

Privy Council Appeal No. 59 of 1922.

Robert Sydney Turton - - - - - *Appellant*

v.

C. Melhado and Sons - - - - - *Respondents*

FROM

THE SUPREME COURT OF BRITISH HONDURAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH MAY, 1923.

Present at the Hearing :

VISCOUNT HALDANE.

LORD SHAW.

LORD PARMOOR.

[*Delivered by* LORD SHAW.]

This is an appeal from an order of the Supreme Court of British Honduras made on the 21st October, 1921. That order discharged the rule *nisi* for the new trial of an interpleader issue, in which the respondents were plaintiffs and the appellant was defendant. Upon the trial of that issue before the Acting Chief Justice a verdict was obtained and judgment given for the respondents.

The circumstances which give rise to that interpleader issue were these :—

The respondents issued a writ against one Luis Mayo claiming to recover \$1037-20 for the price of goods sold to a firm of Santiago Perdomo and Company. While the action was directed against Mayo the writ contained the following statement of the plaintiffs' claim :—

“ The plaintiffs' claim is for money payable by the defendant to the plaintiffs for the price of goods sold and delivered at Belize by the plaintiffs to the defendant and Santiago Alberto Perdomo, since deceased, then trading together in co-partnership under the firm or style of Santiago Perdomo and Company.”

After the goods had been supplied, Perdomo, Mayo's partner, died. The goods not having been paid for, Mayo was sued, and he was sued undoubtedly as being the surviving partner and being accordingly charged with the duty of seeing that the assets of the firm were made answerable for its obligations—this being a simple way of stating the ordinary law applicable to such a situation.

The Partnership Act of 1890 is applicable in the Colony of British Honduras. The principle just stated is expressed in Section 39 of that Act, in these words :—

“ On the dissolution of a partnership every partner is entitled as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm.”

It may be added that the surviving partner, Mr. Mayo, has not denied this liability or his obligation. He has been examined as a witness in the Court ; and it stands without question that the ground of action, viz., the supply of goods issued to the firm, is established. Further, Mr. Mayo has accepted the situation which the statement in the writ disclosed, that although sued in his personal name the action was truly directed against him as surviving partner, liable as holder of the firm's assets, and as such to make payment therefrom of the debt.

In these circumstances one enquires what was the position taken up by the appellant who seeks to bar seizure by execution of the firm's goods. The appellant maintained (1) that there never was a co-partnership between Perdomo and Mayo ; (2) that the business and assets including the goods levied in execution were entirely Perdomo's ; (3) that Perdomo's widow and executrix made a sale of the goods in execution to him, the appellant ; and that (4) accordingly Mayo had neither ownership of, nor anything to do with, the goods.

Hence the interpleader issue ; the fundamental question in which was :—was there such a firm as alleged ? The appellant maintained that there was not, and that he could claim the goods as assignee of the widow Perdomo. The respondents maintained throughout that there was such a firm, and that the assets seized were co-parcenary assets. This was the substance of the issue which was contested and tried.

With regard to Mr. Mayo, the surviving partner, his evidence confirmed entirely the respondents' case : he assented to the procedure taken and did not challenge in any way the execution, which would have worked itself out by permitting the goods of the firm under his charge as surviving partner to be seized.

On the interpleader issue being put before a jury, it was found as a fact that (1) there was a relationship of partnership between the late Perdomo and Mayo ; (2) that the goods and stock-in-trade upon which execution had passed were partnership property ; (3) that the partnership subsisted up to Perdomo's

death ; and (4) that Mayo, the surviving partner, did not divest himself of his right, title and interest in these goods after his partner's death. Up to this point, accordingly, the appellant had completely failed to show any right whatsoever in the goods upon which execution passed. It may be at once said that this being so his title to interpose in execution proceedings whether against the partnership property as such, or against Mayo in respect of his being surviving partner in the firm and liable for its assets, entirely disappears. The appellant has—the facts above-mentioned being established—no title to interfere in the working out of the execution.

That being the case it is unnecessary to refer to the fifth issue, which was this: "Were the goods and stock-in-trade seized by the sheriff on the 16th June, and the 22nd June, 1921, the property of Luis Mayo?" to which the jury answered "Yes." It is perfectly plain that the jury having given the previous answers referred to, as to the subsisting partnership, and the goods seized being the property of the firm and as to Mr. Mayo being surviving partner—this fifth issue can only be properly interpreted along with the other issues to mean that the goods were the property of Mayo, not personally or exclusively, but as such surviving partner. As stated, Mayo did not challenge that, but acknowledged it; and in the opinion of the Board the appellant, who has not any title to the goods himself, and has entirely failed in the litigated issue has now no *locus standi* to put forward any objection to the execution.

Their Lordships think that the Court below has come to a perfectly correct conclusion.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

ROBERT SYDNEY TURTON

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C. MELHADO AND SONS.

DELIVERED BY LORD SHAW.

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