

70, 1952

Appeals Nos. 21, 22 and 23 of 1950.

In the Privy Council.

31336

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

UNIVERSITY OF LONDON
APPEAL (W.C.A.)

9 - NOV 1956

INSTITUTE OF ADVANCED
APPEAL No. 21 of 1950
LEGAL STUDIES

IN THE MATTER of an Interpleader
Summons No. 1 of 1947

BETWEEN

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

AND

PHILIP SAID AZAR (Judgment Creditor) *Respondent*

and Appeal No. 22 of 1950

BETWEEN

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

AND

PHILIP SAID AZAR (Plaintiff) *Respondent*

and Appeal No. 23 of 1950

IN THE MATTER of an Interpleader
Summons No. 2 of 1947

20

BETWEEN

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

AND

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

(Consolidated by Order dated 3rd April 1951)

Case for the Appellants.

1. These are consolidated appeals by leave of the West African
Court of Appeal from judgments and orders of the West African Court of
Appeal (Gold Coast Session) dated the 13th of December 1947 in Civil
30 Appeals Nos. 44, 53, 54 and 55 of 1947.

RECORD 1.
pp. 43-44.

RECORD 2.
p. 22.

RECORD 1.
pp. 34-43.

RECORD 2.
p. 21.

APPELLANTS CASE

2. In substance the same matters are in issue with both Respondents since both Respondents, being judgment creditors of one Moukarzel, attached certain property including :—

- (A) Certain used motor-vehicles and trailers and spare parts ;
- (B) Certain lands at Kumasi ;

and the main question for determination in these appeals is :—

(1) whether the Court should have made at the instance of the Appellants orders releasing the said motor-vehicles and trailers and lands at Kumasi from attachment ;

though there is a further issue affecting only the Respondent Azar :— 10

(2) whether in respect of 14 of such motor vehicles and 14 of such trailers the Respondent Azar is entitled to rank as a secured creditor having priority over a security of the Appellants.

RECORD 1.

3. The facts leading to these appeals are as follows :—

On the 16th November 1946 Moukarzel entered into an agreement under seal with the Respondent Azar whereby Moukarzel agreed to repay the sum of £4,000 with interest by certain instalments, the first of such instalments being payable on the 30th November 1946.

Other main provisions of this agreement may be summarised as follows :— 20

By Clause 2, if Moukarzel made any default in the payment of any one instalment or in the observance of any of the covenants thereafter contained, Azar was to be at liberty to sue for principal and interest then remaining due or in the alternative might require Moukarzel to transfer to him (subject to any approval required by law) all or any of 14 lorries and trailers particularised in a Schedule.

By Clause 3, in case of such default as aforesaid Azar might without previous notice seize the said vehicles or any of them, giving notice in writing within five days of such seizure to Moukarzel whether or not he desired to exercise the right to have transferred 30 to him all or any of such vehicles specifying the same.

By Clause 4 Moukarzel covenanted with Azar (*inter alia*) :—

G. Not to permit or suffer any execution or distress to be levied against the said vehicles or any of them.

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

4. On the 22nd November 1946 Moukarzel entered into a deed, which is referred to in the Judgments as " a Bill of Sale," whereby he assigned to the Appellants 57 used lorries and 49 used trailers described in a Schedule thereto (including the 14 lorries and 14 trailers mentioned in the agreement 40 dated the 16th November 1946 between Azar and Moukarzel) by way of security for the payment of the sum of £16,140 and interest at 8 per cent. per annum.

Exhibit 1.
p. 77-79.

. 77, ll. 40-41.
. 78, ll. 1-10.

. 78, ll. 17-35.

. 79, ll. 19-36.

78, ll. 36-52.

79, ll. 1-8.

Exhibit C.
p. 80-82.
82.

Exhibit 1.
p. 77-79.

Exhibit C.
80, ll. 29-34.
81, ll. 1-2.

Other main provisions of this deed may be summarised as follows :—

Exhibit C.
pp. 80-82.
p. 81, ll. 3-9.

By Clause 1 Moukarzel agreed to pay principal and interest by monthly instalments of £1,500 the first instalment falling due on the 31st December 1946.

By Clause 3 if Moukarzel made default in payment of principal or interest or in the performance of any agreement contained in the deed and necessary for maintaining the security or suffered the lorries or any of them to be distrained for rent, rates or taxes, or if execution was during the continuance of the security levied against the goods of Moukarzel under any judgment at law, then the Appellants might seize without notice any chattels included in the security.

p. 81, ll. 24-34.

By Clause 4 the Appellants might on the expiration of five clear days from the date of seizure sell the chattels seized and retain out of the proceeds the principal and interest then due together with all costs and expenses incurred.

p. 81, ll. 35-45.

5. Upon the execution of the said deed Moukarzel handed over to the Appellants a policy of Insurance in respect of all the said 57 lorries and 49 trailers.

Exhibit C.
pp. 80-82.
Exhibit G.1.
pp. 74-77.

6. At an interview on the 27th November 1946 Moukarzel requested the Appellants to discharge his overdraft amounting to the sum of £7,170 at the Kumasi Branch of Barclays Bank (D. C. & O.) Limited (hereinafter called Barclays Bank) and offered as Security for the repayment thereof the documents of title to 3 plots of land at Kumasi numbered 105, 571 and 586 O.T.B. (meaning Old Town Section B) and to certain other lands outside Kumasi, as to which other lands no issue arises upon these appeals.

p. 11, ll. 21-30.

7. On the 28th November 1946 Moukarzel signed and gave to the Appellants a letter whereby in consideration of the Appellants agreeing to pay at his request to Barclays Bank the sum of £7,171 15s. 4d. (being the amount then due from Moukarzel to the Bank) he undertook, *inter alia* :—

Exhibit D.
pp. 83-84.

(1) To request the Bank to hand to the Appellants as security such documents of title as Barclays Bank possessed relating to Plots 571 and 586 O.T.B. Kumasi.

p. 83, ll. 38-40.

(2) To deposit with the Appellants without delay (*inter alia*) the title deeds of various plots of land and the document of title relating to his leasehold interest in Plot 105 O.T.B. Kumasi.

p. 83, ll. 41-44.

(3) To execute when called upon a proper legal mortgage of the said properties.

p. 84, ll. 1-3.

(4) To execute a formal Bill of Sale covering all transport and trailers which he then owned together with spare parts in stock to secure the repayment of £16,140 and interest at 8 per cent. per annum.

p. 84, ll. 9-13.

8. On 6th December 1946 the Appellants paid the said sum of £7,171 15s. 4d. to Barclays Bank (plus certain transfer charges amounting

Exhibit E
(original).

p. 11, ll. 33-37.

in all to £7,194 7s. 10d.) and received the documents of title relating to the said Plots 571 and 586, O.T.B. Kumasi. Whether they also received the documents of title to Plot 105 O.T.B. does not appear clearly from the Record, but it seems to have been assumed (at any rate, in the Court of first instance) that they did.

p. 24, ll. 25-27.

Exhibit 1.
pp. 77-79.

9. On the 10th December 1946 the Respondent Azar issued a writ against Moukarzel for the £4,000 (plus interest) due under the said agreement dated the 16th November 1946 and on the 14th December 1946 he obtained an order for interim attachment of the 14 lorries and trailers mentioned in the said agreement. On the 16th December 1946 he obtained judgment for £3,350 (part of the said sum of £4,000 plus interest), and on the same day other creditors of Moukarzel, including the Respondents K. Massoud & Sons, obtained judgments against him. 10

p. 11, ll. 42-45.

p. 13, ll. 15-19.

10. On the 17th and 18th December 1946 the Appellants seized all Moukarzel's lorries and trailers (other than 8 or 9 which had already been attached under the said order for interim attachment) by painting their name upon the same, and also his stock of spare parts by painting their name upon the sheds in which the same were contained.

Exhibit 1.
p. 77-79.

11. On the 24th December 1946 Azar obtained judgment for the balance of the said sum of £4,000 agreed to be repaid under the said agreement. On the same day the Sheriff attached *inter alia* the 57 lorries and 49 trailers the lands at Kumasi and the stock of spare parts hereinbefore mentioned under writs of execution issued at the instance of the Respondents Azar and K. Massoud & Sons as judgment creditors. 20

Exhibit C.
p. 80-82.

12. Moukarzel failed to pay to the Appellants the instalment due 31st December 1946 under the said deed dated the 22nd November 1946.

p. 1-8.

13. On the 4th January 1947 the Appellants commenced Interpleader proceedings against both Respondents under Gold Coast Ordinance No. 7 of 1935, chapter 4 Schedule 3 Order 44, Rule 25, the relevant part of which is as follows:— 30

“ 25. (1) In the event of any claim being preferred to, or objection offered against, the sale of lands, or any other immoveable or moveable property which may have been attached in execution of a decree, or under any order for attachment made before judgment, as not liable to be sold in execution of a decree against the judgment debtor, the Court shall . . . proceed to investigate the same with the like powers as if the claimant had been originally made a party to the suit, and if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was not in the possession of the party against whom execution is sought, or of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of, or in trust for some other person, the Court shall make an order for releasing such property from 40

attachment. But if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was in possession of the party against whom execution is sought as his own property, and not on account of any other person, or was in the possession of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, the Court shall disallow the claim.”

14. The interpleader issue between the Appellants and the Respondent Azar came on for hearing in the Divisional Court before Mr. Justice Smith, p. 9.
10 on the 24th January 1947, without pleadings.

15. It was contended for the Appellants *inter alia* :— p. 9.

(1) That the Appellants were and Moukarzel was not in possession of the said lorries, trailers and spare parts at the date of attachment and this fact sufficed to entitle them under the provisions of the said Order 44 Rule 25 (1) to an Order releasing the said property from attachment ;

20 (2) That the Appellants had such an interest in the said lorries and trailers by virtue of the said deed dated the 22nd November 1946 coupled with the deposit of the documents of title in respect of the said lands as entitled them to have all the said property released from attachment. Exhibit C. pp. 80-82.

16. It was contended for the Respondent Azar *inter alia* :— p. 9.

(1) That the Judgment Debtor still had ownership of the properties attached and the Appellants had no legal title thereto ; any possession they had was obtained only by an illegal seizure.

(2) That the said deed dated the 22nd November 1946 so far as it related to motor-vehicles was void and unenforceable by reason of the provisions of the Defence (Control of Transfer of Used Motor-Vehicles) Order 1943 (as amended). Exhibit C. pp. 80-82.

30 (3) That the said letter dated the 28th November 1946 in so far as it related to lands at Kumasi and the said deposit of title deeds were of no effect for want of registration of any mortgage under the Kumasi Lands Ordinance 1943, Section 22. Exhibit D. pp. 83-84.

(4) That the transactions evidenced by or contained in the said deed and the said letter were avoided by the Statute 13, Elizabeth, Chapter 5, as constituting a fraud upon creditors of Moukarzel. Exhibit C. pp. 80-82. Exhibit D. pp. 83-84.

17. The relevant provisions of the Defence (Control of Transfer of Used Motor-Vehicles) Order 1943 as amended by the Defence (Control of Transfer of Used Motor-Vehicles) (Amendment) Order 1944 are as follows :—

“ 2. In this Order, unless the context otherwise requires ‘ purchase ’ includes any acquisition of the property in a used motor-vehicle ; ‘ sell ’ includes any transfer of the property in a used motor-vehicle ; ‘ Used motor-vehicle ’ means a motor vehicle

as defined in Section 2 of the Motor Traffic Ordinance (Cap. 195) which has at any time been licensed under that Ordinance for use on a public highway.

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

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

There follow provisions for the grant of a permit by the Competent Authority "if satisfied that the transfer of the used motor-vehicle is 10 essential or desirable." There is scheduled to the said order a form of application and permit whereon the intending vendor is required to state (*inter alia*) the reasons for the intended sale and particulars of the date on which and the price for which he purchased the vehicle concerned and the intending purchaser is required to state the reasons for the intended purchase and the District in which he proposes to use the vehicle concerned.

A motor-vehicle is defined in Section 2 of the Motor Traffic Ordinance as follows :—

"Motor-vehicle includes every description of vehicle propelled by means of mechanism contained within itself, other than vehicles 20 constructed for use on specially prepared ways such as railways or tramways."

A trailer is defined in the same section as meaning :—

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

18. The relevant provisions of the Kumasi Lands Ordinance No. 17 of 1943 are as follows :—

"22. (1) No lease, transfer, devolution, mortgage, whether 30 legal or equitable, assignment, underlease or surrender of land vested in the Asantehene under the provisions of this Ordinance, shall be of effect until the same is registered by the Commissioner of Lands . . ."

S. 2. "'Asantehene' means the person who is recognised by the Governor as occupant of the Golden Stool of Ashanti . . ."

pp. 22-24.

19. On the 19th March 1947 Mr. Justice Smith delivered a reserved judgment, and his findings may thus be summarised :—

p. 23, ll. 34-35.

(1) That the securities given by Moukarzel to the Appellants were given to secure genuine debts and were not avoided by any 40 provision of 13 Eliz. Cap. 5 ;

Exhibit C.

pp. 80-82.

p. 23, ll. 36-44.

(2) That the deed dated the 22nd November 1946 constituted a valid Bill of Sale and that the provisions of United Kingdom legislation requiring registration of Bills of Sale do not form part of the law of the Gold Coast ;

(3) That upon the true construction of the Defence (Control of Transfer of Used Motor-Vehicles) Order, such Orders only extended to outright sales of used motor-vehicles and did not affect the Appellants' security ;

(4) That the letter dated the 28th November 1946 and the deposit of the title deeds of the landed properties which, as the learned Judge expressly found, took place before Judgment was obtained, constituted a good equitable mortgage of all the property therein mentioned ;

10 (5) That the equitable mortgage of the Appellants over the said lands at Kumasi was of no effect as against the Judgment Creditors for want of registration under the provisions of section 22 (1) of the Kumasi Lands Ordinance.

20. By consent of all parties judgment on the interpleader issue between the Appellants and the Respondents K. Massoud & Sons followed the judgment above summarised in the issue between the Appellants and Azar. The learned Judge accordingly made orders upon both issues :—

(1) upholding the Appellants' claim to be secured creditors in respect of the lorries, trailers and spare parts and the lands outside Kumasi ;

(2) dismissing the Appellants' claim to be secured creditors in respect of the said lands at Kumasi ;

(3) declaring that the Respondents were entitled to attach and sell all the said property subject to the prior interest of the Appellants in the property mentioned in sub-paragraph (1) hereof.

21. The Appellants appealed to the West African Court of Appeal against the decision of Smith J. with regard to the said lands at Kumasi by Civil Appeal No. 44 of 1947 ; the Respondent Azar (by Civil Appeal No. 53 of 1947) and the Respondents K. Massoud & Sons (by Civil Appeal No. 54 of 1947) cross-appealed with regard to the lorries, trailers and spare parts. There was no appeal against the learned Judge's decision with regard to the lands situate elsewhere than at Kumasi.

22. On the 13th December 1947 the West African Court of Appeal (Verity C.J. M'Carthy and Coussey JJ.) delivered judgment. With regard to the lands at Kumasi the Court held that the undertaking contained in the said letter dated the 28th November 1946 coupled with the deposit of the title deeds constituted an equitable mortgage thereof which had not been registered under the provisions of section 22 of the Kumasi Lands Ordinance and was therefore of no effect. The Court rejected the argument of the Appellants that the said lands were nevertheless held by Moukarzel on account of or in trust for the Appellants within the meaning of Schedule 3, Order 44, Rule 25 of the Courts Ordinance by reason of the equitable lien or charge accruing to the Appellants on their discharge at Moukarzel's request of the latter's indebtedness to Barclays Bank in return for the documents of title. In so ruling the Court relied upon the decision in *Re Taylor Stileman and Underwood* (1891) 1 Ch. 590, in which a

p. 41, ll. 16-20. solicitor was held to have abandoned his lien on his client's papers by taking security for his costs, but which, it is respectfully submitted, has no bearing on the problem involved in these appeals. Upon the cross-appeal relating to the lorries and trailers the Court held that an assignment by Bill of Sale of a used motor-vehicle fell within the terms of the Defence (Control of Transfer of Used Motor-Vehicles) Orders, and that the security relied upon by the Appellants, because of the lack of any such permit as was prescribed by the said Orders was void and of no effect. It was not argued before the Appeal Court that the Appellants' security was avoided by the provisions of 13 Elizabeth Cap. 5. 10

p. 41, ll. 28-34. Exhibit D. pp. 83-84. The Court upheld the decision of Smith J. that the said letter dated the 28th November 1946 created an equitable mortgage of the spare parts and that the Respondent was only entitled to attach the same subject to the Appellants' prior charge.

p. 45, ll. 19-22. 23. Immediately after the above judgment had been delivered Counsel for the Appellants drew the attention of the Court to the fact that no distinction had been drawn by the Court in the said judgment between motor-vehicles, as defined for the purpose of the Defence (Control of Transfer of Used Motor-Vehicles) Orders and trailers. Counsel for the Appellants requested the Court to reconsider the question of the trailers 20 the transfer of which he contended was not prohibited by the said Orders. According to the recollection of the Appellants' said Counsel, he drew the attention of the Court in the course of the argument to the said definition of motor-vehicles. The Court, however, declined to reconsider this aspect of the matter, and one of the learned Judges mentioned that his impression of the argument was that a lorry with trailer attached formed one motor-vehicle.

p. 42, ll. 30-32. 24. By consent of all parties the judgment in Civil Appeal No. 54 of 1947 followed that above summarised in Civil Appeals Nos. 44 and 53 of 1947, and the West African Court of Appeal accordingly made orders 30 in all three appeals :—

p. 41, ll. 35-36. (1) Dismissing the Appellants' appeal and affirming the judgment of Smith J. with regard to the lands at Kumasi ;

p. 41, ll. 40-42. (2) Dismissing the Respondents' appeals and affirming the judgment of Smith J. with regard to the spare parts ;

p. 41, ll. 37-40. (3) Allowing the Respondents' appeals and setting aside the judgment of Smith J. with regard to the lorries and trailers.

25. It is respectfully submitted that the Court of Appeal misdirected itself on the issue as to the lands in Kumasi.

The real issue, it is submitted, was not whether an equitable mortgage 40 came into existence or what effect, if any, such mortgage could have ; but whether, in the events proved to have happened Moukarzel was or was not at the material time in possession of such lands and if he was in possession of them whether or not they were in his possession on his own account or as his own property or on account of or in trust for the Appellants. This was the relevant test, it is submitted, for the purposes of the said Rule set out in paragraph 13 hereof.

26. It is further submitted that the Court of Appeal erred in failing to have regard to the fact that up to the time when the Bank delivered the deeds relating to the said lands to the Appellants Moukarzel had held the said lands on account of or in trust for the Bank and that it could not have been the intention of the parties that the Appellants in paying off Moukarzel's debt to the Bank should at the same time forego the security which the Bank held.

27. It is further submitted that the Court of Appeal in ruling that the equitable lien accruing to the Appellants on the discharge of Moukarzel's debt was abandoned or waived when the undertaking of the 28th November 1946 was accepted, overlooked the fact that this undertaking did not follow, but preceded, the payment by the Appellants to the Bank.

Exhibit D.
pp. 83-84.

28. As to the effect of the undertaking itself in the light of Section 22 of the Kumasi Lands Ordinance, it is submitted—

(1) that a person who has made a contract for valuable consideration to execute a mortgage, whether the mortgage in question be legal or equitable, is a trustee of the property the subject of such mortgage for the intended mortgagee or holds it on his account; there may be no mortgage, yet there will be an equitable relationship of mortgagor and mortgagee which itself creates rights and obligations;

(2) that any statutory provision directing merely that a mortgage shall be of no effect until registered must be interpreted, in order to avoid conflict with the principle stated under (1) above as meaning no more than that no estate valid against other purchasers will be created by an unregistered mortgage; and

(3) that Section 22 of the Kumasi Lands Ordinance, being of purely local application and manifestly designed to afford a measure of Crown control over dealings in the land thereby vested in the Asantehene, does not require an interpretation so wide as to destroy the obligations and relations referred to under (1) above.

29. On the 13th September 1948 the West African Court of Appeal granted to the Appellants final leave to Appeal against the judgment in Civil Appeals Nos. 44, 53 and 54 of 1947 summarised in paragraph 22 hereof, and these Appeals are Privy Council Appeals Nos. 21 and 23 of 1950.

p. 43, l. 29.
p. 44, l. 15.

RECORD 2.

30. On the 28th March 1947 Azar commenced an action in the Supreme Court of the Gold Coast in which he claimed :—

(1) A declaration that the security constituted by the said deed dated the 16th November 1946 made between himself and Moukarzel over the 14 lorries and trailers therein referred to had priority in law and equity over any security constituted by the said deed dated the 22nd November 1946 made between the Appellants and Moukarzel or by the written undertaking dated the 28th November 1946 given by Moukarzel to the Appellants;

p. 2, ll. 22-28.

RECORD 1.

Exhibit I.
pp. 77-79.
Exhibit C.
pp. 80-82.
Exhibit D.
pp. 83-84.

p. 2, ll. 29-30.

(2) A declaration that he was entitled to be treated as first mortgagee and to all the rights and remedies of a first mortgagee in respect of the said 14 lorries and trailers ;

p. 2, ll. 31-34.

(3) That he was entitled to sell the said 14 lorries and trailers and to apply the proceeds in payment of the debt thereon secured.

To this action both the Appellants and Moukarzel were made Defendants.

. 3.

RECORD 1.

Exhibit 1.
p. 77-79.

RECORD 2.

. 3, ll. 21-23.

. 4, ll. 23-24.

4, l. 19.

3, ll. 23-25.

4, ll. 24-26.

31. It was contended for the Appellants :—

(1) By the terms of the deed relied upon by Azar he was given alternative rights either to sue on the covenant to repay 10 or to seize the said lorries and trailers ; that he had elected to sue and was bound by his election ;

(2) that the said deed created no mortgage ;

(3) that in any event the Appellants' security was entitled to priority.

p. 13-16.

15, ll. 39-40.

RECORD 1.

Exhibit C.

p. 80-82.

RECORD 2.

15, ll. 18-24.

16, ll. 19-21.

16, ll. 24-25.

17, l. 14.

32. The action was heard by Smith J. on the 11th and 13th June 1947, and judgment was given on the 17th June 1947. The learned Judge held that the Appellants had a legal mortgage over all the lorries and trailers described in the Schedule to the deed dated the 22nd November 1946 which was (as he had previously held) unimpaired by the Defence 20 (Control of Transfer of Used Motor-Vehicles) Orders ; that Azar's security was (at best) equitable only ; and that the Appellants having (as the learned Judge expressly found) no notice of Azar's equity were entitled to priority.

The learned Judge accordingly made an order dismissing Azar's claim.

p. 18-19.

21, ll. 17-18.

21, ll. 23-28.

21, ll. 18-20.

21, ll. 20-22.

33. Azar appealed to the West African Court of Appeal by Civil Appeal No. 55 of 1947. The appeal came on for hearing before Verity C.J. M'Carthy and Coussey JJ. on the 13th December 1947 immediately after judgment had been given in Civil Appeals Nos. 44, 53 and 54 of 1947, 30 and it was agreed by all parties that judgment in this appeal should follow that which had been delivered in the other three. Accordingly the judgment of Smith J. was set aside and it was declared that Azar was entitled to be treated as first mortgagee of the fourteen lorries and trailers. The Court did, however, hear argument upon the learned Judge's finding that the Appellants had no notice of Azar's security. While stating that in view of the Judgment in Civil Appeals Nos. 44, 53 and 54 of 1947 the question did not arise for decision, the Court expressed the view that the decision of Smith J. was right in the said respect.

22, l. 15.

34. On the 13th September 1948 the Appellants were granted final leave to appeal against the judgment in Civil Appeal No. 55 of 1947, and 40 this Appeal is Privy Council Appeal No. 22 of 1950.

35. These appeals have been consolidated and it is submitted on behalf of the Appellants that their appeals should be allowed with costs for the following among other

REASONS.

IN PRIVY COUNCIL APPEALS NOS. 21 AND 23 OF 1950.

- (1) BECAUSE the Appellants' rights under the Bill of Sale relating to the lorries and trailers are not invalidated by the Defence (Control of Transfer of Used Motor-Vehicles) Orders.
- 10 (2) BECAUSE a trailer, in any event, is not a motor-vehicle within the meaning of the said Orders.
- (3) BECAUSE the decision of Smith J. dated the 19th March 1947 with regard to the lorries and trailers is correct in law and that of the West African Court of Appeal dated the 13th December 1947 is wrong in the like respect.
- (4) BECAUSE by reason of the equities arising from the transaction whereby the Appellants discharged Moukarzel's indebtedness to Barclays Bank and received the title deeds to the Kumasi lands, the said lands were held, thereafter and at the time of their attachment, by Moukarzel on account of alternatively in trust for the Appellants to the extent of the amount so discharged.
- 20 (5) BECAUSE the said equities are not affected by the provisions of the Kumasi Lands Ordinance.
- (6) BECAUSE at the time of the attachment the said lands were not in the possession of Moukarzel as his own property.
- (7) BECAUSE there was no evidence that Moukarzel was in possession of the said lands or that they were in the possession of any person in trust for him or in the occupancy of any persons paying rent to him.
- 30

IN PRIVY COUNCIL APPEAL No. 22 of 1950.

- (1) BECAUSE the document relied on by the Respondent Azar was not a legal mortgage of the vehicles therein mentioned, nor had the Appellants any notice of it.
- (2) BECAUSE the said document gave the Respondent Azar an election whether to sue on the covenant for repayment therein contained or to avail himself of the limited licence thereby granted to seize the said vehicles; and because the Respondent Azar is bound by his election to sue on the covenant.
- 40

- (3) BECAUSE the Appellants were in possession of the chattels.
- (4) BECAUSE the decision of Smith J. dated the 17th June 1947 is right and that of the West African Court of Appeal dated the 13th December 1947 is wrong.

C. P. HARVEY.

RODGER WINN.

In the Privy Council.

ON APPEAL

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

BETWEEN

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

AND

PHILIP SAID AZAR (Judgment Creditor)
Respondent

AND BETWEEN

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

AND

PHILIP SAID AZAR (Plaintiff) *Respondent*

AND BETWEEN

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

AND

K. MASSOUD & SONS (Judgment Creditors)
Respondents.

(Consolidated by Order dated 3rd April 1951)

Case for the Appellants.

FARRAR, PORTER & CO.,

2 Wardrobe Place,

Doctors' Commons,

London, E.C.4,

Solicitors for the Appellants.