

~~P.C.~~
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Judgment
12

26 OF 1964
11965

PRIVY COUNCIL

On Appeal from the
Gambia Court of Appeal



SOLO DABO

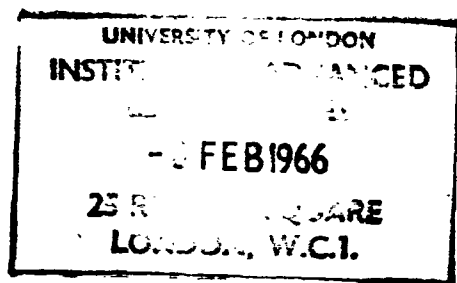
Appellant

versus

ABDALLA MOUSA
by his attorney AHMED JACOB

Respondent

~~CH2G.1~~



80943

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IN THE SUPREME COURT OF THE GAMBIA.

Civil Suit No. S. 40/1963.

BETWEEN ABDALLA MOUSA
by his attorney AHMED JACOB

Plaintiff

AND

SOLO DABO *Defendant*

To. SOLO DABO,
of 47, Grant Street, Bathurst.

You are commanded in Her Majesty's name to attend this Court at Bathurst on Friday the 29th day of March 1963 at 9.00 o'clock in the forenoon to answer a suit by MOHAMED ABDALLA MOUSA by his Attorney Ahmed Jacobs of 7/8 Cameron Street, Bathurst, against you. 10

The plaintiff claims £19,200 being money received from the plaintiff by the defendant in accordance with the Statement of Claim annexed hereto.

(Sgd.) J. A. L. WISEHAM
Chief Justice.

Issued at Bathurst this 23rd of March, 1963.

TAKE NOTICE:—(1) That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof the Court may allow the plaintiff to proceed to judgement and execution. 20

(2) If you have a counter-claim or set-off against the plaintiff 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 therefor.

CERTIFICATE OF SERVICE BY BAILIFF.

Upon the 25th day of March 1963 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/statement of claim on the defendant personally at Bathurst. 30

(Sgd). SALOUM N'JIE
BAILIFF OR OFFICER OF THE COURT.

**IN THE SUPREME COURT OF THE COLONY OF
THE GAMBIA.**

Civil suit No. S. 40/1963.

BETWEEN MOHAMED ABDALLA MOUSA
by his attorney **AHMED JACOB** *Plaintiff*

AND

SOLO DABO *Defendant*

STATEMENT OF CLAIM

- 10 1. The plaintiff is a businessman carrying on his business at Bo,
Sierra Leone.
2. The defendant is a businessman and resides at Bo, Sierra Leone.
3. On the 2nd day of July 1962, the defendant executed an under-
taking declaring and admitting that he received the sum of
£19,200 from the plaintiff, which he, the defendant, was to
deliver to plaintiff's nephew, one MOHAMED KHALIL, at
Bo, Sierra Leone.
- 20 4. On the 8th day of March 1963, the defendant, at the request
of the plaintiff, executed another undertaking at Bathurst
confirming the undertaking which he made on the 2nd day of
July 1962 but misplaced by the plaintiff.
5. The defendant failed to deliver the said sum of £19,200 to the
plaintiff's nephew or to the plaintiff.
6. Since and after the execution of the first undertaking dated 2nd
July 1962, the plaintiff made several demands but the defendant
has refused and still refuses to repay the said sum of £19,200.

And the plaintiff claims £19,200.

30

(Sgd.) E. D. N'JIE,
of No. 19, Buckle Street,
Bathurst, Gambia.
Solicitor for the Plaintiff.

**IN THE SUPREME COURT OF THE COLONY OF
THE GAMBIA.**

Civil Suit No. S.40/1963.

BETWEEN **MOHAMED ABDALLA MOUSA**
by his Attorney **AHMED JACOB***Plaintiff*

AND

SOLO DABO*Defendant*

DEFENCE

1. Save that the defendant by his arrest was compelled to put in his appearance which he did under protest, he admits paragraphs 1 and 2 of the plaintiff's statement of claim, and no more. 10
2. The defendant pleads that this Honourable Court has no jurisdiction in this matter.

AND OR IN THE ALTERNATIVE,

3. The defendant denies paragraph 3 of the plaintiff's statement of claim and says that he never on the 2nd July, 1962, or on any other date executed any undertaking whatsoever declaring and or admitting that he the said defendant received a sum of £19,200, or any part thereof, which he was to deliver to plaintiff's nephew one Mohamed Khalil, or was to deliver to any other person, at Bo Sierra Leone, or at any other place within or without the said Sierra Leone. 20
4. The defendant denies paragraph 4 of the statement of claim in that he never executed any undertaken at Bathurst, on the 8th of March, 1963, or on any other date at the request of the plaintiff, or at any other person's request.
5. The defendant denies owing the plaintiff the sum of £19,200 or any other sum, and pleads the defence of illegality in respect of any dealings between himself and the plaintiff which may be directly or indirectly connected with the said plaintiff's claim. 30

DATED THE 4TH DAY OF APRIL, 1963.

(Sgd.) T. S. D. JOHNSON
FLORA CHAMBERS
17, Wellington Street,
Bathurst.
Solicitor for the Defendant .

**IN THE SUPREME COURT OF THE COLONY OF THE
GAMBIA.**

Civil Suit No. S. 40/63

Between:	MOHAMED ABDALLA MOUSA	Plaintiff
	And	
	SOLO DABO	Defendant

29th March, 1963.

E. D. N’Jie for Plaintiff

Defendant in person

10 Defendant “I deny the claim.”

Defence in 7 day’s time. Hearing date to be fixed by Registrar.

(Sgd.) J. A. L. WISEHAM

Between:	MOHAMED ABDALLA MUSA	
	by his attorney AHMED	Plaintiff
	And	
	SOLO DABO	Defendant

30th April, 1963.

S. A. N’Jie for Plaintiff

Johnson for Defendant.

N’Jie “It is suggested this case be put off.”

Johnson “I have a preliminary objection to take”.

Johnson “Writ of Summons—O.2. Schedule 2 S.C.R. rules 2 & 4. Alteration of writ was made without leave of Court. The date & date were altered.

Writ is void”

N’Jie “Document in form of summons becomes a writ—was the document signed first & alteration made afterwards—permission can be made to alter it in chambers. If my friend can prove it was signed & alteration made afterwards—then

Johnson “I do not have to prove anything. The Law is imperative. This is a writ issued. There is a presumption that the alteration of a writ must be by Court—in open Court. 10

ORDER.

Rule 17 Cap. appears to cover the alteration in the writ, which I am not sure at all may have been altered before or after my signature as to date & day—but it does not affect the substance of the document and is not calculated to mislead—and the writ is not void. The objection is taken at this stage of hearing long after the defence statement has been filed.

Hearing will proceed therefore. 20

(Sgd.) J. A. L. WISEHAM,

Johnson “2nd ground is jurisdiction which I am taking as a preliminary objection. Paras 1 & 2—both parties reside out of jurisdiction.”

N’Jie “I refer to paragraph 3 of affidavit of Plaintiff in a motion in Misc S. 30/63 saying defendant is domiciled in Gambia but carries on business at Bo—I refer to ‘cause of action’ in interpretation Ord. page 35 Vol. 1.—Cheshire pages 107 & 115 Private International Law”

Dicey page 55”

Johnson “graveness is—Plaintiff’s own admission is—both parties reside at Bo. They got round it by filing a Plaint by an agent. In affidavit he mentions domicile in Gambia. Both parties reside outside jurisdiction”. 30

ORDER

A suit is maintainable in the Gambia—although both parties reside outside the Court’s jurisdiction if any part of the cause of action arises within the jurisdiction.

Mr. Johnson has only argued the question of residence of both parties outside the jurisdiction, but it is clear from the definition of 'cause of action' in section 2 Cap. 5 that this Court has jurisdiction in view of para 4 of the statement of Claim that a fresh undertaking was executed at Bathurst.

I have decided this point on the pleadings. It may or may not be supported by the evidence in respect of para 4 of Claim.

(Sgd.) J. A. L. WISEHAM

Plaintiff:

10 Mohamed Abdalla Mousa, s on k, in English
Xd. by N'Jie: Business man at Bo. I live at 7&8 Cameron Street Bathurst.
I know defendant.

On 2nd July 1962, defendant in Freetown came to me and said he had business at Bo. I had £19,200 with me. I was not ready to go up to Bo. So I gave defendant the £19,200 to carry it to my brother Mohamed Khalil at Bo. I asked defendant when he reached Mohamed Khalil—he should give him the £19,200 and to show him the business. The business was to buy diamonds. Defendant has a diggers licence—and Khalil has a dealer's licence. I also have a dealer's licence. (This is it Ex. "A" admitted) Defendant took the £19,200 from me & gave me a small note—which said he had received the £19,200 from me to give to my brother Khalil. The note has been lost—I do not know where it is. Defendant did not give the money to my brother. After 2 or 3 days I went up to Bo myself and asked my brother about this money & my brother said he had not seen Solo Dabo or received anything from him. Defendant was not to be found at Bo by me. After a week or so I went Lebanon & met defendant in the Lebanon and asked him for that money. He told me he had the money in Freetown in the diamond business. Defendant said he was ready to return to Freetown that same day and pay the money to my brother Mohamed Khalil.
30 Defendant left the Lebanon. I heard from my brother that he had not received any money.

In December I came to Bathurst & still did not meet defendant. So I went back to Freetown. On 27th February I came to Bathurst and meet Solo Dabo in the street. I went with defendant to Ahmed Jacob at 7 Cameron Street on 28th February in the afternoon. I asked Solo Dabo about the money. Ahmed Jacob was not present. Defendant told me he was not running away with the money—only he had some business with Indian Rupees & had no time to exchange it. I told him I would accept the Indian money if he had it. He said he had 160,000 Rupees in Geneva. He said he had sent his young brother to go and get it. In exchange value it was £11,200. I told him I had a friend in Geneva—& that the young brother should hand over the money to my friend in Geneva & I
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gave him the address of my friend & gave him a letter to my friend to collect the money. I gave the letter four days later to Dembo Dabo—the brother of defendant—to give to my friend in Geneva. Dembo Dabo took the letter from me and went by plane by air to Geneva to collect the money to hand to my friend—Himsa Halilk. I saw him off at the air port along with defendant. I came back and sent a telegram to my friend to meet him in Geneva. I got no reply. I ‘phoned him. He said Dembo had not reached Geneva. I told defendant his brother had not reached Geneva & I went with him to the Cable & Wireless. Defendant sent a telegram to his own friend in Geneva with whom he had left the money—asking for Dembo Dabo’s whereabouts. The reply was given to by defendant to read to him. I asked defendant to make a paper for me. This is what he made because I told him I had lost the small note he had made for me. Defendant said “O.K.” It was made on 8th March, 1963. Ahmed Jacob, & his clerk Mr. Cole were present. Ahmed Jacob wrote the document and gave it to Cole to read it to defendant—who speaks Krio like me—broken English—defendant signed the document—it was witnessed by Ahmed Jacob & Cole. This is the document (put in & admitted as Ex. “B”)

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Hearing adjourned to 3rd May.

3rd May, 1963.

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Plaintiff—on same oath.

Xd. by N’Jie:—Before 8th March 1963—I received no letter from defendant. I did, however, receive a letter from defendant dated 14th March. This is it (Ex.C put in evidence)

There were 2 copies of this letter—defendant signed both copies. I was given this one & the other copy was given to defendant’s younger brother to give it to the man in Sierra Leone. I don’t know if the letters was taken to Freetown—I only sent a letter to my brother Mohamed Khalil in Bo to take the money from the man. The money was never received. I only received this telegram (Ex.D admitted) Defendant then came to me with another man Marry Tambadu. I had put the case in Court before the telegram. The brother that went to Geneva came back & said that the man he went to meet there had gone to India. When defendant & Marry Tambadu came to me in Bathurst I told the defendant —“my friend—I will not go away without receiving the £19,200” He told me “what do you want to do” I said “make a mortgage for me with your own property in Bathurst & Freetown”

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He agreed to make a mortgage for me. This was before the case was filed. He said he would like to make the mortgage with lawyer Mahoney I called Ahmed Jacob to telephone lawyer Mahoney—if he get chance—to do ‘em. Mr. Mahoney say he get chance 4 o’clock. The phone to Mr. Mahoney was morning time. So at 4 o’clock Solo Dabo & Marry Tambadu came to me again—I called Ahmed Jacob to go all together to lawyer Mahoney.

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We all went together—all four—and we met Mr. Mahoney in his office.. Mr. Mahoney asked for a list of the properties of defendant at Bathurst & Freetown. Solo Dabo said all his papers were at Freetown. Ahmed Jacob asked Solo Dabo if in the absence of his papers, whether he would make an agreement & insert the numbers of the properties. Solo Dabo agreed. Mr. Mahoney asked me the amount. I said £19,200. Solo Dabo did not agree—because he had given me a letter to receive £4,000 in Freetown—he said the £4,000 should not be included in the amount. This was the letter (Ex.C) I agreed to leave out the £4,000 & make
10 agreement for £15,200 and if Mohamed Khalil did not receive the £4,000, then Solo Dabo was to give me the £4,000 in addition to the agreement. At that time I had not received the telegram. ExD. Solo Dabo said that he had already given me £7,000 out of the amount of £19,200—and that he had also given me £6,200 worth of diamonds. I said “do you say you gave me these things?” & he said “yes”. I said “where is receipt?” He said I had not given him a receipt.

Solo Dabo said only £4,000 was due—after we were talking—he said it was £5,000. I was arguing with him—Mr. Mahoney advised us to go home and talk it over and come back to him. I was angry and I went to
20 Mr. S. A. N’Jie at once and explained everything, and he put the case in Court. Besides the £19,200—I had many business with Solo Dabo—Basiru Jawara—and Marry Tambadu—we were all living in one place Bo and we were friends, and we used to work with receipts—before this. £19,200.

Q. Do you know one Waggeh

A. Yes I do.

(Johnson objects leading question).

I gave Waggeh £140 ticket to go London to look for Solo Dabo & tell him to come. He went but said he saw him & told me that Solo Dabo was coming on Friday. This was in January. He said he wanted to go to
30 Dakar to bring Solo Dabo back. He went. I waited 10 days. I went back to Liberia—Freetown is my home.

XXd. by Johnson: At that time Freetown was my home—but from 15th January I have been here. Freetown is my place of business. Freetown is my home. I cannot go to Freetown now—Government no agree to it. I was asked to go to Lebanon where I was born. I am prohibited from entering Sierra Leone—I do not know why.

Q. Is it because you constantly break the laws of Freetown?

A. No.

Q. You are smuggler of diamonds?

40 A. No.

I told my lawyer I gave £19,200 on 2nd July 1962 to Solo Dabo to take to Bo.

It was not necessary to mention diamonds in the writ. I gave the £19,200 to give to Mohamed Khalil. He Solo Dabo said he had business. I told him if he got business to show it to Mohamed Khalil—if he bought it let him give receipts.

- Q. I put it to you that you did not give £19,200.
 A. I did give him £19,200.
 Q. This is the value you place on diamonds you sold to him?
 A. No. It is not.—because I have a buyer's licence—not a seller's licence.
 Q. You said you had business with him before. What business?
 A. Yes—diamond business—to buy. 10
 Q. I put it to you that you have always been dealing illegally in diamonds with Solo Dabo?
 A. It is not true.
 Q. I put it to you that the diamonds were sold to him in June 1962?
 A. No. I did not sell diamonds to him. It was afternoon time when I gave the £19,200. I no look the hour.—it was between 12 & 4 o'clock. It was in Freetown.
 Q. Do you know that on 2nd July 1962, Solo Dabo was at Bo before a Magistrate answering questions?
 A. No. I do not know. He was in Freetown. 20
 Q. Do you know that the case that kept him in Bo started on 1st July—it was a 2 day case?
 A. No I do not know that.
 Q. If there is evidence to that effect will you accept it?
 A. No.—because a plane is ready anytime for Freetown & Bo.
 Q. Do you know that on 2nd July—Solo Dabo drove to Monrovia after the case?
 A. I do not know of his case or driving to Monrovia—but I know after giving the money in Freetown I no see him.
 Q. On 11—June 1962, in your presence in your office at Bo, the Police 30 seized Solo Dabo's diggers licence?
 A. I was not there.
 Q. Did you not give evidence in Court about that licence?
 A. No. I did not.

The note was prepared by a clerk of Abess Brothers in Freetown. Long time business—I go Lebanon—Europe—& note was all the time my pocket.

- Q. You keep your dealers licence—of no benefit—yet you lose the note for £19,200?
 A. Because licence is in a big book & the note, on the other hand, was 40 travelling with me chasing about.
 Q. When were you last in Sierra Leone?
 A. On 13th or 14th January 1963.
 Q. When were you expelled from Sierra Leone?

- A. I don't know—not only I—plenty others.
- Q. How did you bring the dealers licence out with you?
- A. I sent for it. I am not telling lies.
- Q. If you had left the licence there—the police would have seized it?
- A. My book—big receipt book—with licence is taken about everywhere.
- Q. There was no document on 2nd July 1962?
- A. Not a lie. It is true.
- Q. What were you doing in Freetown with £19,200 when your place of business was at Bo.
- 10 A. My cousin in Abess Bros.—one day asked me about money to cover overdraft in a British Bank in Freetown. I gave him that money—to repay to me in 3 or 4 day's time. I gave him that money. He returned it on 1st July 1962. £19,200. It was returned in Freetown to me in his shop. I don't remember the day—but it was 1st July 1962—shops in town were all open. I don't know what shops were open for business or not—but I know that his shop was open.
- Q. 1st July was a Sunday?
- A. I am not lying. It was 1st July—
- 20 I did not mention diamonds to my lawyer—I don't tell him—because the £19,200—was cash money—nothing to do with diamonds.
- Q. Ex.B is a forgery?
- A. The document is a true document. Mohamed Jacob wrote it. I no savy write English. I cannot read English that is written I read small-small- broken English.
- Q. You said you once read a letter for him?
- A. No—only a telegram once-I read it small-small. (Ex.D—read out by witness slowly)
- That is all I can read—broken English. I cannot write at all—so I made Ahmed Jacob write it—Ex.B.
- 30 Q. Who wrote Solo Dabo's name here?
- A. Solo Dabo.
- Q. Who wrote Solo Dabo on Ex.C.?
- A. Solo Dabo.
- Q. Both documents Ex.B & C are forgeries?
- A. No. Solo Dabo signed them—same man.
- Q. Both the 'bs' in Dabo?
- A. It is the same—he signed it.
- Q. Have you any other papers where he signed?
- A. No.
- 40 Q. Has he paid you any money by cheque?
- A. No.
- Q. If he writes his signature now—will you accept it?
- A. If I see him write now—yes I will say he wrote it— (Mr. Johnson asks defendant to sign his signature which defendant does.)

Yes I saw him write it now—but I don't know his cheque signature. (put in for identification Ex. E—a signature) I agree Ex.E was written by him now—the letters are not joined together in the documents & now they are. Cole typed Ex.C. Solo Dabo dictated it in broken English. Solo Dabo signed it. The clerk read it to him two times. Cole is in both Exs. "B" & "C" Ex. "C" was to Ayu W zim. I understood the letter at the time because Solo Dabo said himself he wanted me to have £4,000. (letter read out). I understood the letter. I don't know about diamond business—but about the £4,000 money. I agreed to the letter being sent. I don't know if Solo Dabo kept a copy — I know he signed two copies—gave one copy to his brother and one copy to me. Cole is a clerk to Jacobs & typed the letter. 10

Q. When was document Ex.B stamped?

A. I don't remember. Treasury stamp says 14th March.—same date as Ex. "C"—I sent document Ex.B with Cole for stamping and I gave him the money—I don't remember how much. I did not make Ex.B myself. I went to Mahoney's chambers to prepare mortgage.

Hearing adjourned to 6th May.

(Sgd.) J. A. L. WISEHAM

6th May, 1963.

Counsel as before.

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Plaintiff—reminded on same oath—

XXd. by Johnson: I kept one copy Ex.C. The other, defendant said he was sending with his younger brother to Freetown. I got Ex.D telegram on 21st March, I wrote to my brother in Freetown in Arabic but I did not keep a copy. It was sent after Ex.C letter of 14th March. After this letter of 14th March—we went to Mr. Mahoney—but before the telegram. I do not remember the date. I do not remember the date I went to my own lawyer—either before or after telegram. I went to Mahoney to make mortgage with Solo Dabo.

Q. Before you went to Mr. Mahoney did he know you were going to talk diamonds with him? 30

A. No.

Q. Was it not true that he drove you all away when you talked diamonds?

A. No. He did not drive us away—he said we should come back again after arranging the matter.

Q. Did he not advise you to settle the matter as it concerned illicit diamonds?

A. No. I did not show Ex. "B" to Mr. Mahoney.

Q. Why not?

A. I did not show him—because he himself no make the mortgage— 40
because it no first thing—because Solo Dabo no deny the £19,200 for me day before.

- Q. You went to Mahoney to make a false document to sue on debt?
- A. No.
- Q. Mr. Mahoney, being an honest & respectable man, wanted to know all about debts?
- A. No—we went to make a mortgage. Mahoney never asked me about diamonds—we went for a mortgage—we did not go to make an agreement—Solo Dabo mentioned diamonds then.
- Q. Do you agree that you spoke about diamonds, diamonds—till Solo Dabo said it was £4,000 or £5,000 arrived at?
- 10 A. He himself start diamond talk; I no talk about diamonds.
- Q. In respect of the amounts Solo Dabo said he gave you—I put it to you—it was for diamonds sold by you to him?
- A. No.
- Q. I put it to you that the £19,200 is the value you place on illegal diamond dealings with Solo Dabo?
- A. I no take or sell 'em no diamonds. In July last year I met Solo Dabo in Lebanon in Beyruth. I don't know where he stayed. I reached Beyruth—I just saw him—he wanted to go back.
- 20 Q. Did you not ask Solo Dabo to give you all his money for safe keeping as he was spending too much?
- A. No he had no money there.
- Q. I put to you that Solo Dabo had deposited a few thousand pounds at Beyruth?
- A. No.
- Q. Did Solo Dabo not draw on it?
- A. No. Myself wanted money from him. He had no deposit with Lebanon.
- Q. Did you not return the balance of deposit to Solo Dabo at Beirut?
- 30 A. No. He took no money from me in Beirut. I never told anybody that Solo & I had spent a lot of money in Beirut—or repeat it a few days ago—I don't remember. I have not approached anyone to pay a commission to get Solo Dabo to give me money.
- Q. Is it true you told an important citizen that Solo spent too much money in Lebanon—so you kept his money for him?
- A. No. Not true. I only meet one day.
- Q. Did Solo Dabo buy a radio-gram for you from Liberia?
- A. Yes in 1961—but I do not know where from.
- Q. Was it in July 1962?
- 40 A. No. The radiogram is not with me. It is with I. B. Camara in Free-town. I had asked Solo to buy it for me. It is not true he bought it out of diamond sale receipts for me. It is not true that the £5,000 was arrived at after deducting £100 for the radio. That what you say.
- Q. The matter, do you realise now, is about illegal diamonds?
- A. No—it is not about diamonds—it is cash.

Rxd. by N'Jie On 1st July 1962—I was not at Bo—nor on 2nd July 1962 was I at Bo—nor did I give evidence at Bo in a Magistrate's Court. I never sold diamonds to Solo Dabo—In Freetown I have not sold diamonds to Solo Dabo. Up to 2nd July 1962—Solo Dabo never held a dealer's licence—I have never handed Solo Dabo any diamonds. Before going to Mahoney—Solo Dabo and I had agreed he owed me £19,200. I was vexed and shouted when he denied it before Mr. Mahoney. Mr. Mahoney suggested we would meet to come to an agreement—but we never met. In Beirut I only met Solo Dabo for half an hour. He never gave me money for keep. I never gave him any money either during the half hour we met. I paid for the radio he bought for me. Solo Dabo never gave me £7,000 or £6,200—nor did I give any receipts. 10

In July 1962 my licence Ex.A was valid.

P.W. 2—Abdul Rahman Cole s on K, in English.

Xd. by N'Jie:—employed by Jacob & Sons Ltd—live at 3 Hill Street—I know Plaintiff & defendant. On 8-3-63 I met defendant upstairs in Jacob's house in the morning hours. A document was given to me—I recognise it—This is the document (Ex.B identified). Mr. Ahmed Jacob wrote it. It was written downstairs in the office. I was present when it was written. Plaintiff, myself & Mr. Ahmed Jacob, were present. I did not see defendant. He had not come then. After writing the document it remained on the office table—till Plaintiff saw defendant going upstairs. Mr. Ahmed—the Plaintiff—then gave me the document to carry upstairs. Upstairs I met Plaintiff and Defendant. The 2nd Paragraph in Ex.B had been written. The 1st paragraph had been written after the 2nd paragraph. I did not go with Plaintiff when 1st paragraph was written. I took the paper downstairs myself and the top paragraphs was added after a conversation between Plaintiff and defendant upstairs. After 1st & 2nd paragraphs—were written—I went upstairs again—it was given to me to interpret in Krio to Solo Dabo. Plaintiff & Defendant were both upstairs. Afterwards Ahmed Jacob joined us. At the time I read & explained paras. 1 & 2 to Solo Dabo—there was no other writing on Ex.B. Solo Dabo then signed Ex.B. I saw Solo Dabo sign Ex.B. This is the same signature on it. I then signed it. Then Jacob signed it Solo Dabo was satisfied with the document. There was no argument at all. After signing the document it was handed to Plaintiff. A few days after—Plaintiff gave me the document for stamp duty. It was the same document. I got it stamped. 20 30

XXd. by Johnson: Employed by Jacob 3 years. On 14-3-63 I prepared a document for the defendant. It was dictated to by defendant.

Q. Why did you leave this out in your evidence? 40

A. I was not asked.

Q. You came to Court only to answer what you were asked?

A. I came to Court to give evidence of all I know of facts of this case.

I know this letter (Ex. "C"). I come to give evidence I have not finished yet. I am still in the Box. All you ask me I will give you and all of it true. I typed Ex. "C". I prepared it. Defendant dictated it to me—upstairs in 7 Cameron Street—Jacob's house. I am not working for defendant—but I have done many odd jobs for him—messages—personal letters—after sometime in March when he was introduced to me in the Jacob's house. Plaintiff introduced him to me as Solo Dabo—upstairs—on the 8th March. That was the first time I was introduced to him personally; but I can't remember when I did the odd jobs for him after that. (Looking at Exs. B & C). They are similar signatures—of Solo Dabo—they were signed in my presence—to me it looks like a 'b' in Dabo—small 'b'. In the other document—it is a capital B—but I say they are the same signature. Small 'a' in one case—capital A in the other case—but they are the same signatures of the same person in my presence.

Q. Copy the join between the a & the b (done by witness also & put in as Ex.F) (done by witness also & put in as Ex.G—connecting A & B)

The two signs cannot be the same.

The two signatures are the same—whether with small b or capital B.

Q. Would you be surprised if Plaintiff said something different?

A. I would be.

Johnson "I will tell you Plaintiff said "when defendant made this note—Ahmed Jacob & Cole were present. Ahmed made the document & gave it to Cole to read it to Solo Dabo who speaks Krio"

A. What is the difference? I said I took the document upstairs—something had to be added—I took it downstairs—then after it was added—I took it up again—read it & explained it to Solo Dabo & he signed it. I cannot see any difference. If you interrupt me I cannot give the truth. I say my evidence is true.

The Ex.C document was signed by defendant.

Q. I put it to you that both documents are forgeries?

A. No. They are not forgeries—they were signed in my presence.

Q. I put it to you that he was not present on each occasion?

A. He was—on each occasion—he was sitting on the couch—I still remember. There were 2 copies of Ex.C. I typed it for defendant & gave it to him & handed it over in presence of Plaintiff. The handing over was upstairs where it was dictated. I typed it in my office downstairs. I cannot remember all the contents—I can give the gist of it—writing to someone in Freetown to give a certain amount of money (witness goes on too rapidly for me to get down—but quite a lengthy repetition) I do not know what 'business' is referred to in the 2nd line.

The money for stamping—registration—was given to me by Plaintiff.

Rxd. by S. A. N’Jie: I am not a handwriting expert. I saw both Exs. B & C both signed by defendant in my presence. There are no foreign signatures on the documents—since they were signed. No. I never forged any document. Ahmed Jacob did not forge them—not to my knowledge. Nor did Plaintiff forge any document—not to my knowledge. Ex. B & C—are the same as when they were signed except for marking in red ‘Ex. ‘B’ & ‘Ex. ‘C’ by Court.

Adjourned till tomorrow.

7th May, 1963.

P.W. 3—Mohamed Jacobs, s on K in English.

10

Xd. by N’Jie: partner in J. Jacobs Ltd. 7 & 8 Cameron Street. I know the parties to this suit. Plaintiff came to my office on 8th March 1963—he is my guest—he lives with me. He asked me to make him a paper—promissory note for defendant — for £19,200. I made the note. This is the note (Ex B identified).

There are 2 paragraphs. I made the 2nd paragraph first. I gave the document to my clerk to take it to Plaintiff upstairs—where Solo Dabo was because they normally go & meet upstairs frequently. The 8th March was not the first time they met. A few minutes later Plaintiff called me from verandah & said I should add what is in the first paragraph. I did so. He told me the first note was lost and this was in replacement. You can see the pens are different. I gave it to my clerk to take the document upstairs. Then I followed upstairs as Plaintiff asked me to witness the signature. My clerk was reading & explaining in Krio to defendant. These are 3 signatures of Solo Dabo, A. R. Cole & myself. Solo Dabo signed in my presence. Cole also signed in my presence. I signed in their presence. I don’t know what date but Plaintiff asked me to make an appointment with J. L. Mahoney. At 4 p.m.—myself, Plaintiff, Solo Dabo & Marry Tambadu went. The purpose was that Solo Dabo wanted to mortgage his property—I think 2 or 3—to Plaintiff—to secure the £19,200. All in the same room—round Mr. Mahoney’s table. Mr. Mahoney asked for the title deeds—Solo Dabo said they were in Freetown Sierra Leone. Then I suggested whether they could have an agreement until the title deeds are available.—For the payment of this £19,200—to be paid within 6 months as arranged for. Mahoney asked names of parties. One of us must have given the name. When we suggested the sum of £19,200 Solo Dabo said it was not as much as that. He first said it was £4,000—then he said £9,200 or £9,400—then Marry Tambadu, I think—started to speak in Mandingo. I asked Mahoney whether he knew Mandingo—he said “No”. Then Plaintiff, defendant & Marry Tambadu began to argue—Marry Tambadu & defendant in Mandingo—Plaintiff & defendant in Krio. I understand Krio. Plaintiff was saying £19,200 & Solo Dabo was saying £4,000, £5,000—£9,000—then Mr. Mahoney suggested they go away & when they agree on a fixed sum, he would be prepared to do what they wanted. No receipts

were produced at the meeting. Ex.B is in my handwriting. There is no change. I do not know of any meeting after that. At this stage, at the request of S. A. N’Jie—the following order is made.

ORDER

Under O.7 R.41 of Schedule I of the S.C.R. I order that a representative of the Bank of West Africa Ltd.—do attend this Court in this case for the purpose of producing signatures of the defendant by a representative who is able to testify to such signatures.

(Sgd.) J. A. L. WISEHAM

10 Witness continuing:

Xd. by S. A. N’Jie: I do not remember dates. I am not interested in remembering dates. Defendant was introduced to Cole. In March Cole was called to draft a letter—by defendant & Plaintiff—anyway they were upstairs. Cole asked my permission to go & draft the letter. He drafted it in red ink—& then typed it—I think it was typed two or three times, as it was changed. This is the letter (Ex. C identified). It was signed by Solo Dabo in red ink—It was in duplicate. I think only red ink was available. On 8th March—when Solo Dabo signed—he was normal—he was always friendly—he was never hesitant to sign the document.

20 **XXd. by Johnson:** Plaintiff told me—an hour later—that his brother was sending one copy to Freetown. I told Cole “What are you doing?” He said “I am writing this letter”—he showed it to me and I read it. (Ex.C letter). The time he took to type the letter was longer than I expected—so I asked “what are you doing?” I was not interested—it was the clerk who offered it to me. It is not correct that my clerk and I and Plaintiff knew all about the letter. I did not see defendant sign this (Ex.C) letter of the 14th March.

Q. Would you be surprised to know that defendant did not sign that letter?

30 A. Well, I don’t know. I would be surprised to know he did not sign. But he was there at the time. I would know if he had gone away. Actually I don’t know his signature—it looks like on Ex.C—but I am not an expert. Unless I see him sign — I would not know his signature. Document 8th March—in my handwriting—I prepared it. Solo Dabo signed it. Myself & Cole also—3 people signed it. Yes—I say this is Solo Dabo’s signature on Ex.C. If I saw it anywhere else—I may not recognise it—I am not a good recogniser of signatures. Looking at Exs. B & C—the signatures are nearly the same—nearly the same—nearly the same. They may be not the same—one is a small ‘a’—the other is capital A.—so with the “bs”—looks like a
40 big S or 8

You can always find two different ways of writing. It is also possible two different people wrote it. It is also possible they were written by the same person. Maybe anything is possible. This one on the 8th March is not forged—because I was present. The signature on 14th March—I do not know. I do not know if this is defendant's signatures. Capital & small letters do not look the same. Ex. D signature. I don't know. The one on 8th March—is Solo Dabo's signature. It is not a forgery. I prepared it & saw it signed by Solo Dabo. I am sure of it —certainly. My clerk was present when Plaintiff asked me to prepare a promissory note. I did it & sent it upstairs. Only Cole was present when I made the addition downstairs. 10
When Plaintiff asked me to make a paper—defendant was not present at first. I know my statement—if Plaintiff asked defendant to make a promissory note—that may also be correct. I have several pens on my table. I used a different pen in the different paragraphs. Ex.B.—I did not date it at first. It is not true the document was forged and portions added. Maybe same pen that wrote 1st paragraph & word 'witness'. Plaintiff is my guest—he asked me to telephone Mahoney—he did not know him—he knows no one. I told Mahoney—I think I mentioned the name of my guest—I told him I wanted an appointment—I cannot remember if I said what the appointment was about. I told Mahoney—that Solo Dabo wanted to make 20
a mortgage for a sum —I may have mentioned the amount—but Mr. Mahoney will remember better. We were there only for—we did not complete the transaction—I went there to introduce Plaintiff—it was all done in 2 or 3 minutes—I cannot remember—but Plaintiff did not produce Ex.B, that was his business. If the transaction was to be completed — I think the document Ex.B must be produced —but it was a matter of a few minutes.

It is not true we did not go to Mahoney to prepare a mortgage. It is true we went for a mortgage—that is why Mahoney asked for title deeds. The amount was disputed before Mahoney—not “hotly” disputed. 30
Defendant could dispute the amount although he made Ex. B. He knew of the document. In Mahoney's chambers—Solo Dabo said amount was only £4,000—then £5,000—then £9,200 and then they argued. I started to talk to Mahoney to ask if he understood Mandingo. I heard talk of diamonds. You should ask for it—I don't talk a lot like you. What I can remember—defendant said “I gave you diamonds”—worth a certain amount—I don't remember. Mr. Mahoney said—they should not discuss matters there—not necessarily about diamonds—there is nothing wrong in talking about diamonds anywhere—but he did not want any argument there. None of the parties talked of diamonds to me before. I know both are diamond business people—but the first time 40
they talked of diamonds was in Mahoney's chambers. It may be, it may not be diamonds are connected with it. At the time I read Ex.C —then I knew what it was all about. That is what I am saying, I know they are diamond business people. My Clerk prepared Ex. C and intended for Solo Dabo. Ex. C does not support that there was diamond business

between them. It was from Solo Dabo to Ayub Wuzin. "Pay £4,000 or give diamonds". Of course—I knew they were business people. I did not know a lot of their business—because I was not interested. After I left Mahoney's chambers—I think so—that was the last—we returned to my premises and I came down—last time I had anything to do with the matter. I cannot remember the date we went to Mahoney's chambers. My driver or I may have taken Plaintiff to Mr. S. A. N'Jie. I cannot remember-or-when—not the same day we left Mahoney's chambers.

- 10 RXd. by N'Jie: I did not forge Ex. B. I wrote it and Cole, Dabo and I signed it. Before reaching Mahoney's office—at no time did Solo Dabo deny owing £19,200. He did not deny before Mahoney that he did owe some money to Plaintiff. Solo Dabo was very frequent visitor to my place—sometimes twice or 3 times a day—sometimes collecting the Plaintiff at night for a drive.

(Sgd) J. A. L. WISEHAM

P.W.4—Martin Ebenezer Sock, s on B, in English:

- 20 Xd. by N'Jie: 7, Kent Street—Chief Clerk Bank of West Africa Ltd. I know Solo Dabo. I am familiar with his signature. I have cheques drawn by him and also his specimen signature card. I now produce them. (Exs. H.1 to H.6 admitted).

- 30 XXd. by Johnson: (defendant writes a signature again in Court marked Ex. J) (Shown this Ex. J)—defendant signs like this. He never signs otherwise. I do not know why he signs like this—since he is an illiterate he signs script. That would be the reason why Bank allows him to sign like that. Looking at Ex. B document. I do not know whose signature that is. So far as Bank is concerned, we would not pay on that signature—because we have got his specimen signature. Looking at Ex. C also Bank would not pay on that signature. If one signature is his on Ex. B—I would say that on Ex. C is not his. They are not the same—nothing identical. Possible they were written by two different people—not possible the same person. I cannot commit myself—but it looks like somebody trying to copy his signature—according to our specimen—if cheques were signed like this we would call it forgery. Solo Dabo has an account with Bank well over 18 months.

RXd. by N'Jie: I have not seen his signature outside the Bank—on anything not connected with cheques. His letters vary in size on cheques—but variation is not much.

Looking at letter of 14th March—Ex. C—Solo Dabo's signature is joined.

P.W.5

- 40 Both the next witnesses absent. To be warned to be present tomorrow. Hearing adjourned till tomorrow.

(Sgd) J. A. L. WISEHAM

8th May, 1963

Counsel as before.

P.W.5 Marry Tambadu, s on k, in Krio:

Xd. by N'Jie: 15 Hagan Street. I know the parties—we are all friends. We have had money transactions. I went to the Lebanon sometime ago. I met the Plaintiff there when I went there with the defendant. I left the Plaintiff and Defendant in Lebanon—I left for Rome the very next day. Here in Bathurst I met Plaintiff, defendant, Ahmed Jacob—at Ahmed Jacob's place—may be in three or four times in March. Plaintiff said he would take defendant to Court for money due. He said this on presence of defendant. (Johnson objects and says evidence is being led). 10

Q:— Was the amount mentioned?

A:—

The amount was £19,200. All three of us were present, in Ahmed Jacob's place. Ahmed was not present. Solo Dabo did not say 'yes' did not say 'no'—he said they had business—and Abdulla knows and he knows. Not same day, but after the talks at Ahmed Jacobs—we—Solo, Mohamed Jacob, Abdulla and myself went to lawyer Mahoney. Abdulla said he wanted to make an agreement paper for his property—that Solo's houses in Bathurst and Sierra Leone. I don't know what for. Ahmed Jacob made a telephone appointment after they had agreed to go and make an agreement—at 4 or 5 o'clock, we went to Mahoney's place—we all went together. I don't remember the car. When we got to Mahoneys—Ahmed said "what I tell you—we come to make a paper" Mahoney asked Solo for the property papers. Solo said they are all at Freetown. Mahoney said "how can we do because property papers all at Freetown" Ahmed Jacob said "well—anyhow—make other agreement" Mahoney said "how much the amount?" Abdulla said £19,200. Solo said "No" Abdulla said "why". Solo said £4,000 is due to your brother—not you". The brother was Mohamed Khalil. Then they argue with that about the £4,000. Abdulla wanted to add the £4,000 to his amount and Solo said "No"—it was for his brother". Mahoney said "if it is a limited Company you can add it—if not a limited Company you should not add it". Abdulla said "balance is £15,200." Solo said "No" he said he had given £7,000 and some diamonds for £6,200 or £6,300—I cannot remember Solo said the balance was £5,000. Abdulla got up and was vexed. Mahoney said "you come to make paper—not for argument—so let you go—you come to one—and we make paper". Then we go out. Everybody go away. I don't remember travelling back or not in same car. Before going to Mahoneys—there was no disagreement between them—no argument—not in my presence. I know Solo's signature—sometime. I do not know if he signs differently. 20 30 40

Johnson "I wish to object to the documents Ex. B and C being put to the witness at this stage?"

Court “what stage do you suggest?

Johnson “Witness said if he saw his signature—he would recognise it. If they are put now—it would be suggestive. Witness should first describe his signature—how it is written or things like that. All the documents should be put in at same time and not piece meal and let him pick out.

ORDER

Objection overruled. Witness is at liberty to say ‘yes’ or ‘no’ to each document.

- 10 Q.— Whose signature is on this Ex. B and C?
A.— I don’t understand. I cannot read or write.
Q.— Whose signatures are on these Exs. H?
A.— He used to sign like that before me.
Q.— Did you ever talk to anyone about Solo’s way of signing?
A.— No.

I know Ahmed Jacob. Ahmed Jacob showed me the paper and I said I had never seen Solo sign like this before. I also talked to Basiru Jawara about Solo’s signature. Basiru said Ahmed said he made paper with Solo. He asked me ‘he said Solo sign? He said he sign—but the signature that he sign I had never seen him sign before.

- 20 **XXd. by Johnson:**—I was in Lebanon in July 1962. Solo met me there. I went before him—one month before him. I did not travel there with him. If I said I went there with defendant it is not correct. I was in Lebanon 8 days—then I left. Solo was there 7 days—then Abdalla came 8th day & I left for Rome next day.

- Q. How did you know when Plaintiff arrived?
A. Because we are all friends—Abdalla cabled to his people saying he’s coming today—& his people told myself Solo & Basiru.

Xd. by Court “Where is Basiru now?”

- A. In Sierra Leone.
30 In the Lebanon—I knew Abdalla was coming—he cabled but I never saw him at all.
Q. When did Abdalla tell you Solo owed him £19,200?
A. He told me in Sierra Leone & here in Bathurst at Ahmed Jacobs, in March. I reached Bathurst on 18th March. I came from Sierra Leone I had left January 8th—1963 for Sierra Leone from Bathurst. It was the 19th March—I saw Abdalla & Solo. Since I saw him, he said he wanted to take Solo to Court he told me about the money Solo owed him—2 or 3 days after—I told Abdalla not to take Solo to Court. It was after that we all went to Mahoney. I don’t know the date—but
40 not the same day after Abdalla told me. I don’t know what business they had—I was

never there when they did business. My business is trading—everything—diamonds also inside everything—also gold. I don't know what business they were talking about. I don't know if it was diamonds—I did not suspect diamonds. I have a digger's licence.

Q. Where do you dig your diamonds—in Beirut?

A. No.—in Paris—you say Beirut—so I replied Paris—No. I get my diamonds in Sierra Leone.

After the argument in Mahoney's chambers—they were not arguing about diamonds—they were arguing about amount of money. I did say Solo mentioned diamond—but that was the last thing mentioned in Mahoney's chambers. They talked about diamonds—then I knew it was about diamonds. 10

Q. Who asked you to come & give evidence?

A. I stay in my house, then the summons came to me. I took the summons to Plaintiff & asked him. He said 'Yes'—because when we were talking you were present. I am quite sure I arrived in Bathurst on 18th March. Everybody—went away—from Mahoney's office. I don't know whether together in a car or not. Probably in a car dropping us where we stayed. I said Ahmed Jacob showed me a paper signed by Solo. It was before going to Mahoneys. I don't know why he showed me the paper. 20

Q. Why did you say Solo had never signed like this before when Ahmed showed you the paper?

A. Because I saw the paper and said it was not like his signature—maybe he changed. I doubted he signed—but if he signed it he changed his signature. Ahmed only showed me the paper but he did not ask me about Solo's signature. May be he showed me the paper for the signature. That was the only paper he showed me. After that I talked to Basiru—& told him the signature of Solo that he used to do I did not see—maybe he changed his signature. It was before we went to Mahoneys. No paper was signed in my presence. I know Solo Dabo since 1956. All this time I see him sign one way—like this Ex. H.1. We are all friends. Solo cannot read—but we all try. Not seen him ever wrote a letter or read a book. 30

RXd. by S. A. N'Jie:—I have a diggers licence. Diggers then sell to Dealer's licence. Solo never said that Abdalla ever sold him £19,200 worth of diamonds.

P.W.6—Reuel Andrews, s on b in English.

Xd. by N'Jie:—Employed by Cable & Wireless. 17 Gloucester Street. I have in my possession, that is the company's possession—telegrams sent by both Plaintiff & Defendant. I have 2 cables brought here and sent by Plaintiff. I have also, but not brought them, cables sent by Solo Dabo. The reasons are I have instructions from the Manager not to bring these cables until he has made further investigations. The second reason is the subsequent subpoena was only handed over at 9.5 o'clock this morning. 40

Hearing adjourned till tomorrow.

9th May, 1963.

Counsel as before'

P.W. 7—Basiru Jawara, s on k, in English:

Xd. by N'Jie: 15 Hagan Street—business man. I know both parties. We are all friends. Of course—We have money business between us. (Witness makes application to say) "I have just received this summons—not even 24 hours I went to be excused giving evidence till I see Plaintiff." (Court explains he cannot be released & must continue to give evidence).
10 In January I saw Plaintiff in Bathurst—don't remember the time. He said he come for see Mr. Solo. He did not see Mr. Solo here or in Freetown. From July 1962 to date I don't remember Solo in Bathurst. I cannot remember the last time I saw Solo in Bathurst. 1st & 2nd July 1962, I was in Dakar. I was not in.

Q. Where you in Freetown in July 1962? (Objection—Put another another way)

Q. Where were you in July 1962?

A. I left for France—cannot remember date—but all the month I was in Paris, Beirut and London. I returned to Freetown 1st August. I did not see Solo on my return. In Beirut—I saw Plaintiff and defend-
20 dant—about a week we were together—sometimes—not always. Marry Tambadu was also there. We lived together—all 3 of us in same hotel. When I returned to Freetown—some time passed—cannot remember month I met Solo Dabo. He told me nothing of his movements. He did not tell me of any difficulties with any person. I don't remember the time—last year—Solo Dabo returned to Bathurst. I was not in Bathurst on 28th February 1963. I do not know of any monetary dealings between the parties. I have a digger's licence in Sierra Leone for diamonds.

30 The man who served me with summons met me yesterday opposite Mahoneys. Marry Tambadu was with me when the process server came. I was in a house—Marry Tambadu, Solo Dabo & process server were all three talking—I met all three in the street. We handed me the paper—I said "take back paper — I know why you serve me with this—I know nothing about the case". I said nothing more.

Application to threat him as hostile.

Treated as hostile I did not tell Secka—to go away and say he did not see me. I did not say my friends and I do not want to meddle. (word meddle interpreted)—No. I did not tell anyone I did not want to meddle in this matter.

XXd. by Johnson: Between summons & now I talked to lawyer N’Jie. He asked me about Plaintiff. I said “I don’t know him”. Nobody asked me to apply for permission to see Plaintiff first. I was not asked any further question by lawyer N’Jie. I have not seen you before; I do not know of any diamond business between Plaintiff and Defendant. Solo Dabo is my friend—that is all—not related.

RXd. by N’Jie: Nil.

P.W. 8—Momodou Secka, s on k, English.

Xd. by N’Jie: Process server. Court House. 58 Lancaster Street. Yesterday I served a summons to a witness—Basiru Jawara. He was served at Buckle Street at 15, Buckle Street—Mr. Mahoney—on the footpath at the entrance to Mr. Mahoney’s office. I did not know him before. I went to Wellington Street. to lawyer Johnson—there I met Solo Dabo—whom I asked where is Basiru Jawara—he said “give me 5 minutes—I will take you where he is” After 5 minutes, I boarded Solo’s car with 3 others in the car to Buckle Street. The car stopped at the entrance of Mahoney’s office. Then Solo called for Basiru Jawara, who was in the office of Mr. Mahoney. When Jawara came out—I took out the summons—explained to him & gave him the time for today & served him. Basiru did not appear to understand so I explained summons to witness. He said to me “I know nothing about this case” I said I was to serve & explain. He went as far as want to refuse service. I said if you refuse—I have something else to do. That was the end of the conversation. So far as I remember. He did not suggest for me to say I did not see him

XXd. by Johnson: Nil

P.W. 6 recalled: Reuel Andrews, s on B, English:

Xd. by S. A. N’Jie: I now have some telegrams—sent by Plaintiff—These are the 2 cables I produce Exs. K.1. & K.2 put in) I also have 5 telegrams—sent by Solo Dabo—These are the 5 cables I produce Exs.L.1. to L.5) (3 telegrams appear to be personal).

N’Jie: “I want them for the signatures”

So far as I remember I prepared two—both on 5th March—No.37 & 47. They were both signed in my presence. The signatures are not consistent—not the same thing every time. When this telegram to Switzerland was being addressed — it was made by Solo in the presence of Mr. Abdalla.

XXd. by Johnson: Solo was accompanied by Mr. Abdalla, when Ex.L.1 was sent—but I cannot remember if Mr. Abdalla accompanied Solo when Ex.L.2 was sent. The 2 signatures of on Exs. L.1 & L.2 do not appear to be the same. In Ex. L.2—the characters are clearly printed—the one in which I cannot remember whether he was accompanied. In Ex. L.1—the first name Solo is not very clearly written out—S is printed—the O does not appear printed—it appears an attempt to write script.

Xd. by Court:—Solo signed both Exs.L.1 & L.2 in my presence.

XXd. by Johnson:—Exs. L.1—appears ‘ ‘Sle’ Ex.B—appears ‘Selo’—they are not the same. Ex.L.1 signature is not the same as any of these signatures. Ex.L2 signature is printed—in Exs’ B.C.—whoever tried to write it tried to write a running hand. Of the remaining telegrams—only two appear to have Dabo’s signatures. L.3 was not signed. Solo dictated the telegram-in pidgin English—the telegram is definitely not his exact words—

- 10 **Q.** Did either Plaintiff or defendant approach you before the summon?
A. I think I would say ‘yes’—the Plaintiff did.
Q. What did he approach you for?
A. He did an enquiry—he asked me if I could remember when he accompanied Dabo to despatch a telegram. I said ‘yes—I can remember fully!

- I cannot remember – but it was sometime before the receipt of the subpoena. We then said “you might be subpoenaed to give evidence” I thought it was implied—but Plaintiff subpoenaed me as R. Andrews—Manager was also subpoenaed. I said I did not like to go to Court—it is a bother—waste of time. Nothing else was said between Abdulla & myself.
20 Meeting took place in my office.

- Q.** Did Abdulla give you anything at all at that meeting?
A. What are you suggesting?
Johnson—“Nothing”
A. He gave me nothing.

It is not usual for me to insert his address—but in this case the sender is illiterate—& we insert it—even sometimes in the case of old people who forget—we ask the address & insert it. We attach no importance to the address. Both summons were received the same day.

- Q.** Why do you think Abdulla wanted you to give evidence?
30 **A.** Because Abdulla came with Dabo & the telegram was written in his presence.
Q. I suggest telegram L.1 was not sent by Solo?
A. I am very very sure of all this. Solo came with Abdulla—Solo signed it & it was on his instructions.

- I say very emphatically also that telegram L.2 was sent by Solo. The times of the telegram are on the telegram. On 5th March—I was on duty 8 a.m. to 2 p.m.—similarly on 6th March. I said the telegram was sent in the evening. This telegram was filed in the evening—when I was not on duty—but happened to be in the office— it was filed at 18.15 p.m.
40 —and transmitted at 18.20—Handing in time was 18.15 p.m.

Q. I put it to you Solo Dabo was never in the office at that time.

A. I confirm Solo Dabo was in the Cable & Wireless Office at that time.

Ex. L.2 was handed in at 10.15 p.m. & transmitted about 12 o'clock I was on duty in the morning. Coron transmitted it. It is not correct to suggest that Ex. L.2 was the only occasion I saw Solo Dabo—James Coron—transmitted it as operator. I have it too clearly in my memory. I am not confused about the 5th March. It is not correct to suggest I saw Plaintiff & defendant at different times. On 5th March—it was the first time Solo Dabo saw me in the morning. I was officially on duty, Coker & Coron were on the opposite shift. Either of them could accept telegrams that evening. It is not correct that either of them received Ex.L.1. Coron received it over the counter & transmitted it. At the request of defendant—I prepared it—I wrote it out. I prepared it in the office at the counter. Coron is not now in employment. I do not know where he is now. He resigned on the 30th April—almost every member of Cable & Wireless try to get a better job. Coron was in the instrument room when I prepared the telegram. I prepared it because defendant asked me to prepare it. Outgoing telegrams are normally written there & received. I go to the office as often as I can during leisure hours. I chose to assist my colleagues—and at request of defendant. I was in the instrument room when the bell rang.

Q. I put it to you—you were only with Abdalla

A. Mr. Johnson—this is most incorrect. It is my common practice. I love to work. I go to the office 1001 times a day.

RXD. by N'Jie: I say Solo Dabo signed Ex. L.1

Hearing adjourned till tomorrow.

(Sgd.) J. A. L. WISEHAM

10th May, 1963.

Counsel as before.

Plaintiff recalled: with permission of Court—resworn:—

XXd. by Johnson: Date you left Lebanon?

A. From Freetown I went to Paris — Switzerland—then Lebanon. I left Freetown on 13th July 1962 between 13th & 20th I left Freetown & Lebanon. I reached Lebanon on 20th and left Lebanon after 2 or 3 months. On 2nd July 1962—I saw a clerk of Abess Brothers made the document—one of his clerks—Ali Abess was one of the witnesses. I do not know Mr. Andrews by name—if I see him I recognise him I do not remember who gave me his name. I did not talk to him

10 before summoning him. I told Mr. N’Jie about Cable & Wireless—
but me myself I never talk to him If Andrews said I met him before
summons it is a lie. I have never asked him to make a telegram. One
day I went with Solo Dabo for him to make a telegram to send to his
younger brother in Switzerland. I think it was in March—but I do
not remember morning, afternoon. If you say 10 o’clock—I don’t
say true or not true. The telegram was not received from me—It was
received from Solo Dabo. I don’t know the clerk who received it for
Solo Dabo. I don’t remember how light in colour the clerk was. I
no measure the man—tall or short—he was standing behind the
counter. No only this man—but there were 2 or 3 others. Solo Dabo
called a man—I don’t know from which side he came out—When I
entered the building—there was nobody there. Solo Dabo called a
man. He called him from outside—he shouted but I don’t remember
what he said—He shouted for someone .I don’t remember how many
came. I only saw one man come and write the telegram for Solo.
Behind the counter there was only one man—but I saw others going
and coming. That day I only went once to Cable & Wireless with
Solo Dabo. Solo asked this man to write. The message was to enquire
20 the whereabouts of his brother whom he had sent to Geneva. The
telegram was sent to someone outside Geneva. He had the address
& produced it to the man who wrote the telegram.

Q. I put it to you, you alone sent the telegram.

A. No. I asked somebody what this man who wrote the telegrams was
called and I was told ‘Andrews’—but before that day I had never
seen Andrews. I don’t remember when I asked for his name but at
Cable & Wireless—whether inside or outside.

(Court adjourns 10 minutes).

30 **Johnson** “I wish to bring something to your notice. When your lordship
adjourned for 10 minutes--Plaintiff accompanied his lawyer to Magistrates’
Court. I directed someone to follow them. The information I got—I
would like to put to your Lordship.”

Court: “You tell me”

Johnson: “The Lawyer said to the Plaintiff—answer questions ‘I don’t
know—I don’t know—and not answer directly”

Court “In defence you can call such evidence if you desire.”

40 **XXd by Johnson:** It was inside the Cable & Wireless Building—when I
asked for Andrew’s name. Inside or outside the office I don’t know. I
think so—Andrews was there. It was not the same day as the telegram
(L.1) was sent. I don’t remember how many days after. When one put
case then one put witness—one know one clerk write telegram—that is
why I ask name—but I no ask name to himself. I no make no meeting with

him. I savy the house of my lawyer—but I no know the address. I no know where Andrews lives. You say 17 Gloucester Street, but I don't know. Yes I have been to my lawyer's house—many times. I no see Andrews there. I no know if he lives at the same address. I say Solo Dabo himself sent that telegram (Ex.L.1) and he himself signed it. (Looking at Ex. L.1) I no savy read English. But he himself went and called clerk to write telegram—meself go with him—but meself know what he himself told to write. I think this telegram (Ex. L.1.) — he sent return telegram. I look at address Solo Dabo had. I see same address here. I no learn read at school—I read one by one small small. Solo Dabo sent this telegram (Ex. L1.) in my hand. Solo Dabo signed it. I see the signature. 10

Q. Is that the signature you know?

A. Maybe — he signed paper for me, but I can't tell his signature. sometime he sign four five signatures—meself know he sign it and I see it. Ex. 'C'—is also sign by Solo Dabo—meself see it. Ex. 'B'—is by Solo Dabo—meself see him sign it. I saw Solo Dabo sign all 3 documents Exs. B, C & L.1. 20

S. A. N'Jie—To what extent

Rxd. by S. A. N'Jie: “Where were you living in Beirut?

(Objection by Johnson: not in XXtion)

Court: Not very material.

S. A. N'Jie—Did you offer Andrews money to come here? 30

A. No money, no arrangement, no meeting.

Q. The person sent to Switzerland—younger brother—was that the Dembo Dabo.

A. Yes.

Close of Case for Plaintiff.

Defendant:

Solo Dabo, s on k, in Krio.

Xd by Johnson: Business man—4 Lancaster Place. Bathurst. I know Plaintiff—for about 2 to 3 years. I first knew him at Bo in Sierra Leone. I was doing diamond business. Plaintiff was also doing diamond business. I have a digger's licence. Yes. I did diamond business with Plaintiff. I remember June 1962—I did diamond business with Plaintiff in Sierra Leone. On 10-6-62, I bought one parcel of diamonds for £12,300 from Plaintiff. If Plaintiff sold his diamonds to Diamond Corporation & they told him the offer—& Plaintiff told me & if I offered more—then Plaintiff would sell it to me. During the time I bought this parcel from him in June 1962—I deposited with him £1,000—leaving balance £11,300. Then 21st 40

June— Monday—I buy 3 pieces of diamonds from Plaintiff for £7,000. Before I paid the money—I said to Abdulla “if you guarantee that I will not lose more than £1,000—then I can take them” He said the Corporation had offered £6,500. So I offered £500 more. I paid him £7,000 in cash to Abdulla. On 21st June 1962. He guaranteed the £6,200. On 21-6-62, the Police watched me and him on that day. When the business finished, Police said they suspect me of buying diamonds from Abdulla. Police demanded the diamonds from me. I said “No. I will not give it” because Police no ask for paper. “Law no allow you to touch the diamonds” I said. Abdulla asked me to hand over the diamonds to him and not to the Police. I said “if you give the diamonds to the Police—it will be on your own responsibility—not mine” Abdulla said he would not do so—so he returned the diamonds back to me. All this took place in one place—in Abdalla’s shop in Bo—in the presence of Police. Police again demanded the 3 pieces & I said “No”. The four Police seized me to take the diamonds, but did not get them. I was arrested—taken to Police Station—searched my pockets—nothing found—and they said they would charge me for obstruction—Police went back to Abdulla to give evidence in Court against me. He attended the Court. Police called Abdalla to the station he—refused—so Police went to him to get his evidence. It was front of myself—thats how I know. In Majistrate’s Court, Bo, Police said it was for fighting and refusing to produce diamonds. Abdalla gave evidence in Court that Police found no diamonds in my hand in his shop. He said this to get himself out of trouble. The case was thrown out of Court. Police seized my licence which was cancelled from 21st June 1962. Then that very day—after taking statement—Abdalla said “I agree to the guarantee—pay the money “He guaranteed £6,200. Then previously on 18-6-62 I had a case with a Customs Officer. That finished on 2nd July in Bo at 2 o’clock. I went to Liberia on 3rd July. I left Bo on the 3rd July. On 4th July—Police told me something—I was arrested on the plane & taken off the plane by Police—for smuggling diamonds. They searched two of us—Alhaji Berbiyigi—found nothing—He was left off. Later I was released. I left Liberia for Bathurst—may be 7th July or so—it is in my passport—I was in Liberia—less than a week. I flew back to Bathurst—on a travelling certificate, but when I got here I got a British passport. I left on 11th July for Dakar—three days later flew to Paris—then to Beirut in Lebanon. Abdulla knew I was going to the Lebanon—I told him I would be going when the case was finished in Sierra Leone.

13th May, 1963.

-40 Due to part heard & other criminal appeals today—Hearing of this case adjourned to 16th May.

(Sgd.) J. A. L. WISEHAM

16th May, 1963.

Due to Criminal Sessions—Hearing adjourned to 23rd May.

(Sgd.) J. A. L. WISEHAM

23rd May, 1963.

Counsel as before.

Johnson "I would refer to security for costs"

Court "Please make a motion on paper"

Solo Dabo, s on k in English—

Xd. by Johnson:—This is my passport (Ex. M. admitted) It will show when I arrived in Lebanon in July.

Court "I suggest a compromise between parties—if possible"

(To adjourn for $\frac{1}{2}$ hour)

Later—No compromise effected:

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Solo Dabo—continuing on same oath:—

I left the Lebanon on 25th July. When I reached Lebanon—in a few days' time Momodou arrived. We were together 5 or 6 days. He asked me to go easy & not use lot of money. He asked me how much money I had used. I said I had to check my traveller's cheques. I said I brought £2,500 travellers' cheques. I gave him the traveller's cheques—I did not check how much. I was to take small small from him. The time I left—the balance he gave me was £700. We only discussed life in Beirut—it was hard—nothing else. The time I left — I said I wanted to go Italian—Paris—and London. I left Lebanon—for other places—for Paris London—then Dakar —then Sierra Leone—then left in September for India—then London & back. (Delhi & Bombay & Pakistan) I met Plaintiff in February this year. My brother told me Plaintiff wanted to see me. We met at Jacobs—& Plaintiff said everybody had been deported from Freetown—including myself—the first man to be deported. He said Police here had been informed by Sierra Leone. He said we could do same business in Congo and other places. Then at another meeting between 18th to 20th March, he said to me could we settle the business between us—it was at Jacob's house. He said "if you have not got the money now—let us go & see a lawyer for balance left—to make a paper" I said "Yes—I am ready—I will make a paper". He phoned Jacobs & we fixed up with Mahoney. Same day, in evening, Plaintiff, Jacobs, myself Tambadu went into Mr. Mahoney's office. Jacob told Mahoney we came to make account. Mahoney said what kind of business of this was £19,200—I tell him say why? supposed to be £19,200. He said his brother £4,000—his own £15,200 I told him no mention brother — he owes me—I owe him—don't join his. He agreed. I said how is your £15,200? Have you not received diamonds from your brother for £6,200 & radio for £100. If you move inside the amount—how much you leave, He agreed he received the £6,200 in diamonds and the radio. He said his account was £21,400. I tell him first

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parcel was £12,200—deposit £1,000—and balance was £11,300. 2 packet of 3 pieces was £7,000. Before I pay you must give me a guarantee. He guarantee for £6,300. It was not sold—the 3 pieces of diamonds—were returned with radio. This was to be deducted from amount' Balance should be £11,300—then reduce the £6,300—balance was £5,000. Plaintiff would not agree. Mr. Mahoney said “if this business about diamonds—you should agree to an amount before coming here”. I told Mahoney “this man never told me about this account until today”. Mahoney said “go away & consider—before coming back”. I drove them back to Jacobs. Plaintiff said in the car—Plaintiff said—he did not agree to this amount—he said he would get 20 witnesses for me to pay this amount. He said he had already gave Sibou Wake £140 & would buy other witnesses. I made no agreement with Plaintiff on March 8th. I did not sign any paper. I did not send any cablegram on 5-3-62 with Plaintiff. I did not write any letter to Freetown on 14-3-63 or dictate it. I was not in Bathurst on 14-3-63. I left at 6.30 a.m. from Bathurst for Kuntaur. I mean I woke up at 6.30 a.m. to cross over—we crossed over & I was in Barra at 7.30 a.m. I returned to Bathurst on the 16th. I never saw Plaintiff on 14th morning. I was not alone that morning. I took the Land Rover—it had come from Kuntaur on 13th—night—& in the morning of 14th it was at Barra. On 2-7-62—I signed no paper at Freetown. I was at Bo. I received no money from him. I did not even see him. He never gave me any cash money at any time to give anybody. I cannot read—I see Ex.B. I see Ex.C I no see my name. If printed — I can see it. I do not see my name in Ex. L.1. This is my passport—my signature is in it—This is it (page 2) I have no other way—I only just print—also on cheques.

XXd. by S. A. N’Jie: I knew Plaintiff 3 years ago. Our business was diamonds and other things—but in Sierra Leone diamonds only. I have a digger’s licence. It was seized on 21-6-62. It was before the Court proceedings—when I was arrested. I see now Plaintiff’s dealer’s licence. All the time I knew Plaintiff—I knew he had a buyer’s licence. During our business—I always sold to him and bought from him. Our business was not in writing—guarantee was in words. He has his amount in his book—I have the amount in my book. I have my book here—if you want it—I can go with policeman—Of course now. I print myself how I did business—I know only the money I write—no dates. I can go home now and bring the book. (S. A. N’Jie requests that witness be asked to go and bring the book).

Court adjourns for that purpose.

In Chambers—Mr. Johnson reports that he has been assaulted after Court rose.

I return and decide to adjourn case till Monday 27th.

(Sgd) J. A. L. WISEHAM.

27th May, 1963.

Due to other causes & matters—Hearing further adjourned to
6th June.

(Sgd) J. A. L. WISEHAM.

6th June, 1963.

T. S. D. Johnson for defendant.
S. A. N’Jie—is absent—and is having a tooth extraction. 10
Hearing adjourned to 10th June.

(Sgd) J. A. L. WISEHAM.

13th June, 1963.

Counsel as before.

S. A. N’Jie “Both of us are appearing in Court below—he as com-
plainant—and I as Accused” 20

Johnson “We are in defence & will not take long”
Hearing adjourned to 17th June.

(Sgd) J. A. L. WISEHAM.

17th June, 1963.

Counsel as before.

Solo Dabo s on k, in English—(in Krio) 30

XXd. by S. A. N’Jie—(Witness is unwilling to produce whole book but
wishes to put in only one page extracted from book as relevant 20

Johnson: “We are willing to put in all pages except two pages which we
say are addresses”

Q. What is the date today?

A. The 17th.

Q. What date did you write the first page of £50, £100, of £200— 40
(Ex. N.2)

A. I know what it all means—but I do not know the date.

Q. When did you write this one? (Ex.N.2)

A. I did not put a date. I remember the date—I cannot remember now

Q. When did you write this page (Ex.N.3)

A. I do not know. Ex.N.3—Also I do not know

Q. Do you know the date you write this page(Ex.N.5)

A. I do remember. On October—11th—1962.

Q. Is it related to this business?

A. No.

Q. Did you write this document? (Ex. N. 6)

A. Note:- Inordinate delay of minutes in answering the question

Johnson:—"My client must have time to study document"

S. A. N'Jie—"he can have an adjournment"

Johnson:—"No need for it"

10 A. I wrote it—on 4th July 1962 in Monrovia. All the transactions did not take place on same day. I wrote them on different dates. On 10th June I wrote the two items on left hand side totalling £12,300. Same day I wrote £1,000. The £11,300 was wrote on the 10th June, I wrote the £7,000 on 21st June. I wrote the £6,200 on 4th July. I wrote the £100 on 4th July. The last 2 items were transacted at the same place same time. The total is £6,300. In right hand column I added 2 items together. Work of diamond £7,000—guarantee is £6,200. Yes I wrote these exhibits N. to N.6—

Q. Do you always write in the same handwriting?

A. To me it is same.

Q. How many stripes are on the

20 A. That is my writing

Q. Look at second one—how many stripes on?

A. That is my writing.

Q. You say your writing and signature are always the same

A. That is my writing—for money transactions. The signature is only one way.

Q. Were you in Freetown at any time of July?

A. I was in Bo—I did not say my case then started on 1st July—but it finished on 2nd July.

30 I did not say Plaintiff gave evidence on 2nd July—It was in June—but not 18th. I have no copy of records. Since being summoned in this case for £19,200—I have not applied for copy of proceedings in Bo. I have people who were present in Court there. Abbes Bros—I only bought a car from them.

Q. Do you remember the day you signed the bond for £19,200?

A. No. I did not sign any paper.

Q. Do you know in Freetown they have books that authorize the sale of diamonds?

A. I know dealers & diggers licence—I do not know about books. People who are dealers—I have seen them have books.

40 Q. Look at this book?

A. I never had a book in my hand like this. I do not remember my digger's licence.

- Q. Is it 1532?
A. I no remember my licence number..
Q. On 18-4-62 did you sell any diamonds to Plaintiff.
A. I know I used to buy and sell diamonds from him.
Q. Did you sell from Khalil Ahmed?
A. Yes I bought & sold diamonds from him & to him,
Q. When they sell diamonds what is the routine?
A. Police to know—I ought to give my licence number—copy to dealer, police.
Q. You are not ignorant of conditions? 10
A. We cannot buy from him because it is not legal what I sold to him—gave me receipts—not from this book.
Q. Did you ask for receipts?
A. When I have diamonds to sell and he wants to sell diamonds—then there is no receipt. Sometimes I get receipts. Sometimes when I sold him diamond & I wanted to buy from him—while he had already bought a diamond to whom he had already given a receipt. He would give me the diamond without a receipt.
Q. Can you show us any receipts now?
A. All my receipts were taken from me. 20
Q. Is there a regular air service between Bo & Freetown?
A. Yes—lot of planes.
Q. By car by Mercedes Benz—how long from Bo to Freetown?
A. About six hours—going myself—not on business—under nobody's control.
Q. How many people in Abbess Brothers?
A. I do not know. I only buy car & got receipt.
On 8-3-63 I was in Bathurst. That day I don't remember if I visited the Jacob's premises.
Q. How many times a day did you visit Plaintiff? 30
A. At times he phoned me for my car. He drove me in a car in Lebanon—private owned or taxi. I only know I was in Bathurst on 8-3-63—that is all—I no remember nothing. On 14-3-63—I was on my way to Kuntaur. I was in Bathurst on that morning but crossed to Barra on 14th and was there at 7.30 a.m. I hired an engine canoe to Barra. I do not know the name of the man.
Q. Is he Ibrima N'Jie—tall?
A. I don't know.

I left Barra between 10 & 10.30 a.m. & found another hired transport at Kerewan. We left Barra—& did not stop—on way to Kerewan. I do not know mileage between Barra and Kerewan. We arrived at Kerewan between 11 or 12—I don't know if not later than 12.30. On 14-3-63, I did not see Plaintiff or Jacobs or Jacob's clerk. 40

From Kerewan—G.A. 1748—I don't know if that was the number. I was driving—I gave some people a lift and dropped them at Kuntaur—nobody at Farafeni.

- Q. Do you know why Plaintiff, Jacobs & his clerk should frame you & say you wrote a letter on 14-3-62?
- A. I don't know—it is their business.
- Q. You said earlier you arrived at Barra at 11.30 a.m.
- A. I did not say that.
- Q. Your supposed transactions—all over £10—is not evidenced in writing?
- A. He gave me receipts, but I did not give him receipts because that is illegal. When I bought from him sometimes there were no receipts because—when he buys from me—sometimes receipts, sometimes no receipts.

10

I never said Plaintiff & myself lived in the same hotel. Plaintiff used to visit me at the hotel. Tambadu Basiru & myself lived in the same hotel. Plaintiff's own people were present when traveller's cheques were handed to him by me. I did not check them.

- Q. How many times have you taken money from Plaintiff & how did he deliver it?
- A. Three or four times—when I went to buy gold for my wife. From Bathurst to Lebanon—is it usual to pass through Paris, Geneva?

- 20 I travelled Paris Lebanon, return Geneva, Rome, London. I do not remember dates always. I do not know how many days I stayed with Abdalla the Plaintiff in Lebanon. If Abdalla says only one day—I don't know. I don't know if Tambadu stayed one, two or 3 days. We lived in same hotel. We went out together sometimes. Abdalla never mentioned the sum of £19,200—but only at Mahoneys. Basiru said he did & Tambadu—they are Plaintiff's witnesses. We did not go to Mahoney for mortgage—but only to make an account to Mahoney. It is Andrew's business—not mine—why he said I came with Abdalla. I have never quarrelled with him. I do not know if Andrews is one of the witnesses he bought. Plaintiff
- 30 said he would buy witnesses. The witnesses are friends of Plaintiff. I do not know if Plaintiff bought witnesses. At Mahoneys I said balance was £5,000. No guarantee for sales of diamonds were in writing.

- Q. Did the Police see the diamonds?
- A. Yes—they saw it in my hands, but he said 'give the diamonds to the police—he had fear"—but I said No and refused to hand them over. When I was arrested—I was taken to Police Station but they did not find diamonds on me. Police charged me—for fighting with police and being in possession of diamonds—and Abdalla was to be my witness. Case was tried next day at Bo. Abdalla gave evidence in
- 40 Court. I don't know date of trial—of the 3 pieces of diamonds worth £7,000. This is the case where I said Abdalla refused to make a statement to Police & Police came to his shop to take the statement. That was on 21st June. The Customs case was on 18th June—but this case on 21st June was different. In connection with the 21st June incident

—he made a statement and also gave evidence. On 2nd July I left overland and arrived Monrovia 4th July. I told you I had a case on 2nd July—I did not say I was present in Bo on the 1st July.

- Q. On 1st July you received £19,200 at Freetown & flew away with no intention of returning it?
- A. He never told me anything about this £19,200 Tambadu is his witness that is why he said so.
- Q. Everytime he saw you and chased you around you ran away.
- A. No—£19,200 is not 19 shillings—
- Q. According to your defence—you say you do not owe £19,200 or if you do it is illegal? 10

Johnson:—I wrote the defence—witness cannot understand it”

Q. What is the value of your properties in Bathurst or in Freetown?

A. Value of property in 60 Buckle Street is more than £3,000, but you know.

Johnson:—“This is an objection I make—it has nothing to do”. Objection overruled.

Value of property in 47 Grant Street I don’t know. Value of properties in Freetown—I don’t know—

- Q. How many properties—have you—in Freetown” 20
- A. I refuse to tell you—ask Abdulla—You find out.
- Q. Did any lawyer make a power of attorney for someone to sell your properties in Freetown?
- A. That is my business
- Q. You did sign a receipt for £19,200 in Freetown and abscond the country with the money?
- A. I tired to answer the question 10 times.
- Q. You did dictate a letter on 14-3-62.
- A. I never did.
- Q. The telegrams sent by you were sent one in morning and one in evening? 30
- A. I sent one but I did not go with Abdalla to send another.
- Q. You write your £s different yet you say you always wrote the same?
- A. Signature is always the same; people may not understand my writing but I understand it. According to me anything I write I must know. It is not true I crossed to Barra on 14-3-63 at 11.30 a.m. on 2nd Ferry and arrived at Kerewan at 12.30 midday—the distance 30 miles—gravel road. It took time to hire a car at Barra. That day—not true I went to Jacobs’ clerk to write letter. Abdulla lodges with Jacobs—they are friends—they want money. 40
- Q. You said Abdulla gets money from Jacobs—Does your brother Musa Dabo not get money from Jacobs also?
- A. I do not know.
- Q. Have you summoned him as a witness?

Q. Do you rely on your defence?
A. That is for my lawyer.
Q. Do you accept it?

Johnson:—I object to anyone coming between a solicitor & his client”

Case adjourned till tomorrow.

(Sgd) J. A. L. WISEHAM.

18th June, 1963

Counsel as before.

Solo Dabo resworn:

- 10 Q. How & when did you first meet Plaintiff in Lebanon?
A. When he arrived he sent a telephone message to Basiru Jawara that he had arrived. Basiru told me—and said we could go together to see him. We went together to see him at his uncle’s house. I do not know the date but I went to meet him the very day he arrived. We just complimented each other.
Q. What Tambadu said that you knew of his arrival through his family.
A. I think it was Basiru told me.
Q. What did you not tell your lawyer to ask Tambadu?
A. I did not tell my lawyer.
- 20 Q. Is it not true at your first meeting—no one was present?
A. I know I went with Basiru.
Q. Is it not true you promised to pay the £19,200.
A. No mention of it in Lebanon—we went for holiday.
Q. Did you not say conversion of rupees to money was difficult in Lebanon & you would do it in Geneva?
A. I had no business with him in Geneva.
Q. Is it not true you promised to return money at Bo?
A. How could I when I was deported?
Q. Did you not return to Sierra Leone?
- 30 A. Yes, I did in August 1962.
Q. Did you not go with Abdulla to send a cable to your brother?
A. No—my brother left before me.
Q. Did you not go to Cable & Wireless with Abdulla?
A. No I did not.
Q. Did you not send a telegram on 5-3-63 (Ex.L1) to your brother?
A. No it is not my signature on telegram.
Q. Have you made any attempt to compromise with Abdulla at your brother’s place here?
A. No, I have not.
- 40 Q. You say if you owed Abdulla £19,200, he would have prosecuted you in Lebanon?
A. Yes. If what he says is true, he would have arrested me.
Q. But if the meeting was so short—how could he do so?
A. I would have gone to Police straightway.

- Q. Was anybody ever sent to find out if your brother was in Geneva ?
 A. No my brother has not left here.
 Q. When you went to Mahoney you disagreed straightaway the £19,200 ?
 A. Yes—I said why not take out the £4,000
 Q. You say you bought £12,300 & only paid £1,000—so you still owe him, £11,300.
 A. Yes. Correct.
 Q. You also say you bought 3 pieces for £7,000 for which you only advanced £1,000.
 A. No I never said that—what I did not sell—I cannot pay for. I paid him 10 the £7,000.
 Q. Then out of the £11,300 how much do you owe Abdulla ?
 A. The £11,300 belongs to Abdulla and £6,200 for 3 pieces diamond as guarantee plus £100 for radio belongs to me.
 Q. Did you hear Plaintiff in Court say the radio had nothing to do
 A. He did not tell me so.
 Q. If the Corporation Diamond offered £6,500 why should he sell you for £6,200.
 A. That is what they do.

If you refuse the offer of the diamond Corporation & after a few 20 days you take it back to the Corporation, they will offer you a lesser price and the Plaintiffs knew it.

- Q. Price of diamonds per carat is fixed every year by Corporation ?
 A. No it does not.
 Q. Is it not fixed by Government ?
 A. It is not so.
 Q. Why did you an ordinary man buy diamonds at £6,200 ?
 A. Diamond business is profit and loss.
 Q. Why should he sell you at £6,200 when the corporation offered £6,500
 A. He received the diamonds for £6,200 from my brother. He admitted 30 that out of Court, but I cannot say when & where .I have no receipt. If there was a paper between us there would be no need to go to any one for an account. That is on my side and Abdulla's side as well.
 Q. Do you now remember your licence number ?
 A. No. I no put em my head. I got the licence in 1962. I cannot remember how many months.
 Q. You have given evidence which has not been put to Plaintiff.
 A. (Court—he cannot answer that—)
 Q. I put it to you you owe £19,200 ?
 A. No 40

If Abdulla had that paper he would not take you to Mahoney to make an account.

- Q. You went there for a mortgage ?
 A. No.
 Q. You have practised a deception on 14-3-63 when you wrote a letter signing it in a different manner ?

Johnson:—"Objection 0.35. R.13. on ground of vexatiousness." Objection overruled: it is part of their case:

A. I cannot cheat a man like Abdulla. He is trying to cheat me.

Q. You did the same thing signing the two telegrams differently

A. Abdulla knows me well.

Q. At Cable and Wireless did you meet Andrews?

A. You can meet any of them when you go there.

Q. Your whole version of transaction is wrong?

A. No.

10 **Q.** You still admit £5,000?

A. Yes—by account.

Q. Do you understand what an account means?

Johnson "I object, my client is an intelligent man"

Q. Do you know what is an account stated?

A. We no write no account.

Q. Why do you not pay him the £5,000?

A. He would not accept it.

20 **RXd. by Johnson:**—(looking at Ex .N.6) Can you explain—the first item, 12,300? Yes first parcel of items. and all the figures relate to diamond transactions. On 14-3-63, I got to Barra at 7.30 a.m. & left Barra between 10 or 10.30 a.m. I was at Barra all that time. On 2-7-62—the case started in June at Bo about end of June & it was adjourned to 2nd July. During the time we met in Lebanon he never mentioned the £19,200. The first time he mentioned it was at Mahoney's.

30 **D.W.1—Jacob Laurence Mahoney, s on b, in English—Barrister & Solicitor of this Court. 15 Buckle Street. It was Ahmed Jacobs who arranged an interview on 19th or 20th March on the phone & he arrived with that Gentleman (the Plaintiff) & Solo Dabo and another person—tall African. Ahmed Jacobs & Plaintiff had approached me before but without Solo Dabo — about a month before. On 19-3-63, object was to prepare a mortgage. When they came they repeated they wanted a mortgage prepared—I said "what properties?" Plaintiff said "the properties in Freetown" I said "you have to go to Freetown then" Then they said there was property here in Grant Street—I asked for the documents and Solo Dabo said the documents are in Freetown. Then Ahmed Jacobs said "Can we prepare an agreement to make a mortgage when the documents arrive". I said yes we could do that. Then I said "what is the amount involved? Plaintiff said £19,000—defendant said "oh no—not £19,000—" he said "you remember the first packet of small stones—you gave me this**
40 **for £7,000—I deposited £1,000. There was another packet 3 or 4 big stones which I got later from you—for £7,000 & you guaranteed to take them back for £6,000. I did not get the £7,000 & returned the stones to you" He also spoke £100—something of a radiogram. Musa said what about £4,000**

Dabo said "you cannot mix your brother's business & your business—because when I had the things from your brother—you were not there". There was argument & no agreement Defendant mentioned £5,000—plaintiff mentioned £19,200. I said "you are not agreed as to the debt how do you expect me to prepare an agreement. It is also diamond business—you ought to reconsider and settle the business without argument. It ended and they left.

XXd. by S. A. N'Jie: Plaintiff did not say £19,200 worth of diamonds—he just said £19,200. Defendant did not ask me to prepare an account. Very likely—I prepared a conveyance of 47 Grant Street. It is a strong word—I never "drove" them away. There was no consensus as to amount. 10
There was no denial that whole transaction was based on diamonds. Plaintiff never spoke of diamonds—but he never denied it—Solo Dabo spoke of diamonds. The first packet was £12,000 deposit £1,000—At the end defendant insisted he only owed £5,000 & Plaintiff was annoyed—oh yes! very annoyed. They left together—

RXd. by Johnson: He could not get £7,000—so he made losses & returned it for £6,200.

D.—2—Honourable Bangali Singateh, s on k, in English—

Xd. by Johnson:—M.H.R. Chief's Rest House. I remember 14-3-63 I was with him. We went to Kuntaur. We left Bathurst about 6.30 a.m. We 20
arrived at Barra about 7.30 a.m. We stayed there for about 2 hours & we went in a chartered land rover and got to Kerewan.

XXd. by S. A. N'Jie:—Since I was subpoenaed I have never been sitting in Court. I cannot remember who manned the canoe crossing to Barra. As far as I remember—we left at 6.30 and arrived at 7.30 a.m. Round about 9.30 or 10 or 11—I am not sure we left for Kerewan—and arrived at Kerewan about 11.30 or 12 o'clock. Between Barra & Kerewan I do not know the mileage—road is fairly good. We did stop on the journey—I cannot remember where or how many times—for a few minutes each time. We did give a lift to some people—I do not know their names—I 30
would not recognise them. Just near waterside at Kerewan we got a puncture. Solo Dabo is my friend.

Q. I put it to you you crossed at 11 o'clock & got to Kerewan 12 noon

A. No.

Q. Story concocted.

A. No.

RXd, by Johnson: Nil

Hearing adjourned till tomorrow.

19th June, 1963.

Counsel as before.

D.W.3—Dodou Sonko, s on k, in English :

Xd. by Johnson:—No.245. Corporal—Police—Barra Police Station. On 14-3-63 I was on duty at Barra. I know defendant. I was on duty from 7.30 a.m. to 5 p.m. I saw him at Police Station Barra at about 7.30 a.m. He told me he was travelling to Kuntaur to find a car G.A. 1748. I could not trace it. He was there with me till 10 a.m. He asked me to arrange for another car. I got a Land Rover. He travelled on it. Between 1.30 & 2 p.m.
10 the Land Rover returned.

XXd. by S. A. N’Jie:—I was there all day on 14-3-63. I am not sure if Land Rover went to Kuntaur. I was already in my office at 7.30 a.m. when later Solo Dabo came in. People travelling with passports would come to me. Not necessary for Gambians to have passports. Solo Dabo is my friend. I do not know how he got to Barra. I do not know how or when he left Bathurst. Since last August I was posted at Barra. I do not know how many times the official transport crosses. I do not know how many people leave the Gambia per day—I did not see the crowds that leave at different intervals. “Metta”, the official ferry was crossing. I only saw
20 it once that day. I have never seen the notice of times of arrival and departure of ferry. I did not hear “Metta” was damaged that day. 14-3-63 was a Thursday. Metta may have done four trips—might be. The first trip—I don’t know—what time it come in. I have been at Barra 10 months. I don’t know how far Barra is from Kerewan. I am from Bakau. I have seen Plaintiff once at Barra—I don’t remember day, date or hour—he came to my office—it was in December. $\frac{1}{2}$ hour before case started—Solo Dabo did not talk to me this morning.

(Shown passport of Plaintiff)

30 **Q.** See whether Plaintiff was in the Gambia in December at all & whether you stamped his passport or not?

A. No not in December. I did stamp it I see in January, February & April. (Passport put in as Ex.O)

I stamp it myself on all three occasions—2 arrivals—1 departure.

Q. You have come here just to help your friend?

A. Which friend?—I do not know how he travelled to Barra—at the time Metta was not there.

Q. If you saw this man it was between 10.30 & 11 a.m.

A. No.

Q. Have you any record of Solo Dabo’s arrival on 14-3-63?

40 **A.** No.

Q. Is it not true that you have been directed & advised what to say?

A. I am a big man—no one advised me.

RXd. by Johnson: (page 37. Ex.O. top) departures for Dakar in December 1962—I cannot see a placard from Police Station to terminal—about 100 yards. I do not know when Metta arrives or leaves Barra. Solo Dabo said he was going to Kuntaur—not for stamping passport. No one has told me what to say.

D.—4—Musa Darbo s on k, in English: Honourable Minister of Agriculture. Live at Kanifing and work at the Cape. Defendant is my first cousin. I know Plaintiff. Sometime in March or April—when it became necessary for me to stand security for Solo Dabo—when I had my first shock—when Registrar warned me not to stand as surety—I became interested in case. Plaintiff was not present. Registrar said he saw a paper signed & he believed the signature Dabo. I called Dabo himself. From Dabo's explanation I believed the Registrar's words were just a threat. 10

ORDER

From what appears to be stated—it is an account of what happened in Registrar's room and appears irrelevant to the issues.

(Hearsay) In the evening I went to Mahoney and asked him what he thought about it.

I was approached by one Ahmed Jacob to effect a compromise. I said if the parties came to my room, I would try. I told my cousin—but he declined. He said he was no longer prepared to make any peace. In the evening Jacobs & Plaintiff & Tambadu came—I said I am sorry my brother has not come. Jacobs came 2nd time—but Solo Dabo was not prepared to make peace. I am an acquaintance of Jacobs and always in his shop. Plaintiff told me of the time they were living in same hotel—no—living together—and even there defendant was spending £1,500 for seven days—and I said why not seize this money from him—and he said he would not like to do that to a friend. 20

XXd. by N'Jie: I am debtor to Shyben Madi: yesterday judgment by Bijoudi: Bijoudi knows I do not owe him.. 30

Johnson:—"I object to it"

Objection overruled:—

Q. The reason why you went to Jacobs was because you owed him money—

A. Not so.

Q. Are you indebted to Jacobs?

A. Yes. Not true I went to Jacobs for further goods.

Q. Did Plaintiff ever tell you anything less than £19,200?

A. No, he never.
 Q. The Registrar never advised you not to stand surety?
 A. Untrue.
 Q. You have come here to help your cousin?
 A. Untrue.
 Q. I put it to you that Plaintiff never spoke to you?
 A. He did.

RXd. by Johnson: Nil.

D.W.—.5—Omar Sissoho, s on k, in English:—

10 **N’Jie** “This witness has been in Court”

Witness: “This is the first time I come to Court.”

Johnson: “This man has not been subpoenaed”

Xd. by Johnson:—Driver—I came to Gambia on 8-4-63 from Bo, Sierra Leone, where I had been 7 years. I know the parties from Bo. Yes, I know everything happen between them. Last year—21st June—I was in Plaintiff’s shop—Solo came. Plaintiff opened his safe—took out 3 pieces of diamonds and Solo was inspecting. The C.I.D. came and demanded the diamonds from Solo—who refused. Plaintiff told Solo to give up the diamonds. Solo said if he gave them it would be Plaintiff’s responsibility.
 20 Solo handed it back to Plaintiff. Solo was gripped by Police. They took all of us to the Police Station—because Solo was fighting with the Police. We were all searched—nothing found. Solo was charged for possession of diamonds—Plaintiff was asked to make a statement at Police Station—he refused—Police went and took his evidence. After that—Plaintiff gave evidence in Court. I was in Court. I cannot say the date the case was finished. After that Solo was sleeping in his room. Customs Officers came to search. This is another case. Solo asked for warrant. Solo seized him. It went to Court—I know the day it ended—the 2nd July and Solo left for Monrovia.

30 Some weeks ago—I remember when this case adjourned—I saw Plaintiff with his lawyer behind this door—lawyer said to Plaintiff—“when you are questioned you should not say what really happened”
 Someone said “this man understands” lawyer said “I don’t care”

XXd, by N’Jie: I am quite sure the Customs case ended on 2nd July. Monday. I don’t know if Solo Dabo was in Court on 1st July. I attended all sittings of both cases. At Bo, Solo did not employ me. I was at No. 12 Hamjar Town, owner Alhaji Camara. I was driving for myself. I do not know where the diamonds went after Plaintiff’s hands. Plaintiff was never arrested. If I saw Berthan Macauley—if I saw him I would recognise him.
 40 During the cases, I did not see the Magistrate writing. I gave no evidence. I was discharged from Police Station. 23-5-63 I was in Sierra Leone—quite sure.

RXd. by Johnson:—I understood the question asked properly—Question was whether I was present in shop when police came. 23-5-63, I was in Bathurst.

Close of Case.

Jacob Laurence Mahoney, s on b, in English:

XXd. by..... ..Yesterday I said I had done several work for Ahmed Jacobs.

Q. How do you find his character?

A. Rather delicate. I would not like to say.

RXd. by Johnson:—Nil

20th June, 1963.

10

Counsel as before.

For addresses:—

Hearing on 24th June.

(Sgd) J. A. L. WISEHAM.

24th June, 1963.

Counsel as before.

Johnson: “Question of foreign law involved. Both parties stated if you have a diggers licence—you cannot sell or buy. This has been done, in absence of expert on the law. I draw your attention to it. I want point clarified. In this particular matter—first day—submission of jurisdiction—
—Order was jurisdiction accepted due to document being executed in Gambia. Defence paras. 1 & 2. If Court will satisfy us about jurisdiction—I will proceed.” 20

1. *Document is a copy*—original executed 2nd July 1962 was lost. *Copy is not admissible.* Phipson in evidence page 544—last para—& p. 570—last para.—we allowed it in only on question of signature—Phipson page 538—handwriting and attesting—no evidence called to prove last document.

2. *Defence of illegality*—Contract made in contravention of a prohibition—conflict of laws—Gambia and Sierra Leone. Bound by English Rules. Foster Vs. Driscoll 1929. 1 K.B.470 Raleigh Brothers Vs. Compagna Nassera Cota Ey Azner 1920.2 K.B. 287. *Contract illegal will not be enforced*—if illegal by laws of foreign country. Laws of Sierra Leone prohibits sale of diamonds to unauthorised person.—illegality is in dealing with diamonds. See Mahoney’s evidence—“you are not agreed in amount—this is diamond business—“no denial by Plaintiff. Brimaker—Barret Instruments Ltd. K.B. 65. Court should not lend assistance to illegal claim. Ayent Vs. Gentles 1873. L.R. 16. Equity 275. 30

Illegality is my alternative defence.

Plaintiff claims £19,200 handed over in cash—to defendant—to hand over to his nephew or brother at Bo. Both parties were diamond Merchants in Sierra Leone for a number of years. Plaintiff deported—defendant prohibited entry.

Issue: (1) Did Plaintiff give to defendant on 2-7-62 at Freetown £19,200?

(2) If Plaintiff did not, can Plaintiff recover £5,000 in respect of diamonds on defendant's admission?

- 10 Inconsistencies: Plaintiff stated he was in Freetown on 2-7-62 with Tambadu & Basiru Jawara. Basiru was in Dakar 1st & 2nd July. "I know of no monetary business between parties"

- 20 2nd Inconsistency: Mr. Andrews—responsible individual—said Abdalla met him and wanted him as a witness—nothing wrong with it—but on recall Abdulla said he did not know Andrews or did not meet him. Again Plaintiff said Solo Dabo shouted for assistance—whereas Andrews said he came in answer to a bell—Let me dispose of Bank Clerk—Bank would call it forgeries. Now look at Exs. B & C—& Ex.L.1—Defendant always writes in script. Ahmed Jacobs—Ex.B—signature & 2nd para written with one pen. On 19th March—why was document not put before Mahoney? because it was a forgery. Evidence of Tambadu—why should Jacobs show the note to him? Month before Mahoney said Jacob & Abdulla came to see him. Document of 8th March is a forged document. Ex. "B" Now take letter Ex.C—supposed to be a copy—yet it is the original. It is forged apart from signatures—alibi—defendant was at Barra at 7.30 a.m.—supported by Member and Police Officer.

Ex.L.1—attempt at joining letters—defendant denies being at Cable office at that time. Andrews there at that time out of his hours. Also where does Andrews live? 17 Gloucester Street—same as N'Jie.

- 30 N'Jie "There is no evidence where I live. Andrews may have said where he lived".

Documents are all forgeries. Defendant's evidence—knocking off £4,000—business with his brother. Why would Plaintiff agree? If Plaintiff met defendant in Lebanon—why did he not arrest him? Instead they went about together and Plaintiff looked after defendant's cheques defendant said: 2-7-62—Solo Dabo was at Bo—witness actually present—Defendant's evidence—what happened on 21st June 1962? Evidence of Police said.

Ask claim be dismissed.

N’Jie “I ask for 5 minutes adjournment to ease myself” Court adjourns—
but I decide not to return to Court as it has been a long morning. Clerk of
Courts requested to inform parties that address will continue tomorrow.

(Sgd) J. A. L. WISEHAM.

25th June, 1963.

Counsel as before.

S. A. N’Jie “This contract is simple—either legal or illegal — void or
voidable—proceedings—or hearing started 3rd May come to an end today
—contract in writing — no oral evidence can contradict it. On 2-7-62—at
Freetown—document signed in presence of Abbas & his clerk—defendant 10
obtained £19,200 & that was last Plaintiff saw defendant.—then it was
chase after chase—till Lebanon. Look at Passports—my client was only
in Lebanon 1 day—how could he take charge of defendant’s traveller’s
cheques & dole him out money from day to day’ Foreign law must be
proved. Why did defendant not get his passport at Freetown A—
genuine buyers & dealers licence. —defendant came backwards & forwards
—but finally met Plaintiff in street. Ex.B—genuine—Jacobs—born or
bred in Bathurst—commercial standing—credibility—Supported by Tam-
badu—defendant did not go to Mahoney’s if he owed nothing—why 20
give away all your properties—if you only owed £5,000. Why did he not
deny the £19,200? You can see the deceit. Ex.C—only time my client
agreed to reduce £4,000. Ex.E—specimen handwriting—Ex.G & F of no
importance. Ex.J— Ex.L.1 to 5—Vary from one telegram to another—no
consistence. Look at Exs. L.1 & L.2—one sent in morning—one in evening
—Andrews was present—character not challenged—he told defendant—
first time he came alone—second time with Abdulla. Look at signatures.
Defendant’s conduct speaks for itself—signatures intended to deceit.
Now Ex.s N.1 to N.6—last item on left—N.1 & N.2—See £ & S & stripes.
Ex.O—strokes & L are triple—Solo does not write in one simple way. 30
Exhibits N.1 to N.6—the ink is new—not written contemporaneously—
not admissible. 1929. 2 K.B. 316—contract cannot be varied—How far
are we bound by Statute of Frauds?sec. 4—Was it reduced to writing—if
there was a sale—no documents at all. If he gave receipts—why did he
not ask for receipts. It was only when defendant went to Mahoneys—he
started talking about diamonds. The £19,200 was never refuted at any time
before that. The defendant never denied the £19,200—till mortgage of pro-
parties proposed—

Court “At this stage I do not desire any further address:—”

The case has been heard by me off and on since 4th May. I shall
reduce my reasons to writing but in order not to keep the parties in sus-
pense—under O.40 R.S.C. & sec. 64, Cap. 5—I give the decision in this 40
case.

DECISION.

There will be a decree in favour of Plaintiff for recovery of £19,200 together with costs from the defendant.

(Sgd). J. A. L. WISEHAM
Chief Justice
25th June, 1963.

Reasons for the Decision.

20 In order not to keep the parties in suspense at the end of a long trial, I gave my decision that the Plaintiff was entitled to recover £19,200 from the defendant with costs. I now set out the reasons for that decision.

The Plaintiff sued for recovery of £19,200 for cash entrusted to the defendant to be handed over to Plaintiff's relation. Plaintiff alleged that the defendant failed to do so. Plaintiff deposed that the defendant had executed a document for this amount, but as it was lost, the defendant executed a fresh promissory note in Bathurst. All the previous transactions were at Freetown and the money was to be handed over at Bo in Sierra Leone.

The defence was that this Court had no jurisdiction: a denial of the claim and a plea in the alternative that the transactions were illegal by the Laws of Sierra Leone.

30 The preliminary objection as to jurisdiction was disposed of at the outset of the trial, because if the promissory note was executed in Bathurst, then part of the cause of action arose within the jurisdiction of this Court with a new and fresh promise to repay moneys, not a copy of a lost note.

A promissory note is a Bill of Exchange and cannot normally be challenged, except for want of consideration, fraud, or illegality. The defendant has contended all these. The defendant contends that the promissory note is a forgery, that he never received moneys, and that it related to diamond transactions in Sierra Leone and illegal at that.

Firstly, the defence of illegality must fail, quite apart from my findings of fact. Foreign Law, like any other fact, must be proved by expert or other evidence, in every particular case. There is no evidence adduced in the case before me of what the laws in Sierra Leone are with respect to the buying or selling of diamonds, or the classes of prohibited buyers or sellers, or the conditions to be observed in diamond transactions. There has been much talk of diamonds, diamonds, diamonds, but not an iota of evidence to show whether they were polished cut diamonds, or rough or uncut diamonds.

Secondly, there is the issue as to whether the promissory note Exhibit "B" was executed by the defendant or whether it is a forgery. In support of the Plaintiff, there is the evidence of Ahmed Jacobs and his clerk Cole. All three deposed that the defendant signed the document. I heard, watched and observed these witnesses and without hesitation I accept and believe their oral testimony that the defendant did sign Exhibit "B" promissory note. The defence was that it was not his usual Bank signature. It was indeed not his usual Bank signature. That has to be consistent or you cannot draw your own money. That does not prevent you using any other signature for other purposes. The witness Andrews deposed to the defendant signing a telegram Exhibit "L.1" which made it clear to me that the defendant did use an illiterate scrawl to sign himself in his presence. This witness gave his evidence in an upright and forthright manner and I accept his evidence having carefully seen his demeanour. There were further aspersions cast on the genuineness of this document Exhibit "B" but the variations of an illiterate in attempting to connect alphabetical letters must necessarily produce different results and cannot override his attempt to disguise and cheat for his own purposes. It is also suggested that at a subsequent meeting in Lawyer Mahoney's Chambers, this document was never mentioned on the 19th March 1963. The fact remains that it was duly stamped and revenue paid per Exhibit "B" attached receipt on the 14th March 1963, when it existed. Mr. Mahoney gave evidence as to what the defendant said, setting up a series of diamond transactions. There is nothing in his evidence as to what the Plaintiff said. The Plaintiff neither admitted or denied the talk. The Plaintiff was annoyed. The Plaintiff stuck to his claim for £19,000 or so.

The Honourable Musa Dabo gave evidence for the defence in this case, which I rejected out of hand as being a result of his private investigations after the suit had begun. He appeared disappointed that his second hand enquiries should not be accepted as primary truth.

The defendant also sets up an alibi that he crossed over to Barra so early in the morning of the 14th March 1963, that he could not possibly have signed Exhibit "C" letter—another piece of evidence to falsify a signature. Here again I have the evidence of the clerk to Ahmed Jacobs how he was requested to write the letter and again I have no hesitation

in believing his evidence having given consideration to the details of his evidence and the manner in which he gave the same. The police officer who saw the defendant at Barra at an early hour and the Honourable Member who accompanied the defendant over in a motor canoe with no rime or reason for starting ahead of scheduled services on Government. Ferry crossings, I do not believe. For these reasons, I reject the defence and find that as a fact the defendant signed Exhibit "B" promissory note admitting his liability for £19,200.

- 10 Lastly, there is the issue whether defendant received £19,200 in Freetown. There is the evidence of the Plaintiff that he handed over this sum to defendant in Freetown on July the 1st 1962. Defendant denies it and says he was in Bo on 2nd July on a case. In spite of oral evidence as to Criminal proceedings at Bo, it is great pity that no documentary evidence as to proceedings or suggestion of it has been put in evidence. The defence came out with many allegations of scuffles and resistance to Police on the 21st June 1962, but the case for the defence was never put to the Plaintiff in toto when he was in the box. Bo and Freetown have not been proved to be such inaccessible distances devoid of transport to support an alibi in the space of time in the circumstances of this case. As
- 20 witness the evidence, the two parties were close friends and had large amounts of cash and travelled unlimited. There is nothing inherently improbable in the suit transactions. The Plaintiff chased his money over parts of Europe and the Lebanon. The defendant did not go to Lawyer Mahoney's office devoid of liability. When he got there, he decided to shirk his liability. I disbelieve the defendant with his small notes Exhibits "N.1 to 6". He was very uncomfortable in the box answering when he had prepared these and the dates on which he did so. In my opinion, he prepared it to establish his case. He also set up his defence of diamonds transactions to defeat his just dues. That is my summary of credibility. I find as a fact again that defendant received £19,200 in Freetown
- 30 from the Plaintiff and is seeking to avoid its repayment, or account for the same.

These are the reasons for the decision.

(Sgd) J. A. L. WISEHAM.
Chief Justice.
25th June, 1963.

EXHIBIT "B"

COPY in lieu of lost Promissory Note made on the 2nd July 1962 at Freetown (Sa Leone) which reads as follows:—

I Solo Dabo hereby declare and admit having received from Mr. Mohammed Abdallah Mousa the sum of £19,200 — Say Ninteen thousand two hundred pounds sterling, for safe keeping and promise to deliver this sum to his nephew Mr. Mohamed Khalil at Bo Sierra Leone on demand.

(Sgd.) SOLO DABO

Witness (Sgd.) A. R. COLE
3, Hill Street.
BATHURST.

Witness (Sgd.) M. JACOB 10

Dated at Bathurst this 8th day of March, 1963.

EXHIBIT "C"

47, Grant Street,
Bathurst, Gambia.
14th March, 1963.

Mr. Aub Wazni,
Bo,
Sierra Leone.

20

My Dear Friend,

I am happy to write you this letter.

The business which my brother gave to you to sell for me, please if you have finished selling, give £4,000. (Four thousand pounds) sterling to Mr. Mohamed Abdallah Mousa. If you do not finish to sell at the receipt of this letter, please give him your diamond value £4,000 (Four thousand pounds).

I sent my brother to you — Bashiru Jawara, to give him this amount, but you refused to give him. Please dont let me write any more letter regarding this business without your delivering this money as per my instructions. You know we have been friends for long and during the time I was going to London only you knew and I still have that confidence in you still.

Please if you pay the money to Mr. Abdallah, demand a receipt and inform me immediately. Do not let me ashamed to Mr. Mohamed Abdallah. I shall be very happy if you pay this money.

10 Best wishes and regards.

Yours faithfully,
(Sgd.) SOLO DABO

EXHIBIT "D"

113

Bathurst. 21st Mar. 63

FTNBH 45 PO 132 BOSRL 26 21 1500

LT HANMEY JACOB P.O. BOX 159 BATHURST GAMBIA

INFORM MY BROTHER THAT AYOUB WAZIN REFUSED
TO PAY SAID NO MONEY FOR DABO TO HIM

20

MOHAMED

COL P. O. BOX 159

IN THE GAMBIA COURT OF APPEAL

CIVIL APPEAL NO.5/63

BETWEEN MOHAMAD ABDALLA MOUSA
by HIS Attorney AHMED JACOB *Plaintiff/Respondent*

AND
SOLO DABO *Defendant/Appellant.*

TAKE NOTICE that the defendant/Appellant being dissatisfied with the decision of the Supreme Court contained in the judgment of Mr. Justice J. A. L. WISEHAM, Chief Justice of the Colony of the Gambia, dated the 25th day of June, 1963 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. 10

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

2. Whole decision of the lower Court complained of.

3. Grounds of appeal:

(1) That the whole trial was a nullity in that the learned trial Judge erred in law in holding that Plaintiff/Respondent's writ of summons which was altered without leave of the Court was not void..

(2) That the Courts of the Gambia to which the appellant submitted under protest, have no jurisdiction to try the case. 20

(3) That the alleged undertaking said to have been executed by the appellant in Freetown, Sierra Leone, and which was pleaded in the statement of claim to have been misplaced by the respondent, was not proved to have been so misplaced as required by law.

(5) That the learned trial Judge was wrong in law in openly rejecting respondent's Counsel's persistent submissions that the substitutional document dated 8th March, 1963, was a simple contract, and was wrong in law in openly giving evidence for the respondent by calling the said document a Bill of exchange, and in treating it as such. 30

(4) That the learned trial Judge wrongly admitted in evidence a substitutional document dated 8th March, 1963, in place of the alleged undertaking referred to in ground (3) above.

(6) That the document dated 8th March, 1963, was a forgery.

(7) That the learned trial Judge misdirected himself on the law by stating that a promissory note was a Bill of exchange.

(8) That the learned trial Judge was wrong in law in rejecting appellant's defence of illegality in respect of his purchases of diamonds in Sierra Leone from the respondent, which purchases in fact constituted the real subject—matter of respondent's claim.

(9) That the learned trial Judge erred in law in wrongly concluding that appellant did not prove the Foreign Law which governed his dealings in diamonds with the respondent.

10 (10) That both Exhibits 'C' and 'L.1' were forgeries.

(11) That Exhibit 'C'—a letter dated 14th March, 1963, and alleged to have been signed by appellant, was wrongly admitted in evidence.

(12) That the learned trial Judge wrongly rejected the evidence of appellant's witnesses.

(13) That the learned trial Judge wrongly ignored the evidence of Mr. Jacob L. Mahoney on a material particular connected with the subject-matter of respondent's claim.

20 (14) That the learned trial Judge wrongly ignored grave contradictions in the evidence of respondent and his witnesses on material and relevant points.

(15) That the judgment of the trial Court was against the weight of the evidence.

(16) That the judgment contained inaccurate statements of certain evidence as given at the trial.

(4) Relief sought from the Gambia Court of Appeal:

1. That the judgment of the trial Court be set aside and cost be awarded to appellant.
2. That the costs awarded by the trial Court be set aside.
3. That judgment be entered in favour of appellant with costs

30 5. Persons directly affected by the appeal:

NAME.	ADDRESS.
1. Ahmed Jacob	7 & 8 Cameron Street, Bathurst.
2. Mohamed Abdalla Mousa	C/O above.

DATED this 26th day of June, 1963.

(Sgd) SOLO DABO,
Appellant.

**IN THE GAMBIA COURT OF APPEAL (GENERAL
SITTINGS) HOLDEN AT BATHURST ON
MONDAY, THE 25TH DAY OF
NOVEMBER, 1963.**

Coram:	C. G. AMES	<i>President</i>
	G. F. DOVE-EDWIN	<i>J.A.</i>
	E. F. LUKE	<i>J.A.</i>

Civil Appeal 5/63 Solo Dabo (Defendant/Appellant v Mohamed
Abdulla Moussa by his attorney Ahmed Jacobs

Johnson for appellant; A. S. B. Saho and M. A. Saho with him. 10
Davies for respondent; S. A. N’Jie with him.

Johnson:—Judgment on 25-6-63. Notice of appeal on page 62. Page 9 of
Record. Material omission.

G.C.A. Rules 30 and 35 (page 213 Vol. IV).

P.9 line 9 after “defendant” some words are missing from the record
which are in original. (Original record examined.)

(Ames: Yes: they are there but they have been ruled out). Ground 1.
(Reads it). (Office copy called for and produced) The day and date were
altered without leave of the Court. Altered before service. Rules of S. Ct.
page 48. Orders II, Rules 1—4. 20

Page 7—8 (Reads it).

See 17 Cap. 1 (which “Rule 17 Cap” of the record was meant for
does not apply.

Ogders 4th Edition page 268. “shall” and “must”. Reads the
Judge’s ruling. Page 8 lines 15—22.

P. 4 & 5. Motion to arrest absconding debtor dated 22nd. Affi-
davit 23rd March. Writ served on 25th March.

Warrant of arrest dated 23rd March. Suit called on 29th. Defendant
in person. Given 7 days to file defence. No time to make the objection
before filing the defence. 30

We took our objection at the hearing date of the defence. Submit
that the writ was void and so whole proceedings were null and void.

Ames:—If you wished to appeal against the order on page 8, ought you
not to have done so then, as an interlocutory Order?

No. It is discretionary.

Ground 2. (Reads it).

Both parties in Sierra Leone, and the transaction arose there. Refers to S/C. para 2 and 1. Page 2.

Defence on Page 3.

(Ames:—Where was he when arrested? Here or in Sierra Leone?)

Yes. Here.

Writ issued by attorney

Page 5. M. A. Mousa himself swore to affidavit. Paragraph 7 of affidavit on page 5.

10 Page 8. Order made. lines 38—40. (Reads it) and over page 9 lines 1—8.

Submit this was wrong. S/C said “whole cause of action” in Sierra Leone. C.J. said “part here”.

Cheshire’s private international law page 109. Appellant here appeared to protest and not to submit. Cap. 5 sec. 2 “cause of action”.

(Reads Plaintiff’s evidence) page 9, lines 14 et seq.

Any breach of the contract could only take place in Sierra Leone. If it was a contract there was no consideration; or it was an illegal contract. Grounds 3 and 4 (Reads them).
page 10 lines 16—17

20 (Reads the Note. Ex.B). It is called a copy. Law requires document to be proved to be lost. Page 31 line 2. This was to establish before the Court that the people who witnessed the first document were still alive.

Phipson 9th. Page 538. Party tendering secondary evidence.

(Ames:—We notice on page 10 that you did not object to its admission).

We allowed it to go in; in order to help our case by proving that it was a forgery.

Grounds 5 & 7. (Reads them). Page 53. Chitty 21st Edition, page 179 Definition of Promissory Note page 125 Definition of Bill of Exchange. **Dove-Edwin:** If not a P.N. what do you say Ex.B. is?

30 It is not a P.N. within the meaning of the Law. It is a receipt.

Davies: It is not my intention to argue that it is either a P.N. or a negotiable instrument.

If neither P.N. or a negotiable instrument, it must have consideration. No consideration.

Action should be in Tort.

W.A.C.A. Vol. XIII 204.

Ames: That was overruled in the Privy Council) Combe v Combe 1951 2 K.B. 215 Ground 11. Ex. C

(**Ames:** Was this objected to at the time?)

Yes.

(**Ames:** You do not appear to have. Page 10 line 30 What is the objection now?)
It is a forgery.

Grounds 6 and 10.

10

In Exs. B., C. and L1. the signature Solo Dabo has all the letters joined together. No two are alike.

Plaintiff called a Bank official to prove the signature. P.W.4 Martin Sock.

Defendant/Appellant is illiterate and signs like this. page 23 lines 6—15.

Evidence of Marry Tambadu. Page 25, line 5. It refers to Ex.B.

Page 44. D.W.1 Jacob Laurence Mahoney. line 32 to line 47. There was a dispute about the document. Ex.B. was 8th March. This interview was 19th. If Ex.B. was genuine would not Ahmed Jacob have produced it to J. L. Mahoney who was Plaintiff's own lawyer. 20

Also before the interview Ahmed Jacob was showing the document to Marry Tambadu.

Page 17. P.W.2 Abdul Rahman Cole. Document was written by Ahmed J, in presence of A. R. Cole and Plaintiff. Page 10, line 16.

Adjourned to tomorrow.

Resumed 26th.

Parties as before.

Johnson: Grounds 6 and 10 (continued). Page 19, line 13—14. Evidence of Mohammed Jacob ref. Ex.B. What Plaintiff said, page 10 lines 16—24 and what P.W.2 Cole said—page 17, line 4 et seq ref. Ex.L.1. Evidence of Andrews at page 29, lines 3—10. Ex.L.2 Personal cablegram. Authenticity not in dispute. Page 29, line 43—Page 30 line 3.

10 Page 26. line 1. Andrews and Plaintiff's Solicitor live at same address. Page 31, lines 4, 5 onwards Page 29, line 12. Ref. Exc. Said to have been written by Appellant at Bathurst. D.W.2, Page 45 lines 27—31; D.W. 3 Page 46, lines 11—15. shows defendant was not here. Defendant Page 36, lines 12 et seq. He only prints signature. Ref. Ex.B. page 26 line 6. Evidence of P.W.5. Ex.B. showed to this witness who had arrived the day before. Yet never shown to Mahoney, although they went to him for an agreement and although there was dispute as to the amount. Grounds 8 and 9 (Reads them).

Defence: Paragraph 5 (Reads it).

Can only be asked about foreign law if Plaintiff has been believed.

20 If Plaintiff's claim not believed and own claim believed, that it was illegal diamond transaction, then we should have had to prove foreign law. To be on safe side we did prove it.

Page 49, line 30. Plaintiff and Defendant both gave evidence. Diggers licence can only sell. Dealers licence can only buy. "I want point clarified."

(Ames: What did you expect the Judge to do ?)

To say that he accepted what the Plaintiff and Defendant said about the law because they did not differ).

Physon 9th Edition, page 405. Opinions of Experts—Foreign Law. ".....other person who from profession or business has had peculiar means of becoming acquainted.

30 Our case was that the £19,200 was value of diamonds sold by Plaintiff to defendant illegally.

Solo Dabo was a digger and so could not buy.

Plaintiff was a dealer and so could sell to an unauthorised person. Page 49. Evidence of Plaintiff's lawyer, at time of agreement. Line 45 and over page to page 45, line 22. Ground 13.

Covered in argument about ground 9.

Ground 14 (Reads it).

Plaintiff's evidence at page 10 line 16.

C.F. (P.W. 2 at Page 17 lines 4—10

(P.W. 3 at Page 19 lines 13—16

and Page 21 lines 26—27.

Plaintiff's evidence at page 9 line 14—19. Date was 2nd July, at page 40, line 44 date is altered to 1st July. Page 55 line 2.....on 1st July.

.....

This is tied up with the alteration of the record.

Plaintiff said all along it was on 2nd.

10

1st July being a Sunday, they were trying to prove that Defendant could have gone from Bo to Freetown on the Sunday..

Page 13, lines 25—30. Plaintiff said he received money on 1st and gave it to Defendant on 2nd..

Page 48, lines 36—40. Defendant was at Bo.

Page 9, line 26. Plaintiff himself went to Bo 2 or 3 days later, yet he says he gave Defendant £19,000 to take to his brother.

Page 24, line 20 et seq. P.W.5 said Plaintiff agreed not to include the £4,000 because it was for his brother. As to what Plaintiff and Defendant said as to foreign law.

20

Page 9, lines 20 and 21. Plaintiff's evidence.

Page 36, line 19. Defendant's evidence.

Page 38 lines 42—45.

Ground 15 (Reads it).

Consistencies and contradictions has already been partly pointed out in arguing other grounds.

It was agreed that Ex.B is not a Promissory Note. By treating it as such, it weighted evidence heavily against the Defendant. Whole emphasis was shifted by the emphasis of this document being taken to be a Promissory Note. Abandon Ground 16.

30

Ground 12. Unreasonable to disbelieve the evidence of the hon. member of Parliament and of the Police corporal, about crossing over to Barra on the early morning of 8th March.

(Reads from Phipson 9th Edition on onus probandi.)

Davies:

Preliminary matters.

ref. suggestion that record altered.

ref. argument that Plaintiff acted through an agent.

Plaintiff is a visitor here and cannot stay long, requires visiting permission.

Also, the record shows his English is limited and not being a Gambian, has no local language..

Ground 1.

- 10 Formal writ, must be presumed properly done. Defendant had to show it was altered after signature.. Reads lines 15–21 of page 8. Judges' ruling. He is saying not shown altered after signature. Alteration initialled, by Registrar.

Rule 1. S.C. Rules

Ground 2 ref. jurisdiction.

- 20 Sec. 2 Cap. 5. Definition "cause of action". jurisdiction is territorial for one point of view. Judgment was that Ex.B. was signed here and so jurisdiction. Sec.84. Bills of Exchange Act (Reads it). ExB. (Reads it). Never delivered to M. Kh). the payee. So even if a P.N. it was inchoate. It should have been sent to payee for endorsement and return to Plaintiff. Sec.85. Even if all complied with it could probably never become a promissory note.

Akbar 1936 2 All E.R. 545.

".....being primarily a receipt, even if coupled with a promise to pay is not a Promissory Note....." Court had jurisdiction for following reasons.

S.C.: Page 2.

C.J. assumed Plaintiff sued on a Promissory Note. Submit not justified..

- 30 S.C. it is simply for an action for money had and received.

Plaintiff chased defendant all over the globe and caught up with him here.

Here there was demand and no payment, and so a tort committed here. Sinclair v Brougham 1914 A.C. 398. Reads at page 415. Lord Haldane. This brings us within the definition in section 2. Holt v Markham 1923 1 K.B. 1. Chitty, contracts 22nd edition. Vol.1 section 1591. "Waiver of Tort".

United Australia Ltd. v Barclay's Bank 1941 A.C.1. Grounds 3, 4 and 7.

Plaintiff sued on a transaction which occurred in Freetown of which there has been a breach here.

Not suing on a document. Significance of document is that it is a vital admission..

Other Grounds of Appeal
(Reads the judgment)

Adjourned until tomorrow at 9 a.m.

(Sgd) C. G. AMES. 10

Resumed 27th November, 1963.

Parties as before.

Davies (continuing).

As to the inherent probability of Plaintiff's case. Page 55 line 14. The C.J.'s view. Adopted. Appellant had case at Bo on 2nd. If friends, respondent would know the appellant would be going and so would naturally take opportunity. Page 9 line 14 Plaintiff's evidence

Page 44 line 27 Defendant's evidence

Page 40, line 42—44

Page 13, line 25—31 Plaintiff's reason for having large sum of money about him. 20
As to the Defence

(a) that Defendant never received the money

(b) that if he did, it cannot be recovered because of illegality of the transaction. as to defence (a). Defendant has to get over the document of the 8th March.

Page 35, line 33)

Page 38, line 24—25).

Page 39 line 16—20.

} categorical denial

Page 43 lines 4—5. This suggests that there was a £19,200. 30

(Ames: He means take it out of the value of the stones he gave him)

I draw your attention to it for what it is worth. As ref. Ex.C. Defendant seeks to get out of this by an alibi. Page 36, lines 1—4. Supporting evidence as to his going, none as to his return on 16th.

Page 39, line 22; page 41, line 34—38. page 44, line 25. Two witnesses supported him. D.W.1, D.W.2. The C.J. rejected their evidence.

Johnson: I ask leave to call additional evidence as to the return of the appellant under Rule 30, as to the return of the appellant on the 16th. (Court confers).

Ruling: Application refused.

10 **Johnson:** It was never doubted at trial that he did not return on 16th.

Davies: Evidence that he did return on 16th would not be evidence that he did not travel on 14th.

ref. suggestion Exs. B. and C. are forged.
Why should he?

(Reads Ex.C). Why should this be forged? How does this support the claim for £19,200.

Same applies to the cablegram.

D.W. 2 and D.W. 3 do not help defence, except as to alibi on 14th.

Neither says how he remembers it was 14th. ref. other defence witnesses:
20 D.W.4 not relevant. Tried to make peace between parties.

D.W. 5 Omar Sissoho. Page 48, lines 39—40. Does not. As to defence (b). To establish this defendant must establish :—

1. That there were contracts between him and Plaintiff; 2. that they were tainted by illegality by laws of Sierra Leone; 3. that the £19,200 was given to him on account of one of the contracts.

ref. 1. Not denied. They were friends and had dealings with each other.

ref. 2. must be strictly proved. Evidence did not establish illegality, not mentioning lack of proof of law. Even if it was established that there
30 were illegal transactions, between them, he had to show that this contract was one of them.

ref. evidence in the case as it touches forgery. Plaintiff. Page 9, line 25 to bottom of page 10. Narrative of what happened and how he chased Defendant: and also on page 11, lines 40—44.

P.W.2. Cole. Page 17, line 3 to 28, and on other pages. His evidence was completely unshaken.

P.W. 3. Mohamed Jacobs. Page 19, lines 27 et seq. Has ring of truth. The addition of 1st paragraph infers that defendant had said that there already was a £19,200 document and if he signed this there would be two. So paragraph 1 added.

Page 21, lines 1—30. Mohamed Jacob under crossexamination.

P.W. 4. P.23, line 15. Prosecution were not putting forward cheques.
P.W.5. Marry Tambadu. Page 23, line 34—39, and Page 24.

P.W. 6. Andrews. Page 26. (Refers to passages of it). 10

C.J. said he was an upright witness.

Plaintiff recalled. Page 32, lines 14—30.

ref. dissimilarity of the signatures. Adopt what C.J. said.

ref. events which took place in Mahoney's office, and two arguments (a) Ex.B. not produced (b) why should S.D. deny £19,200 if he had acknowledge it few days before.. ref (a) Refers to Ahmed Jacobs evidence as to the interview page 20, and page 21. ".....matter of a few minutes....." Short interview: altercation in two languages: that was reason for now production of note. Mahoney sensible cut short the interview.

ref. (b) Defendart had given acknowledgement in Sierra Leone previously year before. Successful avoidance of payment.. Perhaps hoped again. This interview was because now he was being asked for mortgage. ref illegality. 20

No evidence that diamond transactions are illegal, although certain may be. No sufficient evidence that this.

Page 16. line 30 Plaintiff under crossexamination. Page 13 line 37—39 Page 9 line 20—22. page 11 lines 22—27; page 12, lines 13—29; page 15, lines 35—44; no evidence as to what is evidence of Sierra Leone.

(Dove-Edwin: Is it correct that the first time diamonds came into all this was in Mahoney's office?). 30

Yes: and it was the defendant that then raised it.
Turning to defence evidence.

Page 33, line 8 et seq. Cannot elucidate this; page 28 line 26—page 39, line 8. (Reads passages on page 37—38). I make no comment. I leave it with what the C. J. said at page 55, lines 20—26

ref. proof of foreign law.

Page, 25, lines 26—27. Foreign law is not proved “or other evidence”. It is proved by expert evidence. 1950 White Book. comment on

O 37, r.1 (Reads it). Should be lawyers: but can be others, if none

available. The parties are not experts. Vol. IV Rules of Supreme Court. Page 30 Order VII Rule 13.

ref. criticism that £4,000 was the brother's. See Plaintiff's version at page 11, lines 15—20

- 10 ref. criticism that Andrews and Plaintiff's Solicitor living at same address. Wholly improper innuendo. Which should not have been made and which should be refuted.
Johnson replies:-
ref. ground 1 (alteration of writ).

Respondent failed to answer. Not shown that amendment was made before alteration. No evidence that leave to amend was sought for and obtained. Sec. 17, Cap.1. 1959 White Book. Page 15. Order 2, rule 8.

(Dove-Edwin:- Are you saying that it was altered after 23rd March). Presumption is. No provision here for alteration before issue. It was not an interlocutory matter.

- 20 ref. ground 2. (jurisdiction).
Argument was demand and refusal made here, and tort committed here. First demand and refusal in Lebanon. Page 9, line 29. So Tort occurred in Lebanon in July, 1962. Lebanon is Plaintiff's domicile. Counsel's argument was not raised in Court below.

ref. What conversion is: Demand and refusal is not conversion. Clerk and Lindsell 11th Edition, page 38; and page 421. Trover and conversion- page 428. Section 698. Demand and refusal are evidence of refusal. Refusal in answer to a demand is never a conversion.

- 30 If C. J. had not taken pleading as to P.N. here, C.J. would never have accepted jurisdiction.

Page 49, lines 36—37. After C.J. had heard all the evidence counsel is now trying to disassociate himself with what his junior in the Court below.

ref. action for money had and received; and waiving of tort. That cause of action was not disclosed on the pleadings and cannot now be substituted

Plaintiffs pleadings did not disclose any cause of action. 0.23, rules 3 and 4 (Page 70 Vol. IV)

No where in pleading is there mention of having given this money to the defendant.

Can facts as contained in Plaintiff's evidence give rise to an action for money had and received?

Chitty Contracts 21st Ed. page 95 "quasi contract". Money had and received. Action for money had and requires three people.

Chitty's Q.B. Forms, page 65 & S/C for money had and received.

If waiver of tort, it must be shown in S/C- & Cheshire Private international law. 6th Ed. Page 44, para. 2 and page 45.

Two essentials. Court must be have jurisdiction over both Plaintiff and Defendant, and over cause of action. 10

REPLY as to the merits of the appeal.

e f. the question 2nd July.

page 9, lines 14—21. No inherent probability. Why has he not called witness who was present when money handed over; there was a receipt written. Plaintiff received it on July, 1st, why should he give it to defendant to take to Bo when Plaintiff was to go in two days time. Loss of receipt for £19,200. Plaintiff was in Lebanon for 3 months; is that a man chasing his money. He did not report to Police in Lebanon, and Defendant was there. 20

ref. evidence of defendant and Ex.N1—6.

Page 36, line 23. Documents were not put in evidence in chief, but under cross examination he said he would go and fetch them and he did so. If prepared for purposes of the case, they would have been produced in evidence in chief. Reference in judgment was not justified. Page 55, line 20. Figures on N.6 fit in with Defendant's story of how he bought and sold diamonds.

ref. forgeries. Why did not Ahmed Jacob produce the document in Mahoney's office. That was the first opportunity of defendant to deny. Court should consider seriously whether or not this was a cash transaction 30
ref. argument that alternative defences are inconsistent. Not inconsistent. First of all denies owing and pleads illegality. This means we deny any cash transaction but if Plaintiff claims anything to be from us in respect of our transactions, it was for an illegal transaction.

(Dove-Edwin: Do you admit owing anything over the transaction?)

Yes. £5,000. It was admitted and is on the record. ref. evidence of Omar Sissoho. It was argued that he was only peacemaker. it was then no suggestion of cash transaction and defendant stuck to his story and Plaintiff tried to squeeze more out of him, and defendant refuse. ref. proof of foreign law. Defendant not obliged to prove foreign law, unless his case diamond transactions was believed.

Adjourned for consideration and decision later in these sittings.

(Sgd) C. G. AMES.

Resumed: 2nd December:

10 Johnson and Saho for Appellant
 S. A. N’Jie for Respondent

Ames reads his judgment.

Ames: P:—This appeal is against a judgment for £19,200 given in the Supreme Court against the appellant, in a suit started by a writ claiming that amount. There are fifteen grounds of appeal to be considered. There was a sixteenth, but it was not argued.

20 Ground 1. is that the whole trial was void, because of an alteration in the writ “without leave of the Court” as required by Order 11 Rules 1—4 of the Rules of the Supreme Court. The alteration was the alteration of the date of the return day. The alteration was initialled by the Registrar. The point was taken in the Court below and overruled. The alteration was made before service. It was not shown that it was made after the writ was issued. The objection in the Court below was not taken when the appellant appeared on the return day, when the filing of a defence was ordered. The defence was filed without mentioning it. I think it is an instance when the doctrine “*Cmnis praesumuntur rite esse*” applies.

30 Ground 2 is that the Supreme Court of the Gambia had no jurisdiction to entertain the claim. In July of last year both parties were in business in Sierra Leone. (They have since been deported). In that month the respondent gave (so he claimed in his writ) £19,200 to the appellant for delivery to a brother of the respondent. The appellant did not deliver it, nor would he return it to the Respondent. He did however sign a document admitting his indebtedness. The respondent lost this document. Eventually the appellant came here (he is a Gambian and has property here). Payment was demanded here but not made. But, as before, the appellant went the length of signing another document admitting the indebtedness, which was expressly stated to be in substitution for the former one signed in Freetown but misplaced. The appellant nevertheless continued to refuse
40 to pay. The appellant in his defence denied everything, having received the money, having signed either document, or owing any sum to the respondent. He also pleaded:—

“5..... and pleads the defence of illegality in “respect of an dealings between himself and the plaintiff which may be directly or indirectly connected with the said plaintiff’s claim.”

That was the situation disclosed by the pleadings when the learned Chief Justice had to decide whether he had jurisdiction. He decided that he had. The proceedings in the suit showed that he was correct. It was not so much that part of the cause of action arose here, as that a sufficient cause of action arose here. Mr. Johnson argued that in such event, the defendant should have been sued in Lebanon and not here. Possibly he could have been; I do not know. He also could have been sued in Freetown on the basis of what happened there, had it been done before they were both deported—and that would now complicate or frustrate any such action. He could also be sued here, where he was, on the basis of what happened here. 10

The learned Chief Justice held that the document signed here was a promissory note, and grounds 5 and 7 concern that. I agree with Mr. Johnson's argument that it was not a promissory note, and Mr. Davies, for the respondent, did not argue that it was. The document was stamped with a large duty, which suggests that it may have been assessed as a promissory note; but that does not make it one.

A supplemental argument followed from the concession by Mr. Davies that it was not a promissory note. Mr. Johnson submitted that the respondent was changing the nature of the claim into something quite different from that pleaded. The learned Chief Justice took it to be a claim on a promissory note; but that was not the Statement of Claim. 20

It was for money had to deliver, and admitted not to have been delivered, and refused to be returned to the respondent when demanded and admitted to be still unpaid and owing to the respondent.

Grounds 3 and 4 complain that it was wrong to admit the document signed here without proof that the Sierra Leone one had been lost. I do not think that these grounds have any substance. The plaintiff gave evidence of the loss of the documents.

I will skip grounds 8 and 9 for the moment, about the alleged illegality, and come to all the others. They can be considered together. They are all about the findings of facts, in particular whether or not the document signed here and another exhibit were forgeries, about contradictions in the evidence, and so on. An appeal such as this is in the nature of a rehearing. Both Mr. Johnson and Mr. Davies made full and painstaking examinations of the entire evidence, indicating agreements and disagreements between witnesses (and of course in a case of this length there were disagreements) and commenting on the probabilities and so on. As far as I myself am concerned, the result has been to make me agree (with one exception) with the findings of fact of the learned Chief Justice. 30
And as to the so called forgeries, there is the clearest evidence indicating not the probability but the certainty that the documents were genuine. 40
And I say so, notwithstanding the different signature of the appellant registered at the Bank. Many people have a registered signature for banking purposes and sign otherwise for other purposes. I do so myself. I registered a signature with my Bank long ago. But I have to sign far too often to make it possible to use that signature for any other purpose.

The exception is this. It concerns the pieces of paper which were exhibits N.1—6. The learned Chief Justice stated in his Reasons for his Decision:—

“I disbelieve the defendant with his small notes. Exhibits N.1 to 6. He was very uncomfortable in the box answering when he had prepared these and the dates on which he did so. “In my opinion, he prepared it to establish his case”

1 If the learned Chief Justice meant that these were prepared for the purpose of putting them in evidence, I would agree with Mr. Johnson and say that the evidence does not justify that inference. Their existence was elicited during cross-examination of the defendant, and they were produced during cross-examination, on the request of counsel for the respondent. N.1—5 appear to be business notes, but there is nothing in them to show what of, or to connect them with this case. N.6 is the important one. The figures agree with the figures given by the appellant in his evidence. The items were said to have been made on different dates, but it does not look like that to me. It has a regularity, and each item looks as if made with the same degree of care or abandon. It appears to be an account written at some one time, an “aide memoire”, for some reason or other.

20 I now return to grounds 8 and 9 about illegality. I have already set out that part of the defence where illegality was pleaded. The evidence for the plaintiff was that it was a cash transaction, (by cash, I include notes, and not mean only coins) and that is one of the facts found by the Chief Justice. The defendant sought to establish that the £19,200 was the value of diamonds handed over, which had been illegally won, or money handed to pay for illegally won diamonds. The evidence was not clear to me as to what exactly he was alleging the illegality to be. He failed to rebut the Plaintiff’s version of the transaction. Moreover there was no proper proof,
30 as the learned Chief Justice pointed out, as to what is and what is not legal in diamond mining in Sierra Leone. So had the particular transaction been clearly established, there would have been no means for the learned Chief Justice to decide whether or not it was illegal. Mr. Johnson submitted that he had to wait to ascertain whether the Chief Justice would believe the appellant’s version before needing to adduce evidence of what the law in Sierra Leone is. I do not agree with that proposition.

In my opinion the appeal should be dismissed.

(Sgd) C. G. AMES
President

40 I agree

(Sgd) G. F. DOVE-EDWIN
Justice of Appeal

I agree

(Sgd) E. F. LUKE
Justice of Appeal

LIST OF DOCUMENTS OMITTED TO BE PRINTED

Misc. Civil Cause No. S. 30/63	Application by Motion dated 22nd March, 1963, for defendant to give bail or security for his appearance Affidavit in support of Motion. Order. Warrant dated 23rd March, 1963.	
Misc. Civil Cause	Application by Motion dated 29th May, 1963, for Plaintiff to give security for dependant's costs in the action Affidavit in support of Motion Order dated 10th June, 1963.	10
Misc. Civil Cause No. S. 67/63	Application by Motion dated 26th June, 1963, for stay of execution pending hearing of appeal to Gambia Court of Appeal. Affidavit in support of Motion. Order dated 2nd July, 1963.	
G.C.A. 5/1963.	Application by Motion dated 6th December, 1963, for leave to appeal to Judicial Committee of Privy Council. Affidavit in support of Motion Bond for costs on Appeal	20
	Application for final leave to appeal and for stay of execution pending the appeal to Privy Council. Affidavit in support of Application. Affidavit in opposition to Application	
Exhibit "A"	Non--Native Alluvial Diamond Dealer's Licence No. 406	
"E"	Specimen Signature of Solo Dabo	30
"F"	A sign by Mr. Cole.	
"G"	A sign by Mr. Cole	
H1—H6"	5 cheques & 1 specimen signature of Solo Dabo	
"J"	Signature of Solo Dabo	
"K1—K2"	Telegrams sent by M. A. Mousa the Plaintiff	
"L1—L5"	Telegrams sent by Solo Dabo	
"M"	Passport of Solo Dabo No. A3197	
"N1—N6"	Leaflets with figures belonging to Solo Dabo	
"O"	Passport of M. A. Mousa No. 5826 issued at Beirut 21.4.53.	