

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Trefftz and Son v. Antonio Canelli, from Her Britannic Majesty's Supreme Consular Court, Constantinople; delivered Friday, 14th June 1872.*

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Present :

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR R. P. COLLIER.

THIS is an Appeal from the Judgment of Her Majesty's Supreme Consular Court at Constantinople, which reversed a Judgment pronounced by the Queen's Consular Court at Alexandria. The action was brought by Messrs. Trefftz and Son against Mr. Canelli for breach of a contract into which he had entered or intervened, under which certain bills of exchange were deposited with him for the purpose of securing the payment of certain other bills which had been given by a person of the name of Chilaiditti to Messrs. Trefftz and Sons. Chilaiditti was indebted to Trefftz and Sons, and an action had been brought by them against him. That action was discontinued upon Chilaiditti giving certain bills to Trefftz and Sons, and agreeing to deposit with Mr. Canelli, the Defendant, certain other bills by way of security.

The main question arises upon the proper construction of the agreement under which the bills given as security were deposited with Mr. Canelli. The contract is by no means an intelligible one, and some difficulty has been felt by their Lordships in ascertaining from the words of it what was the real intention of the parties; but it is obvious that the obligation of the depositary cannot be carried further than the language of

the contract will warrant, and their Lordships must find as well as they can from the language used what was the intention of the parties.

The agreement was made in Alexandria on the part of Trefftz and Son by an agent, Mr. Salone, and bears date the 21st October 1865. It was made between the two principal parties, and Mr. Canelli intervened. The first part of the agreement relates to the action which had been brought and the compromise of it, and the delivery of certain bills by Mr. Chilaiditti to Trefftz and Son. Those bills are referred to in the second clause of the contract, which says, "In payment of the aforesaid sum," that is, the agreed debt, exclusive of the costs, which are to be paid in ready money, "he," that is the debtor, "will place in the hands of Mr. Salone, " in his (Mr. Salone's) aforesaid capacity, four " bills respectively accepted by him in favour of " Mr. D. Piazzi, the original attorney of the firm " of Trefftz and Son." Then there is a description of the bills, the last of them maturing in eight months from the date of the contract. The other clauses contain the obligation, and the only obligation, into which Mr. Canelli entered; the third is in these terms: "As security for the " said four bills, Mr. Chilaiditi deposits in the " hands of Mr. Antonio Canelli, an English merchant residing in this place, who for that purpose becomes a party to this instrument (inter-venes), the following bills, drawn in his own " favour, and accepted by certain native merchants of this place who stand indebted to him, " viz. :"—The bills are described, and the names of the parties, and the amounts given. Then it goes on: "4th. Mr. Canelli, constituting himself the voluntary depositary of the aforesaid " bills, undertakes to be (render himself) responsible for the same, or for the value represented " by the same, to the firm of Trefftz and Son " until the effectual encashment thereof, which " encashment is entrusted to Mr. Chilaiditi." Mr. Canelli signs in this way, "The depositary " only, A. Canelli."

Now, two constructions have been suggested of this agreement. Mr. Cohen, on the part of the Plaintiffs (the Appellants), maintains that the words "until the effectual encashment" of the bills meant that the bills should remain deposited with Mr. Canelli until they had been paid, and the money had come into his or Messrs. Trefftz and Son's hands. The other construction, supported by the passage following the words I have just read, namely, "which encashment is entrusted to Mr. Chilaiditi," is, that the bills were to be held by the depositary only until the time for effectual encashment came, and were then to be entrusted to Mr. Chilaiditi for the purpose of obtaining payment, and that when that had been done, it was contended that the deposit was at an end.

The contract is certainly not very intelligibly expressed, and it becomes necessary to examine its words, to ascertain what interpretation they most naturally bear. If it had stopped at the words, "until the effectual encashment thereof," there would have been strong ground for contending that the parties meant that the depositary should hold the bills until he got payment of them. But the contract does not stop there. It goes on with the passage I have just read, and to which effect must be given, as well as to the former part. The construction which appears to their Lordships to be that which the words naturally import is, that Mr. Chilaiditi was to be entrusted with the possession of the bills in order to obtain payment; and if that is the meaning of the parties, the responsibility of the respondent as depositary would end, when the former was so entrusted.

The agreement seems to be hardly susceptible of any other construction than of these two, and it may be observed that both are sensible constructions; that is, both give an effect to the agreement which is a beneficial one to the creditors, Messrs. Trefftz and Sons. One is much more beneficial to them than the other, and

would give them a much greater security; but still both give them some security; and the question is to collect, as well as can be done from the language, what it was the parties really meant, and what was the obligation Mr. Canelli undertook, because no court can carry his obligation further than the words to which he has become a party will allow, even although it may be that the agreement is not one which mercantile men would be expected to enter into.

It is suggested by Mr. Cohen that there would be no advantage in the agreement if it be construed in the way in which the Respondent's counsel seeks to construe it; but, as just said, that really is not so. The bills which were given by Mr. Chilaiditi to Trefftz and Sons matured in eight months from the date of this agreement. The bills which were deposited as a security, apparently, did not mature for a year and a half after its date. The benefit which was secured to Messrs. Trefftz and Sons by this agreement was at all events to this extent, that bills of their debtor to an amount exceeding the amount of the bills which he had given to them remained in the hands of a depository up to and beyond the time when these last became due, and the debtor was prevented from parting with that property. It remained locked up under this agreement, and they might, by proceedings against Mr. Chilaiditi when his own bills were dishonoured, have very probably obtained in some way the benefit of those which were deposited as security with Mr. Canelli.

Their Lordships, therefore, think that a sensible construction may be given of this agreement, and that they best give effect to all the words and the different parts of it, by adopting that which has been put upon it on the part of the Respondent.

If the construction of the Appellants were to be adopted, it would impose upon Mr. Canelli a greater obligation than he undertook. He does not undertake to hold the money or to be the

depository of the money. The agreement is that he will be responsible for the bills, or for their value, until the effectual encashment thereof. He does not undertake to be a depository of the money, or that his obligation under this contract shall endure for all time. Undoubtedly, a difficulty might arise in the practical working of this agreement, if Mr. Chilaiditi, being entrusted with the bills, presented them and they were dishonoured. Possibly that is a state of things which was not foreseen. The experience of those who have had to deal with mercantile contracts teaches that they are not uncommonly entered into without an apprehension or foresight of all the circumstances which may result from them. It may be that if Mr. Chilaiditi had presented the bills and they were dishonoured, there might have been implied from this contract an obligation on his part to return the bills to Mr. Canelli, and on the latter to retain the custody of them as a continuation of the original deposit. However, it is not necessary to decide that question.

Assuming, then, the construction of the contract to be that which their Lordships have declared it in their opinion to be, the only remaining question is, whether the Plaintiff has established a breach of the contract so construed.

Now, it appears to their Lordships that it lies upon the Plaintiff to establish that there has been on the part of Mr. Canelli some breach of his duty under the contract. There would have been a breach of his duty under it if he had delivered the bills to Mr. Chilaiditi before the time when they ought to have been presented for payment, or if he had delivered them to him for any other purpose than that of obtaining payment. But their Lordships think, upon looking at the evidence in this case, that the Plaintiff has not shown that there was a breach on the part of Mr. Canelli in either of these respects. The evidence is extremely scanty, and their Lordships would scarcely be able to arrive

at what were the true facts of the case unless they availed themselves of the judgment which was delivered by the Consul at Alexandria. Looking at that judgment, and reading the evidence by the light of it, it sufficiently appears, in their Lordships' view, that the bills were delivered by Mr. Canelli to Chilaiditi for the purpose of being cashed, and also that they were paid.

Assuming those to be the facts, that the bills were delivered by Mr. Canelli to Chilaiditi for the purpose of being cashed, and that he did obtain payment of them, their Lordships think that there was no breach of duty on the part of Mr. Canelli, and that nothing can be imputed to him which would give a cause of action to Messrs. Trefftz and Sons.

It was urged by Mr. Cohen that Mr. Canelli had been guilty of negligence in allowing Mr. Chilaiditi to help himself, as it were, to the bills, by going to the chest where they were kept, and taking them from it. Assuming that there may have been some want of care in that respect, or some undue confidence placed by Mr. Canelli in Mr. Chilaiditi, that alone would not make Mr. Canelli liable, unless Mr. Chilaiditi got possession of the bills for a purpose which the agreement did not warrant. But if it be right to assume upon the evidence, and upon the assumptions in the judgment, that Mr. Chilaiditi had these bills only at the time when they became due, and only for the purpose of getting them paid, the fact that he was allowed to take them himself, and that there might have been some want of care in that respect in allowing him to handle all the bills, would, their Lordships think, afford no ground of action, when that negligence was not followed by any consequences affecting the interests of Messrs. Trefftz and Sons.

The Consul at Alexandria appears to have construed the contract as their Lordships have done, and certainly not in the way in which Mr. Cohen attempted to interpret it at their Lordships' bar. But the Consul appears to

have thought that by implication the agreement imposed an obligation upon Mr. Canelli, either to take care that Mr. Chilaiditi did receive the money and hand it over to Messrs. Trefftz and Son, or give to notice to Messrs. Trefftz and Son of the time when the bills matured, and of his having delivered them to Mr. Chilaiditi in order that they might go with him and obtain the money when it was paid. It seems to their Lordships that this is not a necessary, or even a reasonable, implication from this agreement. There are no words which affect to bind Mr. Canelli to any such duty, and their Lordships think that there is no laches which amounts to anything like a breach of duty under this agreement, in his not accompanying Mr. Chilaiditi when he received the money, or in not giving notice to Messrs. Trefftz and Sons, or some agent of theirs, that Mr. Chilaiditi had possession of the bills for the purpose of obtaining payment.

As far as laches is concerned, their Lordships are clearly of opinion that there is far greater neglect on the part of the Appellants themselves than on the part of Mr. Canelli. The object of the agreement appears to have been that Mr. Canelli should hold these bills until effectual payment could be obtained. The bills are described in the agreement, and Messrs. Trefftz and Son knew perfectly well, or ought to have known, or taken care to have known, the time when these bills would have matured. It seems reasonable to expect that they, with a due regard to their own interests, would have taken care to see that Mr. Chilaiditi, if he obtained the bills and the cash for them, would hand over the cash to them. It seems to their Lordships that they have no right to cast that duty, which was one which they might have been fairly expected to undertake for their own interest, upon Mr. Canelli, and make him responsible for the consequences of leaving Mr. Chilaiditi in the uncontrolled possession of these bills.

· Their Lordships, therefore, have come to the conclusion that the Supreme Consular Court at Constantinople was right in reversing the judgment of the Consul at Alexandria, and they will advise Her Majesty to dismiss this Appeal, with costs.