



ON APPEAL

FROM THE COURT OF APPEAL OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (ST.LUCIA)

B E T W E E N

JOHN BERTRAM GODDARD Plaintiff-Respondent - Appellant

- and -

LAURENT JOHN Defendant-Appellant - Respondent

C A S E FOR THE R E S P O N D E N T

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10 1. The Respondent respectfully proposes to adopt in toto the ratio of the Court of Appeal, in particular, that of Louisy, J.A., holding that the document purporting to be a notarial lease relied upon by the Appellant is not an "authentic writing" within the meaning of the Civil Code of Saint Lucia.

2. In respect of the Appellant's contention (at page 5 paragraph (2) of his case) that the document qualifies as a "private writing" and is caught by Article 1153 of the Code, which reads as follows:-

20 "A writing which is not authentic by reason of any defect of form, or of the incompetency of the officer, has effect as a private writing, if it has been signed by all the parties; except in the case mentioned in article 831"

30 the Respondent contends that the said article is not applicable to the instant case, in that the absence of authenticity is not "by reason of any defect of form, or of the incompetency of the officer". In respect of the latter "reason", suffice it to say that the competency of the officer is not and never was in question. In respect of the former "reason", the Respondent contends that the defect is not one of form, but of substance, in that the document purports to be that which the evidence shows it is not: the document purports to have been executed with due solemnity before a Notary; this allegation, if true, would have clothed the document with the high and distinction mantle of authenticity, which bestows upon a document so executed the status described in

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Article 1141 of the Code. This mantle is a characteristic of substance, and when the document boasted this high status which the evidence shows it has never possessed, the document thereby sought to deceive. It is, in effect, a forgery and it cannot, upon being exposed as such, seek to shelter from its proven deceit and achieve respectability by claiming ex post facto the lesser status of a "private writing". A forgery is a nullity, and no judgment can be founded on a nullity. The finding of the learned trial judge that the document was executed by the Respondent (and, by implication, by the Appellant) is not, per se sufficient to bring the case within Article 1153; one or other "reason" stated in the said Article must be satisfied also, and neither is. In any event, any argument tending to base the Appellant's case on an agreement other than the notarial instrument upon which his pleadings are founded would (on the authority of Waghorn v. George Wimpey & Company Limited (1970) 1 All England Reports 474, following Stein (John G) & Company Limited v O'Hanlon HL (1965) 1 All England Reports 547) constitute so radical a departure from the case as pleaded as to disentitle the Appellant to succeed.

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3. In respect of page 5 paragraph 15 of the Appellant's case, the Respondent contends that the Respondent by Paragraph 1 of his defence denied that he ever executed or caused to be executed the notarial document upon which the Appellant relied, and by paragraphs 5, 6, 7, 8, 9 and 10 stated that he had executed an entirely different document, i.e. a private writing, which did not give the Appellant an option to purchase the land in question. This defence pleaded at issue the entire document upon which the Appellant relied and it then became necessary for the Appellant to provide each and every material ingredient of the said document, two such being:

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(a) that the Respondent was in Castries on the relevant date and

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(b) that he executed the particular document before the Notary.

The Appellant failed to do so, and, indeed, out of his own mouth denied those two material ingredients.

E. HENRY GIRAUDY

No. 14 of 1972
IN THE PRIVY COUNCIL

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Appellant

- and -

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Defendant-Appellant -
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C A S E FOR THE RESPONDENT

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