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IN THE PRIVY COUNCIL

20, 1959

No. 30 of 1959

ON APPEAL

FROM THE COURT OF APPEAL, GHANA

B E T W E E N :

GHANA COMMERCIAL BANK

Appellants

- and -

(1) D. T. CHANDIRAM and

(2) J. MEHSAH

Respondents

RECORD OF PROCEEDINGS

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20, Copthall Avenue,
London Wall, E.C.2.
Solicitors for the Appellants.

T. L. WILSON & CO.,
6, Westminster Palace Gardens,
Victoria Street,
London, S.W.1.
Solicitors for the First Respondent.

IN THE PRIVY COUNCIL

No. 30 of 1959

ON APPEAL
FROM THE COURT OF APPEAL, GHANA

UNIVERSITY OF LONDON
W.C.1.

- 7 FEB 1961

INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N :

GHANA COMMERCIAL BANK

Appellants

- and -

50953

(1) D. T. CHANDIRAM and
(2) J. MEMSAH

RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No. 30 of 1959

ON APPEAL
FROM THE COURT OF APPEAL, GHANA

B E T W E E N :

GHANA COMMERCIAL BANK Appellants

- and -

(1) D. T. CHANDIRAM and
(2) J. MENSAH Respondents

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

Sealed 26.9.56
At 10.00 a.m.
Intd. N.N.A.

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 1

IN THE SUPREME COURT OF THE GOLD COAST

EASTERN JUDICIAL DIVISION,

LAND COURT, ACCRA 1956, L.S. No.161/56

Writ of Summons.
26th September,
1956.

B E T W E E N

D.T. CHANDIRAM of Accra, Plaintiff

- and -

1. J. MENSAH, Manager of Saint John's Grammar School, Accra,
2. BANK OF THE GOLD COAST, Christiansborg Road, Accra: Defendants

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, TO -

1. J. Mensah, Manager of Saint John's Grammar School, North Kokomlemle, Nkrumah Road, Accra.
2. BANK OF THE GOLD COAST, Christiansborg Road, Accra,

in the Eastern Province of the Gold Coast Colony.

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra.

No. 1

Writ of Summons.
26th September,
1956
- continued.

We command you, that within eight days after the service of this writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of D. T. Chandiram

And take notice that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS, KOBINA ARKU KORSAH,
Knight Bachelor, Chief Justice of the Gold Coast, 10
the 26th day of September, in the year of our Lord
One thousand nine hundred and fifty-six (1956)

N.B. This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The defendant may appear hereto by entering an appearance either personally or by Solicitor, at the Registry of the Land Court at Accra. A defendant appearing personally may, if he desire, enter his appearance by post and the appropriate forms may be obtained by sending a postal order for 2s.11d. with an addressed envelope, foolscap size, to the Registrar, Land Court, Accra. 20

The Plaintiff's claim as against the Defendants jointly and severally -

- a. A Declaration of his title of ownership to the said premises
- b. £500 General damages for trespass 30
- c. £2025 as Mesne Profits at the rate of £75 a month as from the 16th April, 1955, to the 15th September, 1956, and any further sums of money by way of Mesne Profits that will have accrued up to date of judgment.
- d. Recovery of Possession.

(Sgd) E. Akufo Addo
SOLICITOR FOR PLAINTIFF.

THIS WRIT was issued by E. Akufo Addo of Accra whose address for service is Kwakwadua Chambers D112/4, Mamleshie Road (Off Knutsford Avenue) Accra agent for of Solicitor for the said Plaintiff who resides at Accra. 40

Indorsement to be made within 3 days after service.

THIS WRIT was served by me at Accra together with Statement of Claim at Accra New Town, Accra, on the defendant J. Mensah, Manager of Saint John's Grammar School, Kwasi Amoake Atta, for Bank of Gold Coast, Accra on Thursday and Friday 27th and 28th days of September, 1956.

Indorsed the 27th and 28th days of September, 1956.

(Signed) M.M. Seedi
(Address) Land Court, Accra.

10

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 1

Writ of Summons.

26th September,
1956

- continued.

No. 2

STATEMENT OF CLAIM

Filed 26.9.56.
At 10.00 a.m.
Intd. N.N.A. for Registrar,
Land Court, Accra.

No. 2

Statement of
Claim.

26th September,
1956.

20

1. On the 16th April, 1955, the Plaintiff purchased at a public auction All that piece or parcel of land with the Buildings thereon situate at North Kokomlemle, Accra and bounded on the North by Otuopai Stool land measuring one hundred feet (100') more or less on the South by Vendor's property measuring One hundred feet (100') more or less on the East by Vendor's property measuring three hundred feet (300') more or less and on the West by a Proposed Road and measuring two hundred and thirty five feet (235') more or less and covering an approximate area of .623 acre.

30

2. The sale of the land and buildings described in paragraph 1 supra was in execution of a Writ of Fi:Fa issued by the Divisional Court, Sekondi in the suit "M.D. Bassil - Plaintiff-Judgment-Creditor versus E.O. Hollomah - Defendant-Judgment-Debtor".

40

3. The said land and buildings were the property of the said E.O. Hollomah and at the date of the sale the 1st Defendant occupied the buildings thereon as Tenant of the said E.O. Hollomah and paid rent at the rate of £75 (seventy-five pounds) a month.

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 2

Statement of
Claim.

26th September,
1956

- continued.

4. After the purchase of the said premises by the Plaintiff he the Plaintiff informed the 1st Defendant of the purchase and requested the 1st Defendant to pay to him the Plaintiff all rents due as from the 16th April, 1955.

5. The 1st Defendant refused to pay any rents to the Plaintiff and has since not paid any rents on the ground that the 2nd Defendant had requested that all rents be paid to them, and the 1st Defendant has therefore refused to atturn tenant to the Plaintiff, and his occupation of the said premises is therefore wrongful.

10

6. Wherefore the Plaintiff claims against the Defendants jointly and severally;

a. A Declaration of his title of ownership to the said premises;

b. £500 General damages for trespass;

c. £2025 as Mesne profits at the rate of £75 a month as from the 16th day of April, 1955 to the 15th September, 1956 and any further sums of money by way of Mesne profits that will have accrued up to date of Judgment.

20

d. Recovery of Possession.

DATED at Kwakwadua Chambers, Accra, this 25th day of September, 1956.

(Sgd) E. Akufo Addo.

Solicitor for the Plaintiff.

No. 3

Defence of
First Defendant.

8th October,
1956.

No. 3

DEFENCE of FIRST DEFENDANT

Filed 8.10.56
at 8.15 a.m.
Intd. N.N.A. for
Registrar,
Land Court, Accra.

30

1. The Defendant is Manager of Saint John's Grammar School an Educational Institution carrying on School Teaching at Kokomlemle, Accra (hereinafter referred to for convenience as "the Defendant School").

2. The Defendant School is in occupation of the premises the subject matter of the action under a Tenancy Agreement with E.O. Holomah the original owner of the premises in question.

3. The Defendant School denies the existence of any tenancy agreement between it and the Plaintiff whereby it is, can or would be liable to pay rent to the Plaintiff.

10 4. The Defendant School avers that after the alleged sale of the interest of E.O. Holomah the owner in the said premises he the said E.O. Holomah informed the Defendant School of steps being taken by him to have the sale set aside or for clarification of the interest sold as he had prior to the said sale mortgaged the property to the Bank of the Gold Coast by Deed.

20 5. In the meantime the Bank of the Gold Coast by Notice dated the 25th day of July, 1955 informed the Defendant School that the legal estate in the premises occupied by the Defendant School was and is vested in the said Bank under a Deed of Mortgage dated the 27th day of October, 1954, and registered as No.42/1955 in the Gold Coast Land Registry, and the Defendant School was in consequence obliged to attorn the said Bank of the Gold Coast as Landlord and to pay and has since paid rent to the said Bank regularly and does not owe any rent for and/or in respect of the said premises as claimed in the Writ of Summons in this action.

30 6. By reason of the premises the Defendant School avers that it is not liable to the Plaintiff in any action for recovery of rent or possession.

40 7. The Defendant School avers that by a letter dated the 13th August, 1955, in reply to a demand made by T. Chandiram & Company dated the 28th July, 1955 for the payment of rent IF the Defendant School informed the said T. Chandiram & Co., that rent was being paid to the Bank of the Gold Coast the holders of the legal estate in the premises according to their instructions and also requested the said T. Chandiram & Co., to contact the said Bank of the Gold Coast.

8. SAVE as is herein expressly admitted the Defendant School denies each and every allegation contained in the Statement of Claim as if the same

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 3

Defence of
First Defendant.

8th October,
1956.

- continued.

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

were set out in extenso and traversed seriatim.

DATED at Accra the 8th day of October, 1956.

(Sgd.) C.C. Lokko,
SOLICITOR FOR DEFENDANT GRAMMAR SCHOOL.

No. 3
Defence of
First Defendant.
8th October,
1956
- continued.

The Divisional Registrar,
Land Court, Accra.

And

TO - E. Akufo Addo, Esquire,
Solicitor for Plaintiff, Accra.

Certificate of Service.

10

Upon the 8th day of October, 1956, at 9.55 a.m.
copy of the statement of defence was served by me
on Akufo Addo, Counsel for Defendant herein
personally at Accra.

(Sgd.) M.M. Seedi.
Bailiff.

No. 4

No. 4

Defence of
Second
Defendants.
8th October,
1956.

DEFENCE of SECOND DEFENDANTS

Filed 8.10.56
at 8.05 a.m.
Intd. N.N.A. for
Registrar,
Land Court, Accra.

20

1. The Second Defendant Bank of the Gold Coast
(for convenience hereinafter referred to as "the
Defendant Bank") was incorporated under the laws
of the Gold Coast Colony having its registered
office situate at Accra in the Eastern Judicial
Division.

2. On the 16th day of July 1954 Ebenezer Ofue
Holomah deposited his Title Deeds with Barclays
Bank (Dominion Colonial and Overseas) with the
intent to create an Equitable Mortgage upon all
the hereditaments and property comprised therein
for securing the payment and discharge of all
moneys and liabilities due from him or other
banking facilities granted to him which said

30

Instrument was registered as No.1234/1954 in the Gold Coast Land Registry.

3. Under a Writ of Fieri Facias issued out of the Divisional Court, Sekondi, in an action wherein M.D. Bassil was Plaintiff and E.O. Holomah Defendant the Judgment Creditor M.D. Bassil purported to attach the property comprised in the documents referred to in paragraph 2 hereof, on or about the 24th day of September, 1954.

10 4. The Defendant Bank avers that on the date of the alleged attachment the legal estate in the said property was vested in the Barclays Bank (D.C. & O.) and that the only attachable interest of the said Ebenezer Ofuo Holomah in the said property was the Equity of Redemption.

20 5. The Defendant Bank avers further that on or about the 4th day of September, 1954, the interest of Barclays Bank (D.C. & O.) referred to in paragraph 2 supra was transferred to the Defendant Bank when the liabilities of the said Ebenezer Ofuo Holomah were taken over and payment made by the Defendant Bank to the said Barclays Bank (D.C. & O.) and the said title Deeds were handed over by the said Barclays Bank (D.C. & O.) to the Defendant Bank whereupon the Deed of Mortgage dated the 27th day of October, 1954 was executed between the said Ebenezer Ofuo Holomah of the one part and the Defendant Bank of the other part and registered as No.42/1955 in the Gold Coast Land Registry.

30 6. On or about the 4th day of April, 1955 it came to the knowledge of the Defendant Bank that the property comprised in the Deed of Mortgage of the 27th day of October, 1954, referred to in paragraph 5 hereof had been attached for sale under the Writ of Fieri Facias referred to in paragraph 3 hereof whereupon the said Defendant Bank caused a letter of the same date to be written by its Solicitor Mr. C.C. Lokko to the Deputy Sheriff Accra, in the following terms:

40 "M.D. Bassil versus E.O. Holomah With reference to the property attached by you in the above action and the Auction Notice advertising such property for sale on the 16th day of April, 1955, at 2.30 p.m. I am instructed by the Bank of the Gold Coast to notify you that the legal estate in the said property is vested in it under a Deed of Mortgage dated the 27th day of October, 1954, which deed is registered as No.42/1955 in the Gold Coast Land Registry and to request that you so inform the

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 4

Defence of
Second
Defendants.

8th October,
1956
- continued.

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 4

Defence of
Second
Defendants.
8th October,
1956
- continued.

Judgment Creditor and follow it up by instituting Interpleader proceedings on its behalf to protect its interest".

7. Notwithstanding the aforesaid notification of the interest of the Defendant Bank in the property of the Judgment Debtor Ebenezer Ofue Holomah to the Deputy Sheriff of Accra and to the Judgment Creditor the said Judgment Creditor nevertheless proceeded with the sale of the said property as if it was not charged in favour of the said Defendant Bank and without waiting for the Interpleader Summons asked for to issue and without proper description of the interest of the Judgment Debtor in the said property. 10

8. The Defendant Bank avers that the attachment under which the property of the said Ebenezer Ofue Holomah (which was under mortgage to it) was made on the 13th day of January, 1955, or thereabouts; and that at that date the legal estate in the said property was legally and properly vested in the said Defendant Bank as set out in paragraph 5 supra. 20

Even if, the Attachment under which the said property was sold was made on the 24th or 25th day of September, 1954, the legal estate in the said property was at that date as set out in paragraph 2 supra, vested in the Barclays Bank (D.C. & O.) which was subsequently on the 4th day of September, 1954, or thereabouts, transferred by the said Barclays Bank (D.C. & O.) to the Defendant Bank and that at that date the only attachable interest of the said Judgment Debtor Ebenezer Ofue Holomah in the said property was his Equity of Redemption. 30

9. The Defendant Bank avers that in the circumstances the only attachable interest of the Judgment Debtor Ebenezer Ofue Holomah in the property that could be attached and sold on the 16th day of April, 1955, and could be bought by the Plaintiff was the Equity of Redemption.

10. The Judgment Creditor M.D. Bassil having ignored the Notification of the interest of the Defendant Bank given to him through the Deputy Sheriff of Accra and proceeded to sell the interest of the Judgment Debtor Ebenezer Ofue Holomah in the said property without waiting for the Interpleader Summons asked for by the Defendant Bank to issue 40

as set out in paragraph 6 supra and in order to protect its interest (to wit the legal estate) in the said property the said Defendant Bank caused a Notification dated the 25th day of July, 1955, to be addressed to the First Defendant School, a Tenant then occupying the said premises which reads as follows:-

In the
Supreme Court of
the Gold Coast
Eastern Judicial
Division
Land Court, Accra

No. 4

10 "The Principal, St. John's Grammar School I
the undersigned C.C. Lokko as Solicitor for
and on behalf of the Bank of the Gold Coast do
hereby give you notice that under and by vir-
tue of a Deed of Mortgage dated the 27th day
of October, 1954, and registered as No.42/1955
in the Gold Coast Land Registry and made be-
tween Ebenezer Ofuo Holomah of the one part
and Bank of the other part the legal estate in
the premises of which you are Tenant is vested
in the said Bank of the Gold Coast AND I
20 hereby on behalf of the said Bank of the Gold
Coast demand of and require you to pay all rent
which is now or shall henceforth become due and
payable in respect of the said premises to the
said Bank or its duly authorised agent".

Defence of
Second
Defendants.
8th October,
1956
- continued.

11. The said First Defendant School in pursuance of the foregoing Notification and demand attorned the Second Defendant Bank and paid rent in respect of the said premises to the said Defendant Bank which said payments IT the said Defendant Bank is lawfully entitled to retain in reduction of the debt due by the said Ebenezer Ofue Holomah under the said Mortgage.

12. The Defendant Bank will contend that the claim in this action is misconceived and should be dismissed, and that the Plaintiff in the circumstances is not entitled to any of the Relief asked for.

DATED at Accra the 8th day of October, 1956.

(Sgd.) C.C. Lokko
SOLICITOR FOR DEFENDANT BANK OF THE GOLD COAST.

40 The Divisional Registrar, Land Court, Accra,
and
TO - E. AKUFO ADDO, Esquire, Solicitor for Plaintiff,
Accra.

CERTIFICATE OF SERVICE.

Upon the 8th day of October, 1956, at 9.55 a.m. copy of this Statement of Defence was served by me on Akufo Addo personally, Solicitor for Plaintiff, Accra.

(Sgd.) M.M. Seedi.

In the
High Court of
Justice, Ghana

No. 5

P R O C E E D I N G S

No. 5

Proceedings.

25th June, 1957.

Mr. Akufo Addo for the Plaintiff
Mr. Lokko for the Defendants

Mr. Akufo Addo:

I ask leave to amend the title of the case and wherever it appears by deleting "Bank of the Gold Coast" and substituting therefor "Ghana Commercial Bank".

Mr. Lokko:

I have no objection.

10

Court:

Leave granted, amendment granted accordingly.

Mr. Akufo Addo:

The main point is that the property subject matter of the suit was attached some time in 1954 under a Writ of Fi:Fa issued by the Divisional Court, Sekondi, in a suit entitled M.D. Bassil versus E.O. Holomah at the instance of M.D. Bassil then Judgment-Creditor.

20

The property was attached on the 25th September, 1954, but was not sold until April, 1955. It was purchased by the Plaintiff in this case.

The reason for the delay was that after the attachment under the writ of Fi:Fa the Defendant-Judgment-Debtor applied for and obtained Suspension of execution upon certain conditions which he eventually fulfilled pending hearing and determination of an appeal he had lodged, then pending in the West African Court of Appeal.

30

While the property was under attachment the Judgment-Debtor on the 27th October, 1954 purported to convey the property to the 2nd Defendants to secure the repayment of a loan of the sum of £4,000.

Before the sale took place the Bank entered an Interpleader but did not pursue it.

The 2nd Defendants say that on the 25th September, 1954, the date of the attachment, the title deeds relating to the property had been deposited with Barclays Bank by way of Equitable

40

charge on the property concerned; and that Barclays Bank transferred their right over the property to them the 2nd Defendants, and yet a Deed of Mortgage was actually executed.

In the
High Court of
Justice, Ghana

No. 5

Proceedings,
25th June, 1957
- continued.

We say that the deed of mortgage executed by the Judgment-Debtor on 27th October, 1954 in favour of the 2nd Defendants was null and void ab initio. Therefore the Bank took nothing.

10 In spite of many requests the Bank, 2nd Defendants refused to give my client possession, and the 1st Defendant refused to pay the rents to us, he has been paying to the Bank.

We did what we could to get the 1st Defendant to attorn tenant to us, but he would not. He was paying the 2nd Defendants £75 a month for the premises, and that is the amount of mesne profits we claim.

PLAINTIFF'S EVIDENCE

Plaintiff's
Evidence

No. 6

No. 6

ROGER VAN DER PUIJE

20

Mr. Akufo Addo calls the Deputy Sheriff:

Roger van der
Puije.

P.W.1. - ROGER VAN DER PUIJE (m) s.o.b. in English:

25th June, 1957.
Examination.

I am the Deputy Sheriff, Accra.

I produce the docket relating to matters in the case of execution in the case of M.D. Bassil versus F.O. Holomah.

30

I have it on record that a Writ of Fi:Fa was issued by M.D. Bassil against E.O. Holomah on the 24th September, 1954 and some property was attached by virtue of that writ on the 25th September, 1954 at 10.45 a.m.

The property subject matter of the attachment was land with buildings thereon at North Kokomlemle, the description of which is exactly the same as that in the writ of summons in this case.

In the
High Court of
Justice, Ghana

Plaintiff's
Evidence

No. 6

Roger van der
Puije.

25th June, 1957

Examination
- continued.

The property was sold on the 16th of April, 1955; and was purchased by D.T. Chandiram, Merchant, Accra.

On the 30th September, 1954, I received a telegram from Divisional Court, Sekondi directing suspension of execution.

I know Mr. Ghansah's signature. The signature on this paper you show to me is his. It is a record of proceedings relating to the attachment in the case.

10

Mr. Akufo Addo - I tender it.

Mr. Lokko - No objection.

Court - Admitted and marked Exhibit 'A'.

Mr. Akufo Addo - I also tender the following documents:

1. Certificate of Attachment noted on the file under date 27.9.54.
2. Telegram dated 30/9/54 suspending sale.
3. Telegram dated 23/3/55 directing sale.
4. Notice of sale dated 13/1/55.
5. Auction Sale. (Account dated 16.4.55)
6. Letter dated 25.3.55 directing the Auctioneer to proceed with the sale.

20

Mr. Lokko - No objection.

Court:- Accepted and marked Exhibits 'B1 - 6'.

We used the usual form of attachment in the case.

Cross-
examination.

Cross-examined by Mr. Lokko:

I produce order of attachment dated 25.9.54.

Court: Tendered not objected to, and marked Exhibit '1'

30

From Exhibit 'B2' I gathered that the Court had ordered suspension of execution.

I would not upon a telegram like Exhibit 'B2' withdraw the attachment, I would merely suspend the execution i.e. sale.

By Exhibit 'B6' we directed the Auctioneer to proceed with the execution of the suspended writ, no fresh writ was issued.

I have in my hand Order of Attachment dated 13th January, 1955.

Mr. Lokko - I tender it.

10 Court:- Not objected to, admitted and marked Exhibit '2'.

On the 4th April, 1955 I received a letter from Lokko, Solicitor for the 2nd Defendants in respect of the Attachment.

Mr. Lokko - I tender it.

Court:- Not objected to, admitted and marked Exhibit '3'.

20 In consequence of Exhibit '3' I wrote to the Auctioneer, and gave Notice of the objection to the sale to Mr. Bassil.

Mr. Lokko - I tender the Notice to Bassil.

Court:- Not objected to, admitted and marked Exhibit '4'.

It is dated 12.4.55.

In compliance with that Notice Mr. Akufo Addo, Solicitor for M.D. Bassil gave Notice disputing the title of the Bank of the Gold Coast.

Mr. Lokko - I tender that letter.

30 Court:- Not objected to, accepted and marked Exhibit '5'.

I do not see any Interpleader summons on the file.

I admit that under Order 57 rule 16 quoted in my letter to Mr. Bassil Exhibit '4', I should issue Interpleader Summons should Mr. Bassil refuse to admit the title of the Claimant.

In the
High Court of
Justice, Ghana

Plaintiff's
Evidence

No. 6

Roger Van der
Puije.

25th June, 1957

Cross-
examination
- continued.

In the
High Court of
Justice, Ghana

Plaintiff's
Evidence

No. 6

Roger van der
Puije.

25th June, 1957

Cross-
examination
- continued.

Re-examination.

On 15.4.55 I wrote the Auctioneer to proceed with the sale.

Mr. Lokko - I tender that letter.

Court:- Not objected to, admitted and marked Exhibit '6'.

I wrote Exhibit '6' in consequence of a letter I received from Mr. Akufo Addo, Solicitor for M.D. Bassil dated 15.4.55.

Re-examined by Mr. Akufo Addo:

This is the letter dated 15.4.55 from Mr. 10
Akufo Addo, which I referred to in cross-examination. I tender it.

Court:- Not objected to, admitted and marked Exhibit 'C'.

When a Judgment-Creditor disputes the title of a Claimant, I have to proceed under Order 57 rule 18.

No. 7

Shewakram
Mulchand
Mirpuri.

25th June, 1957

Examination.

No. 7

SHEWAKRAM MULCHAND MIRPURI

P.W.2 - SHEWAKRAM MULCHAND MIRPURI (m) s.o.b. in 20
English:

I am a trader in Accra and work with Plaintiff in this case otherwise known as Gumani.

Whilst this case was pending Mr. Chandiram the Plaintiff left for India. I hold a General Power of Attorney to manage all his affairs in Ghana. I tender the Power of Attorney.

Court:- Not objected to, admitted and marked Exhibit 'D'.

I have a personal knowledge of the deal which 30
has led to this case.

It was I who actually bought the property in the Plaintiff's name. A Certificate of Purchase was issued to me. I tender it.

Court:- Not objected to, admitted and marked 'E'.

The first Defendant was in occupation of the premises conducting a School at time I purchased it. I wrote to him apprising him of the purchase of the property and requesting him to pay rents to me.

10 This is the original of that letter coming from the 1st Defendant's custody. I also have with me reply of the 1st Defendant. I tender the two letters together.

Court:- Not objected to, admitted and marked Exhibits 'F1 & 2'.

Upon my instructions my Solicitor Mr. Akufo Addo wrote to the 1st Defendant, that letter is dated 19.8.55. This is copy of it. I tender it.

Court:- Not objected to, admitted and marked Exhibit 'G'.

20 The 1st Defendant told me in Court yesterday that he had been paying the rents to the 2nd Defendants since November, 1954.

1st Defendant has never paid any rents to me.

Cross-examined by Mr. Lokko:

I have no agreement with the 1st Defendant for payment of rents.

I did not know of any mortgage of the property to Barclays Bank at the date of attachment.

Re-examination - NONE;

Case for the Plaintiff.

30 Court Adjourned to tomorrow, 26th June 1957.

(Sgd.) N.A. Ollennu, J.

In the
High Court of
Justice, Ghana

Plaintiff's
Evidence

No. 7

Showakram
Mulchand
Mirpuri.

25th June, 1957
Examination
- continued.

Cross-
examination.

In the
High Court of
Justice, Ghana

DEFENDANTS' EVIDENCE

No. 8

Defendants' Evidence

JOHN HAYFORD MENSAH

No. 8

Mr. Akufo Addo for the Plaintiff
Mr. Lokko for the Defendants.

John Hayford
Mensah.
9th July, 1957.
Examination.

1ST DEFENDANT JOHN HAYFORD MENSAH (m) s.o.b. in English:

I am Manager, St. John's Grammar School, Accra, and I am the 1st Defendant in this action.

I conduct Educational institution, operates in Accra. 10

The School is tenant of the House in dispute. It was let to me by one Mr. E.O. Holomah, since November, 1954.

In April, 1955, the property was sold. Up to the date of the sale I was paying the rents in the account of Mr. E.O. Holomah with the Bank of the Gold Coast, now Ghana Commercial Bank.

After the sale of the property I had letters from the Plaintiff in this case and one letter from the 2nd Defendant Bank. This is the letter from the 2nd Defendant Bank, dated 25th July, 1955. I tender it. 20

Court:- Not objected to, admitted and marked Exhibit '7' for the Defence.

Exhibit 'F1' is the first letter I received from the Plaintiff, and Exhibit 'F2' is my reply to that letter.

Since then I have been paying the rents to the 2nd Defendant Bank in the same account as before. 30

The Plaintiff has not submitted any tenancy agreement to me for execution.

My School has not attorned tenant to the Plaintiff.

Cross-examined by Mr. Akrafo Addo;

I was not present on the premises when the property was sold. But I heard of the sale in the evening of the very day it was sold, namely 16th April, 1955, and I then got to know that the Plaintiff was the purchaser.

10 About a month after the sale Mr. Mirpuri Agent of the Plaintiff had an interview with me. That was some time before the letter Exhibit 'F1' was written. At that interview he told me (the Plaintiff) his Principal had bought the house so I should pay all rents to him.

He told me that if I wished to continue his tenant he would have me.

I asked him to fulfil two conditions upon which I would attorn tenant to him. Those conditions are:-

1. To produce his Title Deeds.
- 20 2. That he and my Landlord Mr. E.O. Holomah should come together to me for Mr. Holomah to authorise me to pay the rents to the Plaintiff.

Moreover, Mr. Holomah told me the Bank had interpleaded. I saw the Bank and they confirmed that information.

The two conditions were not fulfilled.

The Plaintiff's agent did not show me Certificate of Purchase, and did not mention to me that he had got one.

30 I admit that in his letter Exhibit 'F1' the Plaintiff's agent said he had a Certificate of Purchase, but that did not mean much to me.

No, I did not call for the title deeds of the Bank. But I saw this Mortgage.

The considerations which directed me to prefer the title of the Bank to that of the Plaintiff are that I had been paying the rents to the account of Mr. Holomah with the Bank, and I knew that the Bank had given Mr. Holomah a loan.

In the
High Court of
Justice, Ghana

Defendants'
Evidence

No. 8

John Hayford
Mensah.

9th July, 1957.

Cross-
examination.

In the
High Court of
Justice, Ghana

Defendants'
Evidence

No. 8

John Hayford
Mensah.

9th July, 1957.

Cross-
examination
continued.

The instructions from the Bank - my letter Exhibit 'F2' refer to Exhibit '7'.

At the moment I maintain that my landlord is Mr. Holomah, into whose account with the Bank I pay my rents.

I found myself in a position in which I had to choose between two persons as my landlord, and the choice was between the Bank and Mr. Holomah, the Plaintiff did not come in at all; and I chose Mr. Holomah because I regarded the Bank's interest as identical with that of Mr. Holomah. 10

I took a legal advice in the matter, and Mr. Lokko was the said legal adviser.

Re-examined by Mr. Lokko: None.

No. 9

Kwasi Amoako
Atta

9th July, 1957.

Examination.

No. 9

KWASI AMOAKO ATTA

D.W.2 - KWASI AMOAKO ATTA (m) affirms in English:

I am Credit Manager of the Ghana Commercial Bank, formerly Bank of the Gold Coast.

On the 9th September, 1954, I received a letter from the Solicitors of the Barclays Bank, Takoradi in connection with Mr. E.O. Holomah's account. It is dated 4th September, 1954. 20

Mr. Lokko - I tender it.

Mr. Akufo Addo - I object to the admissibility of this document there is nothing on record showing its relevancy to the case.

Witness to Mr. Lokko.

Barclays Bank, Takoradi through their Solicitors forwarded certain documents relating to property of Mr. E.O. Holomah. Those documents came under cover of the letter dated 4th September, 1954. 30

Mr. Lokko - At this stage I tender the said letter and documents.

Court:- Not objected to, admitted 3 in all and marked -

1. Letter dated 4th September, 1954, Exhibit '8'
2. Deed of Conveyance dated 18th March, 1948, Exhibit '9'
3. Deed of Gift dated 1st July, 1954, Exhibit '10'
4. Deed of Conveyance dated 14th July, 1954, Exhibit '11'.

In the
High Court of
Justice, Ghana

Defendants'
Evidence

No. 9

Kwasi Amoako
Atta

9th July, 1957
Examination
- continued.

10 I got to know that Mr. Holomah had deposited the said documents with Barclays Bank, by way of Equitable charge, and that Barclays Bank had registered the Memorandum of Deposit of the said Deeds. We have obtained certified copy of that Memorandum which I now tender.

Mr. Akufo Addo - I waive my objection under section 27 of Cap.133.

Court:- Admitted and marked Exhibit '12'.

20 We later obtained a Mortgage from Mr. E. O. Holomah. The Mortgage Deed is dated 19th October, 1954, it is registered as No. 42/1955. I now tender it.

Court: Not objected to, admitted and marked Exhibit '13'.

Upon execution of the Mortgage we paid to Barclays Bank the amount due to them on the said documents.

Later on, i.e. in April, 1955, we saw an Auction Notice advertising the property for sale. We thereupon instructed our Solicitor to file Interpleader, and he accordingly wrote to the Sheriff.

30 We learnt on the 16th April, 1955 that the sale had taken place.

Before the sale the tenants of the premises were paying the rents to the Bank. They came to me in connection with the Auction Notice of Sale.

In July, 1955, we instructed our Solicitor to write to the tenants directing them to continue paying the rents to us in spite of the sale. He did; and the tenants have continued to pay the rents in advance ever since.

40 We received a letter from Solicitor of Mr. Bassil in connection with the attachment of the property, this is that letter, dated 15th April, 1955. I tender it.

In the
High Court of
Justice, Ghana

Defendants'
Evidence

No. 9

Kwasi Amoako
Atta.

9th July, 1957

Examination
- continued
Cross-
examination.

Court: Not objected to, accepted and marked
Exhibit '14'.

Cross-examined by Akufo Addo:

It is correct that we i.e. the 2nd Defendant
Bank were never Mortgagee in possession.

There is no document executed between Barclays
Bank and my Bank in connection with this Holomah
transaction.

Re-examined by Mr. Lokko: None.

Case for the Defence.

10

Court Adjourned to tomorrow, 10th July for
addresses.

(Sgd.) N.A. Ollennu, J.

No.10

Defendants'
Counsel.

27th August,
1957.

No. 10

DEFENDANTS' COUNSEL

27th August, 1957.

Mr. Akufo Addo for the Plaintiff.

Mr. Lokko for the Defendants.

Addresses.

Mr. Lokko -

I refer the Court to the Writ of Summons and
the Statement of Claim.

20

I also refer to the Statements of Defence.

The main issue is: In whom was the legal
estate vested at the date of the attachment.

According to evidence and Exhibit 'B1', the
date of the attachment is 25th September, 1954.

The Defendant Bank contend that at the date
of the attachment the legal estate was vested in
Barclays Bank by reason of deposit of title deed
as shown by Exhibit '12'. Though that deposit

30

constituted an equitable Mortgage yet I submit that it vested the legal estate in the property in Barclays Bank. That deposit, and the transfer of legal estate took place on the 16th July, 1954.

Barclays Bank by Exhibit '8' a letter written by their Solicitor passed the title deeds of Holomah to the Defendant Bank, that letter Exhibit '8' is dated 4th September, 1954.

10 That letter Exhibit '8' was received by the Defendant Bank on the 9th September, 1954.

I submit that on the date of the receipt of the said letter dated 9th September, 1954, the legal estate passed from Barclays Bank to the 2nd Defendant Bank and became vested in the Defendant Bank.

20 I say that the legal estate was vested in Holomah but the equitable estate became vested in Barclays Bank on the 16th July, 1954. Barclays Bank transferred that equitable estate to the Defendant Bank on the 9th September, 1954. Thus when the Defendant Bank subsequently took a mortgage from Mr. Holomah and paid off Barclays Bank the legal estate passed from Holomah to the Defendant Bank.

When a man creates an equitable mortgage on his property he still has a beneficial interest in the property but not the full legal estate.

I refer to Coote on Mortgage Volume 2, 9th Edition page 1353, and the case there cited. Whitworth versus Gangain, 3 Ha. 416.

30 I submit that the sale having been suspended, in the meantime the Defendant Bank on the 27th of October, took a mortgage from Holomah, and thus perfected their title to the legal estate.

The Judgment-Debtor cannot alienate his interest, whatever it may be, in the property.

If the legal mortgage of the Defendant Bank Exhibit '13' does not exist, the Defendant Bank still had an equitable mortgage which it can enforce.

40 When the Defendant Bank paid Barclays Bank they stepped into the shoes of Barclays Bank with effect from 16th July, 1954.

In the
High Court of
Justice, Ghana

No. 10

Defendants'
Counsel.

27th August,
1957

- continued.

In the
High Court of
Justice, Ghana

No. 10

Defendants'
Counsel.

27th August,
1957

- continued.

The sale was suspended. That raises the question as to what is meant by "Execution". Does it mean attachment or sale under an attachment.

I submit execution does not mean attachment. I submit a sale constitutes execution.

The Defendant Bank had an interest in the property prior to the attachment, he cannot therefore be prevented by the attachment from perfecting that interest.

On the 4th April, 1955, the Defendant Bank upon receiving notice of the Auction Notice filed on the 13th January, 1955 advertising the property, caused their Solicitor to write Exhibit '3' to the Deputy Sheriff. 10

Exhibit '4' is the notification by the Deputy Sheriff to the Judgment Creditor. By Exhibit '5' Solicitor for the Judgment Creditor disputed the title of the Bank.

On Exhibit 'B1' appears a minute by Deputy Sheriff to a member of his staff to put in an application for Interpleader Summons. 20

I assume that it was in consequence of Exhibit 'C' a letter from Solicitor of the Judgment Creditor that the Interpleader Summons was not issued. That letter Exhibit 'C' is dated 15th April, 1955.

I submit it is negligence on the part of the Deputy Sheriff that he did not see to it that the Interpleader Summons issued.

I submit that the interest of the Judgment Debtor in the property at the date of attachment is the Equity of Redemption and that was all the title the Plaintiff acquired upon the purchase at the Auction Sale. 30

The fact that after the receipt of the letter Exhibit '7' from the Bank the 1st Defendant continued to pay rents into the Bank to the credit of Holomah's account with the Bank shows that he attorned tenants to the Bank.

Exhibit 'F1' which is dated 28th July is a letter 1st Defendant received from the Plaintiff. He replied by Exhibit 'F2' which is dated 13th August, 1955. 40

The 1st Defendant was never at any time been a tenant to the Plaintiff and therefore not liable to rents to the Plaintiff and for that matter the Defendant Bank is also not liable to pay rents to the Plaintiff.

If the Court holds that the interest sold to the Plaintiff is only the equity of redemption then this action must fail.

10 I refer the Court to the case of D. O. Awuku versus J.N. Tetteyfiio W.A.C.A. Judgment dated 25th March, 1955 14 W.A.C.A. 723.

No. 11

PLAINTIFF'S COUNSEL

Mr. Akufo Addo:

All that the Court has to determine is the question of "In whom was the legal estate vested at the date of the attachment?".

20 Upon my friend's own showing all that Barclays Bank had was equitable mortgage by deposit of title deeds.

I submit that even that equitable interest was never transferred by Barclays Bank to the Defendant Bank, the letter Exhibit '8' did not make and could not make such a transfer. The terms of that letter are plain. Thus if anybody were aggrieved by the sale it would be Barclays Bank, but they are not aggrieved.

I submit the case of Tetteyfiio versus Awuku 14 W.A.C.A. 723 cited by my friend is inapplicable.

30 The only basis upon which the position of the parties in this case can be determined is what the law is with regard to the attachment of immovable property. That is set out in Order 43 sub-sections 7 and 11 of the Supreme Court (Civil Procedure) Rules.

The terms of those rules are clear.

In the
High Court of
Justice, Ghana

No. 10

Defendants'
Counsel.

27th August,
1957

- continued.

No. 11

Plaintiff's
Counsel.

27th August,
1957.

In the
High Court of
Justice, Ghana

No. 11

Plaintiff's
Counsel.

27th August,
1957

- continued.

The Judgment Debtor was prohibited by the attachment from alienating the property; any alienation while the attachment subsisted is null and void.

The sale made under the attachment passed the legal estate which was vested in the Judgment Debtor at the date of the attachment.

The suspension of the sale did not nullify the attachment, and the subsequent attachment is a surplusage.

10

This is not a claim for rents between landlord and tenant. It is a claim for damages for trespass and for mesne profits. The fact that the claim for mesne profits is based upon £75 a month, the same amount which the 1st Defendant pays as rent does not make the claim for mesne profits a claim for rents. It is only the consideration that the 1st Defendant is a School that the claim for mesne profits have been made so low.

On the evidence there can be no doubt that both Defendants are guilty of trespass.

20

Trespass to land gives cause for general damages as well as for special damages.

The claim therefore is for £500 general damages and the £2025 is the specific or actual damage suffered by reason of the fact that the Plaintiff has been kept out of possession.

If judgment is given in favour of the Plaintiff we would ask that an order for possession should be made to take effect on the 15th September, 1957.

30

The Plaintiff is entitled to each of the claim he makes.

COURT:- Judgment reserved to be delivered on Tuesday 3rd September, 1957.

(Sgd.) N.A. Ollennu,
J.

No. 12
J U D G M E N T

In the
High Court of
Justice, Ghana

No. 12

3rd September, 1957.

IN THE LAND COURT OF THE HIGH COURT OF JUSTICE,
GHANA, EASTERN JUDICIAL DIVISION, hold at
Victoriaborg, Accra, on TUESDAY the 3rd day of
SEPTEMBER, 1957, before OLLENNU, J.

Judgment.
3rd September,
1957.

Land Suit No.161/1956

D.T. CHANDIRAM of Accra, Plaintiff

10

VERSUS

1. J. MENSAN, Manager of Saint John's
Grammar School, Accra,
2. GHANA COMMERCIAL BANK,
Christiansborg Road, Accra Defendants

JUDGMENT:-

20

The plaintiff claims declaration of title to, damages for trespass to, and mesne profits accruing from a piece or parcel of land with buildings thereon. The said land is particularly described in paragraph 1 of his Statement of Claim.

The plaintiff's claim is based upon purchase of the said property at an auction sale conducted in pursuance of an attachment by the Sheriff made in pursuance of a Decree of the Divisional Court, Sekondi.

It is agreed by Counsel for the parties that the main question to be determined in the suit is "In whom was the legal estate in the property vested on the date of attachment?"

30

The determination of this question depends upon the following facts which I find either proved or admitted:

1. The property belonged originally to one E.O. Holomah who let it out to the 1st Defendant School sometime in November, 1954.
2. On the 16th day of July, 1954, the said E.O. Holomah deposited his title deeds to the

In the
High Court of
Justice, Ghana

No. 12

Judgment.

3rd September,
1957

- continued.

- said property with Messrs. Barclays Bank, Sekondi Branch, with intent to create an Equitable Mortgage to secure the payment of all moneys due from or incurred by him; and he executed a Memorandum of the said deposit, Exhibit '12' in this case.
3. Under cover of a letter dated 4th September, 1954, Exhibit '8' in the case, Mr. H.V.A. Franklin who was holding the said Title Deeds on behalf of Barclays Bank, forwarded the same at the request of the said E.O. Holomah to the 2nd Defendant Bank, to hold for and on behalf of Barclays Bank. Mr. Franklin did this with the permission of Barclays Bank; and the 2nd Defendant thereafter and until the 27th day of October, 1954, held those documents as requested, for and on behalf of Barclays Bank. 10
 4. On the 24th day of September, 1954, a writ of Fi;Fa was issued under the hand of the Chief Justice at the instance of one M. D. Bassil, in pursuance of a Decree of the Divisional Court, Sekondi, bearing date the 27th day of July, 1954, made in suit entitled M.D. Bassil versus E.O. Holomah, for the attachment of the said property. The attachment was made by a written Order of the Sheriff dated the 25th September, 1954, Exhibit '1', copy thereof was served upon the said E.O. Holomah on the same day 25th September, 1954. 20 30
 5. On the said 25th day of September, 1954, Auction Notices were filed by the Deputy Sheriff, Accra, advertising the sale of the property for the 18th day of October, 1954.
 6. On a date unspecified, the said Holomah applied to the Divisional Court, Sekondi, for Stay of Execution and on the 8th day of November, 1954, had an order made in his favour for Stay of Execution for 14 days on terms, and also on the 22nd of November, 1954, had an Order by the Court for Stay of Execution pending the hearing and determination of an appeal which the said Holomah had lodged against the judgment of the Court, and which appeal was then pending before the West African Court of Appeal. The said appeal 40

was subsequently dismissed and the Stay of Execution became automatically discharged.

7. On the 27th day of October, 1954, E.O. Holomah executed a Deed of Mortgage, Exhibit '13', in favour of the 2nd Defendant Bank.
8. On the 13th day of January, 1955, the property was again attached under Exhibit '2', and fresh Auction Notices filed advertising it for sale for the 3rd day of February, 1955; and Mr. E. Ohene-Glover, Licensed Auctioneer of Accra, was entrusted with the sale.
9. On the 25th day of January, 1955, the Deputy Sheriff instructed the Auctioneer by letter to stop the sale. But on the 25th day of March, 1955, he wrote to the Auctioneer directing him to proceed with it. The Auctioneer therefore filed Notices on the same day 25th March, 1955, for sale to take place on the 16th day of April, 1955.
10. On the 4th day of April, 1955, Mr. C.C.Lokko, Solicitor for the 2nd Defendant Bank gave notice in writing, Exhibit '3', to the Deputy Sheriff of claim of his clients to title to the property, and requested him to institute Interpleader proceedings. In consequence of that Notice the Deputy Sheriff by letter of the same date, 4th April 1955, instructed the Auctioneer to suspend the sale.
11. In pursuance of the claim made to the property by the 2nd Defendant Bank, the Deputy Sheriff served Notice, Exhibit '4', upon the Execution-Creditor requiring him to admit or dispute the title of the said Bank. Whereupon Mr. Akufo Addo, Solicitor for M.D.Bassil, wrote to the Deputy Sheriff on the 13th day of April, 1955, disputing the Bank's claim.
12. No Interpleader was issued by the Deputy Sheriff.
13. On the 15th day of April, 1955, the Deputy Sheriff withdrew his letter to the Auctioneer directing suspension of the said sale, and instructed him to proceed with the sale.

In the
High Court of
Justice, Ghana

No. 12

Judgment.

3rd September,
1957

- continued.

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High Court of
Justice, Ghana

No. 12
Judgment.
3rd September,
1957
- continued.

14. On the 16th day of April, 1955, the property was sold at Public Auction and was purchased by the Plaintiff.
15. The Plaintiff gave notice of his title to the 1st Defendant School and called upon them to attorn tenant to him. The 1st Defendant School however, refused to do so and has never at any time done so.
16. The 1st Defendant School were paying the rents into the account of the said E. O. Holomah with the 2nd Defendant Bank, and has continued to do so. 10
17. The 2nd Defendant Bank also notified the 1st Defendant School on the 25th day of July, 1955, of their Mortgage and requested them to pay the rents to them, the 2nd Defendant Bank, as Mortgagees, and
18. The 1st Defendant School is in occupation of the premises for and on behalf of the 2nd Defendant Bank with the concurrence of the said E.O. Holomah. 20

Upon these facts I have come to the following conclusions:-

1. The attachment of the property made on the 25th day of September, 1954, was never lifted, and consequently the attachment of the same property on the 13th day of January, 1955, upon the same writ of Fi;Fa is a surplusage.
2. The Barclays Bank never at any time transferred their Equitable Mortgage on the property to the 2nd Defendant Bank. They merely created them their agents for the mere custody of the Title Deeds to the said property. Consequently the 2nd Defendant Bank never acquired any proprietary interest, legal or equitable, in the property which was subsisting or could subsist on the 25th day of September, 1954. Therefore on that date 25th September, 1954, they were Agents or Bailees of Barclays Bank holding the said Title Deeds. 30 40
3. The legal estate and beneficial interest was on the 25th day of September, 1954, vested in E.O. Holomah and in no other person.

Since I have held that the 2nd Defendant Bank had no interest legal or equitable in the property on the date of the attachment, it is unnecessary for me to discuss the question of priority argued by Mr. Lokko, learned Counsel for the Defendants. It will be enough for me to say that in my opinion the authorities to which Mr. Lokko referred me relate to priority between Mortgage Debt which may be legal or equitable on the one hand, and a judgment debt which when registered in England operates as an equitable charge on the judgment Debtor's property. It does not apply where the judgment Debtor's property has actually been attached under a writ issued and executed in accordance with Rules of Court.

10

The attachment was made under Order 43 Rule 7 of the Supreme Court (Civil Procedure Rules) 1954, which reads -

20

"Where the property shall consist of lands, houses, or other immovable property, or any interest therein, either at law or in equity, the attachment shall be made by a written order of the Sheriff prohibiting the judgment debtor from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise, and the Sheriff may also, by direction of the Court, take and retain actual possession thereof."

30

The words of prohibition are reproduced on Exhibit '1' the attachment made by the Sheriff on the 25th day of September, 1954, copy of which was served upon E.O. Holomah.

And rule 11 of the same Order provides that -

40

"After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in case of an attachment by written order, after it shall have been duly intimated and made known in manner aforesaid, any alienation without leave of the Court of the property attached, whether by sale, gift, or otherwise and any payment of the debt or debts, or dividends, or shares to the judgment debtor during the continuance of the attachment, shall be null and void, and the person making such alienation or payment shall be deemed to have committed a contempt of Court."

In the
High Court of
Justice, Ghana

No. 12

Judgment.

3rd September,
1957

- continued.

In the
High Court of
Justice, Ghana

No. 12

Judgment.

3rd September,
1957

- continued.

I hold therefore, that execution of Exhibit '13', the mortgage on the property, by E.O. Holomah, on the 27th day of October, 1954, without leave of the Court, while the attachment was subsisting, and the acceptance by the 2nd Defendant Bank of the same were in contravention of the provision of Order 43 Rule 7. Therefore, by virtue of the provisions of Order 43 Rule 11, the said mortgage is null and void and I hereby so declare it.

In the result I hold that the Plaintiff acquired the whole of the right title and interest which E.O. Holomah had in the property on the 25th day of September, 1954, which right title and interest is the legal estate coupled with the beneficial interest carrying with it the right to immediate possession of the property.

10

It follows that the 1st Defendant School who are in actual occupation of the property became trespassers from the moment they refused to acknowledge the title of the Plaintiff, and the 2nd Defendant Bank who claim to be entitled to immediate possession of the property and authorised the 1st Defendant School to continue to occupy the same upon payment of the monthly rent into the Bank are also trespassers.

20

Trespass is a wrong which carries with it liability to damages even when the owner whose possession is disturbed did not suffer any actual loss. The interference with the possession or the right of possession of the Plaintiff, e.g. the mere entry upon or adverse occupation of the land without leave and licence is itself an injury or damage and the Plaintiff need not prove any actual injury before he could become entitled to award of damages.

30

If however, in addition to, or in consequence of the trespass some actual damage is caused, the Plaintiff is entitled to full compensation to the extent of that loss - see Halsbury 3rd Edition Volume 11 page 266, paragraph 441.

As I have already held, the Defendants in this case became trespassers by their act of resisting the Plaintiff's exercise of his right of immediate possession from the day that the said right accrued to the Plaintiff, namely, the 16th day of April, 1955. In addition to that injury the two Defendants have deprived the Plaintiff of the enjoyment

40

of the profits which he would have derived from his property.

In the
High Court of
Justice, Ghana

No. 12

Judgment.

3rd September,
1957

- continued.

The evidence satisfies me that the minimum lawful profits which the Plaintiff would have realised from the property in dispute is £75 a month, namely, the monthly rent which the 1st Defendant School has been paying for the premises. He is therefore, entitled to recover compensation or mesne profits assessed at that rate for the duration of the trespass.

10

There will be judgment for the Plaintiff against the Defendants jointly and severally for -

1. Declaration of his title of ownership to the property in dispute.
2. £100 damages for trespass.
3. Mesne profits assessed at £75 a month from the 16th day of April, 1955, to the 15th day of September, 1957 which works out at £2,925, and
4. Recovery of possession with effect on the 15th day of September, 1957.

20

The Plaintiff will have his costs assessed at £152.4/- including Counsel's costs of 100 guineas.

(Sgd) N.A. Ollennu,
JUDGE.

Counsel:

Mr. Akufo Addo for Plaintiff.

Mr. Lokko for Defendants.

In the
High Court of
Justice, Ghana

No. 13

D E C R E E

No. 13

3rd September, 1957.

Decree.

3rd September,
1957.

IN THE LAND COURT OF THE HIGH COURT OF JUSTICE,
GHANA, EASTERN JUDICIAL DIVISION, held at
Victoriaborg, Accra, on TUESDAY the 3rd day of
SEPTEMBER, 1957, before OLLENNU, J.

Land Suit No.161/1956

D.T. CHANDIRAM

Plaintiff

versus

10

J.K. MENSAH & ANOR.

Defendants

JUDGMENT:

Mr. Akufo Addo for the Plaintiff.
Mr. Lokko for the Defendants.

Court:-

Written Judgment read.

There will be judgment for the Plaintiff
against the Defendants jointly and severally for

1. Declaration of title of ownership to the pro-
perty in dispute. 20

2. £100 damages for trespass,

3. Mesne Profits assessed at £75 a month from the
16th day of April, 1955 to the 15th day of
September, 1957, which works out at £2,925,
and

4. Recovery of Possession with effect from the
15th day of September, 1957.

The Plaintiff will have his costs assessed at
£152.4/- including Counsel's costs of 100 guineas.

(Sgd) N.A. Ollenu, J.

30

No. 14

NOTICE OF APPEAL

Filed 10.9.57.
At 8.50 a.m.
Intd. E.O.O. for Registrar,
Land Court, Accra.

In the
High Court of
Justice, Ghana

No. 14

Notice of Appeal.
10th September,
1957.

IN THE GHANA HIGH COURT OF JUSTICE
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA

10

A.D. 1956

L.S. No.161

BETWEEN -

D.T. CHANDIRAM of Accra

Plaintiff

- and -

1. J. MENSAH, Manager of Saint John's
Grammar School of Accra,
2. BANK OF THE GOLD COAST of
Christiansborg Road, Accra,
GHANA COMMERCIAL BANK - Amended

Defendants

20

NOTICE OF APPEAL (Rule 12).

TAKE NOTICE that the Defendants being dissatisfied with the decision of the Land Court contained in the Judgment of His Lordship Mr. Justice N.A. Ollennu, J., dated the 3rd day of September, 1957, do hereby appeal to the Court of Appeal of Ghana upon the Grounds set out in paragraph 3 hereof and will at the hearing of the Appeal seek the Relief set out in paragraph 4.

30

AND the Appellants further state that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5.

2. Part of Decision of the Lower Court complained of "WHOLE DECISION".

3. GROUNDS OF APPEAL.

1. The Learned Trial Judge erred in holding that

In the
High Court of
Justice, Ghana

No. 14

Notice of Appeal.

10th September,
1957

- continued.

the interest in the property attached in the action M.D. Bassil versus E.O. Holomah on the 25th day of September, 1954, sold and bought by the Plaintiff on the 16th day of April, 1955, was the legal estate.

2. The Learned Trial Judge having accepted the proposition of law that an Equitable Mortgage was created by Memorandum to accompany Deposit of Title Deeds by the Judgment Debtor E. O. Holomah (hereinafter referred to as Holomah) with Barclays Bank D.C. & O. Takoradi on the 16th day of July, 1954 (Exhibit 12) which Equitable Mortgage was subsisting at the date of attachment of the right title and interest of Holomah to wit the 25th day of September, 1954, erred in holding that the interest of the Judgment Debtor Holomah sold was the legal estate and not the Equity of Redemption in the premises the subject matter of the action. 10
3. The Memorandum accompanying Deposit of Title Deeds dated the 16th day of July, 1954, having been registered as No.1234/1954 in the Gold Coast Land Registry the Judgment Creditor Bassil was put upon his enquiry as at the date of attachment of the property of the Judgment Debtor Holomah on the 25th day of September, 1954, and sale on the 16th day of April, 1955, the only attachable and saleable interest of Holomah was the right of Holomah to redeem in other words the Equity of Redemption. The Learned Trial Judge therefore erred in holding otherwise. 30
4. The Learned Trial Judge having found as a fact that on the 27th day of October, 1954, when Exhibit '13' was executed "the Second Defendant Bank held Exhibit '12' as agents for Barclays Bank" erred in his subsequent conclusion when he said "Barclays Bank never at any time transferred its interest to the 2nd Defendant Bank" by any Deed of Transfer; for transactions between Banks do not admit of transfer of accounts by Deed except in very special circumstances; ordinary transactions pass by delivery by hand from one Bank to the other on payment of balance of account due by the customer. 40
5. The moment the 2nd Defendant Bank paid the amount owing by Holomah to Barclays Bank it

the 2nd Defendant Bank stepped into the shoes of the said Barclays Bank and the Equitable Mortgage (Exhibit '12') became formally vested in the said 2nd Defendant Bank whereupon the Mortgage (Exhibit '13') was executed to convert the Equitable Mortgage into that of a Legal Mortgage.

In the
High Court of
Justice, Ghana

No. 14

Notice of Appeal.
10th September,
1957

- continued.

- 10 6. The Learned Trial Judge erred in declaring the Mortgage executed between Holomah and the 2nd Defendant Bank (Exhibit '13') void as contravening the provisions of Order 43 Rules 7 and 11 of the Supreme Court (Civil Procedure) Rules 1954, as the regularity or otherwise of the said Mortgage was never before the Court to be adjudicated upon but merely as evidence of the fact that the legal estate in the property the subject matter of the action had passed and was vested in the 2nd Defendant Bank.
- 20 7. The Learned Trial Judge erred in holding that the Defendants in the action are trespassers (the first Defendant School as from the 16th day of April, 1955 and the second Defendant Bank as from the 25th day of July, 1955) and liable in damages jointly and severally because:
- 30 a. The First Defendant School is and was in lawful occupation of the premises the subject matter of the action under a Lease with the Judgment Debtor Holomah and so long as the terms of the Lease subsists the said Defendant School cannot be deemed a trespasser; for a demand to pay rent (Exhibit 'F1') and a refusal to attorn Landlord (Exhibit 'F2') cannot be construed to amount to such invasion of the rights of the Plaintiff (a purchaser of the right title and interest of the original owner) so as to entitle him to damages for trespass.
- 40 b. The Defendant Bank never at any time went into possession as Mortgagee in possession or otherwise and a demand to pay rent (Exhibit '7') cannot by any stretch of imagination be construed as an entry into possession constructive or otherwise as to make it liable to the Plaintiff in damages for trespass.

In the
High Court of
Justice, Ghana

No. 14

Notice of Appeal.

10th September,
1957

- continued.

8. The Court was wrong in decreeing mesne profits of £2,925.

4. Relief sought from the Court of Appeal of Ghana -

To set aside the Judgment of the Land Court dismiss the claim of the Plaintiff, declare the interest of the Judgment Debtor sold in the action M.D. Bassil versus E.O. Holomah as that of the Equity of Redemption and enter Judgment for the Defendants.

10

5. Persons directly affected by the Appeal

D.T. CHANDIRAM,
D.746/4, Station Road, Accra.

DATED at Accra the 10th day of September, 1957.

(Signed) C.C. Lokko
Solicitor for Defendants.

In the
Court of Appeal
Ghana

No.15

Court Notes.

4th November,
1958.

No. 15

COURT NOTES

4th November, 1958.

IN THE COURT OF APPEAL, TUESDAY the 4th day of
NOVEMBER, 1958 CORAM SIR ARKU KORSAH, C.J. VAN
LARE and GRANVILLE SHARP JJ.A.

20

Civil Appeal No. 10/58

1. J. MENSAH
2. GHANA COMMERCIAL BANK Defendants/Appls.

v.

D.T. CHANDIRAM, Plaintiff/Respondent

Mr. Lokko for Appellants absent.

Mr. Akufo Addo for respondent.

Court - Mr. Lokko Counsel for appellants not being
well this case is adjourned to 24th Novem-
ber at his request.

30

(Sgd.) K.A. KORSAH, C.J.

25th November, 1958.

IN THE COURT OF APPEAL, TUESDAY the 25th day of
NOVEMBER, 1958.
CORAM KORSAH, C.J., VAN LARE and GRANVILLE SHARP,
JJ.A.

In the
Court of Appeal,
Ghana

No. 15

Court Notes.

25th November,
1958

- continued.

Mr. Lokko for the appellants.
Mr. Akrafo Addo for the respondent.

10 Counsel for Appellants - The real question in
issue is what property was seized and sold; that
whether equitable or legal interest in the prop-
erty. Refers to p.25 l.36 para 2.

On 24th September when property was attached under
writ of Fi Fa the legal estate was still in Judg-
ment debtor, but the equitable interest was in
Barclays Bank.

Grounds 1, 2 & 3.

Refers to p.63 lines 4 to Contract by deposi-
tion i.e. Judgment Debtor to do certain things
when called upon.

20 It is well settled law that an equitable mort-
gage implies an undertaking; to execute legal
mortgage at the request of the holder of the equit-
able interest.

Cites Halsbury 2nd Edition Vol. 23 p.233 paragraph
342. Submit that when equitable mortgagee calls
upon the mortgagor and the mortgagor executes a
mortgage then the legal title is vested in the
mortgagee Parker v. Housefield 39 English Report
p.1004.

30 Cootes on Mortgages 9 Edition Vol.11 p.1353 para
Priorities as between Mortgagee and Judgments
Whitworth v. McGregor 67 Eng. R. p.444.

Carter v. Wake 4 Ch. D. 1876 605 at 606.

Submit that it is only the beneficial interest of
debtor in the land.

Submit Plaintiff did not admit interest of the
Bank, p.23 lines 21-27. Refers to Judgment on
that point p.28 l.30.

The Barclays Bank never at any time.

40 Refers Halsbury 2nd Edition Vol. 23 p.342 paragraph
511

Form of Transfer of Equitable Charge, etc.

Broklesby v. Temperance Building Society 1895.

A.C. 173 181-2 183

Refers to Halsbury 2nd Edition Vol.23 p.348 para-
graph 520 Cracknall v. Janson

In the
Court of Appeal,
Ghana

No. 15

Court Notes.

25th November,
1958

- continued.

Butler v. Rice 1910 2 Ch. 277

A stranger who pays off a mortgage is presumed to intend to keep it alive for his own benefit and effect is given to this intention.

Learned Judge held that 2nd defendants were agents, if so they are equitable transferees; but in spite of this Learned Judge wrongly concluded that 2nd defendants had no locus standi.

Learned Judge awarded damages £100 for trespass. Submit 2nd defendants never in possession therefore could not be said to have committed trespass. 10

The calculation of mesne profits was wrong. £75 per month for 29 months is £2175 and not £2925

Counsel for respondent replies -

Submit that the point raised in this Court namely that the Ghana Commercial Bank was at the time of attachment equitable mortgagee in the shares of Barclays Bank and must therefore enjoy priority over the purchaser under an execution by the Court at instance of a Judgment Creditor was not canvassed in the Court below, certainly not the basis of defendants case; if that had been so, the case would have been fought on other grounds; 20

Submit that it is not desirable for this Court to undertake the duty of investigating that new point. Submit that there is no case here of Ghana Commercial Bank paying off the debts of Holomah to Barclays and in consideration collecting from Barclays the title deeds. In this regard certain dates become essential 30

1st date of Memorandum Ex 12 p. 62. Record 16 July 1954

2nd The other relevant date Ex 8 4th September 1954

3rd 25th September 1954 date of attachment Ex.9 p. 51

4th 11th October 1954 date when Dennison J. suspended Sale p.73-74.

5th 8th November 1954 date to which resumed hearing

6th 27th October 1954 date of the deed of Mortgage when Holomah purported to grant legal mortgage to Ghana Commercial Bank. 40

Now refer to p.7 paragraphs 4 & 5 and compare with Ex. 8 at p.67 Ghana Commercial Bank receipt at p.69 shows that they merely held on behalf of Barclays Bank.

I refer to p.19, from line 8.

Upon execution of the mortgage we paid to Barclays Bank the amount due to them on the said documents.

Adjourned to 26th November,

(Sgd.) K.A. Korsah, C.J.

10 26th November, 1958.

In the
Court of Appeal,
Ghana

No. 15
Court Notes.

25th November,
1958
- continued.

26th November,
1958.

Mr. Lokko for the appellants
Mr. Akufo Addo for the respondent.

20 Apart from any objection that I may respectfully raise on the new issue as a trial Court i.e. first instance Court without prejudice; I would contend that if the case now put up by Counsel for appellants that the appellants became equitable mortgagee by deposit of title deeds, there would have been a complete answer to it; 1st that the respondent was a purchaser for value without notice that appellant bank's equitable interest in the property.

30 2ndly that whether or not the delivery of the title deeds was intended to constitute an equitable mortgage is to be gathered from the evidence and there is no evidence on record to support this contention. Indeed the whole of the evidence pointed to this that the appellant Bank was to advance money on a legal mortgage and not on deposit of title deeds.

3rdly Assuming that appellant Bank became equitable mortgagee by the deposit of title deeds the execution of the legal mortgage extinguishes whatever right the appellant may have acquired under the equitable mortgage even though the legal mortgage is void.

Halsbury 1st Edition Vol. 21 p.326 paragraph 580
Hals. Hailsham Edition Vol. 23 p.522 paragraph 774.

Refers to p.97 of the Record.

In the
Court of Appeal,
Ghana

No. 15

Court Notes.

26th November,
1958

- continued.

Appellant contended in Court below that as the legal owner of the premises he was entitled to rent. Vide p. 97 Respondent also on the other hand contended that he was the owner entitled to rent p.67.

Appellants tendered no evidence that even if they were not legal owners but equitable mortgagee that there was an agreement between them and the owner to receive rents.

On the question of trespass: Submit that on the evidence the Appellant Bank claimed to be legal owner. No evidence that in any other way they were entitled to collect rent i.e. mortgagees in possession: Their claim to receive rent is a claim to right possession if they are proved wrong, they are liable in damages as trespassers. 10

The 1st Appellant declines to attorn tenancy and denied our title, his denial and continued occupation constituted trespass.

As to the figures £2925, I agree that the correct amount should be £2175. 20

Counsel for Appellants replies - Calls attention to evidence of 1st Appellant p.16 of the record. Paid money to Holomah's account with Ghana Commercial Bank.

Refers to p. 7 lines 10-15 the question is, was there money due to Barclays Bank. What remained in Holomah was the obligation to redeem.

It was put in issue by paragraph 11 page 9.

C.A.V. 30

(Sgd.) K.A. Korsah C.J.

No. 16

J U D G M E N T

IN THE COURT OF APPEAL

ACCRA, GHANA.

Coram:

KORSAH, C.J.
VAN LARE, J.A.
GRANVILLE SHARP, J.A.

In the
Court of Appeal,
Ghana

No. 16
Judgment.

2nd December,
1958.

10 2nd December, 1958

Civil Appeal No.10/58

1. J. MENSAH and
2. GHANA COMMERCIAL BANK,
Defendants-Appellants

v.

D.T. CHANDIRAM, Plaintiff-Respondent.

JUDGMENT.

20 VAN LARE, J.A.: On the 16th April 1955 the respondent in this case purchased at a public auction the landed property of one Holomah. The sale was in the execution of a Writ of Fi;Fa properly issued by the Divisional Court, Sekondi, to satisfy a judgment-debt against the said Holomah.

The attachment of the property under the Fi;Fa in question was effected on the 25th September 1954 and at all material times remained fully effective.

30 At all times material to the date of attachment the Barclays Bank, Sekondi, had an encumbrance on the property by way of equitable mortgage. The owner, Holomah, in consideration of that bank giving him "time credit and/or banking facilities and accommodation" by a formal memorandum deposited with the aforesaid bank the title deeds and other documents in respect of the attached property. The first appellant Mensah was a tenant of the premises paying his rents into the account of the owner, but has refused to attorn tenant to the respondent at the request of the second appellant bank.

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

The law is clear that a purchaser of a property under the execution of a Fi;Fa steps into the shoes of the judgment debtor by purchasing no more than the "estate" of the judgment debtor therein. In other words what is sold and what is bought at a sale in execution is the right, title and interest of the judgment-debtor - Dadzie vs; Kojo & Anor., 6 W.A.C.A. 139. It follows therefore that if a certain property which is attached under execution by way of Fi;Fa turns out to be in any way encumbered the purchaser buys subject to that charge or encumbrance. 10

The trial of this case would have taken a different turn had the Barclays Bank still remained at the date of sale the party interested in the encumbrance or if they were the appellant bank in this appeal. But due to certain intervening circumstances the Barclays Bank disappeared from the picture and the Ghana Commercial Bank emerged creating the difficulties resulting in the institution of this action. 20

On the 4th September 1954, that is to say on a date before the attachment of the property Mr. Franklin, a Solicitor, who held the title deeds on behalf of the Barclays Bank forwarded the same at the request of Holomah to the second appellant, Ghana Commercial Bank, to hold them for and on behalf of Barclays Bank. I quote the relevant portion of this letter:

"Mr. Holomah has requested me to hand these
"to you and I have obtained the permission of
"my clients to do so against your undertaking
"to hold them on their behalf." 30

It is observed that the undertaking by the Ghana Commercial Bank was not to give credit or loan but simply to hold the title deeds on behalf of the Barclays Bank. It is my view that when the Ghana Commercial Bank received the title deeds by that date no interest became created, nor can it be properly suggested that the Barclays Bank had transferred their interest in the property to the Ghana Commercial Bank. The appellant Bank then held the title deeds merely as custodians for the Barclays Bank in the same way as Mr. Franklin had held them. Whether or not Holomah later turned them into security in favour of appellant Bank is immaterial. I cannot accept the proposition that 40

by the mere custody of title deeds the appellant bank became a mortgagee by deposit of title deeds without becoming Holomah's creditors at that time. No mortgage can be created without a debt because mortgage is a thing put into the hands of a creditor. According to legal writers: "a mortgage is the creation of an interest in property defeasible (i.e. annullable) upon performing the condition of paying a given sum of money, with interest thereon, at a certain time. This conditional assurance is resorted to when the debt has been incurred, or a loan of money or credit effected, in order to secure either the repayment of the one or the liquidation of the other" - Wharton Law Lexicon 14th Ed. p.669.

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

There is no evidence that Holomah owed money to the appellant bank at the time he caused the title deeds to be forwarded to them until upon the execution of a legal mortgage on the 27th October 1954, when the appellant bank paid to the Barclays Bank, presumably at Holomah's request, an amount due and owing by Holomah. On the authorities, before Holomah owed the Ghana Commercial Bank, that is the appellant bank, there can be no question of a mortgage equitable or otherwise between him and the Ghana Commercial Bank. In the absence of a formal assignment of Holomah's debt by Barclays Bank to the appellant bank, it cannot in my opinion be successfully contended that the appellant bank stepped into the shoes of Barclays Bank who could have been the only party interested in the equitable charge on the property on the date of sale. The execution of the legal mortgage on the 27th October 1954 was a transaction only between the appellant bank and Holomah to the exclusion of Barclays Bank and there can be no question of any transfer of interest by Barclays Bank to the appellant bank. The appellant bank therefore relying on an estate believed to have been created in their favour upon the execution of this legal mortgage on the 27th October 1954 in respect of the property in dispute refused to acknowledge that the ownership of the property had passed to the respondent, the purchaser, on the 16th April 1955, and would not let the first appellant attorn tenant to the respondent. On the other hand the appellant bank considered themselves entitled to the legal estate on the date of sale, collected the rent from the first appellant who attorned tenant to them, and assumed that the respondent was entitled only to

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

an equity of redemption.

What is Equity of Redemption? Before 1926 it was the equitable estate or interest left in a person after he had mortgaged his property; but now that is, after 1926 it is the right to call for a reconveyance of a legal estate or of an equitable interest in property from the mortgagee on payment of principal, interest and costs.

The appellants therefore believing in the existence of a mortgage involving the property in dispute, in their defence to this action instituted against them by the respondent for (a) declaration of title of ownership, (b) damages for trespass, (c) mesne profits and (d) recovery of possession pleaded that the respondent's action was misconceived mainly on the ground that: 10

(1) On the date of attachment in execution the legal estate in the property was vested in the Barclays Bank and that the only attachable interest of Holomah, the judgment debtor, had in the said property was an Equity of Redemption: 20

(2) The interest of Barclays Bank in the property was transferred during the attachment to the appellant bank when upon execution of a deed of mortgage on the 27th October 1954 between Holomah and the appellant bank the appellant bank paid Holomah's debts with the Barclays Bank, and therefore the only attachable interest of the said Holomah in the property purchased by the respondent was an Equity of Redemption: 30

(3) The first appellant attorned tenant to the appellant bank and paid rents in respect of the property to the appellant bank which said payments the appellant bank was lawfully entitled to retain in reduction of the debt due by Holomah under the mortgage of the 27th October, 1954.

It was agreed and settled at the trial that the only issue was in whom was the legal estate vested at the date of sale, the appellants contending that the legal estate was vested in the appellant bank and not in the respondent whose action ought to be dismissed, because as was contended by the appellants, the respondent had purchased only an Equity of Redemption. 40

The right or equity of redemption is an essential attribute of a mortgage, and for the appellant bank to aver that the respondent is entitled to an equity of redemption from them, the appellant bank must presume themselves to have a valid mortgage existing in respect of the property which the respondent purchased; but this is far from the truth as will appear hereafter.

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

10 On the 27th October 1954 when the alleged
legal mortgage was executed the property was then
under attachment under a due process of law, and
by virtue of Order 43 Rule 7 of the Supreme Court
(Civil Procedure Rules) 1954, Holomah, the judgment-
debtor, was prohibited from alienating the property
in any way, including by way of mortgage; further,
by Rule 11 of the same Order any such alienation
without leave of Court, as was in this case null
and void. I have no alternative therefore but to
20 find that the mortgage of the 27th October 1954 by
the judgment-debtor to the appellant bank was null
and void and in the result the said bank could have
no interest whatsoever to vie with the estate or
interest which the respondent bought at the sale
on the 16th April 1955.

30 There can be no doubt that at the date of sale
the legal interest in the property was vested in
the original owner, the judgment-debtor; and it
was exactly that interest which the respondent
bought. This is therefore a complete answer to the
appellants overall plea as the legal estate was
neither in the Barclays Bank nor in the appellants'
bank upon attachment of the property but remained
in the original owner, Holomah, the judgment-debtor.
The appellants' plea therefore that the respondent
should only buy and/or did only buy an Equity of
Redemption is without support and was wholly mis-
conceived and rightly rejected by the trial Judge.
It becomes unnecessary therefore to consider
40 whether or not Barclays Bank transferred any in-
terest either before or during the attachment to
the appellant bank.

Mr. Lokko, however, before this Court appeared
to have realised his mistake in the stand he took
in resisting the action at the trial and would have
preferred treating the interest which the judgment-
debtor had in the property at the date of sale as
an equitable charge. Although the issue which he

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

fought at the trial was that the appellant bank had a legal interest as against an equitable interest or charge, what he has now argued before us is that it was only the residue of the beneficial interest of the judgment-debtor in the property that was sold and bought by the respondent. He put forward a proposition that a stranger who paid off a mortgage must in law be presumed to intend to keep the mortgage alive for his own benefit. He now appears to concede to a declaration of title in favour of the respondent, but argues that it should be subject to the equitable charge which according to him was subsisting at the date of attachment. But the question is: Was such a charge still subsisting at the date of sale in view of the intervening circumstances? Barclays Bank had disappeared from the picture and there has been no formal assignment of the debt to the Ghana Commercial Bank. 10

These are admittedly new issues and certainly not those on which the appeal is grounded. In his opening before us Mr. Lokko for the appellants said: "The only question in issue is what property was seised and sold - whether equitable or legal interest in the property". 20

Mr. Akufo Addo for the respondent has submitted and rightly in my view that this is not a case where the appellant bank paid off the debts of Holomah to Barclays Bank in consideration of collecting Barclays Bank's title deeds with intent to create an equitable mortgage. Although it is my view that the points now raised by the appellants namely that the Ghana Commercial Bank was at the time of attachment equitable mortgagees in the shoes of the Barclays Bank and must therefore enjoy priority over the respondent purchaser under an execution by the Court at the instance of judgment-creditor was certainly not the basis of the defendants case at the trial and not canvassed in the Court below, I think I have nevertheless in this judgment said enough in relation to these points raised; but I wish to make it clear that such observations must be regarded as obiter only in case the appellants or Barclays Bank may be advised to institute other proceedings concerning such alleged equitable interest or charge in or on the property purchased by the respondent. 30 40

In the result the trial Judge was right in

decreeing that the respondent was entitled to a declaration of title of ownership to the property in dispute. This legal estate the appellants had unsuccessfully resisted; by such resistance they challenged the respondent's right to possession thereby rendering themselves liable to damages for trespass; I would therefore confirm the judgment appealed from in this respect and also the decree for recovery of possession. With regard to the mesne profits however it is admitted that there is an arithmetical error in the learned Judge's calculation which must be corrected. It is agreed that the total of such profits in respect of which the respondent is entitled to judgment should be £2,175 and not £2,025. Subject to such a variation I would dismiss the appeal.

KORSAH, C.J.: I agree.

GRANVILLE SHARP, J.A.: I also agree.

In the
Court of Appeal,
Ghana

No. 16

Judgment.

2nd December,
1958

- continued.

No. 17

D E C R E E

IN THE HIGH COURT OF JUSTICE

GHANA EASTERN JUDICIAL DIVISION

LAND COURT, ACCRA

D. T. CHANDIRAM of Accra. Plaintiff

v.

1. J. MENSAH, Manager of St. John's
Grammar School, Accra.

2. GHANA COMMERCIAL BANK, Accra
Defendants

No. 17

Decree.

2nd December,
1958.

JUDGMENT AFTER TRIAL

Dated and Entered 2nd day of December 1958.

This appeal having on the 26th November, 1958
been heard before Mr. Justice Korsah, C.J., Mr.

In the
Court of Appeal,
Ghana

No. 17

Decree.

2nd December,
1958

- continued.

Justice Van Lare, J.A. and Mr. Justice Sharpe, J.A.
in the Court of Appeal Accra and the said Court on
the 2nd December, 1958 having ordered that Judgment
be entered for the Plaintiff for £2,175. 0. 0,
£50.19/- costs, £100 damages for trespass and
£154. 4. 0 (costs awarded in the Land Court);

IT IS THIS DAY ADJUDGED that the Plaintiff
recover against the Defendants £2,175, £50.19/-
costs, £100 damages for trespass and £154.4/-
(Costs awarded in the Land Court) totalling in all 10
£2,480. 3. 0.

(Sgd.) F. AKUFO-ADDO.
SOLICITOR FOR THE PLAINTIFF.

THE REGISTRAR
Land Court, Accra.

AND TO THE ABOVE NAMED DEFENDANTS,
Accra.

COUNTERFOIL RECEIPT.
No.7748583 Date: 12. 5. 59.

(Signature illegible) 20

For Divisional Registrar,
(Lands Division)
ACCRA.

No. 18

ORDER granting SPECIAL LEAVE to APPEAL.

AT THE COURT AT BALMORAL

The 12th day of August, 1959

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	SIR MICHAEL ADEANE
LORD CHAMBERLAIN	DOCTOR NKRUMAH
MR. SECRETARY MACLAY	

In the
Privy Council

No. 18

Order granting
Special Leave
to Appeal.

12th August,
1959.

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 29th day of July 1959 in the
words following, viz.:-

20 "WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was re-
ferred unto this Committee a humble Petition
of Ghana Commercial Bank in the matter of an
Appeal from the Court of Appeal of Ghana Be-
tween the Petitioners and (1) D.T. Chandiram
and (2) J. Mensah Respondents setting forth
(amongst other matters) that the case concerns
certain land and buildings in Accra originally
owned by one Holomah who on the 16th July 1954
deposited the title deeds thereof with Barclays
Bank (D.C. & O.) in order to create an equit-
able mortgage to secure the repayment of all
sums due from him to the bank; that on the
4th September 1954 the said deeds were trans-
ferred from Barclays Bank to the Petitioner
and on the 27th October 1954 Holomah executed
a mortgage of the land in their favour the
mortgage being duly registered and the Peti-
tioners paying the said bank the amount due
from Holomah; that in November 1954 Holomah
let the land and buildings to the second
Respondent who is the Manager of St. John's
Grammar School and the School was thereafter
conducted on the premises; that on the 27th
40 July 1954 one Bassil obtained Judgment against

In the
Privy Council

No. 18

Order granting
Special Leave
to Appeal.

12th August,
1959

- continued.

Holomah in the Divisional Court at Sekondi and a Writ of fieri facias was issued and on the 25th September 1954 the land was attached and sold at public auction to the first Respondent on the 16th April 1955; that the second Respondent refused to attorn tenant or to pay rent to the first Respondent and on the 26th September 1956 the first Respondent issued a Writ in the Land Court at Accra against the second Respondent and the Petitioners stating that he had bought the land at public auction and alleging that the second Respondent had refused to attorn tenant to him and was in wrongful occupation of the land and buildings and claiming a declaration of his title of ownership and possession of the premises damages for trespass and mesne profits; that on the 3rd September 1957 the Court gave Judgment in favour of the first Respondent; that the Petitioners and the second Respondent appealed to the Court of Appeal which on 2nd December 1958 delivered Judgment dismissing the Appeal; that the Petitioners were granted conditional leave to appeal to Your Majesty in Council by the Court of Appeal on the 22nd December 1958 but failed to comply in time with the conditions of the said grant; that the Petitioners moved the said Court of Appeal on the 6th May 1959 for an Order granting an extension of time for fulfilling the conditions but the Court held that it had no jurisdiction to consider such an application; And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Court of Appeal of Ghana dated 2nd December 1958 and for further or other relief;

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel for the Petitioner and for the first Respondent no one appearing at the Bar on behalf of the second Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Court of Appeal of Ghana dated the 2nd day of December 1958 upon depositing in the Registry of the Privy Council the sum of £400 as security for

costs and entering Appearance within fourteen days of Your Majesty's Order in Council here-in and that the costs of this Petition ought to be paid by the Petitioners in any event;

In the
Privy Council

No. 18

Order granting
Special Leave
to Appeal.

12th August,
1959

- continued.

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"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor-General or Officer administering the Government of Ghana for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Sgd.) W.G. AGNEW.

E X H I B I T S

Exhibits

Exhibit "9". - DEED OF CONVEYANCE

"9"

Tendered in evidence by Counsel for Defendants, admitted and marked Exhibit '9' in re D.T. Chandiram versus J. Mensah & Anor.
(Sgd) B.A.

Deed of
Conveyance.
18th March,
1948.

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9. 7. 57.

DEEDS REGISTRY NO. 321/1948. Stamped.

'A'

THIS INDENTURE made the 18th day of March in the year of Our Lord One thousand nine hundred and forty eight (1948) Between ALFRED OCQUAYE MENSAH YEBUAH of Accra in the Accra District of Eastern Province of the Colony of the Gold Coast (hereinafter called the Vendor which expression shall where the context so requires or admits include his

Exhibits

"9"

Deed of
Conveyance.
18th March,
1948
- continued.

heirs executors administrators and assigns) of the one part and EBENEZER OFOI HOLOMAH also of Accra aforesaid (hereinafter called the Purchaser which expression shall where the context so requires or admits include his heirs executors administrators and assigns) of the other part WHEREAS the Vendor is seised in fee simple in possession free from incumbrances and family claims and is otherwise well entitled to the land and hereditaments hereby described and intended to be hereby granted and conveyed AND WHEREAS the Vendor being so seised hath agreed with the Purchaser for the absolute sale and conveyance to him of the said land and hereditaments for the sum of One hundred and Ninety Pounds (£190) NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of ONE HUNDRED AND NINETY POUNDS (£190) to the Vendor paid by the Purchaser on or before the execution of these presents (the receipt whereof the Vendor doth hereby acknowledge and from the same doth hereby release the Purchaser) the Vendor as beneficial owner doth hereby grant and convey unto the Purchaser his heirs executors administrators and assigns ALL THAT piece or parcel of Land situate lying and being at North of Kokomlomlo Accra in the Accra District aforesaid and bounded on the North by a Proposed Road measuring Seventy-five feet (75'0") more or less on the South by a Proposed Road measuring Seventy-five feet (75'0") more or less and on the East by the property of the Vendor measuring Two Hundred and sixty five feet (265'0") more or less and on the West by the property of the Vendor and measuring two hundred and ten feet (210'0") more or less and covering an approximate area of .408 acre or however otherwise the same may be bounded known described or distinguished and is more particularly delineated on the Plan hereto attached and thereon edged Pink TOGETHER with all rights easements advantages and appurtenances whatsoever to the said land belonging or appertaining or which the same are usually held or enjoyed or reputed as part thereof or appurtenant thereto And all the Estate right title interest claim and demand whatsoever of the Vendor into and upon the same TO HAVE AND TO HOLD the said land and hereditaments hereby granted or expressed so to be unto and to the use of the Purchaser his heirs executors administrators and assigns for ever and the Vendor doth hereby for himself his heirs executors administrators and assigns covenant with the Purchaser his

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Exhibits

"9"

Deed of
Conveyance.
18th March,
1948
- continued.

10 heirs executors administrators and assigns that
NOTWITHSTANDING any act deed or thing by the Vendor his heirs executors administrators and assigns or any person or persons lawfully or equitably claiming any title or interest in the said hereditaments done or executed or knowingly suffered to the contrary He the Vendor now hath good right to grant the said land and hereditament hereby granted and conveyed or expressed so to be unto
20 and to the use of the Purchaser his heirs executors administrators and assigns in manner aforesaid AND that the Purchaser his heirs executors administrators and assigns shall and may at all times hereafter peaceably and quietly hold possess occupy and enjoy the said land and hereditaments and receive the rents and profits thereof without any lawful eviction interruption claim or demand whatsoever from or by the Vendor or any person or persons lawfully or equitably claiming from under or
30 in trust for him And that free from all incumbrances whatsoever made or suffered by the Vendor or any person or persons lawfully or equitably claiming as aforesaid AND FURTHER that the Vendor and all other persons having or lawfully or equitably claiming any estate or interest in the said land and hereditaments or any of them or any part thereof from under or in trust for him shall and will from time to time and at all times hereafter at the request and cost of the Purchaser his heirs
40 executors administrators and assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said land and hereditaments and every part thereof unto and to the use of the Purchaser his heirs executors administrators and assigns in manner aforesaid as shall or may be reasonably required

40 IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED SEALED AND DELIVERED)
by the within named ALFRED) (Sgd.) ALFRED OKWEI
OCQUAYE MENSAH YEBUAH in) MENSAH YEBUAH
the presence of) (L.S.)

(Sgd) A.N. Yebuah
" Thomas Tetch Their
(Mkd) Ayitey Annang X
" Adseley Adjei X
marks.

Exhibits

"9"

Deed of
Conveyance.
18th March,
1948
- continued.

SIGNED SEALED AND DELIVERED)
by the within named EBENEZER) (Sgd.) E.O. HOLOMAH
OFOI HOLOMAH in the presence)
of)

(Sgd.) A.N. Yebuah
" Thomas Tetteh. Their
(Mkd.) Ayitey Annang X
" Adzeley Adjei X
marks.

Received the within-mentioned Consideration Money 10
of One Hundred and Ninety (£190) sterling.

(Sgd.) A.O.M. Yebuah
VENDOR.

In accordance with Section 18 of Cap. 179 I certify
that in the opinion of the Commissioners of Stamps
This instrument is chargeable with a Duty of TWO
POUNDS Commissioner of Stamps Office (Sgd.) ? ?
Grant Accra 31. 3. 1948. Commissioner of Stamps.

On the 8th day of April, 1948 at 9.10 o'clock in 20
the forenoon this Instrument was proved before me
by the Oath of the within-named Thomas Tetteh to
have been duly executed by the within-named ALFRED
OCQUAYE MENSAH YEBUAH.

Given under my Hand.

(Sgd.) J.H. Shackles.
REGISTRAR OF DEEDS.

(Plan not reproduced in this Record)

Exhibit "10". - DEED OF GIFT.Exhibits

Tendered in evidence by Counsel for Defendants,
admitted and marked Exhibit "10" in re D. T.
Chandiram versus J. Mensah & Anor.

(Sgd.) E.K. Attram
9.7.57.

"10"
Deed of Gift.
1st July, 1954.

DEEDS REGISTRY NO. 899/1954.

Stamped

10 THIS INDENTURE made on the 1st day of July in the
year of Our Lord One thousand nine hundred and
fifty four (1954) Between NII TETTEY GBEKE II
Dsasotso and Acting Mankrale of Otuopai Stool in
the Ga State in the Eastern Province of the Gold
Coast Colony with the consent and concurrence of
the Elders and Councillors of the Otuopai Stool in
the Ga State aforesaid whose consent and concu-
20 rrence are by Native Customary Law necessary for the
valid alienation of Otuopai Stool Lands such con-
sent and concurrence being testified or expressed
herein by the signatures and marks of some of such
Elders and Councillors as attesting witnesses
(hereinafter called the DONOR which expression
shall where the context so admits or requires in-
clude his successors-in-title and assigns) of the
One part and ALFRED OCQUAYE MENSAH YEBUAH of
Accra customary Successor to the late Nortey Tsuru
Yobuah who died on the 13th day of October, 1943
intestate (hereinafter called the DONEE which ex-
30 pression shall where the context so admits or
requires include his heirs executors legal repre-
sentatives and assigns) of the other part WHEREAS
the land and hereditaments hereinafter described
and intended to be granted and conveyed are a
portion of Otuopai Stool Lands AND WHEREAS the
late Nii Teteyfio alias Addy Kwao Tse (Deceased)
the Donor's predecessor acting with his elders and
Councillors did donate the said land and heredita-
ments described herein to the Donee's predecessor
the late Nortey Twuru Yebuah in the year 1910 after
40 the necessary customs relating to the Gift of Land
had been made and performed viz. payment of the
sum of Thirty two shillings (32/-) and giving of
one life Sheep by the Donee's predecessor to the
Donor's predecessor AND WHEREAS during the same
year of 1910 the Donor's predecessor did after the
said Gift put or place the Donee's predecessor the
late Nortey Tsuru Yebuah in possession thereof AND

Exhibits

"10"

Deed of Gift.

1st July, 1954
- continued.

WHEREAS the Donor has agreed with the Donee that a Deed of Gift in accordance with the English Law granting and conveying the said Land to the Donee be executed by the Donor his Elders and Councillors NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of Thirty two shillings (32/-) paid and One Life Sheep given to the Donor's said predecessor and in further consideration of the sum of Twenty pounds (£20) now paid by the Donee to the Donor (the receipt of which sums of Thirty two shillings (32/-) and Twenty pounds (£20) the Donor hereby acknowledges and from the same doth hereby release the Donee) the Donor as Beneficial Owner doth hereby ratify the said Gift by the Donor's predecessor and by way of further assurance doth hereby grant convey and/or confirm unto and to the use of the Donee his heirs executors personal representatives and assigns ALL THAT piece or parcel of land situate lying and being at Kokomlemle Accra aforesaid and bounded on the North by the Donor's land measuring four hundred and ninety eight feet seven inches (498'.7") more or less on the South by the Property of Joseph Addy measuring Five hundred and twenty seven feet six inches (527'.6") more or less on the East by the Donor's property measuring three hundred and forty feet six inches (340'.6") more or less and on the West by the Donor's property measuring five hundred and ninety three feet two inches (593'.2") more or less covering an approximate area of 5,493 Acres or howsoever otherwise the same may be bounded known described or distinguished and is more particularly delineated on the Plan hereto attached and edged Pink TOGETHER with all easements rights liberties privileges right of way advantages and appurtenances whatsoever to the said piece or parcel of land belonging or in anywise appertaining thereto AND all the Estate right title interest claim and demand whatsoever of the Donor aforesaid in to and upon the same TO HAVE AND TO HOLD the said land hereby granted or expressed so to be unto and to the use of the Donee his heirs executors administrators and assigns in fee simple for ever and the Donor doth hereby for himself his successors-in-title and assigns doth hereby COVENANT with the Donee his heirs executors administrators and assigns that notwithstanding any act deed or thing by him the Donor or by any of his predecessors in title done or executed or knowingly suffered to be done to the contrary He the Donor now hath good title and

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right to grant the land hereby granted or expressed so to be unto and to the use of the Donee his heirs executors administrators and assigns in manner aforesaid AND that the Donee his heirs executors and assigns shall and may at all times hereafter peaceably and quietly possess occupy and enjoy the said land and receive the rents and profits thereof without any lawful oviction interruption claim or demand whatsoever from or by the Donor or any person or persons lawfully or equitably claiming from under or in trust for him or from or under his predecessors in title or any person or persons lawfully or equitably claiming any estate or interest in the said land or any part thereof from under or in trust for him the Donor prior to these presents AND that the Donor shall and will from time to time and at all times hereinafter at the request and cost of the Donee his heirs executors administrators and assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said land and hereditaments and every part thereof unto and to the use of the Donee his heirs executors administrators and assigns in manner aforesaid as shall or may be reasonably required.

10

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IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written

30

SIGNED/MARKED SEALED AND)
 DELIVERED by the said NII)
 TETTEY GBEKE II the Donor)
 herein his Elders and)
 Councillors after the fore-)
 going has been read over,)
 interpreted and explained to)
 those who cannot read and)
 write and they seemed per-)
 fectly to understand the)
 purport and meaning of these)
 presents after it had been)
 read and interpreted to them)
 by)
 of Accra and they seemed)
 perfectly to understand the)
 same before signing and or)
 making their marks thereto)
 in the presence of -)

40

(Sgd) NII TETTEY
 GBEKE II
 (L.S.)

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(Sgd.) E.T. Addy
 " ? ? Aryee
 " Fred Holomah
 " ? ?
 " E.O. Holomah

Exhibits

"10"

Deed of Gift.
 1st July, 1954
 - continued.

Exhibits

"10"

Deed of Gift.

1st July, 1954
- continued.

SIGNED SEALED AND DELIVERED)
by the said ALFRED OCQUAYE)
MENSAH YEBOAH the Donee) (Sgd.) A.O.M. YEBUAH
herein in the presence of) (L.S.)

(Sgd.) E.O. Holomah
" ? ? ?

RECEIVED the within-mentioned Consideration monies
of thirty two shillings (32/-) and Twenty pounds
(£20) and One Life Sheep.

(Sgd.) Nii Tettey Gbeke II. 10
Donor.

Sgd. E.T. Addy
" ? ? Aryee
" Fred Holomah
" ? ?
" E.O. Holomah

On the 3rd day of July, 1954, at 8.30 a.m. in the
fore-noon this instrument was proved before me by
the Oath of the within-named Ebenezer Ofoi Holomah
to have been duly executed by the within-named NII 20
TETTEY GBEKE II.

GIVEN under my hand and Official Seal.

(Sgd.) Roger van der Puije

REGISTRAR, DIVISIONAL COURT.

(Plan not reproduced in this Record)

"11"

Exhibit "11". - DEED OF CONVEYANCE

Deed of
Conveyance.

14th July, 1954.

Tendered in evidence by Counsel for Defendants,
admitted and marked Exhibit "11" in re D.T.
Chandiram versus J. Mensah.
Intld. B.A.
for Div. Registrar,
Land Court. 30

DEEDS REGISTRY No.981/1954. 2656/54.

Stamped.

THIS INDENTURE made the 14th day of July in the
year of our Lord One thousand nine hundred and fifty
four (1954) Between NUMO ARYITEY COBBLAH Korle

Exhibits

"11"

Deed of
Conveyance.
14th July, 1954
- continued.

10 Priest and NII AMITRY ADJIN III Gboso Mantso for
and on behalf of Ga Gboso and Korle Stools all of
Accra in the Eastern Province of the Gold Coast as
consenting parties (hereinafter called the Vendors
which expression shall where the context so admits
include their heirs successors and assigns) of the
one part and EBENEZER OFOI HOLOMAH also of Accra
in the Province aforesaid (hereinafter called the
Purchaser Which expression shall where the context
so admits include his heirs personal representatives
and assigns) of the other part WHEREAS the Vendors
are seised at date hereof in fee simple in possession
free from incumbrances of the land and hereditaments
hereinafter described AND WHEREAS the
Vendors herein have agreed with the Purchaser herein
to sell the land and hereditaments hereinafter
described for the price of Five hundred pounds
(£500) NOW THIS INDENTURE WITNESSETH that in
20 pursuance of the said Agreement and in consideration
of the sum of FIVE HUNDRED POUNDS (£500) paid
to the said Vendors by the said Purchaser 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) They the
Vendors do HEREBY GRANT and CONVEY unto the said
Purchaser ALL THAT piece or parcel of land situate
lying and being at Senche North of Kokomlemle
Accra aforesaid and bounded on the North by Vendor's
land measuring One hundred feet (100') more or less
30 on the South by Vendors' land measuring one hundred
feet (100') more or less on the East by
Vendors' land measuring three hundred and three
feet (303') more or less on the West by a Proposed
Road measuring two hundred and thirty five feet
(235') more or less and thus covering an approximate
area of 0.61 acre or howsoever otherwise the
said piece or parcel of land may be known bounded
described or distinguished and is more particularly
40 delineated on the Plan hereto attached and thereon
edged Pink TOGETHER with all easements rights
liberties fixtures right of way advantages privileges
and appurtenances whatsoever to the said
piece or parcel of land belonging or appertaining
or with the same are usually held occupied and
enjoyed or reputed as part thereof or appurtenant
thereto And all the estate right title claim and
demand whatsoever of the Vendors in to and upon
the same TO HAVE AND TO HOLD the said land hereby
50 granted or expressed so to be unto and to the
use of the said Purchaser AND the said Vendors do
hereby for themselves their heirs successors and

Exhibits

"11"

Deed of
Conveyance.

14th July, 1954
- continued.

assigns covenant with the said Purchaser his heirs and assigns that NOTWITHSTANDING any act deed or thing by them or by their predecessors in title done or executed or knowingly suffered to be done to the contrary They the said Vendors now have good title and right to grant the land and hereditaments hereby granted or expressed so to be unto and to the use of the said Purchaser in manner aforesaid AND that the said Purchaser shall and may at all times hereafter peaceably and quietly hold possess occupy and enjoy the said land and receive the rents and profits thereof without any lawful eviction interruption claim or demand whatsoever from the said Vendors or any person or persons lawfully or equitably claiming from under or in trust for them or from under their predecessors in title AND that the said Vendors shall and will from time to time and at all times hereafter at the request and cost of the said Purchaser his heirs and assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the land hereditaments and premises and every part thereof unto and to the use of the said Purchaser in manner aforesaid as shall or may be reasonably required.

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IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED/MARKED SEALED AND DELIVERED)
by the said Vendors NUMO ARYITEY)
COBBLAH and NII AYITEY ADJIN III)
after the foregoing had been read)
over interpreted and explained to)
the said Numo Aryitey Cobblah in)
the Ga Language by John Nyan)
Plange when he seemed perfectly to)
understand the same before affix-)
ing his signature/mark hereto in)
the presence of :)

NUMO ARYITEY COBBLAH X His (L.S.)
KORLE PRIEST mark

(Sgd.) AYITEY ADJIN (L.S.)

Their
Nee Tetteh Kwei X
Komey Kwao X Witness to marks
Ayitey Mensah X (Sgd.) J.N. Plange
Odai Tetteh X " ? ? ?
marks

		Thoir	
	Shomch Ngleshi	X	Executor Estato James
	Shomch Djon	X	Nortei Yebuah (deceased)
	Ashiorkor Ngleshi	X	
	Amaku Ngleshi	X	

Exhibits

"11"

marks
 10 (Sgd.) J.N. Plange (Land Agent)
 " ? ? Annan
 " C.P. Nortey
 " ? ? ?

Dood of
 Conveyance.
 14th July, 1954
 - continued.

SIGNED SEALED AND DELIVERED)
 by the said Purchaser)
 EBENEZER OFOI HOLOMAH in) (Sgd.) E.O.HOLOMAH
 the presence of:) (L.S.)

(Sgd.) ? Holomah
 " ? ? ?

RECEIVED from Mr. Ebenezer Ofoi Holomah, the Purchaser herein, the sum of Five Hundred Pounds (£500) being the full purchase price agreed upon.

20 (Mkd.) Numo Ayitey Cobblah X
 his
 mark
 (Sgd.) Ayitey Adjin
 VENDORS.

WITNESSES:

(Sgd.) J.N. Plange
 " ? ? Annan
 " C.O. Nortey
 " ? ? ?

30 This is the Instrument marked 'A' referred to in the oath of Timothy Mensah Lartey Sworn before me this 15th day of July, 1954.

(Sgd.) Dugbartey Narnor.
 REGISTRAR, DIVISIONAL COURT.

On the 15th day of July, 1954, at 12.50 o'clock in the afternoon this Instrument was proved before me by the oath of the within named Timothy Mensah Lartey to have been duly executed by the within-named Numo Ayitey Cobblah and Nii Ayitey Adjin III.

GIVEN under my hand and Official Seal.

40 (Sgd.) Dugbartey Narnor
 REGISTRAR, DIVISIONAL COURT.

(Plan not reproduced in this Record)

Exhibits

Exhibit "12". - MEMORANDUM of deposit of Deeds.

"12"

Memorandum of
deposit of
Deeds.

This is the Instrument marked 'A' referred to in
the oath of Walter Joseph Quagraine sworn before
me this 7th day of August 1954.

16th July, 1954.

(Sgd.) J.H. Ghansah
REGISTRAR DIVISIONAL COURT SEKONDI.

DEEDS REGISTRY NO.1234/1954.

PARTICULARS DELIVERED

Stamped Duty £8.15/-

Sdi 825/54.

"A"

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To be registered within 21 days if given by a
Company.

MEMORANDUM OF DEPOSIT OF DEEDS TO SECURE THE
ACCOUNT OF A THIRD PARTY AS WELL AS THE ACCOUNT
OF THE DEPOSITOR.

TO - BARCLAYS BANK (DOMINION, COLONIAL AND
OVERSEAS).

1. In consideration of your giving time credit
and/or Banking facilities and accommodation to me
Ebenezer Ofue Holomah of P.O. Box 66 Oda (herein-
after called "the Customer") I/We the undersigned
have deposited with you the title deeds and other
documents specified in the Schedule hereto with
the intent to create an Equitable Mortgage upon
all the hereditaments and property (real or per-
sonal) mortgage debts and sums of money comprised
therein or to which the same or any of them re-
late for assuring the payment and discharge on
demand of all moneys and liabilities now or here-
after due from or incurred by me/us and/or the
Customer (or any or either of us them) to you upon
any account or in any manner whatever and whether
actually or contingently alone or jointly with
others and whether as principal or surety includ-
ing (but without prejudice to the generality of
the foregoing) charges for interest discount com-
mission and other usual banking charges and all
costs charges and expenses which you may pay or
incur in stamping perfecting or enforcing this
security or in obtaining payment or discharge of
such moneys or liabilities or any part thereof or
in paying any rent rates taxes or outgoings or in
insuring repairing maintaining managing or realis-
ing the said hereditaments and property or any part

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thereof and I/We hereby undertake to pay and discharge all such moneys and liabilities as aforesaid on demand.

Exhibits

"12"

I/We hereby undertake that I/We and all other necessary parties (if any) will on demand at my/our cost make and execute to you or your nominees a valid legal mortgage or registered charge of or on the said hereditaments and property or any part thereof in such form and with such provisions and powers of sale leasing and appointing a Receiver as you may require.

Memorandum of
deposit of
Deeds.

16th July, 1954
- continued.

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2. The powers of leasing conferred on mortgagors in possession by Section 99 of the Law of Property Act 1925 and the restriction on consolidation contained in Section 93 of the same Act shall not apply to this security and are hereby excluded.

3. The said hereditaments and property are not mortgaged charged or encumbered save as appears in the said deeds and documents.

20

4. This security shall be in addition to all other securities which you may now or hereafter hold and you shall at all times be at liberty to grant or refuse time credit or any other indulgence to or to compound with the Customer or any other party now or hereafter liable to you and to take hold retain give up release modify vary exchange or abstain from perfecting taking advantage of or enforcing any securities negotiable or other instruments or contracts which you may now or hereafter hold and to discharge any party thereto in any manner as you may think fit and this security shall not thereby be affected prejudiced or diminished. If the Customer shall become bankrupt or insolvent or make or offer to make any composition or arrangement with his/their creditors or (being a Company) go into liquidation you may prove for the whole of the moneys owing to you by him/them in the same manner as if this security had not been made and you may agree to accept any composition in respect of the same and receive and retain the whole of the dividends composition or other payments in respect of the debt due from the Customer and apply the same in or towards satisfaction of any moneys due from him/them and I/We will not claim to have the benefit of any such proof dividends composition of payments in reduction of the amounts received or to be received by virtue of this security or the benefit of any other security which you may now or hereafter hold until you shall

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Exhibits

"12"

Memorandum of
deposit of
Deeds.

16th July, 1954
- continued.

thereby and by and under this security have received the full amount which may then be due to you from the Customer and me/us and you may enforce and realise this security notwithstanding any such proof or composition as aforesaid and notwithstanding any other guarantee or collateral security which you may now or hereafter hold or be entitled to in respect of the moneys intended to be hereby secured or any part thereof And you may place and keep to the credit of a Suspense Account for so long as you think desirable any moneys received by virtue of this or any other security without any obligation in the meantime to apply the same or any part thereof in or towards discharge of the moneys for the time being secured hereby. 10

5. This security shall not extend to any moneys which may become owing or accruing due to you in respect of any advance or payment made (otherwise than in respect of the premises comprised in this security) after the expiration of one month from the delivery of a notice in writing by me/us or my/our executors administrators committee or receiver to you not to make any further advance or payment on this security. And this security shall not be terminated limited or affected by reason only of notice of the death or lunacy of me/us but shall notwithstanding such notice extend to all advances or payments made by and to all moneys becoming or accruing due or owing to you at any time thereafter until the expiration of one month from the delivery of notice in writing by my/our executors administrators committee or receiver to you not to make any further advance or payment on this security. 20 30

6. As a separate and independent stipulation I/We agree that any moneys which may not be recoverable hereunder by reason of any legal limitation disability or incapacity on or of any party who shall have borrowed or purported to borrow the same or to or for whom or for whose account the same may have been advanced shall nevertheless be recoverable hereunder and from the hereditaments and property hereby charged as though such moneys had been advanced to me/us and as if I/we were the sole or principal debtor(s) in respect thereof. 40

7. I/We hereby undertake that during the continuance of this security no person or corporation shall be registered as proprietor of the said hereditaments or any part thereof without your consent in writing.

8. I/We hereby undertake that during the continuance of this security I/We will keep all buildings on the said hereditaments insured against fire in the full value thereof and will on demand in writing produce to you the receipts for premiums paid in respect of such insurance.

Exhibits

"12"

Memorandum of
deposit of
Deeds.

16th July, 1954
- continued.

10 9. Where this memorandum is signed by more than one party the liability of each of them hereunder shall be joint and several and every agreement and undertaking on their part shall be construed accordingly. A party hereto being a joint or a joint and several debtor shall not nor shall this security be released or discharged by his death or by the death release or discharge of any other joint or joint and several debtor nor by the substitution of any other debtor or security or any change in the constitution of any partnership of which any party hereto may be a member.

20 10. Where the Customer consists of two or more parties the expression "Customer" shall include both of them jointly and severally. Where the Customer is a firm this security shall continue notwithstanding any change in the constitution or title of the firm or the members thereof and shall extend to and secure all moneys and liabilities at any time owing to you by such firm or their successors.

11. Where the context so requires or admits references herein to you are to include your assigns.

30 IN WITNESS whereof these presents have been signed by me/us.

SIGNED by Ebenezer Ofue Holomah)
in the presence of Walter Joseph) (Sgd,) EBENEZER
Quagraine) O.HOLOMAH.

Signed by W.J. Quagraine)
witness in the presence of)

ExhibitsTHE SCHEDULE above referred to

"12" Memorandum of deposit of Deeds. 16th July, 1954 - continued.	Date of Document	Parties	Description of Document, Conveyance, Assignment, Lease, Land Certificate, Mortgage, Fire Policy, etc.	
	18th March, 1948	Alfred Acquaye Mensah Yebuah to Ebenezer Ofoi Holomah	Conveyance Land at North of Kokemlemle Accra .408 acres approx. Deeds Registry No.321/1948.	10
	1st July 1954	Nii Tettey Gbeke II of Accra and Alfred Acquaye Mensah Yebuah	Indenture of Gift Land at Kokomlemle. Deeds Registry No.899/1954	
	14th July, 1954	Numo Aryitey Cobblah, Korle Priest and Nii Ayitey Adjin III Gbese Mantse	Conveyance Land at Senche North of Kokomlemle Deeds Reg- istry 981/1954.	
	On the 7th day of August, 1954 at 9 o'clock in the forenoon this Instrument was proved before me by the oath of the within-named Walter Joseph Quagraine to have been duly executed by the within-named Ebenezer Ofoi Holomah.			20
	GIVEN under my hand.			
	(Sgd.) J.H. Ghansah. REGISTRAR, DIVISIONAL COURT.			
	(Sgd.)	E.O. Holomah		
	(Sgd.)	W.J. Quagraine.		
		Witness.		30

Exhibit "8". - LETTER, H.V.A. FRANKLIN to
SECOND DEFENDANTS.

Exhibits

"8"

Tendered in evidence by Counsel for Defendants,
admitted and marked Exhibit "8" in re D. T.
Chandiram versus J. Mensah & Anor.

Intd. B.A.
Divisional Registrar
Land Court
9.7.57.

Letter, H.V.A.
Franklin to
Second
Defendants.
4th September,
1954.

10 H.V.A. Franklin.
Barrister-at-Law and
Solicitor.

P.O. Box 782
Accra,
Gold Coast.

4th September, 1954.

The Credit Manager,
Bank of the Gold Coast,
P.O. Box.
Accra.

Sir,

20 I hold on behalf of Barclays Bank Limited,
Takoradi, the following Documents:

1. Conveyance dated the 18th March, 1948 from
Alfred Ocquaye Mensah Yebuah to Ebenezer Ofoi
Holomah.
2. Deed of Gift dated the 1st of July, 1954
from Nii Tettey Gbeke II to Alfred Ocquaye
Mensah Yebuah.
3. Conveyance from Numo Aryitey Cobblah, Korle
Priest and Nii Ayitey Adjin III, Gbese
Mantse to Ebenezer Ofoi Holomah.

30 Mr. Holomah has requested me to hand these to you
and I have obtained the permission of my clients
to do so against your undertaking to hold them on
their behalf. I have endorsed the second copy of
this letter with a note to this effect which you
will please return to me.

Mr. Holomah obtained some land in that area
at Kokomlomlo as to which the present judgment is
that it was properly occupied by the Atukpai people,
although the owners of the land and the proper
grantors thereof were the Korle Priest and the

Exhibits

"8"

Letter, H.V.A.
Franklin to
Second
Defendants.
4th September,
1954
- continued.

Gbese Mantse. He had this land from his father in law, an Atukpai man, and built a house thereon. The first document refers to this transaction. In an effort to improve his title (for of course Mr. Yebuah, although he had granted to Mr. Holomah, had no document of title himself) the second document was prepared in an attempt to mend the position. When I came into the matter some short while ago I pointed out that in all probability both the documents were useless since the proper conveying parties were at the present state of litigation the Korle Priest and the Gbese Mantse. I therefore advised that a further document should be taken, which is in fact the third document. It had also appeared that the conveyance by Mr. Yebuah to Mr. Holomah was of doubtful value since other members of his family had objected to the sale and indeed had taken action in respect of it. I therefore advised that the opportunity offered by the last conveyance should be seized to join the dissenting members of the family so that that matter should also be settled. You will find the names of the dissenting members of the family as witnesses in the last document.

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Subject to what I write later, Mr. Holomah appears now to have a reasonable title from both sides so that whoever wins on appeal he is safe. If Atukpai wins he has a good title from Nii Tettey Gbeke II and Mr. Yebuah by documents one and two and, subject to what I write below, from the dissenting members of the family in document three. If the Korle people win he has, subject to what I write below, a good title by document three. I expect that the Korle people will win.

30

One difficulty has still to be solved. Since the passing of the State Councils Ordinance, the consent of the State Council is necessary for the disposal of Stool Land. I have applied to the State Council for that consent and so far have been experiencing difficulty, for the State Council is asking how they can give their consent at present when the matter is still not decided in the Courts. I have written to point out that in this case the existence of the dispute does not affect their consent at all since it cannot be challenged by the other side of the dispute who have already given to us. It seems likely to me that the hesitation of the State Council is really due to other reasons. As you know, it seems wrong in principle that the control of Stool lands which was taken

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away from Chiefs by the local Government Ordinance should be partly returned to them by the State Councils Ordinance and I am given to understand that the authorities are only awaiting examples of awkwardness on the part of the State Councils to have the law changed again as regards this matter. The legal position as to the last of Mr. Holomah's documents remains however, that at the moment it has no legal force until the consent of the State Council is obtained, but that there is no reasonable doubt that that consent will at some future date be obtained and will give validity to the document.

Exhibits

"8"

Letter, H.V.A. Franklin to Second Defendants.

4th September, 1954

- continued.

10

I have the honour to be Sir,

Your obedient servant,

(Sgd.) H.V.A. FRANKLIN.

Encs: 3.

Received the three Documents mentioned above to be held on behalf of Messrs. Barclays Bank Limited, Takoradi.

20

Exhibit "1". - ATTACHMENT NOTICE

"1"

Tendered in evidence by Defendants' Counsel not objected to, accepted and marked Exhibit "1" in re D.P. Chandiram versus J. Mensah & Anor.

Attachment Notice.

(Sgd.) A.E.B. Addo.
25.6.57.

25th September, 1954.

ATTACHMENT OF IMMOVABLE PROPERTY BY SHERIFF
(The Courts Ordinance, 1935. Order 44, Rule 10)

IN THE DIVISIONAL COURT AT SEKONDI

30

EASTERN JUDICIAL DIVISION

BETWEEN

M.D. BASSIL of Accra, Plaintiff

versus

E.O. HOLOMAH of Oda, Defendant

Whereas a Writ of fi. fa dated at Sekondi the 24th day of September, 1954 has been issued under the hand of His Lordship Mark Wilson, Knight

Exhibits

"1"

Attachment
Notice.

25th September,
1954.

- continued.

Bachelor, Chief Justice, at the instance of the Judgment Creditor M.D. Bassil for the attachment of the movable and immovable property of the Judgment Debtor E.O. Holomah in the above-named suit the said Judgment-Debtor is hereby prohibited from alienating the property below-mentioned by sale, gift or in any other way and all persons are hereby prohibited from receiving the said property by purchase, gift or otherwise - that is to say :- All that piece or parcel of land situate lying and being at North of Kokomlemle, Accra aforesaid and bounded on the North by Otuopai Stool land measuring one hundred feet (100') more or less on the south by Vendor's property measuring one hundred feet (100') more or less on the East by Vendor's property and Otuopai Stool land measuring three hundred feet (300') more or less and on the West by a proposed road and measuring two hundred and thirty five feet (235') more or less and covering an approximate area of .623 acre.

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DATED at Accra this 25th day of September, 1954.

(Sgd.) S.K. BANSON
Deputy Sheriff.

"B1"

Minutes on
File re Bassil
vs. Holomah.

25th and 27th
September, 1954.

Exhibit "B1". - MINUTES on FILE re BASSIL
vs. HOLOMAH.

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "B1" in re D.T. Chandiram versus J. Mensah and Anor.

(Sgd.) A.E.B. Addo
25.6.57.

30

SUPREME COURT

F1:Fa No.43/1954
Page 65

M.D. BASSIL versus E.O. HOLOMAH

CLAIM - £2,844.1.6d. (As amended)

C.B./ F.N.A.

(Intd.) D.A.T.
Sheriff Clerk
25.9.54.

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71.

(2)

Bailiff Hammond

For execution and report please.

(Intd) E.T.T.
Chief Bailiff.
25.9.54.

Exhibits

"B1"

Minutes on
File re Bassil
vs. Holomah

25th and 27th
September, 1954
- continued.

(3)

C.B./

Noted please.

(Sgd.) E.C. Hammond.
27.9.54.

(4)

10 C.B./

Writ executed on the 25th day of September, 1954 at 10.45 a.m. one Land with buildings thereon situate lying and being at North of Kokomlamle (House No.67) was attached by me and copy of Auction Sales Notice together with attachment paper was served by me on E.O. Holomah, Judgment Debtor herein at 10.30 a.m. personally at Tudu, Accra.

20

(Sgd.) E.C. Hammond
Deputy Sheriff's Officer.

(5)

C.B./

Please copy of the Notice under Order 57 rule 16(2) be served on J. Creditor and report.

(Intd.) D.A.T.
Sheriff's Clerk
12/4.

(6)

Bailiff Abu,

Will you please serve a copy of the notice herein and report.

30

(Sgd.) E.T. Tackie
C.B. 12/4/55.

72.

Exhibits

(7)

"B1"

Noted please.

Minutes on
File re Bassil
vs. Holomah.

25th and 27th
September, 1954
- continued.

(Sgd) I.I.Abu.
12.4.55.

Amount on Writ £3,643.16.6 C/F

Amount on Writ £3,643.16.6
Execution 5.-

£3,644. 1.6

Less payt on a/c 800. -.-

Blce due as)
amended on Writ) £2,844. 1.1

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(8)

Notice of dispute filed 13.4.55.

(9)

Mr. Hammond,

Please put up application for Interpleader
Summons.

(Intd) D.A.T.
S.C.

Exhibit "B2". - TELEGRAM re BASSIL
vs. HOLOMAH.

Exhibits

"B2"

Tendered in evidence by Plaintiff's Counsel not
objected to, accepted and marked Exhibit "B2" in
re D.T. Chandiram versus J. Mensah & Anor.
(Sgd.) A.E.B. Addo.
25.6.57.

Telegram re
Bassil vs.
Holomah.
28th September,
1954.

10 DIVISIONAL COURT ACCRA
Received 28.9.54.
Registered No.5539/DS/Vol.3
Time Register Received 8.30 a.m.

52 2.29 OHMS SEKONDI 21

DEPUTY SHERIFF ACCRA

COURT TODAY ORDERED SUSPENSION OF EXECUTION OF WRIT
OF FI. FA. RE BASSIL VERSUS HOLOMAH UNTIL FURTHER
ORDER -

DIVISIONAL

Mr. Tetteh/

20 Pl. instruct auctioneer to stop sale if he has
been already instructed to conduct same. B.U. this
telegram on 6/10/54 for confirmation.

(Intd) B.
29.9.54.

Exhibit "A". - COURT NOTES re BASSIL vs. HOLOMAH

"A"

Tendered in evidence by Counsel for Plaintiff,
not objected to, accepted and marked Exhibit "A"
in re D.T. Chandiram versus J. Mensah and Anor.
(Sgd.) A.E.B. Addo
Court Clerk
25.6.57

Court Notes re
Bassil vs.
Holomah.

4th, 11th,
October, 8th,
22nd November,
1954.

30 4.10.54 (Dennison, J.)

M.D. Bassill versus E.O. Holomah.

Motion on Notice by James Mercer Counsel for De-
fendant-Appellant for an Order granting stay of
execution etc.

Exhibits

"A"

Court Notes re
Bassil vs.
Holomah.

4th, 11th
October, 8th,
22nd November,
1954
- continued.

Court: Plaintiff not served - motion adjd.
to 11th (W.A.C.A. Record Fol.52)

11.10.54 (Dennison, J.)

Mercer for Applicant.
Akufo-Addo for Respondent absent.

Note: Telegram sent to Accra suspending execution
until this Motion has been heard.

Court: At the request of Mr. Akufo-Addo this motion
is to stand over to a date suitable to him
and Mr. Mercer (W.A.C.A. Fol.52)

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8.11.54 (Dennison, J.)

Mercer for Applicant.
Beckley for Akufo-Addo for Respondent.

Both Counsel heard.

Court: A stay of execution is granted for 14 days.
If the three dishonoured cheques are met on
or before the 22nd instant, I will grant a
stay of execution, upon terms, pending the
determination of the appeal.
For mention 22nd instant (W.A.C.A. Fol.55)

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22.11.54 (Dennison, J.)

Same Counsel.

Mercer - £800 has been paid and the appeal is
listed for next January.

Beckley - My Client objects to any further stay of
execution unless another £250 is paid.

Mercer - It is not possible for my client to raise
any further money at the moment. Sureties can
be obtained for the amount remaining.

Court: Upon the applicant providing two sureties
for the balance, I will grant a stay of
execution until the appeal is heard and
determined. The Sureties are to be justi-
fied. (W.A.C.A. Fol.58).

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Exhibit "13". - DEED OF MORTGAGEExhibits

Tendered in evidence by Defendants' Counsel not objected to, accepted and marked Exhibit "13" in re D.T. Chandiram versus J. Mensah & Anor.

(Sgd.) B.K. Attram
for Divisional Registrar
Land Court.

"13"

Deed of
Mortgage.27th October,
1954.

DEEDS REGISTRY No. 42/1955.

Stamped.

10

"A"

THIS INDENTURE made the 27th day of October in the year of our Lord One thousand nine hundred and fifty-four (1954) BETWEEN EBENEZER OFOI HOLOMAH of Accra in the Accra District of the Eastern Province of the Gold Coast Colony (hereinafter called "the Mortgagor" which expression shall where the context so requires or admits include his heirs personal representatives successors in accordance with Native customs and assigns) of the one part and BANK OF THE GOLD COAST incorporated with limited liability by Ordinance No.49 of 1952 of the Gold Coast Colony aforesaid having its registered Office situate at Accra aforesaid (hereinafter called "the Bank" which expression shall where the context so requires or admits include its successors and assigns) acting by HENRY DUNCAN DUFF also of Accra aforesaid its Manager of the other part WHEREAS by a Deed of Conveyance dated the 18th day of March 1948 and made between Alfred Ocquaye Mensah Yebuah therein described and called the Vendor of the one part and the Mortgagor therein also described and called the Purchaser of the other part and registered as No. 321/1948 in the Gold Coast Land Registry the hereditaments therein comprised and intended to be hereby granted and assured were for the consideration therein expressed granted and conveyed by the said Vendor unto and to the use of the said Purchaser his heirs and assigns for ever AND WHEREAS by a Deed of Conveyance dated the 14th day of July, 1954 and made between Numo Aryitey Cobblah Korle Priest and Nii Ayitey Adjin III Gbese Mantse therein described and called the Vendors of the one part and the Mortgagor therein also described and called the Purchaser of the other part and registered as No.981/1954 in the Gold Coast Land Registry the

Exhibits

"13"

Deed of
Mortgage.27th October,
1954

- continued.

hereditaments therein comprised and intended to be hereby granted and assured were for the consideration therein expressed granted and conveyed by the said Vendors unto and to the use of the said Purchaser his heirs and assigns for ever AND WHEREAS the Mortgagor has or may have accounts with the Bank and has requested the Bank to grant him banking accommodation of facility on current account and/or loan account and/or any other account sanctioned by the Bank which the Bank has agreed to do upon the Mortgagor executing the security hereinafter contained NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Mortgagor hereby COVENANTS with the Bank to pay on demand all such sums as now are or shall from time to time become owing by him to the Bank on balance of current account and/or loan account and/or any other account sanctioned by the Bank (including in such account interest as hereinafter mentioned usual Bank Charges and commission) whether in respect of moneys advanced or to be advanced or paid to or for the use of the Mortgagor or charges incurred on his account or in respect of letters of hypothecation or negotiable instruments drawn accepted or endorsed by or on his behalf and discounted or paid or held by the Bank at his request or in the course of business or in respect of moneys which the Mortgagor shall become liable to pay to the Bank in any manner whatsoever and whether any such moneys shall be paid or incurred on behalf of the Mortgagor alone or jointly with any other person or persons corporation or company and whether as principal or surety AND ALSO to pay interest on the balance of the said current account and/or loan account and/or any other account and on all moneys whatsoever at any time owing to the Bank at the rate of seven per cent (7%) per annum such interest to be calculated on the balance and levied by the Bank quarterly on the facility PROVIDED ALWAYS that if any interest payable on arrears of interest capitalised under this present clause shall remain unpaid for one calendar month after the day on which the same ought to be paid then and in every such case the interest so in arrear shall as from the date on which the same ought to have been paid be added for all purposes to the balance of moneys hereby secured (unless the Bank shall otherwise elect) and shall thenceforth bear interest at the rate and on the days aforesaid and all the covenants and provisoes contained in these presents and

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rules of law and equity in relation to interest on the said balance shall equally apply to interest on such arrears AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the Mortgagor or beneficial owner hereby GRANTS and ASSURES unto the Bank ALL THAT piece or parcel of land situate lying and being at Senche Morth of Kokomlemlle in the Municipality of Accra aforesaid and bounded on north by the property of Ga Gbese and Korle Stools measuring one hundred (100) feet on the south by the property of Ga Gbese and Korle Stools measuring one hundred (100) feet on the east by the property of Ga Gbese and Korle Stools measuring three hundred and three (303) feet and on the west by a proposed road and measuring two hundred and thirty five (235) feet be the same several dimensions little more or less and covering an approximate area of nought decimal six one (0.61) of an acre as the same is for purpose of identification but not of limitation delineated on the Plan hereto attached and thereon edged Pink TOGETHER with all houses and other buildings now erected and standing thereon or to be erected thereon And all rights ways liberties privileges advantages easements and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining thereto or usually held or enjoyed therein or reputed to belong or be appurtenant thereto AND all the estate right title interest claim and demand whatsoever of the Mortgagor in to and upon the said hereditaments and premises and every part thereof TO HOLD the same unto and to the use of the Bank its successors and assigns for ever SUBJECT to the proviso for Redemption hereinafter contained PROVIDED ALWAYS that if the Mortgagor shall on demand pay all moneys for the time being owing by him to the Bank which he has bound himself to pay in accordance with the covenant in that behalf hereinbefore contained then on such payment the Bank shall upon the request and at the cost of the Mortgagor reconvey the hereditaments and premises hereby granted and assured or expressed so to be unto and to the use of the Mortgagor or as he shall direct AND the Mortgagor hereby COVENANTS with the Bank that he the Mortgagor now hath good right to grant and assure the said hereditaments and premises hereby granted and assured or expressed so to be unto and to the use of the Bank in manner aforesaid AND that during the continuance of this

Exhibits

"13"

Deed of
Mortgage.27th October,
1954

- continued.

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Exhibits

"13"

Deed of
Mortgage.27th October,
1954

- continued.

security the Mortgagor will keep all buildings for the time being subject thereto in good and sufficient repair order and good condition AND will also keep all buildings for the time being subject thereto insured against loss or damage by fire tempest earthquake or other act of God in the name of the Bank in an Insurance Office approved by the Bank in the sum of Twelve thousand pounds (£12,000) at the least and will make all payments required for such last mentioned purposes not later than one week after the same shall be due and on demand produce to the Bank the policy or policies of insurance and the receipts for each such payment AND that if default shall be made by the Mortgagor in respect of any of the above matters the Bank may at its discretion repair and insure and keep insured all or any of the said buildings to the amount aforesaid and that its expenses of so doing shall be repaid to it by the Mortgagor on demand and until so repaid shall be a charge on the hereditaments and premises hereby granted and assured or expressed so to be and be added to the moneys hereby secured and bear interest accordingly AND that if default shall be made in payment of any sum or sums of money due under this security the Bank may at any time thereafter enter into and upon the hereditaments and premises hereby granted and assured or expressed so to be and shall thenceforth quietly possess and enjoy the same and receive the rents and profits thereof without any lawful eviction interruption claim or demand from or by any person or persons whomsoever AND that free from all incumbrances whatsoever AND further that the Mortgagor and all other persons having or lawfully or equitably claiming any estate or interest in the hereditaments and premises hereby granted and assured or expressed so to be or any part thereof shall and will from time to time and at all times hereafter upon the request of the Bank and at the cost during the continuance of this security of the Mortgagor and afterwards of the person or persons requiring the same do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the hereditaments and premises hereby granted and assured or expressed so to be unto the Bank in manner aforesaid as shall or may be reasonably required AND IT IS HEREBY AGREED AND DECLARED as follows:

a. THAT any Statute or Ordinance to the contrary 50

notwithstanding the Mortgagor shall have no power to grant any lease underlease or tenancy of the hereditaments and promises hereby granted and assured or expressed so to be or any part or parts thereof for any term or terms of years whether in possession or reversion without the concurrence of the Bank such concurrence to be testified by the Bank being joined with the Mortgagor as a party to and executing any such lease underlease or tenancy and that any attempted lease underleases or tenancy created by the Mortgagor except as aforesaid shall constitute and be a breach of the provisions and stipulations hereof within the meaning of the sub-clause (d) hereinafter contained.

Exhibits

"13"

Deed of
Mortgage.27th October,
1954

- continued.

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- b. THAT it shall be lawful for the Bank at any time or times without any further consent on the part of the Mortgagor to sell the hereditaments and premises hereby granted and assured or expressed so to be either together or in lots and either by public auction or private contract AND also at any time or times and either preparatory to any such sale or otherwise to let the hereditaments and premises hereby granted and assured or expressed so to be or any part or parts thereof either from year to year or otherwise or to grant any underlease or underleases thereof for any term or terms of years and either in possession or reversion and either with or without taking a premium for the making thereof and at such yearly or other rents and under and subject to such covenants and conditions and generally upon such terms as to the Bank shall think proper and with full power upon any such sale letting or underlease to make stipulations relative to title or otherwise which the Bank shall think proper AND ALSO with power to buy in the hereditaments and premises hereby granted and assured or expressed so to be or any part thereof at any sale by auction or to rescind or vary any contract for the sale letting or underlease thereof and to resell relet and demise the same from time to time without being answerable for any loss or diminution in price or premium or rent occasioned thereby or consequent thereof and with power also to give time for the payment of the purchase money or premium or any part or parts thereof and upon such security personal or otherwise or without security as the Bank may think fit and with power also to execute assurances give effectual receipts for any purchase

Exhibits

"13"

Deed of
Mortgage.27th October,
1954

- continued.

- money or premium and do all other acts and things for completing such sale letting or underlease which the Bank shall think proper.
- c. THAT the Bank shall with and out of the moneys to arise from any such sale letting or underlease as aforesaid in the first place pay and retain the costs and expenses attending such sale letting or underlease or otherwise incurred in relation to this security and in the next place pay and satisfy the moneys which shall then be owing on the security of these presents and shall pay the surplus (if any) to the Mortgagor. 10
- d. THAT the power of sale letting and granting underlease hereinbefore contained shall not be exercised unless default shall be made in payment of any sum or sums of money due under this security for the space of One calendar month next after the same ought to have been paid in accordance with the provisions hereof and after notice requiring such payment shall have been given to the Mortgagor on behalf of the Bank or left at his usual or last known place of abode or left upon or affixed to some part of the hereditaments and premises hereby granted and assured or expressed so to be or unless there has been a breach of some provision contained in these presents on the part of the Mortgagor to be observed and performed. 20
- e. That no purchaser tenant or lessee upon any sale letting or underlease under the powers hereinbefore contained shall be bound or concerned to see or enquire whether any such default has been made or otherwise as to the necessity or propriety of such sale letting or underlease or be affected by notice that no such default has been made or that the sale letting or underlease is otherwise unnecessary or improper. 30
- f. THAT the said powers of sale letting and underleasing may be exercised by any person or persons entitled for the time being to receive and give a discharge for the moneys for the time being owing on the security of these presents. 40
- g. THAT the Bank shall not be answerable for any involuntary loss or happening in or about the exercise or execution of any power conferred on it by these presents or by Statutes or Ordinance or of any trust connected therewith and the

Bank shall not be liable to account to the Mortgagor except for such moneys as the Bank shall actually receive.

Exhibits

"13"

10 h. THAT these presents shall constitute and be a continuing security to the Bank notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not operate so as in anywise to prejudice or affect the security created by any deposit which may have already been made with the Bank of the title deeds and documents relating to the hereditaments and premises hereby granted and assured or expressed so to be or any other securities which the Bank may now or at any time hereafter hold for or in respect of the moneys hereby secured or any part thereof.

Deed of Mortgage.
27th October, 1954
- continued.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written

20 SIGNED SEALED AND DELIVERED)
by the within-named EBENEZER)
OFOI HOLOMAH in the presence) (Sgd.) E.O. HOLOMAH
of -) (L.S.)

(Sgd.) Fred Holomah
" ? ?

30 SIGNED SEALED AND DELIVERED)
by the within-named HENRY)
DUNCAN DUFF as Manager for)
and on behalf of and as the) (Sgd.) H.D. DUFF (L.S.)
act and deed of BANK OF THE)
GOLD COAST in the presence)
of -)

(Sgd.) E. Amoake Atta.

On the 21st day of December, 1954 at 11.10 a.m. in the forenoon this Instrument was proved before me by the oath of the within-named NYAMI TSIASI CLARKE to have been duly executed by the within-named EBENEZER OFOI HOLOMAH.

40 (Sgd.) J. Okai Thompson
REGISTRAR OF DEEDS.

This is the Instrument marked 'A' referred to in the Oath of Nyami Tsiasi Clarke sworn before me this 21st day of December, 1954.

(Sgd.) J. Okai Thompson
REGISTRAR OF DEEDS.

(Plan not reproduced in this Record)

Exhibits

"B3"

Auction Notice
re Bassil vs.
Holomah.

13th January,
1955.

Exhibit "B3". - AUCTION NOTICE re BASSIL
vs. HOLOMAH

Tendered in evidence by Plaintiff's Counsel not
objected to, accepted and marked Exhibit "B3" in
re D.T. Chandiram versus J. Mensah & Anor.

(Sgd.) A.E.B. Addo
25.6.57

N O T I C EIN THE SUPREME COURT OF ACCRAEASTERN JUDICIAL DIVISION

10

DIVISIONAL COURT, SEKONDIB E T W E E N -

M.D. BASSIL of Accra

Plaintiff

- and -

E.O. HOLOMAH of Oda

Defendant

NOTICE is hereby given that in pursuance of a
Decree of the said Court bearing date the 27th day
of July, 1954, in the above suit, the property of
the said Defendant having been seized in execution
under writ of fifa dated the 24th day of September,
1954, will be sold by Public Auction on the 3rd day
of February, 1955, at 9.30 o'clock a.m. unless the
said Decree shall be sooner satisfied, to wit:-

20

All that piece or parcel of land with build-
ings thereon situate lying and being at North
of Komkomlemle, Accra aforesaid and bounded
on the North by Otuopai Stool land measuring
one hundred feet (100'0) more or less, on the
South by Vendor's property measuring one hun-
dred feet (100'0) more or less, on the East
by Vendor's property and Otuopai Stool land
measuring Three hundred feet (300'0) more or
less and on the West by a proposed Road and
measuring Two hundred and Thirty five feet
(235'0) more or less and covering an approxi-
mate area of .623 Acre.

30

By Order of the Deputy Sheriff.

(Sgd.) E.C. Hammond

Deputy Sheriff's Officer.

Deputy Sheriff's Office,
Accra.

40

13th January, 1955.

Exhibit "2". - ATTACHMENT NOTICE

Exhibits

Tendered in evidence by Defendants not objected to, accepted and marked Exhibit "2" in re D. T. Chandirah versus J. Mensah & Anor.

"2"

(Sgd.) A.E.B. Addo
25.6.57.

Attachment
Notice.

13th January,
1955.

ATTACHMENT OF IMMOVABLE PROPERTY BY SHERIFF
(The Courts Ordinance, 1935, Order 44, Rule 10)

IN THE SUPREME COURT OF SEKONDI

10

EASTERN JUDICIAL DIVISION

DIVISIONAL COURT, SEKONDI.

Fi.Fa. No.43/1954.

BETWEEN

M.D. BASSIL of Accra

Plaintiff

- and -

E.O. HOLOMAH of Oda

Defendant

20

Whereas a writ of fi.fa. dated at Sekondi the 24th day of September, 1954 has been issued under the hand of His Lordship Mark Wilson, Knight Bachelor, Chief Justice of the Gold Coast, at the instance of the Judgment Creditor M.D. Bassil for the attachment of the movable and the immovable property of the Judgment Debtor E.O. Holomah in the above named suit the said Judgment Debtor is hereby prohibited from alienating the property below-mentioned by sale, gift or in any other way and all persons are hereby prohibited from receiving the said property by purchase, gift or otherwise - that is to say:

30

ALL THAT piece or parcel of land with buildings thereon situate lying and being at North of Kokomlemle, Accra aforesaid and bounded on the North by Otuopai Stool Land measuring one hundred feet (100'0) more or less, on the south by Vendor's property measuring one hundred feet (100'0) more or less, on the East by Vendor's property and Otuopai Stool land measuring Three hundred feet (300'0) more or less and on the West by a proposed road and measuring Two hundred and thirty five feet

Exhibits

"2"

(235'0) more or less and covering an approximate area of .623 Acre.

Attachment
Notice.

Dated at Accra this 13th day of January, 1955.

13th January,
1955
- continued.

(Sgd.) Roger Vanderpuije

Deputy Sheriff.

"B4"

Exhibit "B4". - TELEGRAM re BASSIL vs. HOLOMAH

Telegram re
Bassil vs.
Holomah.

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "B4" in re D.T. Chandiram versus J. Mensah & Anor.

23rd March,
1955.

(Sgd.) A.E.B. Addo.
25.6.57.

10

POST OFFICE TELEGRAM
Received 2.20
ACCRA C.T.O. 23 Mar. 1955 Gold Coast.

DIVISIONAL COURT ACCRA
Received 24/3/55
Registered No.2292/DS/Vol.I
Time Received -

63 2. 10 OHMS SEKONDI 23 -

DEPUTY SHERIFF ACCRA -

RE BASSIL VERSUS HOLOMAH PROCEED WITH EXECUTION OR WRIT OF FIFA AS DEFENDANTS APPEAL TO WACA HAS BEEN DISMISSED -

30

DIVISIONAL

(2)

Sheriff's Clerk,

Pl. proceed with the sale and instruct Auctioneer accordingly.

Intd. S.K.B. 25/3.

Exhibit "B6". - LETTER, DEPUTY SHERIFF
to AUCTIONEER

Exhibits
"B6"

Tendered in evidence by Plaintiff's Counsel not
objected to, accepted and marked Exhibit "B6" in
re D.T. Chandiram versus J. Mensah & Anor.
(Sgd.) A.E.B. Addo
25.6.57.

Letter,
Deputy Sheriff
to Auctioneer.

25th March,
1955.

1164/DS./Vol.1/1955. Deputy Sheriff's Office.

25th March, 1955.

10 Sir,

M.D. BASEIL versus E.O. HOLOMAH.

I have to refer to my letter No.338/DS/Vol.1/
1955 of 28th January, 1955 and to ask you to pro-
ceed with the sale of the property entrusted to
you in the above case after giving the Statutory
period of Notice for the said sale.

I have the honour to be, Sir,

Your obedient servant,

(Sgd.) S.K. Banson.
Deputy Sheriff.

20

Mr. E. Ohene Glover,
Licensed Auctioneer,
Accra.

Exhibits

"3"

Exhibit "3". - LETTER, C.C. LOKKO to
DEPUTY SHERIFF

Letter,
C.C. Lokko to
Deputy Sheriff.
4th April, 1955.

Tendered in evidence by Defendants' Counsel not
objected to, accepted and marked Exhibit "3" in
re D.T. Chandiram versus J. Mensah & Anor.
(Sgd.) A.E.B. Addo
25.6.57.

C.C. LOKKO,
Barrister at Law & Solicitor
Supreme Court of the Gold Coast
Colony & Notary Public.

10

P.O. Box 28,
Telephone No.4230.

Accra.
4th April, 1955.

THE DEPUTY SHERIFF, ACCRA.

Sir,

M.D. BASSIL versus E.O. HOLOMAH.

With reference to the property attached by
you in the above action and the Auction Notice
advertising such property for sale on the 16th
day of April, 1955 at 2.30 p.m. I am instructed
by the Bank of the Gold Coast of Accra to notify
you that the Legal estate in the said property is
vested in it under a Deed of Mortgage dated the
27th day of October, 1954 which Deed is registered
as No. 42/1955 in the Gold Coast Land Registry and
to request that you so inform the Judgment Credit-
or and follow it up by instituting Interpleader
proceedings on its behalf to protect its interest.

20

30

I undertake to pay the necessary Court fees.

I have the honour to be, Sir,

Your obedient Servant,

(Sgd.) C.C. Lokko.

(2)

Mr. Tetteh,

F.N.A.

Intd. S.K.B. 4.4.55.

(3)

Exhibits

Mr. Hammond,

"3"

Please send Notice under Order 57 rule 16(2) for service on the J/Creditor herein.

Letter, C.C. Lokko to Deputy Sheriff.

Intd. D.A.T.
S.C. 4.4.55.

4th April, 1955
- continued.

Exhibit "4". - NOTICE OF CLAIM by SECOND DEFENDANTS to PROPERTY taken in Execution

"4"

Tendered in evidence by Defendants' Counsel not objected to, accepted and marked Exhibit "4" in re Chandiram versus Mensah & Anor.

Notice of Claim by Second Defendants to Property taken in Execution.

10

(Sgd.) A.E.B. Addo
25.6.57.

12th April, 1955.

No. 59.

NOTICE OF CLAIM TO PROPERTY TAKEN IN EXECUTION (O.57,r.16)

M.D. BASSIL of Accra

Plaintiff

versus

E.O. HOLOMAH of Oda

Defendant

TAKE NOTICE that BANK OF THE GOLD COAST of ACCRA has claimed the immovable property taken in execution by Deputy Sheriff's Officer at Accra under Warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said Bank of the Gold Coast to the said property and give notice thereof in writing to the Deputy Sheriff within four (4) days from the receipt of this Notice failing which the said Deputy Sheriff may issue an Interpleader Summons. If you admit the title of the said Bank of the Gold Coast to the property and give notice thereof in manner aforesaid to the said Deputy Sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

20

30

DATED at ACCRA this 12th day of April, 1955.
(Sgd.) S.K. Banson DEPUTY SHERIFF.
TO M.D. Bassil of Accra
or his Solicitor Herbert Jones of Accra.

Exhibits
"5"

Exhibit "5". - PLAINTIFF'S NOTICE disputing
title of Second Defendants.

Plaintiff's
Notice dis-
puting title
of Second
Defendants.

Tendered in evidence by Defendants' Counsel not
objected to, accepted and marked Exhibit "5" in re
Chandiram versus J. Mensah & Anor.
(Sgd.) A.E.B. Addo.
25.6.57.

13th April,
1955.

Deputy Sheriff Received 13.4.1955 at 9.55 a.m.

Intld. D.A.T.
S.C.

10

M.D. BASSIL of Accra Plaintiff

versus

E.O. HOLOMAH of Oda Defendant

CLAIM TO IMMOVABLE PROPERTY 0.57 r.16.

PLEASE TAKE NOTICE that the Plaintiff herein
disputes the title of the said Bank of the Gold
Coast of Accra the Claimant herein.

DATED at Kwakwaduum Chambers Accra this 13th
day of April, 1955.

(Sgd.) E. Akafo Addo.
SOLICITOR FOR THE PLAINTIFF.

20

THE DEPUTY SHERIFF
SUPREME COURT
ACCRA.

Exhibit "C". - LETTER, E. AKUFO-ADDO to
DEPUTY SHERIFF

Exhibits

"C"

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "C" in re Chandiram versus J. Mensah & Anor.

Letter,
E. Akufo-Addo
to Deputy
Sheriff.

(Sgd.) A.E.B. Addo.
25.6.57.

15th April,
1955.

10 E.AKUFO ADDO (M.A.Cxon)
Barrister-at-Law
Solicitor Supreme Court
of the Gold Coast
Notary Public.

Kwakuwada Chambers,
P.O. Box 207,
Accra, Gold Coast.

15th April, 1955.

My Reference AA/B/108/55.

The Deputy Sheriff,
Supreme Court, Accra.

Dear Sir,

M.D. BASSIL versus E.O. HOLOMAH.

20 Mr. M.D. Bassil the Judgment-Creditor herein has instructed me to acknowledge on his behalf the receipt of your letter of the 13th April, and to say in reply thereto that since the Deed of Mortgage in virtue of which the Bank of the Gold Coast make their claim is dated the 27th October, 1954 and the property was attached on the 24th September, 1954 he fails to see any ground for the claim by the Bank that the legal estate is in them. The Deed of Mortgage is void insofar as it purports to transfer to the Bank any interests or rights in the property attached.

30 In the circumstances my client has instructed me to request you to withdraw your instructions to the Auctioneer to enable the sale to proceed as scheduled.

Yours faithfully,

(Sgd.) E. Akufo Addo.

Exhibits

"6"

Letter,
Deputy Sheriff
to Auctioneer.

15th April,
1955.

Exhibit "6". - LETTER, DEPUTY SHERIFF to
AUCTIONEER

Tendered in evidence by Defendants' Counsel not
objected to, accepted and marked Exhibit "6" in re
D.T. Chandiram versus J. Mensah & Anor.
(Sgd.) A.E.B. Addo
25.6.57.

1468/DS/Vol.1/1955.

15th April, 1955.

Sir,

10

M.D. BASSIL versus E.O. HOLOMAH.

With reference to my letter of the 4th April
1955, instructing you to suspend the sale of the
property entrusted to you herein, I hereby with-
draw said letter and request you to carry out the
sale.

I have the Honour to be, Sir,

Your obedient Servant,

Intd. S.K.B.

DEPUTY SHERIFF.

20

E. Ohene Glover, Esquire,
Licensed Auctioneer,
Accra.

Exhibit "14". - LETTER, E. AKUFO ADDO to
SECOND DEFENDANTS

Exhibits

"14"

Tendered in evidence by Counsel for Defendants
admitted and marked Exhibit "14" in re D. T.
Chandiram versus J. Mensah & Anor.

(Sgd.) B.K. Attram
Divisional Registrar,
Land Court.
9.7.57.

Letter,
E. Akufo Addo
to Second
Defendants.

15th April,
1955.

10 E. AKUFO ADDO, M.A. (Oxon) Kwakwaduam Chambers,
Barrister-at-Law, Solicitor P.O. Box 207,
of Supreme Court of the Accra,
Gold Coast Notary Public. Gold Coast.
15th April, 1955.

The Manager,
Bank of the Gold Coast,
Accra.

Dear Sir,

20 Re M.D. BASSIL versus E.O. KLOLOMAH.
and
Re CLAIM BY THE BANK OF THE GOLD
COAST IN RESPECT OF PROPERTY
ATTACHED IN EXECUTION HEREIN.

30 In your Solicitor's letter dated the 4th April,
1955 notifying the Deputy Sheriff of your claim
herein it was stated that the Deed of Mortgage in
virtue of which your claim is made was executed on
the 27th October, 1954. I have to inform you that
the attachment in execution was made on the 24th
September, 1954 a fact which could have been known
to you by a little search in the Deputy Sheriff's
Office.

The Mortgage is therefore invalid as affecting
the rights of Mr. M.D. Bassil the Judgment-Creditor
who has instructed me to say that he is proceeding
with the sale of the property attached.

40 My client further instructs me to say that you
will be informed of the proceeds of the sale and of
the balance remaining thereout to enable you to take
appropriate steps to recover the debt due to you.

A copy of this letter is being sent to the
Deputy Sheriff.

Yours faithfully,
(Sgd.) E. Akufo Addo.

Exhibits

Exhibit "B5". - AUCTION SALE ACCOUNT.

"B5"

Auction Sale
Account.

16th April,
1955.

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "B5" in re Chandiram versus Mensah and Anor.

(Sgd.) A.E.B. Addo (25.6.57)

AUCTION ACCOUNT SALE

THE 'ROYAL' MART EDMUND OHENE GLOVER
Licensed Auctioneer.

P.O. BOX 1068, Accra.
Phone 3765. 10

Account sales by Public Auction on the 16th day of April, 1955, on account of EDMUND OHENE GLOVER In favour of M.D. BASSIL, Merchant, Accra.

<u>Date</u>	<u>Description</u>	<u>Purchaser</u>	<u>Amount</u>
16.4.55	THE SALE IS AT THE INSTANCE OF THE SHERIFF, Supreme Court, ACCRA - AND IN CASE OF - M.D. BASSIL OF ACCRA VERSUS E.O. HOLOMAH		
	"All that piece or parcel of land with buildings thereon, situate lying and being at the North of Kokomlemle, Accra aforesaid, and bounded on the North by Otuopai Stool Land, measuring one hundred feet (100'0) more or less on the South by Vendor's property measuring one hundred feet (100'0) more or less on the East by Vendor's property and Otuopai Stool land measuring Three hundred feet (300'0) more or less and on the West by a proposed Road and measuring Two hundred and thirty five feet (235'0) more or less and covering an approximate area of .623 acre.		20
	AND KNOWN AS THE PROPERTY OF E.O.HOLOMAH DEFENDANT-JUDGMENT-DEBTOR HEREIN		30
	Less Commission of 7%	PURCHASER D.T. CHANDIRAM Merchant, Accra.	40
	Nett Proceed	3350. - -	
		234.10. -	
		<u>£3115.10. -</u>	

(Three thousand and one hundred and fifteen pounds ten shillings)

I hereby solemnly and sincerely declare and affirm that

the foregoing account is true and correct so help me God.

(Sgd.) E. Oheno Glover
Licensed Auctioneer etc.

Exhibits

"B5"

Auction Sale
Account.

16th April,
1955

- continued.

Exhibit "D". - POWER OF ATTORNEY

"D"

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "D" in re D.T. Chandiram versus J. Mensah & Anor.

Power of
Attorney.

(Sgd.) A.E.E. Addo
25.6.57.

19th May, 1955.

10

(Stamped) (Stamped)
5/- 5/-

AC 1831/55.

KNOW ALL MEN BY THESE PRESENTS that I, DHARAMDAS TULSIDAS CHANDIRAM of Accra in the Eastern Province of the Gold Coast West Africa but intending to leave and for a time to be absent from Gold Coast hereby appoint SHEWARKRAM MULCHAND MIRPURI also of Accra aforesaid the true and lawful Attorney in my name and for my use and account to do the following acts and things:-

20

1. To apply for demand to sue for recover and receive of and from all and every or any person or persons whomsoever concerned or chargeable therewith and every sum or sums of money debts duties and interest which shall or may belong to or be or become due or payable to me.
2. To take possession of all such real and personal property such as lands buildings etc. as I am now or may in any way during my absence from Gold Coast become entitled to.
3. To bring or defend any action or other proceedings in respect to or for or concerning all or any such property.
4. To demand receive distrain recover and give receipts for the rents and profits thereof respectively for my use.
5. To manage let sell mortgage charge exchange or

30

Exhibits

"D"

Power of Attorney.

19th May, 1955
- continued.

absolutely dispose of and convey assign transfer or surrender the same or any part thereof or any interest therein.

- 6. To exercise all statutory powers now or hereafter to become vested in me as mortgagee or as tenant for life.
- 7. To sign my name set my seal and as my act and deed to execute seal and deliver any instrument contract agreement lease assignment or conveyance for effectuating any or all of the purposes aforesaid. 10
- 8. To receive and sign and give receipts or discharges for all moneys received in pursuance of this power and out of such moneys to make such expenditure in the exercise of this power as he may consider proper.
- 9. To invest the residue of such moneys in such securities as may be allowed by law for the investment of trust funds with power to vary such investments from time to time as he shall think fit. 20
- 10. To stand possessed of all moneys property and investments acquired by him under this power to my use.
- 11. To join with any other person or persons corporation or corporations in executing or doing any instrument or thing hereinbefore mentioned.
- 12. Generally to do execute and perform all and every other act matter and thing whatsoever in anyway necessary or expedient to be done in my concerns soever during my absence from Gold Coast as fully and effectually as if I were personally present to do the same. 30

AND I the said DHARANDAS TULSIDAS CHANDIRAM HEREBY AGREE to confirm all and whatsoever my said attorney shall lawfully do or cause to be done by virtue of these presents.

AND I declare that this Power of Attorney is irrevocable for Three Years from the date hereof.

IN WITNESS whereof I the said DHARAMDAS TULSIDAS CHANDIRAM have hereunto set my hand and seal this 19th day of May, 1955. 40

SIGNED SEALED AND DELIVERED by)
the said DHARAMDAS TULSIDAS)
CHANDIRAM in the presence of -)(Sgd.) D.T.CHANDIRAM
(L.S.)

Sgd. ? ? Osei
Law Clerk.

Exhibit "E". - CERTIFICATE OF PURCHASE.Exhibits

Tendered in evidence by Plaintiff, not objected to, accepted and marked Exhibit "E" in re Chandiram versus J. Monsah & Anor.

"E"

(Sgd.) A.E.B. Addo
25.6.57.

Certificate of
Purchase.

AC3233/55.

29th June, 1955.

CERTIFICATE OF PURCHASE
(Order 44, Rule 34 of the Courts
Ordinance, 1935)

10

IN THE DIVISIONAL COURT AT SEKONDIWESTERN JUDICIAL DIVISIONBETWEENM.D. BASSIL ... Plaintiff

and

E.O. HOLOMAH ... Defendant

THIS IS TO CERTIFY that D.T. CHANDIRAM has been declared the Purchaser of the right, title and interest of Defendant herein in the messuages, lands and tenements hereinafter mentioned, that is to say:-

20

30

All that piece or parcel of land with buildings thereon, situate lying and being at North of Kokomlemle, Accra aforesaid, and bounded on the North by Otuopai Stool Land, measuring one hundred feet (100') more or less, on the South by Vendor's Property, measuring one hundred feet (100') more or less on the East by Vendor's property and Otuopai Stool Land, measuring three hundred feet (300') more or less, and on the West by a proposed road, and measuring Two hundred and thirty-five feet (235') more or less and covering an approximate area of .623 acre, and known as the property of E.O. Holomah, the Defendant-Judgment-Debtor herein,

which said messuages, lands and tenements were sold in execution of a Decree in the above Suit by Order

Exhibits

"E"

Certificate of
Purchase.

29th June, 1955
- continued.

of this Court, dated the 27th day of July, 1953.

DATED at Sekondi the 29th day of June, 1955.

(Sgd.) T.A. Dennison
Signature of Judicial Officer
JUDGE.

I HEREBY CERTIFY that the Property within named
seized in execution under writ of Fi.Fa. herein
was sold at a Public Auction by EDMUND OHIENE
GLOVER, Licensed Auctioneer of Accra on 16th day
of April, 1955, and the said D.T. CHANDIRAM, Mer- 10
chant of Accra, was declared the highest bidder
for the sum of THREE THOUSAND THREE HUNDRED AND
FIFTY POUNDS (£3350.0s.0d)

DATED at Accra this 24th day of June, 1955.

(Sgd.) Roger van der Puije
DEPUTY SHERIFF.

IN ACCORDANCE with Section 18 of the Stamp Ordin-
ance I CERTIFY that in the opinion of the Commiss-
ioners of Stamps this Instrument is not chargeable
with Stamp Duty. 20

Commissioner of Stamps Office (Sgd.) ? ? ?
Accra 19th August, 1955 Commissioner for Stamps.

EXHIBIT "7". - NOTICE, C.C. LOKKO to
ST. JOHN'S GRAMMAR SCHOOL

Exhibits

"7"

Tendered in evidence by Counsel for defendants,
admitted and marked Exhibit "7" in re D.T.
Chandiram versus J. Mensah and Anor.

(Intd.) B.A.
for Divisional Registrar,
Land Court,
9.7.57.

Notice,
C.C. Lokko to
St. John's
Grammar School.

25th July, 1955.

10

P.O. Box 28
Telephone No.4230
Accra.

The Principal,
St. John's Grammar School,
Kokomlemlo, Accra.

20

I the undersigned C.C.LOKKO as Solicitor for
and on behalf of the BANK OF THE GOLD COAST, DO
HEREBY GIVE YOU NOTICE that under and by virtue
of a Deed of Mortgage dated the 27th day of Octo-
ber, 1954, and registered as No.42/1955 in the Gold
Coast Land Registry and made between Ebenezer Ofue
Holomah of the one part and Bank of the Gold Coast
of the other part the legal estate in the premises
of which you are Tenant is vested in the said Bank
of the Gold Coast AND I hereby on behalf of the
said Bank of the Gold Coast demand of and require
you to pay all rent which is now or shall hence-
forth become due and payable in respect of the said
premises to the said Bank or its duly authorised
agent.

30

DATED at Accra the 25th day of July, 1955.

(Sgd.) C.C. Lokko.

Exhibits

Exhibit "F1". - LETTER, S.M. MIRPURI to
ST. JOHN'S GRAMMAR SCHOOL.

Letter,
S.M. Mirpuri to
St. John's
Grammar School.
28th July, 1955.

Tendered in evidence by Plaintiff from Defendants' custody, not objected to, accepted and marked Exhibit "F1" in re D.T. Chandiram versus J. Mensah & Anor.

(Sgd.) A.E.B. Addo.
25.6.57.

REGISTERED.

T. CHANDIRAM & CO.
Direct Importers & General Merchants.

10

Market Street,
P.O. Box 497.
Accra, G.C., W.A.

Ref. SMM/DKN/

28th July, 1955.

The Principal,
St. John's Grammar School,
Kokomlemle, Accra.

Dear Sir,

Re: Property ex E.O. Holomah.

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While confirming the personal interview of Mr. D.T. Chandiram, the present owner of this land, which is now occupied by St. John's Grammar School, with the Principal of the School that Mr. D. T. Chandiram had bought this piece and parcel of land with buildings thereon situate, lying and being at North of Kokomlemle, Accra, aforesaid, and bounded on the North by Otuopai Stool Land, measuring One hundred feet (100') more or less, on the South by the Vendor's property, measuring One hundred feet (100') more or less, on the East by the Vendor's property and Otuopai Stool Land, measuring Three hundred feet (300') more or less, and on the West by a proposed Road, and measuring Two hundred and thirty five feet (235') more or less and covering approximate area of .623 acre, and known as Property of E.O. Holomah was purchased in Auction on the 16th of April, 1955, Auction held by Edmund Ohene Glover, Licensed Auctioneer of Accra, of which, I, the undersigned S.M. MIRPURI, the legal Attorney of Mr. D.T. Chandiram, am holding the Certificate of Purchase issued by the Court at

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Accra dated 24th June, 1955 and thereby wish to inform you that the rent for the above land occupied by your school as from 16th of April, 1955 at the rate of £75.0.0 (Seventy-five Pounds) per month should be paid at once direct to me under the above address for which my Official Receipt will be issued.

Exhibits

"F1"

Letter,
S.M. Mirpuri
to St. John's
Grammar School.

10 Please take notice that henceforth Mr. D.T. Chandiram is the legal owner of this property which kindly place on record.

28th July, 1955
- continued.

Thanking you while requesting the favour of your early payment by cheque, by the return of post and oblige.

Yours faithfully,

(Sgd.) S.M. Mirpuri

(S.M. Mirpuri)
ATTORNEY.

Exhibit "F2". - LETTER, J.K. MENSAH to
S.M. MIRPURI

"F2"

20 Tendered in evidence by Plaintiff not objected to, accepted and marked Exhibit "F2" in re D.T. Chandiram versus J. Mensah and Anor.
(Sgd.) A.E.B. Addo
25.6.57.

Letter,
J.K. Mensah
to S.M. Mirpuri.

13th August,
1955.

ST. JOHN'S GRAMMAR SCHOOL
Motto: VIRTUTE ET INDUSTRIA

P.O. Box 1373,
Accra, Gold Coast.

30 Your Ref. SMM/DKN
Our Ref. JHM/GW.

13th August, 1955.

Mr. S.M. Mirpuri
T. Chandiram & Co.,
Market Street,
P.O. Box 497,
Accra.

PROPERTY EX E.O. HOLOMAH

Dear Sir,

We thank you for your letter dated 28th July, 1955, and wish to inform you that we have been

Exhibits

"F2"

paying to the Bank of the Gold Coast according to their instructions all rents accruing on the above property.

Letter,
J.K. Mensah to
S.M. Mirpuri.

Please contact the Bank in this respect.

Yours faithfully,

13th August,
1955.
- continued.

(Sgd.) J.K. Mensah,
MANAGER.

D.T. Chandiram.

"G"

Exhibit "G". - LETTER, E. AKUFO ADDO to
ST. JOHN'S GRAMMAR SCHOOL

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Letter,
E.Akufo Addo
to St.John's
Grammar School.

Tendered in evidence by Plaintiff's Counsel not objected to, accepted and marked Exhibit "G" in re D.T. Chandiram versus J. Mensah & Anor.

(Sgd.) A.E.B. Addo.
Court Clerk 25.6.57.

19th August,
1955.

Ref. AA/11/198/55.

19th August, 1955.

The Manager,
St. John's Grammar School,
P.O. Box 1373,
Accra.

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Dear Sir,

RE PROPERTY OF E.O. HOLOMAH
PURCHASED BY D.T. CHANDIRAM

I am instructed by Mr. D.T. Chandiram, to acknowledge the receipt of your letter of the 13th instant, and to say that you are running a very big risk by refusing to pay the rent to him

The Bank of the Gold Coast has no claim whatsoever to the rents and unless the rents due from the 11.4.55 to date are paid to my client or his agent within 3 days an action will be instituted for arrears of rent and ejection.

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Yours faithfully,

(Sgd.) E. Akufo Addo.