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Judgment
(39), 1964

IN THE PRIVY COUNCIL

No. 28 of 1963

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA.

B E T W E E N

EMMANUEL AYODEJI AJAYI
trading under the name and
style of the Colony Carrier
Company (Defendant) Appellant

- a n d -

R.T. BRISCOE (NIGERIA) LIMITED
(Plaintiffs) Respondents

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78651

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

WILKINSON, KIMBERS & STADDON,
34, NICHOLAS LANE,
LOMBARD STREET,
LONDON, E.C.4.

SOLICITORS FOR THE RESPONDENTS

IN THE PRIVY COUNCIL

No. 28 of 1963

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

B E T W E E N

EMMANUEL AYODEJI AJAYI
trading under the name and
style of the Colony Carrier
Company (Defendant) Appellant

- and -

R.T. BRISCOE (NIGERIA) LIMITED
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 28 of 1963

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

B E T W E E N

EMMANUEL AYODEJI AJAYI
trading under the name and
style of the Colony Carrier
Company (Defendant)
Appellant

10

- and -

R.T. BRISCOE (NIGERIA)
LIMITED (Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

No. 1

IN THE HIGH COURT OF LAGOS

In the High Court

CIVIL SUMMONS

No. 1

Suit No.LD/319/1959

20 Between R.T. Briscoe (Nigeria) Ltd....Plaintiffs

Civil Summons
2nd November 1959

and

E.A. Ajayi (Trading under the name of Colony
Carrier Company Defendants.

To Emmanuel Ayodeji Ajayi of 52 Campbell Street
Lagos or 160 Clifford Street Ebute-Metta.

30 You are hereby commanded in Her Majesty's
name to attend this court at High Court Lagos on
Monday the 30th day of November, 1959, at 9
o'clock in the forenoon to answer a suit by
R.T. Briscoe (Nigeria) Ltd. of c/o T.O.S.
Benson & Co. 17 Custom Street, Lagos against
you.

In the High Court

No. 1

Civil Summons
2nd November
1959 (Continued)

The Plaintiff's claim against the Defendant is for the sum of £11,304: 16s (Eleven thousand, three hundred and four pounds sixteen shillings) being amount standing against the defendant's debit in the Plaintiffs' books as per particulars attached.

This debit is made up of the Costs of Motor Vehicles sold and delivered to the Defendant on Hire-purchase basis on signed and executed Hire-purchase Agreements by the Defendant, the Covenants and terms of which he the defendant has failed to observe and comply with.

10

The Plaintiffs have repeatedly requested the defendant to effect settlement of the amount but the defendant refused and still refuses to do so.

Issued at Lagos the 2nd day of November 1959.

(Sgd.) A.R. Dickson
J U D G E

20

No. 2

No. 2

Order for Pleadings

Order for Pleadings 30th November 1959

IN THE HIGH COURT OF LAGOS
MONDAY THE 30TH DAY OF NOVEMBER, 1959
BEFORE THE HONOURABLE
MR. JUSTICE BELLAMY
J U D G E

Suit No.LD/319/59

R.T. Briscoe Ltd. Plaintiff
v.
Emmanuel A. Ajayi ,... Defendant

30

ALOKALARO holding B.S. Benson's brief, for plaintiffs.

A.K.L. MAKANJU holding Mrs. Adebisi's brief for Defendant

Alokalaro: I ask for order for pleasings, 30 days for Statement of Claim.

In the High Court

MAKANJU: 30 days for Statement of Defence.

No. 2

COURT:

It is ordered:

Order for Pleadings 30th November 1959
(Continued)

10

1. That the plaintiffs do file and serve on the defendant's solicitor their Statement of Claim within 30 days from this date;
2. That the defendant do file and serve on the plaintiffs' Solicitors his Statement of Defence within 30 days thereafter;
3. That the costs of today be costs in the cause.

(Sgd.) Alexander Bellamy
30 Nov. 59.

No. 3

Statement of Claim

No. 3

IN THE HIGH COURT OF LAGOS.

20

Suit No.LD/319/59

Statement of Claim 28th December 1959

BETWEEN:

R.T. BRISCOE (NIGERIA) LIMITED. PLAINTIFFS

AND

EMMANUEL AYODEJI AJAYI DEFENDANT

STATEMENT OF CLAIM

30

1. The Plaintiffs are a Company duly Registered and Incorporated in Nigeria;
2. The Defendant is the Proprietor of the Colony Carrier Company of 162, Clifford Street, Yaba;

In the High Court

No. 3

Statement of
Claim 28th
December 1959
(Continued)

3. By two hire Purchase Agreements made in writing and dated the 1st day of June, 1956 and the 31st day of July, 1956 respectively the Plaintiffs as the sole absolute and beneficial Owner of the eleven motor Vehicles described in the First Schedule of each of the said two Agreements, agreed to let on hire to the Defendant the said Vehicles and the Defendant agreed to take on hire the said vehicles from the said Plaintiffs at the rent contained in those agreements, which rent is hereinafter stated; 10
4. In compliance with those two Agreements the Plaintiffs in June 1956 and July, 1956 delivered to the Defendant on hire eleven Mark 5 S/10 Seddon Tippers valued Twenty-four Thousands, five hundred and eleven Pounds, six shillings and Eight Pence (£24,511:6:8d); 20
5. On the execution of the said two Agreements the Defendant paid to the Plaintiffs deposits of One Thousand and seventy one Pounds, Two shillings and Six Pence (£1,071:2:6d) and Three Thousand Pounds (£3000) respectively in respect of the said two Agreements dated 1st June, 1956 and 31st July 1956 as consideration for the Option to Purchase the eleven vehicles on the terms of the said Hire Purchase Agreements; 30
6. By paragraph three of each of the above-mentioned Agreements the defendant promised that he will punctually pay to the Plaintiffs the following sums (as rents) And on the following respective dates
- (A) £567:14:1d on the 1st July 1956, 40
£567:14:1d on the 1st August, 1956
£567:14:0d on the 1st September, 1956
£567:14:0d on the 1st October, 1956
£567:14:0d on the 1st November, 1956
£567:14:0d on the 1st December, 1956

respect of the Agreement dated 1st day of June, 1956.

In the High Court

AND (B) £3000 on the 31st day of August 1956,
£3000 on the 30th day of September, 1956,
£3000 on the 30th day of October, 1956;
10 £3000 on the 30th day of November 1956,
£3000 on the 30th day of December, 1956
£2034 on the 30th day of January, 1957 in

No. 3

Statement of Claim 28th December 1959
(Continued)

respect of the Agreement dated 31st day of July 1956.

7. The position of the Defendant's Account with the Plaintiffs in respect of the above-mentioned two Agreements is as per
20 the Statement of Account herewith attached which shows a debit balance of Eleven Thousand, three hundred and four Pounds and Sixteen shillings (£11,304:16s);
8. The Plaintiffs aver that there has been a breach by the Defendant of Paragraph three of each of the said two Agreements;
9. The Plaintiffs have made repeated demands from the Defendant for the said sum of
30 Eleven Thousand, three hundred and four Pounds and Sixteen shillings (£11,304:16s) but the Defendant has failed or neglected to comply with the demands;
10. The Plaintiffs claim the sum of Eleven Thousand, three hundred and four Pounds and Sixteen shillings (£11,304:16s) as per writ of Summons.

DATED AT LAGOS THIS 28TH DAY OF DECEMBER, 1959.

(Sgd.) T.O. Shobowale Benson
& Co. for
T.C. SHOBOWALE BENSON & CO.,
PLAINTIFFS' SOLICITORS.

Suit No. LD/319359

R.T. BRISCOE (NIGERIA) LIMITED
Private Mail Bag 2104,
Lagos

Messrs. Colony Carrier Co.,
162, Clifford Street,
Yaba.

ACCOUNTS DEPARTMENT,
CREEK ROAD, APAPA,
TEL: 55567
55603

Date	Voucher Number	Description	Debit	Credit	Balance
26/5/56					
1/6/56	By Deposit 197 Two Mark	Cash 5/ S/10 Seddon		1071. 2. 6	1071. 2. 6 Cr.
6/7/56		Cash Tippers	4477. 6. 8	567. 14. 1	3406. 4. 2 Dr.
31/7/56		Cash		3000. - -	161. 9. 11 Cr.
1/8/56	268: Nine Mark	5 S/10 Seddon Tippers.	20034. - -	567. 14. 1	19872. 10. 1 Dr.
16/8/56		Cash		3000. - -	19304. 16. -
4/9/56		Cash		1000. - -	16304. 16. -
11/10/56		Cash		1500. - -	15304. 16. -
12/11/56		Cash		1500. - -	13804. 16. -
10/12/56		Cash		1500. - -	12304. 16. -
20/3/57		Cash		1000. - -	11304. 16. -

The last amount
this column is due.

CERTIFIED TRUE COPY

R E G I S T R A R

PLAINTIFFS' ADDRESS:- c/o Their Solicitors,
17, Custom Street,
Lagos.

In the High
Court

No. 3

DEFENDANT'S ADDRESS:- c/o His Solicitor,
Mrs. A. Adebisi,
Alli Street,
Lagos.

Statement of
Claim 28th
December 1959
(Continued)

No. 4

STATEMENT OF DEFENCE AND COUNTERCLAIM

No. 4

10

IN THE HIGH COURT OF LAGOS

Statement of
Defence and
Counterclaim

Suit No.LD/319/59:
- February 1960

Between:

R.T. Briscoe (Nigeria) Ltd. .. Plaintiffs

and

Emmanuel Ayodeji Ajayi Defendant.

STATEMENT OF DEFENCE

1. Save and except as herein expressly admitted the defendant denies each and every allegation of fact contained in the plaintiffs' Statement of Claim as if the same were set out seriatim specifically traversed.
2. The defendant is not in a position to admit paragraph one of the Statement of Claim and puts the plaintiff to a very strict proof thereof.
3. The defendant denies the allegation contained in of paragraph 5 of the Statement of Claim.
- 30 4. The defendant is a Transporter and Managing Director of the Colony Carrier Company which was registered in the year 1956.

In the High Court

No. 4

Statement of Defence and Counterclaim - February 1960 (Continued)

5. The defendant carries gravels, sands, etc., from Abeokuta Ibadan, etc., to Lagos. The defendant is visited always by the Representatives/Agents of different Motor Companies to advertise the sales of their vehicles.
6. The defendant was visited by one Mr. D.L. Payne who introduced himself as the Managing Director of the Plaintiffs' Company.
7. The defendant avers that Mr. D.L. Payne who was anxious to introduce Seddon Lorries into Nigeria came to the defendant to advertise their Seddon Lorries. 10
8. This 'Seddon Lorry' was then new to Nigeria market.
9. By a letter dated the 7th day of April, 1956, the Plaintiffs represented to the defendant that they would own a garage at once and there would be spare parts for repairs. 20
10. Mr. D.L. Payne falsely represented to the defendant the durability of the vehicle, of their maintenance facilities and spare parts for repairs and that a European Engineer would be in charge of their garage which they were to take over from B.E.W.A.C. at Commercial Avenue, Yaba.
11. The defendant avers that he was induced by the misrepresentations of Mr. D.L. Payne to enter into the Hire Purchase Agreement dated June 1956 and a deposit of £1,071:2:6d was paid down by the defendant. 30
12. Mr. D.L. Payne later came back to the defendant and asked for his help by giving him 9 more lorries in order to afford the plaintiffs opportunity to make their vehicles known in Nigerian Market.
13. Mr. D.L. Payne said that the defendant being a big business man and if he had several Seddon vehicles in use the other 40

African business men will come to purchase from the plaintiffs.

In the High Court

No. 4

Statement of
Defence and
Counterclaim
- February 1960
(Continued)

- 10 14. Mr. D.L. Payne brought one European to introduce to the defendant as their Engineer and that two others were to come from Ghana and Europe and also some African Engineers would be engaged by plaintiffs and that the B.E.W.A.C's garage at the Commercial Avenue, Yaba, would be a very big concern where repairs and maintenance of the vehicles take place.
15. In order to induce the defendant to purchase the fleet of Seddon lorries he was persuaded by Mr. D.L. Payne to take the 9 lorries without paying down a deposit excepting Licenee and Insurance fees for them.
- 20 16. The defendant was so induced to make the second agreement which was undated and by consent he also gave the plaintiffs a post dated cheque for 1st instalment.
17. The eleven lorries started to ply Abeokuta to Lagos.
18. The lorries started to give various troubles within a short period.
- 30 19. The defendant complained to the Plaintiffs in writing that there were no spare parts for sale and they could not repair, maintain or service the 11 lorries because the plaintiffs had no garage.
20. The defendant suffered great loss in his business.
21. The Plaintiffs later brought one Mr. Brown to the country as an Engineer to work in their Garage.
22. This Mr. Brown the plaintiffs later found out that he was not an Engineer but a Plumber.

In the High Court

No. 4

Statement of Defence and Counterclaim - February 1960 (Continued)

23. The Plaintiffs brought 2 of their Directors from Overseas to the defendant's office for introduction and told them all the faults and troubles encountered in respect of their Seddon Lorries.
24. The 2 Directors promised the defendant to modify certain parts in their new models and also to send parts for the repairs of those already purchased, and the Directors did not fulfil such promise. 10
25. The plaintiffs brought one Mr. Edward from the North as an Engineer to repair Seddon Vehicles and he could not repair any of the eleven vehicles.
26. The plaintiffs' garage was later completed at Apapa and by then all the 11 vehicles were out of order, 8 could not pass Road Worthiness (because of their bad condition and were sent to the plaintiffs' garage and the other 3 that could not be operated are lying in the defendant's garage with the instructions that the plaintiffs should tow them away. 20
27. The defendant avers that because of the disappointment given by the bad condition of the 11 motor vehicles he suffered a great loss as the contracts given him by the Lagos Town Council and other various firms were withdrawn and he is now in debt.
28. The defendant paid the plaintiffs total sum of £16,000. 30
29. The defendant avers that he was induced by fraud and misrepresentations of Mr. Payne to make the alleged contracts and within a reasonable time after he had notice the misrepresentations and before he had received any benefit under the said agreement the plaintiffs were informed of the troubles he had with the fleet of Seddon Tippers and by the plaintiffs' letter dated 22nd July, 1957, the defendant was asked to withhold the instalments due on 40

the Seddon Tippers as long as they are withdrawn from the road.

In the High Court

No. 4

Statement of Defence and Counterclaim - February 1960
(Continued)

30. The defendant avers that the fleet of Tippers were not on the road on the receipt of this letter and ever since they have not been on the road. (8 are with the plaintiffs and 3 lying in the defendant's garage).

10 31. The defendant avers that the misrepresentations made by Mr. D.L. Payne were false to his own knowledge in these respects:-

(1) He knew that the plaintiffs at the time of the sale had no spare parts;

20 (2) No garage where repairs could be made and no qualified Engineers to repair the fleet of Tippers; all that he did was to introduce the Seddon Tippers into the market at the expense of the defendant.

The plaintiffs wilfully and knowingly concealed the above facts from the defendant.

COUNTER-CLAIM:

32. The defendant repeats paragraphs 1 - 31 both inclusive of the defence.

30 33. In the alternative the defendant says the consideration for which he paid the said sum of £16,000 wholly failed and he seeks to recover the same as money had and received by the plaintiffs to the use of the defendant.

The defendant claims:-

1. That the contract between himself and the plaintiffs' Company may be rescinded and declared Null and Void.

2. That the Register of the plaintiffs Company may be rectified by the removal of the defendant's name thereon.

In the High Court

No. 4

Statement of Defence and Counterclaim - February 1960 (Continued)

3. The return of the said sum of £16,000 and interest thereon.

4. Further or in the alternative damages.

DATED at Lagos thisday of February, 1960.

(Sgd.) (Mrs.) A.A. Adebisi
SOLICITOR FOR THE DEFENDANT.

Plaintiffs' Address:-

c/o Their Solicitors,
17, Custom Street, Lagos.

Defendant's Address:-

c/o His Solicitor,
17, Alli Street, Lagos.

10

No. 5

Defence to Counterclaim
19th April
1960

No. 5

DEFENCE TO COUNTERCLAIM
IN THE HIGH COURT OF LAGOS

SUIT NO. LD/319/59:

Filed at 9.15 a.m. 22/4

BETWEEN:

R.T. Briscoe (Nigeria) Ltd. Plaintiffs

Emmanuel Ayodeji Ajayi Defendant.

20

Save and except as herein expressly admitted the Plaintiffs deny each and every allegation of fact contained in the Defendant's Counter-Claim as if the same were set out seriatim and specifically traversed.

1. That the Defendant is not entitled to the sum of £16,000 claimed by him as in paragraph 33 of the Statement of Defence/Counterclaim;

2. The Plaintiffs deny that the Defendant paid to them the sum of £16,000;
3. The Plaintiffs aver that the total sum of money paid by the Defendant to the Plaintiffs is the sum of £13,206:10:8d;
4. The Plaintiffs aver that the sum of £13,206 paid by the Defendant was in consideration of eleven Seddon Tippers of the Plaintiffs delivered to the Defendant under the terms of the hire-purchase agreement alleged in paragraph 3 of the Statement of Claim;
5. The Plaintiffs will contend at the trial that the contract between the Defendant and themselves is valid and that Defendant is not entitled to have it rescinded or declared null and void;
6. The Plaintiffs deny knowledge of any fraudulent representation made to the Defendant by Mr. D.L. Payne mentioned in the Statement of Defence;
7. The Plaintiffs deny that they ever procured or authorised the said Mr. D.L. Payne to make a fraudulent representation on their behalf to the Defendant or to anybody;
8. The Plaintiffs deny knowledge that the Defendant was induced by fraud and misrepresentation on the part of Mr. D.L. Payne to execute the said hire-purchase agreement or any contract.

In the High Court

No. 5

Defence to Counterclaim
19th April 1960
(Continued)

Dated this 19th day of April, 1960.

(Sgd.) T.O. Shobawale Benson & Co.
T.O. SHOLOWALE BENSON & CO.,
PLAINTIFF'S SOLICITORS.

Plaintiff's Address:- c/o Their Solicitor,
17, Custom Street, Lagos.

Defendant's Address:- c/o His Solicitor Mrs. A.
Adebiyi, 17 Alli Street,
Lagos, Nigeria.

In the High
Court

No. 6

PROCEEDINGS

No. 6

Wednesday the 8th day of June, 1960.

Proceedings 8th
June, 1960

Suit No. LD/319/59

BENSON for plaintiffs.

BICKESTETH for Mrs. Adebisi for defence.

BENSON Not ready to go on; Case was fixed for
yesterday; hear it tomorrow;

MRS. ADEBIYI Tomorrow will be inconvenient;

To October 25, 1960.
Costs to the defendant £10:10/-

10

(Sgd.) Charles Onyeama
J.
June 8, 1960.

Tuesday the 25th day of October, 1960

BENSON for plaintiffs

MRS. ADEBIYI for defendant:

BENSON: I apply to amend the penultimate line
of paragraph 6 of the Statement of claim by
deleting "1959" after December and inserting
"1956" in its place. Also paragraph 4 of the
defence to the Counterclaim by adding 10/8
after £13,206.

20

MRS. ADEBIYI: I do not oppose the application
terms.

ORDER: Statement of claim and the defence to
the counterclaim amended as prayed: Costs
£3: 3/- to the defendant in any event.

BENSON Opens; Hire purchase agreements; default
in payment; paragraph 3 of the agreement.

PLAINTIFFS' EVIDENCE

No. 7

Klaus Eric Beyer

In the High Court

Plaintiffs' Evidence

No. 7

Klaus Eric Beyer Examination

10 CALLS: FIRST WITNESS: Sworn on Bible; States English: My name KLAUS ERIC BEYER: GRAM-HANSSEU: Chief Accountant of R.T. Briscoe (Nigeria) Ltd; residing 6 Lauder Close, Apapa: I have been with the plaintiffs since March 1957; The Company was formerly R.T. Briscoe Ltd. the name of the Company was changed to R.T. Briscoe (Nigeria) Ltd; I produce the certificate of incorporation of the new Company; admitted and marked Exhibit "1"; before the company came to establish in Nigeria its place of business was in Ghana but we had a Nigerian Agent D.L. Payne (Nigeria) Ltd., the company dealt in Seddon lorries and accessories through its agents; When we came to Nigeria we took over the business ourselves 20 from our Agent; the defendant was one of the customers served by D.L. Payne (Nigeria) Ltd, the defendant was then carrying on business as Colony Carrier Company, he had an outstanding account with us; I produce two Hire Purchase Agreements entered into between the defendant and us; admitted and marked Exhibit "2" and Exhibit "3"; the defendant took in all eleven tipper lorries on hire purchase;

30 BENSON Calls for Original debit notes issued to defendant; Notice served.

MRS. Adebisi We cannot lay hands on the Originals; We admit receipt and admit the Copies shown to us.

40 WITNESS These copies are copies of Debit notes sent to the defendant in respect of the lorries he took; admitted and marked Exhibit "4" and Exhibit "5"; these debit notes refer to the lorries covered by the Hire purchase agreements; there was a total of £24,511:6:8d due on the lorries this sum has not been fully paid; there is an outstanding balance of £11,304:16:-d due from the defendant on the agreements; We sent monthly statements of account to the defendant;

In the High Court

Plaintiffs' Evidence

No. 7

Klaus Eric Beyer Examination (Continued)

the whole amount due should have been paid off by January 30, 1957; We demanded payment from the defendant several times; About July 1957 we received complaints from the defendant about the lorries; I produce the letter of complaint; admitted and marked Exhibit "6"; We carried out repairs to the defendant's lorries; We asked the defendant to remove the lorries after repairs but he failed to do so; Eight lorries were sent in for repairs; We sold the lorries to cover the cost of repairs; We have a garage in Apapa; before we built the garage we had an Engineer who carried out repairs in our yard; I know Mr. Brown; he was employed by D.L. Payne and not by us;

10

Cross-Examination

Cross-examined by Mrs. Adebisi: D.L. Payne Ltd. were our sole agent in Nigeria; he was acting on our behalf; When the agreements were signed; these two documents shown to me appear to be correct copies of Exhibit 2 and 3; Admitted and marked Exhibit "2A" and Exhibit "3A" Exhibit 3A is not dated nor is the date of payment inserted in page six; I believe Mr. Payne of D.L. Payne is in the Country; I know Feyisitan; our storekeeper; he signed this letter shown to me; admitted and marked Exhibit "7" our garage was completed in November 1957; I do not know Roger of D.L. Payne's office; I believe this letter shown to me came from D.L. Payne to the defendant; Admitted and marked Exhibit "8"; I know Mr. Heidemann; he and I went to the defendant's office together; Heidemann wrote this letter; he was manager of the plaintiff company; admitted and marked Exhibit "9"; Exhibit "6" was a reply to Exhibit "9"; Mr. Heidemann is at present in Denmark; at the time Heidemann's letter was written we had no garage; D.L. Payne had a garage; I saw the garage when I came to Nigeria; We received this letter from the defendant; admitted and marked Exhibit "10"; this letter was also written to us by the defendant; admitted and marked Exhibit "11"; the motor installed in the lorry referred to in Exhibit 11 was manufactured by Perkins Ltd. and so we sent a copy of Exhibit 11 to Arab Brothers the Local Agents or Perkins Ltd; Seddon lorries were first introduced into Nigeria in 1954; We introduced them through our then Nigerian Agent El-Khalil;

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We received this letter of the 12th July 1957; Admitted and marked Exhibit "12" Spare parts were available to the defendant but he would not take them; Heidemann replied Exhibit "12" on 22nd July 1957; I know Leigh; he was the defendant's Engineer;

In the High Court

Plaintiffs' Evidence

No. 7

Klaus Eric Beyer
Cross-Examination
(Continued)

10 MRS. ADEBIYI CALLS for letter from defendant's solicitor to plaintiffs' solicitors; produced by Benson; put in evidence; admitted and marked Exhibit "13"; We had £30,000 worth of spare parts; Mr. Edward was brought down from the Northern Region; he is our engineer; Mr. Brown was employed by D.L. Payne; The Seddon lorries repaired for the defendant were sold; four are still running; two were sold as spare parts; We wrote to the defendant to inform him we were selling the lorries; the defendant and we did not agree on a valuer; We got about £3600 on the sale of the lorries; this letter shown to me was a Copy of a letter to Arab Brothers; We sent the copy to the defendant; Admitted and marked Exhibit "14";

Re-examined by Benson: No questions.

Case for plaintiffs.
To October 26, 1960.
(Sgd.) Charles Onyeama
J.
October 25, 1960.

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DEFENDANT'S EVIDENCE

Wednesday the 26th day of October, 1960

Parties present:

Counsel as before

Defendant's Evidence

26th October 1960

In the High Court

No. 8

Defendant's Evidence

EMMANUEL AYODEJI AJAYI

No. 8

MRS. ADEBIYI CALLS:

Emmanuel Ayodeji Ajayi Examination

DEFENDANT: Sworn on Bible, examined by Mrs. Adebisi; States in English; My name is EMMANUEL AYODEJI AJAYI; residing 52 Campbell Street, Lagos, a Company director; I know the plaintiff Company; they came to my office to advertise their Seddon lorries; D.L. Payne came to my office; he was the plaintiffs' Agent; My Company deals in transport business; We carry gravel and granite from Abeokuta to Lagos; We supply building Materials to building contractors; D.L. Payne invited me to buy Seddon lorries; he said they were good lorries; I already had Bedford lorries; I was asked to come to his office and see the lorries; I then had about sixteen Bedford lorries; I went to inspect the Seddon lorries; I agreed to buy the lorries but wanted to know if there were repair facilities; he said they would take over B.M.W.A.C. garage and instal a European engineer there at once; the garage is in Commercial Avenue, Yaba; I asked about spare parts for Seddon lorries; he said they had spare parts "inquantum"; When I heard that these facilities were going to be available I decided to give the lorries a try; I first took two lorries; D.L. Payne used to come to my garage; Exhibit "2" was made when I decided to take two lorries D.L. Payne told me they wanted an intelligent Nigerian like me to introduce Seddon lorries to Nigerian Market as they wanted our people to know about this type of lorries; he invited me to take more of the lorries; he said he was prepared to give me the additional lorries without any "down payment"; he said I could give him Cheques post-dated for six weeks and pay the deposit if I was satisfied with the lorries after the six weeks; it was then that Exhibit "3A" was made; the agreement was not dated when it was made not were any dates of payment stated; I gave a cheque post dated for payment on the 31st July 1956 but the lorries had been delivered to me in June; I licensed the

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first of them on the 13th June, 1956; The nine lorries were given to me in two batches of four lorries and five lorries; the first batch was licensed on 13th June 1956 and the second batch on the 30th June, 1956; Mr. Payne's representations about a repair garage and spare parts were also contained in a letter (Exhibit 8) which was written before I bought the first two lorries the representations proved false; there was no garage, there were no repair facilities and there were not enough spare parts; I had not used the lorries for as much as two months when they commenced giving trouble; I immediately complained to Mr. Payne; When I hired the lorries I had jobs to do for the Lagos Town Council, the Nigerian Railway Corporation; and building contractors; as a result of the breakdown of the lorries I found it difficult to give satisfaction to my customers; Exhibit "11" is one of my letters of complaint; I used to complain orally but when no action was taken on my complaints I thought the plaintiffs' Agents were out to deceive me and so I took to writing my complaints; Exhibit 10 and Exhibit 12 are more of my complaints; Subsequently my engineer and the plaintiffs' engineer met my engineer made certain suggestions to which the plaintiffs replied in writing; I produce the letter admitted and marked Exhibit "15"; Payne introduced one Mr. Brown to me as a motor engineer; Mr. Brown was quite unable to carry out repairs and he is now working as a plumber; I know Mr. Edwards; he was introduced to me by the plaintiffs' witness and Mr. Heidemann; he is an engineer; he had no garage facilities available to him and so he could not work; I wrote Exhibit "7"; About half the spare parts I asked for was not available; Arab Brothers could not help me when my engine broke down; they did not even visit the garage; I told the plaintiffs this in my letter Exhibit "10"; When the lorries were immobilised and after several complaints I drove eight of the lorries to the plaintiffs' garage as they were not roadworthy; of the three remaining lorries two had broken engines and the third had been repaired with parts from the

In the High Court

Defendant's Evidence

No. 8

Emmanuel Ayodeji
Ajayi Examination
(Continued)

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In the High Court

Defendant's Evidence

No. 8

Emmanuel Ayodeji Ajayi Examination (Continued)

other lorries as there were no spare parts; I have paid to the plaintiffs over £13,000 for the lorries and over £1000 for tyres; in all I have paid over £16000 to the plaintiffs in connection with these lorries; When the lorries were delivered I noticed an inscription on the side of each lorry "M.El-Khalil' Order No....." the lorries were not able to pass the tests of roadworthiness; When, I returned the lorries to the plaintiffs; the plaintiffs were building a garage in Apapa; When I got Heidemann's letter I sent a reply; Exhibit "16"; it is not correct that the plaintiffs told me they had repaired the lorries nor did they ask me to come and take them away; if the lorries had been repaired I would have been glad to take them back as I had many jobs on hand at that time; I ask that my £16000 be refunded to me; I ask that the contract be rescinded and the hire purchase agreement be declared null and void; Other reliefs as claimed;

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Cross-Examination

Cross-Examined by Benson: I took delivery of the first two vehicles in May 1956; I started using them; I took delivery on 25th May, 1956; I had no cause to complain about the two lorries I had already purchased when I accepted Payne's suggestion that I take more lorries; I would have stopped payment on the post dated cheque if up to July 31, 1956 the lorries had started giving trouble; the hire purchase transaction on these lorries were my first; I paid cash for my Bedford; I made down payment on the purchase of the first two lorries; the nine lorries were to be taken on hire purchase terms; the cheque for £3000 payable on 31st July 1956 was expected to be down payment on the nine lorries; hire purchase payments should be made monthly; the payment on the nine lorries would commence on 31st July 1956 followed by another on 31st August 1956 and continue until the whole of the purchase price had been paid off by monthly payments; Payne and I agreed I was to pay £3000 each month; the amount due on the nine lorries was £20,034; the last instalment on the nine lorries was payable at the end of January 1957; if I had paid according to the terms of the two agreements I would have paid off the cost of the eleven lorries by the end of January 1957; a

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Lorry LB7402 was one of the Seddon lorries I bought on hire purchase; I did not receive the original of this letter shown to me; letter marked X; the plaintiffs have now completed their garage; the plaintiffs provided some spare parts; but not all I wanted;

Re-Examined by Mrs. Adebisi: No questions.

In the High Court

Defendant's Evidence

No. 8

Emmanuel
Ayodeji Ajayi
Cross-
Examination
(Continued)

No. 9

10 Counsel's Addresses
Case for defence

No. 9

Counsel's
Addresses
26th October 1960

MRS. ADEBIYI Addresses: Representations made by Payne; Payne not called by plaintiffs; See Exhibit "8" representations proved false; Available service by European Engineer in plaintiffs' garage; No garage; Available spare parts; not enough spare parts; see Exhibit "7"; also Exhibit "8" false representations have avoided the contract; 20 defendant showed great forbearance; see Exhibit 10; Complaints to plaintiffs; Exhibit 11; Exhibit 9 from Heidemann; Meant "don't pay at all any more"; When owner resumes possession contract is rescinded p.181 Halsbury's Halsbury Vol.7; Exhibit 9 a fresh contract; No sufficient evidence the lorries were repaired; engineer not called; the lorries should have been returned to defendant whose address was known to plaintiffs if 30 really the lorries had been repaired; no valuer as required by the agreement;

To 12 noon of 27/10/60 for reply by Benson.

(Sgd.) Charles Onyeama
J.
October 26, 1960.

In the High Court

Thursday the 27th day of October, 1960

No. 9

MRS. ADEBIYI for defendant

No appearance for plaintiffs.

Counsel's
Addresses
27th October
1960
(Continued)

C.A.V.
To November 19, 1960
(Sgd.) Charles Onyeama
J.
October 27, 1960.

No. 10

No. 10

Judgment
18th November
1960

JUDGMENT

10

IN THE HIGH COURT OF LAGOS
HOLDEN AT LAGOS, NIGERIA
ON FRIDAY THE 18TH DAY OF NOVEMBER, 1960
BEFORE THE HONOURABLE
MR. JUSTICE ONYEAMA

Suit No. LD/319/1959

R.T. BRISCOE (NIGERIA) LIMITEDPLAINTIFFS

V.

EMMANUEL AYODEJI AJAYIDEFENDANT
(Trading under the name
and style of the Colony
Carrier Company)

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J U D G M E N T

The plaintiffs' claim in this suit is based on certain hire purchase agreements entered into by the plaintiffs and the defendant and relating to Seddon motor tippers.

The first agreement was made on the 1st of June, 1956, between the defendant and the plaintiffs' agent, D.L. Payne (Nigeria) Limited, and related to two Seddon tippers: (Exhibit 2). The second was made on the 31st July, 1956, between the defendant and the plaintiffs' agent D.L. Payne (Nigeria) Limited, and related to nine Seddon tippers: Exhibit 3.

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The total sum due on the eleven vehicles was £23,184:10:0d. and £1,326:16:8d: hire purchase charges, making in all £24,511:6s:8d: Of this gross sum there is said to be an outstanding balance of £11,304:16:0d. due to the plaintiffs from the defendant.

In the High Court

No. 10

Judgment 18th
November 1960
(Continued)

10 It is not denied that there were these hire purchase agreements as alleged by the plaintiffs, but it is contended that the agreements were induced by the plaintiffs' agent's misrepresentations.

20 From the evidence it appears that Mr. D.L. Payne informed the defendant that it was proposed to take over the garage of B.E.W.A.C. in Commercial Avenue, Yaba, for the purpose of servicing Seddon tippers, and that there was available a good stock of spare parts. The defendant could not get service for the tippers and could not get all the parts he required. It is not suggested that the tippers were, in themselves, unfit for the purpose for which they were hired. Indeed, the defendant must have found the first two tippers satisfactory before taking on hire another lot of nine.

30 I am of the opinion that the statements of Mr. Payne did not amount to misrepresentation for the reason that the statement about the garage related to plans for the future and was not as to an existing or past fact. There is no evidence that Mr. Payne did not honestly believe that garage facilities would be provided, and the defendant agrees that a garage has now been built. In any case, since the cost of repairs was to be borne by the defendant I fail to see how the failure of the plaintiffs to provide a garage could vitiate a hire purchase agreement of which the provision of a garage was not a term.

40 The essential harm done by deceit is, usually, that the victim was induced to act to his detriment on a false statement of facts on which he would not have acted if the true facts had been disclosed. It follows that the

In the High
Court

No. 10

Judgment 18th
November 1960
(Continued)

deceit must relate to existing facts or past facts, and such facts must be about some material term in the agreement.

On a consideration of the evidence I am unable to find any misrepresentation, and certainly none that has any bearing on the hire-purchase agreements.

There is no ground for the counterclaim which is dismissed.

Regarding the claim, there is evidence that some of the tippers were sold by the plaintiffs. The claim appears to be based on the assumption that the tippers had been sold to the defendant and not hired out to him for periodic payments. The liability of the defendant is to pay the rent up to the day the tippers were returned to the plaintiffs. When the tippers were sold, the price realised should have been credited to the unpaid periodical sums agreed in Clause 1 of the agreement, or if the plaintiffs were resuming possession as owners, the defendant would be liable for hire charges until such resumption.

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As I see it, the plaintiffs are not entitled to sell the tippers and also recover the full purchase price for them from the defendant.

As it is not clear from the evidence what sum was realised on the sale of the tippers by the plaintiffs I direct that an account be taken between the parties as to the rents; if any, due on the date of the sale of the tippers and an inquiry as to the amount realised on the sale.

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(Sgd.) Charles Onyeama
JUDGE.

18th November, 1960

Continued/

Counsel agree on Mr. J.B. Sogbola as accountant to take the account and make the enquiry. Report within four weeks.

Remuneration £21 - £10:10:0d. each side.

In the High Court

(Sgd.) Charles Onyeama
JUDGE.

No. 10

Mr. B.O. Benson - for plaintiffs.

Judgment 18th
November 1960
(Continued)

Mrs. A.A. Adebisi - for Defendant.

No. 11

No. 11

Report of Accountant

Report of
Accountant
(Undated)

10 The Registrar,
High Court of Lagos,
Lagos, Nigeria.

Dear Sir,

Report of Inquiry into Hire Purchase Account
R.T. Briscoe (Nigeria) Limited Versus
Emmanuel Ajayi, Suit No. LD/319/1959
Court Order dated 18/11/60.

Terms of Reference

20 "I direct that an account be taken between
the parties as to the rents if any, due on the
date of the sale of the tippers and an inquiry
as to the amount realised on the sale (Sgd.)
Charles Onyeama - Judge.

30/11/60 - Preliminary Examination of the Account

1. With a letter of introduction from Plaintiffs
Solicitor the defendant and I visited Plaintiffs'
office at Apapa. Saw Mr. Gram-Hansen the Chief
Accountant. The defendant's Card Ledger account
was submitted and examined. Both parties agreed
to the following position of the account at the
date of the return of 8 of the tippers to the
30 Plaintiffs:-

Debit - Defendant(C.C.C.)	£20,034. -- -d
for 9 tippers @ £2,226 each	
Debit - Defendant (C.C.C.)	
for 2 tippers @ £2,234.13.4d.ea.	£ 4,477. 6. 8d.
Total	<u>£24,511. 6. 8d.</u>

In the High
Court

No. 11

Report of
Accountant
(Undated)
(Continued)

Less Rents already paid on the
11 tippers at the date of the
return of 8 of the tippers £13,206.10. 8d.

Net total Rents outstanding £11,304.16. 0d.

2. The plaintiffs' representative Mr. Gram-Hansen stated that 8 tippers were returned and 3 were still with defendant and was not contradicted.

Further that two of the returned tippers were transferred to their parent Company at Ghana and sold there at £1,000 each; and one was sold to Kamarun Limited for £1,150.16.5d. He added that £150.16.5d representing shipping expenses was borne by the Kamarun Limited and that the remaining 5 tippers were still in their yard, being dismantled for sale as spare parts; whereof a sum of £854:15:6d. had been realised. He produced a ledger account for £813:18:9d said to be for spare parts bought by Mr. Ajayi the defendant personally which was disputed and, as it was not raised in the original claim before the Court, it was withdrawn.

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3. After preliminary examination of the Card Ledgers and available supporting vouchers; the plaintiffs (Gram-Hansen & Bossman), the defendant (Ajayi C.C.C.) and I went to the plaintiffs' yard to inspect the 5 vehicles said to be laid-up there but found nothing of C.C.C. tippers. Mr. Gram-Hansen then suggested that the whole 5 tippers must have been sold out for the sum of £854:15:6d. stated in paragraph 2 above. And submitted that in effect Mr. Ajayi the defendant was due to be credited for the sale in repayment of rents as follows:-

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1. Tipper Lorry to Kamarun Ltd.	£1,150:16: 5d.
2. " Lorries to Ghana at	
£1000 each	£2,000: -: -d
5. " as spare parts	£ 854:15:6d

£4,005:11:11d

Less Repairs & Expenses £1,031:12: 2d

Net Rental Credit due £2,973:19: 9d

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4. In answer to my questions Mr. Gram-Hansen stated that the possible life of the tippers was between 5 and 6 years and that Mr. Ajayi the defendant returned the 8 tippers after 14 or 15 months of operation. The defendant retorted that the 8 vehicles were driven into their compound and the plaintiffs had been advised to come and tow away the remaining 3 with him which for broken engines could not be driven. Mr. Gram-Hansen replied that the Company had no more interest in the transaction.

In the High Court

No. 11

Report of Accountant (Undated) (Continued)

10

8/12/60 - Inquiry started

5. Mr. Bossman Stated that Mr. Gram-Hansen (on Local Leave) and the Plaintiffs' Engineer were not available and that he had been elected to act for both of them as they could do very little if present. He corrected the first statement of Mr. Gram-Hansen and produced a Debit Note for £52:11:3d labour cost dated 22/8/58, to show that the 5 tippers were dismantled for sale as spare parts; and 2 Booking Copies to show that the first sale was made in May 1958 to M.El. Khalil's Transport for £404 and £12:10/0d. respectively.

6. The defendant Mr. Ajayi contended that the spares sold to Khalil in May could not be any part of the tippers if they were dismantled in August according to the Debit Note. In reply, Mr. Bossman explained that the tippers had been dismantled long before the Account Department was notified, and the date on the note was the date of the issue of the voucher. He added that there was no record of the actual date the dismantling was started and/or completed.

7. Mr. Bossman thereupon submitted a Ledger Card for £854:15:6d said to be net sale of the dismantled tippers as spare parts together with supporting vouchers available to prove the debits and credits recorded in the account. On examination of the details, both parties agreed to adjustment of discrepancies found as follows:-

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In the High Court <hr/> No. 11 Report of Accountant (Undated) (Continued)	Item 7 " 9 " 10 " 11/13 " 15 " 17 " 18 " 20/24	£32:12:6d credit to be 6:18:-d debit " " 29:15:2d debit " " vouchers missing £1: 4: 0d debit " " 10:10: 0d debit " " 367: 6:10d credit " " vouchers missing	to be £65:5:-d credit " " 6:18:-d " " " 29:15:-d " 150:19:3d " " " 1:4: 0d " " " 10:10:0d " " " 367: 6:10d debit 431: 5: 0d debit	10
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8. In answer to questions Mr. Bossman stated that no inventory of the parts comprising the dismantled tippers was taken; and no valuation certificate to indicate the residual values of the tippers was obtained from any valuer. In other words the vehicles were neither valued before, nor after they were dismantled. He agreed the vehicles were driven back to their yard after 14 or 15 months of operations; and for wear and tear, their cost must have gone down 33 1/3% per annum. He confirmed that the life of each vehicle might be between 5 & 6 years, but if badly used 3 years would be the maximum. 20

9. On the point of dates, the Defendant Mr. Ajayi demanded to see the delivery notes signed, by respective purchaser of the tippers and/or the parts. Mr. Bossman replied that such documents were not available. Mr. Bossman was at this stage requested to submit a statement of the residual value of the 8 vehicles at 33 1/3% depreciation per annum as agreed. 30

13/12/60 - Inquiry closed

10. As requested Mr. Bossman tendered a statement depicting the residual value of the 11 vehicles (Appendix 1) at the time 8 of them were returned to the Plaintiffs. He stated that on the face of it, the defendant in his view, was entitled to a credit of £4221:0:2d. loss on sale in settlement of part of his outstanding rental debt. 40

11. In answer to questions, he added that he had assumed the outstanding rents namely £11,304:16:0d, to be cost of the 8 tippers in the interest of his Company; and not the original

of (£2,226 x 8) i.e. £17,808. And
£4,221:0:2d as loss on sale which Should
reduce the debit of the defendant to his
Company, to about £4,000 net on the final
adjustment of the account between the parties.
The depreciation of 33 1/3% was raised on
£11,304:16:0d and not on £17,808. He
concluded that whether or not the vehicles
were driven back to their yard, it amounted
10 to seizure by the owners as the rents had not
been fully repaid and the plaintiffs were
therefore entitled to use their discretion in
selling the vehicles. He admitted that as
the sale proceeds were to be set up against
the outstanding rents of the defendant, Mr.
Ajayi was entitled to be notified and/or
served with a statement or schedule of the
quantity, and valuation of the spare parts
or tippers to be sold. He added that he
had made every search in the office for any
20 relative document but found none. It
appeared, he said, the Company took no trouble
to list out the articles and/or assess their
values.

12. The defendant Mr. Ajayi stated that he had
at no time agreed to the sale of the tippers,
and had received no information about the sale.
He returned the 8 tippers for repairs only;
and the plaintiffs promised to do the repairs,
and had asked him to suspend payments of the
30 rents until the vehicles were back on the
road. Mr. Bossman did not dispute this fact
much as he was not quite sure of it. The
defendant agreed that the 8 tippers, were
returned 9 months after the rents were overdue
for full discharge.

13. Mr. Bossman produced Ledger Book called
for by the defendant during the sitting but,
as the information in it did not come within
the terms of the inquiry, it was withdrawn.
40 The defendant pressed that the sale's account
ought to be posted in a book form of ledger
and not Card Ledger. In reply, the Referee
explained that the Card Ledger was as good as
a book form of ledger as long as the records
in it were properly supported by vouchers.

In the High
Court

No. 11

Report of
Accountant
(Undated)
(Continued)

In the High Court

No. 11

Report of Accountant (Undated) (Continued)

Mr. Bossman added that at first his Company used book form and loose leaf ledgers and now, that mechanised accounting was introduced, Card ledgers were in use.

14. Winding up the inquiry, I pointed out that the value to be depreciated should be the original value of the tippers and not the sum-total of the rents outstanding. The fact that the defendant had paid over £13,000 towards the purchase of the 11 vehicles, he appeared from accounting point of view entitled to full ownership of approximately 6 of them. He was therefore owing £11,304:16/- for 5 tippers the ownership of which was yet to pass to him. As the defendant had returned 8 of the tippers, he must be notified of the valuation and inventory of the parts at least as owner of 3 of them. Further that the sale was by public auction. No Valuation Certificate of the 8 tippers and so, the burden of loss on the sale, if any, would be that of the plaintiffs who had conducted the sale at their discretion.

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15. In consideration of the above report and from my examination of the accounts, the position of the rental account between the parties is as follows:-

E.A. Ajayi (as C.C.C.) Hire Purchase Account.

	Debits	Credits	
To: Rent due on return of 8 tippers	£11,304:16: 0		
" Discrepancy Item 18	367: 6:10		30
By: Sale of two tippers through R.T. Briscoe (Nig.) Ltd. Ghana @ £1000 each.		£2,000:0:0	
" Sale of one tipper to Kamarun Limited		1,150:16:5	
" Sale said to be of five tippers as spare parts net.		854:15:6	

		Discrepancies spotted:-	In the High Court
	Item 7 (C.C.C.) Spare Parts		
	Sales Ledger	£65: 5: 0	No. 11
	" 9 "	6:18: 0	
	" 10 "	29:15: 2	Report of
	" 15 "	1: 4: 0	Accountant
	" 17 "	10:10: 0	(Undated)
			(Continued)
10	By Credit due for loss on sale of 8 tippers for £4119:4:1 instead of (£1360:6:8 x 8) £10882:13:4 i.e.	6,763: 9: 3	
	" Balance (Being rents due on final adjustment of account between the parties)	789: 9: 6d	
		£11,672: 2: 10	£11,672:2:10
	TO: Balance b/d	£789:9:6	

16. In plain language, the above depicts that the plaintiffs have sold 3 of the 8 tippers for £3,150:16:5d while the remaining 5 have been sold as spare for only (£968:7:8d Less £367:6:10d) i.e. £601.0.10d. This in my opinion is out of pro-portion and make its abundantly clear, that the plaintiffs should bear the burden of loss as stated in paragraph 14, based on 33 1/3% depreciation per annum on the original cost of the tippers, from £2226 each to £1360:6:8d each (Residual value and/or marketable price) when the 8 vehicles were returned after 14 months of operation.

17. Consequently, my findings are that the rents due on the date of the sale of the tippers are £789:9:6d and that the amounts realised on the sale are £4,119:4:1d + £6,763:9:3d i.e. £10,882:13:4d and not £4,119:4:1d + £4,221:0:2 i.e. £8,340:4:3d as assumed by the plaintiffs in paragraphs 10 and 11.

Yours faithfully,
(Sgd.) J.B. Shogbola
ACCOUNTANT
ELECTED BY THE COURT

In the High Court

No. 12

Proceedings.

No. 12

Proceedings
16th January
1961

Monday the 16th day of January, 1961

BENSON for plaintiff

MRS. ADEBIYI for defendant

To 18th January, 1961 for arguments on the referee's report.

(Sgd.) Charles Onyeama

J.

January 16, 1961.

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Wednesday the 18th day of January, 1961

BENSON: Accountants findings are not supportable, departed from terms of reference; see paragraph 1 of the report; to find out rent due at date of sale not on date of return; paragraph 14 of the report; not called upon to decide ownership; paragraph 8, not called upon to evaluate the lorries; see account at p.6 Credit due for loss on sale of 8 tippers for £4119:4:1d instead of (£1360:6:8d) 10882:13:4d i.e. £6,763:9:3d is wholly unwarranted Bellicourt V. Le Gendre 1900 A.C. 173;

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MRS. ADEBIYI: Proper to consider depreciation; life of tipper said to be 5 or 6 years; see para 8; also para 9; refers to agreement; no independent valuer;

To 23/1/61

(Sgd.) Charles Onyeama

J.

Jan 18, 1961.

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No. 13

In the High Court

Judgment (after Accountants Report)

No. 13

IN THE HIGH COURT OF LAGOS
WEDNESDAY THE 23rd DAY OF JANUARY, 1961
BEFORE THE HONOURABLE
MR. JUSTICE ONYEMAMA
JUDGE.

Judgment (after Accountants Report) 23rd January 1961

Suit No.LD/319/59:

Between:

10 R.T. Briscoe (Nig.) Ltd. Plaintiffs

A n d

Emmanuel Ayodeji Ajayi Defendant

After reading the report of Mr. Shogbola who, by consent of the parties, was appointed the referee, to take an account between the parties as to the rents if any, due on the date of the return of the vehicles, and an inquiry as to the amount realised on the admitted sale of the lorries hired out to the defendant by the plaintiffs, and after hearing arguments by counsel on the report, I have come to the conclusion that the defendant is liable to pay to the plaintiffs the sum of £11,304:16/-.

The referee reported among other things that both parties agreed to the following position of the account, at the date of the return of eight of the tippers to the plaintiffs

30	Debit - Defendant (C.C.C.)	
	for 9 tippers @ £2226 each	£20,034: --: --:
	Debit - Defendant (C.C.C.)	
	for 2 tippers @ £2,234:13:4	
	each	£ 4,477: 6: 8
		<hr/>
	Total	£24,511: 6: 8

In the High Court

No. 13

Judgment (after Accountants Report) 23rd January 1961 (Continued)

<u>Less</u> Rents already paid on the 11 tippers at the date of the return of 8 of the tippers	<u>£13,206:10:8d</u>
Net total Rents outstanding	£11,304:16: -:

In my view the transaction between the parties was a hire-purchase agreement. The defendant was liable to pay the rents due on the tippers in accordance with the agreement. As the transaction was not one of outright sale of goods it is unnecessary to consider the question of the ultimate sale of some of the vehicles by the owners - the plaintiffs.

10

Since the parties agreed that the rents due and owing on the date of the resumption of ownership by the plaintiffs, and, therefore, the termination of the hiring, was £11,304:16/- I do not think that anything more need be said.

There will be judgment for the plaintiffs for £11,304:16/- And Costs assessed at 60 guineas;

20

(Sgd.) Charles Onyeama
JUDGE
January 23, 1961.

In the Federal Supreme Court

No. 14

Notice and Grounds of Appeal 24th January 1961

No. 14

Notice and Grounds of Appeal

IN THE FEDERAL SUPREME COURT

NOTICE OF APPEAL

Suit No. LD/319/59

BETWEEN:

E.A. AJAYI DEFENDANT/APPELLANT

30

AND

R.T. BRISCOE (NIGERIA) LTD. PLAINTIFF/RESPONDENT

1. TAKE NOTICE that the defendant being

dissatisfied with the decision of the Lagos High Court contained in the judgment of the Honourable Mr. Justice Onyeama, Puisne Judge dated the 23rd day of January 1961 doth hereby appeal to the Federal Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

In the Federal
Supreme Court

No. 14

Notice and
Grounds of
Appeal 24th
January 1961
(Continued)

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

2. Part of the decision of the lower Court complained of:- The whole decision.

3. GROUNDS OF APPEAL:-

20 (1) That the learned trial judge misdirected himself in law in holding that the letter written by the plaintiff/respondent to the defendant/appellant to the effect that the appellant was not obliged to pay the arrears due on the hire-purchase agreements so long as the lorries were off the road did not afford a good defence to the action for the said arrears when there was undisputed evidence that:-

30 (a) The lorries the subject-matter of the hire-purchase agreements were off the road at the time of seizure and the action by the plaintiff/respondents.

(b) The defendant/appellant relied on the respondents' letter aforesaid.

(ii) That the learned trial judge erred in law in failing to apply the principles laid down in Central London Properties Trust Ltd. V

In the Federal
Supreme Court

No. 14

Notice and
Grounds of
Appeal 24th
January 1961
(Continued)

High Trees House Ltd.(1947) KB 130
to the undisputed facts as referred
to in ground 1 above.

(iii) That the decision was unwarranted,
unreasonable and cannot be supported
having regard to the defence Relief
sought from the Federal Supreme Court:-
That the decision of the High Court be
set aside and judgment entered for the
appellant with costs.

10

Persons directly affected by the appeal.

(i) R.T. BRISCOE (NIGERIA) LIMITED,
Creek Road, Apapa.

(ii) E.A. Ajayi, 52 Campbell Street,
Lagos.

Dated this 24th day of January, 1961.

(Sgd.) (Mrs.) A.A. Adebisi
Appellant's Solicitor
17 Alli Street,
Lagos.

20

No. 15

Additional
Grounds of
Appeal 26th
November 1962

No. 15

Additional Grounds of Appeal

IN THE FEDERAL SUPREME COURT OF NIGERIA

Suit No. F.S.C./414/1961

BETWEEN:

EMMANUEL AYODEJI AJAYI ETC. ...DEFENDANT/APPELLANT

-AND -

R.T. BRISCOE (NIG.) LTD. ...PLAINTIFFS/RESPONDENT

ADDITIONAL GROUNDS OF APPEAL

3. The learned trial Judge erred in law in
effect holding that the Defendant/Appellant claims
was not maintainable in that the Plaintiff/
Respondent in breach of their obligations as

30

repairers to return the vehicles in good condition to the defendant, had wrongfully and in violation of the Defendants' rights as hirers disposed of the vehicles to third parties Accordingly, the foundation of the agreements (which had not been duly determined was completely destroyed.

DATED at LAGOS this 26th day of November 1962.

10 (Sgd.) David & Moore
Defendant/Appellant Solicitors
13, Catholic Mission Street,
L A G O S

This is the document referred to as Exhibit "A" in the affidavit of OLAYINKA AWOTUNDE OTUYELU Sworn to at the Federal Supreme Court Registry, Lagos this 26th day of November, 1962.

BEFORE ME
(Sgd.) O. Ogunmuyiwa

20 COMMISSONER FOR OATHS.

No. 16

Proceedings

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON TUESDAY, THE 4TH DAY OF DECEMBER, 1962
BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT KT.

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE

SIR VAHE ROBERT BAIKAMIAN KT.

FEDERAL JUSTICE

30

F.S.C. 414/1961

E.A. Ajayi V. R.T. Briscoe (Nigeria) Ltd.

In the Federal
Supreme Court

No. 15

Additional
Grounds of
Appeal 26th
November 1962
(Continued)

No. 16

Proceedings
4th December 1962

In the Federal
Supreme Court

No. 16

Proceedings 4th
December 1962
(Continued)

Appeal against decision of Lagos High Court.
O. Moore & Ajayi & Fiberesima for appellant.
B. Benson for respondent.

Leave given to argue additional Grounds of Appeal.

Moore: Writ p.2 Counterclaim p. 14.

Calim rested on H.P. agreements Exh. 2 & 3
identical in terms. Statement of Claim p. 4 & 5
paras. 3 - 8 Breach of agreement to pay instalments.
Defence p. 10 para. 29. Fraud and misrepresentation
letter of 22nd July, 1957 re withholding instalments 10
while vehicles withdrawn from road - Exh. 9 p.
- last instalment already overdue. Not alleged
vehicles were seized because instalments overdue,
under terms of agreements clauses 14 seq. - They
were put in for repairs and sold to meet the cost
of repairs - p. line seq. Exh. 6 p.

Grounds of Appeal 1 & 2 p. rest on waiver in
Exh. 9.

Judgment page

I am not basing my case on fraud or
misrepresentation. I abandon paras. 1 & 2 of
counterclaim.

20

Judge did not direct his mind to Exh. 9.
Sufficiently pleaded in Defence paras 29 and 30.

B'ham & Dist. Land Co. v. Lon. & N.W. ry.Co.
14 Ch.D 268 at pp. 276 and 280 and 285.

Tool Metal Manufacturing Co. v. Tungster (1955)

1 W.L.R. 761. Right to be kept in abeyance for
particular time - effect in equity.

Inequitable for plaintiffs to enforce rights
here because defendant abstained from suing for
breach of warranty in consequence of receiving
Exh. 9.

30

Plaintiff had made no attempt to enforce their
rights under the agreement in respect of the arrears
before writing Exh. 9.

We were never notified when vehicles were repaired or asked to pay for repairs and take them back - Conflict of oral evidence and no finding of fact on the issue. Reply to counterclaim does not refer to the matter - so not in issue on the pleadings, in view of Defence paragraph 30.

In the Federal
Supreme Court

No. 16

Proceedings 4th
December 1962
(Continued)

We do not know even now when lorries were sold.

- 10 As to pleading of waiver, rely on allegation in brackets in Defence paragraph 30.
Onus on plaintiffs to show liability in spite of waiver or suspension.

Central London Proptly Trust v. High Trees House (1947) K.B. 130.

Grounds of Appeal 3. Counterclaim:

P.l. received tippers for repair. No right to sell. Ask for retrial or nonsuit.

- 20 We are entitled to damages for failure to return the lorries after repairs. Ask for dismissal of plaintiffs' claim.

Benson for respondents:

Agreements. Paras 3, 14 - p. lines
Not disputed defendant was in breach of claim
3. Last payment date 30 January, 57.

Clause 20 as to waiver or forbearance.

Letter Exhs. 6 and 10, no indication of complaint about vehicles till then.

- 30 Exh. 13 the next communication.

No waiver in this type of transaction.
3rd Hals. 19 page 545 para 882.

Combe v. Combe (1951) 1 All ER 767. High Trees principle not a cause of action. To be applied with caution. Exh. 9 not a complete waiver as in the High Trees case,

In the Federal
Supreme Court

No. 16

Proceedings 4th
December 1962
(Continued)

merely deferring payment.

In clause 20 of Exh. 2 "waiver" does not mean same as "neglect, forbearance or delay".

Even if appeal allowed, new trial should be ordered. Onus would be on defendant to show lorries not repaired etc.

Moore in reply:

Exh. 2 clause 20. Cases cited conclusive against it where inequitable. Principle the same.

Charles Richards v. Oppenheim (1950) 1 All ER 10 420 as to waiver of stipulated time -

Combe's case considered in Tool Metal as ap. 764 and not approved.

Onus of proof as to forbearance is on plaintiff. He must show tippers repaired and offered - we cannot prove negative.

Benson does not wish to comment of Richards v. Oppenheim.

Judgment reserved

(Sgd.) L. Brett
FEDERAL JUSTICE.

20

No. 17

Judgment 21st
December 1962

No. 17

Judgment

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
FRIDAY THE 21ST DAY OF DECEMBER, 1962
BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE

SIR VAHE BAIRAMIAN

FEDERAL JUSTICE

F.S.C. 414/1961

30

BETWEEN:

EMMANUEL AYODEJI AJAYI ETC. ..DEFENDANT/
APPELLANT

A N D

R.T. BRISCOE (NIG.) LTD.PLAINTIFFS/
RESPONDENT

In the Federal
Supreme Court

No. 17

Judgment 21st
December 1962
(Continued)

J U D G M E N T

10 TAYLOR F.J. The plaintiffs, a Limited
Liability Company sued the defendant in the
High Court of Lagos for the sum of
£11,304:16:0d. being an amount alleged to be
standing against the defendant's name in the
books of the plaintiffs as the balance due on
the hire purchase Agreement entered into by
the defendant in respect of Seddon Tipper
lorries. By virtue of the hire purchase
Agreement, the last instalment on the said
lorries was to have been paid on the 30th
January, 1957.

20 The Defence as can be gathered from the
S/D is one based primarily on fraud and
misrepresentations as contained in
paragraphs 29 to 31 of the S/D which read
as follows:-

30 29. "the Defendant avers that he was induced
by fraud and misrepresentations of Mr.
Payne to make the alleged contracts and
within a reasonable time after he had
noticed the misrepresentation and before
he had received any benefit under the
said agreement the plaintiffs were
informed of the troubles he had with the
fleet of Seddon Tippers and by the
plaintiffs' letter dated the 22nd July,
1957, the defendant was asked to withhold
the instalments due on the Seddon Tippers
as long as they are withdrawn from the
road.

30. "The defendant avers that the fleet of
Tippers were not on the road on the
receipt of this letter and aver since

In the Federal
Supreme Court

No. 17

Judgment 21st
December 1962
(Continued)

they have not been on the road (8 are with the plaintiffs and 3 lying in the defendant's garage).

31. "The Defendant avers that the misrepresentations made by Mr. D.L. Payne were false to his own Knowledge in these respects:-

- (1) He knew that the plaintiffs at the time of the sale had no spare parts;
- (2) No garage where repairs could be made and qualified Engineers to repair the fleet of Tippers, all that he did was to introduce Seddon Tippers into the market at the expense of the defendant.

10

"The plaintiffs wilfully and knowingly concealed the above facts from the defendant".

The defendant in addition to this, has set up a counterclaim for the sum of £1,600 being money paid by him to the plaintiffs on a consideration which is alleged to have wholly failed or in the alternative, damages are claimed.

20

The Learned Trial Judge found that the facts did not establish fraud or misrepresentation, and held that the plaintiffs had proved their case, but in view of the evidence led that the lorries had been sold by the plaintiffs, it was directed that an account be taken between the parties as to the rents, if any, due on the date of the sale of the Tippers, and an enquiry made as to the amount realised on the sale. This, having been done, judgment was later entered for the plaintiffs in the sum of £11,304:16:0d. and costs assessed at 60 guineas. The counterclaim was dismissed. Against that Judgment, the defendant has appealed and has filed three original grounds, and one additional ground of appeal with his notice of appeal. It will be convenient to deal firstly with the counterclaim which Chief Moore had to concede, could not be pursued for the following two reasons:-

30

40

- (1) That the findings of absence of fraud and

misrepresentation were not being challenged on appeal; and

In the Federal
Supreme Court

- (2) That the defendant having had the lorries for some period of time, could not be heard to say that the consideration had wholly failed as contended by him.

No. 17

Judgment 21st
December 1962
(Continued)

10 In my view, there is no substance in this part of the appeal and I would dismiss it without saying more.

20 On the main appeal, Chief Moore's contention is that a plea of estoppel and/or waiver is implicit in paragraphs 29 and 30 of the S/D and that on the authority of Central London Properties Ltd v. High Trees House Ltd. (1947) KB. 130, the respondents are estopped from bringing this action by virtue of Exhibit "9". On the other hand, Mr. Benson for the respondents said that there was no waiver, and that in any case the principle enunciated in the above case should be applied with caution.

The letter Exhibit "9" which I shall quote in full, sufficiently outlines the facts connected with the defence raised and under consideration. It reads thus:-

Dear Sirs,

SEDDON/TIPPERS

30 We are in receipt of your letters of 5th and 12th July and are indeed very sorry to hear about the troubles you have had with your fleet of Seddon Tippers.

We hope very soon to be able to put at your disposal the service of our engineer and on completion of our workshop in Apapa we should be able to give you a proper service for your Seddon vehicles in the time to come

40 Please rest assured that we do regret the inconvenience and loss you have been put to and we confirm herewith

In the Federal
Supreme Court

No. 17

Judgment 21st
December 1962
(Continued)

that we are agreeable to your withholding
instalments due on the Seddon Tipplers as
long as they are withdrawn from active
service.

Yours faithfully,
(Sgd.) B.A. Heidemann
Acting Manager.

This letter was written by the plaintiffs' Ag. Manager to the defendant. I have underlined the words in the last paragraph, on which Mr. Moore's arguments rest. Now if I understand Mr. Moore correctly, his argument must go so far as to say, that although this sum of £11,304:16:0d. was due as far back as 30th January, 1957, when the last instalment should have been paid (individual monthly instalment being due at the end of each month), yet as long as the lorries are off the road, this sum need not be paid. Further, the lorries having been sold by the plaintiffs, the defendant, on this contention can never be held responsible for this sum which was due on the Agreement some six months before Exhibit "9" was ever written.

10

20

I now turn to the case of Central London Properties Trust Ltd. v. High Trees House Ltd. K.B. 130 to see whether it supports Learned Counsel's contention as stated above. The facts were shortly as follows:- The plaintiff Company let to the Defendant Company a block of flats for 99 years from 29/9/37 at a ground rent of £2,500 a year. During the war, it became difficult for the defendants to pay the ground rent out of the rents obtained in the letting of the flats, as all the flats could not be let. As a result of the discussions, a letter was written on the 3rd January 1940 by the plaintiffs to the defendants confirming that the ground rent would be reduced to £1,250 as from the beginning of the term. The defendants paid that reduced rent, and continued to do so in spite of the fact that all the flats were let by the beginning of 1945. In September 1945, plaintiffs wrote claiming rent was payable at the original rate, and a friendly action was taken out to determine this point. The defence was that the agreement to reduce the rent operated during the whole term

30

40

of the lease, Denning J (as he then was) states the principle applicable to cases of this nature as follows:-

In the Federal Supreme Court

No. 17

Judgment 21st December 1962 (Continued)

10 "There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel are not really such. They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made, and which was in fact so acted on. In such cases the courts have said that the promises must be honoured

20 As I have said they are not cases of estoppel in the strict sense. They are really promises - promises intended to be binding, intended to be acted on, and in fact acted on."

30 In that case the reduction in the rent was made in order to enable the defendants to continue to run their business which they continued to do. In the case of Fenner v. Blake 1900 1 QBD 426 the defendant, a tenant of the plaintiff was desirous of surrendering his tenancy at an earlier date than that for which he could give a valid notice to quit, and therefore entered into an oral Agreement with the Plaintiff in December to give up possession the following Mid summer. On the faith of this, the plaintiff with defendant's knowledge and consent sold the premises with a right to possession at Midsummer. Defendant refused to give up possession at Midsummer. It was held that he was estopped from saying that the tenancy did not end in June I have referred to these two cases to show that not only was a

40 promise made, but that it was a promise made with the intention of being acted upon, and was in fact acted upon. The party acting upon it altered his position on the strength of the promise made to him. What are the circumstances in the case on appeal before us? It is true that a promise was made, that as long

In the Federal
Supreme Court

No. 17

Judgment 21st
December 1962
(Continued)

as the lorries were off the road the defendant could withhold the payment of the instalments due. It had not been contended, and indeed it could not be contended that this was a promise which had the effect, in view of the subsequent sale of the lorries, of waiving the payment of the balance of the debit altogether; as distinct from suspending the time for payment. Finally I cannot see in what way the present appellant altered his position, or can be said to have acted on the promise contained in the letter under consideration, and altered his position. In his Statement of Defence, paragraph 30, to which I have already drawn attention, he states that before the letter was received, and ever since its receipt eight of the lorries were with the plaintiffs, and three in the appellant's garage. There is nothing in the evidence, and Mr. Moore' has not been able to show in what way the appellant having known of the promise, acted upon it and thereby altered his position in any way, so as to make it unjust for the respondents to sue for the balance on the hire purchase agreement, two years after Exhibit "9" was written, and nearly three years after the final instalment was due.

10

20

In my view the principle in the case of Central London Properties Trust Ltd. v. High Trees House Ltd., does not apply to the facts of this case on appeal. I would dismiss the appeal with costs to the respondents in the sum of 24 guineas.

30

(Sgd.) John Taylor
FEDERAL JUSTICE

I concur (Sgd.) L. Brett
FEDERAL JUSTICE

I concur (Sgd.) Vahe Bairamian
FEDERAL JUSTICE.

Chief Moore, Ajayi, Fiberesima, for the appellants 40
E.O. Benson, for respondents.

No. 18

Order

In the Federal
Supreme Court

No. 18

IN THE FEDERAL SUPREME COURT OF NIGERIA

Order 21st
December 1962

HOLDEN AT LAGOS

Suit No.LD/319/59

F.S.C. 414/1961

On appeal from the judgment of
the High Court of Lagos.

Between:

10 Emmanuel Ajayi } (L.S.)
Trading under the name }
and style of the Colony }
Carrier Company.....) Appellant

a n d

R.T. Briscoe (Nigeria) Ltd... Respondents

Friday the 21st day of December, 1962. (Sgd.) L. Brett
FEDERAL JUSTICE
PRESIDING

20 UPON READING the Record of Appeal
herein, and after hearing Chief O. Moore
Q.C. (Messrs. Ajayi and Fiberesima with
him) of counsel for the Appellant and
Mr. B.O. Benson of counsel for the
respondents:

IT IS ORDERED that this appeal be
dismissed with costs to the Respondents
assessed at 24 guineas.

(Sgd.) J.A. Adefarasin

CHIEF REGISTRAR

In the Federal
Supreme Court

No. 19

Order granting Stay of Execution

No. 19
Order granting
Stay of
Execution
16th January
1963

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. LD/319/59

F.S.C. 414/1961.

Application for an order for
a stay of execution pending
the determination of appeal
to the Privy Council.

10

Between:

Emmanuel Ayodeji Ajayi)
Trading under the name)
and style of the Colony)
Carrier Company.) ... Appellant/Applicant

a n d

R.T. Briscoe (Nigeria) Ltd. . Respondent

(Sgd.) L Brett
FEDERAL JUSTICE
PRESIDING

Wednesday the 16th day of January, 1963.

UPON READING the Application herein,
and the affidavit of the Applicant sworn
to on the 31st day of December, 1962, and
after hearing Messrs. Ajayi and Fiberesima
(holding brief for Chief O. Moore Q.C.)
of counsel for the Applicant and Mr. B.O.
Benson of counsel for the Respondents:

20

IT IS ORDERED -

- (1) that stay of execution be granted
on condition that the Applicant
charges the Leasehold properties
set out in paragraph 6 of this
affidavit in favour of the Respondents
for payment of the judgment debt
with interest at 5% from the date of
judgment in the High Court.

30

2. that the charge is to be executed or registered within one month and is not to be enforced without leave of the Court.

In the Federal Supreme Court

No. 19

3. that either side is to be at liberty to apply for further directions.

Order Granting Stay of Execution 16th January 1963 (Continued)

(Sgd.) J.A. Adefarasin
CHIEF REGISTRAR

No. 20

No. 20

10 Order granting Final Leave to Appeal to Privy Council.

Order granting Final Leave to Appeal to Privy Council 6th May 1963

IN THE FEDERAL SUPREME COURT OF NIGERIA
Holden at Lagos

Suit No. LD/319/59
F.S.C. 414/1961.

Application for an order for final leave to appeal to the Privy Council.

Between:

20 Emmanuel Ayodeji Ajayi)
Trading under the name) Appellant/
and style of the Colony) Applicant
Carrier Company)
a n d

R.T. Briscoe (Nigeria) Ltd. Respondent
Monday the 6th day of May 1963.

UPON READING the Application herein, and the affidavit sworn to on the 19th day of March 1963, filed on behalf of the Appellant/Applicant and after hearing Mr. J.O.

30 Fiberesima (holding brief for Chief O. Moore Q.C.) of counsel for the Applicant and Mr. B.O. Benson of Counsel for the respondent:

IT IS ORDERED that final leave to appeal to the Privy Council be granted.

(Sgd.) J.A. Adefarasin
CHIEF REGISTRAR.

EXHIBITS

Exhibit 8

Exhibits

Exhibit 8
Letter, D.L.
Payne(Nigeria)
Ltd. to E.A.
Ajayi 7th
April, 1956

Letter, D.L. Payne (Nigeria) Ltd. to E.A. Ajayi

D.L. Payne (Nigeria) Limited
MANUFACTURERS' REPRESENTATIVES
FOR BRITISH WEST AFRICA

Cable Address: Denpay
Lagos
Telegram: Denpay Yaba

Directors:

D. L. PAYNE
E. J. PAYNE

10

Postal Address
Nigeria

Our Ref. 171/1135/2840

Telephone 44198
P.O. Box 151 Your Ref. 31, Commercial Avenue,
Yaba, Lagos, Nigeria.

Yaba, Lagos

7th April, 1956.

Mr. E.A. Ajayi,
52, Campbell Street,
LAGOS.

20

Dear Sir,

SEDDON DIESEL MK5S10 TIPPERS
5½ CUBIC YARDS

Following on your visit to us yesterday morning concerning a prospective order for 12 Tippers we are now in a position to offer delivery of these vehicles as follows:-

3 Tippers s.s. "TARKWA" 12/4/56
3 " delivery end of April.
6 " " in May.

30

TERMS: On a guaranteed order of 12 vehicles we will allow a special discount of 5%.

1 Tipper @ £2,255. -. -d.
Less 5% 112.15. -d.
£2,142. 5. -d.

Deposit would be 25% on arrival plus 6% Hire Purchase charges and repayment by monthly instalments for six months.

Insurance must be full comprehensive through Royal Exchange Assurance Co. of which we are the Agents.

Vehicles to call at our premises once every month for inspection.

10 If terms are to be CASH a further discount of 2½% will be allowed.

We hope to have our own servicing facilities at once with European Engineers, Also large quantities of Spare Parts available.

The 12 Tippers MK.5S10/2 with the two speed Rear Axle could be shipped by the end of April and Mr. Payne has agreed to a reduction in our list price as shown.

	1 Mk. 5S10/2 Tippers @	£2,355. -- --
	Discount	25. -- --
	List	<hr/>
20		£2,330. -- --
	Less 5%	116.10. --
		<hr/>
		£2,213.10. --

Assuring you of our very best attention at all times.

Yours faithfully,
for: D.L. PAYNE (NIGERIA) LIMITED
(Sgd.) J. M. Roger.

JMR/IAA:

Exhibits

Exhibit 8
Letter, D.L.
Payne (Nigeria)
Ltd. to E.A.
Ajayi 7th
April 1956
(Continued)

Exhibits

Exhibit 2
Agreement
R.T. Briscoe
Ltd. and
Emmanuel
Ayodeji Ajayi
1st June 1956

Exhibit 2. Agreement, R.T. Briscoe and
Emmanuel Ayodeji Ajayi.

An Agreement made the FIRST day of JUNE,
One Thousand nine hundred and FIFTYSIX (1956)

BETWEEN R.T. Briscoe, Limited P.O. Box 287
of Sekondi, Gold Coast, Merchants carrying on
business in Nigeria by their Agent D.L. Payne
(Nigeria) Limited, P.O. Box 151, Yaba, Lagos
(hereinafter called "the Owners" which
expression shall include their successors in
title and assigns) of the one part AND EMMANUEL
AYODEJI AJAYI PROPRIETOR, COLONY CARRIER
COMPANY, of 162 CLIFFORD STREET, YABA,
(hereinafter called "the Hirer" which expression
shall where the context so admits or requires be
deemed to include the Hirer's executors
administrators successors according to native
customary law and assigns) of the other part.

10

WHEREAS the Owner is the sole absolute
beneficial owner of the Motor Vehicle described
in the First Schedule hereto and it is hereby
expressly admitted by the Hirer that the said
Motor Vehicle is in good perfect working order
and condition the Owner not being responsible
for any warranty.

20

NOW IT IS HEREBY AGREED as follows:-

1. In consideration of O E THOUSAND & SEVENTY-
ONE POUNDS TWO SHILLINGS & 6d. on the
signing hereof paid by the Hirer to the
Owner for the option of purchase herein-
after contained and in consideration of
the rent hereinafter reserved or made
payable and the provisions hereinafter
contained the Owner will let on hire
to the Hirer as bailee and the Hirer
as a Bailee will take on hire from the
1st day of June, one thousand nine
hundred and FIFTY SIX until the

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hiring shall determine as hereinafter mentioned the Motor Vehicle described or mentioned in the First Schedule hereto which shall include any renewals or replacements thereof or of any component parts thereof and any additions thereto made during the continuance of the hiring.

Exhibits

Exhibit 2
Agreement
R.T. Briscoe
Ltd. and
Emmanuel
Ayodeji Ajayi
1st June 1956
(Continued)

- 10 2. The Hirer before the signing hereof shall satisfy himself as to the description condition and running of the Motor Vehicle (and the signing hereof shall be sufficient proof thereof) and agrees that there is no warranty representation or condition implied or otherwise on the part of the Owner as to the description state quality fitness roadworthiness or otherwise of the said Motor Vehicle and that any and every kind of warranty representation or condition with regard to the hire or purchase of the said Motor Vehicle hereunder is expressly excluded.
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- 30 3. The Hirer will during the continuance of the hiring punctually pay to the Owner at the Owner's principal place of business for the time being and without previous demand for the hire of the said Motor Vehicle the respective sums mentioned in the First Column of the Second Schedule hereto upon the respective dates mentioned in the Second Column of the said Schedule.
- 40 4. If the hirer shall duly observe and perform the provisions and stipulations of this Agreement and shall in manner described in the last preceding clause hereof pay to the Owner rents amounting in the aggregate with the sum paid on the signing hereof to FOUR THOUSAND FOUR HUNDRED AND SEVENTY SEVEN PDS.

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1st June 1956

Continued

- 6/8d. and shall also pay to the Owner all or other moneys which shall become payable by the Hirer hereunder the hiring shall determine and the said Motor Vehicle shall thereupon become the sole property of the Hirer but until all such payments shall have been made the said Motor Vehicle shall remain the sole property of the Owner and the Hirer shall not be deemed to have bought or agreed to buy the same but shall be and remain the bailee thereof only notwithstanding any judgment or judgments which the Owner may at any time or from time to time obtain against the Hirer for any sum of sums for the time being owing by the Hirer to the Owner hereunder. 10
5. The Hirer may at any time terminate the Hiring and become the purchaser of the said Motor Vehicle by paying the Owner the sum of £4477: 6: 8d. and all moneys due from the Hirer to the Owner under the provisions hereof and in that event credit shall be given by the Owner to the Hirer for the amount paid by the Hirer upon the signing of this Agreement and for all payments made in respect of rent PROVIDED that the option given to the Hirer by this Clause shall not prejudice any right of action or other remedy by the Owner in respect of any breach by the Hirer of this Agreement. 20
6. The Hirer may at any time terminate the Hiring by delivering up the said Motor Vehicle to the Owner at such principal place of business as aforesaid or elsewhere at the Owner may in writing direct at the Hirer's own risk and cost but the Hirer shall remain liable for rent (including apportioned rent for any broken period) up to the sate of such return and all other sums payable under this agreement and no allowance return credit or payment shall be allowed to or paid to the Hirer in the event of the hiring being determined by the Hirer as provided by this clause. 30 40
7. The Hirer will pay all licence duties fees and registration charges payable in respect of the said Motor Vehicle and if any such duties fees

or charges shall be paid by the Owner the Hirer will repay the same on demand.

Exhibits

8. The Hirer will at his own expense forthwith effect and during the continuance of the hiring sustain and keep in force a policy of insurance in an office approved by the Owner in the name of the Owner alone or jointly with that of the Hirer providing for a full indemnity to the Owner against loss of or damage to the said Motor Vehicle resulting from accident collision fire theft or malicious act and against liability for or in respect of the death or injury to any person or persons or damage to any property caused by the said Motor Vehicle hereto resulting from the driving or use (whether negligent or not) of any such Motor Vehicle including liability for costs. Such policy and the receipts for premium paid thereunder shall be delivered to the Owner. The Hirer will indemnify the Owner from and against all loss of or damage to the Motor Vehicle from whatsoever cause arising and all claims and demands connected with the said Motor Vehicle or consequent upon the use thereof in respect of which the Owner may not be effectually indemnified by such insurance And the Hirer shall not make use of the said Motor Vehicle outside the scope of such insurance or do any act or thing which may invalidate such insurance PROVIDED that such insurance shall not affect the liability of the Hirer to maintain the said Motor Vehicle in good repair and working condition nor shall the Owner be bound to institute any proceedings against the insurance office to enforce any claim under such insurance PROVIDED FURTHER that in case the Hirer shall at any time fail to effect or keep effective the said policy by making default in payment of any premium or in any other way, the Owner shall be entitled to effect such insurance and pay such premiums and any sums so paid by the Owner and any costs and expenses occasioned by

Exhibit 2
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Continued

- the Hirer's default in effecting or keeping effective the insurance shall be repaid by the Hirer on demand PROVIDED FURTHER, that if the said Motor Vehicle shall be destroyed or damaged by fire, the Owner shall be entitled to and shall be paid each and every sum recoverable by the assured under the said policy, and the Hirer will forthwith pay the said sums to the Owner if received by the Hirer from the said Insurance Company, provided that the Owner agrees to give the Hirer credit for all sums paid by the said Insurance Company, as against the sum recoverable by the Owner against the Hirer in respect of the loss/or damage to the said Motor Vehicles. 10
9. The Hirer will during the continuance or the hiring keep the said Motor Vehicle in his own custody and will not sell assign pledge mortgage underlet lend or otherwise part or attempt to part with possession of the motor Vehicle or the Hirer's interest therein or contract or purport so to do or assume the ownership of the said Motor Vehicle. 20
10. That the Hirer will not take the Motor Vehicle out of Nigeria without first obtaining the consent in writing of the Owner.
11. The Hirer shall keep the said Motor Vehicle in his own possession and shall not create or allow to be acquired any lien on the Motor Vehicle and shall permit the Owner its servants or agents at all reasonable time to inspect and test the said Motor Vehicle FOR the purpose of giving effect to this clause the Hirer thereby undertakes to produce the said Motor Vehicle at the Owner's principal place of business or elsewhere as the Owner may in writing direct once in every month during the continuance of this agreement to enable the Owner to inspect the same. 30 40
12. The Hirer will during the continuance of the hiring at his own expense keep the said Motor Vehicle in perfect working order and thoroughly good conditions and repair and will

be responsible for all risks of whatsoever kind PROVIDED that the Hirer shall not be deemed to have authority to pedge the Owner's credit for the repair of the said Motor Vehicle or to create any lien on the said Motor Vehicle in respect of such repairs or otherwise and if the said Motor Vehicle shall require repair the Hirer shall notify the Owner who shall be entitled to repair the said Motor Vehicle or have the same repaired by a person to be selected by the Owner at the expense of the Hirer and the Owner shall be entitled to the possession of the said Motor Vehicle for the purpose of such repair.

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13. The Hirer may at any time determine the hiring by returning the said Motor Vehicle at his own cost to the Owner Provided that it is hereby agreed and understood that an independent valuation of the said Motor Vehicle shall be obtained by the Owner at the expense of the Hirer who shall be bound by such independent valuation and that amount of such valuation only shall be deducted from the amount of the periodical sums agreed upon in Clause 1 hereof which remain still unpaid by the Hirer and that the Hirer agrees to pay in full the balance of the aggregated hire rent still remaining unpaid less the amount of the said valuation.

14. If the Hirer fails punctually to pay the rent mentioned in Clause 3 hereof (whether demanded or not) or to observe or perform any of the provisions and conditions hereof or if a Receiving Order in Bankruptcy be made against the Hirer or if he convene any meeting of creditors or execute any assignment for the benefit of his creditors or compound with the greater part in number or value of his creditors or if the Hirer execute a Bill of Sale or preferential security of the Hirer's effects or any of them or if a distress be

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Exhibit 2
Agreement
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1st June 1956
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1st June 1956
Continued

be levied or threatened upon the Hirer's effects or the said Motor Vehicle or if the said Motor Vehicle or the Hirer's term of interest therein be seized or taken in execution or if the Hirer allow any judgment against him to remain unsatisfied then and in any of the aforesaid cases the hiring shall immediately determine (without any notice or other act on the part of the Owner and although the Owner may not have taken advantage of some previous default of a like nature) and thereupon all payments previously made by the Hirer under this agreement shall be forfeited to the Owner.

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15. If the hiring be determined under clause 14 hereof the Hirer shall forthwith deliver up the said Motor Vehicle at the Hirer's own risk and cost to the Owner at such principal place of business as aforesaid and in default of delivery the Owner or any Agent or Agents of the Owner may without previous notice enter upon any premises occupied or apparently occupied by the Hirer or of which the Hirer is or appears to be tenant and seize and take away the said Motor Vehicle and resume possession of the same and for that purpose or for any other purpose connected therewith the Owner the Owner's Agents servants or others in the Owner's employ or on the Owner's behalf shall have at all reasonable time full liberty of ingress and egress into and from any of the premises whereon the said Motor Vehicle may be placed or supposed to be placed without being liable for any damage that may be caused by any such entry or to any action or other proceedings on the part of the Hirer or any person claiming through under or in trust for him in respect thereof AND the Owner at any time either before or after the determination of the hiring may pay any sums or sums which the Owner may deem it advisable to pay for the protection of the Motor Vehicle or for the purpose of regaining possession thereof and thereupon all such payments shall forthwith become due and payable by the Hirer to the Owner.

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16. If the hiring be determined under Clause 14 hereof the Owner may notwithstanding any seizure of the said Motor Vehicle or return thereof recover by action from the Hirer all rent in arrear at the date of the termination of the hiring and any costs expenses including legal charges incurred by the Owner whether legal proceedings shall have been instituted or not and payments incurred or made by the Owner in connection with tracing and obtaining possession of the said Motor Vehicle or otherwise and all other moneys due from the Hirer to the Owner under this Agreement and also loss and damage which the Owner may sustain in consequence of any breach by the Hirer of this agreement and the Hirer shall not on any ground be entitled to any allowance return or set-off.

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17. If the hiring be determined under Clause 14 hereof and immediately upon such determination the Hirer deliver up the Motor Vehicle to the Owner or permit the Owner to retake possession of the same then the Hirer shall have the right to purchase the said Motor Vehicle PROVIDED that he pays to the Owner within seven days of such determination a sum which together with the sum paid by the Hirer on the signing hereof and the sum paid by him for rent will amount to and also all moneys due from the Hirer to the Owner under this agreement at the date of such determination and all costs charges payments and expenses incurred made or sustained by the Owner in relation to the premises PROVIDED ALWAYS that until the Hirer shall have fully complied with the stipulations of this clause he shall not (after the hiring has been determined under Clause 14 hereof) be deemed to have any right or property or beneficial interest in the said Motor Vehicle.

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Exhibit 2
Agreement
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Agreement
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Ayodeji Ajayi
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Continued

18. The Hirer shall procure the Motor Vehicle described or mentioned in the First Schedule hereto be forthwith registered in the name of the Owner and licensed in the manner for the time being required by law and to continue so registered and licensed during the continuance of the hiring and shall not at any time during the continuance of the hiring use nor drive such Motor Vehicle nor suffer the same to be used nor driven unless the said Motor Vehicle and any Vehicle drawn by the said Motor Vehicle are registered and licensed as aforesaid and have affixed thereto in the prescribed manner the identification mark prescribed by law nor use any such Motor Vehicle in any manner or at any time or place or any purpose for the time being forbidden by law. 10
19. The Hirer shall not at any time during the continuance of the hiring remove change erase deface or conceal any engine chassis registration or identification mark or number or trade mark appearing on or affixed to the said Motor Vehicle nor suffer any such mark or number to be removed changed erased defaced or concealed. 20
20. All the original rights and powers of the Owner under this agreement shall remain in full force notwithstanding any neglect forbearance or delay in the enforcement thereof and no waiver of any breach of this Agreement whatsoever shall operate as a waiver by the Owner of any like or other breach thereafter committed or suffered. 30
21. The Owner is and shall be bound only by the terms of this agreement notwithstanding any proposal representation or arrangement whether verbal or in writing that may have been made or suggested prior to the signing hereof by any person firm or company whatsoever or in any advertisement circular or advertising matter or otherwise and no variation in the terms and conditions of this agreement shall be binding on the Owner without the Owner's written consent. 40

22. The intervention of any dealer insurance agent or other person either by introducing the Hirer to the Owner or by delivery of the said Motor Vehicle to the Hirer or to the owner or otherwise shall not constitute the said dealer insurance agent or other person the agent of the Owner for any purpose whatsoever in reference to the transaction entered into and recorded by this Agreement.
- 10 23. If and whenever the Hirer shall change his address he shall forthwith give notice in writing thereof and of his new address to the Owner.
24. In case there shall be two or more accounts kept by the Owner against the Hirer by reason of two or more Motor Vehicles having been let to the Hirer by the Owner on hire-purchase agreement or otherwise the Owner may if he so desires apply any sum or sums paid by the Hirer to the Owner in or towards the payment of any of the said two or more accounts.
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25. In case of any amount being due by the Hirer to the Owner for repairs or supply of parts or accessories or licence or insurance or on any other account whatsoever in respect of the said Motor Vehicle all sums paid by him to the Owner shall in the first place be applied by the Owner in satisfaction of such amounts due and the said payments shall be taken to have been so applied NOTWITHSTANDING any statement to the contrary contained in any receipt or acknowledgment given for any such payment.
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26. Any notice required to be given by the Owner under this agreement may be communicated either verbally to the Hirer or any other person at the premises on which the said Motor Vehicle may be or to the Hirer elsewhere or in writing served upon the Hirer personally or left at the last known place of abode or business of the Hirer or affixed on the said premises or sent by post addressed to the Hirer at the aforesaid place of abode or business of the Hirer or at the said premises and any notice required to be given by the Hirer under this agreement shall be in writing and sent by registered post to the Owner's principal place of business.
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Agreement,
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1st June 1956
(Continued)

Less 5% discount	£ 225.10. -.
		<u>4284.10. -.</u>
Less 25% deposit	<u>192.16. 8.</u>
Plus 6% H.P. charges		£4477. 6. 8.

Exhibits

Exhibit 4
Debit Note
1st June 1956
(Continued)

Balance to be paid by six monthly instalments of
£567.14.1d. £567.14.1d. £567.14.-d. £567.14.-d.
and £567.14.-d.

Commencing from 1st of July, 1956.

10 Chassis No. 31644 & 31645
Engine No. 3224160 & 3224166

PREPARED BY (Sgd.) ? ?
CHECKED BY (Sgd.) ? ?
EXAMINED BY (Sgd.) ? ?

Exhibit 3

Agreement R.T. Briscoe Ltd. and Emmanuel
Ayodeji Ajayi.

Exhibit 3
Agreement
R.T. Briscoe
Ltd. and
Emmanuel
Ayodeji Ajayi
31st July 1956

20 An Agreement made the THIRTYFIRST day of JULY
(1956) One Thousand nine hundred and FIFTY-SIX
BETWEEN R.T. Briscoe, Limited, P.O. Box 287 of
Sekondi, Gold Coast Merchants carrying on business
in Nigeria by their Agent D.L. Payne (Nigeria)
Limited P.O. Box 151, Yaba, Lagos (hereinafter
called "the Owners" which expression shall
include their successors in title and assigns)
of the one part AND EMMANUEL AYODEJI AJAYI,
PROPRIETOR, COLONY CARRIER COMPANY of 162, Clifford
Street, Yaba (hereinafter called "the Hirer" which
expression shall where the context so admits or
30 requires be deemed to include the Hirer's executors
administrators successors according to native
customary law and assigns) of the other part.

1. WHEREAS the Owner is the sole absolute and
beneficial owner of the Motor Vehicle
described in the First Schedule hereto and
it is hereby expressly admitted by the Hirer
that the said Motor Vehicle is in good
perfect working order and condition the
Owner not being responsible for any warranty.

40 NOW IT IS HEREBY AGREED as follows:-

In consideration of THREE THOUSAND POUNDS cn
the signing hereof paid by the Hirer to the
Owner for the option of purchase hereinafter
contained and in consideration of the rent
hereinafter reserved or made payable and

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- the provision hereinafter contained the Owner will let on hire to the Hirer as a bailee and the Hirer as a bailee will take on hire from the day of one thousand nine hundred and until the hiring shall determine as hereinafter mentioned the Motor Vehicle described or mentioned in the First Schedule hereto which shall include any renewals or replacements thereof or of any component parts thereof and any additions thereto made during the continuance of the hiring. 10
2. The Hirer before the signing hereof shall satisfy himself as to the description condition and running of the Motor Vehicle (and the signing hereof shall by sufficient proof thereof) and agrees that there is no warranty representation or condition implied or otherwise on the part of the Owner as to the description state quality fitness roadworthiness or otherwise of the said Motor Vehicle and that any and every kind of warranty representation or condition with regard to purchase of the said Motor Vehicle hereunder is expressly excluded. 20
3. The Hirer will during the continuance of the hiring punctually pay to the Owner at the Owner's principal place of business for the time being and without previous demand for the hire of the said Motor Vehicle the respective sums mentioned in the First Column of the Second Schedule hereto upon the respective dates mentioned in the Second Column of the said Schedule. 30
4. If the hirer shall duly observe and perform the provisions and stipulations of this Agreement and shall in manner described in the last preceding clause hereof pay to the owner rents amounting in the aggregate with the sum paid on the signing hereof to TWENTY THOUSAND AND THIRTY-FOUR POUNDS, and shall also pay to the Owner all or other moneys which shall become payable by the Hirer hereunder the hiring shall determine and the said Motor Vehicle shall thereupon become 40

the sole property of the Hirer but until such payments shall have been made the Motor Vehicle shall remain the sole property of the Owner and Hirer shall not be deemed to have bought or agreed to buy the same but shall be and remain the bailee thereof only notwithstanding any judgment or judgments which the Owner may at any time to from time to time obtain against the Hirer for any sum or sums for the time being owing by the Hirer to the Owner hereunder.

Exhibits

Exhibit 3
Agreement, R.T.
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31st July 1956
(Continued)

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5. The Hirer may at any time terminate the Hiring and become the Purchaser of the said Motor Vehicle by paying the Owner the sum of £20034. -. -d. and all moneys due from the Hirer to the Owner under the provisions hereof and in that even credit shall be given by the Owner to the Hirer for the amount paid by the Hirer upon the signing of this Agreement and for all payments made in respect of rent PROVIDED that the option given to the Hirer by this Clause shall not prejudice any right of action or other remedy by the Owner in respect of any breach by the Hirer of this Agreement.

6. The Hirer may at any time terminate the Hiring by delivering up the said Motor Vehicle to the Owner at such principal place of business as aforesaid or elsewhere as the Owner may in writing direct at the Hirer's own risk and cost but the Hirer shall remain liable for rent (including apportioned rent for any broken period) up to the date of such return and all other sums payable under this agreement and no allowance return credit or payment shall be allowed to or paid to the Hirer in the event of the hiring being determined by the Hirer as provided by this clause.

7. The Hirer will pay all licence duties fees and registration charges payable in respect of the said Motor Vehicle and if

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any such duties fees or charges shall be paid by the Owner the Hirer will repay the same on demand.

8. The Hirer will at his own expense forthwith effect and during the continuance of the hiring sustain and keep in force a policy of insurance in an office approved by the Owner in the name of the Owner alone or jointly with that of the Hirer providing for a full indemnity to the Owner against loss of or damage to the said Motor Vehicle resulting from accident collision fire theft or malicious act and against liability for or in respect of the death of or injury to any person or persons or damage to any property caused by the said Motor Vehicle hereto resulting from the driving or use (whether negligent or not) of any such Motor Vehicle including liability for costs. Such policy and the receipts for premium paid thereunder shall be delivered to the owner. The Hirer will indemnify the Owner from and against all loss of or damage to the Motor Vehicle from whatsoever cause arising and all claims and demands connected with the said Motor Vehicle or consequent upon the use thereof in respect of which the Owner may not be effectually indemnified by such insurance And the Hirer shall not make use of the said Motor Vehicle outside the scope insurance or do any act or thing which may invalidate such insurance PROVIDED that such insurance shall not affect the liability of the hirer to maintain the said Motor Vehicle in good repair and working condition nor shall the Owner be bound to institute any proceedings against the Insurance Office to enforce any claim under such insurance PROVIDED FURTHER that in case the Hirer shall at any time fail to effect or keep effective the said policy by making default in payment of any premium or in any other way the Owner shall be entitled to effect such insurance and pay such premiums and any sums so paid by the Owner and any costs and expenses occasioned by the Hirer's default in effecting or keeping effective the insurance shall be repaid by the Hirer
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on demand PROVIDED FURTHER, that if the said Motor Vehicle shall be destroyed or damaged by fire, the Owner shall be entitled to and shall be paid each and every sum recoverable by the assured under the said policy, and the Hirer will forthwith pay the said sums to the Owner if received by the Hirer from the said Insurance Company, provided that the Owner agrees to give the Hirer credit for all sums paid by the said Insurance Company, as against the sum recoverable by the Owner against the Hirer in respect of the loss/or damage to the said Motor Vehicle.

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9. The Hirer will during the continuance of the hiring keep the said Motor Vehicle in his own custody and will not sell assign pledge mortgage underlet lend or otherwise part or attempt to part with possession of the Motor Vehicle or the Hirer's interest therein or contract or purport so to do or assume the ownership of the said Motor Vehicle.

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10. That the Hirer will not take the Motor Vehicle out of Nigeria without first obtaining the consent in writing of the Owner.

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11. The Hirer shall keep the said Motor Vehicle in his own possession and shall not create or allow to be acquired any lien on the said Motor Vehicle and shall permit the Owner its servants or agents at all reasonable times to inspect and test the said Motor Vehicle FOR the purpose of giving effect to this clause the Hirer hereby undertakes to produce the said Motor Vehicle at the Owner's principal place of business or elsewhere as the Owner may in writing direct once in every month during the continuance of this agreement to enable the Owner to inspect the same.

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12. The Hirer will during the continuance of the hiring at his own expense keep the said Motor Vehicle in perfect working order and thoroughly good condition and repair and will be responsible for all risks of whatsoever kind PROVIDED that the Hirer shall not be deemed to have authority to pledge the Owner's credit for the repair of the said Motor Vehicle or create any lien on the said Motor Vehicle in respect of such repairs or otherwise and if the said Motor Vehicle shall require repair the Hirer shall notify the Owner who shall be entitled to repair the said Vehicle or have the same repaired by a person to be selected by the Owner at the expense of the Hirer and the Owner shall be entitled to the possession of the said Motor Vehicle for the purpose of such repair. 10

13. The Hirer may at any time determine the hiring by returning the said Motor Vehicle at his own cost to the Owner Provided that it is hereby agreed and understood that an independent valuation of the said Motor Vehicle shall be obtained by the Owner at the expense of the Hirer who shall be bound by such independent valuation and that the amount of such valuation only shall be deducted from the amount of the periodical sums agreed upon in Clause 1 hereof which remain still unpaid by the Hirer and that the Hirer agrees to pay in full the balance of the aggregated hire rent still remaining unpaid less the amount of the said valuation. 20
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14. If the Hirer fail punctually to pay the rent mentioned in Clause 3 hereof (whether demanded or not) or to observe or perform any of the provisions and conditions hereof or if a Receiving Order in Bankruptcy be made against the Hirer or if he convene any meeting of creditors or execute any assignment for the benefit of his creditor or compound with the greater part in number or value of his creditors or if the Hirer execute a Bill of Sale or preferential security of the Hirer's effects or any of them or if a distress be levied or threatened upon the Hirer's effects 40

or the said Motor Vehicle or if the said Motor Vehicle or the Hirer's term or interest therein be seized or taken in execution or if the Hirer allow any judgment against him to remain unsatisfied then and in any of the aforesaid cases the hiring shall immediately determine (without any notice or other act on the part of the Owner and although the Owner may not have taken advantage of some previous default of a like nature) and thereupon all payments previously made by the Hirer under this Agreement shall be forfeited to the Owner.

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15. If the hiring be determined under clause 14 hereof the Hirer shall forthwith deliver up the said Motor Vehicle at the Hirer's own risk and cost to the Owner at such principal place of business as aforesaid and in default of delivery the Owner or any Agent or Agents or the Owner may without previous notice enter upon any premises occupied or apparently occupied by the Hirer or of which the Hirer is or appears to be tenant and seize and take away the said Motor Vehicle and resume possession of the same and for that purpose or any other purpose connected therewith the owner the owner's agents servants or others in the Owner's employ or on the Owner's behalf shall have at all reasonable times full liberty of ingress and egress into and from any of the premises whereon the said motor vehicle may be placed or supposed to be placed without being liable for any damage that may be caused by any such entry or to any action or other proceedings on the part of the hirer or any person claiming through under or in trust for him in respect thereof AND the Owner at any time either before or after the determination of the hiring may pay any sum or sums which the Owner may deem it advisable to pay for the protection of the Motor Vehicle or for the purpose or

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regaining possession thereof and thereupon or such payments shall forthwith become due and payable by the Hirer to the Owner.

16. If the hiring be determined under Clause 14 hereof the Owner may notwithstanding any seizure of the said Motor Vehicle or return thereof recover by action from the Hirer all rent in arrear at the date of termination of the hiring and any costs expenses including legal charges incurred by the Owner whether legal proceedings shall have been instituted or not and payments incurred or made by the Owner in connection with tracing and obtaining possession of the said Motor Vehicle or otherwise and all other moneys due from the Hirer to the Owner under this agreement and also loss and damage which the Owner may sustain in consequence of any breach by the Hirer of this agreement and the Hirer shall not in any ground be entitled to any allowance return or set-off. 10
17. If the hiring be determined under Clause 14 hereof and immediately upon such determination the Hirer deliver up the Motor Vehicle to the Owner or permit the Owner to retake possession of the same then the Hirer shall have the right to purchase the said Motor Vehicle PROVIDED he pays to the Owner within seven days of such determination a sum which together with the sum paid by the Hirer on the signing hereof and the sum paid by him for rent will amount to and also all moneys due from the Hirer to the Owner under this agreement at the date of such determination and all costs charges payments and expenses incurred made or sustained by the Owner in relation to the premises PROVIDED ALWAYS that until the Hirer shall have fully complied with the stipulations of this clause he shall not (after the hiring has been determined under Clause 14 hereof) be deemed to have any right or property or beneficial interest in the said Motor Vehicle. 30 40

18. The Hirer shall procure the Motor Vehicle described or mentioned in the First Schedule hereto to be forthwith registered in the name of the Owner and licensed in the manner for the time being required by law and to continue so registered and licensed during the continuance of the hiring and shall not at any time during the continuance of the hiring use nor drive such Motor Vehicle nor suffer the same to be used nor driven unless the said Motor Vehicle and any Vehicle drawn by the said Motor Vehicle are registered and licensed as aforesaid and have affixed thereto in the prescribed manner the identification mark prescribed by law nor use any such Motor Vehicle in any manner or at any time or place or any purpose for the time being forbidden by law.
19. The Hirer shall not at any time during the continuance of the hiring remove change erase deface or conceal any engine chassis registration or identification mark or number or trade mark appearing on or affixed to the said Motor Vehicle nor suffer any such mark or number to be removed changed erased defaced or concealed.
30. 20. All the original rights and powers of the Owner under this agreement shall remain in full force notwithstanding any neglect forbearance or delay in the enforcement thereof and no waiver of any breach of this Agreement whatsoever shall operate as a waiver by the Owner of any like or other breach thereafter committed or suffered.
21. The Owner is and shall be bound only by the terms of this agreement notwithstanding any proposal representation or arrangement whether verbal or in writing that may have been made or suggested prior to the signing hereof by any person firm or company whatsoever or in

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31st July 1956
(Continued)

Exhibits

Exhibit 3
Agreement R.T.
Briscoe Ltd.
And Emmanuel
Ayodeji Ajayi
31st July 1956
(Continued)

any advertisement circular or advertising matter or otherwise and no variation in the terms and conditions of this agreement shall be binding on the Owner without the Owner's written consent.

22. The intervention of any dealer insurance agent or other person either by introducing the Hirer to the Owner or by delivery of the said Motor Vehicle to the Hirer or by receiving any payment hereunder and remitting the same to the Owner or otherwise shall not constitute the said dealer insurance agent or other person the agent of the Owner for any purpose whatsoever in reference to the transaction entered into and recorded by this Agreement. 10
23. If and whenever the Hirer shall change his address he shall forthwith give notice in writing thereof and of his new address to the Owner. 20
24. In case there shall be two or more accounts kept by the Owner against the Hirer by reason of two or more Motor Vehicles having been let to the Hirer by the Owner on hire-purchase agreement or other wise the Owner may if he so desires apply any sum or sums paid by the Hirer to the Owner in or towards the payment of any of the said two or more accounts.
25. In case of any amount being due by the Hirer to the Owner for repairs or supply of parts or accessories or licence or insurance or on any other account whatsoever in respect of the said Motor Vehicle all sums paid by him to the Owner shall in the first place be applied by the Owner in satisfaction of such amounts due and the said payments shall be taken to have been so applied NOTWITHSTANDING any statement to the contrary contained in any receipt or acknowledgment given for any such payment. 30 40
26. Any notice required to be given by the Owner under this agreement may be

10

communicated either verbally to the Hirer or any other person at the premises on which the said Motor Vehicle may be or to the Hirer elsewhere or in writing served upon the Hirer personally or left at the last known place of abode or business of the Hirer or affixed on the said premises or sent by post addressed to the Hirer at the aforesaid place of abode or business of the Hirer or at the said premises and any notice required to be given by the Hirer under this agreement shall be in writing and sent by registered post to the Owner's principal place of business.

Exhibits

Exhibit 3
Agreement R.T.
Briscoe Ltd.
and Emmanuel
Ayodeji Ajayi
31st July 1956
(Continued)

27. This agreement is personal to the Hirer and is not assignable by him to any other person or persons company or corporation whatsoever.

IN WITNESS WHEREOF D.L. PAYNE (NIGERIA) LIMITED
and for and on behalf of
Owner and COLONY CARRIER COMPANY the Hirer
have hereunto set their hands the day and year
first above written.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO:

Make and Description of Vehicle : 9 MARK 5S10
SEDDON TIPPERS

Engine Numbers - 3224592, 3224402, 3225333,
3225324, 3228331, 3228329.

Chassis Numbers - 3228325, 3228321, 3224593

Registration Number 31733, 31734, 31735,
31741, 31765, 31766,
31768, 31769 & 31770.

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO:

Amount of Rent Payable	Date of Payment
£3000. 0. 0d.	31ST AUGUST, 1956
£3000. 0. 0d.	30TH SEPTEMBER, 1956
£3000. 0. 0d.	30TH OCTOBER, 1956

<u>Exhibits</u>	<u>Amount of Rent Payable</u>	<u>Date of payment</u>
Exhibit 3 Agreement, R.T. Briscoe Ltd. and Emmanuel Ayodeji Ajayi 31st July 1956 <u>(Continued)</u>	£3000. 0. Od. £3000. 0. Od. £2034. 0. Od.	30TH NOVEMBER, 1956. 30TH DECEMBER, 1956. 30TH JANUARY, 1957.

SIGNED by the above-named
(Sgd.) D.L. PAYNE (NIGERIA) LIMITED
for and on behalf of the owners in the
Presence of:-
(Sgd.) E.A. Ajayi.

Exhibit 5
Debit Note
31st July, 1956

Exhibit 5

10

Debit Note

D E B I T N O T E No. BMP/268.

D.L. PAYNE (NIGERIA) LIMITED.

P.O. Box 151

Cable Address: Denpay
Lagos.

31, Commercial Avenue
YABA, NIGERIA

Telegram: Denpay Yaba
Telephone: 44198

MESSRS. COLONY CARRIER Company
162, Clifford Street, Yaba.

31. 7. 56.

Price									
per unit	£	s	d	£	s	d			

20

TO

9 Mk, 5S10

Seddon Tippers @ £2100 18900. - -

Plus 6% H.P. Charges 1134. - -

20034 - -

Chassis No. 31733; 31734, 31735,
31741, 31765, 31766,
31768, 31769, 31770.

30

Engine No. 3224592; 3224402; 3225333;
3225324; 3228331; 3228329,
3228325, 3228321, 3224593.

PREPARE BY (Sgd.) ??
CHECKED BY (Sgd.) ??
EXAMINED BY (Sgd.) ??

Exhibits

Exhibit 5
Debit Note
31st July, 1956
(Continued)

Seddon Lorries Nigeria

Exhibit 1

Certificate of Incorporation
R.T. Briscoe (Nigeria) Ltd.

Exhibit 1
Certificate of
Incorporation
R.T. Briscoe
(Nigeria) Ltd.
9th March, 1957

10

N I G E R I A

Certificate of Incorporation

No. 1482

I hereby Certify that
R.T. BRISCOE (NIGERIA) LIMITED
is this day Incorporated under the Companies
Ordinance (Cap. 38) and that the Company is
Limited.

20 Given under my hand at Lagos this ninth
day of March, One thousand Nine Hundred and
fifty-seven.

Fees and Deed Stamps £32. -: -d.
Stamp Duty on Capital £500. -: -d.

(Sgd.) ? ? ?
Registrar of Companies

Exhibits

Exhibit 11

Exhibit 11
Letter, Colony
Carrier Co.
(Regd.) to R.T.
Briscoe (Nigeria)
Ltd. 29th May
1957

Letter, Colony Carrier Co. (Regd.) to
R.T. Briscoe (Nigeria) Ltd.

THE COLONY CARRIER COMPANY (REGD.)

Transporters & Building Materials Suppliers

Specialities:

SAND
GRAVELS
GRANITE
ROCK LATHITE
STONES
FILLING SAND
ETC.

Head Office & Garage:-
162, Clifford Street,
Yaba.

Phone 41680 Ex. 3

P.O. Box

29th May, 1957.

10

Messrs. R.T. Briscoe (Nig.) Ltd.,
Private Mail Bag 2104,
Lagos.

Dear Sirs,

Perkins Engine failure

Breakage of Crankshaft

20

We write to inform you of a case of Crank-
shaft breakage of the engine of Seddon Truck No.
LB 7402 on 21st May, 1957.

The breakage occurred under normal running
conditions and there was no failure of either
main or connecting rod bearings.

The breakage of the Crankshaft has occurred
through the rear end Crank Pin bearing web.

Will you please send a representative of
your Company to the above address to inspect the
broken Crankshaft in order that we may take
appropriate action with the engine Manufacturers.

30

Yours faithfully,

(Sgd.) H.P.G. LEIGH.

Exhibit 14

Letter, R.T. Briscoe (Nigeria) Ltd. to
Arab Bros. of Kano & Lagos Ltd.

R.T. BRISCOE (NIGERIA) LTD.

4th June, 1957.
BH/NOS/916

Messrs. Arab Brothers of Kano & Lagos Ltd.,
52/54, Denton Street,
Ebute Metta.

Exhibits

Exhibit 14
Letter, R.T.
Briscoe (Nigeria)
Ltd. to Arab
Bros. of Kano &
Lagos Ltd.
4th June 1957

10 Dear Sirs,

PERKINS

We have received the following letter from one of our good customers, Messrs. Colony Carrier Company regarding failure of a Perkins P6 installed in a Seddon Truck:-

"We write to inform you of a case of Crankshaft breakage of the engine of Seddon Truck No.LB 7402 on 21st May, 1957.

20 The breakage occurred under normal running conditions and there was no failure of either main or connecting rod bearings.

The breakage of the Crankshaft has occurred through the rear end of Crank bearing pin bearing web".

30 These customers have experienced over the last six months unprecedented failures of several Perkins engines and we shall be much obliged if you will kindly arrange for a representative of your Company to inspect the broken crankshaft and submit his report to us.

The workshop of Colony Carrier Company is at No. 162, Clifford Street, Yaba.

Yours faithfully,
(Sgd.) ? ? ?

c.c. Colony Carrier Company.

Exhibits

Exhibit 7

Exhibit 7
Letter, Colony
Carrier Co.
(Regd.) to R.T.
Briscoe (Nigeria)
Ltd. 2nd July,
1957

Letter, Colony Carrier Co. (Regd.) to
R.T. Briscoe (Nigeria) Ltd.

THE COLONY CARRIER COMPANY (REG.)

Transporters & Building Materials Suppliers

Specialities:-

Head Office & Garage.

SAND GRAVELS
GRANITE
ROCK LATRITE
STONES
FILLING SAND
ETC.

162, CLIFFORD STREET,
YABA.

Phone 44680 Ex. 3
P.O. Box
2nd July, 1957

10

The Storekeeper,
Messrs. R.T. Briscoe,
Commercial Avenue,
Y a b a.

Dear Sir,

Please supply the following to the above
Company for Cash payment.

No. 1 Spring leaf (Back) none
Spring Hanger (Rear) £4. 10/-
King pin and bushings none
Rear Hubs none
Brake Exhauster (Blade) none
Shaft Studs and Nuts none Right 12/- ea.
Rear Hub studs No Left.
Injector nozzles 82/6 ea.
Water pump repair kit
Water pump complete £13. 10/-

20

These are the prices of what we
have in the stock.

30

(Sgd.) ??
2/7/57

Yours faithfully,
(Sgd.) E. A. Ajayi
Managing Director.

Exhibit 10

Letter, Colony Carrier Co. (Regd.) to
R.T. Briscoe (Nigeria) Ltd.

THE COLONY CARRIER COMPANY (REGD.)

Transporters & Building Material Suppliers

Exhibits

Exhibit 10
Letter, Colony
Carrier Co. (Regd.)
to R.T. Briscoe
(Nigeria) Ltd.
5th July, 1957

Specialities:-

Head Office & Garage

SAND
GRAVELS
GRANITE

162, CLIFFORD STREET,
YABA.

10 ROCK LATRITE
STONES
FILLING SAND
ETC.

Phone 44680 Ex. 3

P.O. Box

5th July, 1957.

Messrs. R.T. Briscoe (Nig.) Ltd.,
Private Mail Bag 2104,
Lagos.

Dear Sirs,

SEDDON TIPPERS-COLONY CARRIER CO.

20 In connection with the above type of vehicle of which we purchased 11 from yourselves in June, 1956, we write to bring to your notice the unsatisfactory service we have obtained from them and also the high incidence of Mechanical failures of both minor and major components.

To date we have major engine failures as follows:-

FAILURES:

30	Connecting rod breakages	2
	Resultant breakage of cylinder block and crank case	2
	Pistons	2
	Differential Bevel & Pinion	2
	Differential Roller bearing	1

Exhibits

Exhibit 10
Letter, Colony
Carrier Co.
(Regd.) to
R.T. Briscoe
(Nigeria) Ltd.
5th July, 1957
(Continued)

Cylinder Head fracture 1
Excessive wear of crank shaft main
journals ("040") rendering crank
shafts unserviceable as they are
"010" below the low limit 2
Other recurring failures of a high incidence are
as follows:-

1. Breakage of Rear wheel Hub securing studs
(on several occasions the whole set of 8).
2. Breakage of axle shaft flange studs. 10
Resultant scrapping of wheel Hubs 6.
3. Distortion of rear doors owing to load
pressure during normal running conditions
(All.)
4. Insecurity of Main fuel tanks and
consequent breakage of fuel pipes connected
thereto.

From: Colony Carrier Co.
To: Messrs. R.T. Briscoe.

Despite all our effort to maintain 20
serviceability of vehicles we have had on
occasions from 50% to 75% of them unserviceable.

Spare parts required in replacement of
defective parts have risen to an abnormal
quantity and the cost of these has increased our
maintenance and repair costs to such a figure
that economical operation of the trucks has been
virtually impossible. Such a situation has not
arisen in the case of 4 Bedford 5cu/yd.
Tippers which have been in service since May, 30
1956.

These 4 trucks have given us almost trouble
free service and the provision of spare parts for
their maintenance has been infinitesimal in
comparison.

Two of the major engine failures were
reported through the Agents, Messrs. D.L. Payne
to Messrs. Perkins Ltd., about 8 months ago but
nothing further has been heard from them and no
assistance has been offered to us to bring the 40
vehicles concerned to a serviceable condition.
Consequently we have suffered a heavy financial
loss by having them lying in our Yard earning no

money.

Exhibits

Owing to the repeated mechanical failures on journeys to such places as Abeokuta, which on occasions has delayed the return of the vehicle to our Yard for a day or more we have been compelled to withdraw them from such work and to employ them on Town running.

Exhibit 10
Letter, Colony
Carrier Co.
(Regd.) to
R.T. Briscoe
(Nigeria) Ltd.
5th July, 1957
(Continued)

10 This has considerably reduced their earning capacity and the situation with which we are now confronted is serious, inasmuch as we are unable to obtain any assistance in bringing all of our Seddons to a serviceable state and workable condition.

From Colony Carrier Co.

To Messrs. R.T. Briscoe (Nig.) Ltd.

20 The lack of after sales service has been acutely felt but we hope this will soon be remedied when workshop facilities and Technical advice are available in the repair organisation we understand you are shortly to open.

It has now become imperative to reduce out operational costs and in this connection it has occurred to us that a considerable reduction would be affected from the view point of Insurance if our present comprehensive policies were on expiry replaced by policies covering Third Party, fire and theft only.

30 The financial assessment in this connection could then be applied to capital cost repayments to yourselves. These repayments would be adequately covered by Mr. E.A. Ajayi's personal guarantee.

We await an early reply from you after you have given consideration to the points enumerated in this letter; an agreement to which on your part we feel would be to our mutual advantage.

40

Yours faithfully,
(Sgd.) E.A. Ajayi
Managing Director.

Exhibits

Exhibit 12

Exhibit 12
Letter, Colony
Carrier Co.
(Regd.) to
R.T. Briscoe
(Nigeria) Ltd.
12th July, 1957

Letter, Colony Carrier Co. (Regd.) to
R.T. Briscoe (Nigeria) Ltd.

THE COLONY CARRIER COMPANY (REGD.)

Transporters & Building Materials Suppliers

Specialities

Head Office & Garage:-

SAND
GRAVELS
GRANITE
ROCK LATHRITE
STONES
FILLING SAND
ETC.

162, CLIFFORD STREET
YABA.

Phone 44680 Ex. 3

10

P. O. Box

12th July, 1957

Messrs. R.T. Briscoe (Nig.) Ltd.,
Private Mail Bag 2104,
Lagos.

Dear Sirs,

SEDDON TIPPER-COLONY CARRIER CO.

Reference is made to our letter dated 5th
July, 1957 in connection with 11 of the above
type of vehicle purchased from yourselves in
June, 1956.

20

In that letter we outlined the extreme
difficulties we have met in maintaining them in a
serviceable and roadworthy condition owing to the
non-availability of spare parts and lack of any
essential technical assistance on your part which
it was understood would be available in your
repair organisation.

30

As this is not yet available and we
understand it will be some months yet before it
is available we have reluctantly been compelled
to withdraw them completely from service.

We are unable to cope with the ever
increasing spare part requirements and for some
considerable time we have had to purchase many

essential spares from Leventis, Arab Bros: and elsewhere. In cases where we have dismantled engines for a complete overhaul we have invariably found excessive wear on the crank-shaft journals which has necessitated the scrapping of the crank-shafts as the reduction in diameter owing to normal running conditions did not allow of re-grinding within the allowable limits.

Exhibits

Exhibit 12
Letter, Colony
Carrier Co.
(Regd.) to
R.T. Briscoe
(Nigeria) Ltd.
12th July, 1957
(Continued)

10 We now feel it would be inadvisable to make any further attempts to bring our vehicles to a fully serviceable condition with the limited repair facilities available to us.

From: Colony Carrier Co.
To: Messrs. Briscoe (Nig.) Ltd.

20 Apart from the loss of business which we have suffered owing to constant road breakdowns and high incidence of unserviceability, we feel that it would be to the best interests of this Company and yourselves to lay up all our Seddon until we can come to you for the technical advice and assistance which you will be able to put at our disposal through your Apapa Repair Organisation.

30 We would remind you that we have to date paid approx: 65% of the purchase price of the 11 vehicles inclusive of H.P. charges, and we have no desire or intention to forfeit the large sum of money involved.

The sooner you can offer us the help required to put them on the road again so that they will be an asset to the Company and produce a revenue the happier we shall be.

40 We were visited early last year by a Tech. representative of the Seddon Co. and he was given full details of our constant recurring failures. He stated that most of them were known to the Company and that modifications were being introduced which would preclude further repetitions.

Exhibits

Exhibit 12
Letter, Colony
Carrier Co.
(Regd.) to
R.T. Briscoe
(Nigeria) Ltd.
12th July, 1957
(Continued)

Also that supplies of modified parts would shortly be made available to us but to date nothing further has occurred and no modified parts have been made available.

When you are able to put your repair facilities at our disposal we feel sure that the results will enable our vehicles to be put into service again and by so doing their reputation would be enhanced and not as at present somewhat detrimental.

10

We on our part are prepared to make the necessary contribution for all essential repairs executed by yourselves and such costs would be debited to our Account with you and payment made when the vehicles are again in service. Your early comments on our proposals would be appreciated, and we would finally state that it is our firm desire to co-operate with you to obtain the ultimate full serviceability of our vehicles while ensuring the retention of our friendly business relationship.

20

Yours faithfully,
(Sgd.) E.A. Ajayi
Managing Director.

Exhibit 9
Letter, R.T.
Briscoe
(Nigeria) Ltd.
to Colony
Carrier Co.
22nd July, 1957

Exhibit 9

Letter, R.T. Briscoe (Nigeria) Ltd. to
Colony Carrier Co.

R. T. BRISCOE (NIGERIA) LTD.

Head Office,
The East Asiatic Company
Ltd. Copenhagen.

Lagos, 22nd July, 1957.
Private Mail Bag 2104

30

BH/NOS/1307

CABLE ADDRESS:
MANAGEMENT: PYRALOGS
GENERAL LOGS

TELEPHONE 23688

The Colony Carrier Company,
162, Clifford Street,
Yaba.

Dear Sirs,

SEDDON/TIPPERS

We are in receipt of your letters of 5th and 12th July and are indeed very sorry to hear about the troubles you have had with your fleet of Seddon Tippers.

10 We hope very soon to be able to put at your disposal the service of our engineer and on completion of our workshop in Apapa we should be able to give you a proper service for your Seddon vehicles in the time to come.

Please rest assured that we do regret the inconvenience and loss you have been put to and we confirm herewith that we are agreeable to your withholding instalments due on the Seddon Tippers as long as they are withdrawn from active service.

20 Yours faithfully,
(Sgd.) B.A. Heidemann
Acting Manager.

Exhibit 6

Letter, Colony Carrier Co. (Regd.) to R.T.
Briscoe (Nigeria) Ltd.

THE COLONY CARRIER COMPANY (REGD.)
Transporters & Building Material Suppliers

Specialities:- Head Office & Garage

SAND
GRAVELS
30 GRANITE
ROCK LATRITE
STONES
FILLING SAND
ETC. 162, CLIFFORD STREET,
YABA.
Phone 44680 Ex. 3
P.O. Box
29th July, 1957.

Messrs. R.T. Briscoe (Nig.) Ltd.,
Private Mail Bag 2104,
L a g o s

Dear Sirs,

SEDDON TIPPERS

We acknowledge with thanks receipt of your

Exhibits

Exhibit 9
Letter, R.T.
Briscoe
(Nigeria) Ltd.
to Colony
Carrier Co.
22nd July, 1957
(Continued)

Exhibit 6
Letter, Colony
Carrier Co.
(Regd.) to R.T.
Briscoe (Nigeria)
Ltd. 29th July,
1957

Exhibits

letter Ref. BH/NOS/1307 dated 22nd July, 1957.

Exhibit 6
Letter, Colony
Carrier Co.
(Regd.) to R.T.
Briscoe (Nigeria)
Ltd. 29th July,
1957 (Continued)

Also we appreciate your promised co-operation and facilities of your Apapa Workshop on its completion in order that our Seddon Tippers may be returned to service and thereby become an asset to us and enable us to resume our increasing business commitments which at present have been seriously curtailed.

We would state that we would prefer to wait until such time as our vehicles can be received in your Apapa Workshop as opposed to attempting to carry out repairs in our yard with the limited facilities at our disposal. 10

In the meantime we feel that it would be to our mutual advantage if our joint representatives could meet and thoroughly discuss the mechanical failures we have experienced to date.

This would be helpful in determining the nature and extent of repairs and modification required to ensure future efficient service from our vehicles. 20

Yours faithfully,
(Sgd.) E.A. Ajayi
Managing Director.

Exhibit 15
Letter, R.T.
Briscoe (Nigeria)
Ltd. To E.A.
Ajayi (Undated)

Exhibit 15
Letter, R.T. Briscoe (Nigeria) Ltd. to
E.A. Ajayi.

R.T. BRISCOE (NIGERIA) LTD. LAGOS
PRIVATE MAIL BAG 2104

HEAD OFFICE
THE EAST ASIATIC COMPANY LTD. 30
COPENHAGEN EJE/GAS/1755

CABLE ADDRESS:
MANAGEMENT: PYRALOGS
GENERAL: LOGS

TELEPHONE 55238

Mr. Ajayi,
Colony Carrier Company Ltd.,
Clifford Street,
Yaba.

Dear Sir,

MARK 5 TIPPER CONVERSION

The price of an R6 Perkins Engine will be approximately £600. 0. Od. A heavy duty 2-speed axle complete £485:14:0d. and the heavy duty DBrown Gear Box £224. 0. 0.

As you will appreciate a modification of this nature will entail a considerable labour charge of approximately £80 per vehicle making a total of £1389.14.0d. for each machine.

10 Regarding rebate on axles, Gear boxes and Engines removed, Mr. Heidemann will be able to give you more details on this subject, but personally I feel that the modification you require is far too expensive a proposition especially as all we removed will only have a second hand value. May I suggest that you discuss this matter with Mr. Heidemann and myself in an effort to put your vehicles roadworthy as soon as possible.

20 Yours faithfully,
(Sgd.) E.I. Edwards

c.c.: Mr. Heidemann
c.c.: Mr. Anderson.

Exhibit 13

Letter, G.O.K. Ajayi to T.O. Showale Benson & Co.

G.O.K. Ajayi LL.B (HONS)LL.M (LOND)
Barrister-at-Law (Middle Temple)
SOLICITOR AND ADVOCATE

30 20, Akinwummi Street,
Yaba Estate,
Federal Lagos, Nigeria.
5th April, 1958.

Tel: 44645

T.O. Showale-Benson & Co.,
17, Custom Street,
L a g o s.

Dear Sir,

re: Seddon Tipplers.

40 Your several letters addressed to my client

Exhibit 15
Letter, R.T.
Briscoe (Nigeria)
Ltd. to E.A.
Ajayi (Undated)
(Continued)

Exhibit 13
Letter, G.O.K.
Ajayi to T.O.
Showale-Benson
& Co. 5th April
1958

Exhibit 13
Letter, G.O.K.
Ajayi to T.O.
Showale-Benson
& Co. 5th April
1958 (Continued)

Mr. E.A. Ajayi of 52, Campbell Street, Lagos, have been passed on to me.

It is rather amazing that my client should receive such letters from you on behalf of R.T. Briscoe. He had thought it all rather a big joke until the letters increased both in length and in passion. That is why he thought that matters be put in their proper setting and perspective.

Now, you already know that at the time my client entered into hire-purchase agreement with yours, your clients had made representations to us that they were going to provide an efficient spare-parts service for the Seddon types and also a workshop for the servicing of Seddon types because these vehicles were a new type to these parts. It was on the strength of these representations that my client entered into the hire-purchase agreement. But alas, almost the date on which the vehicles passed, they started giving trouble, and your client's failure to provide an adequate spare-parts service made matters worse. (See my client's letters to yours dated 5th and 12th July, 1957, and also the fantastic spare-parts bill).

By July 1957, the vehicles had to be withdrawn from active service because of recurrent failures. Fully appreciating the position, your clients by letter dated the 22nd July 1957 agreed to my client 'withholding the instalments due on the Seddon Tippers as long as they are withdrawn from active service'. You know that the Tippers are still withdrawn from active service. Why then do you choose to be troublesome?

My client is as anxious to get them going as much as you would like paid, but you certainly won't get anywhere with lame threats of Courts action. If you choose to determine the agreement, you would be in breach of your word as per above quoted letter which constituted a variation of the original agreement.

In the circumstances, we can only suggest that you bring forth suggestions by which the mess can be cleared up, for we are as anxious as you are to find a way out.

Yours faithfully,
(Sgd.) G.O.K. Ajayi
S O L I C I T O R

10

20

30

40

IN THE PRIVY COUNCIL

No. 28 of 1963

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA.

B E T W E E N

EMMANUEL AYODEJI AJAYI
trading under the name and
style of the Colony Carrier
Company (Defendant) Appellant

- a n d -

R.T. BRISCOE (NIGERIA) LIMITED
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant
WILKINSON, KIMBERS & STADDON,
34, NICHOLAS LANE,
LOMBARD STREET,
LONDON, E.C.4.

SOLICITORS FOR THE RESPONDENTS