

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:

“The Native Courts shall consist of the Native Courts as now existing according to native law and custom; and such Courts shall have jurisdiction according to native law and custom to hear and determine —

(1) all civil cases triable by native law arising exclusively between natives, other than a case between two or more Paramount Chiefs or Tribal Authorities involving a question of title to land, or a case in which a debt owing to him in connection with his trade is claimed by the holder of any trading licence. . . .”

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s. 39(1): “The Circuit Court shall have jurisdiction to hear and determine all causes and matters which, by virtue of the provisions of this or any other Ordinance, are not cognizable by any other Court under this Ordinance. . . .”

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Beoku-Betts for the plaintiff;
Barlatt for the defendant.

MACQUARRIE, J.:

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In this case the plaintiff claims from the defendant the repayment of the sum of £181, being the difference between the sum of £250 paid by him to the defendant, and the sum of £69 repaid by the defendant to the plaintiff, on grounds which are stated in the plaint note, para. 4 as follows:

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“The plaintiff has been removed from the office of Alimamy of the Foulahs aforesaid and the said sum of £250.0s.0d. was found not to be due by native custom and the representations fraudulent.”

Objection was taken by Mr. Barlatt, for the defendant, that this court had no jurisdiction as the case was within s. 9(1) of the Protectorate Courts Jurisdiction Ordinance, 1932 and was, by s. 39, for that reason not within this court’s jurisdiction. The parties are natives and the case is of a civil nature; the only question is whether it is “triable by native law” within the meaning of s. 9(1).

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No evidence was tendered as to native custom. Mr. Barlatt argued that the native courts were invested with the original jurisdiction exercised by the chiefs before the main courts were constituted and almost went to the length of saying that any civil case between natives was within their jurisdiction. He also pointed to the references in the plaint to native custom.

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Mr. Betts objected that notice should have been given of this objection, but did not press it. In any case, I do not think notice is necessary of such an objection in the Circuit Court.

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He also argued that the action was one under English law and not "triable by native law." One has to assume a good deal in favour of the plaintiff to bring it within English law, *e.g.* there is no allegation that the representation alleged was false or that the plaintiff was induced by the representation to enter into any agreement.

Assuming however that the claim is one based on a "fraudulent misrepresentation" whereby the plaintiff was induced to enter into a contract, I am of the opinion that it is a case "triable by native law." I do not think much evidence is necessary — or the assistance of native assessors — to satisfy this court that there is a cause of action under native law for money obtained by fraud, such as this is alleged to be.

The obtaining of money by fraud is an act which is common to all mankind and by no means unknown to "natives", nor is there any feature of this action which will remove it from the scope of native law.

I therefore uphold Mr. Barlatt's objection and the action is accordingly struck out with costs.

Objection sustained; action struck out.