

ABSI v. MENDS

Supreme Court (Webber, C.J.): June 25th, 1934

5 [1] Agency — duties and liabilities of principal — liability in contract —  
principal liable to repay money borrowed without authority by agent  
but applied in discharging principal's legal liabilities: If an agent borrows  
money without the authority of his principal but in fact applies the  
money in discharging the legal liabilities of the principal, the lender is  
entitled in equity to stand in the same position regarding the money so  
applied as if it was originally borrowed from him by the principal, and  
10 may therefore sue the latter for its repayment (page 363, lines 34—40).

[2] Civil Procedure — parties — defendants — principal proper defendant in  
action to recover money borrowed by agent without authority but  
applied in discharging principal's legal liabilities: See [1] above.

15 [3] Money — loans — repayment — principal liable to repay money  
borrowed without authority by agent but applied in discharging  
principal's legal liabilities: See [1] above.

The plaintiff brought an action against the defendant to  
recover money collected on his behalf by the defendant's agent.

20 The plaintiff made an agreement with the defendant whereby  
his produce was to be transported in the defendant's launch to  
Bissau where the purser of the launch would collect from one  
Paris the purchase price on behalf of the plaintiff.

25 During the journey it became necessary to buy petrol for the  
launch and having inadequate funds the purser paid for it partly  
out of the plaintiff's money received from Paris.

30 The defendant ultimately paid the plaintiff only part of the  
sum collected and the plaintiff brought the present proceedings  
to recover the balance. In his defence the defendant contended  
*inter alia* that he was not liable to repay that part of the money  
which had been spent by his agent, the purser of the launch, since  
although it had been used for meeting an obligation of the  
defendant it had been borrowed without his authority.

The court gave judgment for the plaintiff.

35 Case referred to:

(1) *Bannatyne v. MacIver*, [1906] 1 K.B. 103; [1904—7] All E.R. Rep.  
425, applied.

WEBBER, C.J.:

40 The plaintiff's claim is to recover from the defendant the sum  
of £101.13s.10d. being the balance of an amount paid to one

E.J. Aubee, the purser on board the launch of the defendant, for and on behalf of the plaintiff.

In giving particulars of his claim, the plaintiff alleged that he and the defendant entered into an agreement in January 1933, by which the defendant was to carry to Bissau 120 baskets of kola nuts and to bring back the sum of £300, for which services he was to be paid.

It is further alleged that in pursuance of this agreement the plaintiff delivered to the defendant the kola nuts and gave an authority to the purser of the defendant's launch to receive from one Assad Paris of Bissau the sum of £300, that the sum of £200 was paid to the said Aubee but only £66.16s.2d. has been paid to the plaintiff.

The whole point in this case rests on the question as to whether on the evidence I can find that such an agreement as set forth above was in fact made. It is a very simple issue of fact and I have no hesitation in saying that the plaintiff's case has been firmly established. I believe absolutely the witnesses for the plaintiff, all upright and respectable witnesses, and I disbelieve to a very great extent the evidence of the defendant. There is nothing in the documentary evidence, including the document labelled Exhibit G, which might lead one to regard it with suspicion and I absolve Aubee from all imputations of fraud cast upon him by the defendant's counsel.

The £80 was in respect of an emergency necessitating the purchase of petrol for the defendant's launch and Exhibit G truly represented the transaction although stamps covered part of it. It was a transaction made by Aubee for Mends and as it was the plaintiff's money which was used for the purpose it was rightly entered "on account of Absi." The only question of law raised in this case was whether the claim as laid is supported by the evidence and whether Paris was not the proper person to sue Mends in respect of the £80 supplied by him.

The principle laid down in *Bannatyne v. MacIver* (1), a principle adopted even before that case, applies here, namely to the extent to which money borrowed should be found on enquiry to have been in fact applied in paying the legal debts and discharging the obligations of a defendant, a plaintiff was entitled in equity to stand in the same position as if that amount had been originally borrowed by the defendant. It seems to me to be clear on the facts that the money which was supplied to Aubee by Paris for the use of

the plaintiff as per written authority was borrowed by Aubee as the agent of the defendant and actually applied by him in payment of the defendant's liability.

I find in favour of the claim and give judgment for £101.13s.10d. with costs against the defendant.

*Judgment for the plaintiff.*

# JALLOH v. PARAMOUNT CHIEF LAMA

Circuit Court (Macquarrie, J.): July 12th, 1934

[1] Conflict of Laws — jurisdiction of courts — civil suits between natives — jurisdiction of Circuit Court ousted by Protectorate Courts Jurisdiction Ordinance, 1932, s. 9 — proof of native law unnecessary when proceedings based on commonplace human action: When civil proceedings between natives before the Circuit Court are based upon a commonplace human action the court may be satisfied without evidence of native law or the assistance of native assessors that the case is “triable by native law” within the Protectorate Courts Jurisdiction Ordinance, 1932, s. 9 and that it does not therefore fall within the jurisdiction of the court (page 366, lines 7—17).

[2] Courts — Circuit Court — jurisdiction — civil suits between natives — jurisdiction ousted by Protectorate Courts Jurisdiction Ordinance, 1932, s. 9 — proof of native law unnecessary when proceedings based on commonplace human action: See [1] above.

[3] Courts — native courts — jurisdiction — civil jurisdiction — jurisdiction over civil suits between natives conferred by Protectorate Courts Jurisdiction Ordinance, 1932, s. 9 — proof of native law in Circuit Court unnecessary to oust jurisdiction of that court when proceedings based on commonplace human action: See [1] above.

The plaintiff brought an action to recover money paid to the defendant as a result of a fraudulent misrepresentation.

A preliminary objection was taken by the defendant that the Circuit Court had no jurisdiction to hear the case since, both parties being natives, it fell within s. 9(1) of the Protectorate Courts Jurisdiction Ordinance, 1932 and should therefore be heard by a native court. The court did not hear evidence of native custom nor did it have the assistance of native assessors.

The objection was sustained and the action was struck out.

Legislation construed:

Protectorate Courts Jurisdiction Ordinance, 1932 (No. 40 of 1932), s. 9: