

G. O. Laja - - - - - Appellant

v.

M. A. Okupe - - - - - Respondent

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 23RD JULY 1963

Present at the Hearing:

VISCOUNT RADCLIFFE.

LORD MORRIS OF BORTH-Y-GEST.

LORD GUEST.

LORD PEARCE.

SIR KENNETH GRESSON.

[*Delivered by* SIR KENNETH GRESSON]

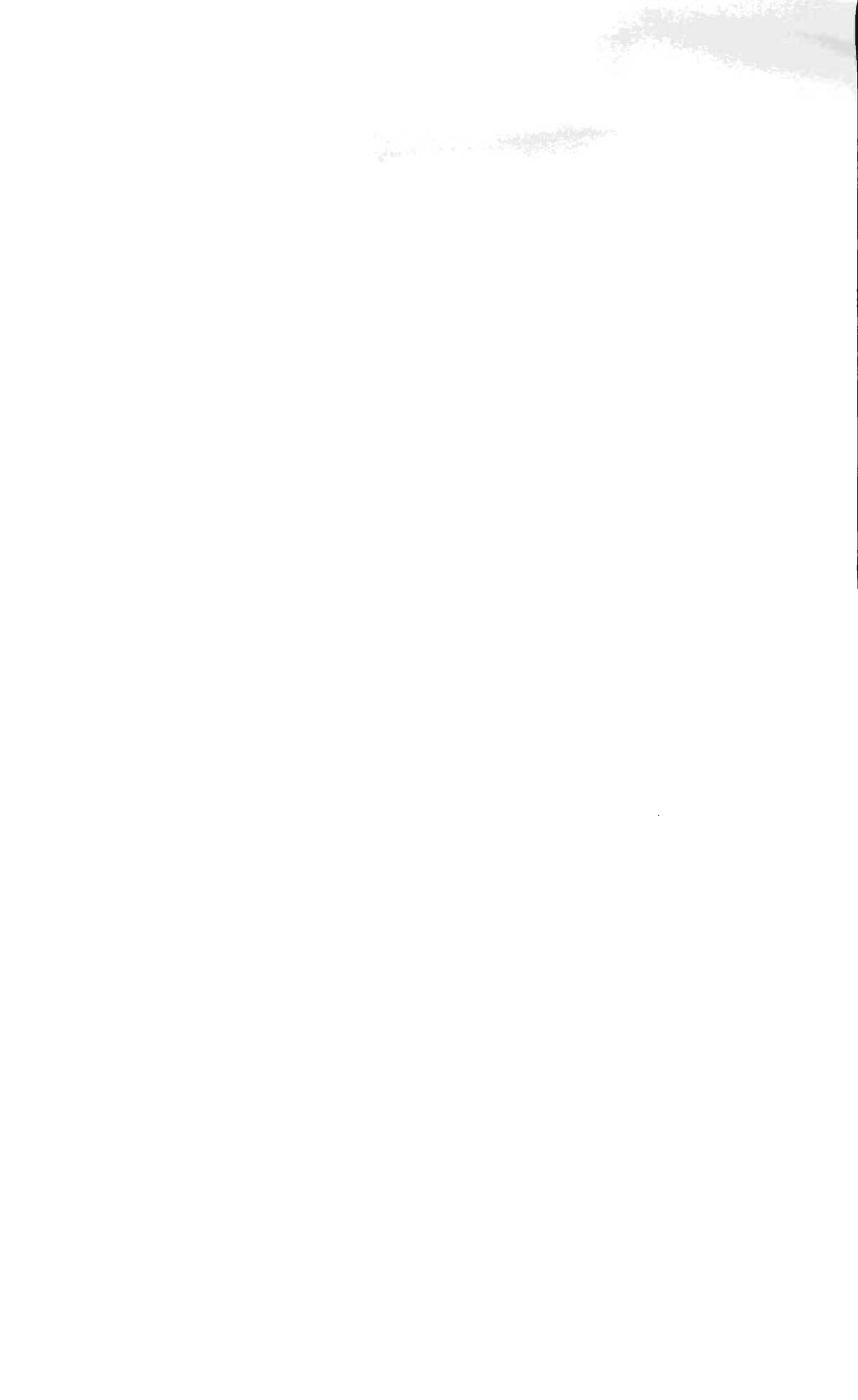
This appeal is from a judgment of the Federal Supreme Court of Nigeria allowing an appeal from the judgment of the High Court of Lagos in which judgment had been given in favour of the defendant in an action in which the respondent had claimed from the appellant an amount of £10,047 5s. 0d. as money paid by the respondent to the appellant in regard to which it was alleged there had been a total failure of consideration.

The action arose out of an agreement made by the respondent with the appellant for the purchase by the respondent from the appellant of ten thousand tons of logs delivery to be made to one Ligali—a business associate and friend of the appellant. The respondent testified that Ligali was present when the contract of purchase was entered into, and that Ligali agreed to export the logs on respondent's behalf to Europe, and having sold them there, to account to respondent for the proceeds. The appellant informed the respondent from time to time that deliveries had been made whereupon the respondent made payments to the appellant, altogether five in number to a total amount of £10,047 5s. 0d. In fact no logs ever had been delivered as the respondent later ascertained. These facts were not in dispute, nor that the respondent had received from Ligali an amount of £62,000 but it was not clear when, or upon what basis, the amount had been paid. The only evidence given in the action was that of the plaintiff (respondent) and it is upon his evidence and such inferences as can properly be drawn therefrom that the validity of the respondent's claim can be assessed.

The Statement of Claim comprised chiefly a recital of the facts related save that no reference was made therein to the payment of £62,000 by Ligali to the respondent. The Statement of Defence was for the most part a general denial save that it admitted that the appellant did not deliver any logs at all. In the High Court of Lagos de Lestang C.J. held that there had not been a total failure of consideration in that the respondent had received from Ligali £62,000 "purporting to be the proceeds of the sale of the logs or some of them" and this notwithstanding there being no evidence "where the money came from". The Federal Supreme Court of Nigeria reversed this decision holding, upon an examination of the evidence, that the £62,000 paid by Ligali to the respondent concerned the obligations of Ligali to the respondent and had no relevance to the appellant's obligations to the respondent.

The evidence was very scanty indeed consisting as it did only of the evidence of the respondent together with two letters written by him to Ligali in April 1957 demanding an account in respect of the sale of the logs. At the time he wrote these letters the respondent believed that delivery of the logs had been made to Ligali.

In argument before their Lordships it was contended by counsel for the appellant that inasmuch as Ligali was present when appellant and respondent made the contract for the sale and purchase of logs he was involved in such a way as to constitute a kind of tripartite agreement, and that accordingly any payments made by Ligali to the respondent would operate to negative there having been a total failure of consideration. In the opinion of their Lordships this contention cannot be upheld even though the respondent did say in the course of his evidence: "Out of the transaction concerning the 10,000 tons of logs I have received from Ligali £62,000 approximately". It was no doubt this statement which led to de Lestang C.J. in the High Court of Lagos holding that the respondent "had received and still holds £62,000 as being the alleged proceeds of the resale of those logs". But inasmuch as "those logs" had in fact never been delivered and could not therefore have been sold, this finding cannot be supported upon the evidence considering it in its entirety. In their Lordships' opinion the Federal Supreme Court of Nigeria rightly held that the payment of £62,000 concerned the obligations of Ligali to the respondent and that any discharge by Ligali of his obligations to the respondent could not avail the appellant; nor indeed was there any such allegation in the Statement of Defence of the appellant. In their Lordships' opinion the judgment of the Federal Supreme Court allowing the appeal and entering judgment for the respondent for £10,047 5s. 0d. with costs was a proper judgment upon the evidence. Accordingly their Lordships humbly advise Her Majesty to dismiss the appeal. The appellant must pay the respondent's costs of the appeal.



In the Privy Council

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v.

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DELIVERED BY SIR KENNETH GRESSON

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