

Tolomeo Gandolfo - - - - - *Appellant*

v.

The African Plantations Company and another - - - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH APRIL, 1923.

Present at the Hearing :

VISCOUNT HALDANE.

LORD SHAW.

LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

In this case the facts are sufficiently stated in the judgment given by Mr. Justice Porter on the 21st March, 1921, concurring with the Chief Justice. Their Lordships need not go into the history of the litigation. It is sufficient to say that on the 2nd May, 1918, the Writ of Summons was issued at the instance of the African Plantations Company against the defendant, Tolomeo Gandolfo, the Master, and Murialdi Giovanni, the representative of the owners of the ship "Estrella," and a motion was made to stop the clearance of the ship "Estrella," the subject of the Charter Party, which was at the time in Accra Roads. There were various proceedings and adjournments. At first the respondents were advised by Mr. Renner, who later appeared for Mr. Gandolfo, the present appellant. On the 7th May an order was made by the Court that the clearance of the ship "Estrella" should be stopped and the ship detained pending security being given in the sum of £5,000 for any damages which might be given against the defendants. Under the Charter Party the ship

chartered was to have sailed from Accra with a certain cargo, and, as a breach of the contract on the part of the shipowners was apprehended, security was asked and obtained to the extent of £5,000. That money was paid out to the African Plantations Company, and the ship was allowed to sail. That did not end the matter, because the case went on as a suit for damages against the owners of the ship for breach of the provisions of the Charter Party, and the Court had before it various affidavits, notably an affidavit from which it appeared that Mr. Gandolfo, the present appellant, disputed his liability, saying that he was only the servant of the owners of the ship, and it appeared when the Charter Party was put in evidence that he was no party to the Charter Party. A new feature introduced itself into the suit. A question was raised as to the propriety of Mr. Renner's appearance on behalf of the defendants, one of whom was the present appellant, having regard to the fact that he had been employed by the other side in the earlier stages of the matter, and there was much dispute and discussion as to that, on which their Lordships do not intend to express any opinion. It may be that the Court below were quite right in thinking that Mr. Renner was precluded from acting. Then there appeared another gentleman, probably brought there by Mr. Renner, and the point was taken by the plaintiffs, the African Plantations Company, that this gentleman had not a proper retainer; that he only appeared under a Power of Attorney, which covered the case of the representatives of the owners, the Italian Government, but did not extend to Gandolfo, the present appellant, and they said, therefore, that he did not and could not appear for Mr. Gandolfo. On that the Court proceeded to give judgment on the footing that the suit was undefended. Their Lordships think that in doing this the Court below were wrong. Although it was clearly before them that Mr. Gandolfo, the present appellant, was not a party to the Charter Party, they nevertheless treated him as a person who could be made liable for damages, and gave judgment for £6,000 damages against him in his absence. On the face of it it appears to their Lordships to be impossible to support this. There may, however, be something else unknown to their Lordships, which would have been elicited had a proper trial taken place, and, therefore, they do not conceive themselves to be justified in finally disposing of the case upon this point. All they wish to say is that it does not appear to them to be right that the Court should have failed to take judicial notice of what was on the face of the documents a very serious point. Under these circumstances, their Lordships, much as they dislike protracted litigation, and glad as they would have been to have disposed of a case which turns so much upon small details, think that they have no alternative but to send it back for a new trial in the light of the observations which they have made. The £5,000 referred to having been paid out of Court, must be paid in again to abide the result of the new trial. In their Lordships'

opinion the appellant is entitled to his costs here, but there should be no order at this stage as to any other costs. These should be dealt with when the case has been re-tried. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

TOLOMEO GANDOLFO

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THE AFRICAN PLANTATIONS COMPANY AND
ANOTHER.

DELIVERED BY VISCOUNT HALDANE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.
1923.