

~~CIT 1959~~

Tanganyika

Judicial C 1959

IN THE PRIVY COUNCIL

No. 4 of 1957

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N:

HASSANALI KURJI KANJI trading
as Hassan Trading Stores (Defendant)
Appellant

- and -

GAILEY & ROBERTS LIMITED (Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

GIBSON & WELDON,
27, Chancery Lane,
London, W.C.2.
Solicitors for the Appellant.

LINKLATERS & PAINES,
Barrington House,
59-67, Gresham Street,
London, E.C.2.
Solicitors for the Respondents.

IN THE PRIVY COUNCILNo. 4 of 1957

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FOR EASTERN AFRICA

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HASSANALI KURJI KANJI trading (Defendant)
as Hassan Trading Stores Appellant

- and -

GAILEY & ROBERTS LIMITED (Plaintiffs)
Respondents

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DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
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1	Exhibit No.16 Plaintiffs' Bank Pass Book sheets	June to October 1952
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10	Part of evidence of Gulshan Natha Hirji	9th December 1954.
11	Part of evidence of William Henry Primrose	9th December 1954.
12	Part of Judges Notes of Hearing at Arusha	9th December 1954.
13	Exhibit No.20 Affidavit of Ian Stewart Bedale and the Exhibit thereto sworn	9th June 1955.
14	Exhibit No.21 Plaint in Gailey & Roberts (Tanganyika) Limited -v- Husein Alibhai Ramji and Annexure "A" thereto	Undated.

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
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15	<p data-bbox="391 506 1018 576"><u>IN THE HIGH COURT OF TANGANYIKA ARUSHA DISTRICT REGISTRY (Contd.)</u></p> <p data-bbox="373 608 999 704">Part of Judges Notes of Hearing at Dar-es-Salaam including part of Notes of Defendant's evidence</p>	14th June 1955
	<p data-bbox="391 772 1002 842"><u>IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA</u></p>	
16	Extracts from Notes of Arguments on Appeal Worley P.	28th & 29th June 1956.
17	Extracts from Notes of Arguments on Appeal Sinclair, V.P.	28th & 29th June 1956.
18	Extracts from Notes of Arguments on Appeal Briggs, J.A.	28th & 29th June 1956.
19	Order granting conditional leave to appeal to Her Majesty in Council	7th November 1956.

1.

No. 1.

PLAINT

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA

IN THE DISTRICT REGISTRY AT ARUSHA

CIVIL CASE NO. 3 of 1954

GAILEY & ROBERTS LIMITED

Plaintiffs

versus

HASSANALI KURJI KANJI
Trading as Hassan Trading
Stores (a Firm)

Defendant

PLAINT

1. The Plaintiffs are a limited liability company incorporated in Tanganyika carrying on business at Moshi and elsewhere.

2. The Defendant is an Indian carrying on business at Moshi under the style and name of Hassan Trading Stores.

20 3. The Plaintiffs claim the sum of Shs.97,936/54 being the amount due to the Plaintiffs for goods supplied to Hassan Trading Stores from July 1951 until August 1953. Particulars are annexed hereto marked "A".

4. The Plaintiffs claim interest on the said sum mentioned in paragraph 3 at 6 per centum per annum amounting to Shs.16,884/77. Full particulars are annexed hereto and marked "B".

30 5. In or about December 1951 the Defendant undertook the liability of the account of Hassanali and Company amounting to Shs. 118,444/70 together with interest at 7½% per centum per annum amounting to Shs. 3,017/37. Particulars are attached hereto and marked "C" and "D" respectively.

6. The Plaintiffs' total claim against the Defendant in respect of the account of Hassanali & Co., amounts to Shs. 121,462/07.

In the High Court
of Tanganyika
Arusha District
Registry.

No. 1.

Plaint.

5th February,
1954.

In the High Court of Tanganyika Arusha District Registry.

No. 1.

Plaint.

5th February, 1954 - continued.

7. In or about February 1952 the Defendant paid a cheque to the Plaintiffs of Shs.25,000/- in part payment of the said account of Hassanali & Co.

8. In or about June 1952 the Defendant paid a cheque to the Plaintiffs of Shs. 10,000/- in part payment of the account of Hassanali & Co.

9. In or about December 1953 the Defendant paid a cheque to the Plaintiffs for the sum of Shs. 3,000/- in part payment of the said account of Hassanali & Co.

10

10. The Defendant has acknowledged his indebtedness to the Plaintiffs in respect of the account of Hassanali & Co.

11. By reason of the premises the Plaintiffs claim to be entitled to a sum of Shs.236,283/38.

Wherefore the Plaintiffs pray for judgment for:

- (1) Shs. 236,283/38.
- (2) Costs
- (3) Such other or further relief as to this Honourable Court may seem fit.

20

The cause of action arose within the jurisdiction of this Honourable Court.

The value of this suit for the calculation of Court Costs is Shs. 236,283/38.

Dated at Moshi this day of 1954.

For and on behalf of
GAILEY & ROBERTS (TANGANYIKA) LTD.

(Sgd.) W.H. PRIMROSE

Branch Manager.

Plaintiffs.

30

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

For and on behalf of
GAILEY & ROBERTS (TANGANYIKA) LTD.

(Sgd.) W.H. PRIMROSE

Branch Manager,

Plaintiffs.

P. 2384/-
 S. 4/-
 EX. 16/-

 2404/-
 801/50

 3205/50

In the High
 Court of
 Tanganyika
 Arusha District
 Registry.

No. 1.

Plaint.

5th February,
 1954
 - continued.

10

Filed this 5th day of February 1954

E. Rodrigues
 Court Clerk
 5/2/54.

Filed by D. Cassidy, Advocate, Moshi.

STATEMENT (ANNEXURE "A")

TO HASSAN TRADING STORE,
 P.O. BOX 48, MOSHI.

Extract from
 Annexure "A"
 (undated)

DR. to

GAILEY & ROBERTS (TANGANYIKA) LIMITED
 Registered Office: DAR ES SALAAM.

		Shs.Cts.	Shs.Cts.
To Balance		93780.34	
20	Dec. 1951 To Invoice No.26423	6351.17	
	To Invoice No.26453	1875.73	
	4 To Invoice No.26477	26.00	
	7 To Invoice No.26518	173.50	
	To Invoice No.26521	460.00	
	13 To Invoice No.26525	3067.92	
	14 To Invoice No.26599	364.36	
	Dec.21 To Invoice No.26617	685.00	
	To Invoice No.26618	162.42	
30	To Invoice No.26700	466.00	
	27 To Invoice No.26722	84.00	
	By cheque		15000.00
	31 To transfer from a/c Mohamedali Jafferli	<u>9345.70</u>	
	By balance		101842.14
		<u>116842.14</u>	<u>116842.14</u>

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 1.
Plaint.
Extract from
Annexure "A"
(undated)
- continued.

	Shs.Cts.	Shs.Cts
To Account rendered		
b/f	91180.79	
June 1952 To Invoice No.28670		
100 per x 10 ft. Aluminium sheets short suffered 100 ft. 2600/-		
10 per x 6 ft. Aluminium sheets short suffered 156/-		10
	2756.00	
	93936.79	
By cheque		25000.00
By balance		68936.79
	93936.79	93936.79

Annexure "C"
to Plaint
(undated).

STATEMENT (ANNEXURE "C")

MOSHI

	Shs.Cts	Shs.Cts
No. 1.		
To, HASSANALI & CO., P.O. Box No.48, MOSHI.		20
DR. to GAILLEY & ROBERTS (TANGANYIKA) LIMITED Registered Office: Dar-es-Salaam.		
	Shs.Cts	Shs.Cts
To Account Rendered		
To Invoice No.25061		
Aug. 1951 10,000 R.F.T. Asst. C.I. Sheets 26 Gaze	25500.00	
Sept.1951 To Invoice No.25352 1413 6 x 8/3" Cor.iron Sheets		30
8478 ft.	30944.70	
Dec. 1951 To transfer of a/c of Mohamedali Jaffer	100000.00	
Feb. 1952 By Cheque		25000.00
June 1952 " "		10000.00
Dec. 1952 " "		3000.00
" Balance		118444.70
	156444.70	156444.70
To Balance	118444.70	40

5.

No. 2.

STATEMENT OF DEFENCE

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 2.

Statement of
Defence.

(Undated)

Hassanali Kurji Kanji, the Defendant above named, states as follows :-

1. That he does not admit paragraph 1 of the Plaintiff.

2. That he admits paragraph 2 of the Plaintiff.

10 3. That, with regard to paragraph 3 of the Plaintiff, he denies being indebted to the Plaintiff in the sum sued for but admits owing the sum of Shs. 52,170/64 and states as follows :-

(a) That Defendant's Credit No.1714 under date July 31st, 1951, for Shs. 340/-, has been debited instead of credited.

(b) The Plaintiff has failed to give credit for the sum of Shs.1,101/75 as per Credit Note No.3060 dated 30/8/51.

20 (c) The Defendant denies having received the goods to the value of Shs. 2,756/- specified in Plaintiff's invoice dated 31/5/52.

(d) The Defendant has no knowledge of, and denies having issued, a cheque for Shs. 35,133/75 as debited to his account in October, 1952. In any event no credit entry appears in the Plaintiff's account in respect of such cheque.

(e) The Plaintiff has failed to give credit for the sum of Shs. 3,000/- paid by the Defendant in December, 1953.

30 (f) The Defendant paid the sum of Shs.3,094/40 in February, 1954.

4. That he does not admit liability for interest as claimed in paragraph 4 of the Plaintiff.

5. That, with regard to paragraphs 5, 6, 7, 8, 9 and 10 of the Plaintiff, he denies that he undertook the liability of Hassanali and Company and made any payment on account thereof.

In the High Court of Tanganyika Arusha District Registry.

No. 2.

Statement of Defence.

(Undated)

- continued.

6. That he denies paragraph 11 of the Plaintiff.

WHEREFORE the Defendant prays that judgment be entered for the sum of Shs. 52,170/64 and that the Defendant be awarded the costs of suit.

(Sgd.) H.K. KANJI, Defendant.

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

10

(Sgd.) H.K. KANJI, Defendant.

Filed by:

Sd. A. Reid.

Advocate for Defendant.

No. 3.

Reply to Statement of Defence.

(Undated)

No. 3.

REPLY TO STATEMENT OF DEFENCE

1. The Plaintiffs join issue with the Defendant on the Defence.

2. The Plaintiffs repeat paragraph 1 of the Plaintiff and state further that the name of the Company is Gailey and Roberts (Tanganyika) Limited and the Company's Registered Office is at Dar-es-Salaam.

20

3. With regard to paragraph 3 (a) the said sum of Shs. 340/- was a credit note by the Defendant to the Plaintiffs and is correctly debited to the Defendant's A/c.

4. With regard to paragraph 3(B) the said credit note was cancelled as the Defendant was not entitled to any further discount as he was supplied with the said goods at "F" prices being the price applicable to sales of goods between traders in the same business under the Price Control Schedules.

30

5. With regard to paragraph 3 (c) the said debit of Shs. 2,756/- occurred because the Defendant delivered to the Plaintiffs certain aluminium sheeting, and the said delivery was short by 110 pieces, and as the Plaintiffs on or about the 20th February 1952 had already paid the full amount to the Defendant for the said sheeting, he was debited with the said sum to cover his short delivery. The price of the said sheeting was Shs.2/60 per ft. and the Defendant delivered short 1060 ft.

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 3.

Reply to State-
ment of Defence.

(Undated)
- continued.

6. With regard to paragraph 3 (D) the Defendant gave one cheque for Shs. 25,000/- and one cheque for Shs. 10,000/- on the 27th June 1952, the cheque for Shs. 25,000/- was to be paid to the credit of the A/c of Hassan Trading Stores and the cheque for Shs. 10,000/- was to be paid to the credit of the A/c of Hassanali and Co., these two cheques were credited to the respective accounts according to the instructions of the Defendant, both cheques were returned unpaid. The Defendant then gave a further cheque for Shs. 35,000/- which in due course was presented and returned unpaid by Barclays Bank Moshi on the 30th October 1952, and accordingly the Defendant's A/c Hassan Trading Stores was debited with the total sum together with the Bank Commission.

7. With regard to paragraph 3 (E) the Plaintiffs state that they credited the A/c of Hassanali and Co., with the said sum of Shs. 3,000/- and the Defendant agreed and/or acquiesced in them doing so.

8. The Plaintiffs informed the Defendant that interest would be chargeable by the letter dated 17th September 1953, and the Defendant acquiesced in such interest being payable and he raised no objection thereto until the date of his defence, a copy is attached hereto and marked "A".

WHEREFORE the Plaintiffs
pray for Judgment as
claimed in the Plaint.

For and on behalf of
GAILLEY & ROBERTS (TANGANYIKA) LTD.

(Sgd.) W. H. PRIMROSE,

Branch Manager,

Plaintiffs.

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 3.

Reply to State-
ment of Defence.

(Undated)
- continued.

Annexure "A" to
Reply to State-
ment of Defence.

17th September,
1953.

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

For and on behalf of
GAILEY & ROBERTS (TANGANYIKA) LTD.

(Sgd.) W.H. PRIMROSE

Branch Manager.

Plaintiffs.

Filed by:
D. Cassidy,
Advocates for Plaintiffs.

10

ANNEXURE "A" TO REPLY TO STATEMENT OF DEFENCE
W. H.P/GNH. COPY 17th September 1953

Mr. Hassanali Kurji Kanji,
MOSHI.

Dear Sir,

We enclose herewith statements of account in respect of the following as at 31st August 1953 -

Messrs.Hassan Trading Store Shs.115,380/54
Messrs.Hassanali and Co. Shs.121,444/70

20

Will you please advise us by return in writing what arrangements you intend to make to have this outstanding account settled. We are charging you interest on account of Messrs.Hassan Trading Store and will have no alternative but to charge interest on the Account of Messrs. Hassanali & Co., from 1st September 1953.

Failing a satisfactory reply before 25th instant we shall have no alternative but place this matter with our lawyers for legal procedure.

30

Yours faithfully,
GAILEY & ROBERTS (TANGANYIKA) LTD.

(Sgd.) W.H. PRIMROSE,

BRANCH MANAGER.

Received the original hereof 18/9/53.

Encls: 2

Signed.

Hassanali Kurji Kanji.
18/9/1953.

No. 4.

AMENDMENT TO PLAINT

AMENDED PARAGRAPH 5 OF PLAINT
made in pursuance of an Order of Mr. Justice
Mahon dated the 28th day of June, 1954.

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 4.

Amendment to
Plaint.
7th July, 1954.

10 5. In or about December 1951 it was agreed orally
between Mr. F. A. Green the then Manager of the
Plaintiffs at Moshi and the Defendant and H. K.
Premji that Shs. 100,000/- should be transferred
from the account of Mohamedhally Jafferalli to the
account of Hassanali and Co., the said H.K. Premji
being registered as the proprietor of Hassanali
and Co., and it was agreed at the same time that
the balance of the said account of Mohamedhally
Jafferalli some Shs. 9,344/70 should be transferred
20 to the account of Hassan Trading Store of which the
Defendant is the registered proprietor, and it was
further agreed between the aforementioned parties
that the Defendant would undertake the responsibil-
ity for the payment of the account of Hassanali and
Co., which at the time of the said undertaking in-
cluded the amount transferred from the account of
Mohamedhally Jafferalli. A copy of the account of
Mohamedalli Jafferalli is attached hereto and marked
"E". Copies of the accounts of Hassanali and Co.,
and Hasan Trading Store are attached and marked "C"
and "D" respectively.

30 On or about the 4th day of March 1953, the
Plaintiffs' Manager Mr. Thrower approached the
Defendant with regard to the payment of Hassanali
and Co's. account, whereupon the Defendant orally
agreed that he was liable for the said account of
Hassanali and Co., which he knew at the time stood
at Shs. 121,444/70 and that all the accounts ren-
dered to the Defendant have always included the
said sum of Shs. 100,000/- shown to the Debit of
Hassanali and Co.

40 For and on behalf of
GAILEY & ROBERTS (T) LTD.,
Sd. W.H. PRIMROSE,
Branch Manager.

Dated at Moshi the
7th day of July 1954.

In the High Court of Tanganyika Arusha District Registry.

No. 4.

Amendment to Plaintiff.

7th July, 1954
- continued.

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

For and on behalf of
GAILEY & ROBERTS (TANGANYIKA) LTD.
Sd. W.H. PRIMROSE.
Branch Manager,
Plaintiffs.

Filed by: Sd. D. Cassidy.
D. CASSIDY,
ADVOCATE FOR PLAINTIFFS.

10

Annexure "C" to Amended Plaintiff.

31st December, 1951.

ANNEXURE "C" TO AMENDED PLAINT

Hassanali & Co.,
P.O. Box 48,
MOSHI.

"C"

December 31st, 1951.

R.41.

Aug. Sept. 1951

56,444.70

December 31

To Transfer

(of a/c of Mohamedali Jafferalli)

100,000.00

20

156,444.70

Annexure "D" to Amended Plaintiff.

31st December, 1951.

ANNEXURE "D" TO AMENDED PLAINT

"D"

Mohamedally Jafferalli
P.O. Box 48,
MOSHI.

December 31st, 1951.

M.98.

August Sept. 1951

109,345.70

December 31

By Transfer

(a/c H.Trading Stores)

9,345.70

30

By Transfer

(of a/c Hassanali & Co.)

100,000.00

109,345.70 109,345.70

ANNEXURE "E" TO AMENDED PLAINT

"E"

STATEMENT

MOSHI.

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 4.

Annexure "E" to
Amended Plaintiff.

To: Mohamadally Jafferalli,
P.O. Box No. 48,
MOSHI.

DR. to

GAILEY & ROBERTS (TANGANYIKA) LIMITED
Registered Office: DAR-ES-SALAAM.

(Undated)

	<u>Shs.Cts.</u>	<u>Shs.Cts</u>
10	To Account Rendered	
Aug. 1951	To Invoice No.25220 9000 R. Ft. Corr. Iron Sheets 10 x 3x24a	
	39,600.00	
20	Sept. 1951 To Invoice No.25309 "F" 776 Sheets Corr. Iron 6x8/3"	
	660 " " "	
	580 " " "	
	522 " " "	
	464 " " "	
	10x8/3"	
30	= 23218 R. ft.	84,745.70
Nov. 1951	By Cheque	15,000.00
	By Balance	109,345.70
	<u>124,345.70</u>	<u>124,345.70</u>
	To Balance	109,345.70
40	Dec. 1951 By Transfer to A/c of Hassan Trading Store	
		9,345.70
Dec. 1951	By Transfer to A/c of Hassanali & Company	
		100,000.00
	<u>109,345.70</u>	<u>109,345.70</u>

In the High
Court of
Tanganyika
Arusha District
Registry.

PLAINTIFF'S EVIDENCE

No. 5.

Plaintiff's
Evidence.

No. 5.

Frank Alfred
Green.

9th December,
1954.

Examination.

P.W.1. FRANK ALFRED GREEN, sworn, states :-

Examination-in-Chief

CASSIDY: Mr. Green, I think you were the manager of Gailey & Roberts, Moshi, in 1951, 1952? - Yes.

And were you succeeded in January 1953 - you left in January, 1953? - Yes.

Were you succeeded by Mr. Thrower? - Yes.

Now, you had dealings whilst you were there as the manager with one Hassanali Kurji Kanji who was the proprietor of Hassan Trading Stores? - Yes.

10

COURT: Sole proprietor do you know? I could not say, your honour, if he was the sole proprietor.

Examination Continued

And did you also have dealings with Hassanali & Co.? - Yes.

And Mohamedali Jafferli? - I think so, yes.

COURT: Do you remember that?

CASSIDY: It is some time ago, I quite agree.

20

Examination Continued

Have you seen anybody you recognised outside the Court this morning, any Asian? - I am afraid not: I don't know.

Now, round about some time in 1951 did your head office get disturbed about certain outstanding accounts? - Yes.

Which outstanding accounts were those? Can you remember? - No, I think there were several.

Can you recall - not the figures actually - was the Hassan Trading Store account one of those? - I cannot say definitely, possibly.

30

Did you get a letter from Mr. Barclay on the 24th December - ..

In which he complains about two accounts, Hassan Trading Stores and Hassanali & Co.? - Possibly, but I cannot

In the High Court of Tanganyika Arusha District Registry.

COURT: A letter from whom?

CASSIDY: Mr. Barclay.

COURT: He is in Nairobi?

CASSIDY: The Chief Accountant.

10 COURT: If he saw the letter he would possibly remember the fact. You don't mind that, do you, Mr. Reid?

REID: I don't think the witness remembers Barclay at all from what he said.

Plaintiff's Evidence.

No. 5.

Frank Alfred Green.

9th December, 1954.

Examination - continued.

Examination Continued

This is in June, 1951. Is that written by you? - It is only a copy. - Usually I put my initials.

You were manager in June, 1951, were you? - Yes.

20 Well, put it this way, Mr. Green. Were Hassan Trading Store paying their account? Were they people who settled their accounts regularly every month? - At one time they were one of my best customers.

COURT: Hassan Trading Stores? - Yes, or Kanji.

Examination Continued

In 1951 was he paying everything up to date? - I don't think he was.

30 Did you have a meeting with Mr. Kanji with regard to his account? - Yes. I know on one occasion I went and when I was either away or was busy with clients or other things I usually sent either my European assistant or my Asian assistant, or both.

In the High
Court of
Tanganyika
Arusha District
Registry.

Plaintiff's
Evidence.

No. 5.
Frank Alfred
Green.

9th December,
1954.

Examination
- continued.

Did you have a meeting with Mr. Kanji with regard to his account? - Yes.

What I want you to try and remember is did a meeting take place in your office between yourself and the proprietor of Hassanali & Co., sometime in December, 1951? - I cannot say whether it was in my office. I think I did, because I got cheques, post-dated cheques in settlement of the account.

Now, what was the purpose of that meeting? - Well, to get the money. 10

From what account? - (witness does not answer).

One of the main points in dispute, Mr. Green, in this case, is here is an account of Hassanali & Co., You see there a figure of Shs.100,000/- and it is alleged that this has been transferred from the account of Mohamedali Jafferli to the account of Hassanali & Co., in December 1951. Well, you told his lordship ... will you tell his lordship when that transfer took place? - Well, your lordship, because these people could not pay ... 20

Hassanali & Co., could not pay? - The other people agreed to take it over.

These people could not pay? - Yes.

COURT: Who could not pay?

CASSIDY: Hassanali & Co.

COURT: I must get the evidence from the witness.

Examination Continued

When you said, though, these people could not pay, do you mean the people at the head of that, or what? - Mohamedali Jafferli. 30

Mohamedali Jafferli could not pay? - Yes.

So the Shs.100,000/- was transferred from his account? - Yes.

Now, why was it transferred to Hassanali & Co.'s account? - I think because Hassanali & Co. agreed to take it because I remember on the cheques there was a rubber stamp of Hassanali & Co.

Well, Hassanali & Co. agreed. Now, let us take it a stage further from there. Did anybody else agree to take the liability of Hassanali & Co's. account? - Well, frankly .. the only other one could be Hassanali Trading Co., Kanji.

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Was he present at this meeting? - This I cannot answer definitely. I really don't remember whether he was present.

Plaintiff's
Evidence.

10 Did he at any time agree to undertake the liability of Hassanali & Co's account? - I think so, yes, because I had these cheques, as I say.

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But did he verbally agree with you at any time to undertake the liability for that account as it stood? - My impression was that he did.

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Examination
- continued.

You think it was quite a time ago? - It was 1951.

20 After this meeting which took place did you give certain instructions to your staff in the accounts branch? Did you give instructions to the accounts people? - With regard to what?

With regard to these transactions, the transfer of Shs.100,000/-? - I think I must have done, because surely if it is reflected in the books.

Your view is that they would not have done it without reference to you? - No.

I see, now, would you also look at this account of You will note the date of this one

30 COURT: Mr. Cassidy, if you are referring to different accounts like that, if you can, refer them to me.

CASSIDY: I beg your pardon, my Lord. Hassanali & Co., I think that is Exhibit "C".

COURT: That is the last two pages attached to the plaint?

CASSIDY: Yes, that is Exhibit "C" and "D" to the plaint. Hassanali & Co's account. Now I go back, my Lord, to Exhibit "A" of the plaint, the 7th page.

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Examination Continued

Do you see the figure there, Mr. Green. of Shs. 9,345/-? - Yes.

Was that a sum of money transferred from Mohamedali Jafferalli's account to the account of Hassan Trading Stores? - Was it transferred?

Yes? - It must be, yes.

That would be done on your instructions? - Yes.

And were your instructions given because of some agreement reached between yourself and these parties? You would not do it without any agreement, would you Mr. Green? - No. 10

And the two transfers, the one for Shs.100,000/- and the one of Shs.9,000/- odd, were they done at the same time? - That I cannot say.

Well, will you refer back to Exhibit "C" which is the account of Hassanali & Co. The date of this one is June, is it not? - December

December, 1951. Both of those transfers were done at the same time? - It would seem so. 20

COURT: Both December, 1951? - Yes, your honour.

Examination Continued

Now, in 1952, did you receive the post-dated cheques to the value of Shs.121,444/-?

Objection by Reid to amounts of cheques being given to witness.

Examination Continued

Did you receive post-dated cheques? - Yes.

To what account were these cheques to be credited when they were paid? - From memory, from this Shs. 100,000/-. 30

Now, were those cheques drawn by the Defendant, or not? - That I have been trying to remember. I do distinctly remember there was a

Plaintiff's
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Examination
- continued.

Hassanali & Co., stamp on them in red sort of ink, but whether they were drawn by them or whether it was endorsed by them I do not remember. But I do remember distinctly the stamp.

Did you know in the latter half of 1952 the bank account of Hassan Trading Store was closed by Barclays' Bank? - In the latter half, yes, I knew that.

10 These cheques were drawn on Barclays' Bank. Do you remember if they were Barclays' cheques? - Yes, they were Barclays' cheques.

COURT: The account of Hassan Trading Store was closed? - Yes, my lord.

What about these cheques? - The cheques weren't given to me after the bank closed their accounts, sir.

Examination Continued

Now, I think you put those cheques away safely, did you, Mr. Green? - Yes.

20 And then I think, in December, 1952, Mr. Thrower took over from you? - At the latter end, yes. And I actually left the office on the 15th January, 1953.

And did you hand him over those cheques, together with everything else? - Yes, I did.

The form of statement you have got in front of you, is that the form of statement your company used, sent out to its customers regularly? - Yes.

30 COURT: The statement in front of him - what is that? Is that a copy of the plaint?

CASSIDY: Yes, that is a copy of the plaint.

Would you look at this book? What is that book exactly? - It is a receipt book.

Receipt book marked No.1 for identification.

At the bottom there, is there a cheque, one for Shs.25,000/-? Is that a cheque paid in to the

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- continued.

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credit of Hassan Trading Stores' account for Shs. 25,000/-? Is that correct? - Yes.

And is the number of that cheque 6726? - Yes.

After that is there a cheque for Hassanali & Company, Shs.10,000/-? - Yes.

And is the number of that cheque 6727? - Yes.

Plaintiff's
Evidence.

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Examination
- continued.

I will refer you again, Mr. Green, to Exhibit "C" of the plaint. Is there a sum there under date June 1952 by cheque, Shs.10,000/- credited to the account of Hassanali & Company? - Yes.

10

COURT: And you say it is the same cheque referred to in that receipt book? - It doesn't give the same number, but the date is the same, sir.

Examination Continued

Exhibit "A", page 14. Is there a cheque of Shs.25,000/- credited thereto the account of Hassan Trading Stores? - Yes.

And that is June the 27th? - Yes.

Can you recall the difficulty? Were those cheques returned unpaid? - Had I not seen the passbook - lately - I would not have known.

20

But you have seen the entries in the passbook, if I may produce that, did you now? - Yes.

Passbook marked No.2 for identification.

These on that date, the 28th of June, - Yes.

COURT: Cheque paid in on the 28th, were they?

CASSIDY: Yes.

COURT: Both of them?

CASSIDY: Both of them.

COURT: And when do they return?

30

CASSIDY: I am afraid this book does not show it. I will give you that later from another record.

COURT: If that is a passbook it should show, shouldn't it, the debit?

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CASSIDY: Anyway, those were the cheques. There again was a cheque for Shs.35,065/75 cts. presented on 31st July. It was re-presented again on August

REID: May it please your Honour, my learned friend is leading too much evidence.

Plaintiff's Evidence.

CASSIDY: I think the next witness will be able to explain the whole of this transaction to your lordship.

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10

Examination Continued

9th December, 1954.

You remember these two cheques now, Mr.Green? I don't remember these two, no, but I can see that we had them all right, and we presented them again.

Examination - continued.

Look at this book. This cheque of Shs. 35,133/75 continually occurs as being paid in August, September and October, the same figure.

COURT: Can you give me the dates in August, September and October? - 30th August, 30th September and 31st October. After that it seems to have been met.

20

Now on the 31st of October did you receive this notice from Barclay's Bank? (Notice shown to witness). This is the usual notice indicating the cheque is unpaid, is it not? - Yes. H.K.Kanji, Shs. 35,133/75 cts.? - Yes.

That was returned unpaid on the 31st of October 1952.

30

Notice produced, tendered, no objection, admitted and marked No.10.

Examination Continued

On page 15 of Exhibit "A" to the plaint you see there a figure debited to the account of Hassan Trading Stores, Shs.35,133/75 cts.? - Yes.

Is that the same figure as the amount of this returned cheque? - Yes.

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Examination
- continued.

What was your practice with these post-dated cheques? You held them in your own office until the date arrived? - No, the book-keeper held them.

You didn't deposit them with the Bank to await payment? - No.

Can you recall a little more about these cheques that we have been talking about? Were you asked to hold them up? - No, not as far as I know.

Well, you didn't extend the time. You never asked to extend the time? - No. 10

When this cheque of Shs.35,000/- came back, Mr. Kanji's, did you say anything about it to him? I did about one or two cheques that I had received. I went round personally because I was then very worried about these accounts.

They were his cheques, were they - cheques he had drawn? that you were worried about? - Well, I was worried about his account.

You were worried about his account? - Yes. 20

Were you also worried about the Hassanali & Company account? - Yes.

I want you to think very carefully, Mr. Green. Did Mr. Hassanali Kurji Kanji of Hassan Trading Stores ever say to you that he would pay the account of Hassanali & Company? - Well, I have been trying to puzzle over that for weeks. I cannot say emphatically that he did. All I can say is that the consequence was I got these post-dated cheques.

But to your recollection? - My impression is that he did agree. 30

That some form of agreement took place between you? - Yes.

REID: Oh no, my lord. That is just suggesting too far.

CASSIDY: I don't think so.

COURT: You cannot say emphatically that the Defendant personally, Hassanali Kurji Kanji, promised

to pay Hassanali & Company's account? - I cannot say.

COURT: But what about the cheques? - Yes, because I got cheques in payment of the amount.

From him? - From him or Hassanali & Company, because they had Hassanali & Company's stamp on them.

10 CASSIDY: You cannot remember who actually the drawer was? - No, I can't remember who the actual drawer was.

Examination Continued

Mr. Green, I think you sent out a series of monthly statements - you didn't keep a ledger of your customers? - No.

Is that a book of the usual type of monthly statements for the year 1951, December, 1951? - That is right.

COURT: Are they duplicates, copies or what?

20 CASSIDY: These are duplicates for the month of December, 1951.

Examination Continued

Will you look at page 109 of that and do you see the copy of a statement to Hassanali & Co., P.O. Box 48? - Yes.

August, September, December 1951.

COURT: What account is that?

CASSIDY: Hassanali & Co., P.O.Box 48, Moshi.

Examination Continued

30 And is there an entry on that account to transfer the account of Mohamedali Jafferli, Shs. 100,000/-? - Yes, there is.

Would you go back to page 94 of this book which is the account of Hassan Trading Stores, and also at the bottom of that statement is there to transfer to account of Mohamedali Jafferli Shs. 9,345/70 cts? - Yes.

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Examination - continued.

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Examination
- continued.

CASSIDY: That is the transfer on this statement.
That is dated 31st December.

Examination Continued

The last entry I draw your attention to in
this book is page 186, which is the account of Mo-
hamedali Jafferli, P.O. Box 48, Moshi, and there
two figures occur: is it not transfer to the ac-
count of Hassan Trading Stores Shs.9,345/70 cts:
transfer of amount to Hassanali & Co. Shs.100,000/-?
- Yes.

10

CASSIDY: The date in that book is 31st December.

(Book marked No. 3 for identification).

Court adjourned from 1.0 p.m. to 2.15 p.m.

2.15 p.m.

COURT as before.

Witness warned that he is still on his oath.

Examination Continued

I want to clear up a point with regard to the
pass book. Reverting, Mr.Green, to the two cheques
of Shs.25,000/- to Hassan Trading Stores, and the
other cheque for Shs.10,000/- credited to Hassanali
& Co., on the 28th June a figure of Shs.36,414/22
cts. is shown as cheques paid into the Bank. We
turn over

20

COURT: Does it say those are cheques? - It says
just the figure, sir.

CASSIDY: But they were cheques, in fact.

COURT: I don't know about that and the witness
doesn't either.

CASSIDY: If we look to the 18th July in the pass-
book there is a cheque for Shs.25,000/- plus Shs.
47 for bank charges.

30

COURT: Do you know it is bank charges? Does it
say so? - It does not say so.

Examination Continued

Anyway a cheque for Shs.25,047/- was returned
unpaid.

COURT: That appears in the passbook, does it? - Yes.

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Examination Continued

Shs.10,018/75 was also returned unpaid?

COURT: Is that right, Mr.Green? - It was debited to the account, sir.

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COURT: On those days those sums were debited to the account of Gailey & Roberts? - Yes, my lord.

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Examination Continued

10 In July we find on the 31st July the sum of Shs.35,065/75 credited to the account of Gailey & Roberts. Is that column solely in respect of cheques? - Cash.

Examination - continued.

COURT: That figure is those two cheques added together?

CASSIDY: That is correct, my lord.

COURT: That is from the pass book. What was that marked?

INTERPRETER: No.2 for identification.

20 Examination Continued

And then I think we come down to this one for the sum of Shs.35,065/75 which was credited on July the 31st and then on August 7th the sum of Shs. 35,133/75 was debited. That is correct? - Yes.

Again on the 30th August the figure of Shs. 35,133/75 was credited to the account

REID: May I ask which year, my lord?

CASSIDY: 1952. They are all 1952.

Examination Continued

30 We turn the page and you then come to an entry on September 5th with cheque unpaid, Shs.35,133/75 debited to the account? - Yes.

COURT: This account must have looked quite well when it was going up.

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CASSIDY: This cheque has bounced so often it got worn at the edges. On the 30th September was the sum of Shs.35,133/75 once again credited to the account of Gailey & Roberts - that is correct, is it? - Yes.

Examination Continued

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Examination
- continued.

And lastly, do we find another entry in October 31st "Cheque unpaid, Shs.46,919/29? Was that once more debited

COURT: On 31st October, cheque or cheques? 10

CASSIDY: Cheque, my lord. And that corresponds, my lord, to this memorandum received from the bank which refers to the

That (Memorandum - Ex.No. 10) gives you the analysis for that figure, my lord.

Cross-examination

Cross-
Examination.

REID: Can you tell by whom these cheques were drawn, Mr. Green? - No, I cannot.

Nor on what banks? - So far as that is concerned at that time they were drawn on Barclays', I feel sure. 20

Barclays' Bank? - I think so.

At Moshi? - Yes.

Barclays' Bank, Moshi, do not charge exchange on an RD cheque if it is a local cheque: no bank does locally? - No.

So that must have been foreign cheques, somewhere away from Moshi? - That I cannot tell you, Mr. Reid.

COURT: You say Barclays' would not charge any form of discount or make any charge on a cheque drawn on this? - No, I don't think they would. Or any bank for that matter. 30

Cross-Examination Continued

Who were Gailey & Roberts bankers in Moshi? - Barclays'.

At that time? - At that time, yes.

REID: I do not propose to go into the figures, my lord, because I frankly confess I am lost. Turning to this matter of December, 1951, Mr. Green, where you said quite frankly this morning that these two entries, the Shs.9,000/- odd transfer into the account of Hassan Trading Store and the Shs.100,000/- into the account of Hassanali & Co., must have been done with your authority? - Yes.

10 But you cannot remember that it was expressly agreed to in your presence? - No, I cannot remember.

The point I am about to put to you, Mr. Green, is this: If the Defendant, Hassan Trading Store, had indeed agreed to take over the account of both Mohamedali Jafferalli and Hassanali & Co. you would have transferred the whole lot into your account instead of the Shs.9,000/- odd? If there had been an agreement at that time when the whole lot was to be taken over by the Hassan Trading Store you would have transferred the whole figure instead of the Shs. 9,000/-? - Yes, had the matter cropped up and at the same moment with the other.

You would have done that as a normal business practice? - Yes.

COURT: That is provided that the agreement about the whole lot, as the witness said, cropped up at the same time.

30 Now it is a fact, Mr. Green, that the transfer from the account of Mohamedali Jafferalli of Shs.9,000/- odd into one account and Shs.100,000/- into the other closes the account of Mohamedali Jafferalli from then on? - Yes.

That is correct, isn't it? - Yes.

And if, while you were there within the business, Hassan Trading Store had agreed to take over the account of Hassanali & Company, the whole of it, would you have transferred the balance and closed that account in the same way? - Yes.

40 If the Trading Store had agreed to take over the whole of the account of Hassanali & Company you would have transferred the account in the ordinary way, and closed their account also. Now,

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you mentioned some cheques, post-dated cheques that you got. You weren't quite certain as to who gave them or what they were. I would just like to refresh your memory with this letter, Mr. Green, if you would like to read it. It is a letter dated 5th March 1953.

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Evidence.

COURT: Written by whom? - Written by my successor, my lord, Mr. Thrower.

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REID: In that letter it clearly states that these cheques were received from H.K. Premji.

10

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1954.

Witness reads letter silently.

Cross-
Examination
- continued.

Cross-Examination Continued

It states in that letter, does it not, that these cheques were received from H.K. Premji, who was Hassanali Premji of Hassanali & Company. Do you agree with that statement? - I was not there at that time.

COURT: Having looked at that, you remember you said you did not remember who drew those cheques but it had something to do with Hassanali & Company because it had their stamp on it? - Yes.

20

COURT: Well now that you see this, can you remember whether the cheques were in fact drawn by Mr. H.K. Premji or not? - No sir, I honestly can not.

Cross-Examination Continued

Can you remember whether in fact you, as this letter states, received these cheques from H. K. Premji? - No, I cannot say. I was under the impression they were received from Hassanali & Company.

30

You say you have always been under the impression that these cheques were received from Hassanali & Company as stated in this letter.

Letter (certified as being a true copy) tendered, no Objection, admitted and marked No. 11.

REID: My lord, there are some matters mentioned in the written statement of defence that I must

now turn to, for your lordship's information. I may say, my lord, Item No.1, Shs.340/- we agree that there has been a mistake over that. At the time I was instructed my client was under the impression that the credit note was from Gailey & Roberts to himself, but we confirmed later that it is from Gailey & Roberts and therefore properly debited in his account. No point arises over that. Dealing with Item 3 (b) my lord, this Mr. Green, refers to an invoice for, as you will see, Shs.1,101/75 cts. It is a credit note issued by your firm. Can you remember anything about that particular transaction? - Frankly, I can not.

10

Document tendered, no objection, admitted and marked Exhibit 12.

Turning to the next item, my lord, 3 (c). Will you have a look at this debit note, Mr. Green, and see if you can remember anything about this particular transaction? - (Witness looks at debit note).

20

You will see from that, Mr. Green that a certain amount has been debited to the Defendant following upon the receipt by your company of a debit note from a firm known as Kahe and Soko Sisal Estate. Does that refresh your memory at all? - No, it does not. It is not in my writing and I can't remember what the arrangement was.

Debit tendered, no objection, admitted and marked 13.

30 REID: For your lordship's information I might explain the point of that is, this is a claim by those other people who actually took delivery of a certain quantity of corrugated iron. They afterwards paid, and went back to Gailey & Roberts who sold it to them, and Gailey & Roberts automatically debited my client, although he had not taken delivery from Gailey & Roberts. That is merely explanatory of what the item represents.

Cross-Examination Continued

40 You have none of these cheques that you were referring to, Mr. Green, in the evidence you have given? You cannot produce to the Court any of these cheques? - No, certainly not.

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If they are anywhere they lie in the records
of your firm, as far as you know when you left?

COURT: These cheques should be filed in Gailey
& Roberts' records.

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Evidence.

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Green.

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Cross-
Examination
- continued.

And dealing briefly with (e) and (f), my lord.
You know nothing about events that happened in the
firm after you left in January 1953? - No, because
I left immediately for South Africa.

Up to the time you left this firm, Mr. Green,
the account that was issued by your firm contained
no charge for interest? - That I could not say.

10

If you look at the account which has been filed
and which you went through with my learned friend
this morning -

CASSIDY: I accept that, my lord.

REID: That is accepted, my lord, and I don't need
to pursue the subject.

Re-Examination Cassidy

Re-Examination.

My friend has asked you about this sum of
Shs. 2,756/- which I think is Exhibit No.13. Whilst
you were there were you dealing with Kahe and Soko
Sisal Estate? Did you supply them with stuff? -
Yes.

20

Did you ever purchase from Hassan Trading
Stores materials, in order to supply your custom-
ers? - Upon occasion. Occasionally we did.
Upon occasion.

And can you recall purchasing corrugated iron
from the Defendant in order to supply your customer
who wanted it? - Not in this specific instance,
but we were in the habit of, in order to oblige a
customer, or if we had a short fall in what a
customer required, yes.

30

You cannot say with regard to this transaction
whether this was delivered short by the Defendant?
- No.

You cannot remember the details of this con-
versation which took place some time in 1951 be-
tween yourself, Mr.Premji and Mr.Kenji? - No. I
am afraid I cannot.

40

But after this conversation did these various transfers in the books take place? It was after this conversation? - Oh yes, it must have been.

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COURT: Can you tell from any of the books you have got there, possibly the duplicated copy of the statements, whether this transfer of the Shs.9,000/- odd and the Shs.100,000/- odd belonging to Mohamedali Jafferli, whether that was transferred at the same time, or not? - No, your honour, I cannot.

Plaintiff's Evidence.

No. 5.

10 Not from looking at the statements? - You can't. I cannot.

Frank Alfred Green.

REID: I think, my lord, that this question was answered by the other statements that were produced that showed December 31st and we had evidence of it.

9th December, 1954.

Re-Examination - continued.

CASSIDY: I think the statements show that both of these transfers took place at the same time.

COURT: Was that the date of the transfer?

20 CASSIDY: December 31st was this transfer and the other one of Shs.100,000/- was also December 31st.

REID: They were on December 31st. Page 44 is the account of Hassan Trading Stores. The account of Hassanali & Co., shows also, December 31st the transfer of Shs.100,000/- from the account of Mohamedali Jafferli. The account of Mohamedali Jafferli also shows under the date August/September, 1951 by transfer account Hassanali & Co., Shs.100,000/- say they took place on the same day.

30 COURT: Now, the transfer of Hassanali & Co's. account to the Stores

REID: Has never been transferred, my lord.

COURT: It has only been a liability accepted.

CASSIDY: That is the appellant's case. Never any book transfer. It is merely we alleged an agreement that took place.

COURT: I understand there has been no transfer of Hassanali & Co's account to the Hassanali Trading

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Store's account? - No, not transferred, no, I think he accepted or agreed to pay the Hassanali account but it was not transferred to him.

Can you give me any reason why it has not been transferred? - I cannot say.

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You are satisfied he agreed to pay them? - Yes, I am satisfied, otherwise I would never have got the cheques and I would never have been able to write to my director and say I had received post-dated cheques in settlement.

10

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Re-Examination
- continued.

You say you said the account was settled on the receipt of the post-dated cheques? - That is what I said. That I had received post-dated cheques in settlement of the account.

I see. The position then was that you had got the account in your book and you had got post-dated cheques to meet that account in full and I suppose as the cheque, the separate cheques were paid, so you would have credited the amount and gradually have eliminated it? - Exactly.

20

Can you tell me, was there any further dealing on that account after you received these post-dated cheques to settle it? - That was at the time when I retired from the firm and what happened to the cheques I could not say.

Now, not the cheques. Whether there was any further debiting of that account? - No, as far as I know, nothing at all.

(Witness released from further attendance).

No. 6.

Peter Maurice
Thrower.
9th December,
1954.
Examination.

No. 6.

P.W.2. PETER MAURICE THROWER, sworn, states :-
Examination-in-chief:

CASSIDY: Mr. Thrower, you are at present employed by Gailey & Roberts, are you not? - I am, yes.

And I think at the moment you are the Manager of the Nakuru branch? - That is correct, sir.

30

In 1952 is it correct you were sent down to Moshi to take over the Moshi branch from Mr. Green?
- That is correct.

I think you arrived some time in December, 1952? - Yes.

COURT: That is the last witness who was here? - Yes.

Examination Continued

10 And I think you proceeded to take over the Moshi branch from Mr. Green and was that completed on the 15th January, 1953, when Mr. Green left for South Africa? - That is correct.

Now, quite briefly, one of the first things you remember, was that a bunch of post-dated cheques? Can you remember a packet of post-dated cheques for Shs.121,000/- or something like that?
- I do remember.

20 COURT: Can you remember the figure? - The total amount of the cheques I cannot remember, sir, but I think it was about Shs.120,000/-.

Examination Continued

Will you tell his lordship a little about these cheques. Can you remember who drew them? - They were drawn, as far as I can remember - the signature, I would not know whose the signature was, but they were drawn over a rubber stamp, signed over a rubber stamp which indicated they were signed by Hassanali K. Kenji.

30 Would you look at this signature here. This is the Defendant's signature. Was it anything like that? - Yes, it was very similar to that.

COURT: It is like the Defendant's signature on this? - Yes, sir.

Examination Continued

And were these cheques endorsed to Gailey & Roberts by the payee, Hassanali & Co.? - They were.

I think those cheques remained in your possession until March, 1953? - Yes.

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

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By that time had you learned that the bank had closed the account of Hassan Trading Stores? - Sometimes between my taking over from Mr. Green, I think it was approximately two months afterwards, I learned that the account on which cheques had been drawn had been closed.

So then in consequence of that knowledge did you see the Defendant, Mr. Hassanali Kurji Kanji? Did you have an interview with him? - I did.

Was the subject matter the closed bank account? 10
- It was and the cheques I had received from him.

Will you tell his Lordship to the best of your recollection what took place. Did you discuss the possible payment of these cheques, or what? - tried to contact Hassanali K. Kanji and eventually, after several attempts, he came to my office and I showed him these cheques which I understood were in settlement of his account with us and I told him that I had learned a few days before that the account on which they were drawn at Barclays' Bank had been closed and that the Bank Manager had advised me that the cheques were worthless. Hassanali Kanji asked me if I would return the cheques to him as they were worthless and I told him I would post them to him. I also asked him what arrangements he intended to make to replace those worthless cheques with new ones or what other arrangements he was going to make to settle the account for which these cheques were tendered. 20

That account was not the Hassan Trading account? 30
- No I understand it was for Hassanali & Co. I do remember the exact amount of this bundle of cheques coincided with the exact amount on our books for Hassanali & Co.

Now, my lord, if I may refer to Ex. 11, which is a letter of the 5th March put in by my learned friend. In consequence of that conversation did you write this letter, dated 5th March to Mr. Hassanali Kurji Kanji? Was that written after this interview about the cheques? - It was, I think, written the following morning. 40

(Letter read by Mr. Cassidy).

Now, that you sent under registered cover, did you not? - I did.

Together with the cheques? - Yes.

Will you tell his lordship, Mr. Thrower, whilst you continued as manager of Gailey & Roberts at Moshi, did you ever receive a written reply to that letter? - As far as I can remember, no reply was received.

COURT: No reply at all, or an oral reply? - As far as I can recall I received no written reply.

Examination Continued

10 Did he reply to it orally? Did any further conversations take place with regard to the settlement of this debt between yourself and Mr. Kanji? - Yes, they did, particularly with reference to the last paragraph of this letter.

20 What was that suggestion? - I cannot remember the exact details but it might clarify it if I explained that before this letter was written and during the interview with Hassanali Kurji Kanji when I showed him these worthless cheques he admitted it was his responsibility.

Did you write a letter also on the 5th March to your accountant in Nairobi?

REID: I would like your lordship to know at this stage that this is the evidence I have objected to as being inadmissible.

CASSIDY: Not this one, surely?

30 COURT: Anything dealing with this interview in March, 1953, which has, unfortunately, been pleaded as an agreement. That is Mr. Reid's point. Mr. Reid is objecting to any evidence in connection with this, shall I say from your point of view, which took place in March, 1953.

CASSIDY: Your lordship has decided that point?

COURT: No.

BY COURT: I do not consider from what I have heard that this is evidence relating to an agreement that has not been pleaded. As far as I can see at present, it is all part and parcel of the original undertaking, and I am not prepared at this

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Examination
- continued.

stage to exclude it. I may have to do so later, but until I specifically exclude it I propose to admit it as admissible.

Examination Continued

Do you recall a letter written on 5th March?
- I do.

Well, would you like to refresh your memory with regard to what was put forward by Mr. Kanji as regards settlement of his debts?

COURT: Mr. Thrower, read the letter through so as to serve as an aide memoire to you, and then you can speak about what you remember. 10

Examination Continued

Some proposition was put up, was it? Would you tell his lordship what proportion was in fact suggested by Mr. Kanji? - The proposition which Hassanali K. Kanji made in order to liquidate both these accounts of Hassan Trading Stores and Hassanali & Company was to offer us a third mortgage. 20

COURT: On the premises? - I think it was a garage or some premises which he told me belonged to him.

Would that be the Hassan Trading Store building? - I believe it was, yes.

COURT: Just that one proposal? - That was the only proposal in that letter, sir.

Examination Continued

You put that up to your head office, did you?
- I did, sir, yes.

And did you receive a reply? - I did. 30

Was the offer accepted or not? - I cannot remember the exact wording, but I believe it was rejected as it was considered that a third mortgage would be of very little use if it were taken advantage of.

I think the second mortgage was held by British East Africa Corporation? - So I understand, sir.

COURT: It was a third mortgage, not a mortgage of a third?

CASSIDY: Yes, a third mortgage - a somewhat doubtful security indeed.

In the High Court of Tanganyika Arusha District Registry.

Examination Continued

The second was British East Africa Corporation? - That is correct. We were offered the third.

Plaintiff's Evidence.

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Examination - continued.

10 You have no idea how much was due to British East Africa Corporation on the second mortgage? - I have no idea.

You have no idea of this Defendant's liability to the Corporation? - I have heard the amount but I don't know whether it is correct.

Did you see Mr. Kanji after your head office had rejected this proposal? - I did.

Did he make any further proposals to you for settling these two accounts? - He did.

20 What were they? - He told me that given time he would be able to pay us back small amounts to liquidate both these debts. I think also he suggested that we might like to buy a farm or a dairy business on a farm, I think that is more correct.

Did he suggest a price for that farm? - He indicated that if we bought this farm it would be worth more than his debt to us, but I did not pursue it any further.

COURT: Do Gailey & Roberts indulge in farms? - They do not, sir.

30 CASSIDY: They merely supply the implements with which it is carried out.

Examination Continued

How many of this type of interview took place between you? - Not more than two or three in my office, although I made many attempts to have interviews with the Defendant.

Would you describe him as elusive? - Extremely so.

COURT: That may be justified or unjustified.

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Examination Continued

Throughout the whole time you were managing Gailey & Roberts, Moshi, did Mr. Kanji ever come to you and say "I am not liable for this account. Why do you send it to me?" - Never.

Plaintiff's
Evidence.

How many months were you there? - Very nearly six months.

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Did you send a statement each month? - A statement would normally have been sent each month. I did not personally see that it did go to him, but normally it should go each month. 10

9th December,
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Examination
- continued.

And at any time was there any complaint about any of the items on the Hassan Trading Store account while you were there? - No, not that I am aware of.

Can you remember when Mr. Kanji's credit was stopped to Gailey & Roberts? Was it stopped first while you were there? - I was not certain whether it had been stopped or not when I took over the branch, but within a very short time I told him so.

When did you stop it? - I cannot remember the exact date, but I think it was round about the time I discovered his account was closed at the bank. 20

About March, would you say? - I think it was about the end of February or beginning of March.

COURT: Which account was that?

CASSIDY: That was Hassan Trading Stores, my lord.

Examination Continued

Were there any dealings at all on the Hassan-ali & Company's account? - As far as I can remember the amount did not alter at all during the time I was there. 30

The Defendant is now querying this. He says now that in May of 1952 (written statement of defence paragraph 3 (c)) - did he ever complain to you that he had been wrongly debited with the sum of Shs.2,758/- in respect of corrugated iron? - No, I don't remember him complaining.

Did he ever complain to you that he had not been given credit for a credit note for Shs.1,101/75 cts., as far as you can remember, Mr.Thrower? - I cannot remember.

In the High Court of Tanganyika Arusha District Registry.

I think Mr.Primrose came to Moshi in 1953? - That is correct, yes.

Plaintiff's Evidence.

What month did he come? - In June.

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Did you stay on for a short time to hand things over to him? - I did, yes.

Peter Maurice Thrower.

10 Whilst you were there did you and he visit Mr. Kanji? - We did.

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Together? - Yes.

Examination - continued.

Did you discuss between the three of you the payment of these accounts? - We did.

What were Mr.Kanji's reactions at that meeting? - Exactly the same as the previous meetings I had in my office. He was very anxious to settle both his accounts, that is.

20 By both accounts you mean the Hassanali & Company's account and the account of Hassan Trading Stores? - Yes.

He didn't at any time say that he was not liable? - Never.

Not at that interview with you and Mr.Primrose? - No. In fact he reiterated his previous statement that he was liable, and took full responsibility for it.

30 And your recollection is that the account when Mr.Primrose took over from Hassanali & Company was approximately the same amount that you wrote about. You recall your letter you wrote about the sum of Shs. 120,000/-? - Yes.

In actual fact the exact figure was Shs. 121,444/70 cts.

And when Mr. Primrose took over that was the same figure? - It was. It did not alter the whole time.

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Examination
- continued.

Cross-
Examination.

I think finally you left Mr. Primrose to carry on. When did you leave actually? - I think it was about 14th June, 1953.

I think you said you left in June? - Yes that is correct.

Cross-Examination

REID: You cannot remember who actually drew these cheques? - I remember the signature on the cheque, yes.

You do. You mentioned that they were signed over or under a rubber stamp? - That is correct. 10

What was the rubber stamp? - I cannot remember.

So you cannot disagree if it was Hassanali & Co.? -

CASSIDY: Mr. Green? didn't say that

He said that he was not sure whether it was on the back or the front of the cheque.

Cross-Examination Continued

Did you know the signature of H.K. Premji? - No. 20

Who was the payee who endorsed the cheques? - It was endorsed on the back as far as I can recall, by H.K. Premji.

Although you don't know his signature? - I can read his signature.

Now which of them signed on the front and which on the back? - H.K. Kanji signed on the front of the cheque, Premji endorsed it on the reverse side.

And you went to Kanji and demanded to know what arrangement he was going to make to replace the cheques? - That is correct. 30

These cheques were for monthly instalments, were they not? - I cannot recollect whether they were exactly monthly instalments as far as dates, but I think they were approximately at 30 day intervals.

COURT: Thirty, did you say? - Approximately so.

Cross-Examination Continued

And the size of the instalments? - I cannot remember that.

About Shs.3,000/- to Shs.5,000/- was it? - I think it was, approximately.

10 Three or four thousand shillings per month. Now, he made a proposal to you for instalments again, did he not? - No definite arrangement regarding instalments, he asked me if we would be prepared to accept small sums whenever he could make them.

And you refused? - I didn't refuse, No.

Did you ever agree to his proposal? - I didn't.

It just remained in the air? - It did.

And part of his proposal was this security that he offered you to perhaps help things out? - That is correct, yes.

That was definitely refused? - That was definitely refused.

20 COURT: The third mortgage? - Yes.

Cross-Examination Continued

And you immediately started pressing for payment of the full amount? - We started pressing for payment, not necessarily of the full amount but anything we could get.

But not the instalments you had previously agreed and accepted cheques for - nothing as small as that? - I would not say a definite figure.

30 Would you accept such instalments or not - I am putting it to you that you definitely refused to accept such instalments? - That is not quite correct. I was prepared to accept anything which he could pay, but I did not stipulate that it had to be in accordance with the cheques already paid.

Then did you suggest that he might give you new cheques in place of the old ones? - I did.

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Cross-
Examination
- continued.

And did he agree with it? - No. He said he was not in a position to give further cheques.

From the time you came here you assumed he accepted liability for the payment? - I didn't assume it. Immediately I realised there were two accounts I asked Hassanali K. Kanji whether he was responsible for the accounts we had in the name of Hassanali & Co.

Did you ask him that before you pressed for the cheques on the Hassanali & Co. account, or after? - The first pressure you put on the Defendant, was that for the Hassanali & Co. cheques which you thought had become -

10

COURT: The question is: was that the first pressure you put on him, or did he accept liability for the whole amount? - I may have seen him before we discussed these particular cheques but I don't recall it. I don't think I had seen him until he came into my office about these cheques.

Cross-Examination Continued

20

And you assumed that by virtue of those cheques that he had accepted the liability for the Hassanali & Co. accounts? - I did, yes.

And it was on that basis that you carried through all your negotiations, on that assumption? - Not on that assumption, on his statement to me that he accepted liability - responsibility. He was prepared to pay? - Yes.

By instalments, if your people were prepared to agree to it, which they never did agree, is that correct? - Yes.

30

Now, from whom were those cheques obtained? - You mean how did they arrive in the office?

Yes? - I have no idea. I was not there when they arrived.

Did you make enquiries as to who delivered them? - I didn't.

REID: May the witness be shown the letter of 5th March.

(Letter, No.11, passed to witness)

40

Cross-Examination Continued

That letter was written by you? - That is correct.

And in it you distinctly state that these cheques were received from H.K. Premji? - That is correct. May I say something?

COURT: Yes? - By the word "receive" I meant to imply that they were tendered by him, not that they were handed over by him, personally.

10 Cross-Examination Continued

They were tendered in settlement of his account? - You can use the word "tendered".

Did you use the word tendered or received? - Received.

From H.K. Premji? - Yes. But when I said "we" I was meaning Gailey & Roberts.

20 The source of the cheque was definitely known to them to be H.K.Premji, that is the person who delivered it to them, whether through the post or by hand. What was your information at the time, Mr. Thrower? - As soon as I had seen these cheques I realised they had been endorsed by H.K. Premji but I also realised that he had not actually drawn them.

Accepted by you in settlement of the account of Hassanali & Co., H.K.Premji? - They were not accepted by me - by the firm.

On settlement of their account?

30 COURT: In settlement of Hassanali & Co's account? - After consultation with Hassanali K. Kanji he confirmed that was what they were tendered for.

Cross-Examination Continued

While you were with the firm of Gailey & Roberts were there other dealings with the Defendant, apart from these accounts? For instance, was machinery ordered for a bakery? And a deposit of Shs. 25,000/- made on it? - I believe it was, yes.

COURT: I must confess I find it difficult to know

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Cross-
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- continued.

whether we are dealing with H.K. Kanji or Hassan Trading Stores. Do you accept the fact that in the whole of these transactions where anything was said or done by H.K. Kanji it was said and done in his capacity as the Hassan Trading Stores?

REID: Yes, my lord, I am quite prepared to accept that.

Cross-Examination Continued

Shs.25,000/- was paid by the Defendant? - I could remember the details I know we had some ... 10
but whether he paid any money I don't remember.

Did you also have dealings with him, a hire purchase transaction for dairy machinery delivered to the value of Shs.65,000/-? - There was a hire purchase agreement in existence, I believe.

Quite. And at the time that he made this proposal for settlement of his own account and Hassanali & Co's account he was, in fact, paying you instalments on a monthly agreement? - I don't know. 20

COURT: Do you remember that? - I don't remember.

Cross-Examination Continued

And your memory over these conversations may be equally vague? - Not at all. Because I was particularly keen on the outstanding debt

Now, never at any time in your accounts while you were there was the account of Hassanali & Co., ever transferred to the account of Hassan Trading Stores? It always remained separate? - As far as I can recall there were always two separate accounts. 30

And, in fact, in your letter to your directors did you write - you referred to them as two separate accounts? - Yes, I did.

Did you know who the registered proprietor of Hassanali & Company was - or I think my learned friend possibly conceded that - I don't think that I was aware of the fact that H.K. Premji was.

CASSIDY: It is admitted that H.K.Premji was sole proprietor of Hassanali & Company. 40

Cross-Examination Continued

When did you take over from Mr. Green? - I think it was the 15th of January 1953.

Re-Examination

CASSIDY:

10 Tell me, Mr. Thrower, it was suggested that you might have been mistaken as to who endorsed these cheques and who drew them. I refer to the cheques amounting to Shs. 121,100/-. When you wrote the letter of the 5th of March (Exhibit 11), the cheques were in front of you, so to speak? - They were.

And you wrote that letter from knowledge you obtained by looking at the cheque? - That is correct, yes.

Now, if a cheque is given to you which is drawn by one person and endorsed by another, you would naturally expect to receive that cheque from the endorser, would you not? - I would, yes.

20 You were asked by my learned friend about a hire-purchase agreement with regard to milk equipment, dairy equipment. What is the usual period allowed by your firm under a hire purchase agreement? - It depends on the value of the item. If it is an item of small value it would probably be six months.

Yes, but we know this to be Shs. 65,000/- - That would almost certainly be twelve months.

Would it be any more than twelve months? - It may be if other arrangements were made.

30 You don't know when this hire-purchase agreement commenced for this dairy equipment, do you? - I don't. I believe the hire-purchase agreement was actually in the hands of Hassanali K. Kanji when I arrived in Moshi, but I seem to remember that he had not signed it, and I had to collect it from him.

COURT: Well then, it had probably just started on your arrival? - That is correct, sir.

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Re-Examination - continued.

Re-Examination Continued

It had not been negotiated before? - The equipment had been supplied quite some time before.

Now my friend suggests that you might be as vague about this conversation as you are about the figure that you mentioned. You left Moshi in 1953? - That is correct.

We are now in December 1954. Have you seen the accounts books of Messrs. Gailey & Roberts, Moshi, since you left? - I have not, my lord.

10

Witness released from further attendance.

No. 7.

Gulshan Natha Hirji.

9th December, 1954.

Examination.

No. 7.

P.W.3. (MISS) GULSHAN NATHA HIRJI, Mohamedan, affirmed.

Examination CASSIDY

Have you been employed by Messrs. Gailey & Roberts, Moshi, from about the beginning of 1951 onwards? - From August 1951.

Until the present day? - Yes.

You were employed in the Accounts Department? - Yes.

20

And it is part of your duty to post the entries? - Yes.

Is this one of the books (No. 3 for identification) used by your company? This is the duplicate. This is the form of monthly statement you send out? - Yes.

You don't keep a ledger for your customers? - No, we don't keep ledgers.

Will you look at the handwriting there (page 94, Hassan Trading Stores). Do you know whose it is? - It is my hand-writing.

30

At the bottom is "Entry transfer account Mohamedali Jafferalli, Shs. 9,345/70". Is that correct, you made that entry? - Yes, I made that entry.

Who told you to make that entry? - Our head clerk.

Was it Mr. Green? - No, Mr. Mahedi.

He is the head accountant? - He was the head accountant at that time.

10 Do you know where he got his instructions from? - I suppose he got from the manager, Mr. Green.

I see. You don't know, you just presume it is. - Yes.

Now, will you turn to the next flagged one. Is that in your handwriting (page 100 Hassanali & Company), and that deals with the transfer of Shs. 100,000/- from Mohamedali Jafferalli to Hassanali & Company. December 31st, 1951.

20 COURT: Your handwriting? - Yes. Account Mohamedali Jafferalli. There are two entries: Shs. 9,345/70 transferred to account of Hassan Trading Stores, and Shs. 100,000/- transferred to Hassanali & Company's account.

Examination Continued

Those transfers took place in December 1951? - Yes.

COURT: 31st December? - Yes.

Examination Continued

30 What book is this (No. 1 for identification)? What is that book? - Receipt book.

And in whose handwriting is that, actually? - Our head clerk Mr. Mahedi's writing.

Receipt book tendered, admitted, no objection and marked No.15.

Whose handwriting is that? (in passbook). - This is the Bank writing.

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Gulshan Natha Hirji.

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Examination - continued.

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Gulshan Natha
Hirji.

9th December,
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Examination
- continued.

Anyway, that is the passbook of Gailey & Roberts? - Yes, that is right.

Passbook tendered, admitted, no objection, and marked No.16.

You understand this book. On which side is the debit and credit in this book? - Witness indicates debit and credit sides respectively.

Are those statements extracted by you from the books (Copies of statements shown to witness, similar to those attached to the plaint), or are they done by Mr. Mahedi? - No, these are not my writing.

10

Who were they done by? - Mr.Martin/Mahedi (?).

4.12 p.m. Court adjourns

Examination

Just look at Exhibit 15.

COURT: That is the receipt book, is it?

CASSIDY: Yes, my lord.

Examination Continued

Would you take the pass book (Exhibit 16) and indicate in there where those two cheques have been paid in. There is one other book which we will have to put in

20

COURT: Have you found those figures?

CASSIDY: I think this book will solve the difficulty.

Examination Continued

Will you look at this. Is that the ordinary bank paying in book of Gailey & Roberts? - Yes.

COURT: Do you tender that?

30

CASSIDY: I tender that, my lord.

COURT: Any objection?

REID: No objection as such.

COURT: Very well. Admitted and marked No.17.

Examination Continued

Dated 28/6/52. On that are there entries there relating to two cheques? - Hassanali & Co. Shs.10,000/-. And Hassan Trading Store.

That is? - Shs. 25,000/-.

Is there an entry in the passbook for the 28th June referring to Shs.36,414/22? Is that correct? - Yes, that is correct.

10 And that was the total paid in on that day? - Yes.

And the slip shows that the other cheques and the sums in cash were paid? - Yes.

Now, just look again and you will see on July 18th two sums of

COURT: Is this paying in slip?

CASSIDY: Pass book.

Examination Continued

20 Two sums are debited to Gailey & Roberts. Would you first tell his lordship what these figures are? - One entry is for Shs.25,047/- and the other is for Shs.10,018/75.

Now, we don't want to go through all these again. Is there an entry on the 31st July in the pass book relating to a cheque of Shs. 35,065/-? - Is that correct? - And cents 75.

COURT: What - Shs.35,065/75 cts.

You say that is an entry for a cheque? How do you know this is a cheque? - You can tell by the paying in slip.

30 CASSIDY: I cannot find that. It does not appear to exist. That entry continues to appear. The next entry that I refer to is on the 8th August.

REID: I would ask that the paying in book

COURT: Paying in book was 17.

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Plaintiff's Evidence.

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Gulshan Natha Hirji.

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Examination - continued.

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Examination
- continued.

Examination Continued

On the 8th August is there a debit entry of Shs.35,133/75? Does that appear on the debit side? - Yes, on the debit side.

In September does the figure of Shs.35,133/75 appear once more on the credit side? - Yes.

What date is that? - On the 30th August, not September.

Does it once more appear on the debit side in September? 10

COURT: That same figure?

CASSIDY: That same figure?

WITNESS: Yes.

Examination Continued

What date is that? - 5th September.

COURT: On the debit side.

Examination Continued

Finally, was it put in once more, was it credited, that same figure credited again on the 30th September? - Yes. 20

And then it appears again in October ... how do you know it is that figure? Put it this way. On October 6th - cheque unpaid - Shs.40,135/75. Can you tell his lordship whether that Shs.35,133/75 which we have been talking about, whether that was part of that? - Yes.

You know yourself? - Yes, it was.

And that is referred to as the cheque unpaid.

COURT: Well, now, if the witness knows that can that witness say that these entries of Shs.35,000/- 30 in the debit and credit all refer to a cheque?

CASSIDY: All these entries we have been dealing with

COURT: Do you know all that refers to a cheque or cheques? - Yes.

You know that of your own knowledge? - Yes.

In the High Court of Tanganyika Arusha District Registry.

Examination Continued

Now the last entry appears to be on the 31st October - Shs.35,133/75 was credited to Gailey & Roberts account? - Yes.

Plaintiff's Evidence.

No. 7.

Gulshan Natha Hirji.

9th December, 1954.

Examination - continued.

10 On the 31st October did Gailey & Roberts receive that Memorandum from Barclays' Bank? (No.10) On the 31st October did you receive cheques back from the bank unpaid to that extent - Shs.45,919/29? - Yes.

And was the cheque of Shs.35,133/75 included in that amount? - Yes.

And was that cheque drawn by H.K.kanji - Yes, drawn by H.K. Kanji.

20 And, last thing, do you recall a number of post-dated cheques in the office from about some-time in 1952; cheques for quite a large sum of money - over Shs.100,000/- drawn, or rather, payable to Hassanali & Co.? - I remember we received some post-dated cheques.

COURT: You remember the post-dated cheques? - Yes.

Payable to Hassanali & Co., or not? - I do not, unfortunately.

Examination Continued

Do you remember who they were drawn by? - Well, I suppose by H.k. Kanji.

Cross-Examination

REID: But you don't know to whom they were payable? - No.

Cross-Examination.

30 Nor, I take it, can you remember the amount of them? How much they came to? - No, I don't remember the amount.

Or what the actual amounts of them were, each individual cheque? - I don't know each individual cheque.

Now, that bank pay-in book there, is it written in your handwriting? - Mr. Mahedi's writing.

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

No. 7.

Gulshan Natha Hirji.

9th December, 1954.

Cross-Examination - continued.

It is not written by you. So that you know nothing about the actual cheques referred to therein - you never saw them? - I saw the cheques which were mentioned in the book. Two cheques.

What about the rest? - All the rest because I used to go down to the Bank.

And you remember all the signatures on each cheque, or do you remember that some cheques had Hassanali K. Kanji's signature on them? - Yes.

You remember the cheques for Shs.10,000/- and Shs. 25,000/-? - Yes. 10

Who were they sent by? - H.K. Kanji.

They were drawn on Moshi, Barclays' Bank? - I don't remember.

Or to whom payable? - Gailey & Roberts.

Or to some third party and endorsed over to them? - Well I don't quite remember, but I think it was Gailey & Roberts.

And they were referred back by the bank in Moshi? - Yes. 20

And the same amount was debited to Gailey & Roberts' account in the pass-book? - Yes.

What caused the difference in the debits with subsequent cheques? - They went up by a certain amount each time, apparently.

COURT: Twice.

REID: Yes, twice, my lord.

Cross-Examination Continued

What caused that difference? - That is commission because the cheques are not Moshi cheques, now I remember it. They were Mombasa or Tanga. 30

Can you remember whether they were Mombasa or Tanga? - Well, I don't quite remember.

x x x x x

No. 8.

P.W.4. WILLIAM HENRY PRIMROSE, sworn, states:

Examination-in-Chief.

CASSIDY: You are a director of Gailey & Roberts (Tanganyika) Ltd.? - Yes, I am.

And at present you are the Manager of the branch at Moshi of Gailey & Roberts (Tanganyika) Ltd.? - I am.

10 Did you take over at Moshi in about June, 1953, from Mr. Thrower? - I did, during the first half of June.

In the course of handing over to you did you and Mr. Thrower visit a gentleman named Mr. Hassan Kurji Kanji? - Yes, we visited Mr. Kanji approximately at the end of the first week in June.

What was the purpose of that visit? - Before visiting Mr. Kanji we had gone through the debtors of the branch and this Kanji having the largest debts we went to visit him regarding settlement of those debts.

20 Now, was there one account or two accounts? - Two. One known as Hassan Trading Stores and the second account under the title of Hassanali & Co.

30 What grounds did you have for believing that Mr. Kanji was responsible for the account of Hassanali & Co.? - During our conversations at Mr. Kanji's office I discussed both these accounts with Mr. Kanji and I asked him if he would arrange terms of settlement with me. His reply was that "in due course I will settle all my debts" and no terms were arrived at that particular time.

Did you make it plain to him that you were referring not only to Hassan Trading Stores account, but to the account of Hassanali & Co.? - I cannot remember at that particular interview but I had interviewed Mr. Kanji since then and delivered by hand the statements for Hassan Trading Stores and Hassanali & Co.

CASSIDY: My lord, I think I will have to put in both the original and the copies of this letter.

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

No. 8. William Henry Primrose.

9th December 1954.

Extracts from Examination.

In the High
Court of
Tanganyika
Arusha District
Registry.

Plaintiff's
Evidence.

No. 8.

William Henry
Primrose.

9th December,
1954.

Extracts from
Examination
- continued.

Examination Continued

Was that the original of the covering letter you took down together with the statements? - That letter was handed by me to Mr. Kanji together with the two statements showing the amounts as in our books at the end of August, 31st August 1953.

COURT: Are you tendering that letter or both together?

CASSIDY: I will tender them both together.

COURT: Have you the statements?

10

WITNESS: The statements are in the possession of Mr. Kanji.

CASSIDY: I gave notice to produce all original statements and all original documents. I gave notice to produce on 21st June.

REID: That is quite true, my lord.

Examination Continued

That is the original letter and the copy? - This is the copy of the original letter.

(sic) 1953 COURT: What is the date of your letter? - 17th September, 1952. 20

(sic) 1953 COURT: You say that your letter of the 17/9/52 - that is the copy of that letter? - This is the copy of the original letter.

COURT: A duplicate? - A duplicate copy, my lord.

COURT: Now, are you tendering both of these?

CASSIDY: I am tendering both of these, my lord. The reason being the duplicate is --- has the signature of the Defendant.

COURT: This is tendered. Any objection? 30

REID: No, my lord.

COURT: No.19 (original) and 19A (duplicate).

COURT: You say 19A has the Defendant's signature as receiving the original letter? - Yes.

Examination Continued

He signed it in your presence? - He signed it in the presence of both myself and my Chief Clerk, who was then Mr. Mahedi Ali.

In the High Court of Tanganyika Arusha District Registry.

That letter reads as follows, Mr. Primrose: "We enclose herewith (sic) "Received the original hereof 18/9/52, signed Hassanali Kurji Kanji".

Plaintiff's Evidence.

No. 8.

COURT: It also states there are two enclosures.

William Henry Primrose.

9th December, 1954.

10 Examination Continued

There were with that letter these two enclosures which were the accounts of Hassanali & Co., and Hassan Trading Stores? - They were together; handed over at the same time.

Extracts from Examination - continued.

x x x x x

Examination Continued

20 Now, Mr. Primrose, to go back to this letter of 17th September, what did Mr. Kanji say when you handed him the letter? - Mr. Kanji assured me that he would settle his accounts in time. He did not dispute the amounts on the statements presented to him.

He did not dispute the figure in Hassan Trading Store account? - No.

Did he dispute the figure in Hassanali & Company account? - In fact he has never disputed any figure, not until this day.

Did he deny liability for Hassanali & Company? - No, never.

30 Did he admit it? - Yes, on many occasions. The most recent occasion when he interviewed me on 22nd of November 1954 requesting me to withdraw this case from the Court, and he would enter into an agreement to settle both amounts claimed, with interest.

x x x x x

Examination Continued

Well, since you took over Gailey & Roberts,

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

No. 8.

William Henry Primrose.

9th December, 1954.

Extracts from Examination - continued.

Moshi, which was in June 1953, I believe, until you read the defence put in by my learned friend in this case, which was in April 1954, had the Defendant ever complained to you?

COURT: Mr. Cassidy, the defence was put in by the Defendant in this case.

CASSIDY: I apologise, my lord. One is perhaps accustomed to signing one's own pleadings.

Examination Continued

Well, until you read the defence, had there been any denial of liability by the Defendant of the account of Hassanali & Company to you? - No, never. The monthly statements for both these accounts were sent to Mr. Kanji at Box 48, Moshi, which is his post-box number and he has continued to receive these statements monthly.

10

x x x x x x

Examination Continued

And the statement for Hassanali & Co., was sent? - Yes, on the 1st January.

Would it show the sum of Shs.3,000/- was sent out? - The account was sent out with the receipt for Shs. 3,000/-.

20

And the receipt was sent on account of? - Hassanali & Co.

And did he ever complain it was wrongfully credited to that account? - No, he never raised any objection.

x x x x x x

REID: The question to you is, did you know anything about this agreement in 1951? - I did know about an agreement in 1951.

30

Of your own knowledge? - Yes.

How? - When I was in Dar-es-Salam.

Well, how did you know that? - I have seen a report passing through the General Manager. We discussed it together.

And you say that that agreement was that the Defendant should take over the liability of Hassanali & Co.? - That was to my knowledge, yes, the agreement.

In the High Court of Tanganyika Arusha District Registry.

10 Well, now, have you looked at these two accounts carefully Mr. Primrose? You know that on the 31st December, 1951, Shs.100,000/- was transferred from Mohamedali Jafferli to Hassanali and on the same day there were transferred from the account of Mohamedali Jafferli the sum of Shs. 9,000/- odd? - That is correct. That is shown in our books.

Plaintiff's Evidence.

No. 8.

William Henry Primrose.

9th December, 1954.

20 Can you account for the fact that the whole amount was not transferred if there was such an agreement, that the whole amount was not transferred into the account of the Hassan Trading Stores? - I was not? transferred? I have seen a letter from Mr. Green or correspondence between Mr. Green and the then General Manager, Mr. Everrett.

Extracts from Examination - continued.

Explaining the position as it appears in the accounts, that the agreement was that so much would go to Hassanali ... ? - I saw a letter from Mr. Green saying that he had received cheques for the full amount from Hassanali & Co.

30 And that is all you know about it? You are not in a position to deal with any of these items which are pleaded in the statement of defence? You were not here? - I could not confidently say I know anything about them.

x x x x x

Examination Continued

Now, this Shs. 3,000/- paid in December. Are you crediting no other item at all to Hassanali & Company although you received many cheques during the 1951/1952/1953 period? - I don't think we received many cheques, Mr. Reid.

Yet there are quite a number of them shown in your account. - Against Hassanali & Company.

40 Not against Hassanali & Company, no. You received many cheques from Hassan Trading Store and credited them all the Hassan Trading Store, never one to Hassanali & Company. Is that correct? - I cannot state that.

In the High
Court of
Tanganyika
Arusha District
Registry.

Plaintiff's
Evidence.

No. 8.

William Henry
Primrose.

9th December,
1954.

Extracts from
Examination
- continued.

Well, have a look at your account. - (Witness looks at account). Yes, I credited that amount of Shs. 3,000/- to the account of Hassanali & Company when Mr. Kanji gave me that cheque.

COURT: Now why didn't you credit it to Hassan Trading Stores? - This cheque was collected by me on or about 28th or 29th December last year from Mr. Kanji's office, and I asked Mr. Kanji at the time where he wanted it credited, and he said "It doesn't matter, just against account", and that appeared to be the attitude with most cheques. 10

Examination Continued

There is not a single month hardly in the whole of this account that there is a cheque that goes in Hassan Trading Store that has not been credited to his account. For what peculiar reason did you suddenly for this month apply the cheque in another form? - There was no peculiar reason about it Mr. Reid.

I am going to put it to you that it was on advice to save this matter from limitation that you applied it in this way, because the account would be time-barred in three years. Was that the proper reason, Mr. Primrose? - Most likely it was. I would like you also to read the receipt on that one. 20

You received a cheque for Shs.3,000/- the following month, and put it into Hassan Trading Store, did you not? - Yes there was a cheque received, but it was against a specified invoice, Mr. Reid, which was on Hassan Trading Stores. 30

Shs.3,000/-? In January. There is no further invoice in January, Mr. Primrose. - I haven't traced that.

You have brought your book of accounts? - Yes, I have.

And where does that Shs. 3,000/- appear? It was in fact put into Hassan Trading Stores account?

COURT: The witness said so. When was this, in what month?

REID: In February.

Examination Continued

Now the Defendant has from time to time made efforts of a settlement of these two accounts provided you were willing to accept it. - Yes, he made one offer without prejudice, which we cannot discuss, and he made another on the 22nd of November this year.

That was to go to Nairobi? - To go to Nairobi.

10 And of course it was rejected? - My instructions were to proceed with the case.

His proposal was rejected, it was refused? - It was refused by me.

Do you know if there were any previous proposals as far as you are concerned? - Only the other one without prejudice.

20 One thing I would like to know. There is a cheque here for Shs.35,000/- that has been accumulating some commissions from time to time. Can you produce that cheque to the Court? It has been R/D, and you presumably have it. - I explained to the Court as far as I know from record, Mr. Reid.

I want to know, have you got that cheque? - No.

You cannot produce it? - I don't think so. It may have been returned to Mr.Kanji. I am not sure.

It may have been? - Yes.

Do you usually return R/D cheques to your customers, or do you keep them? - For me I retain them.

30 I am not talking about you personally. I am talking about the firm's practice. - I would not if it was the usual practice.

And have you got any record of having returned this cheque? - Not to my knowledge.

Can you tell the Court on what Bank or where it was drawn? - I cannot. I did not actually deal with it, Mr. Reid. I cannot stand here on oath and give evidence on a document which I have never seen.

In the High
Court of
Tanganyika
Arusha District
Registry.

Plaintiff's
Evidence.

No. 8.

William Henry
Primrose.

9th December,
1954.

Extracts from
Examination
- continued.

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

No. 8.

William Henry Primrose.

9th December, 1954.

Extracts from Examination - continued.

You wouldn't be expected to know. Have you had a search through your records to see if you could find it? - Yes, I have.

And you have not been able to find it? - No. Regarding the Shs. 35,000/- I can give you the numbers of the original cheques, one for Shs.25,000/- and one for Shs.10,000/-

What we are interested in is this last one, by whom it was drawn and on what Bank. - I cannot give that, I am sorry.

10

What happened to the other two cheques, the Shs.25,000/- and the Shs.10,000/-? - I am sorry I don't know. I think they were probably handed back; in the case of this particular cheque, it is a mystery.

Re-Examination. CASSIDY

Extracts from Re-examination.

My friend suggested that you received frequent cheques from Hassanali Kurji Kanji in payment of Hassan Trading Stores. Look at this account, if you would. Is there a single cheque in September 1951? - No.

20

Is there a single cheque for October 1951? - No, not here.

In November? - No.

Until some time towards the end of December. Something arrives in 1951. Then we go further on. December 1951 again, debit but no credits. In fact, Mr.Primrose, looking at that thing, your lordship will see the credit side is pure as the undriven snow most of the way.

30

REID: I see numerous cheques for Shs.10,000/- and upwards may it please your lordship, and there is a contra of Shs.41,000/- no less, in August.

COURT: Which year was that?

REID: The very first year, 1951 - the second entry from the bottom.

CASSIDY: Well, I think the document speaks for itself, my lord.

x x x x x

BY COURT:

Mr. Primrose, when you said that Mr. Kanji gave you this cheque for Shs. 3,000/-, and you asked him which account to credit it to, and he says "It doesn't matter; credit my account," were you speaking about both the Hassan Trading Stores and Hassanali Trading Company? - Both Hassan Trading Stores and Hassanali Trading Company.

10 Are you sure in your own mind that you were speaking of that but were you actually using words with him which made him understand that you were talking of these two accounts? - I did not specifically mention the names of the account, the title of the account.

In the High Court of Tanganyika Arusha District Registry.

Plaintiff's Evidence.

No. 8.

William Henry Primrose.

9th December, 1954.

Examination by Court.

COURT: But are you absolutely satisfied? - That Mr. Kanji understood my question?

20 And you put the cheque either to the credit of the Stores' account or Hassanali & Co.? - Mr. Kanji gave me the impression it did not matter where it was credited. It was so much for the amount he owed on both accounts.

When he told you to "credit my account" you were quite satisfied that he meant either of those two? - Yes, either account.

You are sure of that? - Yes.

x x x x x

Mr. Cassidy informs Court that he may have another witness - Mr. Mohamedy Ali who has been served with a summons but has not obeyed the summons.

30 Case adjourned until a date to be fixed for hearing in Dar-es-Salaam, in January if possible.

Court adjourned at 7.10 p.m.

In the High Court of Tanganyika Arusha District Registry.

No. 9.

EXTRACTS FROM JUDGE'S NOTES OF HEARING AT ARUSHA

x x x x x

9.12.54. Arusha 10.40 a.m.

Cassidy for Plaintiff.

Reid for Appellant.

Reid: Medical Certificate that Defendant ill with appendicitis and that the certificate has just been delivered this a.m. from Moshi.

Also that material witness not yet traced - this was mentioned when the case was fixed. If continued with must be determined later possibly in Dar-es-Salaam. 10

Cassidy: Got witnesses here at considerable expense from different parts of East Africa - outside the Territory.

Last time adjourned on request of complainant.

Case fix back to 1951.

Court: We will proceed as far as possible now at Arusha and then adjourn to a later date probably at Dar-es-Salaam. 20

(Sgd.) H. COX
C.J.
9.12.54.

Claim filed 5.2.54.

Para 3. Shs.97,936/54 claimed from Hassan Trading Stores for goods supplied.

Reid admits owing

Shs.52,510.64 Balance is disputed.

Issues agreed.

(1) Is the Plaintiff entitled to any sum above the admitted amount in respect of para. 3. 30

Para 5. Shs.118,444/70 liability on account of Hassanali & Co.

..... asking that liability of one

No. 9.
Extracts from Judge's Notes of Hearing at Arusha.
9th December, 1954.

Shs.9,000/- be taken on. That has been accounted for but the item of Shs.118,444/70 is an entirely different account and is disputed entirely.

In the High Court of Tanganyika Arusha District Registry.

Issue (2)

Reid: Issue of 1953 struck out by District Registrar, 0 6 r 7 but now included in better particulars.

No. 9.

Extracts from Judge's Notes of Hearing at Arusha.

10 O.6.r.7. Order of District Registrar not appealed from and he ruled that paragraph in reply No. 9 must be struck out.

9th December, 1954
- continued.

In amended para.5 of plaint dated 7th July, 1954.

Para. 2 brings in again the agreement of 4.3.53 no part of particulars ordered.

No application to amend has been made 0.6 r.7.

Evidence of 1953 agreement cannot be permitted as it has been struck off the record by the District Registrar.

20 Plaintiff could have asked for leave to amend and Defendant had right of reply and answering.

But putting forward in this way has deprived us by opportunity of replying.

Chitale 4th Edition Vol. II p. 1573.

"It has been seen
at p. 1617.

"A pleading can

Specifically exclusion by the District Registrar and Defendant excluded from pleading to its.

Cassidy:

30 Chamber Summons dated 19.6.54.

(a) Asks for facts.

Have disclosed the facts and nothing more. In March, new manager appointed and he checked up.

Even if new agreement, still within rule.

Plaintiff has directed facts on which he claims the sum.

In the High
Court of
Tanganyika
Arusha District
Registry.

No. 9.

Extracts from
Judge's Notes
of Hearing at
Arusha.

9th December,
1954

- continued.

Does not like it.

Have had 4 months to raise any question,
he raised it today - same thing before.

No merit in objection.

Complains that he had been given too much
information.

No new agreement but reaffirmation of the old.

Reid got what he asked for and what the court
advised.

Application not to be entertained for a min- 10
ute.

Whatever happened to the amended para. 5 is
still admissible.

Reid: Defence.

Para. 5 includes with its ambit para. 5 of
S/Claim in view of the Statement para of S/Claim
even if not specifically mentioned.

In reply para 9 new agreement of March 1953
set up as struck out on 12.6.54.

Applied to Court for particulars of claim of 20
100,000/-. Reply to Mohammedali Jafferli from ?
but our figure of account ? to the Plaint.

In amended para 5 of plaint Plaintiff raised
the 1953 question again.

"Orally agreed" - the agreement struck out.
Agreed issue.

No. 2 Is the Defendant liable for the sum of
Shs.118,444/20 named in para 5 of the Plaint:
as part of agreement of December 1951.

No. 3 Is the Defendant liable to pay interest on 30
the sum of the account of Hassan Trading
Stores - whatever amount is found due.

No. 4 Is the Defendant liable to pay interest on
the account of Hassanali & Co., as found.

No. 5 If the defendant agreed to undertake the
liability of the account of Hassanali & Co.
did that account at the time of the agree-
ment include a sum of Shs.100,000/- owed by
Mohamedali Jafferli.

No. 6 Is the Defendant liable on a cheque for Shs. 35,135/75 which has been debited to his account on 31.10.52.

No. 7 Did the Plaintiff fail to give credit for the sum of Shs.3,000/- paid in December, 1953.

Plaintiff admits the payment of Shs.3,094/40 in 1954 after filing of suit - Para 3 (f) of Defence.

x x x x x

In the High Court of Tanganyika Arusha District Registry.

No. 9.

Extracts from Judge's Notes of Hearing at Arusha.

9th December, 1954
- continued.

10

No. 10.

EXTRACTS FROM JUDGE'S NOTES OF HEARING AT DAR-ES-SALAAM.

Court Dar-es-Salaam 14.6.55 - 9.10 a.m.

Cassidy for Plaintiff

Reid for Defendant

Cassidy closes Plaintiff's case.

Defence

x x x x x

(Intd.) H.C.

2 D.W. Sauli (?) Karmali Premji affirmed saith:-
My name is S.K. Premji.

At one time carried on business under name of Hassanali & Co., Moshi.

Business registered under that name under B. N. Ord.

In 1951 had dealings with Gailey & Roberts as shown in Exhibit C attached to plaint.

I got these two items of goods shown in ? account.

I see the items of Shs.100,000/- transfer from

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam.

14th June, 1955.

20

Hassanali Karmali Premji Examination.

In the High Court of Tanganyika Arusha District Registry.

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam. 14th June, 1955.

Hassanali Karmali Premji Examination - continued.

a/c of Mohamedali Jafferalli. Yes I agreed to this transfer being made to my account but not for immediate payment but for subsequent payments.

Cassidy objects as no conditions ever put to witness Green.

By Court: Matter for comment.

(Intd.) H.C.

At the time that agreement was made it was made with Mr. Green who was the Manager at December 1951 as shown in account.

10

That was not the whole debt by ? ? had a debt of Shs.109,000/- I took over Shs.100,000/- but balance debit to account of Mr. H.K.Kanji. He not present when that agreement made between me and Green.

Never any suggestion that kanji should be responsible for my account at Gailey & Roberts.

I see this account which has the figure of Shs.3,000/- balance would be Shs.121,444/70 and I produce account for 31st August 1952 showing balance of Shs.121,444/70.

20

A/c tendered. No objection. Admitted and marked 23.

When I got 23 I went to see Green & Gailey & Roberts.

The account of Mohamedali Jafferalli which I had taken over in my own account were settled by an instalment arrangement after a time, not so soon.

Mr.Green agreed and accepted these cheques.

Bundle tendered - 20 cheques and counterfoils.

30

24 No objection. Admitted and marked No. 24 collectively.

None of these cheques have been cashed because in November Green called me and said that the instalments which I had paid have been refused by head office too long term arrangement. He would keep them and not cash them until the new manager

comes. When the new manager came I must agree terms with him so Mr. Green kept them.

New Manager came, Thrower, he called me and told me that the cheques were too low for instalments, if I gave him in big sums would take small instalments for the balance.

I said I could not as I not able to pay a big sum.

10 He would not agree to this and handed over the cheques to me and the arrangement was cancelled.

Gailey & Roberts have never told me that I released from my liability to them. Never said that they no longer held me liable. I have to pay the balance for my own personal goods but not from the Shs.100,000/- because I had taken it over conditionally.

When I got account in August it was agreed that we should pay like this - commencing in November.

20 Sometimes I got monthly statements from Gailey & Roberts.

Since then the Shs.100,000/- still included in the account.

In December 1952 I did not pay that Shs.3,000/-.

I have no receipt for that. I never paid it.

I still consider that I am liable to Gailey & Roberts for the goods I bought but not for the Shs.100,000/-.

Cross-Examination

30 Yes Gailey & Roberts' a/c still continue to show this Shs.100,000/-.

Thrower gave me back my cheques in January 1953. After receiving back my cheques I used to get statements containing the Shs.100,000/- but I never objected to them and that item therein.

I did not know that the Defendant gave cheque in payment of this account. I never asked him to help me out.

In the High
Court of
Tanganyika
Arusha District
Registry.

No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.

14th June, 1955.

Hassanali
Karmali Premji.

Examination
- continued.

Cross-
Examination.

In the High
Court of
Tanganyika
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Registry.

No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.
14th June, 1955.

Hassanali
Karmali Premji.

Cross-
Examination
- continued.

Why he gave cheque to cover the whole amount if I did not ask him.

(? were the cheques for this account in full?
(Intd.) H.C.)

When I made this agreement with Green I had Mohamedali Jafferli and I went, he nephew of Defendant. The Defendant not there.

Quite sure that Defendant did not agree with Mr. Green to take over the account of Hassanali & Co. If Green says so that not true. 10

I now employed in the Dairy of Defendant as manager draw salary and 25% of profit.

Never ceased dairy business on my own account, doing slight business now.

Have bank account at Barclays Bank. Account of Hassanali & Co., closed at Barclays Bank. I stopped it last year.

I have separate P.O. Box number - since last year.

Hassanali & Co., operated on same P.O. Box as Defendant. In 1952 used box number 48. 20

Hassanali & Co., no concern of Hassan Trading Stores.

When Hassan Trading Stores could not get credit I did not order for them.

I sold the Shs.25,500/- worth of sheets in the market ? over in my business. I paid Shs.10,000/- to Gailey & Roberts.

Bought Shs.30,944.70 of corrugated iron.

Sold for cash in the market. I paid them Shs.25,000/-. 30

I sold at a profit.

Yes never complained of Shs.100,000/- appearing on my account.

I am a business man, a careful one, but never

queried the amount of Shs.100,000/- appearing in the account month after month.

I thought that when I got my cheques back I was not responsible.

I thought that when I paid the balance I would have explained the position. Not paid balance. Not yet queried it or explained not because I am liable.

10 When these people cancelled that arrangement I was free - they handed me back my cheques. They wanted big instalments and when I said I could not pay that so I understood that I not liable at all.

I took over the account on conditions.

Re-Examination

I am related to Mohamedali Jafferli. He son of my brother-in-law.

I paid the Shs.10,000/- by cheque returned unpaid, then in two or three days paid Shs.10,000/- in cash. I think they returned the cheque to me.

20 By Court:

I wrote the 20 cheques in October, the first dated 30/11/52. Mr. Green called me to settle the account which I received in September. Statement 23 for Shs.121,444.70. Called a few days after I received the statement. I wrote the cheques in either September or October.

Before I got No.23 sometime (?) I got monthly statements.

Cheques I gave were -

30	1 for Shs.7,444.70	7,444.70
	19 for Shs.6,000/- each	<u>114,000.00</u>
		<u>Shs. 121,444.70</u>

To settle not only the 100,000/- but the whole account.

When the cheque returned to me did not wipe out the Shs.21,444.70 that still standing.

In the High Court of Tanganyika Arusha District Registry.

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam. 14th June, 1955.

Hassanali Karmali Premji.

Cross-Examination - continued.

Re-Examination.

Examination by Court.

In the High
Court of
Tanganyika
Arusha District
Registry.

No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.
14th June, 1955.

Hassanali
Karmali Premji.

Examination by
Court
- continued.

I was never told that I would have to pay interest on the amount outstanding. Nothing about charging interest.

Received statements but never demanded any money.

M.J.Ali said that they pressing me for the sum and I went to Green with him. I said I would take it over on a long term. Gailey & Roberts trusted me: that is why I took over this Shs. 100,000/-

10

Witness released.

(Intd.) H.C.
14.6.55.

12.30 p.m. Court will rise until 2 p.m.

(Intd.) H.C.
C.J. 14/6.

2.00 p.m. Court reassembles. All present as before.

(Intd.) H.C.

Reid tenders Record of No. 6/53 Arusha District Registry.

20

By consent admitted and marked No.25.

Hassanali
Kurji Kanji,
Examination.

Defendant D.W.3. Hassanali Kurji Kanji, affirmed
saith:

My name is Hassanali Kurji Kanji.

Proprietor of Hassan Trading Stores.

In 1951 also had Baboo's Milk House and Moshi (?) Bakery.

During that year extensive dealings with Gailey & Roberts on all three accounts.

30

At December 1951 I took over to the extent of Shs.9,000/- odd portion of the debt due to Gailey & Roberts of Shs.9,345.70 from Mohamedali Jafferli, transferred to my account. At end that year on own account owed approx. 91,000/- making a total of Shs. 101,842.14. page 7 of account.

In the High
Court of
Tanganyika
Arusha District
Registry.

No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.
14th June, 1955.

Hassanali
Kurji Kanji,
Examination
- continued.

Bank account on which these cheques were drawn was closed by the Bank.

Can't say if any cheques presented at the Bank but think one must have been presented for Mr. Thrower to know that my account closed.

Those cheques returned to me by Thrower. I have destroyed them.

I don't dispute that numbers quoted on Thrower's letter are correct numbers.

Thrower called me to his office after I found account closed and I said that I would pay him and offered him some security. A third mortgage on my garage premises, said he would send proposition to head office. Offered him my farm for sale or mortgage. 10

In March 1953 I entered into a Hire Purchase Agreement for machinery for the milk house costing Shs. 65,509.45.

Cassidy objects is not relevant to proceedings.

28. Reid submits to show that business transactions continued. Admitted and marked 28. 20

Also received the offer to purchase more machinery for £1,660.0.0. but did not - retreading.

29. Tendered. No objection. Admitted and marked 29. 29.

On 3.7.53 received from Gailey & Roberts a letter about my liability on that date sent by Primrose.

Tendered. Objected to as not signed by anyone. 30

Reid submits admissible as allied to a specific figure and on the firm's official paper.

By Court:

I do not consider that this piece of paper can be admitted other than by agreement. Not admitted.

(Sgd.) H. Cox.
C.J.

I never at any time agreed to accept responsibility for the account of Hassanali & Co.

On 17.9.53 received letter from Primrose in which Primrose demanded payment of my own account and Hassanali & Co.

10 I saw Primrose in my office and he gave me the letter. I said nothing about the account for Hassan Trading Stores except that I would come and see him some time. I told him that I had nothing to do with this Hassanali account.

I went and saw him, he then said that "this account (Hassanali & Co.) not your account" and we discussed a settlement of my own account.

I asked for time. He said he would discuss them if I brought a substantial amount. I could not. I said as soon as I finished my hire purchase agreement I will pay small amounts. Later received letters from advocates and suit was filed.

20 I tried to negotiate with Mr. Primrose without prejudice to the merits of the case, and made certain proposals. Sent to head office but answer was "no bring a substantial amount".

Had a subsequent conversation about this case, went his office to make enquiry about buying an Albion truck.

30 Quite ready to do business on the Albion truck so I said at the same time as he favourably impressed I said shall we go to Nairobi and settle my account - this following on previous conversation with him.

He said his instructions were to go ahead with the case:

Served with summons.

Filed defence.

Defence:

3 (d)

October 1953 cheque unpaid Shs.35,132.75.

One cheque given to Gailey & Roberts for H.A.

In the High Court of Tanganyika Arusha District Registry.

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam.

14th June, 1955.

Hassanali Kurji Kanji,

Examination
- continued.

In the High
Court of
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Arusha District
Registry.

No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.

14th June, 1955.

Hassanali
Kurji Kanji.

Examination
- continued.

Ramji by me as his account closed in Mombasa, cheque drawn on my private account. H. K. Kanji on Barclays Bank, Moshi.

I did that as H.A. Ramji as his account closed and he asked me to pay Gailey & Roberts that and he would pay small amounts into my account.

Cassidy: New and alternative form of defence, not put to Primrose. Drawing such a cheque denied in para. 3 (d). Can only be admitted with great caution.

10

By Court: Will admit it with great caution.

Reid points out that in the Reply reference is made to this cheque in para. 6 of reply.

By Court: Evidence admitted, can be commented on later if necessary. H.A. Ramji did not pay into my account.

(Intd.) H.C.
14.6.

Ramji settled his account with Gailey & Ronerts and he brought me back my cheque - settled by instalments.

20

Def. 3(b) (Note that Plaintiff has admitted this). Exhibit No.12. Rebate on certain articles.

3(a) Do not challenge that any further.

3(c) Ex. 13. Debit note Shs.2,756/-. Do not admit why this alleged short delivery. The invoice of these goods from me to Gailey & Roberts does not appear to be in these accounts. P.14 attached to plaint - none of invoice there.

30

Gailey & Roberts might have paid cash to me for goods.

I cannot remember the transaction and do not admit liability.

Do not know to what this refers at all (P.14 of A in plaint).

3(c) Credited to Hassanali & Co.

Had nothing to do with Hassanali & Co., never gave authority for that to be credited to Hassanali & Co.

Never made any payment on a/c Hassanali & Co.

When paid this in December 1953 had:

Hassan Trading Stores ordinary account.
Hire Purchase account
Baboos Milk House

Hire purchase agreement not up to date.

10 Money could have been put to either of these.

I never at any time made any agreement to pay interest on my account.

3.30 p.m.

Cross-Examination

Can't remember if I had a meeting with Green in December 1951.

Entirely deny that ever undertook the liability of Hassanali & Co.

20 If Green said so I cannot give a reason for it.

Can't say if that untrue.

I am speaking the truth. Not correct that I took over the account.

Just before Thrower took over I gave cheques for Shs. 100,000/-. Destroyed them since.

I owing that amount then.

They useless so I destroyed them.

5.3.53 Letter of 5.3.53 Ex.11.

30 I deny that any such conversation took place with respect of the accounts of Hassanali & Co., Green and Thrower putting on me a liability not mine.

Everything Thrower says in his letter about Hassanali & Co., is false.

In the High Court of Tanganyika Arusha District Registry.

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam.

14th June, 1955.

Hassanali Kurji Kanji.

Examination - continued.

Cross-Examination.

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14th June, 1955.

Hassanali
Kurji Kanji.

Cross-
Examination
- continued.

I went to Thrower and said I had no liability over Hassanali & Co.

I am a business man - don't say "careful" or "wise".

I thought that having done and said so verbally that is better than in writing.

By Court:

When Primrose took over from Thrower they came to see me. If they say that at that meeting I accepted the accounts for Hassanali & Co., did not and no mention of that only a formal introduction of by whom taking over. Accounts not mentioned, not at all.

10

If Primrose said that there was any conversation about the accounts he is lying - I am here speaking the truth. Only one in my office together that I can remember - it a long time ago.

Cross-Examination (Continued)

I remember Primrose bringing letter No. 19 of 17.9.5 ? and 19A signed by me.

20

No, I never answered the letter in writing.

I answered it verbally by going to see Mr. Primrose.

If Mr. Primrose said that I agreed to pay that incorrect.

If nothing was put to Mr. Primrose about this I don't know I sick.

I told Mr. Reid about this Shs.35,000/- from Gailey & Roberts signed by me for security after the Arusha case.

30

The cheque I gave Kanji no connection with my accounts. If Primrose says that I never denied liability and that I admitted I would pay both accounts that is incorrect. I never accepted.

The accounts three:-

Hassan Trading Stores
Hassanali & Co.
Mohamedali Jafferli.

I not getting credit from Gailey & Roberts on the accounts of my relatives.

I deal in corrugated iron.

If Thrower and Primrose say that I never queries my accounts I don't know as I getting in my P.O.Box 48 for others as well. My letters come to me not others. (?)

All four of my employees got credit from Gailey & Roberts for corrugated iron.

10 On 27.6.52 gave cheques to Gailey & Roberts for Shs.25,000/-, unpaid and later settled. Can produce it.

Credited in my account (in page 14).

I did not give a cheque for Shs.10,000/- that same day to Gailey & Roberts for Hassanali & Co.

I gave cheque of Shs.10,000/- to Hassanali & Co., don't know what they did with it.

I settled the cheque of Shs.25,000/- with Gailey & Roberts with other payments.

20 I have no receipt as it credited once to my accounts.

The Shs.35,000/- debited is Kanji's cheque not my ? of Shs.25,000/- and Shs.10,000/-.

The account in the suit are wrong.

I told Cashier Mahedi that that is not my cheque. Also if given in June why debited in October.

30 I had good relationship with Gailey & Roberts and did not bother to write to them about things just went to speak about things.

I got the milk machinery from Green and I was always ready to sign the Hire Purchase agreement.

Defence:

Para 3(b) Exhibit 12.

In the High Court of Tanganyika Arusha District Registry.

No.10.

Extracts from Judge's Notes of Hearing at Dar-es-Salaam.

14th June, 1955.

Hassanali Kurji Kanji.

Cross-Examination - continued.

In the High
Court of
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No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.
14th June, 1955.

Hassanali
Kurji Kanji.
Cross-
Examination
- continued.

Gailey & Roberts took orders and sent the goods through me giving me 5% credit.

3(c) I can't say how delivered.

Debit in June 1952 no complaint in writing ? verbally.

Cannot say that these managers conspired against me if they say that I never complained.

3(d) Deny that the cheque of Shs.35,135/75 had anything to do with this.

I mentioned this to the cashier, knew I would get credit later. Never mentioned it to any manager. Letter of 19.1.54 from Cassidy before suit claiming these large sums. Having reached that stage did not think that Cassidy would listen - let it go to Court.

10

Have received regular monthly statements from Gailey & Roberts took no steps to get it put right.

By Court:

The Shs.3,000/- placed to the a/c of Hassanali & Co., should have been placed to my account. I pointed this out to the cashier Mahedi that no credit in my statement of Shs.3,000/- when I gave a cheque for. He said "I'll see to it". I told Miss Gulshan about it - the one with spectacles.

20

I never went back to her about it but I wrote this letter - copy of :

Cassidy objects, never received by Gailey & Roberts, cannot trace it.

Reid: Notice to produce has been served.

Cassidy: Received.

30

Witness: I signed this without any instructions. Dealt with in the ordinary way.

30. By Court: Can be admitted. Marked 30 dated 17.2.54.

(Intd.) H.C.
14.6.55.

? case started. Never expected Gailey & Roberts to sue me.

Cross-Examination Concluded.

Re-examination tomorrow morning.

4.47 p.m. Court adjourned until 9 a.m. tomorrow.

(Intd.) H.C.
14.6.55.

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No.10.

Extracts from
Judge's Notes
of Hearing at
Dar-es-Salaam.

14th June, 1955.

Hassanali
Kurji Kanji.

Cross-
Examination
- continued.

15/6/55. 9.05 a.m. Court reassembled. All present as before.

(Intd.) H.C.
15/6.

15th June, 1955.

Re-Examination Nil.

By Court:

I admit I owe Gailey & Roberts the amount they claim, less the :-

Claim for Hassanali & Co.

Cheque for Shs.35,133.75.

Credit Note for Shs.1,101.75 - para 3 (b)

Ex. 12.

12.

Short delivery Shs.3,756/- - para 3 (c)

Ex. 13.

13.

Interest on 'B' Shs.16,884.77.

But claim credit for Shs.3,000/- from the credit of Hassanali & Co's account.

Payment of Shs.3,094.40 para 3 (f) admitted by Plaintiff.

That including the item of 3 (a) credit note for Shs.340/- comes to a total admitted owing of Shs. 52,510.64.

I never agreed to pay interest.

Am still trading. Getting hardware etc. from Nairobi.

I gave Gailey & Roberts cheque of Shs.35,000/-

10

20

30

In the High Court of Tanganyika Arusha District Registry.

but not of Shs.10,000/-. If Green, Thrower and Primrose all say that I agreed that this was my liability I think they must have made a mistake.

Case for Defence

No.10.

Reid Addresses:

Extracts from Judge's Notes of Hearing at Dar-es-Salaam. 15th June, 1955.

x x x x x

No novation. Mere agreement to be responsible
---- ? ---- Apart from ? fact that it is not proved.

Hassanali Kurji Kanji. Examination by Court - continued.

Case falls within Sec. 127 of Indian Contract Act Illustration C. Void and unenforceable for lack of consideration even if made - no consideration at all. Not even time given to pay on account of taking over. 10

Pestonji v Bai Maherbai @ 539 @ 544.

"The further question dismissed".

Nanak Ram v Mugenlal.

I Allahabad 487.

x x x x x

11.38 Reid ends.

11.38 Cassidy begins.

x x x x x

3.7 p.m. Cassidy concludes. 20

C.A.V. Time to be announced later.

(Sgd.) H. Cox.

C.J.

15.6.55.



No. 11.

JUDGMENT

Cassidy for Plaintiffs.

Reid for Defendant.

In the High
Court of
Tanganyika
Arusha District
Registry.

No.11.

Judgment,
H.Cox, C.J.

20th October,
1955.

- 10 COX, C.J. - The Plaintiffs, who are a limited liability company incorporated in Tanganyika, carried on business at different places, including Moshi. At Moshi Hassanali Kurji Kanji carried on business under the name and style of Hassan Trading Stores. At the same time there was another concern known as Hassanali & Company in which the Defendant had very extensive interests, and there was also another concern, Mohamedali Jafferli, in which the Defendant was also interested. It was not clear to what exact extent the Defendant was interested in the three concerns, but I am satisfied that their business relationship and their family relationship was such as to make them almost integrated one with the other.
- 20 2. In the middle of 1951 and before that Mohamedali Jafferli had incurred a considerable liability with the Plaintiffs, and one of the local managers of the Plaintiffs, being concerned about it and the fact that he himself would be pressed from his head office in connection with this outstanding account, acquiesced in a proposal by the Defendant that the liability of this third concern to the Plaintiffs should be divided between Hassan Trading Stores and Hassanali & Company, and at the request of the Defendant Mohamedali. Jafferli's account was closed, Shs.9,345/70 cts. being transferred to the account of Hassan Trading Stores and Shs. 30 100,000/- transferred to the account of Hassanali & Company, and the proceedings now before this Court are in respect of the amounts alleged to be due to the Plaintiffs from Messrs. Hassan Trading Stores and Hassanali & Company, which together include the total of Shs.109,345/70 cts. transferred from Mohamedali Jafferli's account in order to close Mohamedali Jafferli's account. The Defendants admit liability as regards the Shs.9,000/- but do not accept the liability as regards Shs.100,000/-.
- 40 3. These proceedings have been very protracted. The plaint was filed, after considerable correspondence and negotiation, in February 1954, and the

In the High
Court of
Tanganyika
Arusha District
Registry.

No.11.

Judgment,
H.Cox, C.J.,

20th October,
1955

- continued.

matter came before me at Arusha in the middle of December 1954. In the meantime there had been many applications to the Court in connection with the striking out of parts of pleadings and as between the parties themselves asking for further and better particulars. On the matter coming before me at Arusha, Mr. Reid for the Defendant informed the Court that he had just received a medical certificate that the Defendant was ill. That was a fact, but in view of the fact that this was the second occasion on which witnesses had been summoned from Kenya on behalf of the Plaintiff the trial proceeded, it being decided that it would be concluded subsequently in Dar-es-Salaam, and it was concluded in Dar-es-Salaam in the middle of June this year.

10

4. It has been my invariable practice in writing a judgment to deal with all the arguments which have been adduced, and to analyse the findings in detail. I have done that so as to endeavour to satisfy the unsuccessful party that his case has been thoroughly and fully investigated. I am afraid that circumstances have prevented my doing so in this instance, but I am not suggesting for a moment that I have not given to the actual issues involved the attention that I like to give. It is only that I have not got the opportunity now of recording in writing the details of my analysis as I would normally have done.

20

5. I am quite satisfied from the evidence that the Defendant accepted liability for the whole of Mohamedali Jafferli's liability to the Plaintiffs, and that that liability was divided between Hassan Trading Stores and Hassanali & Company as requested by the Defendant, with effect from the 31st day of December 1951.

30

6. There is ample evidence that the Defendant satisfied the Plaintiffs that he would meet the above liabilities, and in so far as one particular matter was concerned he gave post-dated cheques to the extent of Shs. 120,000/--, none of which cheques were honoured by the Bank because very shortly after this the Bank itself closed his account, and in consequence the security which the Plaintiffs thought they had vanished into thin air. In the meantime the Defendant in respect of both these accounts continued a certain amount of trading,

40

incurring liability and making payments on account of his liability.

7. A change of local management of the Plaintiffs brought matters to a head, the new manager seeing the Defendant and the Defendant admitting liability and undertaking to pay. Subsequently two cheques were placed to the credit of the Defendant, a cheque for Shs. 25,000/- and a cheque for Shs. 10,000/-. There was considerable argument about these cheques and whether they were or were not really given for the purpose alleged by the Plaintiffs. These two cheques totalling Shs. 35,000/- were dishonoured and that amount together with the Bank charges appeared regularly in the accounts of the Defendant. They were credited to his account, passed to the Bank, dishonoured, returned to the Plaintiffs, who kept them, towards the end of another month paid them into the Bank, and so the cycle continued, terminating with the cheques never being honoured by the Bank. In the meantime, the other cheques which had been given as security, and which as the then manager thought were now of no further use, the account being closed, were returned to the Plaintiff by letter in which the numbers of the cheques were stated.

8. I am quite satisfied that the Defendant throughout the whole of the protracted negotiations with the Plaintiffs accepted the liability and was always promising to pay if there was forbearance on the part of the Plaintiffs. He even offered security of an entirely different nature, and the matter was referred to the Plaintiffs' head office in Nairobi, and refused. Throughout the whole of these protracted negotiations - well over two years - in no single instance did the Defendant repudiate or deny any of the allegations about his liability to the Plaintiffs. He received regular monthly statements, and while of course each monthly statement did not reproduce the details of the previous monthly statement it did reflect the result of that statement. No complaint was ever made as regards any detail in the statements, including even the charges for interest. Ultimately the Plaintiffs felt obliged to charge interest, and they wrote a letter to the Defendant informing him that if he did not take steps to settle his account they would be obliged to charge interest on one of the accounts as they were already doing on the

In the High
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No.11.

Judgment,
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20th October,
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- continued.

In the High
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No.11.

Judgment,
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- continued.

other. To this letter there was no reply.

9. I do not for a moment support the practice in this territory of creditors claiming interest either automatically from their debtors when there has been no provision for that in the contract or alleging that it is a custom of merchants, yet where a debtor is notified in writing by his creditor that unless an account is paid he will be charged interest as is being charged on another of his accounts, and he does not repudiate that nor does he take steps to show that he does not agree, he cannot, after a period of years and only when sued in court, say that it is not an agreed matter between himself and the creditor. In the present case the Defendant acquiesced over a long period of time in this practice and obtained respite because of the charging of interest, and I am satisfied that his conduct was an acceptance of the condition that he would pay interest to avoid being sued.

10

20

10. At the last moment in Dar-es-Salaam a surprise was sprung on everybody when it was stated in evidence that the cheque for Shs. 25,000/- was not given to Messrs. Gailey & Roberts in settlement of any of Mr. Kanji's accounts, it was given as an accommodation in order to assist Mr. Ramji, and that it was subsequently returned to the drawer. Now there was no single suggestion of anything of this sort put to any of the witnesses who could have admitted or denied the truth of the allegations from one who is a self-confessed passer of cheques which were dishonoured. I do not believe it.

30

11. Although I am not altogether satisfied with all the manner of business and the records of all the business conducted by the Plaintiffs, yet I do accept the general story as told by the witnesses for the Plaintiffs and reject that of the defence where it is in conflict with it.

12. There are, however, one or two matters to which I must refer specifically. I am not satisfied that the items of Shs.2,600/- and Shs.156/-, making a total of Shs. 2,756/-, debited to Hassan Trading Stores in June 1952 in respect of aluminium sheets which were short-supplied, should be debited to the Defendants. I am not satisfied that the responsibility for that short-delivery has been traced to the Defendants, though it is possible

40

that that was their responsibility. That being so, that amount should be deducted from the total claim against Hassan Trading Stores. The Defendant should also be given credit for Shs.3,000/- paid in December 1952, that is to say, he should be given credit for a total of Shs. 5,756/-.

In the High
Court of
Tanganyika
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10 13. I propose to give judgment for the Plaintiffs in the amount claimed, namely, Shs.236,283/38 cts. less the sum of Shs.5,756/- and a further sum of say, Shs.684/- interest overcharged, in other words, for a sum of Shs.229,843/38 cts. (Shillings two hundred and twenty nine thousand eight hundred and forty three and Cents thirty eight), together with costs; and I further order that interest on the decretal amount be paid from today's date to the date of payment at 6 (six) per centum per annum.

No.11.
Judgment,
H.Cox, C.J.,
20th October,
1955
- continued.

AND IT IS ORDERED ACCORDINGLY.

20 14. I feel I must observe on the extraordinary lack of commercial morality of certain people, who seem to draw cheques without any real intention of their being honoured. In this particular case there was a large number of cheques just drawn, I am inclined to think, as a blind to encourage the giving of furthering of credit or the retaining of existing credits, and in many cases I am satisfied it was not intended that they would be met. I am quite satisfied, too from what I have seen in this territory that if those individuals who presented cheques which were dishonoured were prosecuted in proper cases it would increase the commercial integrity of a certain section of the trading community and it would also materially reduce the cost of living, because the merchants have to increase prices to those who pay in order to cover bad debts. I have never in my experience come across any trading conditions where so many bad cheques are passed as I have experienced in this territory.

30

40 Dated at Dar-es-Salaam this 20th day of October, 1955.

(Sgd.) H.C.F. COX,
Chief Justice.

Judgment read over in Court in presence of Miss Nasser for Cassidy for Plaintiff and Ali for Reid for Defendant.

Sd. G.M.Mahon, Ag. C.J.,
28.10.55.

In the High
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No. 12.

DECREE.

No.12.
Decree.
20th October,
1955.

The Plaintiffs pray judgment for :-

1. Shs.236,283/38 due under an account between the parties.
2. Costs.
3. Such other and further relief as this Honourable Court may seem fit.

This suit coming on this day for hearing and final disposal before the Honourable the Chief Justice, Sir Herbert Cox, in the presence of D. Cassidy Esq., Advocate for the Plaintiffs and A. Reid Esq., Advocate for the Defendant. 10

IT IS HEREBY ORDERED AND DECREED THAT the Defendant do pay to the Plaintiffs :-

1. The sum of Shs. 236,283/38, less the sum of Shs. 5,756/- and a further sum of Shs. 684/- interest overcharged, in other words the sum of Shs. 229,843/38 (Shillings Two hundred and twenty nine thousand eight hundred and forty three and cents thirty eight). 20
2. The taxed costs of the suit to be taxed by the Taxing Officer including Shs. 5/50 the cost of the decree; and
3. It is further ordered that interest on the decretal amount be paid from the 20th October 1955, the date of judgment until payment at 6 (six) per centum per annum.

Given under my hand and the seal of the Court this 20th day of October, 1955. 30

H.R.F. BUTTERFIELD,
Registrar.

Seal of the Court.
Issued & Signed,
10/1/56.

No. 13.

NOTICE OF APPEAL

GAILEY & ROBERTS LIMITED

Plaintiff

versus

HASSANALI KURJI KANJI

Defendants

In the High
Court of
Tanganyika
Arusha District
Registry.

No.13.

Notice of Appeal.

29th October,
1955.

10

TAKE NOTICE that the Defendant, being dissatisfied with the decision of the Honourable the Chief Justice Sir Herbert Cox herein pronounced by the Honourable the Acting Chief Justice at Dar-es-Salaam on the Twenty eighth day of October, 1955, intends to appeal to Her Majesty's Court of Appeal for Eastern Africa against such part of the said decision as decides that the Plaintiff is entitled to any sums in excess of the amount admitted by the Defendant to have been owed.

Dated this Twenty ninth day of October, 1955.

Sd. A. REID,
Advocate for Defendant.

20

To the Registrar of Her Majesty's High Court of Tanganyika at Dar-es-Salaam and to Gailey & Roberts Ltd., Boma Road, Moshi.

The address for service of the Appellant is c/o Messrs. Reid and Edmonds, Advocates, P.O. Box 59, Moshi.

30

Note:- A respondent served with this notice is required within fourteen days after such service to file in these proceedings and serve on the Appellant a notice of his address for service for the purposes of the intended appeal, and within a further fourteen days to serve a copy thereof on every other respondent named in this notice who has filed notice of an address for service. In the event of non-compliance, the Appellant may proceed ex parte.

Filed this 8th day of November, 1955, at Dar-es-Salaam.

Sd. H.R.F. BUTTERFIELD,
Registrar.

40

Received copy hereof
Sd. Desmond Cassidy,
Advocate for Plaintiff.
11.11.55.

In Her Majesty's Court of Appeal for Eastern Africa.

No. 14.

MEMORANDUM OF APPEAL

No.14.
Memorandum of Appeal.
25th January, 1956.

HASSANALI KURJI KANJI, trading as Hassan Trading Stores Appellant

- and -

GAILEY & ROBERTS LIMITED Respondent

(Appeal from a decree of Her Majesty's High Court of Tanganyika at Dar-es-Salaam (Sir Herbert Cox, Chief Justice) dated 28th October 1955, in Arusha District Registry Civil Case No. 3 of 1954).

10

between

GAILEY & ROBERTS LIMITED Plaintiffs

- and -

HASSANALI KURJI KANJI, trading as Hassan Trading Stores Defendant

Hassanali kurji kanji, the Appellant above named, appeals to Her Majesty's Court of Appeal for Eastern Africa against part of the decision above mentioned.

20

The part appealed against is the award to the Respondent of the sum of Shs. 177,332/74, in addition to the sum of Shs. 52,510/64 admitted owing, and the costs in the suit.

The grounds are:-

1. The learned trial Judge erred in failing to give any or adequate separate consideration to the Issues Nos. 2,3,4,5 and 6 and to state his findings or decision thereon and the reasons therefor.
2. The learned trial Judge erred in failing to direct himself that, as the Respondent failed to produce the cheques, bank records or other primary evidence relating thereto the evidence given for the Respondent relating to the series of cheques presented to and returned by Barclays Bank in August, September and October 1952 was inadmissible and irrelevant.

30

3. The learned trial Judge erred in failing to give any or adequate consideration to the evidence for the Appellant relating to such cheques, particularly the extracts from Bank records, and should have held that the said cheques were of Hussein Alibhai Ramji (D/W 1) and not of the Appellant.
- 10 4. That the learned trial Judge erred in holding that the Respondent was entitled to debit the Appellant with the sum of Shs. 35,133/75.
5. There is no or insufficient evidence on record to support the finding by the learned trial Judge that the Appellant had an interest in the businesses of either Mohamedali Jafferli or Hassanali & Company.
- 20 6. That there is no or insufficient evidence on record to support the finding by the learned trial Judge that the liability of Hassanali & Company to the Respondent at 31st December, 1951 was divided between Hassan Trading Stores and Hassanali & Company at the request of the Appellant.
7. There is no or insufficient evidence on record to support the finding that the Appellant agreed to accept liability for the whole of the account of Mohamedali Jafferli to the Respondent.
- 30 8. There is no or insufficient evidence on record to prove the Agreement set up in Paragraph 5 of the Plaint namely that in December 1951 the Appellant agreed to accept liability for the amount due by Hassanali & Company Shs. 118,444/20, and to pay interest thereon.
9. In view of the case set up in the Respondent's pleadings and the terms of the agreed Issue No.2, the learned trial Judge erred in admitting evidence relating to, or tending to set up, any alleged Agreement subsequent to December 1951.
- 40 10. The learned trial Judge erred in holding that the evidence of the interview between the Appellant and the Witness Primrose in November 1954 was not privileged and inadmissible.

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.14.

Memorandum of
Appeal.

25th January,
1956

- continued.

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.14.
Memorandum of
Appeal.
25th January,
1956
- continued.

11. If the evidence relating to meetings and discussions after December 1951 is held to be admissible, it is insufficient to prove any concluded agreement.
12. In any event, any such agreement was wholly without consideration and void in law.
13. The learned trial Judge erred in failing to consider whether or not the Respondents were entitled to debit the Appellant's account with the amount of the credit note for Shs.1,101/75 and should have held that the Respondent was not so entitled. 10
14. The learned trial Judge erred in holding that the Respondent was entitled to charge interest on the account of Hassanali & Company.
15. The learned trial Judge erred in holding that the Respondent was entitled to charge interest on the account of Appellant.

Dated this 25th day of January 1956.

Sd. A. REID. 20

Advocate for Appellant.

To the Honourable the Judges of Her Majesty's Court
of Appeal for Eastern Africa,
and to D. Cassidy, Esquire,
Advocate for Respondent.

The address for service of the Appellant is care of
Mr. A. Reid, Advocate, Mawenzi Road, Moshi.

Filed this 1st day of February 1956.

(Sgd) H.F.R. BUTTERFIELD.

Deputy Registrar
of the Court of Appeal. 30

No. 15.

NOTES OF ARGUMENTS ON APPEAL, WORLEY P.

In Her
Majesty's Court
of Appeal for
Eastern Africa

28.6.56. Coram: Worley P.
Sinclair V-P.
Briggs, J.A.

No.15.

Reid for Appellant.
Cassidy for Respondent.

Extracts from
Notes of
Arguments on
Appeal.

Worley, P.

28th June, 1956.

x x x x x

Consideration.

10

If account not completely taken over, the un-
dertaking was in nature of surety for an al-
ready owed debt. For that there is no
consideration whatever.

Indian Contract Act S.127 illus. (c).

French v French 26 E.& E.D. 18 No.63.

Plaint para. 5: Appellant couldn't have agreed
to pay Shs.118,444 in December 1951.

(New point - plaint refers to amount owing
at its date).

20

Cheques can't be relied on to prove agreement
pleaded.

Can't enter judgment on vague supposition.

Chitale & Rao C.P.C. 4th Ed. Vol. 2, 544 -
variation between pleading and proof.

If one limb of agreement (interest) not proved
by Green's evidence, how can other limb be
proved?

S.O. to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

30

Court: Cassidy not called on.

We agree in the main with the judgment but
it must be varied in some respects.

Cassidy: I don't press for the interest.

Court: Decree is for Shs. 229,843.38.

Interest is Shs. 16,884.77

less 684.00

16,200.77

3,017.37

1,101.75

3,094.40

23,414.29

40

final amount

206,429.09

In Her Majesty's Court of Appeal for Eastern Africa.

No.15.

Extracts from Notes of Arguments on Appeal.

Worley, P.

28th June, 1956.
- continued.

18th July, 1956.

Order that the appeal is dismissed with costs, but the decree appealed from is varied by reducing the decretal amount to Shs.206,429.09.

Sd. N.A. WORLEY,
P.

18.7.56.

Coram: Worley, P.
Briggs, Ag. V-P.

Hamlyn holds Reid's brief for Appellant.

Miss Nasser holds Cassidy's brief for Respondent.

Reasons for the Judgment of the Court read by Briggs, Ag. V-P. 10

Sd. N.A. WORLEY,
President.

No.16.

Extracts from Notes of Arguments on Appeal,

Sinclair, V-P.

28th June, 1956.

No. 16.

EXTRACTS FROM NOTES OF ARGUMENTS ON APPEAL, SINCLAIR, V-P.

x x x x x

Consideration.

Plaintiff's case was that there was a complete taking over of the account. That was an undertaking in the nature of a surety for an already overdue debt. 20

No consideration whatsoever.

Sec.127 Indian Contract Act, III.(c).

A's obligation was to take over Mohamedali & Co's debt.

French v French

26 E & E Digest 18, Case 63.

Clear there was a transfer from one account to another and apportioned. No evidence how that came about. 30

The undertaking would have been for 156,000 (page 10).

Figure 118,444.70 did not exist then. The taking of the cheques can be given full meaning and effect standing alone. Created a new liability in that it provided for instalment payments.

Enforceable contract. No direct primary contract proved. That instalment evidence cannot be used to bolster up a previous contract.

10 Express agreement pleaded and it must be proved. Chitaleay C.P.C. Vo. 2 (4th).

1550: on variance between pleading and proof. At time plaint filed Plaintiffs were under a misapprehension as to the facts.

In Her Majesty's Court of Appeal for Eastern Africa.

No.16.

Extracts from Notes of Arguments on Appeal,

Sinclair, V-P.

28th June, 1956
- continued.

PRESIDENT TO CASSIDY:-

Do not wish to hear you on merits of appeal but wish to hear Counsel on agreed variation of figures.

Interest

20 Do not intend to press for interest. Am prepared to forgo the interest.

Decretal Amount

229,843.38	
Interest claimed	16,884.77
(para 4)	<u>684.00</u>
Less int. allowed	16,200.77
(para 5)	3,017.37
	1,101.55
	<u>3,094.40</u>
30 Total deductions	<u>23,414.29</u>
Balance	<u>206,429.09</u>

COURT: Appeal dismissed with costs. Decree appealed from is varied by reducing the decretal amount to Shs. 206,429.09 for reasons to be given in writing.

Sgd. R.O. SINCLAIR,
V.P.

In Her Majesty's Court of Appeal for Eastern Africa.

No. 17.

EXTRACTS FROM NOTES OF ARGUMENTS ON APPEAL
BRIGGS, J.A.

No.17.
Extracts from Notes of Arguments on Appeal,
Briggs, J.A.
29th June, 1956.

X X X X X
REID: No consideration. s.127 Contract Act.
COURT: The other debtor (Mohd. Ali) was released - French v. French 26 E.& E. Dig. 18 No.63.

2.30 p.m. Bench and Bar as before.

CASSIDY: Not called on.

Counsel agree that figures are as above. 10

Appeal dismissed with costs but decree to be varied by reducing decretal amount to Shs. 206,429.09.
Reasons in writing later.

Sd. F.A. BRIGGS,
J.A.

18th July, 1956. 18.7.56. Coram: Worley, P.
Briggs, Ag. V.P.

Hamlyn holds Reid's brief for Appellant.
Miss Nasser holds Cassidy's brief for Respondent.

Reasons for the Judgment of the Court read by me. 20

Sd. F.A. BRIGGS,
Ag. V.P.

No. 18.

JUDGMENT.

In Her Majesty's Court of Appeal for Eastern Africa.

HASSANALI KURJI KANJI trading
as Hassan Trading Stores

Appellant

- and -

GAILEY & ROBERTS LIMITED

Respondent

No.18.

Judgment,
Briggs, J.A.

18th July, 1956.

(Appeal from a decree of Her Majesty's High Court of Tanganyika at Dar-es-Salaam (Sir Herbert Cox, Chief Justice), dated 28th October, 1955, in Arusha District Registry

10

in

Civil Case No. 3 of 1954

between

Gailey & Roberts Limited

Plaintiffs

and

Hassanali Kurji Kanji (Trading
as Hassan Trading Stores)

Defendant

BRIGGS, J.A.

20

This was an appeal from a decree of the High Court of Tanganyika. It was argued with a persistency quite unwarranted by any merits, and at the end of the hearing we were in no doubt that the judgment of the learned Chief Justice was substantially right and that the appeal must be dismissed with costs. There were, however, certain minor points raised by the appellant, which were probably to some extent overlooked in the Court below, but which led us to order that the decree should be varied by substituting for the principal sum of Shs. 229,843.38. decreed the lesser sum of Shs. 206,429.09. We desire now to give reasons for that order.

30

2. The facts are clearly set out in the judgment of the High Court and it is unnecessary to repeat them. The case turned largely on an oral agreement made between the Appellant and a Mr. Green, formerly the Respondent's manager at Moshi, in December 1951. It was alleged by the Respondents that under this agreement the Appellant became liable to pay to them a large sum for principal and

40

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.18.

Judgment,
Briggs, J.A.

18th July, 1956
- continued.

a sum of Shs.16,884/77 for interest thereon. The agreement itself was proved to conclusion, although Mr. Green's evidence about it was, owing to the lapse of time, somewhat vague. We considered, however, that the term providing for payment of interest was not satisfactorily proved. Mr. Green himself did not mention it, and it could only have been inferred from subsequent dealings. Of the sum of Shs. 16,884.77 so claimed the learned Chief Justice disallowed Shs.684, but allowed the balance of Shs. 16,200.77. We thought this sum should be disallowed. 10

3. A sum of Shs.3,017.37 was claimed and allowed for interest upon another part of the principal debt. This claim was to some extent dependent on the previous one, and we thought it could not safely be said to have been established, and should therefore be disallowed.

4. The appellant pleaded in his defence that the Respondents had failed to give him credit in their account attached to the plaint for a sum of Shs. 1,101.75 in accordance with their credit note dated 30th August, 1951. 20

5. The appellant also pleaded that in February, 1954, either after the plaint was filed, or at least after the account attached to the plaint was made up and balanced, he had paid to the Respondents on account a sum of Shs. 3,094.40.

6. Counsel for the Respondents, after submitting at first that the claims for interest might be justified, decided to withdraw his argument on the point, being evidently of opinion that in any event his clients would have judgment for much more than they were likely to recover. As regards the credit note and payment to account, he agreed that they had been overlooked and that the errors should be corrected. 30

7. The figures are therefore as follows :-

		Decretal amount	Shs.229,843.38	
Deduct, under	Ss 2,	Shs.16,200.77		40
"	"	Ss 3,	3,017.37	
"	"	Ss 4,	1,101.75	
"	"	Ss 5,	<u>3,094.40</u>	
		New decretal amount	<u>23,414.29</u>	
			<u>Shs.206,429.09</u>	

The remaining provisions of the decree, including the order as to costs, will stand.

8. We think it may be desirable to add a very brief account of the reasons which led us to reject the Appellant's contention on the main issue, which was that the alleged agreement of December 1951 was never proved. We agreed generally with the reasoning of the learned Chief Justice. We thought that, although Mr. Green's recollection was by no means clear and his evidence, had it stood alone, would not have afforded sufficient proof, that evidence was patently honest, and that the evidence of the parties' subsequent dealings could only be referable to the agreement which Mr. Green clearly believed to have been made. If the Appellant's own evidence and that of his witnesses was to be rejected as untrue, the agreement alleged was established, if not beyond reasonable doubt, at least with such balance of probability as is necessary in a civil case. The central point was the cheques for Shs.35,000 odd handed by the Appellant to the Respondents. The Respondents' case was that the first of these was given in substitution for two unpaid cheques, one for Shs. 25,000 drawn by H.K. Kanji, the Appellant, and credited to the account of his firm, and the other for Shs.10,000 drawn by Hassanali & Co., and credited to their account. These were paid in on 28th June, 1952. On 18th July, 1952, the bank debited the Respondents with Shs.25,047.00 and Shs.10,018.75, or a total of Shs. 35,065.75, in respect of the non-payment of these cheques and the commission thereon. On 31st July the Respondents paid in a cheque for Shs.35,065.75, received from the Appellant, but drawn by one H.A. Ramji on Mombasa. That was not met and on 8th August the Respondents were debited with Shs. 35,133.75. for the cheque and commission. On 30th August they paid in a cheque for Shs. 35,133.75 again drawn by H.A. Ramji on Mombasa. It was returned unpaid on 5th September. No commission was charged this time. On 30th September the same or a similar cheque was paid in and on 7th October it was returned unpaid, but no commission was charged. The omission to charge commission suggests that this cheque was probably regarded as the "successor" of Ramji's first cheque for Shs. 35,065.75, on which commission was charged. Finally on 31st October the Appellant gave to the Respondents and they paid into the bank his own cheque, drawn on the same bank at Moshi for Shs.35,133.75.

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.18.

Judgment,
Briggs, J.A.
18th July, 1956
- continued.

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.18.

Judgment,
Briggs, J.A.
18th July, 1956
- continued.

This was returned unpaid the same day. The Respondents point to these transactions as linking the Appellant's cheque for Shs.35,133.75 with the earlier cheques for Shs.25,000 and Shs.10,000 and showing that the Appellant had made himself liable for the debt of Hassanali & Co. The Appellant says that he gave the cheque in satisfaction of the account of H.A. Ramji with the Respondents. He put in the record of a suit later brought by the Respondents against Ramji; but this only shows that, according to the account on which they recovered judgment, Ramji owed them at the end of October, 1952, less than Shs.30,000. If the Appellant's story is true, he was not only doing an act of charity to Ramji for which no explanation is given, but was also making the Respondents a present of over Shs.5,000. All this story was so much an after-thought that it was never put at all to the Respondents' witnesses. It involves the remarkable coincidence that on two accounts of the Respondents' Moshi branch, with both of which the Appellant was associated, the amount due at the end of October 1952, was Shs.35,133.75. After this, it need hardly be added that in the defence the Appellant denied having issued to the Respondents any cheque for Shs.35,133.75 at the relevant time. This impertinent series of falsehoods was rightly rejected by the learned Chief Justice. The evidence for the Appellant was that when the cheque for Shs.10,000 was returned Hassanali & Co., paid that sum to the Respondents in cash, but took no receipt for the cash, though they had had one for the cheque. This also was quite incredible. A whole series of letters and accounts to the Appellant was put in evidence by the Respondents which confirmed the existence of the agreement alleged by them. No written protest or denial was ever sent by him. He says that he received the letters and accounts, but never queries the fact that month after month he was charged with Shs.100,000 which he was not liable to pay. There were other substantial reasons for rejecting in toto the evidence of the Appellant and his witnesses. The evidence for the Respondents had the same validity as if it stood wholly uncontradicted, and it was more than sufficient to establish their case and to justify the decree passed in their favour.

(Sgd.) N.A. WORLEY,
President.

97.

(Sgd.) R.O. SINCLAIR,
Vice President.

(Sgd.) F.A. BRIGGS
Justice of Appeal.

In Her
Majesty's Court
of Appeal for
Eastern Africa.

No.18.

Judgment,
Briggs, J.A.
18th July, 1956
- continued.

Dar-es-Salaam,
18th July, 1956.

Seal

H.M.COURT OF APPEAL
FOR EASTERN AFRICA.

10

No. 19.

No.19.

ORDER

Order.

HASSANALI KURJI KANJI, trading
as Hassan Trading Stores

Appellant

and

GAILEY & ROBERTS LIMITED

Respondent

In Court this 20th day of July, 1956.

Before the Honourable the President (Sir Newnham
Worley)

the Honourable the Vice-President (Sir
Ronald Sinclair)

the Honourable Mr. Justice F.A. Briggs,
a Justice of Appeal.

20

THIS APPEAL coming for hearing on the 28th
and 29th days of June 1956 in the presence of Mr.
A. Reid, Advocate for the Appellant and Mr. D.
Cassidy, Advocate for the Respondent.

IT IS HEREBY ORDERED:

- (1) That the Appeal be and is hereby dismissed.
- (2) That the decree in Tanganyika High Court Civil
Case No.3 of 1954 Gailey & Roberts Ltd. versus
Hassanali Kurji Kanji be varied by substitut-
ing for the principal sum of Shs.229,843/38
decreed the lesser sum of Shs.206,429/09.
- (3) That the remaining provisions of the decree
including the order as to costs will stand.

30

In Her Majesty's Court of Appeal for Eastern Africa.

No.19.

Order.

18th October, 1956

- continued.

(4) That the Appellant do pay the Respondent the costs of the appeal.

Dated this 29th day of June, 1956.

H.R.F. BUTTERFIELD,
Deputy Registrar.

Issued this 18th day of October, 1956.

In the Court of Appeal for Eastern Africa.

No.20.

Order granting Final Leave to Appeal to Her Majesty in Council.

28th February, 1957.

No. 20.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE MATTER OF AN INTENDED APPEAL TO HER MAJESTY IN COUNCIL

10

BETWEEN

HASSANALI KURJI KANJI trading
as Hassan Trading Stores

Appellant/
Applicant

and

GAILEY & ROBERTS LIMITED

Respondent

(Intended appeal from a judgment and order of Her Majesty's Court of Appeal for Eastern Africa at Dar-es-Salaam dated 18th July, 1956, in

20

Civil Appeal No. 9 of 1956

Between

Hassanali Kirji Kanji trading
as Hassan Trading Stores

Appellant

and

Gailey & Roberts Limited

Respondent)

In Chambers this 28th day of February, 1957.

Before the Honourable Mr. Justice Briggs, a Justice of Appeal.

UPON the Application presented to this Court

30

10 on the 18th day of February, 1957, by Counsel for the above-named Applicant for final leave to appeal to Her Majesty in Council AND UPON READING the Affidavit of Alexander Reid of Moshi, Advocate, sworn on the 14th day of February, 1957 in support thereof and the exhibit/annexure marked 'A' referred to therein and UPON HEARING Counsel for the Applicant and in the absence of the Respondent, duly served, THIS COURT DOTH ORDER that the Application for final leave to appeal to Her Majesty in Council be and is hereby granted AND DOTH DIRECT that the record, including this Order, be despatched to England within 14 days from the date of issue of this Order AND DOTH FURTHER ORDER that the costs of this Application do abide the result of the appeal.

GIVEN under my hand and the Seal of the Court at Nairobi, the 28th day of February, 1957.

20 F. HARLAND,
Registrar.

ISSUED at Nairobi, this 1st day of March, 1957.

In the Court
of Appeal for
Eastern Africa.

No.20.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

28th February,
1957.

- continued.

Exhibits

Plaintiffs'
Exhibit No.3.

Extract from
book of
duplicate
accounts, dated
31st December,
1951.

(also possibly
Exhibit No.18)

E X H I B I T SPLAINTIFFS' EXHIBIT NO. 3.EXTRACT FROM BOOK OF DUPLICATE ACCOUNTS.

M/S. Hassan Trading Stores,
P.O. Box 48,
Moshi.

December 31st, 1951.

R. 2.

Sept. Oct. 1950.	96254.09	
Sept. Nov. 1951 26423 6351-17		
Nov. 29 26453 1875-73		10
Dec. 1 26477 26-00		
4 26518 173-50		
7 26521 460-00		
8 26525 3067-92		
13 26599 364-36		
14 26617 685-00		
21 26695 162-42		
22 26700 466-00		
27 26722 84-00		
31 26725 <u>481-27</u> 14197-37		20
By Cheque	15000-00	
To Transfer		
(of account of Mohamedali Jafferli)	9345-70	
By Balance	<u>104797-16</u>	
	119797-16	119797-16
To Balance	104797-16	

EXHIBIT No. 15.EXTRACTS FROM RECEIPT BOOK
RECEIPT PLAINTIFFS to M. JAFFERALI

Amount Received Sale Ledger.

Shs.Cts. Shs.Cts

Receipt No.2287 30.11.51.

Mohamedali Jafferalli

Sd. ? ?

Shs.Fifteen thousand only

10 Cheque MT/A 280572 15000.00 15000.00

RECEIPT PLAINTIFFS TO DEFENDANT

Receipt No.2998 27.6.52.

Hassan Trading Co.

Shs. Twenty five
thousand only

25000.00 25000.00

Sd. ? ?

Cheque 6726

RECEIPT PLAINTIFFS TO HASSANALI & CO.

Receipt No.2999 27.6.52.

20 Hassanali & Co.

Shs. Ten thousand only.

10000.00 10000.00

Sd. ? ?

Cheque 6727

ExhibitsPlaintiffs'
Exhibit No.15.Extracts from
Receipt Book
dated 30th
November 1951.Receipt:
M. Jafferalli.

Exhibits

EXHIBIT No. 17

Plaintiffs'
Exhibit No.17.

EXTRACT FROM PLAINTIFFS PAYING IN BOOK.

Extract from
paying in book
dated 28th
June, 1952.

Form No.9a.

BARCLAYS BANK (DOMINION, COLONIAL & OVERSEAS)

MOSHI, 28.6.1952.

Tanganyika Territory.

CREDIT. GAILLEY & ROBERTS (TANGANYIKA) LIMITED
Moshi Branch.

E. A. C. B. NOTES:

Shs. 1000/- each	.....	.....	10
" 100/- "	.....	.....
" 20/- "	.....	.....
" 10/- "	.....	.....
" 5/- "	.....	.....
<u>SILVER</u>	.....	.....
<u>COPPER</u>	.....	.....	211-99

Cheques, etc., handed in to be collected and
to be available as cash when paid, viz:

Name of Drawer			
Hassanali & Co.	10000-00		20
	25000-00		
	1149-81		
	<u>52-42</u>	36202-23	
		Shs. 36414-22	

Amount in words:

Shs. Thirty six thousand four hundred and fourteen
and cents twenty two only.

Paid in by GAILLEY & ROBERTS (TANGANYIKA) LTD.

MOSHI BRANCH.

Sd... ?? ..

.....Teller.

EXHIBIT NO. 11.

LETTER PLAINTIFFS TO DEFENDANT

GAILEY & ROBERTS (TANGANYIKA) LIMITED,

PMT/MT.

P.O. Box 134,
Moshi.

5th March, 1953.

Mr. Hassanali K. Kanji,
P.O. Box 48,
MOSHI, T.T.

Exhibits

Plaintiffs'
Exhibit No. 11.

Letter,
Plaintiffs to
Defendant.

5th March, 1953.

10 Dear Sir,

Account - Hassanali & Co.

Further to the writer's conversation with you yesterday, we confirm your statement that you would make yourself responsible for the debt of Shs. 121,444/70 which is outstanding on our books against Hassanali & Co.

20 You will remember that we received post-dated cheques from Mr. H.K. Premji for the whole of this amount, but as they were drawn on your account which was closed on the 31st January 1953 they are of course worthless. We return therefore Cheque Nos. MT/A. 577848 to MT/A. 577865 and cheques MT/A. 487274 and MT/A. 487275.

We have advised our Head Office of your suggestion regarding security for the outstanding debts of Hassan Trading Stores and Hassanali & Co. and as soon as a reply is received from Nairobi we will contact you again.

Yours faithfully,

30 GAILEY & ROBERTS (TANGANYIKA) LTD.

Sgd. P.M. THROWER.

P.M. THROWER,

Branch Manager.

IN THE PRIVY COUNCIL

No. 4 of 1957

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N:

HASSANALI KURJI KANJI trading
as Hassan Trading Stores (Defendant)
Appellant

- and -

GAILEY & ROBERTS LIMITED (Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

GIBSON & WELDON,
27, Chancery Lane,
London, W.C.2.
Solicitors for the Appellant.

LINKLATERS & PAINES,
Barrington House,
59-67, Gresham Street,
London, E.C.2.
Solicitors for the Respondents.