

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Natal Land and Colonization Company, Limited, v. John William Rycroft, from the Supreme Court of the Colony of Natal; delivered the 10th November 1908.*

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Present at the Hearing :

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

This appeal is taken under conditions which render success extremely difficult. It is in support of an accusation of fraud; and the circumstances are such as required delicate and discriminating appreciation of conduct and motives. The evidence was given in the presence of three judges of the Supreme Court; and they were unanimous in the decision now appealed against. If ever there was an occasion for the exercise of caution and reserve in disturbing the decision of an issue of fact, it is presented here.

When the case is examined more closely, it is seen that the Court have been far from credulous or otiose in their reception of the Respondent's story. On the contrary, some incidents which compromise his character for fair dealing and lessen his credibility are assigned full prominence in the discussion. Again, the Appellants have not been able to

point to any specific error in the Court's review of the facts. Their complaint is rather that too lenient or too charitable a construction is placed on the incriminated proceedings, as a whole.

Their Lordships recognize in the case one of those which admit of difference of opinion on the part of competent critics of written evidence. But agreeing, as they do, that the case of the Appellants is one of fraud, they consider the construction put on the facts to be not only permissible, but consonant with the principles and presumptions which are applicable to such evidence. The question is ultimately one of fact and of credibility, and the Appellants have failed to discharge the heavy *onus* imposed upon them by the decision appealed against.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed. The Appellants will pay the costs of it.