

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sturge and others v. Field and others, from the Court of Appeal of the Leeward Islands; delivered 29th January 1880.*

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Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was a suit brought by William Henry Field and Caroline his wife, and Edward Hall and Emma his wife, against Joseph Marshall Sturge and Anne his wife, formerly Anne Burke, and Sarah Hyde Edmiston, executor and executrices of the last will and testament of Francis Burke, deceased. A verdict was given for the Defendants, and a new trial moved for, which the Judge who tried the cause refused to grant. On appeal the Appellate Court ordered a new trial upon an issue which was different from the issues upon which the parties originally went down to trial. The question before their Lordships is whether the Court of Appeal were right in making that order.

The Plaintiffs in their plaint alleged that Francis Burke made his last will and testament, and appointed Joseph Marshall Sturge, Anne Burke his daughter, and Mrs. Edmiston executor and executrices of his will, by which, amongst other things, he gave and bequeathed his estate called "Woodlands," with all buildings, &c., "to his dear daughters Sarah Hyde Edmiston, the said Anne Burke, Caroline Burke," and six other children. Then the

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plaint says that—"The Plaintiffs, Caroline, the  
" wife of the said Plaintiff William Henry Field,  
" and Emma, the wife of the said Plaintiff  
" Edward Hall, daughters of the said testator,  
" are respectively of the full age of 21 years, and  
" after having attained the age of 21 years  
" came into possession of their respective  
" ninth shares of the estate called 'Wood-  
" lands.'" It then states in the 7th paragraph  
—"that some time after, to wit, on the 7th day  
" of March 1873, the said Defendants, in their  
" capacity as executor and executrixes as afore-  
" said, one Charles Dickinson Sturge being in-  
" debted to them as such executor and executrixes,"  
—here, it should be observed, there is a distinct  
allegation that Charles Dickinson Sturge was in-  
debted to them,—“recovered by verdict the sum  
" of 1,490*l.* 15*s.*, and interest 774*l.* 0*s.* 2*d.*, in a  
" certain action in which the said Defendants  
" in the capacity aforesaid"—that is, as executor  
and executrixes—"were Plaintiffs, and the said  
" Charles Dickinson Sturge was Defendant.  
" That the said Plaintiff Caroline, the wife of  
" the said William Henry Field, and Emma, the  
" wife of the said Plaintiff Edward Hall, were  
" at the full age of 21 years at the time when  
" the said action or suit was ended, and the said  
" sum of 1,490*l.* 15*s.* and interest 774*l.* 0*s.* 2*d.*  
" was recovered by the said Defendants as  
" aforesaid. That the said Defendants by their  
" attorney on record, Henry Dyett, on the 15th  
" day of September 1873 entered up satisfaction  
" for the amount of 2,264*l.* 15*s.* 2*d.*"—which  
was the total amount—"recovered in the said  
" action. That the said sum of 2,264*l.* 15*s.* 2*d.*  
" was recovered as above mentioned in the said  
" suit as money arising out of the rents, issues,  
" and profits of the said estate called 'Woodlands,'  
" to a portion of which the said Plaintiffs are  
" entitled under the will of the said testator.

" That the said Plaintiffs, since the entering of  
 " satisfaction in the said suit, have repeatedly  
 " requested the Defendants to render an account  
 " of the said sum of 2,264*l.* 15*s.* 2*d.*, and to pay  
 " over to the Plaintiffs such sum or sums of  
 " money as may be found owing, due, or be-  
 " longing to them out of the said sum of  
 " 2,264*l.* 15*s.* 2*d.*, but the said Defendants have  
 " hitherto neglected so to do. The Plaintiffs  
 " pray as follows: That the Defendants be  
 " decreed to render an account of the said  
 " sum of 2,264*l.* 15*s.* 2*d.*, with all issues, profits,  
 " and interest arising therefrom. That the said  
 " account be settled before the Registrar of this  
 " Honourable Court. That the said Defendants  
 " be decreed to pay to the said Plaintiffs all such  
 " sum or sums of money found due, owing, or  
 " belonging to the said Plaintiffs on such account  
 " when taken, with interest and costs of this  
 " suit."

The substance of that plaint is this, that the  
 Defendants as executors recovered a judgment  
 against Charles Dickinson Sturge, who was a  
 debtor to the estate of their testator, and that  
 they entered up satisfaction thereon, and that in  
 consequence thereof they became liable to render an  
 account of the money recovered by the judgment  
 either as having been received by them or as  
 being a sum which, but for their wilful negligence  
 and default, they ought to have received. The  
 Defendants in their answer admit that the judg-  
 ment was recovered; but they say, with reference  
 to the statement in the 7th paragraph, " that  
 " on the 7th March 1873 the said Defendants,  
 " in their capacity as executor and executrixes,  
 " recovered by verdict the sum of 1,490*l.* 15*s.*  
 " and 774*l.* 0*s.* 2*d.* as interest in a certain  
 " action in which the said Defendants, in  
 " the capacity aforesaid, were Plaintiffs, and  
 " Charles Dickinson Sturge was Defendant. It

is true a verdict as alleged was obtained  
“ in their names, but to that verdict they  
“ had not and have not any right in law or  
“ equity, for the said William Henry Field,  
“ without their (the Defendants’) knowledge,  
“ and without any power or authority from  
“ them or any of them the said Defendants, who  
“ were then and still are residing in England,  
“ commenced an action in the names of the  
“ said Defendants as executor and executrixes  
“ of the said Francis Burke, deceased, against  
“ the said Charles Dickinson Sturge;” and  
that “ the Defendants, upon hearing of the unau-  
“ thorised act of the said William Henry Field,  
“ wrote immediately and without delay to the said  
“ William Henry Field to forbid him using their  
“ names as executor and executrixes as aforesaid,  
“ and requiring him to discontinue the action he  
“ improperly, unauthorisedly, and unlawfully so  
“ commenced in their names; but the said  
“ William Henry Field, although he was ordered  
“ to desist from and to discontinue his unlaw-  
“ ful proceedings in the names of the Defen-  
“ dants as executor and executrixes, and  
“ although the said Defendants executed and  
“ sent powers of attorney to John Edmund  
“ Sturge and Henry Dyett to appear, and on  
“ their behalf to discontinue the action against  
“ the said Charles Dickinson Sturge so unlawfully  
“ brought in their names by the said William  
“ Henry Field, and although the said Defendants  
“ made and sent from England affidavits to show  
“ and prove that the said Charles Dickinson  
“ Sturge was not at the time of the commence-  
“ ment of the said action, nor at any time  
“ before, indebted to the Defendants, as ex-  
“ ecutor and executrixes, in any money whatever,  
“ and that the Defendants had no claim against  
“ the said Charles Dickinson Sturge in any  
“ capacity whatsoever, and although Henry

“ Musgrave Furlonge, the attorney by whom the  
“ action was entered for the said William Henry  
“ Field, upon hearing that the action was brought  
“ without the knowledge and consent of the said  
“ Defendants, and receiving positive instructions  
“ from the Defendants to discontinue, applied for  
“ leave to discontinue the action, the said  
“ William Henry Field, by Counsel on his own  
“ behalf, continued to control the action under  
“ pretext that the said powers of attorney and  
“ the said affidavits were not properly proved  
“ and sworn, and wrongfully persisted in con-  
“ tinuing the action in the Defendants’ names,  
“ and unjustly obtained the verdict referred to  
“ in the 7th paragraph of the plaint.” Then  
they aver—“ that the said Charles Dickinson  
“ Sturge, who resided at the time and still resides  
“ in England, was not defended in the said  
“ action, for the said Defendants informed him  
“ that the said action was brought by the said  
“ William Henry Field without authority, and  
“ that they the Defendants would have the  
“ same discontinued; that the said Charles  
“ Dickinson Sturge was not indebted to the said  
“ Defendants as executor or executrixes, and  
“ was therefore unjustly sued, and that the De-  
“ fendants expected that the action, having been  
“ brought in their names, and therefore subject  
“ to their control, would have been discontinued  
“ on their request and command; but that the  
“ said William Henry Field, notwithstanding  
“ all the Defendants ordered him to discontinue  
“ the said action, proceeded in their names; and  
“ that the said Charles Dickinson Sturge, who re-  
“ lied on the Defendants discontinuing the action,  
“ being unrepresented by Counsel, a verdict was  
“ taken behind his back against him, and against  
“ the affidavits of the Defendants that he the  
“ said Charles Dickinson Sturge was not indebted  
“ as alleged in the said action so wrongfully

“ and unjustly brought against him ; that the  
“ trial of the said action was called on without  
“ regard to practice in such cases, and the  
“ verdict aforesaid obtained without the now  
“ Defendants having any right or claim thereto  
“ and against their positive admission and  
“ affidavits that there was nothing due to them as  
“ executor and executrixes from the said Charles  
“ Dickinson Sturge. That the verdict being  
“ so unlawfully and unjustly obtained in the  
“ action brought in the names of the said  
“ Defendants as executor and executrixes by the  
“ said William Henry Field, who had neither  
“ power nor authority from, and who was  
“ expressly forbidden by, the said Defendants to  
“ continue the action, and the Defendants  
“ having no right to the amount of the verdict  
“ or of any part thereof, as in honesty they were  
“ bound to do, and without receiving the amount  
“ of the verdict or any part thereof, did, as is  
“ stated in the 9th paragraph of the plaint,  
“ cause satisfaction to be entered up for the  
“ amount of the verdict.”

The Procedure Act of the Colony authorises the Judge, without confining himself strictly to the allegations in the proceedings, to settle the issues which are to be tried between the parties. Upon the allegations contained in the plaint and answer, Mr. Justice Semper thought it right to settle the following issues, and he says that at the time he settled them no objection was made by either of the parties.

The first issue was, “ Was the judgment  
“ obtained in the cause instituted in the former  
“ Court of Queen’s Bench in this Presidency  
“ in the names of Sarah Hyde Edmiston, Anne  
“ Burke, and Joseph Marshall Sturge, execu-  
“ trixes and executor of the last will and  
“ testament of the late Francis Burke, deceased,  
“ against Charles Dickinson Sturge, obtained by

“ lawful authority, or was it obtained by  
“ William Henry Field claiming to act as the  
“ agent of the Plaintiffs contrary to the positive  
“ instructions of the said executrixes and execu-  
“ tor not to proceed in the said suit, but on the  
“ contrary to discontinue the same, as there was  
“ nothing due by the said Charles Dickinson  
“ Sturge to the said executrixes and executor.  
“ And was satisfaction entered on the judgment  
“ in the said suit by the said executrixes and  
“ executor on the ground that there was nothing  
“ due to them as such executrixes and executor.”  
The second issue was, “ Have the Defendants re-  
“ ceived the sum claimed by the Plaintiffs, or  
“ any other or what sum to which the Plaintiffs  
“ in this suit are entitled.” The third issue  
was, “ Was the amount for which the judgment  
“ mentioned in the first issue was obtained really  
“ due by the Defendant in that suit to the  
“ Plaintiffs as executrixes and executor as afore-  
“ said, and are the present Plaintiffs entitled  
“ to any part thereof, and if so, to how much  
“ are they entitled.” At page 19 of the Record,  
the Judge, after detailing the evidence which  
was given in the case, states: “ I charged the  
“ jury that if the judgment in the former suit  
“ was obtained fraudulently under the authority  
“ held for a time by Mr. Field and behind the  
“ back of the Defendant, that judgment would  
“ be null and void, and as to the lime-juice, that  
“ they must be satisfied that the Plaintiffs were  
“ entitled to it under the final arrangements.”  
It should be stated that the action was brought  
in respect of lime-juice which had been delivered  
over to Mr. Dickinson Sturge. The Judge  
proceeds: “ I then reviewed the evidence on  
“ both sides. Mr. Martin asked me when I  
“ had concluded to charge the jury that the  
“ Plaintiffs were estopped from denying the  
“ record, and that the judgment was conclusive,

“ and that application should have been made  
“ to the Court to set it aside; also that the  
“ lime-juice was not credited in account and  
“ formed no part of the account, *and that,*  
“ *while Mr. Edmund Sturge might have claimed*  
“ *the consignment of the lime-juice, he was*  
“ *subject to account for and pay for the same.*  
“ Mr. Martin also asked at this stage to with-  
“ draw all evidence respecting the contents of  
“ the communication to Mr. Edmund Sturge  
“ from Mr. Charles Dickinson Sturge, spoken  
“ to in the evidence taken by the Commissioner  
“ in England. I declined to comply with either  
“ request, as the evidence with regard to what  
“ was done by the agent and the reason given  
“ by the principal was good evidence, and at  
“ least could not be objected to after the jury  
“ were charged.” Upon that the jury found  
on the first issue--“That the judgment obtained  
“ in the names of Sarah Hyde Edmiston, Anne  
“ Burke, and Joseph Marshall Sturge, executrixes  
“ and executor of the last will and testament  
“ of the late Francis Burke, deceased, against  
“ Charles Dickinson Sturge was not obtained  
“ by lawful authority, but that it was obtained  
“ by William Henry Field, one of the present  
“ Plaintiffs, claiming to act as agent of the said  
“ Plaintiffs contrary to their positive instruc-  
“ tions not to proceed in the said suit, but on  
“ the contrary to discontinue the same, as there  
“ was nothing due by the said Charles Dickinson  
“ Sturge to the said executrixes and executor,  
“ and satisfaction was entered on the judgment  
“ in the said suit by the said executrixes and  
“ executor on the ground that there was  
“ nothing due to them as such executrixes and  
“ executor.” Then with regard to the second  
issue the jury said, “We answer ‘No’ on the  
“ second issue, and that the Defendants have  
“ received no sum whatever.” Then, with

regard to the third issue, they answered, " We  
 " answer 'No' on the third issue; that the  
 " amount for which the judgment mentioned  
 " in the first issue was obtained was not due  
 " by the Defendant,"—that is to say, that  
 Charles Dickinson Sturge did not owe the money.  
 " Lastly, we find for the Defendants on all the  
 " issues."

The Plaintiffs moved for a new trial before the  
 Judge who tried the case; the proceedings will  
 be found at page 99 of the Record. The Judge  
 refused to grant a new trial, and recorded the  
 following reason:—" Mr. Martin, the Plaintiff's  
 " counsel, not having made out sufficient grounds  
 " to entitle him to an order, and considering  
 " that the verdict was right, and that no wrong  
 " had been done, and that there had been no  
 " miscarriage."

Upon that there was an appeal upon which  
 the Appellate Court made the following order:—  
 " His Honour the Chief Justice proceeded to  
 " deliver judgment in this case, followed by  
 " their Honours the First and Second Puisne  
 " Judges, when the majority of the Court"—  
 that is, the Chief Justice and Mr. Justice Pem-  
 berton, against the view of Mr. Justice Semper—  
 " decided and ordered that the Appeal be allowed;  
 " that the issues framed in the Court below, as also  
 " the findings of the jury thereon, be set aside;  
 " and that a new trial be had in which the  
 " question of fraud alone be raised upon issues  
 " to be framed for the purpose by the Judge  
 " of the Supreme Court before whom the cause  
 " shall be called on for hearing. It is further  
 " ordered that the costs in the Court below, as  
 " well as the costs of Appeal, abide the verdict  
 " on the new trial."

It is against that order that the present Appeal  
 has been preferred; and the question is whether  
 the issues which were settled by the Judge in the

first Court were proper and such as raised all the points necessary for the determination of the suit, and whether there were any sufficient grounds for setting aside the verdict of the jury and having a new trial upon the question of fraud only.

In their Lordships' opinion there was sufficient evidence to prove that Charles Dickinson Sturge did not owe the debt; that Field brought the action against him in the name of the executors without any authority from them to do so; that he continued the action against their express orders; that they revoked any authority that he might have had; that they ordered him to discontinue the action; that they sent out an authority to an agent there to move to discontinue the action; and that, notwithstanding all this, Field went on and was allowed to go on in the suit, and to recover judgment against Charles Dickinson Sturge when he was not present and was undefended.

Upon the argument before their Lordships there was a contest as to whether Field had not received authority from the Plaintiffs to commence the action, and the power of attorney which is set out at page 39 of the Record was relied upon on behalf of the Plaintiffs. It was contended, however, on the part of the Defendants that that power did not authorise Field to sue in their names as executors.

Their Lordships are inclined to think that this authority, independently of all other circumstances, would have authorised Field to commence an action in the names of the Defendants as executors if the debt had been really due. But it is not material in this case whether the power of attorney did give Field authority to commence an action in the names of the Defendants as executors; for, even if it did, the Defendants had power at any time to revoke the authority

and to discontinue an action brought in their names by Field for money which was not due. Having that right, they did revoke the authority and did everything in their power to discontinue the action; but the Judge who tried the case which was so improperly continued in their names refused to admit certain affidavits which were sworn in England before a Commissioner appointed to take affidavits in the Court of Queen's Bench, and, notwithstanding the revocation of Field's authority was filed in the Court, he allowed the action to go on, and a judgment to be recovered against Dickinson Sturge, when in fact there was nothing due from him.

Field claimed that his wife had an interest in the assets of the estate. Assuming that he honestly believed that the debt was due when it was not due; that he honestly believed that he was authorised to commence an action for it in the names of the Defendants as executors, he was not authorised to proceed with the action after the Defendants had revoked his authority, and he had had notice of that revocation.

It was immaterial whether he was acting fraudulently or not. In their Lordships' opinion the Defendants were justified in entering up satisfaction on the Record in an action brought or continued in their names, without their authority, against a man who owed them nothing, and in which a judgment was recovered in their names for a sum not due and which they altogether repudiated.

It might have been better for Dickinson Sturge to have applied to set aside the judgment, and for the Defendants to have consented to the application; but the entering of satisfaction did not injure the estate more than a consent to have the judgment set aside. It may be said that after the entry of satisfaction

no action could ever be brought again against Charles Dickinson Sturge for that amount; but what was the injury to the estate? The fact that no new action could be brought against Charles Dickinson Sturge to recover a sum of money from him which he did not owe could not injure the estate.

It is clear that a Court of Equity would not have compelled the Defendants to allow Field to issue execution on the judgment in their names. On the contrary, they would have set aside the judgment or restrained execution from being issued thereon.

It has been contended that the evidence was contrary to a deed which had been executed by the *cestui qui* trusts, and that the deed upon the face of it did not show that Charles Dickinson Sturge had been released from liability. The facts were these: The executors held a quantity of lime-juice which had been prepared on the estate of the *cestui qui* trusts, the executors carrying on the business, under advances made by Mr. Edmund Sturge of Birmingham, to whom the estate was mortgaged by the testator as a security; and Burke had covenanted with Sturge that he would ship to him all the lime-juice which should be made on the estate, and Edmund Sturge was to account for it at certain rates. Edmund Sturge gave notice to foreclose the estate under the mortgage, whereupon Field, who had been authorised by the executrixes to look into the affairs, wrote a letter to him, in which he stated, in effect: that should Sturge proceed to foreclose the mortgage, he, Field, would impeach the deed as unjust and inequitable, and made in fraud of the usury laws. Then he made a proposal that Edmund Sturge should give an annuity to the family of 300*l.* a year, or pay them a sum of money down. After a negotiation for

the settlement of this dispute, Sturge, in January 1866, agreed with the executors to pay 1,100*l.* for the equity of redemption. Pending the negotiation, and after Sturge had given notice of foreclosure, Field (acting on behalf of Anne Sturge and her sister, Mrs. Edmiston, the two executrices who had given authority to Field to act on their behalf) and Joseph Marshall Sturge, one of the executors, who had not then married Anne Burke, refused to ship the lime-juice which was the subject of dispute to Edmund Sturge until, as Field says, the accounts between them were adjusted, and in consequence it was arranged that the lime-juice should be placed in the hands of Charles Dickinson Sturge, and it was shipped under a bill of lading deliverable to Charles Dickinson Sturge or to his order. It does not appear precisely upon what terms Charles Dickinson Sturge was to hold it; but it is clear that it was not put into his hands by the bill of lading for the purpose of his selling it; it appears rather that Charles Dickinson Sturge was to hold it until the accounts should be adjusted or a final settlement should be come to. The executor Joseph Marshall Sturge says, "I never intended to call upon Charles Dickinson Sturge for this lime-juice, provided the instalments of the 1,100*l.* which was mentioned in the negotiation should be paid according to the terms of the settlement." The executors accepted the proposed settlement, and Charles Dickinson Sturge handed over the lime-juice to his uncle Edmund Sturge.

The question is, whether Charles Dickinson Sturge, in consequence of his handing over that lime-juice to his uncle, broke any contract, or became liable to be sued, as he was sued, in the names of the executors for the value of the lime-juice as a debt due to the executors. The

jury have found that he was not; that Charles Dickinson Sturge did not owe the money. All the executors believed that it was the intention when the lime-juice was handed to Charles Dickinson Sturge that it should be handed over to Edmund Sturge, provided the settlement was concluded, and it was concluded; and, in consequence, all the executors repudiated the claim. They said, "It was the intention of the arrangement between us that the lime-juice should be handed over to Edmund Sturge or that it should become the property of Edmund Sturge, and consequently that Charles Dickinson Sturge should be at liberty to hand it over." Upon the evidence the jury came to the conclusion, and their Lordships think properly, that Charles Dickinson Sturge was not indebted to the executors.

But then it was contended, and one of the objections for the new trial was, that the Judge misdirected the jury on the effect of the deed of the 29th March 1866. The settlement was concluded with the executors in January 1866. Mr. Edmund Sturge proposed—"In consideration of your giving your consent to the foreclosure of the mortgage on the Woodlands Estate, or a conveyance of the reversionary interest therein reserved, we agree to pay you the sum of 50*l.* sterling on the execution of the said deed, and 1,100*l.* as follows." Then it stated the various instalments by which that 1,100*l.* was to be paid. The executors on the 16th January say, "We accept your offer to pay us the sum of 1,150*l.* on the conditions named in your letter of this day's date, and will sign the conveyance, and give you possession of Woodland's Estate when the necessary papers shall have been completed." It was to be either a foreclosure or a conveyance of the reversionary interest, that is, the equity

of redemption. Sturge held the mortgage, and he was going to buy up the estate and settle the whole question by paying them 1,100*l.* The conveyance from the *cestui qui* trusts to Edmund Sturge stated that it was—"in consideration of the sum of 9,715*l.* 10*s.* 9*d.* due and owing to Edmund Sturge." It was contended that the deed was conclusive that the lime-juice which had been handed over to Charles Dickinson Sturge was to belong to the executors, because this sum of 9,715*l.* 10*s.* 9*d.* was the balance due upon the mortgage accounts, exclusive of the sum which would have been carried to the credit of the mortgagors in respect of the lime-juice had that been consigned to Edmund Sturge under the contract and in the ordinary course of dealing. It is, however, clear that the deed did not control the arrangement which had been made between the executors and the trustees. The executors were to consent that the estate should be foreclosed, but at the time that the deed of conveyance was executed Marshall Sturge, who was one of the executors and one of the Defendants sued in this case, was no party to that deed. He had not married the daughter Anne Burke at that time, and therefore she in her own name and in her own right as Anne Burke joined in the conveyance. The conveyance did not preclude the parties from showing that at the time when the lime-juice was handed to Charles Dickinson Sturge it was handed to him upon condition that if the settlement was completed the lime-juice should be handed over to his uncle Edmund Sturge. Their Lordships think that there was no misdirection on the part of the learned Judge in not directing the jury that the deed was conclusive that the lime-juice was to belong to the executors.

The two learned Judges, the majority of the Court, considered that the judgment which had been recovered under the circumstances stated was conclusive as against the executors that Charles Dickinson Sturge owed them the money, unless it could be proved that Field obtained the judgment fraudulently. The majority held that nothing could get rid of that judgment unless there was fraud, and therefore they set aside the verdict and the issues which had been settled by the Judge. The judgment, so long as it remained in force, was conclusive between Charles Dickinson Sturge and the Defendants; but it was no estoppel as between the Plaintiffs and the Defendants. Their Lordships are of opinion that the issues which were settled by the Judge were properly settled, and raised all the questions necessary for the determination of the merits of the cause; and that the evidence in the cause justified the jury in coming to the conclusion that Charles Dickinson Sturge was not indebted to the executors.

It appears from Mr. Justice Semper's notes that Mr. Martin, the Plaintiffs' counsel, contended that the lime-juice was not credited in account, and that, whilst Mr. Edmund Sturge might have claimed the consignment of the lime-juice from Charles Dickinson Sturge, still he was liable to account, and that he had not accounted for it. The question in the case was not whether Edmund Sturge was bound to account for the lime-juice which Charles Dickinson Sturge had handed over to him, but whether Charles Dickinson Sturge, by handing it over to Edmund Sturge, had rendered himself personally responsible to the executors for the value of it. There was no misdirection on the part of the Judge in not telling the jury that, although Edmund Sturge might have claimed the consignment of

the lime-juice, he was subject to account and pay for the same. The Judge had nothing to do with what Edmund Sturge was liable for; all that he had to try was whether Charles Dickinson Sturge was indebted for having handed over to Edmund Sturge. Their Lordships see no evidence in the case that Edmund Sturge was liable; but it is not necessary for them to express any opinion upon that point.

Under these circumstances their Lordships are of opinion that the majority of the Judges in the Court below came to a wrong conclusion; that they ought not to have allowed the Appeal; that the decree ordering the new trial upon the new issue was erroneous, and that it ought to be set aside. They will therefore humbly advise Her Majesty that the decree and order of the Appellate Court be reversed and that the order of the first Court be affirmed, and that the Appellants pay the costs of the Respondents in the Appellate Court. They will also pay the costs of this Appeal.

