

Privy Council Appeal No. 26 of 1949

Lawrence Adrian Sedgwick - - - - - *Appellant*

v.

Ellen Summers - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE FALKLAND ISLANDS

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 12TH JUNE, 1950**

Present at the Hearing:

LORD PORTER
LORD OAKSEY
LORD RADCLIFFE
SIR JOHN BEAUMONT
SIR LIONEL LEACH.

[*Delivered by* LORD OAKSEY]

This is an appeal *ex parte* from a judgment of the Supreme Court of the Falkland Islands dated the 8th October, 1948, dismissing the appellant's action against the respondent for the recovery of £600 money lent. 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.

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.

The following facts, about which there was no dispute, were proved:

On the 26th July, 1944, the appellant lent to the respondent the sum of £780 for the purchase of a house, and the respondent gave a written receipt. The money so lent was expended by the respondent on the purchase of No. 7, John Street, Stanley; the deeds of this house (which remained in the name of the respondent) were deposited with the appellant. 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, receipts on account being given by the appellant. There was thus a balance of £600 outstanding thereafter. By letter dated the 24th January, 1948, the 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." The respondent replied by her letter dated the 26th January, 1948, asking the appellant to return the deeds of the house to her

“ as I am making other arrangements ”. The deeds 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.”

The appellant's oral evidence was to the effect that about a week after the deeds had been returned by him to the respondent in 1948 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.

The only point on which the appellant was cross-examined by the respondent was why he had allowed the matter of repayment to 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.

When the respondent gave evidence she alleged for the first time that the appellant had given her 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.

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:—

“ 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.”

In his summing up he told the jury that the issue was simply one of fact and gave them no direction of any sort.

The judge's note of the jury's finding is as follows:—

“ The Jury find that no claims 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. Find for Defendant.”

Mr. Cyril Harvey who appeared for the appellant before their Lordships' Board submitted that the trial had been irregular and improper and that the appellant had not been given a proper opportunity of answering the allegation of fact made for the first time by the respondent in her evidence that the appellant verbally promised in 1946 to cancel her debt of £600 to him, but that quite apart from the irregularity and unfairness of the trial the facts proved showed that even if the alleged promise to cancel the debt had in fact been made by him there was no consideration sufficient in law to support that promise.

Their Lordships are of opinion that the appellant's argument is unanswerable. The Common Law of the Falkland Islands is the Law of England and their Lordships understand that there has been no

statutory variation of the English Common Law upon the subject of consideration. It now appears from documents printed in the Record which have been deposited with the Registrar of the Supreme Court of the Falkland Islands in connection with this appeal that the only suggested consideration for the alleged promise to cancel the debt was past immoral cohabitation and it is well settled law that such consideration will not support a verbal promise. (See *Beaumont v. Reeve* 1846. 8. Q.B. 483.)

Apart therefore from the irregularity of the trial in that the appellant was not properly instructed as to his right to cross-examine or to give evidence in rebuttal and that the jury do not appear to have been properly directed on the facts or on the law, their Lordships are of opinion that the proper course in this unfortunate case is that this appeal should be allowed and judgment entered for the appellant with costs before their Lordships' Board and in the Supreme Court, and they will humbly advise His Majesty to this effect.

In the Privy Council

LAWRENCE ADRIAN SEDGWICK

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ELLEN SUMMERS

DELIVERED BY LORD OAKSEY

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