

be in dispute between the parties, as to whether the Governor is the Governor of Sierra Leone. Without deciding that point, I have based my decision on the assumption that he is. Even if he is not, that fact would not be of any assistance to the plaintiff in his claim. I therefore allow the motion and I dismiss the action summarily. There will be no order as to costs.

Suit dismissed.

TAYLOR v. JOHNSON

SUPREME COURT (Smith, C.J.): March 19th, 1953
(Civil Case No. 235/52)

- [1] Civil Procedure—interlocutory proceedings—compromise—effect is to bar relitigation of original dispute—exception where question one of enforcement of compromise terms or where evidence of fraud, mistake or misrepresentation: Where a case is settled and is struck out by the consent of the parties, then, whether or not the terms of their compromise are communicated to the court and embodied in a formal judgment, and whether or not the issues between them are set out in the court order, the parties are barred from relitigating their original dispute, unless the second dispute is as to the carrying-out of the terms of the compromise or there is evidence of fraud, mistake, or misrepresentation in fact or in law; and if the original dispute arose out of a contract, the compromise in effect substitutes a new contract for the original one between them (page 298, line 26—page 299, line 25).
- [2] Contract—novation—compromise of proceedings on contract—compromise between parties to action substitutes new contract for original one: See [1] above.
- [3] Estoppel—record—judgment by consent or default—parties to compromise estopped from relitigating original dispute—embodiment of compromise terms in formal judgment and setting out of issues in court order not necessary for estoppel: See [1] above.

The plaintiff brought an action against the defendant arising out of a contract between them.

The action was struck out by consent and a formal judgment was drawn up which did not set out the issues between the parties. The plaintiff then instituted the present proceedings based on the same contract.

The plaintiff contended that he was not estopped from re-

litigating his dispute with the defendant because the issues between them had not been set out in the court order following the consent judgment.

5 The defendant maintained that the effect of the compromise was to bar the present proceedings, and that this was so whether or not the issues between them were set out in the court order.

Case referred to:

10 (1) *Goucher v. Clayton* (1865), 11 L.T. 732; 34 L.J. Ch. 239, considered.

R.W. Beoku-Betts for the plaintiff;
Dobbs for the defendant.

SMITH, C.J.:

15 In this case the defendant pleaded that the plaintiff has already taken action against the defendant upon the same facts as alleged in the statement of claim in Civil Case No. 40/51 between the same parties, and that by consent the case was struck out after evidence had been given by the plaintiff; and, in consequence, the plaintiff is
20 estopped from bringing this action against the defendant and the aforementioned judgment stands.

The plaintiff in his reply puts this question in issue; but this morning Mr. Dobbs said that the previous case about the same matter had been struck out by consent and Mr. Beoku-Betts agrees
25 that it is so.

Referring to the record of that other case, it is clear enough that counsel announced, after an adjournment, that they had settled the case, and by consent the case was struck out and an order made that each side pay his own costs. A formal judgment was drawn up
30 to that effect. It is quite clear that when the parties did that, in the absence of any fraud, or mistake, or misrepresentation, they in effect made a new contract as a substitute for the original matter between them which was in dispute. And, if the original litigation was brought to an end as a result of making this new agreement, the
35 parties cannot litigate over again their dispute about the original matter. This is quite clear from the authorities cited in the *Annual Practice* and in the text-books. Mr. Beoku-Betts, however, submits that that principle only applies if the terms of the compromise are communicated to the court and are embodied in the formal judgment as drawn up. No doubt that course is a desirable one to follow
40 on many occasions; but the fact that those terms are not recorded

does not prevent them being binding on the parties just as if they had been.

Mr. Beoku-Betts has also cited to me the case of *Goucher v. Clayton* (1), which case he submits is authority for the proposition that unless an issue or issues on which a consent judgment was given are stated in the order, no estoppel arises between the parties if they wish to litigate those issues over again. Certainly, there are occasions when it is desirable that the issues should be specifically stated, but I do not read the judgment in *Goucher v. Clayton* as going as far as Mr. Beoku-Betts has asked me to go; and it is clear that if we want to see what issues are in dispute in the first case we can look at the pleadings, and counsel agree with this.

The present case is about the same matter as the former case. I am quite satisfied that the compromise has put an end to the proceedings in the first case and is a bar to fresh action about the same contract which is a subject of the first, and that this action cannot be allowed to proceed. I would add that if there is a dispute between the parties as to whether the terms of the compromise arrived at have been carried out, the parties are entitled to litigate that dispute. But this action is not brought for that purpose but to litigate over again the original dispute, and that cannot be done. It is not suggested that there was any fraud, or mistake, or misrepresentation in fact or in law, in arriving at the compromise, and the compromise judgment therefore stands good and bars these present proceedings.

I hold that the plaintiff now has no cause of action on the matters raised in his statement of claim and I give judgment in favour of the defendant with costs.

As to his counterclaim, the defendant equally cannot succeed on that because, having obtained judgment on the point taken in para. 1 of his defence, the other issues pleaded in the alternative do not arise.

Judgment for the defendant.