

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thomas Clarkson Williams v. The Sierra Leone Coaling Company and another, from the Supreme Court of Sierra Leone ; delivered the 24th May 1911.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

[DELIVERED BY LORD ROBSON.]

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This is an Appeal from a Judgment of the Supreme Court of the Colony of Sierra Leone, dated the 21st December 1909, pronounced in two actions. In the principal action the Appellant was Plaintiff, and the Respondent Company Defendant. The Appellant's claim was for reconveyance of a mortgage which he said had been discharged. The Respondent Company as mortgagee acting under the powers of the mortgage had sold part of the property to the Respondent, Abu Baccary Savage, who was Plaintiff in the second action. He sought to have the Plaintiff ejected from the property which he, the Respondent Savage, had so purchased. Judgment was pronounced against the Appellant, with costs in both actions.

The facts material to the point in dispute are as follows :—

Early in 1902 the Appellant, who was a trader at Freetown, in the Colony of Sierra Leone,

was desirous of opening a trading account with the Respondent Company for the supply to him of goods and merchandise on credit. The Respondent Company required security before acceding to his request, and accordingly on the 1st February 1902 he gave them a mortgage on two properties in Cline Town, Freetown. The mortgage was expressed to be given to secure an account with the said mortgagee for the "supply of goods and merchandise on credit . . . . upon the agreement that the balance of account in the hands of the mortgagor should not at any time exceed the sum of 500*l*." There was the usual proviso for reconveyance, and it was declared that after the 1st February 1904 either party should be entitled to give to the other three calendar months' notice in writing of his intention to "close up business relationship" with the other, and at the expiration of the said three calendar months the said account current should be deemed to be closed.

In 1906 the Appellant was largely indebted to the Respondent Company. He had found his business very bad in Freetown, and desired to open up business in the Protectorate. The Respondent Company had a business in the Protectorate known as the Kpye factory. They informed the Appellant that they had decided to close that factory, but if he cared to open up in the Protectorate he might take over the stock the Company held there and trade with them under certain conditions, ensuring them a certain measure of control over his operations. He agreed to this proposal, and an agreement was entered into on the 6th September 1906 arranging the terms under which the trading was thereafter to be carried on. In form this was an agency agreement for a period of three years, but, so far as the supply of goods was concerned, the provisions as to agency were

obviously no more than machinery devised for the purpose of securing to the Respondent Company the supervision over the Appellant's business transactions which it was agreed they should have. Under Clause 1 the Respondent Company agreed "to supply and furnish the " said Thomas Clarkson Williams at Kpye aforesaid with all goods and wares and merchandise " and cash from time to time for the purpose of " the business at Kpye aforesaid." All profits made by the Appellant on the goods supplied to him by the Respondent Company were to be for his own account, and he was responsible for any losses he might make thereon.

The business between the parties was afterwards carried on according to the terms of this agreement. The balance in respect of the Freetown transactions was not completely liquidated till May 1907, and in the meantime a large indebtedness from the Appellant to the Company arose in respect of the supply of goods to him at Kpye. Not being able to get payment of that balance Respondents proceeded to realise their mortgage security and sold one of the properties to the Respondent Abu Baccary Savage. The Appellant then raised the contention that the mortgage security was not applicable to the goods supplied to him at Kpye, because such goods were supplied to him as agent, whereas the mortgage contemplated the supply of goods to him as purchaser only. He therefore claimed a reconveyance of the mortgage properties for the purpose, as he himself alleged, of settling them on his wife and children, while leaving the Respondents wholly unsecured as to the rest of his indebtedness.

It is unnecessary to deal in detail with all the clauses of the disputed agreement. Their Lordships are of opinion that it has been rightly

construed by the Supreme Court as a trading agreement whereby the Appellant was to continue to buy and sell whatever goods he chose to order for his own personal profit as he had done previously. When that agreement was made nothing was said on either side, and there was certainly nothing in the circumstances, to indicate that the security on which the previous trading between the parties had been founded was to be regarded as discharged.

Their Lordships are of opinion that the agency clauses in the agreement do not prevent the supply of goods under Clause 1 thereof from being a "supply of goods and merchandise on credit" within the meaning of the mortgage deed, and they will therefore humbly advise His Majesty that this Appeal should be dismissed with costs.

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In the Privy Council.

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THOMAS CLARKSON WILLIAMS

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THE SIERRA LEONE COALING  
COMPANY AND ANOTHER.

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