

9/81

No. 12 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE GAMBIA COURT OF APPEAL

BETWEEN :

1. SHYBEN A. MADI  
2. SHYBEN A. MADI & SONS LTD. Appellants  
- and -  
C. L. CARAYOL Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
London SW1E 6HB.

Solicitors for the  
Appellants

CHARLES RUSSELL & CO.  
Hale Court,  
Lincoln's Inn,  
London WC2A 3UL.

Solicitors for the  
Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE GAMBIA COURT OF APPEAL

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B E T W E E N :

1. SHYBEN A. MADI  
2. SHYBEN A. MADI & SONS LTD. Appellants  
- and -  
C.L. CARAYOL Respondent
- 
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RECORD OF PROCEEDINGS

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Notice of Motion	13th September 1976
Affidavit of G. Madi and annexures "A", "B", "C" and "D" thereto	20th September 1976

E X H I B I T S

Exhibit Mark	Description of Document	Date
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BB	Grand Summary of monthly sales and cash banked - 16 months to 30th April 1975	
CC	Summary of Accounts, Shyben Madi	
E1	Notice of Assessment 1974, Shyben A. Madi & Sons Ltd.	29th August 1975
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Exhibit Mark	Description of Document	Date
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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE GAMBIA COURT OF APPEAL

BETWEEN :

1. SHYBEN A. MADI  
2. SHYBEN A. MADI & SONS LTD. Appellants  
- and -  
C.L. CARAYOL Respondent

10

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 1976-B-4

In the Supreme Court

No. 1  
Writ of  
Summons  
29th January  
1976

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD. Plaintiffs  
and  
C.L. CARAYOL Defendant

20

To: Mr. C.L. Carayol,  
12 Hagan Street,  
BANJUL.

YOU ARE HEREBY COMMANDED in the name of the Republic of the Gambia to attend this Court at Banjul on Monday the 2nd day of February 1976 at 9.30 o'clock in the forenoon to answer a suit by SHYBEN A. MADI, SHYBEN A. MADI & SONS LTD. of

In the Supreme Court

No. 1  
Writ of Summons  
29th January  
1976  
(cont'd)

Russell Street, Banjul, against you.

The Plaintiffs claim from the defendant Account Books, Income Tax Papers and all other books and papers relating to their respective businesses in respect of 1975 and before handed to the defendant while he acted as Accountant and Income Tax Consultant for the Plaintiffs.

(Sgd.) Philip Bridges.  
CHIEF JUSTICE

ISSUED AT BANJUL, this 29th day of January 1976. 10

TAKE NOTICE:- 1. That if you fail to attend at the hearing of this suit or at any continuation or adjournment thereof the Court may allow the plaintiffs to proceed to judgment and execution.

2. If you have a counter-claim or set-off against the plaintiffs you must lodge with the Registrar FOUR CLEAR DAYS before the return day a notice in original with as many duplicates thereof as there are plaintiffs containing your name and address and a concise statement of the grounds of such counter-claim or set-off and pay such court and service fees as may be payable in respect thereof. 20

CERTIFICATE OF SERVICE OF BAILIFF

UPON the \_\_\_\_\_ day of \_\_\_\_\_ 1976 this summons was served by me on the defendant. This I did by serving a copy of the above summons and the particulars of claim on the defendant personally.

BAILIFF OR OFFICER OF THE COURT

No. 2  
Statement of Claim  
28th January  
1976

No. 2  
Statement of Claim

30

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD. Plaintiffs  
and  
C.L. CARAYOL Defendant



STATEMENT OF CLAIM

In the Supreme  
Court

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No. 2  
Statement of  
Claim  
28th January  
1976  
(cont'd)

1. The Plaintiffs are a businessman and a Limited liability company incorporated in the Gambia with its Registered Office at 3, Russell Street, Banjul, The Gambia respectively. The defendant is an Accountant and Income Tax Consultant and Retired Civil Servant.
  
- 10 2. The Plaintiffs employed the defendant as Accountant and Income Tax Consultant for some years and in the course of his employment gave the defendant their books, papers etc., for the purpose of preparing the usual balance sheets and other accounting documents required, among other purposes, for the purpose of assessing their Income Tax liabilities.
  
3. The defendant failed to surrender these books, papers, etc., although he failed to carry out the work for which he was engaged.
  
- 20 4. The Plaintiffs do not owe the defendant any sum or sums in respect of work done for them.
  
5. Despite repeated demands, the defendant has refused and is refusing to hand over these books, papers, etc. to the plaintiffs.

AND the plaintiffs claim from the defendant their books, papers, etc. and costs and any further and other relief as the Court might seem fit.

DATED AT BANJUL, this 28th day of January 1976.

30 ALHAJI A.M. DRAMEH,  
8 MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE PLAINTIFFS.

Master & Registrar,  
Supreme Court,  
Banjul.

Mr. C.L. Carayol,  
12 Hagan Street,  
Banjul.

40 Alhaji A.M. Drameh,  
8 MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE PLAINTIFFS.

In the Supreme  
Court

No. 3  
Proceedings  
2nd February  
1976

No. 3  
Proceedings

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD.                      Plaintiffs  
and

C.L. CARAYOL    Defendant

Monday the 2nd day of February 1976.

10

Before His Lordship The Hon. Mr. Justice O. Agege,  
Ag. Judge.

A.M. Drameh for Plaintiffs - absent.

A.S.B. Saho for defendant

Order for pleadings -

Statement of Claim already filed to be deemed to  
have been filed by order.

Statement of Defence in 14 days.

Mention - 23/2/76

J. Omo Agege,  
2/2/76

20

No. 4  
Notice of  
Motion  
13th February  
1976

No. 4  
Notice of Motion

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD.                      Plaintiffs/  
Respondents

- and -

C.L. CARAYOL    Defendant/  
Applicant

30

NOTICE OF MOTION

In the Supreme Court

TAKE NOTICE that this Court will be moved on Monday the 16th day of February, 1976 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by ABUBACARR SERIGN BAMBA SAHO Counsel for the Defendant/Applicant that this Honourable Court may be pleased to order as follows:

No. 4  
Notice of Motion  
13th February 1976  
(cont'd)

10

1. The Defendant may file a Request for Further and Better Particulars of the Statement of Claim within two days.
2. The time for filing a Defence be extended to fourteen days after receipt by the Defendant of The Reply to The Request for Further and Better Particulars.

DATED AT BANJUL THIS 13th DAY OF FEBRUARY, 1976.

A.S.B. Saho,  
Bamba's Chambers,  
32 Lemam Street,  
Banjul, The Gambia.

20

COUNSEL FOR DEFENDANT/APPLICANT

To: Alhaji A.M. Drameh,  
8 MacCarthy Square,  
BANJUL.

(Solicitor for the Plaintiffs/Respondents).

No. 5

Request for Further and Better Particulars

No. 5

Request for Further and Better Particulars  
13th February 1976.

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

30

BETWEEN:

SHYBEN A. MADI	
SHYBEN A. MADI & SONS LTD.	Plaintiffs
- and -	
C.L. CARAYOL	Defendant

In the Supreme  
Court

No. 5  
Request for  
Further and  
Better  
Particulars  
13th February  
1976.  
(cont'd)

REQUEST FOR FURTHER AND BETTER PARTICULARS  
OF THE STATEMENT OF CLAIM

As to the title of the Suit:

Which is First Plaintiff and which is Second Plaintiff?

As to paragraph 2:

- (a) What books did each of the Plaintiffs give to the Defendant?
- (b) What papers did each of the Plaintiffs give to the Defendant? 10
- (c) What items are covered by the words "etc"?
- (d) When was the Defendant employed and what were the terms of such employment?

As to paragraph 3:

What books, papers etc. did the Defendant fail to surrender?

DATED the 13th day of February, 1976.

A.S.B. Saho,  
Bamba's Chambers,  
32 Leman Street,  
Banjul, The Gambia.  
COUNSEL FOR DEFENDANT. 20

S.F. N'jie  
Bedford Place,  
Banjul, The Gambia.  
COUNSEL FOR DEFENDANT.

S.B.S. Janneh,  
15 Hagan Street,  
Banjul, The Gambia.  
COUNSEL FOR DEFENDANT. 30

No. 6

Affidavit of C.L. Carayol

In the Supreme  
Court

No. 6  
Affidavit of  
C.L. Carayol  
14th February  
1976.

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI SHYBEN A. MADI & SONS LTD.	Plaintiffs/ Respondents
- and -	
C.L. CARAYOL	Defendant/ Applicant

10

A F F I D A V I T

I CHARLES LOUIS CARAYOL of 12 Hagan Street  
Banjul Gambian Pensioner and Income Tax Consultant  
make oath and say as follows:-

1. That I am the Defendant/Applicant in this  
Suit.
2. That by an order of the Court made on the  
Second day of February, 1976, a Defence was  
to be filed within fourteen days.
3. That I am advised by my Solicitors that the  
Statement of Claim is vague and that a  
request for further and Better Particulars  
has been lodged in the Registry.
4. That I intend to file a Counter-claim against  
the Plaintiffs.

20

C.L. CARAYOL  
DEPONENT

SWORN at Banjul  
this 14th day of February, 1976.

BEFORE ME

30

(sgd) O.S. Batchilly  
COMMISSIONER FOR OATHS.

In the Supreme  
Court

No. 7

No. 7  
Further and  
Better  
Particulars  
9th March 1976

Further and Better Particulars

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD. Plaintiffs

- and -

C. L. CARAYOL Defendant

FURTHER AND BETTER PARTICULARS

10

SOME OF THE DOCUMENTS WITH MR. C.L. CARAYOL

Income Tax File ..... G. Madi

Income Tax File ..... T. Madi

Income Tax File ..... S. Madi

Income Tax File ..... Z. Madi

Discrepancies File Claims.

Bank(s) Statements:

(a) Standard Bank of West Africa Limited

1. Paying-in Books:-

10th May, 1974 - 16th September 1974. 20  
17th September, 1974 - December 1974.

17.12.75: 3 Pay-in Slip Books (CHEQUES).  
(Jan. 26.5.75)

18.12.75: 1 Pay-in Slip Book (CHEQUES).

Cash & Cheques: Pay-in-Books:

12th Feb. - 15th May, 1972: Cheques  
and cash.

June & July, 1972: Cheques  
and cash.

November & December, 1972: Cheques 30  
and cash.

January - 24th October,  
1975 Cheques  
and cash.

19.5.74 - 16.9.74 Cash

January - December, 1974 Cheques.

2. Invoices

3. Suspense

In the Supreme  
Court

No. 7  
Further and  
Better  
Particulars  
9th March 1976  
(cont'd)

(b) The Gambia Commercial & Development Bank

1. Pay-in Slip Books (CHEQUES). (Jan.-  
27/5/75).  
January - 27th May, 1975: (CHEQUES).  
January - December, 1973 (CHEQUES).  
January - December, 1974 (CHEQUES).

2. Invoices.

3. Suspense

10

(c) Invoice Books Nos. 10, 11, 12 & 13.

(d) 1 (one) Ledger

(e) 1 (one) Ledger (NEW)

DATED AT BANJUL, this 9th day of March, 1976.

ALHAJI A.M. DRAMEH,  
8 MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE PLAINTIFFS

The Master & Registrar  
The Supreme Court,  
BANJUL.

20

Mr. A.S.B. Saho, B.L.,  
32 Leman Street,  
BANJUL.

Alhaji A.M. Drameh,  
8 MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE PLAINTIFF.

In the Supreme  
Court  
No. 8  
Notion of Motion  
22nd March 1976

No. 8  
Notice of Motion

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI  
SHYBEN A. MADI & SONS LTD.      Plaintiffs/  
Respondents

- and -

C.L. CARAYOL      Defendant/  
Applicant      10

NOTICE OF MOTION

TAKE NOTICE that this Court will be moved on the Tuesday the 30th day of March, 1976 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by ABUBACARR SERIGN SAHO Counsel for the Defendant/Applicant that this Honourable Court may be pleased to order as follows:-

1. That the Defendants shall furnish Better Particulars in answer to the Request for Further & Better Particulars herein before filed by the Defendant. 20
2. That no further step be taken by the Plaintiffs in this suit until they have fully complied with the order of the Court made on the 16th day of February 1976.
3. That the time for filing a Defence be extended.

Dated the 22nd day of March, 1976.

A.S.B. Saho,      30  
Bamba's Chambers,  
32 Leman Street,  
Banjul.

To: Alhaji A.M. Drameh,  
8 MacCarthy Square,  
Banjul.





In the Supreme  
Court

No. 10  
Proceedings

No. 10  
Proceedings  
12th April  
1976.

Monday the 12th day of April 1976.

Before His Lordship, The Hon. Mr. Justice O. Agege,  
Judge.

A.M. Drameh for Plaintiff - absent.

Saho, N'jie & Janneh for Defendant.

Drameh is away to Ghana for The Gambia Bar  
Association.

For Mention - 14/4/76.

J. OmO Agege,

10

14th April  
1976.

Wednesday the 14th day of April 1976.

Before His Lordship, The Hon. Mr. Justice O. Agege,  
Judge.

Same representatives.

A.M. Drameh for respondent.  
Saho for Applicant. (N'jie and Janneh with him.)

Mr. N'jie refers to the Further & Better  
Particulars filed.

Submits that the particulars furnished are  
inadequate. Refers to O.23, r. 14 (P.1034). Says  
that it is necessary to know the issue.

20

A.M. Drameh submits that it should be assured that  
Shyben A. Madi is the 1st plaintiff and 2nd  
plaintiff is Shyben A. Madi & Sons Ltd.

Says that several books were handed over a  
period of years and it is not possible to itemise  
them. Submits that defendant should furnish what  
is stated in the particulars and no more. That any  
doubtful word e.g. should be ignored.  
On O.23, r.14, says that what is before the court  
is adequate.

30

Ruling:

In the Supreme Court

The Plaintiffs has furnished to the defendant's a statement of further and better particulars which on the face of it does not answer the questions posed in the request. But I consider that the issues in the case can now be narrowed down in the light of conclusions made by Drameh for the plaintiff.

No. 10  
Proceedings  
14th April 1976.  
(cont'd)

10

The plaintiffs are now to be designated as  
Shyben A. Madi - 1st Plaintiff;  
Shyben A. Madi & Sons Ltd - 2nd Plaintiff.

The books which both plaintiffs handed over to the defendant which are being claimed are the items set out in the Statement furnished by the plaintiff but omitting items marked suspense. The word marked "etc" to be ignored.

The defendant is allowed 14 days to file a statement of defence.

Mention 31/5/76

20

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No. 11  
Defence and Counter-Claim

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NO. 11  
Defence and  
Counter-Claim  
12th May 1976

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN:

SHYBEN A. MADI                      1st Plaintiff  
SHYBEN A. MADI & SONS LTD.      2nd Plaintiffs  
- and -  
CHARLES L. CARAYOL                      Defendant

D E F E N C E

30

1. Paragraph 1 of the Statement of Claim is admitted.

In the Supreme  
Court

No. 11  
Defence and  
Counter-Claim  
12th May 1976.  
(cont'd)

2. Save that the Defendant denies that he was employed by either Plaintiffs but that he was so engaged by both Plaintiffs paragraph 2 of the Statement of Claim is admitted.
3. Save that the Defendant withheld and still continues to withhold the documents that were given to him by the Plaintiffs paragraph 3 of the Statement of Claim is denied.
4. Paragraph 4 of the Statement of Claim is denied. 10
5. Paragraph 5 of the Statement of Claim is admitted.
6. Save as is hereinbefore expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were traversed seriatim.
7. The Defendant avers that he reconstructed the accounts of the First Plaintiff for the years 1966, 1967, 1968, 1969 the First Plaintiff not having kept any or any proper books of accounts in respect of his money-lending or merchandise operations over the period. 20
8. The Defendant avers that he rendered valuable professional services to the Plaintiffs through their Counsel and Solicitors and in particular Mr. Eugene Cotran who was conducting a law suit on behalf of the First Plaintiff.
9. The Defendant avers that he was engaged as a Tax Consultant by the first Plaintiff in September 1971 and by the second Plaintiffs in December 1973 and is still so engaged. 30
10. The Defendant avers that late in December 1975 he handed over to George Madi a Director of the 2nd Defendants' Company a draft of the Trading and Profit and Loss Account of the 2nd Defendants' Company covering a period of sixteen months to the 30th April 1975 and supported by certain annexures.
11. The Defendant avers that he has completed some 3,000 working hours on the business of the first Plaintiff, and some 300 working hours on the business of the second Plaintiffs. @0

12. The Defendant avers that there is not in existence any written contract between the Plaintiffs and the Defendant but that there was an oral agreement between the Parties that the Defendant's fees would be calculated with reference to what results were obtained by him at the conclusion of investigations by the Commissioner of Income Tax into Plaintiffs' accounts covering a period of six (6) years ending 31st December 1970, and that until such conclusion of the investigation the Defendant could from time to time make withdrawals of sums of money from the Plaintiffs.
13. In consequence of the matters contained in Paragraph 12 hereinbefore the Defendant has made withdrawals from the Plaintiffs in the sum of D10,450.00 (Ten thousand four hundred and fifty Dalasis.)
14. In consequence of and as a direct result of Defendant's work and skill the First Plaintiff has benefitted in the sum of D700,000 (Seven hundred thousand Dalasis) being savings on Income Tax for which he the First Plaintiff was originally liable.

In the Supreme Court

No. 11  
Defence and  
Counter-Claim  
12th May 1976.  
(cont'd)

COUNTER-CLAIM

The Defendant repeats paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of his Defence and the Defendant Counter-Claims as against the First Plaintiff the sum of D102,443.75b (One hundred and two thousand four hundred and forty-three Dalasis seventy-five bututs) and as against the Second Plaintiffs the sum of D9,225.00 (Nine thousand two hundred and twenty-five Dalasis).

Dated the 12th day of May, 1976.



They aver that the verbal agreement with the defendant was that the defendant would be paid D2,500 for preparing balance sheets and goods Trading & Profit & Loss Accounts covering a period of 3 years, i.e., 1967, 1968 and 1969.

In the Supreme Court

No. 12  
Defence to  
Counter-claim  
11th June 1976.  
(cont'd)

- 10
7. The defendant also prepared accounts for the 1st Plaintiff for submission to the Tax Authorities for 1971, 1972 and 1973. The defendant was paid in full in accordance with the above-named agreement i.e. 1967, 1968 and 1969. And the 1st Plaintiff's figures show that he had in fact been paid more than was agreed because the defendant had refused to work and had to be made to work by being paid more than was agreed with him.
- 20
8. In respect of 1971, 1972 and 1973 the agreed fee with the defendant was DL,000 per annum. Here again, he had been overpaid for the same reason as has been given above.
9. For the 2nd Plaintiffs the agreed fee was DL,500 per the 16 months period referred to above. Here too he was overpaid. He was paid DL,775 - for the same reason as that advanced above.
- 30
10. The 2nd Plaintiffs will show at the trial that the defendant has been advanced D650 towards his fees for the year 1975/1976 and he has not only done anything in respect of this period but that he has not even completed the previous years work i.e. 1974/75.
11. the 1st and 2nd Plaintiffs deny paragraph 13 and 14 of the defendant's defence and counter-claim.
12. The 1st and 2nd Plaintiffs deny that they owe the defendant the sums named in the counter-claim or any sums at all.
- 40
13. Save as is hereinbefore expressly admitted, the 1st and 2nd Plaintiffs deny each and every allegation contained in the defendant's counter-claim as if the same were traversed seriatim.

DATED the 11th day of June 1976.

In the Supreme  
Court

No. 12  
Defence to  
Counter-claim  
11th June 1976.  
(cont'd)

ALHAJI A.M. DRAMEH,  
8, MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE PLAINTIFF

1. Master & Registrar,  
Supreme Court, BANJUL.

2. A.S.B. Saho,  
32 Lemam Street, BANJUL.

3. Alhaji A.M. Drameh,  
8 MacCarthy Square,  
Banjul, The Gambia.  
SOLICITOR FOR THE 1ST & 2ND PLAINTIFFS.

10

Plaintiffs'  
Evidence  
No. 13

No. 13

George Madi

George Madi  
Examination  
(day 1)

Wednesday 23rd June, 1976.

Before The Hon. Sir Phillip Bridges C.J.,

Mr. A.M. Drameh for plaintiff.

Mr. Saho (sick today) Mr. S.F. N'jie & Mr. S.B.S.  
Janneh with him.

No objection to me trying the case.

20

George Madi S.O.B. (E) Pipe Line Road, Fajara. I  
have a P/A for 1st plaintiff my father and I am  
Managing Director of Shyben A. Madi & Sons Ltd.

In October 1971 I on behalf of my father  
engaged Mr. Carayol to reconstruct accounts for  
years 1967, 1968 & 1969. To prepare balance sheets  
& Trading Profit & Loss Accounts and necessary  
schedules for reconstructing the accounts. Fees  
were agreed at D2500.00 for the 3 years. (£500.0.0)  
Before then we had employed Mr. Foon at £200.0.0

30

For the Revenue a Mr. Gerald Davies had  
appointed a Mr. N. Staveley Chartered Accountant  
to reconstruct the accounts.

In April or May 1972 Staveley & Davies's job



was stopped 8 months later Cooper Brothers were appointed to finish the work their predecessors had started. They asked Carayol for schedules. Coopers started in 1973. Carayol had been paid his D2500 but had not prepared balance sheet or profit & Loss accounts but certain schedules.

In the Supreme Court

Plaintiffs' Evidence  
No. 13  
George Madi Examination  
(day 1)  
(cont'd)

They were

- 10
- (a) draft profit & loss year ending 31.12.68
  - (b) Schedule of merchandise debtors at 31.12.66 1967, 1968 & 1969.
  - (c) Schedule of money lending debtors at 31.12.66
  - (d) Analysis of S.B.W.A. current account for years ending 31.12.67, 1968 & 1969.
  - (e) Analysis of cash receipts and payments for years ended 31.12.67, 1968 & 1969
  - (f) Summary of receipts from money lending debtors years ending 31.12.67, 1968 & 1969.
  - (g) Schedule of creditors and overseas acceptances at 31.12.67, 1968 & 1969.
  - 20 (h) Schedule of motor vehicle debtors at 31.12.69.

Later on he said he would not work any more unless he was paid more money so we paid him around D3800.00 until his work was finished - work assisting Coopers. To this day he's not prepared the balance sheet and profit & Loss accounts for 1967 1968 & 1969.

Later we employed him to prepare annual accounts up to and mid 1973 for a fee of D1000.00. Oral agreements. Paid by cheques.

30 End of 1973 Shyben Madi ceased trading & Shyben A. Madi & Sons Ltd. was incorporated on 1st January 1975 and began trading. The Company engaged Mr. Carayol and I agreed on D1500.00 as fees for 16 months. Accounting period from 1st January 1974 (30th April 1975) At the same time we engaged Pannell Fitzpatrick & Co. (CA) to be our auditors. That was when we started having problems with Mr. Carayol.

In the Supreme Court

Plaintiffs' Evidence No. 13 George Madi Examination (day 1) (cont'd)

By end of accounting year 1975 April he was not cooperating in preparing the accounts although he has been paid in full in advance fees from Shyben Madi & Co. We have already paid him some advance in respect of 1975/1976. Account year in 1st May - 30th April.

When he wanted more money in advance we asked him to finish the Company's account. He would not do so though he kept telling us they would be ready - up till August 1975 C.I.T. sent us an estimated assessment because Carayol has failed to produce the accounts we tried every means to convince him to finish the accounts or hand over the papers. Talked to him, - all of us - no effect. Employed solicitor.

10

He still has not given us the books. At early December we told C.I.T. that we had employed Alhaji Drameh. End of December 1975 he produced an incomplete Profit & Loss Account - Exhibit A.

At this stage the Coopers & Hyhand report goes in by consent Exhibit B.

20

We disagreed with the draft account. He'd put too high a figure. Our previous profit margin had gone up by 100%. from 4.6% (1972) gross and 5.73 (1973) - 16 months to 10.62%. I discussed it with him he said leave it another 12 months and don't let the auditors get involved it will right itself. I said we had to have auditors and we needed balance sheet & profit & Loss account. That was the last time I've seen him.

30

We need accounts for our banks, tax man and our suppliers.

Not true we entered into the agreement set out in the defence. He does not show himself owing the creditors.

This is a note he gave us on 14th January 1974. Exh. C. We paid this.

We don't owe the plaintiff anything.

Here is a returned cheque in respect of a loan 31st May 1975. Exh. D. He'd already had advance on 76 fees - and borrowed D350 in addition. He's had D650 in advance for 1975/76.

40

He's always received more than we'd agreed with him.

In the Supreme Court

We are claiming the books set out in the F & BP.

Plaintiffs' Evidence No. 13 George Madi Examination (day 1) (cont'd)

We've had no bill from Mr. Carayol and hear nothing about our alleged debt to him until after we sued.

10

Cross-Examination: I am Managing Director of plaintiff. I was the General Manager of the business of my father before the company came into existence.

Cross-examination

Shareholders are Shyben Madi, Zakia Madi, George (myself) and Tony (my brother).

Shyben provided D25,000.

Can't say value of goods in stock - at close of Shyben's business - off hand.

I've read Exh. B. - I got it through Mr. Carayol who got it from the C.I.T.

20

I objected to the draft as it shewed D250.000 sale of shares - but not as capital.

Adjourned to 2nd July 1976.

(sgd.) Philip Bridges.

Friday 2nd July, 1976.

(Day 2)

Before The Hon. Sir Phillip Bridges, C.J.

This hearing to take evidence of Mr. Sanders partner in Pannell Fitzpatrick -

The Cross-Examination of Mr. George Madi will continue on next adjournment.

Plaintiffs'  
Evidence  
No. 14  
Robert  
Christopher  
Sprigett  
Sanders  
Examination

Robert Christopher Sprigett Sanders

Robert Christopher Sprigett Sanders S.O.B. (E):  
Pipeline Road. Chartered Accountant. Office  
Manager of Pannell Fitzpatrick C.A. I'm standing  
in for resident partner. We act for plaintiffs.  
I don't know Mr. Carayol. I have a copy of Ex A.  
It does not comply with Companies Act. There  
being no balance sheet. Not totalled. I think  
we would. No depreciation figure. I don't  
understand accused charges figures.

10

Depreciation is required by Act.

Cannot see an opening stock figure - but it  
could have been included in purchases as its a  
first period account.

"Accountancy" may include debt owed to  
defendant. So much "accrued charges". Normal  
practice to say so.

We would not submit this without it being  
totalled and without tax computation. Otherwise  
C.I.T. would raise certain queries.

20

We would not submit accounts in this manner.

I would want to know why profitability had  
gone up so much on the years in question. Not  
unless there was a change in the method of trading.

Accounts fees are normally computed on a  
time basis - not on percentage - my firm do not  
charge on percentage. We are a world wide firm.  
It's contained in hand book of Institute of C.A.  
of England & Wales - for guidance.

30

We work 39 hours on a 6 day week and in  
one year if a person took no time off he would  
work 2028 hours. 3000 hours is well over a  
year's work for one man.

Amount depends on who is working - junior  
charged at less than seniors - probably worked  
longer. D10,450 fee would mean a senior for 20  
days.

Original judgment would have been a best judgment assessment - account not entitled to charge on a tax saved basis - in my experience.

In the Supreme Court

Normal practice to show money due to account. He'd spend perhaps 2 weeks on schedules such as mentioned as being prepared by defendant by Coopers but only as a preliminary investigation. I'd do 10-15 clients in a year. Roughly.

Plaintiffs' Evidence No. 14 Robert Christopher Sprigett Sanders Examination (cont'd)

10 These are tax assessment forms on Shyben A. Madi & Shyben A. Madi & Sons Limited. Ex. E1 & 2.

Cross-Examination: Ex A. says "Draft" at the top. It's a very early stage in preparation of a balance sheet.

Cross-Examination

Adjourned to 9th July 1976.

(Sgd.) Philip Bridges.

Friday 9th July, 1976.

9th July 1976 (Day 3)

Before The Hon. Sir Phillip Bridges, C.J.

20 As Before - (Mr. Saho still sick: Mr. N'jie & Mr. Janneh in court).

Reminded of oath: Witness continues.

Some work will have been done to produce Ex. A. - a fair amount of work - yes - but I can't say without seeing the books. Considerable work to a business which did keep purchase day book, sales book creditors ledger and cash book.

We would ask a great many questions to prepare such acts. I've no idea of size of Shyben's business at 31.12.73.

30 Our records don't show his assets.

We'd arrived at final balance sheet of Shyben Madi & agree with her company at what value they'd take over the assets.

Much more than repairing articles and memorandum.

Without this document (agreement between Shyben Madi & Company) accounts can't be prepared.

In the Supreme Court

Plaintiff's Evidence

No. 14

Robert

Christopher

Sprigett

Sanders

9th July 1976

(day 3)

(cont'd)

I don't think accused charges should appear and a goods trading & Profit and loss account. Accused charges would appear as a creditor in the balance sheet.

To lump them in a global sum would make trading and profit & loss account of limited value. Accused charges could mean sums owing to Mr. Carayol books Ex B. This list is not all that would be required to produce a balance sheet - and some items are not necessary.

10

Don't know fees of tax consultants. Don't know if Shyben Madi added 3% to landed cost.

Re-examination

Re-Examination: Tax consultant and accountants are very different profession - fees may be similar.

Subject to recall of Mr. Madi next witness may be called.

Plaintiff's

Evidence

No. 15

Mecurpat

Korukuppy Nair

Examination

No. 15

Mecurpat Korukuppy Nair

Mecurpat Korukuppy Nair - affirms - 5 Battery Flats, Banjul. I am the Commissioner of Income Tax. I know Mr. Shyben Madi, Shyben Madi & Sons Ltd., and Mr. Carayol.

20

I wrote this letter. Ex. F.

I made these assessments dated 29.8.75, 30 days limit. 6th October 1975 was date for payment of tax. I received no accounts.

I remember receiving a letter from Mr. Madi asking for time - and repeatedly for further time. At that time (in Ex. F.) Mr. Carayol was acting as tax consultant to Madi's. I've received no company's tax payment.

30

For this year 1975 Mr. Carayol did not act for Shyben as he had no business by then.

These assessments are estimates.

Cross-Examination: I know when to claim privilege. E1 & 2 are best judgment assessments tax could be more or less.

In the Supreme Court

I've seen this Ex B. - latest developments on this cannot be disclosed (ITA sub-section 4) Ex B. paragraph 3 explains.

Plaintiff's Evidence  
No. 15  
Mecurpat  
Korukuppy Nair  
Cross-Examination  
(cont'd)

I'm not aware of any revised assessments other than those in court. (Shyben Madi

10 DL01,000 may have been one of the figures - no a much higher figure - but I claim privilege.

Re-Examination: None.

Adjourned to 14th July, 1976.

(sgd.) Philip Bridges.

XXn of Mercupat to continue

14th July 1976  
(Day 4)

Wednesday 14th July, 1976

Before The Hon. Sir Phillip Bridges, C.J.

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No. 16

Amal Sallah

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Plaintiff's Evidence  
No. 16  
Amal Sallah  
Examination.

20 Amal Sallah (S.O.B. E.) 29 Wellington Street.  
Asst. Manager to Mr. Shyben Madi. When the Company became incorporated I remained as Asst. Manager.

This is a letter from C.I.T.

Court: This may go in for what it is subject to Mr. N'Jie's objection, that it is addressed to Mr. Madi and not the witness. Exh. G.

(Sgd.) Phillip Bridges.

These are cheques paid to Mr. Carayol by Shyben A. Madi and Shyben A. Madi Ltd. Exh. H is the List.

30 Here are the cheques and counterfoils, Bundle J & K.

In the Supreme  
Court

Plaintiff's  
Evidence  
No. 16  
Amal Sallah.  
Examination.  
(cont'd)

These are accounts prepared by Mr. Carayol  
(Exh. L. & M. - to go in despite Mr. N'Jie's  
objection that they are photo copies certified  
by C.I.T.

(Sgd.) Phillip Bridges.

Cross-  
Examination

XXn: I began to work for Mr. Madi in 1972. I  
know nothing of cheques and counterfoils written  
in 1971. I wrote none of these cheques or  
counterfoils. I know nothing about them.

Re-  
Examination

Rexn: I did book keeping. Mr. George Madi handled  
these exhibits.

10

No. 17  
George Madi  
(Recalled)  
Cross-  
Examination  
(continued)

No. 17

George Madi (Recalled)

Court: Now returns to Mr. George Madi's Cross-  
Examination.

Reminded of his oath.

I was not happy with Ex. A. merely because  
profit was too high, but because of his lack of co-  
operation. I questioned him about profit but he  
never responded to my questions.

20

(Looks at Ex. A.) Stock in trade figure was our  
valuation. We gave him the list. He had nothing  
to do with stocktaking. If it is inaccurate profits  
will be wrong. We added 3% to C.I.F., and duty to  
cover etc. when costing goods taken into stock.

My father kept records, paying in books  
invoices - no purchase day book, maybe a sales day  
book: he kept books in accordance with accountant's  
wish.

( - Page 6 of Ex. B. Sub-Section 23 - read by Mr.  
N'Jie.)

30

He did work - prepared same schedules but no  
accounts. - fees were D1250.00 per annum for 1971,  
1972, 1973 not D1000.00



Carayol contributed to report of Coopers on behalf of my father.

In the Supreme Court

I remember commissioner asking me to make an offer. I declined to make an offer.

Plaintiff's Evidence No. 17

I know Mr. Carayol as an Accountant. I know he was C.I.T.

George Madi (Recalled) Cross-Examination (cont'd)

We left Foon because he asked us for D10,000 to do the exercise.

10 The assessment came because my father said in court that he made a turnover of £800,000.

Carayol's task was made greater because we had not kept proper accounts.

He was paid drips as he wanted it that way.

Mr. Carayol worked with Mr. Stavely.

I told C.I.T. that I'd asked Drameh to retrieve our papers.

Company had bank account in 1974.

Mr. Carayol said he could get the assessment reduced substantially - It was ridiculous.

20 Re-Examination: Father's last year alone was 1973. Mr. Carayol did the accounts. But provided for his fees - D2770.00.

Re-Examination

I decided to come to court after we'd had the best judgment assessment on 29th August and been given time to 6th October 1975. to file accounts and Mr. Carayol was not co-operating. He would not appeal so I wrote to C.I.T. myself to appeal with copy to Carayol.

No. 18

No. 18  
Louis Lurier Thomassi  
Examination

30 Louis Lurier Thomassi

Louis Lurier Thomassi S.O.B. (E) 72 Lemman Street.  
Accountant. Knows the parties slightly. I prepare annual accounts and charge annual fees. Not commission.

In the Supreme Court Looks at Ex A. - This is not yet completed. I don't know what "accused charges".

Plaintiff's  
Evidence  
No. 18  
Louis Lurier  
Thomassi  
Examination

Cross-  
Examination Cross-Examination: "Draft" shows account is not complete. Work on basis of work to be done - I take  $\frac{1}{2}$  advance. My fee includes seeing accounts right through to the end. I'll defend the accounts to the end.

I make no difference between an accountant and tax consultant.

Howell and Wade closed in 1962.

10

Re-  
Examination Re-Examination: There are no rules

(Sgd.) Philip Bridges.

19th November 1976.  
(Day 5) Friday 19th November, 1976.  
Before The Hon. Sir Phillip Bridges, C.J.

No. 19  
Shyben  
Antoine Madi  
Examination

No. 19  
Shyben Antoine Madi

Shyben Antoine Madi S.O.B. (E) 3 Anglesea Street,  
Banjul. George Madi is my son.

Before company was incorporated he was my manager. He had a share of the profits. Defendant is my friend.

20

I left here on 12th August 1971 to go to Lebanon and came back in November. George told me he had engaged Carayol as tax accountant for D2500.00 per annum. This is the power of attorney.

Mr. N'jie objects, this is not properly registered.

Drammeh. Powers do not need to be registered - I can give an undertaking that the Stamp Duties commissioner will be called to say that it was so stamped.

Ruling: The Powers of Attorney may go in subject to undertakings to stamp the second deed. M1 & 2.

Cross-Examination: I received a subpoena to produce documents.

In the Supreme Court

Plaintiff's Evidence  
No. 19  
Shyben  
Antoine Madi  
Examination  
(cont'd)

Cross-Examination

10 George shared in my business as a partner since 1969. My wife is partner and so is my son Anthony. The boys became partners as soon as they returned to The Gambia.

Adjourned to 25th November 1976.

(Sgd.) Philip Bridges.

25th November 1976.

As before - reminded of oath.

Witness continues.

25th November 1976.  
(Day 6)

20 The boys were salaried before company was incorporated - partners (shareholders and directors) only after incorporation.

We made a company and I handed it to my boys. George set up the company. We own 25% each, myself, my wife, George and Tony.

George told me he'd taken Carayol as Accountant for tax when I came from Lebanon in November 1971. Before that he'd been a friend. I knew he'd been at Income Tax and had retired there from.

Carayol was my friend.

30 When I went to Lebanon in 1971 I knew that I was running into difficulties with C.I.T. I'd already been in court. I left 12th August 1971.

Mr. Louis Thomassi is my accountant now. After Carayol broke his contract.

When I was running my business late Ebou Janneh kept accounts.

In the Supreme Court

Plaintiff's Evidence

No. 19

Shyben

Antoine Madi

Cross-

Examination (cont'd)

Carayol said that he could reduce our assessment considerably. D2500 was for the tax case with Revenue. When that was settled £250.00 per annum was to be paid.

Looks at Ex. N. I don't know it this is part of the account I made - I was in Lebanon from June 1974 - November 1974.

Part of the Account was executed in Lebanon. (Ex. B. referred to by Counsel) Carayol told me he was working on the case and would charge £500.00. Not true he said he could not know his fees until the end of the exercise.

10

Re-examination

Re-Examination. I can read and write Arabic not much of western languages.

Close of Plaintiff's case.

Adjourned to 8th December 1976.

Order; The books of Shyben A. Madi & Sons Ltd. are to be brought into court forthwith - an inventory thereof made and made available at the Court House to the plaintiffs accountants.

20

13th January 1977.  
(Day 7)

Thursday 13th January, 1977.

Before The Hon. Sir Phillip Bridges, C.J.

Defendant's Evidence  
No. 20  
Charles Louis Carayol  
Examination

No. 20

Charles Louis Carayol

Charles Louis Carayol S.O.B. (E). Villa Mon Reve, 12 Hagan Street. Retired Civil Servant. One time C.I.T. 1954 - 1965. I am now a tax consultant. I knew Mr. Shyben Madi very well. We started in the same form at the St. Augustine's Preparatory together in 1929. He left the country in 1934 - 35 and returned in 1946. His wife is godmother of two of my children. We are friendly and good neighbours.

30

I know George Madi. In April or May 1971 he came to my house. As manager of his father's firm

he told me of his father's tax difficulties. He told me his father came to court in a case against Toufie Massroy. A case in which he made statements which startled to tax authorities who wrote to him and demanded an explanation or sought to raise the assessments for 6 years back 1963 - 1969 assessment years. Corresponding income years would be 1962 - 1968. On reflection assessments years 1966 - 1971 inclusive. Income years 1965 - 1970.

In the Supreme Court

Defendant's Evidence  
No. 20  
Charles Louis Carayol  
Examination  
(cont'd)

10 George shewed me two letters from the revenue and also said he was not satisfied with their accountant Mr. A.W. Foon. He was required to pay £183. 00 in addition to what he'd already paid.

One letter referred to his statements in court and the other asked why his assessments should not be reopened and asked him to make an offer of settlement.

20 Shyben was away in the Lebanon. I gave him a draft reply making an offer of £3000 final settlement. I charged no fees.

I saw him several times afterwards but was paid nothing - I asked for none. Around August 1971 he invited me to meet a Mr. Eugene Cotran of counsel from London. I met him on three occasions. Once in Shyben's office and twice at the Atlantic Hotel.

Cotran was seeking a way to get the assessments quashed. But he found that 50% of tax must be deposited before a dispute can come to court.

30 Finally he tried certiorari - those proceedings are still pending. The 50% was never paid. I was paid nothing. November 1971 George Madi asked for my help to reconstruct the accounts previously submitted by Mr. Foon. Foon refused to hand over the files until he was paid £2000 additional fees for handing over copies of part accounts.

40 Mr. Gerald Davies was acting for the Revenue - Mr. Norman Stavely was gazetted as Asst. C.I.T. his firm has Messrs. A.J. Downs & Co. of Hall. Davies warned Foon to hand over documents. Foon was paid an additional £500 and handed over the papers.

Foon's total fees came to D6500.00 for period 31st Dec. 1965 - 31st Dec. 1970. of this sum D2500

In the Supreme Court

was in respect of the additional charge. Cheque number 647 of 5th July 1971.

Defendant's Evidence No. 20 Charles Louis Carayol Examination (cont'd)

I reconstructed accounts for years 1967, 1968, 1969. Cotran and Davies agreed they needed part accounts for 1967 and 1968 - 1969. Foon had done accounts and I was asked to reconstruct.

George asked me in first instance and then Shyben did so.

A lot of work was involved. I had to go back to 1962 to get proper balances carried forward. Shyben had no books of account whatsoever. I had to do a cataloging of well over 9000 documents. He had receipt books, several hundred envelopes containing slips in form of receipts which his money lending clients signed to acknowledge their indebtedness. He had several 100 cheque book stubbs. I had to write to the bigger clients asking for statements of their dealings with Shyben.

10

We kept no standard books of account, no cash book, no purchases day book, no sales book, no sundries debtors or creditors, no cost book and no stock book reads paragraph 23 of Exh. B.

20

I did the work for which I was engaged. I acted for them over the I.T. investigations. I had to face two firms of chartered Accountants. Downs of Hull; and Coopers & Hayman. Government would not accept Downs report as it did not adequately cover the moneylending transactions.

I worked with Coopers at the Madis request. The last meeting with C.I.T. was in July 1974. I was there, George, and Mr. Nair the C.I.T. Nair asked for an offer, again. He mentioned figure of £21,000.

30

I wrote and confirmed the interview this is my copy. Exh. O.

Adjourned to 14th January 1977.

(Sgd.) Philip Bridges.

14th January 1977.  
(Day 8)

Friday 14th January, 1977.

Before The Hon. Sir Phillip Bridges C.J.

As before.

40

Documents required to be stamped have been stamped. Cross-examination continues - reminded of oath.

In the Supreme Court

I had no reply to Exh. O.

Defendant's  
Evidence  
No. 20  
Charles Louis  
Carayol  
Examination  
(cont'd)

Coopers report leaves the calculation to the Commissioners. He was talking of D105,000.00. I did not agree with that figure. It was too high.

10 (Looks at Exh. A.) Draft account prepared by me, George did not find this acceptable. He said the profit was too high. He said he thought they had made a loss for the period. They did not make a loss - not by any standards. He said he knew Mr. Nair (C.I.T.) would be happy to accept 6% gross as margin. The 10% plus 10.62 he thought was nonsensical. He knows no book keeping. If he did he'd do it himself. Net figure would be around 6%. Figures I worked on were provided by George, Tony and Mr. Amal Sallah.

20 This is a draft letter I prepared. It was sent Exh. P.

I had to scout around to find facts. Money owners - taxi drivers - Banks - Government Departments - Traders - Government houses a wide and big field.

Paragraph 89 @ page 22 of Exh. B. Appendix F. of Exh. B. This is my copy which contains Appendices - Exh. B. does not - Exh. Q.

30 I prepared Appendix F. for Shyben. I got it from the moneylending clients. I wrote to clients about money lending transactions and sale of houses and other matters. This is my circular letter and some of the replies Ex. E.

I prepared all the appendices mentioned at page 4 of Exh. Q. - well a joint effort in respect of appendices A - D1; my own work for the others.

This is a copy of schedule of merchandise debtors as at the year ending 1967 Exh. S.

I worked for the company.

40 We came to an agreement as to fees. In September 1971 I was retained principally to

In the Supreme Court

Defendant's Evidence No. 20 Charles Louis Carayol Examination (cont'd)

reconstruct the accounts of Shyben for years 1967, 1968, 1969. I could not know the volume of work but would be paid in relation to the size of the reduction in tax achieved. In the meantime I was to make drawings against such fees. It was agreed between Shyben, George and myself.

This is a record of the drawings I've made. Exh. T. they total D10,450.00. D2475.00 relates to the company work I did. It is included in the D10,450.00.

10

I have available Company's bank statements Exh. U. Bank suspenses for goods imported. I have a summary of them this is it Exh. V.

I also had invoices of goods sold for whole of 1974 and up to end of April 1975 Books 10, 11, and 13. 12 was returned to the company. W1, 2 & 3.

Paying in Books of S.B.W.A. five in all likewise Commercial Bank two books. Stock sheets Exh. Y. and goods short landed lists prepared by Mr. George Madi. Z.

20

To 17th January, 1977.

(Sgd.) Philip Bridges.

17th January 1977 (Day 9)

Monday 17th January, 1977.

Before The Hon. Sir Phillip Bridges, C.J.

Representation as before.

Witness reminded of oath.

Exh. L. is not for the Company.

George objected to the percentage profit on Exh. A. He was wrong, because in the course of examination of their marine insurance claims I came by a document in their field which showed that they add on 3% on the landed cost of the goods. Its already a profit. They add 6% to arrive at selling price - i.e. 9% in all.

30

Purchases Exh. A. has attached purchases D6,157,918.55 3% on that is a hell of a lot of money. D185,267.67. D10.62% trading profit gross.

He called this 10.62% profit "Rubbish".



Looks at a bundle - there is a balance sheet and supporting documents and notes. I prepared this Exh. AA. 30th April 1975 end of 16th month period.

In the Supreme Court

Defendant's Evidence  
No. 20  
Charles Louis Carayol  
Examination  
(cont'd)

It shows that value of assets at commencement of trading increased by D253,096.00. Increase being attributable to trade done.

Reads "Coopers" Sub-Section 147.

10 Looks at Exh. N. this was supplied by tax office. I prepared these accounts and this marks the end of my work on the 6 year re-assessment.

This is a grand summary of their own figures of receipts and payments into Bank - Shyben's & Sons Ltd. Sales amounted to D6,326,753.39 money banked D6,339.815.86 Exh. BB.

In November 1975 Jagne D.C.I.T. told me that he would not discuss Shyben's business with me any more as he had been written to by George saying I was no longer retained.

20 This is a draft I prepared of what ought to have appeared on ledger account of Shyben's personally over period of first sixteen months of the company.

Exh. CC.

This is a letter from Shyben 10th September 1973 when he was in The Lebanon. Exh. DD. This is another 17th October 1974 Exh. EE.

30 After Cooper Shyben's liability could be D127.000. I recomputed the liability for 5 years 1966 - 1970 inclusive. As against revised assessments of D670,833.33 a saving of D542,875.51 Exh. FF. I prepared this to support my case.

I am counter claiming against first plaintiff sum of D102,443.75 in respect of work done - number of hours worked 2763 hours I claim D37.50 an hour.

Against second plaintiff D11,700. 293 hours at D40.00.

I credit then with payments received on account.

In the Supreme Court

Defendant's Evidence No. 20 Charles Louis Carayol Examination (cont'd)

In respect of investigation years I drew D5200.00 and years outside investigation years D2775.00 - (Shyben personally)

Net claim against Shyben 107,443.75

Claim against Company D11,700 Less on account.

2,475

D 9.225

This is a letter addressed by Forster to me on Cooper's letterhead. 26th April 1973 (GG1). At end of the investigation reads it. Copy of letter to Accountant General referred in GG1 (Exh. GG2). These are two letters between Mr. Madi and Mr. Cotran.

10

Mr. Drammeh objects these are privilege as between Solicitor and client.

This objection is upheld - it is the clients privilege and Mr. Madi is not prepared to work it. Letters are inadmissible.

(Sgd) Philip Bridges.

Cross-Examination

Cross-Examination. I am not aware that Mr. Foon was involved in the enquiries following the court case - and subsequent re-opening of the accounts by the Revenue.

20

Adjourned to 18th January, 1977.

(Sgd) Philip Bridges.

18th January 1977 (Day 10)

Tuesday 18th January, 1977.

Before The Hon. Sir Phillip Bridges, C.J.

As before.

Witness reminded of oath.

Looks at Letter of 2nd March 1971. This is a letter from C.I.T. to K.W. Foon.

30

Mr. N'jie objects. Letter is recognized - its a typed top-copy. So marked.

Document may not go in.

(Sgd.) Philip Bridges.

Witness continues.

In the Supreme Court

I'm not aware Foon did anything after I'd been instructed.

Defendant's  
Evidence  
No. 20  
Charles Louis  
Carayol  
Cross-  
Examination  
(cont'd)

I was never prepared to do it for £500. Looks at cheques and counterfoils (Exh. J. K.) Looks at counterfoil BA/MAK 001802 4th January 1972. These are my ticks on the counterfoil.

"It says Charles Carayol accountancy fees for 1971, 50% advance D625.00".

10 It is not correct. I was not paid D1250.00 per annum fees.

This D650 was a retainer to spark me off. I cannot remember that I queried the work on the counterfoil.

20 Looks at 002446. 23rd January 1973. - Words "D87.50 Charles Carayol. Fees accountancy. Balance 1972", bears my tick. This is not correct. I cannot remember if I queried this. Looks at 002459 - 30.1.73 "Charles Carayol fees accountancy 1972 D87.50.

30 Looks at Exh. C. "C.L. Carayol 1973 D250.00. Balance due as at 14th January 1974. Fees 1973". Looks at Exh. T. Statement showing drawings I had between 2nd March 1974 - 11th December 1974, D1775.00. 14th January 1974 cheque 002855 - D480.00. Charles Carayol fees accountancy for 1973. D480 balance D250. Exh. C. can only mean that I had given them a lot for my fees for 1973 and this is what was left to come. Looks at Exh. H. entry for 1973 - I received D75 Cheque 002922 - 11th December 1974 cheque 0033251. I received D500 on loan for Christmas - from several clients it was a good year and I wanted to reduce my tax liability. Looks at cheque 003412 18th March 1975 fees 75/76 D300.00 - counterfoil says "Charles Carayol fees 1975/76 D300.00 also 003482 1st May 1975 D350.00. I've not done work for 1975 - 76 - I stopped work on 30th April 1975. I was paid on 1st May 1975.

40 I did not complete balance sheet because Madi rejected my accounts. He said the profit was too high. 16th months up to 30th April 1975. My duty was to submit tax figures. But Madi had rejected my account. Draft was incomplete I delivered it in December 1975 just before Christmas.

In the Supreme  
Court

Defendant's  
Evidence  
No. 20  
Charles Louis  
Carayol  
Cross-  
Examination  
(cont'd)

As far as I was aware there was no clamour  
for the accounts.

Best judgment assessments were made E1 & E2 -  
and very reasonable assessments too for a firm like  
that.

I wrote this D10,000 of - a loan of francs.  
There was a ceiling for my drawings pegged at  
D2000.00 for any given year. I wanted to return  
francs - Exh. HH.

This is an RD cheque D350.00 JJ I borrowed  
it for a friend who let me down. 10

Looks at Exh. T. I drew D1875.00.

I keep work cards - I keep note of hours  
worked in my diary.

I worked for the Company for 190 hours and  
for Shyben for 293.

"I did not agree to do the work for £500 -  
D2500.00 that is.

For 1971 the figure of D1250 was for drawings.  
No I with draw that because my figure is 2050 for  
that year. 20

We agreed that at the end of the day I would  
send them a bill from which I would deduct whatever  
drawings I had made. There are two ways to compile  
and bill but we did not agree upon one.

Either percentage of reduction obtained or by  
hours worked." Exh. C. refers to the ceiling -  
not balance of fees. Loan was against ceiling of  
drawings not fees. (Exh. M. looked at) There is  
no provision for their indebtedness to me on this. 30

In Exh. A. I'm showing actual expenses of  
D39,306 - my fees are included in this Exh. AA  
D3308.88 balance my fees for 1974.

Four months to 30th April 1975 D727.78. For  
Shyben accounts I made no provision for my fees.

To 19th January, 1977

(Sgd.) Philip Bridges.

Wednesday 19th January, 1977.

Before The Hon. Sir Phillip Bridges, C.J.

As Before

Witness reminded of oath.

Cross-Examination continues

Ex was given to my clients before Christmas. People had approached me including Company Solicitor to finish the job and deliver the accounts.

In the Supreme  
Court

Defendant's  
Evidence  
No. 20  
Charles Louis  
Carayol  
Cross-  
Examination  
19th January  
1977.  
(Day 11)

10 Ex. AA. relevant. To this day I have not supplied Exh. AA to my clients - shewing accountancy fees assessed at D3308.88.

I've received D650.00 in respect of work yet to be done.

Looks at Exh FF - This is for assistance to the court - I've not shown my clients. Prepared since the institution of these proceedings.

20 No need to prepare a balance sheet for years 1967, 1968 1969 (Exh T). I provided the figure to the Revenues Accountants. Downs & Coopers.

Re-Examination: Handwriting a cheque stubbs is George Madis' - 001802 he wrote "50% advance" I ticked them when writing up the account, cheque 003251 D500 "CLC (Loan/fees)". George Madis' writing. It states "loan" as I asked that it be shown as a loan to reduce my tax liability.

Re-  
Examination

30 George goes overseas four times a year and I required to know his expenditure and from what sources the money was obtained to meet such expenditure. He did not supply the information. I could not have completed in accounts without that information. I'd posed questions which were not answered. These three - private remittances of sterling - medical fees in Daljar - directors expenses.

Drawings are advance payments on account of fees -

40 There was not agreement on fees as I did not know that there were no standard books. I did not know how long the investigation would go on.

In the Supreme  
Court

Defendant's  
Evidence  
No. 20  
Charles Louis  
Carayol  
Re-  
Examination  
(cont'd)

I base my claim on hours worked.

George prepares his personal tax papers himself. I have access to those papers but could not find the answers I sought there.

Drammeh came and appealed to me but did not tell me they were taking me to court.

I've no reason to suppose Coopers report will not be accepted.

I would have sent my bill when the revenue sent the re-revised assessments - as soon as the company had agreed final figures.

10

Adjourned to 21st January 1977.

(Sgd.) Phillip Bridges.

Friday 21st January, 1977.

Before The Hon. Sir Phillip Bridges C.J.

As before:

Mr. N'jie asks for adjournment of one week to enable the Accountant General to produce figures.

Mr. Drammeh - Accountant General should have been warned in time.

20

Adjourned to 2nd February, 1977.

Costs of the day to the plaintiff.

(Sgd.) Phillip Bridges.

2nd February  
1977  
(Day 12)

Wednesday 2nd February, 1977.

Before The Hon. Sir Phillip Bridges C.J.

As before.

No. 21  
Malamin Janneh

In the Supreme  
Court

Defendant's  
Evidence  
No. 21  
Malamin Janneh  
Examination

Malamin Janneh S.O.K. (E) Bakau Kombo St. Mary's  
Division. Senior Accountant at the Treasury.

I have here the payments to Mr. Gerald Davies  
or same then.

Drammeh - I object - this is totally  
irrelevant.

10 N'jie. All we are saying is this Davies, Stavely &  
Cooper Brothers have all been engaged in this  
matter and their remuneration is relevant.

Court - the evidence may be given, but unless the  
figures are apportionable to the present matter  
they will be of little value.

(Sgd.) Philip Bridges.

Witness continues.

20 Between December 1971 - 72. I have vouchers  
for local payments to Davies and Staveley. The  
local vouchers read - being fees in respect of  
duties undertaken for the G.G. as per bill dated  
5th January 1972.

1st Trip 24 days - 16 @ £150/day & 10 days at £100/day.  
2nd Trip 39 days - 5 @ £100 expenses incurred D742.58  
In all D31,095.64

Stavely 1st Trip 24 @ £100/day -  
2nd Trip 31 @ £100/day -  
in all D27500.00

30 There is an additional voucher submitted by  
Staveley for D16,000.00. No details - other than  
"duties undertaken".

I've no details for Coopers Brothers &  
Highland.

Payments were made in 1972 by Crown Agents  
direct - "Professional Charges" not large sums however.

Cross-Examination: I can only say that work is not  
itemised at all.

Cross-  
Examination

In the Supreme  
Court

No. 22

Defendant's  
Evidence  
No. 22  
Addresses of  
Counsel  
2nd February  
1977

Addresses of Counsel

Addresses.

N'jie: Claim is for return of paper etc.  
paragraph 1 S/Claim distinction between defendant  
as Accountant and as tax consultant. He refused  
to hand over books 2 capacities.

Draft accounts were prepared - refused as  
profit too high. How could he do more work in  
those circumstances, in fact he did. The 3% -  
even before profit margin is fixed. Madi says 7%  
therefore 10% in all.

10

Can't be true Carayol did no work - see  
Cooper Report alone.

Counter Claim: Work done corroborated in Cooper  
report. Cooper relied on Carayol for information -  
Q is full report 11 pages of appendix supplied by  
Carayol Coope Sub-Section 9.

Question Agreement about fees - if so what were  
fees to be. Madi (George) entered the agreement -  
but ratified by Shyben. Ex. DD. EE.

20

Not to exceed 2500 according to Madi but they paid  
well over this.

Which is preferred - Madis' or Carayols' story re  
fees. We have got to end of the matter by production  
of Cooper report accepted by Government. Absence of  
a bill - Carayol thought up to the service of the  
unit that he was still engaged by taxpayer.  
Withdrawal letter sent to C.I.T. but not Carayol.  
Counter claim on a quantum merit

30

Exh. C. will be made much of by plaintiff. But  
look at Carayols' evidence. His explanation "what  
was left to come out for fees for that particular  
year".

Davies/Stavely D500.00 per diem - Carayol asks £275.  
Defendant evidence shows tax savings. Exh. FF  
reduction of D542.875.  
Reasonable proportion of savings he has.



Drammeh.

In the Supreme  
Court

This is a simple matter - Lien claimed for unpaid fees - my clients have paid more than he asked and have lent him money into the bargain - a loan unrepaid and work not done. Defence is a speculation. No written contract - but oral one is admitted. Exh. H. contract has been discharged Exh. C. and cheque stub 14th January 1974.

Defendant's  
Evidence  
No. 22  
Addresses of  
Counsel  
2nd February  
1977.  
(cont'd)

10

The loan and dual cheque - no money owed to C.L.C. No indebtedness Madi to Carayol shown in the books.

Analysis of account fees prepared purposely and only for this case.

Never sent a bill, and never said "These people owe me money - when they pay I'll return the books". Although many visited him to urge him to get on with the work. Why did he not Sue Madi? if he was owed so much.

20

Agreed mode of payment - First he said it was on a percentage basis - then he changed to an hourly basis. "Ceiling" an after thought - if so why not provide for it.

Report not accepted - therefore counterclaim premature.

Evidence of Accountant General irrelevant.  
Where is evidence of hours of work done.  
Do we owe him or don't we.  
We do not.

30

Cur ad vult.  
(Sgd.) Phillip Bridges.

No. 23

J U D G M E N T

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1976-B-4

BETWEEN: SHYBEN A. MADI AND  
SHYBEN A. MADI & SONS LTD. Plaintiffs  
and  
C.L. CARAYOL Defendant

No. 23  
Judgment  
30th June 1977

In the Supreme Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

Before the Hon. Sir Phillip Bridges, C.J.

Alhaji A.M. Drameh for Plaintiffs

Mr. A.S.B. Saho (with him Messrs. S.F. N'Jie and S.B.S. Janneh) for defendant

J U D G M E N T

This is an action in which the plaintiffs claim from the defendant Account Books, Income tax papers and all other books relating to their business in respect of the year 1975 and prior thereto and which were handed to the defendant whilst he was acting as Accountant and Income Tax Consultant for the Plaintiffs and which he declines to return.

10

The defendant counterclaims for the sum of D102,443.75 from the first plaintiff and for D9225.00 from the second plaintiff.

The first plaintiff, Mr. Shyben A. Madi was for many years in business as a Trader on his own account and the second plaintiff Shyben A. Madi & Sons Limited is a company incorporated in The Gambia with limited liability and which took over the business of Mr. Madi.

20

The defendant was at one time the Commissioner of Income Tax of The Gambia Government and after retirement established himself as an accountant and income tax consultant and as such rendered professional services to both plaintiffs.

The case in a nutshell is this - the plaintiffs say that Mr. Carayol has been paid for such work as he has done; Mr. Carayol says that he has not been paid in full and refused to hand over the books until he has been paid. He is in fact seeking to exercise a lien which accountants have legal right to exercise over the books of accounts in respect of work done on behalf of the owner of the books. Re Hill Ex Parte Southall (1848) 12 Jur. 576 pr Knight Bruce V.C. p.577.

30

There is no question that the books belong to the plaintiffs or that the defendant was retained as accountant and tax consultant. The question is has he been paid in full for his services?

40

In 1971 in the course of litigation which is of no concern to us here Mr. Shyben Madi made certain statements on oath in the witness box which prompted the Commissioner of Income Tax to begin an investigation into his tax affairs. As a result of the statements the Commissioner issued revised tax assessments in respect of the years 1966 to 1971 inclusive.

In the Supreme Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

10 Mr. Madi applied to the court for an order of certiorari to quash the assessments and also for an order of Prohibition prohibiting the Commissioner from raising further assessments in respect of the years 1966 - 1971. These proceedings were adjourned sine die with liberty to either party to restore and negotiations between the Commissioner and Mr. Madi with a view to settlement began. Neither party has applied for the case to be restored to the list and the tax liability of Mr. Madi has not apparently been settled.

20 Following the case in 1971 which prompted the decision to investigate Mr. Madi's tax affairs, a Chartered Accountant, Mr. Norman Stavely was instructed by the Revenue to carry out the investigation. His services were dispensed with on 15th July 1972 before he had completed his task and Messrs. Cooper and Lybrand, the internationally known firm of Chartered Accountants were retained to finish the job. Their report was delivered to the Government of The Gambia on 30 4th October 1973 and their conclusion was that Mr. Madi had been substantially undercharged to income tax in the original assessments 1966 - 1970 and a recommendation was made that negotiations should be resumed on the basis of their report. They also considered that it was likely that Mr. Madi had been undercharged to income tax in the 1971 and 1972 assessments and suggested that he should be requested to produce accounts for the three-year period to 31st December 1972.

40 At this stage I should emphasise that we are not here concerned with Mr. Madi's tax liability nor the liability of Shyben A. Madi & Sons Limited, but with the professional relationship between Mr. Madi and Mr. Carayol and between the company and Mr. Carayol.

The events of 1971 no doubt alarmed Mr. Madi and so in October, 1971 Mr. George Madi, one of the

In the Supreme  
Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

sons of Mr. Shyben Madi on behalf of his father instructed Mr. Carayol to reconstruct the accounts for the years 1967, 1968 and 1969. I would remark here that any production of balance sheet and profit and loss accounts in respect of Mr. Shyben Madi's business would present difficulties as Mr. Madi kept no books of accounts as such and the reconstruction would have to be made from bank statements, invoices, customs documents and so on.

The tax year in The Gambia runs from 1st January to 31st December. 10

Mr. George Madi in his evidence said that a fee was agreed between himself and Mr. Carayol of D2500.00 for the three years in question. Mr. Carayol produced certain schedules as follows:-

- (a) draft profit and loss year ending 31st December 1968
- (b) Schedule of merchandise debtors at 31st December 1966, 1967, 1968 and 1969.
- (c) Schedule of money lending debtors at 31st December 1966. 20
- (d) Analysis of SBWA current account for years ending 31st December 1967, 1968 and 1969.
- (e) Analysis of cash receipts and payments for years ended 31st December 1967, 1968 and 1969.
- (f) Summary of receipts from money lending debtors years ending 31st December 1967, 1968 and 1969.
- (g) Schedule of creditors and overseas acceptances at 31st December 1967, 1968 and 1969. 30
- (h) Schedule of motor vehicle debtors at 31st December 1968.

He asked for more money and was paid D3800.00 presumably in respect of his work on behalf of Mr. Madi assisting Coopers.

He has not to this day prepared the balance sheets and profit and loss accounts for the years 1967, 1968 and 1969. 40

Later according to Mr. George Madi he was employed to prepare annual accounts up to mid 1973 for a fee of D1000.00.

In the Supreme Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

When the company was incorporated according to Mr. George Madi he and Mr. Carayol agreed on D1500.00 as his fee for the sixteen months accounting period 1st January 1974 to 30th April 1975.

10 The plaintiffs maintain that they have paid Mr. Carayol in full all that was agreed upon for his services and more and that he has not produced the accounts in respect of Shyben Madi's business and in respect of the company only a set of preliminary accounts which the company declines to accept as showing too high as profit.

Mr. Carayol has been paid by the plaintiffs according to the plaintiffs themselves sums over the period 19th October 1971 to 1st May 1975 as follows:-

20

<u>Year 1967 - 1969</u>			
19th October 1971	Accountancy Fees	D	750.00
1st November 1971	" "		250.00
15th November 1971	" "		375.00
25th November 1971	Fees		250.00
1st December 1971	"		250.00
9th February 1971	Fees for Back Years		500.00
22nd February 1973	" " "		750.00
14th April 1973	" " "		525.00
2nd May 1973	" " "		125.00
			<u>D3.775.00</u>

30

<u>Year for 1971</u>			
4th January 1972	Accountancy Fee 71, 50% Advance	D	625.00
19th January 1972	Fees Accountancy		200.00
19th February 1972	" "		75.00
			<u>D 900.00</u>

In the Supreme  
Court

	<u>Year for 1972</u>			
No. 23	10th March 1972	Fees Accountancy 72	D	100.00
Judgment	10th June 1972	" " 72		75.00
30th June 1977	18th December 1972	" " 72		500.00
(cont'd)	30th December 1972	" " 72		125.00
	6th January 1973	Fees for 72		200.00
	23rd January 1973	Fees Accountancy 72		87.50
		Bal. 87/50		
	30th January 1973	Fees Accountancy 72		87.50
				<u>87.50</u>
				<u>D1,275.00</u>

10

Year for 1973

15th September 72	Fees Part Adv. 73	D	250.00
24th December 1973	Fees for 73.		
	Professional		370.00
14th January 1974	Fees Accountancy for		
	73		480.00
22nd February 1974	" " for 73		<u>75.00</u>
			<u>D1,175.00</u>

Year for 1974 - April 75

2nd March 1974	Fees for 74	D	500.00
16th March 1974	" " 74		50.00
23rd March 1974	" " 74		50.00
11th April 1974	" " 74		250.00
25th May 1974	Accountancy fees 74		25.00
1st June 1974	Payment for Work		
	done fees		25.00
6th June 1974	Fees for 74		250.00
19th August 1974	" " 74		125.00
11th December 1974	Loan (74/75) Fees		<u>500.00</u>
			<u>D1,775.00</u>

20

30

Year 1975/76

18th March 1975	Fees 75/76	D	300.00
1st May 1975	Fees 75/76		<u>350.00</u>
			<u>D650.00</u>

In all D10,150.

Mr. Carayol himself admits that he has been paid D10450.00 and he includes in his figures items

not immediately recognisable as fees such as Christmas gift, goods and loan but the parties are substantially agreed that more than D10,000 have been paid by the plaintiffs to the defendant in respect of his professional services.

In the Supreme Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

The plaintiffs are not satisfied with the services they have received from Mr. Carayol and are embarrassed in their dealings with the revenue by the absence of the books for which they sue.

10

Mr. Carayol as I have already said claims fees amounting in all to D111668.76 and he says that there was an agreement in respect of his fees. This is what he said.

20

"We came to an agreement as to fees. In September, 1971 I was retained principally to reconstruct the accounts for Shyben for the year 1967, 1968 and 1969. I could not know the volume of work but would be paid in relation to the size of the reduction in tax achieved. In the meantime I was to make drawings against such fees. It was agreed between Shyben, George and myself."

He put in evidence a record of his drawings totalling D10,450.

30

In the statement of defence, however, Mr. Carayol asserts that he completed 3000 working hours on Mr. Shyben Madi's accounts and 300 working hours on the company's and further that Mr. Shyben Madi has benefitted to tune of D7000,000 income tax reduced.

40

In evidence Mr. Carayol claimed 2763 hours at D37.50 per hour in respect of Mr. Shyben Madi's accounts (D102443.75) and 293 hours at D40.00 per hour in respect of the company's accounts (D11720.00).

Two professional accountants were called to give evidence of professional practice. Mr. Sanders said "Accountant's fees are normally charged on a time basis not on a percentage" and "an accountant is not entitled to charge on a tax-saved basis." Mr. Thomassi said he did not charge on commission but on the basis of work done.

The defendant called evidence to show that payments by The Gambia Government to Mr. Gerald

In the Supreme  
Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

Davies and Mr. Norman Stavely who were concerned on behalf of the Revenue in the matter of Mr. Madi's tax affairs (amongst other matters) had been paid substantial fees - and this I do not doubt, but it is not in my view directly relevant to Mr. Carayol's fees.

A great deal of evidence was led relating to the business affairs of the business and the company that succeeded it, but which again is not in my view directly relevant to this case. I accept, however, that Mr. Madi's tax affairs involved Mr. Carayol in a great deal of work- and moreover work not normally required to be carried out by accountants particularly the cataloguing of over 9000 documents, the writing to clients asking for details of their dealings with Mr. Madi and creating de novo and in retrospect the books normally to be found in commercial business.

10

It is apparent, however, that whatever required to be done has not been completed - no accounts for 1967, 1968 and 1969 have been produced and the final accounts of the firm remain in draft; admittedly because the profit figure is thought to be too high by the company.

20

The work for the company would involve less labour than that for the business since the company under the provisions of the Companies Act is required to maintain adequate books whilst no such requirement exists for business or unincorporated associations, but 300 hours of work are said to have been put in and the accounts cannot be far from complete.

30

The crucial point to be decided in this case, as I have already said, is the nature of the contracts between Shyben Madi and Mr. Carayol and Messrs. Shyben A. Madi & Sons Limited and Mr. Carayol in respect of his professional services.

No written agreement in respect of fees was entered into and very little in writing is in evidence on the matter, but on 14th January 1974 Mr. Carayol wrote on a Shyben Madi delivery note in his own handwriting the following words and signed them:

40

"C.L. Carayol Fees 1973  
Balance due Mr. C.L. Carayol as at



14th January 1974 D250.00 (Two hundred and fifty Dalasis)

In the Supreme Court

(Sgd.) C.L. Carayol  
14.1.74"

No. 23  
Judgment  
30th June 1977  
(cont'd)

This paper writing is in evidence as Exhibit C and when learned counsel put this to him in cross examination Mr. Carayol said:-

10

"Exhibit C can only mean that I had given them a chit for my fees for 1973 and this is what was left to come."

The cheque paid to Mr. Carayol on this date was for D480.00 (No. 002855) and the counterfoil reads:

"C.L. Carayol Fees for 1973  
Accounting  
D480.00  
Bal. D250."

20

The inescapable conclusion it seems to me is that all fees outstanding up to the end of 1973 were satisfied with this payment of D250.00; and if that is so the basis of the contract with Shyben was a straightforward matter of payment in accordance with a verbal agreement and that this was for a fixed sum or sums and not on a time basis. Fees above the original agreement were paid but this did not affect in my view the nature of the agreement.

In respect of the year 1975/76 which relates to company trading Mr. Carayol said:

30

"I've not done work for 1975/76; I stopped work on 30th April 1975. I was paid on 1st May 1975".

The conclusion would therefore seem to be the same in the case of the Company's accounts.

Nothing in the documentation would lead one to suppose that fees were to be charged on a time basis and no time sheets such as professional men use were put in evidence. Mr. Carayol said he kept a note of hours worked in his diary but none of these were produced to the court.

40

The lack of documentation on the question of professional remuneration in this case has proved a

In the Supreme Court

No. 23  
Judgment  
30th June 1977  
(cont'd)

source of embarrassment to me in coming to any conclusion and matters would have been greatly helped if Mr. Carayol had delivered a bill for his services but in fact no bill has ever been delivered. Had bills been delivered, the plaintiffs would at least have known that they were being charged on a time basis since the bills would have indicated the hours devoted to their affairs. It seems to me that the first inkling they had that they were to be charged on a time basis was when the defence was delivered and counterclaim made.

10

There will be judgment for the plaintiffs on their claim with costs and the books will be forthwith delivered to the plaintiffs.

On the counterclaim there will be judgment for the plaintiffs with costs.

(Sgd.) Phillip Bridges.  
CHIEF JUSTICE

30th June 1977.

20

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No. 24

Notice and Grounds of Appeal

In the Court of Appeal

No. 24  
Notice and Grounds of Appeal  
(Undated)

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No. G.C.A. 13/77

BETWEEN:

CHARLES L. CARAYOL                      Plaintiff/Appellant  
and

SHYBEN A. MADI and  
SHYBEN A. MADI & SONS  
LTD.    Defendant/Respondent

30

TAKE NOTICE that the Plaintiff/Appellant being dissatisfied with the decision of the Supreme Court of The Gambia contained in the Judgment of the learned Chief Justice dated the 30th June, 1977, doth hereby appeal to The Gambia Court of Appeal upon the grounds set out: in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Plaintiff/Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in Paragraph 5.

In the Court  
of Appeal

No. 24  
Notice and  
Grounds of  
Appeal  
(undated)

2. The whole decision is appealed against.

3. The grounds of appeal are:-

(i) That the learned Chief Justice erred in that he failed to assess accurately the evidence adduced by the Plaintiff/Appellant.

10

4. Relief sought:-

(a) to set aside the said judgment

5. Persons directly affected by the Appeal:-  
Shyben A. Madi and Shyben A. Madi & Sons Limited through their Solicitor, Alhaji A.M. Drammeh, 8 MacCarthy Square, Banjul, The Gambia.

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(Sgd) A.S.B. Saho Esq.,  
Bamba's Chambers,  
74 Leman Street,  
Banjul, The Gambia.

20

(ONE OF THE SOLICITORS FOR PLAINTIFF/  
APPELLANT)

Note: The Plaintiff/Appellant will crave leave to amend his grounds of appeal after receipt of copy of records be spoken on his behalf.

No. 25

J U D G M E N T

No. 25  
Judgment  
1st December  
1978

IN THE GAMBIA COURT OF APPEAL

GENERAL SITTING HOLDEN AT BANJUL - NOVEMBER 1978

30

Coram:

Mr. Justice S.J. Forster - J.A. (Presiding)  
Mr. Justice E. Livesey Luke - J.A.  
Mr. Justice P.D. Anin - J.A.

CIVIL APPEAL NO. 13/77

In the Court  
of Appeal

No. 25  
Judgment  
1st December  
1978.  
(cont'd)

BETWEEN:

C.L. CARAYOL

Appellant

and

1. SHYBEN A. MADI

2. SHYBEN A. MADI & SONS LTD. Respondents

S.B.S. Jannah led by A.S.B. Saho for the Appellant.  
Alh. A.M. Drammeh for the Respondents.

J U D G M E N T

Judgment delivered on 1st day of December, 1978 by  
Patrick D. Anin - JUSTICE OF APPEAL

10

The first Respondent was for many years in business as a Trader on his own account; and the second Respondents are a company incorporated in the Gambia with limited liability which took over the business of the former. The Appellant is a former Commissioner of Income Tax of the Gambia; and upon his retirement, he set himself up as an accountant and income tax consultant. It was in this capacity that he was employed by both Respondents to prepare balance sheets and other accounting documents required for the assessment of the Respondents' income tax liabilities over a few past years. The Appellant was duly entrusted with the Respondents books and papers relating to their respective business for the period in question. In this litigation, Respondents claimed from the Appellant recovery of their said documents; on the grounds stated in the Statement of Claim that "they do not owe him any sum in respect of work done for them", and that "he failed to carry out the work for which he was engaged."

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The Appellant's defence was in the nature of a confession and avoidance. While admitting his retention of Respondents' trading books and other specified documents, he justified it on the ground that he had not been fully paid for professional services rendered. He estimated the work done by him as amounting to some 3000 working hours on business of the first Respondent, and some 300 working hours on the business of second Respondents. On the question of the agreement, if any, between the parties covering his professional fees, the Appellant pleaded as follows in his defence and counterclaim:

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10 "12. The Defendant avers that there is not in existence any written contract between the Plaintiffs and the Defendant but that there was an oral agreement between the Parties that the Defendant's fees would be calculated with reference to what results were obtained by him at the conclusion of investigations by the Commissioner of Income Tax into Plaintiffs' accounts covering a period of six (6) years ending 31st December 1970, and that until such conclusion of the investigation the Defendant could from time to time make withdrawals of sums of money from the Plaintiffs.

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20 13. In consequence of the matters contained in Paragraph 12 hereinbefore the Defendant has made withdrawals from the Plaintiffs in the sum of D10,450.00 (Ten thousand four hundred and fifty Dalasis).

14. In consequence of and as a direct result of Defendant's work and skill the First Plaintiff has benefitted in the sum of D700,000 (Seven hundred thousand Dalasis) being savings on Income Tax for which he the First Plaintiff was originally liable."

30 The Appellant further counter-claimed as against the first Respondent the sum of D102,443.75; and as against the second Respondents the sum of D9,225.

40 In their Defence to the Counter-claim, the Respondents conceded that the Appellant did some work; e.g. he prepared schedules for first Respondent's merchandise and money lending operations, and also prepared his accounts for the fiscal years 1971, 1972 and 1973 for submission to the Tax Authorities. With respect to the second Respondent Company's accounts, it was averred that the Appellant handed over to George Madi, the firm's Managing Director, a draft of an incomplete Trading and Profit and Loss Account covering 16 months to the 30th April 1975, supported by certain annexures which "have no use or value as what was required from him was a balance sheet and complete Trading and Profit and Loss Account which could be used for tax, banks and other purposes." The work on the firm's account for 1974/75 had been

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left uncompleted; and nothing had been done in respect of the fiscal years 1975/76's accounts.

On the issue of payment for Appellant's professional services, the Respondents pleaded in paragraph 6 of their Defence to the Counter-claim that "the verbal agreement with him was that he would be paid D2,500 for preparing balance sheets and goods Trading and Profit and Loss Accounts covering a period of 3 years, i.e. 1967, 1968 and 1969." "He had in fact been paid more than was agreed with him" (paragraph 7). "The agreed fee with the Appellant in respect of the fiscal years 1971, 1972 and 1973 was D1,000 per annum. Here again he had in fact been overpaid for the above stated reason." (paragraph 8). The agreed fee for work done for the said 16 months period in connection with the said Respondent Company's business was D1,500. However, he was actually paid D1,775 for the same reason as that advanced above."

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Paragraph 10 of the same pleading stated that the Appellant had received an advance of D650 towards his fees for 1975/76 for no work done and it was finally denied that the Respondents owed the Appellant either the sum claimed or any sum at all.

Before leaving the pleadings, it is necessary to point out that the Appellant's solicitor applied for further and better particulars, inter alia, about "when the defendant (i.e. Appellant) was employed and what were the terms of such employment?"

30

Significantly, this plea for particulars went unheeded by the other side; and not even a pursuant Notice of Motion for the same request succeeded in eliciting the required information from them.

On the pleadings as a whole, the respective positions of the parties on the issue whether a contract was duly concluded for the Appellant's professional fees or not would appear to be as follows: The Appellant relied on an oral agreement that his fees would be calculated after the completion of his assignment and the Commissioner of Income Tax's assessment of the Respondents' tax liabilities. In his testimony he stated that he could not know from the outset the volume of work

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involved; but that he would be paid in relation to the size of the reduction in the respondents' tax liability achieved. Before then, he was at liberty to make any withdrawals from his clients he desired. In all, he withdrew a total of D10,450 on his own admission.

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10 The Respondents, on the other hand, relied upon a verbal agreement allegedly concluded with the Appellant fixing three lots of fees as being payable to him as follows: A first sum of D2,500 for 1967-1969 accounts of first Respondent, a second annual sum of D1,000 for each of the three years 1971-1973 Accounts of first Respondent; and a third sum of D1,500 for the 16 months accounts of second Respondents for 1974 to April 1975 respectively.

In his judgment, the Learned Chief Justice described the case in a nutshell thus:

20 "The plaintiffs say that Mr. Carayol has been paid for such work as he has done; Mr. Carayol says that he has not been paid in full and refuses to hand over the books until he has been paid."

Elsewhere he described the case as involving -

"the nature of the contracts between Shyben Madi and Mr. Carayol and Messrs. Shyben Madi and Sons Ltd. and Mr. Carayol in respect of his professional services."

30 Having held that no written agreement in respect of fees was entered into and very little in writing is in evidence on the matter, he nevertheless relied heavily on a document, Exhibit 'C'. After reproducing it in full and quoting the Appellant's answer with reference to its significance under cross-examination and his endorsement on a related cheque counterfoil, the Learned Chief Justice held as follows:-

40 "The inescapable conclusion it seems to me is that all fees outstanding up to the end of 1973 were satisfied with this payment of D250.00; and if that is so the basis of the contract with Shyben was a straightforward matter of payment in accordance with a verbal agreement and that this was for a fixed sum or sums and not on a time basis. Fees above

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the original agreement were paid but this did not affect in my view the nature of the agreement.

In respect of the year 1975/76 which relates to company trading Mr. Carayol said:-

"I've not done work for 1975/76; I stopped work on 30th April, 1975. I was paid on 1st May 1975."

The conclusion would therefore seem to be the same in the case of the Company's accounts. 10

Nothing in the documentation would lead one to suppose that fees were to be charged on a time basis and no time sheets such as professional men use were put in evidence. Mr. Carayol said he kept a note of hours worked in his diary but none of these were produced to the court.

The lack of documentation on the question of professional remuneration in this case has proved a source of embarrassment to me in coming to any conclusion and matters would have been greatly helped if Mr. Carayol had delivered a bill for his services but in fact no bill had ever been delivered. Had bills been delivered, the plaintiffs would at least have known that they were being charged on a time basis since the bills would have indicated the hours devoted to their affairs. It seems to me that the first inkling they had that they were to be charged on a time basis was when the defence was delivered and counter-claim made. 20 30

There will be judgment for the plaintiffs on their claim with costs and the books will be forthwith delivered to the plaintiffs.

On the counterclaim there will be judgment for the plaintiffs with costs."

In this appeal, argument has centred on two fundamental questions; firstly, whether or not there was a fixed fee contract between the parties with respect to the fees; and secondly, if there was no such contract, whether the Appellant is entitled to claim upon a quantum meruit. For the 40



Appellant, Mr. Janneh contended that no fixed fee contract was proved between the parties. The evidence was uncertain and inconclusive on the issue. Nowhere in the evidence was a particular price mentioned as a fixed fee or fees for Mr. Carayol. The Respondents' figures kept changing. Even though the Learned Chief Justice observed that there was no written agreement in respect of fees, he nevertheless relied on a document (Exhibit 'C') for his conclusion that the contract was a verbal agreement for a fixed fee contract having been proved. The Appellant ought to be paid on a quantum meruit on a time basis indicated in his Defence and Counterclaim; and he cited in support the law of quantum meruit as expounded in Roberts v Havelock (1832) 37 Revised Reports 452; Powell v. Braun (1954) 1 All E.R. 484 and Way v. Latilla (1937) 3 All E.R. 759, H.L.

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As was to be expected, Alhaji Drammeh, learned counsel for the Respondents canvassed the correctness of the judgment appealed from. In his submission, there could be no question of a quantum meruit since the learned Chief Justice found as a fact that the parties entered into a verbal agreement for a fixed sum or sums; and the Appellant had himself admitted in certain passages of his evidence that he had been overpaid in certain instances. He contended that the conclusion reached by the Court below was based on a proper evaluation of the evidence and not on Exhibit 'C' alone. In any event, the proper construction had been placed on that important exhibit. The Appellant was under the concluded verbal agreement entitled to only D2,500 for the whole of the three years 1971 to 1969 inclusive; and another verbal agreement existed to take care of the post - 1973 accounts, if and when the contracted work was finally executed by the Appellant. In view of the trial court's correct findings, the appeal in learned counsel's submission ought to be dismissed.

In resolving the two salient issues raised by this appeal, one recalls to mind the situation where either a course of conduct or a volume of correspondence is relied upon to determine the existence of a concluded contract. It is in such cases necessary to consider the course of dealing or the whole correspondence passing between the parties. Each case of course must be decided on its own facts. However some guidance may be derived from decided cases on

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the correct method of approach to the solution of  
the problem.

For example, in the case of Hussey v. Horne-  
Payne (1879) 4 App. Cases, 311 two letters from a  
correspondence seemed to suggest a completed  
agreement; but the House of Lords looked at the  
correspondence and negotiations as a whole and  
held that there was no such agreement. Lord  
Cairns held, at p. 316, that:

"Where you have to find your contract or  
your note or memorandum of the terms of the  
contract in letters you must take into  
consideration the whole of the correspondence  
which has passed. You must not at one  
particular time draw a line and say; we  
look at the letters up to this point and  
find in them a contract or note, but we will  
look at nothing beyond!"

10

Again the general rule is that if the terms of  
agreement are so vague or indefinite that it cannot  
be ascertained with reasonable certainty what is  
the intention of the parties, there is no contract  
enforceable at law. Thus an agreement that the  
plaintiff employee should receive a reasonable share  
of his employer's profits was held by the House of  
Lords in Way v. Latilla, Supra, to be vague and that  
there was no concluded contract between the parties  
as to the amount of the shares or interest that the  
plaintiff was to receive and it was impossible for  
the court to complete the contract for them.  
However, the House of Lords held further that since  
there was a contract of employment between the  
parties, which clearly indicated that the work was  
not to be done gratuitously, the plaintiffs was  
entitled to a reasonable remuneration on the im-  
plied contract to pay him a quantum meruit.

20

30

Applying these guidelines to the facts of this  
case, it is clear that the disputed issue whether  
there was a fixed fee contract or not, must be  
decided on a consideration of the case as a whole  
and not from the inclusive Exhibit 'C', as was done  
in the Court below.

40

Exhibit 'C' reads as follows:-

"Delivery Note  
Shyben Madi  
Bathurst.

C.L. Carayol - Fees 1973

Balance due Mr. C.L. Carayol as at 14/1/74  
D250.00 (Two hundred and fifty Dalasis).

(Sgd.) C.L. Carayol."  
14/1/74

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10 In the first place, I hold that Exhibit 'C'  
does not, ex facie, warrant either the "inescapable  
conclusion" of the Learned Chief Justice that all  
fees outstanding up to the end of 1973 were  
satisfied with the payment of D250, or his further  
deduction that the basis of the contract was a  
straightforward matter of payment in accordance  
with a verbal agreement, and that this was for a  
fixed sum or sums and not on a time basis." It is  
manifestly clear from the title of the exhibit -  
"Fees 1973" - that it relates back to 1973 fees  
and to no other period. In my view, the exhibit  
cannot, without straining the clear unambiguous  
words of the title ("fees 1973") be extended to  
20 cover all fees outstanding from the earliest year  
(i.e. 1967) up to 1973.

30 Secondly, in assessing this exhibit, sight  
must not be lost of the rival cases of parties  
summarised above. The Appellant's case, it will  
be recalled, was that until he had finally prepared  
the accounts and the official tax assessment was known,  
he was permitted to withdraw from time to time sums  
of money from the Respondents. His candid admission  
under cross-examination that the exhibit represents  
the balance of D250.00 due after a chit submitted by  
him to the Respondents for his fees for 1973 must  
therefore be understood in the general context of  
the modus operandi claimed by him whereby he was  
entitled to withdraw sums from his employers  
periodically according to his needs. The rival  
pleading of the Respondents, it will be recalled,  
was that for the year 1973 accounts, the  
Appellant's fees were fixed at D1,000. In their  
evidence, however, they departed from their  
40 pleadings. While first Respondent stated that  
"George told me he had engaged Carayol as tax  
accountant for D2,500 per annum," George Madi the  
Company's Managing Director, on the other hand,  
testified that "fees were agreed at D2,500 for the  
3 years (£500) i.e. 1967 to 1969; that "we paid  
him around D3,800 until his work was finished", and  
that "later we employed him to prepare annual  
accounts up to and mid 1973 for a fee of D1,000.

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Oral agreements." George further revealed that after the incorporation of the company on 1st January, 1974, second Respondents engaged Mr. Carayol; and I agreed on D1,500 as fees for 16 months. In my view, the Respondents' version, taken as a whole, shows such inconsistency as to make it inherently improbable and unreliable.

By contrast, viewed against the background of the friendship then admitted to be existing between the parties, the Appellant's explanation that until his professional work had been accomplished and the Respondents' tax liabilities were known, he was allowed to withdraw periodical sums from the plaintiffs is not intrinsically improbable or unreasonable. On its true construction, therefore, I would hold that Exhibit 'C' is a receipt for interim fees received by the Appellant for professional services rendered during 1973, to which was tagged a demand for a further sum of D250. The Appellant's answer under cross-examination that "the Exhibit 'C' can only mean that I had given them a chit for my fees for 1973 and this is what was left to come" sounds plausible enough to me.

In the third place, it is significant that each of the three lots of fees for the aforementioned separate accounting jobs was overpaid by the Respondents; and we have the stock excuse that this overpayment had to be made in order to stir the Appellant from his lethargy. Thus, according to Exhibit 'H', the Appellant was paid D3,775 instead of D2,500 for the first period, D900, D1,275 and D1,175 for 1971-73, respectively for the second period instead of D1,000 per annum as allegedly agreed upon; and for the remaining 16 months' work on the company's accounts instead of the alleged stipulated sum of D1,500, he was in fact paid D1,775. I do not find the stereotyped reason proffered in paragraph 7 of the Respondents' Defence to the Counter-claim, supra, convincing or even credible. On the contrary, I hold that the fact of these regular overpayments being made by the Respondents tends to negative the existence of any such concluded fixed fees contract as was alleged by them. Men of business do not as a rule knowingly pay more than they are obliged to do under the terms of a binding contract. Charity to a friend or a relation is one thing; business transactions regulated by a binding contract are quite another.

10 Fourthly, the Learned Chief Justice found the lack of documentation on the question of professional remuneration in this case a source of embarrassment to him in coming to any conclusion; and that "matters would have been greatly helped if Mr. Carayol had delivered a bill for his services but in fact no bill was ever delivered. Had bills been delivered, the plaintiffs would at least have known that they were being charged on a time basis since the bills would have indicated the hours devoted to their affairs." My brief comment on this aspect of the judgment is that the court must take the parties as they find them; if on a proper construction of their transaction they can be fairly and reasonably deemed to have reached a concluded agreement, and if the terms of such an agreement are clear, certain and unambiguous, all well and good. If not, it is just too bad; for it is not the court's function to impose a bargain on the parties where they have failed to conclude one. Furthermore, both parties in this case relied on a verbal agreement; in neither version was any insistence placed upon the need for the submission of written bills calculated on a time basis. It is obvious that the Appellant introduced an estimate of the number of hours devoted to the Respondents' business for the purpose of this litigation and his counterclaim. In my view, it would be wrong to disbelieve Appellant's story simply because he did not opt for the more usual mode of claiming fees employed by accountants generally.

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(cont'd)

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40 From the above analysis, I am driven to the conclusion that the crucial issue was decided solely on Exhibit 'C' and on the lack of documentation; and that the Learned Chief Justice unfortunately omitted to consider the rival pleadings and evidence as a whole bearing on the issue. I have no doubt in my mind, and I do accordingly hold, that on a full and proper evaluation of the relevant pleadings and evidence it cannot be gainsaid that the Respondents, who alleged the existence of the controversial verbal agreement for fixed contract fees and on whom the onus probandi lay, failed to prove it. Their evidence on the issue was inconsistent and it was also uncertain and nebulous with regard to the nature and the fundamental term concerning fees agreed upon.

50 In the event, I would uphold the Appellant's argument on the appeal; and hold that there was no

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concluded contract about fees payable to the Appellant in respect of his professional services. I would also hold that the evidence as well as the pleadings in the case nevertheless establish that there was contract of employment between the parties which clearly indicated that the professional work of the Appellant was not to be done gratuitously. In the circumstances, I would hold that the Appellant is entitled to a reasonable remuneration on the implied contract to pay him a quantum meruit; and I here rely on the above cited authorities on quantum meruit.

10

It is not in dispute in this case that the Appellant has rendered some professional services upon the request of the Respondents. The Learned Chief Justice found correctly, in my respectful view - "that Mr. Madi's tax affairs involved Mr. Carayol in a great deal of work - and moreover work not normally required to be carried out by accountants particularly the cataloguing of over 9000 documents, the writing to clients asking for details of their dealings with Mr. Madi and creating de novo and in retrospect the books normally to be found in commercial business.

20

It is apparent that whatever (was) required to be done, has not been completed - no accounts for 1967, 1968 and 1969 have been produced and the final accounts of the firm remain in draft; admittedly because the profit figure is thought to be too high by the company.

30

The work for the company would involve less labour than that for the business since the company under the provisions of the Companies Act is required to maintain adequate books whilst no such requirements exists for business in unincorporated associations, but 300 hours of work are said to have been put in and the accounts cannot be far from complete".

Elsewhere in his judgment he again shrewdly observed that "any production of balance sheet and profit and loss accounts in respect of Mr. Shyben Madi's business would present difficulties as Mr. Madi kept no books of accounts as such and the reconstruction would have to be made from bank statements, invoices, customs documents and so on".

40

In his evidence, the Appellant himself claimed to have done 2763 hours at D37.50 per hour in respect

of first Respondent's accounts at a total value of D102,443.75 and 293 hours at D40 per hour in respect of the company's accounts totalling D11,720. It is indisputable that the Appellant started from scratch on first Respondent's accounts in the absence of the relevant books and documents and reconstructed the draft profit and loss account for the year ending 31/12/1968; schedule of merchandise debtors as at 31/12/66,67,68 and 1969; schedule of money-lending debtors at 31/12/66; analysis of S.B.W.A. current account for years ending 31/12/67, 68 and 69; analysis of cash receipts and payment for years ended 31/12/67, 68 and 69; summary of receipts from money lending debtors for years ending 31/12/67, 68 and 69; schedule of creditors and overseas acceptances at 31/12/67, 68 and 69; and schedule of motor vehicles debtors at 31/12/68. With respect to the second Respondents' business accounts, he has presented a set of preliminary accounts which the company declines to accept since they allege the profit shown is too high. The work done by the Appellant has been corroborated by the Coopers report (Exhibit 'B' and 'Q') e.g. paragraphs 14, 23, 79, 83, 85, 91, 115 and 133 of Exhibit 'B'. Indeed Coopers and Lybrand expressed therein their heavy indebtedness to the Appellant's work on the Respondents' accounts in the preparation of their own report commissioned by the government of The Gambia.

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It is beside the point, as far as his entitlement to quantum meruit is concerned, to consider whether he has accomplished all he was engaged to do. He is entitled, in the absence of a contract on fees payable, to be paid a reasonable sum for work he has actually done at the instance of the Respondents; since it was not intended to be done gratuitously.

What then is a reasonable remuneration in the peculiar circumstances of this case? In assessing this I would accept the evidence on record from the independent and expert witness Mr. R.C.S. Sanders of Pannell Fitzpatrick, a firm of chartered accountants, that accountants' fees are normally computed on a time basis and not on a percentage on tax saved basis. I would also bear in mind that the Appellant himself admitted having already withdrawn total sum of D10,450 from his employers and I would make due allowance for this. I further

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accept as a reasonable guide Mr. Sanders' estimate that if an accountant works 6 days and 39 hours in a week and took no time off, he can put in 2028 hours in a year.

In all the circumstances of the case and bearing in mind the sheer volume of work Appellant has done, albeit in draft, I would award him as against the 1st Respondent the sum of D70,000.00 and as against the second Respondents the sum of D5,000 as a fair and reasonable remuneration upon a quantum meruit.

10

In the event, the appeal is allowed; the judgment of the court below is set aside; and in its place I would dismiss the original claim and upheld the counter-claim and award in favour of the Appellant the sums of D70,000 and D5,000 as against the first and second Respondents respectively. The Appellant would be entitled to his costs in this court and the court below to be taxed. I would further direct that upon payment in full of the judgment debt herein, the Respondents' books, documents and other papers in the possession of the Appellant shall be returned forthwith to the Respondents.

20

.....

Sgd. Patrick D. Anin  
JUSTICE OF APPEAL

I agree

.....

(Sgd. ) Sam J. Forster  
JUSTICE OF APPEAL  
(Presiding)

I agree

.....

(Sgd.) E. Livesey Luke  
JUSTICE OF APPEAL

30

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4/12/1978



No. 26

Order granting Conditional Leave to  
Appeal

In the Court  
of Appeal

No. 26  
Order granting  
Conditional  
Leave to Appeal  
8th December  
1978.

IN THE GAMBIA COURT OF APPEAL

CIVIL APPEAL NO. 13/77

BETWEEN:

SHYBEN A. MADI

1st Applicant/  
Respondent

SHYBEN A. MADI & SONS LTD.

2nd Applicant/  
Respondent

- and

C.L. CARAYOL

Respondent/  
Appellant

Friday 8th day of December, 1978.  
Before the Hon. Sir Phillip Bridges, C.J.

A.M. Drammeh for Applicant  
S.B. Semega-Janneh for Respondent.

O R D E R :

This is an appeal as of right, nevertheless,  
an order is required, it seems to me, under Section  
3 of The Gambia (Appeals to Privy Council) Order  
in Council 1961 Vol. VIII page 5081 at 5083.

After hearing counsel it is ordered

1. That within 3 months of the date hereof the applicant do furnish security for the due prosecution of the appeal against the decision of the Court of Appeal herein in the sum of D2000.00;
2. That within 3 months from the date hereof the applicant shall take all such steps as may be necessary for the purpose of securing the preparation of the record and despatch thereof to the Registrar of the Privy Council and to that end the Registrar of The Gambia Court of Appeal shall prepare a certified copy of the Record herein with copies for the parties and despatch the same to the Registrar of the Privy Council; and

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3. The Registrar shall with due expedition settle the record in the presence of the parties.

(Sgd.) Phillip Bridges  
CHIEF JUSTICE

Certified True Copy  
20/1 /79

No. 27

Order granting  
Final Leave to  
Appeal  
29th March  
1979

No. 27

Order granting Final Leave to Appeal

IN THE GAMBIA COURT OF APPEAL

10

CIVIL APPEAL NO. 13/77

BETWEEN:

SHYBEN A. MADI 1st Applicant  
SHYBEN A. MADI & SONS LTD. 2nd Applicant

- and -

C.L. CARAYOL Respondent

Before the Hon. Sir Phillip Bridges, C.J.

Mr. A.M. Drameh appears to move for an order granting final leave to appeal herein.

Affidavit read.

20

O R D E R

Having read the affidavit herein sworn on 16th March 1979 and the terms contained in the order of 8th December 1978 having been complied with - Final leave to appeal is hereby granted.

29th March, 1979.

(Sgd). Phillip Bridges  
CHIEF JUSTICE  
As a single Judge of the  
Court of Appeal.

Certified True Copy  
29/3/1979.

30

Exhibit B

Report by Messrs. Coopers & Lybrand  
on Mr. Shyben Madi

REPORT DATED 4TH OCTOBER 1975

to

MR. M. L. SAHO

The Attorney General of The Gambia

on

MR. SHYBEN MADI

COOPERS & LYBRAND  
Chartered Accounts.

COOPERS & LYBRAND,

ABACUS HOUSE,  
GUTTER LANE,  
CHEAPSIDE,  
LONDON EC2V BAH.

OUR REF 717

M.L. Saho, Esq.,  
The Attorney General,  
Attorney General's Chambers,  
Banjul,  
The Gambia.

Dear Sir,

Shyben Madi

On 12th December 1972 you discussed the tax investigation of Mr. Shyben Madi with a member of our staff, Mr. Allan Forster, who was at that time in Banjul, The Gambia. You informed us that Mr. Norman Stavely had been engaged on this case, but had not completed the work when his services were dispensed with on 15th July 1972 and that you wanted our firm to complete the work started by him.

Background to the Tax Investigation

2. The investigation into the tax affairs of Mr. Shyben Madi was prompted by certain statements made during a civil action suit in the Supreme Court of The Gambia between Mr. Shyben Madi and Mr. Toufic

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Massry for the recovery of the debt owed by the latter to Mr. Shyben Madi. As a consequence of those statements the Commissioner of Income Tax issued revised tax assessments on Mr. Shyben Madi for the years 1966 to 1971 inclusive.

3. We understand that Mr. Shyben Madi applied to the Supreme Court for an order of Certiorari to quash the assessments for those years and also for an Order of Prohibition prohibiting the Commissioner of Income Tax from issuing any further assessments in respect of Mr. Shyben Madi's income for the years 1966 to 1971 inclusive. However, on 5th August 1971 the Chief Justice directed that there should be a stay of the proceedings in question until there was a final determination of the application and that the Commissioner of Income Tax was prohibited from taking any further action on the matter under Income Tax Act until determination.

10

4. As a consequence of this direction from the Chief Justice, out-of-court negotiations were commenced between Mr. Gerald Davies (Counsel For The Gambia Government) and Mr. Eugen Cotran (Counsel for Mr. Shyben Madi) to come to an agreeable solution. We understand that it was agreed during these negotiations that:-

20

(i) No action be taken by either party in the present proceedings for Certiorari pending attempts at a settlement acceptable to both parties;

30

(ii) An investigation should be made of the accounts of Mr. Shyben Madi for the three years ended 31st December 1967, 1968 and 1969. It was originally proposed that the investigation should only cover two years, one of which was during the time Mr. Shyben Madi was engaged in his money lending activities. This course of action was stated to be impracticable by Mr. Norman Staveley, and the three years 1967 to 1969 inclusive were selected.

40

5. This course of action was proposed in the Supreme Court and on 15th November 1971 the Chief Justice directed that the case should be adjourned sine die with liberty to restore.

6. Mr. Norman Staveley was appointed to prepare revised accounts for the years ended 31st December 1967, 1968 and 1969 which could be used as a basis for revised tax assessments for Mr. Shyben Madi for the years 1966 to 1971 inclusive. No details were given as to the formula to be used for ascertaining the taxable income for the years of assessment.

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Terms of Reference and Period Covered by this Report

7. In our letter of 18th January 1973 we set out our understanding of the terms of reference under which our assignment was to be carried out. For the sake of completeness we reproduce those terms of reference which were as follows:-

(i) Complete the work carried out by Mr. Norman Staveley in the preparation of accounts for the years ended 31st December 1967, 1968 and 1969;

20

(ii) Obtain such information and explanation from Mr. Shyben Madi, Mr. George Madi (his son) and Mr. C. Carayon (his accountant) as would be necessary;

(iii) Report direct to you upon the findings of our investigation making recommendations for the income tax assessments of Mr. Shyben Madi for the years 1966 to 1971 inclusive.

Books and Records Available to Us

30

8. We have not sighted any books or records of prime entry maintained by Mr. Shyben Madi but limited ourselves to a scrutiny of the following documents:-

- (i) Schedules prepared by Mr. Norman Staveley
  - (a) Draft accounts for the three years ended 31st December 1969
  - (b) Working papers to the accounts in (a)
  - (c) Correspondence and notes on interviews.
- (ii) Schedules prepared by Mr. C. Carayon
  - (a) Draft profit and loss account for the year ended 31st December 1968

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- (b) Schedule of merchandise debtors at 31st December 1966, 1967, 1968 and 1969
  - (c) Schedule of money lending debtors at 31st December 1966
  - (d) Analysis of S.B.W.A. current account for the years ended 31st December 1967, 1968 and 1969
  - (e) Analysis of cash receipts and payments for the years ended 31st December 1967, 1968 and 1969 10
  - (f) Summary of receipts from money lending debtors in the years ended 31st December 1967, 1968 and 1969
  - (g) Schedule of creditors and overseas acceptances at 31st December 1967, 1968 and 1969
  - (h) Schedule of motor vehicle debtors at 31st December 1969.
- (iii) Schedule prepared by Mr. K. Foon 20
- (a) Statutory accounts prepared and signed by Mr. Foon which were lodged with the Commissioner of Income Tax to support the income tax returns for 1967 to 1970 inclusive, along with supporting schedules thereto

9. We would point out that the accounts prepared by Mr. Norman Staveley (referred to in 8(i) did not take full account of Mr. Shyben Madi's money lending activities during the period as he was not in possession of the necessary information which was subsequently produced by Mr. C. Carayol. 30

10. We would emphasise that in no sense have we carried out an audit of Mr. Shyben Madi's books and records; nor have we varified any of his assets or liabilities at the balance sheet dates. The accounts have been prepared solely from the records and information available to us and from discussions with Mr. George Madi and Mr. C. Carayol. If we had carried out an investigation of the books of prime entry maintained by Mr. Shyben Madi our conclusions may have been different. 40

Accounts of Mr. Shyben Madi

Exhibits

11. The capital of Mr. Shyben Madi invested in his business is represented by the difference between assets and liabilities at my date, and the profit or loss earned by Mr. Shyben Madi in any given period is the increase or decrease in capital during that period.

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10 12. Consequently, the profit or loss earned by Mr. Shyben Madi in any year can be ascertained by a comparison of the net assets (i.e. fixed and current assets less liabilities) at 31st December with those at the previous 31st December. The profit and loss account will only explain how the profit or loss was achieved.

13. It therefore follows that if the net assets at 31st December are correctly stated then the profit or loss has been correctly stated, assuming that the personal drawings of Mr. Shyben Madi have been correctly extracted.

20 14. As Mr. Shyben Madi did not maintain proper books of account to record either his trading or money lending transactions, Mr. C. Carayol reconstructed a bank account and cash account, the balancing figure in the latter representing cash sales.

30 15. As we want this report to be as comprehensive as possible we have prepared the following appendices which compare the accounts prepared by ourselves "C & L accounts", with those prepared by Norman Staveley "Staveley accounts" and by Mr. K.W. Foon "Foon accounts";-

Appendix "A" - Balance Sheets at 31st December 1966

Appendix "B" - Balance Sheets at 31st December 1967

Appendix "B1"- Trading and Profit and Loss Accounts  
for the year ended 31st December 1967

Appendix "C" - Balance Sheet at 31st December 1968

Appendix "C1"- Trading and Profit and Loss Accounts  
for the year ended 31st December 1968

Appendix "D" - Balance Sheets at 31st December 1969

40 Appendix "D1"- Trading and Profit and Loss Accounts  
for the year ended 31st December 1969.

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16. We set out in succeeding and explanations where available on the figures appearing in the accounts.

17. The report is set out as follows:

	<u>Paragraphs</u>	
I	18 - 20	
II	21 - 60	
III	61 - 131	
IV	132 - 134	
V	135 - 136	10
VI	137 - 152	

Additional appendices to those referred to in Paragraph 15:-

Appendix "E"	- Summary of taxis "owned" by Mr. Shyben Madi	
Appendixes "F- F12"	- Summary of money lending balances	
Appendix "F13"	- Summary of monies borrowed	
Appendices "G- G7"	- Summary of merchandise debtors	20
Appendix "H"	- Summary of motor vehicle trading debtors	
Appendix "I"	- Summary of merchandise creditors	
Appendix "J"	- Summary of Mr. Shyben Madi's drawings	
Appendix "K"	- Summary of taxi earnings and runnings costs	
Appendix "L"	- Summary of tax computations 1966 to 1970	
Appendix "M"	- Summary of tax payable and payment thereof 1966 to 1970	30



I GENERAL INFORMATION

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Nature of Business

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18. Mr. Shyben Madi is a trader who has been operating in The Gambia for many years, dealing in various goods, mostly textiles, which have been imported from various overseas firms.

10 19. Until very recently Mr. Madi has operated as a registered money lender and was currently holding a licence to act in that capacity. However, we have been informed by Mr. George Madi who has recently returned from Whittier College, United States of America, that his father has now discontinued his money lending activities as that was one of the conditions which he (Mr. George Madi) stipulated if he was going to work for his father. At 31st December 1969 a considerable amount was still owed to Mr. Shyben Madi by various debtors relating to money lending activities.

20 20. A review of the statutory accounts prepared by Mr. Foon would lead one to believe that Mr. Madi operated a taxi business. This was not the case. We have ascertained that taxis and other vehicles were sold to various individuals but the title thereto was not transferred to the purchaser until the debit had been settled. We refer to this activity in more detail in other sections of this report.

II TRADING RESULTS

30 22. The main purpose of our assignment was, as already explained, to prepare revised trading results of Mr. Madi's business for the three years ended 31st December 1969 which could form an acceptable basis for calculating Mr. Shyben Madi's tax liability for the tax assessment years 1966 to 1971 inclusive. Our review disclosed that numerous adjustments were necessary to the accounts already provided by Mr. Madi. The figures which we arrived at for each of the years under review are set out in detail in appendices "B1", "C1" and "D1" together with details of the figures  
40 originally calculated by Mr. Foon and the revised figures calculated by Mr. Staveley.

22. We have already provided Mr. Carayol with a copy of the accounts reproduced on appendices "A" to "D1" which he has accepted as being reasonable.

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23. We would reiterate that Mr. Shyben Madi did not maintain an adequate book-keeping system, in that standard records such as purchase day books, sales day books, creditors ledgers and cash books were not kept. Consequently the figures in the revised trading and profit and loss accounts were based largely upon the accounts which Mr. C. Carayol had been able to construct from such records as were available to him; there is no certainty of their accuracy.

10

24. We comment on the individual items in the revised trading and profit and loss accounts in the succeeding paragraphs and explain, where possible, the variances between the figures shown in the C & L accounts and those shown by Mr. Norman Staveley and Mr. K.W. Foon in their accounts.

Merchandising Operations

Summary

25

20

Year ended 31st December 1967	<u>As per</u>		
	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>
	£	£	£
Sales	386,756	397,459	382,237
Cost of Sales	<u>341,557</u>	<u>341,673</u>	<u>371,126</u>
Gross Profit	<u>£45,199</u>	<u>£55,786</u>	<u>£11,111</u>
% on sales	11.7%	14%	2.9%

Year ended 31st December 1968	<u>As per</u>		
	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>
	£	£	£
Sales	432,515	430,549	367,689
Cost of Sales	<u>372,835</u>	<u>375,498</u>	<u>357,926</u>
Gross Profit	<u>£59,680</u>	<u>£57,451</u>	<u>£ 763</u>
% on sales	13.9%	13.3%	0.2%

30

<u>Year ended 31st December 1969</u>	<u>C &amp; L</u>	<u>As per</u>		<u>Exhibits</u> B Report by Messrs. Coopers & Lybrand on Mr. Shyben Madi 4th October 1975. (cont'd)
		<u>N. Staveley</u>	<u>K. Foon</u>	
	£	£	£	
Sales	540,122	544,546	556,671	
Cost of sales	<u>533,584</u>	<u>549,697</u>	<u>542,564</u>	
Gross Profit/ (Loss)	<u>£ 6,538</u>	<u>£( 5,151)</u>	<u>£14,107</u>	
10      % on sales	1.2%	(0.9)%	2.5%	

We discuss these items separately in the following paragraphs 26 to 37.

Sales

26. As far as we can determine Mr. Shyben Madi never maintained an orthodox sales day book to record either cash or credit sales effected by the firm. Mr. Carayol has reconstructed the debtors accounts from invoices and ledgers to arrive at the debtors figures at 31st December each year (1966 to 1969 inclusive). These papers provide the credit sales figures for the year 1967 to 1969 which we have accepted without carrying out any checks thereon.

27. Mr. Carayol has also reconstructed cash accounts for the years ended 31st December 1967, 1968 and 1969 and, as we have already stated previously in this report, the balancing figure thereof represents cash sales. As no daily cash takings records have been kept and it was normal practice to make periodic bankings of round sum amounts when warranted, we have accepted that in the circumstances this is the only practicable method of arriving at a figure for cash sales.

28. Following our examination of the schedules prepared by Mr. Carayol and from the result of discussions with him and Mr. George Madi, certain of the figures for money lending and other matters had to be changed. These adjustments necessarily affected the cash sales figures previously arrived at by Mr. Carayol.

29. It can be seen that no material differences arise between the C & L and Foon Accounts except in

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1968; we are unable to give any explanation for this variance.

Cost of sales

Summary

30	<u>As per</u>		
<u>Year ended 31st December 1967</u>	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>
	£	£	£
Opening Stocks	42,414	42,414	42,414
Purchases	357,750	357,866	387,319
(Closing Stocks)	<u>(58,607)</u>	<u>(58,607)</u>	<u>(58,607)</u>
	<u>£341,557</u>	<u>£341,673</u>	<u>£371,126</u>
<u>Year ended 31st December 1968</u>			
Opening Stocks	58,607	58,607	58,607
Purchases	382,839	383,502	377,490
(Closing Stocks)	<u>(68,611)</u>	<u>(68,611)</u>	<u>(60,171)</u>
(Cost of Sales)	<u>£372,835</u>	<u>£373,498</u>	<u>£375,926</u>
<u>Year ended 31st December 1969</u>			
Opening Stocks	68,611	68,611	60,171
Purchases	555,797	568,059	551,628
(Closing Stocks)	<u>(90,824)</u>	<u>(86,973)</u>	<u>(69,235)</u>
Cost of Sales	<u>£533,584</u>	<u>£549,697</u>	<u>£542,564</u>

10

20

Opening and Closing Stocks

31. Stocks of merchandise goods will be dealt with later in this report in the section on Assets (see paragraphs 103 to 110).

Purchases

32. Except for a few very minor adjustments, we have accepted the figure for purchases as calculated

30

by Mr. C. Carayol. We have no explanation for the variances between the figures in the C & L and Foon accounts.

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33. The above purchases in the C & L accounts are arrived at after eliminating the following non-trade purchases which have been debited to Mr. Madi's drawings accounts:-

<u>Year ended 31st December</u>	<u>£</u>
1967	748
1968	1,049
1969	1,663

10

Gross Profit from Merchandising

34. We consider that the gross profit percentages disclosed in the 1967 and 1968 accounts did not seem unreasonable, but that the figure for 1969 (1.2%) merited further investigation.

35. We prepared a detailed analysis of purchases for 1969 with the view of obtaining from Mr. George Madi some idea of the mark-up which would have been applied to each commodity. However, our findings were inclusive because certain queries arose which required further details from Mr. C. Carayol. These were requested of Mr. Carayol on 26th April, 1973 but despite subsequent reminders they are still not forthcoming.

20

36. We did, however, ascertain that Mr. Shyben Madi was adversely affected by the revaluation of the Deutschmark in 1969, but we are unable to quantify the amount involved and consequently ascertain the effect upon the gross profit percentage. These additional costs have been included in purchases whereas in our opinion they should have been included in overheads as a loss on foreign exchange. No adjustments have therefore been possible in the 1969 accounts.

30

37. The analysis of purchases did disclose that £5,025 had been included in both purchases paid for and creditors; we have adjusted for this item when arriving at the gross profit percentage of 1.2%.

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Motor Vehicle Trading OperationsSummary

38

As perYear ended 31st  
December 1967C & LN. Staveley

£

£

Sales

14,665

15,478

Cost of Sales  
(including Expenses)12,60512,605

Gross Profit

£2,060£2,873

10

% on sales

14.0%

18.6%

Year ended 31st  
December 1968

Sales

4,388

2,700

Cost of Sales  
(including Expenses)2,5602,560

Gross Profit

£1,828£ 140

% on sales

41.7%

5.2%

Year ended 31st  
December 1969

Sales

-

-

Cost of Sales

1,0301,750

Gross Loss

£1,030£1,750

20

We discuss these items separately in the following paragraphs 39 to 43.

Sales

39. Sales of motor vehicles on extended credit were not taken up in the Foon accounts as such, but were accounted for on a cash basis. The purchase of the motor vehicle was capitalised and only written-off against revenue when the debt had been completely repaid and title of the motor vehicle transferred to the purchaser.

30

40. In both the C & L and the Staveley accounts these sales have been included in the year they were effected. We set out in appendix "H" details of the motor vehicles treated in this manner.

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Cost of Sales

41. We have accepted the figures for vehicle purchases as calculated by Mr. C. Carayol. It would appear that the expenditure of £1,030 should have been taken up on the previous year as no sales were effected in 1969.

10

Gross Profit Percentages

42. The gross profits earned from the motor vehicle trading business in the three years ended 31st December 1967, 1968 and 1969 can be summarised as follows:-

<u>Year ended 31st December</u>	<u>C &amp; L</u>		<u>Staveley</u>	
	£	%	£	%
1967	2,655	18.1	3,468	22.4
1968	1,888	43.0	200	7.
1969	(1,030)	-	(1,750)	

20

43. The figures shown in the previous paragraph for profits are arrived at after excluding expenses of £595 in 1967 and £60 in 1968. Taking the three years together, the gross profit earned was £3,513 on sales of £19,053 with a gross profit percentage of 18.4%. This was considered reasonable.

Other Income

Summary

44

As per

30

<u>Year ended 31st December 1967</u>	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>
	£	£	£
Taxi Earnings	-	-	4,739
Commissions Received	98	98	-
Interest Received -			
Sundry	183	183	5,294
Loans	120	-	-
	<u>£401</u>	<u>£281</u>	<u>£10,033</u>

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		<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>	
		£	£	£	
Taxi Earnings		-	-	4,463	
Commissions Received		214	213	-	
Interest Received					
- Sundry		79	78	9,634	
- Loans		<u>1,060</u>	<u>-</u>	<u>-</u>	10
		<u>£1,353</u>	<u>£291</u>	<u>£14,097</u>	
	<u>Year ended 31st December 1969</u>				
Taxi Earnings		-	-	1,829	
Commissions Received		118	118	-	
Interest Received					
- Sundry		108	107	7,625	
- Loans		<u>1,240</u>	<u>-</u>	<u>-</u>	
		<u>£1,466</u>	<u>£225</u>	<u>£9,454</u>	20

We discuss these items separately in the following paragraphs 45 to 49.

Taxi Earnings

45. As stated previously in this report taxi "earnings", as shown in the Foon accounts, in reality represent repayments of debts for the purchase of taxis. We set out at appendix "K" an analysis of Taxi "earnings".

Interest Received - Sundry

46. Interest received (sundry) as shown in the C & L and Staveley accounts is that received from deposit and savings accounts maintained at various banks by Mr. Shyben Madi. 30

47. We have no details of the amounts shown in the Foon accounts for interest which we assume must be from Mr. Shyben Madi's money-lending activities.



48. As it was impossible to determine exactly how much interest had been received on the small money lending debts it has necessarily been included in cash sales. However, our discussions with Mr. C. Carayol revealed that the following amounts had definitely been received on major loans and we have excluded them from sales to be shown separately:-

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	<u>C &amp; L</u>		
	<u>1967</u>	<u>1968</u>	<u>1969</u>
	£	£	£
Kamal Milky	120	240	1,240
Chaffik Najib	-	320	-
Momodou Mousa N'Jie	-	<u>500</u>	-
	<u>£120</u>	<u>£1,060</u>	<u>£1,240</u>

49. It can be seen from appendix "F2" that interest on certain of the loans does not appear to have been accounted for. However, if any was received, it will have been included in cash sales.

#### Overheads

20

50. We consider that only the following overheads referred to in paragraphs 51 to 58 merit comments.

#### Interest Paid

51. We set out at appendix "F13" an analysis of interest paid upon monies borrowed from various persons, as follows:-

30

<u>Year ended 31st December</u>	<u>C &amp; L</u>	<u>Staveley</u>	<u>Foon</u>
	£	£	£
1967	2,100	7,080	-
1968	5,800	2,800	-
1969	3,300	3,300	-

52. It would appear that the figure of £7,080 used in the Staveley account for 1967 included the accrual of £1,080 and repayment of principal of £6,000 to Dr. Madi. As stated previously in this report Mr. George Madi has written to Dr. Madi for clarification of the loan transactions between his father and Dr. Madi. We are unaware of the receipt of any reply.

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Bad Debts

53. We set out at appendices "G-G7" an analysis of the following bad merchandise debts that have been written-off in the three years under review:-

<u>Year ended 31st December</u>	<u>C &amp; L</u>	<u>Staveley</u>	<u>Foon</u>
	£	£	£
1967	15,829	15,829	7,245
1968	10,561	8,519	-
1969	7,718	9,757	1,907

54. These bad debts are as advised by Mr. C. Carayol and we have accepted that they are irrecoverable and should be written-off.

10

Loss on Sale of Fixed Assets

55. The loss of £529 in 1967 arises from the sale of the Mercedes Banz (GA 3006) for £1,500.

Taxi Running Costs

56. We set out at appendix "K" an analysis of the taxi running costs shown in the Foon accounts.

Depreciation

57. No depreciation has been charged in the accounts on private motor cars or other fixed assets. The following depreciation shown in the Foon accounts represents the write-off of the cost of taxis sold in respect of which the debt has been repaid and title transferred (See appendix "E").

20

<u>Year ended 31st December</u>		<u>Correct Amount</u>
	£	£
1967	1,100	1,100
1968	-	2,150
1969	3,000	4,075

30

58. The differences in 1968 and 1969 are accounted for by the omission of the write-off of vehicles GA 4081 and GA 4306 (2,150 and GA 4036 (£1,075)).

Net ProfitsExhibitsSummary

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As per

Year ended 31st  
December 1967

C & LN. StaveleyK. Foon

£

£

£

Gross Profit -

Merchandising

45,199

55,786

11,111

Motor

2,060

2,873

-

Other Income

401

281

10,033

(Overheads)

(24,666)

(29,198)

(15,519)

Net Profit

£ 22,994

£29,742

£5,625

Year ended 31st  
December 1968

Gross Profit -

Merchandising

59,680

57,451

763

Motor

1,828

140

-

Other Income

1,353

291

14,097

(Overheads)

(26,880)

(19,551)

(10,530)

Net Profit

£35,981

£38,331

£4,330

Year ended 31st  
December 1969

Gross Profit/(Loss)

-Merchandising

6,538

5,151

14,107

-Motor

(1,030)

(1,750)

-

Other Income

1,466

225

9,454

(Overheads)

(20,856)

(22,888)

(19,572)

Net (Loss)/  
Profit

(£13,882)

(£29,564)

£3,989

10

20

30

60. The Net profits shown in the accounts of Mr. Shyben Madi from the basis of his taxable income, and this is referred to in more detail in paragraphs 143 to 145.

Exhibits

III ASSETS AND LIABILITIES

B  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
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(cont'd)

61. As we have stated previously in this report the preparation of an accurate balance sheet was necessary to ascertain the profit or loss earned by Mr. Shyben Madi from his business activities in each of the three years ending 31st December 1967, 1968 and 1969.

62. Consequently we have made every effort to ascertain the exact figure for assets and liabilities at the balance sheet dates and we comment in detail thereon in succeeding paragraphs and explain where possible the variances between the figures shown in the accounts prepared by ourselves and those shown by Mr. Norman Staveley and Mr. K.W. Foon in their accounts.

10

Fixed Assets

Summary of Fixed Assets

<u>As at 31st December</u> <u>1966</u>	<u>As per</u>			20
	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>	
	£	£	£	
Motor Vehicles	2,029	-	2,029	
Office Furniture	105	-	105	
Taxis	-	-	4,600	
Land and Buildings	<u>1,800</u>	<u>-</u>	<u>1,800</u>	
	<u>£3,934</u>	<u>-</u>	<u>£8,534</u>	
<u>As at 31st December 1967</u>				
Motor Vehicles	2,000	-	2,000	
Office Furniture	336	-	336	
Taxis	-	-	11,100	
Land and Buildings	<u>1,800</u>	<u>-</u>	<u>1,800</u>	30
	<u>£4,136</u>	<u>-</u>	<u>£15,236</u>	
<u>As at 31st December 1968</u>				
Motor Vehicles	3,200	-	2,784	
Office Furniture	336	-	336	
Taxis	-	-	8,960	
Land Buildings	<u>1,890</u>	<u>90</u>	<u>1,800</u>	
	<u>£5,446</u>	<u>£90</u>	<u>£13,880</u>	

<u>As at 31st December 1969</u>	<u>As per</u>			<u>Exhibits</u>
	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>	B Report by Messrs. Coopers & Lybrand on Mr. Shyben Madi 4th October 1975. (cont'd)
	£	£	£	
Motor Vehicles	5,600	-	4,464	
Office Furniture	403	-	336	
Taxis	-	-	4,885	
Land and Buildings	<u>5,581</u>	<u>3,781</u>	<u>5,581</u>	
	<u>£11,584</u>	<u>£3,781</u>	<u>£15,266</u>	

10 We discuss these items separately in the following paragraphs 64 to 74.

Motor Vehicles

64. During the three years under review Mr. Shyben Madi owned the following motor vehicles which were used for personal or business use and not acquired for the prime purpose of resale (ignored by Mr. Norman Staveley in his accounts):

	<u>C &amp; L</u>	<u>Foon</u>
	£	£
20 <u>At 31st December 1966</u>		
GA 3006 - Mercedes Benz	2,029	2,029
<u>Year ended 31st December 1967</u>		
GA 3006 - Mercedes Benz	(2,029)	(2,029)
GA 4323 - Mercedes Benz	<u>2,000</u>	<u>2,000</u>
<u>Book value at 31st December 1967</u>	<u>2,000</u>	<u>2,000</u>
<u>Year ended 31st December 1968</u>		
GA 4323 - Mercedes Benz	(2,000)	-
GA 4777 - Mercedes Benz	2,500	-
30 GA 5225 - Volkswagen	<u>720</u>	<u>784</u>
<u>Book value at 31st December 1968</u>	<u>£3,220</u>	<u>£2,784</u>
<u>Year ended 31st December 1969</u>		
GA 5483 - Volkswagen	1,020	-
GA 5638 - Ford Capri	922	922
GA 4540 - Bedford Lorry	400	-
GA 5225 - Volkswagen	(720)	-
GA 5786 - Bedford Lorry	<u>758</u>	<u>758</u>
40 <u>Book value at 31st December 1969</u>	<u>£5,600</u>	<u>£4,464</u>

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65. GA 3006 was sold in 1967 for £1,500 and the resultant loss of £529 has been written-off in the profit and loss account for that year. Vehicle GA 4323 and GA 5225 were exchanged for GA 4777 and GA 5483 with additional cash payments of £500 and £300 respectively. A Schedule of motor vehicles prepared by the licensing department of The Gambia Police disclosed that GA 4549 was also registered at one time by Mr. Shyben Madi, but was not recorded in the accounts. Subsequent enquiry elicited that GA 4549, a Bedford Lorry, was never actually owned by Mr. Madi, but held by him as a security for monies owed by Feres Hochiemy. The vehicle was subsequently taken back and sold to Mr. John Mousa in 1969.

10

Office Furniture

66. The office furniture (ignored in the Staveley accounts) was acquired in the following periods:-

	£	
Some time prior to 1961	105	
Year ended 31st December 1967		
Steel Cupboards	231	
Year ended 31st December 1969		
Calculator	<u>67</u>	
	<u>£403</u>	

20

This figure has been shown in both the C & L and Foon accounts.

Taxis

67. We set out at appendix "E" a summary of the taxis shown in the Foon accounts.

30

68. As stated earlier in this report, Mr. Madi did not operate a taxi service, although in the Foon accounts the purchase of taxis for re-sale were shown as fixed assets.

69. The procedure adopted by Mr. Shyben Madi for the sale of these taxis was to sell them to taxi drivers and make advances and pay certain overheads, i.e. insurance, licence fees, repairs etc. so that the purchaser could afford to operate a taxi service.

40

Repayment of the debit was made by the taxi drivers from their takings when so able. It was only when the debt was completely repaid that transfer of the title was effected. By this method Mr. Madi maintained some security for his debt.

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10 70. Any receipts received from the taxi drivers were credited to the trading and profit and loss accounts as "taxi earnings", and when title to the vehicles was transferred to the purchaser the cost thereof was written-off against profits.

71. It can be seen that in 1967 the costs of GA 2578, GA 2925 and GA 2679 totalling £1,100 have been written-off against the profits for the year. However, in 1968 although the costs of GA 4081 and GA 4306 (£2,150) were eliminated from the asset account it was not reflected in the profit and loss account.

Land and buildings

20 Business Premises

72. We have been informed that Mr. Madi owns the freehold of his shop at 3 Russell Street, Banjul, by reason of inheritance from his father, Mr. Antoine Madi. The £1,800 spent in the year ended 31st December 1967 was in respect of alteration to the premises.

Residential Premises

30 73. During 1968 and 1969 funds were expended on the erection of a residential building in Pipeline Road, Fajara. At 31st December 1969 the sum of £3,781 had been spent but the building had not been completed. The expenditure of £3,781 on this property was not capitalised in the Foon accounts and because of the way in which they were prepared, has been written-off against revenue, and therefore taxable profit.

74. We have not sighted title deeds for either of these properties.

Current Assets

40 Summary of Current Assets

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75.

As PerAs at 31st December  
1966

	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>	
	£	£	£	
Sundry Bank Account	73	73	-	
Money Lending Debtors	18,449	- )	36,388	
Merchandising Debtors	44,879	44,879 )		
Motor Vehicle Trading Debtors	3,286	4,162	-	
Stock in Trade	42,413	42,413	42,413	10
Cash in Hand	<u>140</u>	<u>140</u>	<u>147</u>	
	<u>£109,240</u>	<u>£91,667</u>	<u>£78,948</u>	

As at 31st December 1967

Sundry Bank Accounts	3,179	3,306	-	
Money Lending Debtors	18,542	4,352 )	37,737	
Merchandising Debtors	50,041	50,041 )		
Motor Vehicle Trading Debtors	8,148	8,278	-	
Trade Deposit	2,000	2,000	2,000	
Mr. Toufic Massry	34,120	34,120	-	20
Stock in Trade	58,607	58,607	58,607	
Cash in Hand	<u>2,804</u>	<u>2,804</u>	<u>2,804</u>	
	<u>£177,441</u>	<u>£163,508</u>	<u>£101,148</u>	

As at 31st December 1968

Sundry Bank Accounts	398	524	-	
Money Lending Debtors	16,645	10,066 )	49,421	
Merchandising Debtors	79,194	81,372 )		
Motor Vehicle Trading Debtors	4,193	6,699	-	
Trade Deposit	2,000	2,000	2,000	30
Mr. Toufic Massry	26,620	26,620	-	
Claims	821	-	-	
Stock in Trade	68,611	68,611	60,171	
Cash in Hand	<u>2,175</u>	<u>2,175</u>	<u>2,175</u>	
	<u>£200,657</u>	<u>£198,067</u>	<u>£113,767</u>	



	<u>As Per</u>			<u>Exhibits</u>
	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K.. Foon</u>	
<u>As at 31st December 1969</u>	£	£	£	B Report by Messrs. Coopers & Lybrand on Mr. Shyben Madi 4th October 1975. (cont'd)
Sundry Bank Accounts	1,012	7,494	-	
Money Lending Debtors	12,089	1,034	) 42,013	
Merchandising Debtors	45,603	45,603		
10 Motor Vehicle Trading Debtors	2,419	5,026	-	
Trade Deposit	2,000	2,000	2,000	
Mr. Toufic Massry	18,660	18,660	25,065	
Stock in Trade	90,824	86,973	69,235	
Cash in Hand	<u>251</u>	<u>251</u>	<u>251</u>	
	<u>£172,858</u>	<u>£167,041</u>	<u>£138,564</u>	

We discuss these items separately in the following paragraphs 76 to 112.

#### Sundry Bank Accounts

20 76. In addition to the current account at the Standard Bank of West Africa Limited, Mr. Shyben Madi maintained the following various savings and deposit accounts at different banks:-

<u>As at 31st December</u>	<u>Per C &amp; L Account</u>			
	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>
	£	£	£	£
Standard Bank of West Africa Savings account	-	3,106	325	70
Short term deposit account	-	-	-	-
30 International Bank of Commerce and Industry				
Savings account	-	-	-	850
Current account	-	-	-	6
Gambia Government Savings	<u>73</u>	<u>73</u>	<u>73</u>	<u>86</u>
	<u>£73</u>	<u>£3,179</u>	<u>£398</u>	<u>£1,012</u>

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77. The balance of £127 on the short term deposit account was transferred to Mr. Shyben Madi's drawings account. We have sighted all the bank books to verify the above balance.

78. These sundry bank accounts were omitted from the Foon Accounts.

Debtors - Money Lending

79. The figures shown in the C & L accounts have been accepted by Mr. C. Carayol following a detailed examination of the schedules etc. prepared by him and the outcome of certain enquiries.

10

80. We set out at appendix "F" a summary of the money lending debtors at 31st December 1966, 1967, 1968 and 1969, and a detailed analysis of these figures is to be found on appendices "F1-F12".

81. As stated previously in this report, Mr. Shyben Madi operated as a registered money lender until 1969 when that side of the business was discontinued by his son George, as it was proving unprofitable because of the high cost of borrowing money and the non-recovery of so many debts.

20

82. Full details of money lending debtors at 31st December 1966 were unavailable to Mr. Staveley at the time he prepared his accounts, and consequently the amounts shown in the Staveley accounts are inaccurate. Mr. Foon, in his accounts, made no distinction between money lending and merchandise debts.

83. We would emphasise that the accounting records of the money lending activities were almost non-existent and consequently the figures arrived at in the appendices "F1-F12" can only be a best estimate based on the reconstruction of the records prepared by Mr. Carayol. In the circumstances we do not consider that we have any alternative but to accept these figures.

30

Debtors - Merchandise

84. We set out at appendices "G-G7" a detailed analysis of the figures (after the elimination of bad debts) shown in the various balance sheet at 31st December 1967, 1968 and 1969 for merchandise debtors.

40

85. The figures in the C & L and Staveley accounts have been prepared by Mr. C. Carayol from a complete reconstruction of the Company's records for credit sales. We feel, in the circumstances, that we have no alternative but to accept these figures for inclusion in the accounts even though none of these debts have been independently confirmed by us.

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10 86. As can be seen from appendices "G-G7" the debtors shown in the Foon accounts contain certain money lending debts which we have attempted to distinguish as such. In addition, the omission of many merchandise debtors from the Foon accounts is disclosed but we have no explanations as to why this should be so.

87. No details of the £36,388 shown in the Foon accounts at 31st December 1966 were available to us and consequently we are unable to ascertain how the difference between the figures arose in that year.

20 88. Also shown at appendices "G-G7" is a detailed analysis of the following bad debts which were written-off, or provided against in the accounts:-

<u>As at 31st December</u>	<u>C &amp; L</u> £	<u>Staveley</u> £	<u>Foon</u> £
1967	15,829	15,829	7,243
1968	10,561	8,519	-
1969	7,718	9,757	1,907

Debtors - Motor Vehicles

30 89. We set at appendix "H" an analysis of the debts due from the sales of motor vehicles, showing all movements in the personal accounts during the three year period to 31st December 1969.

90. As we have stated previously in this report, we have treated the amounts owing by vehicles purchasers as debtors whereas in the Foon accounts they have been ignored; the cost of the vehicles being expensed when the debt was finally repaid with receipts being credited to the trading and profit and loss accounts as and when collected.

40 91. These figures have been prepared by Mr. Carayol from a reconstruction of the firms records and in the circumstances we consider that they may be included in the accounts, even though no independent confirmation has been received thereof.

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92. We set out an appendix "H" an analysis of the bad debts totalling £2,320 which were written-off in the year ended 31st December 1968.

Debtors - Trade Deposit

93. During 1967 Mr. Shyben Madi deposited £2,000 with Hans Mehr, Hamburg who is a regular supplier of goods to the firm. This amount has been shown in all the accounts and we have been informed that this was still held by Hans Mehr at 31st December 1969.

10

Debtors - Mr. Toufic Massry

94. We set out at appendices "F2" and "F3" the amounts, exclusive of interest that Mr. Shyben Madi contends were owed to him by Mr. Toufic Massry.

95. Mr. Toufic Massry operated a groundnut crushing mill at Denton Bridge. During 1967 certain transactions were effected between Messrs. Shyben Madi and Toufic Massry in the way of interest bearing loans and the sale of CFA francs.

96. This series of transactions has been the subject of a prolonged and complicated civil suit heard in the Supreme Court of The Gambia during 1969 and 1970. It was finally settled out of Court and, in consideration for dropping all claims for loans and interest unpaid, Mr. Shyben Madi agreed to receive £10,000 from S. Madi Limited payable in five equal annual instalments commencing on 31st December 1971.

20

97. We do not know why the debt due by Mr. Toufic Massry should have been omitted from the Foon accounts in 1967 and 1968; nor do we know what items make up the figure of £25,065 shown in the 1969 Foon accounts.

30

98. It was normal practice for Mr. Madi upon lending money or supplying CFA francs to obtain from the borrower or purchaser a post-dated cheque which might, or might not, include interest, depending upon the terms.

1967

99. The balance at 31st December 1967 was made up of the following items:-

40

	£		
(i)	Loan	12,150	) Exclusive of any interest
(ii)	Sale of CFA francs	13,630	
(iii)	Untraced cheques	<u>8,340</u>	
		<u>£34,120</u>	

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B.  
Report by  
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(i) We set out at appendix "F2" a summary of the cheques which we have been informed were given to Mr. Massry. No interest has been accrued on these loans.

10 (ii) The credit for the sale of the CFA francs has been included as income in the trading account for the year ended 31st December 1967.

(iii) We have been informed that the following cheques were given to Mr. Massry during 1967 but were never presented at the Bank:

<u>Date Drawn</u>	<u>Cheque No.</u>	<u>Amount</u>
		£
26th June 1967	979 ?	4,700
24th July 1967	979 ?	<u>3,640</u>
		<u>£8,340</u>

20 As there is a certain element of doubt as to whether these cheques were ever given to Mr. Massry or exchanged for cash, they have been credited to suspense account and not to the Trading account.

1968

100. During the year ended 31st December 1968 a cheque (No. 371621) for £7,500 was received from Mr. Massry which, we have been informed, was in part repayment of the amounts owing by him for CFA francs. The cheque was banked on 13th May 1968 and  
30 duly honoured.

1969

101. In the year ended 31st December 1969 Mr. Shyben Madi took groundnut oil to the value of £7,960 which was offset against the debt owing by Mr. Toufic Massry. The cost has been included in purchases.

Debtors - Claims

102. At 31st December 1968 a customs rebate claim

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for £821 was outstanding and this amount was received in the following year.

Stock in Trade  
1966 and 1967

103. As no detailed stock listings were available to substantiate the figure for stock-in-trade at either 31st December 1966 or 1967, the value shown in the Foon accounts has necessarily been used in the other accounts.

1968

10

104. A detailed stock listing of stocks held at 31st December 1968 totalling £68,611.3.0 has been made available to us. It was noted that this included an increase of £6,440 in respect of 230 bales of Fanty which had been underpriced by £28 per bale. However there was no apparent explanation for the remaining £2,000 of the difference between the Foon accounts and the C & L accounts:-

	£	s	d
i.e. as per Foon accounts	60,171	3	0
Underpricing of Fanty	6,440	0	0
Unexplained Variance	2,000	0	0
	<u>£68,611</u>	<u>3</u>	<u>0</u>

20

105. The extensions of the stock listings were checked and except for one error of £200, which was ignored, were found to be correct but no tests were carried out either on the pricing of the goods or on cut-off.

1969

30

106. Although a detailed listing of stocks held at 31st December 1969 was available to us, it proved impossible to reconcile the value thereof (£86,972.12.5) with the figure used in the Foon accounts (£69,235.0.4)

107. As the gross profit on merchandise was so abnormally low in 1969 (1.2% compared with 11.7% and 13.9% in the previous two years) we decided to examine the stock figure in more detail, paying

particular attention to valuation and cut-offs. Cut-off checks are designed to confirm (on a test basis) that all goods purchased prior to year end had been received before that date or included as goods-in-transit, and also that all goods included in stock had been either included in purchases or creditors at year end.

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Cut-off

10 108. We satisfied ourselves that there were no material errors in cut-off at 31st December 1969.

Valuation

20 109. Although no detailed pricing tests were carried out, a scrutiny of the prices revealed that the prices attributed to Blue Poplin meritted further enquiry. It was then found that the 600 yard bales had been incorrectly priced at £45 per bale, whereas it should have been £66.10.0., and the 900 yard bales priced at £66.10. instead of £98. The effect of these adjustments was to increase the stock figure by £3,851 to £90,824.

		£
i.e. 100 bales at	£21.10.0. =	2,150
54 bales at	£31.10.0. =	<u>1,701</u>
		<u>£3,851</u>

110. The extensions of the stock listings were checked and found to be correct, except for a small error of £20 which was ignored.

Cash in Hand.

30 111. We have been informed that it is Mr. Madi's normal practice to make periodic round-sum cash bankings keeping up to £100 in the safe. However, no records are kept for these bankings or the balance remaining in hand, so we have had to accept the figures as given to us.

40 112. A scrutiny of the bank pass sheets in January 1970 revealed that on 2nd January substantial amounts of cash were banked and we have been assured by Mr. Carayol that these must have been in respect of takings on that day, the previous day being a holiday. We have also been told that it was normal practice for Mr. Shyben Madi to go up country over the holiday and collect outstanding amounts due to him.

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LiabilitiesSummary of Current Liabilities

113

As perAs at 31st December  
1966

	<u>C &amp; L</u>	<u>N. Staveley</u>	<u>K. Foon</u>
	£	£	£
Merchandise Creditors	50,444	50,444	38,330
Monies Borrowed	12,680	-	13,600
Bank Overdraft	<u>20,644</u>	<u>20,644</u>	<u>20,644</u>
	<u>£83,768</u>	<u>£71,088</u>	<u>£72,574</u>

10

As at 31st December 1967

Merchandise Creditors	83,322	83,322	72,995
Suspense Account	8,340	8,340	-
Monies Borrowed	14,000	-	-
Bank Overdraft	<u>31,226</u>	<u>31,342</u>	<u>28,269</u>
	<u>£136,888</u>	<u>£123,004</u>	<u>£101,264</u>

As at 31st December 1968

Merchandise Creditors	84,731	84,731	68,687
Suspense Account	8,340	8,340	-
Monies Borrowed	20,500	15,500	-
Bank Overdraft	<u>20,189</u>	<u>20,189</u>	<u>20,189</u>
	<u>£133,760</u>	<u>£128,760</u>	<u>£88,876</u>

20

As at 31st December 1969

Merchandise Creditors	94,203	99,228	84,708
Suspense Account	8,340	8,340	-
Monies Borrowed	-	-	-
Bank Overdraft	<u>33,558</u>	<u>33,558</u>	<u>33,558</u>
	<u>£136,101</u>	<u>£141,126</u>	<u>£118,266</u>

30

We discuss these items separately in the following paragraphs 114 to 131.



114. We set out appendix "I" an analysis of the merchandise creditors outstanding at 31st December 1966, 1967, 1968 and 1969. This discloses which creditors have been omitted from the Foon accounts but we have no explanations as to the reason.

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115. The figures used in the C & L and Staveley accounts are those prepared by Mr. C. Carayol which we have accepted although no verification work whatsoever has been carried out thereon.

10 116. As stated in paragraph 37 we found that the amount of £5,025 included in the Staveley accounts as outstanding at 31st December 1969 had fact been settled prior to that date.

Suspense Account

20 117. As stated previously in paragraph 98 (iii) of this report, it is alleged that two cheques totalling £8,340 are given to Mr. Toufic Massry in 1967. However, these were never presented to the bank and we have been informed that they were exchanged for cash. As there is a certain element of doubt over this matter, £8,340 has been credited to suspense account instead of to the trading account as sales. If it proves necessary to write-off part of this debt as irrecoverable, this credit will be used to reduce the charge against profits.

Monies Borrowed

118. We set out at appendix "Fl3" details of monies borrowed by Mr. Shyben Madi.

30 119. It was the normal practice of Mr. Madi when borrowing money to prepare a post-dated cheque to cover both the principal and interest which then he handed over in exchange for the principal. However, in some cases, if Mr. Madi found himself unable to meet the cheque on the due date, it would be exchanged for another post-dated cheque to cover the original loan plus interest, and also interest thereon.

1966

40 120. The figure of £13,600 appearing in the Foon accounts at 31st December 1966 was comprised of the following amounts:-

Exhibits

		£	£
B.			
Report by	Mrs. Millicent Madi	1,600	-
Messrs. Coopers	Mrs. Saidy Madi		
& Lybrand on	(Through J. Madi)	<u>12,000</u>	<u>2,000</u>
Mr. Shyben Madi		£13,600	£2,000
4th October		<u>£13,600</u>	<u>£2,000</u>
1975.			
(cont'd)			

121. It was noted that Mr. Foon duplicated this amount by including it both as loans and an increase in capital during 1966, with the result that the profit for that year was understated by £13,600. 10

122. Except for interest of £1,080 due on loans made and repaid prior to 31st December 1966 from Dr. Madi, no accrual has been made for interest.

1967

123. During the year ended 31st December 1967 the following cheques which had been drawn in the previous year became due for presentation:-

	<u>Cheque No.</u>	<u>Total</u>	<u>Principal</u>	<u>Interest</u>	
		£	£	£	
Mrs. Millicent Madi	0092	2,200	1,600	600	
Mrs. J. Madi (for Mrs. Saidy Madi)	00491	12,000	10,000	2,000	20

124. The cheque for Mrs. Millicent Madi was presented and duly honoured. However, the other cheques for Mr. J. Madi was withdrawn and exchanged for cheque No. 1045 for £13,000 which included additional interest of £1,000.

125. As there is considerable confusion over the loans made by Dr. Madi, Mr. George Madi has written to Dr. Madi (who is now resident in the Lebanon) for clarification, but to date no reply has been received. 30

1968

126. During the year ended 31st December 1968 the following cheques which had been drawn in the previous year became due for presentation:-

	<u>Cheque No.</u>	<u>Total</u>	<u>Principal</u>	<u>Interest</u>	<u>Exhibits</u>
		£	£	£	
Mr. J. Madi (for Mrs. Saidy Madi)	1045	13,000	10,000	3,000	B. Report by Messrs. Coopers & Lybrand on Mr. Shyben Mad 4th October 1975. (cont'd)
Mr. M. Jarolymak	1036	5,000	4,000	1,000	

10 127. It was found that cheque No. 145 which was post-dated to 31st August 1968 was never presented but instead cheque No. 00157 for £13,000 was drawn, dated 31st July, 1968 and honoured by the bank on that date. However, the cheque for Mr. Jarolymak was withdrawn and replaced by cheque No. 169, post-dated to 31st July 1969 for £6,300 which included additional interest of £1,300.

128. During 1968 a further £8,000 was borrowed from Mr. R. Madi.

#### 1969

20 129. During the year ended 31st December 1969 the following cheques which had been drawn in the previous year became due for presentation:-

	<u>Cheque No.</u>	<u>Total</u>	<u>Principal</u>	<u>Interest</u>
		£	£	£
Mr. R. Madi	00168	5,500	8,000	2,000
Mr. R. Madi	00169	4,500		

30 As there is no trace of these cheques having been presented to the bank, it has loan assumed that they were withdrawn and cash paid in lieu. The cheque for £6,300 was honoured on the due date.

#### Bank Overdraft

130. We have confirmed the overdrawn current account balances in the C & L accounts with the bank pass sheets. The matter of outstanding cheques at 31st December 1966 and 1969 has been considered and examined, to find that none existed.

131. We cannot explain why a figure of £28,269 should have been used in the Foon Accounts for 1967.

ExhibitsIV MR. SHYBEN MADI'S CAPITAL ACCOUNT

B.  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
1975.  
(cont'd)

132. The excess of assets over liabilities at the year and will represent Mr. Shyben Madi's capital invested in the business, and can be summarised as follows:-

	<u>C &amp; L</u>	<u>Staveley</u>	<u>Foon</u>	
	£	£	£	
<u>As at January 1966</u>	*	*	2,493	
Loans	*	*	13,600	
Profit for year ended 31.12.66	*	*	4,120	10
Drawings in 1966	<u>*</u>	<u>*</u>	<u>(5,305)</u>	
Balance at 31st <u>December 1966</u>	29,406	20,579	14,908	
Profit for year ended 31.12.67	22,994	29,579	5,625	
Drawings in 1967	<u>(7,711)</u>	<u>(9,817)</u>	<u>(5,413)</u>	
Balance at 31st <u>December 1967</u>	44,689	48,504	15,120	
Loans	-	-	31,226	20
Profit for year ended 31.12.68	35,981	38,331	4,330	
Drawings in 1968	<u>(8,327)</u>	<u>(9,438)</u>	<u>(11,905)</u>	
Balance at 31st December <u>1968</u>	72,343	68,397	38,771	
Loss for year ended 31.12.69	(13,882)	(29,564)	3,989	
Drawings in 1969	<u>(10,120)</u>	<u>(10,137)</u>	<u>(7,196)</u>	
Balance at 31st <u>December 1969</u>	<u>£48,341</u>	<u>£29,696</u>	<u>£35,564</u>	30

\*No accounts prepared for year ended 31st December 1966 by either C & L or Staveley.

133. We set out at appendix "J" a comparison of the drawings account for three years as disclosed in the C & L and Foon accounts. The figures were prepared by Mr. C. Carayol and we have necessarily accepted them as being correct. No explanations are available as to the reason for the variances between the figures arrived at by Mr. Carayol and Mr. Foon.

134. It must be noted that loans of 213,600 in 1966 and £31,226 in 1968 have been duplicated in the Foon accounts for those years by including them creditors, and also as an addition to the capital account. The effect of this duplication was to understate the taxable profits by £44,826.

Exhibits

B.  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
1975.  
(cont'd)

V TAXATION

10

135. We set out at appendix "L" a summary of the tax computation for 1966 to 1970 inclusive and at appendix "M" a summary of tax already paid.

136. We have no comment to make thereon except to point out the inconsistent way in which chargeable income has been arrived at over the period.

VI CONCLUSIONS AND RECOMMENDATIONS

20

137. Although Mr. Shyben Madi did not keep proper books of account and many assumptions have had to be made, both by ourselves and by Mr. Carayol, we consider that the results disclosed in the accounts for the years ended 31st December 1967, 1968 and 1969 reasonably reflect, in aggregate, the profit earned by Mr. Shyben Madi during that period.

30

138. It was originally proposed by Messrs. Gerald Davies and Eugene Cotran that the accounts for the three years ended 31st December 1969 should be used as a basis for raising assessments on Mr. Shyben Madi for the six years 1966 to 1971 inclusive, either by assuming that the average profits for 1967 to 1969 were also earned in 1966, 1970 and 1971 or by applying an assumed percentage profit on either turnover or cost of sales in those years. We do not think that this is feasible. The first proposal may be inequitable in that the results for 1966, 1970 and 1971 may have been very different from the average for 1967 to 1969. This second proposal is almost certainly impracticable due to the unreliability of the figures reported for turnover and cost of sales.

40

139. He consider that it should be possible to arrive at reasonable assessment for 1966 to 1972 on the bases described in the following paragraphs 140 to 148.

1966 Assessment

140. The 1966 assessment was based on the accounts for the year ended 31st December 1965 which reported

Exhibits

B.  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
1975.  
(cont'd)

profits of £3,604. We noted however that Mr. Shyben Madi's capital account was understated by £14,498 in the Foon accounts prepared as at 31st December 1966. Unless Mr. Madi increased his capital by, for example, investing the proceeds from the sale of some privately owned asset in his business, this increased capital represents accumulated profits earned by Mr. Madi in the past. It is not possible to ascertain when these profits were earned but it might be reasonable to assume that 50% of these profits were earned after 1st January 1965 25% in 1965 and 25% in 1966. 10

141. On this basis assessable profits for 1966 would be :-

	£
As original reported	3,604
Allocation of £14,498 (25%)	<u>3,625</u>
	<u>£7,229</u>

1967 Assessment

20

142. The 1967 assessment is based upon the accounts for the year ended 31st December 1966 and profits of £4,120 were originally reported. As previously mentioned in this report (paragraph 134) this figure was understated by £13,600. The assessable profit, before capital allowances, would then become:-

	£
As originally reported	4,120
Understatement re loans	13,600
Allocation of £14,498 (25%)	<u>3,624</u>
	<u>£21,344</u>

30

1968, 1969 and 1970 Assessments

143. The assessments for 1968, 1969 and 1970 will be based on the accounts for the years ended 31st December 1967, 1968 and 1969 which have been the subject of the investigation by Coopers & Lybrand.

144. The profit disclosed in the accounts for these three years is:-

<u>Year ended 31st December</u>	£
1967	22,994
1968	35,981
1969	(13,882) loss
	<u>£45,093</u>

Exhibits

B.  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
1975.  
(cont'd)

10 145. We consider that one third of this amount, i.e. £15,031, should be taken up each year which after adjustment for capital allowances, will form the basis of the assessments for 1968 to 1970 inclusive.

1971, 1972 and 1973 Assessments

146. The assessments for 1971, 1972 and 1973 are based on the accounts for the years ended 31st December 1970, 1971 and 1972 respectively. No balance sheets have been prepared by either Coopers & Lybrand or Mr. C. Carayol at any of these dates.

20 147. In the circumstances we feel that the best course of action is for Mr. C. Carayol to prepare accounts for the three year period ended 31st December 1972 using the balance sheet prepared by Coopers & Lybrand at 31st December 1969 as a starting point. Any increase in capital at 31st December 1972 over that 31st December 1969 will represent the profit earned by Mr. Shyben Madi during the period, which must of course be adjusted for the drawings made during that same period.

30 148. One third of the profit as adjusted for drawings should then be assessed to income tax each year after giving due allowance for any capital allowances.

Underpayment of Income Tax

149. We have not attempted to calculate the underpayment of income tax on the 1966 to 1970 assessments as we feel that this should be done by Mr. M.K. Nair the Commissioner of Taxes.

Conclusion

40 150. In our opinion Mr. Shyben Madi has been substantially undercharged to income tax in the

Exhibits

B.  
Report by  
Messrs. Coopers  
& Lybrand on  
Mr. Shyben Madi  
4th October  
1975.  
(cont'd)

original assessments 1966 to 1970 inclusive and we recommend that negotiations be resumed between the Commissioner of Income Tax and Mr. Shyben Madi, using the facts and figures in this report as a basis.

151. We also consider that it is likely that Mr. Shyben Madi has been undercharged to income tax in the 1971 and 1972 assessments, and he should be requested to produce accounts for the three year period to 31st December 1972.

10

152. If there is any further information you require please let us know.

Yours truly,

Sgd: Cooper & Lybrand.

Exhibits

C.  
Delivery Note  
14th January  
1974.

---

Exhibit C

Delivery Note

DELIVERY NOTE

SHYBEN MADI

BATHURST

C. L. CARAYOL -- Fees 1973

20

Balance due Mr. C. L. Carayol as at 14/1/74

D250.00 (Two Hundred and Fifty Dalasis)

Sgd. ?

14/1/74

---



Exhibit D

Debit Note and returned cheque

Exhibits

D.  
Debit Note  
and Returned  
cheque  
31st May 1975

Standard Bank of West Africa Ltd.

SHYBEN A. MADI & SONS LTD.  
3A RUSSELL STREET,  
BANJUL.

Banjul Branch  
31st May 1975.

Please note that we have DEBITED your account as follows:-

10

PARTICULARS	AMOUNT
Cheque No. <u>BA</u> 442402 returned <u>I</u> unpaid (Three Hundred and Fifty Dalasis)	D350 - 00

CHECKED

Sgd. ?

Manager

Form No. 3484.12.60

20

refer to drawer 31. 5. 9175  
 STANDARD BANK OF WEST AFRICA LIMITED  
 Banjul  
 Pay Shyben Madi & Sons Ltd. or Bearer  
 Three Hundred & Fifty Dalasis D 350.00 ----  
 only

(sgd) Manager

BA  
I 442402

Exhibits

G.  
Letter,  
Commissioner  
of Income Tax  
to Shyben A.  
Madi  
13th July  
1976.

Exhibit G

Letter, Commissioner of Income Tax  
to Shyben A. Madi

THE REPUBLIC OF THE GAMBIA

Ref: T/E. 68A.                      Income Tax Office,  
   Bedford Place Building,  
   Banjul,  
   The Gambia.

13th July, 1976.

Dear Sir,

10

Please refer to your letter M.2/SAM dated  
13th July, 1976.

The amount shown as Accountant's fee for the  
calendar years 1968, 1969 and 1970, in the accounts  
submitted by you or on your behalf by Mr. K.W.  
Foon, are as under:-

1968	-	£100
1969	-	£200
1970	-	£200

Yours faithfully,

20

(Sgd. M.K. Nair

Commissioner of Income Tax

Mr. Shyben A. Madi,  
3A Russell Street,  
Banjul.

Exhibit H

List of fees paid to C.L. Carayol

Exhibits

H.  
List of fees  
paid to C.L.  
Carayol.

FEES PAID TO C.L. CARAYOL BY CHEQUES BY SHBEN A.

MADI & SHYBEN A. MADI & SONS LTD.

YEAR 1967 - 1969

	19/10/71	ACCOUNTANCY FEES	D 750.00	CHEQUE NO.	<u>BA</u> MP.001728
	1/11/71	" "	250.00	" "	" 001739
	15/11/71	" "	375.00	" "	" 001756
	25/11/71	FEES	250.00	" "	" 001775
10	1/12/71	"	250.00	" "	" 001777
	9/ 2/73	FEES FOR BACK YEARS	500.00	" "	<u>BA</u> MAK 002474
	22/ 2/73	" " " "	750.00	" "	" 002496
	14/ 4/73	" " " "	525.00	" "	" 002556
	2/ 5/73	" " " "	<u>125.00</u>	" "	" 002573
			<u>D3,775.00</u>		

YEAR FOR 1971

	4/ 1/72	ACCOUNTANCY FEE 71,50% ADVANCE	D 625.00	CHEQUE NO.	<u>BA</u> MAK001802
20	19/ 1/72	FEES ACCOUNTANCY	200.00	" "	" 001825
	19/2/72	" "	<u>75.00</u>	" "	" 001866
			<u>D 900.00</u>		

YEAR FOR 1972

	10/ 3/72	FEES ACCOUNTANCY 72	D 200.00	CHEQUE NO.	<u>BA</u> MAK001906
	10/ 6/72	" " 72	75.00	" "	"002039
	18/12/72	" " 72	500.00	" "	"002379
	30/12/72	" " 72	125.00	" "	"002400
	6/ 1/73	FEES for 72	200.00	" "	"002415
30	23/ 1/73	FEES ACCOUNTANCY 72 Bal. 87/50	87.50	" "	"002446
	30/1/73	FEES ACCOUNTANCY 72	<u>87.50</u>	" "	"002459
			<u>D1,275.00</u>		

Exhibits

H.  
List of fees  
paid to C.I.  
Carayol.  
(cont'd)

YEAR FOR 1973

15/ 9/72	FEEs PART ADV. 73 D	250.00	CHEQUE No.	BA MAK	002217
24/12/73	FEEs FOR 73 PROFESSIONAL	370.00	" "	" "	002829
14/ 1/74	FEEs ACCOUNTANCY FOR 73.	480.00	" "	" "	002855
22/ 2/74	" " "	<u>75.00</u>	" "	" "	002922
		<u>D1,175.00</u>			

YEAR FOR 1974 - APRIL 1975

2/ 3/74	FEEs FOR 74	D 500.00	CHEQUE NO.	BA MAK	002933	10
16/ 3/74	" " 74	50.00	" "	" "	002951	
23/ 3/74	" " 74	50.00	" "	" "	002964	
11/ 4/74	" " 74	250.00	" "	" "	002993	
25/ 5/74	ACCOUNTANCY FEEs 74	25.00	" "	" "	003049	
1/ 6/74	PAYMENT FOR WORK DONE FEEs	25.00	" "	" "	003064	
6/ 6/74	FEEs FOR 74	250.00	" "	" "	003067	
19/ 8/74	" " 74	125.00	" "	" "	003144	
11/12/74	LOAN (74/75) FEEs	<u>500.00</u>	" "	" "	003251	
		<u>D1,775.00</u>				20

YEAR 1975/76

18/ 3/75	FEEs 75/76	D 300.00	CHEQUE NO.	BA MAK	003412
1/ 5/75	FEEs 75/76	<u>350.00</u>	" "	" "	003482
		<u>D 650.00</u>			

HH  
Receipt  
14th February  
1974.

Exhibit HH

Receipt

C.I. Carayol  
12 Hagan St.,  
Banjul.  
14/2/74

30

Received from Tony Madi the Sum of D10,000 CFA =  
@ 14/9 pa 500 CFA on loan.

(Sgd) ?

STATEMENT SHOWING DRAWINGS BY MR. C.L. CARAYOL  
AGAINST FEES AND RETAINER FROM MR. SHYRON A. MADI  
AND SHYRON A. MADI & ASSOCIATES COVERING THE  
PERIOD SEPTEMBER 1971 TO MAY, 1975, ENCL.

DATE CASH

DATE                      CHEQUE NO.                      AMOUNT                      ENTRY ON CHEQUE STUB

1971

Sept./Decr.

D1,875.00 \*

T.  
Statement of  
Drawings by  
C.L. Carayol  
September 1971  
to May 1975

\* NOTE: Total as appearing in supporting Account  
schedules to Profit & Loss Account for  
the Year ended 31/12/71

1972

Jan. 4	-1802 ✓	625.00	Advance Fees for 1971 Accountancy.
Jan. 19	-1325 ✓	200.00	Fees - Accountancy
Feb. 14	-1866 ✓	75.00	Accountancy Fees
Mar. 9	- 906 ✓	200.00	Fees
June. 12	-2039 ✓	75.00	Accountancy Fees
Sept. 15	-2217 ✓	250.00	" " "
Decr. 19	- 379 ✓	500.00	" " "
Decr. 27	- 400 ✓	125.00	" " "
	<u>TOTAL</u>	<u>D2,050.00</u>	

1973

Jan. 6	- 415 ✓	200.00	Fees 1972
" 22	- 446 ✓	87.50	" "
" 30	- 459 ✓	87.50	" "
Feb. 9	- 474 ✓	500.00	Fees for back years
" 22	- 496 ✓	750.00	" " " "
Apr. 14	- 556 ✓	525.00	" " " "
May 2	- 573 ✓	125.00	" " " "
Dec. 24	- 829 ✓	370.00	Fees for 1973
	<u>TOTAL</u>	<u>D2,645.00</u>	

NOTE: In addition to above drawings of D2,645.00 in 1973 the  
defendant was supplied with one Air Conditioner on the  
9th February, 1973 at the cost of D600.00 and gloss  
paint on various dates in 1973 at the total cost of  
D250.00; therefore total received = D3,495.00

DATE CASH

DATE                      CHEQUE NO.                      AMOUNT                      ENTRY ON CHEQUE STUB

1974

Jan. 14	- 855 ✓	D 480.00	Fees for 1973 A/c.
Feb. 22	- 922 ✓	75.00	" " " "
Mar. 2	- 933 ✓	500.00	" " 1974 "
" 15	- 951 ✓	50.00	" " 1974 "
" 23	- 964 ✓	50.00	" " 1974 "
Apr. 11	- 993 ✓	250.00	" " 1974 "
May. 25	-3049 ✓	25.00	" " 1974 "
June 1	-3064 ✓	25.00	Payment for A/c Fees
" 6	-3067 ✓	250.00	Accountancy Fees 1974
Aug. 19	- 144 ✓	125.00	" " " "
Dec. 11	- 251 ✓	500.00	loan
	<u>TOTAL</u>	<u>D2,330.00</u>	

<u>1975</u>	<u>CHEQUE NO.</u>	<u>AMOUNT</u>	<u>ENTRY ON CHECKBOOK STATEMENT</u>
Mar. 18	- 412	D 300.00	A/c Fees for 1975/6
May. 1	- 482	350.00	" "
Dec. 19	Xmas Gift Cash	50.00	
		<u>D700.00</u>	

RECAPITULATION

1971	Total Cash	1,875.00
1972	" "	2,050.00
1973	" " D2,645.00	
	" Goods <u>850.00</u>	3,495.00
1974	Total Cash & Loan	2,330.00
1975	" "	<u>700.00</u>
		<u>D10,450.00</u>

Investigation

Years 1966/9

1971

1972

1973

1974

1975

1971  
to 1/Dec.

1,875.00

1971

Jan 4 Chq - 1802 625.00  
 " 10 " - 1825 200.00  
 Feb 14 " - 1866 75.00  
 Mar 9 " - 906 200.00  
 Jun 12 " - 2039 75.00  
 Sept 15 " - 2217 250.00  
 Dec 19 " - 379 500.00  
 " 27 " - 400 125.00

1972

Jan 6 " - 415 200.00  
 " 22 " - 446 87.50  
 " 30 " - 459 87.50  
 Feb 9 " - 474 500.00  
 " 20 " - 496 750.00  
 Mar 18 " - 556 525.00  
 " 27 " - 573 125.00  
 Dec 24 " - 829 370.00

Various; Air Conditioner etc

850.00

1974

Jan 14 Chq - 855 480.00  
 Feb 22 " - 922 75.00  
 Mar 2 " - 933 500.00  
 " 15 " - 951 50.00  
 " 25 " - 964 50.00  
 Apr 11 " - 993 250.00  
 May 25 " - 5049 25.00  
 Jun 1 " - 3064 25.00  
 " 6 " - 3067 250.00  
 Aug 19 " - 144 125.00  
 Dec 11 " - 251 (loan) 500.00

1975

Mar 18 " - 412 300.00  
 May 1 " - 402 350.00  
 Dec 13 Cash - Xmas Gift 50.00

TOTALS

D3775.00

D2050.00

D375.00

D1775.00

D1775.00

700.00

RECAPITULATION

Investigation Years	Cheques	Cash	Goods	Total
1971	3,775.00	-	-	3,775.00
1972	2,050.00	-	-	2,050.00
1973	375.00	-	-	375.00
1974	925.00	-	850.00	1,775.00
1975	1,775.00	-	-	1,775.00
	650.00	50.00	-	700.00
	<u>D9,550.00</u>	<u>D50.00</u>	<u>D850.00</u>	<u>D10,450.00</u>

Investigation  
Years(4) 1971 1972 1973 1974 1975

<u>1971</u>						
Sept/Dec		1,875.00				
<u>1972</u>						
Jan 19 Chq - 1825	200.00					
Feb 14 " - 1866	75.00					
Mar 9 " - 906	200.00					
June 12 " - 2039	75.00					
Sept 13 " - 2217	250.00					
Dec 19 " - 379	500.00					
" 27 " - 400	<u>125.00</u>	1,425.00				
Jan 4 Chq - 1802			625.00			
<u>1973</u>						
Jan 5 Chq - 415			200.00			
" 22 " - 446			87.50			
" 30 " - 459			87.50			
Feb 9 " - 474	500.00					
" 21 " - 406	750.00					
Apr 11 " - 556	525.00					
May 2 " - 573	<u>125.00</u>	1,900.00				
Dec 21 Chq - 829				370.00		
Air Conditioner & Paints				850.00		
<u>1974</u>						
Jan 14 Chq - 855				480.00		
Feb 22 " - 922				75.00		
Mar 2 " - 933					500.00	
" 15 " - 951					50.00	
" 23 " - 954					50.00	
Apr 11 " - 993					250.00	
May 25 " - 3049					25.00	
June 1 " - 3064					25.00	
" 6 " - 3067					250.00	
Aug 19 " - 144					125.00	
Dec 11 " - 251					500.00*	
<u>1975</u>						
Jan 18 Chq - 412						300.00
May 1 " - 482						350.00
Dec 19 Cash Xmas Gift						50.00
<u>TOTAL</u>		<u>5,200.00</u>	<u>625.00</u>	<u>375.00</u>	<u>1,775.00</u>	<u>1,775.00</u>
						<u>2,700.00</u>

\*LOAN

<u>RECAPITULATION</u>				
Investigation Years (1966-69 incl)	<u>CHEQUES</u>	<u>CASH</u>	<u>GOODS</u>	<u>TOTAL</u>
1971	625.00			625.00
1972	375.00			375.00
1973	925.00		850.00	1,775.00
1974	1,775.00			1,775.00
1975	650.00	50.00		700.00
	<u>5,200.00</u>	<u>50.00</u>	<u>850.00</u>	<u>10,450.00</u>



No. 12 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE GAMBIA COURT OF APPEAL

BETWEEN :

1. SHYBEN A. MADI  
2. SHYBEN A. MADI & SONS LTD. Appellants  
- and -  
C. L. CARAYOL Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
London SW1E 6HB.

Solicitors for the  
Appellants

CHARLES RUSSELL & CO.  
Hale Court,  
Lincoln's Inn,  
London WC2A 3UL.

Solicitors for the  
Respondent