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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
19 JUN 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

IN THE PRIVY COUNCIL

No. 44 of 1961.

ON APPEAL

FROM THE SUPREME COURT OF THE
BAHAMA ISLANDS.

5 74062

B E T W E E N

THE HONOURABLE SIR GEORGE WILLIAM KELLY
ROBERTS Trading as THE CITY LUMBER YARD Appellant

- and -

ALBERT SOLTYS Respondent

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CASE FOR THE APPELLANT

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1. This is an appeal by the Plaintiff by leave of the Supreme Court of the Bahama Islands given on the 22nd April 1961 against the judgment of the said Court dated 23rd March 1961 whereby judgment was given for the Defendant with costs on the Plaintiff's claim in the action to recover the sum of £323. 6. 10. as the price of goods sold and delivered by the Plaintiff to the Defendant. By his defence delivered on 11th April 1959 the Defendant denied that he had ever ordered any goods from the Plaintiff or that the goods mentioned in the Statement of Claim were ever delivered by the Plaintiff to him at his request or at all, or that he ever agreed to pay the Plaintiff any of the prices charged. The Plaintiff and the Defendant in the said action are hereinafter referred to as the Appellant and the Respondent respectively.

2. The Appellant carries on business as a builders merchant at Nassau and the goods the subject matter of the action consisted of building materials which were delivered by the Appellant to a building site in Nassau Street, Nassau where a building was being constructed by one Benjamin Pratt a building contractor on behalf of Walters Ltd. a private company controlled by the Respondent.

Page 3.

3. It was the Appellant's case in the said action that the said goods amounting in the aggregate to the value of £323. 6. 10. as aforesaid were ordered from time to time from 10th June 1958 to 14th July 1958 by the said Pratt as the duly authorized agent for and on behalf of the Respondent who had orally authorized the said Pratt to order the said goods from the Appellant on his behalf, and who had orally authorized the said Pratt to order the said goods from the Appellant on his behalf, and who had orally confirmed to the Appellant the said authority of the said Pratt before the Appellant accepted any of the said orders. 5
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Page 35. 4. On the trial of the said action it was proved to the satisfaction of the learned Chief Justice, the trial judge, that the said goods to the value aforesaid had been ordered by the said Pratt on the dates alleged and that such goods were duly delivered by the Appellant to the said building site. The effective issue in the action was whether the Respondent was liable to the Appellant for the price of the said goods, either on the ground that he had expressly authorized the said Pratt to order the said goods as agent on his behalf, or alternatively whether he had held out the said Pratt to the Appellant as having such authority. 15
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5. On the said issue the evidence adduced at the trial on behalf of the Appellant may be summarized as follows, viz :- 30

Pages 13 - 17. (i) The evidence of Theophilus Ethelbert Thompson, an audit clerk in the employ of the Appellant, who deposed that in June 1958 in his said employment he was visited by the said Pratt who stated that he was carrying out building work for the Respondent and that he wanted to buy materials for the job and that the materials when supplied were to be charged by the Appellant to the account of the Respondent. That the witness thereupon consulted with Mr. Harris, the Appellant's manager, and that as a result thereof he telephoned the Respondent and spoke to him and informed him of the said visit of the said Pratt who had placed an order for material to be charged to the Respondent's account, and that before making any delivery the Appellant needed the Respondent's authority, and that in reply thereto the Respondent had said: 35
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"It's quite all right, Mr. Pratt is doing work for me. Let him have the materials he needs and I will come in at the end of the month and bring you a cheque for it."

- 5 (ii) The evidence of the said Benjamin Pratt who deposed as follows, viz :-

10 That he ordered the said goods from the Appellant to be charged to the account of the Respondent and that he had the permission of the Respondent so to do. That in addition to the main building contract between him and the said company, the Respondent had ordered as extras a bathroom and a bedroom and that 15 this made the said Pratt short of funds for the purchase of materials and that this was likely to hold up the progress of the building. That in the circumstances he spoke to the Respondent on the site and that it was then 20 agreed between him and the Respondent that the Respondent would open an account with the Appellant for delivery of such materials, the said materials to be ordered by the witness on behalf of and to be charged to the Respondent, and that the expense thus 25 incurred by the Respondent would be deducted by him from the payments to be made by him to the witness.

Pages
17 - 24

- 30 6. The Respondent in his evidence denied that he had ever authorized the said Pratt to purchase materials from the Appellant on his behalf: he denied that he had any conversation with the said Pratt of the nature referred to in the said Pratt's evidence and he further denied that he had ever had a telephone conversation with the said witness 35 Thompson as alleged.

Pages
25 - 34

- 40 7. In the premises it is submitted that the liability of the Respondent to the Appellant's claim depended on the answers to the following questions viz :-

- 45 (i) Did the Respondent orally authorize Pratt to purchase building materials from the Appellant for the account of the Respondent as alleged by Pratt in his evidence?
- (ii) Did the Respondent have the telephone conversation with the said witness Thompson at the time and in the terms as stated by Thompson in his evidence?

It is submitted that if the answer to either one of these two questions were in the affirmative, the Appellant was entitled to succeed in the action.

Pages
35 & 36.

8. In his judgment, the learned Chief Justice stated that the crucial point to be determined was whether the said conversation between the Respondent and Mr. Thompson took place. It is submitted that in this respect the learned Chief Justice misdirected himself in that he took no account of the fact that it was equally crucial as to whether the said conversation between Mr. Pratt and the Respondent took place. On that particular issue the learned Chief Justice made no finding. Furthermore, even on the issue as to the conversation between Mr. Thompson and the Respondent, the learned Chief Justice made no finding save and except that he stated that the Appellant had not discharged the onus of proof as to the said conversation. He stated that both Mr. Thompson and the Respondent had impressed him equally as truthful witnesses by their demeanours, and then stated that there was a circumstance in the Respondent's favour. Later in his judgment he stated:

"I can find no evidence that the Defendant ever gave cause to the Plaintiff to believe that Mr. Pratt could pledge his credit as his agent."

It is submitted that that was ample evidence of such fact and that it was for the trial judge to accept or reject such evidence. The learned Chief Justice then continued :-

"There is no evidence here of 'holding out', the Plaintiffs must therefore rely on the telephone conversation and the onus of proof that it occurred is on them."

The said telephone conversation, if it took place, was of itself evidence of holding out. Furthermore it is submitted that it was again incorrect to state that the Appellant must rely on the said telephone conversation; He was entitled to rely on the evidence of the conversation between Pratt and the Respondent as

constituting the actual agency of the said Pratt independently of any holding out.

5 9. Furthermore, it is submitted that the learned Chief Justice failed to consider and take into account the effect of the evidence of the witness Pratt, especially when taken in conjunction with the evidence of the witness Thompson. In the premises it is submitted that the judgment was against the weight of evidence. 10 It is further submitted that this is reinforced by the fact that in the last sentence of the said judgment, the learned Chief Justice expressed doubt as to whether the decision was in accordance with the truth of the matter.

15 10. In the premises the Appellant submits that the judgment of the Supreme Court of the Bahama Islands dated 23rd March 1961 was wrong and should be set aside and that judgment should be entered for the Appellant for the amount of 20 the claim with costs or

ALTERNATIVELY that a new trial should be had between the parties for the following, (amongst other)

R E A S O N S

25 (1) That the learned Chief Justice mis-directed himself in holding that the crucial point to be determined was whether the conversation between Mr. Thompson and the Respondent took place.

30 (2) That on the issue as to the conversation between Mr. Pratt and the Respondent as to the authority of Mr. Pratt to pledge the credit of the Respondent with the Appellant, the learned Chief Justice 35 made no finding.

(3) That in regard to the issue of the telephone conversation between Mr. Thompson and the Respondent the learned Chief Justice made no finding.

40 (4) That the learned Chief Justice was wrong in stating that there was no evidence that the Respondent ever gave cause to the Appellant to believe that Mr. Pratt could pledge his credit as his agent.

(5) That the learned Chief Justice misdirected himself in stating that the Appellant must rely upon the telephone conversation between Mr. Thompson and the Respondent.

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(6) That the said Judgment was against the weight of evidence.

P. GOODENDAY.

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ON APPEAL

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B E T W E E N:

THE HONOURABLE SIR GEORGE
WILLIAM KELLY ROBERTS
Trading as THE CITY LUMBER
YARD (Defendant) Appellant

- and -

ALBERT SOLTYS (Plaintiff)
Respondent.

CASE FOR THE APPELLANT

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