

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of De Cor-
dova and others v. De Cordova, from the High
Court of Chancery, of the Island of Jamaica,
delivered 26th July 1879.*

Present :

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR JAMES HANNEN.

This is an appeal from a decree of the Vice Chancellor of Jamaica, in a suit instituted by the Respondent as a legatee under the will of his father Aaron de Cordova, deceased, against the Appellants, who were the executors and executrix of the testator.

To prevent confusion, the Respondent in the appeal will herein-after be called the Plaintiff and the Appellants the Defendants.

The will was dated the 10th of July 1865, and the purport of it is fully set forth in the careful and elaborate judgment of the learned Vice Chancellor.

It is sufficient to state here that the testator, after directing payment of his debts and funeral expenses, and amongst other legacies one-sixth part or share of all his estate to his son Altamont, and 200*l.* to his son Solomon, the Plaintiff, gave and devised all the rest, residue and remainder of his estate, both real, personal, and mixed, unto and to the use of his executors and executrix, upon trust as to his house in Duke Street, in the city of Kingston, and all the

furniture, &c. therein, to permit and suffer his wife to use, occupy, possess, and enjoy the same, or to receive and take the rents, issues, and profits thereof during the term of her natural life, without any impeachment of waste, and immediately upon the death of his said wife, to sell the same in such manner as his said executors or the survivors or survivor of them, or the heirs of such survivor should think fit.

The will then proceeds,—“ And as to all the
 “ rest of my said trust estate, to sell and dispose
 “ of, and convert into money as speedily as
 “ possible, so much thereof as shall be in its
 “ nature saleable, and to collect, get in, and
 “ receive the residue thereof. And to stand and
 “ be possessed of all moneys herein-after referred
 “ to as trust moneys, to arise from all such sales,
 “ disposals, conversions, collections, and receipts
 “ of my said trust estate. Upon trust as to so
 “ much thereof, and such sum as shall, together
 “ with the said sum of 200*l.* bequeathed to my
 “ son Solomon, and such sum as shall appear by
 “ my books of account to be due to me by him
 “ (notwithstanding that such last-mentioned sum,
 “ or any part thereof, shall have been discharged
 “ and satisfied by operation of law) amount to
 “ and equal one-sixth part or share of, and in all
 “ my estate to lay out and invest the same in the
 “ names or name of my said executors and
 “ executrix, or of the survivors or survivor of
 “ them, or of the heirs, executors, or adminis-
 “ trators of such survivor, in some one or more
 “ of the public stocks or funds of Great Britain,
 “ or this island, or at interest upon Government
 “ or real securities in Great Britain or this island,
 “ and to stand and be possessed of and interested
 “ in such stocks, funds and securities, and the
 “ interest, dividends, and annual produce thereof
 “ upon trust thereout, so long as the same shall
 “ last, to pay unto my said son Solomon yearly

“ the sum of 240*l.* by twelve even and equal
 “ monthly payments, the first payment to be
 “ made one month after my death, and imme-
 “ diately after the death of my said son Solomon
 “ to transfer and deliver the said stocks, funds,
 “ and securities, or so much thereof as shall then
 “ be existing and remaining unconsumed by such
 “ yearly payments as aforesaid, unto the widow
 “ and children (if any) of my said son Solomon ;
 “ but if he shall leave no widow or child him
 “ surviving, then to hold the residue of the said
 “ stocks, funds, and securities (if any) upon the
 “ same and the like trusts as herein-after ex-
 “ pressed and declared of and concerning the
 “ balance of the said trust moneys.”

The said will then declared trusts of the balance of the trust moneys for the benefit of the widow and four younger children of the testator, and then proceeded as follows :—

“ I declare and direct that any legatee or
 “ executor named in this my will, who shall at
 “ the time of my decease owe me any money,
 “ shall account for the same to my executors
 “ and executrix.”

The testator died on the 8th of July 1866. He had been twice married, and left two sons by his first wife, viz., the Plaintiff, who was his eldest son, and the Defendant Altamont. His second wife, Julia De Cordova, one of the Defendants, who was appointed executrix of his will, survived him. He also left by his said second wife, two sons, Alfred and Eustace, and two daughters, Ella and Fleurette.

Prior to the year 1863 the Defendant Altamont carried on business in partnership with his father the testator, who in that year retired and sold his share in the business to his son Altamont for a sum of which 17,716*l.* odd remained unpaid at the time of the death of the testator. That amount was secured by six promissory notes of the Defendant Altamont, dated the 3rd August 1863,

for the respective amounts following, that is to say:—

- One for 5,000*l.*, due on the 10th August 1866.
- One for 2,500*l.*, due on the 10th August 1867.
- One for 2,500*l.*, due on the 10th August 1868.
- One for 2,500*l.*, due on the 10th August 1869.
- One for 2,500*l.*, due on the 10th August 1870.
- And one for 2,716*l.* 3*s.*, due on the 10th August 1871.

Each of the notes bore interest at 6 per cent., from the 1st August 1864, payable yearly. In addition to the said promissory notes and a balance of interest amounting to about 1,000*l.* due thereon, Altamont was indebted to the testator, at the time of his death, in a sum of 2,414*l.* 1*s.* 5*d.*, on open account, making a total, exclusive of interest, of 20,130*l.* odd.

The Plaintiff was, at the testator's death, indebted to him in a sum of 1,968*l.* 7*s.* 8*d.*

The testator's other assets consisted of debts due to him, including a debt from one Michael De Cordova, the house and furniture and effects specifically given by the will, and other real estate, and certain investments, some of which were on foreign securities.

All the Defendants proved the will, and thereby took upon themselves the execution thereof.

Shortly after the death of the testator, the Defendants prepared a balance sheet of the estate. The net assets, including the debt from Altamont, were estimated at 36,000*l.* Altamont claimed to set off one sixth of that amount bequeathed to him by his father's will against the amount due on the promissory note which matured on the 10th of August, 1866, and the sum owing from him on open account. His co-executor, the Defendant De Mercado, opposed this claim at first, but discontinued his opposition upon being advised that the claim was well founded. A settlement was accordingly con-

cluded by which it was arranged that the legacy, estimated at 6,000*l.*, should be set off against the like amount of the debt then payable by Altamont.

That settlement, in their Lordship's opinion, extinguished, to the extent of 6,000*l.*, Altamont's debt, and also any right which he had under the bequest in his father's will, unless it should turn out that the assets exceeded the amount at which they were then estimated. He was also liable to refund *pro tanto* in case the assets should fall short of the amount at which they were estimated, and according to which his share of the property under his father's will was treated as amounting to 6,000*l.*, the sum allowed in the settlement on account. It was said in the argument of the learned Counsel for the Defendants that the settlement in account was a mere paper transaction, but a paper transaction of this nature is merely a representation on paper of that which is treated by the parties as having actually taken place. By setting off one debt against another of equal amount both are extinguished. A settlement of a debt in account amounts to the same thing as a payment. *Skyring v. Greenwood*, 4 Barn & Cr. 281, and *Bramston v. Robins* 4, Bingham's Reports 13. Their Lordships consider that the settlement in account had the same effect as if Altamont had paid 6,000*l.* of the debt then due and payable by him to the estate, and the Defendants, as executors, had with the assets so received paid him the then estimated amount of his legacy, subject to his liability to refund *pro tanto* in case the assets should fall short of the estimated amount.

Neither of the parties have contended by their Counsel before their Lordships that the settlement in account was not in accordance with the testator's will, by which he declared that any legatee who should owe him any money should

account for the same with his executors. Their Lordships are of opinion that it was binding upon Altamont, and also upon his co-executors, who assented to it, and the Plaintiff has not objected to it. If the settlement did not amount to a discharge in full of the 6,000*l.* of the debt then payable, the executors would be liable for allowing that portion of the debt to remain outstanding from the time of the death of the testator in 1866, when Altamont was solvent, up to the date of the compromise in 1868, when he is said to have been insolvent. According to Altamont's own evidence, he was solvent at the time of his father's death. His liabilities to the estate were estimated by the executors as of the value of 20*s.* in the pound, and his legacy was calculated and allowed upon that basis. Further, in a conversation which Altamont had with his brother, the Plaintiff, before the latter left for America, he said, "You can go away making your mind perfectly easy, for if you live for ninety-nine years your money is safe, and you will always receive your twenty pounds a month." It appears that, in addition to the 6,000*l.* of Altamont's debt discharged by the settlement, Altamont paid to the estate in cash about 1,000*l.* on account. Other evidence puts the amount paid at about 916*l.*, but the difference is not a matter of importance.

This brings their Lordships to the consideration of the effect of the compromise which took place in January 1868.

It appears from the evidence of Altamont that in the course of the year 1867 he sustained heavy losses in his business, and by reason thereof became embarrassed in his circumstances and unable to meet his engagements. In the month of August 1867, the Appellant De Mercado made frequent applications to him to pay the 2,500*l.* due on the promissory note which became payable

in that month, but such applications were unsuccessful. On the 20th of January 1868, an arrangement was made between the Appellant, Altamont, and his principal creditors, including himself and the other Defendants as executors and executrix of his father's will, which was embodied in a letter addressed to his firm of Altamont De Cordova & Co. The letter was in the following terms:—

“ Kingston, Jamaica, 20th January 1868.

“ Messrs. Altamont De Cordova & Co.,

“ Dear Sirs,

“ Having investigated your statement and account in connection with your business, we have to express ourselves satisfied as to the fact that the unfortunate result has been brought about by serious losses which accrued during the recent panic, and we hereby agree to accept as a compromise in full of our demands the sum of five shillings in the pound, payable by your acceptances at three and six months, and a transfer of the debt of Mr. W. Knaggs in trust for our benefit. It being understood that this arrangement on our part shall only hold good in the event of all your creditors, to whom your matters have been submitted, according to the arrangement, namely,—

“ Colonial Bank.

“ Executors of the estate of Aaron De Cordova.

“ Charles Levy & Co.

“ Davidson, Coulthurst & Co.

“ Nunes Bros.

“ Alberga Brothers & Sons.

“ Lewis Leon, London, and

“ Henry De Cordova & Co., New York.

“ We further consent to your proposition that you pay all your other small creditors in full, and agree to sign a more formal document to the

same effect at any time we may be called upon so to do.”

The letter was duly signed by or on behalf of all the creditors mentioned therein, and it is admitted by the Defendants that it was signed by all of them as executors of the testator.

The principal question to be determined in the present appeal is, was that compromise valid and binding upon the Plaintiff. The other legatees in the will do not object to it.

The learned Vice Chancellor has declared and decreed that it was a breach of trust and void as against the Plaintiff.

Their Lordships are of opinion that that portion of the decree is correct, and that it must be upheld.

It was admitted by the learned Counsel for the Defendants that he could not refer to any decision that executors can compromise a debt due from one of themselves.

The case of *Cooke v. Collingridge*, 1 Jac. 607, cited by the Vice Chancellor seems to be decisive upon the question that an executor can not compromise a debt due from himself to the estate.

In that case Lord Eldon, in the passage quoted by the Vice Chancellor, said,—“ One of the most “ firmly established rules is that persons dealing “ as trustees and executors must put their own “ interests entirely out of the question, and this “ is so difficult in a transaction in which they are “ dealing with themselves that the Court *will not* “ *inquire whether it has been done or not, but at* “ *once say that such a transaction cannot stand.*” It is treated as a breach of trust without inquiring whether the transaction was beneficial or not. The other case of *Expte. Lacey*, 6 Ves. 625, cited by the Vice Chancellor is also in point. It is unnecessary to consider whether the doctrine is applicable to a case in which several executors compromise a debt due from one of them, or how

far such a compromise if beneficial to the estate will be excused and upheld by the Court, inasmuch as the learned Counsel for the Plaintiff was content to rest his case upon the ground that the compromise was not beneficial to the estate.

Their Lordships are of opinion that this view of the case is correct.

It has already been shown that 6,000*l.* of the debt due at the time of the testator's death had, prior to the compromise, been extinguished by setting off the estimated amount of Altamont's legacy, and that a portion of the balance then payable was discharged by actual payment at the rate of 20*s.* in the pound. Altamont according to that transaction, was allowed in account 6,000*l.*, the full amount of his legacy, subject to his liability to refund if his one sixth of the estate should eventually turn out to be less than 6,000*l.*

He had, therefore, as the Vice Chancellor properly remarked, "nothing further to receive from the estate, and the whole of the residue was trust property liable to be accounted for by himself and his co-executors." But when the compromise was entered into the settlement in account was ignored and abandoned. The debt due to the estate, upon which 5*s.* in the pound was to be accepted, was treated as amounting to 19,808*l.* 17*s.* 10*d.*, in respect of which acceptances for the composition of 5*s.* in the pound amounting to 4,952*l.* and a fraction were given by the Defendant Altamont; two of such acceptances, for sums amounting together to 2,476*l.* and a fraction, were at 90 days, and the other for 2,476*l.* and a fraction at six months date.

Thus the debt of 6,000*l.* which, in effect, had been discharged by the settlement at the rate of 20*s.* in the pound was revived, and a composition of 5*s.* in the pound accepted in respect of it, payable by bills half at three months and half

at six months date ; and, further, Altamont's right to the legacy of one sixth of the estate which had been satisfied in settlement of account was revived, and from the time at which the compromise was entered into the Defendants have divided the net assets of the estate into equal sixth parts and taken credit in their account with the estate for one of those parts, amounting to 1,817*l.* 14*s.* 1*d.*, and interest thereon amounting to 300*l.*, the two sums amounting together to 2,117*l.*, as due to Altamont on account of his legacy, and for payments made to him on that account, instead of charging him with the amount which he was liable to refund in consequence of the amount of assets actually received having fallen short of the amount at which they were estimated at the time when the settlement in account was concluded. There can be no doubt that the compromise and the mode in which it was carried out was highly beneficial to Altamont and injurious to the estate and to the Plaintiff.

But further, as regards Altamont, there was actual fraud in the transaction, for he admits that at the time when the compromise was entered into there was an understanding with the Bank that if he should be in a position he was to make them further payments, but he adds, "I was not to be legally responsible." The understanding with the Bank does not appear to have been made known to the other creditors who signed, nor does the fact appear to have been communicated even to his co-executors, and certainly not to the Plaintiff. The stipulation that he was not to be legally responsible did not render the secret understanding the less fraudulent, for it could not have been enforced even if the stipulation had not been made. The understanding was, however, acted upon, for it is proved that Altamont afterwards paid 2,300*l.* to the Bank, in addition to the composition of 5*s.* in the pound.

Altamont, on his cross-examination, said, "Notwithstanding the compromise, I have paid Alberga Bros. since, the full amount of their debt. I have also paid the Colonial Bank about 2,500*l.* in addition. I think there was a small sum due in cash to Charles Levy & Co., not included in the compromise, that was paid in full. The debt included in the compromise was between 3,000*l.* and 4,000*l.* I have paid Leon since 1,000*l.* I have paid H. De Cordova & Co. some 600*l.* or 800*l.* more by allowing them half commissions. The small debts were not included in the compromise and were paid in full. The transactions with the creditors were kept as secret as the compromise. Alberga's was an accommodation, and I repaid him by payments from time to time. They are the same Albergas that I have lent money to out of the estate."

It is unnecessary to say, although there are strong grounds for inferring, that all the additional payments were made in consequence of secret understandings with the creditors respectively prior to their signing the compromise. The understanding, as it is called, with the bank, was sufficient to vitiate the compromise.

The Defendant De Mercado in his evidence said, "By the statement of his (meaning Altamont's) affairs made up to 31st December 1867, which he showed to his creditors, I discovered that if I had pressed in the previous August bankruptcy must have been the result. In January 1868 I accepted a compromise with him. If I had not compromised, the creditors would have thrown the estate into bankruptcy, and I believe they would not have got half the money that was offered. I took legal advice as to my power to compromise with him. I satisfied myself that, in accepting the compromise, I was acting for the best interest of the estate."

“ I accepted the same compromise for my com-
 “ mercial debt of 3,700*l.* There was a cash debt
 “ of about 500*l.* which I refused to compromise,
 “ as I thought he was bound in honour to pay
 “ me that. I was afterwards paid that 500*l.* in
 “ full. That was cash lent to be returned when
 “ I wanted it. It was repaid between 1868 and
 “ 1869 by small payments of 50*l.*”

Notwithstanding all the above-mentioned pay-
 ments to others, the Plaintiff was never informed
 of them, and nothing in addition to the 5*s.* in
 the pound was ever paid in respect of the debt
 due to the testator's estate. So far from it,
 Altamont, in his letter to the Plaintiff of the
 18th April 1870, says, “ If I were worth
 “ 1,000,000*l.* the executors could never compel
 “ me to pay one shilling, because they, *in com-*
 “ *mon with my other creditors,* gave me a dis-
 “ charge on my paying 5*s.* in the pound.

The large payments which were subse-
 quently made to other creditors, in excess of
 the 5*s.* in the pound which they had openly
 and ostensibly agreed to accept, have a very
 strong bearing upon the question whether the
 composition was beneficial to the estate of which
 the Defendants were executors, and whether, if
 the composition had not been accepted, the pay-
 ment of a larger amount might not have been
 enforced against the estate of Altamont, even if
 the creditors had thrown his estate into bank-
 ruptcy, as the Defendant De Mercado says they
 would have done.

In addition to the circumstance that the Plaintiff
 was never informed of the secret understanding
 with the Bank, and of the fact that many of the
 creditors were actually paid more than the amount
 agreed upon by the compromise, he was all
 along kept in ignorance of the settlement in
 account, by which Altamont's legacy of one
 sixth of the estate had been extinguished and

discharged, and of the fact that, upon the compromise, that settlement had been abandoned, and Altamont let in to share with the other legatees in the assets of the estate, and freed from his obligation to refund.

It is impossible to hold that the Plaintiff could under the above circumstances be bound by any assent to, or acquiescence in, the compromise, if he ever did assent to or acquiesce in the same. The Plaintiff, after he had been informed of the compromise by the letters of the 21st January 1868 from the executors and from his brother respectively, did say, in his letter of the 12th February, "I must submit cheerfully to the reduction of my income;" but it is very doubtful whether that assent did not merely refer to the reduction in the allowance of from 20% to 10% a month mentioned in the letters of the 21st January 1878, without entering into the consideration of the particular circumstances under which that reduction had become necessary. The statements in the letters from the executors were little calculated to prepare the Plaintiff for the announcement in the letter of the 26th February 1870, by which he was informed that his stipend must altogether cease after the 31st of December then next, as he was then indebted to his father's estate in the sum of 965*l.* odd.

It is unnecessary to pursue this part of the case further, as their Lordships concur with the learned Vice Chancellor in holding that the composition was null and void as against the Plaintiff, and that he is not bound by any assent to or acquiescence in the same.

This brings their Lordships to consider whether any and what variations ought to be made in the decree under appeal.

The decree declares that the executors are all severally liable to the estate as between themselves and the Plaintiff for the full amount pro-

posed or intended to be abandoned by the compromise and given up by them to Altamont, with interest. The compromise being void as against the Plaintiff, there can be no doubt that that portion of the decree ought not to be varied so far as it relates to Altamont.

Their Lordships have had some doubts whether it ought to be varied as regards the Defendant De Mercado. In this respect the case of the Defendant Julia De Cordova is very different from that of the Defendant De Mercado, who, when he, as one of the executors, agreed to the composition, stipulated for a private benefit to himself. Although their Lordships, looking to the payments made by Altamont to the Bank and other creditors, are of opinion that a larger amount than 5s. in the pound could have been obtained if the Defendants had not agreed to accept the composition, they are not prepared to hold, that even with the utmost diligence, the full amount of 20s. in the pound could have been realized; and they therefore think that although the Defendants, Julia De Cordova and Isaac Henry De Mercado, by reason of their having signed the composition and acted upon it, are liable to be charged for wilful neglect and default, it will be proper and equitable instead of charging them with the whole of the 15s. in the pound given up, to charge them only with what, but for their wilful neglect and default, they might have received of the debt due from Altamont. The amount should be the subject for further inquiry. As to other objections to the decree, their Lordships are of opinion that it was not necessary to direct an inquiry previously to charging the Defendants, Julia De Cordova and Isaac Henry De Mercado, with what, but for their wilful neglect and default, they might have received; and that as regards the account signed by the Plaintiff and acknowledged to be correct, and

the delay in commencing the suit, the Defendants are not in a position to contend that the Plaintiff is thereby barred from obtaining the relief which he seeks, considering the ignorance of the real state of facts in which he was kept by them, to say nothing of the poverty to which he had been reduced, and his want of means either to obtain legal advice or to take legal proceedings.

As to the 5th reason for appeal stated in the Appellant's case. The decree does not declare that the return of the inventory at an undervalue was of itself a devastavit, but that the Defendants were guilty of a devastavit in returning the inventory at an undervalue and in subsequently compromising the debt. The compromise was a devastavit, whether the estate was undervalued in the inventory or not. In the inventory the debt of Altamont was valued at 50 per cent. of the amount; it was compromised for 25 per cent. It seems, however, to be premature to declare that the estate was undervalued in the inventory, and their Lordships are of opinion that the declaration to that effect in the decree should be omitted, so as to leave the whole question open before the Registrar.

As to the 6th ground of objection. The Defendants were directed to sell the real estate. If they allowed Altamont to hold the stores and buildings at less than a fair occupation rent, they are chargeable with what would have been a fair occupation rent. There is, therefore, no objection to the 7th of the accounts and inquiries by the decree directed to be taken by the Registrar, or to the order that the Defendants be charged in their accounts (for that is the meaning of the order) with what shall be found to be a fair occupation rent.

It was objected to the 9th head of accounts and inquiries in the decree that the Defendants ought not to have been charged with interest at 6 per

centum per annum, or at any higher rate than 4 per centum per annum, on the amounts which upon inquiry it should appear ought to have been invested, and, further, that it was premature to fix the rate of interest. The case of *Robinson v. Robinson* (1 De Gex McNaghten and Gordon's Reports, 247) was cited in support of the objection as to the rate of interest. Their Lordships are of opinion that that authority does not support the objection, and that it ought to be disallowed.

It was objected that the decree was erroneous in ordering that in taking the accounts no credit is to be allowed to the Defendants in respect of any moneys expended in or about the repairs of the house and premises in Duke Street, devised to the Defendant Julia De Cordova for life. It appears to their Lordships that, as the house and premises were given to the widow for life without impeachment of waste, there may be circumstances under which the executors might have been justified in expending money to prevent the destruction or depreciation of the property. The decree ought to be amended by omitting the direction that no credit ought to be allowed for repairs. It will then be a matter for inquiry by the Registrar in taking the accounts whether any charge for money expended on the buildings which may be brought in by the Defendants ought to be allowed or not, having regard to the circumstances under which the expenditure was made.

Lastly, it was contended that, even if the compromise was void, the question of costs ought to have been reserved, but their Lordships are of opinion that there is no foundation for that objection.

Upon the whole, their Lordships will humbly advise Her Majesty that the decree be varied by omitting that part of it by which it is ordered and decreed that the said Altamont De Cordova,

Julia De Cordova, and Isaac Henry De Mercado are severally liable and responsible to the estate of the said Aaron De Cordova, as between themselves and the Plaintiff, for the full amount proposed or intended to be abandoned and given up by them to the said Altamont De Cordova by the composition or alleged release of the 20th January 1868, in the pleadings mentioned, with interest; and that, in lieu thereof, it be ordered, declared, and decreed that the said Altamont De Cordova is liable and responsible to the estate of the said Aaron De Cordova for the full amount of what would have been due and payable by him if that release or composition had not been made, with interest thereon at the rate of six per centum per annum on that amount, and that the Defendants, Isaac Henry De Mercado and Julia De Cordova, are severally and respectively liable and responsible for so much of the said amount as would or might at any time have come to the hands of the Defendants, as executors and executrix of the said Aaron De Cordova, or to the hands of some or one of them, but for the wrongful and wilful acts, neglect, or default of the said Defendants, Isaac Henry De Mercado and Julia De Cordova, respectively, and that they are severally and respectively liable to interest at the rate of six per centum per annum on the amounts, if any, to which they may severally be found to be liable. Further, that so much of the said decree as declares that the Defendants returned an inventory of their testator's personal estate at an undervalue, and also so much thereof as directs that, in taking the accounts of the Defendants with their testator's estate, no credit is to be allowed them for or in respect of any moneys expended in or about the the house in Duke Street, devised to the Defendant Julia De Cordova for life, be reversed,

and that the said decree, except so far as it is hereby ordered to be varied or reversed be affirmed.

The decree has been affirmed upon the main point, viz., the invalidity of the composition, and it remains substantially undisturbed as regards the Appellant Altamont. Their Lordships are therefore of opinion that the Appellant Altamont ought to pay, and their Lordships order that he do pay, the costs of this appeal. As regards the other two Appellants, the decree has been varied in a material point. They, however, joined with Altamont in the appeal, and endeavoured to support the composition. Under these circumstances, their Lordships are of opinion that the Appellants, Julia De Cordova and Isaac Henry De Mercado, ought not to receive or pay any costs of this Appeal. They will, therefore, respectively bear their own costs thereof.