

GH 4. G. 2

45, 1961

IN THE PRIVY COUNCIL

No. 51 of 1959.

On Appeal from The Federal  
Supreme Court of Nigeria

B E T W E E N

ADEL BOSHALI

Plaintiff/Appellant

and

UNIVERSITY OF LONDON  
W.C.I.  
19 FEB 1962  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

ALLIED COMMERCIAL  
EXPORTERS LIMITED

Defendant/Respondent

and

ADEL BOSHALI

Defendant/Appellant

and

63594

ALLIED COMMERCIAL  
EXPORTERS LIMITED

Plaintiff/Respondent

C A S E for the APPELLANT.

Record

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, dated the 23rd February, 1957, reversing a Judgment of The Honourable Mr. Justice Abbott, in the Supreme Court of Nigeria, Lagos Judicial Division (as it then was), dated the 2nd December, 1955, in two consolidated actions numbered respectively 496/53 and 610/53, and ordering that, the said Judgment of Mr. Justice Abbott, as regards the action 496/53 wherein the Appellant (hereinafter called "the Buyer") was plaintiff and the Respondent Company

pp.87-99;  
p.99  
11.15-36  
pp.56-67.

Record

(hereinafter called "the Sellers") was defendant be set aside and the buyer's action be dismissed with costs, and that judgment be entered for the Sellers on their Counterclaim therein with costs, and that as regards the action 610/53, wherein the Buyer was defendant and the Sellers were Plaintiff, the said judgment be set aside and judgment be entered for the Sellers for £967. 9. 2. and costs.

10

2. Both the actions concerned the sale by the Sellers, a limited Company incorporated and carrying on business as general traders and exporters, in the United Kingdom, to the Buyer, carrying on business as a trader at Lagos in Nigeria, of a quantity of goods. In the action 496/53 the Buyer claimed the sum of £3,531. damages for breach respecting the said sale with regard to a portion of the said goods, which were accepted by him, by reason of the inferiority in quality and the shortage in measurement of the said goods; and the Sellers counterclaimed therein for the sum of £1,666.14. 2. damages for the failure by the Buyers to accept the portion of the said goods which the Buyer had not accepted with the addition to the said sum of certain charges for insurance, customs, interest.

20

3. In the action 650/53 the Sellers claimed the sum of £967. 9. 2. as the price of goods: goods sold and delivered; relating to the portion of the goods accepted by the Buyer.

30.

p.1, 1.14  
p.3, 1.20.

p.10, 1.13  
p.11, 1.9.

p.15, 1.23  
p.16, 1.9;  
p.17,  
11.12-33.

Record

ExH "A.1."  
pp.102-3

Sample  
ExH."A.B."  
(not  
copied)

p.102,  
11.31-44

10 4. The said sale originated in a letter dated 10th (sic) March, 1952, from the Sellers to the Buyer, enclosed, wherein was a sample of cloth (hereinafter referred to as "Sample A.B.") with a label pinned thereto which bore the statement: "Quality A.S.100, quantity 65,000 yards origin blank". It was found by the learned trial Judge, which finding was concurred in by the Federal Supreme Court that the reference "A.S.100" on the said label was a mistake for "A.S.1000". With reference to the Sample A.B. the Sellers in the said letter said "..... However it occurs to us to mention that we have a stock of crepe spun, QUALITY A.S.1000.... which we thought you might prefer ..... It is a much heavier quality and is very slightly dearer namely, 2/0½d. per yard C.I.F. It is a much heavier cloth and worth much more than A.S.100 and as we have a larger quantity and it is a novelty cloth and can be dyed to your shades we thought you might prefer this. If you prefer this please cable us immediately just saying 'PREFER 65000 YARDS AS1000 CREPE and we will immediately dye this instead of the 50,000 yards AS100.'"

20

30 5. In reply to the said letter the Buyer wrote to the Sellers by letter dated the 12th March, 1952, stating:-

ExH "4"  
p.103,1.16  
p.104,1.14.

"I have to thank you for your letter dated 9th inst. and samples.

.....  
With reference to your sample, crepe spun Quality AS 1000, of 65/70,000 yds. 36%. I appreciate your offer but

Record

unfortunately the Africans here do not like such a crepe finish and prefer the plain, for I remember, few month ago I bought from U.K. -2000 yds. @ 1/10d. and it did not sell well and I had to clear it with very small profit, but if you could let me have it @ 1/10 CIF dyed to my own shade I should risk buying this large quantity .....

10

6. By letter dated March, 17th 1952, the Sellers wrote to the Buyer in reply to the Buyer's said letter dated the 12th March, as follows :-

ExH "2"  
p.104, 1.18 -  
p.105, 1.31

p.104, 1.42 -  
p.105, 1.12.

"Thank you for your letter of the 12th instant.....  
With reference to QUALITY AS 1000 Crepe spun and your offer of 1/10 per yard CIF of this cloth, if you can increase your offer to 1/11½d. per yard CIF the same AS 100, we would be willing to accept your price for a quantity offered, but it is essential that you let us have your cabled reply to this.  
....."

20

7. Following the said correspondence the Sellers agreed to sell to the Buyer at the said price of 1/10d. offered by the Buyer a quantity of 85,000 yards, which was confirmed by the Sellers to the Buyer in two "Sales Notes" one being dated March 24th, 1952, for a quantity of 70,000 yards, described therein as "36" dyed crepe, QUALITY AS 1000, grey cloth foreign, origin dyed to your own shades;.....";

30

ExH "A.3"  
pp.106/107,  
1.25  
p.106,  
11.36-37

the other being for the balance of 15,000 yards described similarly as "QUALITY AS 1000 36" dyed Rayon Crepe, grey cloth of foreign origin."

Record  
ExH "A.4"  
p.107,1.27.  
p.109,1.15.  
p.108,11.23-24

10 8. Before the goods arrived the Sellers sent off to the Buyer a shipping sample of the goods, which appeared to him to be of inferior quality to the sample AB. At this time the Buyer was in the United Kingdom and he at once saw one Jack Dellal one of the Sellers' directors to whom he complained regarding the said inferiority and, as the said Dellal would not admit that there was any difference in the quality in the shipping sample compared with that of Sample AB, the Buyer consulted a firm of Manchester Solicitors who wrote to the Sellers by letter dated the 20 23rd September, 1952 in the following terms :-

ExH "AB"

ExH "B",  
p.110.

30 "We have been consulted by Messrs. Adel Boshali of Lagos, Nigeria with reference to two contracts for the sale by you of 85,000 yards approximately of 36" dyed crepe Quality AS 1000 grey cloth foreign origin to be dyed to our clients own shades. This was a sale by samples. It now appears from the shipping samples supplied by you that the bulk of the goods does not correspond with the original sample on which the sale was based. As our clients have not accepted delivery of any part of the contract they are entitled to reject your delivery or alternatively to claim damages from you for breach of contract ..... "

p.110,11.16-28.

Record

EXH "C"  
p.111,1.29,  
p.112,1.6.

By letter dated October 1st, 1952 the Sellers replied thereto saying :-

"Thank you for your letter of the 23rd September re Adel Bohsali.

With reference to QUALITY AS 1000, we have submitted some samples to testing authorities to ascertain if there is any difference between the original sample shown to Mr. Bohsali and the goods shipped. We will revert back to the question in a few days time".

10

p.38,  
11.21-23.

9. The Buyer himself then submitted samples (of the sample "AB" and the said shipping sample) to the Manchester Chamber of Commerce Testing House and Laboratory.

p.38, 1.24 -  
p.39, 1.9.

10. Before receiving a report (hereinafter called: Exhibit G") as to the result of their test from the Manchester Chamber of Commerce Testing House the Buyer had an interview with the said Dellal which took place at the request of the said Dellal. The said Dellal expressed to the Buyer the wish of the Sellers, as he was about to go away, to settle the matter and he gave the Buyer the assurance that the result of the test carried out on behalf of the Sellers was that the only difference between the sample AB and the said shipping sample was one of finish and added that he was prepared to credit the Buyer with £500 on the account for another transaction and thus settle the matter.

20.

30

Record

10 There was a dispute in connection with this other transaction. The Buyer relying on the said Dellal's assurance that the only difference between the sample AB and the shipping sample was one of finish accepted the offer of £500 and this was confirmed in a letter written by the Sellers to the Buyer dated October 15th 1952. However, when a few days later he got the report Exhibit G which expressed the opinion that the shipping sample was inferior in weight and quality to the sample AB he went to the Sellers' office where he met another Mr. Dallal whom he informed as to what the report Exhibit G stated. This Mr. Dallal, however, said he knew nothing about the matter. The Buyer mentioned it again in 20 a letter dated the 3rd November, 1952 to the Sellers written by him after he had returned to Lagos. Therein he said :-

EXH. "E.1"  
pp.113-114.

EXH. "G"  
p.114

EXH. "J"  
p.125, l.30 -  
p.126, l.4.

30 "When I was in Manchester, Mr. Jack Dellal asked me to settle the dispute of AS 1000 at once as he was going abroad, and he told me the result of examining the goods was very little, and it is only the finish of the goods was a little different from the original one, and I accepted to his words for I trust Mr. Dellal and believe his word, but later on I found that the quality of AS 1000 he shipped to me was 13½ per cent. inferior than the basic sample of which we ordered the goods, not only the finish as he said, and that is the result I received afterward

Record

according to the certificate received (Exhibit G) afterward, now it seemed to me that Mr. Dellal did not (sic) tell me the actual result of examining the goods, and that was unfair from Mr. Dellal, .....

11. The Buyer then returned to Lagos where his agent acting on his (the Buyer's) instructions, given by him after the meeting with Jack Dellal in Paragraph 10 above referred to, had cleared 4 bales of the goods and had sold these goods to a firm in Lagos named A. Houcher & Sons, at the price of 2/2d. per yard. This firm complained that the goods were short in yardage and demanded that the Buyer should take them back or give them a discount of 5d. per yard, or about 20% because of the shortage. The Buyer being unwilling to agree to the latter proposal took back the goods and refunded the said firm their money. No complaint other than that regarding the shortage was made by the said firm which could not be otherwise as they had not bought on Sample AB not having seen it.

10

20

EXH. "H"  
p. 122.

12. The Buyer complained to the Sellers about the said shortage in a telegram dated the 31st October 1952. The Sellers denied that there was any shortage but, as a result of an interview the Buyer had with one Mr. Brown a director of the Sellers when the Buyer was again in Manchester in December, 1952, the Sellers offered to credit the Buyer's account with the sum of £400 to cover part of the Buyer's losses. At first the Buyer refused this offer because Brown

30



Record

10 said he would not make it a firm offer without seeing the Jack Dellal hereinbefore mentioned, who was still away. Brown, however, promised that when he saw Dellal he would make a final settlement for the Buyer and would tell the Sellers' Lagos agent to inspect the goods at the Buyer's shop, and that when he received the agents' report he would settle the matter. On being given these assurances and promises the Buyer accepted the credit of £400.

20 13. The Buyer had cleared and taken delivery from the Sellers 28 bales of the goods amounting to 35,466½ yards (which included the 4 bales sold to and returned by the said firm of Housner & Sons. The Buyer sold these goods to various purchasers at the price of 1/9d. per yard which, owing to their inferior quality was the best price he could obtain. He was obliged to make refunds out of proceeds of the sale owing to complaints in the shortage in quantity, the total amount of such refunds being £246. 19. 0d. The cost to the Buyer of the said goods landed was 2/4d. per yard so that in having to sell at the said price of 1/9d. per yard the loss suffered by the Buyer was 7d. per yard on the said quantity of 35,466½ yards which amounted to 30 £1,034. 8. 6.

14. The learned trial Judge held that the said sale was a sale by description and that the goods did not correspond with the description either as to quality or as to yardages and that therefore there had been a breach by the Sellers of the contract of sale of the goods

CC-113-11  
p.66,  
11.10-12  
11.13-17.  
CC-113-11

Record  
p.66,  
11.18-33.

15. As regards the counterclaim of the Sellers which was based on the non-acceptance of the remainder of the goods beyond the said 35,466 $\frac{1}{2}$  yards the learned trial Judge held that, as the Buyer was entitled to reject them, that is to say, not accept them, owing to the said previous breach by the Sellers, the counterclaim failed and had to be dismissed. He further held that even if he had held otherwise he would have had the greatest difficulty in holding that the counterclaim had been proved by the Sellers witness. His knowledge, as the learned trial Judge found, of the transaction was small and his figures in many instances were grossly inaccurate, and that had he found for the Sellers on the counterclaim he would have awarded them the sum of £425. 11. 5d. only because the evidence in support of the other items was so unsatisfactory.

10

20

16. In the result the learned trial Judge gave judgment for the Buyer on his claim for (a) the sum of £1,034. 8. 6. the amount of his loss in the re-sale of the said goods accepted by him and (b) £246. 19. 0. the amount refunded by the Buyer to those who purchased some of the goods from him. He furthermore held that the Buyer was entitled to the loss of profit in the whole of the said quantity of 85,000 yards at 6d. per yard amounting to £2,125. The total amount for which the learned trial Judge then gave judgment was £3,406. 7. 6. He awarded costs of

30

p. 67,  
11.25-33

p. 66,  
11.34-43.

£78. 15. 0. on the Buyer's claim and  
£27. 0. 0. disbursements and on the  
Sellers counterclaim he gave judgment for  
the Buyer with £15. 15. 0. costs.

Record  
p.67,11.34-40.

10 17. As regards the Sellers action 610/53  
in which they claimed the sum of £967.9.2.  
as the price of goods sold and delivered  
by them to the Buyer, as was admitted by  
the Sellers, and found by the learned  
trial Judge the Sellers had debited the  
amount of the two promissory notes given  
by the Buyer to the Sellers in respect  
of this indebtedness of his to his  
account with the Sellers, which was in  
credit. Accordingly the Sellers could  
not bring this action against the Buyer.

p.57,11.1-38  
47,11.37-38  
EXH. "V"  
pp.153-154.

20 18. In dealing with the action 610/53  
the learned trial Judge said :-

p.57,11.1-38.

30 "In suit 610/53 the Sellers claim  
from the Buyer the sum of £967. 9. 2.  
for the price of goods sold and  
delivered. There are thus three  
separate claims (i.e. (1) the Buyer's  
action 496/53 against the Sellers  
(2) the Sellers counterclaim in the  
said action and (3) the Sellers'  
action 610/53 against the Buyer) upon  
which I now have to adjudicate. It  
seems that the claim in Suit 610/53 can  
be separated from those in suit 496/53.  
It emerged during the trial that the  
buyer had signed promissory Notes for  
the sum claimed in Suit 610/53 and had  
asked that the amounts due on these  
should be debited to his account with  
the Sellers.

Record

There is no claim by either side for any balance said to be due on an account stated. There was a good deal of evidence relating to the state of accounts between the parties but I do not find this material. I deal first with Suit 610/53. The buyer admits he owed the money claimed thereon and says as I have mentioned that he asked that his account with the Sellers be debited with the amount of the two promissory Notes which he signed for the amount claimed. 10

"The issue in Suit 610/53 thus is resolved into matters of account. The Sellers do not agree, I gather, that they have received payment of the two notes, but admit that they have been debited to his account.

"I repeat that nowhere in either Suit is there to be found any claim by the Sellers for any balance of account due to them from the Buyer or vice versa. It seems to me that once the Sellers admit that the amount of the two promissory Notes, together making up the sum claimed in Suit 610/53, has been debited against the Buyer's account, the cause of action in that Suit has gone. Therefore I hold that Suit 610/53 must be dismissed and the Sellers must pay the costs assessed at £10. 10. 0." 20 30

19. The Sellers appealed to the Federal Supreme Court. The Federal Supreme Court (Jibowu Ag. Federal Chief Justice, De Lestang F.J., and Hubbard Ag. F.J.), in the judgment delivered by De Lestang F.J. in which the other two members indicated their concurrence, said as follows :-

"The first question for decision on this appeal is whether the learned Judge was right in holding that this was a sale by description and not by sample. Mr. Glidewell, for the (Sellers) sought to support the Judges' decision on this point, while Mr. David, for the (Buyer) contended that the sale was both by sample and by description".

Record  
p.91, 11.20-

10

The learned Federal Justice said this -

"The terms of the contracts in the present case are to be found in Exhibits A3 and A4" (i.e. the Sale Notes referred to in Paragraph supra) "of which I have already quoted the material portions and reference to them, will show that there is no mention of any sample in them, Mr. David contended that the Sale notes were not contracts, but merely confirmation of the Sale, that the terms of the contracts set out in them were not complete and that a further term that the sale was by sample had to be imported because the (Sellers') first offer contained a sample, and the (Buyer's) counter-offer expressly referred to that sample. In my view, the sale notes contained all the terms of the contracts".

p.91, 11.20-45

EXH. "A.3"  
pp. 106-107  
EXH. "A.4"  
pp. 106-108

20

30

It is submitted that though it might be legally correct that, as the learned Federal Justice went on to hold, that the

Record

contract of sale here concerned was not a sale by sample, he was nevertheless, it is respectfully submitted, stating the matter far too legally restrictively and, wrongly, disregarding the essential element in the formation of the contract and what cannot be left out as part of it, namely, the sample AB sent with the offer contained in the Sellers' letter, referred to in Paragraph 3 supra and the whole terms of that letter and the letter of the Buyer in reply thereto, referred to in the said Paragraph, and the whole of the facts and circumstances of the case.

10

It is submitted that it is beyond doubt or question upon the proved or undisputed facts and circumstances of the case that the Sample AB was incorporated into and was part and parcel of the contract.

20

p.92,11.28-  
p.93, 1.2.

20. The learned Federal Justice then said :-

"The next question is whether assuming the sales to be sales by description there was any breach on the part of the appellants". On this question the Judge said, 'I am, however, satisfied, from the evidence both oral and documentary that the goods did not correspond with the description either as to quality or as to yardage'. With respect to the learned Judge I have been unable to find any evidence whatever on the record that the goods did not correspond with the description and

30

Record

10

indeed the total absence of evidence on this point is not surprising because it was never the (Buyer's case) that the goods did not correspond to the description. His case was that it was not according to samples and to establish that he relied entirely on the report of the tests made by the Testing House of the Manchester Chamber of Commerce Exhibit G. I can only assume that the learned Judge based his finding that there was breach of description on the result of that test, in which case, in my view, he wrongly treated a breach relating to samples as being the same as a breach of description...

EXH. "G"  
pp. 114-119

20

After commenting on the "Exhibit G" the learned Federal Justice went on to say -

30

"Therefore, even if this were a sale by sample the certificate upon which the (Buyer) relied did not and could not establish that the bulk of the goods did not correspond to the sample, a matter which had to be proved to render the (Sellers) liable in such a contract. A fortiori it does not prove a breach of description. Mr. David further contended that the two payments of £500 and £400 respectively which (the Sellers) made to the (Buyers) as a result of the so-called settlement, are implied admissions that the goods were inferior in quality. I am unable to agree. There is nothing in the correspondence produced to indicate that (the Sellers) ever admitted that the goods supplied were inferior".

p.93,11.13-31.

Record

It is with the utmost respect submitted that, there can be no doubt whatever that it was established upon the proved or undisputed evidence that :-

- (a) the shipping sample sent by the Sellers to the Buyer at the time the goods were being delivered was inferior and,
- (b) It represented the kind and quality of the goods being delivered.

10

There is, it is with respect submitted, a misapprehension in the mind of the learned Federal Justice as to the position. The sample AB was sent to let the Buyer see the kind and quality of goods that were being offered for sale to him. This is abundantly clear from the Sellers' letter to the Buyer dated the 10th March, 1952 (referred to in Paragraph 4 supra), and there was pinned to this sample the statement, "QUALITY AS 1000". The shipping sample was sent to show what kind and quality of goods were being delivered. The conclusion therefore, it is submitted, is clear that "Sample AB" were the kind and quality of goods which were being sold by the Sellers to, and which were being bought by, the Buyer from the Sellers and the shipping sample was to show the kind and quality of goods which were being delivered. And in proving, as the Buyer did, that the goods being delivered were inferior in quality to those which were sold he had established the breach.

20

30

It was beyond doubt, it is submitted that the shipping sample indicated as it



Record

10 was intended to indicate, as above submitted, the kind and quality of goods being delivered; and it was upon this footing that the action was fought and the contrary, if it had been suggested by the Sellers during the trial, could have been completely and without difficulty controverted. As an example of this there is the letter sent on behalf of the Buyer by a Manchester firm of Solicitors (referred to in Paragraph 8 supra) dated the 23rd September, 1952, which was sent off almost immediately after the Buyer, who at the time was in the United Kingdom, had received the shipping sample from his agent in Lagos. Therein there is this statement -

EXH. "B"  
p. 110.

20 "..... It now appears from the shipping sample supplied by you that the bulk of the goods does not correspond with the original sample on which the sale was based....."

p.110,  
ll. 21-24.

In their reply dated October 1st, 1952, the Sellers say in the most careful and precise terms -

EXH. "C"  
pp. 111-112.

30 "..... With reference to QUALITY AS 1000, we have submitted some samples to testing authorities to ascertain if there is any difference between the original sample shown to (the Buyer) and the goods shipped..."

The Sellers leave no doubt, as is clear, for they use the words - "the goods shipped". They refrain from the use of

Record

the words "shipping sample" used in the letter being replied to.

21. In regard to the shortage in the goods the learned Federal Justice says :-

p. 93,  
11.36-49.

"There was evidence from a check made on behalf of the (Buyer) from which it would appear that there was some shortage but that the difference was less than  $\frac{1}{2}\%$ . The learned Judge found, as I have already stated, 'that the goods did not correspond with the description either as to quality or as to yardage'. It is perfectly clear from Exhibits A3 and A4 "(the sale notes) "that the contracts were to supply a total quantity of 85,000 yards. There was no term that the pieces should be of any given length. It follows, therefore, that the small discrepancy between the marked yardage and actual yardage could not constitute a breach of contract".

10

20

The Buyer would respectfully observe that the shortage of the yardage of the goods compelled him to refund their money to purchasers of his and it is respectfully submitted that the learned trial Judge came to the right view in law and was justified therein upon the evidence as found by him after a full and careful trial.

30

p.94,11.1-  
29

22. The learned Federal Judge says :-

"If I am correct in my view that this was a sale by description, and that there was no evidence that the goods did not

correspond to the description, this appeal must succeed, but I think that this appeal also succeeds on the 5th ground of appeal which reads as follows -

10. "The learned Judge failed to have any or proper regard to the last condition of the contracts, - Exhibits A.3 and A.4 whereas upon the evidence and in law the Sellers were and are entitled to rely upon such conditions and to judgment accordingly against the buyers upon the statement of claim' p.72,1.35 - p.73,1.4.

20 It is common ground that the goods here are of foreign origin, and, therefore, prima facie effect must be given to this condition in the sale notes which I have already quoted and which protects the appellants from liability. It may be thought that the condition is harsh, but this is not a good reason for not enforcing it because in a contract it is left entirely to the parties to make whatever agreement they please, and the Courts will not refuse to enforce them unless they are illegal or for an unlawful purpose or against public policy. ...." 30

It is submitted that the condition referred to by the learned Federal Justice cannot have any operation in regard to the sale here. The obligation of the Sellers was to deliver goods of the kind

Record

and quality corresponding to that of the Sample AB and in failing to deliver goods of that kind and quality they broke their contract. This is somewhat in the nature of an over-simplification but it nevertheless states the essence and essentials of the matter. It is submitted that the learned Federal Justice has formed a wrong view of the application or effect of the condition.

10

23. It is submitted that as regards the damages awarded by him, subject to the qualification mentioned below, the learned trial Judge was right in law and on the evidence before, and as found by him, and the Judgment of the Federal Supreme Court is wrong.

The qualification referred to is that it is conceded that in the amount of damages awarded by the learned trial Judge some allowance should be made in regard to the sums of £500 and £400 allowed by the Sellers to the Buyer in the "so-called settlement" as it is described by the learned Federal Justice.

20

24. The questions for determination are:-

(1) Whether the Sample AB was incorporated into and was part and parcel of the sale of goods by the Sellers to the Buyer?

30

(2) If so, did the goods correspond with Sample AB ?

(3) If the answers to (1) and (2) are in favour of the Buyer to what relief was he in all the circumstances entitled?

- 10 (4) As regards the Sellers' Counterclaim in action 496/53 what if any damages were the Sellers entitled to on their counterclaim?
- (5) As regards the action 610/53, whether in all the circumstances the Sellers were entitled to recover judgment for the price of goods sold and delivered?

20 25. It is respectfully submitted that the Judgment as regards the action 496/53 and the counterclaim therein and action 610/53 of the Federal Supreme Court is wrong and that it should be reversed or varied or that in the alternative a new trial should be ordered between the parties for the following amongst other

R E A S O N S :-

As regards action 496/53 and counterclaim

- 30 1. BECAUSE the sample AB was incorporated into and was part and parcel of the contract of sale of the goods.
2. BECAUSE the said sample by reference to the label bearing the statement "QUALITY AS 1000", which was also contained in the description in the sale notes, was part of the description of the goods.
3. BECAUSE under the said contract it was the obligation in law of the Sellers to deliver goods corresponding to the sample AB.

Record

4. BECAUSE the goods delivered were inferior to the sample on which the Buyer bought and substantially lighter in weight.

5. BECAUSE of the said breaches of contract by the Sellers they could not in law sustain their counterclaim and were liable in damages to the Appellant.

6. BECAUSE in any event the Sellers had not proved that they were entitled to the sum awarded to them as damages by the Federal Supreme Court. 10

7. BECAUSE the judgment of the learned trial Judge was right.

As regards action 610/53

8. BECAUSE the sum claimed was debited by the Sellers to the account of the Buyer and was accordingly the subject matter of account and not of a claim for the price of goods sold and delivered. 20

9. BECAUSE by debiting the promissory notes given by the Buyer in payment for the said goods to the Buyer's account the Sellers had disentitled themselves to be paid therefor otherwise. 30

10. BECAUSE the Buyer's said account was in credit.

11. BECAUSE the judgment of the learned trial Judge was right.

PHINEAS QUASS.

S.N. BERNSTEIN.

IN THE PRIVY COUNCIL

On Appeal from the Federal  
Supreme Court of Nigeria

A. BOSHALI

— v. —

ALLIED COMMERCIAL  
EXPORTERS LTD.

---

C A S E

— for —

the Appellant

REXWORTHY BONSER & SIMONS,  
83, Cowcross Street,  
LONDON, E.C.1.

SOLICITORS for the APPELLANT.