily from defendant. Question of fact on direct and circumstantial evidence that agreement was mutually abandoned. The Concession is not based in the agreement. It is loans made by defendant to plaintiff after agreement terminated.

30 Appellant's admissions show the business was running at a loss. That is why 1948 meeting was held to close up.

Plaintiff failed to bring money for carrying on business.

ALAKIJA:

Business should have financed itself when started with plaintiff's advances. Separate marks were used only to avoid confusion.

C. A. V.

(Sgd.) J. Henry Coussey
President.

In the West
African Court
of Appeal

No.15

Court Notes.
1st May 1956
- continued.

In the West
African Court
of Appeal

No.16
Judgment.
28th June
1956.

No.16

J U D G M E N T

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION.

Coram:

Coussey, P.
Korsah, C.J.
Baker, Ag. J.A.

Civil Appeal
No. 3/56.

10

28th June, 1956.

John Kwesi Taylor of Assin Akropong
in Assin Apimenim State and Cape
Coast, Plaintiff-Appellant.

v:

Joshua Fanye Davis, Timber Contractor
of Assin Bereku in Foso, Cape Coast
District, Defendant-Respondent.

J U D G M E N T.

KORSAH, C.J.: This is an appeal from the judgment
of the Divisional Court which dismissed the plain-
tiff's claim in a suit in which the plaintiff
claims:

20

"(1) A full and true account of the timber
business carried on by the defendant as
plaintiff's agent.

"(2) Payment of plaintiff's share or interest
under an agreement dated 31st January
1946, and

"(3) Damages for breach of the said agreement
by the defendant."

30

In the alternative:

"(1) The plaintiff and defendant were partners
under the said agreement.

"(2) An account to be taken under the said

partnership transaction, and payment by defendant to plaintiff of what is due to the plaintiff under the said agreement, and

"(3) Dissolution and winding up of the said business."

The said agreement contains three recitals which briefly summarised, are as follows:

- 10 (a) On the instructions of the plaintiff, the defendant entered into an agreement with the Assin-Apimenim State, on terms and conditions contained in an agreement dated 27/8/45 and executed between the said State and defendant for timber rights over Basofi land.
- (b) The plaintiff advanced £200 to the defendant for the purpose of the said agreement.
- 20 (c) The intention of the parties under the agreement dated 31/1/46 - between plaintiff and defendant - was to carry on timber business in the area covered by the said Basofi land for a period of 10 years with option for further period etc.

30 It will be observed that although the agreement between the Assin-Apimenim State of the one part, and defendant of the other part was produced and marked "1" for identification, it has not been tendered in evidence. However, for all practical purposes, in this appeal the material document is the agreement dated 31st January, 1946 between plaintiff and defendant, marked Exhibit "A", which states "that in consideration of the advance in

"money already made and to be made in the future by

"the plaintiff towards the performance of the duties

"and obligations on the part of the defendant under

"the agreement with the Assin Apimenim Stool the

"defendant:

40 "Covenants with the principal (the plaintiff)

"that he will faithfully carry out the said duties

"and obligations during the currency of the agreement with the Assin Apimenim Stool with the help

"advice and assistance of the Principal and that

"in return therefor he will after deduction of all

"working expenses and other outgoings either weekly

In the West
African Court
of Appeal

No.16

Judgment.

28th June

1956 -

continued.

In the West
African Court
of Appeal

No.16

Judgment.

28th June
1956 -
continued.

"or otherwise as may be agreed upon pay to the
"Principal one half of the amount of profits rea-
"lised on the sale and disposition of all Timber
"and Timberlike trees, Boards, etc. obtained from
"the said Basofi land by virtue of the said Agree-
"ment with the Assin Apimenim Stool. And the Con-
"tractor doth hereby assign all his claims rights
"interests and benefits arising under and by virtue
"of the said Agreement to the Principal as a Dis-
"closed Principal under that Agreement. And the
"Principal doth hereby covenant with the Contractor
"that he will continue as heretofore in giving all
"necessary assistance to the Contractor towards the
"due performance of the said Contract."

10

It is admitted that by this covenant it was
agreed between the parties, inter alia, that
plaintiff undertook to advance money from time
to time, as and when defendant required money,
for the purpose of carrying out the rights and
obligations under the agreement between defendant
and the Assin Apimenim State dated 27/8/45, as a
condition precedent to the terms and obligations
under Exhibit "A", the agreement dated 31/1/46
between plaintiff and defendant.

20

Plaintiff's claim states: "The plaintiff has
"performed his part of the said agreement by advan-
"cing such sums of money to the defendant as the
"said defendant required from time to time for the
"said timber business or contract, but the defendant
"has not, when required by the plaintiff, paid to
"the plaintiff his share of the nett profits of the
"said timber business or furnished the plaintiff
"with any account of the said timber business from
"time to time although required several times by
"plaintiff so to do."

30

In answer to the above, defendant denies that
plaintiff has fulfilled his part of the agreement
as alleged and
"Avers that he has had, by reason of the plaintiff's
"failure to advance such sums, to carry on the con-
"tract with his own money" and that about the latter
"part of 1948, at the request of the plaintiff,
"accounts were taken between the plaintiff and the
"defendant at Assin Bereku by Mr. C.N. Ayornoo, who,
"by consent of parties, investigated and audited
"the accounts which showed that plaintiff was in-
"debted to the defendant. The books kept in the
"ordinary course of business namely etc. were then

40

"taken away by the plaintiff and are still in his possession. After which all business relations under the said agreement Exhibit "A" were by mutual agreement terminated. The defendant thereafter carried on his own business. Later in 1952 plaintiff attempted by an arbitration to effect reconciliation with a view to renewing business relation with defendant but failed."

In the West
African Court
of Appeal

No. 16

Judgment.

28th June
1956 -
continued.

10 The evidence on record supports substantially the version of the defendant which both the referee and the learned Judge accepted, consequently the learned Judge dismissed plaintiff's claim. In my view there is ample evidence to support the findings of fact and the judgment.

20 The claim filed was for account either on the basis of principal and agent or, in the alternative, on the basis of a partnership business, and for dissolution. The learned Judge disposed of the latter claim, by reference to the addendum to
20 Exhibit "A" which, inter alia, provided that the said agreement shall be preparatory to a partnership provided certain conditions were later fulfilled. Both parties having agreed that those conditions were not fulfilled it cannot be contended that the partnership business which had been contemplated was ever conducted by the parties.

30 The relationship between the parties was therefore one of principal and agent, and had the plaintiff carried out his obligations under the agreement, he would have been entitled to an account on the 1st part of his claim. In view however of his failure to comply with the terms of the agreement, and the termination of the business relationship between them by mutual agreement in 1948 after the accounts were investigated and audited, it is clear that the plaintiff is not entitled to accounts from defendant for any period after December 1948.

40 It has been contended on behalf of the Appellant that as the claim depended on the construction of the Agreement Exhibit "A", the construction of which was not referred to the Referee, being a matter of law, the learned Judge was wrong in adopting the view expressed in the Referee's Report, that the business under the said Agreement was terminated in 1948.

50 It will be observed that whether as principal and agent, or as partners, it is not disputed that the agreement upon which the claim is based provides that the parties shall share profits equally. In order therefore to ascertain what profits, if any, accrued from the business the trial Judge, in the first place, referred the taking of the accounts to a Referee, who in obedience to the order examined the accounts filed by the parties, and

In the West
African Court
of Appeal

No.16

Judgment.

28th June
1956 -
continued.

took evidence of the parties and their witnesses, with respect to the business transactions between the parties; he duly filed his report together with the proceedings.

Counsel for plaintiff-appellant, objected to the admission, of the Referee's report and proceedings in evidence, on grounds briefly summarised as follows: (1) Referee exceeded his powers and decided questions of law which he is not entitled to do, therefore the proceedings before the Referee should be declared null and void. (2) That the order to the Referee was vague and that the Court before referring the accounts to a Referee should have decided certain matters, such as whether partnership had been dissolved, and the rights of parties in Basofi Concession.

10

In my opinion this proposition cannot be supported. Certainly the Referee's opinion on questions of law should in no way influence the Court, which alone decides finally the issues of law and fact arising as to the accounts. It is open to the Court to agree or disagree with the findings of the Referee so that, in every respect, it is incumbent on the trial Judge to come to his own conclusions on questions both of law and fact irrespective of what the findings of the Referee may be. I am aware of no authority which supports the contention that because the Referee has discussed questions of law in his report, therefore, the whole of a report, which is in no way ambiguous or uncertain, is void and inadmissible in evidence.

20

30

In my opinion the conclusions of the learned Judge both in law and fact were correct, and it is right to assume that he formed his judgment irrespective of any view expressed by the Referee although he may have been in agreement therewith. It has frequently been laid down that the Court ought not to interfere with a Referee's finding when it is confirmed by the Court below except on the strong ground of manifest error or manifest abuse, circumstances which are not present in this case.

40

I would therefore dismiss this appeal with costs.

(Sgd.) K.A. Korsah
C.J.

COUSSEY, P: I concur. (Sgd.) J. Henry Coussey.

BAKER, Ag: J.A.: I concur. (Sgd.) Francis H. Baker.

Alakija for the appellant.
Hayfron-Benjamin (Senior) (Bossman with him) for the respondent.

In the West African Court of Appeal

No.16

Judgment.

28th June

1956 -

continued.

No.17

COURT NOTES GRANTING FINAL LEAVE TO APPEAL

19th November, 1956.

10 In the West African Court of Appeal, Gold Coast Session Coram: Coussey, P., Korsah, C.J., and Verity, Ag. J.A.

Civil Motion
No. 76/56.

John Kwesi Taylor

versus

Joshua Fanye Davis.

No.17

Court Notes granting Final Leave to Appeal.

19th November 1956.

Motion and Notice for final leave to appeal to Privy Council.

20 Mr. Williams moves - all conditions have been observed.

Mr. Opoku Akyeampong for Mr. Puplampu for Respondent on notice - does not oppose.

BY COURT:

Order for final leave to appeal as prayed.

Costs in cause £18. 7. 6.

(Sgd.) J. Henry Coussey

P.

Exhibits

"2"

Letter, J.K.
Taylor to
J.F. Davis.
16th July
1943.

E X H I B I T S

Exhibit "2"

LETTER, J.K. TAYLOR TO J.F. DAVIS

Ekrofuom,
16th July, 1943.

J.F. Davis, Esq.,
Art Photographer,
Saltpond.

Dear Brother/

I beg your pardon that since then I arrived from Accra I have not been able to write you, or report my safe arrival and news from there to you but sorry to say when I arrived I had a big contract from Foso to supply Timber to P.W.D. Foso. For new elected Police Station, and moreover I have no cash with me to do the work hence I loaned your cash; of which I determined to send over to you. I have to finish the whole work before I make a Bill towards that. So I hope I shall get my cash at the end of this current month when the work is finished. Again we shall attend Lodge at Cape Coast on the 1st of August for His Lordship Jubilee. I hope you will attend. I beg to remind you to get me the old Form, from Peper and send over to me at your convenient time. My Girl at Cape Coast has also brought forth a male child and time of delivered is unknown to me; and since her delivery I have not been able to attend Cape Coast but I have sent £5. -. -. Five Pounds for the expenses.

10

20

30

I am,

Yours friend.

(Sgd.) John Kwesi Taylor.

Exhibit "3"
LETTER, J.K. TAYLOR TO J.F. DAVIS

Ekrofuom,
 16th August, 1943.

J.F. Davis, Esqr.,
 Art Photographer,
 Saltpond.

Dear Mr. Davis/

10 I beg to inform you that yours of the 12th
 inst. has been received with many thanks and con-
 tents therein is carefully noted. The cash £32.10.
 Thirty-two pounds Ten shillings per Driver Kofie
 Ewanzah was given to him to be given to you just
 to give £22.10/- Twenty-two Pounds Ten shillings to
 Araba and £10 Ten Pounds to self to cover your
 timber taken last. I also told him to give the
 whole amount to you, and you will give Araba's
 shares, but she told me that she has received
 20 £22. 0. 0. Twenty-two pounds per the Driver himself
 instead of you. So I hope you will add the 10/-
 Ten shillings to her.

I am trying to be there, but time does not
 permit me at all. Anyway I will be taken you on
 surprise in a day. Kindly collect from Kofie
 Driver "Blue Bird" Cash the sum of £3. 10. 0.
 Three Pounds Ten Shillings as well as my hand watch
 until my arrival and the balance of the corn sent
 to the old lady; of which she asked you to col-
 lect same for me.

30 I end here with sincere compliments to self,
 wife Nana Aba as well as all the household.

I am,
 Yours friend,
 (Sgd.) John Kwesi Taylor.

Exhibits
 "3"

Letter, J.K.
 Taylor to
 J.F. Davis.
 16th August
 1943.

Exhibits

"1"

Letter, J.K.
Taylor to
J.F. Davis.
21st September
1943.

Exhibit "1"
LETTER, J.K. TAYLOR TO J.F. DAVIS

Ekrofuom.
21st Sept. 1943.

Mr. J.F. Davis,
Saltpond,

Dear Mr. Davis/

Yours remittance of £20. 0. 0. Twenty Pounds per Araba has been received with many thanks. I thank you most sincerely for your kindness done to me. And I shall let you have it at no distant date plus the telegram fees charged by the Post Office.

10

Kindly remember me to wife Sister from Cape Coast as well as the old man.

We are all sound as these leaves us.

I am,
Yours sincerely,
(Sgd.) John Kwesi Taylor.

"5"

Letter: J.K.
Taylor to
J.F. Davis.
11th October
1943.

Exhibit "5"
LETTER, J.K. TAYLOR TO J.F. DAVIS

Ekrofuom,
11th October, 1943.

Dear Mr. Davis,

Yours of the 26th Sept. has been received with many thanks. I have acknowledged your two letters concerning the safe arrival of the cash Twenty pounds per Araba.

20

I am in great difficulty of finance so I shall no longer replace your cash Twenty pounds per Araba. I have cancelled my arrangement with G.B.O. Cape Coast. I have inquired the papers from your friend at Cape Coast and he said none in stock. I have also send the Board per Araba. I have also ask you to take or to agree the price of £5, Five Pounds per the cloth offered by weekly and take the cash and advice me.

30

Compliments to self and all.

I am, Yours,
(Sgd.) John Kwesi Taylor.

40

Exhibit "4"
LETTER, J.K. TAYLOR TO J.F. DAVIS

Ekrofuom,
25th November, 1943.

Exhibits
"4"
Letter, J.K.
Taylor to
J.F. Davis.
25th November
1943.

Dear Mr. Davis,

Yours of the 20th instant with Cash of £4
Fourteen Pounds have been received with many thanks
and I thank you most sincerely for your kind favour
done to me.

10 I am still expecting more gangs of Surveyors;
therefore I still need of another £20. 0. 0.
Twenty Pounds to put on more Gangs, the more Gangs
I get the more profit, I will get; as I told you
on the telephone, sooner if I find that all cash
is loose I shall send same to you; or at any time
you need of same to you at once. Regards to the
8 ft. Saw too. Kindly send same to me with
every possible terms. I am not very well now-
20 adays, and when I get somewhat better and time,
I shall come and spend a couple of days with you,
and before then, I shall notify you.

With sincere compliments to all the household
and the children.

I am,

Yours sincerely brother

(Sgd.) John Kwesi Taylor.

Exhibits

"F"

List of Advances,
J.K. Taylor to
J.F. Davis.

Exhibit "F"LIST OF ADVANCES, J.K. TAYLOR TO J.F. DAVIS

J.F. Davis, Timber Contractor, Asin Bereku
in account with J.K. Taylor, Timber Con-
tractor, Asin Akropong.

PERIODICAL ADVANCES IN CASH PAID TO MR. DAVIS

27	Aug.	1945	To	Cheque No. 7488	£200. 0. 0	
31	"	"	"	ordinary Cash Ret.No.4921	200. -- --	
30	Nov.	"	"	" " "	4903 7. -- --	
31	Dec.	"	"	" " "	4901 5. -- --	10
30	Jan.	1946	"	" " "	4902 35. -- --	
4	May	"	"	" " "	4904 38. -- --	
13	Jly.	"	"	" " "	4907 46. -- --	
1	Jne.	"	"	" " "	4905 30. -- --	
5	Jan.	1947	"	" " "	4916 36.18. --	
?	Mar.	"	"	" " "	4919 146. 9. 9	
31	"	"	"	" " "	4922 15.13.10	
7	Aug.	"	"	" " "	4923 88. -- --	
22	"	"	"	" " "	4925 2. -- --	
3	May	1948	"	" " "	4931 200. -- --	20
17	Aug.	"	"	" " "	4938 100. -- --	
22	"	"	"	" " "	4939 40. -- --	
4	Sept	"	"	" " "	4927 70. -- --	
4	"	"	"	" " "	4910 50. -- --	
4	"	"	"	" " "	4912 2. 1.11	
7	"	"	"	" " "	4908 56. -- --	
11	"	"	"	" " "	4911 23. -- --	
20	Oct	"	"	Cheque No.71/B.56804	-- 100. -- --	
20	"	"	"	ordinary Cash Ret.No.4940	100. -- --	
13	Nov.	"	"	" " "	4941 50. -- --	30
13	Nov.	"	"	Cheque No. ? 600	-- 50. -- --	
10	Dec.	"	"	ordinary Cash Rect.No.4943	40. -- --	
21	"	"	"	" " "	4915 42. 2. 9	
7	Jan.	1949	"	" " "	4944 5. -- --	
28	Jne.	1950	"	Cheque No.P/800191	-- 200. -- --	
4	July	1946	"	ordinary Cash Ret.No.4906	10. -- --	

TOTAL :-

£ 1,980. 6. 3d

Identification "1"
 AGREEMENT, NANA N. ABABIO AND JOSUAH F.
 DAVIES

Exhibits
 Identification
 "1"

GOLD COAST STAMP
 DUTIES
 One Pound

"A"

GOLD COAST STAMP
 DUTIES
 One Pound
 4295/45.

Agreement,
 Nana N. Ababio
 and Josuah
 F. Davies.

31st August
 1945.

10 THIS AGREEMENT made the 31st day of August
 1945 between NANA NKYI ABABIO, Omanhene of Assin
 Apimanim State, in the Central Province of the
 Gold Coast hereinafter called the Landlord which
 expression where the context admits include his
 heirs successors administrators personal represen-
 tatives and assigns as well as the person or per-
 sons or body of persons whose consent and con-
 currence by Native Customary Law and Usages are
 necessary in dealing with Stool, Ancestral or
 Family property of the one part And JOSUAH FANYE
 20 DAVIES of Santpond in the Central Province of the
 Gold Coast aforesaid hereinafter called the Timber
 Contractor which expression where the context so
 requires or admits include his heirs successors
 personal representatives and assigns of the other
 part

WHEREBY IT IS AGREED AS FOLLOWS :-

30 1. The Landlord hereby grants unto the Contractor
 a portion of Basofi land measuring 20 miles square
 as described in the schedule hereinafter described
 situate lying and being at Dansami and Brisaku in
 the Assin State the property of the Stool of Asin
 Apimanim State to fell thereon such timber trees
 from time to time and manufacture them into timber
 logs and haul therefrom such timber logs as and
 when the timber Contractor may deem necessary and
 convenient.

40 2. The said Timber Contractor shall fell trees
 of the 10 to 14 feet and 15 feet and upwards in
 circumference at the rate of £1.10/- for Mahogany,
 £2.10/- for Odum, £1 for Cedar, 10/- for Embere
 and £1 for Dahuma a tree respectively.

3. In consideration thereof the sum of Two
 hundred pounds (£200) has been paid by the Timber
 Contractor as an advance against the quantity of

Exhibits
Identification
"1"

Agreement,
Nana N. Ababio
and Josuah
F. Davies.

31st August
1945 -
continued.

trees to be felled which shall be counted either at the end of each month or any other time as shall be agreed upon by the parties and the number of trees felled shall include payments for all trees which the Timber Contractor may have felled after deductions shall have been made from the amount already paid.

4. And It is hereby agreed between the parties that the exercise of rights privileges and liberties hereby granted shall commence from the date of the execution hereof and continue until after the expiration of Ten (10) Years thereafter and the Landlord hereby agree to grant the Contractor at his request a further option of renewal at the expiration of the said term upon the same terms and conditions as are herein contained.

10

5. And It is hereby further agreed and declared that should the Landlord for any reason fail to make his title to the said property to the satisfaction of the Contractor then and in such case (without prejudice to any other remedies of the Contractor) the Landlord shall be liable to refund to the Contractor any money that may have been paid to him by the Contractor or any money expended for the felling of timber trees which shall be determined by Arbitrators or otherwise.

20

6. The Contractor shall observe all the regulations and conditions which may have been imposed or may from time to time or hereafter be imposed by the Conservator of Forests or other competent Authority.

30

7. And It is hereby Mutually agreed between the parties that the Landlord will at the request of the Contractor do all acts matters and things and render such assistance to the Contractor as shall be necessary for confirming the property granted and that he will not during the time hereby granted obstruct or interfere with the Contractor his agents servants or workmen or assignees in the exercise by them of the rights contained herein.

40

8. AND IT IS HEREBY further agreed that the Contractor shall have the wole right to use the land purposely for the felling and hauling timber trees in any part of the land.

IN WITNESS WHEREOF the parties hereto set

their hands and seals the day and year first above written.

Exhibits
Identification
"1"
Agreement,
Nana N. Ababio
and Josuah
F. Davies.
31st August
1945 -
continued.

10 Signed Sealed Marked and) His
Delivered by the Land-) Nana Nkyi Ababio x
lord after the contents) Mark
hereof had been first)
read over and interpreted) Omanhene Asin Apimanim
to him in the Fante Lang-) State (L.S.)
uage by Theophilus)
Lawrence Apeadu of Asin)
Manso and he perfectly)
to understand the meaning)
purport and effect there-)
of before making his) (Sgd.) David Lord
mark thereto in the)
presence of :-)

20 (Sgd.) Amakyi II, Kyidomhene Apimanim State (L.S.)
R.E. Mensah for and on behalf of the
Stool Family Their (L.S.)
(Mkd.) Kwami Boahene Gyaschene x (L.S.)
" Chief Kwaku Efikuma x (L.S.)
Marks.
" Kyiame Kwaku Akomin x (L.S.)
Mark

Signed Sealed and) (Sgd.) Joshua F. Davis
Delivered by the Contrac-)
tor in the presence of :-) TIMBER CONTRACTOR
(L.S.)

30 (Sgd.) John Kwesi Taylor
" William Apia.

SCHEDULE REFERRED TO

All that piece or parcel of land situate lying and being at Dansami and Brisaku bounded on the North by Yaw Busi's land on the South by path road from Bereku to Nwakisu on the East by Adontenhene Kurantwi Braimah's land and on the West by Nwakyisu.

In the Supreme Court of the Gold Coast.

40 I, Theo. Lawrence Apeadu of Assin Apimanim State make oath and say that on the 31st day of August 1945, I saw Nana Nkyi Ababio, Omanhene of Assin Apimanim State duly execute this Instrument now

Exhibits
Identification
"1"

Agreement,
Nana N. Ababio
and Josuah
F. Davies.
31st August
1945 -
continued.

produced to me and marked "A" and that the said Nana Nkyi Ababio cannot read or write and that this Instrument was read over and interpreted to him in the Fante Language by me the time of this execution and that he appeared to understand its provisions.

Sworn at Cape Coast this } (Sgd.) Theol. L. Epeadu.
1st day of November, 1945)

Before me,
(Sgd.) J.T. Odametey
COMMISSIONER FOR OATHS.

10

On the 1st day of November 1945 at 9.5 o'clock in the forenoon this Instrument was proved before me by the oath of the within named Theol. Lawrence Apeadu to have been duly executed by the within named Nana Nkyi Ababio Omanhene of Asin Apimanim State.

Given under my Hand I having no official seal.

(Sgd.) J.T. Odametey
REGISTRAR, DIVISIONAL COURT,
CAPE COAST.

20

Received from Mr. Joshua Fanye Davis of Salt-pond the sum of Two Hundred Pounds (£200) being advance against Timber Trees to be felled on Brasaiaku and Sansami lands situate on portion of Basofi land property of the Stool of Asin Apimanim State in terms of an Agreement made between myself and Landlord and Joshua Fanye Davis as Licensee dated the 31st day of August, 1945

Dated at Asin Manso the 31st day of August, 1945.

30

His
Nana Nkyi Ababio x
Mark
OMANHENE APIMANIM STATE.

Witnesses :-

Their
Gyasehene Kwami Boahene x
Chief Kwaku Efikuma x
Kyiamme Kwaku Akomin x
Marks.

3D STAMP.

3D STAMP.

W/W to mark.
(Sgd.) Teho. L. Apeadu.
Asst. Reg. N.C.

40

This is the Instrument marked "A" referred to in the Oath of Theol. Lawrence Apeadu sworn before me this 1st day of November, 1945.

(Sgd.) J.T. Odamey
REGISTRAR, DIVISIONAL COURT.

In accordance with Section of Cap. 179 I certify that in the opinion of the Commissioner of Stamps this Instrument is chargeable with a duty of Two Pounds and a penalty of Five Pounds.

(Sgd.) ? ?
COMMISSIONER OF STAMPS.

Commissioner of Stamp's Office,
ACCRA.
5.12.45.

Exhibit "D"
R E C E I P T

NO. 4921.

ORIGINAL.

31st August, 1945.

Received from J.K. Taylor the sum of Two Hundred Pounds ----- Shillings and ----- pence being advance pd. against Trees to be felled.

£200. -. -. .

(Sgd.) Joshua F. Davis.

Exhibits
Identification
"1"

Agreement,
Nana N. Ababio
and Josuah
F. Davies.

31st August
1945 -
continued.

"D"
Receipt.
31st August
1945.

10

20

Exhibits

"L"

Letter, J.F.
Davis to
J.K. Taylor.
6th December
1945.

Exhibit "L"
LETTER, J.F. DAVIS TO J.K. TAYLOR

Akropong
6th December, 1945.

Dear Mr. Taylor,

I arrived at your station 3 p.m. in the noon, to inform you of the case, I have arrival with the representatives of the Omanhene together with the elders and the Contractor's brother, they reach on the point asking me to allow, that they may share the trees among us for which I refused and that it was further agreed that we must meet at Manso on the coming Sunday for final. According to the position of our case I must to start to work before we meet for final, therefore I have collected 15 to 20 logs or more which I came to inform you and take the Headman to go and open same to the other boys being a new business or branch.

10

Trust you will not be avers of the taken the Headman and Techie for the prospective work. I will despatch them to say on Sunday when I find is convenient.

20

You may try to see me say Saturday for further matters before I proceed to Manso.

I have taken one packet ticket from your wife. You may also arrange to send me every necessary tools that may be needed at Bereku branch. I have also checked the boys pay-sheet as you may sometimes inconvenient you before their pay.

30

Trust everything goes on well on your fly visit to Accra.

Yours,

(Sgd.) Joshua F. Davis.

Exhibit "K"
LETTER, J.F. DAVIS TO J.K. TAYLOR

Exhibits

"K"

Saltpond.
21st Dec. 1945.

Letter, J.F.
Davis to
J.K. Taylor.
21st December
1945.

Dear Mr. Taylor,

10 This serves to you in respect of Bereku case to Omanhene rejecting the ways and manner they shared the Mahogany trees with me; further he have asked me to have a little patient for owing to his festival unless after eight days which he could call we both at Manso for final share, although he is in our favour so far as justice is concerned. I have also assured him for a refund and he was too pleased if we will get same he will only call him for his money, so kindly think over it again.

20 Re - recruiting of labourers I arrived here on the 19th night and the following day I have the Agreement Paper typed by Mr. Oku (Friday) and proceed to Cape Coast for its sign and see Mr. Ayivor on the 20th inst. The Agreement was signed and Mr. Ayivor told me that unless he handed the recruiting of labourers to one of his headmen which I ask him to do so and I arranged for a telegram reply paid to him for an total on Hand. I have also send my friend James there, who is also working the same labourers collection for me. You shall see me with them soon as I am through. My father also is very ill with his health again, Kwesi Boye has written me but I did not get the letter and if same reaches you kindly keep it.

sic

30 I have also inform by my cousin Aba Payinn about labourers at Akwatia, and have wire my cousin John A. Pokoo and if I am through I will go there on Monday.

Without further for the moment.

Regards.

Yours faithfully

(Sgd.) Joshua F. Davis.

40 John K. Taylor Esq.,
Timber Contractor,
Akropong,
via Foso.

Exhibits

"A"

Agreement,
J.F. Davis and
J.K. Taylor.

31st January
1946.

Exhibit "A"
AGREEMENT, J.F. DAVIS AND J.K. TAYLOR

"A" £1 No.114/46.

AN AGREEMENT made the Thirty-first day of January One Thousand Nine Hundred and Forty-six (1946) in the year of Our Lord BETWEEN Joshua Fanye Davis of Saltpond in the Central Province of the Gold Coast Colony (hereinafter called the Contractor) of the One Part AND John Kwesi Taylor of Agotimi in the Keta District in the Eastern Province and Colony aforesaid now at Ekrofuom in the Assin Apimanim State in the Central Province and Colony aforesaid (hereinafter called the Principal which expression where the context so admits shall be deemed to include his Heirs, Successors Personal Representatives and Assigns) of the other part WHEREAS on the instructions of the Principal the Contractor entered into an agreement with the Paramount Stool of the State of Assin Apimanim in the Central Province of the Colony aforesaid acting per its lawful representative Omanhene Nana Nkyi Ababio on the terms and conditions contained in the Agreement executed between the said parties dated the 31st day of August 1945 covering an arrangement for Timber Rights over Basofi Land as therein more fully set out and expressed.

10

20

AND WHEREAS the Principal advanced the amount of Two Hundred Pounds (£200) to the said Contractor for the purposes of the said Agreement with the said Stool of Assin Apimanim in consideration of the premises hereinafter appearing which said amount was paid by cheque No.22488 dated the 27th August 1945 on the Bank of British West Africa Limited, Cape Coast.

30

AND WHEREAS the intention of the parties hereto is to carry on Timber Business in the area covered by the said Basofi Land for the period of Ten (10) years as expressed in the said Agreement or such other further periods as may be granted under it by virtue thereof on the terms hereinafter appearing.

40

NOW THESE PRESENTS WITNESS that in consideration of the premises and of the advance in money

Exhibits

"A"

Agreement,
J.F. Davis and
J.K. Taylor.

31st January
1946 -
continued.

10

already made and to be made in the future by the Principal towards the performance of the duties and obligations on the part of the Contractor to be discharged in respect of the contract with the Assin Apimanim Stool the said contractor doth hereby COVENANT with the Principal that he will faithfully carry out the said duties and obligations during the currency of the Agreement with the Assin Apimanim Stool with the help advice and assistance of the Principal and that in return therefor he will after deduction of all working expenses and other outgoings either weekly or otherwise as may be agreed upon pay to the Principal one half of the amount of profits realised on the sale and disposition of all Timber and Timberlike trees, Boards, etc. obtained from the said Basofi Land by virtue of the said Agreement with the Assin Apimanim Stool AND the Contractor doth hereby assign all his claims rights interests and benefits arising under and by virtue of the said Agreement to the Principal as a Disclosed Principal under that Agreement AND THE PRINCIPAL doth hereby covenant with the Contractor that he will continue as heretofore in giving all necessary assistance to the Contractor towards the due performance of the said Contract.

20

30

AND it is hereby mutually agreed and declared that the benefit of the Contract with the Assin Apimanim Stool shall be vested in the said Principal, his heirs, Successors Representatives and Assigns and that as long as the Contractor carries out his part of the said Contract he shall be entitled to retain for himself one half of the said Nett Profits as aforesaid AND FURTHER that in the event of the death of the Contractor all interest accrued due to him at the date of such death but not otherwise shall be paid to the Legal Personal Representative of Family of the Contractor by the Principal, and or his heirs successors personal representatives and Assigns.

40

AS WITNESS the hands and seals of the parties hereto the day and year first above written.

Signed Sealed and Delivered }
by the said Joshua Fanye } (Sgd.) Joshua Fanye
Davis in the presence of } Davis (L.S.)

F.C. Adamo

Aboom Chambers

R.A. Acquah Law Clerk to

Barrister J.W. de Graft Johnson.

Exhibits

"A"

Agreement,
J.F. Davis and
J.K. Taylor.

31st January
1946 -
continued.

Signed Sealed and Delivered)
by the said John Kwesi) (Sgd.) John Kwesi
Taylor in the presence of) Taylor (L.S.)

F.C. Adamo
Aiboom Chambers
R.A. Acquah Law Clerk to
Barrister J.W. de Graft Johnson.

In the Supreme Court of the Gold Coast,
Central Province.

OATH FOR PROVING EXECUTION OF DOCUMENT

10

I, Isaac Anaman Acquah of Cape Coast make Oath
and say that on the 31st day of January 1946 I saw
Joshua Fanye Davis the Contractor herein duly
execute the Instrument now produced before me and
marked "A" and that the said Joshua Fanye Davis
can read and write.

SWORN at Cape Coast the) (Sgd.) Isaac A.
23rd day of February, 1946.) Acquah

BEFORE ME

(Sgd.) ? ? ?

20

AG: REGISTRAR DIVISIONAL COURT.

PROOF OF EXECUTION

On the 23rd day of February 1946 at 10 o'clock in
the forenoon this Instrument was proved before me
by the Oath of the within-named Isaac Acquah to
have been duly executed by the within-named Con-
tractor Joshua Fanye Davis.

Given under my hand I having no official seal.

(Sgd.) ? ? ?

AG: REGISTRAR, DIVISIONAL COURT.

30

ADDENDUM MADE BEFORE EXECUTION OF AGREEMENT

AND it is hereby further agreed between the
Parties hereto that the foregoing Agreement shall
be preparatory to the creation of a Partnership
under the Law for Timber and other kinds of ven-
tures and that out of the Nett Profits accruing
from the aforesaid business to which each party
is entitled to 50 per cent, the Principal shall

deposit in an account to be opened at the Bank of British West Africa Ltd., Cape Coast in their joint names one third of the said 50 per cent and that deposits shall be made at the close of every Timber deal until the sum of Five Hundred Pounds is deposited from the joint Savings whereupon the foregoing Agreement shall determine and the Parties shall enter into a Partnership with the said £500 as Capital.

Exhibits

"A"

Agreement,
J.F. Davis and
J.K. Taylor.
31st January
1946 -
continued.

10

(Sgd.) Joshua Fanye Davis

" John Kwesi Taylor.

Witness to Signature.

(Sgd.) I.A. Acquaaah

Law Clerk to Barrister J.W. de Graft Johnson.

Exhibit "N"

LETTER, J.F. DAVIS TO J.K. TAYLOR

"N"

Letter, J.F.
Davis to
J.K. Taylor.
28th February
1946.

Saltpond,
28/2/46.

Dear Mr. Taylor,

20

I acknowledge the receipt of your telegram in respect of my mother with many thanks.

I am compell by Seckyi death to stays at home my mother will finish her 8 days widowship on Monday and shall leave for Achiase for the labourers and thence to Bereku where I shall write you the date of the funeral, as it will be fixed on 8 days celebration.

Regards,

Yours,

30

(Sgd.) Joshua F. Davis.

Exhibits

"M"

Letter, J.F.
Davis to
J.K. Taylor.
12th September
1946.

Exhibit "M"
LETTER, J.F. DAVIS TO J.K. TAYLOR

Foso,
12/9/46.

Dear Mr. Taylor,

Regret of not able to wait for me, I have taken the delivery of the 6 fes. pit saws and have place them in care of Mr. Otoo to hand them to you.

Please send the consignment note to the station master with thanks. 10

I have return back to my station as I am not sound with my right hand, and may expect me here or your station by tomorrow or Saturday.

I have received your note back which you left it at Bereku and my expect same when we meet.

I am also making payments of the boys today.

Yours truly,

(Sgd.) Joshua F. Davis.

Mr. J.K. Taylor,
Contractor,
Akropong. 20

"23"

List of
amounts paid
by J.F. Davis.

Exhibit "23"
LIST OF AMOUNTS PAID BY J.F. DAVIS

List of amounts invested by Defendant into
the business.

1947.						
March	By	Cash	Receipt	No.	4920	... £221.11. 3d
July 25	"	"	"	"	4924	... 50. -. -
Aug. 22	"	"	"	"	4926	... 100. -. -
Oct. 3	"	"	"	"	4928	... 5. -. -
Oct. 12	"	"	"	"	4929	... 5. -. -
1948.						
Aug. 22	"	"	"	"	4939	... 40. -. -
Nov. 5	"	"	"	"	4942	... 50. -. -
Jan. 2	"	"	"	"	4947	... 20. -. -
" 13	"	"	"	"	4948	... 100. -. -
Aug. 26	"	"	"	"	4949	... 50. -. -
Sept. 24	"	"	"	"	4950	... 60. -. -
						£701.11. 3

30

4924.

25th July 1947.

Received from Mr. J.F. Davis Timber Contractor, Bereku the sum of Fifty Pounds ----- shillings and ----- pence being cash paid in respect of Bereku Trees a/c. to Omanhene at Manso.

£50. -- --.

2d. Stamp.

(Sgd.) Joshua F. Davis

Exhibits

"23"

List of
amounts paid
by J.F. Davis.

- continued.

4928.

3rd day of October, 1947.

Received from Mr. J.F. Davis, Timber Contractor, Bereku the sum of Five Pounds ----- shillings and ----- pence being cash against sundry expenses.

£5.

2d. Stamp.

(Sgd.) Joshua F. Davis

4929.

12th day of October, 1947

Received from J.F. Davis Timber Contractor, Bereku the sum of Five Pounds ----- shillings and ----- pence being cash against sundry expenses.

£5. -- --.

2d. Stamp.

(Sgd.) Joshua F. Davis.

20

4939.

day of 22nd August, 1948.

Received from J.F. Davis Timber Contractor Bereku the sum of Forty Pounds ----- shillings and ----- pence being a/c. to Bereku Concession.

£40. -- --.

2d. Stamp.

(Sgd.) Joshua F. Davis

4942.

5th day of November, 1948

Received from J.F. Davis Timber Contractor, Bereku the sum of Fifty Pounds ----- shillings and ----- pence being a/c. to Bereku Concession.

£50. -- --.

2d. Stamp.

(Sgd.) Joshua F. Davis.

30

<u>Exhibits</u>			
"23"	4947.	2nd day of January, 1948.	
List of amounts paid by J.F. Davis.	Received from J.F. Davis, Timber Contractor Bereku the sum of Twenty Pounds ----- shillings and ----- pence being account to Bereku Concession.		
- continued.	£20. -. -. .		
	2d. Stamp.	(Sgd.) Joshua F. Davis.	
	4948.	13th day of January, 1948	
	Received from Mr. J.F. Davis, Timber Contractor, Bereku the sum of One Hundred Pounds ----- shillings and ----- pence being account to Bereku Concession.		10
	£100. -. -. .		
	2d. Stamp.	(Sgd.) Joshua F. Davis.	
	4949.	26th day of August, 1948.	
	Received from J.F. Davis Timber Contractor Bereku the sum of Fifty Pounds ----- shillings and ----- pence being account to Bereku Concession.		
	£50. -. -. .		
	2d. Stamp.	(Sgd.) Joshua F. Davis	
	4950.	24th day of September, 1948	20
	Received from J.F. Davis, Timber Contractor Bereku the sum of Sixty Pounds ----- shillings and ----- pence being account to Bereku Concession.		
	£60. -. -. .		
		(Sgd.) Joshua F. Davis.	

Exhibit "17"
C H E Q U E

PAYABLE TO J.K. Taylor
AMOUNT ... £100. 0. 0.
DATE ... 31st May, 1949

Exhibits

"17"

Cheque.

31st May 1949.

EXHIBITS "18" to "22"R E C E I P T SExhibit "18"

No.9203 11th day of February 1948

10 Received from J.F. Davis Timber Contractor, Bereku
the sum of One Hundred and Fifty Pounds -----
shillings and ----- pence being cash drawn in res-
pect of Bereku a/c.

£150. -- --.

(Sgd.) John Kwesi Taylor.

Receipts.

"18"

11th February
1948.Exhibit "19"

No.9204. 3rd day of March, 1948.

20 Received from Mr. J.F. Davis, Timber Contrac-
tor Bereku the sum of Fifty Pounds ----- shillings
----- pence being cash drawn in respect of Bereku
Concession account.

£50. -- --.

(Sgd.) John Kwesi Taylor.

"19"

3rd March
1948.Exhibit "20"

No.9205. 23rd day of March, 1948.

Received from J.F. Davis, Timber Contractor
Bereku the sum of Four Fifty Pounds ---- shillings
and ----- pence being cash drawn in respect of
Bereku Concession A/C.

£450. -- --.

(Sgd.) John Kwesi Taylor.

"20"

23rd March
1948.

Exhibits

Receipts.
- continued.

"21"

23rd October
1948.

Exhibit "21"

No.9206.

23rd day of October, 1948.

Received from J.F. Davis, Timber Contractor
the sum of Ten Pounds ----- shillings and -----
pence being cash drawn out of £100. 0. 0. drawn
at Sekonai against payment of 6 drums petrol etc.
£10. 0. 0. (Sgd.) John Kwesi Taylor.

"22"

13th July
1948.

Exhibit "22"

9207.

13th day of July, 1948.

Received from J.F. Davis Timber Contractor
Bereku the sum of Eighty Pounds ----- shillings
and ----- pence being cash drawn in respect of
Concession on Bereku account.
£80. -. -. (Sgd.) John Kwesi Taylor.

10

"13"

Credit Note,
J.K. Taylor
& Sons.

31st January
1949.

Exhibit "13"
CREDIT NOTE, J.K. TAYLOR & SONS

J.K. TAYLOR & SONS

CREDIT NOTE

Mr. J.F. Davies,
Timber Contractor,
Assin Bereku.

20

By net value 20 only mahogany curls weighing 4 tons
15 cwt. 0 qrs and shipped per M.V. "DEL VIENTO" Ex
following specifications.

JSPD	F31	-	4	36"	x	38"	x	13"
"	36	-	5	48	x	36	x	11
"	40	-	5	45	x	28	x	10
"	41	-	4	44	x	28	x	12
"	42	-	4	38	x	37	x	11
"	43	-	4	45	x	22	x	12
"	44	-	4	48	x	30	x	15

30

JSPD F46	- 4	54"	x	33"	x	16"
"	66 - 5	48	x	26	x	10
"	69 - 4	60	x	36	x	14
"	70 - 4	39	x	28	x	13
"	80 - 4	36	x	24	x	13
"	47 - 4	48	x	41	x	16
"	49 - 4	48	x	34	x	14
"	51 - 4	62	x	31	x	12
"	52 - 4	50	x	28	x	11
"	56 - 4	46	x	25	x	13
"	57 - 4	36	x	32	x	12
"	64 - 4	36	x	24	x	12
"	65 - 4	36	x	25	x	11

Exhibits

"13"

Credit Note,
J.K. Taylor
& Sons.31st January
1949 -
continued.

10

£173. -- --.

(One hundred and Seventy Three Pounds)

E. & O.E.

FOR J.K. TAYLOR & SONS
(Sgd.) John K. Eduful
SECRETARY.

20

Cape Coast.
31/1/49.

Asin Bereku.

1st July, 50.

Dear Mr. Taylor,

With reference to your promise last time you called to see me regarding to the payment of the Curls and Wawa Logs which you purchased from me regret I have not as yet heard from you.

30

By the way when shall I expect settlement from you?

Yours faithfully,
(Sgd.) Joshua F. Davis.

John Kwesi Taylor,
Asin Akropong.

Exhibits

"14"

Receipt.

22nd June
1951.

Exhibit "14"
R E C E I P T

22nd June, 1951.

Received from J.F. Davis the sum of Eight hundred and Fifty Pounds ----- shillings and ---- pence being cash borrowed to be refunded.

14/9/50	£400. -- -	
4/1/51	400. -- -	
22/6/51	50. -- -	Chq.No.B/60
		044612
	<u>£850. ... -</u>	

10

(Sgd.) John Kwesi Taylor

2D STAMP.

Letters,
J.F. Davis to
J.K. Taylor.

EXHIBITS "6" to "12"

LETTERS, J.F. DAVIS TO J.K. TAYLOR

"6"

9th September
1950.

Exhibit "6"

J.F. Davis,
Timber Contractor,
Asin Bereku.
9/9/1950.

20

Dear Mr. Taylor,

15 WAWA LOGS

Will please furnish me with Statement of Account or specification re above Logs you purchased from me.

Yours faithfully,
(Sgd.) Joshua F. Davis.

Mr. J.K. Taylor,
Timber Contractor,
Asin Akropong.

30

61.

Exhibit "7"

J.F. Davis,
Timber Contractor,
Asin Bereku.
27/4/50.

Exhibits

Letters,
J.F. Davis to
J.K. Taylor -
continued.

"7"

27th April
1950.

Dear Mr. Taylor,

15 WAWA LOGS

10 With reference to your Credit Note of
15/2/1950 for £228. 6. 3d. being value of above
logs you purchased from me, will you please on
receipt of this letter let me have payment of same
together with the £173 being Curls Account.

Yours faithfully,
(Sgd.) Joshua F. Davis.

John Kwesi Taylor,
Timber Contractor,
P.O. Box 8,
Foso.

Exhibit "8"

20 J.F. Davis,
Timber Contractor,
Asin Bereku.
30/4/1949.

"8"

30th April
1949.

Dear Mr. Taylor,

20 PEST MAHOGANY CURLS

30 I am in receipt of your credit No.2 of
31/1/49 for £173. 0. 0. being value of above, and
I agree. Will you please let me have settlement
as early as possible.

Yours faithfully,
(Sgd.) Joshua F. Davis.

Mr. John Kwesi Taylor,
Timber Contractor,
Asin Akropong.

Exhibits

Letters,
J.F. Davis to
J.K. Taylor -
continued.

"9"

14th January
1949.

Exhibit "9"

Asin Bereku.

14th January, 1949.

Dear Mr. Taylor,

20 PES. MAH. CURLS

Please shall I remind you to forward me a statement of account re above Curls you purchased from me.

Yours faithfully,

(Sgd.) Joshua F. Davis.

10

Mr. John Kwesi Taylor,
Timber Contractor,
Asin Akropong.

"10"

7th June 1952.

Exhibit "10"

J.F. Davis,
P.O. Box 33,
Foso.
7th June, 52.

Dear Sir,

With reference to your promise last when you called on me regarding settlement of your account £850, in March 1952, I would like to bring to your notice that you have again failed to make use of the amount and unless you have a good reason to give or settlement is made by you immediately on receipt of this letter else I shall be compelled to take legal step against you for recovery of same.

20

Yours faithfully,

(Sgd.) Joshua F. Davis.

30

Mr. J.K. Taylor,
Timber Contractor,
P.O. Box 8,
Foso.

Exhibit "11"

Asin Bereku,
3rd January, 1952.

Dear Sir,

1 sic. Please I still await settlement of your account in the sum of £850 reference my letter of 30/10/51, demanding for payment.

Yours faithfully,
(Sgd.) Joshua F. Davis.

10 Mr. J.K. Taylor,
Timber Contractor,
P.O. Box 8,
Foso.

Exhibits

Letters,
J.F. Davis to
J.K. Taylor -
continued.

"11"

3rd January
1952.

Exhibit "12"

J.F. Davis,
Timber Contractor,
Asin Bereku.

30th Oct. 51.

Dear Mr. Taylor,

20 I have to call your attention for settlement of your account in the sum of £850. 0. 0. being amount received from me on loan from time to time.

viz	14/9/50	£400. -- --.
	4/1/51	400. -- --.
	22/6/51	50. -- --.
		<u>£850. -- --.</u>

Yours faithfully,
(Sgd.) Joshua F. Davis.

30 Mr. John K. Taylor,
P.O. Box 8,
Foso.

"12"
30th October
1951.

ExhibitsEXHIBITS "E1" - "E9"

"E1" - "E9"
Receipts.

R E C E I P T S

7th January
1949.

No.4944.

7th day of January, 1949.

Received from Mr. J.K. Taylor, Timber Contractor, Asin Akropong the sum of Five Pounds ----- shillings and ----- Pence, being account to Bereku Concession.

£5. 0. 0.

2d Stamp.

(Sgd.) Joshua F. Davis.

10th December
1948.

No.4943.

10th day of December 1948.

10

Received from J.K. Taylor, Timber Contractor, Akropong the sum of Forty Pounds ----- Shillings and ----- Pence being account to Bereku Concession.

£40. 0. 0.

2d. Stamp.

(Sgd.) Joshua F. Davis.

13th November
1948.

No.4941.

13th day of November 1948

Received from J.K. Taylor, Timber Contractor, Akropong the sum of Fifty Pounds ----- Shillings and ----- Pence being account to Bereku Concession.

£50. 0. 0d.

2d. Stamp.

(Sgd.) Joshua F. Davis.

20

20th October
1948.

No.4940.

20th day of October, 1948.

Received from Mr. J.K. Taylor, Timber Contractor, Akropong the sum of One Hundred Pounds ----- Shillings and ----- Pence being a/c to Bereku Concession.

£100. 0. 0d.

2d. Stamp.

(Sgd.) Joshua F. Davis.

No.4938.

17th day of August, 1948.

Exhibits

Received from J.K. Taylor, Timber Contractor, Akropong the sum of One Hundred Pounds --- Shillings and ---- Pence being Bereku Concession a/c.

"E1" - "E9"

Receipts
- continued.

£100. 0. 0.

2d. Stamp.

(Sgd.) J.F. Davis.

17th August
1948.

No.4916.

5th day of January, 1947.

5th January
1947.

Received from John K. Taylor, Timber Contractor, Akropong the sum of Thirty six Pounds ----- Shillings and ---- pence being a/c to Bereku Labourers Wages in December, 1946.

10

£36.18.-.

2d. Stamp.

(Sgd.) Joshua F. Davis.

No.4919.

day of March, 1947.

March 1947.

Received from Mr. J.K. Taylor the sum of One hundred and forty six pounds nine shillings and ninepence being cash paid into the business.

£146. 9. 9d.

2d. Stamp.

(Sgd.) Joshua F. Davis.

20

No.4915.

21st day of December 1946.

21st December
1946.

Received from John K. Taylor, Timber Contractor, Akropong the sum of Forty two Pounds Two Shillings and ninepence being a/c. to Bereku Labourers Wages in November, 1946.

£42. 2. 9.

2d. Stamp.

(Sgd.) Joshua F. Davis.

RECEIPT4th-September
1946.

Received from Mr. J.K. Taylor of Akropong Cash the sum of Seventy Pounds (£70. 0. 0.) being cash against deposit of hiring timber lorry and Pit Sawn Saws at Takoradi.

30

2d. Stamp.

(Sgd.) Joshua F. Davis
4/9/46.

Exhibits

"H"

Specification
of Logs
supplied.

21st October
1949.

Exhibit "H"
SPECIFICATION OF LOGS SUPPLIED

J.F. Davis,
Timber Contractor,
Asin Bereku.
21st October, 1949.

SPECIFICATION OF WAWA LOGS SUPPLIED BY J.F. DAVIS
TO J.K. TAYLOR

Squared Wawa Logs.

Mark JAFD - JKTS.

10

<u>LOGS NO.</u>	<u>MEASUREMENT</u>	<u>CU. FT.</u>
F.101 - 1	17' x 35" x 36"	148.780.
100 - 3	16' x 24" x 24"	64.000.
100 - 1	15' x 27" x 28"	78.776.
101 - 2	20' x 36" x 38"	190.139.
100 - 2	16' x 24" x 24"	64.000.
101 - 3	20' x 34" x 36"	170.139.
86 - 1	15' x 33" x 33"	113.438.
86 - 2	15' x 38" x 38"	150.417.
101 - 4	18' x 32" x 28"	112.500.
86 - 3	15' x 32" x 35"	116.901.
109 - 1	17' x 37" x 41"	179.562.
86 - 4	15' x 27" x 35"	100.164.
105 - 3	24' x 28" x 30"	140.167.
109 - 3	18' x 34" x 34"	144.500.
109 - 4	19' x 32" x 32"	<u>135.111.</u>

20

1903 Cu.Ft.

at 50 38.3 Tons.

Dear Mr. Taylor,

The above 15 logs are the result that I have
been hauled to Takoradi against your earliest
shipment, which please ship same against my
account.

30

Trusting this will meet you in good health.

Regards.

Yours faithfully,

(Sgd.) Joshua F. Davis.

Mr. J.K. Taylor,
Akropong.

Exhibit "J"
LETTER, J.F. DAVIS TO J.K. TAYLOR

Exhibits

"J"

J.F. Davis,
Timber Contractor,
Asin Bereku.
15th Jan. 1950.

Letter, J.F.
Davis to
J.K. Taylor.
15th January
1950.

Dear Mr. Taylor,

10 Your letter of the 15th inst. received with
thanks, as you required me to supply you paints
and tyre, I have supply per your Driver one tin
of kerosene pan full of logs white paint for the
use of painting logs face.

Regarding to the tyre I regret to inform you
that I have not at present to supply.

sic. I have already supply to one of your drivers
by name Accra-Boy one Tyre almost a fortnight ago
and it has excape my mind to inform you. (Size
10. 50. 16.)

20 The two bottles distill water has been
delivered to your Driver at Attasi accordingly.

With kind regards to self and all.

Yours truly,
(Sgd.) Joshua F. Davis

Mr. J.K. Taylor,
Timber Contractor,
Asin Akropong.

Exhibits

"16"

Credit Note,
J.K. Taylor
& Sons.
15th February
1950.

Exhibit "16"
CREDIT NOTE, J.K. TAYLOR & SONS

J.K. TAYLOR & SONS
(TIMBER CONTRACTORS AND GENERAL MERCHANTS)

G.132/2 Kotokurabah Road,
Cape Coast,

15th February, 1950.

CREDIT NOTE.

Shipping proceeds covering 15 only squared Obeche logs shipped per "SS ZINI" during the month of November 1949, based on F.O.B. Value

10

Account: J.F. DAVIES - ASSIN BEREKU

F.105 - 3	F. 86 - 2	F. 86 - 3
86 - 4	109 - 1	109 - 3
109 - 4	101 - 4	86 - 1
101 - 1	100 - 3	100 - 1
101 - 2	100 - 2	101 - 3

15 Obeche logs - 32 tons 5 cwt. 0 qr. - £248. 5. Od

Less: Lighterage charges, Harbour dues, handling charges, towage etc. etc.

19.18. 9

20

Net proceeds on 15 logs.

£228. 6. 3d

For J.K. Taylor & Sons
(Sgd.) John K. Eduful MANAGER.

E. & O.E.

"G"

Cheque.

28th June
1950.

Exhibit "G"
C H E Q U E

No.P/30 000191 CAPE COAST 28th June, 1950.

BANK OF BRITISH WEST AFRICA LIMITED
CAPE COAST.

30

PAY J.F. Davis or Bearer Two Hundred Pounds Only.

£200. -. -. For J.K. TAYLOR & SONS
(Sgd.) ? ? MANAGER.

B.B.W.A. LTD.

CAPE COAST

PAID

30 JUN. 1950

CASHIER.

Exhibit "15"
R E C E I P T

Exhibits

"15"

R.T.B. 2205
7. 7. 1950.

Receipt.
7th July 1950.

Received from Mr. J.F. Davis the sum of Two Hundred Pounds ----- shillings and ----- pence being deposit against Chev. Truck on behalf of J.K. Taylor.

£200. -- --.

FOR R. T. BRISCOE
(Sgd.) ? ?
for LODGING SUPERVISOR.

10

Identification "2"
LETTER, J.B. AFFAINIE TO J.K. TAYLOR

Identification
"2"

J.B. Affainie,
B.60, Eguabadu Street,
Saltpond,
19th December, 1952.

Letter, J.B.
Affainie to
J.K. Taylor.
19th December
1952.

Mr. J.K. Taylor,
c/o Rolland, Esqr.,
Kotokuraba,
Cape Coast.

20

Dear Mr. Taylor,

I am sorry you disappointed me last Saturday the 13th instant, and have since been expecting to hear from you.

As a complainant in the case, if you now wish to withdraw it, you should inform me in order to advise the defendant and the arbitrators; on the other hand if you still desire to continue it you should appoint a day convenient to you and I will inform them to meet.

30

May I suggest that you have the matter settled amicably as according to you, both of you are tight friends. It will serve all of you no useful purpose to go into law suit, for one does not know what a day may bring forth.

Hope to hear from you as early as possible.

Yours faithfully,
(Sgd.) J.B. Affainie.

Exhibits

"B1"

Letter, J.
Bannerman-
Hyde to F.A.
Williams.
17th February
1953.

Exhibit "B1"
LETTER, J. BANNERMAN-HYDE TO F.A. WILLIAMS

From J. Bannerman-Hyde,
Barrister-at-Law & Solicitor,
Notary Public and Commissioner for Oaths
Marmon Chambers
Johnston Road,
P.O. Box 82,
Cape Coast.

Date 17th February, 1953.

To
F.A. Williams, Esq.,
Barrister-at-Law,
Sekondi.

10

Dear Sir,

JOHN KWESI TAYLOR VS: J. FANYE DAVIS.

With reference to our conversation about a week ago in connection with the above case and the necessity of my being furnished with a copy of the Agreement referred to in the above case, I should be thankful if you would return to me my client's copy of the Agreement which according to my instructions has been in the custody of the Plaintiff since 1949.

20

Thanks in advance.

Yours faithfully,
(Sgd.) J. Bannerman Hyde
SOLICITOR FOR J. FANYE DAVIS.

"B2"

Letter, F.A.
Williams to
J. Bannerman-
Hyde.
27th February
1953.

Exhibit "B2"
LETTER, F.A. WILLIAMS TO J. BANNERMAN-HYDE

F. Awoonor Williams
Barrister-at-Law,
Solicitor of the Supreme Court.
P.O. Box 35

Petusie Chambers,
Sekondi.
Gold Coast, West Africa.
27th February 1953.

30

FAW/EEP.

Dear Sir,

J.K. Taylor vs. J.F. Davis
Referring to your letter of the 17th instant,

40

I now enclose you herewith a copy of the agreement between your client and Mr. Taylor. Your client never delivered his copy of the Agreement to Mr. Taylor as stated in your letter.

Kindly acknowledge receipt.

Yours faithfully,
(Sgd.) F. Awoonor Williams.

J.H. Bannerman-Hyde, Esq.,
Barrister-at-Law,
Cape Coast.

10

Exhibits

"B2"

Letter, F.A. Williams to J. Bannerman-Hyde.

27th February 1953- continued.

Exhibit "R"
PROCEEDINGS BEFORE THE REFEREE

30. 6. 53.

Minutes of Reference held at the Divisional Court Cape Coast, on Tuesday, the 30th day of June 1953 by Mr. E.J. Blankson, Referee

"R"

Proceedings before the Referee.

30th June 1953 to 25th May 1954.

John Kwesi Taylor of Assin Akropong in Assin Apimanim State and Cape Coast Plaintiff

20

versus.

Joshua Fanye Davies, Timber Contractor of Asin Breku in Fosu, Cape Coast District Defendant.

PRESENT:

John Kwesi Taylor - Plaintiff.
Joshua Fanye Davies - Defendant.

Referee to Parties.

The Court order appointing Reference and the Provisions of Order 37 Schedule 3 of the Courts Ordinance read out and explained to the Parties, who seemed perfectly to understand the terms of the said Order.

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Mr. Awoonor Williams, Counsel for Plaintiff sends letter for adjournment to 4. 7. 53. for Mr. Alakija and himself to attend reference, to conduct case for Plaintiff. Both of them are engaged before W.A.C.A.

Mr. Davies, Defendant has no objection subject to payment of Costs for to-day but points out that his witnesses have to travel long distances, particularly one Mr. Ayornoo who comes from Kumasi.

10

Mr. Taylor, Plaintiff says he brought the letter from Mr. Awoonor Williams as he desires his Counsel to conduct the case, therefore, he asks for adjournment.

REFEREE:

I do not object to adjournment at present particularly as application comes from Plaintiff's Counsel. I understand Mr. Hyde, Counsel for Defendant is anxious to conduct the case for his client but is unable to attend today. I adjourn to 7. 7. 53 at 2 p.m. Mr. Ayornoo, witness for Defendant need not attend until required.

20

I agree Defendant is entitled to Costs of today in any event but this is matter for directions by Court.

I adjourn reference to 7.7.53 at 2 p.m. All Counsel should be notified by parties.

(Sgd.) E.J. Blankson
REFEREE.

7th July
1953.

7. 7. 53.

30

PRESENT:

Plaintiff and his Counsel Absent.
Defendant in person.

REFEREE:-

Mr. Awoonor Williams sends letter again for adjournment and the Plaintiff too is not present today, nor is his Counsel, Mr. Alakija here.

Mr. Davies, Defendant complains these adjournments are causing him inconvenience and he is

unable to attend to his business but has no objection subject to Costs.

Mr. Hyde, Counsel for Defendant is not also present. Defendant asks for 4. 8. 53.

Reference adjourned to 4. 8. 53 at 2 p.m. Defendant is entitled to Costs for to-day, subject to Court's directions.

(Sgd.) E. J. Blankson

REFEREE.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

10 4. 8. 53.

4th August
1953.

PRESENT:

Mr. Alakija appears as Counsel for Plaintiff.
Mr. Hyde appears as Counsel for Defendant.

20 MR. HYDE:- We filed Notice to produce dated 24. 6. 53. for Plaintiff to produce (1) Cash Book, (2) Ledger and (3) Journal formerly kept by the Defendant and were in his possession up to 1948 when they were taken away by Plaintiff on the determination of the Agreement then subsisting between Plaintiff and the Defendant. We want these books.

30 MR. ALAKIJA:- These books are not in our possession. We did not remove any books from the Defendant, but during the attempted arbitration in 1948 the matter was settled by the arbitration who charged one guinea from each party. The arbitration decided Defendant must continue business so the books were left with Davies, Defendant. Parties in this action entered into agreement to do timber business. Plaintiff advanced the money to Defendant to do the business. Plaintiff paid out to Defendant £1,980 under the agreement.

JOHN KWESI TAYLOR - s.o.b. in English :-

Manager of John Kwesi Taylor & Sons, Timber Merchants at Asin Akropong and Cape Coast. I entered into agreement with Defendant to do timber business, under agreement. I advanced monies to Defendant.

40 Mr. Alakija to Referee:- I am afraid all our receipts from Defendant are unstamped. We ask for

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

adjournment, subject to directions of the Court as to payment of costs for today, to get receipts stamped.

MR. HYDE TO REFEREE:- I have no objection, subject to directions of the Court, as to payment of costs. We brought all our witnesses here today and we ask for £22. 3. 6d.

MR. ALAKIJA TO REFEREE:- Subject to what the Court directs, we agree to pay the costs for today.

REFEREE:- I think Defendant is entitled to his costs for today but that is a matter I shall refer to the Court for directions. 10

Reference adjourned to 11.8.53 at 2 p.m.

(Sgd.) E.J. Blankson
REFEREE.

11th August
1953.

11. 8. 53.

PRESENT:

Mr. Taylor, Plaintiff in person.
Mr. Davies, Defendant in person.
Mr. Hyde, Counsel for Defendant later arrives. 20

REFEREE TO MR. HYDE:- Mr. Taylor the Plaintiff reports his Counsel is not present, Mr. Alakija who has the brief in his possession is away to Accra and that if Mr. Williams arrived he could not conduct the case without brief. Plaintiff asks for adjournment.

MR. HYDE TO REFEREE:- Though I am prepared to go on with case today, I have no objection to the adjournment, subject to directions of the Court as to costs. 30

REFEREE:- Adjourned to 12.8.53 at 2 p.m. Defendant is entitled to costs for to-day and I intend to report to the Court for directions in due course.

(Sgd.) E.J. Blankson
REFEREE.

12th August
1953.

12. 8. 53.

Williams, with him Alakija for Plaintiff.
Bannerman Hyde for Defendant.

10 MR. WILLIAMS:- I give brief facts of Plaintiff's case. Mr. Taylor has many years experience in the timber business. He arranged for defendant Davies to join him. Prior to this arrangement Defendant was photographer at Saltpond without any banking account before joining Plaintiff for timber business. Plaintiff entered into agreement with Defendant dated 31/1/46. The original agreement was with me when Mr. Hyde asked for a copy which It cannot be found. Plaintiff provided funds, tools and materials. Defendant upon Plaintiff's instructions obtained the Basofi Concession from Asin Apimanim State. Defendant assigned Concession to Plaintiff, who is Principal. Net Profit was to be divided into two equal moiety. Plaintiff called upon Defendant to produce account but Defendant refused and as a result arbitration was held which proved abortive. Defendant had all 20 books in his possession plaintiff's agent or the person doing the business for both parties. Defendant carried on the business but owing to dissatisfaction this action was instituted. This is the gist of Plaintiff's case.

I call Plaintiff to give his evidence.

JOHN KWESI TAYLOR still on oath :-

30 I entered into agreement with defendant. Under agreement, I advanced moneys to defendant for timber business. Defendant was to do the field work as Contractor and I provided money for the business. Agreement was in respect of Basofi Concession at Bereku in Asin Apimanim State. Defendant was previously a photographer at Saltpond. I have had about 4 years experience in timber work before agreement with Defendant. I paid £200 to Defendant for Basofi Concession. I have particulars of the Cheque for £200 in favour of the Defendant. It is dated 27.8.45 in Bank Statement dated 30.9.45. I tender statement. No objection, admitted and marked Exhibit "C". On 31.8.45 40 I paid another £200 to Defendant on account of same business. I tender receipt in Defendant's handwriting. No.4921.

MR. HYDE:- The other day I objected to some receipts being put in evidence as not properly stamped. Apart from that general objection, I particularly object to admission of this receipt

Exhibits

"R"

Proceedings before the Referee.

30th June 1953
to
25th May 1954
- continued.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

on ground that it is receipt for the £200 cheque of 27.8.45 in Exhibit "C". It is the same amount not different or additional advance of another £200.

REFEREE:- It is a matter for credibility or otherwise and I admit this receipt in evidence subject to proof and my opinion as to credibility. Receipt admitted and marked Exhibit "D".

Plaintiff continues:-

Witness continues:-

10

I also paid the following amounts to Defendant for the business. I tender the following Receipts:-

Receipt No.4944	dated	7. 1.49	for £	5. -- --
"	"	4943	"	10.12.48 for £ 40. -- --
"	"	4941	"	13.11.48 for £ 50. -- --
"	"	4940	"	20.10.48 for £100. -- --
"	"	4938	"	17. 8.48 for £100. -- --
"	"	4916	"	5. 1.47 for £ 36.18. --
"	"	4919	"	-- 3.47 for £146. 9. 9.
"	"	4915	"	21.12.46 for £ 42. 2. 9.
Receipt (Temporary)	"	4. 9.46	for £	70. -- --

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No objection, admitted and marked Exhibit "E1" to "E9".

Reference adjourned to 19.8.53.

(Sgd.) E.J. Blankson
REFEREE.

19th August
1953.

19. 8. 53.

Mr. Alakija, Counsel for Plaintiff.
Mr. Davies, Defendant in person.

30

REFEREE:- Mr. Awoonor Williams sends telegram asking for adjournment to 20.8.53. Mr. Hyde sends to tell me Mr. Williams had spoken to him on telephone and he agrees to adjournment.

Mr. Alakija says he is ready to proceed on with case as Plaintiff and his witnesses are present if Mr. Hyde agrees to attend reference.

REFEREE:- Mr. Hyde is definitely not attending in view of Mr. Williams' request.

Defendant says he wants to go and pay his labourers but 3/9/53 will suit him.

Adjourned to 3.9.53.

(Sgd.) E.J. Blankson
REFEREE.

3.9.53.

PRESENT:-

Mr. Awoonor Williams with him Mr. Alakija, Counsel for Plaintiff.

10 Mr. Bannerman Hyde, Counsel for Defendant.

J. KWESI TAYLOR, Plaintiff - still on his Oath:-

I paid out these monies to the Defendant.

	Receipt No.4901 of	31.12.45	=	£ 5. -- -
	" " 4902 "	30. 1.46	=	25. -- -
	" " 4903 "	30.11.45	=	7. -- -
	" " 4904 "	4. 5.46	=	38. -- -
	" " 4905 "	1. 1.46	=	30. -- -
	" " 4906 "	4. 7.46	=	10. -- -
	" " 4907 "	13. 7.46	=	46. -- -
20	" " 4908 "	7. 9.48	=	56. -- -
	" " 4910 "	14. 9.48	=	50. -- -
	" " 4911 "	11. 9.48	=	23. -- -
	" " 4912 "	4. 9.48	=	2. 1.11
	" " 4915 "	21.12.48	=	42. 2. 9
	" " 4916 "	5. 1.47	=	36.18. 0
	" " 4919 "	- . 4.47	=	146. 9. 9
	" " 4921 "	31. 8.47	=	200. -- -
	" " 4922 "	31. 4.47	=	15.13.10
30	" " 4923 "	7. 8.47	=	88. -- -
	" " 4925 "	22. 8.47	=	2. -- -
	" " 4927 "	4. 9.47	=	70. -- -
	" " 4931 "	3. 5.48	=	200. -- -
	" " 4938 "	17. 8.48	=	100. -- -
	" " 4939 "	22. 8.48	=	40. -- -
	" " 4940 "	20.10.48	=	100. -- -
	Cheque 71/B.56804	20.10.48	=	100. -- -
	Receipt No.4941 of	13.11.48	=	50. -- -
	" " 4943 "	10.12.48	=	40. -- -
	" " 4944 "	7. 1.49	=	5. -- -
40	Cheque No.P/800191	28. 6.50	=	200. -- -
	" " 600 of	13.11.48	=	50. -- -
	438 "	27. 8.48	=	200. -- -

£1,980. 6. 3

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

3rd September
1953.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

I tender list containing particulars of Receipts and cheques totalling £1,980.6.3d. paid by me to Defendant.

MR. HYDE:- I object to this list on the ground that some of the items are disputed by Defendant.

REFEREE:- I admit list in evidence subject to what Defendant says against such items he disputes. Admitted and marked Exhibit "F".

TAYLOR, Plaintiff continues:-

Cheque P/800191 should read Cheque No. P.30/000191 for £200; it is an error. I tender the Cheque No.P.30/000191 dated 28.6.50 for £200. No objection, admitted and marked Exhibit "G". I was in Cape Coast on 28.6.50 when Defendant came to me for £200 to pay labour wages and I gave him this cheque, and it is not true that this amount was in respect of timber truck from Briscoe. I bought lorries direct from Briscoe myself. I never bought any lorry from Briscoe for anybody. On 13.11.48 I gave Cheque for £50 and gave also cash of £50 to Defendant. When Defendant came for money and I had not sufficient cash on hand I gave him the cash on hand and the balance by cheque. Defendant gave receipts for cash only paid by me and not for cheque, as his endorsement on the cheque was sufficient receipt for the amount on the cheque. During the business we had correspondence. I tender this letter dated 21/10/49 from Defendant showing Statement of Account. No objection, admitted and marked Exhibit "H". I tender letter dated 15.1.50 from Defendant about painting of surface of logs. No objection, admitted and marked Exhibit "J". I tender letter 31.12.45 from Defendant regarding the Basofi Timber Concession in which Defendant says I have no interest. No objection, admitted and marked Exhibit "K". I tender letter 6.12.46 from Defendant about tickets, tools and labour wages. No objection, admitted and marked Exhibit "L". I tender letter 6.12.45 from Defendant dated 12.9.46 about labour wages. No objection, admitted and marked Exhibit "M". I tender letter of 28.2.46 from Defendant. No objection, admitted and marked Exhibit "N". Defendant was to account for the expenditure of the monies advanced by me for the timber business; the agreement provided reimbursement to me of monies advanced by me

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to Defendant from the gross takings in the business and the net profit was to be divided into two equal moiety. Part payment of the advances have been paid to me by Defendant amounting to £1,351.6.3d. approximately the same amount which Defendant counterclaims from me.

Adjourned to 4.9.53 at 2 p.m.

(Sgd.) E. Jeurry Blankson
REFEREE.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

10 4. 9. 53.

PRESENT:- Alakija, Counsel for Plaintiff.
Mr. Bannerman Hyde, Counsel for
Defendant.

4th September
1953.

JOHN KWESI TAYLOR - Plaintiff - still on his Oath:-

The £1,301 was on account of logs and timber curls supplied, cheques and cash. An arbitration or meeting was held at Bereku in 1948. £800 was advanced by me to Defendant for the business. This amount was paid from 1948 - 1949, defendant did not manage the business properly and as a result we tried to break off partnership business which was running at a loss. Defendant rendered account but I was dissatisfied and as a result arbitration was held at Bereku at which Mr. Edwards, Mr. Tetteh Wuddah, Mr. C.N. Ayornoo and our Clerk Ayornoo. At first it was my intention to stop the business transaction with the Defendant but after the meeting at Bereku it was agreed Defendant should continue business. The following were the only books produced and examined at the arbitration at Bereku :-

1. Voucher Book.
2. Pay Sheet.

Books were produced from custody of Defendant, he kept the books. Books were handed over to Defendant after arbitration. £800 was the amount found by the arbitration to be due to me by the defendant. Defendant has made no account to me after arbitration. Defendant always gave the excuse that he had no time. I must exercise patience. Defendant sent me Exhibits "H" and "J". Arbitration was held in February 1948. Exhibit "F" contains amounts

sic.

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

advanced by me to Defendant after arbitration, as from May 1948. Defendant was my friend. He was a photographer. He had no banking account prior to this timber business transaction. Defendant was taught photograph by a man called Hansen. Defendant was unable to pay his customary fee for apprenticeship. Apart from the Basofi Concession Defendant has acquired other Concessions at Adanse, Dominase and Jukwa. Defendant has bought 8 lorries and trucks costing £8,000, 4 trucks at £5,000 each, one Sawmill about £10,000 with a European in charge, employed by Defendant who has provided him with a G.M.C. Van costing about £900 for the free use of the European. Apart from that Defendant has his own car costing £850. He has bought land at Sekondi in the name of his mother. Defendant had a banking account at Takoradi but he has since closed down the account when this action was instituted by me. Defendant had a deposit of £5000 but this amount has since been removed from the Bank. I instituted this action for Defendant to render account of the timber business in order to give to me what is due to me from the business.

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Cross-examination :-

- Q. Notice to produce Cash Book, Ledger and Journal which were kept by Defendant and were in his possession up to 1948 when agreement between you and Defendant came to an end, has been served on you. Where are the books?
A. No such books are with me.

30

- sic "what" Q. You have given evidence what Defendant was poor photographer. When did you first meet defendant?
A. I have known Davies, defendant from early boyhood at School.

- Q. In December 1948 one Ayornoo made the accounts of the business.
A. Ayornoo was one of the arbitrators who examined the accounts.

- Q. What were the books examined?
A. Voucher Book, Pay Sheet Book and the Defendant had one exercise book in which he entered payments made out by him.

40

- Q. I put it to you that the arbitration found that you were indebted to the Defendant?

A. No. I was not found owing the Defendant. Ayornoo was our friend. I financed the business but upon complaint of dissatisfaction with the business Ayornoo made the accounts. Ayornoo did not find me owing defendant.

Q. Defendant demanded payment of what you owed him and as a result Defendant stopped all transaction with you?

A. No.

10 Q. You approached Edwards to intercede for you but as Defendant did not agree to continue to carry out business with you, you took away the books?

A. No.

Q. I put it to you that no arbitration was held but it was Ayornoo alone who examined the accounts?

20 A. That is not true. It was when I wanted to stop Defendant from the business that Defendant approached the Catechist Mr. Edwards to intercede for him. Mr. Ayornoo examined the accounts with other people whom I have already mentioned.

Q. I put it to you that Defendant never requested Mr. Edwards to intercede for him?

A. He did. Mr. Edwards himself is giving evidence sooner or later.

Q. When did business end between you and Defendant?

A. Business was never stopped.

Q. During course of transaction between you and Defendant your property mark was used?

30 A. It is correct that my property mark JKT was used for logs in this timber transaction.

Q. You did not provide trucks for this timber business?

A. I hired lorry from Baksmmattey for Defendant to do the business.

Q. I put it to you that you did not provide trucks of your own for this business transaction?

40 A. Business was not financially strong so I hired lorry from Baksmmattey. Apart from this hiring I had one Dodge Lorry No. A.C.44 for the business.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

Q. I put it to you that your Company did not own any lorry?

A. We had lorries.

Q. The first advance of money made by you to Defendant was for clearing bush in order to locate trees?

A. Yes. I gave Defendant £200 for clearing bush. Receipt No.4903 for £200 in Exhibit "F" is the amount. Amounts on Receipts Nos.4915 and 4916 in Exhibit "F" were for labour wages etc. we were doing friendly business.

10

Q. According to the date of agreement business should have started January 1946. When did you actually start business?

A. In 1945 there was no cutting. I gave Defendant money to bring Headmen. Defendant's timber work, was under my supervision. Concession was taken in 1945 but we signed agreement one month after my paying the £200 to Defendant.

Q. Under agreement you provided the money for the Defendant to do the work?

20

A. Yes. But I supervise work, some time staying for weeks at Bereku.

Q. I put it to you that you failed to provide money for labourers and Defendant was obliged to find loan to pay labourers?

A. No. When business started to produce logs money should be provided from business. I provided money until cutting time but when business started to yield money expenditure must be paid from the gross taking. Ayornoo did not find that I was owing the Defendant. Both Defendant and Ayornoo were financed by me.

30

Q. You are harping on the fact that, according to you, Defendant, as a photographer, was a man of straw?

A. I had no means myself but I was only trying to do business.

Q. Do you know that Defendant was doing timber work at Esiam, Akrofuom, Asin Apimanim, Kokosu, Brakwa and Baku in Asikuma State?

40

A. No. But I remember in 1941 or 1942 I gave £100 to Defendant to manufacture boards.

Q. Did you write this letter dated 21.9.48 to Defendant for a loan?

A. No.

Mr. Bannerman-Hyde - I tender letter. No objection, admitted and marked Exhibit "1". I tender also letter dated 10.7.48. No objection, admitted and marked Exhibit "2". I tender letter dated 16.8.43. No objection, admitted and marked Exhibit "3". I tender letter dated 25.11.43. No objection, admitted and marked Exhibit "4". I tender letter dated 11.10.43. No objection, admitted and marked Exhibit "5".

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

10 Cross-examination continues:-

Q. In 1943 Defendant supplied you timber according to Exhibit "3". Apart from loans which he gave you?

A. No. I requested Defendant to transfer to me on loan timber sold to him by me for a friend of mine, which I did replace. It was Boards and not logs.

Q. You remember Defendant sold timber to Briscoe at Kumasi?

20 A. Defendant sold timber to Briscoe. Our logs were sold to Briscoe.

Q. I refer to occasion when you stopped payment for logs sold to Briscoe?

A. That is true. But no payment was made to me by Briscoe. I warned Briscoe not to pay money to Defendant alone as business was owned by both of us.

Q. I put it to you that money was paid to you by Briscoe because logs had your property mark on them?

30 A. Briscoe paid money to Defendant and not me.

Q. I suggest to you that the payment for the logs to you by Briscoe brought split between you and Defendant?

A. No. There was no split, it was Defendant who failed to render account to me.

Q. Why did you go to Briscoe to stop payment of logs to Defendant?

40 A. Defendant was producing logs without rendering account to me so I stopped payment unless Briscoe paid money to both Defendant and myself. Logs are bought with different property marks and sold. I did not take the money from Briscoe. I did not know the value of timber supplied

Exhibits

"R"

Proceedings
before the
Referee.
30th June 1953
to
25th May 1954
- continued.

but I stopped payment of all logs, supplied generally. I cannot remember how much money was paid.

Q. Defendant has been operating on his own since 1949 and has J.A.F.D. as his property mark?
A. This is true because my own company was supplying timber to Briscoe apart from the supplies of timber belonging to myself and Defendant together to Briscoe. To avoid confusion it was decided to use the property mark J.A.F.D. for timber supplied by Defendant and myself. This change was not the result of any split between us. 10

Q. How can Defendant render accounts when you have seized all the books and kept in your possession?

A. Books are still with Defendant.

Q. Books were removed by you in presence of one Aryonoo?

A. No. 20

Q. Notice to produce the following books has been served on you :-

- 1. Journal.
- 2. Ledger.
- 3. Cash Book.
- 4. Voucher Book.
- 5. Payment Sheet Book.

A. No books are with me.

Reference adjourned to Monday 7/9/53 at 9 a.m.

(Sgd.) E. Jeurry Blankson. 30
REFEREE.

7th September
1953.

7. 9. 53.

Mr. Taylor, Plaintiff in person.
Mr. Davies, Defendant in person.

MR. TAYLOR TO REFEREE:-

My Counsel asked for 11 o'clock but unfortunately he has not returned from Sekondi.

MR. DAVIES TO REFEREE:-

Mr. Hyde asks for 15th, as he has just been warned by the Doctor not to go out for few days.

REFEREE:-

Mr. Hyde was ready today but he told me he was going to see the Doctor first. It is unfortunate he too cannot be here again.

Reference adjourned to 17.9.53 at 9 o'clock subject to payment of costs for today subject to directions of the Court to the Defendant in any event.

(Sgd.) E.J. Blankson.

17. 9. 53.

PRESENT :-

Mr. Alakija, Counsel for Plaintiff.
Mr. Hyde, Counsel for Defendant.

MR. TAYLOR, Plaintiff still on his oath :-

Q. You were served with Notice to Produce original letter from Defendant to yourself. Notice is dated 29/6/53.

- Letter dated 14. 1.1949.
- 30. 4.1949.
- 27. 4.1950.
- 1. 7.1950.
- 9. 1.1950.
- 30.10.1951.
- 7. 6.1952.

A. I have not received any of the above letters from Defendant. I now remember receiving these two letters dated 30.4.49 and 14.1.49 originals of which I have not got with me I admit to receiving 27.4.1950 original is not here. Letter dated 9.1.50 was received by me. I received only these four letters but the rest I do not remember receiving.

Mr. Hyde - I tender all letters.
Mr. Alakija - No objection.
Admitted and marked Exhibits "6" - "13".

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

17th September
1953.

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

These letters are put in evidence to support
defendant's Counterclaim of £1, 51.6.3d.

Q. The first two items on Exhibit "F" 27.8.45
for £200 and 31.8.45 for £200, I put to you
that second item represents the receipt for
the cheque No.488?

A. I explained to you that apart from the cheque
for £200 I gave another £200 raw Cash. Receipt
No.4921 is not a receipt for the £200. Cheque
No.488 of 27.8.45.

10

Q. What year did you start this business?

A. It was between 1945 and 1946 but before I
advanced Defendant money for labourers, tools
etc.

Q. I put it to you that Cheque No.488 of 27.8.45
of £200 is the identical cheque cited in the
agreement - Exhibit "A".

A. That is correct. Though Agreement is dated
31.1.46, we started the business before agree-
ment was made.

20

Q. For what purpose was the Cheque No.488 of
27.8.45 for £200 given?

A. It was in respect of Basofi Concession for
purpose of purchasing timber trees to be felled.

Q. I put it to you that Exhibit "D" for Receipt
No.492 for £200 was receipt for the timber
trees to be felled?

A. I admit that cheque No.488 for £200 was money
for acquisition of the timber concession.
Apart from this cheque I gave cash of £200 to
defendant for trees labour, etc. and the
receipt for this amount is Exhibit "D".

30

Q. I put it to you that item for £40 Receipt No.
4939 of 22.8.48 was money contributed by
Defendant into the business?

A. It is not true that the £40 was contribution.
It was rather paid by me. Counsel points out
Defendant.

Q. Item of 20.10.46, Cheque 71/B 56804 for £100
I put it to you that on the same day Defendant
gave you the Receipt No.4940 for £100 it would
appear that the amount is doubled.

40

A. Defendant came for £200 but as I had only £100
ready with me I gave him the cheque 71/Bp56844

for £100 in addition to the £100 Cash on the same day I am unable to say where I gave the money as I am not stationary.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Q. Why did you not give cheque for £200 if you had no money with you?

A. It was because at times I never have sufficient money in the bank. Sometimes I had more money at a particular place. I advance money to Defendant whenever he requires money for some particular materials, labour, etc.

10

Q. For what purpose you paid this £250?

A. I cannot remember. But I think Defendant came for this money to replace money paid for logs in order to buy timber truck.

Q. Cheque No.600 for £50 and Cash £50 on Receipt No.4941 of 13.11.48 is a receipt for the amount of £50 on the cheque. It is not Cash paid out separately?

A. It is not true. Defendant came for £100 and as I had not sufficient cash I gave cheque for £50 in addition to cash payment of £50. It is not true that the receipt for £50 is for cheque No.600 of 13.11.48. I think the amount of £50 was for Wages. No vouchers are made at the end of the month but Defendant comes to me for advances.

20

Q. Cheque No.P/800191 of 8.6.50 for £200 was for purchase of Chevrolet Truck?

A. No. Defendant was cutting Timber at Dominase when he came for £200.

30

Q. I put it to you that you and the Defendant went to Briscoe at Anwhiaso and arranged for Chevrolet Truck?

A. I remember we went to Briscoe but not to buy truck.

Q. Defendant paid £200 for purchase of truck. Although deposit was made in our name the truck was never supplied to your knowledge and the £200 was refunded to you?

A. It is not true that Receipt Exhibit "15" was in my possession until it was handed over to Defendant upon his reimbursing me with the £200.

40

Q. You admit that the Defendant's Counterclaim of £1,351.6.3d. was correct?

A. Yes.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

Mr. Awconor Williams:- I object to the Defendant's leading evidence of any claim outside his Statement of Defence, the Defendant having not applied for leave to amend his Statement of Defence he is bound by the Statement of Defence. If he wishes to adduce evidence beyond the amount stated on the counter claim Defendant must obtain leave of the Court before doing so.

Mr. Hyde:- This is absolutely unnecessary in view of paragraphs 4 and 5 of the Statement of Defence. Defendant was compelled to carry on the business with his own money when Plaintiff stopped supplying him money. Paragraphs 4 and 5 after Statement of Defence refer to this matter, therefore we are entitled to lead evidence in support as at paragraph 6 of the Statement of Defence the counter claim is different from loans advanced to Plaintiff after the transaction was enquired into by arbitrators.

10

Mr. Awconor Williams:- Defendant is not entitled in law to claim anything beyond his counterclaim.

20

Mr. Hyde:- Plaintiff claims upon agreement therefore Defendant is entitled to bring his evidence.

REFEREE:- Counsel require point to be referred to Court for Ruling.

I agree. Adjourned to 29.9.53.

(Sgd.) E.J. Blankson
REFEREE.

Your Lordship,

The Court referred the accounts in this case to me for enquiry and report.

30

The action is based upon an agreement entered into by the Parties to do timber business. The Plaintiff was to provide the money and the Defendant was to operate the timber business and the net profits accruing therefrom was to be divided into two equal moieties.

The original agreement is lost; a copy thereof was admitted in evidence and is an Exhibit in Court.

40

Apart from the loss of the original Agreement it is alleged that all the account books are lost as well. The Plaintiff alleges the Defendant is in possession of the books, but the defendant says the plaintiff removed the account books, after an arbitration held into the accounts in dispute and that plaintiff never returned the books to him.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

10 Each party has filed Notice to produce the books but neither the Plaintiff nor the Defendant has complied with the Notice to Produce. The absence of the account books creates an awkward situation for me.

20 The Defendant entered a counterclaim in this action in addition he alleges in paragraph 4 and 5 of his Statement of Defence that he has paid monies to Plaintiff in respect of the business and given loans to the Plaintiff and is desirous of leading evidence to prove that he has given such monies and/or loans to the Plaintiff apart from the amount he counterclaims, but Counsel for Plaintiff object to his leading such evidence on the ground that the Defendant did not mention this in his counterclaim, and for that reason the Defendant is estopped in law to do so. In other words the Defendant must obtain the leave of the Court to do so in view of the fact that he has not specifically pleaded such matters in his Statement of Defence. It was agreed that this point be referred to the Court for directions.

30 In my opinion as this case is one involving accounts for which this reference was appointed, I think all admissible evidence should be produced to enable the Referee to arrive at a definite conclusion, particularly in view of the fact that all the account books are not available. It is a matter of credibility and I recommend that the Defendant should have the opportunity to lead whatever evidence he desires in proof of his case.

40 (Sgd.) E. J. Blankson
REFEREE
8/10/53.

REFEREE

Take all available evidence of parties to assist you in the taking of accounts in this matter to arrive at your conclusion of facts.

(Intd.) C.S.A.J.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

13th October
1953.

13. 10. 53.

Mr. Alakija appears for plaintiff.
Mr. Bannerman-Hyde appears for defendant.

Cross-examination of Plaintiff continues:-MR. JOHN KWESI TAYLOR, Plaintiff on his Oath:-

Q. Do you admit the counterclaim?

A. Yes, I admit the counterclaim of £1,351.6.3d.
as part of refund of advances made by me to
the Defendant. But at the time of signing
the receipt for £850 the words "being Cash
borrowed to be refunded" and the figure "£850"
were not in the receipt. These words were not
there at all.

10

MR. HYDE:- I tender receipt dated 22.6.51. for
£850. No objection, admitted and marked Exhibit
"14".

I tender Statement showing the figures in the
Counterclaim. No objection, admitted and marked
Exhibit "15" and "16".

Cheque No.P/12/012292 for £100 also tendered,
no objection, admitted and marked Exhibit "17".

20

Q. I put it to you that apart from the counter-
claim the Defendant, between 1945 - 1948, paid
to you the sum of £1,590 on account of the
business?

A. As far as I know the total amount refunded to
me by Defendant was £1,351. 6. 3.

Q. You remember you have been served with Notice
to Produce Voucher Book. Can you produce this
Book now?

A. The Voucher Book is with Mr. Davies, the
Defendant.

30

Q. In 1945-1948 sums of money totalling £600
were paid to you by Defendant for which you
gave receipts in the Voucher Book and this
book is in your possession now.

A. I did not receive £600 from Defendant.

Q. On 11th February 1948 Defendant paid to you
£150 for which you gave a receipt?

A. I admit receiving this amount on Receipt

40

No.9203 dated 11th February 1948 for £150. Receipt tendered, no objection, admitted and marked Exhibit "18". I admit receiving also the £450 on Receipt. 9205 and also £10 on Receipt No.9206 dated 22nd October 1948. Receipts tendered; No objection, admitted and marked Exhibits "19", "20" and "21". I admit receiving the £80 on Receipt No.9207 dated 13th July, 1949. Receipt tendered, no objection, admitted and marked Exhibit "22".

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

10

Q. In the course of the Timber Business transaction Davies the Defendant invested in the business a total amount of £701.11.3 between 1947 - 48. Do you know this fact?

A. I do not know this amount. Defendant did not invest any money in the business to my knowledge; not a penny.

Q. When accounts were taken by Ayornoo and others in 1948, Receipts were produced?

20

A. I did not produce any receipt but the Defendant did produce receipt books.

MR. HYDE TO REFEREE:- I tender the following receipts:-

No.4920	for	£221.11. 3.
" 4924	"	£ 50. -. -. .
" 4926	"	£100. -. -. .
" 4928	"	£ 5. -. -. .
" 4939	"	£ 40. -. -. .
" 4942	"	£ 50. -. -. .
" 4947	"	£ 20. -. -. .
" 4948	"	£100. -. -. .
" 4949	"	£ 50. -. -. .
" 4950	"	£ 60. -. -. .
		<u>£696.11. 3.</u>

30

MR. ALAKIJA :- I object to the admission of those receipts, on the ground that they are not in proper form and that the proper person to sign the receipts should have been the payee.

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REFEREE TO MR. ALAKIJA:- I think they can be admitted for what they worth. Objection overruled. Receipts admitted and marked Exhibit "23".

Exhibits

"R"
 Proceedings
 before the
 Referee.
 30th June 1953
 to
 25th May 1954
 - continued.

Cross-examination continues:-

Q. Did you pay any salary to Davies, Defendant at any time during the business?
 A. No. I remember the arbitration or meeting at Saltpond. It was not held in November 1952 but I think it was this year. I lodged a complaint with Mr. Affainyi of Saltpond, as a result of which a meeting was held at which Chief Bainyo Acquah, Neizer, Joe Taylor, Frank Hammond, Papa Kojo, Jackson, Apofam Aidoo, Daniel Roland, Ben Smith and J.K. Eduful were present.

10

Q. I put it to you that Davies, Defendant, asked for certain books to be produced by you at the meeting, those books were used by Ayornoo at the time he went into the accounts at Bereku but when Ayornoo came to Saltpond you failed to attend the arbitration or meeting?

A. I remember the arbitration was adjourned pending attendance of Ayornoo at Saltpond but as Ayornoo did not attend the meeting, I instituted this action. Ayornoo did not come to Saltpond at all. Arbitrators took 2 guineas from each side.

20

Adjourned to 20th October, 1953 at 2 p.m.

(Sgd.) E. J. Blankson
 REFEREE.

27th October
 1953.

27. 10. 53.

Plaintiff in person.

Mr. Bannerman Hyde appears for Defendant.

GILBERT ABRAM EDWARDS - s.o.b. in English :-

30

Catechist, Methodist Church at Asin Nyankumasi, formerly I was at Asin Bereku. I know both Taylor and Davies. In February or March 1948 Mr. Davies the Defendant mentioned to me that some misunderstanding existed between him and Taylor, the Plaintiff, he requested me to accompany him to settle the dispute. Mr. Tetteh Wuddah, Ayornoo, Laweh and Taylor were present at Davies Defendant's Camp at Bereku. I presided over the meeting. It was alleged there was a deficit of about £800. Ayornoo went into the accounts. It was alleged Taylor gave £850 to Davies, Defendant for timber business. Taylor plaintiff was

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annoyed and desired to stop business with Davies and wanted his money back from Davies. It was alleged both Taylor and Davies were friends. Davies the Defendant admitted the deficit of £800 but stated it was due to lack of trees at the place where he was operating. We decided they must continue the business until the amount was settled. I saw some account books at the meeting. The books were brought there by Davies. I left the meeting so I cannot say who took the books after the meeting was over. I cannot say anything about the books as I left you all at the meeting. I saw the account books already on the table when I arrived at the meeting. I met Ayornoo there examining the account books. Meeting was held at Davies the Defendant's Office at Bereku. When you left Davies' Camp to my house to say goodbye. I did not see any book with you when you were leaving Bereku. I saw you about 3 occasions at Bereku after the meeting at Davies' camp. You told me you went to see Davies and on one occasion you told me you came to pay labour boys. I knew you worked together with Davies up to the time I left Bereku.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

Cross-examination :-

Q. Did you know Taylor and Davies before that day?

A. I knew Taylor in 1942 and I saw Davies at Bereku in 1948.

Q. Were books used in making the accounts?

A. Yes, account books were there. Ayornoo and others started at 7.30 a.m. to 9.30 a.m. I went with Davies to the Camp before examination of the accounts was started. I did not take part in making the accounts. I only presided at the meeting. Mr. Ayornoo was the man who audited the accounts. Ayornoo said £800 was due from Davies to Taylor.

Q. How many account books did you see at the meeting?

A. I saw only one book. It was a big book like ledger. Davies, the defendant explained he had used money for constructing road. Ayornoo mentioned £800 but I did not know how he arrived at that figure. I acted as a peace-maker. I gave lemonade for parties to drink as smoking the peace. The arbitrators were given a drink of £1.1/-. That was the only occasion we went into the matter at Bereku.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

sic.

Q. I put it to you that Mr. Davies has never invited you to settle any dispute. It was rather Taylor?

A. No.

No re-examination.

MOSES LARWEH AYORNOO - s.o.b. in English:-

I am a clerk of Taylor, the Plaintiff at Foso. I was at one time Clerk to Davies, Defendant from April 1947 to April 1948 upon Plaintiff's recommendation. I was previously working as clerk to Taylor, Plaintiff who sent me to assist Davies, Defendant, as the business belonged to both Taylor and Davies. At the end of the month Plaintiff goes to Bereku sometimes to pay out wages. In 1948 accounts were made at Bereku in Mr. Davies' office. Business was continued. I did not see Taylor - Plaintiff, take away any books with him. I was present at the meeting. I went there to greet my uncle and remained till meeting closed. I saw account books at the meeting. I did not count them. The books were kept by Davies, the Defendant. My uncle examined the books. Davies had one account book and the Pay Sheet. I was timekeeper and kept the tickets. Taylor, Plaintiff paid monies to Davies, Defendant, who gives receipt. I did not see Taylor take any book away with him nor my uncle Mr. Ayornoo.

10

20

Examined by Referee:-

Q. Why did you leave Davies?

A. Taylor transferred me to work with Mr. Ayornoo, my uncle at Dominase. The accounts were being examined by Ayornoo when Davies went and called Edwards and I heard Taylor shout it was £800.

30

Cross-examination:-

Q. Did you go to bush that day when your uncle Ayornoo came to make accounts?

A. I went to bush to work that day early in the morning at about 6.30 a.m. and returned at 3 o'clock. It was when I returned from bush about 3 o'clock in the afternoon that day when I met my uncle and others with Davies. Mr. Edwards came later to join them.

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Q. I am suggesting to you that you were not present at all that day and you did not know what transpired there at the meeting?

A. I was present.

Q. How long did the meeting take before it closed and how long did Mr. Ayornoo take to check the accounts?

A. The meeting closed between 4 and 5 o'clock.

10 Q. I put it to you that it was found after checking the accounts that rather Taylor was owing Davies £800 and you were not there when Taylor left the meeting?

A. I was there. We accompanied Taylor half way into the town, he did not carry any book with him.

Q. I put it to you that it was when Ayornoo and the people found Taylor owed Davies £800 that Taylor not annoyed banged his hand against the table and left?

20 A. No. I heard Davies owed the £800. I should be surprised to hear that the meeting was in the morning. I remember quite well it was in the afternoon at 3 o'clock when I returned from bush.

Re-examination:-

Q. Did Taylor and the other people sleep there that day?

A. No Plaintiff stayed up to 5 o'clock and left.

Adjourned to 29th October, 1953 at 2 p.m.

(Sgd.) E. Jeury Blankson.
REFEREE.

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29. 10. 53.

29th October
1953.

Taylor, Plaintiff present in person.
Davies, Defendant present in person.

ARABA AKRABA - s.o.b. in Fante :-

I live at Aguabadu in Saltpond, Petty Trader. I know Taylor the Plaintiff and Davies the Defendant. I know both of them to be friends, they were so closely attached to each other as if they were brothers. I am wife of Taylor, Plaintiff. About 8 years ago, Davies, Defendant, approached

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

me for a loan of £10. I gave him £5. Davies was unemployed at that time. I now say Davies was a photographer at that time. When I said Davies was unemployed I meant that he was not then doing timber business. Davies told me he wanted the £10 to meet transport expenses to join Taylor, Plaintiff, at Asin Akropong. Davies was then at Kurankyekrome, Saltpond and Taylor was then at Asin Akropong. Davies told me he wanted to join my husband Taylor in order to do business with you. Davies refunded the £5 after a year's time.

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Cross-examination :-

Q. I put it to you that all what you have said is not true?

A. I am speaking the truth.

Q. Will you be surprised to hear that as far back as 1942 your husband Taylor, Plaintiff, obtained loans from Davies and documents in respect of those loans are exhibits in this case?

A. I shall be alarmed to hear that Taylor obtained loans from Davies.

20

Q. When your husband Taylor was at Akrofuom about 10 years ago Davies gave you money to support yourself and children, at request of Taylor?

A. No. If Davies gave me any money at all, I took it to be money from sales of Kente Cloths which my husband Taylor sent to Davies for sale. I only recollect that sometime ago Taylor gave 10/- to Davies for me.

Q. I put it to you that before 8 years ago Davies was already operating at Akrofuom, Ayinabreim, Ahabankurembua and Barko in Asikuma?

30

A. I do not know. I knew you were only a photographer.

Q. I put it to you that Davies was sufficiently well to do as to make it impossible for him to approach you for a loan of £5. It is not true Taylor gave Davies Kente Cloths to sell?

A. I gave you £5 when you were going to join Taylor. Davies himself told me about the Kente Cloths.

40

EXAMINED BY REFEREE:-

Q. Do you know anything about this business transaction?

A. No. I know Taylor and Davies were doing same timber business together but I do not know anything about their transaction.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

Re-examination:-

Q. Do you remember that before Taylor went to work at Cadbury & Fry in 1935 he gave Kente Cloths about £200 worth to Davies for sale?
A. It is correct. I have already mentioned this matter in my evidence. Davies first told me that my husband Taylor gave him the Kente Cloths to sell. Later Taylor himself told me also.

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JOHN KWEGYIR EDUFUL - s.o.b. in English :-

I live at Fosu. I am Timber Clerk to J.K. Taylor & Sons of which Company the Plaintiff in this case is the Managing Proprietor. On 29th November 1952 a meeting was held at Saltpond. Taylor, Davies, Affainyi, Roland and others including myself were present at which the accounts between the plaintiff and defendant were made. Certain figures given by Plaintiff and Defendant were recorded. Plaintiff's figures totalled £1,980 being monies he had paid to Defendant. I cannot remember the figures given by the Plaintiff, there being no receipts to support some of them. Defendant's figure was something like £1,660. Total of monies paid by Plaintiff was £1,980. 6. 3. Total of monies paid by Defendant £1,660. 5. 0. I saw no receipts given by Plaintiff for monies paid to him by cheque by Davies. Bank Statements gave particulars for our records. No receipt was produced at Saltpond for £850.

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Cross-examination :-

Q. According to you, Defendant's figure totalled £1,660 so that the £850 which you allege was not one of the items mentioned at Saltpond, is not included in the £1,660?
A. No. I did not hear of any single item of £850 mentioned at the meeting.

40

Q. Did you hear at Saltpond if any previous accounts were taken in 1948 by Mr. Ayornoo at Bereku as a result of which Plaintiff took books away?

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

- A. I heard accounts were made previously in 1948. It was alleged by Defendant, Plaintiff took books away. Affainyi and myself examined the account. No books were produced but defendant called out items from a paper in his hand. Plaintiff had in his hand receipts given to him by Defendant. Ayornoo's name was frequently mentioned as the man who made the accounts in 1948 at Bereku.
- Q. What was the necessity for calling Ayornoo; was it because the books were not available or was it because Ayornoo had previously audited the accounts at Bereku? 10
- A. It was necessary for Ayornoo to be present so both Taylor and Davies were requested to arrange for Ayornoo to attend the meeting at Saltpond. But a quarrel arose and Taylor, Plaintiff told meeting that whether Ayornoo was brought or not he, Taylor would take action in Court. Meeting was held at request of Affainyi. 20
- Q. Did you hear it mentioned at Saltpond that Davies decided to stop the business with Plaintiff as a result of his letter to Briscoe which brought about the taking of the accounts at Bereku?
- A. No. I did not hear this at Saltpond. But I heard Defendant say that when the accounts were made at Bereku he stopped the business with Plaintiff. The arbitrators did not take notice of that in view of the Agreement between the two parties. The meeting at Saltpond proved abortive. It arrived at no final conclusion in the matter. It was Affainyi who convened the meeting. But I did not know at whose request the meeting was convened by Affainyi. I accompanied Taylor, Plaintiff to the meeting but I cannot say whether or not Taylor approached Affainyi to convene such a meeting. 30
- Q. Did you see one Arthur Neizer at the meeting?
- A. I cannot say as I do not know the names of some of the people who were present at the meeting. If I see Neizer I can say whether he was at the meeting or not. I cannot say whether R.B.K. Acquaaah was present or not. I may recognise him if I saw him at the meeting. Affainyi convened meeting in his house; he presided over the meeting. 40

Q. Were the items given by Plaintiff at the meeting supported by receipts?

A. Yes. With the exception of Defendant. I shall be surprised to hear that Plaintiff was unable to support his items with receipts at this Reference.

Exhibits

"R"

Proceedings before the Referee.

30th June 1953

to

25th May 1954

- continued.

Re-examination:-

Q. Was original Agreement produced at Saltpond meeting and read over to the people present?

10 A. Yes. There was no dispute. It was agreed, at the meeting that no steps had been taken to cancel existing agreement between Taylor, Plaintiff and Davies, Defendant.

QUESTION BY REFEREE :-

Q. Did you see the Agreement paper yourself, if so, was it a copy or the original which was read at the meeting, because it has been suggested that the original was destroyed after the 1948 accounts?

20 A. I saw the original. It was examined by all present.

Adjourned to 2 p.m. tomorrow 30th October, 1953.

(Sgd.) E. Jeury Blankson.
REFEREE.

30. 10. 53.

30th October 1953.

Taylor, Plaintiff in person.
Davies, Defendant in person.

THOMAS AMPOFRAN AIDOO - s.o.b. in English :-

30 I live at Saltpond. Panel Member of Fante Confederacy Council. I remember one day Taylor, Plaintiff requested me to go with him to Affainyi's house in connection with some dispute between him and Mr. Davies. Many people were present. It was a matter of accounts. Agreement was produced. It was in original because it had Treasury Stamp on it. I read the Agreement. It was suggested accounts should be examined so Affainyi and Taylor's Clerk made the accounts. The meeting was adjourned for a week. When I attended the meeting the second time I saw confusion here and there at the meeting

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

and there were shouts. Affainyi told me on Torto and Taylor were quarrelling. He stopped them. I forget the figure mentioned but I heard something like £1,990. 6. 3. supported by receipts and £1,660 - but some without receipts. Only 13. Something were supported by receipts. I am unable to give the actual figure as it is a long time ago. The £1,990. 6. 3.; I remember was for Taylor, Plaintiff and the £1,660 for Davies. The people who made the accounts pointed out that some were supported by receipts. I did not hear that one of the items was for £850. There was no question as to whether or not the document was the original or not. Taylor produced the original document. I consider it was the original. I saw original sealed with wafers on it. I did not hear at the meeting that the Agreement had been revoked.

10

Cross-examination:-

Q. Did you see the receipts yourself?

20

A. No. The people who made the accounts told the meeting about the receipts. Ayornoo's name was mentioned because we wanted certain books. Both Taylor and Davies denied having the books. I suggested Ayornoo should be contacted. Taylor objected to it because Ayornoo was owing him some money so he had dismissed him from his business. Taylor did not want to see Ayornoo. However, it was agreed that Ayornoo must be brought down. Since then I have not seen Ayornoo. The meeting broke off without any final decision and since then I have heard nothing.

30

Q. Did Davies give any evidence or make any Statement at the meeting?

A. No. It was the accounts only which was examined. No mention was made of any £850 as one of the receipts produced by the Defendant. Davies did not mention that he was going to stop the business relationship with Taylor, Plaintiff. But he said that he had stopped the timber business with Taylor long ago. The meeting ruled that so long as the Agreement existed the business was not stopped.

40

JOSIAH ATTA TAYLOR - s.o.b. in English

Exhibits

"R"

I live at Saltpond. Managing Director of Kobina Asamoah & Company. I remember the meeting at Affainyi's house in November, 1952. I was invited there by Affainyi to assist him in settling some difference between Taylor and Davies. Taylor produced original agreement. We suggested accounts be checked by a Referee so Affainyi and another person were appointed to go into the accounts. Meeting was adjourned for a week. We met again but Taylor and Davies were not satisfied with the accounts when the Referees read their report. It was alleged by the Referees that Taylor was entitled to £1,980. I understood they were supported by receipts. £1,351 were due to Davies supported by receipts. There was no objection. Davies raised no objection to the Agreement. Davies admitted Agreement was not revoked. Agreement was stamped and sealed. Agreement was taken back by Taylor.

Proceedings
before the
Referee.
30th June 1953
to
25th May 1954
- continued.

Cross-examination :-

- Q. Did you hear Ayornoo's name mentioned at the meeting at Saltpond?
- A. Yes. His name was mentioned in connection with the accounts between Taylor and Davies. I do not remember that Davies said Ayornoo made accounts in 1948 but the meeting agreed Ayornoo must be brought down to the meeting. Ayornoo was not required in connection with some books which Davies says Taylor took away in 1948. I would be surprised to hear that Aduful gave evidence that it was mentioned at the meeting that Ayornoo had made or audited accounts in 1948.
- Q. Will you be surprised to hear that last witness Ampofram Aidoo said he heard at meeting that Ayornoo had audited the accounts in 1948?
- A. What I heard was Ayornoo knew about the accounts because Ayornoo was at one time or another Clerk to both Taylor and Davies. The meeting was adjourned for Ayornoo to be present. Ayornoo came when Taylor was absent and meeting broke off without since meeting again.
- Q. You mentioned figures £1,660, £1,980 and £1,351. You have given an account of the £1,980 and £1,350. What about the £1,660?

Exhibits

"R"

Proceedings
before the
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30th June 1953
to
25th May 1954
- continued.

- A. £1,660 were not all supported by receipts. £1,350 out of that amount were supported by receipts. The Referees said so. I had nothing to do with the accounts, except what the Referees told us at the meeting.
- Q. Did Davies give evidence at the meeting at Saltpond or made any statement there?
- A. No. Davies gave no statement nor did he say anything at all.

Re-examination:-

10

- Q. Was there any receipt produced for £850 or mentioned at meeting?
- A. No. Some of the receipts were mentioned and that some of the cheques had no receipts.

Adjourned to 6.11.53.

(Sgd.) E. Jeury Blankson.
REFEREE.

6th November
1953.

6. 11. 53.

Taylor, Plaintiff in person.
Bannerman Hyde, Counsel for Defendant.

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KWAME BUAMUAH - s.o.b. in Fante :-

I am Fitter employed by Plaintiff at Asin Akropong. I saw a European about a year ago accompanied by Davies visit Asin Akropong to see Taylor about a timber lorry front Axle. They met two of us. I questioned them and they replied they were going to fix axle into a lorry belonging to both Taylor, Plaintiff and Davies, Defendant in this case. Taylor was absent. They took away the Axle. I knew Taylor was doing some timber business with Defendant. We carted timber logs from Defendant's Camp. I have not heard that the timber business had been stopped.

30

Cross-examination:-

sic.

- Q. You do not know about the Agreement Taylor and Davies?
- A. I do not know the terms of the Agreement existing between Plaintiff and Defendant.

Adjourned to 2 p.m. on Tuesday the 10th
November, 1953.

(Sgd.) E. Juery Blankson.
REFEREE.

40

10. 11. 53.

Mr. Taylor, Plaintiff in person.
Mr. Bannerman Hyde for Defendant.

TETTEH WUDDAH - s.o.b. in Fante :-

Asafoatse of Asin Akwabosu. I went to Bereku about 5 years ago from Akwabosu. I went there to see my wife who was sick. I saw Taylor, the plaintiff in this case and my nephew called Ayornoo at Bereku, so I went to greet them. Ayornoo told me a dispute had arisen between Taylor the Plaintiff and Davies, the Defendant so they had met at Bereku to settle the dispute. Ayornoo asked me to accompany him and Taylor to go to Davies' Camp. We went there to investigate the dispute about the accounts of Plaintiff and Defendant. Mr. Edwards, a Catechist at Bereku was present at request of Davies, Defendant. We all met to settle the dispute between Plaintiff and Defendant regarding the accounts of the business of both parties, that is, Taylor and Davies. Defendant's clerk called Larweh was also present at the meeting. Edwards, Catechist, suggested the accounts must be made in order to know what was the state of the business first. Davies, Defendant then produced some small book. Ayornoo, my nephew made the accounts, as a result of which it was discovered that there was a deficit of £800, more or less, but I am not sure, being moneys paid by Taylor, the Plaintiff to Davies, the Defendant for the business. No profit accrued from the business from the moneys advanced by the Plaintiff as an investment into the business. I heard the £800 represented amounts paid by the Plaintiff Taylor to Davies, Defendant for the business. Davies, Defendant explained that the £800 was used for construction of roads to places where unfortunately there were no trees. We reconciled the parties and decided the business should be carried on as before. The meeting then dispersed.

REFEREE TO WITNESS :-

Q. How many books were produced?

A. Davies produced only one book. I saw only one book. Taylor did not take any book away with him when he left the meeting. Mr. Ayornoo did not take any books away.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

10th November
1953.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

EXAMINATION OF WITNESS CONTINUES :-

I and Larweh led you to the town after the meeting. Davies, Defendant took the books. No Agreement paper was produced at the meeting. I remember now that Davies also accompanied us to town to see you depart from Bereku. After this, I saw you again on 3 occasions at Bereku to pay labourers' wages. I cannot say you have broken off your business partnership with Davies.

Cross-examination:-

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Q. At what hour of the day meeting was held?

A. Meeting was held at 9.30 a.m. about 2 years ago. I am sure it was 9 a.m. I should be surprised if I heard meeting was held at 3 p.m.

Q. I put it to you that you were never present at any meeting where accounts were investigated between Plaintiff and Defendant?

A. The meeting started about 9 a.m. and lasted till 4 p.m. The £800 was debt for both parties in business.

20

Q. I put it to you that you only accompanied Ayornoo at request of Plaintiff to beg Davies. That was all what you did in connection with this matter?

A. This is not true.

- Case for Plaintiff -

Adjourned to 12th November, 1953.

(Sgd.) E.J. Blankson,
REFEREE.

12th November
1953.

12. 11. 53.

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Mr. Taylor, Plaintiff in person.
Mr. Bannerman Hyde, Counsel for Defendant.

JOSHUA FANYE DAVIES - s.o.b. in English :-

I am Timber Contractor living at Asin Bereku. I know Taylor, the Plaintiff from boyhood. Before entering into Agreement with Plaintiff for timber business, I was myself a Timber Contractor and Photographer. Agreement was made in 1946. Before agreement was made, I had already acquired in 1945

timber concession from Nana Nkyi Ababio. Omanhene of Asin Manso. (Identification "1" - Lease).

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

10 Timber business with Plaintiff occurred when I went to see Taylor, Plaintiff to demand from him £180 which he was then owing me. When I went for this money then Plaintiff approached me to allow him to enter into business with me in timber trade. This happened when I approached Taylor, Plaintiff to refund £180 which he was owing to me at that time, when he was receiving loans from me. Taylor, Plaintiff did not pay the £180 to me but instead he gave me £200 as a deposit against the timber business for trees acquired by me in the Basofi Concession. As a result of the approach by Taylor, the Plaintiff, we entered into an Agreement in 1946 to do timber business. Agreement was executed by both of us. But I pointed out that there was no provisions as to remuneration, allowance and accommodation for me as the Agent who was to carry out the business and asked that they should be provided for in the Agreement. Though the Agreement was executed by us, Taylor, Plaintiff, agreed to include those provisions in the Agreement and send me a copy. Taylor did not send me a copy nor were those provisions made in the Agreement. Despite this, I carried out my obligations under the agreement. I remember the date of the agreement was 31st January, 1946. I started doing timber business on my own in November, 1945 then this timber business started by me in November 1945 was merged into the new timber business under the Agreement with Plaintiff. At the time my timber business was merged into the new business under the Agreement with Plaintiff, I had reached the stage of construction of roads. Roads had to be constructed before cutting the trees. Under the terms of the Agreement, Taylor, Plaintiff was to advance the money for the carrying out of the business. Plaintiff was irregular in supplying money for the business and I had to find loans to carry out the business each time plaintiff failed to give me money. Taylor, Plaintiff, had his own timber business at Asin Akropon as timber contractor. Receipts in Exhibit 23 totalling £701.11.3d. was money invested by me in the business when Plaintiff failed to supply me with money for the business. These were loans obtained from people by me. The £701.11.3. had already been taken into account in the business when Mr. Ayornoo went into the accounts.

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Exhibit 22: £80 was money taken from the business from me by Taylor, Plaintiff. He visited me frequently and whenever any money had come into the business plaintiff drew it and took it away with him.

Exhibit 18: Receipt for £150 was money which Plaintiff drew from business. Exhibit "19" for £50, Exhibit "20" for £450 and Exhibit "21" for £10 were also monies which Plaintiff withdrew from the business.

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I remember I put in a counterclaim for £1,351.6.3d. in my statement of Defence.

Exhibit "10" is a copy of a letter demanding £850 from Plaintiff being loan received from me. This formed part of my counterclaim.

Exhibit "12" is letter demanding the same amount of £850 from Plaintiff. This £350 has not been paid to me by the Plaintiff.

Exhibit "13" is letter demanding costs of Curls and Wawa logs amounting to £401.6.3d. from the Plaintiff. The sums of £173 and £228.6.3d. make the total amount of £401.6.3d. on Exhibit "16".

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Exhibits "15" and "16" are Statements of Accounts in respect of Curls and Wawa logs which Plaintiff bought from me.

Exhibit "17" for £100 is a loan given by me to Plaintiff.

Exhibit "14" is the receipt for £850 loan given by me to Plaintiff. This had already been mentioned by me in my evidence.

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I now come to question of monies which Plaintiff invested in the business some of which I do not admit.

Cheque for £200 - No.488 dated 27th August 1945. I admit receipt of the amount of £200 shewn on this cheque. This cheque was handed to me at Asin Akropong and cashed at the Bank of British West Africa Ltd., Cape Coast. On 31st August, 1945 I went to Akropong and reported receipt of this money to Plaintiff who instructed his assistant Mr. Ayornoo to prepare a receipt for £200 for

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me to sign. I signed the receipt and handed it over to Plaintiff. This receipt is for the amount of £200 on the cheque cashed by me. It is not a receipt for a different money which plaintiff paid to me. What I mean is that this receipt was for the £200 cheque which I had cashed at Cape Coast from the Bank.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

10

I received cheque No.71/B.5680 for £100 from Plaintiff for which I gave receipt No.4940 dated 20th October 1946. It is not true that the receipt was for another different £100 from the Plaintiff. Plaintiff did not pay cash of £100 to me apart from this cheque, which was given to me on the same day.

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I received Cheque No.600 - dated 13th November 1946 for £50 and gave receipt No.4941 on the same day. I did not receive two separate sums of £50 each that is, Cheque for £50 and Cash for £50. I received only cheque for £50 no other £50 in cash at the same time, the same day.

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I received a Cheque P/800191 dated 28th June 1950 for £200 as a deposit against timber truck to be supplied by R.T. Briscoe. R.T. Briscoe gave receipt Exhibit "15" for this amount but Plaintiff afterwards decided he did not require the truck. I refunded the £200 to Plaintiff so the Plaintiff surrendered to me the Receipt Exhibit "15".

The business under the agreement was closed in December 1948 after the investigation of the accounts. It is not true that this £200, one of the items in Exhibit "F" is a debt owed by me to the Plaintiff. I have already refunded this money to the Plaintiff.

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The sum of £50 Receipt No.4939 was money invested by me in the business. It is Exhibit "14" and not money paid to me by Plaintiff. He is not entitled to claim this £40. Plaintiff is not the person who invested this money. I invested the £40 in the business, Plaintiff is therefore not entitled to claim the money from me.

In 1948 I supplied logs to R.T. Briscoe but when I went for payment of the logs Briscoe showed me a letter which Plaintiff has written without my knowledge to the effect that the logs supplied by me to Briscoe were having the property mark

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

of the Plaintiff "JKT" therefore the value of the timber logs should not be paid to me by Briscoe and as a result of this I decided the accounts of the business should be investigated with a view to close down the partnership business with Plaintiff. The logs would cost about £300 - £450, as it was subject to specifications which Briscoe was to give to us in respect of the logs. Plaintiff received the value of the logs from Briscoe. This amount was not taken into account when Mr. Ayornoo investigated the accounts. Mr. Ayornoo investigated the accounts in 1948 by consent of Plaintiff and myself. This man Ayornoo was Plaintiff's clerk and Plaintiff brought him to do the accounts for us. After going through the accounts Ayornoo discovered that an amount of over £800 was due to me by the Plaintiff for monies paid by me for Sundry expenses as well as monies invested by me into the business. The accounts were written down on paper from books but those books were taken away by the Plaintiff and have not been returned by the Plaintiff up to to-day. The books are :-

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One Ledger Book
One Cash Book
One Journal Book
One Voucher Book
One Pay sheet Book for wages.

The books were removed by the Plaintiff. Notice to produce them was served on Plaintiff to produce them but he has never done so. I have good credit in the books, if the books were produced my position in this case would be clear in the eyes of everyone. Plaintiff knew this fact and for that reason he took the books away deliberately. Books will show the position of the accounts of the business if they are produced.

30

I remember last year 1952 at the instance of the Plaintiff one Mr. Affainie of Saltpond convened a meeting with a view to settle dispute between us. I told Mr. Affainie and people present at the meeting that the accounts of the business were investigated in December 1948 by Mr. Ayornoo and that the Plaintiff took away the account books. Plaintiff admitted removing the books but he has misplaced the books. As a result of the meeting found it necessary to write Mr. Ayornoo to attend the meeting which was adjourned to enable him to be present. Both myself and

40

sic.

Plaintiff were requested to get Mr. Ayornoo. This man Ayornoo arrived at Saltpond for the meeting fixed for 13th December 1952 within the knowledge of the Plaintiff but Plaintiff did not attend the meeting as a result of which the meeting proved abortive. No settlement was reached.

Before this action Plaintiff did not make any written demands or otherwise at any time for any monies due and owing to him by me.

10 It would be seen from the Exhibits that I gave loans to Plaintiff in 1949 and 1950 to the total amount of £850.

20 I remember Plaintiff came to me for financial assistance after the partnership business has been closed but I warned him that unless he surrendered to me the original agreement and my copy thereof to me for cancellation, I would be prepared to lend him any money. Plaintiff promised to find the original agreement and the copy and bring them to me. On 14th December 1950 Plaintiff brought the original Agreement to me at Bereku in presence of one Mr. Amoah but he never brought my copy which he told me he could not find. I read the original agreement. I handed it over to Mr. Amoah also to read it after which Plaintiff took original Agreement and destroyed it in presence of myself and Mr. Amoah. After this destruction of the original Agreement, Plaintiff obtained £400 from me, a receipt for which amount is admitted as Exhibit 30 "14". This amount is part of the £850.

Adjourned to 13th November 1953 at 2 p.m.

(Sgd.) E. J. Blankson
REFEREE.

13. 11. 53.

13th November
1953.

PRESENT:- Mr. Taylor, Plaintiff.
Mr. Bannerman Hyde appears for Defendant.

JOSHUA FANYE DAVIES - still on oath :-

Plaintiff painted me as a man of straw because I was a common photographer.

40 Before the agreement was made I had been giving Plaintiff loans up to £180. This amount

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

has been refunded back to me. Correspondence in respect of the loans are Exhibits "1" to "5". Voucher Book contains entries of monies Plaintiff received from me, these were taken into account when Mr. Ayornoo made the accounts in December 1948. Amounts in Voucher Book are not included in any of the receipts put in as exhibits. Business had no trucks of its own and as a result logs were left lying in the field to rot. I drew attention of Plaintiff to this fact but he paid no heed to arrange for trucks; the plaintiff was interested in his own company and for this reason I approached Briscoe to buy the logs. Before 1946 when Agreement was made I was doing timber business at Boako, Asikuma, Kokoaso, Habenkwisukua Akrofuom and Nyinabrim. Property mark of the company was J.K.T. and when I was operating on my own I used my property mark J.A.F.D. I am not owing the Plaintiff but on the other hand the Plaintiff owes me £1,351.6.3d. I did not ship any timber for and on behalf of our Company.

10

20

Cross-examined:-

Q. In whose interest would it be if the account books were extant?

A. It would be in my own interest and I would like Referee to believe this fact. It is not true that I have kept the books and refuse to produce them.

Q. In what book you recorded the number of trees felled down?

A. I entered the number of trees felled in part of the Pay Sheet, that is, I used a portion of the Pay Sheet Book for wages and the other half for recording number of trees felled down.

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Q. How many trees did you fell during the business? How many Mahogany logs?

A. You have heard that when timber is shipped and there was something valuable about the timber and logs had to brace the stump, don't you take trouble to find out the number of trees you felled?

sic.

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A. I cannot give the number of logs bought by heart in the absence of the books.

Q. You consider this business closed in 1948?

A. Yes. In December 1948 business closed down.

Q. Receipt No.4944 for £5 for what was this paid?
A. Cost of hauling rope received from Plaintiff
and paid to Briscoe.

Exhibits

"R"

Q. I put it to you that this business was not
closed down in 1948?

Proceedings
before the
Referee.

A. It closed in 1948.

30th June 1953

Q. Cheque P/800191 for £200 dated 28th June, 1950?

to

A. I cashed this amount. I deposited this money
with R.T. Briscoe for timber truck the Receipt
Exhibit "15". Taylor, Plaintiff told me he did
not want truck from Briscoe. Plaintiff came
to me to go with him to Briscoe to arrange for
the truck and gave me the cheque for £200 for
the truck.

25th May 1954

- continued.

10

Q. Do you know Basofi Concession had to be made in
your name for certain reasons?

A. No. I acquired the Concession for myself and it
was granted in my name personally.

20

Q. Agreement referred to the Plaintiff as the
Principal?

A. Yes.

Q. Could you afford £200 for your trees. How much
had you got before Agreement?

A. I could afford to pay for the trees. On the day
we entered into agreement I was desirous of
paying for the trees.

Q. Do you know what is instructions. I refer to
that part of Agreement whereas on the instruc-
tions of the Principal, the Contractor?

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Adjourned to Monday 16th November 1953 at
2 p.m.

(Sgd.) E.J. Blankson,
REFEREE.

16. 11. 53.

16th November
1953.

Parties in person.

Counsel absent engaged before Divisional Court
Saltpond.

Case adjourned to 19, 20, 23, and 24.

(Sgd.) E.J. Blankson,
REFEREE.

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Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

19th November
1953.

19. 11. 53.

PRESENT:

Williams, with Alakija for Plaintiff.
Bannerman Hyde for Defendant.

J.F. DAVIES :

Q. Do you accept the Agreement of 31st January 1946 as showing the proper relationship with Taylor, Plaintiff?

A. Yes.

Q. Notice to produce your bank book served on you. Have you got them here? 10

A. I had no banking account at the time we entered into agreement.

Q. You produced a receipt for £850, if you add that amount to your counterclaim would it not increase your counterclaim?

A. It is included in the counterclaim as a loan.

Q. In 1951 when you gave this money £850 to Taylor, Plaintiff, was not the business still going on? 20

A. No. It has been closed. We closed business relationship in 1948.

Q. Did Taylor approach you for this loan?

A. Yes. Taylor came to me himself for this loan of £850.

Q. I put it to you that this is not a genuine receipt for £850?

A. It is a genuine receipt given to me by the Plaintiff and signed by Plaintiff himself.

Q. I put it to you that Mr. Taylor did not give you receipt for £850 at any time? 30

Q. He has given me receipt for £850 which I have put it in as Exhibit. This money was paid as the first and second items of £400 each was paid to Plaintiff in cash by me as a loan not as part of the timber business. I paid monies to Taylor at Assin Bereku. I did not pay these monies to him the same day. The receipts give particulars as to days on which they were paid.

Q. Are you suggesting, as a business man, that you gave £400 in 1951 to Taylor without obtaining a receipt? 40

- A. Taylor gave me temporary receipts for these monies and when he gave me this receipt for £850 Taylor took away the temporary receipts.
- Q. Why did you not put these facts to Taylor when he gave evidence that he obtained these monies and took away the temporary receipts for them?
- A. I did not ask my Counsel to put these questions to Plaintiff because I thought the particulars on the receipts were sufficient.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

- 10 Q. Did you draw these monies from the Bank?
- A. I had these monies with me each time Taylor came for money, but it was money I had from the Bank with me. I withdraw the money from Takoradi. I cannot remember the date.
- Q. I put it to you that apart from the signature of Taylor, all the other writings on the receipt handwriting of Davies, yourself?
- A. Yes. Because I wrote all receipts which Taylor signed.
- 20 Q. I put it to you that the receipt was given for £50 only and not £850?
- A. No. The receipt was for £850.
- Q. How did you break your business relationship. You were not in very friendly terms?
- A. Accounts were made in December 1948 by Mr. Ayornoo and as a result business came to an end. Friendship did not break.
- Q. I put it to you that there were erasures in receipt No. "14".
- 30 A. No. There was no erasure.
- Q. When the Agreement of 31st January, 1946 between you and Taylor existed, had you any timber property mark?
- A. We used Plaintiff's property mark JKT.
- Q. Have you kept account of the Basofi Concession or timber operations?
- A. No.

JACOB BENONI AFFAINIE - so.b. in English:-

40 I live at Saltpond. Treasurer of the Fanti Confederacy Local Council. I came to know Taylor Plaintiff in November 1952 for the first time.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953

to

25th May 1954

- continued.

Taylor came to me with a complaint claiming a share profit accruing from business he was doing with Davies, Defendant. He asked me to demand his share of the profit from Davies, Defendant. I invited friends, Messrs. Acquah, Jackson, Toe Taylor, Arthur Neizer and others to assist me to go into the complaint. It was found that a large sum of money was involved so a committee was appointed to go into accounts. Both failed to produce any books or records of the accounts kept. We enquired of the whereabouts of books and we were told by Davies, Defendant in presence of Taylor, Plaintiff that in 1948 the Account Books were audited by one Mr. Ayornoo and after that books were taken away by Taylor, Plaintiff. We enquired from Taylor, Plaintiff as to whether it was true he took the books but Taylor, Plaintiff said he had misplaced the books. We warned both Taylor and Davies to arrange for Ayornoo to come to prove the position of the accounts. As a result of this suggestion the meeting was adjourned to a fortnight. Davies later brought this man Ayornoo on the date fixed to my house at Saltpond. But Mr. Taylor, who was aware of this date did not turn up at the meeting. I addressed a letter under registered cover to Mr. Taylor, Plaintiff, but he refused to take delivery and the letter returned back from R.L.O. as unclaimed. As Taylor did not put in appearance this meeting broke off. Letter Identification "2".

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sic.Cross-examined:-

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Q. Is Mr. Davies your relative?

A. Yes. He stayed with me when he attended school. Davies did not give me boards and scantlings to roof my house. I did not know that Taylor had travelled to Gambia at the time I wrote to him the letter Exhibit "19". The first time I saw Taylor was in November 1952.

Q. If what you say is true that Taylor came to complain to you about business between him and Davies, if it is true he had the books?

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sic.

A. Yes, if he had the books with him, if he had them. I spent my time in Nigeria. I did not know there was a bank at Saltpond. It had closed already when I returned from Nigeria.

Q. Before meeting Taylor you must have heard that he and Davies were doing timber business?

A. Yes. I heard so. I returned in 1946. I heard they were doing business in or about 1947. I know Davies is carrying on timber business and has employed a European as his Sawmiller. I never kept Davies' timber books.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

Re-examined :-

Q. In what way are you related to Davies?

A. We are relatives as by marriage to cousin of Davies.

10 Adjourned to Monday 23rd - 2 p.m.

(Sgd.) E.J. Blankson
REFEREE.

23. 11. 53.

23rd November
1953.

Mr. Taylor, Plaintiff, present in person.

Mr. Hyde, Counsel for Defendant appears for Defendant.

KWAMINA NIMFA - s.a.r.b. in Fanti :-

20 I am at present living at Anyinabrim, Ex-Omanhene of Asin Apimanim State. I abdicated about 4 years ago. I know both parties, Taylor, Plaintiff, and Davies, Defendant. The Stool of Asin Manso (Apimanim State) own lands attached to the Stool. My said Stool granted a portion of the lands known as Basofi part of which is called Beteuasi to Davies, Defendant. It was granted by me during my time as Omanhene at Manso. It was made about 8 years ago during the time when both states of the Asin people, Apimanim and Atandaso, joined as a Confederacy. Davies, Defendant, paid 30 £50 consideration money to me. Davies gave me an advance of £200 for the standing trees. Prior to the grant of this timber concession to Davies, I knew Davies at Saltpond to be a Photographer. Apart from the photographic business, Davies was trading in timber boards in Akronfu and Anyinabrim. These two towns are divisions within the State of Asin Apimanim. Taylor, Plaintiff, was also granted land by the Akropong and Wurakesi Divisions of the 40 Asin Apimanim State. It was agreed to pay royalties for the trees felled. Mahogany £2 at first but later increased to £4; cedar £1.10/- but later increased at £3 and so on according to the quality of each tree. After cutting trees to the

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to
25th May 1954
- continued.

value of £200, Davies continued to pay royalties to us and when we needed money at any time he gave us the money we required.

Cross-examination:-

- Q. You say you knew Taylor; how and when did you come to know Taylor?
- A. It was from the time Taylor came to attend school at Ayinabrim. Taylor always came to my mother's house at Anyinabrim after school was over.
- Q. You remember the day the Confederacy was formed at Ngresi you asked Taylor something? 10
- A. I asked Taylor to give me £200 but he did not give me the money.
- Q. You remember you suggested giving Taylor the Basofi land for cutting timber and Taylor told you he couldn't advance the £200 himself but that he would speak to a friend about it?
- A. As Taylor, Plaintiff, couldn't give me the £200 I send to tell Davies, Defendant if he could give me £200 in order to grant him Basofi land for timber Concession. Davies gave me the £200 the next day. 20
- Q. Are you suggesting that Taylor had nothing to do with this Basofi Concession?
- A. When I was Omanhene, I lived at my headquarters at Asin Manso. Taylor lived at Asin Akropong and Davies at Asin Bereku therefore I cannot say what was the arrangement between Taylor and Davies. I do not remember that Taylor came to see me with Davies in connection with the Basofi Concession granted to Davies and during which time Taylor handed over the £200 to me. I do not remember my car took Taylor and Davies to Manso to see me after the Confederacy ceremony at Ngresi. 30
- Q. Was the agreement between you and Davies read out, interpreted and explained to you?
- A. Yes. It was in the presence of all my Divisional Chiefs who signed the agreement. I do not know if Taylor also signed as a witness. I remember Taylor and Davies came to see me when it was sought to increase the rates of royalties payable for the trees and the intention to reduce the term of the lease from 10 years to 5 years. 40

- Q. Don't you remember that on the day of the Confederacy ceremony, Taylor introduced Davies to you as the man who was going to pay the £200 for the Basofi Concession?
- A. Taylor told me he was unable to give the £200 required by me himself, so I sent for Davies. I knew Davies long before that day. Taylor did not introduce Davies to me.
- 10 Q. Would you be surprised to know that Davies had already stated at this Reference that Taylor gave him the £200 to be paid to you?
- A. If Davies obtained the £200 from Taylor as a loan that is a different matter. It would be a matter between them.

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REFEREE :-

At this stage Taylor, Plaintiff, leaves the Reference, as I refused to grant adjournment.

CHRISTIAN NENE AYORNOO - s.o.b. in English :-

20 I live at Kumasi. I am Manager of a trading firm known as Gold Coast Hardwares, Kumasi. I know Taylor, Plaintiff in this action. I have known Taylor since 1925. Both Taylor and myself speak the same language but we do not come from one town. In 1948 Taylor, Plaintiff showed to me an Agreement between himself and Davies, the Defendant. Taylor asked me to accompany him to Bereku to go into accounts with Davies, the Defendant. At that time I was assisting Taylor in his timber work. I went with Taylor to Bereku. We met Davies and made the

30 accounts in presence of Taylor, Plaintiff and Davies, Defendant and myself. Taylor told me at Akropong that he and Davies were doing some timber business together and for a long time Davies had never rendered any account. As a result of that, he Taylor had written to R.T. Briscoe, Ltd. at Kumasi to stop payment of any logs supplied by Davies because the Timber logs had his property mark "J.K.T.". At Bereku I found Davies prepared to go into the accounts. The following books were

40 produced by Davies :-

1. Cash Book.
2. Ledger.
3. Labourers Roll or Pay Book, the second half of which book was used for recording the number of trees felled, and the other the first half as Pay Sheet.

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4. Voucher Book, containing accounts as to travelling expenses and personal payments to Taylor, Plaintiff and cost of First Aid Outfit, plant and furniture.

These were prepared by Davies and signed by Taylor, Plaintiff.

5. Cash Receipt Book.
6. Journal.

I started to work on these books. I examined all the accounts. This took two days to complete. We all stayed two days investigating the accounts. Before doing this I drew the attention of Taylor to Davies' investment in the business. I did this because according to the Agreement it was Taylor only who was to supply the money for the business. Davies explained Taylor was irregular in supplying money so he, Davies started to find money himself for the work. When I drew up the Balance Sheet I found that Davies had invested sums of money into the business to almost the same amount which Taylor had invested into the business. I forget that amount. I found that Davies had put in a little more money than Taylor because Taylor had been drawing some of his money. Davies then declared he would not continue the partnership because he did not understand why Taylor should write to stop Briscoe from paying for the timber and that Taylor gossips about the business, telling lot of stories to people about Davies. Davies, even cried at the meeting. When Davies said he wanted to discontinue the work, he made it a condition that if Taylor refunded to Davies monies invested by Davies into the business he would be prepared to continue the work. But Taylor didn't say anything in reply to this matter. For this reason I invited an Uncle of mine called Tetteh Wuddah, who was in Bereku on a visit, to assist me in settling the dispute. Taylor also invited Mr. Edwards, the Catechist then at Bereku to assist in bringing about reconciliation. The attempt proved abortive. Taylor, Plaintiff took some of the books away. I think he took all the books away except the receipt book. The following books were removed by Taylor:-

1. Ledger.
2. Cash Book.
3. Voucher Book.
4. Pay Sheet Book.
5. Journal.

The investigation into the accounts took place in December, 1948. But some years afterwards in December, 1952, I was invited by some people at Saltpond to appear before them in respect of this accounts. I attended the meeting but Taylor did not put in appearance at the meeting. I saw several of the exhibits on this Cash Book in December 1948 when I was investigating the account and I have entered folios of the Cash Book on some of them. Since Taylor took away the books to Akropong and I also later left Akropong for Fosu to do my own business, I have never seen the books again. I know they were with Taylor at Akropong before I left for Fosu.

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Adjourned to 25th November, 1953 at 2 p.m.

(Sgd.) E.J. Blankson,
REFEREE.

25. 11. 53.

25th November
1953.

PRESENT:- Williams and Alakija for Plaintiff -
absent.
Bannerman Hyde for Defendant.
Plaintiff also absent.

REFEREE:- No appearance for Plaintiff, who is himself absent. This case was adjourned after the evidence of Mr. Ayornoo for Plaintiff's Counsel to cross-examine the witness, today; neither Counsel is here. We have to adjourn.

BANNERMAN-HYDE:- This case is being unduly delayed by these adjournments caused by Plaintiff. We ask for costs £17.12.6d.

REFEREE:- I agree that you are entitled to costs for today in any event, subject to direction of the Court.

Case adjourned to 1st December, 1953.

(Sgd.) E.J. Blankson,
REFEREE.

1. 12. 53.

1st December
1953.

PRESENT:
Mr. Alakija appears as Counsel for Plaintiff.
Mr. Bannerman Hyde, appears as Counsel for Defendant.

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MR. CHRISTIAN NENE AYORNOO - still on his Oath :-

Cross-examination:-

Q. Do you know parties very well. Grown up together?

A. I have known Taylor, Plaintiff for a long time but I came to know Davies, Defendant four years ago. I saw Edwards for the first time in 1948 in connection with the investigation of the accounts. I know Tetteh Wuddah; he is my uncle and older than me.

10

Q. You saw a lot of books. Is there any reason why Tetteh Wuddah would tell lies that he saw only one book?

A. He was not present at the accounts. I prepared the accounts in the office of Davies, Defendant. After I had announced the result to the two people concerned, i.e. Taylor and Davies, I found that both were getting annoyed with each other, so I went and called in Tetteh Wuddah to assist in settling up quarrel, particularly Davies as he wanted to discontinue business. I decided to call only one person my uncle Wuddah. Edwards was called by Taylor.

20

Q. Have you a nephew called Ayornoo?

A. Yes. He was not present at all. Ayornoo worked in the bush and has no business to be present in a matter of this nature between his masters. I was assisting Mr. Taylor in his business. I helped Taylor with money. I am not owing Taylor. I was trying to make out an account with Taylor. It was not an uncompleted account. He paid me an allowance of £5, paid my rent, supplied me food free.

30

Q. I put it to you that apart from all these free rent and food, Taylor paid you £10 allowance?

A. No. It was £5. I went and helped Taylor to improve his business. In fact I set up the standard now followed by Timber Contractors. I assisted Taylor to obtain financial assistance from friends. I agree Taylor employed me. It is not true that he dismissed me. I left to do my own timber business. Taylor got the land for me. I gave money to Taylor to obtain the Concession. The £5 Taylor gave me was nothing to me. I was not successful. I am not owing Taylor £850. He is rather owing me £60. I made several demands.

40

- Q. When you struck out the balance sheet, did you show books to Tetteh Wuddah and others?
 A. No. The books were there before Wuddah arrived. Wuddah is illiterate. I did not call him for that purpose. I am still friendly with Taylor. At any rate I was more friendly at that time with Taylor. Davies wanted to stop business and the idea was to get Davies reconciled with Taylor. We failed to bring them together.

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- 10 Q. Tetteh Wuddah stated he succeeded in bringing Taylor and Davies together?
 A. I do not agree perhaps I was not present. He can read a bit of vernacular. He knows what is a book. It is not possible he saw only one book. Davies had a library in the office.
- Q. At what stage do you suggest Taylor removed the books?
 A. It was when we were going to Akropong Taylor took the books away. The books are for the Company.
- 20 Q. I put it to you that your evidence that Taylor took books is fabricated?
 A. God forbid. Taylor admitted to me in Kumasi that he took the books.
- Q. This 1952 meeting; who convened the meeting?
 A. Ampofru Aido, Taylor and others. I was told it was in respect of the 1948 accounts. I was told at the instance of Taylor meeting was held. They wanted to ask me some questions about the 1948 accounts. Taylor wanted dispute to be settled.
- 30 Q. Taylor and Davies were working this business together?
 A. Yes. Property mark was J.K.T. I encouraged Taylor sometime to continue Timber work as he was deciding to stop. I left for my station. I didn't know what was going on. Taylor was given conditions. My concession is about 10 or 12 miles. It is not a lie to say there was split. I would have settled afterwards if there was a dispute.
- 40 Q. You made no effort to settle?
 A. Yes. I was not called by anyone to do so. I went into this account in December, 1948. I saw several entries. There might have been advances against the trees, but without books I am unable to confirm.

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Q. Did you see all receipts?

A. Yes. When I found no receipts, I issued the receipts. When there is none for monies paid to Taylor. I never antedated the receipts to agree with entries. It is not a "cooking" account.

Q. We have seen some receipts issued by Davies; you helped to issue those receipts?

A. I do not know. I did not say Taylor was owing Davies £800. I did not see any entry in the books for money paid to Davies for lorry. Amount paid for the Concession, I caused a receipt for £200 to be made as advanced against the trees.

10

Q. Davies said you found Taylor owed £800?

A. I don't remember this but any money that Davies invested in the business is what Taylor owed him.

Q. How many receipts of £200 you saw?

A. I do not remember, but I remember issuing one. The accounts was investigated at Bereku. I found the £200 credited without receipt supporting it. I do not remember issuing £180 receipt. I don't remember seeing anything in the books.

20

ISAAC JAMES AMOAH - s.o.b. in English:-

I live at Sekondi. Road and Building Contractor. I know Mr. Taylor and Mr. Davies. I visited Davies 13.9.50. at Bereku. I spent about 3 days with Davies. The next day, 14.9.50 Taylor arrived on a visit to Davies. He brought a certain document with him to Davies who read and gave me also to read. It was the original Agreement between Taylor and Davies; it was stamped. Davies asked to bring the copy of the Agreement but Taylor told us that the copy of the Agreement was missing but as soon as he discovered he would bring it. Davies then handed back the Agreement to Taylor who destroyed it in my presence. Taylor then asked for £400 financial help and £400 in currency notes were given to Taylor by Davies in my presence. Temporary Receipt was prepared by Davies and signed by Taylor and I signed as a witness. Agreement was destroyed before the £400 were given to Taylor. I thought Taylor looked like a man who was having something troubling him.

30

40

Cross-examination:-Exhibits

"R"

Q. Did you read the Agreement which was destroyed?

A. Yes. It was stamped like one executed by both parties in respect of Timber Concession. I can't tell where the land is situated.

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Q. Would you be surprised to hear that the original agreement got missing in his office this year?

A. I would be surprised to hear.

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Q. Was there any one there?

10 A. We were only three present. We are friends. Davies made me to understand they had stopped the business since 1948. I did not go there on special invitation. I went to visit Davies myself. I was present at Bereku. In 1942 I pledged my two cloths to Taylor but when I went to redeem them he refused. I visit Bereku often about 4 or 5 times a year. It was that day Davies told me he had stopped business with Taylor. I do not know when they took final
20 account. Davies told me that they had stopped business in December 1948 but to-day Taylor brought Agreement to be destroyed. I cannot say whether business continued after that time or not. Davies did not tell me anything about books.

Q. Are you not surprised that Agreement was not destroyed in December 1952?

30 A. I do not know whether it was due to their friendship. I did not know they parted in 1948 in anger. It was only on that day I heard of the matter.

Q. Could you expect them to meet in 1952 after December 1948 before destroying Agreement? Would you be surprised that a meeting was held at Saltpond about this matter?

A. I do not know anything about this matter.

Q. £400 was a loan?

A. Yes. It was a loan and I signed the receipt as a witness. I am speaking the truth.

40 No Re-examination.

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JACOB WEBBER NEIZER - s.o.b. in English :-

Road Overseer living at Saltpond. I know Mr. Davies for about 16 years and Taylor the same. I was present at a meeting in which Taylor and Davies were concerned. Mr. Affinyie asked me to attend the meeting. We held the meeting at Mr. Affainyie's house. 8 people met there. Mr. Affainyie, Mr. Acquah, Jackson, Opayin Kofi, Mr. Bain & Joe Taylor. We held five meetings but Taylor attended only three of them. The matter was about accounts between Taylor and Davies and were investigated, the account books should be produced. Davies made us to understand that accounts had been investigated by Ayornoo in 1948 which took two days to finish at Assin Bereku. Taylor admitted this fact and Taylor told us that the books had been misplaced by him so we requested both parties to produce the man who made the accounts to enable us to know the position. They agreed to fetch Ayornoo. Ayornoo came to Saltpond but Taylor did not turn up, he was not notified by Affainyie but Taylor did not attend.

10

20

sic.Cross-examination:-

Q. Was there any accounts there at Saltpond?

A. No. There were receipts produced by Taylor and Davies. It was when the receipts were produced we suggested that books also should be produced. Taylor's complaint was that he wanted his share of the profits from the business he did with Davies. We met on 16th November, 1952. Davies told us business stopped in 1948 after they had investigated accounts. I cannot say why Taylor came after 4 years to ask for his share. We were paid no fees.

30

Q. Did Davies tell you somebody had taken the books away?

A. Yes. Davies told us Taylor took the books away. And Taylor admitted books were missing.

Q. Affainyie says had the books been produced it would have been in the interest of Taylor?

40

A. I do not know that.

Q. The inference is that after books were produced it would be in interest of Taylor he would not keep the books.

A. I do not know why Taylor did not produce the books. We wanted to see Ayornoo because he investigated the accounts.

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Q. Did Taylor tell you for what period he was claiming?

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A. He told us he was claiming his share of the profit. I do not know what was in his mind. We did not ask him. He claimed up to the day we met in 1952.

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10 Q. Did he produce any Agreement?

A. No. We did not meet there about Agreement. I know they were working at Asin Bereku. Taylor said he worked with Davies but Davies refused to produce account books. I was linguist at the meeting.

REFERENCE CLOSED.

(Sgd.) E. Jeury Blankson
REFEREE.

22. 4. 54.

22nd April
1954.

20 PRESENT:

Mr. Williams for Plaintiff.
Mr. Bannerman-Hyde for Defendant.

ROBERT ALFRED WILLIAMS TEKWI MENSON - s.o.b. in
English :-

30 Assistant Accountant, Bank of British West Africa, Takoradi. I have a subpoena to produce the current account of the Defendant Davies from 1946 to date but we have no account in our books in the name of the Defendant Davies. I am afraid we cannot give any information relative to the Defendant since he has no accounts in our books in his name Davies.

Q. Have you any account current in your books for any person for whom Joshua Fanye Davies acts as Agent, Manager or Trustee?

A. We have an account in our books in the name of Joshua Fanye Davies whether that is the person in this case or not we couldn't give the information because we were not able to know whether the Davies in our books is one and the same person.

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Q. How many Joshua Fanye Davies' have you?

A. One customer.

Q. Did you know your customer Davies personally?

A. Yes. The man shown to me here is the same person.

The subpoena shows a case between John Kwesi Taylor and Joshua Fanye Davies. Plaintiff Taylor is not a customer of our branch at Takoradi.

REFEREE:-

10

I am afraid this evidence cannot go on. It has to be adjourned for Plaintiff to move the Court for an order to amend the title of the case by replacing Davies with Davis.

KINGSLEY NEWLOVE APAGYA CRENTSIL - s.o.b. in English :-

Clerk, Bank of British West Africa, Cape Coast. The Bank was served with subpoena to produce accounts of Defendant Davies but we have no accounts for this man. We have an account which has been dormant for some time in the name of Joshua Fanye Davis.

20

REFEREE:-

This has to be adjourned for the Court to be moved in the matter. It is an unfortunate situation but the Bank is justified.

Adjourned to 1.5.54 for Motion.

(Sgd.) E.J. Blankson
REFEREE.

21st May 1954.

21. 5. 54.

30

PRESENT:

Taylor, Plaintiff in person. Counsel absent. Mr. Bannerman-Hyde appears as Counsel for Defendant.

REFEREE TO PARTIES:-

I am sorry to tell you that I have just dis-

covered that there has been an oversight to serve the parties, only the banks were served with the amended Notice and hearing date. I have been on leave and I returned today from travelling, when I came to the Court before I discovered this regrettable situation and fortunately I saw Barrister Alakija's Clerk a short time ago who undertook to ask the Plaintiff to be here. Before I left Cape Coast, I saw Clerk of Counsel for the Defendant and told him of this date before hand and that Hearing Notice would be served in due course. This was not done but I am glad I mentioned it to the Clerk and as a result Counsel is here, even though neither he nor the Defendant was served with notice. Can we go on since the witnesses from the Banks are here? It is only to give formal evidence by showing the account of the defendant with the bank.

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10

TAYLOR, PLAINTIFF TO REFEREE:-

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As a matter of fact, I did not know that this day had been set down for this Reference until a couple of hours ago when my Counsel's Clerk spoke to me about it. I am anxious for Counsel to be present and I ask for adjournment to enable me to get my Counsel to attend.

MR. BANNERMAN-HYDE:-

30

I agree to the adjournment required; it cannot be helped in the circumstances. I am not well at present but I managed to come in the hope of doing this Reference to-day, if possible.

REFEREE:-

I think there is nothing to be done than to adjourn. I apologise for this inconvenience to all concerned.

Reference adjourned to Tuesday, the 25th May 1954 at 2.30 p.m.

(Sgd.) E.J. Blankson
REFEREE.

25. 5. 54.

25th May 1954.

40

PRESENT:

John Kwesi Taylor, Plaintiff in person.
Counsel absent.

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- continued.

Joshua Fanye Davies, Defendant in person.
Counsel absent.

MR. TECHIE MENSON - still on his Oath :-

I am Assistant Accountant, Bank of British West Africa, Takoradi. We have a customer known as Joshua Fanye Davis, who is the defendant in this case. He has been our customer since 19th May, 1949. I have here two Statements of his accounts. Statements tendered. No objection admitted and marked Exhibits "O" and "P". A customer is entitled to open any number of accounts as he wishes. The No.2 account has a debit of £4,377.12.9d. against Davis, that is, he is indebted to the Bank for this amount which represents over drafts made to him by the Bank. The No.1 account has a credit balance of £23.0.2d. in favour of Davis. He has a fixed deposit of £4,400 and this is set up against the overdrafts. This fixed deposit was made on 20th July, 1953 renewable every 12 months.

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Cross-examination:-

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- Q. Is the account a personal one or opened in the name of any Company?
A. It is a personal account and it is in the name of Joshua Fanye Davis only and nothing else.

Re-examination:-

- Q. Did any Company pay in monies?
A. No. All payments were made by Davis himself. Mostly in cheques.

CASELY NEWLOVE APAGYA CRENTSIL - still on his Oath:-

I am Clerk employed by the Bank. We have an account in the name of Joshua Fanye Davis opened on 4.4.48. I have here a statement of his account. Statement tendered, no objection, admitted and marked Exhibit "Q". This is the only account. No other accounts besides this one, the account has been dormant since 1948 in our books. This is the only account in our books. It is a personal account. Payments made by Davis were in cash. No cheques.

30

Cross-examination:-

Exhibits

- Q. Is it the practice for the Bank to give out cheques issued and paid for back to the drawer at any time?
- A. When cheques are issued out paid for they are no more the property of the drawer but the drawer is entitled to go to the Bank to inspect the cheques at any time. Drawer is entitled to withdraw the cheque for any purpose provided he gives the bank a receipt for it.

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10

REFEREE TO WITNESS:-

- Q. Is it to be returned?
- A. Yes. It is the property of the Bank.

REFERENCE CLOSED.

(Sgd.) E. Jeurry Blankson
 REFEREE.

John Kwesi Taylor of Asin
 Akropong in Asin Apimanim
 State and Cape Coast ... Plaintiff

versus

Joshua Fanye Davies, Timber
 Contractor of Asin Bereku in
 Fosu, Cape Coast District Defendant

20

REFEREE'S REPORT

FACTS IN CASE.

The facts in this case are that the Defendant obtained a timber Concession known as the Basofi Concession from Nana Nkyi Ababio, Omanhene and the Divisional Chiefs of the Asin Apimanim State in 1945.

30

The Plaintiff and the Defendant on 31st January, 1946 then entered into an agreement to do timber business together. The Plaintiff was to provide the money for the Defendant to operate the timber business, the net profit accruing therefrom was to be divided into two equal moieties. The Plaintiff in due course called upon the Defendant to produce account. One Ayornoo, who was at the

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time clerk of the Plaintiff, made the accounts at Bereku in the presence of both parties. This took two days to complete. The enquiry into the accounts brought about a dispute between the parties and the partnership ended.

The original of the agreement was lost and all the accounts books were also missing. The Plaintiff alleged the defendant was in possession of the books and the Defendant also alleged the Plaintiff removed the books away after the accounts were made in 1948 and never returned the books to him. 10

In 1952, a meeting was held at Saltpond to settle this matter but the attempt proved abortive and as a result this action was instituted and the plaint is that:-

By a contract under seal dated 31st January, 1946, between the plaintiff and the defendant for the consideration therein mentioned, the defendant as the Plaintiff's agent for the purpose of their timber contract or business contained in the said agreement to be carried on for the mutual benefit of the parties thereto, agreed for a period of ten (10) years to pay fifty of the said business from time to time to the plaintiff. 20

The Plaintiff has performed his part of the said agreement by advancing such sums of money that the defendant required from time to time for the said timber business or contract, but the defendant has not, when required by the plaintiff, paid to the plaintiff his share of the net profits of the said timber business or furnished the plaintiff with any accounts from time to time of the said business although requested several times by the plaintiff so to do. 30

The Plaintiff claims :-

- (1) To have a full and a true account of the said timber business carried on by the defendant as the plaintiff's agent.
- (2) Payment of the plaintiff's share or interest under the said agreement by the defendant. 40
- (3) Damages for breach of the said agreement by the defendant.

2. In the alternative, the plaintiff claims that:-

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

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10

3. The Plaintiff also claims such further and other relief in the said premises as the Plaintiff may be entitled to against the defendant.

PLAINTIFF'S CASE.

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The Plaintiff's case is that he entered into an agreement with Defendant to do timber business, under the agreement he provided monies for Defendant to carry on the field work as a timber contractor. The agreement was in respect of the Basofi Concession at Bereku in Asin Apimanim State. The Defendant was previously a Photographer at Saltpond and that on 27. 8. 45 he paid £200 in cheque to defendant for the Basofi Concession and on 31. 8. 45 he paid another £200 in cash to defendant on account of the business and that the total amount paid to defendant, details of which are set out in the proceedings, was £1,980. 6. 3d. The defendant was to account for the expenditure in the business, that the agreement provided reimbursement to him of monies advanced by him from gross takings in the business, and that the profit was to be divided into two equal moieties, one half for each of them and that part payment of his money had been made to him in the sum of £1,351. 6. 3d. by defendant. That the sum of £1,301. -. -. was for logs and timber curls supplied. An arbitration or meeting was held at Bereku in 1948 and that £800 was advanced by him to defendant for the business from 1948 - 1949 but defendant did not manage the business properly so they tried to break partnership of the business which was running at a loss.

The defendant rendered account but he was dissatisfied and an arbitration or meeting was held

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at Bereku. It was intended to stop business transaction but it was agreed after meeting at Bereku that defendant should continue to do business and that the Books produced at the meeting were

1. Voucher Book
2. Pay Sheet.

They were produced from custody of defendant, afterwards they were handed over to defendant. The sum of £800 was amount found due to him from defendant. Defendant has made no account to him after arbitration, but that the defendant always gave excuses that he had no time. Arbitration was held in February 1948. Defendant was his friend and was a Photographer who had no banking account, and that defendant was unable to pay his customary apprenticeship fee to his master called Hansen who taught defendant Photography.

10

Apart from the Basofi Concession the defendant has since acquired other concessions at Adansi, Dominase and Jukwa, defendant had bought 5 lorries and trucks costing £8,000, 4 trucks at £5,000 each, one Saw Mill about £10,000 with a European employed by defendant and has provided for the use of the European a GMC Van costing about £900. Apart from that the Defendant has his own car costing £850 and bought land at Sekondi in his mother's name. Defendant has banking account at Takoradi but he has since closed down the account when action was instituted, defendant had a deposit of £5,000 but this has since been removed from the Bank for these reasons he instituted this action for defendant to render account of the timber business in order to give what was due to him from the business.

20

30

Plaintiff under cross-examination explains certain payments which defendant denied and admitted certain loans received from defendant. Plaintiff denied that defendant invested the sum of £701.11. 3. in business.

40

Plaintiff called Gilbert Abrom Edwards, a Catechist of Methodist Church Asin Nyankumasi who was formerly at Asin Bereku. This witness confirmed that in February or March 1948 accounts were made at Bereku, that it was alleged there was a deficit of £800 and that he left the meeting earlier, so he did not see who took the books away.

He met Ayornoo already there, books were also there before he arrived. Later in his evidence he stated he saw only one big book like ledger at meeting and that defendant explained he had used the £800 for construction of roads.

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10 Moses Larweh Ayornoo was next witness, Clerk of Plaintiff but sometimes went to assist defendant in the timber business. He confirmed that accounts were made in 1948 and that business was stopped. He saw account books at meeting, and did not see Plaintiff take the books away nor his Uncle Ayornoo. He did not count the number of books but that defendant had one account book and pay sheet. He was Timekeeper for Defendant and kept tickets. In cross examination he stated he heard defendant owed Plaintiff £800 and that he was present when account was made at 3 p.m.

20 Araba Akaraba, wife of plaintiff states she knew the parties to be friends. That about 8 years ago defendant approached her for a loan of £10 to pay his transport to join plaintiff at Asin Akropong, but she gave him £5. Defendant was unemployed at that time. She said defendant was a photographer before he started the timber work.

30 John Kwegyir Eduful Clerk to plaintiff confirmed that on 29.11.52. meeting was held at Saltpond to settle dispute, that Plaintiff gave figure of £1,980 and that of defendant was £1,660. 5. Od. and that he saw no receipts given by plaintiff to defendant for monies and did not see any receipt for £850. There were no books. He and Affainyi examined accounts, but no books were produced, that Plaintiff had only receipts in his hand. Ayornoo was frequently mentioned as the man who made the accounts in 1948 at Bereku.

40 Thomas Ampofran Aidoo, Panel member of Fante Confederacy Council, Saltpond stated he was present at Saltpond. The original Agreement was produced by plaintiff. He heard the figures of £1,990.6.3d. for plaintiff and £1,660 for defendant mentioned, and that he did not hear £850 mentioned at Saltpond. Ayornoo was mentioned on account of some books which both parties denied them and the meeting was adjourned for Ayornoo to be present, but Plaintiff objected on ground that Ayornoo was indebted to Plaintiff so he had dismissed him from his business

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so he did not want to see Ayornoo. It was however agreed that Ayornoo must be present.

Joseph Atta Taylor, Merchant of Saltpond confirmed meeting at Saltpond in November 1952 where Plaintiff produced the original Agreement and appointed Referees to go into accounts. The Report credited Plaintiff with £1,980 and that he understood there were receipts in support of this amount and that £1,351 were also due to Defendant. Agreement was not revoked and that the original Agreement was taken back by Plaintiff. Witness denied at first that Ayornoo's name was mentioned at the meeting as having made accounts in 1948 but later stated he heard Ayornoo knew about accounts as he was clerk to Plaintiff and the meeting was adjourned for Ayornoo to be present. Plaintiff was absent when Ayornoo arrived and that Defendant could support with receipts £1,351 out of the £1,660. The Referees mentioned these amounts but he had nothing to do with accounts. There was no mention of £850 at Saltpond.

10

20

sic.

Kwame Buamah, fitter, employed by Plaintiff testified he saw Defendant and a European remove timber lorry from Axle from Asin Akropong during absence of Plaintiff and that he knew Plaintiff and Defendant were doing timber business together. He carted logs from Defendant's camp and never heard timber business was stopped. He did not know the terms of the Agreement between parties.

Tetteh Wuddah who styled himself as Asafoatse of Asin Akwabosu testified he went to ASIN BEREKU to see his sick wife. He confirmed meeting at Bereku about accounts in 1948, that his nephew told him a dispute had arisen between parties and invited him to assist in settling it. Edwards was present, they met to settle dispute and Defendant's clerk Larweh was present. Defendant produced some books, Ayornoo made the accounts and discovered a deficit of £800 representing total monies paid by Plaintiff to Defendant for business. Defendant explained that the £800 was used for construction of roads but could not get trees from the place, and that parties were reconciled by them and decided business should not stop. The Defendant produced only one book. Plaintiff did not take away any books. No agreement paper was produced at Bereku. Meeting was held at 9.30 a.m. and that he should be surprised to hear meeting was held at 3 p.m.

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10 Early in this reference the Managers of the Bank of British West Africa Limited, Cape Coast and Takoradi were subpoenaed to give evidence at the instance of the Plaintiff without obtaining an Order of the Court for the inspection of the Defendant's Banking Accounts. This was done after the defendant had closed his case. The Bank at first refused to release the accounts as the defendant spelt his name Davis and not Davies, this difficulty was overcome by obtaining an order from the Court to amend the name and the following representatives of the Bank gave evidence.

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20 Robert Alfred William Tekyi Menson, Assistant Accountant Takoradi testified that Joshua Fanye Davis, the Defendant on 19. 5. 49 became customer of the Bank, he produced statements of two accounts which were admitted as exhibits. He explained that a customer was entitled to open more than one account, if he so wished. The No.1 account had a credit of £23. 0. 2d, the No.2 account showed a debit of £4,377.12.9d which represented overdrafts. There was a fixed deposit of £4,400 renewable every year from 20. 7. 53 which was set up against the overdrafts. The accounts are personal and not in name of any company and that all payments mostly cheques were made by defendant himself and no payments were made by any Company.

30 Casely Newlove Apagya Crentsil, Clerk employed at Cape Coast, testified defendant had one account with the Bank opened 4. 8. 48 and produced statement which was admitted. Account had been dormant. Payments were made by Defendant himself in cash. He stated it is the practice of the bank to release paid cheques to drawers for any purpose, provided a receipt was given for it and the cheque should be returned as it was the property of the Bank.

DEFENDANT'S CASE.

40 The Defendant testified he is a timber Contractor at Asin Bereku. He knew Plaintiff from boyhood. Before entering into agreement with Plaintiff for timber business he was himself a timber contractor and Photographer at Saltpond. He had already acquired timber Concession from Nana Nkyi Ababio, Omanhene of Asin Manso in Asin Apimanim State in 1945 before agreement was made in 1946.

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Defendant stated one day he went to demand from Plaintiff £180 which Plaintiff owed him when Plaintiff asked to be allowed to enter into timber business with him. He gave plaintiff loans log before Agreement. Plaintiff did not refund the £180 but instead plaintiff gave defendant £200 as a deposit against the timber business for trees acquired by him from the Basofi Concession. The agreement was executed on 31st January, 1946. The provisions in the Agreement did not include remuneration, allowances and accommodation for defendant, so he asked for such provisions to be made in the agreement and a copy be sent to him, though this was not done yet defendant carried on his obligation under the agreement.

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The Defendant started doing his own business in November 1945 but later this was merged into timber business under the agreement with the Plaintiff and that before the agreement defendant's own timber business had reached the stage of construction of roads which was necessary before felling operations.

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Under the terms of the agreement plaintiff was to provide the money for the timber business, but this was irregular and he had to raise loans to do the business whenever plaintiff failed to give him money. Apart from this partnership business plaintiff had his own timber business at Asin Akropong.

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The Defendant invested £701. 11. 3d. in the partnership timber business when Plaintiff failed to give him money and that this amount was included in the accounts made by Ayornoo. Plaintiff drew personally monies from business. He has counterclaimed the sum of £1,351. 6. 3d. from Plaintiff in his statement of defence and that the sum of £850 formed part of the counterclaim.

Defendant demanded £401. 6. 3d. from Plaintiff for curls and Wawa logs bought. In addition defendant gave loans to Plaintiff. The defendant denied some monies which plaintiff alleged he paid to him. The Defendant gave reasons for payment of each amount he denied.

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In 1948 Defendant supplied logs to R.F. Briscoe Limited who showed him a letter which

Plaintiff had written without his knowledge, that because the logs supplied by defendant to Briscoe were having property mark of plaintiff JKT the value of the timber logs should not be paid to defendant. The defendant then decided the accounts of the business must be investigated with a view to close down the partnership business, the logs were to fetch about £400 or £450. This was not included in the accounts made by Ayornoo in 1948. Ayornoo who was the Plaintiff's clerk was brought by plaintiff to do the accounts. After taking the accounts Ayornoo found £800 was due to defendant from plaintiff for sundry expenses and monies invested in business by defendant. No accounts were done on paper from books but the books were taken away by the plaintiff and were still with plaintiff. The books were

1. Ledger Book.
2. Cash Book.
3. Journal Book.
4. Voucher Book.
5. Pay Sheet Book for Wages.

Notice to produce them was served on Plaintiff but he never did so. Defendant has good credit in books and that if books were produced his position in this case would be clear. Plaintiff knew this fact for that reason he deliberately seized the books and that if they were produced position of accounts of the business would be seen by everyone.

In 1952 at the instance of the Plaintiff meeting was held by Affairie and others at Saltpond when defendant told them accounts were made in 1948 by Ayornoo and that Plaintiff took books away. Plaintiff admitted removing the books but that he had misplaced them, the meeting then decided Ayornoo should be present. Ayornoo arrived at Saltpond with the knowledge of Plaintiff but plaintiff did not attend meeting held on 13th December 1952 as a result of which the purpose of the meeting proved abortive. No settlement was reached. Before the action plaintiff did not make any demands for any monies due and owing by defendant and that from the exhibits it would be seen defendant in 1949-1950 gave loans to plaintiff totaling £850.

Defendant was approached by Plaintiff for financial assistance after partnership business

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had been closed but he warned plaintiff that unless he plaintiff surrendered to him the original agreement and the copy thereof he was not prepared to give plaintiff money. Therefore on 14th December 1950 Plaintiff sent the original agreement to him at Bereku in presence of one Amoah. Defendant read original agreement and handed over to Amoah who also read it after which Plaintiff took original agreement and destroyed it in their presence. Defendant then gave Plaintiff a loan of £400 which were part of the £850.

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Plaintiff pointed him as a man of straw because he was a common photographer yet before agreement in 1946 he had given plaintiff £180 loan.

The Voucher Book contained monies defendant paid to plaintiff which were included in the accounts made by Ayornoo in 1948. Business had no trucks of its own so logs were left lying in the field to rot, plaintiff paid no heed to arrange for trucks, plaintiff was interested in his own business and for that reason defendant approached Briscoe to buy the logs.

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Defendant was not owing the Plaintiff but on the other hand plaintiff owed him £1,351.6.3 and that it would be in the Defendant's interest if books were produced and that the Basofi Concession was granted to Defendant alone.

Jacob Benoni Affainie, Treasurer of Fanti Confederacy Local Council, Saltpond testified that he came to know Plaintiff for first time in November 1952. Plaintiff complained to him about his share in a timber business he did with defendant and asked him to demand his share from defendant. To settle the matter a committee was appointed to go into accounts, both parties did not produce any books or records, defendant alleged books were taken away by Plaintiff, Plaintiff said he had misplaced them and the meeting was adjourned for Ayornoo to be present. Defendant brought Ayornoo but Plaintiff did not attend meeting. He sent a registered letter to Plaintiff but Plaintiff refused delivery and the letter was returned from the Return Letter Office as unclaimed. Meeting proved abortive because Plaintiff did not attend.

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Kwamin Nimfa of Anyinabrim, Ex-Omanhene of Asin Apimanim State testified the stool of Asin Apimanim own lands, his stool granted Basofi land to defendant, he granted the Concession when he was occupant of the Stool 8 years ago when his state and that of Asin Attandaso joined as Asin Confederacy. Defendant paid £50 Consideration Money and gave £200 advance for the standing trees and agreed upon the royalties to be paid. He knew Defendant as a Photographer at Saltpond, and apart from that defendant was trading in timber boards in Akroful and Anyinabirim in the Asin Apimanim State. Plaintiff too was granted land by Akropong and Wurakessi divisions in the same state. He knew Plaintiff long time ago during his school days. He denied promising Plaintiff the grant of the Basofi land for cutting timber. The Plaintiff couldn't give him £200 so he sent to the Defendant for £200 in order to grant him the Basofi land for timber and the defendant paid the £200 the next day. When he was Omanhene he stayed at Manso but parties lived at different places so he could not know what was the arrangement between them and that plaintiff did not see him about Basofi Concession nor did plaintiff pay any £200 to him. The lease of the Basofi land was signed by himself and his Divisional Chiefs but could not remember if plaintiff signed as a witness. Both parties went with him when his state sought to increase the rates of royalties or prices for the trees and the intention to reduce the term from 10 to 5 years. Plaintiff did not introduce defendant to him, for he knew defendant long ago and if defendant obtained a loan of £200 from plaintiff, it was a different matter.

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Christian Nene Ayornoo: Manager of Gold Coast Hardwares Kumasi testified he and plaintiff spoke same language but they did not belong to same town. In 1948 plaintiff showed him the Agreement and asked him to accompany him to Bereku to do the accounts. He was then assisting the plaintiff in his timber work. He went with plaintiff to Bereku where they met defendant and made the accounts. Before leaving for Bereku plaintiff told him at Akropong that he and defendant were doing timber business together and defendant never rendered account because of that he had written to R.T. Briscoe Limited to stop payment of any logs supplied by Defendant, as timber logs had Plaintiff's property mark JKT.

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Defendant was ready with following books:

1. Cash Book.
2. Ledger.
3. Labourers Roll or Pay Book half used for record of trees felled.
4. Voucher Book, containing traveling expenses and personal payments to plaintiff and cost of First Aid Outfit, Plant and furniture, recorded by Defendant and signed by Plaintiff. 10
5. Cash Receipt Book.
6. Journal.

Accounts took two days to complete, during which witness drew Plaintiff's attention to investments made by defendant in the business, for according to agreement plaintiff only should provide money for business but defendant explained Plaintiff was irregular so he had to find money himself and that the balance sheet showed defendant had invested in business almost the same amount as plaintiff but he had forgotten the total amount, he found that defendant had invested a little more as plaintiff had been withdrawing some of his money. Defendant then decided to stop partnership business on account of the letter Plaintiff had written to Briscoe to stop payments for timber supplied and that Plaintiff was gossiping about the business by telling stories about defendant to people and that if Plaintiff refunded monies invested into business by defendant he would be prepared to continue work. Plaintiff said nothing so he invited an Uncle Tetteh Wuddah to assist him in settling dispute. Plaintiff also invited Edwards the Catechist to assist them but this proved abortive. Plaintiff then took following books away:- 20

1. Ledger.
2. Cash Book.
3. Voucher Book.
4. Pay Sheet Book. 30
5. Journal. 40

He entered some of the folios in the cash book and some of the receipts when making accounts in 1948. In December 1952, he was invited to Saltpond about this account but Plaintiff did not attend meeting. He had not seen books again since Plaintiff removed them to Akropong. He knew the

books were in possession of Plaintiff when he left Akropong for Fosu to do his own business. He knew Plaintiff long ago but Defendant only 4 years ago, he met Edwards first time in 1948 during investigation of accounts and that he knew Tetteh Wuddah who was his Uncle but illiterate and that it was after he had made the accounts and dispute arose between parties then he invited his Uncle to assist in settling dispute. It was Plaintiff who invited Edwards and the other Ayornoo, his nephew was not present when accounts were made, he worked in the bush and had nothing to do with accounts. He helped plaintiff to obtain loans from friends and it was not true Plaintiff dismissed him but that he left plaintiff in order to do his own timber business and that he was not owing Plaintiff £850 but it is Plaintiff rather who owed him £60. He denied there was no split between parties and that he did not find plaintiff owed defendant £800 but that whatever money invested in business by defendant was what Plaintiff owed defendant. He made a receipt for £200 for advance against trees but that he never issued receipt for £180 at any time.

Isaac James Amoah - Road and Building Contractor of Sekondi gave evidence that he visited defendant at Bereku on 13th September, 1950 for 3 days, plaintiff arrived at Bereku the next day with original Agreement, defendant read it and he also read it after which Plaintiff destroyed it in their presence. Defendant then gave plaintiff £400 loan and a temporary receipt was given to Plaintiff and he signed as a witness. He pledged his cloths to Plaintiff but he refused to give back cloths when he went to redeem them. Defendant told him business was stopped in December 1948 so Plaintiff brought Agreement to be destroyed.

Jacob Webber Neizer - Road Over-seer of Saltpond witness for defendant testified he had known parties for about 16 years. he was present at Saltpond meeting. Defendant told them accounts had been investigated in 1948 by Ayornoo at Bereku, Plaintiff confirmed this and stated he removed books but had been misplaced by him so meeting requested parties to bring Ayornoo, this man came but Plaintiff did not attend meeting. Plaintiff was notified but he did not show his face. Parties produced receipts, Plaintiff wanted his share of profit but defendant said business was stopped in 1948 after investigation of accounts and he could not understand why

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Plaintiff wanted his share after 4 years. Defendant told meeting Plaintiff took books away. Plaintiff told us he had misplaced books. Defendant told us he did not know why plaintiff was keeping the books. Plaintiff was claiming up to and inclusive of 1952 and that Plaintiff did not produce agreement at Saltpond.

F I N D I N G

The Plaintiff alleges he paid to the Defendant the undermentioned monies:-

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Item No.	No. of Receipt or cheque	Date	Amount £. s. d
1.	4901	31.12.45	5. - . -
2.	4902	30. 1.46	25. - . -
3.	4903	30.11.45	7. - . -
4.	4904	4. 4.46	38. - . -
5.	4905	1. 1.46	30. - . -
6.	4906	4. 7.46	10. - . -
7.	4907	13. 7.46	46. - . -
8.	4908	7. 9.48	56. - . -
9.	4910	14. 9.48	50. - . -
10.	4911	11. 9.48	23. - . -
11.	4912	4. 9.48	2. 1.11
12.	4915	21.12.48	42. 2. 9
13.	4916	5. 1.47	36.18. -
14.	4919	4.47	146. 9. 9
15.	4921	31. 8.47	200. - . -
16.	4922	31. 4.47	15.13.10
17.	4923	7. 8.47	88. - . -
18.	4925	22. 8.47	2. - . -
19.	4927	4. 9.47	70. - . -
20.	4931	3. 5.48	200. - . -
21.	4938	17. 8.48	100. - . -
22.	4939	22. 8.48	40. - . -
23.	4940	20.10.48	100. - . -
24.	71/B56804	20.10.48	100. - . -
25.	4941	13.11.48	50. - . -
26.	4943	10.12.48	40. - . -
27.	4944	7. 1.49	5. - . -
28.	P/000191	28. 6.50	200. - . -
29.	600	13.11.48	50. - . -
30.	488	27. 8.48	200. - . -

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£1,980. 6. 3

Of the above-mentioned items Defendant denied receipt of the following :-

Exhibits

"R"

No.	No. of Receipt or cheque	Date	Amount £. s. d
15.	4921	31. 8.47	200. -- -
22.	4939	22. 8.48	40. -- -
23.	4940	20.10.48	100. -- -
25.	4941	13.11.48	50. -- -
28.	P/000191	28. 6.50	200. -- -
			<u>£590. -- -</u>

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10

ITEMS NOS. 30 & 15.

Plaintiff contended that in addition to cheque No.488 of 27th August 1945 to defendant he gave him another £200 in cash and that receipt No. 4921 of 31.8.47 was for the second amount of £200.

Defendants admits receiving only cheque No.488. When he received the cheque he cashed it from Messrs. Bank of British West Africa Limited, Cape Coast and on 31. 8. 45 he gave receipt for it at Akropong. Plaintiff's Clerk Ayornoo prepared the Receipt No.4921 for Defendant who signed it. This is confirmed by Ayornoo. I believe the Defendant and accept his explanation that the Receipt No.4921 of 31. 8. 45 was for the £200 on cheque No.488 of 27. 8. 45. In every sphere of life or business a cheque is not in itself a receipt, it is an order upon the Bank to pay out money. Therefore receipts are given for monies paid by means of cheques.

sic.

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I therefore reject the amount of £200 on Receipt No.4921 of 31. 8. 45.

ITEMS 24 and 23.

Plaintiff claims amounts on cheque No. 71/B 56804 of 20. 10. 48 for £100 and Receipt No. 4940 of 20.10.48 for £100 totalling £200 and alleges that Defendant went to him for £200 but as he had only £100 cash with him he paid £100 cash to Defendant and issued the cheque No.71/B 56804 of 20. 10. 48 for £100 to make the £200 required by Defendant. Plaintiff was unable to give the place where this transaction took place.

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Exhibits

"R"

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Defendant explains that apart from the cheque 71/B 56804 for £100 Plaintiff did not give him another cash for £100 but that Receipt No.4940 of 20. 10. 48 was receipt for the £100 cheque given on the same day. I accept defendant's explanation as it is quite obvious.

ITEMS NOS. 29 and 25.

The Plaintiff claims amounts on cheque No.600 of 13. 11. 48 for £50 and Receipt No.4941 for £50 totalling £100 and states that Defendant went to him for £100 as Plaintiff had no sufficient money he gave defendant cheque for £50 in addition to cash of £50 and that it was not true the receipt No.4941 for £50 was for cheque No.600 for £50. Plaintiff explained that the £50 was for wages, which of them whether the cheque or the cash he did not specifically state. He further explained that no monthly Vouchers were made but that at the end of the month defendant simply went to him for advances. The Defendant's explanation was that he did not receive £100 in two separate sums of £50 cheque and £50 cash on the same day but the Plaintiff gave him only the cheque for £50 for which he issued the Receipt No.4941 on 13.11.48. I do not accept the claim as I agree with defendant's explanation.

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ITEM NO. 28.

Plaintiff claims the £200 on cheque No.P/000191 of 8. 6. 50 for £200 and explains that defendant went to him for this money when he was cutting timber at Dominase.

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Defendant admitted receiving the cheque No.P/000191 of 28. 6. 50 for £200 from Plaintiff as a deposit for timber truck from Briscoe. Plaintiff afterwards did not want the truck so defendant refunded the £200 and Plaintiff handed over the receipt for this £200 to defendant. This was exhibited by Defendant and marked "15".

Although Plaintiff further explained that Receipt Exhibit "15" was never in his possession until handed over to defendant, I have no hesitation in accepting the Defendant's explanation and rejecting the claim by Plaintiff.

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ITEM 22.

The Defendant contends Receipts Nos. 4939 of 22. 8. 48 for £40 was money invested by him in business and not money paid by Plaintiff and that Plaintiff is not entitled to it and that this amount is in Exhibit "14". Plaintiff has admitted amounts mentioned in Exhibit "14". Therefore I reject Plaintiff's claim on this amount.

The total amount rejected is as follows:-

10	<u>No. of Receipt</u>	<u>Amount</u>
	4921	£200. -. -d.
	4940	100. -. -
	4941	50. -. -
	Cheque P/000191	200. -. -
	4939	<u>40. -. -</u>
		<u>£590. -. -. .</u>

From the above, it will be seen that the total of the monies payment of which is denied by defendant amounted to £590 and I reject this amount.

20 The Plaintiff alleges defendant has refunded £1,351 to him. I say without any hesitation that in my opinion it is the same amount defendant counterclaims and I find it to be an admission by the Plaintiff of the £1,351. 6. 3d. which defendant alleges were loans paid by him to Plaintiff after 1948 and which is counterclaimed by Defendant.

30 I accept the explanation of the defendant in denying certain amounts in Exhibit "F" alleged to have been invested in the timber business by the Plaintiff. It would appear that the Plaintiff claimed £590 more and I find that the amount actually invested by Plaintiff appears to be:

	£1,980. 6. 3d.
Less	<u>590. -. -</u>
Balance	<u>£1,390. 6. 3d.</u>

I find also that the Plaintiff made the undermentioned withdrawals totalling £740.

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<u>Exhibits</u>	<u>No. of Exhibit</u>	<u>Amount</u>
"R"	18	£150. -- --
Proceedings	19	50. -- --
before the	20	450. -- --
Referee.	21	10. -- --
30th June 1953	22	80. -- --
to		£740. -- --
25th May 1954		
- continued.		

I am of the opinion that the receipts for the withdrawals are sufficient evidence that the Plaintiff withdrew the amounts stated on them and I am bound to rely on these exhibits, notwithstanding that the account books are not available. Therefore I find the Plaintiff withdrew the £740 from the business and I set them up against the £1,390. 6. 3d. invested by Plaintiff, that is:-

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	£1,390. 6. 3d
Less	<u>740. -- --</u>
Balance	<u>£ 650. 6. 3d</u>

The Plaintiff has therefore a credit of £650 balance of money invested in business by him.

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The Defendant alleges he paid certain sums of money into business when Plaintiff failed to give him money. This amounts to £701.11.3d. as in Exhibit 23.

<u>No. of Receipt</u>	<u>Amount</u>
4920	£221.11. 3d
4924	50. -- --
4926	100. -- --
4928	5. -- --
4929	5. -- --
4939	40. -- --
4942	50. -- --
4947	20. -- --
4948	100. -- --
4949	50. -- --
4950	60. -- --
	<u>£701.11. 3d</u>

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I find the defendant invested this amount in business and it would be seen that he put in a little more than the Plaintiff. This

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in effect confirms the evidence of Ayornoo that when he made the accounts in 1948 and struck out the trial balance, he found that the defendant had put in a little more money than the plaintiff, though he could not remember the actual figures. Ayornoo mentioned also the fact that he entered on the receipts the page or folios of the Cash Book in the presence of the parties in 1948, this I find to be true, as on the receipts exhibited in this case appear the folios entered by Ayornoo. It is unfortunate the books are not available.

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The defendant has invited attention to the fact that the agreement (Exhibit "A") contained no provisions for salary and allowances for him. The answer to this question would have been to point out to defendant that the share of the 50% of the net profit due to him was provision for the remuneration so long as the plaintiff as principal provided the funds for him as Contractor to do the work, and that in his capacity as a Contractor he had no business to provide funds, and that whatever money he invested in business he did so at his own risk, because if business failed or was run at a loss it was plaintiff's responsibility and not defendant's. But in my view whatever the defendant did, it must depend upon the circumstances in which he was compelled to provide money when the Plaintiff failed to do so.

The Plaintiff acquired certain rights from defendant to work the Basofi Concession together and both entered into agreement, Exhibit "A" but defendant was bound to discharge his obligations under the Basofi Concession and I am of the opinion that the defendant had every right to provide the money where plaintiff failed; according to agreement Plaintiff was only assisting defendant to carry out his obligations under the Basofi Timber Concession.

In my opinion the defendant is entitled to recover any sums of money paid by him into business, subject to whatever interpretation placed on his obligations under Agreement Exhibit "A".

I find that the defendant invested the £701. 11. 3d. in the business.

There is also a counterclaim by the defendant of £1,351.6.3d. which are supported by Exhibits:-

<u>Exhibits</u>	<u>No. of Exhibit</u>	<u>Amount</u>
"R"-	13	£401. 6. 3d.
Proceedings	14	850. -. -
before the	17	<u>100. -. -</u>
Referee.		<u>£1,351. 6. 3d.</u>

30th June 1953
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25th May 1954
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Exhibits "6" - "13" show several demands made by defendant from Plaintiff for the above amounts and there is no evidence denying any of them by Plaintiff.

Defendant says these are loans made by him to plaintiff. I find the Plaintiff owes defendant the amount on the counterclaim and I recommend that Judgment be entered for defendant for the sum of £1,351. 6. 3d. 10

The evidence from the Bank discloses no facts of any monies paid by any company or persons in connection with this timber business transaction.

My difficulty is that there is no evidence to take into consideration the income and expenditure during the period of the business transaction and it is like "when the children of Israel were asked to lay bricks without a straw". As a matter of fact the evidence of Ayornoo, witness for the defendant appears to be the only available facts in the case regarding the accounts since books are missing. He seems to have forgotten the particulars. However, this gentleman was subjected to a very rigid cross-examination but he was unshaken and from his demeanour he appeared to me to be telling the truth. 20 30

I am of the opinion that the business under the agreement was ceased when Ayornoo made the accounts. The defendant agreed to continue business on condition that if Plaintiff was prepared to refund to defendant all monies invested by him in the business and that plaintiff refused to do so. I accept the testimony of the defendant and his witness Ayornoo that the Plaintiff removed the account books from the custody of the defendant at Bereku and took them away to Akropong and they are still in Plaintiff's possession. If defendant had any bad intention for any reason he would not have got the accounts ready for the 40

meeting at Bereku in 1948. I accept the evidence of Ayornoo that defendant produced all the books for him to make the accounts in 1948, and I can only say that if the books were in possession of the defendant the only one remedy would have been to report to Police to take whatever action they thought fit.

Exhibits

"R"

Proceedings
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to

25th May 1954

- continued.

10

I am of the opinion that the defendant gave loans to plaintiff long before any transaction under the agreement was commenced and even after the business was stopped in 1948, as both parties had been friends from their youth. I do not incline to the view that photographers are men of straw. Nana Nkyi Ababio, Ex-Omanhene of Asin Apimanim testified that he knew defendant was a timber dealer long before the Basofi Concession was granted and I am satisfied that the contents of the lease (Identification "1") is clear that the Basofi Concession was granted to defendant.

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I am inclined to believe that the original of the Agreement Exhibit "A" was destroyed by the Plaintiff at Bereku in presence of Defendant and his witness Amoah. I think that the copy made for Counsel for Defendant early last year must have been made from a copy of the Agreement in possession of the Plaintiff, for defendant mentioned that his copy of the agreement was kept by Plaintiff.

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I believe also defendant's witness Affainie and others that the meeting at Saltpond was held at request of plaintiff, that plaintiff told people present that he had the account books but they were missing, and that meeting was postponed for Ayornoo to be present but, when Ayornoo arrived on the day fixed, plaintiff failed to attend the meeting. The Registered letter, delivery of which plaintiff refused and was returned to Affainie by the Return Letter Office, is sufficient evidence of this fact.

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I find as a fact that no profit was disclosed from the evidence adduced before me, except that the balance of plaintiff's investment, after several withdrawals by him is £650 and since it seems business was run at a loss, in my opinion parties will not be entitled to anything. Perhaps if the books were available, the actual state of the transaction would have been ascertained. I recommend Plaintiff's action be dismissed.

Exhibits

"R"

Proceedings
before the
Referee.

30th June 1953
to

25th May 1954
- continued.

On the other hand, I am satisfied that defendant invested the sum of £701.11.3d. in business and he is entitled to refund of this amount.

In conclusion, I recommend therefore that Judgment be entered in favour of defendant for the Counterclaim in the sum of £1,351. 6. 3d.

Although it is not within my province to touch upon any question regarding costs, I must here point out that there were several adjournments occasioned by Plaintiff subject to payment of costs in any event. The defendant is entitled to these costs in any event and it is a matter for the Court to give directions.

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(Sgd.) E. Jeurry Blankson,
REFEREE.
