

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on an Appeal of
Peter Awoonor Renner from a Judgment and
Sentence of the Judges of the Supreme Court
of the Gold Coast Colony; delivered 9th
December 1896.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Appellant was called to the English Bar by the Honourable Society of Lincoln's Inn in April 1883; and thereafter, in the year 1884, he was duly admitted as a barrister and solicitor of and enrolled as a practitioner before the Supreme Court of the Gold Coast Colony. The circumstances which led to the proceedings in which this Appeal is taken occurred in or about the months of September 1886, and February 1887, and may be shortly referred to here.

During the first of these periods, the Appellant was employed by one Joseph Wilson Sackey to prepare on his behalf as mortgagor, a mortgage of a dwelling-house and parcel of land in Elmina belonging to him, in favour of a Native Chief, Eccra Kwaku as mortgagee. Special instructions were given by Sackey that the consideration to be inserted in the mortgage deed was to be the sum of 250*l.* advanced to him by the mortgagee on or before the date of the deed; and also that

the deed was to be antedated, the date to be inserted being the 26th September 1884. The Appellant prepared the deed in accordance with those instructions, and sent it to his client; but he was not present at, and took no part in its execution, and its delivery to the mortgagee. There is no evidence in the proceedings before us, and forming the Record in the Court below, as to the precise date upon which the mortgage deed prepared by the Appellant was delivered by him to Sackey; but it is shown that its delivery and its execution must both have been subsequent to the 20th September 1886.

It now appears that, at the time when instructions were given for the preparation of the mortgage, one John F. Brooks had obtained a judgment against Sackey, the mortgagor, for the sum of 92*l.* 3*s.*, payable by instalments of 25*l.* per quarter, the first instalment being payable on the 20th December 1886. The judgment creditor became entitled to recover that debt by attachment and sale of the debtor's property real or personal.

Mr. Brooks did not take any steps to levy his debt from the property included in the mortgage to Eccra Kwaku until January 1887. After that fact came to his knowledge Eccra Kwaku, on the 29th January 1887, instituted an interpleader suit, with the object of having the property mortgaged to him released from the attachment; and, in that proceeding, the Appellant acted as his solicitor. The case went to trial before Chief Justice MacLeod, when the mortgagee gave evidence in his own favour, being examined by the Appellant as his counsel and solicitor. In answer to questions put to him by the Appellant, he stated the consideration which had been given by him for the mortgage, and also stated, "I have the mortgage, and produce it, marked A.,

affidavits; and a good deal of other procedure took place, which their Lordships think it unnecessary to notice, because, on the 31st August 1894, Mr. Justice Redwar, being of opinion that the charges preferred against the Appellant were of too grave a character to be dealt with by him, discharged the rule which he had granted, and referred the whole matter to the Full Court.

On the 12th September 1894, Mr. Roberts appeared before the Full Court of the Colony, consisting of Chief Justice Hutchinson and Mr. Justice Redwar, and at the request of the Court, formulated the charges which he had preferred against the Appellant. These were:— (1) "That Renner about October 1886, drew a mortgage for J. W. Sackey, and, with intent to defraud, dated it 26th September 1884; and also, with the same intent, inserted the sum of 250*l.* instead of 150*l.* "; (2) "That at the hearing of an interpleader summons at Cape Coast, before MacLeod, C.J., Renner put the mortgage in evidence and did not inform the Court that the date of it was false, and in the result the Court, on the ground that the date 1884 was the true date, gave judgment against the judgment creditor on that summons." On the same occasion Mr. Roberts explained these charges, and read a number of affidavits which had been produced by himself and by the Appellant.

The matter came again before the Full Bench on the 20th September 1894, when the Appellant examined several witnesses and addressed the Court in his own behalf. On the same day, the learned Judges, having considered the affidavits and other evidence oral and documentary which had been submitted to them, delivered their judgment in the matter. They held that the first charge was not, and that the

“ dated the 26th September 1884.” As might have been expected, after production of the document, which bore the date assigned to it, no questions were put to the witness, by counsel for Mr. Brooks as to the actual date of its execution ; but the witness was fully cross-examined as to the consideration given for the deed. The learned Judge, on considering the evidence, released the mortgaged property.

Eccra Kwaku, the mortgagee, died in 1890 ; and nothing was heard of these transactions, or of the Appellant's connection with them, until upwards of seven years after their occurrence. In April 1894, Kwasi Mensah, administrator of the deceased, brought an action against F. H. Kwaku, one of the sons of the deceased, for certain sums alleged to be due by him to the estate, in which the Appellant acted as counsel and solicitor for the Plaintiff. On the 27th July 1894, Mr. Roberts, who was acting as counsel and solicitor for the Defendant, moved for a Rule Nisi calling upon the Appellant to show cause why he should not be suspended for a specified period from practising within the jurisdiction of the Court, temporarily, pending a reference to and the confirmation or disallowance of such suspension by the Full Court ; or why, in the alternative, the matters charged against him should not be referred to the Full Court, in order that his name may be struck off the roll of the Court. The suit was, at that time, in dependence before Mr. Justice Redwar ; and the application was made in terms of Section 79 of the Supreme Court Ordinance 1876, which gave the learned Judge the power of temporary suspension, subject to confirmation or disallowance by the Full Court, with the alternative of remitting the whole matter to the consideration and determination of the Full Bench. The motion of Mr. Roberts was supported by affidavits, which were met by counter-

second charge was proved; and in respect of the latter finding they ordered the name of the Appellant to be struck off the Roll of the Court. With reference to the second charge, the learned Judges, after quoting the evidence given by Eccra Kwaku in the interpleader suit, observed,—

“ The Judge believed the statement of Eccra Kwaku and gave judgment in his favour.

“ Mr. Renner at the time this statement was made knew that it was false, because he had himself drawn the deed sometime after September 1886, and it is impossible that he should have forgotten it; and he knew that the statement must of necessity influence the result. If Mr. Renner had informed the Court that the statement made by his client was false, the Judge would, as a matter of course, have disbelieved the whole of the man’s evidence; and unless the rest of his evidence was corroborated by other testimony, would not have believed that he had lent any money at all to the judgment debtor, and would therefore have disallowed the claim. We are satisfied that Mr. Renner was a party to the deception practised upon the Court.”

Their Lordships cannot avoid noticing the intimate connection which exists between the two charges which were before the Court. The first accuses the Appellant of having antedated the mortgage with intent to defraud some one, it is not said whom. But it is impossible to peruse the affidavits and other documents laid before the Court by Mr. Roberts, without seeing that the object of the fraud imputed to the Appellant was, to enable Sackey to defeat the just claims of Brooks, his judgment-creditor, by creating a fictitious encumbrance upon his real estate, which might otherwise have been taken in execution, and made available for payment of his debt. The judgment debt did

not, of itself, constitute a charge upon the debtor's real estate; and the mortgage in question, if it represented a real transaction, would have been equally effective to exclude the judgment creditor if it had been dated in October 1886, seeing that no attachment followed upon the judgment debt until January 1887. There is no proof that, either at the time when the mortgage deed was prepared, or during the dependence of the subsequent interpleader suit, the Appellant knew, or had any reason to believe, that the mortgagee had not (as he stated in the evidence given by him before MacLeod, C. J., in February 1887) advanced the consideration which the deed bears, at or before the date which he was instructed by Mr. Sackey to insert.

Sackey was examined as a witness in the interpleader suit of 1887, when he swore distinctly that the mortgagee had advanced 250*l.* in September 1884. It is true, that in the action of 1894, in which these accusations have been made against the Appellant, Sackey denied that he had instructed the Appellant to insert the sum of 250*l.* in the mortgage; but their Lordships can attach no credit to that statement, which is inconsistent with the terms of his letter to the Appellant, dated the 29th September 1886, as well as with the fact that he accepted the mortgage deed as drawn in conformity with his instructions, and then proceeded to execute and deliver it to Eccra Kwaku the mortgagee.

Their Lordships also think it necessary to observe that, in the suit of 1894, the evidence taken before Mr. Justice Redwar establishes that, in the year 1884, sums amounting to 150*l.* and bearing interest at fifty per cent. were advanced to Sackey by Eccra Kwaku, the only dispute being whether the moneys so advanced belonged to the deceased chief, or came from his son, the

Plaintiff in the suit. There must therefore have been ample consideration to support the mortgage; and Brooks's claim in the interpleader could not have been legally sustained, whatever might have been the amount recoverable by the mortgagee in a redemption suit by the mortgagor or his creditors.

The sting of the second charge, when it is read in connection with the first, appears to their Lordships to consist in this, that the Appellant, having previously aided Mr. Sackey's scheme to defeat his creditor by the preparation of a fraudulent mortgage, then proceeded to accomplish that scheme by misleading the Court as to the true character of the mortgage, in the interpleader suit. The finding of the Court with respect to the first charge, of which their Lordships entirely approve, in their opinion completely alters the aspect of the second. In the view which according to that finding the Appellant took, and was entitled to take, of the character of the mortgage, the actual date of the deed became of comparatively little importance. The material question was whether it represented a genuine transaction; and, upon that point, so far as appears, the Appellant had no reason to entertain any doubt. His client Eccra Kwaku was fully examined by the Counsel for the judgment creditor as to the consideration given by him for the mortgage; and it does not appear to their Lordships that MacLeod C. J. would have been justified in refusing to believe his evidence, and that of Sackey, if he had been made aware the mortgage was antedated. If the learned Chief Justice had, upon that ground, decided that no money was advanced by Eccra, his decision would have been contrary to the truth of the case. If he had thought further inquiry necessary, their Lordships are satisfied that it must have resulted in sustaining the

mortgage, and rejecting the claim of the judgment creditor. There does not appear to them to be any room for the suggestion that the judgment of MacLeod C. J. proceeded upon the ground that the date 1884 was the true date of the mortgage, which is a very material part of the second charge.

It is much to be regretted that Mr. Roberts should have thought fit to prefer these serious accusations of fraud which constitute the first, and which, if true, would have given an ugly complexion to the second charge, without any sufficient ground, and after the lapse of more than seven years from the date of the transactions to which they relate,—a circumstance which, in itself exposed the Appellant to great disadvantage in meeting them. Upon the whole matter they are of opinion that both charges have completely failed. They have not been informed what, if any, rule prevails in the Colony in regard to the institution and conduct of such proceedings; but it appears to them that, that if the conduct of this case had been with a responsible public officer, such as the Attorney-General for the Colony, the necessity for the present appeal might never have arisen.

Their Lordships in the preceding observations are not to be understood as expressing approval of the system of antedating documents. The practice, which is too common, involves a false assertion, and whilst it is in no case commendable, it is, in many circumstances, highly reprehensible. In the present case they are satisfied that, whatever may have been the original intention of Sackey, in directing the mortgage to be antedated, it was not used by him for the purpose of defrauding the judgment creditor.

Their Lordships, in allowing this appeal to be brought, followed the usual course of directing that a copy of the Order should be referred to the learned Judges of the Court below for their

observations, each of whom has made a communication on the subject to this Board. The observations of Chief Justice Hutchinson add nothing to the views which were expressed by the Full Court in giving judgment. Mr. Justice Redwar, who, in the absence of his papers, adopted the somewhat singular course of refreshing his memory by a personal interview with Mr. Roberts, the instigator of these proceedings, adds nothing of consequence except a statement affecting the Appellant's professional conduct in the year 1893, which it might have been necessary to take into account had the second charge been made out, but which, in the view which their Lordships take of that charge, is immaterial.

Their Lordships will humbly advise Her Majesty to reverse the judgment and sentence appealed from, and to remit the case to the Supreme Court of the Gold Coast Colony, with directions to restore the name of the Appellant to the roll of barristers and solicitors entitled to practice before that Court.

