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UNIVERSITY OF LONDON
V.C.I.
INSTITUTION OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

No. 33 of 1959

ON APPEAL

FROM THE GHANA COURT OF APPEAL

63500

B E T W E E N:

KOJO ASANTE (Plaintiff) .. Appellant

- and -

COMPAGNIE FRANCAISE DE L'AFRIQUE
OCCIDENTALE (Defendants) .. Respondents

CASE FOR THE APPELLANT

10 1. This is an appeal from a judgment of the West
African Court of Appeal pronounced upon the 28th
November 1956, which set aside a judgment of the
Supreme Court of the Gold Coast of the 25th October
1955 in favour of the Plaintiff for £669 with costs,
and entered Judgment for the Defendants with costs
in both Courts on the ground that a transaction
evidenced by an agreement dated the 1st June 1954
made between one Abire and others of the one part
and the Plaintiff of the other part was made to
20 defraud Abire's creditors, of whom the Defendants
were one.

Record
p. 27

Ex.B.
p. 38

2. The principal issues to be determined in this
appeal are as follows :-

30 (a) Whether the Ghana Court of Appeal should
have reversed the finding of fact by the
learned trial Judge that the Appellant was an
innocent purchaser for value of the business
concerned in the action with no knowledge of
any intention that the vendor may have had to
defraud his creditors.

(b) If the Appellant was an innocent purchaser,
whether he was entitled to the damages awarded
him by the learned trial Judge.

(c) Alternatively, if the Ghana Court of Appeal
were right to reverse the said finding, whether
such reversal entitled the Respondents to
judgment.

Record

3. The Defendants are a large trading Company supplying merchandise to customers in Kumasi and elsewhere and owning trading premises in Kumasi.

p.33
Ex.1. Abire became a tenant of the Defendants under a tenancy agreement dated 30th April 1953 of premises in the town of Kumasi in Ashanti.

p.6, 1.34 Abire was a trader at Kumasi and obtained goods on credit from the Defendants.

p.5, 1.6 As well as trading, Abire opened and carried on a refreshment bar, called The Coronation Bar, in partnership with two others, Manu and Awuah, in two rooms of the premises he had rented from the Defendants. The Plaintiff was a cocoa farmer and not initially concerned in this venture. 10

pp.5-6 He was a customer at the Bar and, having expressed a desire to buy, it was agreed that he should be admitted as a 4th partner. For this he paid £500 to the existing partners and subsequently provided £110.15.0 to purchase a frigidaire. He was then given an agreement prepared by a licensed letter writer certifying his interest in the business, dated the 5th April 1954 and started to carry on the bar. He found that his partners neglected the business and, having expressed dissatisfaction, his partners suggested he should buy their shares in the business, which it was agreed that he should do by paying them a further £337.10.0 by instalments of £100 at the end of July 1954 and the balance of £237.6.0 at the end of November 1954. This was recorded in an agreement dated the 1st June 1954 (Ex. B.). He was told the value of the goods he took over was £837.6.0. Though it is not recorded in Exhibit A, it was part of the transaction that he should pay to Abire £10 per month for the use of the rooms where the business was carried on and this he did, as appears from receipts given to him by Abire covering the months of June to November 1954 inclusive. 20

p.38 Ex.B. 30

pp.42-43
Exs.E1-5.

p.13 The Plaintiff paid the 1st instalment of £100 to Abire, and on being questioned by Manu and Awuah, told them he had done so. They did not believe him and sued the Plaintiff in the Native Court, but on Abire confirming that he had received this they discontinued the action. The Plaintiff paid the balance in November and was given an acknowledgment (Ex.C.) by Abire on behalf of himself and the two others. 40

p.41 Ex.D.

p.40 Ex.C.

4. Meanwhile Abire became indebted to the Defendants to an amount which he could not meet and in December 1954 the Defendants allege that they issued a Writ against him in the Supreme Court of the Gold Coast to recover the sum of £1739.15.2.

The Defendants then attached by an interim attachment on the 24th January 1955 the goods in the Plaintiff's Bar and the Court Bailiffs under the Defendants' instructions sealed up the premises where the Plaintiff had been carrying on the business. On the 26th January notice of motion was given on behalf of the Plaintiff for an order to release the attachment, but this was opposed by the Defendants and on the 5th February 1955 was refused.

p.3, 1.27

p.43

p.48

5. On the 17th February 1955 the Writ in

p.1

THE PRESENT SUIT

was issued out of The Supreme Court of the Gold Coast by the Plaintiff against the Defendants claiming an order for release of the attachment, £500 damages for wrongful attachment and alternatively £2200 damages, as to £1,200 value of goods attached and £1000 loss of profits, goodwill and general inconvenience.

The Statement of Claim dated 16th February 1955 alleged the purchase by the Plaintiff of the Coronation Bar, that he was a subtenant and that the goods had been unlawfully attached and the premises sealed up under the instructions of the Defendants.

p.3

The Defence dated 1st March 1955 denied the Plaintiff's allegations of purchase and ownership and did not admit the Plaintiff's subtenancy from Abire, against whom they alleged they had brought an action for arrears of rent.

p.4

They admitted the attachment by them and justified on the ground that in November 1954 Abire had become indebted to them for over £1800 from transactions dating back to February 1954 and alleged that any purported sale of the Coronation Bar to the Plaintiff had been made to defraud them as Abire's creditors and that there had been collusion between Abire and the Plaintiff.

6. The trial of the action took place partly in

p.5 seq.

Record

June and July 1955, when it was adjourned for a settlement, and was resumed on the 18th October 1955. Meanwhile on the 11th October 1955 the Defendants had obtained an order to release the attached property pending the determination of the suit.

pp.5-12

7. Evidence for the Plaintiff as to the acquisition of the business of the Coronation Bar was given by the Plaintiff, Abire, Awuah, Awuah's mother and as to an application for transfer to the Plaintiff of a spirit licence (for the sale of intoxicating liquor) by a Police Officer.

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It is submitted that no evidence supporting the Defendants' allegations of fraudulent assignment and collusion emerged.

p.13
pp.33-35
p.14, l.25

8. Evidence for the Defendants was given by their Chief Clerk who put in Abire's tenancy (Ex.1.) and his application for credit (Ex.2.) and deposed that he had believed the business was Abire's and that Plaintiff, Awuah and Manu were Abire's assistants. But he gave no evidence of or, it is submitted, lending any support to, the Defendants' allegations of fraudulent assignment and collusion.

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pp.15-16

9. The learned Trial Judge (Mr. Justice Quashie Idun), after referring to the Plaintiff's case as to his acquisition and carrying on of the business, said:-

"I have carefully considered the evidence of the Plaintiff and of the other witnesses he has called to prove that he had bought the business before it was attached. I have considered the conduct of Abire in the whole transaction and I have come to the conclusion that whatever the conduct of Abire has been towards the Defendants, I accept the evidence that the Plaintiff bought the business and was an innocent purchaser for value."

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He held that the damage suffered by the Plaintiff by the wrongful attachment of the business was to be calculated from the date of attachment up to the date of release on the 11th October 1955 and on this basis awarded him £669, being at the rate of £3 per day at which he assessed the amount of the profits the Plaintiff had lost, and gave judgment for the Plaintiff for that amount with costs.

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10. The Defendants appealed to the West African Court of Appeal who, on the 28th November 1956, unanimously allowed the Appeal and entered Judgment for the Defendants with costs in the Court of Appeal and in the Supreme Court.

Record

p.30, 1.44

10 The Court held that the transaction set up by the Plaintiff (and all the documents set up in support of it) were fictitious and, if the transaction were not fictitious, that it was embarked upon with intent to delay and hinder the creditors of Abire and had that effect so that it was fraudulent and void, under the Statute 13 Elizabeth Cap.5 and within the principle of Twyne's Case 3 Coke's Reports 80b.

p.30, 11.36-43

It is respectfully submitted that there was no evidence upon which the Court of Appeal could properly have arrived at this conclusion.

11. The judgment of the Court was delivered by the President Sir J. Henley Coussey. He referred to the agreement of the 5th April 1954 (Ex.A.) and found it strange that it was not stated in this document, if it were true, that Awuah and Manu had already contributed £300 capital between them and Abire £300, as Awuah had deposed.

p.27

It is submitted that there is nothing strange in this omission in a document prepared by a layman for laymen at a fee of 4/- for the original and copy.

30 The President proceeded to state that Abire had between February and November 1954 obtained from the Defendants goods on credit for over £1800. Abire himself in his evidence on the 16th June 1955 had stated that he (presumably at that date) owed the Defendants £1078.7.7 and had received a writ of summons on the 24th February 1955 (which was the same day as the Plaintiff's goods were attached) but no evidence had been given at the trial that Abire had between February and November 1954 obtained from the Defendants goods on credit for over £1800 or of any of these facts, still less that the Plaintiff had any knowledge at all of the transactions between Abire and the Defendants except that Abire was trading with the Defendants. He did not know that Abire was indebted to the Defendants when he bought the goods or that Abire had been sued in December or until his own goods had been attached. Nor did he know that Abire was indebted to the Defendants at all.

p.7, 1.23

p.11, 1.13
p.6, 1.24

Record

- p.46 12. The Defendants had obtained leave to place before the Court of Appeal as further evidence the proceedings upon the application of the Plaintiff (made in the action by the Defendants against Abire to recover moneys alleged to be due to them from Abire) to release his goods from attachment. These proceedings included an affidavit made by a Clerk of the Defendants describing some transactions between the Defendants and Abire but this affidavit nowhere states what the learned President has stated and, in any case the Deponent does not state that he made it of his own knowledge or even to the best of his knowledge and belief. For this and other reasons it is submitted that it was inadmissible in these proceedings as proof of anything adverse to the Plaintiff or favourable to the Defendants. At the time of the attachment of the Plaintiff's goods at the instance of the Defendants, the Defendants had not obtained judgment for any sum against Abire and there was no evidence that they ever did obtain judgment against him. 10
- p.28, 1.19 The President further stated that in December 1954 Defendants issued a writ against Abire for £1739.15.2 balance due for goods supplied and obtained an order for interim attachment of the goods in the Coronation Bar.
- p.4, 1.19 There was an allegation to this effect in the Defence but no evidence was given at the trial to support this allegation, though it can be presumed, from the fact that Defendants attached the Plaintiff's goods, that the Defendants had instituted a suit for an amount or value of £10 or upwards against Abire and had obtained some order to attach some goods of Abire under Order 13 of Schedule 3 to the Courts Ordinance (Cap 4 Laws of Gold Coast 1936 Revision). 30
13. The other matters which the learned President relied upon were:-
- p.28, 1.36 (1) that the Plaintiff had become a tenant of Abire without the consent of or notice to the Defendants 40
- p.28, 1.40 (2) that the Agreements 'A' and 'B' were not stamped until after the production at the trial
- p.28, 1.42 (3) that the Plaintiff did not take receipts for the sums of £500 and £110.15.0 he said he paid before Exhibit "A" was signed

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|----|---|----------------------------|
| | (4) that he did not take an inventory of the goods he said he bought | <u>Record</u>
p.29, 1.1 |
| | (5) that he did not take out a spirit licence on the 1st July 1954. | p.29, 1.2 |
| | (6) that on 11th November 1954 Awuah and Manu had sued the Plaintiff for £100, though Exhibit "C" was dated the 5th November 1954 and was a receipt from Abire for £837.6.0 which purported to evidence that such £100 had then been paid | p.29, 11. 7-30 |
| 10 | (7) the receipts for rent given by Abire to Plaintiff | p.29, 1.32 |

As to (1)

Though Abire did not inform the Defendants of his subletting to Plaintiff, there was no evidence that Plaintiff was acquainted with the terms of Abire's tenancy (though he may have been, and probably was, aware that Abire was a tenant of the Defendants) nor was he cross-examined as to his knowledge.

p.7, 1.31

p.11, 1.11

20 As to (2)

There was no evidence that the Plaintiff knew that the agreements required stamping and he was not cross-examined as to his knowledge, a knowledge which it is submitted cannot be imputed as a fact to the Plaintiff, a cocoa farmer and illiterate.

As to (3)

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|----|---|---------------|
| 30 | (c) Though Plaintiff stated in his evidence in chief that he was not given receipts, he clearly meant no other receipt than that contained in the Agreement "A" dated the 5th April 1954, which appears to have been given to him soon after. | p.5, 11.10-21 |
|----|---|---------------|

Furthermore these payments were made in the presence of Ama Adade, a sufficient witness.

p.7, 11.4-9
p.12, 11.30-36
p.8

As to (4)

As a partner engaged in the business he was necessarily aware of the partnership stock and of what he took possession of on his purchase and he was illiterate.

p.5, 11.37-42

Record

As to (5)

There was no evidence that Plaintiff was aware (if such was the case) that he should have taken out a spirit licence on the 1st July 1954 or before he made application for it and he was not cross-examined or given other opportunity of explanation.

p.7, l.26

Furthermore Abire deposed that after they (the others) had sold the business to the Plaintiff they (i.e. the others) applied for a transfer of the business into the name of the Plaintiff and were told to come in January 1955. In January 1955 the Plaintiff applied for a transfer. 10

p.11, l.25

p.15, ll.27-40

Furthermore the Trial Judge had specially considered this question of the spirit licence and records that the transaction neither had been nor could be challenged on that ground.

As to (6)

p.5, l.32

p.13, ll.6-10
and l.29

The explanation is given both by the Plaintiff and by Abire, that the amount of £337.6.0d was paid to Abire alone in the absence of the other partners and this is confirmed by the evidence of Awuah. 20

As to the dates 5th November 1954 on Exhibit C and the 11th November 1954 on Exhibit D no question was put in cross-examination either to the Plaintiff, Abire or Awuah.

As to (7)

The President did not state what adverse inference he drew from the receipts for rent. If it was that they are numbered consecutively, it is submitted that no inference could properly be drawn from that fact by itself nor was either the Plaintiff or Abire cross-examined as to this fact or as to the receipts at all. 30

14. It is humbly submitted that this appeal should be allowed for the following, among other,

R E A S O N S

1. BECAUSE at the trial in the Supreme Court the learned Trial Judge had fully and properly considered the evidence and had found that the Plaintiff was an innocent purchaser for value 40

and there were no grounds upon which this finding ought to have been disturbed:

Record

2. BECAUSE the learned trial Judge was right in holding that the Appellant was an innocent purchaser for value and not privy to any fraud, and because the Court of Appeal erred in holding the contrary:
- 10 3. BECAUSE the learned trial Judge saw and heard the witnesses, including the Appellant, whereas the Court of Appeal only examined documents, none of which were composed by the Appellant, and in respect of which he was not cross-examined:
4. BECAUSE the reasons for which the Court of Appeal reversed the said finding were in the circumstances inadequate:
5. BECAUSE there was ample evidence that the Appellant was a purchaser for value without notice:
- 20 6. BECAUSE there was no evidence of knowledge by the Appellant of the liabilities of Abire:
7. BECAUSE there was no evidence of any collusion between Abire and the Appellant to hinder or defraud the creditors of Abire:
8. BECAUSE it is apparent from the exhibits that the Appellant is illiterate:
9. BECAUSE the Court of Appeal failed to give due weight to the effect of the Appellant's illiteracy on his understanding of the documents involved in the transaction:
- 30 10. BECAUSE the sale to the Appellant was by Abire, Awuah and Manu of their partnership interests and not by Abire of assets belonging to him alone:
11. BECAUSE there was no evidence that any of the assets attached were assets in which at the time of the attachment or at any time Abire had had an interest:
- 40 12. BECAUSE even if the Appellant's purchase of the business was voidable, it remained valid unless

Record

and until set aside by the Court:

13. BECAUSE the Appellant's purchase of the business has not been set aside by any Court:
14. BECAUSE the interim attachment of the Appellant's goods and the closure of his business at the instance of the Respondents was unlawful and the Appellant was entitled to damages.

J.R. BISSCHOP.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE GHANA COURT OF APPEAL

B E T W E E N:

KOJO ASANTE (Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE DE L'AFRIQUE
OCCIDENTALE (Defendants)
Respondents

CASE FOR THE APPELLANT

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors and Agents for the
Appellant.