Privy Council Appeal No. 34 *of* 1928.

Stephen Broomfield Manville Parchment - - - - - *Appellant*

v.

Percival Austin Benjamin - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF JUDICATURE OF JAMAICA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH NOVEMBER, 1928.

Present at the Hearing :

VISCOUNT SUMNER.
LORD BLANESBURGH.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* VISCOUNT SUMNER.]

Their Lordships do not consider it necessary to call upon Counsel on behalf of the respondent.

This case has been argued alike with ability and tenacity ; but it may be dealt with in a comparatively small compass.

The action was commenced by Mr. Parchment, who was nephew and heir-at-law of one Eva Louise Benjamin, who died in 1925 intestate in Jamaica, against the widower, Percival Austin Benjamin, who was the administrator of her property, and the question raised in the action was the claim of the appellant as heir-at-law of the said Eva Louise Benjamin to be entitled to a house and lands known as " Edelweiss," formerly " Heywood Place."

At an early stage an application was made for trial by jury. An order was made for a jury, and was not appealed against, and it therefore stands. Nothing can be gained by speculating whether a better tribunal than a jury could have been obtained or not. Their Lordships must not be understood to cavil in any way at the competence of the jury in question.

The action was tried by the Chief Justice of Jamaica with a special jury, and the Chief Justice gave a direction which was admittedly complete and irreproachable. It must, therefore, *ex hypothesi* have contained the necessary directions as to the presumptions of law that arose in the case, but he took the possibly unusual step of indicating to the jury in his summing-up that the question of fact ought to be answered in favour of the plaintiff. More could not have been done to assist the plaintiff and the jury to direct their minds to the real issue. By a majority of five to two a verdict was returned for the defendant. The Chief Justice recorded much dissatisfaction with the verdict.

Upon an appeal, the grounds of which appear to have been identical with those in the appellant's case here, no attempt was made to challenge the direction of the judge or the conduct of the jury as jurymen ; but the contention was that there was no evidence fit to be submitted to the jury or to be accepted by them in support of the defendant's case, and that the verdict was against the weight of the evidence and was unreasonable and/or perverse.

The issue is a comparatively simple one. The deceased died the registered proprietor of " Edelweiss." The case of the defendant was, and there was evidence quite sufficient to warrant the jury in accepting the initial part of the story, that the husband, some 35 years ago, had bought the house and paid for it, so much down and the residue afterwards, with his own money and with his own resources ; but had directed the conveyance to be taken in the name of his wife. Thereafter it was registered in her name, but all the acts of ownership were his ; he paid the rates and taxes, he paid for periodical repairs, he leased the house for periods longer or shorter when he and his wife came to England, and it was their family home all the time.

There is a suggestion that may be disposed of at once, that the matter is affected in some way by reason of the fact that he had been a bankrupt some years before the purchase of this house. He had obtained his discharge and the bankruptcy does not appear to be open to comment except that it was some time before he could get his discharge. When he bought the house he had started in business again, a business which prospered and has prospered apparently ever since, and therefore whatever suggestion was made of some design of defeating his creditors, past or future, by taking the conveyances in his wife's name, proves to have no real bearing upon the case.

The jury must have been told, as the law is, that the presumption under these circumstances is that, by taking the house in the name of his wife, the husband intended to advance the wife, and did so, and that, if he wanted to rely, as he did rely, upon the case that, on the contrary, she was a mere trustee for him, the burden was upon him, and very strongly upon him, to show that intention, so that the presumption might be rebutted.

The respondent said two things about this. One was his

own explanation of his reason for putting the transaction in that form. He said virtually: I wanted to put this house into my wife's control and beyond my own direct control; I am far too easy with people who ask me for assistance; I have backed bills; I have befriended my brothers and sisters; I have lost money in this way. I thought, if the house was in my wife's name, she would certainly never consent to mortgage it, and she could protect the home. I made it as safe as I could against my own good nature or folly. These are not his words: but that is the tale. Told to men of the world, especially of the Eastern hemisphere, that may seem a quixotic or romantic reason for what was done; but that is his case. Then it was put to him: When your wife was dead and immediately after she was dead, you applied for letters of administration and, in making application to the Court for a serious position of that kind to be conferred upon you, you filled up the necessary revenue forms and signed the forms and swore an affidavit, containing the statement that the house was part of the estate of your deceased wife. The statement was against your interest; it was made at a time when, if you were capable of speaking the truth, you should have spoken the truth; and at a time when all the facts were in your knowledge. Thus some two years before the trial you committed yourself to a statement the exact contrary of what you say now, namely, that she was never anything but a trustee for you and that the house was in equity yours. No doubt that among other circumstances and perhaps more than the other circumstances would impress the Chief Justice and lead him to the view which he took of the case. Nobody can have doubted, from the first moment that this incident became known, that it constituted a most serious difficulty in the way of proving such a case as the defendant's. He had an answer, however. He said: I am old (which appears to have been true); I am feeble and in bad health (which was confirmed by the fact that he broke down in the witness-box and was unable to return to it); I was in deep grief at the loss of my wife (which after a partnership of a quarter of a century or more may perfectly possibly have been true): and I had not for some reason the advice of a solicitor. I got the assistance of an old friend, a clerk in the revenue department, to make out my revenue form. I signed what he made out (the body of the document is in fact not in the respondent's handwriting)—but I did not read it, and, had I read it, I could not have appreciated the meaning of this point. As to the affidavit, I do not think I read it and I do not suppose I should have understood it, so far as this point is concerned. One would have expected the owner of a business, which was more or less flourishing, to have been able to understand that it might make a difference whether he was to pay duty even as administrator *de bonis non* to his wife; but it is also possible that neither the incidence of taxation nor the measure of truth required in connection with fiscal imposts

is always as fully appreciated as it should be. The question, therefore, whether his story was true or not was emphatically one which a jury of his own townsmen might be expected to be well qualified to understand and decide. There at any rate is his evidence.

There was a quantity of other evidence which their Lordships think is of much less direct value: What a servant remembered her mistress saying, what a young gentleman from the United States, visiting Jamaica for the benefit of his health, heard the deceased say, and what advice he gave her, what statements she made, rather irrelevantly, and certainly inaccurately, to the effect that she had no property, and what other statements are said to have been made by her to witnesses called by the plaintiff to the effect that she had property and so forth; but if the jury accepted the explanation of Mr. Benjamin as to the way in which he had come to make statements on applying for letters of administration, which were diametrically contrary to what he now said was the truth, and if they appreciated, as it must be supposed they did appreciate, the directions given to them by the learned Judge, there was material upon which they were constitutionally called upon to decide, and perfectly well could decide, whether the presumption was rebutted or not; and by a sufficient majority they said that it was rebutted.

It is urged upon their Lordships that this is an unreasonable verdict which cannot stand. Whether it was correct or not is not within the competence of their Lordships, and they entertain no opinion about it. It is for the purpose, among other things, of avoiding such an enquiry here that the services of a jury are enlisted. Whether the Court of Chancery, a court of conscience, would have drawn the same conclusion from the facts is not a question for their Lordships. The jury itself had before it intelligible and definite evidence, it may be more or less improbable, which, if they believed it, warranted their finding. They saw this witness and they had the opportunity of forming their own judgment of his truthfulness and his character, and they decided in his favour.

The Court of Appeal, reciting very much the same considerations that have now been advanced, said, not without a certain amount of reserve which was due to the opinion of their colleague, that they were unable to say that the verdict was not one which the jury, as reasonable men, having regard to the evidence before them, might have found and that they were consequently not at liberty to disturb it.

That is precisely the conclusion at which their Lordships have been compelled to arrive, and they will humbly advise His Majesty that this appeal should be dismissed.

In the Privy Council.

STEPHEN BROOMFIELD MANVILLE
PARCHMENT

v.

PERCIVAL AUSTIN BENJAMIN.

DELIVERED BY VISCOUNT SUMNER.

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