

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dyson and another v. Godfray, from the Royal Court of the Island of Jersey; delivered 13th June 1884.

Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

THE circumstances under which this case arises may be shortly stated thus: On the 18th September 1880 Mr. Dyson, the Defendant, entered into a contract with Mr. Godfray, Grefier of the States of Jersey, on behalf of the States Market Committee, for the purpose of executing and completing all the "iron founders", "painters", and glaziers' patent work mentioned "in certain specifications and general conditions," and so on. There follow various provisions usual in contracts of this kind; among others, that the payments shall be made according to the certificate of the architect, and that extras are to be allowed and deductions are to be made only according to his certificate, and that part payment is to be made in the first place of 75 per cent., and subsequently of what remains. It concludes in these terms:—"And it "is hereby further agreed that seven days will be "allowed from the date hereof in order that the "contractor may examine the plans and specifications, to test the accuracy of the list of "quantities; and any errors discovered therein, "and communicated in writing to the architect "within that time, will be rectified, and be added "to or deducted from the amount of the contract

“ price, as the case may be, but no additions or
 “ deductions will be made in respect of such
 “ errors after the expiration of the said seven
 “ days; such additions or deductions to be made
 “ by the architect, whose decision shall be final.”

It appears that, some time before this, what may be called a bill of quantities was delivered to Mr. Dyson, and the only material items in it are “ 1,500 feet of Helliwell’s patent glazing round base of tower,” and “ 21,200 feet superficial Helliwell’s patent glazing to main roof and of roof of tower.” Mr. Dyson put his price on these quantities, 187*l.* 10*s.* and 1,855*l.*, and he made his tender upon that footing, which tender was accepted, and led to the contract which has been first referred to. Fourteen days were given for the discovery and rectification of errors.

The next transaction which it is necessary to refer to is a sub-contract entered into between Mr. Dyson and Mr. Helliwell, the architect, who had a patent in respect of glazing work, on the 20th August 1881, which is in these terms:—“ In
 “ consideration of your executing the roof glazed
 “ work, &c., as stated in my contract for these
 “ works, and at the sums named in my contract,
 “ I agree to pay to you the sums named in such
 “ contract, and amounting to 2,042*l.* 10*s.*, immediately after I have received it from the Markets
 “ Committee, or such sums as I may receive from
 “ them.” On the 17th November 1882, which is the next date of importance to be found in this very meagre record, a certificate is given to this effect:—“ New Markets, St. Heliers, Jersey, Mr.
 “ J. Dyson’s account. Amount of contract, including glazing roofs and painting, 4,229*l.*;
 “ extras on deductions, 9*l.* 13*s.* 3*d.*,” making 4,238*l.* 13*s.* 3*d.* “Cash on account,” 3,250*l.*;
 deductions for less value in gates, 20*l.*, making 3,270*l.*, leaving a balance of 968*l.* 13*s.* 3*d.* due.
 On the 6th December of that year an order

was made in accordance with this certificate upon the treasurer to pay this money within 10 days from that date to Dyson, being, as it is stated, the balance remaining due to him upon the contract; and it will be observed that under this certificate the whole excess of the extras over deductions was 9*l.* 13*s.* 3*d.* The Plaintiff attached this sum in the hands of the treasurer for a debt which he alleged to be due to him; claiming 495*l.* 10*s.*, being the balance of the sum of 2,042*l.* 10*s.* which he was to be paid under his contract, and brought this suit to recover it. Thereupon Defendant obtained its release upon giving security. He states in his case that he received 4,218*l.* 19*s.* 1½*d.*, which is the very sum he is entitled to under the certificate of the 17th November 1882.

Mr. Dyson defends himself against this action on two grounds. Firstly, that in the bill of quantities, which has been before referred to, there was a material mistake—an over-statement of the quantities which would amount, according to the prices given, to a sum of 301*l.* 4*s.* 7½*d.*, and he says that, instead of being indebted to Helliwell in 495*l.* 10*s.*, he is only indebted to him in 194*l.* 5*s.* 4½*d.* He contends that he is liable to pay Helliwell, not a lump sum for the whole of the work executed, but at the rate of so much per foot; and, consequently, that he is entitled to a deduction for each foot less than the number specified. It is to be observed that, although he has 14 days according to the bill of quantities, and seven days further according to the contract, to point out any errors in the quantities, he discovers no errors until two or three days after the certificate of November 1882, when he employs another architect to make the measurements, whose measurements differ from the measurements of Mr. Helliwell. Their Lordships do not find in the record any such allegation as was made in the case presented

to them on the part of the Appellant, of fraud on the part of Helliwell, nor is there any direct allegation even of mistake; but, be that as it may, they are of opinion that the Court was substantially right in the view which they appear to have taken, namely, that, the Plaintiff accepting the sum of 968*l.* as the balance of his account, that sum was applicable to the sub-contract with Helliwell, to whom he was bound to pay the sum due under it, and that, if there was a mistake, it was for the Market Committee in Jersey to avail themselves of it, if they thought fit or were able so to do. Mr. Dyson repudiates no portion of the sum as not due under the contract, but lays claim to the whole of it under pretence of a charge for extras for which there is no foundation, inasmuch as the only extras certified for and recoverable amount to 9*l.* 13*s.* 3*d.*

These being the facts of the case, it appears to their Lordships that the Court was right in holding that the Defendant could not contest the claim of Helliwell to the balance of 495*l.*

But another question of more difficulty arises. The Defendant claims what we should call a set-off, but which perhaps is more properly called, according to the civil law, a claim for compensation, and he puts it in this way:—
 “ En effet, le dit Sieur Dyson a fait au dit
 “ Sieur Helliwell des fournitures pour la recon-
 “ struction du marché à lard pour une somme
 “ liquide et admise au montant;” the whole sum amounts to 368*l.* 18*s.* 7*d.* As far as their Lordships are able to see from this record, the Courts of Jersey have taken no notice whatever of this demand beyond dismissing it. They do not appear to have applied their minds to it in the slightest degree in order to ascertain whether the claim was liquid or illiquid, or whether it was true or false.

It has been argued on the part of the Plaintiff that, according to the law of Jersey, no claim

whatever for compensation is admissible ; and it was said that such had been once the law of Normandy. Undoubtedly the law of Jersey was founded originally upon the law of Normandy, and such may have been the law of Normandy 600 or 700 years ago ; but their Lordships think it is unnecessary to go back to so ancient a date. On referring to Basnage, a book frequently quoted in Jersey as an authority, (as appears from the report of the Commissioners,) it is said, that although originally what are called letters from the Chancellerie were necessary in order to enable a defendant to set up a claim by way of compensation, yet that in his time this claim could be made “*ipso jure*, nonobstant le transport et au préjudice du créancier arrêtant, avant la déclaration de compenser.” This view is confirmed by Terrien, who has been referred to in more than one case before this Board as some authority with respect to Normandy and Jersey law ; and it is also in accordance with the book upon Jersey law by De Geyt, which, as far as their Lordships are aware, is the most authoritative work on Jersey law, published comparatively recently as a compilation of all the law relating to the administration of justice in the island, but written some hundred years ago. According to these authorities, a claim by way of compensation is admissible when it is for a demand which is termed liquid. Perhaps the best definition of what may be called a liquid demand is found in Pothier, “Obligations,” 1st vol., part 3, chapter 4, paragraph 628 : “ Il faut 3° que la dette qu’on oppose en compensation soit liquide. Une dette est liquide lorsqu’il est constant qu’il est dû, et combien il est dû, *cùm certum est an et quantum debeatur*. Une dette contestée n’est donc pas liquide, il ne peut être opposée en compensation, à moins que celui, qui l’oppose, n’en ait la preuve à la main, et

“ ne soit en état de la justifier promptement et “ sommairement.” The Courts of Jersey ought to have ascertained whether this was a liquid demand in that sense. If they had found that it was a demand made for the purpose of delaying payment of the sum sought in the action, that would be a good ground for dismissing it. On the other hand, if they thought that the objections to it were frivolous, that would be a ground for dismissing the objections. Again, if they came to the conclusion that, instead of being an admitted debt, or a debt capable of being readily proved, it raised a question which would give rise to serious litigation, it would not properly come under the head of a liquid demand. But all these questions must be considered by the Court; and inasmuch as they have not applied their minds to them, their Lordships think that the case should go back to the Royal Court of Jersey for the purpose of dealing with this set-off in the manner which has been indicated. Under these circumstances their Lordships will humbly advise Her Majesty that it ought to be declared that James Dyson is justly indebted to Thomas William Helliwell in the sum of 495*l.* 10*s.* sued for, but that the Decree or Order of the Royal Court of Jersey, of the 23rd May 1883, appealed from, ought to be reversed to the extent of 369*l.* 8*s.* 7*d.* of the said principal sum of 495*l.* 10*s.*, and that the said Decree or Order ought to be reversed in so far as it rejects the plea of compensation set up by the Appellant; and that the cause ought to be remitted to the Royal Court of Jersey to consider and determine whether the Appellant’s counter claims to the amount of 369*l.* 8*s.* 7*d.* are in whole or in part liquid debts, or debts “*incontestées ou du moins incontestables*,” as alleged by the Appellants, and to proceed further in the cause as may seem just. There will be no costs of this Appeal.