

Privy Council Appeal No. 79 of 1921.

In the matter of H. M. Hes, a Solicitor.

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH FEBRUARY, 1922.

Present at the Hearing:

LORD SUMNER.

LORD WRENBURY.

LORD CARSON.

[*Delivered by* LORD SUMNER.]

The circumstances under which this case arose are recited in the judgments of the Court below. They are material to show how a rule nisi came to be granted by the Court, otherwise than upon the application of a party interested, but in themselves they do not constitute the evidence of the conduct complained of. The appellant, a solicitor of the Supreme Court of Trinidad and Tobago, being a witness in an action of *Stroud v. Macedo*, was cross-examined to credit, and admitted that he had altered the date in a deed in his possession. "I don't think I changed the date," he said, "to evade the Stamp Duty. The deed must have been handed to me by a clerk, who has had to leave the Colony. I can't give any other explanation. The effect of the alteration is to defraud the Revenue." This explanation about the clerk was not afterwards relied on. The point really was not that the Stamp Duty was evaded, for the stamp was duly impressed on the deed, but that the penalty for stamping it out of time was evaded. On the following day, after he had had time to think over the matter, the appellant explained that when the deed was executed the consideration money was not paid, contrary to the statement appearing on the face of the deed, and that when

it was subsequently paid he re-dated the deed as from the date when the money actually was paid and sent it, thus altered, to be stamped. The Judges of the Supreme Court thereafter of their own motion issued a rule, calling upon the appellant to show cause why he should not be struck off the rolls. It has not been disputed that in so doing they acted within their powers, nor is their action in itself complained of. It does not appear that in ordinary course there was any other authority than the Court itself available to initiate these proceedings, but, on the other hand, none of any kind appear to have been taken by the Revenue authorities.

The appellant then showed cause, appearing by counsel and relying upon an affidavit, which he made in explanation. The parties to the deed in question were also called and examined *viva voce*. The Judges took over a fortnight for deliberation, and on the 18th June, 1921, made an order striking the appellant off the rolls. Against this he now appeals by leave of the Supreme Court.

The deed was a conveyance of some parcels of land from Joao Fernandes Relva to Antonio Gonsalves. It had been prepared by the appellant on instructions received shortly before and, as he says in his affidavit, was executed on the 6th July, 1905. Apparently the local practice is for a person who has been present at the execution to make an affidavit of attestation, which in this instance was endorsed upon the deed and was sworn by one Inniss, the appellant's then clerk. Inniss was about to quit the Colony for good, and the appellant requested him to write all affidavits of attestation and swear to them before leaving. Accordingly he swore this affidavit on the 10th July before the Registrar-General. It fixes the 6th July as the date when the deed was signed and delivered by the vendor.

The appellant's affidavit proceeded that the consideration money was not paid until November, 1905, whereupon he told another clerk, Henry, to alter the date of the deed, thinking, as the clerk thought too, that the time for stamping ran from the day of payment of the consideration. In fact, under the Ordinance applicable the deed had to be stamped within two months after its first execution, but if tendered within a further four months, it might be stamped by the Receiver-General on payment of a penalty equal to the amount of the unpaid Stamp Duty. In this case the amount was 15s. How he came to fall into this error the appellant did not explain. No doubt experienced men may sometimes forget familiar practice and be unable to tell why.

His affidavit entered into some detail about the matter. Henry, contrary to his master's intention, erased the words "day of July." The intention had been that "November" should be written over "July." The appellant then himself wrote in the word "November," but whether he wrote this word of eight letters in the space left by the deletion of nine letters or above it, as he had meant the clerk to do without any deletion, did not appear, nor was it explained why the appellant should have

written this word himself instead of telling the clerk to insert the word and finish what he had begun.

Henry was then sent to get the deed stamped. He returned with it unstamped, saying that a penalty of 15s. was demanded. He was told to go back and say that the purchase money had only been paid that day, and presently he returned with the deed stamped. The inference is that the Treasury clerk took his word for it. From that day till the trial of *Stroud v. Macedo* the appellant never saw the deed ; so far as he knew it remained in his office, the proper place in which to keep it.

The affidavit appears to raise the following criticisms, which obviously are not all of equal weight. The appellant does not say, and it may be that Henry did not tell him, how the Treasury clerk came to demand a penalty, but, of course, if he examined the affidavit of attestation endorsed on the back of the deed, the discrepancy at once became apparent. He also does not say whether the view, that the time for stamping ran from the date of payment of the consideration, which he calls "the completion of the deed," was arrived at before Henry went down to the Treasury for the first time, or only when he returned saying that a penalty was demanded. Had it been before, probably Henry would have told the Treasury clerk, in answer to his first demand, that the purchase money had only just been paid, and need not have been sent back to say so. That it really was afterwards seems to follow from the appellant's affidavit, which goes on to say, "It did not occur to me at the time of the stamping that the attesting witness had already sworn to his affidavit ; otherwise I would have had the said Louis Henry to make a new affidavit, which would have entailed no difficulty nor expense, he having been present at the signing." So far the suggestion seems to be that the clerk came back with an unexpected demand from the Treasury ; that he and his master considered the point, and as they thought saw the answer to it, and that thereupon he returned, gave the answer and escaped payment of the penalty. But, if this was so, it may be asked why anyone who believed that the time only ran from the completion should have previously thought it necessary to alter the date at all ? On this view the date was immaterial and the objection would not have been anticipated.

The paragraph raises further difficulties. If, as the affidavit certainly says, the date was altered before ever Henry went to the Treasury at all, and if the discrepancy had then been noticed, it is asked of what use a new affidavit would have been ? If Henry swore to the truth, he could only repeat the affidavit already made by Inniss : if he swore to some other date of execution, he only awakened or deepened the suspicions of the official. It may be asked also whether the Revenue clerk, having found out for himself a plain contradiction between the date in the deed and the date in the affidavit of attestation, and having possibly seen that the date in the deed had been altered as well, would afterwards have allowed his demand for a penalty to be disposed of by a mere verbal message that the price had only

been paid that day. It is perhaps more natural to suppose that, having before him sworn proof of execution on the 6th July, he would have required evidence of equal weight, that is by an affidavit of explanation, before acting on the information given. It can hardly be that he shared the appellant's error, or thought that the Ordinance fixed completion by payment and not execution as the starting-point from which the time for stamping was to run; nor was there any reason why, in the course of his duty to administer the Ordinance, he should by a double coincidence have fallen into the same error and at the same time as the appellant.

It is further pointed out that the above-quoted statement is not an inference, a reconstruction of events forgotten long ago from established facts or from probability or a course of business. It purports to be a precise assertion of a fact remembered, and the question then arises how the appellant came to remember in 1921 a fact that he had forgotten within four months in 1905, namely, that he had told Inniss to make the attesting affidavit, and how he came to recall in 1921 the fact that he had forgotten it in November, 1905.

At the hearing neither Inniss nor Henry could be called. Inniss had left the island long ago and Henry had gone out of his mind. Relva and Gonsalves were, however, called. The case made by counsel for the appellant was that till November the deed was only an escrow, though this was not what the appellant's affidavit had said, and he appears to have stated that Gonsalves could prove that he did not go into possession till November but had refused to swear an affidavit. Gonsalves was accordingly subpoenaed, and was called on a later day with Relva.

The notes taken by each Judge for his own use are obviously condensed and in some details do not entirely agree, but this evidence did not help the appellant. As to the date of payment there was some difference. Gonsalves said that he paid the greater part of the money and another person, Ribeiro, paid the balance on the day of execution. Relva's statement that he received nothing till long afterwards may refer to a settlement of accounts between himself and this third party, for whom he was in some way acting as nominee. Their evidence did not, at any rate, falsify the deed, which, prepared by the appellant, bears on its face the statement that payment was made on or before the execution. It was, however, clear that payment on the 6th November was not the case of either witness, nor do they appear to have been asked to deal with this hypothesis; though the appellant's affidavit treats payment on the 6th November as a thing in his own knowledge, carried out in his office, where the conveyancing part of the transaction was done.

On the other matter these witnesses were agreed and were clear. Gonsalves was let into possession in July, a few days after the execution. Nor is there any evidence to support the suggestion that the appellant had reason to believe that possession had not been given and that until payment the deed was only

an escrow. No second professional man appears in the transaction. No book entry or bill of costs was referred to. There seems to be nothing to support the contention that the appellant mistook the conveyance for an escrow.

There are several material respects in which the Judges of the Supreme Court in Trinidad enjoyed advantages not possessed by their Lordships. They saw the witnesses who were called, and must have been familiar with this class of person, and it was their evidence that they believed and not that of the appellant. One Judge at least, Deane J., had had the opportunity of considering the appellant's demeanour in the witness-box on the trial of *Stroud v. Macedo*. The whole Court must have known whether or not the appellant was an experienced practitioner and whether the mistake, which he said he had made in a matter of such familiar routine, was or was not probable. It had not been put forward merely as the mistake of the clerk or the slip of the master: they had considered the point together and agreed in their opinion. The Court was well qualified to estimate the likelihood of such a mistake. Furthermore, the Judges saw the deed itself and their Lordships have not seen it. Deane J. uses the expression "the clerk having with infinite care erased the offending words," and this, though possibly only an ironical over-emphasis, may equally possibly show that the alteration was such as easily to baffle detection. This would fall in with the otherwise unexplained facts, namely, orders to change the date and disobedience to them by erasing nine letters instead; and next bringing the deed back to the appellant for a purpose which is not stated. Counsel invited their Lordships to read the affidavit as "I intended him to write the word November above the word July," "him" having been omitted by a printer's error. It may well be so; but then, why should the next step in the sequence be the appellant's insertion of the word "November" with his own hand, instead of leaving the clerk to do it himself, as he had been told to do? Three words had been taken out; "November" was written, as Deane J. points out, "in their place," and so the deed read smoothly on without any interlineation. How far this led to the conclusion that the change of date was intended to escape notice at the stamp office depended largely on the appearance of the deed itself; of that the Court below was the best judge: but it is to be noted that if this was, as the story of the erasure suggests, a carefully planned deception, the appellant made his clerk his accomplice in the perpetration of it.

Of course, it is true that the endorsed affidavit remained unaltered. It is asked with force, "Could a guilty person have elaborated a fraud on the face of the deed and have left the key to it on the back?" The observation is weighty and has been well weighed, but it is a familiar argument whenever frauds for any reason can be readily penetrated, and it is common experience that persons, from haste or over-confidence or lack of imagination or what not, do omit sometimes the most simple and obvious precautions.

Their Lordships have examined the facts of this case at unusual length, for it has given them unfeigned anxiety. A solicitor of over twenty years' standing, as they were told, has been struck off the rolls for a matter of a payment of 15s., which he is said to have evaded 15 years ago. Some witnesses could not be called: those who were called might well, like himself, have little memory of the transaction and none that could be trusted. These considerations have had full attention from their Lordships, and they have not been insensible to the complaint that it is for this that the appellant has suffered the extreme penalty of being struck off the rolls.

There are two questions to be considered: the first is, Was the appellant guilty, as the Court below found that he was, of dishonesty in a matter of professional conduct?—this is a pure question of fact; the second is, Was the course which was taken of striking him off the rolls, one of excessive severity under the circumstances?—this is a question largely of discretion. Whatever view might be taken on the second, it could not affect the first. As to the first, the conclusion of their Lordships is that there was adequate ground for holding the appellant guilty, and they cannot differ from the finding of the Court below. The case is very different from *Stewart's* case (L.R. 2 P.C. 88) or *Renner's* case (1897 A.C. 218).

Turning to the second question, the position is that the appellant contrived this act and required and obtained the concurrence of his clerk in the commission of it. When called upon to explain circumstances which had long been successfully concealed, he furnished a sworn explanation of which, in the opinion of the Court, large portions were not worthy to be believed. These are matters as to which he knew whether he remembered them or not, and whether or not they were imagined, were concocted or were true. He must have known that he was inventing material parts of the tale that he told. It is said that the 15s., which he might have charged to his client, would not furnish a sufficient motive for such an act, but it is not shown that he was in a position to charge the penalty to his client or to make another pay for his own neglect, and wrong things are sometimes done for very paltry advantages. It is said that, after all, if the act was an act of dishonesty it was a very small one, but in a solicitor's practice, as in other matters of high responsibility, there are no small dishonesties. True it is that the act was done long ago and that the Record discloses no other delinquency either before or since. It remained for years unknown except to those who were parties to it and is not shown to have served as an evil example to others. The Court was, however, entitled to reflect that the fact had at last become known, in spite of the appellant, under circumstances of some notoriety, in which any leniency might have grave consequences, and that it had been established in spite of an ingenious but somewhat audacious attempt to conceal it by further discreditable denials. The appellant took his chance of succeeding with a false tale instead of making a

frank admission. He might have pleaded and perhaps with truth, that he had long forgotten the circumstances ; that he had never recalled the act without regret, but that he had at least atoned for a single fault by years of unblemished professional conduct. Had he done so, no doubt a different complexion would have been put upon the matter, but he staked all on the success of his affidavit, and his affidavit was not accepted.

In an appeal relating to the conduct of a solicitor in such a community as Port of Spain it is necessary for their Lordships to bear in mind how greatly the conditions, under which the Court below exercised its disciplinary functions, differ from those which prevail in this country. A small community is one in which a solicitor is relatively a conspicuous person ; in which the professional body is limited in number, and is therefore less able to overbear by the sheer weight of its probity the misdoings of a single member of it. The lay public may require, and certainly will benefit by the steady pressure of authority in keeping its legal advisers to the line of their duty, and the Court which exercises that authority, must largely depend on the high standard observed by its officers, not being assisted by the presence of the powerful professional organisation which exists in this country. It is for the judges of the Court in the first instance to consider the form in which they ought to assert their disciplinary powers over their officers, as it is also to consider the time and the circumstances under which to exercise that power of readmitting a repentent offender, which their Lordships are glad to be informed that they possess. It follows that English analogies are not always closely applicable in such cases, and that their Lordships must strongly rely on the local knowledge and the judicial discretion of the Court whose order is under appeal. In their judgments no haste or animus is pointed out or even suggested. The case received full consideration. The Court did not hesitate to facilitate proceedings in which their conclusion might be reviewed. It is not the interest of the appellant alone that has to be considered, nor is the absence of complaint from any individual who has been aggrieved of high importance in his favour. The profession, to which he has belonged, the community, which it has been his duty to serve, and the Government, to whose revenue ordinances he owed obedience, have all to be considered. The alteration of a deed after execution is never a thing to be lightly regarded. Honesty of purpose without due knowledge of the law will not save it from being in many cases a mischievous act. The appellant's case is that in this alteration his purpose was honest, though his knowledge was defective. The effect of the decision below is that in truth the position was the other way about. His proceedings were indeed *pessimi exempli*, and their Lordships are not prepared to say that he has received harder measure than he deserved. They think that the appeal must be dismissed with costs, and will humbly advise His Majesty accordingly.

In the Privy Council.

IN THE MATTER OF H. M. ILES, A SOLICITOR.

DELIVERED BY LORD SUMNER.

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