~~CAHCL~~ 13, 1950 X

In the Privy Council.

No. ~~26 of 1949.~~ 3123

ON APPEAL

FROM THE SUPREME COURT OF THE FALKLAND ISLANDS.

BETWEEN

LAWRENCE ADRIAN SEDGWICK *Appellant*

AND

ELLEN SUMMERS - - *Respondent*

Case for the Appellant.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of the Falkland Islands given on the 8th October, 1948, dismissing the Appellant's action against the Respondent for the recovery of £600 money lent.

2. The Appellant issued the Writ in this action on the 27th August, 1948 and the Respondent's written Answer to the Writ dated the 4th September, 1948 consisted of a simple denial that she owed the money claimed. p. 2. p. 3.

3. The hearing took place on the 8th October, 1948, before His Honour Geoffrey Miles Clifford Governor and Commander-in-Chief of Falkland Islands executing the office of Judge pursuant to section 3 (2) of the Administration of Justice Ordinance 1938 (No. 17 of 1938) and a jury. The parties appeared in person and tendered no oral evidence other than their own. pp. 4–5.

4. The following facts, about which there was no dispute, emerged at the hearing :—

(A) That on the 26th July, 1944 the Appellant lent to the Respondent the sum of £780 for the purchase of a house. p. 6.

(B) That the money so lent was expended by the Respondent on the purchase of No. 7 John Street, Stanley. p. 4. p. 17, line 3.

(C) That the deeds of this house (which remained in the name of the Respondent) were deposited with the Appellant. p. 17, line 14. p. 8.

(D) That two payments on account of the loan, viz., £100 paid on the 5th February, 1945 and £80 paid on the 5th July, 1945, were made by the Respondent to the Appellant and that there was thus a balance of £600 outstanding thereafter. p. 11. p. 12.

(E) That by his letter dated the 24th January, 1948, the
p. 7. Appellant applied to the Respondent for repayment of the balance of £600 and added: "If this cannot be arranged as requested at an early date I must ask you to arrange a Mortgage Conveyance in my favour."

(F) That by her letter dated the 26th January, 1948 the
p. 8. Respondent asked the Appellant to return the deeds of the house to her "as I am making other arrangements," and that the deeds
p. 9. were accordingly returned by the Appellant under cover of his letter of the same date "in order that the other arrangements you mention can be made."

p. 4. 5. The Appellant's oral evidence was to the effect that about a week after the deeds had been returned by him to the Respondent he had an interview with her at which she at first agreed to execute a mortgage in his favour but changed her mind when he stated that he would require interest on the loan for ten years at Bank Rate and would also require the property to be insured against fire risks. The Respondent declined these terms and said that she would sell the property. She said that she would write about this to a Mr. James Lee of the West Falklands and asked the Appellant to take no decision until she had received a reply. To this the Appellant agreed, but, having heard nothing further for several weeks, he again pressed for payment of the £600 outstanding. A further interview took place at which the Respondent said that she had decided not to sell the house and that if the Appellant wanted the money he could take the matter to Court.

6. The only point on which the Appellant was cross-examined by the Respondent was why he had allowed the matter of repayment to
p. 4. stand over since 1945; to which he replied that he had realised that the Respondent might be hard pressed and had consequently let the matter stand over until he decided to realise his assets and go to South Africa. In answer to a question from the jury he confirmed that the deeds of the house were now in the possession of the Respondent. This closed the Appellant's case.

7. It was only when the Respondent gave evidence that she disclosed for the first time that her defence to the action was that the Appellant
p. 5. "gave me the house in May, 1946." She admitted that she had no evidence other than her own word to support this assertion. She gave no further evidence which was material to the case as she denied nothing which the Appellant had himself stated in evidence.

8. At the close of the Respondent's evidence the learned Judge did not invite the Appellant to cross-examine her, nor to give further evidence himself in rebuttal of her evidence, nor to address the jury. The learned Judge's own account of what happened reads as follows:
p. 16. "At the close of the Respondent's evidence I looked towards the Appellant and, as he appeared to have nothing to say, I proceeded to sum up."
p. 5. In his summing up he told the jury that the issue was simply one of fact and gave them no direction of any sort.

9. In returning a verdict for the Respondent the jury stated :—

(A) that they relied on the fact that no claim for repayment had been made by the Appellant between 1945 and 1948,

(B) that they also relied on the fact that the deeds of the property were now in the possession of the Respondent, and p. 5.

(C) that the Appellant had not denied that the house was given by him to the Respondent in May, 1946 and that they accepted her testimony to this effect, which they described as "otherwise unsupported."

10. It is submitted that the trial was misconducted by the learned Judge in the following respects :—

(A) When it appeared from the Respondent's evidence that her answer to the claim was one which had not been put to the Appellant in cross-examination, he should either have ruled the evidence about the gift of the house to be inadmissible, or else he should have elicited from the Respondent the fullest possible particulars of the alleged gift and should then have invited the Appellant to return to the witness box and submit to cross-examination about it.

(B) At the close of the Respondent's evidence-in-chief he should have made it clear to the Appellant that he was entitled to cross-examine the Respondent. Alternatively, he should have invited the Appellant to give further evidence-in-chief or, at the least, to address the jury.

(C) In summing up to the jury he should have directed them—

(i) that the fact that the Appellant had made no application for repayment between July, 1945 and January, 1948 was not in itself a defence to the action ;

(ii) that the Appellant had had no opportunity of denying the Respondent's allegation about the gift of the house, and that the fact that he had not denied it could not therefore be regarded as supporting the Respondent's testimony ;

(iii) that the fact that the deeds of the house were returned by the Appellant to the Respondent only in January, 1948, and in the circumstances indicated by the correspondence which passed at that time tended to impeach, rather than to support, the Respondent's evidence about the alleged gift of the house in May, 1946 ;

(iv) that the Respondent's evidence about this gift must be presumed (if it were to have any relevance at all) to mean that the Appellant promised in May, 1946 to treat the balance of the Respondent's debt as cancelled ; and

(v) that, since no consideration was shown for this alleged promise, it did not afford any defence to the action even if the Respondent's evidence were believed.

11. The Appellant accordingly submits that the judgment appealed from was wrong and should be set aside and judgment entered for the Appellant for the amount claimed (or alternatively that a new trial should be ordered) for the following, among other,

REASONS

(1) BECAUSE the conduct of the trial was irregular and contrary to natural justice.

(2) BECAUSE the jury were not directed upon the material questions of fact and law raised by the evidence before the Court.

(3) BECAUSE if they had been correctly directed upon such questions the jury must have returned a verdict for the Appellant.

(4) BECAUSE the verdict of the jury was contrary to the weight of the evidence.

(5) BECAUSE no defence in law to the Appellant's claim was disclosed by the Respondent.

C. P. HARVEY.

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