In the Matter of the Insolvency of HECTOR CROSS BUCHANAN and FREDERICK WILLIAM BOIS.

1896. *September 24.*

D. C., Colombo, 1,762.

Guarantee by a member of each of two firms—How far it binds the firms—Terms in which guarantee is accepted—Contract by letters.

A was a member of the firm of C. R. & Co. and of A. S. & Co. He wrote to G recommending a loan by G to M of £7,000 on the security of a coffee estate known as the Roeberry estate, with reference to which he stated in his letter, "It is an excellent security apart from our guarantee of principal and interest." G replied that he would be able to lend £7,000 "on the Roeberry estate with "C. R. & Co.'s guarantee of principal and interest." Subsequently C. R. & Co. wrote to G asking him for the £7,000, and the amount was thereupon transmitted to them by G,—

Held, that the two letters constituted a contract between G and C. R. & Co., whereby they agreed to guarantee the principal and interest of the mortgage, and that the guarantee did not extend to and bind the members of the firm of A. S. & Co.

THE facts of the case appear in the judgment of BONSER, C.J.

Wendt, for appellants.

Dornhorst, for respondent.

24th September, 1896. BONSER, C.J.—

The appellants in this case are the trustees of George Alston, who was at the time of his death a partner in the firm of Campbell, Rivers & Co., Glasgow, and of Alston, Scott & Co., Colombo.

This is an application in the insolvency of two members of that latter firm, Hector Cross Buchanan and Frederick William Bois, to be allowed to prove for a sum of Rs. 151,773·88.

It appears that the two firms were very closely connected. In fact all the members of the firm of Campbell, Rivers & Co. were members of the firm of Alston, Scott & Co.

They seem to have carried on business as general merchants and to have financed local planters.

In the year 1879 a planter named Mant, owner of the Roeberry estate, obtained a loan from a Mr. Hutchison of £7,000 sterling upon a mortgage of that estate. In December, 1882, Hutchison wished to call in his money, and in January, 1883, Mr. John P. Alston, then of Glasgow, who was a member of both firms, and who had admittedly authority to bind both firms, wrote to a Mr. Gibson the following letter :—

Glasgow, 4th January, 1883.

MY DEAR GIBSON,—FOUR years ago we arranged a loan of £7,000 with J. W. Hutchison (son of the late Graham H.) on first mortgage over the estate of Roeberry in Hewa Eliya. Mr. H has bought a property and wants the £7,000 in June. The estate was then valued at £15,000, and although the

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coffee is worth less now, the value has been kept up by large plantings of cinchona. It is therefore an excellent security apart from our guarantee of principal and interest. Before offering it to any one else, I think it well to place it before you as a good 7 per cent. investment (interest payable half-yearly) for three years, with six months notice of repayment on either side.

Hoping you are all in good health, and wishing you and Mrs. Gibson many happy new years together.

ALEX. GIBSON, Esq., Edinburgh.

I remain, &c.,
JOHN P. ALSTON.

Mr. Gibson the next day replied in the following terms :—

Edinburgh, 5th January, 1883.

MY DEAR ALSTON,—I HAVE yours of yesterday, and write to say that I expect to be able to let you have the £7,000 named in June next on the Roeberry estate, with C. R. & Co.'s guarantee of principal and interest. Not having anything coming in to me from my Ceylon estates just now, I have nothing open for investment, but by shifting investments I see my way to doing it.

With the best wishes of the season to you and yours.

Believe me, &c.,
ALEXANDER GIBSON.

In that last letter C. R. & Co. means Campbell, Rivers & Co. That first letter, which refers to " our guarantee of principal and interest," would seem, when the position of the writer is considered, to be ambiguous. It will be remembered that he was a member of both firms, and had power to bind both. " Our guarantee " may therefore mean either a guarantee by the firm of Alston, Scott & Co., or by the firm of Campbell, Rivers & Co., or a guarantee by both firms.

Mr. Gibson's reply accepting the offer clears up the ambiguity. It is an acceptance of the offer of the mortgage with the guarantee of Campbell, Rivers & Co. That is the interpretation Mr. Gibson himself put upon Mr. Alston's offer. It might have been open to Mr. Alston to have replied and said : " That is not my offer ; you have misunderstood my letter " ; but he did not do so, and by his conduct he accepted the interpretation placed upon the offer by Mr. Gibson, and the negotiation proceeded on that footing.

It appears to me, therefore, that these two letters constitute a contract between Gibson and Campbell, Rivers & Co., whereby that firm agreed to guarantee the principal and interest of the mortgage.

The money was advanced by Gibson on the faith of the agreement contained in those two letters.

In 1884 George Alston died. The mortgagee was then unable to pay the principal. Thereupon Mr. Gibson commenced an action against the trustees of George Alston to make them liable upon the guarantee The liability was disputed, and the case went to the House of Lords.

The House of Lords decided that the contract of guarantee contained in the letters bound George Alston, and that it did not matter whether it was a guarantee by one firm or the other firm, or by both.

It was clearly a guarantee by one of the firms, and George Alston was liable in any event.

Accordingly the decree went against the present appellants, but it was ordered that Gibson should assign to the appellants "all and "every claim competent to him in respect of the said loan and "interest thereon against the firms of Alston, Scott & Co. and "Campbell, Rivers & Co., and the individual members of these "firms." An assignment was duly made in accordance with the said decree.

The appellants seek to prove in the insolvency of Messrs. Buchanan and Bois for this sum which I have mentioned, which represents the £7,000 and interest.

The question which was immaterial in the action becomes here most material—the question whether the guarantee extended to and bound the members of the firm of Alston, Scott & Co. It is admitted that unless it did Gibson could not have recovered against the members of that firm, and that the present appellants standing in the shoes of Gibson cannot maintain the present claim.

For the reasons I have given I am of opinion that the guarantee did not extend to or bind the firm of Alston, Scott & Co. There is nothing to show that the members of that firm incurred any subsequent liability to pay the money. That being so the proof was rightly rejected.

I omitted to state that on the 7th May following the January in which these two letters were written, Campbell, Rivers & Co. wrote to Gibson, and referring to his letter of the 5th January asked him for the £7,000 to be paid to Hutchison, and that the amount was thereupon transmitted by Gibson to Campbell, Rivers & Co.

Mr. Wendt pressed upon us an observation of Lord Watson's in his speech in the House of Lords, that Gibson's letter of the 5th of January, in answer to J. P. Alston's letter of the previous day, "was in substance an unqualified acceptance of the offer which it conveyed to him," and he sought to argue from that, as J. P. Alston apparently intended to offer the guarantee of both firms, that letter of acceptance must be taken as an acceptance of the guarantee of both firms. But I do not think Lord Watson meant to decide that. What he meant was that it was an unqualified acceptance of the guarantee. It may be inferred that John P. Alston did intend to offer a guarantee of both firms, because he appears to have written shortly afterwards to Alston,

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Scott & Co.: "We have induced Mr. Gibson to take up this mortgage with your guarantee of principal and interest as usual." But whatever John P. Alston's intention may have been, we are not entitled, in my opinion, to go outside the two letters which constitute the contract. Taken together the two letters constitute a plain and unambiguous contract. I do not see on what principle an expression of the intentions of one of the parties written to a third party can be admitted to vary the plain meaning of the contract.

WITHERS, J.—

The claim sent in by the appellants was sent in by them as the assignees of Mr. Gibson. The question is whether there was a contract of guarantee between Mr. Gibson and the members of the firm whose agents are under administration in these proceedings.

The letters containing an offer and an acceptance, which go to make up the contract of guarantee, clearly, to my mind, point to Campbell, Rivers & Co. as being the sole guarantors.

Hence with the failure to prove the contract set up the claim breaks down. In my opinion the proof was rightly rejected.