LARIOS v BONANY Y GURETY

Privy Council

Sir James Colvile, Sir Barnes Peacock, Sir Montague Smith, Sir Robert Collier.

18, 20 March 1873.

Jurisdiction — power of Supreme Court to administer law and equity in any cause.

Specific performance — not ordered of mere agreement to lend money.

This suit was framed as an equity suit for the specific performance of an alleged contract, and for damages for the breach of it. The general effect of various transactions was to impose on the defendants the obligation of opening a credit in favour of the respondent and of honouring his drafts to the agreed amount.

Held: (i) A suit does not lie for specific performance of a mere agreement to advance or lend money.

(ii) Although the Supreme Court, in administering law, may be bound to adopt and follow the principles which govern English Courts of Law; and in administering equity, to adopt and follow the principles which govern English Courts of Equity, it has power to administer both law and equity in any cause of which it may be seized.

Note. The following extract from the judgment is reproduced largely for its historical interest and as showing that the Supreme Court was never a court with different sides administering separate jurisdictions.

The Solicitor-General (Sir George Jessel, Q.C.) and H. Humphries for appellant.

Rigby for respondent.

3 May 1873: The judgment of which the following is an extract, was read —

The parties throughout the negotiation which led up to the contract were stipulating for advances of money on one side, and for security for those advances on the other; the pleadings state and admit an agreement of that nature; and it seems impossible to treat the cause of action in this case as anything more than the breach of a contract to honour the drafts of the Respondent to the extent of the amount agreed to be advanced and placed to his credit. And, upon a full consideration of the arguments and the authorities, their Lordships are constrained to admit that the Court of Chancery would not have entertained a suit for the specific performance of such an agreement, but would have left the party aggrieved by the breach of it to seek his remedy, where he would find an adequate remedy, in a Court of Law.

But does it follow that, in the Court of Gibraltar, the Plaintiff, because he had misconceived his suit by making it one for specific performance, was necessarily to be subjected to the consequences of having that suit altogether dismissed? that Court is not a mere Court of Equity, exercising jurisdiction over matters only of equitable cognizance. Nor is it even, like some of the Courts created by Royal Charter in India and other dependencies of the Crown, a Court having, under the terms of the Charter erecting it, different sides, and directed on its Equity side to govern itself by the course and practice of the High Court of Chancery; and on its Common Law side to exercise the jurisdiction and functions as near as may be of the Court of Queen's Bench. The Charter of Justice by which the Supreme Court of Gibraltar was created, directs generally that the Court shall have cognizance of all pleas, and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the garrison and territory, with jurisdiction over all subjects of the Crown and all other persons whatsoever residing and being within the said garrison and territory, save as thereinafter is excepted. It further provides that all questions there arising are to be judged and determined according to the laws then or thereafter to be in force within the garrison and territory, that the trial of criminal cases is to be by the Judge and a jury of twelve; and that all issues of fact arising in civil suits or actions are to be tried by the Judge and three assessors, the verdict of the Judge and assessors to be according to the majority of votes; or, if they are equally divided, according to the opinion of the Judge.

It also contains a provision which gave to the Judge large powers of framing rules touching the forms and manner of proceeding to be observed in the Court, and the practice and pleading upon all actions, suits, and other matters both civil and criminal.

Under this latter power Mr. Barron Field, the first Judge of the Court, made certain rules, which were duly allowed by the Crown on 1 October 1832. By the 10th of these it was provided that the civil practice of the Court, whether in its legal or equitable jurisdiction, should be simply by petition, answer, or demurrer, and (if necessary) replication or joinder in demurrer, and rejoinder, addressed to the Judge of the Court. Other rules provided one

uniform process for compelling an appearance and for executing the decrees or judgments of the Court; the only rule which seems to contemplate any distinction between a suit for equitable relief and an action to enforce a strictly legal right, or to point to any difference of procedure in the two cases, being the 17th, which is in the following terms:—

> "In the case of equitable suits, the Defendant's answer shall be put in upon oath, and the rest of the practice in such suits shall be conformable to that of the High Court of Chancery in England, except that the evidence of the witnesses shall be taken before the Court *viva voce,* at the hearing; that inquiries, which in England would be referred to a Master in Chancery, shall be made before the Court; and that issues of fact, when directed by the Court, shall be tried by the Judge with assessors or a jury."

There is, therefore, nothing in the constitution of the Court, or in the rules which govern it, to compel it to relegate a party who had mistaken his remedy, and had sought equitable relief in a matter not properly within the cognizance of an English Court of Equity, to another tribunal, or to send him from one side of the Court to another. It seems rather to be a Court that already possesses the power which modern legislation is seeking to attribute to our own Superior Courts, of administering to the fullest extent both law and equity in any cause of which it may be seized; though, in administering law, it may be bound to adopt and follow the principles which govern English Courts of Law; and in administering equity, to adopt and follow the principles which govern English Courts of Equity. From this it seems to follow that had the objections taken to the suit as a suit of specific performance, on the argument of this appeal, been taken by demurrer or otherwise in the Court below, that Court would not have been bound to hold its hand for want of jurisdiction, but might, amending the pleadings if necessary, have caused the subsequent proceedings in the suit to be had as if the suit had been originally an ordinary action for damages sustained by reason of a breach of contract.