

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Nelson Abbott v. Robert Abbott from Her Majesty's Supreme Consular Court, Constantinople; delivered 23rd June, 1874.*

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Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THE circumstances out of which this Appeal arises are as follows :—

Mr. John Nelson Abbott and Mr. Robert Abbott carried on business as partners for a great many years in Salonica, on a large scale and with great success. In the year 1868 a suit was instituted by Mr. Robert Abbott for the dissolution of the partnership and the taking of its accounts, in which Judgment was given in the Supreme Consular Court of Constantinople on the 28th of November, 1868, whereby it was directed that an account be taken on the footing of Mr. John Abbott being entitled to a larger share of the property than Mr. Robert Abbott, in a proportion not far from that of three to two.

This Judgment was appealed against, and reversed by an Order of Her Majesty in Council of the 9th August, 1870, which declared that the Appellant and Respondent were interested in the capital and profits of the partnership in equal shares, and that the accounts of the partnership should be taken on this footing.

It was further ordered that the accounts should be taken from the year 1856 "with liberty to either party, if it should become necessary, to apply to

Her Majesty's Consular Court to have the accounts taken from an earlier period."

One of the grounds on which the Judge of the Consular Court came to the conclusion that Mr. John Abbott was entitled to a larger share of the profits than his brother was the uncontradicted evidence that in fact he had drawn much larger sums than his brother. It appeared that the books of the firm had been destroyed by a fire in 1856. The Plaintiff gave evidence that before that time the Defendant had drawn much more largely than he had, but could not specify how much. The cashier of the firm also stated that Mr. John had drawn more than Mr. Robert before the fire of 1856. Being asked, "Can you say within 1,000*l.* how much?" he answered, "I cannot say whether it was above or under 20,000*l.* more than Robert."

But Mr. Heraclidi, who had been cashier of the brothers up to 1845, and remained their clerk and secretary till the dissolution of the partnership, stated positively that Mr. John Abbott drew to the amount of 2,000,000 piastres in excess of his brother. He said that he saw the account in the books shortly before the fire, and made a note how much each partner had drawn, which note he had lost.

Mr. John Abbott stated that he had drawn largely in excess of his brother, and so far from impugning the evidence of Mr. Heraclidi, relied upon it both before the Consular Court and before this Board as proving that he was entitled to a larger share than his brother. The Consular Court decided in his favour partly on this evidence, nor was it discredited by this Board, who held, notwithstanding, that the partners were entitled in equal shares.

On the cause being remitted to the Consular Court an order was made on the 29th of September, 1870, that the accounts of the late firm of Abbott Brothers, commencing from the 1st of January, 1840, up to the 15th June, 1868, should be taken on the basis of both parties being interested in the capital and profits in equal shares, and that, pending the taking of the accounts, Mr. Henry Rasy, Chief Clerk of the Consular Court of Salonica (who had been appointed receiver before the appeal)—

~~"Do continue to hold possession of the various magazines, stores, and other buildings belonging to the said late firm of Abbott Brothers, and that upon settlement of the accounts herein~~

above referred to, the said Henry Rasy do proceed to realize, by public sale or by private contract, as he shall deem most beneficial to the said estate, all the said magazines, stores, and other buildings, and thereon divide the proceeds arising therefrom equally between the parties hereto."

It does not appear that any objection was made at the time to this Order on the ground either of the re-opening of the accounts anterior to 1856, or that Rasy was directed to sell the real property; the Order was certainly not appealed against.

Very much the same evidence was given on taking the accounts as had been given before as to the overdrawings by Mr. John Abbott of 2,000,000 piastres (treated as equivalent to 20,000 Turkish liras), except that Mr. John Abbott represented that the sum overdrawn by him was mainly expended for purposes connected with the partnership, which representation was denied by Mr. Robert Abbott and Mr. Heraclidi. In the result Mr. Rasy reported that a balance of Turkish liras 68,822 was due to the late firm by Mr. John Abbott; and that such balance included 20,000 overdrawn by him before the 15th July, 1856, with interest at the rate of 12 per cent. per annum from that date to the 15th July, 1868.

By an order of the Consular Court of the 15th August, 1871, the report was sent back to Mr. Rasy, with instructions to maintain the charge of the 20,000 liras, but to exclude interest, and to inquire into another sum of 3,000 liras, for which the Defendant maintained that he was entitled to credit. On the same day it was further ordered:—

"That the stores and magazines belonging to the late firm of Abbott Brothers be divided into such lots as the Court may consider convenient for the purpose of their being disposed of by sale.

"That, within fourteen days after service of a list of the said stores and magazines, the parties hereto be at liberty to forward to this Court sealed tenders for such lots or either of them. And

"That, in the event of no such tender being made by either of the said parties, the said stores and magazines shall be forthwith put up to public auction, or be otherwise disposed of as to the Court shall seem fit."

On the 11th of October, 1871, the following Order was made:—

"Upon reading the report of Mr Henry Rasy, the receiver of the estate of the late firm of Abbott Brothers, dated 12th Sep-

tember, 1871, and examination of the several accounts therein referred to.

“It is ordered, that the said report be received and adopted, and the said account be passed,

“And it is further ordered, that the Defendant John N. Abbott do forthwith pay to the said Henry Rasy the sum of T.L. 31,791, piastres 21, and paras 25.

“And that on receipt thereof, the said Henry Rasy do thereupon deposit with the Imperial Ottoman Bank at Salonica, in the name of the Judge of the Supreme Consular Court, to the account of the estate of Abbott Brothers in liquidation.”

The 11,791 T.L., 21 piastres, and 25 paras, added to the 20,000 liras, consist of over-drawings of the Defendant since 1858, not disputed.

On the 13th of October, 1871, the following Order was also made:—

“Upon reading the report of Henry Rasy, dated 12th September, 1871, in reference to the several stores, magazines, and other buildings belonging to the late firm of Abbott Brothers, and as neither of the parties in the suit have forwarded tenders to this Court, according to the provisions of an order of this Court, dated 15th August, 1871:

“It is ordered, that the said Henry Rasy do forthwith proceed to sell and dispose of the said stores, magazines, and premises by public auction, subject always to such conditions of sale as shall be imposed by this Court:

“And it is also ordered, that the said parties to this suit shall be at liberty at such auction to be present and bid for the said stores, magazines, and premises:

“And it is further ordered, that the net proceeds arising from such sale be deposited with the Imperial Ottoman Bank at Salonica, in the name of the Judge of the Supreme Consular Court, to the account of the estate of Abbott Brothers, in liquidation.

Mr. John Abbott now appeals against the last two Orders.

It has been contended on behalf of the Appellant:—

Firstly, That there was no such necessity as that contemplated by the Order in Council in the former Appeal for carrying the account further back than the year 1856, and that the Court was wrong in directing it to be so carried back.

Their Lordships, however, conceive that as the partnership books in existence do not show what was drawn by either partner before 1856, the Consular Court was right in determining that it was necessary in order to do full justice between the parties to direct that accounts should be taken from an earlier period.

It was secondly contended, That there was no sufficient evidence of the overdrawing by the Defendant of the 20,000 liras.

If the evidence of Heraclidi had stood alone, their Lordships might possibly have come to this conclusion. Considering, however, that his evidence was corroborated, to some extent at least, by the evidence of the cashier and of both the brothers, and further, that, in the former Appeal, the Defendant himself, so far from impugning it, relied upon it in support of his case, their Lordships are of opinion that there was sufficient evidence to support the findings of Mr. Rasy and of the Judge of the Consular Court.

It was thirdly contended, That the sum overdrawn being stated by Heraclidi as 2,000,000 piastres; and treated in the Order of the Court as equivalent to 20,000 Turkish liras, at the rate of 100 piastres to a lira; this amount should be reduced, because, in fact, a lira is worth much more than 100 piastres.

Their Lordships have to observe that this statement is wholly unsupported by any evidence. Whether Mr. Heraclidi meant to represent that all which was overdrawn by Mr. John Abbott was overdrawn in the denomination of piastres, or that he expressed in piastres the value of the overdrawings in whatever denomination of coin they were made, does not appear. Their Lordships find, however, the Defendant, in an affidavit in this cause, referring to M. Heraclidi's statement in these words: "Although I cannot recollect how much I so drew in excess, I am able positively to affirm that such overdrawing was much less than the said sum of 20,000 liras, so spoken to by Heraclidi." The Defendant himself, therefore, treats 20,000 liras as the equivalent for the 2,000,000 piastres. All the accounts are made on the reckoning of 100 piastres to the lira, and to require a different mode of computation would necessitate their being altogether reformed. Their Lordships see no reason whatever for directing this.

It has been contended, lastly, That the Order of the 13th of October, 1871, directing the receiver to sell the partnership premises by public auction, is invalid and *ultra vires* of the Court.

It appears that, before the Protocol of June 18,

1867, British subjects could not hold real property in Turkey in their own names, but, nevertheless, were permitted to hold it in the name of some female relative, who was regarded by the Ottoman law as a *Rayah* (non-Mussulman) subject of the Sultan, or of some native subject (called a "prête-nom"), who was registered as the legal owner, but who gave a private Memorandum acknowledging the real ownership, an acknowledgment acted upon by the Courts in the event of his fraud or bankruptcy. By the Protocol of June 18, 1867, British subjects were permitted to hold land in their own names. This, however, was declared to have for its legal effect (among other things):—

"To render them directly amenable to the Ottoman Civil Courts in regard to all questions relative to landed property and to all real actions, both as Plaintiffs and Defendants, even when both parties are foreign subjects, the whole under the same footing, the same conditions, and in the same forms as Ottoman proprietors, and without the power of availing themselves, in such matters, of their personal nationality; but under the reservation of the immunities attaching to their persons and their personal property, according to the terms of the Treaties."

The partners had not availed themselves of this Protocol, but continued under the old practice to hold the partnership premises in the name of a subject of the Sultan.

This being so, it appears to their Lordships that the effect of the Order is no more than to direct the receiver, who united in himself the rights of the respective partners to sell all the beneficial interest the partners had in the partnership premises. In the event of the purchaser experiencing any difficulty in obtaining possession, the Court would have power, by further Orders, to compel the partners to carry into effect the sale, and to complete the title of the purchaser by all the means at their disposal. It was strongly pressed upon their Lordships that the result of the Order was to cause the property to be sold at an undervalue. If this be true, that result is due, partly, to the manner in which the property was held; but still more to the conduct of the Appellant. The Consular Court did its utmost to secure the full value by inviting tenders from the

partners, and giving to each the liberty to bid. Their Lordships are not satisfied that in the circumstances it would have been possible to dispose of these assets of the partnership to better advantage by any other mode of sale. Entertaining this view, their Lordships are of opinion that the Order was right and proper.

Their Lordships will therefore humbly advise Her Majesty to affirm the Orders appealed against, and to dismiss the Appeal with costs.

