

quashed. The trial being a nullity there is no reason why the same or a similar charge based on the same facts should not again be preferred against the appellant.

*Appeal allowed.*

5

---

ABOUD v. MANDI

Supreme Court (Tew, C.J.): June 15th, 1931

- 10 [1] British Commonwealth — protectorates — status — protectorates not within British dominions: The word “dominions” in the Supreme Court Rules (*cap.* 205), O.XI, r. 5 does not include a Protectorate and so when the defendant to a writ of summons, who is not a British subject, is resident in the Gambia Protectorate, notice of the writ and not the writ itself should be served upon him (page 242, lines 32–41).
- 15 [2] Civil Procedure — writ of summons — service outside jurisdiction — notice of writ, not writ itself, to be served on defendant, not British subject, within a Protectorate — Protectorate not within British dominions: See [1] above.
- 20 [3] Courts — Supreme Court — jurisdiction — civil jurisdiction — contracts — court has jurisdiction over contract to be performed within Sierra Leone: The general rule that a debtor must follow his creditor and pay where his creditor resides applies to a contract whereby one party agrees to sell the other's goods abroad and remit the proceeds of sale to him; and so, in the absence of a definite agreement by the parties as to the mode of payment, when the creditor's country of residence is
- 25 Sierra Leone remittance should be made there, bringing the contract within the jurisdiction of her courts (page 242, lines 11–31).
- 30 [4] International Trade — conflict of laws — jurisdiction — contracts — Sierra Leone courts have jurisdiction over contracts to be performed there — unless contrary provision, agreement to remit to seller in Sierra Leone purchase price of goods sold abroad is performance in Sierra Leone: See [3] above.

The plaintiff brought against the defendant an action for breach of contract.

35 The plaintiff, who was resident in Sierra Leone, made a contract with the defendant, a foreigner, whereby the defendant agreed to sell the plaintiff's goods abroad and to remit the proceeds of sale to him. The defendant usually remitted the money to Freetown although on one occasion the plaintiff had received payment in the Gambia.

40 When the plaintiff instituted the present proceedings for breach of contract he obtained leave to issue the writ and serve it at

S.C.

Bathurst or elsewhere in the Colony of the Gambia, but when the writ was received in Bathurst the defendant was in the Gambia Protectorate and the Supreme Court gave leave to serve the writ there.

The defendant applied to have the writ set aside contending that — (a) the contract of which breach was alleged was not one which was to be performed within the jurisdiction of the courts of Sierra Leone and that no order should therefore have been made granting leave to serve the writ in the Colony of the Gambia, and (b) since the Gambia Protectorate was not within the British dominions and the defendant was not a British subject, under the Supreme Court Rules (*cap.* 205), O.XI, r. 5, service of the writ itself was improper since only notice of it should have been served on him.

The court ordered that the writ should be set aside.

Cases referred to:

- (1) *Comber v. Leyland*, [1898] A.C. 524; (1898), 79 L.T. 180, distinguished.
- (2) *Charles Duval & Co., Ltd. v. Gans*, [1904] 2 K.B. 685; (1904), 91 L.T. 308, applied.

Legislation construed:

Supreme Court Rules (Laws of Sierra Leone, 1925, *cap.* 205), O.XI, r. 5: “When the defendant is neither a British subject nor in the British dominions, notice of the writ, and not the writ itself, is to be served upon him.”

TEW, C.J.:

The plaintiff obtained leave under the Supreme Court Rules (*cap.* 205), O.XI to issue the writ and serve it at “Bathurst or elsewhere in the Colony of the Gambia.” At the time when the writ was received at Bathurst, the defendant was in the Gambia Protectorate, and the Judge of the Supreme Court gave leave to serve the writ in the Gambia Protectorate.

The defendant now contends — (a) that the contract of which a breach was alleged was not to be performed within the jurisdiction of this court, and that the order granting leave for service in the Colony of the Gambia should be set aside; (b) that, the defendant not being a British subject, only notice of the writ could be served in the Protectorate of the Gambia, which is not within the British dominions, and that the service of the writ should be set aside.

As to the first point, the defendant relied chiefly upon the case of *Comber v. Leyland* (1). There goods were shipped from England to the defendant in Brazil, and he contracted to sell them and remit the proceeds to the plaintiff in England. The House of Lords held that the defendant's contract would have been performed as soon as he remitted the proceeds of sale, and that therefore the contract was not one which was to be performed wholly within the jurisdiction, that is, in England. The defendant further relied upon the fact that on one occasion, at least, the plaintiff had received payment at Bathurst.

On the other hand it was argued that there had been no stipulation as to the place where payment was to be made, and that the proper place was Freetown, where the plaintiff resided. The plaintiff had exhibited to his affidavit numerous letters showing that the defendant had frequently remitted money to Freetown in payment for the goods which the plaintiff shipped to him in Bathurst, and has shown that on one occasion he went to Bathurst because he was alarmed at not having received payment and accepted a certain sum there. In *Charles Duval & Co., Ltd. v. Gans* (2) the circumstances were similar to those in the present case, and it was there held that leave to serve notice of the writ out of the jurisdiction was properly given. *Comber v. Leyland* (1) was referred to by Stirling, L.J. ([1904] 2 K.B. at 691) as — "... a case of a somewhat special character. There was a definite agreement ... as to the mode of payment for the goods." [These words do not appear in the report of the case at 91 L.T. 308.] In the absence of any such special agreement, it was held that the ordinary rule must apply (*ibid.*, at 690; 91 L.T. at 310) — "that the debtor must follow his creditor, and must pay where his creditor is." I cannot in any way distinguish the present case, and the application must fail on the first point.

On the second point the defendant must succeed. Under O.XI, r. 5, where the defendant is not a British subject and service is not to be effected within the British dominions, notice of the writ, and not the writ itself, must be served.

Mr. Wright argued that the word "dominions" in this rule must be understood to mean any country within which the King's writ will run. I have much sympathy with that argument and none at all with the application; but I have no doubt that the word "dominions" must be construed in its usual meaning and does not include a Protectorate.

The writ is set aside. There will be no order as to the costs of this application.

*Writ set aside.*

5

NAYMOINOH v. SAWYERR; KPANNEH v. SAWYERR

Supreme Court (Tew, C.J.): July 7th, 1931

- [1] Courts — contempt of court — jurisdiction — Kroo Tribal Ruler has no inherent jurisdiction to punish contempt: A Tribal Ruler has no inherent jurisdiction to punish a contempt of court and may impose only such fines as are prescribed for breach of rules made under the Tribal Administration (Colony) Ordinance (*cap.* 217); although the Kroo Tribal Ruler has power under the Tribal Administration (Freetown) (Kroo) Rules (*cap.* 217), r. 12 to impose a fine for contravention of the rule that parties to a dispute shall abide by the decision of the Tribal Ruler, this does not empower him to impose a fine for a party's insulting behaviour in court or for his mere statement that he does not intend to comply with the Tribal Ruler's decision (page 244, lines 20—31; page 245, lines 11—21). 10 15
- [2] Courts — native courts — jurisdiction — no inherent jurisdiction to punish contempt of court — Kroo Tribal Ruler may fine only for breach of Tribal Administration (Freetown) (Kroo) Rules (*cap.* 217) — no fine for insulting behaviour in court or for statement of intention not to abide by decision: See [1] above. 20

The appellants were summoned before the police magistrate to show cause why they should not pay fines imposed upon them by the respondent Tribal Ruler. 25

In earlier proceedings before the respondent the appellants had behaved in an insulting manner in the court and had stated that they did not intend to comply with the Tribal Ruler's decision. The respondent fined each appellant for contempt of court and on their failure to pay the fines they were summoned before the police magistrate to show cause why they should not pay. 30

The police magistrate ordered that each appellant should pay the fine imposed upon her. The appellants appealed contending that the fines should be cancelled since the respondent had no inherent jurisdiction to impose a fine for contempt of court, and that although he had power under the Tribal Administration (Freetown) (Kroo) Rules (*cap.* 217), r. 12 to impose a fine for contravention of the rule that the parties to any dispute shall abide by the decision of the Tribal Ruler, insulting behaviour or 35 40