

Privy Council Appeal No. 120 of 1924.

Lucia Jacob - - - - - *Appellant*

v.

David Alexander Wills - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH JUNE, 1925.

Present at the Hearing :

LORD ATKINSON.

LORD SHAW.

LORD DARLING.

[*Delivered by* LORD DARLING.]

This appeal arises out of an action to recover damages for breach of a promise to marry. Mr. Justice Buckland, the Judge at the trial, decided in favour of plaintiff and awarded damages against defendant. This decision was reversed on appeal by the High Court of Calcutta, on the ground that the parties to the contract had expressly, or by their conduct, rescinded the contract and had released each other from its performance.

The appellant, a German by birth, had in 1892 become a British subject by reason of her marriage with Mr. Jacob, a barrister. He died in England in 1913.

The respondent and Mrs. Jacob, the widow, in May of 1915 engaged to marry one another, and it was contemplated that the wedding should take place in October, 1915.

Difficulties arose owing to the Indian Government insisting on treating Mrs. Jacob as a suspected person and an alien. It was proposed to send her to Germany, but in September, 1915, she was interned at Belgaum; and there she was detained until the end of March, 1920.

In the course of their engagement many letters passed between Mrs. Jacob and Mr. Wills. The last letter received by her from him is dated the 3rd November, 1915, but he sent her a telegram at Christmas of that year.

Mrs. Jacob gave evidence to the effect that she believed she had telegraphed in reply, explaining that she did not write for reasons already known to Mr. Wills; that is, lest she should prejudice him in his business and social relations.

Respondent did not produce any letters or telegrams received from appellant, but said that he had destroyed them all. On the 21st August, 1920, whilst ignorant that appellant had been released from internment, he had married in England, thus—were his promise to marry Mrs. Jacob still binding—putting it out of his power to perform it.

Although useful, the oral testimony in this case is of less importance than the correspondence which passed between the parties.

Appellant maintains that, when it appeared that respondent's marriage to her might prejudicially affect his business in India, they agreed to postpone it until the war between Germany and England was at an end. This contention is supported by the letter of respondent to appellant dated the 31st July, 1915, especially by this passage in it:—

“ If it is a fact that the officials are prohibited from associating with you, I am afraid the only alternative left to us is to get married after the war. I am agreeable to wait all my life for you. Oh, but it will be so hard that I do not like to look upon the coming years. Will my darling wait for me also? I have not lost hope of marrying you this October, as I still think you have not correctly understood what took place at this interview.”

She had misunderstood nothing of that matter, as her subsequent treatment proves, and in her evidence (p. 8) she states that she agreed to wait “all Eternity.” This answer, although hyperbolic, as is usual in the language of lovers, amounts to an assent to respondent's proposal. In appellant's letter to respondent dated the 20th December, 1920, she states the position thus:—

“ I have received none of the letters you say you have written me later on. We had agreed to wait with being married until the war was over. You said you thought it would last three or four years in one of your letters, and I believed that then impossible, but you were right. It lasted just that time.”

It seems likely that she here alludes to this passage in his letter of the 28th July, 1915:—

“ I have already told you, darling, that I think the war has only just begun, and it will be a few years before it ends. Well, until it ends I must avoid all temptations so as not to betray your trust. Being a man, I have set myself a hard task, but I am sure that my darling's prayers added to mine will assist me. Is my meaning quite clear to you, dear heart? ”

The meaning of this can hardly be other than that he desires and hopes to lead a life of chastity pending the interval between

the date of that letter and the end of the war—when he and Mrs. Jacob will marry.

It further appears to have been agreed between the parties that the marriage should be postponed so long as Mrs. Jacob was subject to the imputation of being a German subject. The evidence of Mr. Wills as to the period to which the marriage might be relegated is not definite. But he was asked (Question 123) whether he would have felt bound by his engagement had Mrs. Jacob, whilst still a prisoner of war, written asking him to come to Belgaum and to marry her. His answer was :—

“That would be contrary to her own wishes—absolutely contrary to her own wishes ; she was very magnanimous, and she admitted that so long as she had this slur on her it would do irreparable harm to my business to marry her.”

Question : “ And you agreed?” *Answer :* “ Yes.”

Further questions and answers satisfy their Lordships that respondent regarded the contract as binding upon him until appellant should be “ free of the slur ” ; which he agrees was not until her release in March, 1920.

Their Lordships are of opinion that Mr. Wills and Mrs. Jacob had agreed to marry one another when the war was over, provided she was then “ free of the slur,” so likely to be injurious to him in his business, of her being suspected by the Indian Government of being a German subject.

This suspicion was not dispelled until March, 1920, at the earliest, when Mrs. Jacob was released from internment ; and perhaps was not fully removed until November of that year, when the Government admitted that she had been wronged, and paid her a considerable sum as compensation.

Since the respondent had in August, 1920, by marriage to another, rendered the performance of his contract with appellant impossible, it is the opinion of their Lordships that she is entitled to succeed in this appeal, unless it be proved that the mutual promises of Mr. Wills and Mrs. Jacob had been withdrawn by each of them, and the contract to marry rescinded by consent. The burden of proving this rests upon the respondent.

He contends that the silence of appellant, lasting during practically the whole term of her seclusion, from December, 1915, to the 24th November, 1920, justified him in thinking that she had released him from his promise, and much stress was laid by his Counsel upon this telegram of the 28th December, 1915 :—

“ To Mrs. Jacob, Civil Camp, Belgaum. Many thanks for kindly greetings, which I heartily reciprocate. Trust new year will bring both you and my heart's desire. Wrote you early November. Why don't you reply ? This suspense is awful.—Wills.”

From this it is evident that respondent did not anticipate an early arrival of the time when he and Mrs. Jacob might marry. He explains in his evidence (see Questions 255–265) that the words “ this suspense is awful ” refer to the illness of Mrs. Jacob, of which he had become aware at the end of October, 1915.

After this there is no correspondence between the parties until Mrs. Jacob, being then free, wrote her letter of the 24th November, 1920. The explanation of Mrs. Jacob is given in her evidence at p. 21, and is to the effect that, although surprised and grieved by the silence of respondent, she had "come to the conclusion that Wills was quite content with the agreement made between us. . . . He had accepted and I had agreed, and I abided by that."

On the 24th November, 1920, appellant wrote to respondent a letter containing these words :—

"My dear Alic, I am free to do as I please again at last. You must have wondered, the war having finished so long ago, why you have not heard from me before. The reason is I had to wait all this time until my case against the Government was settled. It was only settled last week. I have been declared to be a British subject, and have received damages from the Government for their attempt to repatriate me. . . . I nearly sent you a wire, but I thought it might be too great a shock. And now Alic, what do you wish me to do with regard to the rings. I am still in a state of bewilderment, therefore I can't write any more. . . ."

To this letter respondent, on the 14th December, 1920, sent his reply, in which occurs this passage :—

"Then in 1916 I wrote you either two or three letters—I cannot quite remember the number. To all of these letters I had no reply, and as is usual in cases of this sort I assumed the worst had happened to you, more especially as your last letter conveyed the news of your serious state of health. On the signing of the Armistice in 1918, and the whole of 1919 passing and still no news from you, I was more than ever convinced my assumption was correct."

He then announces that he had married in August of 1920.

To this letter appellant replied on the 20th December, 1920, and used the expressions already quoted, and she added :—

"But why, oh, Alic, should you have thought I was dead when an ordinary letter to any one here in this place (Belgaum) would have given you that news about me. Why I did not get your letters I do not know. . . . It may interest you to know I had two offers of marriage during my stay here. Of course I told each of them I was engaged to you, and both accepted my answer as final."

It appears to their Lordships unnecessary to deal minutely with the arguments addressed to them by Counsel, and founded upon various expressions used in the letters between the parties; nor need they comment upon the considerations which appear in the judgments of the Court of first instance and in the Court of Appeal, considerations which led those Courts to opposite conclusions.

All that their Lordships have now to decide is whether the respondent has proved—as it was for him to do—that the contract made between him and the appellant was rescinded and dissolved by the agreement of them both. In certain circumstances silence, absence, conduct, expressions in letters may be amply sufficient to lead a Court of Law to such a conclusion. But here is a case

whose circumstances are altogether extraordinary. The parties to this suit were entangled, and embarrassed—like so many others during the war—by difficulties not of their making, and quite beyond their control. The situation in which the respondent found himself seems to have been beyond his strength to endure, as he himself had come near to foreseeing.

But, when every allowance for the weakness of human nature has been liberally accorded, there remains the legal liability to perform the contract of marriage if it were subsisting. It must never be forgotten that to prove that this contract was rescinded by mutual agreement is a burden of which the respondent must discharge himself, if he is to succeed in this appeal. It is a mere question of fact whether he has done so; and their Lordships cannot find proof of this. Therefore his obligation remains—but as he cannot, because of his marriage, fulfil it, he must make amends to Mrs. Jacob.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, the decree of the High Court in appeal set aside with costs and the decree of Mr. Justice Buckland in favour of appellant restored.

The appellant, having been granted special leave to appeal *in forma pauperis*, will have the costs of the appeal, to be taxed upon the scale usual in such cases.

In the Privy Council.

LUCIA JACOB

v.

DAVID ALEXANDER WILLS.

DELIVERED BY LORD DARLING.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1925.