

IN THE PRIVY COUNCIL

No. 20 of 1962

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

ABUDU GBADAMOSI IJALE (Plaintiff)  
Appellant

- and -

B.A. SHONIBARE (Defendant)  
Respondent

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
22 JUN 1965  
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C A S E FOR THE APPELLANT

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1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (Ademola F.C.J., Hubbard and Taylor Acting F.J.J.) dated the 25th July, 1960, allowing the appeal of the Respondent from the Judgment and Order given and made by Dickson J., in the High Court of Lagos dated the 23rd April, 1959, in an action by the Appellant, as plaintiff, against the Respondent hereinafter referred to also as the first defendant, and two other defendants hereinafter referred to, collectively as the other defendants, or respectively, as the 2nd and 3rd defendants, as defendants, whereby he gave judgment in favour of the Appellant against the Respondent for the sum of £1500 and costs, and ordering that the Appellant's claim against the Respondent and other defendants be dismissed with costs in favour of the Respondent as the Appellant in the said appeal.

pp.55-60;  
p.61.

pp.42-49

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p.49.  
LL.16-21

p.61.  
LL.21-30

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2. The Appellant who was a produce buyer for a limited company called A.G. Leventis and Company Ltd., of Lagos, claimed, against the Respondent and the 2nd defendant jointly and severally the sum of £1000 and against the

p.9.  
LL.13-21;

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Respondent and the 3rd defendant jointly and severally the sum of £500, the said sums totalling £1500 as being the amount advanced by the Appellant through the Respondent for the supply of cocoa and palm kernels by the Respondent and the other defendants to the Appellant.

3. The Respondent admitted having received the said sum of £1500 from the Appellant and that he had given the Appellant a receipt (Exhibit "A") therefor signed by him in these terms:-

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"I received £1000 for myself and Y.L. Goodluck" (2nd defendant) "also £500 for S.O. Hassan" (3rd defendant) "to-day 22.2.59."

p.24 L.35  
p.25.L1-7  
p.42.L.35-  
p.43.LL.43

4. The Respondent denied that he had received the said sum of £1500 as advances and alleged that it was as part payment for produce sold and delivered by him to the Appellant, £500 of which being part payment to himself and £500 each to the 2nd and 3rd defendants, the said payments to the 2nd and 3rd defendants being also part payments to them for produce sold to the Appellant. It was denied by the 2nd and 3rd defendants that they had received any money whatever from the Respondent.

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p.33,LL.30-34  
p.37.LL.11-21;

p.43.LL.17-19;  
p.32.L.23-  
p.33.L.9.

5. The issue to be determined was accordingly solely one of fact in which the determining factor was that of the credibility of the witnesses.

6. Evidence was given on behalf of the parties as follows:-

pp.13-18,  
LL.1-7.p.

For the Appellant:-

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1. Himself.

pp.19-20 L.  
20-p.21 L.25  
-p.24 L.24

2. AMBALI JAJI, a clerk in the employ of the Appellant

On behalf of the Respondent: (1st defendant).

p.24.L.29-p.29  
L.24.pp.32  
L.23-p.33.L.9.  
p.29 L.26-p.32  
L.22.

1. Himself.

2. GANIYU AYANBANJO, who had been a clerk in the employ of the Appellant, and was at the time of the trial a produce buyer employed as such by the Respondent.

Record  
p.29.LL.31-32  
p.31.LL.2-4;  
p.32.LL.12-13

On behalf of the 2nd defendant (Yinusa Goodluck).

2. Himself only.

p.33.L.12-  
p.36.L.27;  
p.39.LL.10-19  
p.36.L.30-  
p.39.L.7.

On behalf of the 3rd defendant (Sule Hassan).

Himself only.

10 7. The learned trial Judge in his Judgment found upon the evidence given by and based upon his assessment of the credibility of the said witnesses as follows:-

"I have approached the consideration of this case with anxiety and much concern in order to ascertain in so far as I can where is the truth. There has been lying by every-one who gave evidence.

20 There is no doubt whatever that at one time and another each of the defendants had transactions with the plaintiff in the matter of the sale of produce to him.

The plaintiff appears to be slightly literate and does not impress me as a shrewd business man.

Exhibit A, upon which the claim is founded, is a receipt made by the 1st defendant and signed by him. It reads:

30 "I received £1000 for myself and Y.L. Goodluck also £500 for S.O. Hassan today 22.2.59."

Then follows his signature.

Exhibits C-C5 are original waybills issued by the plaintiff's office and tendered by the 1st defendant. They show that between the 6th December, 1951 and the 5th March, 1952, he had on 6 occasions delivered produce to the plaintiff for which he had been paid, and which had no

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relation with Exhibit A whatever. The duplicate of Exhibit C5, is found in waybill book Exhibit D. Subsequent waybills are to be found in Exhibit D vouching sales of produce by the 1st defendant and payments made to him, the last of which bears the date 6th April, 1952. Exhibit D1 contains one transaction in the name of the 1st defendant. This is shewn on waybill No. 170 dated the 16th April, 1952. According to the evidence of the plaintiff, the 1st defendant on the waybills. 10  
 If his allegation is correct, the produce for which he received £500 as payment must be anterior to the 6th December, 1951. In view of his defence as set out in his pleading, namely: that the sum of £500 was payment for produce and not an advance (it is to be observed that in his evidence he does not say payment, but part payment) he would have shewn a waybill prior to December, 1951. 20  
 When asked by Mr. Abudu, Counsel for the plaintiff whether he had any waybills relating to Exhibit A, he replied that they are Exhibits C1 and C3. These could not by any stretch of imagination relate to Exhibit A. When asked by the same Counsel to show the court what is there on Exhibit C1 to indicate that it relates to Exhibit A, he said that there is a balance of £269. 1. 9d. On looking at Exhibit C1 which is dated the 26th January, 1952, this again could not have possibly have any connection with Exhibit A. The first defendant knew that and when confronted with the absurdity of his answer, had to admit that the sum of £269. 1. 9d had already been paid. In fact, it shows produce to the value of £769. 1. 9d, had been delivered on the 26th January, 1952; £500 paid on the 31st January, 1952, and the balance of £269. 1. 9d paid on the 7th February, 1952. 30 40

It would appear that the wording on Exhibit A was not without design. A series of significant questions were put to the 1st defendant about Exhibit A. I quote the questions and answers:

Q: Why did you not put on Exhibit A that the amount was paid in settlement of previous debt?

A: Because the money was not received for me alone.

Q: Why did you not insert on Exhibit A that your £500 was in settlement of a previous debt?

10 A: Because the plaintiff knew I was receiving £500 in part payment of produce sold to him.

Q: Why did you not add the particular date to which the amount referred?

A: Because the money was not intended for me alone.

ABUDU: Not asking about others asking about yourself.

A: The plaintiff did not ask me to do that.

Q: You made the receipt?

A: Yes.

20 He admitted that he was by far more intelligent than the plaintiff. The witness who is by no means a fool could not have been serious in his answers.

It may be convenient at this stage, to advert to the 2nd and 3rd defendants.

30 In my view the 2nd defendant in examination in chief modifies what he says in paragraph 3 of the statement of defence. He admits having transactions with the plaintiff; and says he has been buying produce for the plaintiff since 1949. By saying this, he is undoubtedly admitting that he was a buying agent for the plaintiff. He admits he always received advances for the plaintiff. He categorically denies ever receiving £500 cash advance from the plaintiff through the 1st defendant. He says that the plaintiff has never sent cash advances to him through

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anyone. It is worthy of note that in answer to counsel for the 1st defendant he admits receiving monies from the plaintiff through the 1st defendant, thereby contradicting what he has said earlier.

The 3rd defendant says in examination in chief that in 1952, he had transactions with the plaintiff and sold him produce. He never received any cash advances. In answer to the Court, he says he dealt with the plaintiff from the latter part of 1951 to the early part of 1952 - a matter of six months. It is accepted by the plaintiff that he dealt with him for six months - roughly one cocoa season. This defendant also states categorically in examination in chief, that during that period he received no cash advances from the plaintiff through the 1st defendant.

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Like the 2nd defendant, in answer to counsel for the 1st defendant, he admits he had on several occasions received money from the plaintiff through the 1st defendant. He cannot remember any occasion that the plaintiff sent money to him through the 1st defendant, and he had not received it.

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Both these defendant are very untrustworthy witnesses. They are evasive on the question of receiving £500 from the plaintiff through the 1st defendant. Mr. Abudu put the following question to the 2nd defendant:

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Q: The 1st defendant had admitted receiving £500 and paying over to you is not that correct or not?

A: The plaintiff sends money to me through the 1st defendant, and through the 1st defendant to me but not cash advance.

He is hereby saying in effect that what he receives are not advances but payments. He ends up by saying that he cannot definitely remember whether the plaintiff sent £500 to him through the 1st defendant on or before the 22nd April, 1952.

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10 It has been submitted by Mr. Abudu that the 1st defendant in his statement of defence does not say the money handed over to the 2nd and 3rd defendants was for produce sold and delivered by them (2nd and 3rd defendants), and suggests that his evidence that the money was for that purpose was an after thought, and indicates an agreement between them all. The point to be made here is: these two defendants in examination in chief made an absolute denial of ever receiving any money from the 1st defendant, but when cross examined by counsel for the latter, without an effort on his part, each unhesitatingly admitted receiving monies from the plaintiff through the 1st defendant. Conduct of this nature brands the 2nd and 3rd defendants as liars, and would make one ponder whether the suggestion is not correct. It may very well be that the 1st defendant after receiving monies from the plaintiff as advances to the 2nd and 3rd defendants failed to give them and when this case came about, he pleaded that the amount was not an advance to them, and may have got them to agree to say so, but exercising caution they are not prepared to go the whole way; but in order not to let him down act evasively.

30 If the monies were in fact payments for produce the 2nd and 3rd defendants had nothing to lose in admitting it. On the other hand, if the money was intended for payment and was not paid over to them, no doubt more would have been heard about it before now from the 2nd and 3rd defendants. The 1st defendant is no doubt an intelligent man. He is by far more clever than the plaintiff and the 2nd defendant, and, to a little less extent than the 3rd defendant. In my opinion, he is one who could influence both his co-defendants and in particular the 2nd.

40 It has been stated in the defendants' pleadings that they were never buying agents for the plaintiff, but what did the 1st defendant say in answer to the court?

"I know the 2nd and 3rd defendants are sellers of produce to the plaintiff just as I was to purchase and deliver to the

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plaintiff. In the trade I would be called a buying agent."

It has been shewn that as a rule when advances are made to produce buyers by the defendant they are recorded in a book like Exhibit B. The record taking the form of a receipt which is signed by the buying agent receiving the loan. It has also been shewn that it is the system of the plaintiff to enter the loans from Exhibit B into a ledger and when this is done the folio of the ledger is noted against the appropriate receipt in Exhibit B. Comment has been made as to the practice of keeping books amongst produce buyers and it has been suggested as the plaintiff has not followed the recognised practice his claim against the defendants cannot succeed.

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In the first place, I should think that a man is entitled to keep his books as he pleases and is not bound to follow the practice of others in every detail. Standards and methods of keeping books vary with the educational standard and may be culture of the proprietor of a business. The system adopted by Messrs. John Holt or U.A.C. would not necessarily be the criterion for the less articulate.

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In the instant case, it is alleged by the plaintiff that he made three advances in all to the 1st defendant at his (the plaintiff's house; the receipt of which in each case was acknowledged by the 1st defendant on a slip of paper. The plaintiff says when two repayments were made he returned the respective receipts to the 1st defendant. The third receipt is the subject matter of this case. He gives as his reason for adopting this method that the transactions took place at his home as it were after office hours. In my view there is nothing wrong with that. Is it being seriously contested that because a receipt is not made out in an office and in a particular book, it is not effective? Indeed, the 1st defendant is saying that it

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is effective in so far as it acknowledges payment for money made to him for produce supplied. Neither is the receipt in question nor the two other recorded in Exhibit B or the ledger. The fact that Exhibit A has not been recorded in either book would not prohibit the plaintiff from recovering on it.

10 The 3rd defendant who incidentally at first denied that he ever had any advance from the plaintiff, admitted under cross-examination that he had received an advance from him of £500 in 1951. This was written by himself on a piece of paper.

20 The issue to my mind is this: was the receipt Exhibit A an acknowledgment of monies received by the 1st defendant for himself and his co-defendants as advances and not in payment of produce? The point has been made that the ledger Exhibit E is not the real ledger of the plaintiff. It appears that Exhibit E has been recently posted from Exhibit B; but the fact remains that Exhibit B is not of recent origin. The question of the ledger has only been brought in as a 'red herring' across the trail.

30 It is my judgment that the 1st defendant received the sum of £1,500 as set out in Exhibit A as advances to himself and his co-defendants. I believe the plaintiff on this aspect. The defence of the 1st defendant is a subtle attempt to deprive the plaintiff of his money.

Apart from the evidence of the 1st defendant, there is no evidence that his co-defendants actually received the sums intended for them. It has already been pointed out that the 2nd and 3rd defendants have been vague on this question. They have never admitted receiving the money. The plaintiff deposed that when he asked them about it their reply was that they would be seeing the plaintiff.

40 On the evidence, it would be a matter of conjecture whether the 2nd and 3rd defendants received the monies from the 1st defendant.

I therefore find the 1st defendant liable for the whole amount, that is to say, the sum of £1,500.

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Judgment is therefore entered for the plaintiff for £1,500 against the 1st defendant. The 2nd and 3rd defendants are dismissed from the action.

The 1st defendant will pay the plaintiff's costs assessed at fifty-five guineas inclusive of out of pocket expenses.

The plaintiff will pay costs assessed at twenty-five guineas to the 2nd and 3rd defendants jointly (both defendants have been represented by the same counsel)." 10

8. The Respondent appealed against the said Judgment to the Federal Supreme Court.

p.56.L.32-  
p.60.L.16.

9. In their Judgment delivered by Ademola F.C.J. in which the other two members concurred, the Federal Supreme Court said as follows:-

Of the three grounds of appeal argued, only ground 2 of the additional grounds of appeal need be considered for the purposes of this appeal. It is as follows: 20

'2. The learned trial Judge erred in law by failing to consider that the failure or refusal of the plaintiff to produce the Ledger Book or buying book (showing the indebtedness of the 1st defendant to him as claimed) which he admitted was in existence was an evidence that he was hiding the material fact which was against his case.' 30

To understand this ground of appeal, it is perhaps necessary to consider the background to the case. In the Court below the appellant never at any time denied receiving the sum of £1,500 from the plaintiff. He admitted receiving the amount and admitted giving Exhibit A as a receipt; but he stated that £500 of the amount was a payment to him by the plaintiff/respondent for produce he had sold and delivered to him previous to that date and that the balance was also an amount of £500 each, 40

owed by the plaintiff/respondent to the other two defendants for produce already delivered to the plaintiff/respondent by them. He challenged the plaintiff/respondent to produce his ledger or produce book in which all transactions between him and his customers were entered, and which include all transactions with him. Before the trial, a subpoena was served on the plaintiff to produce the ledger or produce book.

10           The learned trial Judge put the issue between the parties very clearly when he said in his judgment:

'The issue to my mind is this: was the receipt, Exhibit A, an acknowledgement of monies received by the 1st defendant for himself and his co-defendants as advances and not in payment of produce...'

20           The defendant/appellant (1st defendant's) case was that the amount was payment for produce he had supplied; he alleged it would be so found in the plaintiff/respondent's ledger which he called for. The plaintiff/respondent in one breath admitted, under cross-examination by the appellant's Counsel, the existence of a ledger or produce book in which all his business transactions were entered: in another breath he quickly retracted his evidence. A book, Exhibit B, in which he pasted the receipt, Exhibit A, which was produced and called a ledger, is in fact cash advance book. Exhibit E, which was described by the learned Judge as "recently posted", was in fact an attempt to mislead the Court.

          Having denied the existence of the produce book or ledger, the plaintiff/respondent went on to say that he only kept two books - Exhibits B and D - in his business. Exhibit B is a book showing advances made to customers. Exhibit D-D2 are delivery books.

          Later his own witness, in fact his clerk, produced more books (Exhibit E) and spoke of a ledger in which he made entries, but again which was not produced. The learned Judge himself pressed for the production of the ledger where

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entries of all business transactions were made, but it was not forthcoming.

The defence called one Ganiyu Ayanbanjo who was formerly a clerk to the plaintiff/respondent. This witness described a book which he called a ledger or buying book in which weight of produce which came into the store was entered, as well as the name of each customer, outstanding cash balances and payments by customers to the plaintiff/respondent. 10  
The description of the ledger or produce book by this witness was substantially the same as the description given by the plaintiff/respondent before he retracted this evidence.

In his judgment the learned trial Judge gave no consideration to all this evidence about the ledger or buying book.

There is another aspect of this matter. The plaintiff/respondent, in his evidence, admitted that after he had made the cash advance on Exhibit A to the defendant/appellant on 22/2/52, and he supplied no produce for it, he continued to trade with him up till May, 1952; that he (defendant/appellant) continued to supply him with produce for which he paid cash. He admitted that on one occasion he was unable to meet the full payment and had to pay something on account, leaving a balance. It is strange, is it not, that at that time, the defendant/appellant was owing him money on Exhibit A and yet he made no efforts to deduct the balance due on the account just mentioned from the debt due on Exhibit A. To my mind, it does not appear that the learned trial Judge directed his mind to this. 30

In another passage in his judgment he said:

"I have approached the consideration of this case with anxiety and much concern in order to ascertain in so far as I can where is the truth. There has been lying by everyone who gave evidence....." 40

Earlier; the learned Judge, had in respect of a receipt, Exhibit G, tendered during the proceedings, recorded unfavourably about the plaintiff/respondent as follows:

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10 "I have been looking at Exhibit G. The stamp bears the inscription of H.M. The Queen. The receipt is dated 8/10/51. Her Majesty did not ascend the throne in 1951. It was in 1952. Undoubtedly the receipt was stamped after the 8/10/51....."

In considering the present appeal, the words of Lord Summerville in the House of Lords in the appeal *Bermax v. Austin Motor Co. Ltd.* (1955) 1 ALL. E.R. 326 at p.330 are apt. Dealing with the premises on which the Judge in the Court below based his decision, he said:-

20 "On the other hand, there are sentences in his judgment, which indicate very probably, but not certainly, that he did not have present to his mind an answer or document which plainly affects the accuracy of a witness he has relied on, on his general conclusions....."

30 The learned Judge in the Court below in the present appeal having found that the parties to the action told lies, he did not, it appears advert his mind to whether the plaintiff's lies related to the existence or otherwise of the ledger or produce book which was the basis of the defence. Had he directed his mind to it, he would undoubtedly have asked himself why such document was not produced by the plaintiff.

The only portion in his judgment in which the learned Judge believed the plaintiff/respondent is recorded in the following words:

"It is my judgment that the 1st defendant received the sum of £1,500 as set out in Exhibit A as advances for himself and his co-defendants. I believe the plaintiff on this aspect ....."

If there was in fact a ledger showing the transactions between the parties, as all the

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evidence pointed to, and it was not produced by the plaintiff/respondent, the only conclusion to be inferred is that the production of it would be unfavourable to him and this would have materially affected the outcome of the case. It appears to me that the learned Judge was on the facts, by virtue of Section 148 (d) of the Evidence of Ordinance, entitled to draw unfavourable conclusions against the plaintiff/respondent had he addressed his mind to the fact that he kept away the ledger or produce book which clearly from the whole evidence must be in existence. 10

I would for these reasons allow the appeal.

I would dismiss the plaintiff's claim against the defendants with costs in the Court below assessed at 25 guineas in favour of the 1st defendant who is the appellant in this Court. 20

Costs of this appeal are assessed at 45 guineas.

p.59.LL.10-  
22.

10. The Appellant respectfully submits that the Federal Supreme Court have incorrectly appreciated the part of the speech of Lord Somervell quoted by them from the case of Benmax v. Austin Motor Co. (1955) 1 All ER p.326 at p.330 in their Judgment: and have in doing so misapplied the said case which if properly understood and applied, it is submitted, is in favour of the Appellant. Lord Morton in the course of his speech says as follows:- 30

"..... My Lords, Counsel for the appellant pointed out that the existence or non-existence of an inventive step is a question of fact decided in favour of the appellant by the trial Judge, who had the advantage of seeing and hearing the witnesses. They suggested that your Lordships should hesitate long before overruling his decision. My Lords, this is an argument of great weight if the credibility of witnesses has come in question; but in the present case it would appear that the learned judge did not doubt the credibility of any witness, and formed 40

his view by inference from the evidence as a whole.....

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Lord Reid at pp.328-9 says as follows:-

10 ".....Apart from cases where appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial Judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one could seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that: Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is and should be, slow to reverse any finding which appears to be based on any such considerations.

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The learned Law Lord then says:-

"The authority which is now most frequently quoted on this question is the speech of Lord Thankerton, Watt (or Thomas) v. Thomas (1947) A.C. 484 and particularly the passage which I now quote at (pp.487-8).

40 'I. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the Judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage

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enjoyed by the trial judge by reason of his having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.

II. The appellate court may take the view that without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.

III. The appellate court, either because the reasons given by the trial judge are not satisfactory or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and it may be, the individual case in question.' 10 20

"Watt (or Thomas) v. Thomas was a consistorial case based on cruelty, and I think that the whole passage which I have quoted refers to cases where the credibility or reliability of one or more witnesses has been in dispute and where a decision on those matters has led the trial judge to come to his decision on the case as a whole. If that be right, then I see no reason to doubt anything that was said by Lord Thankerton....." 30

And as further showing how the said words quoted by the Federal Supreme Court from the speech of Lord Somervell were misapplied by the Federal Supreme Court the learned Law Lord says (at p. 330):-

"My Lords, I agree for the reasons given by my noble and learned friend Lord Morton of Henryton, that this appeal should be dismissed. I would wish to add a few sentences on the point dealt with by my noble and learned friend, Lord Simonds ..... 40  
.....



"The advantages enjoyed by the trial judge have often been stated, and I am sure, familiar to all appellate courts. The difficult cases are those where there are circumstances on which appellant and respondent can each rely. The judge has based his decision on the way in which witnesses give their evidence. Unless there is no dispute at all he always does this."

10 There then follows the said words quoted by the Federal Supreme Court. Viscount Simonds who delivered the first speech says (at p.32) this:-

20 "My Lords, I have had the privilege of reading the opinion which my noble and learned friend Lord Morton of Henryton is about to deliver, and I agree so fully with it that I think it necessary to add nothing except on one question of general importance which has once more been raised in this appeal ..... Learned counsel for the appellant urged in the forefront of his argument that the existence of an inventive slip was a question of fact which had been decided by the trial judge, Lloyd-Jacob, J.; in favour of the appellant and, therefore, that the Court of Appeal should not have reversed his decision except for certain reasons which clearly were not present in this case. I think it convenient, therefore, to state my view on the question, though I am aware that it does not entirely agree with the observations made in this House by noble Lords for whose opinion I have the highest regard. 30 Fifty years ago in Montgomerie & Co., v. Wallace - James (1904) A.C. 73 Lord Halsbury L.C. said (at p.75):-

40 'But where no question arises as to truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position to decide than the judges of an appellate court.'

"And in Mersey Docks and Harbour Board v. Proctor (1923) A.C. 252 Viscount Cave L.C. at p. 258 said:-

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'The procedure on an appeal from a judge sitting alone without a jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inferences from the facts proved or admitted and to decide accordingly...  
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This does not mean that an appellate Court should lightly differ from the finding of a trial judge on the question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness....."

11. It is submitted that the Federal Supreme Court was wrong and should not have reversed the Judgment of Dickson J. (the learned trial Judge) and that this appeal ought therefore to be allowed and the Judgment of the Federal Supreme Court set aside and the Judgment of Dickson, J. restored for the following amongst other

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R E A S O N S

- 1. BECAUSE the issue to be determined in the action was purely one of fact and its determination turned solely on the credibility of the witnesses.
- 2. BECAUSE Dickson J. did not misdirect himself and had seen and heard the witnesses.
- 3. BECAUSE the Federal Supreme Court misdirected itself in law and its consideration of the facts and did not perform its proper function.
- 4. BECAUSE for the reasons given therein and for other good and sufficient reasons the Judgment of Dickson J. was right and the judgment of the Federal Supreme Court was wrong.

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S.N. BERNSTEIN.

No. 20 of 1962

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BETWEEN:

ABUDU GBADAMOSI IJALE  
(Plaintiff) Appellant

- and -

B.A. SHONIBARE  
(Defendant) Respondent

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C A S E  
FOR THE APPELLANT

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