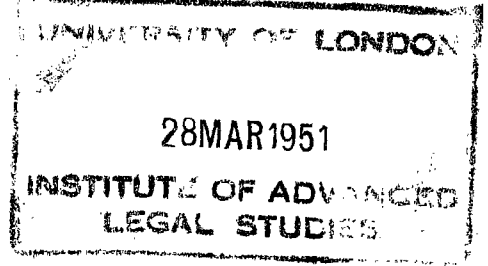


COUNCIL

Judgment 26 13, 1950

1949 7

IN HIS MAJESTY'S JUDICIAL COUNCIL.



Appeal from the Supreme Court
of the
Falkland Islands.

LAWRENCE ADRIAN SEDGWICK - Appellant.

and

ELLEN SUMMERS - Respondent.

INDEX.

31234

Page						
2.	Writ	...	...	...	...	...
3.	Reply	...	...	...	...	...
4.	Judge's Notes	...	...	...	...	...
6.	Exhibit A.	...	...	...	...	...
7.	Exhibit B.	...	...	...	...	...
8.	Exhibit C.	...	...	...	...	...
9.	Exhibit D.	...	...	...	...	...
10.	Exhibit E.	...	...	...	...	...
11.	Exhibit F.	...	...	...	...	...
12.	Exhibit G.	...	...	...	...	...
13.	Notice of Appeal	...	...	...	...	...
14.	Appeal	...	...	...	...	...
16.	Reasons of the Judge	...	...	...	...	...
17.	Answer to Appeal	...	...	...	...	...
18.	Rejoinder	...	...	...	...	...
20.	List of records not included					

UNIVERSITY OF LONDON
W.C.1.
27th August, 1948.
17 JUL 1953
4th September, 1948.
INSTITUTE OF ADVANCED
LEGAL STUDIES
8th October, 1948.

26th July, 1944.

24th January, 1948.

26th January, 1948.

26th January, 1948.

10th August, 1948.

5th February, 1945.

5th July, 1945.

8th October, 1948.

2nd May, 1949.

7th June, 1949.

23rd June, 1949.

1st July, 1949.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

Writ.

GEORGE VI. BY THE GRACE OF GOD OF THE UNITED KINGDOM OF GREAT BRITAIN, IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS KING, DEFENDER OF THE FAITH.

To MRS. ELLEN SUMMERS of Stanley in the Colony of the Falkland Islands.

WE command you that within eight days, (and 30 days if beyond limits of town), after the service of this Writ on you, inclusive of the day of such service you do enter or cause to be entered for you in the Action Book in Our Supreme Court of the Falkland Islands an answer touching the complaint of LAWRENCE ADRIAN SEDGWICK and take notice, that in default of your so doing the Plaintiff may proceed to Judgment and Execution.

The Complaint set forth is

Plaintiff claims	...	£600	0s.	0d.
Costs	... ..	£	1	2s. 0d.
		<hr/>		
		£601	2s.	0d.
		<hr/>		

Witness His Honour (Sgd.) A. B. MATHEWS, Judge of the Falkland Islands, this 27th day of August, 1948.

This Writ must be served within six months from the date hereof.

(Sgd.) J. E. HAMILTON,
Registrar, Supreme Court.

Plaintiff claims £600 and £1 2s. 0d. for costs. If these amounts be paid into Court within 7 days further proceedings will be stayed, but the Defendant may apply to have the costs taxed and if more than one-sixth be disallowed the Plaintiff shall pay his own costs. If the Defendant pays into Court 3 days at least a sum less than that claimed but equal to or greater than the amount for which judgment is thereafter given he shall be entitled to recover his costs from the Plaintiff.

TO THE REGISTRAR SUPREME COURT
STANLEY.

In answer to the Writ served on me on the 27th day of August, 1948

I deny that I owe this money.

(Sgd.) ELLEN SUMMERS

Witness. (Sgd.) J. E. HAMILTON
Registrar, Supreme Court.

4th Sept. 1948.

In the Supreme Court of the Falkland Islands

before HIS HONOUR G. M. CLIFFORD, Judge.

8th October, 1948.

LAWRENCE ADRIAN SEDGWICK

V.

ELLEN SUMMERS

Claim. £600 being balance of sum advanced by Plaintiff to Defendant on 26th July, 1944.

Plaintiff sworn.

A.
Receipt bearing
signature ten-
dered and passed
to Jury.

As above. £780 advanced for purchase of dwelling house at 7, John Street, Stanley, loan made jointly to Defendant and husband but in name of Defendant as her husband was in undischarged debt to a Mr. McRae her former husband.

Two sums of £100 (1945) and £80 (1945) were repaid leaving balance of £600; receipts were issued, uncertain exact date payment.

B.
Letter put in
and Jury to take
note only of
marked passage.

C. D.
Letters put in.

I applied on 24th January, 1948, for payment of balance due, asking for mortgage conveyance. On 26th January I was asked to surrender the deeds of the house and did so. At verbal interview, about a week later, agreed to mortgage 10 until I stated my conditions which were ten years at Bank Rate and property to be covered by insurance against fire risks. Defendant declined and said she would sell property; would write to Mr. James Lee, West Falklands offering to sell property and asking me to defer decision until mail came in. Agreed. Hearing nothing for some weeks I again pressed for payment. At personal interview Defendant said she had decided not to sell and that if I wanted the money I could take the matter to Court. On 10th August, 1948, I wrote to Defendant informing her that unless proper security was given I would take the case to Court.

Defendant.

Why did you allow the matter to stand so long, *i.e.* for over 3 years?

Plaintiff.

20 Because at that time I realised you might be hard pressed and I let the matter stand until I decided to go to South Africa when I also decided to realise my assets.

No further questions by Defendant.

No further evidence by Plaintiff.

Foreman of Jury asked who now has possession of deeds of house. Plaintiff confirming that Defendant had them.

Defendant
sworn.

Plaintiff gave me the house in May 1946. I have no evidence to support that fact. It was not my husband's idea but the Plaintiff's that the loan was issued in my name, and the loan was made free of interest. Mentioned letters from Plaintiff — no bearing on actual debt.

30 No questions by Plaintiff.

No further evidence by Defendant.

F. & G.

Receipts put in for £100 and £80 repaid dated 5th February, £100 and 5th July, £80 — identified.

Summing up.

On facts alleged, no question law involved. No direction.

The Jury find that no claim having been made by Plaintiff between 1945 and 1948, that the deeds are in the possession of the Defendant, that the Defendant claims that the house for which the loan was advanced by Plaintiff was in fact given to her by Plaintiff in 1946 and that the latter has not denied this — accepts her testimony, otherwise unsupported, that the house was in fact given to her in 1946.
40 Find for Defendant.

(Sgd.) MILES CLIFFORD.

8.10.48.

Exhibit A.

26th July, 1944.

Received from L. A. Sedgwick

the sum of Seven hundred and Eighty pounds.

————— Shillings and ————— Pence.

On loan for House 7 John St.

£780 0s. 0d.

(Sgd.) E. SUMMERS.

Exhibit B.

Stanley,
24th January, 1948.

Mrs. Ellen Summers,
Stanley.

Dear Madam,

I would be greatly obliged if you can make early arrangements to repay the balance of the loan made when purchasing the house, namely £600 (six hundred pounds).

If this cannot be arranged as requested at an early date I must ask you to arrange a Mortgage Conveyance in my favour.

Further, owing to disclosures made to me through the medium of one of your indiscreet admirers I have no further desire to see you again unless on strictly business affairs.

I have no wish to embarrass you with particulars of what has been brought to my notice as you will be quite aware of same.

Yours faithfully,
(Sgd.) L. A. SEDGWICK.

Exhibit C.

Stanley,
7 John Street,
26th January, 1948.

Dear Sir,

Will you please come up here as I do want to see you on business, and will you give Sheila the deeds of the house as I am making other arrangements.

(Sgd.) E. SUMMERS.

Exhibit D.

Stanley,
26th January, 1948.

Mrs. Ellen Summers.
Stanley.

Dear Madam,

I acknowledge receipt of your letter of even date and regret that I cannot call at your house to see you on business but you can see me on any business matters at Falkland Store when you care to call.

I forward herewith the Deeds of the house as requested in order that the other arrangements you mention can be made.

Yours faithfully,
(Sgd.) L. A. SEDGWICK.

Exhibit E.

Stanley,
10th August, 1948.

Mrs. Ellen Summers,
Stanley.

Dear Madam,

I am now making formal application for the repayment of the sum of £600 (six hundred pounds), balance of the sum of £780, which I lent you to help purchase the house in John Street and unless I receive this sum or you give proper security for its repayment within seven days I shall issue a writ.

Yours faithfully,
(Sgd.) L. A. SEDGWICK.

Exhibit F.

5th February, 1945.

Received from E. C. W. Summers

the sum of One hundred Pounds

—————Shillings and —————Pence.

On account of loan.

£100—————.

(Sgd.) L. A. SEDGWICK.

Exhibit G.

5th July, 1945.

Received from Ellen Summers

the sum of Eighty Pounds————shillings and
————pence.

per instalment on Loan.

£80————.

(Sgd.) L. A. SEDGWICK.

In the Supreme Court,
Falkland Islands.

LAWRENCE ADRIAN SEDGWICK,

PLAINTIFF.

v.

ELLEN SUMMERS,

RESPONDENT.

I hereby give notice of Appeal to His Majesty in Council against the final judgment in this case.

Dated this 8th day of October 1948.

(Sgd.) L. A. SEDGWICK,
Plaintiff.

To the REGISTRAR SUPREME COURT,
FALKLAND ISLANDS.

THE REGISTRAR SUPREME COURT,
FALKLAND ISLANDS.

APPLICATION for Final Leave to Appeal to His Majesty in Council.

LAWRENCE ADRIAN SEDGWICK - - PLAINTIFF.

V.

ELLEN SUMMERS - DEFENDANT.

Heard at The Supreme Court, Stanley on Friday 8th October, 1948.

I hereby beg that leave be granted me to Appeal to His Majesty in Council on the following grounds :—

1. That the Verdict was against the Evidence;
2. Irregularity at the Trial.

My statement that the Verdict was against the Evidence is based on the following points :—

Evidence, oral and documentary, was produced by me that the debt had been incurred. Part of the original debt had been paid off by the defendant and on the 26th January, 1948, defendant requested me in writing (letter is now held in Court) to let her have the deeds of the house (purchased with the original loan) for her to make other arrangements. The defendant's indebtedness was not
10 disputed until the hearing of the case. She said in evidence that I had given her the house in May 1946. The Jury stated that they accepted defendant's evidence on this point as I had not denied it, but in point of fact, as my second reason is based on irregularity at the Trial, I was given no opportunity of doing so either by way of cross-examination or by a final address to the Jury. Furthermore, the Jury ignored the defendant's letter of the 26th January, 1948, which was in reply to mine of the 24th January, 1948, (also held by the Court) and had I had the opportunity of addressing the Jury, I would have pointed out that if defendant's story was true, would it not have been correct to assume that she would have possessed herself of the deeds at the time of the alleged gift and if such gift had in fact been made, would I in the circumstances have applied for repayment of the remaining £600 as I did in my letter dated 24th January, 1948, to defendant.

20 The fact that the deeds are now held by the defendant is proof only of the purchase of a house in her name and serves only to corroborate the original debt of £780 which defendant has admitted.

Another point mentioned by the Jury was that I had made no claim since the last payment in July 1945 for the balance of loan, namely £600. The Jury apparently forgot or ignored my reply

to defendant in cross-examination that my reason for pressing for repayment was that I intended leaving the Colony and wished to realise my assets. As a debt under English Law remains valid for a period of six years though no claim is made, the Jury was not entitled to place any stress on the fact that I did not press for full payment sooner.

The prayer of your humble petitioner is that Leave to Appeal be granted because the Verdict was against the Evidence and that there was Irregularity.

30 Dated this 2nd day of May 1949.

(Sgd.) L. A. SEDGWICK,
Plaintiff.

His Majesty in Council.

(JUDICIAL COMMITTEE)

LAWRENCE ADRIAN SEDGWICK - APPELLANT.

AND

ELLEN SUMMERS - RESPONDENT.

Reasons of the Judge.

1. There is no case for me to state and little I can add to my note of the proceedings. As the case was solely one of fact I summed up accordingly and left the verdict to the Jury.

2. The facts stated in the Appeal were before the Court for consideration by the Jury and are covered in my note.

3. It is not correct that the Appellant was not given an opportunity to cross examine. At the close of the Respondent's evidence I looked towards the Appellant and, as he appeared to have nothing further to say, I proceeded to sum up. The Appellant is an intelligent man and I have every reason to believe is entirely familiar with Court procedure.

(Sgd.) MILES CLIFFORD,

Judge.

7th June, 1949.

Stanley,
23rd June, 1949.

LAWRENCE ADRIAN SEDGWICK

V.

ELLEN SUMMERS.

I hereby make answer to the Appeal to His Majesty in Council of Lawrence Adrian Sedgwick.

Originally the loan was made free of interest. My husband was not a party to the loan as Mr. Sedgwick did not wish him to have any claim on the dwelling which was bought with the money.

Mr. Sedgwick and I had been on very intimate terms for some time which commenced in December 1941 during my husband's service with the local forces.

My husband petitioned the Court for divorce during November 1948, naming Mr. Sedgwick co-respondent, and the Court now holds letters written by Mr. Sedgwick which show the intimate terms existing between us and his affection for my son David aged 5 years.

I had tried to repay the money, and as our relations had grown to such an extent that in May
10 1946, Mr. Sedgwick gave me the house, so that my child and I should not want. Naturally money transactions ceased.

Later Mr. Sedgwick's affections changed and he intended to go to South Africa. Then only did he take action to recover the gift.

I purchased the house, the deeds are in my name and Mr. Sedgwick does not have a mortgage on the property, which is the custom here with loans when property is involved.

I was not permitted to explain our relations during the Court hearing.

(Sgd.) ELLEN SUMMERS.

Defendant.

THE REGISTRAR

OF THE SUPREME COURT.

Stanley,
1st July 1949.

LAWRENCE ADRIAN SEDGWICK

V.

ELLEN SUMMERS.

I hereby make rejoinder to Defendant's reply to my Case for Appeal to His Majesty in Council.

The loan was made free of interest but the husband was not included because he was in debt to defendant's previous husband through an Order of the Court made at the time the divorce was granted. I was prepared to lend the money to purchase a house as the defendant's previous husband could then have no claim on it but this was entirely at defendant's husband's suggestion as I was not aware that he owed such money.

That I have been on very friendly terms with the defendant is not denied and nothing was kept from the husband. Any association that there was was encouraged by defendant's husband who raised no objection to the friendship.

10 I saw comparatively little of the defendant between 1942 and 1944 and I know that during that period she was on very friendly terms with many soldiers and on most intimate terms with a certain sergeant who frequently visited her when her husband was away on outpost duty.

About 3 days before I left the Colony at the end of May 1946 I heard that defendant had put her husband out of the house and he had gone to live elsewhere.

While I was away in England I wrote several friendly letters and I told her, in one of these, that our association must cease. As she was no longer being supported by her husband and as I had previously made her many gifts in the way of clothing (with her husband's knowledge) I told her that I would not see her want, but I most certainly did not cancel the debt.

20 I had no opportunity to cross examine defendant at the Supreme Court on her bald statement that I had given her the house, neither did I have the opportunity of denying it. While I cannot disprove a wilful untruth, I do suggest that the fact that she did not even receive or collect the deeds from me until February 1948 is corroboration of my statement that the debt is still outstanding and further corroboration exists in the letter from defendant, dated 26th January 1948, in which she asked to be allowed to have the deeds to make other arrangements. Defendant made no and still makes no detailed statement as to the circumstances in which she alleges she was "given the house" and I cannot therefore produce other evidence to disprove her statement. Furthermore is it likely that I would give her the house after 2 years right on the eve of the termination of our association ?

When recovery of the debt was commenced in January 1948, defendant made no attempt to

deny the debt or claim that she was given the house – on the contrary, as the letters produced indicate,
30 she was going to make arrangements to realise the money and for that purpose asked for the deeds.
On the 27th January 1948 the defendant called on me and agreed on a mortgage in my favour and I
purchased the necessary form from the Colonial Secretariat (I still have this form unused and purchase
receipt) but when I insisted that she pay interest at Bank Rate and that she should insure against fire
defendant declined to go through with it, and threatened to produce all my letters if I insisted upon
going to Court. A few days later she asked if I would allow her sufficient time to write to Mr.
James Lee of Fox Bay to see if he would buy the house; I agreed to this but did not receive any
indication of the result of this approach to Mr. Lee.

This threat of exposure was again made after my letter of the 10th August 1948, giving formal
notice of my intention to issue a writ, following defendant's interview with the Colonial Secretary who
40 had been prepared at her request to try and arrange a mutual settlement. I was informed by the
Colonial Secretary that the defendant intended to call on me and expected we could have settled but
she then demanded of me that I give up the receipt for the original loan and dared me to take her to
Court by tapping her handbag saying she would expose and produce my letters in Court. As I had
told my wife everything I had no fear of going to Court and refused her demands.

The only question put to me at the Hearing by the defendant was why had I not asked for
repayment since the last payment of nearly 3 years before. I was not allowed to ask the defendant
any questions and so could not put any of the points mentioned above to her.

The defendant in her answer to Appeal, dated the 23rd June, 1949 and served on me on the
30th June, 1949 mentions that the letters referred to were put into Court when her husband petitioned
50 for divorce naming me as co-respondent but she omits to say that the Petition was dismissed without
my being called upon to Reply and that her husband admitted being given the letters by defendant in
the street. The defendant herself had tried unsuccessfully to divorce her husband in August 1946, and
I understand she then denied on oath that I had been intimate with her.

Our friendship before 1946 was the sole reason why I made an interest free loan and why I did
not press for earlier payment. When I intended leaving to live in South Africa I had to realise all my
assets and call for payment of the balance of the loan. The defendant has relied on this friendship
and threat of exposure to avoid payment.

(Sgd.) L. A. SEDGWICK,
Appellant.

THE REGISTRAR,
SUPREME COURT,
STANLEY.

LIST OF RECORDS NOT INCLUDED.

1.	Application for Writ	...	...	...	...	24th August, 1948.
2.	Order of Stay of sale	...	...	...	...	30th August, 1948.
3.	Notice of hearing	...	...	...	...	28th September, 1948.
4.	Notice of postponement of hearing	...	...	...	...	4th October, 1948.
5.	Summons to Jurymen	...	...	...	...	5th October, 1948.
6.	Application for copy of Judgment	...	...	...	...	8th October, 1948.
7.	Petition for New Trial	...	...	...	...	11th October, 1948.
8.	Application for extension of Notice of Appeal	...	...	...	...	11th October, 1948.
9.	Letter to Plaintiff concerning retrial	...	...	...	...	24th April, 1949.
10.	Letter from Plaintiff, confirmation of Appeal	...	...	...	...	24th April, 1949.
11.	Affidavit of Service of Notice of Appeal and copy of Appeal on Defendant	...	...	...	...	9th May, 1949.
12.	Affidavit of Service of copy of Answer to Appeal on Appellant	...	...	...	...	30th June, 1949.