40, 1952

In the Privy Council.

31337

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION) ACCRA.

P.C.A. No. 21 of 1950.

IN THE MATTER of an INTERPLEADER SUMMONS No. 1 of 1947.

BETWEEN

F. & M. KHOURY (Claimants) . . . . *Appellants*

AND

PHILIP SAID AZAR (Judgment-Creditor) . . *Respondent.*

and

P.C.A. No. 23 of 1950.

IN THE MATTER of an INTERPLEADER SUMMONS No. 2 of 1947.

BETWEEN

F. & M. KHOURY (Claimants) . . . . *Appellants*

AND

K. MASSOUD & SONS (Judgment-Creditors) . *Respondents.*

and

P.C.A. No. 22 of 1950.

BETWEEN

F. & M. KHOURY (Defendants) . . . . *Appellants*

AND

PHILIP SAID AZAR (Plaintiff) . . . . *Respondent.*

RESPONDENTS CASE

Case

for the Respondent PHILIP SAID AZAR.

RECORD.

1. These are three consolidated Appeals, by leave of that Court, from three Judgments of the West African Court of Appeal (Gold Coast Session) Accra, all delivered on the 13th day of December, 1947. I. pp. 34-43. II, p. 21.

2. The first two of these Judgments were delivered upon cross-Appeals by the Respondents and the Appellants from Judgments of the

I, pp. 22–25.
I, pp. 1, 5.

Supreme Court of the Gold Coast, Ashanti (Mr. Justice Smith), both delivered on the 19th day of March, 1947, upon two Interpleader Summonses taken out by the Appellants under the provisions of rule 25 of Order 44 contained in the Third Schedule to Chapter 4 (Courts) of the Laws of the Gold Coast (1936 Revision) for the release of certain property of one George Bechir Moukarzel (hereinafter referred to as "the Debtor") from attachment at the instance of the Respondents as Judgment-Creditors of the Debtor.

3. The third of these Judgments was delivered upon an Appeal by this Respondent from a Judgment of the Supreme Court of the Gold
II, pp. 13–16. Coast, Ashanti (Mr. Justice Smith), delivered on the 17th day of June, 1947, in an action by this Respondent against the Appellants and the Debtor
II, pp. 1, 2. (No. 35 of 1947) for a Declaration (1) that a certain Deed dated the 16th day
I, pp. 77–79. of November, 1946, and made between the Debtor of the one part and this Respondent of the other part (hereinafter called "the Deed") had priority
I, pp. 80–82. in point of law and equity to an Indenture dated the 22nd day of November, 1946, and made between the Debtor of the one part and the Appellants
I, pp. 83–84. of the other part (hereinafter called "the Bill of Sale") and an Undertaking dated the 28th day of November, 1946, given by the Debtor to the Appellants (hereinafter called "the Undertaking") (2) that this Respondent was entitled to be treated as a first mortgagee of the property comprised in the Deed and to all the rights and remedies of a first mortgagee and (3) that he was entitled to sell certain lorries and trailers (being the property comprised in the Deed) and to apply the proceeds in payment of the debt thereby secured.

4. The question for determination upon these consolidated appeals is the respective priorities, under the Deed, the Bill of Sale, the Undertaking and an Execution by Attachment by this Respondent as a Judgment Creditor, of the Appellants' and this Respondent's claims to—

(A) a sub-lease of certain land situate at Kumasi, Ashanti, and

(B) the above-mentioned lorries and trailers, all of which formerly belonged to the Debtor.

I, pp. 77–79.

5. The Deed was executed by the Debtor for the purpose of securing repayment to this Respondent of the sum of £4,000 then lent by him to the Debtor together with interest thereon, by instalments of £400 each, the first of such instalments being due on the 30th day of November 1946 and subsequent instalments on the last day of every subsequent calendar month until the 30th day of September, 1947, when an instalment of £250 should be paid and a final instalment of £250 on the 31st day of October, 1947. It was provided that in default of any one payment being made when it became due, or if the Debtor should make default in the performance or observance of any covenant or agreement thereinafter contained, then on any such default as aforesaid the whole of the said principal sum or so much thereof as then might remain unpaid together with the interest thereon then due, should become immediately payable.

6. Such repayment was secured by the grant to this Respondent of certain rights over the following Motor Vehicles and Trailers (hereinafter

called "the Motor Vehicles" and "the Trailers" respectively) then belonging to the Debtor as set out in the Schedule to the Deed, viz. :— I, p. 79, ll. 19-36.

LORRIES Registration No.	Make	TRAILERS Registration No.
AT. 8416	Ford V. 6	AT. 8263
,, 8750	Ford V. 8	,, 8215
,, 8074	G.M.C.	,, 7819
,, 8495	International ..	,, 8409
AC. 6559	Ford V. 8	,, 8350
AT. 8826	Ford V. 8	,, 8608
,, 8827	Ford V. 8	,, 7827
,, 8872	Ford V. 8	,, 7832
,, 8828	Ford V. 8	,, 8262
,, 8830	Ford V. 8	,, 6640
,, 9087	Dodge	,, 6734
,, 8420	Ford V. 6	,, 7461
,, 5616	Bedford	,, 7658
,, 5258	Bedford	,, 7760

All of the Motor Vehicles and the Trailers were used Motor Vehicles. I, p. 13, l. 21.

7. The rights so granted were upon such default of the Debtor as aforesaid (A) to require him to transfer to this Respondent all or any of the Motor Vehicles and the Trailers at a valuation provided such transfers were approved by the competent authorities and (B) to seize or take possession thereof or of any of them wherever they happened to be and either then to exercise the right to have such motor vehicles and trailers transferred to him or in the event of such transfer not being approved as aforesaid or if he did not wish to exercise such right to retain possession until such time as the principal sum and interest or so much thereof as might be due at the date of such default should be paid or until execution should be levied thereon consequent upon any Judgment or Order obtained by this Respondent against the Debtor in respect of the latter's default under the Deed whichever should first happen. I, p. 78, ll. 21-30. I, p. 78, ll. 36-52.

8. The Debtor further therein covenanted with this Respondent not to transfer part with the possession of charge or in any way encumber the Motor Vehicles and the Trailers or any of them. I, p. 79, ll. 1, 7, 8.

9. By the Bill of Sale the Debtor in breach of his covenant in the Deed set forth in paragraph 8 hereof assigned to the Appellants the Motor Vehicles and the Trailers by way of security for the payment of the sum of £16,140 and interest thereon and covenanted that he would pay to the Appellants the said principal sum together with interest then due by monthly instalments of £1,500 on the last day of each calendar month the first of such instalments to be paid on the 31st day of December 1946. I, p. 80, ll. 31-34; p. 81 ll. 1, 2. I, p. 81, ll. 3-9.

10. The Bill of Sale contains a power for the Appellants to seize and take possession of the Motor Vehicles wherever they might be and the Trailers if the Debtor made default in payment of the principal sum by instalments as aforesaid or of the interest thereon at the times appointed I, p. 81, ll. 24-34.

or if execution should during the continuance thereof have been levied against the Debtor's goods under any judgment at law, and a power of
ll. 35—45. sale exercisable after the expiration of five clear days from the day of such seizure.

I, p. 13, ll. 20–22. 11. No permit for the assignment of the Motor Vehicles effected by the Bill of Sale pursuant to the Defence (Control of Transfer of Used Motor Vehicles) Order 1943 (made under Regulation 41 of the Defence Regulations 1939 (Ordinance No. 25 of 1939)) (hereinafter called " the 1943 Order ") was either applied for or obtained. The 1943 Order (as amended in respect of paragraph 3 (2) by the Defence (Control of Transfer of Used Motor Vehicles) (Amendment) Order 1944) provides *inter alia* as follows :—

" 2. In this Order, unless the context otherwise requires—

' Purchase ' includes any acquisition of the property in a used motor-vehicle ;

' Sell ' includes any transfer of the property in a used motor-vehicle ;

' Used motor-vehicle ' means a motor-vehicle as defined in section 2 of the Motor Traffic Ordinance which has at any time been licensed under that Ordinance for use on a public highway.

3.—(1) No person shall sell or purchase a used motor-vehicle unless a permit has first been obtained under this Order.

(2) No person shall sell or purchase a used motor-vehicle for a sum in excess of the price specified in that behalf in the permit issued by the Competent Authority.

4.—(1) The person intending to sell and the person intending to purchase a used motor-vehicle shall jointly apply to the District Transport Control Officer of the District in which either ordinarily resides for issue of a permit.

(2) The application, which shall be in the form set forth in the Schedule, shall be made in triplicate.

(3) The District Transport Control Officer shall, if he considers the transfer of the used motor-vehicle essential or desirable or for other good and sufficient cause, endorse his recommendation upon the original, duplicate and triplicate application forms and forward the triplicate to the Director of Supplies. He shall return the original and duplicate application forms to the person intending to sell and the person intending to purchase the used motor-vehicle respectively.

(4) The person intending to sell and the person intending to purchase the used motor-vehicle shall respectively forward to the Director of Supplies at Accra the said original and duplicate application forms.

(5) The Director of Supplies, if satisfied that the transfer of the used motor-vehicles is essential or desirable, shall grant his permit therefor ; and such permit shall be in the form set forth in the Schedule.

(6) The Director of Supplies shall retain the triplicate of the permit and return the original and duplicate thereof to the person intending to sell and the person intending to purchase the used motor-vehicle respectively.

(7) The original and duplicate of the permit shall be forwarded to the appropriate Licensing Authority by the respective holders thereof when application is made under the Motor Traffic Regulations for transfer of the licence of the used motor-vehicle in respect of which the permit has been issued."

12. Section 2 of the Motor Traffic Ordinance (Chapter 195 of the Laws of the Gold Coast 1936 Revision) provides as follows :—

"*Interpretation.*

In this Ordinance, unless the context otherwise requires :—

'Articulated Vehicle' means a motor vehicle with a trailer drawn thereby which is so constructed and by partial superimposition attached to the motor car that a substantial part of the weight of the trailer is borne by the motor vehicle; such motor vehicle and trailer shall be deemed to by one vehicle :

'Motor Vehicle' includes every description of vehicle propelled by means of mechanism contained within itself, other than vehicles constructed for use on specially prepared ways such as railways or tramways :

'Trailer' means any vehicle which has no independent motive power of its own and which is attached to and drawn by a motor vehicle, but does not include any part of an articulated vehicle or any side-car attached to a motor cycle."

13. Prior to the 28th day of November, 1948, there was owing upon overdraft on the Debtor's account with the Kumasi Branch of Barclays Bank (Dominion Colonial and Overseas) the sum of £7,171 15s. 4d. which was secured by an equitable mortgage duly registered in accordance with Section 22 of the Kumasi Lands Ordinance 1943 upon two parcels of land belonging to the Debtor and known as Plot No. 571 and Plot No. 586 Old Town, Section " B " Kumasi. I, p. 14, ll. 4, 5, 6, 23, 24. I, p. 83, ll. 38-40. pp. 61-64.

14. This said sum of £7,171 15s. 4d. was discharged by the Appellants at the request of the Debtor, and in consideration of such discharge, the Debtor gave the Undertaking to the Appellants whereby he undertook as follows :— I, pp. 83-84.

"(1) To request the Bank to hand to you as security such documents as they possess relating to Plot 571 and Plot 586, Old Town Section " B " Kumasi.

(2) To deposit with you without delay the title deeds of property of which I am the lessee situate at Tamale, Bawku, Navorongo, Bolgatanga and the document relating to my interest in Plot 105, O.T.B. Kumasi.

(3) To execute when called on by you a proper legal mortgage of the properties mentioned in paras. (1) and (2) above securing the repayment of you of £7,171. The rate of interest in such mortgage to be 8 per cent. and the principal to be repaid by me by monthly instalments on the last day of each month of £1,500. The first such instalment to be paid on 31st December, 1946, I will be permitted to repay at any time all or any of the principal money due without previous notice.

(4) To execute a formal Bill of Sale covering all the transport and trailers which I at present own together with spare parts in stock. The Bill of Sale will be to cover the sum of £16,140 and the rate of interest will be 8 per cent. and with the same provisions as to repayment of principal."

I, p. 11, ll. 34–36; pp. 47–73.

15. The Debtor duly implemented heads (1) and (2) of the Undertaking but never executed a proper legal mortgage in accordance with head (3) and never executed a Bill of Sale in accordance with head (4).

I, p. 13, ll. 11–12.

The Equitable Mortgage of the properties situated at Kumasi constituted by the Undertaking and the deposit of the relevant title deeds by the Debtor with the Appellants in pursuance of the terms thereof was never registered pursuant to Section 22 of the Kumasi Lands Ordinance, 1943, subsections (1) and (2) whereof are in the following terms :—

I, p. 13, ll. 8–9.

"(1) No lease, transfer, devolution, mortgage, whether legal or equitable, assignment, underlease or surrender of land vested in the Asantehene under the provisions of this Ordinance, shall be of effect until the same is registered by the Commissioner of Lands, and the fees payable in respect of any such registration shall be the fees set forth in the Eighth Schedule.

(2) The Commissioner of Lands shall for the purposes of subsection (1) maintain registered and key maps, and the same may be inspected at any reasonable time by any interested person upon payment of the fees set forth in the Eighth Schedule."

II, p. 5, ll. 9–12.

16. On the 30th day of November, 1946, the Debtor gave the Respondent a cheque for £400 in payment of the instalment due under the Deed on that day, but this cheque was dishonoured on presentation. This Respondent then attempted to obtain a permit under the said Defence Order for the transfer to him of some of the Motor Vehicles and the Trailers, but the District Transport Control Officer refused to approve such transfers as there were several applications for the transfer of the same and other vehicles to other persons received in his office about the same time.

II, p. 5, ll. 13–20.

II, p. 7, ll. 4–16.

II, p. 5, l. 22.

17. Accordingly on the 10th day of December, 1946, this Respondent commenced an action (No. 87 of 1946) against the Debtor for repayment of the whole of the monies secured by the Deed. On the 16th day of December, 1946, this Respondent recovered an interim judgment upon which final execution was stayed until the 17th day of January, 1947, in this action for the sum of £3,350, and on 24th day of December, 1946, he recovered a final judgment for a further sum of £691 together with the removal of the said stay, making a total sum recovered of £4,041.

II, p. 5, l. 23.
I, p. 17, ll. 36–37.

II, p. 5, ll. 23–24.
I, p. 17, ll. 37–38.

18. During the course of this action this Respondent obtained before judgment an interim Order for attachment of the fourteen Motor Vehicles under the provisions of Order 13 in the said Third Schedule to the Court Ordinance on or about the 14th day of December, 1946 and shortly thereafter eight or nine of the Motor Vehicles were so attached. After the final judgment therein, at the instance of this Respondent, the Sheriff acting under a writ of *fieri facias* pursuant to the provisions of Order 43 Rule 5 dated the 24th day of December, 1946, seized and attached all the following property belonging to the Debtor to satisfy the said judgment, viz. :— II, p. 5, ll. 24–25. I, p. 15, ll. 18–21. I, pp. 2–3.

(A) The Motor Vehicles and the Trailers and a further Motor Vehicle No. AT 8829 and Trailer No. 8419 ;

(B) Sundry spare parts for Motor Vehicles in premises on Plot No. 1 New Zongo Layout District ;

(C) Sundry spare parts for Motor Vehicles in premises on Plot No. 443, Old Town Section " B " 2 District Kumasi ;

(D) The Debtor's right title and interest in certain lands situate at Kumasi, viz. :—

Plot No. 421 O.T.S.B.

Plot No. 571 O.T.S.B.

being Nos. 33 and 34 Old Zongo New Layout District.

19. The right title and interest of the Debtor in those said plots (hereinafter called " the Kumasi Land ") was as follows :—

(A) In the said Plot No. 421, a leasehold interest the nature and intent of which is not disclosed by the evidence, and

(B) In the said Plot No. 571, a sub-term of 60 years from the 7th day of March, 1945. I, pp. 61–64.

20. At the date of the interim attachment all the Motor Vehicles attached thereunder and at the time of the execution of the said writ of *fieri facias* all the property listed in paragraph 18 hereof (except in so far as it was subject to the interim attachment and in so far as the acts set forth in paragraph 21 hereof were of any force or effect) was in the possession of the Debtor as his own property. I, p. 17, ll. 21–35.

21. Prior, however, to such seizure in execution, though subsequent to the interim attachment, the Appellants on the 16th or 17th day of December, 1946, caused their name or initials to be painted on certain Motor Vehicles belonging to the Debtor which had not been attached under the interim attachment, and on the 17th day of December, 1946, the Appellants locked up the stores containing the spare parts, took possession of the keys, and wrote on each door " Seized under a Bill of Sale." I, p. 13, ll. 17–18 ; p. 15, ll. 20–21 ; p. 17, ll 30–32. I, p. 15, ll. 7–9 ; p. 17, ll. 32–35.

22. The Appellants objected to the seisure of the said immoveable and moveable property under the said writ of *fieri facias* and on the 4th day of January, 1947, issued a summons termed an interpleader summons addressed to this Respondent to show cause why all the properties seized I, pp. 1–2.

should not be released from attachment. The said summons was issued under the said Order 44, Rule 25, which is in the following terms :—

> " 25.—(1) In the event of any claim being preferred to, or objection offered against, the sale of lands, or any other immoveable or moveable property which may have been attached in execution of a decree, or under any order for attachment made before judgment, as not liable to be sold in execution of a decree against the judgment debtor, the Court shall, subject to the proviso contained in the next succeeding rule, proceed to investigate the same with the like powers as if the claimant had been originally made a party to the suit, and if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was not in the possession of the party against whom execution is sought, or of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account, or as his own property, the Court shall make an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was in possession of the party against whom execution is sought as his own property, and not on account of any other person, or was in the possession of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, the Court shall disallow the claim.
>
> (2) Every claim under this rule shall be supported by an affidavit specifying the land or other property claimed and setting forth the grounds upon which the claim is based.
>
> (3) Along with such affidavit there shall be delivered to the Registrar as many duplicates thereof as there are parties against whom relief is sought and the Registrar shall annex one such duplicate to each copy of the summons for service.
>
> (4) Nothing herein shall be deemed to preclude the Court from requiring oral evidence if it shall so desire."

I, pp. 2-4.

23. This Interpleader Summons was supported by an Affidavit of Fred Khoury a partner in the Appellants, based upon the contention that under and by virtue of the Bill of Sale and the Undertaking at the time of the seizure by the Sheriff the whole of the properties seized were the Appellants' as against this Respondent.

I, p. 3, ll. 39-40.

24. The principal contentions advanced in argument on behalf of the Appellants were :—

I, p. 9, ll. 12-14.

(A) That (subject to the claimant proving he had some interest in or was possessed of the property) the only question for decision, under the terms of Order 44, Rule 25, was, who was in possession of the property at the date of the seizure ;

I, p. 9, ll. 19-24 ; p. 21, ll. 10-12.

(B) That under and by virtue of the Undertaking and the deposit of title deeds they were equitable mortgagees of the

immoveable property Plot No. 571 in respect of the sum of £7,194 7s. 1d.; and that the Kumasi Lands Ordinance 1943 only affected priorities and did not invalidate the charge;

(C) That the 1943 Order only applied to outright sales and did not invalidate the Bill of Sale under and by virtue of which they were the owners of the Motor Vehicles and the Trailers; and — I, p. 9, ll. 29–32; p. 21, ll. 29–34.

(D) That under and by virtue of the Undertaking they had an equitable mortgage upon the Spare Parts therein mentioned. — I, p. 21, ll. 14–17.

25. The principal contentions advanced in argument on behalf of this Respondent were:—

(A) That at all material times ownership and possession of all the property seized was vested in the Debtor; — I, p. 9, ll. 35–36; p. 19, ll. 12–15.

(B) That the law of the Gold Coast including the Colony of Ashanti, does not recognise the validity of Bills of Sale (this point is not now taken); — I, p. 9, ll. 37–39.

(C) That the Bill of Sale was void as infringing the 1943 Order; — I, p. 9, ll. 40–41; p. 10, ll. 1–3; p. 20, ll. 19–34.

(D) That in any event no right of seizure under the Bill of Sale had arisen and, as to the spare parts, they were included in the Bill of Sale and could not be seized thereunder; and — I, p. 19, l. 42; p. 20, ll. 1–5; ll. 6–11.

(E) That the equitable mortgage of Plot No. 571 created by the joint effect of the Undertaking and the deposit of title deeds was void as against this Respondent for lack of registration under the Kumasi Lands Ordinance 1943. (Plot 421 was not included in the Undertaking and deposit or either of them.) — I, p. 10, ll. 4–7; p. 19, ll. 21–32.

26. The Supreme Court of the Gold Coast (Mr. Justice Smith) by its judgment in this matter delivered on the 19th day of March, 1947, held:— — I, pp. 22–25.

(A) That the 1943 Order was confined to outright sales only and did not prohibit a transfer by way of mortgage; — I, p. 23, ll. 27–30.

(B) That the Bills of Sale Acts of 1854 and 1866 did not apply in the Gold Coast (which includes the Colony of Ashanti); — I, p. 23, ll. 36–44.

(C) That the Bill of Sale was valid by the law of the Gold Coast; — I, p. 23, ll. 36–44.

(D) That the Undertaking not having been registered under Section 22 of the Kumasi Land Ordinance 1943 was of no effect against the Debtor's judgment creditors; — I, p. 24, ll. 9–17.

(E) That the Undertaking created an equitable charge upon the stock of spare parts. — I, p. 24, ll. 35–41.

It was accordingly decided that this Respondent was entitled to seize in execution the Kumasi Lands free from any right title or interest of the Appellants, but only entitled to seize in execution the Motor Vehicles and the Trailers subject to the Appellants' prior mortgage under the Bill of Sale and only entitled to seize the Spare Parts subject to the Appellants' prior charge under the Undertaking.

I, pp. 29, 31.

27. From this decision both the Appellants and this Respondent appealed to the West African Court of Appeal upon grounds which substantially included the respective grounds already summarised in paragraphs 24 and 25 hereof.

II, pp. 1-2.

28. On the 28th day of March, 1947, this Respondent commenced the above mentioned action (No. 35 of 1947) in the Supreme Court of the Gold Coast, Ashanti, against the Appellants and the Debtor, contending that even if the Bill of Sale was not avoided by the 1943 Order that order had the effect of preventing any transfer of a legal interest in the subject-matter thereof, and that the Appellants had in any event had notice of the Deed at the date of the Bill of Sale. Judgment in this action was given on the 17th day of January, 1947. The Court (Mr. Justice Smith) following its former decision on the Interpleader Summons held that under and by virtue of the Bill of Sale the Appellants had a first legal mortgage upon the Motor Vehicles and the Trailers, the learned Judge not being satisfied that they had taken with notice of the Deed, and that accordingly the Bill of Sale took priority over the Deed. He accordingly dismissed the action.

II, p. 13, ll. 17-21; ll. 2-5.

II, pp. 13-16.

II, p. 15, ll. 39-42; p. 16, ll. 19-21.

II, p. 19; p. 21, ll. 19-21.

29. From this Judgment this Respondent appealed to the West African Court of Appeal. The appeals in the matter of the Interpleader Summonses now the subject of Privy Council Appeals Nos. 21 and 23 were first argued and then the Appeal in the last-mentioned section now the subject of Privy Council Appeal No. 22 of 1950. In consequence of the arguments on the two first-named Appeals having covered substantially the same set of facts and the same matters of law as those which arose in the action, and the appeal thereon, the sole question argued in the last-mentioned Appeal was the question of notice. It was agreed between the parties that judgment in the action should follow that delivered in the cross-appeals on the Interpleader Summonses.

30. In addition to the arguments preferred in the Court below, the Appellants contended that by reason of their payment off of the moneys secured by the equitable mortgage to Barclays Bank they had acquired a lien on the property therein comprised which ranked in priority to the claims of this Respondent. No distinction was drawn in argument between the Motor Vehicles and the Trailers.

I, pp. 34-42.

II, p. 21.

31. The Judgment of the West African Court of Appeal (The Honourable Sir John Verity C.J. Nigeria (Presiding Judge), Leslie Ernest Vivian McCarthy and James Henley Coussey JJ. Gold Coast) in all three matters were delivered on the 13th day of December, 1947. They held in the cross-appeals on the Interpleader Summons in which this Respondent was concerned :—

I, p. 35, ll. 49-50; p. 37, ll. 5-33.

(A) That the Appellants were not entitled to the benefit of the lien for which they contended, because either no such lien ever arose or else, if it did, it was waived by accepting the Undertaking ;

I, p. 37, ll. 42-43.

(B) That the judgment appealed from was correct in dismissing the Appellants' claim in respect of the Kumasi Lands ;

(C) That the Bill of Sale was void as contravening the provisions of the 1943 Order ; I, p. 40, l. 40—p. 41, l. 23.

(D) That the judgment appealed from was correct in so far as it related to the Spare Parts. I, p. 41, ll. 28–34.

Accordingly the Appellants' appeal was dismissed, and the judgment of the Court below was upheld in so far as it related to the Kumasi Land. The cross-appeal by this Respondent was allowed in so far as it related to the Motor Vehicles and the Trailers and the judgment of the Court below was set aside in that respect, a judgment was entered for this Respondent on that part of the claim, the cross appeal was dismissed in so far as it related to the Spare Parts, and the judgment of the Court below was upheld in that regard. I, p. 41, ll. 35–42.

With regard to the cross-appeals on the Interpleader Summons in which this Respondent was not concerned, there was judgment in the same terms.

32. Immediately following these Judgments the same Court gave judgment upon the appeal in the said action, allowing the appeal and declaring that this Respondent was entitled to be treated as a first mortgagee and to all the rights and remedies of a first mortgagee including the right to sell the fourteen lorries and fourteen trailers described in the Deed and to apply the proceeds in payment of the debt thereby secured. On the question of notice they concurred with the decision of Mr. Justice Smith. II, p. 21. p. 21, ll. 19–22.

33. Against the said Judgments of the West African Court of Appeal these Appeals are now preferred, final leave so to do having been granted to the Appellants by the said Court on the 13th day of September, 1948. I, p. 43. II, p. 22.

34. This Respondent humbly submits that the Appeals should be dismissed for the following among other

REASONS.

As regards the first of the said Appeals (No. 21 of 1950).

(1) BECAUSE at the date of the interim attachment all the Motor Vehicles attached thereunder and at the date of the seizure of the Motor Vehicles (except in so far as they were subject to the interim attachment), the Trailers and the Kumasi Land in execution, the Debtor was in possession thereof as his own property, or alternatively that there is no evidence that he was not in possession thereof as his own property.

(2) BECAUSE as regards the Motor Vehicles subject to the interim attachment the same were already in *custodia legis* at the instance of this Respondent before the 16th day of December, 1946.

(3) BECAUSE the Bill of Sale was void as infringing the 1943 Order.

(4) BECAUSE even if the Bill of Sale was valid no rights of seizure thereunder had arisen prior to the date of this Respondent's execution.

(5) BECAUSE the Undertaking was not registered in accordance with the provisions of the Kumasi Lands Ordinance 1943 and was therefore void against this Respondent's execution.

(6) BECAUSE, for the reasons stated therein, the Judgment of the West African Court of Appeal was right.

As regards the second of the said Appeals (No. 22 of 1950). 10

(7) BECAUSE the Deed created a valid first equitable mortgage over the Motor Vehicles and the Trailers.

(8) BECAUSE the Bill of Sale cannot have conferred a valid legal title to the Motor Vehicles and the Trailers of the Appellants.

(9) BECAUSE, in addition to the Reasons numbered 1, 2, 3 and 4 above, for the reasons therein and in their first Judgment stated the Judgment of the West African Court of Appeal was right.

RAYMOND WALTON.

In the Privy Council.

ON APPEAL
from the West African Court of Appeal
(Gold Coast Session) Accra.

P.C.A. No. 21 of 1950.

Re an Interpleader Summons No. 1 of 1947

BETWEEN

F. & M. KHOURY . . *Appellants*

AND

P. S. AZAR . . . . *Respondent*

and

BETWEEN

P.C.A. No. 22 of 1950

F. & M. KHOURY . . *Appellants*

AND

P. S. AZAR . . . . *Respondent*

Case

for the Respondent P. S. AZAR

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