

Supreme Court of the Republic of Liberia

Cavalla River Co. v Fredericks [1920] LRSC 6; 2 LLR 375 (1920)

(3 February 1920)

THE CAVALLA RIVER COMPANY, Limited, by Lancelot Mathews, their agent at Cape Palmas, Plaintiff in Error, v. **JOHN HAROLD DICKINSON FREDERICKS**, Defendant in Error.

ARGUED DECEMBER 23, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. The law to be applied in suits for the breach of contracts is that: as to the mode of solemnization the *lex loci actus* must generally be followed; they should be interpreted according to the *lex loci contractus*: and as to the choice of remedies for the breach of, and the competency of witnesses to establish, the *lex fori* governs.

2. One is not therefore compelled to sue for a violation of a contract in the jurisdiction of the *lex loci contractus* because the agreement provides that it must be interpreted according to the rules of law obtaining thereat, and hence the *lex loci solutionis* may properly take jurisdiction of the suit.

3. One may with impunity neglect to probate and register an agreement which does not convey real estate; nor is the validity of agreements not purporting to effect the transfer of real estate affected by the neglect to affix a revenue stamp.

4. One who was a party to a reference is not estopped from bringing a suit in spite of an award if the subject matter of the new action was not within the submission to the arbitrators, nor passed upon by them.

5. In actions against corporations it is sufficient to describe the corporation sued by its corporate name.

6. A defendant may be required to produce deeds or other writings in his possession to be used by a plaintiff at the trial either by a notice given in his written pleadings or by a *subpoena duces tecum*.

7. When a jury empanelled in a case is charged with such misconduct as is prejudicial to the interest of a party, the act complained of should be brought to the notice of the court before the jury is dismissed.

Mr. Justice Johnson delivered the opinion of the court :

Damages on a Written Contract. This was an action brought in the Circuit Court of the fourth judicial circuit, Maryland County, by John Harold Dickinson Fredericks, plaintiff in the court below, against the Cavalla River Company, Limited, defendants, for damages for the breach of a contract.

The history of the case, so far as can be gathered from the records, is as follows :

The defendant in error entered into a written contract with the Cavalla River Company, Limited, dated the 23rd day of August, A. D. 1911, at the City of London, in the Kingdom of Great Britain, by which he contracted, *inter alia*, to serve said company as their General Manager in Liberia, upon the following conditions : that the defendant should proceed to Liberia and approach the Liberian Government with the view of securing further rights and concessions for and on behalf of the company, and use his best endeavors to promote the company's interest. The defendant in error also contracted to supervise all the company's interests, and report to the head office all transactions beneficial to the company's interest.

The company on the other hand, contracted to pay to defendant in error the sum of five hundred pounds sterling per annum, as salary, and a mess allowance not exceeding ten pounds sterling per month; and to provide him with a first class passage to and from England at the end of every twelve months' service. The agreement was for five years certain, subject to renewal for another term of five years on terms therein set forth. It might be terminated however in case defendant in error became bankrupt or insane, or in the event of mismanagement, drunkenness or absence from duty through illness for over six months. There was also a clause reserving to defendant in error the right to further interest in other companies which were proposed to be formed, and the privilege of accepting any position in the Liberian Government, provided same did not interfere with the company's interest. On the 10th day of June, A.D. 1912, defendant in error, who was then performing the duties of manager of said company, was dismissed by McKay, Managing Director of said company.

Afterwards to wit : On the 26th day of September, A. D. 1912, the plaintiff and the defendant in error submitted all matters in dispute between them, to the sole award and determination of His Excellency J. P. Crommelin, the Liberian Minister, in the following memorandum :

"We hereby agree to submit all matters in dispute between us whether claims against the Cavallo. River Company, Limited, or Mr. Collard, by Mr. Harold Fredericks for salary money advanced, damages or payment of balance of purchase consideration, whether money or counter-claims by Mr. Collard or the company for refund of monies paid, or cancellation with Mr. Fredericks or for damages, to the sole award and determination of His Excellency J. P. Crommelin the Liberian Minister as arbitrator ; signed by Harold Fredericks and Alf. S. Collard, for the Cavalla River Company."

On the 27th day of September, A. D. 1912, one day later, defendant in error wrote the following letter to Mr. Crommelin:

"Royal Colonial Institute, Northumberland Avenue, London, W. C., 27th Sept. '12.

"Dear Minister Crommelin,

"Reviewing the whole situation relative to the difference between myself and the Cavallo. River Company, Ltd., I accept your offer to act as an Arbitrator to settle the matter. My Solicitors have advised the pure atmosphere of a public court, but as you pointed out when at the Legation that any publicity of my matter at this particular time would be prejudicial to Liberia's interest and your task in connection with the loan negotiations and the establishment of the receivership rendered most difficult. With this in view .and in keeping with the assurances given me by you at

our last interview. I agree as a basis of settlement (1) that I be paid my salary up to the time of my leaving the coast less of course any drawings on my private a/c. (2) That as you regard my return to Cape Palmas as the company's Advisory Manager in a different agreement as feasible I am prepared to forego my claims for damages for wrongful dismissal and Breach of Contract and will not present it, as the former action by the company would naturally counteract the effect of the latter. I thank you for the efforts you have put forward in trying to effect an amicable settlement and remain.

Yours sincerely,

(Sgd.) Harold Fredericks."

To this letter Mr. Crommelin replied as follows:

"Liberian Legation, 13, Eaton Place, S. W., September 28, 1912.

"Dear Mr. Fredericks,

"I received your letter and one from Mr. Collard as well this morning asking me to arbitrate on your differences of opinion.

"I will do so, but in order to be enabled to come to the right conclusion to the agreement between yourself and the Company and to the way the monies have been spent; the company's money and the monies you told me you had paid personally and which you claim ought to be refunded you.

"Mr. Collard can not come to Holland before the 8th or 9th of October, so that would give me a full week to carefully study these details.

"You could perhaps come and see me early next week and give me these details.

"Yours sincerely,

(Sgd.) J. P. Crommelin."

On the 13th day of November, A. D. 1912, Mr. Crommelin made the following Award :

"To all to whom These Presents shall come, Jacob Pieter Crommelin of 13, Eaton Place in the County of London, Minister of the Liberian Legation, sends greeting:

"Whereas divers disputes and differences have arisen between John Harold Fredericks now of the Royal Colonial Institute, Northumberland Avenue, in the County of London, and Alfred S. Collard of Tower Buildings, Water Street, Liverpool, concerning an agreement dated the 9th day of August, 1911, and made between the said John Harold Fredericks and the said Alfred S. Collard.

"And whereas by an Instrument in writing dated the 26th day of September, 1912, under the hands of the said John Harold Fredericks and Alfred S. Collard they thereby agree to submit all matters in dispute between them (whether claims against the Cavalla River Company, Limited, or by the said Alfred S. Collard or John Harold Fredericks for salary money advanced, damages or payment of balance or purchase consideration whether money or shares or counter-claims by the said Alfred S. Collard or the Cavalla River Company, Limited, for the refund of monies paid or the cancellation of agreements with the said John Harold Fredericks or for damages), to the sole

award and determination of me, the said Jacob Pieter Crommelin, and to the Arbitrator on their behalf in respect of the matter aforesaid.

"Now, I, the Jacob Pieter Crommelin having taken upon myself the burthen of the said reference and having examined and considered all the allegations of the said parties and the documents concerning the premises do hereby make and publish my award in writing of and concerning the premises in manner following, that is to say :

"1. I award and adjudge that the said John Harold Fredericks is not entitled to be paid the £500 claimed by him from the said Alfred S. Collard or any sum as the balance of the consideration money of £1500 agreed to be paid on the said Alfred S. Collard to the said John Harold Fredericks at the expiration of six months from the completion of the agreement for the transfer of the concession therein named.

"2. I award and adjudge that the said John Harold Fredericks is not entitled to have allotted to him 2000 of any shares in the said Cavalla River Company, Limited, as claimed by him.

"3. I am not yet in a position to make my award in reference to the said John Harold Fredericks' claim for salary; but I will do so when I have been furnished with the necessary further information and accounts.

"4. I award and find that the said John Harold Fredericks had sustained no damages and that he has no claim for damages against the said Alfred S. Collard.

"5. I award and direct that the said John Harold Fredericks is to retain the £1000 already paid him by the said Alfred S. Collard under the terms of the agreement of the 9th August, 1911.

"6. I award and find that the said Alfred S. Collard is not entitled to recover any damages from the said John Harold Fredericks.

"7. I direct that the cost of an incidental to this reference and of this my award shall be borne between the parties equally.

"8. I assess the cost as mentioned in Clause 7 of this my award at £35.3.0.

In witness whereof I have hereunto set my hand this 24th day of October, 1912.
(Sgd.) J. P. Crommelin.

"Signed and published by the said Jacob _Pieter Crommelin in the presence of:

(Sgd.) John Singleton Clerk to Messrs. Pollock & Co., 6 Lincoln's Inn., Fields SOLICITORS (Stamps)."

Afterwards Mr. Crommelin made a Supplemental Award which reads as follows:

"To All to Whom These Presents shall come, Jacob Pieter Crommelin of 13 Eaton Place in the County of London a Minister of the Liberian Legation sends greeting:

"Whereas by an instrument in writing dated the 25th day of September, 1912 under the hands of John Harold Fredericks and Alfred S. Collard they thereby agree to submit all matters in dispute between them whether claims against the Cavallo. River Company, Limited, or by the money advanced, damages or payment of balance of purchase consideration whether money or shares or counterclaims by the said Alfred S. Collard or the said Cavalla River Company, Limited for the

refund of monies paid or the cancellation of agreements with the said John Harold Fredericks or for damages to the sole award and determination of me Jacob Pieter Crommelin and to be the arbitrator on their behalf in respect of the matters aforesaid.

"Whereas I, the said Jacob Pieter Crommelin, took upon myself the burthen of the said reference and on the 24th day of October, 1912, I signed and published my Award of and concerning the premises so far as it relates to matters at that date I was in a position to deal with.

"Now I, the said Jacob Pieter Crommelin, having further examined, investigated and considered certain of the allegations of the said parties and the documents and accounts submitted to me concerning the premises, do hereby make and publish my further Award in writing (which is supplemental to my said Award of the 24th of October, 1912) in manner following, that is to say:

"1. Subject to the findings in my award of the 24th October, 1912, I award and find that the said Cavalla River Company, Limited, sustain no damages and that the said company has no claim for damages against the said John Harold Fredericks.

"2. I award and find that the said John Harold Dickinson Fredericks has no claim for damages against the said Cavalla River Company, Limited.

"3. With reference to the claims of the said John Harold Dickinson Fredericks against the said Cavalla River Company, Limited, for salary and for monies alleged to have been paid by him for and on behalf of the said company, I award and find that there is due and payable from the said Cavalla River Company, Limited to the said John Harold Fredericks the sum of £160.-.-. in respect of such claims.

"4. I direct that the costs of said incidental to this my supplemental Award shall be borne between the parties equally.

"5. I assess the costs as mentioned in clause 4, of this my Award at £31.10.0.

In witness whereof I have hereunto set my hand this 13th day of November, 1912.

(Sgd.) J. P. Crommelin. "Signed and Published by the said Jacob Pieter Crommelin in the presence of:

(Sgd.) Arthur Pollock, SOLICITOR Seal. 6 Lincoln's Inn., Fields, London. Stamp.

"Subsequently defendant in error gave to plaintiff in error a receipt worded as follows :

"London

30th Nov., 1912.

Myself and Messrs. The Cavalla River Company, Limited, received the sum of the one hundred and twenty-six pounds, eight shillings and six pence payable to me under the award herein. (£126.8.6).

(1 ct. stamp) (Sgd.) J. Harold Fredericks.

"The following letter from Fredericks to Mr. Crommelin, dated November 20, 1912, is pertinent:

"Royal Colonial Inst., Northumberland Avenue, London, W. C., 20-11-12.

Dear Minister Crommelin :

"By the tone of your letter of the 10th instant relative to the deal between Levers and the C. R. C., Ltd., I must register my objections to your award which I received from my solicitors this p. m. "Directly I returned from Liberia you called and advised Arbitration instead of going to Court as advised and intended by my Solicitors and offered your good offices to act in that capacity, your reasons being due to the loan which was then being effected and the Receivership about to be established. My matters going to a public court would bring to light the Major's connection with the Cavalla River Company and his unwarranted actions whilst out there for them not only as regard myself but the government which in view of your recommendations and representations to the United States Government at Washington and at Monrovia would seriously handicap me in the negotiations as the press would get hold of it and at an inopportune time.

"You further reminded me that I enjoyed President Howard's confidence and returning as I intended to Liberia my consenting to your request you know would be very much appreciated by the authorities out there. Having the fullest confidence in you, I agree and in good faith accepted your kind offer as arbitrator having discussed with you the basis on which I was prepared to entertain a compromise as evidenced in my letter to you of the 27th, September.

"At one of our meetings I asked for the production of the minute book of C. R. Co., Directors' meeting, they objected and you regarding it so unnecessary, upholding their objections. I now see obvious reasons for its suppression and on the whole regret my non-compliance with my Solicitors' advice have the whole matter thrashed out in a public court.



With all due deference and respect,

I remain,





(Sgd.) Harold Fredericks.

"We will now consider the questions raised in the assignments of errors:

The first assignment of error attacks the jurisdiction of the court below,—plaintiff in error contending "that as by the agreement between the parties to the cause it was provided that said agreement shall be interpreted according to the laws of England, the courts of England, and not the courts of Liberia, can exercise jurisdiction in an action for the violation of said agreement."

This position is not in our opinion well taken. The rule as to contracts is thus stated by Mr. Wharton,—*"obligations in respect to the mode of their solemnization, are subject to the rule locus contractus regit actum; in respect to their interpretation to the  lex  loci contra,clus* ; in respect to their performance to the law of the place of their performance."

It would seem that matters respecting the remedy depend upon the law of the place, where the action is brought. There is no weight in the contention that where an agreement provides that it must be interpreted by the law of the place where the contract was made, a suit for the violation of such contract can not be brought in any other jurisdiction.

The  *lex*  *loci* governs as to the formalities and authentication requisite to the valid execution of contracts. But in providing the existence of, and seeking remedies for, the breach, as well as in all questions relating to the competency of witnesses, course of procedure, the  *lex*  *fori* must govern. (Story's Conflict of Laws. pp. 567-634.)

The court below did not err therefore in taking jurisdiction over the case.

The second and third assignments of errors are stated as follow :

"2. Because defendant says that the parties to the agreement being aliens and foreigners and the said agreement having been made and executed in a foreign state, that is to say in Liverpool, England, and not being duly registered and probated in Maryland County, nor in any of the other counties within this Republic ; it being an agreement which had to deal with certain concessions granted plaintiff by the Republic of Liberia, which extend to and affect real property within the said Republic ; and it not being clothed with the essential statutory requirements, said agreement is void.

"3. Because said agreement was not stamped as the law directs." The statute laws of Liberia provided that all agreements for the sale, transfer, or lease of real estate shall be probated and registered.

On inspecting the agreement in this case we are of the opinion that it does not fall within the rule which requires the probation and registration of agreements, as from the mere fact that plaintiff contracted in said agreement "to approach the Liberian Government with a view of securing further concessions," this instrument could not be construed to be an agreement for the sale, transfer or lease of lands.

As to the third assignment of error we say that by inspection of the Stamp Act it will readily be seen that an agreement of the nature of the one under consideration is not included among the documents enumerated in said Act, which must be stamped in order to be received in evidence in court.

The fourth assignment goes to the award of J. P. Crommelin.

Defendant claims that plaintiff was thereby precluded and estopped from maintaining his said action; and this we will now consider.

In a number of cases tried and determined in the American courts it has been held that where parties have submitted all demands to arbitrators and they have made their report, it may still be shown that in an action afterwards brought on the particular demand that it was not in dispute and not laid before the referees. (*Whittemore v. Whittemore*, [2 N. H. 26](#); *Hodges v. Hodges*, [9 Mass. 320](#) ; *Buck v. Buck*, [2 Vt. 417](#); *Hayes v. Blanchard*, [4 Vt. 210](#).)

Courts in such cases go behind the submission to see what construction the parties gave it, and what was in fact included under it; and where an award is pleaded they will not hold themselves concluded by the mere fact of an award, but inquire what was actually decided by the arbitrator.

Now, in the case at bar, it appears to us that in the submission and in the letter of the 27th September, 1912, written by defendant in error the question of defendant in error's claim for damages for breach of contract by the Cavalla River Company, Limited, was received, defendant in error offering to withdraw said claim in consideration that a new agreement be made between himself and plaintiff in error, appointing an Advisory Manager; a fact which it seems the arbitrator induced the defendant in error to believe was likely to happen.

The amount of £160.00 which was awarded to defendant in error, was, as stated in the award, for salary and for monies expended by defendant in error for and on behalf of the company.

Under these circumstances we are of the opinion that the plaintiff in the court below was not estopped by said award from bringing this suit.

The fifth assignment of error refers to the defendant's plea that the process and entire pleadings of plaintiff were defective by reason of the non-joinder of proper parties as defendants.

The agreement which is the subject of this suit was made between defendant in error and the Cavalla River Company, Limited, plaintiff in error; and the action was brought against said company for the alleged violation of said agreement by the said plaintiff in error ; this contention has therefore no weight, and can not claim the serious consideration of the court.

In actions against corporations the corporation sued must be described by its corporate name.

The agreement is because the court below required defendant to produce at the trial of the cause certain instruments of writing, among which was the agreement between the parties in the action.

It is a well settled rule of law that a defendant may be required to produce deeds or other writings in his possession in order that they may be used to maintain the right of the party asking it, in some suit or other proceeding.

The practice is either to give notice in the written pleadings requiring the party to produce the document desired, or to apply for a subpoena *duces tecum*, by which the party is summoned to appear and give evidence in the case and to produce the deed or other writing to be used as evidence in the case.

Plaintiff in the court below having given notice to defendant to produce the counterpart of the agreement between the parties, and said defendant neglecting or refusing to produce same, plaintiff in the court below had a legal right to offer in evidence a copy of the agreement, or to prove the contents thereof by oral testimony.

The error committed by the court below was in refusing the agreement as evidence.

In the case *Ditchfield v. Dossen et al., transacting business under the name and style of the "Cape Palmas Mahogany Company,"* this court ruled as follows : "The record shows that the plain-tiff, following the rule of the statute laws of Liberia served due notice upon the defendant, requiring him to produce at the trial the counterpart original of the libellous letter said to be in his possession, which the defendant failed to produce, or to prove that it was not in his possession ; which failure the statute laws of Liberia .do not only construe as an admission of the authority and truthfulness of the document sought to be proved, but also opens the door for the plaintiff to put in evidence a copy of said letter as well as to bring in witnesses to prove its contents." (See I Lib. L. R. 492 and cases there cited.)

There are a number of other exceptions taken to the rulings of the court as to the admission and rejection of evidence and to certain alleged defects in the pleadings of the plaintiff ; but as they were not presented for our consideration in the brief of the plaintiff in error or argued before us we regard them as having been waived.

We must refer however to the charge of grave misconduct on the part of the jury empanelled in the case.

When on the trial of a case a jury is charged with committing some act, by which the right of one of the parties is prejudiced the fact should be brought to the notice of the judge before the jury is discharged, in order that the matter may be investigated.

The plaintiff in error having failed to make his complaint to the court at the proper time is guilty of laches and the matter can not claim the serious consideration of the court.

Besides, there was nothing to show that the letter to the plaintiff in error was really written by the empanelled jury, or any of them.

The next assignment of error goes to the verdict of the jury which plaintiff in error contends was not supported by the evidence in the case.

The weight of the evidence was clearly in favor of the defendant in error. There was evidence, there was an agreement, a copy of which was produced at the trial by the defendant in error on the refusal or neglect of plaintiff in error to produce the agreement, after notice or to show that it was not in his possession. There was also evidence that said plaintiff in error acted in the capacity of manager of said company, and a copy of the notice published by the managing director after the discharge of the said defendant in error was produced at the trial of the case in the court below.

No evidence was produced at the trial by plaintiff in error to rebut the evidence of the witnesses for the defendant in error, nor did the plaintiff in error show that the dismissal of plaintiff was justifiable under the terms of the agreement.

We find, however, that the amount awarded defendant in error is excessive, taking into consideration the payments previously made to defendant in error ; in this respect the judgment of the court below should be amended. And the same is hereby amended to the effect that the defendant in error shall recover from plaintiff in error the sum of nine thousand dollars (\$9,000.00), each party to pay his own costs ; and it is so ordered.

C. B. Dunbar and L. A. Grimes, for plaintiff in error.

Arthur Barclay, for defendant in error.