7/1924

High Court of Australia
Court copy
(A 1 G 3)

GLENDENNING ——V PILGRIM.

JUDGMENT. ... MR JUSTICE ISAACS.

MR JUSTICE STARKE.

Glandenning v Pilgrim.

Judgment. Isaacs J.

Starke J.

This is an appeal from the decision of Northmore J., who gave judgment for the present respondents.

The appellant's case as set out in the Statement of Claim was rested on three grounds:- (1) fraud (2) account and (3) negligence. Only the two first have been urged before us but in the second there has been included a claim to a sum of £200, which forms no part of the claims in this action and will be separately dealt with.

The fraud relied on before us consisted of two alleged representations, namely, (1) that Pilgrim's firm controlled the direct shipping of fruit from Java to Fremantle and that the proposed new company would have that monopoly; and (2) that Pilgrim's firm was prepared to put and would put £1,000 into the new company. Those representations were said to be both false and fraudulent, because Pilgrim' knew that his firm did not control the direct shipping but only some of it, and also that his firm had no intention of putting, and would not put £1,000 or any sum into the venture. After hearing the evidence of all parties Northmore J gave credence to the respondents' story in preference to that of the appellants and found there was no misrepresentation and no fraud. The appellants having failed to sustain their charge of fraud

to the satisfaction of the learned primary judge have asked this Court to reverse his finding. That is a heavy burden. Of course as Mr Keenan candidly admits, if the whole matter rested on the verbal testimony, it would be hopeless to ask an Appellate Court to reverse the finding of the primary tribunal that had seen the witnesses and heard their testimony. But he says it does not rest there. He contends there are circumstances partly in writing and partly of events uncontroverted which are so preponderating in favour of the appellants story as to shew it demonstrably to be true. The evidence and circumstances relied on so far from convincing us that the finding was erroneous are in our opinion strongly confirmatory of the learned Judge's conclusions on the first branch of the case. The second branch relates to a sum of £1,000, forwarded by the respondents firm to one Sheppard in Java for the purpose of purchasing bananas for the company. Only a portion of the £1,000, namely, £406/14/6 is accounted for in connexion with the only purchase made. The balance, namely, £593/5/6, the appellants say, should be accounted for to them by the respondents firm. The short and simple answer to that is that by written direction, and by common consent the respondents firm was authorised to forward the whole £1,000 to Sheppard in Java, nominatim, to be applied by him for the benefit of the new company. The appellants contend he simply represented the respondents firm, the firm being the new company's agent and Sheppard the firm's sub-agent.

Northmore J found as a fact that in remitting the money the respondents

firm were merely acting under the special and direct instructions of the new company and that Sheppard did not receive it as the respon--dents agent, and that he alone was accountable to the new Company. The oral evidence of Pilgrim was again accepted by the learned Judge and though Mr Keenan has elaborately explored the correspondence for the purpose of shaking the conclusion so arrived at, it seems to us to strengthen it. The function of remitting the £1,000 to Sheppard seems to have been entrusted to the respondents firm rather as a partner specially conversant with the business than as an agent in the ordinary sense.

The judgment must therefore be affirmed and the Appeal dismissed with Costs.

With respect to the sum of £200, mentioned, Northmore J, while stating his conclusions of fact, so far as the evidence permitted, left the matter outside his formal judgment. We think he was right in doing so, and any claim the appellants may think they have with regard to it is left open and undetermined.