GREER -V- KETTLE [1938]

House of Lords

Judges: Lord Maugham, Lord Russell of Killowen

References: [1938] AC 156, 158 LT 433,

A corporate borrower agreed to repay £250,000 with interest and to charge certain specified shares in another company as security. A guarantee was procured from another company, Parent Trust. The deed of guarantee recited that the lender had made the advance to the borrower 'on the security of a charge dated March 1929 on the shares, particulars of which are set out in the schedule hereto'.

Held:

Recitals may also give rise to an estoppel in respect of specific facts stated and adopted as the basis of a transaction, provided that the facts as stated are 'certain, clear and unambiguous'. However, Parent Trust had never become liable under the guarantee because a charge had never in fact been given over the shares. Where a person guaranteed a loan which was expressed to be secured by a charge on certain shares, and the shares had not been validly issued, it was held that the surety was not liable.

Lord Killowen explained: 'the legal rights and liabilities of these parties depend upon the true construction and effect of the agreement of guarantee. Once it is realized that the debt which Parent Trust are undertaking to guarantee is a debt described as a debt the repayment of which by the principal debtor is secured by a charge on (amongst other shares) the 275,000 shares in Iron Industries, Ld, the case (apart from the question of estoppel, to which I will refer) becomes in my opinion a simple one. It is not a case, as Bennett J seems to have treated it, of seeking to imply a condition, the implication of which is alleged to be inconsistent with other provisions in the document. In other words, as Romer LJ said, it is not a case of Parent Trust being released from a contractual engagement. It is a case of an attempt to impose upon them a liability which they have never undertaken. The only debt, the repayment of which by the principal debtor they undertook to guarantee, was a debt secured by a charge on the 275,000 shares in Iron Industries, Ld, and a debt so secured never in fact existed. The language of Knight Bruce LJ in *Evans v Bremridge* (i) may well be applied to the present litigants . In that case it was sought to make a surety liable who became a surety on the footing that a co-surety would join in the covenant with him. The co-surety had not done so, and the surety was held to be under no liability. As the Lord Justice truly said: 'The defendants seek to charge the plaintiff with 'a contract, into which he did not enter.'

Lord Maugham referred to the qualification imposed by equity on the doctrine of estoppel by deed: 'The position in equity is and was always different in this respect, that where there are proper grounds for rectifying a deed, e.g., because it is based upon a common mistake of fact, then to the extent of the rectification there can plainly be no estoppel based on the original form of the instrument. It is at least equally clear that in equity a party to a deed could not set up an estoppel in reliance on a deed in relation to which there is an equitable right to rescission or in reliance on an untrue statement of an untrue recital induced by his own representation, whether innocent or otherwise, to the other party. Authority is scarcely needed for so clear a consequence of a rectification order or an admitted or proved right to such an order. The well known rule of the Chancery Courts in regard to a receipt clause in a deed not effecting an estoppel if the money has not in fact been paid is a good illustration of the equity view.

Cases Cited:

- *Brooke -v- Haynes*, CA, ([1868] 6 LR Eq 25)
- *Carpenter -v- Buller*, , Commonlii, [1840] EngR 840, (1840) 2 M & Rob 298, (1840) 174 ER 295 (A))