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9, 1961

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UNIVERSITY OF GHANA
W.A.C.I.
INSTITUTE OF LEGAL STUDIES
LEGAL DEPARTMENT

IN THE PRIVY COUNCIL

No. 33 of 1959

ON APPEAL FROM THE GHANA COURT OF APPEAL

63507

B E T W E E N :

KOJO ASANTE ... (Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE DE L'AFRIQUE
OCCIDENTALE (Defendant) Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal from a Judgment and Order of the Ghana Court of Appeal (West African Court of Appeal, Gold Coast Session), dated the 28th November, 1956, allowing an appeal from a Judgment and Order of the Divisional Court, Kumasi (S.O. Quashie-Idun J.), dated the 25th October, 1955, whereby, in an action by the Appellant against the Respondent Company for an Order for the release of certain property which had been attached and which he alleged was his, and for damages for wrongful attachment and loss of profits resulting therefrom, the Appellant was awarded the sum of £669 as loss of profits, and costs, a previous Order releasing the property pending the determination of the case having been made at the instance of the Respondent Company on the 11th October, 1955.

Record
pp. 26-31

pp. 15-16

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p.10

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The attachment complained of was ordered in previous and different proceedings which the Respondent Company had instituted against one Kwabina Abire (hereinafter also referred to as "Abire") who had defaulted in the payment of goods ordered by him for the purposes of his business and delivered by the Respondent Company either to him or, at his instance, to the customers of the said business. While the default continued Abire (with two others) is alleged to have sold the business together with all its stock-in-trade to the Appellant who alleges that he was a bona fide purchaser of the same for value.

Record

2. The main question for determination on this appeal is whether, in the circumstances of this case, the Appellate Court were right to regard the transaction, or transactions, which is, or are, alleged to have resulted in the sale and transfer of the said business, together with its stock-in-trade, to the Appellant, as being either (a) fictitious, or (b) fraudulent and void within the Statute 13 Elizabeth Cap.5, having been embarked upon, to the knowledge of the Appellant, with intent to defeat delay and hinder the creditors of the vendor (or vendors), among them, the Respondent Company. 10

An allied question for determination is whether or not the learned Trial Judge (S.O. Quashie-Idun J.) misdirected himself in accepting, and deciding the points at issue solely, upon the Appellant's evidence, and disregarding the strong probability that the said transactions were fraudulent and void within the said 13 Elizabeth Cap.5. 20

p.29, 11.45-46
Annexure

3. Relevant portions of the Statute 13 Elizabeth Cap.5, which has been held to apply to what was formerly known as the Gold Coast, are annexed hereto.

4. The facts are as follows:-

Ex.1, pp.33-35

By a Lease, dated the 30th April, 1953, the Respondent Company let to one Abire certain premises "situate and known as Plots Nos. 21/22 on the Krobo District (Antoa Road)." The lease was for a period of two years from the 1st April, 1953, with an option to the tenant to renew it at the expiry of that period for a further period of four years. The tenant agreed to pay to the Respondent Company a rent of £65 a month and it was a term of the Lease that he was "Not to assign underlet or part with the demised premises or any part thereof". 30

p.33, 11.27-33

p.33, 11.37-39
p.34, 11.14-15

On the premises so demised, Abire (the tenant) carried on a restaurant or a food and drink establishment, known as the "Coronation Bar" or "Coronation Spirit and Chop Bar", and a general store, the licence for the sale of spirits being in his name. 40

p.4
pp.46-47

For the carrying on of his trade, and at his request, the Respondent Company supplied him with various goods such as beer, cement, iron sheets,

soup, sugar, etc. on the basis of a monthly credit. Abire defaulted in his payments for the goods thus supplied to his order and the Respondent Company in December, 1954, instituted proceedings against him for recovery of the sum owing. In the course of these proceedings, on the 18th January, 1955, an Order was made by the Divisional Court for interim attachment of the defaulting debtor's goods on the said premises. On the 24th January 1955, the attachment was carried out and the establishment sealed up.

Record
p.28, 11.18-28
p.21, 11.30-34
p.46, 11.23-25
p.14, 11.5-8
p.3, 11.27-31

5. On the 26th January, 1955, the present Appellant appeared on the scene for the first time. Intervening as a "Claimant" in the said proceedings between the Respondent Company and the defaulting Abire, he applied to the Court (S.O. Quashie-Idun J.) for release of the attachment. In his application he said, inter alia, that: he was "a tenant" of Abire from whom and two others he had, on the 5th November, 1954, bought all the "goods and utensils in the said Bar"; the Store or Bar were "transferred" to him; he had paid £837.6s.0d. "to the said three persons, namely, D.K. Awuah, Yaw Manu and Kwabina Abire who were the owners of the goods, utensils and other things in the Store or Bar"; the receipt for the said payment was stamped on the 3rd January, 1955; and that on the 4th January, 1955, a formal application was made to the Licensing Authority for the substitution of his name for that of Abire in respect of the spirit licence.

pp.43-45
p.48, 1.32
p.45, 11.1-18

6. In reply the Respondent Company, through its clerk, Kofie Andoh Essar, gave particulars of Abire's indebtedness and the manner of his default - particularly by the issue of cheques which were subsequently dishonoured. As to the alleged transaction between Abire and the Appellant, the Company said that: even if it was entered into "it was only done to evade any decree that may be passed against the Defendant" (Abire) "in the event of the Plaintiff - Company taking action to recover the amount due in respect of the Defendant's business transactions with the Plaintiff - Company"; the lease granted by the Company to Abire precluded him from assigning under-letting or parting with the demised premises or any part thereof and, therefore, the Appellant's statement that he was Abire's "tenant" could not be true; the alleged transaction between the Appellant and Abire was not a genuine one, having taken place,

pp.46-48
p.46, 1.39 to
p.47, 1.3
p.47, 11.11-15
p.44, 1.36
p.47, 11.23-40

<u>Record</u>	in effect, only after the Company had notified Abire of its intention to institute proceedings for the recovery of the sums due to it and to prevent such recovery; and that Abire's application for the transfer of the spirit licence to the Appellant might have been subsequent to his having received information of the Company's application for interim attachment of the Store and Bar.	
p.48, 11.32-33	7. By its Order, dated the 5th February, 1955, the Court (S.O. Quashie-Idun J.) refused the application for the release of the attachment.	10
p.1	8. On the 16th February, 1955, the Appellant instituted the present proceedings against the Respondent Company in the same Divisional Court (S.O. Quashie-Idun J.).	
p.2, 11.9-30	By his Writ, as amended, the Appellant (hereinafter also referred to as "the Plaintiff") claimed: (1) "An Order of this Court releasing the attachment of the Plaintiff's property in the 'Coronation Bar'"; (2) £500 as damages for wrongful and unlawful attachment and for loss of reputation and goodwill and general inconvenience; (3) a sum for loss of profit at the rate of £5 per day or for any part of the day during which the business and goods had been attached up to the time of the release of the attachment; and (4) in the alternative, for £2,200 as damages, being the value of the goods attached in the Store or Bar (£1,200) and loss of profits and goodwill and general inconvenience (£1,000).	20
p.3, 11.3-4 p.3, 11.5-22	In his Statement of Claim the Plaintiff said that: he owned the said Bar in Nos. 21/22 Kumasi; he had purchased the goods therein from three persons - Abire, Awuah and Yaw Manu - for £837.6s.0d. under an Agreement dated the 1st June, 1954, since which date he had been sole owner; he was "a sub-tenant of the store"; and that he had paid "monthly rentals" of £10 to Abire to whom he did not owe any arrears of rent.	30
p.3, 11.23-26		
p.4	9. By its Statement of Defence, dated the 1st March, 1955, the Respondent Company (then the Defendant) denied the truth or accuracy of material allegations in the Statement of Claim and referred to the previous unsuccessful efforts of the Plaintiff to secure an Order for release of the attachment. On the subject of fraud and collusion,	40
p.4, 11.22-26		

paragraphs 5 and 6 of the Statement of Defence were as follows:-

Record

- 10 "5. The Defendants say that in November, 1954, the said Abire had already become indebted to the Defendants in the sum of over £1,800, the business transaction dating back as far as February, 1954, and that any purported sale of the Coronation Bar to the Plaintiff as alleged in his Statement of Claim was made to defraud Abire's creditors - the Defendants herein.
6. The Defendants will contend that there is some collusion between the said Kwabina Abire and the Plaintiff, and that the Plaintiff is not entitled to any relief at all."
10. Giving evidence in support of his case, the Plaintiff said that, following enquiries as to the purchase of a similar business by him, he was invited by Abire, Awuah and Yaw Manu to join them in partnership. Continuing he said:-
- 20 "They asked me to pay some money in order to join them. They asked for £500. I paid it to them. I was made to sign an agreement" (Ex.A) "I was not given a receipt for the £500. I later paid £110.15s.0d. to Manu and others for the purpose of buying a frigidaire. I was not given a receipt. I did not pay any other money to them."
- 30 Later, he said that at the request of his partners he had, under an Agreement (Ex.B, p.38), bought their "shares" for £337.6s.0d. and, in support of this statement, he tendered a receipt (Ex. "C").
- Answering the Court, the witness said that he had not been given an inventory of the goods he had bought.
11. Both of the said Agreements - Exs. A and B - were unstamped and were admitted in evidence only upon an undertaking by Counsel in each case to pay the appropriate penalty.
- 40 The partnership agreement (Ex.A) dated the 5th April, 1954, is printed in about 17 lines of the Record at page 37. It states that the present

p.4, 11.27-38

p.5, 11.11-20
Ex.A, p.37

p.5, 11.28-35
Ex.B, p.38

Ex.C, p.40

Ex.A, p.37
Ex.B, p.38

Ex.A, p.37

Record
p.37, 11.6-9
p.37, 11.10-13

Appellant and three others - Abire, Awuah and Yaw Manu - had agreed to "form as company of making a chop bar and drinkables in the premises of No. K.O. 21/22 Antoa Road Kumasi as styled 'Coronation Bar'"; Clause 2 recites the payment of £610.15s.0d. by the Plaintiff as "a capital to the company for the business" and the remaining Clauses 3 and 4 recite the mutual agreement of the four to share profits and losses.

There is no mention whatsoever of the amount contributed towards the capital of the partnership by Abire, Awuah and Yaw Manu.

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Ex.B, p.38

The other agreement (Ex.B), dated the 1st June, 1954, recites: in Clause 1, the Plaintiff's agreement to purchase "all the properties" in the said business for £837.6s.0d.; in Clause 2, the Plaintiff's previous payment of £500 leaving a balance due of £337.6s.0d. which was to be paid, as to £500 by the end of July, 1954, and, as to the balance of £237.6s.0d., at the end of November, 1954: and, in Clause 3, of the institution of proceedings for the recovery of the whole of the balance remaining due if the Plaintiff defaulted in the payment of any instalment.

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Ex.C, p.40

p.13, 11.6-10

It was alleged during the hearing that, subsequently the Plaintiff did default in the payment of the said first instalment of £100 at the end of July, 1954, but that, nevertheless, he was able to pay the full amount of £337.6s.0d. on the 6th November, 1954 - over three weeks before it was due. A Receipt (Ex.C), dated the 5th November, 1954, was produced by the Plaintiff in support of this allegation. Notwithstanding this Receipt, proceedings were subsequently instituted (on the 11th November, 1954) by Awuah and Yaw Manu against the Plaintiff for the recovery of the said sum of £100. Later, the proceedings appear to have been discontinued after an explanation that Abire had received the money in question.

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pp. 6-8
p. 7, 11.6-7

12. Supporting the Plaintiff's case, Abire (the Respondent Company's defaulting debtor) said, contradicting the Plaintiff's testimony (see paragraph 10 hereof) that when, on joining the alleged partnership, the Plaintiff had paid £500 he was given a receipt. The receipt was not in evidence.

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The witness said that, later, his two partners and himself had agreed to sell the business to the Plaintiff for £837.6s.0d. which left a balance of £337.6s.0d. due from him. As to the payment of this balance, he said: "The amount of £337.6s.0d. was paid to me alone. The other partners were not present."

Record
p.7, 11.32-34

10 Answering the Court, the witness said: "We took inventory of the goods in the store. The letter-writer who prepared the agreement destroyed it." (The Plaintiff's testimony was that he had not been given an inventory of the goods he had bought - see paragraph 10 hereof).

p.7, 11.19-21

20 The witness admitted that he had bought iron sheets, cement, sugar, etc., from the Respondent Company to whom he owed the sum of £1,087.7s.7d. He denied that he had sold any of the goods he had on credit in the Bar or to the Plaintiff. He denied that he had sold goods in order to defraud the Company. He admitted that he had not informed the Company of his sub-lease to the Plaintiff. He admitted, also, that he had not informed the Company that his business was carried on in partnership with others.

p.7, 11.22-23

p.7, 11.25-40
p.8, 11.13-14
p.8, 11.4-5

30 As to the spirit licence, the witness said: "After we had sold the business to the Plaintiff we applied for a transfer of the business in the name of the Plaintiff. We were told to come in January." The application to which he referred was not in evidence.

p.7, 11.26-29

13. Supporting the Plaintiff's case, Ama Adade, mother of Awuah, the alleged partner, said: "I was present when the Plaintiff paid Abire and his partners monies for the business. Plaintiff first paid £500 He later paid £337.6s.0d. All were paid in my presence." (Abire's testimony was that when the last-mentioned sum was paid to him the others were not present, see the preceding paragraph 12).

p.8

40 Awuah (also known as Kwame Nkontire) said, inter alia, that he and Yaw Manu had contributed £300 towards the capital of the business and that Abire had contributed a similar amount. (Apart from this bare statement there was no evidence as to these contributions). The witness said that the goods

pp.12-13
p.12, 11.25-26
p.13, 11.24-28

Record

Abire had bought from the Respondent Company he (Abire) had sold to his own customers (and not, presumably, to those of the alleged partnership); and further, that he did not know that Abire was indebted to any firm.

pp. 11-12

p.11, 11.25-27

14. Also in support of the Plaintiff's case, Harrison Tuburu, Police Corporal, said that: "in January 1955" the Plaintiff had brought to him an application "for a transfer of a house in his name"; he (Tuburu) had visited the store and made a report; and that the Plaintiff's application had been marked and returned to him "to take to the Kumasi Municipal Council" who had enquired as to the Plaintiff's character. 10

The application itself was not in evidence and neither was Tuburu's report.

pp.13-14

p.14, 11.8-13

p.14, 11.24-26

p.14, 11.28-30

15. On behalf of the defence, Robert Christian Yeboah, the respondent Company's Chief Clerk, said, inter alia, that: on the occasion of the attachment of the goods in Abire's Store, Abire himself was not present but the Plaintiff was, having been sent for; the Plaintiff said nothing when the bailiff stated that he had come to take an inventory; he (Yeboah) had often seen Awuah and Yaw Manu (alleged to be Abire's partners) at the Bar and had believed them to be Abire's assistants; and that goods sold to Abire by the Respondent Company were, on Abire's instructions, delivered to his customers by the Company's lorry. 20

p.10, 11.14-18

16. During the trial, Counsel for the Respondent Company applied to the Court for an "Order to release the property attached under interim injunction pending the determination of the case." 30

The application was granted by Order of the Court (S.O. Quashie-Idun J.) dated the 11th October, 1955.

pp.15-16

17. By his Judgment, dated the 25th October, 1955, the learned Judge of the Divisional Court (Quashie-Idun J.) awarded the Plaintiff £669 for loss of profits, together with costs. 40

18. The learned Trial Judge who, in other and previous proceedings, had refused to grant the Plaintiff's application for release of the interim

attachment (see paragraphs 5 to 7 hereof) now, either overlooking or ignoring the provisions of 13 Elizabeth Cap.5, said:-

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13 Eliz.C.5.
Annexure

10 "I have carefully considered the evidence of the Plaintiff and of the other witnesses he has called to prove that he had bought the business before it was attached. I have considered the conduct of Abire in the whole transaction and I have come to the conclusion that whatever the conduct of Abire has been towards the Defendants, I accept the evidence that the Plaintiff bought the business and was an innocent purchaser for value."

p.15, 11.18-27

19. As to the spirit licence which, notwithstanding the alleged sale of the business to the Plaintiff remained in Abire's name, the learned Trial Judge said that he was satisfied that the Plaintiff had, after buying the business, made an application for the licence to be transferred into his own name but that the transfer was not made before the attachment.

p.15, 11.27-30

20. The learned Trial Judge was of opinion that the Respondent Company was not entitled to assume that Abire (to whom alone it had leased the premises upon which the business of the Coronation Bar and General Store was carried on and without any right to "assign under-let or part with the demised premises or any part thereof" and to whom alone it had granted a monthly credit for goods supplied) was the sole owner of the said business. In his view (which, it is respectfully submitted, it is difficult to follow):

p.16, 11.9-12
Ex.1, pp.33-34

30 (1) it must have been obvious to Counsel for the Company, after the attachment, the institution of the present suit and the leading of evidence of the Plaintiff, that the evidence of the sale could not be challenged, as indeed it had not been by the fact that the spirit licence was still in Abire's name; and (2) the present action not being in the nature of an application for ejectment the right (or otherwise) of Abire to sub-let the premises must be regarded as being "a different matter". And, further, on the subject of his previous decision in other proceedings not to set aside the interim attachment, it was his view that that decision did not preclude the institution of the present suit.

Ex.2, pp.35-36

p.15, 11.32-40

p.16, 11.13-17

p.16, 11.20-23

40 As the Plaintiff had not claimed special damages but had led evidence as to loss of profits, he was

p.16, 11.28-30

Records

entitled to be compensated only for the latter and this, in the learned Judge's opinion, did not amount to more than £669 which sum he awarded to the Plaintiff.

21. Against the said Judgment of the Divisional Court, Kumasi (S.O. Quashie-Idun J.) the Respondent Company appealed to the West African Court of Appeal, Gold Coast Session (now the Ghana Court of Appeal) on the several grounds which are printed on pages 17 to 20 of the Record. Among such grounds were the following:-

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p.17, 11.31-38

"1. The learned Judge failed to direct himself on the point that the Plaintiff's claim had once been brought before the learned Judge by way of a motion and affidavit upon the same set of facts as (were?) contained in his Statement of Claim, but was dismissed by him on the 5th day of February, 1955, without costs.

p.17, 1.39 to
p.18, 1.2

"2. The learned Judge failed to give due consideration to the question of collusion between the Plaintiff and Abire raised in the Statement of Defence as regards the alleged sale of the Coronation Bar

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p.18, 11.38-46

"5. The learned Judge did not seriously consider this vital point that if there was any sale at all as alleged by the Plaintiff, having regard to the general nature of the transaction between the Appellant and ... Abire, that sale was made merely to defraud... Abire's creditors, particularly the Appellants to whom he was already indebted.

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p.18, 1.47 to
p.19, 1.5

"6. The learned Judge erred in disallowing Appellant's application to tender in evidence the motion and affidavit filed by the Plaintiff to have the said Bar released from attachment which was dismissed."

pp.20-24
p.23, 1.33 to
p.24, 1.10

As to the last-mentioned ground of appeal it is conveniently stated here that the Respondent Company's application to the Court of Appeal to adduce, during the hearing of the appeal, evidence relating to the previous proceedings in which the Court had refused, (on the Plaintiff's application) to release the attachment was, on the 27th November, 1956, granted.

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22. By its Judgment and Order, dated the 28th November, 1956, the West African Court of Appeal, Gold Coast Session (now the Ghana Court of Appeal) allowed the appeal, with costs.

Record
pp.26-31

10 Delivering the main judgment of the Court, Coussey P. (with whom Korsah C.J. and Verity Ag.J.A. agreed) said that the question for decision was "whether the transaction evidenced by an alleged Agreement between Kwabina Abire, D.K. Awuah and Yaw Manu all of Kumasi of the first part and the Plaintiff - Respondent Kojo Asante of the second part - whereby the Plaintiff-Respondent purported to buy for £837.6s.0d. the stock-in-trade of the parties of the first part in the Coronation Spirit and Chop Bar was made to defraud Abire's creditors, the Defendants -Appellants, as they plead in paragraph 5 of the Statement of Defence." (See paragraph 9 hereof).

p.27, 11.15-25

20 Examining the Plaintiff's case, the learned President referred to the Agreement of the 5th April, 1954, (Ex.A.) which the Plaintiff said he had entered into with Abire, Awuah and Manu and which recited the payment by him of £610.15s.0d. as "a capital to the Company for the business."

p.27, 1.37

Ex.A, p.37

p.37, 11.12-13

The learned President said:-

30 "The contribution of the other parties is not stated in the Agreement, Exhibit 'A', although the agreement provides that profits should be shared between them Awuah says in evidence that he and Manu jointly contributed £300 while Abire contributed £300 as capital. If this is true it is strange that it is not so stated in Exhibit 'A'."

p.28, 11.1-8

23. The learned President drew further and particular attention to the following features of the case:-

- (1) The Plaintiff had stated that he was a sub-tenant of Abire to whom he paid "rents" - notwithstanding the covenant in the lease (granted by the Respondent Company to Abire) against any assignment or underletting.
- 40 (2) The two Agreements between the Plaintiff of the first part and Abire, Awuah and Yaw Manu of the second part, dated, respectively, the 5th April, 1954, and the 1st June, 1954, were not stamped

p.28, 11.32-39

p.28, 11.40-42

Record

until after their production in the suit.
(Under the first of these Agreements the Plaintiff is shown as having agreed to pay £610.15s.0d. as capital upon his joining the said three persons in business, and under the second he is shown as having agreed to the purchase of the interests of the said persons for £337.6s.0d.).

- p.28, 1.42 to p.29, 1.1 (3) "The Plaintiff did not take receipts for the sums of £500 and £110.15s.0d. which he says he paid on account." 10
- p.29, 11.1-2 (4) "He did not take an inventory of the goods he said he bought."
- p.29, 11.2-6 (5) "According to the law the spirit licence of the premises should have been taken out in the Plaintiff-Respondent's name on the 1st July, 1954, if he bought the business on the 1st June as he says. This was not done."
- p.29, 11.7-15 (6) "The Agreement Exhibit 'B' provides for the final payment of £237.6s.0d. at the end of November, 1954. The Plaintiff-Respondent who, apparently, had defaulted as to the instalment of £100 due at the end of July, 1954, was ready to pay the whole amount of £337.6s.0d. before the due date. He produces Exhibit 'C' signed by Kwabina Abire and dated 5th November for £837.6s.0d. in full payment of the cost of all the properties" 20
- Ex.C, p.40
- p.29, 11.22-30 "On the 11th November D.K. Awuah and Yaw Manu sued the Plaintiff-Respondent in the Kumasi Municipal Court for the £100 'being all the properties in the Coronation Spirit Chop Bar bought by Defendant and Defendant promised payment on instalment basis as per Agreement in hand.' But the Receipt Exhibit 'C' of the 5th November, 1954, purports to evidence that the £100 had been paid already." 30
- p.41, 11.14-18
24. Following his close scrutiny of the Plaintiff's documentary evidence, the learned President's conclusion was as follows:-
- p.29, 11.31-44 "A careful examination of the documents referred to and of the receipts for rents produced by the Plaintiff-Respondent satisfies me, without going into further details, that these" 40

are all fictitious documents and badges of the fraud designed to shield the Debtor Abire who in fact owned the goods and to defeat his creditors of whom the Defendant Company were pressing their claim in December, 1954, Abire being perfectly aware long before that date that proceedings against him were imminent.

10 "If the Defendants had expressly pleaded the Statute, 13 Eliz. Cap.5 the issue in the Court below might have been clearer but I think it was sufficiently raised by the Statement of Defence."

25. The learned President referred to the terms of the Preamble of 13 Elizabeth Cap.5 which statute, he said, applied to the Gold Coast. Continuing he said :-

20 "Unfortunately the learned Trial Judge did not consider this aspect of the case. He came to the conclusion that 'whatever the conduct of Abire had been towards the Defendants-Appellants he accepted the evidence that the Plaintiff-Respondent bought the business and was an innocent purchaser for value.' I find myself in disagreement with this finding. In failing to stamp the Agreements, Exhibit 'A' and 'B', assuming that they were made on the dates they bear, which I do not believe, the Plaintiff was keeping secret the purchase of the business. Exhibit 'C' was clearly prepared and was
30 accepted by the Plaintiff in anticipation of a claim against and seizure of Abire's goods, while the action in the Municipal Court was designed to cloak the fraud with a semblance of circumstantial truth and was badly timed."

p.30, 11.10-26

26. In conclusion, the learned President said:-

40 "I think the transaction set up by the Plaintiff is entirely fictitious to his knowledge and, if it is not fictitious, that it was embarked upon with intent to delay and hinder the creditors of Abire and had that effect and that it is therefore clearly fraudulent and void under the Statute of Elizabeth "(13 Elizabeth Cap.5)" and with the principle of Twyne's Case (1601) 3 Co.Rep.80b".

p.30, 11.36-43

Record

pp. 31-32

27. Against the said Judgment and Order of the Appellate Court this appeal to Her Majesty in Council is now preferred, final leave to appeal having been granted by an Order of the Court of Appeal, dated the 21st April, 1958.

The Respondent Company respectfully submits that the appeal should be dismissed, with costs throughout, for the following among other

R E A S O N S

1. BECAUSE, on the evidence, it is clear that the transaction, or transactions, set up by the Appellant in support of his case were fraudulent and void within the Statute 13 Elizabeth Cap.5. 10
2. BECAUSE, on the evidence, it is clear that the said transactions were either fictitious or, to the knowledge of the Appellant, entered into by the defaulting debtor Abire with intent to delay, hinder, or defraud his creditors, among them, the Respondent Company. 20
3. BECAUSE, on the evidence, it is clear that if they were not fictitious the said transactions were entered into as the result of collusion between the Appellant and his two alleged partners on the one side and Abire on the other.
4. BECAUSE the learned Trial Judge was wrong to expressly exclude from his consideration the strong probability that the transactions were fraudulent and void as between Abire and the Respondent Company and within the said Statute 13 Elizabeth Cap.5. 30
5. BECAUSE the finding of the learned Trial Judge that the Plaintiff (who was, admittedly, aware of Abire's indebtedness to the Respondent Company) was an innocent purchaser for value was contrary to any reasonable appreciation of the evidence in the case.
6. BECAUSE, in the circumstances, the learned Trial Judge was wrong to ignore, and depart from, his previous decision that the Appellant had shown no grounds for a release of the 40

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attachment.

7. BECAUSE, for reasons stated therein, the Judgment of the Court of Appeal was right.

DINGLE FOOT.

R.K. HANDOO.

A N N E X U R E13 ELIZABETH CAP. 5An Act against Fraudulent Deeds, Gifts,
Alienations, etc.

PREAMBLE "For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well as lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore: which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without which no commonwealth or civil society can be maintained or continued. 10 20

" II. Be it therefore declared, ordained and enacted, that all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution at any time had or made since the beginning of the Queen's Majesty's reign that now is, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, by such guileful, covinous or fraudulent devices and practices, as is aforesaid, are, shall or might be in anyways disturbed, hindered, delayed or defrauded) 30 40

to be clearly and utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

10 VI. Provided also, that this Act, or anything therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate or interest is or shall be upon good consideration and bona fide lawfully conveyed or assured to any person or persons, or bodies politick or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid; anything before mentioned to the contrary hereof notwithstanding."

No. 33 of 1959

IN THE PRIVY COUNCIL

ON APPEAL FROM THE GHANA COURT OF
APPEAL

B E T W E E N :

KOJO ASANTE
(Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE DE
L'AFRIQUE OCCIDENTALE
(Defendant) Respondent

CASE FOR THE RESPONDENT

T. L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.