Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Johnson v. *The King, from the Supreme Court of Sierra Leone; delivered the 22nd June* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

Isaac Babington Johnson, a Government contractor in Sierra Leone, who was the Defendant in the action, appeals against a Judgment of the Acting Chief Justice of the Colony ordering him to pay to His Majesty 428*l.* 13*s.* 3*d.*

The money in question represents interest on two sums which Johnson received from the Army Paymaster in excess of what was due, and which he retained in his own hands for over a year.

Under his contract with the Government Johnson was required to remove a quantity of granite stones from the Signal Hill to the Naval Coal Shed in Water Street, Freetown. For this service he was to be paid so much a ton. Between the 29th of November 1900 and the 9th of January 1901 he removed 298 tons and a fraction. His charge at the agreed rate ought to have been 448*l.* 1*s.* 7*d.* He presented a voucher for 2,474*l.* 18*s.* 6*d.*, and received that sum from the Army Paymaster, thus obtaining 2,026*l.* 16*s.* 11*d.* beyond his due. Between the

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31st December 1900 and the 24th January 1901 he removed in addition 138 tons and a fraction. His remuneration for that work ought to have been 207*l.* 8*s.* 5*d.* His claim was for the removal of 4,140 tons. He presented a voucher for 6,210*l.*, and actually received that sum from the Army Paymaster. The total amount over-paid was thus 8,029*l.* 8*s.* 6*d.*

On the 2nd of January 1902 a writ was issued in the name of His Majesty against Johnson claiming return of the money over-paid. The claim was put in two ways: (1) return of money obtained by fraud; (2) in the alternative, return of money paid by mistake.

The Statement of Claim in the action was delivered on the 5th of February 1902. It followed the lines on which the writ was framed. It dealt with the two cases of over-payment separately. In paragraphs 6, 8 and 9 it charged fraud, while in paragraphs 7 and 10 it presented the case as one of over-payment by mistake without alleging fraud. Then in paragraph 11 it was alleged that on the 5th of February 1902 (that is, the day on which the Statement of Claim purported to be delivered) the Defendant was convicted of having obtained by means of false pretences from the Army Paymaster two several sums equal in the aggregate to the two sums actually over-paid. In paragraph 12 it was alleged that the Plaintiff had "incurred great "expense in prosecuting and obtaining the "conviction of the said Defendant for his said "frauds," and had "suffered damage by "the unlawful obtaining and detention of "the said sums." The Statement of Claim concluded by claiming under paragraphs 6 and 7 and paragraphs 9 and 10 return of the two sums which amounted together to 8,029*l.* 8s. 6*d.* Under paragraph 11 it claimed 1,200*l.* as damages.

By his Statement of Defence which was delivered on the 14th of February 1902 Johnson admitted over-payment of two sums amounting to the sum of 8,029*l.* 8*s.* 6*d.* and tendered repayment. He denied fraud, and accepting apparently the suggestion of the Crown indicated in paragraphs 7 and 10 of the Statement of Claim, he said the over-payments were due to mistakes which he attributed to certain officials or servants of the Crown. The said sum of 8,029*l.* 8*s.* 6*d.* was forthwith paid into Court.

On the 18th of February 1902 Johnson was sentenced to nine months' imprisonment.

By his reply delivered on the 19th of February 1902 the Plaintiff said that he accepted the sum of 8,029*l.* 8*s.* 6*d.* paid into Court by the Defendant "in satisfaction of the Plaintiff's "claim under paragraphs 7 and 10 of his said "Statement of Claim"—the two paragraphs which treated the over-payments as due to mistake and not to fraud. At the same time he denied that the sum was sufficient to satisfy his claim arising under paragraphs 11 and 12 of his Statement of Claim.

The case went to trial. The Crown adduced no evidence except the Statement of Defence and Johnson's answers to Interrogatories which came to nothing more than an admission of his conviction and the sentence thereon.

At the trial the claim put forward on behalf of the Crown to recover the expenses of the prosecution and conviction was rejected or abandoned. As regards the claim for interest, it does not appear that the learned Counsel for the Crown attempted to rest it on fraud. The learned Counsel for the Defendant pointed out that fraud had not been proved in the action. But the learned Judge held that it was unnecessary to go into that point as the Defendant

admitted "receiving the money by mistake or "as over-payment." Consequently he thought the law would "imply a promise from Defendant "to pay back to the Plaintiff the money paid in "excess." He thought the allegation of special damage in the Statement of Claim sufficient, and gave "Judgment for the Plaintiff for "428*l.* 13*s.* 3*d.* damages by way of interest "without costs."

Having regard to the law as settled by the Judgment of the House of Lords in the case of *The London, Chatham, and Dover Railway Company* v. *The South-Eastern Railway Company* (1893, A.C. 429), it is impossible to support the decision of the Acting Chief Justice on the ground upon which it was rested. Mr. Sutton, who argued on behalf of the Crown, admitted that the case was presented to this Board in a very unsatisfactory manner. He pointed out, however, that the over-payments were so gross and indeed so monstrous in amount that it was impossible to believe in the absence of fraud. It would not be easy to resist that conclusion if their Lordships had to draw inferences of fact from the materials placed before them. But the difficulty is that the Crown seems intentionally and deliberately to have put aside all question of fraud. In the reply on behalf of the Crown the money paid into Court was accepted in terms as money paid by mistake, and no attempt was made to give any evidence of the fraudulent pretences which had been proved to the satisfaction of the Criminal Court. Possibly, as was suggested, no evidence of fraud was given in the civil action because everybody concerned must have known all the facts of the case. This Board however has nothing before it but the evidence presented in the Record. Having regard to the dates of the conviction, the payment into

Court and the sentence, in connection with the reply delivered on behalf of the Crown, and considering that the punishment awarded does not seem to have erred on the score of severity, it is at least conceivable that there may have been some understanding or some expectation or hope held out that the question of fraud would not be further pressed. However that may be, the miscarriage, if miscarriage there be, is due entirely to the action of the Crown and the way in which the Crown has conducted the case. If the Crown intended to rely on fraud as giving a right to interest, the case ought to have been stated plainly and proved clearly.

In order to guard against any possible misapprehension of their Lordships' views they desire to say that, in their opinion, there is no doubt whatever that money obtained by fraud and retained by fraud can be recovered with interest whether the proceedings be taken in a Court of Equity or in a Court of Law or in a Court which has a jurisdiction both equitable and legal, as the Supreme Court of Sierra Leone possesses under the Ordinance of the 10th of November 1881.

In order to support the Decree it was suggested that Johnson, who was a trader, must have made a profit by the use of the money which was in his hands for a year. That is very probable, but there is no proof of it.

It was also suggested that Johnson as a "casual accountant" to the Crown was bound to account for the money with interest. But no authority was given in support of this proposition, and it appears that the Records of the old Court of Exchequer which might have thrown some light upon this point are not readily accessible.

In the result therefore their Lordships are of opinion that the Order appealed from ought to

be reversed, and they will humbly advise His Majesty accordingly.

[Their Lordships having reserved the question of costs for further consideration, the following Addendum to their Lordships' Judgment was delivered by Lord Macnaghten on the 19th July 1904] :—

As regards costs, their Lordships have heard a separate argument, and they desire to say that they are much obliged to the learned Counsel on both sides for the industry and care which they have bestowed upon the question.

It will be enough to state the conclusions at which their Lordships have arrived.

It cannot be disputed that over and over again before this tribunal, the Crown has been treated in the matter of costs just like a private litigant.

It appears, however, that no case can be found in which the point was argued.

All the cases seem to fall under one or other of the following three heads :—

1. Cases where the Crown has been treated as an ordinary litigant, under the authority of local statutes, as is generally the case in the self-governing Colonies.
2. Cases where the question arose under a Petition of Right or some proceeding analogous to a Petition of Right.
3. Exceptional cases where justice seemed to require that the Crown should pay costs or where the Crown was not unwilling to be treated as an ordinary litigant.

The present case cannot be brought under any of these heads. There is no Ordinance in Sierra Leone authorising the Court to treat the

Crown as an ordinary litigant, and the Appellant has succeeded in spite of demerits.

Mr. Muir Mackenzie relied on Section 19 of the Ordinance of the 10th November 1881, which declares that statutes of general application which were in force in England on the 1st of January 1880, should be in force in Sierra Leone from the date of the Ordinance coming into effect. He contended that that Section imported into the Colony the Act 18 & 19 Vict., chap. 90. Their Lordships, however, are of opinion that that Act is not a statute of general application within the meaning of Section 19 of the Ordinance in question. It only deals with proceedings in the United Kingdom.

In the result, therefore, their Lordships are of opinion that, in dealing with costs in cases between the Crown and a subject, this Board ought to adhere to the practice of the House of Lords, and that in future the rule should be that the Crown neither pays nor receives costs unless the case is governed by some local statute, or there are exceptional circumstances justifying a departure from the ordinary rule.

In the present case their Lordships think that the Order appealed from should be reversed without costs, and that there should be no costs of the Appeal.