Privy Council Appeal No. 35 of 1931.

Sarkis Madi - - - - - - - - - *Appellant*

v.

Michael Abdallah - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1932.

Present at the Hearing:

LORD BLANESBURGH.
LORD TOMLIN.
SIR GEORGE LOWNDES.

[*Delivered by* LORD TOMLIN.]

In the action instituted in the Supreme Court of the Colony of the Gambia, out of which this appeal arises, the appellant was sued by the respondent for a declaration that an agreement dated the 19th June, 1925, in so far as it affected the appellant's personal liability for the unpaid part of a judgment debt of £7.920 9*s*. 0*d*., was null and void, and for a further declaration that the appellant was still indebted to the respondent in the sum of £4.420 9*s*. 0*d*., the amount of such unpaid part.

On the 21st May, 1927, judgment was given in favour of the appellant, the action being dismissed with costs. On a counterclaim, with which this appeal is not concerned, the appellant succeeded.

An appeal was taken by the respondent against the judgment in the action, but not against the judgment on the counterclaim, to the West African Court of Appeal sitting at Sierra Leone.

On the 20th March, 1930, the Court of Appeal set aside the judgment of the Court below and judgment was entered for the respondent for the declarations sought.

On the 6th June, 1930, the appellant obtained leave to appeal to His Majesty in Council.

Both parties to the action are Syrians resident in the Colony of the Gambia, and the action was launched in the circumstances next detailed.

On the 6th June, 1925, the respondent obtained in an action in the Supreme Court of that Colony against the appellant a judgment for the sum of £7,920 9*s*. 0*d*. and costs and for an account to be taken of any moneys due from the appellant to him in respect of the estate of one Antoine Khoury (deceased), of which the appellant was administrator.

The appellant being dissatisfied with the judgment, obtained conditional leave to appeal.

Two days after the judgment the respondent sued out a writ of *fieri facias* against the appellant in execution of the judgment, and a large quantity of ground nuts in the appellant's possession was seized by the Sheriff.

Negotiations between the parties followed, as the result of which the Sheriff was withdrawn and a document, dated the 19th June, 1925, drawn up by a Mr. Roberts, the respondent's solicitor, was signed by the appellant and respondent.

This document, omitting formal parts, was in the following terms :—

> " Whereas there is now depending an action in the Supreme Court of the Colony of the Gambia at the suit of Michael Abdallah against Sarkis Madi in which said action judgment was on the 6th day of June, 1925, given against the said Sarkis Madi for the sum of £7,920 9*s*. 0*d*. and costs and by the said judgment it was ordered that an account be taken of the estate of Antoine Khoury (deceased). And whereas at the request of the said Sarkis Madi to the said Michael Abdallah it has been agreed that upon the said Sarkis Madi paying the said Michael Abdallah the sum of £3,500 and assigning the amount now due from Antoine Blain guaranteed by Palmine Limited to the said Sarkis Madi as Administrator of the estate of the said Antoine Khoury (deceased) and assigning the amount now due from Mrs. Pierre Vallantine to the said Sarkis Madi as administrator of the estate of the said Antoine Khoury (deceased), and upon the said Sarkis Madi executing a deed of transfer of the mortgage of Gabriel N'Jie's property at Hagan Street to the said Michael Abdallah, the said Abdallah hereby agrees to forego and hereby releases his right and title and to abandon execution of the said judgment and all benefits accruing therefrom."

After the document had been signed it was retained by Mr. Roberts on behalf of the respondent, apparently upon the footing that it was to be handed over to the appellant when he had complied with the conditions mentioned in the document.

There was some conflict of evidence as to what next occurred, but having regard to the view which their Lordships take it is unnecessary to go into that matter, and it is enough to state the following facts, which are not in dispute.

On Saturday, the 20th June, 1925, the appellant and the respondent and two relatives of the appellant, namely, John Madi and Samuel Madi and others, met at Mr. Roberts' office.

Mr. Roberts was offered and there was left with him (1) a cheque of John Madi's for £1,800, drawn in favour of Mr. Roberts, and certified by the bank as good for that amount; (2) a sum of £1,000, proceeds of a cheque drawn by Samuel Madi on his own banking account, and (3) a promissory note of the appellant for £700.

On the same day Mr. Roberts signed and handed to the appellant a receipt in the following terms:—

"Received from Sarkis Madi the sum of £3,500 (Three thousand five hundred pounds) as follows:—

Cheque No. 53/01584 for ...	...	£1,800	0 0
Notes, Currency...	...	1,000	0 0
Promissory Note due 24.6.25 ...	...	700	0 0

on account of claim of *Abdallah* v. *Madi*.

Dated 20th day of June, 1925."

Mr. Roberts, however, did not hand over to the appellant the document of the 19th June, 1925.

On Monday, the 22nd June, 1925, the parties met again at Mr. Roberts' office, and the appellant, having borrowed £700 elsewhere, paid it to Mr. Roberts in satisfaction of his promissory note for that amount given to Mr. Roberts on the previous Saturday.

In the course of the next few days the appellant executed in favour of the respondent the assignments and transfer referred to in the document of the 19th June, 1925.

On the 30th June, 1925, the sum of £3,500 having been paid in the manner already mentioned and the assignments and transfer having been executed, Mr. Roberts handed over to the appellant the document of the 19th June, 1925.

The writ in this action was issued on the 11th May, 1926.

The statement of claim alleged that the respondent had withdrawn the Sheriff and agreed to accept £3,500 in full settlement of his debt on the faith of representations by the appellant, which were false, and the respondent contended that there had been no accord and satisfaction in law as regards the judgment debt, and that the document of the 19th June, 1925, was voidable on account of misrepresentation.

By the defence the appellant denied the charge of misrepresentation and alleged by an amendment made by leave at the trial after the evidence had been taken, that the terms of agreement between the parties (except a promise by the appellant to abandon the appeal) were embodied in the document of the 19th June, 1925.

The defence also contained a paragraph in the following terms:—

"In pursuance of the said last-mentioned agreement" (*i.e.*, the document of the 19th June, 1925) "and on the 20th day of June, 1925, one John Madi paid to the plaintiff on behalf of the defendant the sum of £1,800 0*s.* 0*d.* by means of a cheque drawn by the said John Madi on his (John Madi's) account with the Colonial Bank at Bathurst, the defendant

on the same day paid to the plaintiff the sum of £1,000 0*s*. 0*d*. in Currency Notes and gave to the plaintiff defendant's Promissory Notes for £700 0*s*. 0*d*., dated the 20th day of June, 1925, and payable on the 24th day of June, 1925. The said Cheque, Currency Notes and Promissory Note respectively were paid to the plaintiff at the plaintiff's Solicitor's office in Bathurst aforesaid and they were accepted by the plaintiff as the due performance of the said Agreement and in full satisfaction and discharge of the said judgment debt of £7,920 9*s*. 0*d*. and costs. The plaintiff then withdrew the Sheriff and the defendant abandoned his conditional leave to appeal from the said judgment or any portion thereof."

The learned trial Judge in his judgment said there were two issues, namely, (1) did the appellant make any misrepresentation to the respondent which induced the latter to sign the document of the 19th June, 1925, and (2) was there any consideration moving from the appellant to support that document and render it a valid contract ?

On the first question the finding of the trial Judge was in favour of the appellant, and his finding in this respect was affirmed by the Court of Appeal, and no further appeal has been taken on this head of the case.

On the second question the learned Judge, in the course of his judgment, said this :—

" I find as a fact, however, that the plaintiff and defendant entered into such agreement " (meaning thereby the document of the 19th June, 1925) " on the understanding that the latter would abandon his appeal, and that the plaintiff would not have accepted the £3,500 in full settlement of the judgment debt except on the footing that the plaintiff (*sic*) was giving up his right of appeal. The facts that he had taken steps to appeal, and had obtained conditional leave to do so, were perfectly well known to the plaintiff and his legal advisers all the time the negotiations leading up to the signing of the agreement were in progress. I simply do not believe any of them when they severally assert that the pending appeal, and its abandonment, were never once mentioned by the plaintiff (*sic*) during all the pleading, recrimination, haggling and threatening which preluded the final arrangement. The defendant is a clever man, and his right of appeal was his one trump card ; I am very certain indeed that he did not omit to play it for all it was worth. Again, on the question of the Colonial Bank Cheque, No. 53/01584, for £1,800, Mr. Ladepon Thomas and Mr. Roberts have severally had to eat their original and very definite sworn statements and to admit, which they previously so strenuously denied, that the receipt itself (Ex. M.A. 3) is a true and not a false document, and that Cheque No. 53/01584, payable to Mr. Roberts himself " (meaning thereby the cheque for £1,800 provided by John Madi) " was tendered and accepted in part payment of the £3,500 due under the agreement. This concludes the matter, at any rate so far as I am concerned. I hold that there was good consideration moving from the defendant to the plaintiff, which supports the latter's promise to forego the balance of the judgment debt : and the claim therefore fails and must be dismissed with costs."

On the appeal the Chief Justice (in whose judgment the other Judges of the Court concurred) said :—

" The grounds of appeal which were eventually argued before this Court were as follows :—

1. To say that there was no misrepresentation is in conflict with the pleadings and even with the defendant's evidence.

2. That the Court below was wrong in admitting evidence extrinsic to the agreement of the 19th June, 1925, and even if such evidence was rightly admitted, the said evidence does not show a good consideration moving from the defendant to the plaintiff."

After affirming the decision of the trial Judge on the issue of misrepresentation, the learned Chief Justice held that the document of the 19th June, 1925, did not on the face of it show consideration moving from the appellant. His view was that the provision with reference to the assignment of debts and the transfer of a mortgage had nothing to do with the agreement as to the settlement of the personal debt, and for the purposes of the appeal under consideration could be disregarded, and therefore that the principle of the decision in *Cumber* v. *Wane*, 1 Strange 426, applied.

The Chief Justice further held that the evidence did not warrant the conclusion of the trial Judge that the appellant undertook to abandon his appeal, and in any case that the deficiency of the document of the 19th June, 1925, could not be supplied by parol evidence. The appeal was therefore allowed.

The appellant before their Lordships' Board contended :—

First, that the document of the 19th June, 1925, on the face of it showed consideration sufficient to take the case out of the principle of *Cumber* v. *Wane*, in as much as the release of the debt was only to be given as well upon the appellant assigning the debts and transferring the mortgage respectively mentioned in the documents as upon his paying £3,500.

Secondly, that upon the true construction of the document regarded in the light of the circumstances in which it was signed an obligation on the part of the appellant to abandon his appeal ought to be implied, and accordingly that there was sufficient consideration.

Thirdly, that the certified cheque for £1,800 produced by John Madi was given to the respondent, or alternatively that the amount of that cheque and the money provided by Samuel Madi was lent to the appellant by John Madi and Samuel Madi upon the faith of the respondent's promise to release the whole debt and that the principle of *Cumber* v. *Wane* had therefore no application.

Their Lordships are of opinion that the document of the 19th June, 1925, constituted an offer capable of acceptance within a reasonable time by fulfilment of the conditions mentioned in the document, namely, payment to the respondent of £3,500 and assignment and transfer to him of the debts and mortgage, and that these conditions having been in fact fulfilled within a fortnight of the signing of the document, there was a valid contract constituted binding the respondent and debarring him from proceeding in any respect upon his judgment.

Their Lordships think that it is impossible to treat the assignments and transfer as matters that have no relation to the judgment debt and to ignore them so far as that debt is

concerned. The obligation of the respondent arose only upon fulfilment of all the conditions and upon such fulfilment there was an obligation on the respondent to release and abandon all his right and title under the judgment, and not merely to release his judgment debt. Nor, in the absence of any allegation or evidence directed to the point, is it, in their Lordships' opinion, to be inferred that the appellant was as administrator guilty of any impropriety in entering into the arrangement.

This view of the matter renders it unnecessary for their Lordships to pass an opinion upon any of the other matters of law or fact debated before them and entitles the appellant to succeed.

This litigation has been proceeding for an unconscionable time, and their Lordships have not been afforded any explanation of this fact. They cannot part with the case without calling attention once more to the importance of expedition in the administration of justice and the necessity for eliminating causes of delay.

The appeal must succeed. The order of the Appeal Court should be discharged and the judgment of the trial Judge should be restored, the respondent paying the costs here and below.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SARKIS MADI

v.

MICHAEL ABDALLAH.

DELIVERED BY LORD TOMLIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1932.