CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

NOVEMBER TERM, 1927.

EDWARD W. ALSTON, Agent for W. D. WOODIN & CO., LTD., Appellant, *v.* GEORGE H. CASTRO, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Decided February 3, 1928.

1. Merchants are not bound to accept outstandings put out by their factors against or without their instructions or assent.
2. Where the accounts are doubtful they may be rejected.
3. In equity, fraud may be presumed from circumstances, but in law it must be proved.

Appellant, plaintiff in the court below, brought an action of debt in the Circuit Court of the Second Judicial Circuit, Grand Bassa County, against appellee, defendant in such court, for the recovery of the sum of seven hundred sixty-seven pounds, ten shillings. To judgment for defendant, plaintiff excepted. On appeal to this Court, *reversed.*

H. L. Harmon for appellant. *C. B. Reeves* for appellee.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

In 1920 appellee was employed by W. D. Woodin & Co. as a factor at River Cess, in Grand Bassa County, in which capacity he was serving when appellant took over the business interest of said firm. In the month of February, 1925, in accordance with instructions given by J. R. Perry, then agent of said firm, appellee handed over to one Mr. Sloan the business premises with the stock on hand. When subsequently appellee's account was adjusted, it was discovered that after crediting him with what outstandings there were from the petty traders of the factory, there was a shortage in his account to the amount of £1,242:10:0. Appellant had submitted a list of outstandings amounting to the sum of £1,256:2:10; but it seems that appellant took over certain items leaving a balance of £1,242:10:0 to be collected by said appellee. To enable appellee to collect said outstandings he was given the further sum of £100:0:0 in goods; a statement was made out and signed by appellee. The account was thereupon entered in the ledger of the firm as follows:

> To list of outstandings not taken over left for collection by Mr. Castro, £1,242:10:0.

Subsequently, appellee was credited with the following items, to wit:

> By salary for the month £18:0:0
> " Cash from London deposit £250:15:7
> " Amount from private a/c £261:14:1

A reasonable time having elapsed, and appellee having neglected to collect said outstandings, appellant entered action as aforesaid.

The pleadings and the records are voluminous; we will, therefore, notice only such points in the bill of exceptions as will enable us to arrive at a correct conclusion.

The first exception is taken to the ruling of the court below, sustaining the objections to the written evidence offered by plaintiff marked "A" and "B," being statement of account between plaintiff and defendant and

the ledger account, on the grounds of: (1) irrelevancy; (2) variance; (3) insufficiency of identification.

We are of the opinion that the court below erred in ruling out these two items, because there was no material variance between the statement of the account and this account filed with the complaint; they should therefore have been admitted by the court. The signed statement of account was relevant to the issue, because it tended to prove that the outstandings amounting to £1,242:10:0 were not taken over by the said firm, but were left for collection by the defendant. The ledger in which the statement of account was entered was also legal evidence of defendant's indebtedness to said firm.

The third exception relates to the court disallowing the question put to the witness Castro: "Have you a receipt, acknowledgment or instructions of any kind, showing that the outstandings which you referred to in your statement were accepted by the firm and placed to the credit of your account, thereby relieving you of any further responsibility of said debt?"

This question was a pertinent one, as appellee claimed that appellant had taken over all of his outstandings and that thereby his account had been liquidated. It was, therefore, error on the part of the court below to have disallowed the question.

In the third point of his brief, appellee submits that the copy of the statement of account filed is fraudulent in itself in that appellant debits a list of outstandings of his factory to appellee, which he claims was not accepted in the balancing of said factory account, but was only left for collection by appellee. We find nowhere in the pleadings that appellee denied signing the statement of accounts; he is therefore estopped from setting up such denial at this stage of the case. "Qui non negat, fatetur." He who does not deny, admits.

The following observations were made in *Bent* v. *Coleman,* 2 L.L.R. 210, Lib. Semi-Ann. Ser. 58 (1915):

> "It cannot be denied that factors are too often in the habit of giving out credit, even when it is against the stipulations of their contract, or the instructions of their employers. Such amounts being seldom or never recovered by the factor or his principal—and this has been the experience of most mercantile businesses in Liberia."

Merchants are not bound to accept outstandings put out by their factors against or without their instructions. Where the accounts are doubtful, they may be rejected.

Now in the case at bar it appears that a statement of account was drawn up showing that certain outstandings were not accepted by the firm, but were left for collection by the appellee. Moreover, he accepted the amount of £100:0:0 in goods to enable him to collect said outstandings. The signature of appellee to said statement having been identified by witnesses acquainted with said handwriting, he cannot now repudiate his obligations set out in said statement, and the mere fact that an agent of the firm collected a few items of the outstandings does not make the firm responsible for the whole list of the outstandings.

We pay no attention to the allegation of fraud raised by appellee. It is held that in equity fraud may be presumed from circumstances, but in law it must be proved. Tribunals will, however, accept presumptive or circumstantial proof if of sufficient force. There appears, however, nowhere in the record any circumstances showing fraud on the part of appellant.

After a careful consideration of the questions raised in the case, we are of the opinion that the judgment of the court below should be reversed and that appellant recover from appellee the sum of £767:10:2 with all costs of the action. And it is hereby so ordered.

Reversed.