

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Turnbull and Company v. Duval, from the Supreme Court of Judicature of Jamaica; delivered 18th April 1902.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether a security for 1,000*l.* given to the Appellants by a married woman for debts of her husband is impeachable by her. The Supreme Court of Jamaica held that it was. The creditors to whom the security was given have appealed from their decision.

The Respondent did not appear by Counsel or otherwise on the hearing of the Appeal which their Lordships regret.

The facts are as follows :—

Mr. Duval the husband of the Respondent was in business in Jamaica and was in pecuniary difficulties and indebted to the Appellants. They carried on business in Jamaica under the name of Turnbull & Co. They also carried on business in London under the name of Park Macfadyen & Co. and in New York under the name of Park Son & Co. Their agent in Jamaica was a Mr. Campbell. He was manager for Turnbull & Co. and was the agent in Jamaica of the other firms.

In August 1898 when the security in question was given Mr. Duval was indebted to all these

firms. He owed the London firm only a small sum, about 22*l.*; but he owed the New York firm nearly 1,500*l.*, and he owed the Jamaica firm nearly 1,000*l.* This sum was mainly due for beer supplied by Campbell for Turnbull & Co. to Mr. Duval to enable him to fulfil a contract which he had entered into for the supply of beer to the military forces in Jamaica.

Mr. Duval's indebtedness to the New York firm was for brick-making machinery which he had obtained in order to start a brick factory. Throughout the summer of 1898 Campbell had been pressing Duval to reduce his indebtedness and had threatened to stop supplying beer unless he did.

Mrs. Duval is according to her own account a good business woman. She was on good terms with her husband and trusted him; but they were not living together in August 1898.

Mr. Campbell was not a stranger to her. He was an executor and a trustee of her father's will and presumably therefore a friend of her father. Her father died in January 1898 and by his will, after making a devise and bequest to another daughter the testator devised and bequeathed the residue of his estate to Mr. Campbell and another gentleman upon trust to sell and convert the same into money and to hold the proceeds upon trust (*inter alia*) to invest a sum of 2,000*l.* for the benefit of Mrs. Duval and her children. He gave very wide discretionary powers to his executors and trustees as to selling his property and winding up his affairs and subject to previous devises and bequests he directed his trustees to pay and divide the ultimate residue of his estate amongst his three children and two nieces. Mrs. Duval therefore was entitled to one fifth of her father's residuary estate and Mr. Campbell was a trustee of that share for her.

In August 1898 the accounts of her father's estate had not been settled. The amount of her share of the residue was not ascertained until a year afterwards and was then found to be 665*l.* after deducting legacy duty. Mr. Campbell however was the person whose duty it was to realise and ascertain and pay over her share to her. The Appellant's contention that he stood in no fiduciary relation towards her is obviously untenable.

According to Campbell's evidence Duval was the first to suggest a security on his wife's property; he said that his wife would consent to give it. Duval says Campbell first suggested that Mrs. Duval should be applied to for assistance. Be this as it may it was ultimately arranged that Campbell should have a security prepared and that Duval should get his wife to sign it. Accordingly it was prepared by Campbell's solicitors from his instructions. Campbell gave it to Duval; Duval got his wife to sign it. Pietersz who was Campbell's chief clerk witnessed it and brought it back to Campbell signed. He went with Duval to get it signed and he went at Campbell's request.

Mrs. Duval stated in her evidence that she never authorised her husband to offer her property as security; and she never had any communication with Campbell about the matter. She never requested anyone not to take proceedings against her husband. Shortly before the 5th August 1898 she and her husband talked about her giving security. She knew that he was in difficulties about the beer business and believed that 1,000*l.* would get him out of his troubles. She knew that he had a brick factory and machinery but not that he was in difficulties with reference to this. She knew nothing about any document she was to sign until it was brought to her by her husband. She had no

advice about it; she did not read it; it was not explained to her. She signed it because her husband pressed her to do so and told her he was being pressed by Campbell and because she believed that if she would sign it for 1,000*l.* it would enable her husband to settle the beer contract. She meant to lend him 1,000*l.* to get him out of his trouble. It was witnessed by Pietersz. She says that he told her there was no harm in it; and that she attached importance to this statement as she knew he was Campbell's chief clerk and she relied on Campbell for protection. Pietersz however denies that he said there is no harm in it or anything to that effect.

Mrs. Duval's statements as to what she knew of her husband's affairs; of what he told her; and of the pressure under which she signed the security are all corroborated by her husband.

The security signed is set out on page 35 of the record. It is by no means a simple document. It is not a security for a present advance to her or to her husband. It states Duval's indebtedness to the three firms in divers large sums of money and contains a statement that the partners had at Mrs. Duval's request agreed not to take proceedings against her husband until after the 30th September 1898 and then it gives a charge on her share of her father's residuary estate in favour of the partners carrying on business under the three firm names above mentioned for all sums due or to become due from her husband to them in respect of any business transactions and a covenant by her to pay what may be so due. But both the charge and the covenant are limited in amount to 1,000*l.*

It is unnecessary to state at length the further dealings between the parties. Arrangements were made between Duval and Campbell for reducing the debt on the beer account and it was considerably reduced. In August 1899 Mrs. Duval

received an account of what was due to her in respect of her father's estate. The amount was 700*l.* less duty but she was told there was a charge upon it in favour of Messrs. Park Macfadyen & Co. and that before any money could be paid to her she must arrange with them. This induced her to consult Mr. Gray a solicitor who obtained a copy of the security and at once endeavoured to have it amicably set aside. In this he was not successful. In November 1899 the trustees of the will paid Turnbull & Co. the sum of 665*l.* being the Plaintiff's share of her father's residuary estate. On the 19th December 1899 her husband became bankrupt. On the 21st Mrs. Duval commenced the present action against Turnbull & Co. By her claim she impeached the validity of the security she had signed and demanded payment to her of the sum of 665*l.* received by the Defendants. A defence was put in. The Plaintiff obtained the usual order for discovery from the Defendants; but they did not apply for discovery by her. The trial came on in due course; witnesses were examined documents were put in evidence: but a deed of the 18th August 1898 hereafter referred to was not produced or referred to. The action was tried by the Chief Justice without a jury and he set aside the deed. The Plaintiff however was willing to pay what was still due on the beer account viz. 161*l.* odd and she obtained judgment for the balance of the 665*l.* with interest and costs.

From this decision Turnbull & Co. appealed to the Supreme Court and the Appeal was dismissed with costs. The Appeal now before their Lordships is from this decision of the Appeal Court and from a refusal to direct a new trial.

The effect of the evidence given at the trial has been already stated. In the face of such evidence their Lordships are of opinion that it is

quite impossible to uphold the security given by Mrs. Duval. It is open to the double objection of having been obtained by a trustee from his *cestui que* trust by pressure through her husband and without independent advice and of having been obtained by a husband from his wife by pressure and concealment of material facts. Whether the security could be upheld if the only ground for impeaching it was that Mrs. Duval had no independent advice has not really to be determined. Their Lordships are not prepared to say it could not. But there is an additional and even stronger ground for impeaching it. It is in their Lordship's opinion quite clear that Mrs. Duval was pressed by her husband to sign and did sign the document which was very different from what she supposed it to be and a document of the true nature of which she had no conception. It is impossible to hold that Campbell or Turnbull & Co. are unaffected by such pressure and ignorance. They left everything to Duval and must abide the consequences.

Their Lordships do not think it necessary to refer to authorities to show that such a transaction cannot stand. The well-known case of *Bridgman v. Green* 2 Ves, S. p. 627 is conclusive to show that Turnbull & Co. can obtain no benefit from it.

But then it is said that since the trial an important document has been discovered which entitles the Appellants to a new trial. This is a deed dated the 18th August 1898 and made between Duval of the one part and his wife of the other part. It recites Duval's indebtedness to Turnbull & Co. to the extent of 1,600*l.* and the security given by his wife as already mentioned. The deed then contains a covenant by Duval to indemnify her and a conveyance and assignment of property for the

same purpose. This deed ought it is said to have been registered; but it was not registered until the 19th May 1900. In the meantime Duval had become bankrupt and obtained his discharge and judgment had been given in favour of the widow in the present action. Its registration first brought it to the knowledge of the Appellants.

As already stated they made no application in the action for discovery of documents. It appears however that Mrs. Duval or her solicitors had this deed or a copy of it as it was in Court at the trial ready to be produced if wanted. From one point of view it corroborates Mrs. Duval's story for it only refers to her husband's indebtedness to Turnbull & Co., and contains no allusion to the other firms and Mrs. Duval only knew of the beer trouble. On the other hand the deed states that Duval was indebted to them in 1,600*l.* a much larger sum than she said she had any idea of, and the Appellants contend that this shows that she knew more about her husband's affairs than she admitted at the trial.

The Supreme Court refused a new trial and their Lordships are of opinion that they were right in so doing. A new trial ought never to be lightly granted. No case of fraud or surprise is made out. Inability to obtain knowledge of the document before the trial is negatived by the fact that Mrs. Duval or her solicitor had it or a copy of it and no application for discovery was made by the Appellants. Further it is plain that Mrs. Duval had no idea of what she had been induced to sign before August 1899 when she saw a copy of the security sent to her by her solicitor.

It is not suggested that she had any more advice when she signed the deed of the 18th of August 1898 than she had when she signed the

security of the 13th. The deed of the 19th of August might perhaps have been useful to the Appellants on the trial for her cross-examination. But this is all that can be said about it; and their Lordships concur with the Supreme Court in thinking that it ought not to alter the final result.

Their Lordships will humbly advise His Majesty to dismiss the appeal.

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