SCHUMACHER & STRAUMANN v. 23rd February, 1922.

HANNAH WILSON alias WAKJKA GBEE - *Appellant.*

v.

JOHN LEWIS alias SERAH - - - - *Respondent.*

Wrongful admission of evidence—Objection not raised in Court below—Decision against weight of evidence—Presumption that decision of Court below on facts was right, must be displaced by Appellant.

The Court of Appeal refused to review the admissibility of certain documentary evidence, objection to the admission of which had not been taken in the Court below, and held that the Appellant had not satisfied the onus which lay upon him to displace the presumption that the decision of the Court below, on the facts, was right.

Appeal from a judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

Betts for Appellant cites:—

Powell on Evidence, 9th Edition, p. 249.

Sec. 16 of the General Registration Ordinance, 1905, (No. 31 of 1905).[1]

Sec. 22 of the Supreme Court Ordinance, 1904, (No. 14 of 1904).[2]

Montgomerie v. Wallace James, L.R. (1904), A.C., p. 73.

Graham for Respondent cites:—

8 & 9 Vict. c. 13.

McDONNELL, Acting J.

In this case three grounds of appeal have been filed—of these three the third has been abandoned and can, in consequence, be ignored.

Of the other two grounds the first is that the learned Chief Justice in the Court below wrongly received in evidence the office copy of a Deed of Indenture in reference to the property in dispute produced and tendered by the Plaintiff—Arguments were addressed to us by counsel for the Appellant on this point, but I am of opinion that we are governed by the ruling of Cottenham, L.C., in the case of Kay *v.* Marshall, 7 Clark and Finelly, page 261, 8 English Reports, page 102, where he stated that the House

[1] Now Cap. 89, sec. 16, Vol. I, p. 683.
[2] Now Cap. 205, sec. 22, Vol. II, p. 1421.

of Lords " will not permit parties upon appeal to raise an objec-
" tion which they did not think proper to raise before and on
" which they did not obtain judgment of Court below."

L.
McDONNELL,
ACTING J.

The notes of evidence show that the Appellant's counsel objected to the document being received owing to there being no notice given to the opposite party under section 19 of Ordinance 31 of 1905—the General Registration Ordinance, 1905—and that the objection was waived.

There is no record on the notes—by which I hold we are bound—of the present objection having also been taken, I am of opinion therefore that this ground of appeal must fall to the ground on the authority which I have just cited.

The second ground of appeal is that the decision of the trial Judge was contrary to the weight of evidence. As to this I would cite the authority of Lord Esher, M.R., in the Colonial Securities Trust Co. *v.* Massey, 65 L.J. (Q.B.), page 101.

> " Where a case tried by a judge without a jury comes
> " to the Court of Appeal, the presumption is that the
> " decision of the Court below on the facts was right and
> " that presumption must be displaced by the Appellant.
> " If he satisfactorily makes out that the Judge below was
> " wrong, then, inasmuch as the appeal is in the nature of a
> " rehearing, the decision should be reversed; if the case
> " is left in doubt, it is clearly the duty of the Court of
> " Appeal not to disturb the decision of the Court below."

I can find nothing here to displace the presumption referred to nor can it even be said that the case is left in any doubt. The fact that at the close of the case the learned Chief Justice ordered that the whole of the papers in the case should be impounded and that the notes of evidence should be forwarded to the Law Officers of the Crown is a clear indication of the view which he took of the evidence given in the Court below on behalf of the Appellants in this Court and, in this connection, I will cite one more authority from the judgment of Lord Robson in Khoo Sit Hoh *v.* Lim Thean Tong at page 325, L.R., Appeal cases, 1912.

> " The case was tried before the Judge alone; it turned
> " entirely on questions of fact, and there was plain perjury
> " on one side or the other. Their Lordship's Board are
> " therefore called upon as were also the Court of Appeal
> " to express an opinion on the credibility of conflicting
> " witnesses whom they have not seen, heard or questioned.
> " In coming to a conclusion on such an issue their Lordships

" must of necessity be greatly influenced by the opinion of the
" learned trial judge, whose judgment is itself under review.
" He sees the demeanour of the witnesses, and can estimate
" their intelligence, position and character in a way not
" open to the Courts who deal with later stages of the case.
" Moreover, in cases like the present where those Courts
" have only his note of the evidence to work upon there are
" many points which, owing to the brevity of the note,
" may appear to have been imperfectly or ambiguously dealt
" with in the evidence, and yet were elucidated to the
" Judge's satisfaction at the trial, either by his own questions
" or by the explanations of counsel given in the presence of
" the parties. Of course it may be that in deciding between
" witnesses he has clearly failed on some point to take ac-
" count of particular circumstances or probabilities material
" to an estimate of the evidence, or has given credence to
" testimony, perhaps plausibly put forward, which turns
" out on more careful analysis to be substantially incon-
" sistent with itself or with indisputable fact, but except in
" rare cases of that character, cases which are susceptible of
" being dealt with wholly by argument, a Court of Appeal
" will hesitate long before it disturbs the findings of a trial
" Judge based on verbal testimony."

None of the arguments addressed to us satisfy me that this is one of those rare cases contemplated in that judgment and I see no reason to cavil at the conclusion come to upon the evidence by the learned Chief Justice.

I therefore give judgment for the Respondent with costs.

PURCELL, C.J.

I agree.

SAWREY-COOKSON, J.

I agree.