

In the Privy Council.

UNIVERSITY OF LONDON
 W.C.1.
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

ON APPEAL

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

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

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

BETWEEN

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

AND

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

(Consolidated Appeals.)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

(All the documents in this Index relate to Privy Council Appeal No. 21 of 1950 except numbers 4, 5, 6, 17, 23, 27 and 29, which relate to Appeal No. 23 of 1950, and the final paragraph of No. 25 which relates to the latter appeal.)

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DESCRIPTION OF DOCUMENT	DATE
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Justification of Sureties	4th September 1948
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Affidavit of M. Khoury in support	4th September 1948

In the Privy Council.

ON APPEAL

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

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

BETWEEN

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

AND

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

AND

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

BETWEEN

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

AND

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

RECORD OF PROCEEDINGS

No. 1.

20 INTERPLEADER SUMMONS No. 1 of 1947.

IN THE DIVISIONAL COURT AT KUMASI.

Between PHILIP SAID AZAR Plaintiff

and

G. B. MOUKARZEL Defendant.

IN THE MATTER of F. & M. KHOURY of Nsawam, Claimants
of property seized under process of the Court in the above
Suit.

*In the
Supreme
Court.*

No. 1.

Inter-
pleader
Summons
No. 1 of
1947,
4th
January
1947.

To : Philip Said Azar of Kumasi,
The abovenamed Judgment-Creditor.

30 You are hereby summoned to appear before this Court at Kumasi
on the 22nd day of January, 1947 at 8.30 o'clock in the forenoon to show

*In the
Supreme
Court.*

cause why certain property as per Claimants' affidavit attached seized under the process of the Court in the above suit should not be released from attachment.

Value of Property £13,000.

No. 1.
Inter-
pleader
Summons
No. 1 of
1947,
4th
January
1947,
continued.

Issued at Kumasi the 4th day of January, 1947.

Fees :—

Court	£20 : 2/-
Bailiff	— 2/-
	<hr/>
	£20 : 4/-
	<hr/> <hr/>

A. C. SMITH,
Judge.

No. 2.

10

No. 2.
Affidavit of
F. Khoury,
filed 4th
January
1947.

AFFIDAVIT of F. Khoury in support of Summons.

IN THE DIVISIONAL COURT AT KUMASI.

Suit No. 87/1946.

IN THE MATTER of :—

PHILIP SAID AZAR Plaintiff-Judgment-Creditor
and

G. B. MOUKARZEL Defendant-Judgment-Debtor

F. & M. KHOURY of Nsawam . Claimants.

I, FRED KHOURY of Nsawam, now in Kumasi, on behalf of the firm of Messrs. F. & M. Khoury, and as a partner thereof, make oath and say as follows :— 20

1. That my firm are the Claimants herein.

2. That in consequence of judgment by this Honourable Court in the abovenamed suit on the 16th December, 1946, and at the instance of the Plaintiff (Philip Said Azar) herein as execution-creditor, the following properties alleged to belong to the Defendant (G. B. Moukarzel) herein as Judgment-Debtor have been seized by the Sheriff under writ of *feri facias* dated 24th December, 1946, namely :—

Lorries	Trailers	
Reg. No.	Regd. No.	
A.T. 8416	A.T. 8263	
„ 8750	„ 8215	
„ 8074	„ 7819	
„ 8495	„ 8409	
„ 6559	„ 8350	
„ 8826	„ 8608	
„ 8827	„ 7827	
„ 8872	„ 7832	
„ 8828	„ 8262	
„ 8830	„ 6640	40
„ 9087	„ 6734	
„ 8420	„ 7461	
„ 5616	„ 7658	
„ 5258	„ 7760	
„ 8829	„ 8419	
„ 8828		

All and sundry spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the premises on Plot No. 1 New Zongo Layout District.

*In the
Supreme
Court.*

All and sundry motor spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the premises on Plot No. 443 Old Town Section " B " 2 District Kumasi.

No. 2.
Affidavit of
F. Khoury,
filed 4th
January
1947,
continued.

All and singular right title and interest in Plot No. 421 O.T.S.B., No. 571 O.T.S.B., Nos. 33 and 34 Old Zongo New Layout District.

10 3. That the said F. & M. Khoury have a valid claim to the properties enumerated hereunder and which are included in the list of properties attached by the Sheriff as given in paragraph 2 hereof by virtue of a Bill of Sale dated 22nd November, 1946, and a written Undertaking dated 28th November, 1946, both of which were executed by the said G. B. Moukarzel in favour of the Claimants herein :—

	Lorries	Trailers
	A.T. 8416	A.T. 8263
	" 8750	" 8215
	" 8074	" 7819
	" 8495	" 8409
	" 6559	" 8350
20	" 8826	" 8608
	" 8827	" 7827
	" 8872	" 7832
	" 8828	" 8262
	" 8830	" 6640
	" 9087	" 6734
	" 8420	" 7461
	" 5616	" 7658
	" 5258	" 7760
	" 8829	" 8419
30	" 8828	

All and sundry spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the Premises on Plot No. 1 New Zongo Layout District.

All and sundry motor spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the Premises on Plot No. 443 Old Town Section " B " 2 District Kumasi.

All and singular the right title and interest in Plot No. 421 O.T.S.B., No. 571 O.T.S.B., Nos. 33 and 34 Old Zongo New Layout Kumasi.

40 4. That at the time of the seizure by the Sheriff the said properties seized were the Claimants' as against the Execution-Creditor.

5. That there is no collusion between the Claimants and the Defendant-Judgment-Debtor.

6. That I swear to this affidavit in support of application for an Interpleader Summons to issue herein at the instance of the above-named

*In the
Supreme
Court.*

Claimants for the said Plaintiff-Judgment-Creditor to show cause why the within-mentioned properties seized under the process of the Court in the above matter should not be released from attachment.

No. 2.
Affidavit of
F. Khoury,
filed 4th
January
1947,
continued.

Sworn at Kumasi this 30th day of } FRED KHOURY.
December, 1946.

Before me,

J. H. MENSAH,
Commissioner for Oaths.

No. 3.
Court
Order,
4th
January
1947.

**No. 3.
COURT ORDER.**

10

IN THE DIVISIONAL COURT, KUMASI.

Interpleader Suit

No. 1/1947.

(L.S.)

A. C. Smith,
Judge.

(*Title as No. 2.*)

UPON the issue of an Interpleader Summons in the above case, IT IS ORDERED that the sale of the following properties seized in execution under a Writ of *feri facias* issued from this Court be stayed mean- 20 while pending the further Order of this Court :—

Lorries Regd. No.	Trailers Regd. No.
A.T. 8416	A.T. 8263
” 8750	” 8215
” 8074	” 7819
” 8495	” 8409
” 6559	” 8350
” 8826	” 8608
” 8827	” 7827
” 8872	” 7832
” 8828	” 8262
” 8830	” 6640
” 9087	” 6734
” 8420	” 7461
” 5616	” 7658
” 5258	” 7760
” 8829	” 8419
” 8828	

30

All and sundry spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the Premises on Plot No. 1 New Zongo Layout District.

In the Supreme Court.

All and sundry motor spare parts belonging to the Defendant-Judgment-Debtor G. B. Moukarzel in the Premises on Plot No. 443 Old Town Section " B " 2 District Kumasi.

No. 3.
Court Order,
4th
January
1947,
continued.

All and singular the right title and interest in Plot No. 421 O.T.S.B., No. 571 O.T.S.B., Nos. 33 and 34 Old Zongo New Layout District.

Dated at Kumasi this 4th day of January 1947.

10

ROGER VAN DER PUIJE,
Acting Registrar.

No. 4.
INTERPLEADER SUMMONS No. 2 of 1947.

No. 4.
Interpleader
Summons
No. 2 of
1947,
4th
January
1947.

IN THE DIVISIONAL COURT AT KUMASI.

Between K. MASSOUD & SONS Plaintiffs
and

G. B. MOUKARZEL Defendant.

IN THE MATTER of F. & M. KHOURY of Nsawam, Claimants
of property seized under the process of the Court in the above
Suit.

20

To K. Massoud & Sons of Kumasi, the abovenamed Judgment-Creditors.

You are hereby summoned to appear before this Court at Kumasi on the 22nd day of January 1947 at 8.30 o'clock in the forenoon to show cause why certain property as per Claimants' affidavit attached seized under the process of the Court in the above suit should not be released from attachment.

Value of Property £1,000.

Issued at Kumasi the 4th day of January 1947.

A. C. SMITH,
Judge.

30

Fees :—

Court .. £10 : 2/-
Bailiff .. — 2/-

£10 : 4/-

In the
Supreme
Court.

No. 5.

AFFIDAVIT of F. Khoury in support of Summons.

No. 5.
Affidavit of
F. Khoury,
filed 4th
January
1947.

IN THE DIVISIONAL COURT AT KUMASI.

Suit No. 77/1946.

IN THE MATTER of

K. MASSOUD, & SONS of Kumasi Plaintiffs-Judgment-Creditors

and

G. B. MOUKARZEL . . . Defendant-Judgment-Debtor

F. & M. KHOURY of Nsawam . Claimants.

I, FRED KHOURY of Nsawam, now in Kumasi, on behalf of the 10
Firm of Messrs. F. & M. Khoury, and as a partner thereof, make
oath and say as follows :—

1. That my firm are the claimants herein.

2. That in consequence of judgment delivered by this Honourable
Court in the above-named suit on the 16th day of December, 1946, and at
the instance of the Plaintiffs (K. Massoud & Sons) herein as Execution-
Creditors, the following properties alleged to belong to the Defendant
(G. B. Moukarzel) herein as Judgment-Debtor have been seized by the
Sheriff under writ of *feri facias* dated 24th December, 1946, namely :—

- (A) Plot N.T.E.R. No. 304. 20
- (B) Plot N.T.E.R. No. 305.
- (C) All motor spare parts stock in store portion of premises
situate on Plot No. 1 Zongo Extension Kumasi.
- (D) Plot No. 571 Old Town Section " B ".
- (E) Compound House at Bolgatanga.
- (F) Compound House at Tamale.
- (G) Compound House at Navrongo.
- (H) Compound House at Bawku.

Lorries :—

- A.T. 5251 A.T. 5485 A.T. 5896 A.T. 5514 30
- A.T. 6465 A.T. 7212 A.T. 7216 A.T. 6733
- A.T. 7132 A.T. 7630 A.T. 7734 A.T. 8827
- A.T. 8828 A.T. 8829 A.T. 8830 A.T. 8831
- A.T. 8832 A.T. 8833 A.T. 8834 A.T. 8835
- A.A. 8812 A.A. 9851

One Dodge Lorry (No number).

3. That the said F. & M. Khoury have a valid claim to the properties
enumerated hereunder and which are included in the list of properties
attached by the Sheriff as given in paragraph 2 hereof by virtue of a Bill
of Sale dated 22nd November, 1946, and a written Undertaking dated 40

28th November, 1946, both of which were executed by the said G. B. Moukarzel in favour of the Claimants herein :—

*In the
Supreme
Court.*

(i) All motor Spare Parts stock in store portion of premises situate on Plot No. 1 Zongo Extension, Kumasi (marked ' C ' in paragraph 2 hereof).

No. 5.
Affidavit of
F. Khoury,
filed 4th
January
1947,
continued.

(ii) Plot No. 571 O.T.B. (marked ' D ' in paragraph 2 hereof).

(iii) Compound House at Tamale (marked ' F ' in paragraph 2 hereof).

10 (iv) Compound House at Bolgatanga (marked ' E ' in paragraph 2 hereof).

(v) Compound House at Navrongo (marked ' G ' in paragraph 2 hereof).

(vi) Compound House at Bawku (marked ' H ' in paragraph 2 hereof).

Lorries :—

A.T. 5251 A.T. 5485 A.T. 5514 A.T. 5896
A.T. 6465 A.T. 7212 A.T. 7216 A.T. 6733
A.T. 7132 A.T. 7630 A.T. 8827 A.T. 8828
A.T. 8829 A.T. 8830 A.T. 8831 A.T. 8832
20 A.T. 8833 A.T. 8835.

4. That at the time of the seizure by the Sheriff the said properties seized were the Claimants' as against the Judgment-Creditors.

5. That there is no collusion between the Claimants and the Defendant-Judgment-Debtor herein.

6. That I swear to this affidavit in support of application for an Interpleader Summons to issue herein at the instance of the abovenamed Claimants for the Plaintiff-Judgment-Creditor to show cause why the within-mentioned properties seized under the process of the Court in the above matter should not be released from attachment.

30 Sworn at Kumasi this 30th day of } FRED KHOURY.
December, 1946.

Before me,

J. H. MENSAH,

Commissioner for Oaths.

*In the
Supreme
Court.*

No. 6.
COURT ORDER.

No. 6.
Court
Order,
4th
January
1947.

IN THE DIVISIONAL COURT AT KUMASI.

(L.S.)

Interpleader Suit No. 2/1947.

A. C. Smith,
Judge.

K. MASSOUD & SONS . . . Plaintiff-Judgment-Creditors.

Vs.

G. B. MOUKARZEL . . . Defendant-Judgment-Debtor

F. & M. KHOURY . . . Claimants. 10

UPON the issue of an Interpleader Summons in the above case, IT IS ORDERED that the sale of the following properties seized in execution under a Writ of *fiery facias* issued from this Court be stayed meanwhile pending the further order of this Court :—

(i) All Motor Spare Parts stock in store portion of premises situate on Plot No. 1 Zongo Extension, Kumasi (Marked " C ").

(ii) Plot No. 571 O.T.B.

(iii) Compound House at Tamale.

(iv) Compound House at Bolgatanga.

(v) Compound House at Navrongo. 20

(vi) Compound House at Bawku.

Lorries :—

A.T.5251	A.T.5485	A.T.5514	A.T.5896
„ 6465	„ 7212	„ 7216	„ 6733
„ 7132	„ 7630	„ 8827	„ 8828
„ 8829	„ 8830	„ 8831	„ 8832
„ 8833	and A.T. 8835.		

Dated at Kumasi this 4th day of January, 1947.

ROGER VAN DER PUIJE,
Acting Registrar. 30

No. 7.
COUNSEL'S OPENINGS.

*In the
Supreme
Court.*

Before HIS HONOUR MR. JUSTICE SMITH.

PHILIP SAID AZAR

V.

G. B. MOUKARZEL

F. & M. KHOURY, Claimants.

Asafu-Adjaye, Mead & Benjamin for Judgment-Creditor.

G. A. Heward-Mills & Ollennu for Claimants.

10 Ollennu for Eve of Giles Hunt & Co.

Heward-Mills :

Submits (1) that in this case all that the Court has to investigate is the question as to who was in possession at the time of seizure of the property. Order 44 rule 25 (1) Gold Coast law differs from English law in this respect. Woodroffe & Ameer Ali, India Civil Procedure Code, p. 96A. Claimant must prove he had some interest in or was possessed of the property which he claims.

(a) G. A.
Heward-
Mills for
Claimants.

Ollennu :

20 I would add that the written undertaking was given in conjunction with deposit of title deeds of houses and lands by way of equitable mortgage to secure an amount which the Claimant paid to discharge Judgment-Debtor's liabilities to Barclays Bank—£7,194 7s. 1d. Claimant claims to be equitable mortgagee of the properties comprised in the deeds deposited with him for the sum of £7,194 7s. 1d. plus charges and interest. Bill of Sale is a mortgage under which the mortgagee's title has become absolute on the fulfilment of a certain condition. Amount secured £16,140, does not include the £7,194 7s. 1d. and Bill secures debts owing by Judgment-Debtor to Claimant for loans for which he gave post-dated cheques which were dishonoured. Control of Transfer of Used Motor Vehicles Order 30 1943 made under Regulation 41 of Defence Regulations 1939. (Gazette 42 of 1943, dated 27th March, 1943). Submits does not affect the validity or effect of the Bill of Sale.

(b) Ollennu
for
Claimants.

Asafu-Adjaye :

Judgment-Creditor submits :—

(1) The ownership of the properties attached is still in the Judgment-Debtor and not the Claimant.

(2) The Claimants have no legal title to the properties attached as the Bill of Sale of 22nd November, 1946, and the written undertaking of 28th November, 1946, are each null and void and of no legal effect.

40 (3) The Bill of Sale in so far as it relates to the motor vehicles attached is illegal and unenforceable as it contravenes the Control of Motor Vehicles

(c) Asafu-
Adjaye for
Judgment-
Creditor.

*In the
Supreme
Court.*

Order, 1943. Nothing is said in Claimant's affidavit as to whether a permit obtained from District Transport Control Officer before Bill of Sale executed.

No. 7.
Counsel's
Openings,
24th
January
1947,
continued.

(4) Alleged undertaking of 28th November, 1946, in so far as it relates to land in Kumasi is of no effect as it is not registered under section 22 of Kumasi Lands Ordinance, 1943. Submits this ordinance covers equitable mortgages as well as legal ones.

(5) Bill of Sale and undertaking are merely contrivances to defeat creditors and made with intent to delay, hinder or defraud creditors, and we plead Statute 13 Eliz. Cap. 5 to avoid Bill of Sale and undertaking. 10 Submits Statute of Eliz. applies in this Colony.

(6) Transaction under Bill of Sale and undertaking not bona fide and that Claimant and Judgment-Debtor in collusion. Rely on Statute of 27 Eliz. *re* leasehold property.

(7) Judgment-Creditor puts Claimant to strict proof of the alleged considerations in the Bill of Sale and undertaking.

(8) If Bill of Sale Act, 1854, applies, which we submit it does not, in so far as it relates to the vehicles attached, the Bill of Sale cannot be genuine, because prior to the date of its execution the Judgment-Debtor had previously charged these lorries as security for £4,000 received from 20 Judgment-Creditor which had not been discharged. Claimant knew of previous charge to Judgment-Creditor but in collusion with Judgment-Debtor created the Bill of Sale on which he relies. Bill of Sale given by Judgment-Debtor in breach of covenant.

CLAIMANTS' EVIDENCE.

No. 8.

M. KHOURY.

MAGID KHOURY, sworn, states :—

I am a partner in the claimant firm. The other partner is my brother, Fred Khoury. I know Judgment-Creditor. Had transactions with him. 30 Lent him money from time to time. Firm's business is transport, trading and money-lending. Loans made by cheques. These are three of our cheques in favour of G. B. Moukarzel and cashed by him and represent loans made to him. (Tendered. No objection. Admitted.)

A1 Chq. 20/8/46	Barclays Accra	..	..	..	£8,500
A2 Chq. 23/8/46	" "	..	..	..	4,000
A3 Chq. 18/10/46	" "	..	..	..	2,820
					£15,320
					£15,320

We have been giving him loans from time to time for some years. None of the cheques are post-dated. On 18th October, 1946, the 40

*Claimants'
Evidence.*

No. 8.
M. Khoury,
24th
January
1947.
Examina-
tion.

Judgment-Debtor gave me a cheque for £4,000 of the same date on Barclays, Kumasi, on account of the loans given to him. We exchanged cheques in our office at Nsawam. I paid Moukarzel's cheque to our account at Accra, but it came back marked "Payment stopped." I telephoned Moukarzel at Kumasi about the cheque and he told me, "Hold on small." I didn't pay cheque to my account until 8th November at Moukarzel's request. Cheque came back to me about 13th November. Telephoned Moukarzel same day. Presented cheque again to my Bank on 21st November and this slip came back to me. The cheque came later. This is cheque and slip. Moukarzel came to see me on 21st November and I demanded payment of the amounts he owed me. He said he couldn't pay and he asked for time and promised to give security on his transport, and he brought all the documents relating to his vehicles. This was on 21st November. Next day, 22nd November, we both went to Giles Hunt and Moukarzel explained his debts to us to Mr. Eve and gave him instructions to draw up the necessary papers. Instructed to draw Bill of Sale, which was done and executed the same day, 22nd November, 1946. This is the Bill of Sale. (Tendered. No objection, admitted.) At time of execution of Bill of Sale, Eve questioned Moukarzel as to whether he owed other people and Moukarzel mentioned that he owed the Bank about £6,000. On 27th November, 1946, Moukarzel came to me again and told me that the Bank was pressing him to settle his account and asked me to help him get free from the Bank. He said he had some property with the Bank which we could have if we paid off the Bank. He then told me he owed the Bank £7,170. I agreed to pay off the Bank and take the security and I went to the Manager of Barclays at Accra and verified what Moukarzel had told me. We then went to Mr. Eve and gave him authority to get the documents from the Bank on payment of the amount due to the Bank. Moukarzel also handed Eve some documents relating to other property as additional security. Eve drew up a written undertaking which Moukarzel signed, and Eve witnessed it. (Tendered. No objection. Admitted.) This was signed on 28th November. I paid the Bank £7,194 : 7 : 1 by cheque 6th December, 1946. This covers cost of transfer from Accra to Kumasi. This is cheque. After paying the Bank the documents relating to the properties pledged were handed over to me, except a few which were promised for next day. These are the documents. There is one more yet to be received from Moukarzel. (Tendered. No objection. Admitted.) Moukarzel also handed over these two Insurance Policies on the properties pledged. The Policy covering the lorries was handed to me when the Bill of Sale was executed.

This Policy covering spare parts was handed to me on 28th November.

About 12th December I heard that Moukarzel was in trouble and that his creditors were after him and I came to Kumasi and seized the properties pledged to me during two days. Later the Sheriff attached them and I brought this interpleader.

Cross-examined :

It was the evening of 21st November, 7-8 p.m., that Moukarzel saw me at Nsawam. He came by car. Some one or two came with him. Mr. Bridi, I think, was with him. The interest on the amounts of the three cheques brought the total to £16,000. Cheque for £8,500 on 20/3/46

*In the
Supreme
Court.*

*Claimants'
Evidence.*

— —
No. 8.
M. Houry,

24th
January
1947,
Examina-
tion,
continued.

" B1."
" B2."

" C."

" D."

" E."

" F1 " to
" F10."

" G1."

" G2."

Cross-
examina-
tion.

" A1."

*In the
Supreme
Court.*

*Claimants'
Evidence.*

No. 8.
M. Khoury,
24th
January
1947,
Cross-
examina-
tion,
continued.

"A2."

"A3."

was a loan with interest at 24% payable on demand. I have a licence as a money-lender and keep a book. My book-keeper makes entries in my money-lender's book from my cheques. Time of payment and rate of interest is recorded in the book. I am not a gambler. I don't gamble. I am not particularly interested in horse-racing. I don't remember for what particular purpose Moukarzel said he required the loan of £8,500. He borrowed from me at various times to pay for properties and transport which he had bought. He executed a Promissory Note for the £8,500 which I have and can produce. (Paper shown to Counsel.) The paper is a genuine paper. It was made in my office at Nsawam on the same 10 day that I issued the cheque. The words "plus interest at the rate of 24% per annum" are written in different ink and are in Moukarzel's handwriting. He had his own pen and I had mine. He wrote this as the result of my insisting that the interest should be stated. I can't remember what Moukarzel told me he wanted the £8,500 for. Nor for what purpose he wanted the £4,000 three days later.

The cheque for £2,820 he said he wanted to draw in Accra, but I can't say for what purpose he wanted it. The previous loans were obtained for business purposes. I can't remember the details, dates or the amounts. There were many. Didn't know Moukarzel owed several 20 other persons before I accepted the Bill of Sale. "Payment stopped" on cheque means that the drawer has stopped the payment. "R.D." means insufficient funds to meet the cheque. I don't know the meaning of "Effects not yet cleared."

Before I gave Moukarzel the cheque for £8,500 he had issued me with his cheque for his previous account. I believe my brother instructed the Bank to hold the cheque for a day or two until Moukarzel's cheque was paid. His cheque was for over £9,000.

This transaction took place at Accra. My brother was at Nsawam at the time, but he is more often at Sekondi. On 21st November, 30 Moukarzel asked for time to settle liabilities and offered security. He never told me he had charged any of his lorries to Azar. Not true we concealed this from Eve. I hadn't heard Moukarzel in difficulties before this. I accepted his word that he didn't owe anyone but the Bank. Left Bill of Sale with Giles Hunt after it was signed. It was for them to get it stamped. I was in Court on 16th December when judgment given against Moukarzel in several cases. Bill of Sale stamped in Kumasi. I got it done. Heard Moukarzel in trouble about 12th—13th December. Got Bill of Sale from Giles Hunt on Saturday 14th, came to Kumasi on 15th. In Court on 16th. Got document stamped on 17th. I took possession 40 of the lorries on 17th December under my Bill of Sale. Under Bill of Sale first instalment due 31st December, 1946.

Interest on the cheques in Exhibit "A" was 24%. The Bill of Sale groups all the amounts together, and agreed to reduce the interest to 8%. The amount £16,140 represents the principal of the 3 cheques plus interest to 22nd November at 24%. He had paid off the old debts before. His last cheque to settle his old accounts was for over £9,000. At second presentation of cheque for £4,000, Bank debited account as cheque unpaid. On first presentation it had come back stopped. Between first and second presentations Moukarzel and his wife telephoned me several times. I met 50 him at Nsawam night of 21st. Next day 22nd, we both met in Accra

and the Bill of Sale was completed that day and I left the Bill of Sale with Giles Hunt to get stamped. On 22nd I did not know that Moukarzel had charged his lorries for another debt. I made no enquiries to find out if lorries already encumbered. He produced the Policy of Insurance showing the list of lorries and trailers which he owned. On 22nd Moukarzel handed me the Policy on the lorries. I gave him no receipt for the Policy. Handed over in Giles Hunt's Office. Eve drafted the undertaking of 28th November and the amendments are in his handwriting. Undertaking is not registered anywhere. I rely on undertaking plus deposit of deeds in respect of my claim to the lands. I have not registered the fact of deposit in the Kumasi Lands Office. Moukarzel has not executed the Bill of Sale referred to in paragraph 4 of the undertaking. I have no Bill of Sale covering the spare parts. My only title is in the undertaking. Some of the parts in the store have been taken from the lorries listed in my Bill of Sale. When I came to Kumasi and put my name on some of the lorries, I did not put my name on those which already had the Court Seal on them. I was not there when lorries came from the North. Put name on lorries on 17th December. Didn't put name on 6 or 7 lorries which had Court seals on them. I am not willing that Azar should take the 14 lorries. Not obtained any permit to assign or transfer any of the lorries. The lorries and trailers are all used motor vehicles. Made no application for permit before execution of Bill of Sale. Moukarzel didn't tell me he had no right to charge 14 of the lorries. I did not undertake to pay off Azar's debt. Before the Bill of Sale, Moukarzel promised that he was going to get money from Azar. He told me this from about 20th October for about 2 weeks he repeated the promise. Took Bill of Sale because he failed to pay me. He told me he couldn't get the money from Azar of 21st November. Moukarzel can say, if he likes, that he didn't know until 26th November that Azar wouldn't give him money. On 18th November didn't say to Moukarzel on telephone had heard Azar was going to sue him. I was not trying to get all his property so that all the creditors would get nothing. After leaving Court I got Bill of Sale stamped next day. Went with lawyer to Lands Office to complete some documents. They were outright assignments. These were prepared as Moukarzel had agreed to give us assignments a day or two after he had given the undertaking. No additional consideration over the £7,000 odd. I think my lawyer made application to Asantehene's Lands Office for consent. Can't remember date of application. Can't say if applications made on 18th and 19th. I didn't go to Asantehene's Lands Office. I went to Commissioner of Lands Office. I don't know what my lawyer was asking the Lands Commissioner to do about the documents. The documents related to the properties which Moukarzel had undertaken to assign to me. I was not collusively trying to defeat Moukarzel's creditors. Moukarzel suggested the Bill of Sale and I agreed.

Re-examined :

Moukarzel gave me a receipt for the £8,500. Moukarzel told me Azar's loan off on 21st November, and then he agreed to give me the Bill of Sale as security. Policy for spare parts handed to me on 28th November. Giles Hunt instructed.

*In the
Supreme
Court.*

*Claimants'
Evidence.*

*No. 8.
M. Khoury,
24th
January
1947,
Cross-
examina-
tion,
continued.*

*Re-
examina-
tion.*

*In the
Supreme
Court.*

No. 9.

S. A. GARDINER.

*Claimants'
Evidence.*

SAMUEL ARTHUR GARDINER, sworn, states :—

No. 9.
S. A.
Gardiner,
24th
January
1947.
Examina-
tion.

Manager, Barclays Bank, Kumasi. I know Moukarzel. He borrowed some money from the Bank and gave an equitable mortgage by deposit of title deeds of certain properties. Asked for payment October-November. In November the amount was paid in full by telegraphic transfer from Accra—£7,194 7s. 10d. I sent the documents which Moukarzel had deposited as security to Accra. Sent registered post on 28th November, 1946. Sent to Accra Branch for delivery to Giles Hunt. Amount paid 10 on 6th December, 1946. Understand documents called for at Khoury's request. Several days before 28th, Moukarzel told me over telephone that he was making arrangements with Khoury to pay off the Bank. Stationed in Kumasi since 1942. Dealt with a number of cheques from Khoury. The endorsement "Effects not yet cleared" means that certain effects had been paid into Khoury's account but had not been cleared when the cheque was presented. Cheque would be paid when effects cleared. Cheque paid 22nd August and telegraphic transfer to me same day for Moukarzel's account. For £4,000 was paid in Kumasi Branch. For "A2." £2,820 was not sighted in Kumasi Branch. Seen other cheques drawn by "A3." Khoury in favour of Moukarzel. Quite a few. 20

Cross-
examina-
tion.

Cross-examined :

Bank held equitable mortgage on property. Registered with Commissioner of Lands and informed Lands Commissioner when the mortgage discharged. Advised him on 17th December, 1946. Moukarzel has issued a number of cheques in favour of Khoury. Agent for Royal Exchange Assurance. So far as I know, Moukarzel's Insurance Policies on lorries and spare parts not deposited with Bank.

Re-
examina-
tion.

Re-examined :

"B1."

This is one of Moukarzel's cheques in favour of Khoury. Moukarzel 30 stopped payment. Cheque presented twice. Returned same answer both times.

No. 10.
J. B.
Amisshah,
24th
January
1947.
Examina-
tion.
"D."
"C."

No. 10.

J. B. AMISSAH.

JOSEPH BROOKMAN AMISSAH, sworn, states :—

Clerk to Giles Hunt & Co., Accra. This document was prepared in my office and typed by my colleague, Mr. Hammond. The corrections are in Eve's writing and witnessed by Mr. Eve. Eve now in Accra—ill. This was also prepared in office. Drafted by Mr. Eve and typed by Hammond. Dated in Eve's handwriting and corrected by him. I 40 attested the execution.

Cross-
examina-
tion.

Cross-examined :

Eve read and explained the document to Moukarzel.

No Re-examination.

Case for Claimants.

JUDGMENT-CREDITOR'S EVIDENCE.

No. 11.

P. S. AZAR.

*In the
Supreme
Court.**Judgment-
Creditor's
Evidence.*

PHILIP SAID AZAR, sworn, states :—

No. 11.

P. S. Azar,
24th
January
1947.
Examina-
tion.

10 Judgment-Creditor. Have attached Moukarzel's properties. Had a promissory note and charge from Moukarzel dated 16th November, 1946. The 14 lorries and trailers which I have attached were comprised in the charge. Each lorry had its own trailer attached to it and are so described in the document. The debt was £4,000. In promissory note Moukarzel undertook not to charge or encumber the lorries. (Promissory Note
tendered. No objection. Admitted.) Debt still owing. This is Receipt
from Moukarzel showing how £4,000 made up. (Tendered. No objection.
Admitted.) £2,300 of the account has been owing since October, 1945,
also the £965. Khoury came to Kumasi on Sunday, 15th December,
and was in Court when I got judgment on Monday, 16th. Same afternoon
he went to Moukarzel's garage with a paint brush and put his name on all
lorries that were there, except the lorries that were under interim attach-
ment. There were about 8 or 9 under attachment. I had an order for
attachment of 14 lorries, but at that time only 8 or 9 had actually been
20 attached. Later he put his name on the other lorries which had not yet
been attached. When Moukarzel gave me the promissory note I told
him to bring me licences of the lorries and trailers, which he did, and I
confirmed that they were licensed in his name. I returned the licences to
him so that he could get petrol permits. He never returned the licences to
me.

" 1."

" 2."

30 On 17th or 18th December, Khoury also locked up the stores of the spare parts, took possession of the keys and wrote on each door, " Seized under a Bill of Sale." The spare parts belong to Moukarzel. The lorries which I have attached belong to Moukarzel. Got information from Lands Department and Asantehene's office. Moukarzel never told me he was going to charge the vehicles to Khoury. The lorries and trailers in promissory note are included in the Bill of Sale. Did not authorise him to encumber or charge them.

*Cross-examined :*Cross-
examina-
tion.

40 I claimed on this Promissory Note for my judgment. I had no interim attachment on the lorries before judgment on 14th December, 1946. Got attachment because he was going to dispose of his property. Heard of this before got attachment. Don't remember the date. Moukarzel did approach me for a loan in November of £10,000 to pay off all his creditors in Kumasi and Accra. I made inquiries between 24th and 27th November and discovered that his debts were more than £60,000, so I refused to give him the £10,000. Told Moukarzel on 26th November that couldn't give him the loan. Moukarzel gave a list of his creditors at a meeting at his house on night of 25th November. In that list Khoury was included as a creditor for £7,100, being the amount which Khoury had paid the Bank for him. He never mentioned the £16,000. Moukarzel never said Khoury was taking over any securities which the Bank held.

" 1."

*In the
Supreme
Court.*

*Judgment-
Creditor's
Evidence.*

No. 11.
P. S. Azar,
24th
January
1947,
Cross-
examina-
tion,
continued.

Friend of Moukarzel for some time. Not friendly at the moment. On 25th November did not get to know that Moukarzel had mortgaged any of his property. Only mortgage I knew of was my own. On 29th October, 1946, Moukarzel mortgaged Plot 100 Kumasi to me to secure £6,000. A new advance which I gave to him. The plot is really his brother's and he mortgaged it as attorney for his brother. On 11th June, 1946, Moukarzel mortgaged to me two houses on Plots 304 and 305 Kumasi for £4,000. Fresh loan. They are Moukarzel's own property. The two mortgages are still subsisting. I had only cheques and promissory notes for the other moneys which Moukarzel owed me. Friendly with Moukarzel 10 for about 2 years. Never knew he was heavily indebted. On 15th never knew that Khoury had mortgaged on Moukarzel's properties. Heard that Khoury had Bill of Sale on 17th or 18th after he had started putting his name on the lorries and doors of store-rooms. Moukarzel told me that only Plot 100 was mortgaged to the Bank since 1935. When he mortgaged the plot to me the Bank released their mortgage and notified the Lands Office. This is the only security Moukarzel told me he had given the Bank. When got information of £60,000 debts, got no information they were secured. Moukarzel sold me Plot 117 in October, 1946. I sued Moukarzel after he failed to pay the first instalment of the Promissory 20 Note. Up to October, Moukarzel owed me about £2,500 unsecured. Sold Plot 117 to me for £11,000 and I paid him cash for it or set it off against any money he owed me. Moukarzel had bought it from K. Massoud & Sons about 6 months ago but hadn't paid. I don't know the price he paid. I never knew that Moukarzel had given security to Khoury. I did not know everything about Moukarzel's affairs.

Re-
examina-
tion.

Re-examined :

At meeting on 25th, Karam, Daniel, Zeitun, Anis Thome, Emil Kamel, Abraham Daniel, Gassoub and others were present.

No. 12.
G. B.
Moukarzel,
25th
January
1947.
Examina-
tion.
" 3."

No. 12.
G. B. MOUKARZEL.

30

GEORGE BECHIR MOUKARZEL, sworn, states :—

Judgment-Debtor in this case. Received subpœna to give evidence at instance of Claimant. This is subpœna. (Tendered. No objection. Admitted.) I gave evidence in this Court in the suit *Azar v. Moukarzel* on the application for review of the order for stay of execution.

" 1." I executed this Promissory Note to Azar on 16th November, 1946.

" 2." I also signed this Receipt on 16th November, 1946.

" 1." In this I charged 14 lorries and trailers to Azar which are specified in the document and described. At the time these trailers were attached to 40 the lorries listed in the same line. I told him I owned the lorries and trailers, but did not show or hand to him the motor licences relating to them.

This is a Fleet Policy on all my lorries, 57 of them. Full comprehensive policy.

The list of lorries and trailers in Bill of Sale was made from the Insurance Policy (Exhibit "G1").

This is Fire Insurance Policy on stock of spare parts. No itemised list in Policy.

The Bill of Sale includes the 14 lorries and trailers which I had previously charged to Azar. I informed Khoury of this previous charge before I executed the Bill of Sale. End October and November there was a proposal that Azar should go into partnership with me, and Azar took stock &c. to find out the position. Azar was satisfied and we both went to Lawyer Asafu-Adjaye to prepare the necessary documents. Finally Azar withdrew. He told me finally on 26th November, and on 27th November I went to Nsawam to see Khoury and spent the night there, and on 28th November both of us went to see Giles Hunt & Co. and the Undertaking was prepared and executed there. Mr. Eve and I initialled the alterations on the Undertaking. It was agreed that I should discharge my liability to Khoury at the rate of £1,500 a month. First instalment due 31st December, 1946. I have not executed the Bill of Sale provided for in paragraph 4 of the Undertaking.

On 28th November I was still in possession of all my lorries and trailers. On 16th December Azar obtained judgment for £3,350, part of the sum in the promissory note. Lorries and trailers still in my possession then. On 24th December Azar obtained judgment for £691, balance of his claim, including interest, under the promissory note of 16th November.

On 24th December the lorries and trailers were some in my garage and some parked in road leading to Massoud's Transport.

Under the Bill of Sale to Khoury, he was to take possession if I defaulted in payment. First payment due 31st December, 1946, of £1,500 plus 8% interest. Khoury seized my lorries on 17th December. He did not touch any of the 14 lorries which I had charged to Azar, but he put his firm's initials on all the other lorries. A few days later Khoury took possession of the keys of the store-rooms in which the spare parts were stored and wrote on the doors, "Seized under Bill of Sale dated 22nd November, 1946, F. & M. Khoury," or words to this effect.

When Court gave judgment on 16th December it granted stay of execution until 11th January, 1947. On 24th December order for stay of execution was rescinded. Khoury had seized the spare parts before 24th December. The lorries, spare parts and landed properties in this interpleader comprise the greater part of my assets. The lands and buildings in Undertaking cost me £5,350. They are worth more now as property values have risen since I bought them. I value all my landed properties at about £30,000 gross. My spare parts insured for £9,000 now stand in my stock books at about £12,000, owing to an increase in quantity since I took out the policy. All the parts in Store No. 1 at Zongo are new parts. The parts in No. 2 are second-hand. The open market value of the lorries and trailers is about £25,000.

*In the
Supreme
Court.*

*Judgment-
Creditor's
Evidence.*

No. 12.

G. B.

Moukarzel,

25th

January

1947,

Examina-

tion,

continued.

"G1."

"C."

"G2."

*In the
Supreme
Court.*

*Judgment-
Creditor's
Evidence.*

No. 12.
G. B.
Moukarzel,
25th
January
1947,
continued.
Cross-
examina-
tion.

Cross-examined :

While negotiating with Azar I told Khoury that I would be getting money from Azar to pay off my creditors, including Khoury. When I saw Khoury on 21st November, Azar had not given me his final answer, and I did not tell Khoury that I was not getting any money from Azar. I told Khoury at Nsawam on 21st November and again at Giles Hunt's office on 22nd that I had charged 14 lorries to Azar and showed him the list of numbers. Mr. Eve said that the Bill of Sale was a temporary one and would be replaced by a proper Bill of Sale which would "omit Azar's lorries and include the spare parts." I called the numbers out to Mr. Eve. I first 10 told Khoury on 27th November that couldn't get money from Azar. Azar came to my house with other Syrians on 26th and told me he would not let me have the money. I went same day to Sekondi to see Mr. Fred Khoury. He telephoned his brother at Nsawam, and on 27th I went to Magid Khoury at Nsawam.

On 24th November, 1946, I signed a mortgage of my brother's property, Plot 100, antedated to 22nd November to Azar for £6,000. Fresh advance. Azar was my good friend in one respect. £6,000 paid direct to Massoud to satisfy all future instalments due by me to Massoud on building at 117 O.T.B. This property has been transferred to another 20 Azar. P. S. Azar didn't buy Plot 117, but his brother N. F. Azar. P. S. Azar knew about all my liabilities before 16th November, including my debt to Khoury. I told him I owed Khoury £16,000 odd. Azar had promised the Bank to pay my liability to Bank, and when he failed to do so I had to get Khoury to do it. I executed promissory note to Azar on his promise of a fresh loan of £4,000 and then when I had executed it he persuaded me to acknowledge that it secured an old debt as specified in Exhibit "2."

When Khoury went to my garage on 17th December, some vehicles had a Court seal on them. Some of the 14 lorries were out on the road at 30 the time. I am not sure of the exact wording of what Khoury wrote on store-room doors. It was to the effect that he had seized them. When executed Undertaking on 28th November it was clearly understood that another Bill of Sale would be prepared to replace the former one. Reason why Bill of Sale was not prepared on 28th November was because I had not got certified copy list of spare parts made by my auditors. Got the list some time in December. Giles Hunt wrote asking me for list of spare parts and informing me £7,100 paid to Barclays Bank. Not sure if this was done before creditors began to take action against me. Bank here notified me between 7th and 9th December. Soon after this the writs 40 started coming in. Some of my vehicles are not in complete running order. The spare parts in the store were not for sale but for maintenance of my vehicles. In second-hand spare parts store are parts of some of my lorries awaiting repair which had been taken off the lorries and put in store for safe keeping. Other spares in second-hand store are from old dismantled lorries.

Re-
examina-
tion.

Re-examined :

Paragraph 4 of Undertaking refers to formal Bill of Sale which would have inventory of spares attached to it. Told Khoury 14 lorries and

trailers charged to Azar. It was proposed that Azar should pay off Bank, then £6,000, and give me £10,000 to pay my creditors. That wouldn't have paid off all my creditors. I owed about £66,000. The £16,000 would have been enough to maintain my credit. A mortgage of Plot 100 was executed on 29th October and subsequently destroyed and a new mortgage executed on 24th November dated 22nd November.

*In the
Supreme
Court.*

*Judgment-
Creditor's
Evidence.*

Case for Judgment-Creditor.

No. 12.
G. B.
Moukarzel,
25th
January
1947,
Re-
examina-
tion,
continued.

No. 13.

COURT NOTES of Judgment-Creditor's Counsel's Address.

10 *Asafu-Adjaye :*

Claimant bases his claim on the Bill of Sale, Exhibit "C," and undertaking, Exhibit "D." Set out in paragraph 3 of his affidavit. He submits at time of execution he was in possession of the properties attached on account of himself and not on account of the Judgment-Debtor.

No. 13.
Court Notes
of
Judgment-
Creditor's
Counsel's
address,
25th
January
1947.

Submits it is a matter of law as to whether he was in possession or not, and under Bill of Sale and Undertaking he was not in possession in law. Claim in three parts—(1) Lands, (2) Motors, (3) Spare parts.

20 Submits Undertaking has no legal effect as against Azar. They are promises to do something.

(1) No effect on Kumasi lands. Kumasi Lands Ordinance 1943, Section 22 (No. 17 of 1943). No Mortgage, etc., of any effect until registered by Commissioner of Lands. The Bank's equitable mortgage was registered. Khoury's was not.

Undertaking plus deposit of deeds is of no effect until registered. The leases themselves provide in paragraph 4 that the lessee will not without the prior consent of the Asantehene assign, underlet, mortgage or part with the possession of the demised premises. Asantehene's consent not obtained.

30 The covenant alone is merely binding *inter partes* and enables the Asantehene to avoid the lease if he sees fit, but the Ordinance binds every one and makes the equitable mortgage of no effect.

The Lands Registry Ordinance, Cap. 112, is optional and only affects priorities. It does not affect validity. No evidence of registration under this Ordinance.

(2) *Spare parts :*

40 Evidence that Moukarzel in possession of spares up to 16th December or a few days later. Agrees that any parts in store which have been taken from laid-up lorries and put in store for safe keeping still belong to the lorries and go with them.

In Exhibit "D" Moukarzel promised to execute a formal Bill of Sale of spare parts. This has not been done. Khoury's taking possession

*In the
Supreme
Court.*

No. 13.
Court Notes
of
Judgment-
Creditor's
Counsel's
address,
25th
January
1947,
continued.

of the spare parts was illegal, as Exhibit "D" did not give him that right. He says he seized them under Bill of Sale, but Bill of Sale does not cover the spare parts. His possession of them is illegal and of no effect. The legal possession still remains in Moukarzel and they are liable to seizure. The undertaking alone vested no title in Khoury.

(3) *The lorries and trailers :*

Seized under Bill of Sale. Submits no right of seizure had then arisen. Paragraph 3 of Bill of Sale. No default had then been made in the payments under the Bill of Sale, and no execution under any judgment had then been levied. Execution had been stayed until 11th January. 10
None of the conditions precedent to justify seizure had then arisen.

Claimant admits he did not seize any of the lorries which had the Sheriff's seal on them. Those were some of the 14 lorries under the interim attachment which have now been levied on. Execution is made under Order 44. Interim attachment under Order 13 and is a different thing altogether. It is a stop order and not an execution. It passes no right and merely preserves the *status quo*.

Validity of Bill of Sale :

The lorries and trailers are used motor vehicles. Defence Regulations 1939 at p. 264. Regulation 41 at p. 285—power to make orders, etc. 20
Section 66—contravention of regulation or any rule or order, etc., made thereunder is an offence. Defence (Control of Transfer of Used Motor Vehicles)—Gazette Notice 343 of 27th March, 1943, page 173 of gazette. Made under Regulation 41. Sell means any transfer of the property. Paragraph 3—no person shall sell or purchase without a permit. Submits Order 343 is wide enough to cover such an assignment as Exhibit "C" purports to effect. Goodeve Personal Property, 7th ed., pp. 117–118. Mortgage of chattels transfers the property in the chattels, subject to the right of redemption. This brings it under 343. Chitty on Contracts, 19th ed., p. 328 : Matters prohibited under a penalty render contracts 30
in regard to them illegal and void. *In re Arbitration Mahmoud and Ispahani* [1921] 2 K.B. 716. No claim could be made under a contract which was prohibited. At p. 724 Bankes L.J. ; 729 Scrutton L.J. Court refuses to enforce illegal contract. Page 730 Atkin L.J. *Canfailla v. Chahin*, 5 W.A.C.A. 104.

Submits Bill of Sale avoided by virtue of Statute of 13 Eliz. C. 5 which applies here. *Braithwaite v. Folorin*, 4 W.A.C.A. 76. Statute applies in Colony and in interpleader proceedings where collusive disposition alleged.

To bring the transaction within the statute, it must be shown that 40
it was done with intent to defraud creditors. Doesn't matter if it is giving security for a genuine debt. Chitty's Statute, p. 731, vol. 2. Statute 13 Eliz. C. 5—Note. Not necessary to prove actual intent, it is sufficient if the necessary effect is to delay creditors. Statute applies to undertaking as well.

Submits the Bill of Sale and undertaking together are mere contrivances to defeat creditors. No provision in Colony for machinery for giving effect to Bill of Sale Act 1854.

COURT NOTES of Claimants' Counsel's Address.

*In the
Supreme
Court.**Ollennu :*

13 Eliz. C. 5 deals with specific transactions. Does not include Bills of Sale by way of mortgage. Even if statute applies. Evidence discloses no such fraud. Khoury was told Azar was going to advance money to pay off creditors. Azar on 16th November knew Moukarzel owed Khoury £16,000. Transaction of 16th November was fraudulent.

No. 14.
Court Notes
of
Claimants'
Counsel's
address,
25th
January
1947.

(1) Kumasi Lands :

10 Section 22 Kumasi Lands Ordinance. Mortgage of no effect until registered. Does nothing more than establish priorities. Does not affect validity of transaction.

(2) Spare Parts :

3 Hailsham, p. 14, para. 19. Any agreement whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattel or to any charge or security thereon is conferred is a Bill of Sale.

20 Submits transaction evidenced by undertaking and deposit of Fire Policy at least gives Claimant an interest, a lien, which at least is equitable entitling Claimant to interplead. 1945 W.B., p. 1256. Order 57 rule 1. Persons entitled to claim. Equitable rights recognised. Holders of lien can interplead, even though date of payment of first instalment had not yet arrived.

(3) Validity of Bill of Sale :

Application for interpleader made after attachment in execution. Submits entitled to seize on day vehicles attached. The contingency under which right to possession arose had matured. Premature seizure doesn't prejudice us.

30 Defence Regulations. "Sell" includes transfer or property in vehicles. Bill of Sale says assign chattels as security. Regulations only deal with transfers of the whole property in the vehicle. Bill of Sale only creates a charge. No property in the thing passed. 13 Eliz. Prideaux on Conveyancing, vol. 1, 1873 ed., p. 667.

Bill of Sale, para. 4. Mortgagee only gets right to sell vehicles.

C. A. V.

A. C. SMITH,
J.

*In the
Supreme
Court.*

No. 15.
Judgment
in Inter-
pleader
No. 1/1947,
19th
March
1947.

No. 15.

JUDGMENT.

Interpleader Suit No. 1 of 1947.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
At a Divisional Court held at Kumasi on the 19th day of March, 1947,
before HIS HONOUR MR. JUSTICE SMITH.

Interpleader Suit No. 1/1947.

PHILIP SAID AZAR . . . Plaintiff-Judgment-Creditor.

v.

G. B. MOUKARZEL . . . Defendant-Judgment-Debtor. 10

F. & M. KHOURY . . . Claimants.

In the affidavit of Fred Khoury supporting the application by the Claimants for the issue of an interpleader summons in regard to the properties seized in execution in this case, the deponent alleged that the 14 lorries and their trailers, the two stocks of spare parts and the landed properties therein mentioned were the Claimants' as against the execution-creditor by virtue of a Bill of Sale dated 22nd November, 1946, and a written Undertaking dated 28th November, 1946, executed by the Judgment-Debtor in favour of the Claimants.

From the evidence, however, led by the Claimants at the hearing of the 20 suit, it has become quite clear that the rights which the Claimants set up are not rights of ownership, but the rights of mortgagees and secured creditors which they maintain take priority over the execution-creditor's claim.

The first ground upon which the claim is contested is that of fraud, on the allegation that the transactions evidenced by the Bill of Sale and Undertaking are bogus and were made solely to prevent the execution-creditors from enforcing their just claims against the Judgment-Debtor.

On this point, while it is quite clear that the Judgment-Debtor being 30 at the time in a very embarrassed financial position—if there were a Bankruptcy Ordinance in this country I should say he was bankrupt—was resorting to many expedients of doubtful honesty to maintain his credit, and if the transactions now under investigation are found valid, the Claimants will be in a very favourable position in comparison with many other creditors of the Judgment-Debtor, nevertheless I am now satisfied that the alleged securities were given to secure genuine debts owing to them by the Judgment-Debtor, and that they are not bogus transactions made with the sole object of defeating the Judgment-Debtor's creditors.

As I observed above the Claimants base their claims on two documents 40 (1) a Bill of Sale dated 22nd November, 1946, under which the Judgment-Debtor assigned to the Claimants all his lorries and trailers therein specified to secure repayment of the sum of £16,140 and interest at 8% and (2) an Undertaking by the Judgment-Debtor dated 28th November, 1946, in consideration of the sum of £7,171 15s. 4d. then due by the Judgment-Debtor to Barclays Bank being paid by the Claimants.

(1) To request the Bank to hand to the Claimants as security the title deeds of the plots in Kumasi therein specified.

(2) To deposit the title deeds of other properties at Kumasi and elsewhere which the Judgment-Debtor owned.

(3) To execute when called upon a proper legal mortgage of the properties mentioned in paragraphs 1 and 2 to secure the sum of £7,171 and interest at 8%.

(4) To execute a formal Bill of Sale of all his lorries and trailers and stocks of spare parts to cover the sum of £16,140 and interest at 8%.

I think it would be convenient if I dealt with these several classes
10 of property mentioned in these documents separately.

And I will first take the lorries and trailers.

The Judgment-Creditor maintains that the Bill of Sale and Undertaking are of no effect in regard to these, as they are all used motor vehicles, the sale of which is regulated and restricted by the Defence (Control of Transfer of Used Motor Vehicles) Order 1943, made under Regulation 41 of the Defence Regulations and published in Gazette Notice 343 of 27th March, 1943.

This Order which prohibits the sale or purchase of a used motor
20 vehicle without a permit from the Competent Authority defines "sell" as including "any transfer of the property in a used motor vehicle" and "purchase" as including "any acquisition of the property in a used motor vehicle."

As a Bill of Sale by way of mortgage transfers the property in the chattels to the mortgagee subject to a right of redemption, the Claimant argues that it falls within the definition of a sale and in the absence of any permit is void under the Order.

But when I examine the Order as a whole, it seems to me that it is
30 only intended to cover an outright sale, and that I must construe "the property" in the definition as meaning "the whole property," and conclude that a mortgage is not such a transfer as is void for lack of a permit.

The same consideration applies to the Undertaking of the 28th November in so far as it may be held to be a mortgage of the same motor vehicles.

Furthermore as the Bill of Sale was given as a security for a genuine debt it is not avoided by the provisions of the Statute 13 Eliz. C. 5.

In the course of the arguments before me the question was raised as to whether the English Bills of Sale Acts of 1854 and 1866 apply in this Colony. If they do, the Bill of Sale in this case, not having been registered, would not stand as against an execution-creditor.

40 I can find no case in which this point has been raised or decided. There is no register kept in this Colony in which such documents could be registered, and I am in great doubt as to whether the statute is of such general application that it should be deemed to be part of the law of this Colony and I finally conclude that it is not.

I would however remark that the time now appears ripe when serious consideration should be given to the passing of some local legislation on this topic.

*In the
Supreme
Court.*

—
No. 15.
Judgment
in Inter-
pleader
No. 1/1947,
19th
March
1947,
continued.

*In the
Supreme
Court.*

No. 15.
Judgment
in Inter-
pleader
No. 1/1947,
19th
March
1947,
continued.

So far as the lorries and trailers are concerned, I hold that the Judgment-Creditor is entitled to seize and sell the Judgment-Debtor's right, title and interest in them subject to the Claimants' prior mortgage on them.

I now consider the question of the landed properties in Kumasi. They are all held under leases and cannot be assigned without the assent of the head landlord. No assent has been obtained, and the title which the Claimants set up is not valid as against him.

But in the case of these properties the law goes further as Section 22 of the Kumasi Lands Ordinance 1943 provides "No lease, transfer, 10
devolution, mortgage, whether legal or equitable, etc., shall be of effect until the same is registered by the Commissioner of Lands."

The Undertaking of the 28th November, 1946, has not been registered as above required and therefore I must hold that so far as it is an equitable mortgage of these lands, it is of no effect as against Moukarzel's judgment-creditors, and I dismiss the Claimants' claim in regard to these Kumasi landed properties.

I next consider the general effect of the Undertaking of 28th November, 1946.

It is given for valuable consideration and the Judgment-Debtor 20
undertakes to give first an equitable and later a legal mortgage of the landed properties therein mentioned and to give a Bill of Sale of all his lorries, trailers and stocks of spare parts to secure his indebtedness to the Claimants.

The undertaking was to be followed or accompanied by a deposit of the title deeds of the landed properties, and I am satisfied that these deeds were deposited before the judgment was obtained in this case.

Except therefore in so far as the Kumasi Lands Ordinance affects the Kumasi lands, and any other legislation of which I at present have no knowledge, may affect the lands elsewhere, I hold that the Claimants 30
have a good equitable title which takes priority over the Judgment-Creditors. But, I repeat, this is only a mortgagee's title and the execution-creditors are entitled to seize and sell in execution for what it may fetch the Judgment-Debtor's right, title and interest in the properties.

The lorries and trailers are already encumbered by the Bill of Sale of 22nd November, 1946, and it is not necessary for me to consider the effect of the undertaking in regard to them, but as to the stocks of spare parts, I find, on the authority of paragraph 19 at page 14 in Hailsham, vol. 3, that the undertaking had the effect of imposing a prior equitable charge upon them, and that again the Judgment-Creditors are entitled 40
to seize and sell the parts in execution, subject to this prior equity.

As each side has succeeded in part, I make no order as to costs.

A. C. SMITH,
Judge.

Counsel :—

Hon. E. O. Asafu-Adjaye for Judgment-Creditor.
Mr. G. A. Heward-Mills (with him Mr. N. A. Ollennu) for Claimants.

No. 16.
COURT NOTES of Judgment.
Interpleader No. 1 of 1947.

*In the
Supreme
Court.*

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
At a Divisional Court held at Kumasi on Wednesday, the 19th day
of March, 1947, before HIS HONOUR MR. JUSTICE SMITH.

No. 16.
Court Notes
of
Judgment,
Inter-
pleader
No. 1/1947,
19th
March
1947.

Interpleader
1/47.

P. S. AZAR

10

V.

G. B. MOUKARZEL

F. & M. KHOURY Claimants.

Heward-Mills for Claimants.

Attoh for Asafu-Adjaye & Mead for Judgment-Creditor.

Judgment read.

Claimants' claim as secured creditor in respect of lorries, trailers, spare
parts and lands outside Kumasi upheld.

Claim to Kumasi lands dismissed.

Claim to own the several properties dismissed.

20

Ruled Judgment-Creditor entitled to seize and sell the Judgment-
Debtor's right title and interest in the several classes of properties.

No order as to costs.

A. C. SMITH,
J.

No. 17.
JUDGMENT.

Interpleader No. 2 of 1947.

No. 17.
Judgment
in Inter-
pleader
No. 2/1947,
19th
March
1947.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
At a Divisional Court held at Kumasi on Wednesday, the 19th day
of March, 1947, before HIS HONOUR MR. JUSTICE SMITH.

30

Interpleader
2/47.

K. MASSOUD & SONS

V.

G. B. MOUKARZEL

F. & M. KHOURY Claimants.

Benjamin for Judgment-Creditors.

Heward-Mills for Claimants.

Judgment as in Interpleader 1/47.

40

No order as to costs.

A. C. SMITH,
J.

*In the
Supreme
Court.*

No. 18.

MOTION on behalf of Claimants for an Order on the Sheriff to deliver the lorries, etc., seized in execution to the Claimants for sale.

No. 18.
Motion on behalf of Claimants for Order to deliver lorries, etc., seized in execution for sale, 28th April 1947.

IN THE SUPREME COURT OF THE GOLD COAST,
Divisional Court, Kumasi-Ashanti.

Interpleader Suit No. 1/47.

PHILIP SAID AZAR . . . Plaintiff-Judgment-Creditor

V.

G. B. MOUKARZEL . . . Defendant-Judgment-Debtor

F. & M. KHOURY . . . Claimants.

10

Motion on notice (under O. 5, R. 2, 2nd Sch., R.S.C.) by George Addison Heward-Mills, Counsel for F. & M. Khoury, the Claimants herein, for an Order of the Court directing the Sheriff of the Court to surrender possession to the said Claimants of the lorries, trailers, and motor spare parts which were the subject-matter of this Interpleader Suit and which are now in possession of the said Sheriff so that the said Claimants may sell the said lorries, trailers and spare parts to realise their prior charge or mortgage thereon subject however to an undertaking to be given by the said Claimants to pay any balance of proceeds of sale over and above the amount of their debt into Court for the Judgment-Creditor, and for any 20 further order as to the Court may seem meet.

Court to be moved on Thursday the 1st day of May, 1947, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at "Dantu" Chambers, Kumasi, this 28th day of April, 1947.

G. A. HEWARD-MILLS,

Solicitor for Claimants.

To the Deputy Sheriff,
Divisional Court,
Kumasi.

And to :—

30

The abovenamed Plaintiff, Philip Said Azar,
Or his Solicitor,
Kumasi.

And to :—

The Other Sixteen Judgment-Creditors affected thereby.



AFFIDAVIT of M. Khoury in support of Motion.

In the
Supreme
Court.

IN THE SUPREME COURT OF THE GOLD COAST,
Divisional Court, Kumasi-Ashanti.

Interpleader Suit No. 1/47.

PHILIP SAID AZAR Plaintiff-Judgment-Creditor

V.

G. B. MOUKARZEL Defendant-Judgment-Debtor

F. & M. KHOURY Claimants.

No. 19.
Affidavit of
M. Khoury,
in support
of Motion,
28th April
1947.

10 I, MAGID KHOURY of Nsawam, make oath and say as follows :—

1. That I am one of the Claimants herein and have the authority of the other Claimants to depose to the facts herein in support of application on our joint behalf.

2. That the Judgment-Creditor caused to be seized under Writ of *feri facias* issued herein certain lorries and trailers and motor spare parts the property of the Defendant-Judgment-Debtor in respect of which the latter had previously executed a Bill of Sale to secure certain debts due to us.

3. That the said lorries and trailers and spare parts were about to be sold when owing to an Interpleader suit instituted by us, the sale was
20 suspended pending the determination of the suit.

4. That judgment was given by the Court in the Interpleader Suit on the 19th day of March, 1947, to the effect, as far as the said motor lorries, trailers and spare parts are concerned that we the Claimants have a prior charge or mortgage on them.

5. That since the date of the judgment the Sheriff has taken no steps to sell the properties seized for sale.

6. That as the judgment of the Court recognises and declares our prior charge or mortgage on the said properties, we claim to have a prior right of sale as against the Judgment-Creditor, and are prepared to give
30 adequate undertaking to pay any balance of proceeds over and above the amount of our debt into Court for the said Judgment-Creditor.

7. That I make this affidavit in support of application for directions to the Sheriff in terms of Motion Paper herein.

Sworn at Kumasi this 28th day of }
April, 1947 } M. KHOURY.

Before me,

J. H. MENSAH,
Commissioner for Oaths.



COURT NOTES of Order.

*In the
Supreme
Court.*

No. 20.
Court
Notes
of Order,
1st May
1947.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
At a Divisional Court held at Kumasi on the 1st day of May, 1947,
before HIS HONOUR MR. JUSTICE SMITH.

Inter. 1/47.

AZAR

V.

MOUKARZEL

KHOURY Claimants. 10

G. A. Heward-Mills for Claimants.

Attoh for Asafu-Adjaye for William Joseph and Rumanus Salim Shadraway.

Mead for Turqui, A. S. Kahi, A. G. Leventis & Co. Ltd., J. S. Raffoul, Angous Trading & Transport Co., A. T. Thome, P. Zakia and S. D. Karam & Sons—Served with Notice of Motion but not parties to this Interpleader.

Benjamin for N. George Karam, I. A. Daniel, Massoud and Sons, D. N. Hage, Toufic Souki, N. D. Bassil, Naja David—Served, but not parties to the Interpleader. 20

G. A. Heward-Mills :

Bossman with me, absent.

Moves in terms of notice of motion. Motion brought as result of inactivity of Deputy Sheriff and sundry Judgment-Creditors in selling the lorries and parts which they have seized in execution. Claimants have as much interest as the other Judgment-Creditors.

Claimants desire to sell the lorries and spare parts and after paying our claim to pay balance into Court. Schedule 2, Order 5, Rule 2. As Claimants held to have prior charge over the lorries and trailers, ask them 30 to be delivered to Claimants to sell on giving undertaking to pay surplus into Court for Judgment-Creditors. Express power of sale in Bill of Sale.

Attoh :

Submits Court has no power to make the order sought.

Court :

I order Deputy Sheriff to sell all the lorries, trailers and spare parts which he has seized in execution at public auction, the auctioneer to be nominated by the Claimants.

Sheriff to apply nett proceeds first in payment of Claimants' claim and any balance to Judgment-Creditors in the order of their priorities. 40

This order is made with the consent of all parties whose Counsel have appeared on this motion.

A. C. SMITH.
J.



No. 21.

CLAIMANTS' GROUNDS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

P. S. AZAR Plaintiff-J-Creditor-
Respondent.
v.
G. B. MOUKARZEL Defendant-J-Debtor
F. & M. KHOURY Claimants-Appellants.

*In the
West
African
Court of
Appeal.*

No. 21.
Claimants'
Grounds of
Appeal,
16th June
1947.

The Appellants, being dissatisfied with the Judgment of the Divisional
10 Court, Kumasi, delivered by His Honour Mr. Justice A. C. Smith on the
19th day of March, 1947, and having obtained Final Leave to appeal
therefrom dated the 9th day of June, 1947, hereby appeal to the West
African Court of Appeal upon the grounds hereinafter set forth.

GROUND'S OF APPEAL.

1. That the Undertaking of the 28th November 1946 was not a
transaction relating to land requiring registration under Section 22 of the
Kumasi Lands Ordinance 1943.

2. That the learned Judge erred in law in holding that in so far
as the said Undertaking was an equitable mortgage of lands in Kumasi
20 and was not registered, under the Kumasi Lands Ordinance 1943, it was
of no effect as against the Judgment-Creditors.

3. That if the said Undertaking was an equitable mortgage requiring
registration as aforesaid the Judgment-Debtor was nevertheless in
possession of such lands not on his own account, or as his own property,
but on account of, or in trust for the Appellants within the meaning of
Section 25 (1) of the Courts Ordinance 1935.

4. That the learned Judge erred in law in failing to give effect to
Section 25 (1) of the Courts Ordinance 1935.

5. That the learned Judge should not have excepted the lands in
30 Kumasi from his judgment in favour of the Claimants and should have
held that in respect of these lands also the Claimants had a good equitable
title taking priority over the Judgment-Creditors and should have given
judgment accordingly.

Dated at Kumasi this 16th day of June, 1947.

GILES HUNT & CO.,
Solicitors for Claimants-Appellants.

*In the
West
African
Court of
Appeal.*

No. 22.
Judgment-
Creditor's
Grounds of
Appeal,
Suit
No. 1/1947,
30th July
1947.

No. 22.
JUDGMENT-CREDITOR'S GROUNDS OF APPEAL, Suit No. 1 of 1947.
(Title as No. 21.)

The Appellant, being dissatisfied with the judgment of the Divisional Court, Kumasi, delivered on the 19th day of March, 1947, and having obtained Final Leave to appeal therefrom dated the 26th day of July, 1947, hereby appeals to the West African Court of Appeal on the grounds hereinafter set forth.

GROUND'S OF APPEAL.

1. Judgment is wrong in law. 10
2. Judgment is against the weight of evidence.
3. Judgment is contrary to law, equity and good conscience.
4. Inadmissible evidence was wrongly accepted by the Court.
5. Admissible evidence was wrongly rejected by the Court.
6. Judgment is otherwise erroneous.

Dated this 30th day of July, 1947.

S. A. ATTOH,
for Solicitor for Appellant.

No. 23.
Judgment-
Creditor's
Grounds of
Appeal,
Suit
No. 2/1947,
31st July
1947.

No. 23.
JUDGMENT-CREDITOR'S GROUNDS OF APPEAL, Suit No. 2 of 1947. 20
IN THE WEST AFRICAN COURT OF APPEAL.

Between K. MASSOUD & SONS . . . Judgt.-Crs.-Respdt's-Applts.
and
G. B. MOUKARZEL . . . Judgt.-Debtor.
F. & M. KHOURY . . . Claimants-Applts./Respdt's.

The Appellants, being dissatisfied with the Judgment of the Divisional Court, Kumasi, delivered on the 19th March, 1947, and having obtained Final Leave to Appeal therefrom dated the 26th day of July, 1947, hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth. 30

GROUND'S OF APPEAL.

1. Because the learned Trial Judge was wrong in holding that the rights of the Claimants under the Bill of Sale of the 22nd November, 1946, are those of secured creditors which take priority over the claim of the execution-creditors (the Appellants herein).

2. Because the Bill of Sale and Undertaking are of no effect in regard to the lorries and trailers, as they are all used motor vehicles, the sale of which is regulated by the Defence (Control of Transfer of Used Motor Vehicles) Order, 1943.

Dated this 31st day of July, 1947. 40

A. MASSOUD,
for and on behalf of the Appellants
herein, and as Partner of the
Appellant-Company.

JUDGMENT-CREDITOR'S NOTICE amending Grounds of Appeal, Suit No. 1 of 1947,

PHILIP SAID AZAR . . . Judgment-Creditor
 (Appellant)
 V.
 G. B. MOUKARZEL . . . Judgment-Debtor,
 and
 F. & M. KHOURY . . . Claimants
 (Respondents).

*In the
West
African
Court of
Appeal.*

No. 24.
Judgment-
Creditor's
Notice
amending
Grounds of
Appeal,
Suit
No. 1/1947,
18th
November
1947.

10 PLEASE TAKE NOTICE that the Appellant herein will ask leave of this Honourable Court at the hearing of the above appeal to amend his grounds of appeal herein by the addition of the following :—

20 1. The Learned Trial Judge, having rightly held that the Bills of Sale Acts (1854 and 1866) not being statutes of general application did not apply in the Gold Coast, should have dismissed the Claimants' Claim, because the Bill of Sale (Exhibit " C ") upon which the Claimants relied could confer no proprietary rights on the Claimants which the law of this country could recognise, and the Learned Trial Judge was therefore wrong in holding that the rights of the Claimants under the aforesaid Bill of Sale were those of secured Creditors which took priority over the claim of the Execution Creditor, and the order that the Execution Creditor was only entitled to sell in execution the Lorries and Trailers subject to the " prior mortgage " of the Claimants was therefore wrong and should be set aside.

30 2. The Learned Trial Judge was wrong in holding that the Defence (Control of Transfer of Used Motor Vehicles) Order 1943 did not apply, because the law regarding the transfer of Used Motor Vehicles cannot be restricted to an actual " transfer of the property in a used Motor Vehicle " only, but must also be interpreted to include any agreement for the " transfer of the property in a Used Motor Vehicle," and such an agreement was what the Bill of Sale (Exhibit " C ") contemplated in its operation. In any case the Learned Trial Judge was wrong in holding that the assignment unto the Claimants (under the Bill of Sale) of the Lorries and Trailers did not constitute a transfer of the property in the said Lorries and Trailers.

40 3. If the Learned Trial Judge was right in holding that the Bill of Sale did not transfer to the Claimants the property in the Lorries and Trailers, then he erred in law by his failure to give effect to the provisions of Order 44 Rule 25 of the Supreme Court Rules (The Court Ordinance) because in law and in fact the Judgment-Debtor was, at the time the Lorries and Trailers were seized in execution, in possession of the said Lorries and Trailers as Owner thereof.

4. The Learned Trial Judge should have upheld the claims of the Execution Creditor (The Appellant herein) under the

*In the
West
African
Court of
Appeal.*

No. 24.
Judgment-
Creditor's
Notice
amending
Grounds of
Appeal,
Suit
No. 1/1947,
18th
November
1947,
continued.

Agreement (Exhibit 1) as against the claims of the Claimants because the Agreement (Exhibit 1) was in strict conformity with the laws of the Gold Coast whereas the Bill of Sale (Exhibit " C ") was not.

5. The Learned Trial Judge in holding that the rights of the Claimants are not rights of ownership but rights of mortgagees and secured creditors did not consider that the Appellant was also a mortgagee and a secured creditor under his Deed Exhibit 1. The Claimants could not therefore have priority as against the Appellant, his deed being prior in point of time to that of the 10 Claimants.

6. On the 22nd November 1946 the Judgment-Debtor is alleged to have signed the Bill of Sale Exhibit " C " in favour the Claimants in respect of his Motor Vehicles. Fourteen (14) of these said Vehicles and Trailers had at that date been already charged to the Judgment-Creditor under Exhibit 1 and the Judgment-Debtor had no right to execute another Bill of Sale covering the very same lorries and trailers.

Dated at Kumasi this 18th day of November, 1947.

(Sgd.) E. A. ASAFU-ADJAYE, 20

Solicitor for Judgment-Creditor-Respondent-Appellant.

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COURT NOTES of Arguments on Appeal.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra on Wednesday the 10th day of December, 1947, before THEIR HONOURS SIR JOHN VERITY, C.J., Nigeria (Presiding J.), LESLIE ERNEST VIVIAN M'CARTHY and JAMES HENLEY COUSSEY, JJ., Gold Coast.

PHILIP SAID AZAR Judgment-Creditor

V.

MOUKARZEL Judgment-Debtor

and

F. & M. KHOURY Claimants

K. MASSOUD & SONS Judgment-Creditors

V.

MOUKARZEL Judgment-Debtor

and

F. & M. KHOURY Claimants.

Ollennu for F. & M. Khoury. Bossman with him.

Asafu-Adjaye for P. S. Azar and K. Massoud & Sons. Akufo-Addo 40 with him.

30

Ollennu :

Interpleader.

Judgment p. 22.

Grounds of Appeal p. 29.

- Appeal of Khoury is against that part of judgment only which relates to Kumasi lands. Kumasi Lands Ordinance 17 of 1943 Section 22 not invalid but inoperative till registered. P. 22-3. Khoury have or had a lien on property. Cap. 4 (Section 25). Property held in trust for Claimant by Judgment-Debtor. Halsbury 2nd Edition Vol. 20 p. 575 paragraph 725.
- 10 Agreement to transfer, lien mortgage &c. requires no registration under Ordinance 17/43 Section 22. Courts will give effect p. 14, 10. Payment to Bank (16.12.46) 83—Undertaking—(28.11.46). *Ex parte Hauxwell* 23 Ch. D. p. 626.

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Asafu-Adjaye :

As to Khoury's appeal. Section 22 Ordinance 17/43. P. 3-4; p. 9—Claimants title—equitable mortgagee. Equitable lien: payment under contract vested no lien.

As to Azar's appeal

For
Judgment-
Creditors.

Akufo-Addo :

- 20 Bills of Sales Acts. 6 W.A.C.A. p. 127 at 130.
Ground 1.

Bills of Sale Acts, 1854 and 1856, not applicable. No law as to Bills of Sale in Gold Coast *Rex v. McKinney & ors.* (1889) L.R. 14 A.C. 77 at 81.

1. Lien.

2. Out and out transfer by mortgage.

3. Pledge.

Exh. 1 p. 77—No assignment—but right to take possession and sell. If Exh. C is a mortgage of chattels—with transfer of property then contrary to Defence Order 1943 G.N. 343 of 27.3.43 void or illegal.

- 30 *In re Arbitration between Mahmoud and Ispahani* [1921] 2 K.B. 716.
Canfailla v. Chahin 5 W.A.C.A. 104.

If Exh. C creates any intent it is no more than equitable charge. Cootes Vol. I p. 80.

Adjourned to 11.12.47.

(Sgd.) JOHN VERITY.

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Appearances as before.

Akufo-Addo resumes.

- Bill of Sale admittedly valid before 1854 at common law in England.
40 Cap. 4. Sec. 70 "common law . . . on 24.7.74."

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Ground 5. Exh. 1 also a bill of sale. Odgers Common Law 2nd Edition Vol. 1.30. Fisher on Mortgages, 6th Edition p. 38 paragraph 64.

Ollennu—in reply to respondent and to his appeal. Lien arises on redemption not security. Lien till security is effective. 32 Digest p. 262, paragraph 454. *Re Leslie : Leslie v. French*, 23 Ch. D. 552. 48 L.J. at 565. *Aylwin v. Whitters* 9 L.R. 720. Halsbury 2nd Edition 579 paragraph 732. *Middleton v. Magny* 10 L.T. (N.S.) p. 408 as to Judgment-Creditor's appeal. Bill of Sale—Mortgage of chattels. Williams on Property 17th Edition p. 93.4.

Exh. A—legal mortgage.

10

Exh. 1—equitable charge.

Cap. 4, Section 70—date referable to statutes only.

Defence (Control of Transfer &c.) Order 1943 G.N. 41 of 1943.

Defence (Control of Transfer &c.) Order 1944 G.N. 1226 of 1944.

Judgment-Creditor's rights under Exh. 1 merged in judgment and they then become Judgment-Creditors without security.

Adjaye in reply.

Judgment reserved.

(Sgd.) JOHN VERITY.

Counsel agree that Court shall give judgment also in appeal *Massoud & Sons v. Moukarzel, F. & M. Houry, Claimants* without further argument.

(Sgd.) JOHN VERITY.

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JUDGMENT on Appeal, Suit No. 1/1947.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Saturday the 13th day of December, 1947, before THEIR HONOURS SIR JOHN VERITY, C.J. Nigeria (Presiding J.), LESLIE ERNEST VIVIAN M'CARTHY, and JAMES HENLEY COUSSEY, JJ., Gold Coast.

Civil Appeals Nos. 44/47 & 53/47.

30

CROSS APPEALS.

PHILIP SAID AZAR . . . Plaintiff-Judgment-Creditor

v.

G. B. MOUKARZEL . . . Judgment-Debtor

F. & M. KHOURY . . . Claimants.

JUDGMENT—read by Verity, C.J., Nigeria.

These are cross appeals in an interpleader suit in which the Claimants sought the release from attachment of certain property seized in execution

at the instance of the Judgment-Creditor. The property to which they laid claim included a number of lorries, trailers and sundry spare parts, and a certain plot of land situate at Kumasi.

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The learned Judge who heard the suit held that as regards the lorries and trailers the Judgment-Creditor was entitled to seize and sell the Judgment-Debtor's interest in them subject to the Claimants' prior mortgage on them. He held in regard to the spare parts that the Judgment-Creditor was entitled to seize them in execution subject to the prior equitable charge upon them in favour of the Claimants. In regard
10 to the land he dismissed the claim.

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Against this decision in regard to the land the Claimants appealed and the Judgment-Creditor brought a cross-appeal in regard to the lorries trailers and spare parts. Owing to the absence of any Rule of this Court requiring an appellant to indicate whether he appeals against the whole judgment or only part thereof the notice of appeal would appear to show that each party appealed against the whole judgment, but the grounds of appeal and the argument of Counsel show that the nature of the cross-appeals is as we have stated.

Dealing firstly with the Claimants' appeal relating to the land, their
20 claim was based upon an undertaking entered into by the Judgment-Debtor on 28th November, 1946, whereby in consideration of a sum of money then due by him to Barclays Bank being paid by the Claimants the Judgment-Debtor undertook to request the Bank to hand to the Claimants as security the title deeds of the land at Kumasi, to deposit the title deeds of other properties, and to execute a proper legal mortgage of all these lands, and further to execute a formal Bill of Sale of the lorries, trailers and spare parts which are the subject of the cross-appeal. The Judgment-Creditor resisted the claim in so far as the land at Kumasi is
30 concerned on the ground that the undertaking amounts to an equitable mortgage which has not been registered by the Commissioner of Lands and that by reason of Section 22 of the Kumasi Lands Ordinance 1943 (No. 17 of 1943) no equitable mortgage shall be of effect until so registered. The learned trial Judge upheld this contention and therefore dismissed the claim.

It is argued before us that although the transaction is of no effect as an equitable mortgage until registered, the statutory restriction upon its effect does not make the transaction null and void and does not extinguish any equities the transaction may have conferred upon the Claimants as distinct from the estate conferred by the equitable mortgage.
40 Counsel submitted that the transaction is one whereby the Claimants, as creditors of the Judgment-Debtor, paid his debt to a third party in redemption of the equitable mortgage held by Barclays Bank and thereby acquired a lien on the property which ranks in priority to the claims of the Judgment-Creditor. On behalf of the Judgment-Creditor it is argued that although the equitable mortgage evidenced by the undertaking of the 28th November coupled with deposit of title deeds is of no effect until registered the payment to the Bank was in fulfilment of a contractual obligation in consideration of which the Judgment-Debtor undertook to give security and that no equitable lien arises. It is open to question as
50 to whether in the circumstances a lien ever arose. By the undertaking

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of the 28th November the Judgment-Debtor agreed to charge this land. Upon the general principle as stated in Coote's Law of Mortgages 9th Edition page 80 that an agreement in writing by which any property real or personal is to be a security for a sum of money owing or advanced is an equitable charge, it would appear that the signing of the undertaking in itself constituted an equitable mortgage, in which case no equitable lien would arise from the subsequent payment of the moneys due to the Bank. Assuming, however, that in such circumstances a lien would arise the submissions of Counsel should receive consideration.

We agree with the submission of Counsel for the Claimants that the provisions of Section 22 of the Ordinance do not destroy the equitable mortgage nor render it null and void. They do no more than defer its effect till registration. It was open to the Claimants to avail themselves of it as effective security at any time by causing it to be registered. We agree further that the fact that the payment to the Bank was in accordance with the contract between the parties does not necessarily negative the creation of an equitable lien such as would protect him until security was given. The question arises, however, as to whether, once security had been given by way of equitable mortgage the Claimants must be deemed to have waived the lien and substituted such security therefor. This question was dealt with in *Re Taylor, Stileman and Underwood* [1891] 1 Ch. 590, in which a similar point arose in relation to a Solicitor's lien and in which Lord Justice Lindley said :

“ In considering this point we must be careful. Whether a lien is waived or not by taking a security depends upon the intention expressed or to be inferred from the position of the parties and all the circumstances of the case.”

Lord Justice Lopes observed :

“ It appears to me that in each case the question whether the lien is waived by taking security must be decided according to the particular circumstances. I do not mean to say that taking a security necessarily imports an abandonment of the lien ; but if there are circumstances in the taking of the security which are inconsistent with the continuance of the old security it is to be inferred that the Solicitor intended to abandon his lien.”

In that case the security taken by the Solicitor consisted of a promissory note payable on demand and bearing interest, the husband of the client joining therein, and the Court of Appeal held that in these circumstances the only fair inference to draw was that there was an intention between the parties to give up the old security and to rely upon the new.

Now in the present case the circumstances giving rise to the lien was the payment to the Bank in order to redeem the plot of land at Kumasi upon which the Bank held an equitable mortgage. There can be no doubt that the lien was secured upon that plot of land only and could not be enforced as against any other properties of the debtor. By the undertaking of the 28th November, however, the debtor agreed to give, and did in fact subsequently give, further security, that is to say an equitable mortgage not only upon the land at Kumasi but also upon other lands and further

undertook to execute a legal mortgage upon all these properties not only to secure the sum paid to the Bank but also other debts due by him to the Claimants and further to execute a Bill of Sale on certain chattels to secure a further sum.

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We are of the opinion that the fair inference to be drawn from these facts is not that the parties intended that the only security by way of lien should be continued, but that this lien limited to the Kumasi lands should be abandoned and there should be substituted therefor the equitable mortgage created by the undertaking, coupled with the deposit of title deeds, and ultimately to be succeeded by a legal mortgage and Bill of Sale which would include security for further indebtedness. This amounts, in our view, to a waiver of the lien once the new security has been given. This security was in fact given when an equitable mortgage arose from the deposit of the title deeds, coupled with the covenants to execute a legal mortgage and Bill of Sale. We are fortified in our view that there was an intention to abandon the lien, by the conduct of the Claimants in the present proceedings. There are no pleadings but from the affidavit of F. Khoury it is clear that they rested their claim upon their rights under the undertaking of the 28th November, while in the addresses of Counsel in the Court below the claim is based upon the equitable mortgage comprised in the deposit of deeds in conjunction with the undertaking. No suggestion that the Claimants relied upon the lien is apparent from the proceedings in the Court below and in our view this confirms the conclusion to be drawn from the immediate circumstances that it was the intention of the parties that the lien should be abandoned. Once abandoned, no authority has been cited to us, nor have we been able to refer to any for the proposition that the lien can be revived by the mere fact that the Claimants have placed themselves in the position of being unable presently to avail themselves of what is admittedly a good and valid security by their failure to register the same. We are of the opinion, therefore, that the learned trial Judge rightly dismissed their claim, for having abandoned their lien and being unable to give effect to their equitable mortgage they have no presently effective estate or interest in the land.

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It was further submitted by Counsel for the Claimants that the Judgment-Debtor by reason of the existence of the equitable mortgage is in possession of the land as trustee for the claimant mortgagees. It is apparent that, in view of our finding that the lien was abandoned, the sole interest of the Claimants in respect of which the Judgment-Debtor could be deemed to hold possession as a trustee for them arises from the equitable mortgage, but as failure to register the same precludes any effect being given thereto it is impossible to sustain their claim on this ground.

In our opinion the learned Judge was right in dismissing the claim in respect of the Kumasi land, and the Claimants' appeal is dismissed.

Turning now to the cross-appeal relating to the lorries and trailers, it appears that on the 16th November, 1946, the Judgment-Debtor entered into an agreement in writing with the Judgment-Creditor whereby the latter agreed to lend the former a sum of money to be secured in the manner therein appearing, that is to say if the borrower made default in payment thereunder the lender should be at liberty to sue the Judgment-Debtor for principal and interest, or in the alternative he might require

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the borrower to transfer to him the lorries and trailers, the subject of the present claim. In view, however, of the restrictions placed upon the sale and purchase of such motor vehicles by the Defence (Control of Transfer of Used Motor Vehicles) Order, 1943, it was provided that such transfer should be subject to the approval of the Competent Authority under the Order. The agreement further provided that in case of default in payment the lender might seize the vehicles, giving notice to the borrower as to whether he desired to exercise the right of transfer, and the clause further provided that if the Competent Authority did not approve of such transfer or if the lender did not desire to exercise his right of transfer, he might nevertheless retain possession of the vehicles until the sum due by way of principal and interest should be paid or until execution should be levied thereupon consequent upon any judgment obtained by him against the borrower in respect of default under the agreement. 10

The Judgment-Debtor made default in payment under this agreement, the Judgment-Creditor sued, obtained an order for interim attachment, proceeded to judgment, and issued execution against the vehicles, which were attached under a writ dated 24th December, 1946, and which are the subject of the present claim for release.

It appears, however, that on the 22nd November, 1946, six days after the date of his agreement with the Judgment-Creditor, the Judgment-Debtor executed a document described as a Bill of Sale whereby he assigned to the Claimants, *inter alia*, the vehicles which were the subject of his agreement with the Judgment-Creditor, to secure payment of a large sum in which he was indebted to the Claimants. 20

In the Court below the Judgment-Creditor contended that this Bill of Sale was avoided by virtue of the Statute of 13 Eliz. c. 5, but the learned Judge found against him on this contention and with this finding the Judgment-Creditor does not express himself as being dissatisfied in this appeal. It was contended further, however, that the document is void by reason of its being in breach of the Defence Order of 1943 to which we have before referred, in that it purported to transfer the property in used motor vehicles without the permit required by that Order. The learned Judge, while observing that the Order defines "sale" as including "any transfer of the property in a used motor vehicle" and "purchase" as including "any acquisition of property in a used motor vehicle," held that on consideration of the whole Order it appeared only intended to cover outright sale, and he concluded that a mortgage is not such a transfer as is void by lack of permit. He therefore deferred the rights of the Judgment-Creditor in execution to the prior mortgage held by the Claimants. 30 40

Counsel for the Judgment-Creditor submitted in the first place that the so-called Bill of Sale was not effective as such in the Gold Coast by reason of the fact that the Bills of Sale Acts 1854 and 1866 are not applicable, not being Acts of general application such as would be effective here by reason of Section 70 of the Courts Ordinance (Cap. 4). It appearing, however, that the document in question might nevertheless have been effective to create a mortgage of chattels at Common Law in England prior to the enactment of the Bills of Sale Acts, he contended, though

we cannot conceive seriously, that the Common Law applicable in the Gold Coast is that in force in England on 24th July, 1874, and that as the Common Law in England as to mortgages of Chattels had before that date been altered by the enactment of the Bills of Sale Acts 1854 and 1866 the Common Law as it was effective in England prior to those Acts was no longer applicable in the Gold Coast. We are unable to uphold any such contention. It is sufficient to say that in our opinion the words "in force on the 24th July, 1874," are referable to statutes of general application only and not to either the Common Law or the doctrines of equity. Assuming, however, for the purpose of argument that the Bill of Sale is a valid and effective mortgage of chattels at Common Law he contended that the agreement entered into between the Judgment-Creditor and the Judgment-Debtor on the 16th November, 1946, is also a Common Law mortgage of chattels, that the effect thereof is identical with that of the Claimants' Bill of Sale and that the sole method of determining the priority of two documents of like legal effect is by reference to their date. He contended therefore that the learned Judge erred in giving preference to the Claimants' Bill of Sale which was later in time. Should it be necessary to determine the relative effect of these documents the arguments of Counsel on this point are worthy of consideration, but the main contention of the Judgment-Creditor is that the Claimants' Bill of Sale is void by reasons of the provisions of the Defence Order of 1943 and is therefore of no effect at all.

This Bill of Sale purports to assign the used motor vehicles which are its subject-matter, the effect of which, if valid, is to transfer to the Claimants the property therein. If, therefore, such transfer falls within the provisions of the Order it is contrary thereto having been effected without the permission there prescribed as a condition precedent to legal transfer. In such case it is an illegal transfer and is void and of no effect.

Now the Order declares that the words "sale" and "purchase" as used therein shall include "any transfer" or "any acquisition" of the property in used motor vehicles. As it is admitted, indeed it is the basis of the claim, that the Bill of Sale effects a transfer of the property in the motor vehicles to the Claimants it would appear *prima facie* that it falls within the terms of the Order. The learned Judge held, however, and it was forcibly argued before us, that on consideration of the whole of the Order it is found that it is intended to cover only outright sales, that the word "property" in the Order must be construed to mean "the whole property" and that as the "property" transferred by the Bill of Sale is not "the whole property" but is limited by the transferor's right to redeem, it is not within the Order.

In support of this contention Counsel referred to the intention of the Order as appears from its terms, with more particular reference to the amending Order of 1944 and to the forms of application and of permit prescribed by the Orders. It is true that the forms refer exclusively to the "vendor" and the "purchaser," that the Competent Authority is given power to determine whether the transfer is essential or desirable, and that by the amending Order he is given power to fix the price at which the vehicles shall be sold. It is submitted that these provisions show that the intention of the Order is to control such transfers as are

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ordinarily connoted by the word "sale" that is to say the transfer of property and possession absolutely to the purchaser in consideration of a purchase price. There is much force in this contention, though it must not be assumed that the word "sale" in itself always connotes no more than such a transfer. In *Bennett v. Wyndham* 23 Beav. at page 526, in an action relating to the raising of certain charges by trustees "except by sale or sales" the Master of the Rolls said :

" I think . . . the word 'sale' expressly excludes the possibility of raising it by sale of any portion of the estate, and I think the word 'sale' virtually includes within it the word 'mortgage' 10 which is practically a sale and which cannot be resorted to without giving the mortgagee the power of getting possession of the estate if the charge is not paid off when required . . . "

How much the more careful should the Courts be in limiting the meaning of the word "sale" where the statute or order prohibiting sales save under certain conditions explicitly declares that a "sale" for the purposes of the Order shall include "any transfer of the property" in the articles the subject of the transfer.

In considering the object of the Order for the purpose of ascertaining precisely what "transfers of the property" were intended to be covered, 20 it must be borne in mind that the original Order made no reference to the control of the purchase price. It is apparent that at that time the purpose of the Order was to enable the Competent Authority to control the transfer of the property in used motor vehicles in accordance with his conclusion as to whether such transfers were essential or desirable in pursuance of the purposes of the Defence Regulations under which the Order was made, that is to say the due prosecution of the war and other purposes related thereto. The fact that in the following year the Competent authority was further empowered to fix the price at which vehicles were 30 to be sold in no way detracts from the powers originally conferred upon him or the object of those powers. We would agree that in so far as the additional powers of the authority to fix the purchase price are concerned they are only capable of being exercised in relation to a sale in the ordinary meaning of that word, but it does not necessarily follow that other powers conferred by the Order for different purposes are to be so limited, nor do we think that the fact that the forms prescribed in the Order do not appear wholly applicable in all circumstances necessarily limits the construction that is to be placed upon either the object or terms of the substantive Order.

It appears to us that the object of the original Order in pursuance 40 of the purpose of the Defence Act and of the Regulations made thereunder was to prevent the free transfer from one person to another of motor vehicles unless the Competent Authority was of the opinion that such transfers were essential or desirable in relation to those purposes. Counsel for the Judgment-Creditor suggested by way of example that the authority could thereunder refuse to permit the transfer of a motor vehicle from a person who used the same in connection with essential war services to one who proposed to use it solely for the purposes of private pleasure. We consider the illustration apt and are of the opinion that the prohibition

of such a transfer is within the objects of the Order. In order to make such prohibition effective it is necessary that the authority should have the power to refuse permission of "any transfer of the property" in the vehicle in pursuance of a non-essential or undesirable purpose. Is a mortgage such a transfer of the property? We think that it is, for as was said by the Master of the Rolls in *Bennett v. Wyndham*, where the object of the trust was to prohibit the alienation of the trust property, the transfer of property by way of mortgage cannot be made without giving to the mortgagee also the power of obtaining possession if the charge is not paid off when required. A transfer of property which gives to the transferee power of getting possession in a certain event does no more than defer to the happening of that event the transfer of that property and possession which distinguish what has been described by the learned Judge as "the whole property" or as was referred to by Counsel for the Claimants as the transfer of the property and possession absolutely. For these reasons we are of the opinion that the transfer of the property in a used motor vehicle by way of mortgage falls within the object and terms of the Order and that the document whereby the Judgment-Debtor purported to make such a transfer to the Claimants without the permission prescribed by the Order is void and of no effect. The learned Judge erred therefore when he deferred the Judgment-Creditor's rights to those of the Claimants under a document which is void, and his judgment in this respect will be set aside.

In regard to the spare parts the Judgment-Creditor submits that as these were not included in the Bill of Sale, although referred to in the undertaking, there is no charge upon them to which the Judgment-Creditor's right of seizure in execution could be deferred.

We are in agreement with Counsel for the Claimants, however, that the undertaking being an agreement to charge operates as creating an equitable mortgage of these chattels (*National Provincial and Union Bank of England v. Charnley* [1924] 1 K.B. 431). The learned trial Judge was right therefore when he held that the Judgment-Creditor was entitled to seize those spare parts but subject to the Claimants' prior equitable mortgage thereon.

In the result the Claimants' appeal is dismissed and the judgment of the Court below is upheld in so far as it relates to the land at Kumasi. The cross-appeal by the Judgment-Creditor is allowed in so far as it relates to the lorries and trailers and the judgment of the Court below is set aside in that respect, judgment to be entered for the Judgment-Creditor on that part of the claim. The cross-appeal is dismissed in so far as it relates to the spare parts and the judgment of the Court below is upheld in that regard.

As regards costs. The Judgment-Creditor having succeeded in respect of the claims to all the property seized save the spare parts will get three-quarters of the costs in that Court to be taxed. In this Court the Claimants must pay the Judgment-Creditor's costs of their appeal which has failed, assessed at £18 3s.

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In the cross-appeal the Judgment-Creditor having succeeded in regard to the main issue but having failed in respect of the spare parts will get two-thirds of his costs assessed at £11 6s.

(Sgd.) JOHN VERITY,

Chief Justice Nigeria
(Presiding Judge).

L. E. V. M'CARTHY,
Judge, Gold Coast.

J. HENLEY COUSSEY,
Judge, Gold Coast. 10

Counsel :—

Mr. E. O. Asafu-Adjaye (with him Mr. Akufo Addo) for Plaintiff-
Judgment-Creditor.

Mr. N. A. Ollennu for Claimants.

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SESSION, held at Victoriaborg, Accra, on Saturday the 13th day of
December, 1947, before THEIR HONOURS SIR JOHN VERITY, C.J.,
Nigeria (Presiding J.), LESLIE ERNEST VIVIAN M'CARTHY and 20
JAMES HENLEY COUSSEY, JJ., Gold Coast.

Civil Appeal No. 54 of 1947.

K. MASSOUD & SONS . Plaintiffs-Judgment-Creditors-Appellants

V.

G. B. MOUKARZEL . . Defendant-Judgment-Debtor

F. & M. KHOURY . . Claimants-Respondents.

JUDGMENT—Read by Verity, C.J., Nigeria.

In this case the facts are the same as in the case of *Azar v. G. B. Moukarzel and F. & M. Khoury* in which judgment has just been delivered in this Court. It having been agreed that the judgment in the present case 30 should follow that which has been delivered in the other, there will be judgment in the same terms.

The Claimants must pay the Judgment-Creditors' costs of their appeal assessed at £18 3s. 0d. and two-thirds of the Judgment-Creditors' costs in his cross-appeal assessed at £11 6s. 0d.

In the West African Court of Appeal.

(Sgd.) JOHN VERITY,
Chief Justice, Nigeria
(Presiding Judge).

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(Sgd.) L. E. V. M'CARTHY,
Judge, Gold Coast.

(Sgd.) J. HENLEY COUSSEY,
Judge, Gold Coast.

10

Counsel :

Mr. E. O. Asafu-Adjaye (with him Mr. Akufo-Addo) for Appellants.

Mr. N. A. Ollennu for Respondents.

No. 28.

ORDER granting Final Leave to Appeal to His Majesty in Council, Suit No. 1/1947.

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No. 28.
Order granting Final Leave to Appeal to His Majesty in Council, Suit No. 1/1947, 13th September 1948.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Monday the 13th day of September, 1948, before HIS HONOUR ALLAN CHALMERS SMITH, Ag. C.J. Gold Coast, sitting as a single Judge of Appeal.

20

P. S. AZAR Judgment-Creditor (Respondent)

V.

G. B. MOUKARZEL Judgment-Debtor

and

F. & M. KHOURY Claimants (Appellants).

Ollennu for Appellants.

A. Addo for Respondent.

Ollennu : Conditions fulfilled.

Court : Final leave granted.

30

A. C. SMITH,
J.

*In the
West
African
Court of
Appeal.*

No. 29.

ORDER granting Final Leave to Appeal to His Majesty in Council, Suit No. 2/1947,

13th September, 1948.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Monday the 13th day of September, 1948, before HIS HONOUR ALLAN CHALMERS SMITH, Ag. C.J., Gold Coast, sitting as a single Judge of Appeal.

K. MASSOUD & SONS . . . Respondents

V.

MOUKARZEL

F. & M. KHOURY . . . Claimants-Appellants.

Ollennu for Appellants.

A. Addo for Respondents.

Ollennu : Conditions fulfilled.

Court : Final leave granted.

A. C. SMITH,
J.

10

No. 29.
Order
granting
Final
Leave to
Appeal to
His
Majesty in
Council,
Suit
No. 2/1947,
13th
September
1948.

No. 30.

NOTICE OF MOTION for inclusion in Record of Claimants' Counsel's submission.

PHILIP SAID AZAR . . . Judgment-Creditor-(Respondent) 20
-Appellant-Respondent

V.

G. B. MOUKARZEL . . . Judgment-Debtor

and

F. & M. KHOURY . . . Claimants-(Appellants)-
Respondents-Appellants.

No. 30.
Notice of
Motion for
inclusion in
Record of
Claimants'
Counsel's
submission,
10th
February
1949.

TAKE NOTICE that this Court will be moved by Nii Amaa Ollennu of Counsel for and on behalf of Messrs. F. & M. Khoury on Thursday the 24th day of February, 1949, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel may be heard for an Order of the Court under article 9 of the West African Court of Appeal (Appeal to Privy Council) Order in Council, 1930, for direction by the Court that certain remarks made by Counsel on the occasion when judgment in the above-named matter was read and the Court's reply thereto should be inserted in the record of appeal and for any other order or orders as to the Court may seem meet. 30

Dated at La Chambers, Accra, this 10th day of February, 1949.

(Sgd.) N. A. OLLENNU,

Solicitor for Claimants-Appellants-Respondents-Appellants.

No. 31.

AFFIDAVIT of N. A. Ollennu in support of Motion.

(Title.)

*In the
West
African
Court of
Appeal.*

I, NII AMAA OLLENNU of Accra, Barrister-at-Law and Practitioner of this Court make oath and say :—

No. 31.
Affidavit
of N. A.
Ollennu in
support of
Motion,
11th
February
1949.

1. That I conducted the appeal in the above-named case on behalf of Messrs. F. & M. Khoury in December, 1947, before this Court.
2. That judgment of the Court was delivered on the 13th day of December, 1947.
- 10 3. That one of the points decided in the said case is that a Bill of Sale or Mortgage comes within the definition of Sale under the Regulation No. 41 of 1943, Transfer of Used Motor Vehicles.
4. That to the best of my recollection Counsel referred the Court, during the course of the arguments, to the definition of Motor Vehicle as contained in the said Regulation, which definition showed that Motor Vehicles do not include Trailers.
5. That the Bill of Sale in dispute in the said case was in respect of Lorries, Trailers and Spare Parts.
6. That in the judgment of the Court read on the 13th December,
20 1947, no distinction was made between Lorries and Trailers.
7. That immediately the reading of the judgment concluded I drew the Court's attention to the omission.
8. That to the best of my recollection the Learned President said that apart from reference to the definition of " Motor Vehicle " during the argument, no specific distinction was made by Counsel in their arguments between Lorries and Trailers and therefore the Court could not amend the judgment.
9. That to the best of my knowledge the said F. & M. Khoury have obtained Final Leave to Appeal to His Majesty in Council (Privy Council).
- 30 10. That to the best of my knowledge the facts stated in paragraphs 7 and 8 hereof have not been included in the record of appeal which has been prepared for transmission to His Majesty's Privy Council.

And I make this Affidavit in support of application under article 9 of the West African Court of Appeal (Appeal to Privy Council) Order in Council, 1930, for direction by the Court that the said remarks made by Counsel and the President's reply thereto would be included in the record of appeal.

Sworn at Accra this 11th day of } (Sgd.) N. A. OLLENNU.
February, 1949

40 Before me,

(Sgd.) R. O. QUANSAH,
Commissioner for Oaths.

*In the
West
African
Court of
Appeal.*

No. 32.
Court
Notes,
24th
February
1949.

No. 32.
COURT NOTES.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra on Thursday the 24th day of February, 1949, before THEIR HONOURS SIR HENRY WILLIAM BUTLER BLACKALL, President, ARTHUR WERNER LEWEY, Justice of Appeal and ALLAN CHALMERS SMITH, J. Gold Coast.

(*Title.*)

Ollennu for Appellants.

A. Addo for Respondents.

10

Ollennu moves under article 9.

President asks Addo if he can confirm Mr. Ollennu's recollection as set out in paragraphs 6, 7 and 8 of his affidavit of 11th February.

Addo : I confirm paragraphs 6 and 7. As regards paragraph 8 my recollection is that Ollennu called Court's attention to the fact that although they specifically mentioned spare parts in their judgment they had not mentioned trailers which came under same category as spare parts. The President replied it was too late for him (Ollennu) to mention trailers then. One of the Judges mentioned that his impression of the argument was that a lorry and trailer attached formed one motor vehicle. 20

Ollennu : Confirms last observation re Judge's remarks.

Court can make no order for amendment as no member of the present Court sat on the appeal. By consent these proceedings will be attached to the record.

Costs of this application agreed at 4 guineas to Respondent Azar in any event.

(Sgd.) H. W. B. BLACKALL,
P.

EXHIBITS.

Claimants' Exhibit.

" F1 "—MORTGAGE, R. Coulon to Guinea Traders Association (1915) Limited.

Gold Coast
One
Pound
Stamp Duties

Gold Coast
One
Pound
Stamp Duties

1841, 31

Exhibits.

Claimants'
Exhibits.

" F1."

Mortgage,
R. Coulon
to Guinea
Traders
Association,
20th April
1931.

10 THIS INDENTURE made the 20th day of April, One Thousand Nine
Hundred and Thirty-one (1931) Between RAYMOND COULON of Tamale
in the Northern Territories of the Gold Coast Colony and Accra in the
Eastern Province of the Colony aforesaid (hereinafter called the Mortgagor
which expression shall where the context so admits include his heirs and
assigns) of the one part and Messieurs THE GUINEA TRADERS ASSOCIATION
(1915) LIMITED a company incorporated in Great Britain and having
their registered offices situate at 68 Borough High Street in the City of
London S.E.1 England carrying on business at Accra and elsewhere in
the Colony aforesaid by their Attorney and Agent WILLIAM GEORGE
20 WEBB of Accra aforesaid (hereinafter called the Mortgagees which
expression shall where the context so admits include their successors and
assigns) of the other part Whereas by two Deeds dated the 1st day of
April 1928 respectively and made between the Chief Commissioner of the
Northern Territories aforesaid therein described and called the Government
of the one part and the Mortgagor therein also described and called the
Lessee of the other part the several lands and hereditaments intended to
be hereby granted and fully described in the Schedule hereinafter appearing
were for the rents therein reserved and subject to the covenants and
conditions therein contained being observed and performed on the part
of the Lessee demised unto the said Lessee for the term of Fifty (50) years
30 each from the 1st day of April 1928 And whereas the Mortgagor is
indebted to the Mortgagees in the sum of Four Hundred and Ninety-three
Pounds Fifteen Shillings and Three Pence (£493 15s. 3d.) under a Judgment
of the Honourable Court of the Circuit Judge of Ashanti held at Kumasi
on the 23rd day of May 1930 And whereas the Mortgagor has requested
the Mortgagees and the Mortgagees have agreed to take over and defray
the aforesaid Judgment debt due to Messrs. G. B. Ollivant & Co. Ltd.
upon the Mortgagor giving security in the sum of Seven Hundred and
Fifty Pounds (£750) for the repayment of the above-mentioned sums
And the Mortgagor has agreed to execute these presents for those purposes
40 Now this Indenture Witnesseth that in pursuance of the said agreement
and in consideration of the premises the Mortgagor hereby covenants with
the Mortgagees their successors and assigns to pay to them on demand
the said sum of Seven Hundred and Fifty Pounds (£750) or any less amount
which may be due from him to them in respect of the above-mentioned
sums at the date of such demand And this Indenture Also Witnesseth
that in pursuance of the said agreement and for the consideration aforesaid
the Mortgagor hereby grants unto the Mortgagees All those pieces or

Exhibits.
 Claimants'
Exhibits.
 "F1."
 Mortgage,
 R. Coulon
 to Guinea
 Traders
 Association,
 20th April
 1931,
continued.

parcels of land more particularly described in the Schedule hereto Together with all houses and other buildings erected or to be erected thereon (*And all rights etc. And all the estate etc.*) To Hold the same Unto and to the use of the Mortgagees thenceforth for all the residue now unexpired of the said Term of Fifty (50) Years granted by the hereinbefore recited Deeds (except the last day thereof in each case) Subject to the proviso for redemption hereinafter contained Provided always and it is hereby agreed and declared that if the Mortgagor shall on demand pay to the Mortgagees all moneys for the time being owing by him to them in accordance with the covenant in that behalf hereinbefore contained then and in that case the Mortgagees will at the request and cost of the Mortgagor reconvey the said several hereditaments and premises unto and to the use of the Mortgagor or as he shall direct And the Mortgagor hereby covenants with the Mortgagees (*Here follow covenants by the Mortgagor*) And it is hereby agreed and declared (*Here follow agreements declarations and provisions that it shall be lawful for the Mortgagees at any time or times without any further consent of the Mortgagor provided that default shall be made in payment of any moneys becoming owing by the Mortgagor to the Mortgagees under this security for one calendar month next after the same ought to have been paid and after notice in writing requiring such payment shall by the Mortgagees have been given to the Mortgagor to sell the several hereditaments and premises hereby granted or any part or parts thereof either together or in lots and either by public auction or private contract with power for the Mortgagees to execute assurances and give effectual receipts for the purchase money and to do all other acts necessary for completing the said sale but that no purchaser upon any such sale shall be bound or concerned to see or enquire whether any such default has been made or such notice given*) And also that these presents shall be in addition to and shall not operate so as in any way to prejudice or affect the security executed by any deposit which may have already been made with the Mortgagees of the title deed and documents relating to the hereditaments and premises hereby granted or any other securities which the Mortgagees may now or at any time hereafter hold for or in respect of the moneys hereby secured or any part thereof In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by the said } (Sgd.) R. COULON (L.S.)
 Raymond Coulon in the presence of :—

(Sgd.) L. S. GRUCHY,
 (of Kumasi, Ashanti).

40

Signed Sealed and Delivered by the said } (Sgd.) WM. G. WEBB (L.S.)
 William George Webb for and on
 behalf of and as the act and deed of the
 Mortgagees in the presence of :

(Sgd.) A. KOJO ADDIB.

Endorsed certificate that instrument is chargeable with a duty of Two Pounds.

SCHEDULE herein referred to

Exhibits.

All that piece or parcel of land measuring 80 feet by 60 feet situated on the North side of the Tamale-Daboya road being the first plot on the proposed new road encircling the Tamale Market on the West side thereof 450 feet there or thereabouts west of the intersection in the Tamale Market place of the Tamale-Daboya and Tamale-Savelugu roads.

Claimants' Exhibits.

" F1."

Mortgage, R. Coulon to Guinea Traders Association, 20th April 1931, *continued.*

10 (Intd.) G. W. R.

All that piece or parcel of land measuring 80 feet by 60 feet situated on the North side of the Tamale-Daboya road being the second plot of the proposed new road including the Tamale market and on the West side thereof 450 feet there or thereabouts west of the intersection in Tamale market place of the Tamale-Daboya and Tamale-Savelugu Roads.

Claimants' Exhibit.

" F2."

" F2 "—ASSIGNMENT, Guinea Traders Association (1915) Limited to A. Chedid.

Assign-ment, Guinea Traders Association to A. Chedid, 21st April 1936.

	Gold Coast	Gold Coast	
	Ten	Five	2342/36
20	Shillings	Shillings	
	Stamp Duties	Stamp Duties	

THIS INDENTURE made the 21st day of April One thousand nine hundred and thirty-six Between Messieurs THE GUINEA TRADERS ASSOCIATION (1915) LIMITED (In Voluntary Liquidation) a Company incorporated in Great Britain and having their registered office situate at 68 Borough High Street in the City of London S.E. England (hereinafter called the Vendors which expression where the context so requires or admits shall include its successors and assigns) of the first part HAROLD CARTER of 6-7 Queen Street Cheapside in the City of London aforesaid, 30 the Liquidator of the Vendors of the second part and AISSAR CHEDID of Kumasi in the Ashanti Protectorate of the said Colony (hereinafter called the Purchaser which expression where the context so requires or admits shall include his heirs personal representatives and assigns) of the third part Whereas by two Indentures of Lease dated respectively the first day of April One thousand nine hundred and twenty-eight and made between the Chief Commissioner of the Northern Territories therein described as and called " the Government " of the one part and Raymond Coulon therein also described as and called " the Lessee " of the other part All those 40 pieces or parcels of land hereby granted or expressed so to be and more fully described in the Schedule hereto were for the rents therein reserved and subject to the covenants and conditions therein contained being

Exhibits.
 ———
Claimants'
Exhibits.
 ———
 "F2."
 Assign-
 ment,
 Guinea
 Traders
 Association
 to
 A. Chedid,
 21st April
 1936,
continued.

observed and performed on the Lessee's part demised unto the Lessee for the term of Fifty years each from the first day of April 1928 determinable as therein mentioned And whereas by an Indenture of Mortgage dated the twentieth day of April One thousand nine hundred and thirty-one and made between the said Raymond Coulon therein described as and called "The Mortgagor" of the one part and the Vendors therein described as and called "The Mortgagees" of the other part the said Raymond Coulon mortgaged to the Vendors all those pieces or parcels of land more particularly described in the Schedule hereto and other the buildings erected or to be erected thereon for all the residue then unexpired of the 10 said terms of Fifty years each except the last day thereof in each case as security for certain sums of money then due and owing by the said Raymond Coulon to the Vendors And whereas by the said Indenture of Mortgage it was declared that it shall be lawful for the Vendors at anytime or times without any further consent on the part of the said Raymond Coulon to sell the said land and buildings or any part or parts thereof either together or in lots and either by public auction or private contract subject to any conditions as to title or otherwise as the Vendors should think fit with power for the Vendors to execute assurances and give effectual receipts for the purchase money and do all other acts and things 20 necessary or expedient for completing such sale And whereas by an Extraordinary Resolution of the Vendors duly passed on the 4th day of June One thousand nine hundred and thirty-five it was resolved to wind up the Vendors voluntarily and the said Harold Carter (Hereinbefore referred to as the Liquidator) was appointed Liquidator for the purpose of such winding up and notice of such Resolution was duly published in the London Gazette of the 7th day of June, 1935 And whereas the Liquidator acting on behalf of the Vendors has agreed with the Purchaser for the sale to him of the said two pieces or parcels of Land and buildings for the residue of the said terms of Fifty years except the last day of each of the 30 said terms at the price of Sixty pounds Now this Indenture witnesseth that in consideration of the said sum of Sixty pounds paid by the Purchaser to the Vendors on or before the execution of these presents (the receipt whereof the Vendors do hereby acknowledge and from the same do hereby release the Purchaser) the Vendors do hereby grant unto the Purchaser the said lands comprised in and demised by the hereinbefore recited Indenture of Lease or expressed so to be and more particularly described in the schedule hereto To hold the same unto the Purchaser for all the residue now unexpired of the said two terms of Fifty years except the last day of 40 each subject to the rents reserved by the said Indentures and the covenants and conditions in the same Indentures contained and which henceforth on the part of the Lessee ought to be observed and performed And the Vendors do hereby covenant with the Purchaser (*Indentures of Lease are good and effectual Rent covenants and conditions have been paid observed and performed For good right to grant For quiet enjoyment Free from incumbrances And for further assurance*) And that the Purchaser hereby covenants with the Vendors (*To pay the rents and perform the covenants and conditions reserved by and contained in the Indentures of Lease and to indemnify the Lessors*).

SCHEDULE herein referred to

50

All that piece or parcel of land measuring 80 feet by 60 feet situated on the North side of the Tamale-Daboya road being the first plot on the

proposed new road encircling the Tamale market on the West side thereof 450 feet there or thereabouts west of the intersection in the Tamale market place of the Tamale-Daboya and Tamale-Savelugh roads.

Exhibits.
Claimants'
Exhibits.

Together with that land lying exactly between the Northern face of this plot and the Southern face of the adjacent plot which is also occupied by Lessee and used as a Garage.

" F2." Assignment, Guinea Traders Association to A. Chedid, 21st April 1936,
continued.

10 All that piece or parcel of land measuring 80 feet by 60 feet situated on the North side of the Tamale-Daboya road being the second plot on the proposed new road including the Tamale market and on the West side thereof 450 feet there or thereabouts west of the intersection in Tamale market place of the Tamale-Daboya and Tamale-Savelugh Roads.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

The Common Seal of The Guinea Traders Association (1915) Limited was hereunto affixed in the presence of

THE GUINEA TRADERS ASSOCIATION (1915) LIMITED. Liquidator.

(Sgd.) ?

20 Signed Sealed and Delivered by the said Aissar Chedid in the presence of

(Sgd.) A. CHEDID. (I.S.)

(Sgd.) SAA. CH. QUASHIE.

Endorsed certificate that instrument is chargeable with a duty of Fifteen Shillings.



Exhibits.

Claimants' Exhibit.

*Claimants'
Exhibits.*

" F3 "—LEASE, Asantehene to Kobina Odoom Re Plot No. 586 O.T.B.

" F3. "

Lease,
Asantehene
to Kobina
Odoom re
Plot
No. 586
O.T.B.,
6th April
1944.

A.L.O. 25/44.

Gold Coast
One
Pound
Stamp Duties

THIS INDENTURE made the 6th day of April 1944 Between Sir OSEI AGYEMAN PREMPEH II Asantehene (hereinafter called " the Asantehene " of the one part and KOBINA ODOOM of Kumasi (hereinafter called " The Lessee " which expression shall where the context so admits or requires include the executors administrators successors according to Native Customary Law and assigns of the Lessee) of the other part Witnesseth that in consideration of the rent hereby reserved and of the covenants and conditions hereinafter contained and on the part of the Lessee to be observed and performed the Asantehene hereby demises unto the Lessee All that piece or parcel of land situate and known as Plot No. 586 in the Old Town Section " B " (Dominasi) District of Kumasi and bounded on or towards the North by Plot No. 584 and measuring on that side Seventy-five decimal two three feet on or towards the East by a lane separating the plot from Plots Nos. 576 and 577 and measuring on that side Eighty decimal nought nought feet on or towards the South by Plot No. 587 and measuring on that side Seventy-seven decimal six seven feet and on or towards the West by a Road and measuring on that side Seventy-nine decimal three seven feet be all or any of the said several admeasurements slightly more or less which said piece or parcel of land is more particularly delineated on the plan attached to these presents and thereon shewn edged pink Together with all the rights easements and appurtenances to the said piece or parcel of land belonging or appertaining Excepting and reserving unto the Asantehene all mines and minerals lying in or under the same To hold the said demised premises unto the Lessee for the term of 98 years and 5 months from the 1st day of November 1943 determinable nevertheless as hereinafter provided Yielding and paying therefor unto the Asantehene during the said term the yearly rent of Ten pounds four shillings (£10 4s.) payable in advance on the First day of April in every year the first payment in respect of the first 5 months of the said term having been made on or before the execution of these presents And the Lessee covenants with the Asantehene in the manner following (that is to say) :—

(Here follow covenants by the Lessee including the following :—)

And also will not without the prior consent in writing of the Asantehene assign underlet mortgage or part with the possession of the demised premises or any part thereof or any building or buildings erected thereon or any part of such building or buildings or any interest therein Provided nevertheless that the demised premises if let free of rent or at a pepper-

corn rent shall not be assigned otherwise than to a Kumasi Native
And the Asantehene hereby covenants with the Lessee

(For quiet enjoyment)

(Provision for re-entry)

In witness whereof the parties hereto have hereunto set their hands and
affixed their seals the day and year first hereinbefore written.

Signed Sealed and Delivered by the said
Sir Osei Agyeman Prempeh II Asante-
hene in the presence of

(Sgd.) OSEI A. PREMPEH II
(L.S.)

10 (Sgd.) HENRY BOATEN,
Clerk,
Asantehene's Office,
Ksi.

by affixing his mark hereto

Signed/Sealed and Delivered by the said
Kobina Odoom after these presents
had been read over and interpreted to
him and the purport and effect thereof
had been previously explained to him
20 in the Twi language by Kwassie Ofori
when the said Kobina Odoom appeared
perfectly to understand the same in
the presence of

KOBINA his
ODOOM X (L.S.)
mark

The within written lease is
granted with the Consent of the
Governor.

(Sgd.) K. OFORI,
Clerk, K.T.C.,
Kumasi.

(Sgd.) R. A. H. TOUGHER,
for Commissioner of
Lands.

*Endorsed Certificate that instrument is chargeable with a duty of One
pound.*

30 *Endorsed with certificate of registration under Section 22 of the Kumasi
Land Ordinance 1943 Title No. 151 under Serial No. 272 at 1.30 p.m. on
12th April, 1944.*

Exhibits.

Claimants' Exhibits.

" F3."

Lease,
Asantehene
to Kobina
Odoom re
Plot
No. 586.
O.T.B.,
6th April
1944,
continued.

*Exhibits.***Claimants' Exhibit.***Claimants' Exhibits.***“ F4 ”—LEASE, Asantehene to Nsenie Stool.**

“ F4.”
 Lease,
 Asantehene
 to Nsenie
 Stool,
 19th
 August
 1944.

A.L.O. 50/44.

Ksi 1135/44.

Gold Coast
 One
 Pound
 Stamp Duties

Gold Coast
 One
 Pound
 Stamp Duties

THIS INDENTURE made the 19th day of August 1944 Between Sir OSEI AGYEMAN PREMPEH II Asantehene (hereinafter called “ the Asantehene ”) of the one part and NSENIE STOOL acting by Chief Kofi Apeageyi of Kumasi 10 (hereinafter called “ the Lessee ” which expression shall where the context so admits or requires include the executors administrators successors according to Native Customary Law and assigns of the Lessee) of the other part Witnesseth that in consideration of the rent hereby reserved and of the covenants and conditions hereinafter contained and on the part of the Lessee to be observed and performed the Asantehene hereby demises unto the Lessee All that piece or parcel of land situate and known as Plot No. 571 in the Old Town Section “ B ” (Dominasi) District of Kumasi and bounded on or towards the North-east by Plot No. 572 and measuring on that side One hundred and Twenty-two decimal two seven 20 feet on or towards the South-east by a Road and measuring on that side Twenty-five decimal four six feet on or towards the South by a Road and measuring on a curvilinear line on that side Fifty four decimal six six feet on or towards the South-west by a Road and measuring on that side One hundred and Ten decimal seven nought feet and on or towards the North-west by a lane separating the plot from Plot No. 589 and measuring on that side Seventy-eight decimal nine seven feet be all or any of the said several admeasurements slightly more or less which said piece or parcel of land is more particularly delineated on the plan attached to these presents and thereon shewn edged pink Together with all the rights easements and 30 appurtenances to the said piece or parcel of land belonging or appertaining Excepting and Reserving unto the Asantehene all mines and minerals lying in or under the same To hold the said demised premises unto the Lessee for the term of 98 years and 11 months from the 1st day of May, 1944 determinable nevertheless as hereinafter provided Yielding and Paying therefor unto the Asantehene during the said term the yearly rent of Forty-eight Pounds nine shillings (£48 9s.) payable in advance on the First day of April in every year the first payment in respect of the first 11 months of the said term having been made on or before the execution of these presents And the Lessee covenants with the Asantehene in the 40 manner following (that is to say) :—

(Here follow covenants by the Lessee including the following :—)

And also will not without the prior consent in writing of the Asantehene assign underlet mortgage or part with the possession of the demised premises or any part thereof or any building or buildings erected thereon or any

part of such building or buildings or any interest therein Provided nevertheless that the demised premises if let free of rent or at a peppercorn rent shall not be assigned otherwise than to a Kumasi Native.

Exhibits.
Claimants' Exhibits.

And the Asantehene hereby covenants with the Lessee

(For quiet enjoyment)

(Provision for re-entry)

“ F4.”
 Lease,
 Asantehene
 to Nsenie
 Stool,
 19th
 August
 1944,
continued.

In witness whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

10 Signed Sealed and Delivered by the said) (Sgd.) OSEI A. PREMPEH II.
 Sir Osei Agyeman Prempeh II) (L.S.)
 Asantehene in the presence of :—

(Sgd.) HENRY BOATIN,
 Secretary,
 Asantehene's Office,
 K'si.

20 Signed by affixing his mark hereto Sealed and Delivered by the said Chief Kofi Apegyei acting on behalf of the Nsenie Stool after these presents had been read over and interpreted to him and the purport and effect thereof had been previously explained to him in the Twi language by Sam Korankyi Wilson when the said Chief Kofi Apegyei appeared perfectly to understand the same in the presence of :—

Chief KOFI APEAGYEI his
 X
 mark
 (L.S.)

Chief KWAKU TAWIAH his
 of Dawurubofrurhene, X
 Kumasi. mark

30 (Sgd.) SAM KORANKYI WILSON,
 Licd. No. 19556/44,
 Court Road,
 Kumasi.

The within-written lease is granted with the Consent of the Governor.

(Sgd.) E. G. HAWKESWORTH,
 Chief Commissioner of Ashanti.

Date Sept. 2nd, 1944.

40 *Endorsed certificate that instrument is chargeable with a duty of Two Pounds.*

Endorsed with certificate of registration under Section 22 of the Kumasi Lands Ordinance 1943 Title No. 555 under Serial No. 759 at 1.25 p.m. on 12th September 1944.

Exhibits.

Claimants' Exhibit.

Claimants'
Exhibits.

" F5 "—TENANCY AGREEMENT, Kobina Odoom and K. Massoud & Sons.

" F5."

Tenancy
Agreement
between
Kobina
Odoom
and
K. Massoud
& Sons,
9th
November
1944.

" A "

Gold Coast	Gold Coast	Gold Coast	
One	One	Five	
Pound	Pound	Shillings	
Stamp Duties	Stamp Duties	Stamp Duties	
Gold Coast	Gold Coast	Gold Coast	
Five	One	One	
Shillings	Pound	Pound	10
Stamp Duties	Stamp Duties	Stamp Duties	
Gold Coast	Gold Coast	Gold Coast	
One	Five	Five	
Pound	Shillings	Shillings	
Stamp Duties	Stamp Duties	Stamp Duties	

THIS INDENTURE is made the 9th day of November in the year of our Lord One thousand nine hundred and forty-four (1944) Between KOBINA ODOOM of Kumasi in Ashanti (hereinafter called the Landlord which expression where the context so admits shall include the reversioner for the time being expectant upon the terms hereby created) of the one part 20 and ANTHONY MASSOUD, ANIS KALIL MASSOUD and KALIL MASSOUD trading in the firm name of Messrs. K. Massoud and Sons per their true and lawful Attorney Anis Kalil Massoud of Kumasi in Ashanti aforesaid (hereinafter called the Tenants which expression where the context so admits shall include their respective administrators and assigns) of the other part Witnesseth as follows :—

1. In consideration of the sum of £150 now paid by the tenants to the Landlord by way of premium (the receipt whereof the Landlord hereby acknowledges) and of the further moneys to be spent by the tenants in erecting a house on the plot hereinafter described and of the rents and 30 covenants hereinafter reserved and contained The Landlord hereby demises unto the tenants All that piece or parcel of land situate in Kumasi and known as Plot No. 586, O.T.B. together with the messuages and which premises are held by the landlord under an Indenture of Lease No. ALO/25/44 dated the 6th day of April 1944 and made between the Asantehene of the one part and Kobina Odoom the landlord herein of the other part for a term of 98 years and 5 months from the first day of November 1943 to hold the premises to the tenants for the term of 50 years from the date of these presents.

2. The tenants for themselves and their respective assigns and to the 40 intent that the obligations (save where they are satisfied earlier) shall continue throughout the term hereby created covenants with the Landlord as follows :—

(Here follow covenants by the Tenants.)

3. The Landlord hereby covenants with the tenants as follows :—

(Here follow covenants by the Landlord.)

(Provision for re-entry.)

And it is hereby agreed and declared that the tenants shall have the option to take a fresh lease of the said premises from the landlord after the expiration of the aforesaid term if they so desire for a further term of 10 years for the sum of £100 as rent for the said period.

Exhibits.
Claimants' Exhibits.
"F5."
Tenancy Agreement between Kobina Odoom and K. Massoud & Sons, 9th November 1944, *continued.*

In witness whereof the said parties to these presents have hereunto set their hands marks and seals the day and year first above written.

10 Signed by marking sealed and delivered by the said Kobina Odoom after the contents of these presents had been read over interpreted and explained to him in the Twi language by Kwesi M. Imbeah of Kumasi when he seemed perfectly to understand the same before making his mark thereto in the presence of
KOBINA his
ODOOM X (L.S.)
mark
Witness to marks
(Sgd.) KWESI M. IMBEAH.

(Sgd.) KWESI M. IMBEAH.
(Sgd.) B. A. HAYFRON,
KWEKU DANYEH. His X mark.

20 Signed sealed and delivered by the said Messrs. K. Massoud & Sons by their true and lawful Attorney Anis Kalil Massoud in the presence of
K. MASSOUD & SONS.
(Sgd.) A. MASSOUD (L.S.)
Manager.

(Sgd.) KWESI M. IMBEAH.
(Sgd.) B. A. HAYFRON.

On the 16th day of November, 1944, at 11.15 o'clock in the forenoon this instrument was proved before me by the oath of the within-named Kwesi Mensah Imbeah to have been duly executed by the within-named Kobina Odoom.

Given under my hand and the official seal.

30 (L.S.) (Sgd.) K. O. QUANSAH,
Registrar, Divisional Court.

I, KWESI MENSAH IMBEAH of Kumasi, make oath and say that on the 9th day of November, 1944, I saw Kobina Odoom duly execute this instrument now produced to me and marked " A " and that the said Kobina Odoom cannot read and write and that the instrument was read over interpreted and explained to him in the Twi language by me and he seemed perfectly to understand its provisions.

40 Sworn at Kumasi this 16th day of November, 1944, in my presence and before me
(Sgd.) KWESI M. IMBEAH.
(Sgd.) K. O. QUANSAH,
Registrar, Divisional Court.

Exhibits.
 ———
Claimants'
Exhibits.
 ———

“ F5.”
 Tenancy
 Agreement
 between
 Kobina
 Odoom
 and
 K. Massoud
 & Sons,
 9th
 November
 1944,
continued.

This is the instrument marked “ A ” referred to in the oath of the within-named Kwesi Mensah Imbeah sworn before me at Kumasi this 16th day of November, 1944.

(Sgd.) K. O. QUANSAH,

Registrar, Divisional Court.

Endorsed certificate that this instrument is chargeable with a duty of Six Pounds.

Endorsed with certificate of registration under Section 22 of the Kumasi Lands Ordinance 1943 Title No. 151 under Serial No. 1044 at 10.10 a.m. on 25th January, 1945.

10

I, SIR OSEI AGYEMAN PREMPEH II, Asantehene, hereby give licence and consent to KOBINA ODOOM of Kumasi Ashanti to sublease to Messrs. K. Massoud & Sons also of Kumasi the premises being Plot No. 586 in the Old Town Section “ B ” (Dominasi) District of Kumasi comprised in an Indenture of Lease No. A.L.O. 25/44 dated the 6th day of April, 1944, and made between the Asantehene of the one part and the said Kobina Odoom of the other part which premises are held subject to the payment of the rent and the due performance and observance of the covenants conditions and provisions reserved and contained in the Indenture of Lease and on the Lessee's part to be paid performed and observed 20 Provided always that this Licence shall not authorise any further assignment under-lease or mortgage of the said piece of land or of any buildings erected or being upon the premises comprised in the said Indenture of Lease or of any part of such premises either by the said Kobina Odoom or the said Messrs. K. Massoud & Sons or by any other person whatsoever and whether voluntary or involuntary.

Dated at Kumasi this 2nd day of Nov., 1944.

(Sgd.) OSEI A. PREMPEH II,

Asantehene.

Claimants' Exhibit.

Exhibits.

" F6 "—DEED OF TRANSFER, K. Massoud & Sons to Moukarzel.

Claimants' Exhibits.

" B."

Original
KSI/22/45.

" F6."
Deed of Transfer,
K. Massoud & Sons to G. B. Moukarzel,
5th March 1945.

Gold Coast
One
Pound
Stamp Duties

Gold Coast
One
Pound
Stamp Duties

Gold Coast
One
Pound
Stamp Duties

10 THIS INDENTURE made the 5th day of March in the year of our Lord one thousand nine hundred and forty-five (1945) Between KALIL MASSOUD, ANTHONY MASSOUD and ANIS KALIL MASSOUD trading in the firm name of Messrs. K. Massoud and Sons per their true and lawful Attorney Anis Kalil Massoud of Kumasi in Ashanti (hereinafter called the Transferors which expression shall where the context so admits include their respective executors administrators and assigns) of the one part and GEORGE BECHIR MOUKARZEL of Kumasi in Ashanti aforesaid (hereinafter called the Transferee which expression shall where the context so admits include his executors administrators and assigns) of the other part Whereas by an Indenture of

20 Lease No. A.L.O. 25/44 (hereinafter referred to as the " Lease " dated the 6th day of April 1944 and made between the Asantehene of the one part and Kobina Odoom (therein called the Lessee) of the other part the lands hereditaments and premises known as Plot No. 586, Old Town Section " B " were demised unto the said Kobina Odoom for the term of 98 years and five months from the first day of November 1944 at the rental therein reserved and subject to the rights of the Asantehene and to the covenants conditions and stipulations therein contained (including a stipulation against assignment without the consent of the Asantehene) And whereas by a Tenancy Agreement dated the 9th day of November 1944

30 the said plot was sublet to the Transferors for the term of 50 years by the said Kobina Odoom And whereas the Transferors have agreed with the Transferee to transfer all their interests in the said hereditaments and premises to the transferee for the sum of £300 Now this Indenture Witnesseth that in consideration of the sum of £300 paid by the transferee to the Transferors being expenses incurred by them in connection with the aforesaid plot (the receipt whereof the Transferors do hereby acknowledge) the Transferors as " Beneficial Owner " with the licence of the Asantehene hereby assigns to the Transferee All and Singular the hereditaments and premises comprised in and demised by the said lease To hold the

40 same unto the Transferee for the residue now unexpired of the term of 50 years created by the sub-lease subject to the payment of the rent and performance and observance of the covenants conditions and stipulations in the sub-lease reserved and contained and henceforth on the part of the Transferors to be paid and observed and the Transferee covenants with the Transferors (*To pay the rents reserved by and perform and observe the covenants conditions and stipulations contained in the lease and to keep the Transferors indemnified*) And it is hereby expressly declared covenanted and agreed by and between the parties to these presents that the expression " Beneficial

Exhibits.
 ———
Claimants'
Exhibits.
 ———

“ F6.”
 Deed of
 Transfer,
 K. Massoud
 & Sons to
 G. B.
 Moukarzel,
 5th March
 1945,
continued.

Owner ” where it appears in these presents shall be of the same force and involve and imply the same covenants by the said parties hereto as are involved and implied by the English Statute known as the Conveyancing Act 1881 in a conveyance in which such expression appears executed after the date of the Conveyancing Act 1881 and before the first day of January 1926.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by the said K. Massoud and Sons by their true and lawful Attorney Anis Kalil Massoud in the presence of :	}	for K. MASSOUD & SONS, (Sgd.) A. MASSOUD, Manager.	10 (L.S.)
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(Sgd.) KWESI M. IMBEAH.

Signed Sealed and Delivered by the said George Bechir Moukarzel (Transferee) in the presence of :	}	(Sgd.) G. B. MOUKARZEL. (L.S.)
---	---	-----------------------------------

(Sgd.) KWESI M. IMBEAH.

I, KWESI MENSAH IMBEAH of Kumasi make oath and say that on the 5th day of February, 1945, I saw Anis Kalil Massoud duly execute this instrument now produced to me and marked “ B ” and that the said 20 Anis Kalil Massoud can read and write.

Sworn at Kumasi this 6th day of March, 1945, in my presence and before me :	}	(Sgd.) KWESI M. IMBEAH.
--	---	-------------------------

(Sgd.) F. A. H. BOTCHEY,
Registrar, Divisional Court.

This is the instrument marked “ B ” referred to in the oath of the within-named Kwesi Mensah Imbeah sworn before me at Kumasi this 6th day of March, 1945.

(Sgd.) F. A. H. BOTCHEY,
Registrar, Divisional Court.

30

On the 6th day of March 1945 at 11.32 o'clock in the forenoon this instrument was proved before me by the oath of the within-named Kwesi Mensah Imbeah to have been duly executed by Anis Kalil Massoud.

Given under my hand and official Seal.

(Sgd.) F. A. H. BOTCHEY,

(L.S.) Registrar, Divisional Court.

Endorsed Certificate that this instrument is chargeable with a duty of Three Pounds.

Endorsed with Certificate of registration under Section 22 of the Kumasi Lands Ordinance 1943 Title No. 151 under Serial No. 1171 at 9.53 a.m., 40 on 19th March 1945.

I, SIR OSEI AGYEMAN PREMPEH II, Asantehene, hereby give licence and consent to Messrs. K. MASSOUD & SONS (Sublessee to Kobina Odoom) of Kumasi Ashanti to assign to George Bechir Moukarzel also of Kumasi the premises being Plot No. 586 in the Old Town Section " B " (Dominasi) District of Kumasi comprised in an Indenture of Lease No. A.L.O. 25/44 dated the 6th day of April 1944 and made between the Asantehene of the one part and the said Kobina Odoom of the other part which premises are held subject to the payment of the rent and the due performance and observance of the covenants conditions and provisions reserved and contained in the said Indenture of Lease and on the Lessee's part to be paid performed and observed Provided always that this Licence shall not authorise any further assignment underlease or mortgage of the said piece of land or of any buildings erected or being upon the premises comprised in the said Indenture of Lease or of any part of such premises either by the said Messrs. K. Massoud & Sons or the said George Bechir Moukarzel or by any other persons whatsoever and whether voluntary or involuntary.

Exhibits.
 ———
Claimants' Exhibits.
 ———
 " F6." Deed of Transfer, K. Massoud & Sons to G. B. Moukarzel, 5th March 1945, *continued.*

Dated at Kumasi this 18th day of February, 1945.

(Sgd.) OSEI A. PREMPEH II,

Asantehene.

20

Claimants' Exhibit.

" F7 "—TENANCY AGREEMENT, Chief Kofi Apeagyei and G. B. Moukarzel.

" A "

Original
 Ksi. 223/45

Gold Coast One Pound Stamp Duties	Gold Coast One Pound Stamp Duties	Gold Coast Five Shillings Stamp Duties	Gold Coast Five Shillings Stamp Duties
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" F7." Tenancy Agreement between Chief Kofi Apeagyei and G. B. Moukarzel, 7th March 1945.

THIS INDENTURE made the 7th day of March in the year of our Lord one thousand nine hundred and forty-five (1945) Between Chief KOFI APEAGYEI acting for himself and as the representative of the Elders and people of the Nsenie Stool of Kumasi whose consent to or concurrence in these presents is for the more perfect assurance of the provisions hereof requisite or desirable according to native customary law or to the customs of the said stool of Nsenie which consent or concurrence is sufficiently testified by the signing or marking of these presents by some of such Elders and people (hereinafter called the Landlord which expression shall where the context so admits include the reversioner for the time being expectant upon the terms hereby created) of the one part and GEORGE BECHIR MOUKARZEL of Kumasi in Ashanti aforesaid (hereinafter called the Tenant which expression shall where the context so admits include his administrators and assigns) of the other part :

Witnesseth as follows :—

1. In consideration of the sum of £230 now paid by the Tenant to the Landlord by way of premium (the receipt whereof the Landlord hereby

Exhibits.
 Claimants' Exhibits.
 " F7,"
 Tenancy Agreement between Chief Kofi Apeagyei and G. B. Moukarzel, 7th March 1945,
continued.

acknowledges) and of the further moneys to be spent by the Tenant in erecting a house on the plot hereinafter described and of the rents and covenants hereinafter reserved and contained The Landlord hereby demises unto the Tenant All that piece or parcel of land situate in Kumasi and known as Plot No. 571 O.T.B. Together with the messuages and which premises are held by the Landlord under an Indenture of Lease No. 50/44 dated the 19th day of August 1944 and made between the Asantehene of the one part and Nsenie Stool acting by Chief Kofi Apeagyei the Landlord herein of the other part for a term of 98 years and 11 months from the first day of May 1944 To hold the premises to the Tenant for the term of 10 60 years from the date of these presents.

2. The Tenant for himself and to the intent that the obligations (save where they are satisfied earlier) shall continue throughout the term hereby created covenants with the Landlord as follows :—

(Here follow covenants by the Tenant.)

3. The Landlord hereby covenants with the Tenants as follows :—

(Here follow covenants by the Landlord.)

(Provision for re-entry.)

In witness whereof the said parties to these presents have hereunto set their hands marks and seals the day and year first above written. 20

Signed by marking sealed and delivered by the said Chief Kofi Apeagyei Landlord his Elders and people after the contents of these presents had been read over interpreted and explained to them in the Twi language by Kwesi M. Imbeah of Kumasi when they seemed perfectly to understand the same before making their marks thereto in the presence of

	Their	
Chief KOFI		
APEAGYEI	X	(L.S.)
Abontendomhene		
KOJO		
NKIDOH	X	(L.S.)
Isakwadwimhene		
KWAKU		
AMPONSAH	X	(L.S.)
Adawubofuhene		30
KWEKU		
TAWIAH	X	(L.S.)
Gyasehene		
KOJO		
MENSAH	X	(L.S.)
Safohene		
KWEKU		
WUSU	X	(L.S.)
Sukwi-Odikro		
YAW		40
BARIMAH	X	(L.S.)
	Marks	

(Sgd.) KWESI M. IMBEAH.

(Sgd.) B. W. HAYFRON.

Signed sealed and delivered by the said George Bechir Moukarzel in the presence of

(Sgd.) KWESI M. IMBEAH.

Witness to marks :

(Sgd.) KWESI M. IMBEAH.

(Sgd.) G. B. MOUKARZEL.
 (L.S.)

I, SIR OSEI AGYEMAN PREMPEH II, Asantehene, hereby give licence and consent to the STOOL OF NSENIE acting by Chief KOFI APEAGYEI of Kumasi Ashanti to sublease to George Bechir Moukarzel also of Kumasi the premises being Plot No. 571 in the Old Town Section " B " (Dominasi) District of Kumasi comprised in an Indenture of Lease No. A.L.O. 50/44 dated the 19th day of August 1944 and made between the Asantehene of the one part and the said Stool of Nsenie of the other part which premises are held subject to the payment of the rent and the due performance and observance of the covenants conditions and provisions reserved and contained in the said Indenture of Lease and on the Lessee's part to be paid performed and observed Provided always that this Licence shall not authorise any further assignment underlease or mortgage of the said piece of land or of any buildings erected or being upon the premises comprised in the said Indenture of Lease or of any part of such premises either by the said Stool of Nsenie or the said George Bechir Moukarzel or by any other person whatsoever and whether voluntary or involuntary.

Exhibits.
 ———
Claimants' Exhibits.
 ———
 ' F7.'
 Tenancy Agreement between Chief Kofi Apeagyei and G. B. Moukarzel, 7th March 1945,
continued.

Dated at Kumasi this 28th day of February, 1945.

20

(Sgd.) OSEI A. PREMPEH II,
 Asantehene.

Endorsed Certificate that this instrument is chargeable with a duty of Two Pounds Ten Shillings.

I, KWESI MENSAH IMBEAH of Kumasi make oath and say that on the 7th day of March 1945, I saw Chief Kofi Apeagyei his Elders and people duly execute this instrument now produced to me and marked " A " and that the said Chief Kofi Apeagyei his Elders and people cannot read and write and that the instrument was read over interpreted and explained to them in the Twi language by me and they seemed perfectly to understand the same before making their marks hereto.

30 Sworn at Kumasi this 9th day of March 1945 in my presence and before me } (Sgd.) KWESI M. IMBEAH.

(Sgd.) F. A. H. BOTCHEY,
 Registrar, Divisional Court.

This is the instrument marked " A " referred to in the oath of the within-named Kwesi Mensah Imbeah sworn before me at Kumasi this 9th day of March 1945.

(Sgd.) F. A. H. BOTCHEY,
 Registrar, Divisional Court.

40 On the 9th day of March 1945 at 9.48 o'clock in the forenoon this instrument was proved before me by the oath of the within-named Kwesi Mensah Imbeah to have been duly executed by Chief Kofi Apeagyei his Elders and people.

Given under my hand and official seal.

(Sgd.) F. A. H. BOTCHEY,
 Registrar, Divisional Court.

(L.S.)

1. 2. 3. 4. 5. 6. 7.

Left Thumb Prints.

Exhibits.
 ———
Claimants'
Exhibits.

Endorsed with Certificate of registration under Section 22 of the Kumasi Lands Ordinance 1943 Title No. 555 under Serial No. 1170 at 9.30 a.m. on 19th March 1945.

“ F7.”
 Tenancy
 Agreement
 between
 Chief Kofi
 Apegyei
 and G. B.
 Moukarzel,
 7th March
 1945,
continued.

Received from George Bechir Moukarzel of Kumasi cash the sum of two hundred and thirty (£230) by way of premium for tenancy agreement of premises situate on Plot No. 571, O.T.B. Kumasi.

Dated at Kumasi this 8th day of March, 1945.

		Their	
	Chief Kofi Apegyei	X	
	Abontendomhene Kojo Nkidoh	X	10
	Isakwadwimhene Kweku Amponsah	X	
	Adweubefuhene Kweku Tawiah	X	
2d.	Gyasehene Kojo Mensah	X	
Stamp.	Safohene Kweku Wusu	X	
8/3/45	Sakwai-Odikro Yaw Barimah	X	
		Marks	

W/W to marks :

(Sgd.) KWESI M. IMBEAH,
 Clerk to Barrister Benjamin,
 Kumasi-Ashanti. 20

Left Thumb Prints.

1. 2. 3. 4. 5. 6. 7.

“ G2.”
 Fire
 Policy,
 30th June
 1945.

Claimants' Exhibit.

“ G2 ”—**FIRE POLICY.**

West Africa.	West African Branch—Post Office. Box 112, 31 Marina, Lagos, Nigeria.	
Fire Policy	Gold Coast Office—Post Office Box 50, Corner of Horse and Pagan Road, Accra.	
No. 11660721.	11660721.	Gold Coast Sixpence
	O/F. 10565.	Stamp Duties. 30
	Sum Assured—£9,000. —. —.	
	Premium to 1st May 1946—£18 —. —.	

ROYAL EXCHANGE ASSURANCE
 Incorporated A.D. 1720.

Head Office : Royal Exchange, London.

ROYAL EXCHANGE ASSURANCE.

THIS INSTRUMENT or POLICY OF ASSURANCE witnesseth, That in consideration of Mr. G. B. MOUKARZEL of Post Office Box No. 447, Kumasi,

Gold Coast (hereinafter called the Assured), paying to the Corporation of the ROYAL EXCHANGE ASSURANCE, of London (hereinafter called the Corporation), the sum of Eighteen Pounds (£18 - -) for Assuring against Loss or Damage by Fire or Lightning as hereinafter mentioned, the Property hereinafter described in the Sum of several Sums following namely :—

Exhibits.
—
Claimants' Exhibits.
—
"G2."
Fire Policy,
30th June 1945.
continued.

- 10 Item 1. On Stocks of Motor Spares and the like in the Retail and Wholesale Stores with dwelling quarters over, built of concrete walls with corrugated iron roof, situate Plot Zongo No. 1, Zongo Street, Kumasi, Gold Coast in the sum of Eight Thousand Pounds—£8,000.
2. On Stocks of Motor Spares and the like in the Retail Store, built of brick and cement with corrugated iron roof, situate opposite Item No. 1, O.T.B. 443, Kumasi, Gold Coast in the sum of One Thousand pounds—£1,000.
- Total Sum assured—Nine thousand pounds £9,000.

This Policy is subject to the attached Hazardous Goods Warranty.

- 20 N.B.—Any Warranties to which the Property Assured or any item thereof is or may at any time be made subject shall attach and continue to be in force during the whole of the currency of the Policy, and non-compliance at any time with any of the Warranties shall be a bar to any claim in respect of such property or item.

- 30 The Corporation hereby agrees with the Assured (but subject to the Conditions printed on the back hereof which are to be taken as part of this Policy) that if the Property above described shall be destroyed or damaged by Fire or Lightning the Corporation, out of its Capital Stock, Estates, and Securities only, shall be liable to pay or make good unto the Assured the value at the time of the happening of such loss of the Property so destroyed or the amount of such damage which shall or may happen between the First day of May, 1945, and Four o'clock in the afternoon of the First day of May, 1946, or before Four o'clock in the afternoon of the last day of any subsequent period in respect of which the Assured shall pay, and the Corporation shall accept, the Sum required for the renewal of this Assurance, to an amount not exceeding in respect of the matter above specified the Sum or Sums set opposite thereto respectively, and not exceeding in the whole the Sum of Nine Thousand Pounds (£9,000 - -).

Dated in Lagos the Thirtieth day of June in the year One thousand Nine hundred and Forty-five, and issued there.

By Order of the Court of Directors,

40

(Sgd.) F. R. KING,

for Branch Manager.

Royal Exchange Assurance,
Lagos.

Exhibits.

THE CONDITIONS referred to in this Policy are as follows :—

*Claimants' Exhibits.**(Here follow the conditions.)*

"G2."

Warranty attached to Policy No. 11660721 of the

Fire
Policy,
30th June
1945,
continued.

ROYAL EXCHANGE ASSURANCE.

Warranted that during the currency of this Policy no hazardous goods (as described hereunder) will at any time be in or near the premises described in this Policy.

*(Here follows a list of hazardous goods.)*No. 33687.
Fire Dept.

Renewal Receipt. 10

ROYAL EXCHANGE ASSURANCE
of London.

(Incorporated by Royal Charter A.D. 1720.)

West African : P.O. Box 112—31, Marina, Lagos, Nigeria.

Accra Office : P.O. Box 50—Corner of Horse and Pagan Road.

Agency

No. of Policy	Sum Insured	Premium
11660721.	£9,000.	£18.

Name of } G. B. MOUKARZEL.
Insured }

Covering Stock : Plot O.T.B. 443 and 1 Zongo Street, Kumasi. 20

Received the above-stated amount, being the payment
Renewal of the Insurance by the above Policy for 12 months from the
1st May, 1946.

BARCLAYS BANK (DOMINION, COLONIAL AND OVERSEAS).

14.5.1946.

2d.
Stamp

(Sgd.) ?

Accountant,
Kumasi.

Claimants' Exhibit.

Exhibits.

" F8 "—ASSIGNMENT, A. Chedid to G. B. Moukarzel.

Claimants'
Exhibits.

" A. "

" F8. "

Assignment,
A. Chedid
to G. B.
Moukarzel,
1st April
1946.Gold Coast
One
Pound
Stamp DutiesGold Coast
Five
Pounds
Stamp Duties713/46.
Gold Coast
One
Pound
Stamp Duties

10 THIS INDENTURE made the 1st day of April in the year of Our Lord one thousand nine hundred and forty-six (1946) Between AISSAR CHEDID of Kumasi in Ashanti Gold Coast (hereinafter called " the Vendor " which expression shall where the context so requires or admits include his executors administrators and assigns) of the one part and GEORGE BECHIR MOUKARZEL Transport Owner also of Kumasi in Ashanti aforesaid (hereinafter called " the Purchaser " which expression shall where the context so requires or admits include his executors administrators and assigns) of the other part.

20 Whereas by two (2) Indentures of Lease dated respectively the First day of April one thousand nine hundred and twenty-eight (1928) and made between the Chief Commissioner of the Northern Territories therein described as and called " the Government " of the one part and Raymond Coulon therein described as and called " the Lessee ") of the other part All those pieces or parcels of land hereby granted or expressed so to be and more particularly described in the Schedule hereto were for the rents therein reserved and subject to the covenants and conditions therein contained being observed and performed on the Lessee's part demised unto the Lessee for the term of Fifty (50) years each from the 1st day of April 1928 determinable nevertheless as therein mentioned including a

30 piece or pieces of land or premises thereon without the consent in writing of the Chief Commissioner :

And whereas by divers mesne assignments event and acts of Law and ultimately by a Deed of Assignment dated the 21st day of April 1936 and made between Messieurs The Guinea Traders Association (1915) Limited therein described as " the Vendors " of the one part and the Vendor therein described as " the Purchaser " of the other part All and singular the pieces or parcels of land comprised in and demised by the respective Leases dated the 1st day of April 1928 thus absolutely became vested in the

40 Vendor for all the residue then unexpired of the term of Fifty (50) years each Subject to the payment of the rents in the respective Leases reserved and to the due performance and observance of the covenants conditions and stipulations therein contained :

And whereas the Vendor has agreed with the Purchaser for the sale to him of the said hereditaments and premises comprised in and demised by the two (2) Indentures of Lease dated the 1st day of April 1928 at the price of seven hundred pounds (£700) :

Exhibits.
 ———
Claimants'
Exhibits.

“ F8.”
 Assignment,
 A. Chedid,
 to G. B.
 Moukarzel,
 1st April
 1946,
continued.

And whereas the necessary licence in writing of the Government the assignment hereby made has been duly obtained :

Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of seven hundred pounds (£700) to the Vendor paid by the Purchaser (the receipt whereof the Vendor doth hereby acknowledge and from the same doth hereby release the Purchaser) the Vendor as “ Beneficial Owner ” doth hereby assign unto the Purchaser All and Singular the leasehold hereditaments and premises comprised in and demised by the two (2) Indentures of Lease dated respectively the 1st day of April 1928 or expressed so to be together with the messuages 10 and dwelling-house erected and standing thereon or on some part thereof And all the estate right title interest claim and demand whatsoever of the Vendor in to and upon the said hereditaments and premises and every part thereof To hold the same unto the Purchaser his executors administrators and assigns for all the residue now unexpired of the said term of Fifty (50) years each demised by the two (2) Indentures of Lease dated the 1st day of April 1928 Subject henceforth to the payment of the rents and observance and performance of the covenants on the part of the Lessee and conditions by and in the said Indenture of Lease reserved and contained : 20

And the Purchaser doth hereby for himself his executors administrators and assigns covenant with the Vendor his executors administrators and assigns (*To pay the rents reserved by and to observe and perform the covenants conditions and stipulations contained in the two Indentures of Lease and to keep the Vendor indemnified*)

And it is hereby expressly Declared Covenanted and Agreed by and between the parties hereto that the expression “ Beneficial Owner ” where it appears in these presents shall be of the same force and involve and imply the same covenants by the parties to these presents as are involved and implied by the English Statute known as the Conveyancing Act 1881 in a Conveyance executed after the date of the Conveyancing Act 1881 and before the 1st day of January 1926 in which such expression appears. 30

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE herein referred to.

All that piece or parcel of land measuring 80 feet by 60 feet situate on the North side of the Tamale-Daboya Road being the first plot on the proposed new road encircling the Tamale Market on the West side thereof 450 feet there or thereabouts West of the inter-section in the Tamale 40 market place of the Tamale-Daboya and Tamale-Savelugh roads.

Together with that land lying exactly between the Northern face of this plot and the Southern face of the adjacent plot which is also occupied by lessee and used as a garage.

All that piece or parcel of land measuring 80 feet by 60 feet situated on the north side of the Tamale-Daboya Road being the second plot on the proposed new road including the Tamale market and on the West side

thereof 450 there or thereabouts west of the inter-section in Tamale market-
place of the Tamale-Daboya and Tamale-Savelugh Roads.

Exhibits.

Claimants'
Exhibits.

"F8."

Assignment,
A. Chedid
to G. B.
Moukarzel,
1st April
1946,
continued.

Signed Sealed and Delivered by the said
Aissar Chedid (Vendor) after the fore-
going had been duly read over inter-
preted and explained to him in the
Pidgin English by Nee Sai Annan when
he seemed perfectly to understand the
same before signing his name hereto
in the presence of :

(Sgd.) A. CHEDID. (L.S.)

10

(Sgd.) N. SAI ANNAN,
P.O. Box 234,
Kumasi.

Two 1d. stamps.

Received the within-named sum of Seven
hundred pounds (£700).

(Sgd.) A. CHEDID.

On the 7th day of May 1946 at 10.15 o'clock in the forenoon this
Instrument was proved before me by the oath of the within-named Nee Sai
20 Annan to have been duly executed by the within-named Aissar Chedid.

Given under my hand and official seal.

(Sgd.) F. A. H. BOTCHEY,

Registrar, Divisional Court,
Kumasi.

(L.S.)

I, NEE SAI ANNAN Law Clerk of Kumasi make oath and say that
on the 1st day of April 1946, I saw Aissar Chedid duly execute the instru-
ment now produced to me and marked "A" and that the said Aissar
Chedid cannot read but write and that the said instrument was read over
and interpreted to him in the Pidgin English by me at the time of its
30 execution and that he seemed perfectly to understand its provisions.

Sworn by the above-named deponent at
Kumasi this 7th day of May 1946
before me :

(Sgd.) N. SAI ANNAN.

(Sgd.) F. A. H. BOTCHEY,

Registrar, Divisional Court,
Kumasi.

This is the Instrument marked "A" referred to in the Oath of Nee Sai
Annan sworn before me this 7th day of May 1946.

(Sgd.) F. A. H. BOTCHEY,

40

Registrar, Divisional Court,
Kumasi.

*Endorsed Certificate that this instrument is chargeable with a duty of Seven
Pounds.*

Exhibits.
 Claimants'
Exhibits.

" F8."
 Assignment,
 A. Chedid
 to G. B.
 Moukarzel,
 1st April
 1946,
continued.

I hereby consent to the Assignment by AISSAR CHEDID of Kumasi Ashanti to GEORGE BECHIR MOUKARZEL also of Kumasi Ashanti of all the right title and interest of the said Aissar Chedid in and to those two plots or parcels of land situate in the town of Tamale in the Northern Territories of the Gold Coast comprised in and demised by two Indentures of Lease both dated the 1st day of April 1928 and made between the Chief Commissioner of the Northern Territories for and on behalf of the Government of the one part and Raymond Coulon of the other part which said plots or parcels of land were demised by way of Assignment to the said Aissar Chedid under and by virtue of an Indenture of Assignment dated 10 the 21st day of April 1936 subject nevertheless to the payment of the rent and the performance and observance of the covenants on the part of the Lessee to be performed and observed and the conditions in the said Indentures of Lease reserved and contained on the Lessee's part to be performed and observed Provided always that this Licence shall not extend to any further Assignment or underletting or dealing with the said two plots or parcels of land.

Dated this 12th day of March 1946.

(Sgd.) G. H. GIBBS,

Chief Commissioner of the Northern 20
 Territories of the Gold Coast.

Claimants' Exhibit.

" F9."
 Certificate
 of
 Occupancy,
 Governor
 of the Gold
 Coast
 Colony to
 G. B.
 Moukarzel,
 9th April
 1946.

" F9 "—CERTIFICATE OF OCCUPANCY, Governor of Gold Coast Colony to G. B. Moukarzel.

Gold Coast 716/46
 One
 Pound
 Stamp Duties
 NORTHERN TERRITORIES OF THE GOLD COAST
 THE LAND AND NATIVE RIGHTS ORDINANCE

CERTIFICATE OF OCCUPANCY 30

Dated the 9th day of April 1946

THIS IS TO CERTIFY that GEORGE BECHIR MOUKARZEL of Kumasi (hereinafter called " the Occupier ") is entitled to a right of occupancy in and over the land described in the Schedule hereto and more particularly delineated in the plan annexed hereto (hereinafter referred to as " the land ") for a term of Fifty-five years from the first day of April 1945 according to the true intent and meaning of the said Ordinance and subject to the provisions thereof and to the following terms namely :—(*Here follow the terms of the occupancy including the following :*)

1. The commencing rent shall be Six pounds (£6.0.0.) per annum 40 payable in advance on the 1st day of January in each year (the first of such payments having been made prior to the execution of these presents) and

will be liable to revision on the 1st January 1960 and the 1st January 1980 of the term hereby granted or such other period as may within the terms of the said Ordinance be from time to time prescribed.

Exhibits.
—
Claimants' Exhibits.

10. The Occupier shall not assign underlet or part with the possession of the land or of any buildings erected thereon or any part thereof nor deposit this certificate by way of equitable mortgage without first obtaining a licence signed by the Commissioner of Lands permitting such assignment underletting parting with possession or deposit.

—
"F9."
Certificate of Occupancy, Governor of the Gold Coast Colony to G. B. Moukarzel, 9th April 1946,
continued.

10 On the revocation of the right of occupancy hereby granted for any reason whatsoever this certificate shall be delivered up to the Commissioner of Lands who shall be at liberty by himself or other officer by him authorised on such determination as aforesaid into and upon the land or any part thereof in the name of the whole to re-enter on behalf of the Governor and to remove therefrom the Occupier as well as all other the person or persons then being therein or thereon whereupon the land shall together with any buildings erected thereon become subject to the disposition of the Governor as if the said right of occupancy had never been granted.

THE SCHEDULE hereinbefore referred to

20 All that piece of land known as Plot No. 26 and containing an area of nought decimal one one nine of an acre situate on the southern side of and adjoining the main Tamale-Bawku Road and distant twenty feet from the western boundary of the Caravansary or Zongo area in the Layout of the Town of Bolgatango in the Mamprusi District of the Northern Province of the Northern Territories of the Gold Coast bounded on the north by the Tamale-Bawku Road and measuring on that side seventy-two feet bounded on the east by a lane and measuring on that side seventy-two feet bounded on the south by a road and measuring on that side seventy-two feet bounded on the west by a lane and measuring on that side seventy-two feet be the
30 same several dimensions little more or less as the same premises are delineated on a plan numbered Z. 1491/26 attached hereto and thereon edged with pink colour.

Given under my hand and sealed with the Seal of Lands Department.

(Sgd.) J. A. RICE, (L.S.)
A.G. Commissioner of Lands.

I, GEORGE BECHIR MOUKARZEL, hereby accept the right of occupancy evidenced by the terms contained in the above Certificate of Occupancy.

40 Signed Sealed and Delivered by the said }
George Bechir Moukarzel in the } (Sgd.) G. B. MOUKARZEL.
presence of } (L.S.)

(Sgd.) N. SAI ANNAN,
P.O. Box 234,
Kumasi,
Law Clerk.

Endorsed Certificate that this instrument is chargeable with a duty of One Pound.



Exhibits.

Claimants' Exhibit.

Claimants' Exhibits.

" F10." Certificate of Occupancy, Government to G. B. Moukarzel, 30th April 1946.

" F10 "—CERTIFICATE OF OCCUPANCY, Government to Moukarzel.

Gold Coast

709/46.

One

Pound

Stamp Duties

NORTHERN TERRITORIES OF THE GOLD COAST

THE LAND AND NATIVE RIGHTS ORDINANCE

CERTIFICATE OF OCCUPANCY

Dated the 30th day of April, 1946.

10

THIS IS TO CERTIFY that GEORGE BECHIR MOUKARZEL of Kumasi in Ashanti (hereinafter called " the Occupier ") is entitled to a right of occupancy in and over the land described in the Schedule hereto and more particularly delineated in the plan annexed hereto (hereinafter referred to as " the land ") for a term of Thirty-seven years from the 1st day of April 1945 according to the true intent and meaning of the said Ordinance and subject to the provisions thereof and to the following terms namely :—
(Here follow the terms of the occupancy including the following :—)

1. The commencing rent shall be Five pounds (£5) per annum payable in advance (the first two payments having been made prior to the execution of these presents) and will be liable to revision on the 1st day of April 1952 and on the 1st day of April 1972 of the term hereby granted or such other period as may within the terms of the said Ordinance be from time to time prescribed. 20

9. The Occupier shall not assign underlet or part with the possession of the land or of any buildings erected thereon or any part thereof nor deposit this certificate by way of equitable mortgage without first obtaining a Licence signed by the Commissioner of Lands permitting such assignment underletting parting with possession or deposit.

On the revocation of the right of occupancy hereby granted for any 30 reason whatsoever this certificate shall be delivered up to the Commissioner of Lands who shall be at liberty by himself or other officer by him authorised on such determination as aforesaid into and upon the land or any part thereof in the name of the whole to re-enter on behalf of the Governor and to remove therefrom the Occupier as well as all other the person or persons then being therein or thereon whereupon the land shall together with any buildings erected thereon become subject to the disposition of the Governor as if the said right of occupancy had never been granted.

THE SCHEDULE hereinbefore referred to

40

All that piece of land containing an area of nought decimal nought six one acres situate south of the Sapeliga-Pusiga Road at Bawku in the

Mamprusi District of the Northern Province of the Northern Territories and known as Commercial Plot No. 5 the boundary line whereof commencing at a Gold Coast Survey pillar marked 1 runs on a bearing of Eighty-four degrees thirty-four minutes which bearing together with all further bearings hereinafter mentioned is referred to the Meridian 1° West for a distance of Forty feet to a pillar marked GCS.NT5/32/8 and thence runs on a bearing of one hundred and seventy-four degrees thirty-five minutes for a distance of Sixty-six feet to a pillar marked GCS/NT.5/32/5 and thence runs on a bearing of two hundred and sixty-four degrees thirty-
 10 four minutes for a distance of forty feet to a pillar marked 2 and thence runs on a bearing of three hundred and fifty-four degrees thirty-five minutes for a distance of sixty-six feet to the point of commencement be the same several dimensions little more or less as the same premises are delineated on the plan attached hereto and thereon edged with pink colour.

Exhibits.
 ———
Claimants' Exhibits.
 ———
 "F10."
 Certificate of Occupancy, Government to G. B. Moukarzel, 30th April 1946,
continued.

Given under my hand and sealed with the Seal of the Lands Department.

(Sgd.) J. A. RICE,

(L.S.)

Ag. Commissioner of Lands.

I, GEORGE BECHIR MOUKARZEL, hereby accept the right of
 20 occupancy evidenced by the terms contained in the above Certificate of Occupancy.

Signed Sealed and Delivered by the said
 George Bechir Moukarzel in the presence of } (Sgd.) G. B. MOUKARZEL.
 (L.S.)

(Sgd.) N. SAI ANNAN,

P.O. Box 234,
 Kumasi,
 Law Clerk.

Endorsed Certificate that this instrument is chargeable with a duty of
 30 *One Pound.*

*Exhibits.**Claimants' Exhibits.*

"G1."
Com-
prehensive
Policy,
19th
August
1946.

Claimants' Exhibit.

"G1"—COMPREHENSIVE POLICY.

West Africa.
A.D. 1720.

West African Branch—Post Office Box 112,
Lagos, Nigeria.

Gold Coast Office—Post Office Box 50,
Horse Road, Accra.

A.D. 1720.

Gold Coast
Six
Pence
Stamp Duties.

See endorsement on back of Policy.

10

ROYAL EXCHANGE ASSURANCE.

Policy No. MV 32166.	Annual Premium	..	£1,526 : 14 : 9
	No Claim Bonus	..	124 : 18 : 6
	First Premium	..	<u>£1,401 : 16 : 3</u>

Head Office : Royal Exchange, London, E.C.3.

COMMERCIAL MOTOR VEHICLE (COMPREHENSIVE POLICY).

Whereas the Insured designated in the Schedule hereto carrying on or engaged in the business or occupation described in the Schedule hereto 20 and no other for the purposes of this insurance has applied to the ROYAL EXCHANGE ASSURANCE (hereinafter called "the Corporation") by a Proposal which the Insured has agreed shall be deemed to be of a promissory nature and effect and the basis of this Contract and which is deemed to be incorporated herein and has paid or agreed to pay the premium stated in the Schedule hereto as consideration for the Indemnity hereinafter contained.

Now this Policy witnesseth that the Corporation will subject to the Terms Provisions and Conditions contained herein or endorsed hereon indemnify the Insured against loss damage and/or liability as hereunder 30 mentioned actually occurring or arising during the period stated in the Schedule hereto or during any period for which the Corporation may accept payment for the renewal of this Policy that is to say:—

1. Loss of or Damage to any Vehicle described in the Schedule hereto and necessary Lamps Tyres and Accessories whilst thereon resulting from any Accidental Collision or Overturning or Collision or Overturning consequent upon Mechanical Breakdown or consequent upon Wear and Tear but excluding accidental damage to Tyres unless such Vehicle is damaged at the same time.

2. Loss of or Damage to any Vehicle described in the Schedule hereto and necessary Lamps Tyres and Accessories whilst thereon.

(A) By fire External Explosion Self Ignition or Lightning or Burglary Housebreaking or Theft or

(B) By Malicious Act or

(C) In Transit by Road Rail Inland Waterway Lift or Elevator

but excluding damage to Tyres unless such Vehicle is damaged at the same time.

(Here follow other indemnities and terms provisions and conditions.)

Exhibits.
 ———
Claimants'
Exhibits.
 ———
 " G1."
 Com-
 prehensive
 Policy,
 19th
 August
 1946,
continued.

10 In witness whereof the undersigned Authorised Representative of the said Corporation has hereunto set his Hand this Nineteenth day of August, in the year of our Lord, One thousand Nine Hundred and forty-six.

(Sgd.) W. GUDING,

Manager,
 West African Branch.

Examined (Intd.) ?

Entered (Intd.) ?

(Here follow various indorsements including the following :—)

TRAILER ENDORSEMENT NO. 13 (A).

20 Notwithstanding anything contained herein to the contrary it is hereby understood and agreed that this Policy shall be operative in respect of any Vehicle against the description of which a number of trailers appears in the Schedule hereto whilst such Vehicle has attached to it any trailers described in the said Schedule but not exceeding the number appearing against the description of such Vehicle.

It is further agreed that the Corporation will indemnify the Insured in the terms of Clauses 1 to 8 of this Policy in respect of such trailers. Subject otherwise to the terms provisions and conditions of this Policy.

THE SCHEDULE.

30 Policy No. MV 32166. Annual Premium £1,526 : 14 : 9.
 First Prem. £1,401 : 16 : 3d.

Period of Insurance : from noon on the Ninth day of July, 1946 to noon on the Ninth day of July, 1947.

The Insured : G. B. Moukarzel.

Address : P.O. Box 447, Kumasi, Gold Coast.

Geographical Area referred to in Proviso (A) : Gold Coast including British Mandated Togoland.

Exhibits.

DESCRIPTION OF VEHICLES.

Claimants' Exhibits.

"G1."

Comprehensive Policy, 19th August 1946, *continued.*

LORRIES :		Trailers used interchangeably in connection with the lorries						
Make	Year	Horse-Power	Reg. No.	Value	No. of Trailer	Reg. No.	Value	
		(Inter alia)						
G.M.C.	1943	33	AT.8074	£500				
					1	AT.6640	£150	
					1	" 6734	£150	
					1	" 7658	£150	10
Ford	1944	30	AT.8416	£626				
Ford	1944	30	AT.8420	£575				
Ford	1944	30	AC.6559	£500				
International	1942/43	30	AT.8495	£650				
					1	" 7760	£150	
Ford	1945/46	30	AT.8826	£650				
Ford	1945/46	30	AT.8827	£650	1	" 8262	£125	
Ford	1945/46	30	AT.8828	£650	1	" 8263	£125	
					1	" 8215	£125	
Ford	1945/46	30	AT.8830	£650	1	" 7819	£125	20
					1	" 8409	£125	
					1	" 8350	£125	
					1	" 8608	£125	
					1	" 7827	£125	
					1	" 7832	£125	
					1	" 7461	£150	
Bedford	1938	26	AT.5616	£400				
Bedford	1938	26	AT.5258	£400				

ROYAL EXCHANGE ASSURANCE

(Accident Department.)

30

Endorsement No. A.O. 10806. To be attached to Motor Policy No. 32166.

Memo dated this 22nd day of November, 1946.

It is hereby declared and agreed anything contained herein to the contrary notwithstanding that as from the 1st day of November, 1946 the motor vehicles described below in addition to those referred to in the within Schedule are insured hereunder up to their market values at the time of the happening of any loss or damage but in no case exceeding the sums stated below :—

Make of Vehicle	Year of Make	H.P.	Reg. Nos.	Capacity	Class of body	Use	Value	40
Ford	1945/46	30	AT.8750	—	Lorry	General Transport (Ex-Towage)	£500	
Ford	1945/46	30	" 8872	—	Lorry	do.	£650	
Dodge	1945/46	28	" 9087	—	Lorry	do.	£500	

In consideration of the above an additional premium of £57 7s. is charged. *Exhibits.*

Subject otherwise to the terms provisions and conditions of this Policy. *Claimants' Exhibits.*

(Sgd.) C. W. SPENCER,
Resident Inspector. *" G1."*
Com-
prehensive
Policy,
19th
August
1946,
continued.

No. 15607.

2d. Stamp.

ROYAL EXCHANGE ASSURANCE.

Head Office : Royal Exchange, London, E.C.3.

10 Gold Coast Office : Corner of Horse Road and Pagan Road, Accra.

25th Oct., 1946.

Received of G. B. Moukarzel, Esq., the sum of One thousand four hundred and one Pounds Sixteen Shillings and Three Pence, being premium on Motor Vehicle Policy 32166.

£1,401 : 16 : 3d.

(Sgd.) C. W. SPENCER,
Resident Inspector.

Judgment-Creditor's Exhibit.

" 1 "—CHARGE, G. B. Moukarzel to P. S. Azar.

20

Gold Coast
One
Pound
Stamp Duties

Gold Coast
One
Pound
Stamp Duties

1893/46.

*Judgment-
Creditor's
Exhibits.*

*No. 1.
Charge,
G. B.
Moukarzel
to P. S.
Azar,
16th
November
1946.*

THIS AGREEMENT made the sixteenth day of November one thousand nine hundred and forty-six Between GEORGE BECHIR MOUKARZEL of Kumasi Ashanti Transport Owner (hereinafter called " the Borrower " which expression shall where the context so admits or requires include his executors administrators and assigns) of the one part and PHILIP SAID 30 AZAR of Kumasi aforesaid General Merchant (hereinafter called " the Lender " which expression shall where the context so admits or requires include his executors administrators and assigns) of the other part Whereas the Borrower has requested the Lender and the Lender has agreed to lend to the Borrower the sum of Four Thousand Pounds upon having the repayment thereof together with interest thereon as hereinafter mentioned secured in manner hereinafter appearing Witnesseth :—

1. In pursuance of the said agreement and in consideration of the sum of Four Thousand Pounds paid by the Lender to the Borrower on or before the execution of these presents (the receipt whereof the Borrower 40 hereby acknowledges) the Borrower hereby promises to pay to the Lender the principal sum of Four Thousand Pounds with interest thereon at the

Exhibits.
 ———
*Judgment-
 Creditor's
 Exhibits.*
 ———

No. 1.
 Charge,
 G. B.
 Moukarzel
 to P. S.
 Azar,
 16th
 November
 1946,
continued.

rate of twelve and one-half per cent. per annum as from the first day of November One thousand nine hundred and forty-six by the following instalments that is to say a first instalment of Four Hundred Pounds on the thirtieth day of November one thousand nine hundred and forty-six and a further instalment of Four Hundred Pounds on the last day of every subsequent calendar month until the thirtieth day of September one thousand nine hundred and forty-seven when the instalment of Two Hundred and Fifty Pounds shall be paid and the balance then remaining of Two Hundred and Fifty Pounds shall be paid on the thirty-first day of October one thousand nine hundred and forty-seven. In default of any one payment being made when it becomes due or if the Borrower shall make default in the performance or observance of any covenant or agreement hereinafter contained then on any such default as aforesaid the whole of the said principal sum or so much thereof as may then remain unpaid together with the interest thereon then due shall become immediately payable. 10

2. If the Borrower shall make default as aforesaid that is to say either in the payment of any one instalment or in the performance or observance of any covenant or agreement hereinafter contained the Lender shall forthwith be at liberty to sue the Borrower for the principal sum and interest then remaining due or in the alternative may require the Borrower to transfer to the Lender all or so many of the motor vehicles particulars whereof are set out in the Schedule hereto (hereinafter referred to as "the vehicles") the aggregate value whereof at the date of such default shall be sufficient to satisfy the principal sum and interest so owing as aforesaid and for the purpose of ascertaining the value of such vehicles the valuation of the District Transport Control Officer of Kumasi aforesaid shall be accepted as conclusive. Provided that such transfers or transfer shall be subject to the prior approval of the said District Transport Control Officer Kumasi or such other Authority (if any) as may by law be required. Provided further that if the value of the vehicle or vehicles so transferred shall exceed or be less than the amount of the principal sum and interest owing at the date of such default as aforesaid then the Lender or the Borrower as the case may be shall pay to the other the amount of such difference. 20 30

3. If default shall be made as aforesaid the Lender or his agents without previous notice to the Borrower may seize or take possession of the vehicles or any of them in whatsoever place or places they happen to be and the Lender shall within five days of such seizure give notice in writing to the Borrower as to whether or not he desires to exercise the right to have transferred to him all or any of the vehicles specifying the vehicles (if any) required to be transferred. Provided that in the event of the District Transport Control Officer of Kumasi as aforesaid or such other Authority (if any) as may be required by law as aforesaid not approving of the transfer of all or any of the vehicles or in the event of the Lender not desiring to exercise the right of transfer hereinbefore contained the Lender may nevertheless retain possession of the vehicles seized until such time as the principal sum and interest or so much thereof as may be due at the date of such default shall be paid or until execution shall be levied thereon consequent upon any Judgment or Order obtained by the Lender against the Borrower in respect of the Borrower's default hereunder whichever shall first happen. 40 50

4. The Borrower covenants with the Lender as follows :—
 (Here follow covenants by the Borrower including the following :—)

(G) Not to permit or suffer any writ of *feri facias* or other writ of execution or distress for rent rates or taxes to be levied or taken against or distrained upon the vehicles or any of them or to become bankrupt or compound with his creditors.

(H) Not to transfer part with the possession of charge or in any way encumber the vehicles or any of them.

5. In the event of the Lender exercising the power of seizure herein-
 10 before contained he shall not be liable to the Borrower for any loss or damage of whatsoever nature suffered by the Borrower arising out of or occasioned by the said seizure and whether directly or indirectly.

6. Upon payment of the said principal sum and interest and any expenses which the Lender may incur in lawfully seizing and removing the vehicles and any costs which the Lender may properly incur in defending and retaining his rights hereunder this agreement shall be void.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE hereinbefore referred to

20	LORRIES		TRAILERS
	Registration		Registration
	No.	Make	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
30	„ 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

Signed Sealed and Delivered by the
 above-named George Bechir Moukarzel } (Sgd.) G. B. MOUKARZEL.
 in the presence of } (L.S.)

40 (Sgd.) JOHN W. MEAD,
 Solicitor,
 Kumasi.

Signed Sealed and Delivered by the
 above-named Philip Said Azar in the } (Sgd.) PHILIP AZAR. (L.S.)
 presence of }

(Sgd.) JOHN W. MEAD.

Endorsed certificate that this instrument is chargeable with a duty of Two Pounds.

Exhibits.
 Judgment-Creditor's Exhibits.
 No. 1.
 Charge,
 G. B. Moukarzel to P. S. Azar,
 16th November 1946,
continued.

*Exhibits.***Judgment-Creditor's Exhibit.***Judgment-Creditor's Exhibits.***" 2 "—RECEIPT for £4,000, G. B. Moukarzel to P. S. Azar.**

No. 2.
 Receipt for
 £4,000,
 G. B.
 Moukarzel
 to P. S.
 Azar,
 16th
 November
 1946.

Received from Philip Azar the sum of Four Thousand Pounds (£4,000) with interest chargeable at the rate of $12\frac{1}{2}\%$ per annum to wit as follows :—
 £2,300 old a/c loan with interest ; £965 old a/c loan with interest ; plus
 £85 in cash and plus £650 paid in five cheques vide agreement made on
 the 16th November 1946 and executed between myself and Philip Azar,
 Agreement Treasury No. 1893/46.

Dated at Kumasi this 16th day of November, 1946.

(Sgd.) G. B. MOUKARZEL.

10

Kumasi.

2d. Stamp (affixed).

*Claimant's Exhibits.***Claimants' Exhibit.**

" C. "
 Bill of
 Sale, G. B.
 Moukarzel
 to F. & M.
 Khoury,
 22nd
 November
 1946.

" C "—BILL OF SALE, G. B. Moukarzel to F. & M. Khoury.

Gold Coast
 Ten
 Pounds
 Stamp Duties

Gold Coast
 Ten
 Pounds
 Stamp Duties

Gold Coast
 Ten
 Pounds
 Stamp Duties

Gold Coast
 Five
 Shillings
 Stamp Duties

Gold Coast
 Five
 Shillings
 Stamp Duties

Gold Coast
 Ten
 Pounds
 Stamp Duties

2019/46

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THIS INDENTURE made the 22nd day of November One thousand nine hundred and forty-six (1946) Between GEORGE BECHIR MOUKARZEL of Kumasi in Ashanti (hereinafter called " the Borrower ") of the one part and FRED KHOURY and MAGID KHOURY carrying on business together the partnership at Nsawam in the Eastern Province of the Gold Coast Colony under the style or name of " F. & M. Khoury " (hereinafter called " the Lenders ") of the other part Witnesseth that in consideration of the sum of £16,140 paid to the Borrower by the Lenders (the receipt of which the Borrower hereby acknowledges) the Borrower doth hereby Assign unto the Lenders their and each of their heirs executors administrators and assigns All and Singular the several chattels and things specifically described in the Schedule hereto by way of security for the

payment of the sum of £16,140 and interest thereon at the rate of £8 per cent. per annum And the Borrower doth Agree and Declare as follows :—

Exhibits.

Claimants' Exhibits.

“ C.”

Bill of Sale, G. B. Moukarzel to F. & M. Khoury, 22nd November 1946,
continued.

(1) That he will duly pay to the Lenders the principal sum aforesaid 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 And in default of payment of any instalment then the Borrower will pay interest thereon at the rate aforesaid from the date when such instalment shall become due until full payment thereof.

10 (2) That he will during the continuance of this security at all times keep the chattels hereby assigned insured against loss or damage by accident fire theft or burglary in the sum of £20,000 in the joint names of himself and the Lenders and will pay all premiums necessary for effecting and keeping up such insurance and will on demand produce and if required deliver to the Lenders the Policy or policies of such insurance and receipt for every such payment And if default shall at any time be made by the Borrower in effecting and keeping up such insurance it shall be lawful for the Lenders to insure and keep insured the said chattels in the sum of £20,000 and all monies expended by them for such purpose together with
20 interest thereon at the rate of £8 per cent. per annum from the time of the same having been expended shall on demand be repaid to them by the Borrower and until such repayment shall be a charge upon all the chattels hereby assigned.

(3) That in case the Borrower shall make default in payment of the principal sum by instalments as aforesaid or of the interest thereon at the times hereinbefore appointed for payment thereof respectively or in the performance of any agreement contained herein and necessary for maintaining this security or shall suffer the said chattels or any of them to be distrained for rent rates or taxes or if execution shall during the continuance
30 of this security have been levied against the goods of the Borrower under any judgment at law then and in such case it shall be lawful for the Lenders their servants or Agents without previous notice to the Borrower to seize and take possession of any chattels included in this security in whatever place or places they may happen to be.

(4) That if the Lenders shall become entitled to seize the chattels hereby assigned they and their agents may enter and remain upon any premises where the said chattels may be and if necessary may break open doors and windows in order to obtain admission and after the expiration of five clear days from the day of seizure may sell the said chattels by
40 public auction or private contract on or off the said premises and retain out of the proceeds so much of the said principal sum as may then remain unpaid and the interest then due and all costs and expenses which they may incur as aforesaid and the expenses of sale and also any rent rates and taxes which they may pay in respect of the premises where the said chattels may be and the surplus (if any) shall be paid to the Borrower.

In witness whereof the Borrower has hereunto set his hand and seal the day and year first above written.

Exhibits.

THE SCHEDULE above referred to.

<i>Claimants' Exhibits.</i>	LORRIES :						Trailers used interchangeably in connection with the lorries			
	Make	Year	Horse-Power (Inter alia)	Reg. No.	Value £	No. of Trailer	Reg. No.	Value £		
Bill of Sale, G. B. Moukarzel to F. & M. Khoury, 22nd November 1946, <i>continued.</i>	G.M.C.	..	1943	33	AT.8074	500				
							1	AT.6640	150	10
							1	AT.6734	150	
							1	AT.7658	150	
	Ford	..	1944	30	AT.8416	626				
	Ford	.	1944	30	AT.8420	575				
	Ford	.	1944	30	AC.6559	500				
	International		1942/43	30	AT.8495	650				
							1	AT.7760	150	
	Ford	..	1945/46	30	AT.8826	650				
	"	..	"	30	AT.8827	650	1	AT.8262	125	20
	"	..	"	30	AT.8828	650	1	AT.8263	125	
							1	AT.8215	125	
	"	..	"	30	AT.8830	650	1	AT.7819	125	
							1	AT.8409	125	
						1	AT.8350	125		
						1	AT.8608	125		
						1	AT.7827	125		
						1	AT.7832	125		
						1	AT.7461	150		
Bedford	..	1938	26	AT.5616	400					
"	..	"	26	AT.5258	400					
Make of Vehicle	Year of Make	H.P.	Reg. Nos.	Capacity	Class of body	Use	Value		30	
Ford	1945/46	30	AT.8750	—	Lorry	General Transport (Ex-Towage)	£500			
Ford	1945/46	30	AT.8872	—	Lorry	General Transport (Ex-Towage)	£650			
Dodge	1945/46	28	AT.9087	—	Lorry	General Transport (Ex-Towage)	£500		40	

Signed Sealed and Delivered by the said George Bechir Moukarzel in the presence of { (Sgd.) G. B. MOUKARZEL. (L.S.)

(Sgd.) J. BROOKMAN AMISSAH,
Clerk to Giles Hunt & Co.,
Accra.

Received the within-mentioned sum of Sixteen thousand one hundred and forty pounds (£16,140).

(Sgd.) G. B. MOUKARZEL.

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Endorsed Certificate that instrument is chargeable with a duty of Forty Pounds Ten Shillings.

Claimants' Exhibit.

" B2 "—BARCLAYS BANK ADVICE.

BARCLAYS BANK (DOMINION, COLONIAL AND OVERSEAS).
ACCRA.

Gold Coast Branch.

23.11.1946.

Exhibits.

Claimants' Exhibits.

" B2."

Barclays
Bank
Advice,
23rd
November
1946.

Dear Sir,

We beg to advise having debited your account this day with Four
Thousand Pounds £4,000.—. being Kumasi Chq. No. 74300 unpaid.
10 Chq. in question to follow in due course which please note.

Yours faithfully,

(Sgd.) ?

Manager.

M/S

F. & M. Khoury,
(Syrian Traders),
Nsawam.

Claimants' Exhibit.

" D "—UNDERTAKING, G. B. Moukarzel to F. & M. Khoury.

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Accra.

28th Nov. 1946.

F. & M. Khoury,
Nsawam.

" D."

Under-
taking,
G. B.
Moukarzel
to F. & M.
Khoury,
28th
November
1946.

Dear Sirs,

In consideration of you paying at my request to Barclays Bank
(D.C. & O.), Kumasi Branch the sum of £7,171 15s. 4d. (which is the
amount now due from me to the Bank) I hereby undertake :—

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

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(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.

Exhibits.

Claimants'
Exhibits.

"D."

Under-
taking,
G. B.
Moukarzel
to F. & M.
Khoury,
28th
November
1946,
continued.

(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 to you of £7,171. The rate of interest in such mortgage to be 8% 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 10 stock. The Bill of Sale will be to cover the sum of £16,140 0s. 0d. and the rate of interest will be 8% and with the same provisions as to repayment of principal.

(5) To hand over to you any sums I may receive from the P.W.D. in connection with the hiring by them of my transport.

Yours faithfully,

(Sgd.) G. B. MOUKARZEL.

Witness to the signature of GEORGE
BECHIR MOUKARZEL.

(Sgd.) P. E. EVE, Solicitor, Accra.

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