

28th January,
1923.

ALFRED OLUKUTUN WILLIAMS - Appellant.

v.

H. C. BANKOLE-BRIGHT - Respondent.

*Privity between parties necessary to a contract—Consent Order—
Effect of superadding command of a Judge upon a contract.*

The facts of this case are sufficiently set out in the judgment.

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

Wright for Appellant cites:—

Anson, on Contracts, 12th Ed., p. 249.

Leake, on Contracts, 6th Ed., p. 296.

Annual Practice, 1905, Part II, p. 356.

Price v. Easton, 4 B. & A., p. 433.

Tweddel v. Atkinson, 30 L.J., Q.B., p. 265.

Eley v. The Positive Government Security Co., 1 Exch.
Div., p. 89.

In *re* English and Colonial Produce Co. (1906), 2 Ch.,
p. 435.

N. J. P. M. Boston for Respondent cites:—

Williams, on Executors, p. 1,081.

Clegg v. Rowland, L.R. (1867), 3 Eq., pp. 368, 372,
374.

PURCELL, C.J.

This is an appeal from the judgment of the Chief Justice delivered on 4th October, 1922.

There has been considerable litigation with regard to the estate of Benjamin Richard Williams (deceased), and in order to understand this matter rightly, it will be necessary, as briefly as possible, to review the various steps taken which culminated in the present action.

Benjamin Richard Williams died as long ago as the 4th of November, 1913, and “by an Order of this Court, bearing date the 7th day of October, 1920, made in the matter of the estate of the said Benjamin Richard Williams (deceased), the said Court ordered (amongst other things) that the Curator of Intestate Estates should administer and sell the real and personal estate of the said Benjamin Richard Williams (deceased) left unadministered, and that after satisfying certain payments in the said

Order mentioned, the said Curator of Intestate Estates should distribute the residue of the purchase money amongst the persons beneficially interested in the said estate, and pay into Court the shares of such of the said persons as were infants.

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Robert Claudius Percy Williams was one of the natural and lawful children and next-of-kin of the said deceased, and a party beneficially entitled to a distributive share in the estate of the said Benjamin Richard Williams (deceased).

Robert Claudius Percy Williams, by deed bearing date the 12th day of December, 1919, in consideration of the love, goodwill and affection which he, the said Robert Claudius Percy Williams had and bore for, and towards the Appellant, his nephew, and also in consideration of the sum of £150 paid to the said Robert Claudius Percy Williams, granted and conveyed to the Appellant, his heirs and assigns, all his interest in the estate of the said Benjamin Richard Williams (deceased).

This deed was proved and registered on the 10th day of August, 1920, and the Appellant's solicitor applied to the Curator of Intestate Estates for payment of the distributive share of Robert Claudius Percy Williams in the estate of Benjamin Richard Williams (deceased), amounting to about £500.

On 14th July, 1921, Mr. C. E. Wright (Appellant's solicitor) received the following letter from the Curator:—

“ Sir,

“ ESTATE OF B. R. WILLIAMS—DECEASED.

“ I have the honour to acknowledge receipt of your letter
“ of yesterday's date, and to inform you that I have with-
“ held acting on the Indenture, dated the 12th December,
“ 1919, for the reason that I have received a letter from a
“ Mr. Eldred Williams, a beneficiary in the above estate im-
“ pugning the document, though *prima facie* it appears to
“ me a valid one. It is intended by me, in order to remove
“ all doubts, to take the opinion of the Court as to the validity
“ of the document, but owing to pressure of other business,
“ I have as yet been unable to do so.

“ 2. If, however, you intend making an application to
“ the Court, I can have no objection.

“ I have the honour to be, Sir,

“ Your obedient Servant,

“ J. R. WRIGHT,

“ *Curator of Intestate Estates,*”

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Steps were taken in due course to test the validity of the deed of gift, and the matter was referred by the Acting Chief Justice to the Master of this Court (Mr. Fawcett), who dealt with the matter and ultimately made the following report:—

“ In pursuance of directions given to me by His Honour, Michael Francis Joseph McDonnell, Acting Chief Justice, I hereby certify that the result of the enquiries which have been taken and made in pursuance of the Order made in this matter, dated the 26th day of October, 1921, is as follows:—

“ The Petitioner and Respondent have attended by their respective solicitors.

“ 1. The Deed dated 12th December, 1919, and made between Robert Claudius Percy Williams of the one part and the Petitioner of the other part, was duly executed by the said Robert Claudius Percy Williams.

“ 2. The said Deed was not executed under any undue influence of the said Petitioner.

“ The evidence produced in this enquiry consists of:— Letters of Administration under the seal of the estate of the said Robert Claudius Percy Williams; the Deed of Conveyance dated the 12th day of December, 1919, and made between the said Robert Claudius Percy Williams of the one part and the said Petitioner of the other part; a number of accounts due from the estate of the said Robert Percy Claudius Williams, deceased; and various documents purporting to be signed by the said Robert Percy Claudius Williams, and the oral evidence *viva-voce* of Eldred Egerton Williams, Randolph Roberts, Alfred Ellinton Olukutun Williams, Sylvanus Juxon Smith, Peter Abdiel Nicolls and Claude Benjamin Davies.

“ Dated this 4th day of April, 1922.”

Ultimately, on June last, the Appellant petitioned the Court as follows:—

“ Your Petitioner therefore humbly prays:—

“ 1. That the Curator of Intestate Estates pay to your Petitioner all sum or sums of money due to the said Robert Claudius Percy Williams, deceased, as his distributive share and interest in the estate of the late Benjamin Richard Williams, deceased.

“ 2. Or that such further Order may be made in the premises as to this Honourable Court may seem meet.

“ And your Petitioner as in duty bound will ever pray.

“ Dated 27th day of July, 1921.”

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And the matter was subsequently settled between the parties, the following consent Order was made:—

“ The 26th day of June, 1922.

“ Upon the further hearing of the petition of Alfred Olukutun Williams, of Freetown, in the Colony of Sierra Leone, at present residing at Boia, in the Protectorate of the Colony aforesaid, Civil Service Officer, on the 27th day of July, 1921, preferred to this Honourable Court, and upon hearing Mr. Claude Emile Wright, Counsel for the Petitioner, and Mr. Claudius Dyonisius Hotobah During, of Counsel for Eldred Egerton Williams, the administrator of the personal estate of Robert Claudius Percy Williams, deceased, and upon reading the said petition, the Order made on the original hearing thereof dated the 26th day of October, 1921, the Master's certificate dated the 4th day of April, 1922, and the Petitioner, by his Counsel undertaking to pay all valid claims against the estate of the said Robert Claudius Percy Williams and all parties by their Counsel consenting to the following Order, this Court doth order that the Curator of Intestate Estates do pay to the said Petitioner, Alfred Olukutun Williams, all sum or sums of money due to the said Robert Claudius Percy Williams, deceased, as his distributive share and interest in the estate of the late Benjamin Richard Williams, deceased, in the hands of the said Curator of Intestate Estates, and that the said Petitioner do pay to the said Eldred Egerton Williams, as administrator, as aforesaid, the sum of £92. 19s. 6d., and the further sum of £30 for his Solicitor's costs, as agreed upon, making together the sum of £122. 19s. 6d.”

In consequence of one of the terms of this Consent Order—that is, by reason of the fact that Appellant undertook to pay all valid claims against the estate of Robert Claudius Percy Williams—the Respondent brought the present action, and the sole question for decision here is whether in law such an action is maintainable against the Appellant.

In view of the facts which I have just recited, I am very doubtful indeed whether this £500 was really ever part of the

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estate of Robert Claudius Percy Williams. I am inclined to agree with the view taken by the Curator, as expressed in his letter of July 14th, 1921, already referred to.

Be that as it may, I am quite clear, now that all the facts are fully before me, that in law no action is maintainable against the Appellant by reason of the undertaking given to the Court, but that the administrator is the proper person to sue with regard to any claims set up as against this deceased man's estate. At the same time I regret that at the time when this Consent Order was drawn up, this fact was not made apparent to me, as, had it been so, I should not have allowed the order to stand in its present form.

For these reasons I come to the conclusion, and with considerable regret, that this appeal must be allowed, with costs, and as a consequence the judgment of the Court below should be set aside, with costs.

McDONNELL, Acting J.

The contract in this case was between Robert Claudius Percy Williams, deceased, and Dr. Bright, the Respondent.

There has never been any privity between Alfred Olukutun Williams, the Appellant, and the Respondent. The Judge's Order of 26th June, 1922, cannot create a contractual relationship between Appellant and Respondent. I am of opinion that judgment must be given for the Appellant, with costs.

SAWREY-COOKSON, J.

I wish only to say that it at once became clear to me, from the arguments advanced by Mr. Wright, that there was no such privity to any agreement in this case as would render the present Defendant liable to be sued thereon, and for that reason alone this appeal must be allowed, with costs.