



In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE
BAHAMA ISLANDS.

15073

BETWEEN HIRAM WALKER & SONS, LTD.
(Plaintiffs) *Appellants.*

AND

CHRISTIE & CO. AND CHARLES F.
CHRISTIE (Defendants) *Respondents.*

CASE FOR THE RESPONDENTS.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of the Bahama Islands in an Action in which the present Appellants were Plaintiffs and the present Respondents Defendants. The Action was heard before the Acting Chief Justice His Honour Guy Tracey Watts and a special jury on 16th and 17th days of December 1931. Legal argument was heard by the learned Judge on 15th day of January 1932 and judgment was given on 23rd day of February 1932.

20 2. The issue in the Action and the question raised by this appeal is whether the Respondents or either of them are liable in law to the Appellants on a promissory note for \$7,330.61 with interest at 6% per annum (in Canadian currency) dated 1st July 1930 payable to the order of the Appellants on demand made by the Respondent Christie & Company and indorsed by the Respondent Charles F. Christie.

3. The Appellants are a Limited Company carrying on the business of distillers at Montreal in the Dominion of Canada. The

Respondent Christie and Company (hereinafter called "the Respondent Company") is a firm carrying on the business of liquor merchants in the City of Nassau in the Bahama Islands. The Respondent Charles F. Christie is and was at all material times a partner in the Respondent Company.

4. In or about the year 1928 the Respondent Company commenced to act as agents for the sale of the Appellants' products in the Bahama Islands. As a result of business transacted with the Appellants, the Respondent Company became indebted to the Appellants and in respect of such indebtedness the Appellants 10 in the month of June 1930 held acceptances of the Respondent Company for a total amount of \$7,330.61 in the currency of the Dominion of Canada. The Respondent Company was also indebted in respect of trading debts to a subsidiary company of the Appellants, owned and controlled by the Appellants named Gooderham and Worts, Ltd., also carrying on business at the same address in Montreal in the Dominion of Canada. The amount of the said indebtedness was \$19,558.25 in Canadian currency for which Gooderham and Worts Ltd. also held acceptances of the Respondent Company. 20

5. In the said month of June 1930 it was orally agreed between the Respondent Company and the Appellants that the outstanding acceptances held by the Appellants and referred to in the last preceding paragraph hereof should be replaced by one promissory note. In pursuance of such agreement the Respondent Company made, and the Respondent Charles F. Christie indorsed the promissory note for the said sum of \$7,330.61, the subject matter of this action, dated 1st July 1930 payable to the Appellants at The Royal Bank of Canada, Nassau, on demand and expressed to bear interest at the rate of 6 per cent. per annum until the date of payment. 30

Exh. A.
p.18.

pp. 3-4

6. By their Statement of Claim herein delivered on the 22nd July 1931 the Appellants claimed from the Respondent Company and the Respondent Charles F. Christie, as makers and indorser respectively of the said promissory note the sum of £1,608 17s. 5d., being the sterling equivalent of the principal and interest alleged then to have accrued on the said note.

pp. 4-5-6

7. By their Defence delivered on the 7th August 1931 the Respondents denied the making or indorsing of the said note and pleaded alternatively that their obligations (if any) thereunder had been discharged and extinguished by a subsequent agreement 40 in writing contained either in two letters passing between the parties dated 26th November 1930 or alternatively in two agreements in writing duly executed by the Respondent Charles F.

Exh. B.& E.
pp. 18-19

Exh. C.& D.
pp. 20-24

Christie in January 1931 at the request of the Appellants and Gooderham and Worts Ltd.

8. By these agreements the Respondents agreed to discharge their said liabilities to the Appellants Gooderham & Worts Ltd. referred to in paragraph 4 hereof in the following manner:—

- (a) By the payment of \$5,000 cash in Canadian currency,
- 10 (b) By the transfer or conveyance to the ^{Appellants} Respondents in fee simple of certain real estate in Nassau, on which is situated a bonded warehouse, as equivalent to the further payment of \$15,000 in Canadian currency and the procuring and handing over of certain letters to the Appellants and Gooderham & Worts Limited,
- (c) The balance to be liquidated by certain trading allowances and discounts to arise upon future business on agreed terms,
- (d) The notes held by the Appellants and Gooderham and Worts Limited to be returned to the Respondents.

20 9. By their reply delivered on the 19th October 1931, there was contained, in addition to a general traverse of the Defence, an allegation that the Appellants' acceptance of the terms set out in the last preceding paragraph was subject to conditions, viz: (i) That \$15,000 was a fair valuation or price of the real estate referred to, (ii) That the Respondents should execute a conveyance of the said real estate to the Appellants. The said conditions were by the Reply alleged not to have been fulfilled. pp. 6-7

30 10. On the hearing of the action upon Counsel for the Respondents admitting the making, indorsing and non-payment of the note, the Respondents assumed the onus of proof. In addition to the facts set forth in paragraphs 3 to 5 hereof, the following facts were proved or admitted:—

- (i) That before action brought the Appellants had never demanded payment of the promissory note from the Respondents or either of them.
- (ii) That the terms of the alleged subsequent agreement referred to in paragraph 7 hereof had not in fact been carried out.

pp. 7-11

11. The Respondents Charles F. Christie and his partner in the Respondent Company, Frank Holmes Christie, gave evidence to the effect that the agreement referred to in paragraph 7 hereof had been accepted by the Appellants in substitution for their claim on the said promissory note. They were cross-examined on behalf of the Appellants with the object of showing (a) That they were not and had never been ready or willing to carry out the terms referred to and (b) That the valuation of the real estate was not a fair one. Upon the latter point the Appellants also called some evidence.

pp. 11-12

pp. 13-14

12. The learned judge left to the Jury the following questions 10 to which the Jury gave answers as set forth :—

1. Have the Defendants, or either of them, been ready and willing, at all times since the month of January, 1931, to perform their part of the agreement (Ex. D) in respect of :—

(a) the payment to the Plaintiffs of the sum of \$5,000.00.

Yes.

(b) the sale to the Plaintiffs of the Bonded Warehouse referred to in the said agreement.

Yes.

(c) the transfer to the Plaintiffs of the Wholesale Liquor 20 Licence, then standing in the name of the late Frederick James Christie.

Yes.

(d) the undertaking to hold in trust for the Plaintiffs the Bonding Licence ?

Yes.

2. Did the Defendants, or either of them, take all necessary action to vest the Bonded Warehouse in the Plaintiffs on or before July 1st, 1931 ?

Yes.

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3. Did the Defendants, or either of them, arrange for the Royal Bank of Canada to guarantee to the Plaintiffs that in the event of the Defendant, Charles F. Christie, being unable to supply good title to the Bonded Warehouse, on or before July, 1931 the Bank would pay to the Plaintiffs the sum of \$15,000.00 ?

Yes.

4. Did the Plaintiffs at any time before action brought intimate to the Defendants, or either of them, that the valuation of \$15,000.00 for the Bonded Warehouse was not a fair valuation ?

No.

He refused to leave to the Jury the following question :—
“Is \$15,000 a fair price for the land in question ?”

p. 12.

13. On 15th January 1932 it was contended on behalf of the Appellants:—

10 (i) That the Respondents were in breach of their obligations under the promissory note unless there had been an accord and satisfaction, and that inasmuch as the alleged subsequent agreement of the 26th November 1931 remained executory there had been at most accord without satisfaction.

(ii) That the subsequent Agreement, if any, was one which the Respondents were never ready and willing to carry out and that therefore the rights of the Appellants under the promissory note revived.

20 (iii) That it was a condition precedent to the validity of the subsequent Agreement that the valuation of the bonded warehouse therein contained should be a fair one, that the valuation was not fair and that the Agreement was thereby avoided.

(iv) That inasmuch as there was no evidence to show that the Appellants had executed the two documents of January 1931 there was no subsequent binding agreement.

(v) That the findings of the Jury ought not to result in judgment for the Respondents.

14. As to these contentions the learned Acting Chief Justice pp. 14-15-16
30 held respectively :—

As to (1) That inasmuch as there had been no demand made upon the Respondents before action brought to pay the note there had been no breach of the Respondents' obligation under it and the Appellants therefore had no cause of action either in November 1930 or January 1931 ; consequently no question of accord and satisfaction arose and executory consideration was sufficient to support the subsequent agreement.

As to (ii), (iii) and (v) That the findings of the Jury were conclusive against the Appellants.

As to (iv) That the Appellants' contention failed, because :

- (a) The Appellants, if they had not executed the documents, had failed to do so solely by reason of their own neglect or refusal.
- (b) The parties had bound themselves by an oral agreement or a further agreement contained in the letters of 26th November 1930 and the documents of January 1931 were only intended to carry out the terms thereof.

15. For the above reasons the learned Acting Chief Justice on the 23rd February 1932 dismissed the action with costs and the Appellants have appealed to His Majesty in Council.

16. The Respondents humbly submit that the appeal should be dismissed for the following amongst other .

REASONS.

pp. 13-14

(i) Because the questions left to the Jury were the proper questions.

(ii) Because of the answers given by the Jury to the questions left to them.

(iii) Because there was evidence upon which the Jury could properly find as they did.

pp. 14-15-16

(iv) Because of the reasons in law given by the learned Judge in his Judgment.

(v) Because the Judgment appealed from is right and ought to be upheld.

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