

Privy Council Appeal No. 26 of 1964

Solo Dabo - - - - - Appellant

v.

Abdalla Mousa - - - - - Respondent

FROM

THE GAMBIA COURT OF APPEAL

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH MARCH 1965**

Present at the Hearing:

LORD HODSON

LORD PEARCE

LORD UPJOHN

(Delivered by LORD HODSON)

This is an appeal from an order of the Gambia Court of Appeal, delivered on the 2nd December 1963, affirming a judgment of the Supreme Court of The Gambia dated 25th June 1963.

The action was commenced by the respondent, Abdalla Mousa, as plaintiff by writ dated 23rd March 1963, in which he claimed the sum of £19,200 due from the appellant. The endorsement on the writ is as follows: "The plaintiff claims £19,200 being money received from the plaintiff by the defendant in accordance with the statement of claim annexed hereto".

The sole question was a question of fact, whether or not the plaintiff was right in saying that the defendant had received money from him which he had not returned or accounted for, and Mr. Finer for the appellant has, in their Lordships' opinion, very rightly applied himself solely to that question and has not allowed himself to be diverted by various other matters which have been raised in defence in the Court of first instance, and also in the Court of Appeal in The Gambia. For example, the question of jurisdiction was raised, but that objection has no substance in it. The action was brought in The Gambia, where the defendant was and where the debt, if it existed, was also, and no question of conflict of law arises. The action was competent in The Gambia. A further adumbrated defence was to the effect that the money, if it was ever paid, which is denied, was paid in respect of an illegal transaction in connection with diamonds. There was no evidence of illegality and that matter was rejected in the court below and has not been referred to by learned counsel who appear for the appellant. The fact is that the plaintiff and the defendant are admittedly men who have been in business in buying or digging diamonds. There is nothing necessarily illegal about that.

The transaction in question was not expressly related to diamond buying. The evidence about it is sketchy. The plaintiff said in his evidence: "On 2nd July 1962, the defendant"—that is Solo Dabo—"in Freetown came to me and said he had business at Bo. I had £19,200 with me. I was not ready to go up to Bo. So I gave defendant the £19,200 to carry it to my brother Mohamed Khalil at Bo. I asked defendant when he reached Mohamed Khalil—he should give him the £19,200 and to show him the business. The business was to buy diamonds. Defendant has a digger's licence—and Khalil has a dealer's licence. I also have a dealer's licence. (This is it Ex. 'A' admitted.) Defendant took the £19,200 from me and gave me a small note—which said he had received the £19,200 from me to give to my brother Khalil. The note has been lost—I do not know where it is. Defendant did not give

the money to my brother. After 2 or 3 days I went up to Bo myself and asked my brother about this money ", and then that he did not get any information from his brother.

" Defendant was not to be found at Bo by me. After a week or so I went to Lebanon and met defendant in the Lebanon and asked him for that money. He told me he had the money in Freetown in the diamond business. Defendant said he was ready to return to Freetown that same day and pay the money to my brother Mohamed Khalil. Defendant left the Lebanon. I heard from my brother that he had not received any money ".

He proceeded: " On 27th February I came to Bathurst "—Bathurst being in The Gambia—" and met Solo Dabo in the street. I went with defendant to Ahmed Jacob at 7 Cameron Street on 28th February in the afternoon. I asked Solo Dabo about the money. Ahmed Jacob was not present. Defendant told me that he was not running away with the money ".

There was no note in existence relating to what took place on the 2nd July 1962. The note was said to have been lost, but it has been referred to, since a copy came into existence on the 8th March 1963. The point that turns on this is that the learned Chief Justice who tried the case misled himself by thinking wrongly that this document of the 8th March 1963 was a promissory note and subject to the law relating to bills of exchange, whereas in fact it was nothing of the kind; it is, as its contents show, merely an acknowledgement of the indebtedness in the sum of £19,200, purporting to be a repetition of what had been said at the original date when the lost note of the 2nd July 1962 came into existence. It is called a promissory note because the man who wrote it out, Mr. Jacob, who is a business man, was asked to give it that name. It reads as follows. Their Lordships refer to the second paragraph first, because this paragraph came into existence first. " I Solo Dabo hereby declare and admit having received from Mr. Mohamed Abdallah Mousa the sum of £19,200—say nineteen thousand two hundred pounds sterling—for safe keeping and promise to deliver this sum to his nephew Mr. Mohamed Khalil at Bo, Sierra Leone, on demand ". That is signed by the defendant and it was witnessed by Mr. Jacob himself and his clerk, Mr. Cole, both of whom gave evidence in support of the document.

The first paragraph, which was added afterwards, contains the germ of the error about promissory notes, because it reads as follows: " Copy in lieu of lost promissory note made on the 2nd July 1962, at Freetown (Sierra Leone) which reads as follows ". It was stamped a few days later as a promissory note.

The learned judge, however, in their Lordships' opinion, was not misled by the title wrongly given to this document, because on a consideration of his judgment it appears that he gave close attention to the evidence regarding the document, as strong evidence in support of the plaintiff as to the transaction which he spoke to as having occurred on the 2nd July 1962, and it matters not to his conclusion that it was falsely described. Indeed, the defendant denied his signature to the document and said it was a forgery, but the document itself was obviously of great importance, if it was what it purports to be, an acknowledgement of the debt, and the learned judge dealt with it in that way. He, having heard the parties and the corroborative witnesses, Mr. Jacob and Mr. Cole, has given a judgment which in their Lordships' opinion is unassailable, and was so held to be in the Court of Appeal in The Gambia.

The Court of Appeal did, however, take one point which is in favour of the appellant. There was in the course of the cross-examination of the appellant a challenge to him as to the transactions which he said had taken place between himself and the respondent. There had been dealings, no doubt about matters which had to do with diamonds and about matters which had not to do with diamonds, and, when he was cross-examined, the appellant was asked if he had any record which showed what he said was due, if anything, to the respondent. He said in effect that all he owed the respondent was £5,000 and not £19,200 at all, and he produced a document which he had to go home and fetch, a book, which fitted in with his own story. The criticism

which is made of the learned Chief Justice in his judgment is that he ought not to have rejected out-of-hand this book, having regard to the way in which it was produced, and ought not to have regarded it as a concocted document.

Their Lordships think there is substance in that criticism in that the learned judge may have placed a wrong emphasis on the way in which this book was produced; but the Court of Appeal have dealt with that matter. In effect they have shown that, although the book which was produced is consistent with the appellant's account of the transaction between himself and the defendant, the entries in the book are not shown sufficiently to relate to the transaction in question in this suit. There is nothing to connect that transaction with the £5,000 to which the entries in the book refer.

Their Lordships will accordingly humbly advise Her Majesty that this appeal be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

SOLO DABO

v.

ABDULLA MOUSA

DELIVERED BY
LORD HODSON