made the gift in question not her spontaneous act or that it was not made under circumstances which enabled her to exercise an independent will.

In the circumstances the plaintiff's claim is dismissed with costs.

Judgment for the defendant.

GABISI and OTHERS *v.* ALHARAZIM and OTHERS

COURT OF APPEAL (Ames, P., Dove-Edwin, J.A. and Marke, J.):
November 16th, 1964
(Civil App. No. 6/64)

[1] **Civil Procedure—appeals—appeals against ex parte judgments—appeal lies from Supreme Court to Court of Appeal:** An appeal lies to the Court of Appeal from a judgment of the Supreme Court obtained on an *ex parte* application (page 179, lines 18–26).

[2] **Civil Procedure—judgments and orders—ex parte orders—not to be set aside as if obtained in absence of party:** While the Supreme Court may set aside a judgment obtained in the absence of a party, it cannot so deal with a judgment or order obtained on an *ex parte* application, which in this respect is no different from any other judgment or order of the court not obtained in the absence of a party (page 179, lines 14–25).

[3] **Civil Procedure—review—Supreme Court has no jurisdiction to review own judgments or orders:** The Supreme Court has no jurisdiction to review, rehear or reconsider its own judgments or orders (page 179, lines 18–25).

[4] **Courts—Court of Appeal—jurisdiction—appeals from ex parte judgments—court has jurisdiction:** See [1] above.

[5] **Courts—Supreme Court—review—no jurisdiction to review own judgments or orders:** See [3] above.

The appellants applied to the Supreme Court by motion on notice to the respondents to set aside an order of the court obtained by the respondents on an *ex parte* summons and to rehear the matter.

The appellants filed their motion after the *ex parte* order had been drawn up and filed. The motion was dismissed on the ground

that the Supreme Court had no jurisdiction to discharge the *ex parte* order after it had been drawn up and perfected. On appeal, the appellants contended that this was erroneous in law.

Case referred to:

(1) *Charles Bright & Co., Ltd.* v. *Sellar,* [1904] 1 K.B. 6; (1903), 89 L.T. 431, *dictum* of Cozens-Hardy, L.J. considered.

C. N. Rogers-Wright for the appellants;
Candappa for the respondents.

MARKE, J.:

This is an appeal from an order of Luke, Ag. J. dismissing a motion for an order that—

(a) execution of the order made *ex parte* on February 28th, 1964 be stayed;

(b) leave be granted to apply for a reconsideration of the whole proceedings;

(c) the order made *ex parte* on February 28th, 1964 be set aside or discharged;

(d) the matter be adjourned into court for further and better evidence to be heard and a decision taken; and

(e) the respondents be restrained from interfering in any way with the set-up and organisation of the Fourah Bay mosque or the administration of the trust thereof until the final determination of this matter.

After we had heard the arguments of counsel for the appellants and for the respondents we dismissed the appeal with costs on October 30th, 1964, and promised to give our reasons later. The court now gives its reasons for dismissing the appeal.

The respondents in this appeal on February 28th, 1964, obtained on an *ex parte* originating summons which came before the Chief Justice, an order appointing them trustees of a mosque in Davies Street in Freetown under s.25 of the Trustee Act, 1893, and vesting in them by virtue of s.26 of the same Act the mosque hereditaments in Davies Street. The appellants on March 19th, 1964, filed the notice of motion referred to above. It may be mentioned in passing that between the making of the order on February 28th, 1964, and the filing of the notice of motion on March 19th, 1964, the order made on February 28th, 1964, had been drawn up and filed.

The only ground of appeal before us was as follows:

"That the learned trial judge erred in law in holding that he had no jurisdiction to entertain the instant application to discharge the order made on an application *ex parte* on the ground that the order had been made, drawn up and perfected."

It does not appear to us relevant to this appeal to consider whether the order made on February 28th, 1964, by the Chief Justice was rightly or wrongly made. That order at all events, not having been appealed against, is still an order of the Supreme Court. What the appellants asked Luke, Ag. J. to do was, in effect, to set aside that order and rehear the application for the appointment of trustees and vesting in them the mosque hereditaments, on the ground that they did not know of the application before the Chief Justice to appoint new trustees and vest in them the mosque hereditaments.

It has to be borne in mind that there is a difference between judgments obtained in the absence of the other party and judgments obtained on an *ex parte* application. In the case of the former, the judgment obtained in the absence of the other party could be set aside and relisted for hearing. In the case of the latter—that is to say a judgment or an order on an *ex parte* application—the position is quite different.

Since the Supreme Court of Judicature Act, 1873, which is still applicable in this country, the old chancery practice of a bill of review has been abolished and the Supreme Court or any judge thereof has not now any jurisdiction to review, rehear or reconsider an order or judgment of the court, as that power has been given to the appellate jurisdiction of the Supreme Court.

As Cozens-Hardy, L.J. states in *Charles Bright & Co., Ltd.* v. *Sellar* (1) ([1904] 1 K.B. at 11; 89 L.T. at 432):

"It is important to remember that in the Court of Chancery, until comparatively modern times—that is to say until the reign of Charles II.—there was no appeal from the Lord Chancellor to any higher tribunal, but an opportunity was afforded of correcting decisions by means of a rehearing, which might be before the same or any other judge. This right of rehearing could, however, only be exercised before a decree or order had been enrolled, up to which time it was not considered to be, in the full sense of the term, a record of the Court. If an enrolled order was bad on the face of it, a means existed for correcting such an order by a bill of review."

The logical consequence of this is that Luke, Ag. J. was right in holding that he had no jurisdiction to hear and determine the motion.

On these considerations we dismissed the appeal with costs assessed at Le40.

AMES, P. and DOVE-EDWIN, J.A. concurred.

Appeal dismissed.

NEW INDIA ASSURANCE COMPANY LIMITED *v.* ZABIAN

COURT OF APPEAL (Ames, Ag. P., Dove-Edwin, J.A. and Cole, J.): November 16th, 1964
(Civil App. No. 8/64)

[1] Agency—insurance agent—non-disclosure—imputation to principal of agent's knowledge: Where an agent of an insurance company becomes aware of material facts concerning a proposal, which ought to be disclosed, the policy is not invalidated by the non-disclosure of these material facts in the proposal form: the knowledge of the agent is the knowledge of the company (page 184, lines 29–35; page 185, lines 13–33).

[2] Estoppel — representation — insurance — insurer's approval of policyholder's accounting system—estoppel from relying on book-keeping endorsement to policy: Approval by an insurer of the way in which a policyholder of the insurer conducts his accounting system estops the insurer from relying on a book-keeping endorsement in the policy requiring the policyholder to maintain certain standards as a condition precedent to the right to recover anything under the policy (page 185, lines 13–39).

[3] Insurance — conditions of policy—condition precedent—book-keeping duties of policyholder—estoppel: See [2] above.

[4] Insurance — conditions of policy—condition precedent—book-keeping duties of policyholder—request for further information: If a book-keeping endorsement in an insurance policy not only requires a policyholder to maintain certain standards as a condition precedent to the right to recover under the policy, but also enables the insurer to request further necessary information in the event of a claim, this information must be limited to what is reasonable in the circumstances (page 185, lines 13–18; page 185, line 40—page 186, line 3).

[5] Insurance — non-disclosure—agent's knowledge of non-disclosure—imputation to principal of agent's knowledge: See [1] above.