business woman. This means that until the end of September 1964 the machine could have been returned to the plaintiff without any loss occasioned by the defendants.

I accept that the loss of business to the plaintiff was £10 or Le20 a month from September 1964 to May 1966 (21 months), Le420 in all, and the cost of renting a hand machine for the same period at Le4 per month amounted to Le84. I award these sums as special damages. I award the sum of Le60 as the current value of the plaintiff's machine and exercise my discretion for the amount to be paid instead of the return of the machine, and award costs on the magistrates' court scale. I find for the plaintiff, and have to observe that the defendants did not demonstrate great vigilance as businessmen.

Judgment for the plaintiff.

THOMPSON *v.* NATIONAL CONSTRUCTION COMPANY

SUPREME COURT (Betts, J.): May 23rd, 1967
(Mag. App. No. 19/66)

[1] **Contract—implied terms—customs and usages—implied if trade familiar to parties:** Where the parties to a contract are familiar with a particular trade they may be presumed to have accepted its special and familiar customs and usages and these may be implied into the contract (page 171, lines 15–19).

[2] **Contract—implied terms—presumed intention of parties—court will not spell out common intention from meagre words:** The courts may only imply terms into a contract where they can be presumed to be the intention of the parties, and the courts will not spell out a common intention from meagre words (page 171, lines 9–12, 28–31).

[3] **Contract—offer and acceptance—acceptance—offeree must have knowledge of offer:** There cannot be assent to a contractual offer without knowledge of the offer and reliance on it by the offeree (page 172, lines 4–6).

[4] **Evidence—admissibility—civil cases—document admitted without objection properly in evidence but evidential value unaffected:** A document received in evidence without objection in a civil case is properly in evidence, but its evidential value depends on its contents considered along with the rest of the evidence (page 170, lines 35–41).

The appellant brought an action against the respondent company

in the Police Magistrate's Court, Freetown, to recover money due under a contract of employment, and the respondent counterclaimed for the balance of an advance to the appellant for the purchase of a motor vehicle and the cost of repairs.

The appellant was appointed a director of the respondent company at an annual salary and held this post until his dismissal 10 months later. The respondent alleged that an advance of money was made to the appellant during his appointment for the hire-purchase of a motor vehicle and the cost of its repair. In the present proceedings both parties claimed money due.

For the purpose of proving the alleged advance, two documents were put in evidence by the respondent without objection by the appellant. The Police Magistrate's Court gave judgment for the respondent on the ground that there was an enforceable agreement between the parties with regard to the advance of money for the purchase of a motor vehicle.

On appeal, the appellant contended that (a) the decision of the trial court was against the weight of the evidence; (b) the trial magistrate misdirected himself in concluding that the transaction between the parties included an advance of money for the purchase of a motor vehicle; and (c) there was no positive evidence of a material nature to support the alleged hire-purchase agreement between the parties. The respondent contended that the documents put in to prove the advance did prove it, because the appellant had not objected to their admission for that purpose.

Cases referred to:

(1) *Akunne* v. *Ekwuno* (1952), 14 W.A.C.A. 59, considered.

(2) *Hillas & Co. Ltd.* v. *Arcos Ltd.*, [1932] All E.R. Rep. 494; (1932), 147 L.T. 503, considered.

(3) *R.* v. *Clarke* (1927), 40 C.L.R. 227, followed.

(4) *G. Scammell & Nephew, Ltd.* v. *H.C. & J.G. Ouston*, [1941] A.C. 251; [1941] 1 All E.R. 14, followed.

Johnson for the appellant;
Minah for the respondent.

BETTS, J.:

This is an appeal against the decision of His Worship Mr. S.J.E. Stober, Police Magistrate, Freetown. There was one ground of appeal submitted which was that the decision was against the weight

of evidence. At the hearing of the appeal two grounds were added:

(a) that the learned trial magistrate misdirected himself on the evidence when he stated in his judgment that "the transaction includes an advance of money for the purchase of a motor vehicle for the use of the plaintiff";

(b) that the respondent's counterclaim is unsupported by positive evidence of a material nature in connection with the alleged hire-purchase agreement between the parties.

The action was brought to recover an amount due under a contract of employment. A defence to this action negatived the claim and counterclaimed for a balance due on an advance for the purchase of a motor vehicle.

There is now no dispute about the other items included under the particulars of counterclaim except that which relates to the advance for the purchase of a motor vehicle together with cost of repairs to it. The only question therefore which emerges is whether the sum of £678. 8s. 0d. is an advance by the company to the appellant for the purpose of buying a motor vehicle on a hire-purchase basis.

The appellant was appointed a director of the National Construction Co. on July 15th, 1960 and remained until May 15th, 1961 at a salary of £1,000 a year. There is no doubt that there was a contractual relationship between the parties, but unfortunately no formal terms or conditions of service were produced during the hearing; nor was any further evidence deposed which would give a comprehensive idea of the true intention of the parties.

Both the magistrate and counsel for the respondent have cited *Akunne* v. *Ekwuno* (1). As a result of this citation the magistrate held that the court was bound by the documents tendered by the respondent and to which the appellant did not object. In the court below these were Exhibits B and C. Actually, Exhibit B is based on Exhibit C with regard to the item under consideration. It is for this court to determine whether Exhibit C states the true intention of the parties with regard to the purpose for which the sum of £678. 8s. 0d. was made available.

Before doing that, however, the point of law raised by the reference to *Akunne* v. *Ekwuno* has to be disposed of. This court is in agreement with the principle that Exhibits B and C cannot be declared inadmissible when they were tendered without any objection by the opposing party. But having gone in, the contents of the exhibits, after analysis, must be considered with the rest of the evidence. It must be shown with sufficient clarity what the

terms of the contract are, and also that they were known and consented to by both parties. Exhibit C was obviously not written to the appellant, and there is no evidence that he knew about its contents until the exhibit was produced in court. The letter was from the managing director, I. Cagshol, to the Minister of Works. The relevant portion of the letter says: "It is understood that the cars will be paid for by the users as soon as possible after which they will be transferred to their names." One can hardly say that the above is language in a contract which is binding. It would be inadvisable for judges to introduce terms into a contract which the parties are too indolent to make for themselves. Exhibit B gives detailed figures of the supposed indebtedness of the appellant, but relies on the existence of a contractual obligation in Exhibit C.

There are two categories into which fall all cases involving contracts, the terms of which are not completely set. The first class comes under the pattern considered in *Hillas & Co. Ltd.* v. *Arcos Ltd.* (2), which states that where the parties are familiar with a particular trade they may be taken to have accepted its special and familiar usages as the background of their bargain. It is suggested in a portion of the magistrate's reasoning set out that it is not unusual for an employer to advance money for the purchase of a motor vehicle for the use of an employee. I agree with the observation of the magistrate, but in this case we do not have under consideration a mere employee. Instead, we have a director, and it certainly cannot be suggested that there is a standard procedure when supplying transport to these persons which falls within the ambit of the case cited.

The second class comes under that dealt with in *G. Scammell & Nephew, Ltd.* v. *H.C. & J.G. Ouston* (4) in which it is put out that the task of spelling out a common intention from meagre words may prove too speculative for the court to undertake. There has not been any evidence or conduct apart from Exhibit C which could give an indication that it was understood that the sum involved was given as an advance. It is not only desirable but also necessary that some such indication be given.

Exhibit C is dated July 31st, 1961 and Exhibit B October 4th, 1961. It is on these documents that the liability constituting the counterclaim is based. The appellant was removed from his appointment on May 15th, 1961, and in fact at the time both documents were written the appellant was serving a term of imprisonment. There has been no evidence that he knew of the contents of the

exhibits, and on the face of the documents there is no indication that it was intended to forward him a copy. In the face of such disregard of a basic principle of contract law, how could it be said that the appellant is liable? In *R.* v. *Clarke* (3) it is stated that there cannot be assent without knowledge of the offer and reliance upon it. Exhibit B was addressed to the general manager, National Construction Co., and Exhibit C to the Minister of Works. It is obvious that the privity necessary to bring both parties together is completely absent.

The appeal must succeed, and the sum of £136. 12s. 8d., claimed by the appellant, paid with costs. The counterclaim is dismissed. The appellant is awarded costs in the court below.

Order accordingly.

TURAY *v.* KAMARA

SUPREME COURT (Betts, J.): May 23rd, 1967
(Civil Case No. 104/66)

[1] **Contract — misrepresentation — fraudulent misrepresentation — fraud must be strictly and clearly proved in all its elements:** Fraud must be strictly and clearly proved by evidence sufficient to establish all its elements, and it is not enough to show that the party against whom relief is sought may not have been perfectly clear in his dealings (page 175, lines 22–25; page 176, lines 31–35).

[2] **Contract—misrepresentation—fraudulent misrepresentation—fraudulent intention to be proved:** To establish fraud as a cause of action, it is necessary to prove a wilful misrepresentation intended fraudulently to deprive a man of his property (page 175, lines 25–27).

[3] **Equity — notice — constructive notice — notice by tenancy — where tenants pay rent to agent, purchaser must inquire who principal is:** A purchaser of property occupied by a tenant who pays rent to an agent has constructive notice of the principal's rights and must inquire who the principal is (page 177, lines 2–3).

[4] **Equity—notice—purchaser for value without notice takes legal estate even if conveyed by fraud:** A *bona fide* purchaser for value without notice who has paid for and obtained a good legal title and is in possession, is entitled to the benefit of his title even if the execution of the conveyance to him has been effected by another's fraud (page 176, line 37—page 177, line 1).

[5] **Evidence—burden of proof—standard of proof—fraudulent misrepresentation—fraud must be strictly and clearly proved in all its elements:** See [1] above.