**Supreme Court of Canada**
**Jackson v. Drake, Jackson & Helmcken (1906), 37 S.C.R. 315**
**Date: 1906-03-13**

Robert Edwin Jackson *(Plaintiff) Appellant;*

and

Drake, Jackson & Helmcken *(Defendants) Respondents.*

1906: March 13.

Present: Sedgewick, Girouard, Davies, Idington and Maclennan JJ.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

*Account stated—Admission of liability—Promise to pay—Collateral agreement—Parol evidence.*

On the dissolution of a partnership, the parties signed a statement shewing a certain amount as due to the plaintiff for his share and declaring that "for the sake of peace and quiet and to avoid friction and bother" the plaintiff waived examination of the firm's books and agreed that the amount so stated should be deemed to be the amount payable by the defendants to the plaintiff.

*Held,* that a promise to pay the amount of the balance so stated to be due should be implied from the admission of liability.

In an action for the amount of the balance, the defendants alleged that the plaintiff had verbally agreed that he would not sue upon the account as stated, and that the document should be treated as merely shewing what would be payable to him upon the collection of outstanding debts owing to the firm.

*Held,* that as the effect of the alleged collateral agreements was to vary and annul the terms of the written instrument they could not be proved by parol testimony.

APPEAL from the judgment of the Supreme Court of British Columbia affirming the judgment of Mr. Justice Martin by which the plaintiff's action was dismissed with costs.

The case is stated in the judgment now reported.

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*W. C. Taylor K.C. for the appellant.*

*Peters K.C. for the respondents.*

The judgment of the court was delivered by

IDINGTON J.—The appellant and the respondents as partners carried on business in Victoria, B.C., and the defendants agreed with appellant to pay him as a retiring member of

the firm an annual sum that was fixed at $4,000.00 a year subject to certain reductions in the event of the business not producing a sum named.

The appellant desired at the end of a number of years a settlement of arrears due him, and after some prolonged negotiations the parties signed the following document:

Victoria, B.C., 2nd November, 1903.

Robert E. Jackson, Esq.:

in account with

Drake, Jackson & Helmcken.

STATEMENT.

| | |
|---|---|
| By balance R. E. Jackson account | $4,923.50 |
| By balance No. 1 account (old account) | 4,286.90 |
| By balance No. 1 account (in No. 2 account) | 790.60 |
| By annuity account 1/4 share of net profits for year 1900 | 2,993.53 |
| By annuity account 1/4 share of net profits for year 1901 | 2,229.60 |
| By annuity account 1/4 share of net profits for year 1902 amount to $1,852.11, therefore, leaving Mr. Aikman's proportion of profits $2,518.86. The amount of $481.14 is deducted from Mr. R. E. J.'s share and added to Mr. Aikman's share to make $3,000. | 1,370.97 |
| | $16,595.10 |

N.B.—The balances herein are taken up to 31st December, 1902.

The above statement has been furnished to the said Robert E. Jackson by the said H. D. Helmcken and H. B. W. Aikman, who admit and allege, testified by their signatures hereto, that the sum of $16,595.10 is (except as to the moneys (if any) in which they were indebted to him in respect of an account known as the Drake

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and Jackson rental account or rent of offices and of a certain promissory note dated the 3rd day of June, 1893, made by them the said H. D. Helmcken and H. B. W. Aikman and one B. H. T. Drake for $2,000 payable to the order of the said R. E. Jackson at the Bank of British Columbia, Victoria, on demand with interest at 7 per cent. per annum) the amount in which they were indebted to him the said R. E. Jackson on the 1st day of January, 1903. And the said R. E. Jackson, for the sake of peace and quiet and to avoid friction and bother, is willing to waive investigation of the books of the firms of Drake, Jackson & Helmcken, of which the said H. B. W. Aikman was or is a member, and to agree that the said sum of $16,595.10 shall (except as aforesaid) be deemed to be the amount which was payable by the said H. D. Helmcken and H. B. W. Aikman to him on the said 1st day of January, 1903, for balance of account.

Dated this 19th day of March, 1904.

H.DALLAS HELMCKEN.

The appellant, in August following the signing, desired payment of the amount fixed as above at $16,595.10, and in default of payment sued for said amount as due on an account stated.

The defences set up in the pleadings were numerous, but on this appeal rested upon (1) a denial of the account stated; (2) what was claimed to be a collateral contract, and; (3) upon mistake or mistakes in the account to such an extent as to render void the account stated.

The document itself, by its wording, seems to us to be as complete a reply as possible to all that was said on the first point. We do not see any other meaning that can be attached to the first part of the document than that of an account stated, and to the last of it, which relates to the first part, a promise to pay the amount, or at least an admission of such a liability to pay the amount that the law implies a promise to pay.

As to the second point taken there was alleged to

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be an agreement that the appellant would not sue upon such a document if given. The contention was also set up that the document if given was only to be used as evidence of the amount the plaintiff was entitled to receive when, but not until, there had been received by defendants, from the debtors owing the partnership the accounts that entered into the calculations upon which the balance was found due, money to pay this balance.

The evidence in support of these contentions was entirely oral.

It certainly was of a character to contradict in one of these alternatives or to vary in the other of them the plain language of the document.

Such evidence must be excluded from our consideration.

Neither alternative set up under this head can be rightly said to be in the nature of a collateral agreement of which parol evidence would be admissible.

Either such alternative is not only inconsistent with the written document, but seems to contradict, or vary, and indeed absolutely to nullify it.

There is no such evidence in support of either proposition as would entitle defendants to ask for reformation of this document as the result of a mutual mistake.

The alleged promise not to sue is one of those vague, indefinite sorts of expression often used in negotiations such as this and if taken literally contradicts the document.

If taken in a more reasonable sense it means little or nothing, possibly a promise of forbearance, as was shewn here, for a short time; or more extended than that, yet so vague that no reformation can be made to give effect to it.

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Reformation can only be granted when it is clearly and explicitly shewn, not only that there has been a mutual mistake, but also what the definite terms of the agreement were intended to have been.

The evidence fails to support any such case.

These remarks as to mistake apply in part to the third ground taken. We are, perhaps, unable to comprehend, correctly, any further contention under that head. The alleged mistake of adopting as the basis of settlement accounts due and owing but unpaid seems to be the only one upon which there is tangible evidence. It would seem to be covered by what I have said. Clearly, appellant never for a moment intended to bargain on any other basis than treating all the accounts carried in the books as good down to the time of treating for this settlement.

He, by accepting this stated account, abandoned any claim to receive from doubtful accounts that were dropped out of this reckoning in previous years, pursuant to what we are told was part of the system.

Preferring an acknowledgment, by the defendants, of liability to him for what had been carried forward as good assets, to the doubtful benefit of awaiting collection of the last dollar that might possibly be got, he can now get no more, and defendants must give no less, than a balance so arrived at. If the defendants find their judgment of the results was mistaken that is not a mistake they can claim now to be relieved from.

If, however, for example, a clear error in the computation had been shewn, of course relief could have been given. No such clear error appears here.

We think the appeal must be allowed with costs of appeal here and in the court below, and judgment

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be entered for plaintiff against the surviving defendant Helmcken for the amount sued for with costs.

*Appeal allowed with costs.*

*Solicitor for the appellant: C. J. Prior.*

*Solicitors for the respondents: Moresby & O'Reilly.*