

(1910) 03 MAD CK 0035
In the Madras High Court

Mathew Henry Abraham

APPELLANT

Vs

The Lodge "Good Will" and Others

RESPONDENT

Date of Decision : 08-03-1910

Acts Referred:

Contract Act, 1872 — Section 63
Evidence Act, 1872 — Section 95

Citation : (1910) 20 MLJ 383

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—The learned District Judge has dismissed the suit brought by M. Henry Abraham as executor of Mathew Abraham for

recovery of money due on a Promissory Note executed on the 12th November 1891 in the latter's favour by certain office-bearers of the Lodge

Good Will," No. 465 of Bellary, on the ground that though the document marked as Exhibit IV in the case and executed by Mathew Abraham on

the 21st February 1902 is not operative as a release, yet since the Lodge regarded it as such, being led so to regard it by the conduct of Mathew

Abraham at the time of its execution, and completed the building of the Lodge premises on the faith of such belief, the plaintiff is estopped from

enforcing his claim. No estoppel, however, was ever pleaded, and the issues did not raise the question, nor is there any evidence on the point

except a statement of the last witness of the defendants elicited in the course of re-examination. The District Judge, therefore, was not right in

dismissing the suit on that ground. The real question in the case is: " Whether the District Judge is right in holding that Exhibit IV is not a good and

effective release." It is in these words:

Know all men by these presents that I, Mathew Abraham, proprietor of Messrs. Abraham & Company, Bellary, do covenant and agree with the

Worshipful Master and Warden of Lodge Good Will, No. 465, for the time being, that if the Masonic Lodge building which has been burnt down

is resuscitated, I shall have no claim, whatever, upon the building or any of the property of the said Masonic Lodge,

Signed, sealed and delivered by me this twenty first day of February one thousand nine hundred and two.

M. Abraham,

2. One reason why it is said it is not a good release is, that there is no mention of the promissory note there, and that neither at the time of its

execution nor afterwards did Mr. Abraham have any claim upon the building or the property of the Lodge. There can be no doubt whatever--and

this has not been disputed by the learned vakil for the plaintiff-appellant--that the document refers to the claim of Mr. Mathew Abraham under the

Promissory Note as that was the only claim he had against the Lodge. It is true that until a decree was obtained on the note and executed, Mr.

Abraham would have no charge upon the building of the Lodge or its property, but it is clear that the Promissory Note was intended to be satisfied

out of the assets of the Lodge and not personally by those office-holders of the Lodge who executed it. In fact in the plaint itself judgment is

prayed for against the assets and property of the Lodge. The evidence on the point which is admissible u/s 95, Evidence Act, makes it quite plain

that the claim referred to in Exhibit IV is with reference to the money due on the Promissory Note. The other question with reference to Exhibit IV

is whether, its operation being made conditional on the happening of a future event, it comes within the provision of Section 63 of the Contract Act.

The illustrations appended to the section are, no doubt, cases in which performance is dispensed with unconditionally. But the words of the section

itself are wide enough to cover conditional releases, and there is no reason to think that the Indian legislature contemplated departure on this point

from the English law under which a release contingent on the happening of a future event is a good release. The point on which Section 63 differs

from the English law is that; it does not require consideration to support a release while under the English law a release without consideration is a

nudum pactum unless made by an instrument under seal--see Davis v. Cundasawmi Mudali ILR (1896) M. 398. Manohar v. Thakur Das Naskar

(1888) I.L.E. 15 C. 319. Naoroji N. Thoonthi v. Kazi Sidick Mirza ILR (1896) B. 636. It has also been suggested that Exhibit IV is a new

contract to release the debt and does not purport to be a release. But I do not think this is a sound contention. Mathew Abraham did not

contemplate the doing of any further act on his part, the discharge of the liability was to come into operation as soon as the building was

completed, and the building was in fact completed before the institution of the suit. And it can hardly make any difference whether a creditor says "

I release this debt" or "I agree to release this debt"--and this, I think is to be gathered from the cases just cited and the English law on the subject

of release, unless, perhaps, it was within the contemplation of the releasor that he was to do something more in order to carry out his intention. I

am of opinion, therefore, that no question of consideration really arises in the case. If, however, Exhibit IV required consideration to support it I

should be inclined to hold there was no consideration for it within the meaning of the Contract Act. There is no evidence, and it has not even been

alleged, that Mathew Abraham ever requested the other members of the Lodge to rebuild the premises. What apparently happened was, the

members of the Lodge decided upon rebuilding the Lodge premises, provided they had sufficient money for the purpose, and Mr. Abraham would

release his claim upon the note. Mr. Abraham agreed to give up his claim in 1902. But that does not mean that Mr. Abraham desired them to

rebuild the Lodge. However, as I hold that Exhibit IV was a valid release, I would dismiss this appeal with costs.

3. I may observe that as regards the form of the action it is not open to the defendants to rely on the objection on the score of an order u/s 30,

C.P.C., not having been obtained, as the objection was not pressed before the District Judge.

Munro, J.

4. I am of the same opinion and the appeal is dismissed with costs.